

Claim No. BIOT SC 2021-1

IN THE SUPREME COURT OF THE BRITISH INDIAN OCEAN TERRITORY

BETWEEN:

(1) BERNARD NOURRICE

(2) SOLOMON PROSPER

Claimants

– and –

THE GENERAL COUNSEL OF THE BRITISH INDIAN OCEAN TERRITORY

Defendant

INDEX TO EXHIBIT KP-1

Page	Document Title
1	<u>Chagos Islanders Group Litigation v. Attorney General</u> [2003] EWHC 2222 (QB)
311	<u>Chagos Islanders v. Attorney General</u> [2004] EWCA Civ 997
320	The BIOT Order 1965 (SI 1965/1)
335	The BIOT Royal Instructions 1965 (SI 1965/2)
339	The BIOT Constitution Order 2004
345	Proclamation No. 1 of 1969 (SI 1969/1)
347	The Fishery Limits Ordinance 1971 (No. 2 of 1971)
351	The Fishery Limits Ordinance 1984 (No. 11 of 1984)
356	Proclamation No. 1 of 1991
358	The Fisheries (Conservation and Management) Ordinance 1991 (No. 1 of 1991)
376	The Fisheries (Conservation and Management) Ordinance 1998 (No. 4 of 1998)
398	The Fisheries (Conservation and Management) Ordinance 2007 (No. 5 of 2007)

424	Proclamation No. 1 of 2003
426	The Immigration Ordinance 1971 (No. 1 of 1971)
432	The Courts Ordinance 1983 (No. 3 of 1983)
445	The Crown Proceedings Ordinance 1984 (No.2 of 1984) as amended
463	The Immigration Ordinance 2000 (No.4 of 2000)
473	<u>Chagos Islanders</u> Group Litigation Order (excerpt)
488	Proclamation No. 1 of 2010

All England Reporter/2003/October/Chagos Islanders v Attorney General and another - [2003] All ER (D) 166 (Oct)

[2003] All ER (D) 166 (Oct)

Chagos Islanders v Attorney General and another

[2003] EWHC 2222 (QB)

Queen's Bench Division

Ouseley J

9 October 2003

Practice and procedure - Abuse of process - Striking out - Settlement of earlier proceedings - Claimants signing forms renouncing claims against United Kingdom as part of settlement.

The Chagos archipelago lay in the middle of the Indian Ocean. Prior to 1965, it was administered by the Crown from Mauritius. In 1964, the British and United States governments discussed the possibility of establishing an American defence facility in the Indian Ocean on a British dependant territory. At that time, the independence of Mauritius was imminent, and that of the Seychelles anticipated. In 1965, a new colony, the British Indian Ocean Territories was created, encompassing the Chagos archipelago, and a number of other islands that had previously been part either of the Mauritius or Seychelles colonies. At that time, the Chagos islands had a fairly small population. Those who came from families which had lived on the islands for some time were known as Ilois. Between 1971 and 1973, the population of the Chagos islands was evacuated mostly to Mauritius in order to facilitate the building of a US naval base on Diego Garcia, the largest of the Chagos islands. Over the following years, talks took place involving Ilois representatives and the British and Mauritius authorities concerning the plight of the resettled Ilois. The Ilois received advice from English lawyers that a proposed settlement was fair. In 1982, Britain and Mauritius signed an agreement setting out the compensation deal. The Ilois Trust Fund Board was subsequently established by the Mauritian authorities to oversee the distribution of the compensation moneys. The money was distributed in a number of tranches. In order to receive the final tranche, the Ilois were required to sign a form renouncing any claim against the UK. Only 12 out of over 1,300 Ilois refused to sign. In 2002, the instant group action claim was issued by which the claimants sought, inter alia: (i) compensation and restoration of their property rights in respect of their unlawful removal or exclusion from the Chagos islands by the defendants; and (ii) declarations of their entitlement to return to all Chagos islands and to measures facilitating their return. The claim alleged, inter alia, that the defendants had committed the torts of misfeasance in public office, and the tort of unlawful exile. An issue arose as to whether the latter tort existed at all. A trial was held to determine certain preliminary issues. At that trial, the defendants applied for summary judgment or to strike out the claim on the basis, inter alia, that in light of the renunciations which had been signed, the action amounted to an abuse of process.

The court ruled:

(1) The tort of misfeasance imposed a high burden. In the circumstances of the instant case, it could not be said that there was an arguable case of misfeasance. Furthermore, the existence of a tort of unlawful exile was unarguable. Unlike established torts, it did not rely on an element such as trespass, negligence or deceit, but was founded merely on an unlawful administrative act. It had long been established that an ultra vires act did not of itself give rise to tortious liability; *Three Rivers District Council v Bank of England* [2001] 2

All ER 513 considered.

(2) The renunciation notices had clearly intended to preclude any future litigation concerning the resettlement of the Chagos islanders, and covered the instant action. Virtually all of the claimants had signed the notices and had received moneys in return. The claimants had had access to legal advice at the time. Moreover, the terms of the settlement could not be regarded as unconscionable. In those circumstances, the bringing of the instant case amounted to an abuse of process by the claimants. Accordingly, summary judgment would be given to the defendants.

Robin Allen QC, Simon Taylor QC, Anthony Bradley and Thomas Coghlin (instructed by Sheridans) for the claimants.

John Howell QC, Rhodri Thompson QC and Kieron Beal (instructed by the Treasury Solicitor) for the defendants.

Aaron Turpin Barrister.

Judgment

[2003] EWHC 2222 (QB)

QUEEN'S BENCH DIVISION

9 OCTOBER 2003

MR JUSTICE OUSELEY

APPROVED JUDGMENT

I DIRECT THAT PURSUANT TO CPR PD 39A PARA 6.1 NO OFFICIAL SHORTHAND NOTE SHALL BE TAKEN OF THIS JUDGMENT AND THAT COPIES OF THIS VERSION AS HANDED DOWN MAY BE TREATED AS AUTHENTIC.

MR JUSTICE OUSELEY:

Overview

1. The Chagos Archipelago lies in the middle of the Indian Ocean. It is approximately 2,200 miles east of Mombasa in Kenya and a little over 1,000 miles south by west of the southern tip of India, and so about 1,000 miles east of Mahe, the chief island in the Seychelles, and 800 miles north-east of Port Louis in Mauritius. The largest island in the group is Diego Garcia; its irregular u-shaped sides enclose a large, deep lagoon. The group includes the Salomon islands, the islands of Peros Banhos, as well as a number of smaller islands.

2. The Chagos islands, with Mauritius, were ceded by France to the Crown by the Treaty of Paris in 1814. They were administered by the Crown from Mauritius as its "*Lesser Dependencies*" along with St Brandon and Agalega, which was about 1,000 miles from the Chagos islands, half way between Mauritius and the

Seychelles.

3. Their economy was based on the production of copra and its by-product, coconut oil, from the coconut plantations. During the 19th century, the freeholds, as it is convenient to call them, passed into the private hands of the companies which ran the plantations, although there was an issue as to whether these private freeholds applied to the full extent of Diego Garcia, Peros Banhos and the Salomon Islands.

4. The companies ran the islands in a somewhat feudal manner. The vast distance from Mauritius left the plantation managers in day-to-day charge; visits by Mauritian officials were rare and the Magistrate was at best an annual visitor. Plantation managers had powers as Peace Officers to imprison insubordinate labourers for short periods, or to detain those threatening to breach the peace.

5. The plantation companies provided the sole source of employment on the islands, save for a meteorological station on Diego Garcia, though a few children, women and elderly people worked as servants for plantation company staff. They did this to earn their rations, although it does not appear to have been a universal requirement that the young and old should work. A few worked for the plantation companies in construction, administration or, perhaps, in fishing.

6. Company shops provided for simple purchases; wages were very low but the companies provided food rations, a small dispensary, very basic medical attention, limited educational facilities and a priest. Their agent, helped by a Mauritius Government subsidy, provided transportation by ship to and from Mauritius for departing or leave-taking workers or for those seeking more serious medical attention; often mothers-to-be went to Mauritius to give birth. The ship brought rations and other necessities or comforts.

7. The abolition of slavery in 1833, and the entitlement of slaves to remain in the colony in which they were freed, meant that many freed slaves had continued to work the plantations.

8. Although in theory from 1838, all Mauritian labourers were on contracts of one to two years' duration, renewable annually, many plantation workers continued working without a written renewal of their contracts. The contracts could only be renewed in front of a Magistrate on his occasional, supposedly annual, visits but even that was not routinely done, at least in latter years. Contracts were sometimes renewed when a worker returned from Mauritius following leave or a trip for medical purposes.

9. Over time, the plantation workers, whether recruits from Mauritius who stayed on or the descendants of slaves who never left, had families. Some of the children would leave for Mauritius, where relatives might be and to which they looked for a more varied life; they might simply not return. Others would become, from an early age, and after at best the most rudimentary and brief education, plantation workers. They would inter-marry, or marry Mauritian recruited labourers and in turn have families. After the Second World War, Seychelles' labourers were recruited as well, and some too inter-married, or married existing residents starting families on the islands.

10. The population, then, consisted of three strands, Mauritian and Seychelles contract workers and, to a degree intermingled with them, those who had been born on the islands and whose families had lived there for one or more generations. These latter were known as the Ilois, a term not always used with a precise or commonly agreed definition. Most of them lived on Diego Garcia, the largest island. They now, but again with no precise or commonly agreed definition, describe themselves as "*Chagossians*", a name which they prefer to "Ilois" because that has come to have pejorative connotations.

11. It is their existence, legal status and rights and what the United Kingdom Government and colonial administrations have believed about them, which lie at the heart of this case.

12. By the early 1960s, the islands' population was in decline, as low wages, monotonous work, the lack of facilities and the great distance to Mauritius and the Seychelles discouraged recruitment or the retention of labour. The plantations suffered from a lack of investment.

13. In 1962, a company called Chagos Agalega Company Limited was formed in the Seychelles. One of its main shareholders was a Mr Paul Moulinie. The company acquired almost all of the plantation islands, of Diego Garcia, Peros Banhos, the Salomon Islands, and Agalega from the Mauritian companies which had owned them. The company intended to and did run the coconut plantations for the production of copra; it believed that they could be revived and run profitably, notwithstanding years of decline.

14. In 1964, discussions started in earnest between the United States and the United Kingdom Governments over the possible establishment of American defence facilities in the Chagos Archipelago, or other Indian Ocean islands which formed part of the dependant territory of the Seychelles. A joint UK/US memorandum agreed on a course of political action, including the need to separate the requisite dependencies from Mauritius and the Seychelles.

15. The independence of Mauritius was imminent and the independence of the Seychelles was at least anticipated. The United States did not wish its facilities to be dependant on the goodwill and stability of such newly independent countries, whose view of American defence facilities in the Indian Ocean might not have coincided with its own. It proposed that the islands be detached from Mauritius and the Seychelles and formed into another, separate dependant territory. It was recognised that the establishment of a new dependency or colony would attract criticism in the United Nations, even more so were it to be created to facilitate an American military presence in the Indian Ocean. From an early stage, the United Kingdom and United States Governments recognised that the transfer or resettlement of those on the islands would be necessary, both for the effective security and operation of the military facility and to avoid the prospect of the new dependency becoming subject to international obligations in Article 73 of the UN Charter to protect the population and to develop their constitutional rights, perhaps towards independence. Islands populated by contract workers or with an insignificant population which could be transferred or easily resettled were obviously attractive in those respects.

16. In 1964, in pursuit of this objective, a joint Anglo-American survey of the islands including their population was undertaken. Its purpose was not publicised. It found little trace of the once distinctive Diego Garcian community. In 1965, the United Kingdom decided to proceed with the detachment of the islands. Discussions were held between the UK Government and the Governments of Mauritius and of the Seychelles upon the terms of the detachment of the Chagos Archipelago from Mauritius and of Aldabra, Farquhar and Desroches from the Seychelles. Agreement was reached on the detachment of the islands subject to the payment of compensation to the governments, compensation to the landowners and the payment of resettlement costs. The Mauritius Government was to receive compensation of £3m plus the resettlement costs; the Seychelles Government was to be provided with a new civil airport on Mahe.

17. On 8th November 1965, the British Indian Ocean Territory Order in Council, SI 1965/1920 was made. It established a new colony, the British Indian Ocean Territory. It comprised the Chagos Archipelago, Aldabra, Farquhar and Desroches. The Governor of the Seychelles became its Commissioner. The Order in Council provided its constitution, gave legislative powers to the Commissioner and provided for a general continuance in force of the existing laws applicable in the islands, either Seychellois or Mauritian.

18. On 30th December 1966, in an Exchange of Notes, the UK and US Governments agreed that the islands

should be available to meet their various defence needs for an initial period of 50 years, and thereafter for 20 years, unless either Government gave notice to terminate the agreement.

19. The next stage was for the UK Government to acquire the land interests held by Chagos Agalega Company Limited. At this point, however, the US proposals were neither public nor approved by Congress. It was only a general defence interest which, publicly, underlay the creation of BIOT. If the land interests were acquired, the UK Government still wanted the plantations to operate, to bring in an income to offset the acquisition costs, until the defence facility was definitely proceeding to a known timetable.

20. On 8th February 1967, the BIOT Ordinance No 1, the Compulsory Acquisition of Land for Public Purposes Ordinance, was made; it empowered the Commissioner to acquire land compulsorily for a public purpose, notably and explicitly the defence purposes of the UK or Commonwealth or other foreign countries in agreement with the UK.

21. On 22nd March 1967, the Commissioner made the BIOT Ordinance No 2, the Acquisition of Land for Public Purposes (Private Treaty) Ordinance, enabling him to acquire land by agreement for the same public purposes. It was under this power that, on 3rd April 1967, Chagos Agalega Company Limited vested its lands in Diego Garcia, Peros Banhos, the Salomon Islands and others in the Crown, for £660,000. The Crown also acquired Farquhar and Desroches; it already owned Aldabra.

22. However, in order to maintain an income and to delay the need for resettlement of the population for as long as possible, the Commissioner granted a lease of the islands to Chagos Agalega Company Limited on 15th April 1967. It was terminable on six months' notice. The company gave notice in June 1967 for tax reasons, created by the compensation payment. Moulinie & Co (Seychelles) Limited, for which Paul Moulinie and his nephew Marcel Moulinie worked, took over the management of the plantations in January 1968. There was no signed management agreement, but the terms of an unsigned written agreement were put into operation.

23. On 12th March 1968, Mauritius became independent. By its constitution, Mauritian citizenship was conferred on everyone born in Mauritius by that date, including those born in that part of BIOT which had previously been part of the colony of Mauritius. They would also remain citizens of the United Kingdom and Colonies. This dual citizenship was not publicised at the time. Before the creation of BIOT, and yet more so thereafter, it was becoming clearer than perhaps had been thought in 1964, following the survey report, that there were inhabitants of Chagos who had been born there and some were second or third generation Ilois. This was a problem, and the morality and lawfulness of their removal in principle, of its manner, of the way in which others who had left voluntarily were unable to return to the Chagos and of their subsequent treatment has been debated for more than 30 years.

24. Thus, from 1964 onwards, the UK Government had been dealing with a number of aspects: the operation of the plantations, the ascertainment of the numbers and status of those working and living on the islands, the contemplation of their removal and resettlement somewhere, the means of achieving those ends, political relations with Mauritius, in particular over those matters, and suspicions or hostilities faced or risked in the UN.

25. To the plantation workers, little of this would have been known. They, and certainly the Ilois, were poorly educated, very largely illiterate, Creole speakers who lived a simple life with few modern facilities, dependent on their employer for their jobs and the necessities of life; they led no independent existence. The Moulinies were aware of more of the background. Marcel Moulinie gave evidence of telling them in January 1966 and of his uncle telling them in May 1967 that they might be asked to leave to make way for an American base.

26. In 1967 and 1968, on two voyages, the "*Mauritius*" brought plantation workers, including Ilois, to Port Louis in Mauritius. They came on leave, or on the expiry of their contract or for medical reasons. The "*Mauritius*" was operated by Rogers & Co, the Moulinie & Co agent in Port Louis; half the cost of it was met by the Mauritius Government, as it provided the means of transport between Mauritius and the various dependant islands. When those who had arrived in Mauritius in 1967 and 1968 eventually tried to return to the Chagos islands in 1968 and later, they were refused passage and were unable to return. The Mauritius Government made representations to the UK Government in September 1968 about the fate of some of those stranded in Mauritius. These Ilois are among the Claimants, asserting that the UK prevented their return by instructing Moulinie & Co or its shipping agent not to permit their return, and asserting that that was unlawful. In July 1968, the "*Nordvaer*", a 500-ton cargo ship, had been acquired by the BIOT Administration to connect the Seychelles, where it was based, and BIOT; the shipping link between Mauritius and Chagos largely ceased.

27. On 5th July 1968, the UK Government was told that the US Government had decided to proceed with an "*austere*" communication and other facilities on Diego Garcia. Plans which hitherto had been uncertain in all respects were by now becoming more certain, but they were still not publicly known. It was an important decision.

28. Approval for the US proposal was sought from the Prime Minister in submissions from the Foreign Office and the Commonwealth Office, drawing upon the advice of officials including legal advisers and the BIOT Commissioner, among others, (paragraph A144). The submission said that some 128 or 34% of the inhabitants of Diego Garcia were second-generation inhabitants. Various possibilities for their resettlement and the resettlement of other workers were canvassed. Agalega, Peros Banhos and the Salomon Islands were seen as possibilities because of their coconut plantations, working in which was the only skill which the Ilois and many other contract workers possessed. But the US was still unable to say whether any other islands would be required or when; and even after acceptance of its request in September 1968, it did not want its proposals publicised. This, unsurprisingly, discouraged commercial investment in other island plantations. Even if no defence facilities were ultimately constructed, the UK Government considered that it would be useful to avoid there being any permanent inhabitants in BIOT, so as to preclude obligations arising under Article 73 of the UN Charter or any other costs if the plantations were to close for economic reasons.

29. A further important submission, vital for these proceedings and backed by extensive working papers, was made to the Prime Minister in April 1969 (paragraphs A226-239). It covered the relevant issues comprehensively and without deceit or excess zeal by any officials. It contemplated the complete evacuation of BIOT. It was approved by the Prime Minister, the Chancellor of the Exchequer and the Secretary of State for Defence.

30. Discussions about resettlement options continued through 1969 and 1970; a number of ideas were canvassed and assessed but no firm conclusion was reached. The uncertain future of the islands of Peros Banhos and the Salomon Islands, as possible defence facilities, inhibited investment in them; the question of who would provide investment in plantations in Agalega was long discussed and remained unresolved for years. Resettlement in Mauritius or the Seychelles were options also to be pursued. The need for immigration legislation to back up the Government's stated position as to the absence of an indigenous population, as well as to prevent people entering BIOT after the islands had been evacuated came to the fore. The nature of the powers, statutory or private land ownership powers, which would be involved in ensuring the evacuation of the islands, was also considered.

31. In December 1970, Congressional approval for the construction of the defence facility was announced. The US Government had told the UK Government shortly beforehand that it wanted Diego Garcia evacuated by July 1971.

32. The BIOT Administrator, Mr Todd, visited the islands in January 1971. On 24th January 1971, he told the assembled inhabitants of Diego Garcia that "*we intended to close the island in July*". He said that Peros Banhos and Salomon could run for some time. This was seen by him as a temporary solution to resettlement whilst longer term arrangements were put in place.

33. The longer term arrangements were seen as resettlement in the Seychelles of the contract workers, who were predominantly Seychellois, and in Mauritius, subject to Mauritius Government approval, or Agalega, of the families of Mauritian origin. Discussions between the UK and Mauritius Governments began in March 1971 when that approach was accepted, but a resettlement scheme remained to be determined and implemented.

34. On 16th April 1971, the BIOT Commissioner enacted the Immigration Ordinance 1971, No 1 of 1971. It made it unlawful for someone to enter or remain in the territory without a permit; it provided for the Commissioner to make an order directing that person's removal from the territory. It was given the minimum lawful publicity. There was an issue as to whether this provision was ever in fact relied on by the UK Government or the BIOT Commissioner in the evacuation of the islands.

35. Throughout the first half of 1971, internal discussions took place between the Foreign and Commonwealth Office, the Overseas Development Administration, the Treasury and externally with the High Commission of Mauritius, the Mauritius and Seychelles Governments and the US Embassy, seeking to establish work and resettlement opportunities and schemes. The potential of Agalega was raised.

36. In July 1971, the "*Nordvaer*" left Mahe to effect the evacuation of Diego Garcia, arriving on 25th July 1971 with engine trouble. It took some Ilois to Salomon and Peros Banhos before limping to Mahe, on the Seychelles. The "*Isle of Farquhar*", a schooner belonging to Moulinie & Co, was chartered, arriving in Diego Garcia early in September and then sailing to Peros Banhos and Salomon with mainly Ilois families. The Ilois left behind their homes, their pets and domestic animals, their larger items of moveable property, taking only a small quantity of personal possessions. They regarded Diego Garcia, rather than the Chagos Archipelago, as home. There is no evidence of physical force being used, but most of their dogs were rounded up and gassed or burnt in the "*calorifer*" used in copra production. The sadness and bitterness was continuing and evident. The task of closing down Diego Garcia was handled on the island wholly or almost wholly by Moulinie & Co and not by the BIOT Administration.

37. In early September, the "*Nordvaer*" arrived in Diego Garcia to take some wild horses, which the BIOT Administration had organised a team to take to the Seychelles, copra, equipment and the remaining Seychelles workers and Ilois who did not want to go to Peros Banhos or Salomon.

38. The conditions of the voyage to Mahe were dreadful and engendered many bitter memories of the horses being better cared for than the passengers. The Ilois numbered 7 men, 6 women and 17 children, outnumbered by Seychellois. In Mahe, they were accommodated in the unused section of the prison, between arrival on 30th September and departure on the "*Mauritius*" for Port Louis, Mauritius, on 8th October 1971. Some Ilois, receiving medical treatment, were left behind.

39. The evacuation of Diego Garcia was completed by the "*Isle of Farquhar*" which arrived in Mahe on 31st October 1971 with 9 Seychellois and one Ilois woman and child.

40. The population of Peros Banhos and Salomon was now 65 men, 70 women and 197 children, of whom 18 men, 18 women and 49 children had been transferred from Diego Garcia. In January 1971, the FCO thought that there had been 37 Ilois families on Diego Garcia.

41. About 100 Seychellois labourers had returned to the Seychelles. But the Mauritian authorities were estimating that there were about 1,000 Ilois already in Mauritius, evacuated, more recently stranded or looking to return after a longer absence, having arrived since the formation of BIOT in 1965.

42. Resettlement discussions continued meanwhile with the Mauritius Government; how much should be paid, to whom, and for what purpose remained unresolved. The focus at this stage was on resettlement of as many as possible on Agalega where Moulinie & Co operated coconut plantations, and on maintaining those on Peros Banhos and Salomon for as long as possible. Less complex discussions in respect of Seychelles contract workers were undertaken with the Seychelles Government. Mauritius and the Seychelles also faced internal difficulties with the receipt of funds which might appear to favour one group of residents over another and give them employment advantages over other poor inhabitants grappling with high unemployment. The cost of setting up BIOT and of constructing the new civil airport on Mahe had exceeded their financial allocations; the UK Government debated which Department should pay for any resettlement costs which had not been budgeted for.

43. It was not until 4th September 1972 that a payment of £650,000 was agreed between the UK and Mauritius Governments in discharge of the obligation undertaken in 1965 to meet the cost of resettlement of those displaced from the Archipelago since 1965 and who were yet to come. It was paid in March 1973.

44. The Seychelles contract workers were simply paid the balance of the contract sums due to them.

45. Meanwhile, the operation of the coconut plantations and copra production on Peros Banhos and the Salomon Islands was becoming economically unsupportable and was running down. The prospect of further closures and moves was becoming clearer to the Ilois; they were becoming resigned and apathetic. Those on Salomon were told to move to Peros Banhos in May 1972, so as to concentrate population and production on one island, but they refused. In June 1972, the "*Nordvaer*" sailed to Mahe with 53 Ilois (15 men, 15 women and 23 children) from Peros Banhos and Salomon; they went on to Mauritius. They were warned that they might not be able to return.

46. In November 1972, the "*Nordvaer*" took a further 120 Ilois (73 adults and 55 children) from Peros Banhos and Salomon to Mauritius, arriving on 14th November. By now, Salomon had closed down.

47. In October 1972, a UK/US Exchange of Notes agreed to the construction of a limited naval base at Diego Garcia. It was no longer economic for Moulinie & Co to run copra production on Peros Banhos; the management fee which they received from BIOT was too small. Paul Moulinie and the BIOT Administrator, Mr Todd, sought closure and an evacuation in March or April 1973.

48. On 27th April 1973, the "*Nordvaer*" left Peros Banhos for Mauritius carrying 26 men, 27 women and 80 children, but on arrival at Port Louis, they refused to disembark: they had nowhere to go, no money and no employment. They received an offer of accommodation in the Dockers Flats area of Port Louis and a small sum of money.

49. On 26th May 1973, the "*Nordvaer*" left Peros Banhos for Mauritius via the Seychelles; it arrived on 13th June 1973 carrying 8 men, 9 women and 47 children or infants, according to the shipping list. This was the last of the population; the plantations closed.

50. The Ilois were experienced in working on coconut plantations but lacked other employment experience. They were largely illiterate and spoke only Creole. Some had relatives with whom they could stay for a while;

some had savings from their wages; some received social security, but extreme poverty routinely marked their lives. Mauritius already itself experienced high unemployment and considerable poverty. Jobs, including very low paid domestic service, were hard to find. The Ilois were marked by their poverty and background for insults and discrimination. Their diet, when they could eat, was very different from what they were used to. They were unused to having to fend for themselves in finding jobs and accommodation and they had little enough with which to do either. The contrast with the simple island life which they had left behind could scarcely have been more marked.

51. There was no resettlement scheme when they arrived. Various schemes, including pig breeding, of improbable viability and in which the Ilois had no experience, were debated over time before being abandoned as unworkable. Rampant inflation between 1973 and 1978 substantially reduced the value of the payment of £650,000. Nothing concrete was done with it for years despite the pressing housing needs of the Ilois. The £650,000 paid to the Mauritius Government in 1973 was eventually expended, with accrued interest, in 1977 and 1978, not just to the 426 families who had been identified as having left the Chagos since 1965, but also to a further 169 families who had returned earlier, making 595 in all. It was paid in the form of a cash distribution. There was nothing for Ilois on the Seychelles.

52. The Ilois had, however, begun to organise themselves early on to improve their conditions and some Mauritian and Seychellois politicians became interested in their plight, whether to obtain votes, or out of genuine concern or as a means of criticising the Government of the day.

53. From an early stage, in 1974, Ilois were petitioning the UK Government for permission to return to Diego Garcia to tend their forefathers' graves; the Government said that it would consider this. But it refused to intervene with the Mauritius Government in relation to their resettlement.

54. In February 1975, Michel Vencatessen issued a writ in the High Court in London against the Attorney General, for the Secretaries of State for Defence and for Foreign and Commonwealth Affairs. Michel Vencatessen had left Diego Garcia on the "Nordvaer's" last voyage. Legal advice had been taken from Sheridans, solicitors, who, in turn, had consulted notable English barristers. He received legal aid. He had been put in touch with Sheridans through Gaetan Duval, an important Mauritius lawyer-politician. It was not in form a representative, let alone a group, action although in its inception and conduct it had a number of those features.

55. The writ claimed damages, aggravated and exemplary, for intimidation, deprivation of liberty and assault in the BIOT, Seychelles and Mauritius in connection with his departure from Diego Garcia, the voyage and subsequent events.

56. The action proceeded through the 1970s with a range of distinguished advocates on both sides. Discovery was to be particularly complex. By 1978, however, it was clear on both sides that the litigation, in practice, had to be regarded as a form of group litigation. The UK Government made an open offer to settle all the claims of all the Ilois for £500,000 plus costs in February 1978.

57. By mid-1978, Sheridans, following a visit to Mauritius, had obtained instructions on a wider basis, "*on behalf of all the Ilois*", they said. But the issues of whom Sheridans represented and what their status was as Ilois in relation to any offer, together with the mechanics of how all the potential claims of the Ilois other than Mr Vencatessen could be resolved, remained thorny ones.

58. Legal aid was not available in this action for Sheridans to advise all the Ilois. The Treasury Solicitor agreed to pay Bernard Sheridan's costs of going to Mauritius to represent the Ilois. Bernard Sheridan went to

Mauritius in October 1979, taking with him the offer from the UK Government which had been raised to £1.25m, and 1,000 copies in English, of a form of quittance for the Ilois' claims, together with a French translation, (A480). He had received advice from Louis Blom-Cooper QC that the settlement was fair in view of the difficulties in the litigation, and that a trust fund should be set up to oversee its distribution.

59. Publicity was given to his visit; he held a number of meetings with the Ilois; over 1,200 quittances were signed. But there was considerable hostility from some Ilois who objected to any renunciation of their right to return to Diego Garcia. He was unable to conclude his work and he returned to London to report.

60. Various committees of Ilois now joined together to become the Joint Ilois Committee, which comprised the older committee of Christian Ramdass with which Mr Vencatessen had been associated, the Beau Bassin Committee which had led the rejection of the quittances brought by Mr Sheridan, and the Ilois Support Committee of Kishore Mundil, a Mauritian politician.

61. Mauritian politicians had a particular interest in the renunciation by the Ilois of any right to return, as well as in using the fact, manner and purpose of the excision of the Chagos from Mauritius as a means of attacking the Government of Sir Seewoosagar Ramgoolam, which was in power from 1961 through independence until 1982. This interest was in the way in which the continued right of Mauritian citizens to return to the Chagos islands could be used as a means of asserting Mauritius' entitlement to the islands when the defence interests ceased.

62. The Joint Ilois Committee wished to continue negotiations. On the oral evidence given to me by those involved, it was said that most of the documents of this era did not represent accurately what they wished to say and had been written without their authority and indeed deceitfully by those whom they now realised had taken advantage of them, acting only as politicians pursuing their own political ends. However, they were taken at face value by Sheridans and the Treasury Solicitor.

63. In March 1980, a petition with 800 thumbprints or signatures of Ilois was sent by the JIC to Sheridans with a detailed letter of instruction. The renunciation of the right to return to Diego Garcia in exchange for a proper amount of compensation was proposed by the Ilois, at least on paper.

64. In July 1980, the Ilois who had led the rejection of the offer in 1979 set up a new committee, the Committee Ilois Organisation Fraternelle, CIOF (sometimes CIF). They would not renounce their right to return. The Front National de Soutien aux Ilois was formed from a number of groups including the JIC.

65. The formation, splitting, reformation of Ilois committees at this time reflected not just the differing locations of groups of Ilois in Port Louis and Mauritius, but also differing views as to the extent to which renunciation of the right to return should be resisted at the price of delaying a settlement or whether an enhanced sum would justify renunciation. Political protest and hunger strikes by women became a feature of the campaign by the Ilois for what they saw as their rights. The various Ilois committees made claims for £8m in compensation from the UK Government in the spring of 1981. In April 1981, the Mauritian Government agreed with Ilois representatives to send a Government delegation of three Ilois representatives and three representatives from the Mauritian Government to negotiate with the UK Government.

66. Meanwhile, the Vencatessen litigation and the looming contests over the disclosure of documents provided a continuous spur to the London end of the negotiations over a wider settlement. In April 1981, an Ilois delegation had met a visiting UK Minister in Mauritius and had discussed with her compensation, the Vencatessen case and nationality issues. Negotiations were to continue in London in June 1981; the Mauritius Government agreed that Christian Ramdass should join the delegation as the representative of Mr

Vencatessen. But before the delegation arrived in London, the CIOF decided to instruct Bindmans, solicitors.

67. The Mauritian delegation met with the UK Government in London at the end of June and the beginning of July, over four days. The Government increased its £1.25m offer with aid of £300,000, but this was not accepted. Negotiations broke down amidst powerful criticism of the stance taken by the UK Government towards the plight of the Ilois. Bindmans took the advice in consultation of John Macdonald QC. Mr Vencatessen wanted to press forward with his claim. This was the only non-political lever which the Ilois had. But Ilois demonstrations and rallies continued in Mauritius.

68. In November 1981, the CIOF said that it would be prepared to accept £1.25m now as a part payment towards the £8m still claimed. By early December, the CIOF, recognising that any settlement would have to be supported by the whole Ilois community, nonetheless put forward a figure of £6m as further and final compensation, without abandoning its contention that £8m was fully justified. Various Ilois groups met the High Commissioner to Mauritius to press their urgent cause; he made the same point: any settlement had to have the support of the whole community. No-one wanted a repeat of the events in 1979 when an agreement appeared to have been reached with many Ilois, but not on terms which were acceptable to all shades of opinion. As at other times, the definition of an Ilois and an assessment of their numbers were problematic for both sides, because that had a crucial effect on the calculation of compensation on a per capita basis as well as reflecting on the numbers whose agreement had to be obtained once they had been identified. Bindmans, advising the CIOF, were investigating the rights which the Ilois had over land, in contrast to the Vencatessen case which focused on tortious aspects. Sheridans pressed on with the case which was seen as capable of having a beneficial effect on the Ilois as a whole.

69. The UK Government recognised that further talks had to take place. Their resumption in Mauritius was announced and they restarted on 22nd March 1982. The Mauritian Government delegation again included representatives of the Ilois. Stephen Grosz, a solicitor with Bindmans, and John Macdonald QC were present to advise the CIOF, to which the majority of Ilois delegates belonged, but they saw themselves as advising the Ilois generally because of the extent to which the CIOF represented their interests; they were paid for by the Mauritius Government. Mr Ramdass was again a delegate because of the Vencatessen case. The UK Government's opening offer was £2.5m based on 426 families or 1,150 people who had left Chagos for Mauritius after the creation of BIOT. The sum was calculated by reference to the cost of a plot of land, the building of a house, and a capital sum for the establishment of a business. The disbursing of the fund was to be managed by a trust fund.

70. During the negotiations, one of the issues had been the way in which the language of the agreement and the settlement of claims might affect the right to return asserted by the Ilois and the assertion of Mauritian sovereignty over the Chagos islands. A second issue was as to how the UK Government could be satisfied that, if it were to pay over the settlement sum, there would be no further claims. The nature and effectiveness of those provisions was at issue in this case. But it was clearly understood by the UK and Mauritius Governments, if by no others, that the Vencatessen litigation had to be withdrawn, if a settlement with the Ilois as a whole were to be reached.

71. In the course of negotiations, the offer was raised twice, ultimately to £4m in addition to the £650,000 previously paid to the Mauritius Government. The Mauritius Government also agreed to put in land to the value of £1m. The English lawyers advising the Ilois recommended acceptance of the offer as a fair settlement. A trust fund was to be set up to disburse the monies.

72. On 27th March 1982, the agreement between the two Governments was initialled; it was also initialled by Ilois representatives. Between the initialling of the agreement and its formal signing, the CIOF pressed the view of its English legal advisers that the agreement provided for compensation, but did not affect Mauritian sovereignty. It became a formal agreement signed by the two Governments on 7th July 1982 in the presence

of Ilois representatives. It contained provision for Ilois to sign individual renunciation forms, for the retention of some money against further action and for a Mauritius Government indemnity, (paragraph A580).

73. Varying degrees of satisfaction were expressed at the agreement; as a compromise, not everything that everyone had wanted had been achieved. Widespread publicity was given to the agreement and to the formal signing ceremony.

74. On 30th July 1982, the Ilois Trust Fund Act 1982 was enacted by the Mauritius Parliament. The Trust Fund was to be managed by a Board of Trustees which included five representatives of the Ilois, initially appointed and subsequently subject to elections. The purpose of the Fund was to disburse the UK and Mauritius Government monies, together with a sum provided by the Indian Government, in promoting the economic and social welfare of the Ilois and of the Ilois community in Mauritius. The Seychelles workers, Ilois and Government were not involved in these discussions. The Seychelles islands within BIOT, Aldabra, Farquhar and Desroches were never evacuated and they were returned to the Seychelles on its independence in 1976.

75. There was then a delay in the withdrawal of the Vencatessen litigation for reasons connected with his personal view of what was his due as the person who had initiated the litigation which had led to this settlement. But, meanwhile, no money was paid over by the UK Government. Public and intense pressure was brought to bear on Mr Vencatessen by the Ilois and eventually he agreed to give instructions to Sheridans that the action was to be withdrawn. Proceedings were stayed by agreement on 8th October 1982.

76. On 22nd October 1982, a cheque for £4m was handed over at a ceremony at which Ilois representatives were present.

77. By December 1982, the Ilois Trust Fund Board had decided to whom the money would be disbursed. 1,260 Ilois adults and 80 minors were recorded as receiving an initial tranche of Rs 10,000 (£556 at the then prevailing exchange rate), although 250 or so more were registered (1,419 adults and 160 minors).

78. Elections took place in December 1982 for the Ilois representatives to the ITFB; Mr Michel Vencatessen's two sons and a nephew were elected. The ITFB began to discuss whether it was responsible for obtaining "*renunciation forms*" from those who received compensation. These forms renounced claims against the UK Government, as set out in the 1982 Agreement and the Mauritius Government had agreed to use its best endeavours to obtain one from every Ilois. This question would be discussed through 1983.

79. On 1st January 1983, the British Nationality Act 1981 made British Dependant Territories citizens of those Ilois who had been citizens of the United Kingdom and Colonies. During June 1983, a further Rs 36,000 per adult and Rs 23,000 per child were disbursed to Ilois for the purchase of a plot of land. Many families and individuals clubbed together to do so. But a number of Ilois were discontented with the ITFB decisions and two Ilois representatives resigned, including Simon Vencatessen. A new group, the Groupe Refugies de Chagos, or CRG, came into being.

80. Between 5th and 22nd September 1983, the final tranche of compensation, Rs 8,000 was made. Some Rs 75m, or just over £4m, was disbursed during 1983 to 1984 to 1,344 Ilois by the ITFB. When the Ilois went to the Social Security Office to collect this final sum, they were presented with a renunciation form to sign, or far more commonly, to put their thumbprint to. This form was a one-page legal document, written in legal English, without a Creole translation, (A647). Ilois members of the ITFB were on hand to witness the thumbprint or to identify the individual, but on the Claimants' case, they did not, and were in no position to,

translate or explain the purport of the document. Only 12 refused to sign, including Simon Vencatessen; he did not receive this last tranche of money, although his wife did. He understood the purport of the renunciation form.

81. Simon Vencatessen later brought proceedings against the ITFB in the Supreme Court in Mauritius, claiming that it had no power to impose on him a requirement to sign a renunciation form as a condition of obtaining this last sum of money. He lost on the grounds that the 1982 Agreement and the ITFB provided a statutory remedy for the Ilois as an alternative to proceeding by an action in the UK or BIOT Courts. In 1989, the Supreme Court of Mauritius dismissed his claim. This decision was based on its decision in 1984 in *Permal v ITFB* to that same effect, (A698 and A749).

82. In January 1984, Ilois members of the ITFB wrote to the US President seeking an additional £4m compensation because the £4m paid by the UK Government was a full and final settlement. These endeavours were pursued sporadically over subsequent years. The £4m was already being seen as inadequate by at least some Ilois.

83. Over £250,000 remained in the ITF at the beginning of 1984. It was being withheld from distribution as part of the means of protecting the UK Government from any further litigation by those Ilois who had not signed renunciation forms. Should such an action be commenced, the UK Government could look to that £250,000 to meet the cost of the action. But the Ilois, short of money and needing every penny, were seeking its release in view of the large number of renunciation forms, at least 1,332 and later 1,339, which had been signed. It appears from the Claimants' case that at least 1,344 Ilois had received compensation. But the money was still retained by the ITFB because it had claims outstanding from 238 workers who had established an entitlement, before the ITF Act was amended in 1984.

84. By mid 1985, the Chagos Refugee Group, amongst the leaders of which was Olivier Bancoult, were contending that the Ilois had been exiled through coercion, in violation of their human rights; they continued to claim that the compensation was inadequate. In 1986, certain Ilois sought the advice of US lawyers as to whether or not a claim existed. They wished to press for their return to the Chagos Islands. These matters rumbled on through the late 1980s. The ITFB in 1989 noted that an Ilois demonstration, seeking another delegation from the Mauritius Government to negotiate further compensation from the UK Government, was told by the President that the 1982 Agreement meant that compensation could now only be sought on a humanitarian basis. There was a further distribution of about £250,000 in 1987.

85. In May 1992, Bindmans were again approached for advice by Ilois representatives; among other issues being considered in September and October were land rights, nationality and citizenship. In October, Professor Anthony Bradley was instructed. In April 1993, he advised that any arguable claim against the UK Government was time barred (A756). In October 1993, he gave advice on constitutional rights, including the right to return (A759). A Mauritian lawyer suggested investigating the constitutionality of BIOT laws. The citizenship and nationality of Ilois were to be pursued.

86. In order to press the issue of the right to return, Bindmans advised that Ilois make applications to visit the Chagos Islands; applications were made in December 1993. The BIOT Commissioner sought details of who wanted to go and why.

87. The Principal Immigration Officer for BIOT through the BIOT Commissioner informed Bindmans that permission had been refused. The Commissioner provided details of the BIOT Court Registrar so that the decision could be appealed. Bindmans' advice was that the appeal should precede any Judicial Review of the constitutionality of BIOT laws.

88. Mr Wenban-Smith was given delegated powers by the BIOT Commissioner to determine the appeal, because of the risk of apparent bias, and on 12th May 1995, he allowed the appeals subject to various conditions. A debate ensued over timing and the presence of a television crew on the trip. It never took place. The fissiparousness of Chagossian groups continued, but Bindmans still dealt with the CIOF. A BIOT Social Committee was set up in October 1995 by other Chagossians.

89. In December 1996, a group of Seychelles Ilois petitioned the UN, the Queen and Prime Minister and the USA for fair compensation. Till then, very little had been done by the Seychelles Ilois; they had not been involved in the 1982 Agreement and although some were aware of the ITFB, no payments were made to them or intended for them. Seychelles politicians, in what had become, by a coup, essentially a one-party state, had not persisted with the Ilois cause; they now saw them as Seychellois and not as a special category. In January 1997, the FCO wrote to the Ilois Group of Seychelles denying any obligation to pay compensation.

90. In October 1997, the Chagos Social Committee (Seychelles) Association was registered to establish the rights of the Ilois in the Seychelles as British citizens and passport holders, who would seek compensation. They were said to number 200. On 24th November 1997, the British High Commission in the Seychelles rejected the claims: those who returned to the Seychelles were mostly contract labourers, the conditions and the scale of the economic problems in Mauritius, which the compensation addressed, did not exist in the Seychelles; there was no scope for a return to the islands.

91. Sheridans became involved again in 1998. They took up the validity of the 1971 BIOT Immigration Ordinance. Olivier Bancoult instructed them to proceed with Judicial Review proceedings in the High Court in England in August 1998. In March 1999, leave was granted by Scott-Baker J. On 3rd November 2000, the Divisional Court (Laws LJ, Gibbs J) held that section 4 of the Immigration Ordinance was *ultra vires* the BIOT constitution. A constitutional power to make legislation for "*peace, order and good government*" was held not to permit legislation which excluded the population from the territory. There was no appeal against this decision although, before me, the Defendants took issue with some of the facts stated in the judgment and at least questioned, "*reserving their position*", the correctness of the decision.

92. Subsequently, the Immigration Ordinance was amended, in effect to permit the return of Chagossians to Peros Banhos and Salomon. There were no defence reasons why islanders could not return to Peros Banhos and the Salomon Islands. But none have taken advantage of that possibility.

93. Through 1999 and 2000, Sheridans pressed the case for compensation for the Ilois and for the provision of infrastructure on the islands to permit a return by the Ilois.

94. The very fact of the success of the Bancoult Judicial Review, together with the conclusion from the judgment that the Ilois had been excluded under an unlawful Ordinance, gave them hope and confidence to organise and pursue other litigation. Documents hitherto withheld under the 30-year rule could now be examined at the Public Record Office. A lawyer in Mauritius, Mr Mardemootoo, in whom the various groups all felt able to repose their confidence, was found.

95. This litigation commenced in April 2002.

96. I have endeavoured to provide a brief introduction to the complex and long-evolving circumstances in which this litigation was brought; the detail is contained in the Appendix to this judgment. I have considered in more detail later in the main body of the judgment certain relevant topics: employment, property, the nature of the Vencatessen litigation as seen by the Ilois, and the organisation of the Chagossians. I describe

and assess the evidence, but more detail is provided in the Appendix.

The Proceedings

97. This litigation commenced with a Claim Form and Group Particulars of Claim dated 25th and 23rd April 2002 respectively. Sheridans again are the solicitors. Anthony Bradley, who had advised the CIOF in the 1990s, is second junior Counsel. A Group Litigation Order was made with the consent of the Lord Chief Justice on 11th April and sealed on 3rd July 2002.

98. The Claimants, the Chagos Islanders, are those born in the Chagos islands and their children. The claim form seeks: (i) compensation and restoration of their property rights, in respect of their unlawful removal or exclusion from the Chagos islands by the Defendants; and, (ii) declarations of their entitlement to return to all Chagos islands and to measures facilitating their return. The Group Particulars of Claim also seek declarations as to their property rights and restitution of property.

99. The Group Particulars of Claim identify two sub-groups: Claimants resident in Mauritius and Agalega represented by the Chagos Refugees Group, chaired by Olivier Bancoult, and Claimants resident in the Seychelles, represented by the Chagos Social Committee (Seychelles), chaired by Jeanette Alexis. There were 5,023 (4,959) Claimants; the Particulars of Claim provide a breakdown; all but 631 (570) were related to Mauritius; only 58 (24) related to Agalega; the rest, 573 (546), related to the Seychelles. Only 1,075 (1,072) of the 5,023 (4,959) were born on the islands; 557 (542) were deceased natives claiming through their heirs. The rest were the children of natives, alive or dead; of those 475 (461) were under 12. They are all listed by name in Schedule 2 to the Group Litigation Order. I should add at this stage that in the course of closing submissions, the Claimants handed in revised figures which total 4,959, though the accompanying note suggests 4,466 Claimants. I have put the breakdown of the figures totalling 4,959 in brackets above. Nothing much turns on the differences, but it illustrates the difficulties of testing individual claims.

100. The GLO was advertised in Mauritius and the Seychelles. The GLO required that the Group Particulars of Claim "*contain general allegations relating to all the claims*", and be verified. Questionnaires completed by each Claimant, supposedly explaining the basis upon which they fall within the group were made part of the Particulars of Claim, (paragraph 14 of the GLO). There were complaints from the Defendants about the absence or incompleteness of questionnaires for a number of Claimants. The questionnaires do not permit it to be seen how the large number of Claimants, particularly those who were not displaced from the islands at any time, relate to the multifarious claims. Some questions are irrelevant; relevant questions are omitted.

101. The Group Particulars are unhelpful: a partial selection of quotes from documents, and two sample life histories, from Olivier Bancoult and Therese Mein, with a lack of focus on the categories of Claimants making which claims, and how their circumstances relate to the two examples given. But its drafting invites those individuals' circumstances to be taken as typifying the Claimants. I leave aside at this stage justifiable criticisms of the way in which the relevant ingredients of the torts are related to the facts relied on, but the particulars are most notable for the range of significant events from the mid-1970s onwards which are simply ignored, particularly any reference to the receipt of any compensation or the 1982 Agreement, and the role of the ITFB.

102. The Group Particulars rely on six separate wrongs: misfeasance in public office, a new tort to be called "*unlawful exile*", negligence, infringement of property rights, infringement of rights under the Mauritian constitution and deceit. The Claimants' Reply to the Defendants' contentions in the Defence as to abuse of process and limitation periods said that the claim also included damages for personal injury created by diseases linked to poor living conditions and mental illnesses. It is far from easy to find that pleaded in the original or amended Group Particulars of Claim, but that is a remediable pleading deficiency.

103. The Group Particulars specifically assert in paragraph 4: "*This action does not address or seek to interfere with matters of foreign policy, national security or defence policy decisions, but merely seeks redress for the Defendant's tortious conduct against the Claimants*". The Claimants' subsequent submissions, when pressed, did not sustain that seemingly simple dividing line.

104. Schedule 1 to the GLO contains the list of common or related issues of fact or law to which the GLO applies: 11 of fact, 21 of law. They appear to cover comprehensively the issues in the case.

105. The misfeasance case originally simply contended that the removals or exclusions of the Ilois were unlawful, whether or not they were carried out pursuant to the 1971 Immigration Ordinance.

106. By Amended Group Particulars of 3rd October 2002, this allegation was considerably elaborated. It was pleaded that the Defendants, their servants or agents as before, knew that the 1971 Immigration Ordinance was unlawful, or were reckless as to its lawfulness, knowing or being reckless as to its purpose in giving effect to an "*unlawful or wrongful*" policy, based on a conscious disregard of the Claimants' interests. The judgment in *R v Secretary of State for the Foreign and Commonwealth Office ex p Bancourt* was relied on.

107. Insofar as evictions and prevention of return were not based on that Ordinance, the Claimants relied on other illegal acts made up of (i) the Defendants' knowledge of a significant permanent population, (ii) the births, deaths and marriages of which the state possessed records, and whose homes and possessions were there to be seen, the nature and extent of which could have been surveyed but was not, (iii) the concealment from the UN, the Commonwealth Governments and Parliament of the true position, because the existence of a permanent population would impede the UK/US agreement and give rise to obligations on the UK Government under the UN Charter, and (iv) the related pretence that there was no such permanent population and taking of policy and administrative measures to ensure that there was no permanent population.

108. Such measures included (i) instructing Rogers & Co, the shipping agents for Moulinie & Co, not to allow Chagossians who had left voluntarily to return, (ii) failing to warn those who left voluntarily that they would be unable to return, (iii) in effect coercing islanders to leave without lawful authority, (iv) failing to balance their interests against the UK Government's interests through a failure to tell them what was happening and what their true position was, (v) failing to provide any adequate system for compensation before the islanders were displaced, and (vi) continuing to refuse to allow the islanders to return. In proposed Re-Amended Group Particulars, the Claimants also alleged (vii) that there had been no consultation with the Chagossians about their future or the future of the islands, and (viii) that the acquisition of land had been done in such a way that those in apparent occupation of land had no recourse to a judicial tribunal.

109. Further acts of illegality pleaded were that it was at the Defendants' behest that the plantations were run down and closed, and that the Defendants could not lawfully either exclude the entire population of BIOT from "*the one part of the territory that, in 1971, had an assured economic future (because of the planned US base)*" compounded by the running down of the plantations knowing that this would remove the economic support for the entire population of the territory.

110. It was also pleaded that it was illegal for the Defendants in 1970 and subsequently to have adopted a policy of concealing the Claimants' status as citizens of the United Kingdom and Colonies from the Mauritius Government, the Chagossians and others. Deceiving citizens as to their citizenship, which deceit continued towards the Ilois after 1972 was itself an illegal act.

111. It was specifically and controversially pleaded, by way of pre-emptive strike, that the disclosed

documents showed the Defendants' liability but that "*it is not necessary as a matter of law for the Claimants to be able to identify bad faith on the part of a single officer for the Defendants to be liable*". This was not so much a point as to evidence but a point as to the substantive law as to the requirements of the tort of misfeasance in public office.

112. The Defendants acted dishonestly, it was alleged, for the purposes of this tort because they acted in bad faith, knowing that what they said was untrue and that what they did was unlawful, or being reckless as to the truthfulness or lawfulness of what they said or did. No individual is named.

113. The dishonest statements were (i) that there were no permanent inhabitants of the Chagos islands when they knew that there were, (ii) that they failed to report to the UN on BIOT when they knew that they should have done, (iii) that they failed to inform Chagossians as to their rights as "*belongers*" and as British citizens, (iv) withheld information from the Mauritius Government as to their status, and (v) minimised publicity over the BIOT Immigration Ordinance.

114. It was pleaded that the Defendants knew that what they did illegally would injure the Claimants or were recklessly indifferent to that consequence because they knew or ought to have known of the Chagossians' property rights, their family and community connections in the islands, of their distinctive cultural identity which "*could not readily survive intact*" transplantation to Mauritius or the Seychelles and that their skills working the coconut plantations could not avail them elsewhere. They were removed under duress, without consultation and without proper facilities on their arrival in Mauritius or the Seychelles.

115. The misfeasance case relates to the period commencing with the lead up to the 1964 UK/US agreement and the creation of BIOT, and its principal aspects conclude with the arrival in 1973 of the last of the Chagossians in Mauritius and the Seychelles, although some later acts are relied on.

116. The initial contentions of the Defence as to the inadequacy of the pleaded allegations in constituting the tort of misfeasance were removed by the Amended Group Particulars. The real issues raised by the Defence were first as to the existence of any real prospects of the Claimants showing knowledge or recklessness as to any of the allegedly unlawful acts or the likelihood of harm to the Claimants from them; the Defence was not amended in response to the new allegations of knowledge and unlawfulness in the Amended Particulars of Claim but that response continued to be made in respect of them. Summary judgment was sought, in any event, in respect of the claims of those who were not in BIOT or who were unborn at the relevant times.

117. The misfeasance claim is closely related to the new tort of "*unlawful exile*" asserted by the Claimants. The ingredients of this tort, not on an exhaustive basis however, were set out by the Claimants in a note of 18th October 2002. The Crown cannot remove from or prevent the return to British Territory of a British citizen or "*belonger*" without statutory authority or the "*free, voluntary and informed consent*" of that person. The rights derived from Magna Carta, and from common, constitutional and international law. If the rights existed, there was a tortious remedy for their breach. This tort covered not just the events surrounding the evacuation of the islands but also the refusal to allow those from Diego Garcia and their descendants to return there; it is said to be a continuing tort.

118. The negligence case, as often stated, relates to the period which starts with the arrival in Mauritius and the Seychelles of those displaced from the Chagos. It does not assert that the decision to remove the inhabitants was itself negligent nor does it cover the immediate manner of their removal. It does not therefore appear to cover those who were not removed from the islands but were prevented from returning. I am not sure that that is the Claimants' intention. It too is said to be a continuing tort. The duty of care was said to arise from the Defendants' decision to close the islands; that led to a duty to make adequate provision for those whom closure had displaced, by way of funds and facilities which would provide a "*roughly comparable*

"lifestyle" to that which they had enjoyed on the islands. This duty was breached because not even their most basic needs were met, leading to great deprivation: adequate provision had never been made.

119. The Claimants' property rights were said to have been acquired by prescription or succession. Mauritius property law, including the Civil Code in force from 1805, applied and granted rights to those in unequivocal possession of non-Crown lands with an intention to own it. Those rights were protected by the Mauritius Constitution.

120. The Claimants' contention that the Mauritius Constitution also provided rights in respect of inhuman treatment was not further particularised.

121. The deceit case was that false statements of existing facts had been made in documents, or even impliedly through inaction, to the Chagossians, the UN, the UK Parliament, the press and the Government of Mauritius. The false statements were that the Chagossians were not permanent residents of, and had no rights to remain in, the Chagos islands, had no rights under the UN Charter and were not British citizens. The Claimants relied on the same facts as to dishonesty as they relied on in relation to misfeasance in public office. The purpose of the deceit was to procure the quiescent removal of the islanders, without their asserting any of their rights and to prevent other persons assisting them to assert those rights. The Claimants and others relied on those representations, as was said to be demonstrated by the unhindered and unopposed evacuations, and the lack of public dissent. The Defendants had wilfully taken advantage of the poverty, ignorance, illiteracy and isolation of the Claimants.

122. This tort appears to cover the period from the inception of the proposal to create BIOT until the Bancourt Judicial Review proceedings.

123. The various torts and wrongful acts are said to have caused the islanders first, broadly, to have been deprived of the right to reside in the Chagos, enjoying the lifestyle, grants and assistance to which they would have been entitled as a permanent population, and second, to suffer individual losses of real and moveable property, jobs, income and "*security, dignity and a sense of identity*". They suffered instead a minority status, characterised by discrimination and poverty in many manifestations. Damages, aggravated and exemplary, are sought. Also sought are declarations (i) that the continued refusal of the Defendants to allow the Chagossians to return is unlawful, and (ii) as to the steps necessary to make that right of return, to live in each of the previously inhabited Chagos islands, practicable.

124. The Group Defence of 28th June 2002 stated that the Defendants would seek to strike out the Particulars of Claim and seek summary judgment on the grounds that there were no reasonable grounds disclosed for bringing the claim and the Claimants had no real prospect of succeeding. The claims either did not satisfy the requirements of the pleaded causes of action, or were unknown to English law, or, if the laws of Mauritius were relied on, were irrelevant to BIOT, and were in any event statute barred or an abuse of process. A detailed response followed but it did not purport to be the full factual response.

125. The jurisdiction of the High Court was not challenged for the purposes of this action, although the BIOT Commissioner did not abandon his contention that the BIOT Courts were the proper forum. The nature and whereabouts of the BIOT Courts make a curious footnote in colonial legal history.

126. The essence of the Defendants' pleaded case in response was that those present on the islands at the point of closure, were present as licensees at will of the owners of the islands, initially Chagos Agalega Company Limited, and subsequently the Crown. It was Chagos Agalega Company Limited and the subsequent management company, Moulinie & Co, which was responsible for reducing the number of

workers, for recruitment and organising the transport of the workers and their dependants to Mauritius, Agalega and the Seychelles upon closure of the islands. BIOT was created to enable the United Kingdom to enter into an agreement with the United States of America for the advancement of their mutual defence and security interests. It was admitted that the plantations were run down and closed as a result of the UK/US Agreements and the subsequent decisions of the United States in respect of Diego Garcia. The plantations on Peros Banhos and Salomon closed because they were not economic after the closure of the Diego Garcia plantations. The Defendants said that they had made adequate provision for resettlement through the agreement with Mauritius and the arrangement for the transfer of people to Peros Banhos and the Salomon Islands.

127. It was denied that the Defendants removed individuals against their will or did so dishonestly or in bad faith; instead, they co-operated to minimise the disruption to those engaged on the plantations by seeking to give a degree of choice as to where those displaced from Diego Garcia and the other islands were subsequently settled, by providing financial support to the Government of Mauritius and obtaining their agreement to a sum of money in discharge of the resettlement obligation which the United Kingdom Government had undertaken.

128. It was said that it was only after the creation of BIOT that the Defendants were aware that there were individuals who had been living on the islands for at least one generation. It was arranged that they should have the status of Mauritian citizens on the independence of Mauritius in 1968. It was denied that they had any right personally or by virtue of property to remain on the islands or that they were permanent inhabitants or "*belongers*" of BIOT. It was disputed that the Defendants knew of or were reckless as to the possible legality of section 4 of the Immigration Ordinance 1971. As to the allegation that the Defendants knew or were reckless as to the probability of their action injuring the Claimants, the Defendants contended in the Defence that they were concerned to ensure their proper treatment and entered into a commitment to the Mauritius Government to meet the resettlement costs, protected their rights of citizenship and thereafter sought to maintain plantation working where possible, to obtain employment for them on the islands, and examined development and investment.

129. The Defendants asserted that they recognised the need to make appropriate financial and administration arrangements for the resettlement of individuals but they believed that it was only a small number of those working on the plantations who had substantial personal links to the Chagos islands and that there would be no real difficulties in making appropriate arrangements of them which they did. It was denied that the Defendants knew or ought to have known that the compensation arrangements might prove unacceptable or inadequate or that they were aware that any losses would be caused for which they would not be compensated by their departure from the islands in terms of real or moveable property.

130. Once the state of Mauritius became independent, it was not for the Defendants to control the way in which the independent Government carried out the arrangements for resettling the Ilois. The two commercial operators of the copra plantations exercised their own judgment in respect of recruitment and operation in the circumstances prevailing after the 1965 UK/US Agreement; the Defendants were not obliged to provide a subsidy to copra production and the copra plantation operators did not act as agents of the Defendants. The Defendants did not have control either over the implementation of the UK/US Agreement and the policy decisions under that Agreement made by the US.

131. Much of the Defendants' pleading in relation of the alleged tort of unlawful exile drew upon the defence in relation to misfeasance. It was said in those circumstances that there had been no breach of any common law or international law. It was denied that the Defendants removed any individuals from the islands or that if they did so, they did so pursuant to the 1971 Immigration Ordinance, but rather asserted that they did so in the exercise of the private rights which they had as operators of the plantation. In respect of Diego Garcia, it was said that it was not practical in view of the importance of Diego Garcia to defence interests for any Claimants to return to Diego Garcia, and that in respect of the other islands, the practicalities of the American

attitude in 1969 onwards for a number of years made investment in those islands impracticable. Although the Immigration Ordinance 2000 permitted Chagossians to return to BIOT except for Diego Garcia, the Defendants were not obliged to undertake the investment required for a viable resettlement of those islands.

132. The Defendants asserted that the pleading of negligence was wholly inadequate and that insofar as there was a duty of care owed, that duty had been discharged by the agreement with the Government of Mauritius in 1972, the payment of the resettlement costs in 1973 and the further payment of £4m in 1982. No admissions were made as to loss or damage or causation.

133. The Defendants denied that the Chagossians had acquired any ownership of real property within the islands, denied the relevance of Mauritian law to any claim and any breach of Mauritian law, and asserted that these claims as with the others was statute barred.

134. The Defendants asserted that the pleadings on deceit were wholly inadequate and should be struck out as frivolous, vexatious and embarrassing. This was because of the very generalised allegations as to what was said to have been said to a very wide and heterogeneous group of individuals, businesses and organisations.

135. It was specifically pleaded that the Claimants must have known of their rights before the Bancourt litigation because of the pleadings in the Vencatessen action. Various allegations about abuse of process were made.

136. The Reply of the Claimants on abuse of process and limitation contended in summary:

(i). that the Limitation Act 1980 had no application because for all or the vast majority of the Claimants, the Defendants' acts had denied them any real and substantive access to justice, and in any event, it would be unconscionable to permit the Defendants to rely on the Act;

(ii). that the Foreign Limitation Periods Acts 1984 excluded or modified the operation of the Limitation Act 1980;

(iii). that Article 3 of the BIOT Courts Ordinance 1983 required the time limits in the Limitation Act 1980 to be adjusted to meet the particular circumstances of these Claimants;

(iv). that the Limitation Periods were not applicable to the continuing torts of unlawful exile and deceit which latter had only ended with the Bancourt litigation;

(v). that the Claimants were disabled within the meaning of the Limitation Act because they had been outside the jurisdiction of the BIOT Courts and of the High Court of England and Wales as a result of the Defendants' actions, which had also caused them to be impoverished, ignorant, illiterate and physically separated from those Courts;

(vi). that the action was based upon the fraud of the Defendants and deliberate concealment of relevant facts, in particular in concealing their citizenship removing the islanders, preventing their return and infringing other rights of theirs and failing to make adequate provision for them, accordingly section 32 of the Limitation Act 1980 meant that the actions were not statute

barred; and

(vii). that the actions were also actions for personal injury and it would be equitable pursuant to Section 33 of the Limitation Act 1980 to allow the actions to proceed. The injuries included diseases linked to poverty, poor living conditions, malnutrition and included such illnesses as malaria, gastro-intestinal infections, drug addictions and mental illnesses.

137. The Claimants were unable to discover with reasonable diligence that the Defendants had behaved fraudulently and unconscionably at an earlier stage because they were uneducated, trusting, without access to pre-legal advice and effectively under the control of the Defendants who had misled the islanders at all stages as to their rights and status.

138. It was said that there was no abuse of process rising out of the Bancoult litigation; there was no duty to test the validity of the 2000 Ordinance by applying for permission to return to Diego Garcia and it was not necessary for the validity of the 2000 Ordinance to be challenged in Judicial Review because of the factual relationship between a decision as to its validity and the material relied on for the rest of the Claimants' claim. This was not a case of *Henderson v Henderson* abuse.

139. The Reply also denied that the renunciation forms could found an allegation that the Claimants were abusing the process of the courts in these proceedings because they would not have been aware of the content or purport of those documents and so there was no clear and unequivocal waiver of rights by persons fully informed as to them. Indeed, it was said to have been unlawful for a Government with governing responsibilities to treat its citizens in that way.

140. A Case Management Conference was held before Master Turner on 16th July 2002, who ordered a trial of a number of preliminary issues.

141. The preliminary issues were (i) "*whether the Claimants were unlawfully removed from or prevented from returning to the Chagos Islands as pleaded*" and (ii) a long list of scheduled issues, the detail of which the parties were to agree, including whether the action was statute barred, whether the pleaded case constituted the tort of misfeasance in public office, and whether they could establish its ingredients, in respect of which a variety of aspects were raised. The existence of a tort of unlawful exile, the justiciability of the national security and international obligation issues raised by the asserted right to return to Diego Garcia, the inadequacy of the pleading of the negligence and deceit case, and the applicability of Mauritius law and the Mauritius Constitution were also issues raised in the Schedule.

142. Master Turner also made orders for disclosure and the exchange of witness statements for the purposes of that trial. The time estimate was 7-10 days. It was not then thought by either side that there would be much more disclosure of documents. There had been a debate as to whether the issues should be dealt with on the pleaded facts or whether, as the Claimants wished, live evidence at least on their side should be called. Master Turner, plainly encouraged by the Claimants' submission that the evidence of comparatively few witnesses for the Claimants would suffice to provide the factual matrix necessary for the determination of the Defendants' preliminary issues, ruled that live evidence should be called. The Defendants did not appeal that decision.

143. The basis for Master Turner's decision was common sense case management and justice. The pleadings were vague or incomplete as to many factual assertions; yet filling in those gaps, the full extent or implications of which could lead to further facts becoming relevant, through the taking of instructions over long distances from largely illiterate people dealing with events long ago via interpreters and then rendering

the answers into pleadings, would be very expensive, time consuming and of debateable completeness or accuracy; live witnesses would be able to deal with those issues immediately, and the true scope of what they wished to say ascertained, clarified and checked or tested. As the aim of the Defendants was to defeat the whole or large parts of the case without a full trial, in circumstances where the Claimants were elderly, at least in their eyes had suffered at the hands of the very colonial power from which they were seeking justice, and were suspicious that as illiterate Creole citizens they were discriminated against in comparison with other colonial citizens, it was only just that the Claimants should have their opportunity to have their say, and should not feel as though the lawyers had dealt with it behind their backs.

144. Although not all of those aspects were explicitly part of Master Turner's thinking, it became increasingly clear to me as the case was prepared for trial and being tried, that he was right to have ordered as he did and the considerations to which I have referred weighed heavily in favour of the process undertaken, very prolonged though it turned out to be.

145. Unfortunately, the nature of the issues thus to be dealt with was not altogether clear and the parties could not agree. Part of the problem related to the question of which witnesses were necessary for which issues and, more importantly, what factual issues if any were to be finally decided at the preliminary stage. I held two pre-trial reviews, on 26th September and 11th October 2002. The list of issues was refined and the questions for the Court became generally expressed in terms of whether there was a reasonable prospect of the Claimants establishing the facts necessary for their claim or for defeating the Defendants' contention that the claims were statute barred. In general, binding findings of fact would not be made except in relation to abuse of process and so far as was necessarily implicit in the formulation of the limitation issue. The Defendants did not therefore have to provide oral evidence lest binding findings of fact were made against them at this preliminary stage. There were issues of law to be resolved. In summary, the fifteen issues covered:

- (i). the factual evidence of compulsory removal of Claimants or the prevention of their return to the Chagos Archipelago and the lawfulness of such acts;
- (ii). in relation to the tort of misfeasance in public office, the prospects of it being shown that the Defendants acted unlawfully or if they did so, whether they knew or were reckless as to that unlawfulness;
- (iii). the existence of and legal requirements of the alleged tort of unlawful exile;
- (iv). whether the alleged duty of care arose;
- (v). the prospects of Claimants showing that they had any real property rights, in particular in the light of the acquisitions by the Crown, and the possible applicability of Mauritian law;
- (vi). the relevance of the Mauritian Constitution;
- (vii). the ingredients of the tort of deceit and the Claimants' prospects of showing that the tort had been committed;
- (viii). the prospects of any cause of action not being statute barred or property right not being extinguished;

(ix). abuse of process in the light of the settlement of the Michel Vencatessen litigation and the later Bancoult litigation.

146. Various other orders were made in an endeavour to clarify what the pleadings were actually contending for; the Particulars of Claim were amended. The Claimants' Reply on Limitation and Abuse of Process went through a number of editions, the last one accompanying their closing submissions.

147. The hearing in the end lasted 37 days, not without some gaps. Many more witnesses were called by the Claimants than had been anticipated. They were called to deal with concerns which I raised during the hearing, with particular reference to the limitation and abuse arguments. Those concerns revolved around what the Claimants knew generally about the 1982 settlement, the Vencatessen litigation, the distribution of the £4m by the ITFB and, as it transpired, subsequent occasions when legal advice was sought by the Ilois. I felt that there were many significant witnesses who had not been called, the absence of whom was very surprising in the light of the contentions. The disclosure of documents from both the Defendants' and Claimants' files continued through the hearing and while written closing submissions were being prepared. Both sides complained about the inadequacy of the others disclosure. Some relevant documents were not in the control of either party.

148. The giving of evidence was slowed not just by the need for almost all the Claimants who gave evidence to do so through an interpreter. Documents had to be translated orally, and even if written in Creole, read to witnesses and at least in part translated for the Court. I am grateful to the many who acted as interpreters, for a language with few interpreters, many of whom, including a former President of Mauritius, came at short notice, at some disruption to their own lives.

149. Written closing submissions with a brief flurry of rebuttals and counter-rebuttals were provided for those submissions not concluded by 10th January 2003. The process ended towards the end of March.

General

150. Mr Allen QC for the Claimants submitted that the Defendants' applications were unjust as a matter of intuition or perception. It was unjust that they should have no personal adjudication on the wrongs which they had suffered and the claims which they brought. His clients had been treated unjustly; it was unthinkable that a British Government could so treat the Chagossians. They had been displaced as a people by the Government of the United Kingdom which had eschewed any governmental obligation to them and was now seeking to prevent adjudication on the wrongs done to them. They had never had "*any independent comprehensive high level review*" of their rights or of the wrongs done to them. They had been treated in a way which it was inconceivable that, eg the Scots would be treated.

151. Paradoxically, however, it was the creation of BIOT in 1965, in advance of the removals which, as Mr Allen accepted, provided the opportunity for some of the Chagossians' grievances to be raised. Had they been removed by the UK from the Archipelago to Mauritius while the islands were still part of Mauritius before independence, or had they been removed by Mauritius after independence from islands which had remained constitutionally part of Mauritius, the removal itself would not have generated claims about exile or a removal which was in principle one which no Government could inflict on its citizens. They would have been removed from one part of Mauritius to another part in the public interest, whether for defence purposes or because the islands' economy could no longer sustain them. Of course, the politics involved in such a route would have been completely different; it would not have been sufficiently certain for the UK or US Governments and the internal politics of Mauritius never contemplated such a course.

152. As Mr Allen reminded me, the fact that this application has lasted so long and has involved so many witnesses and bundles of documents (some newly arriving during the hearing), does not alter the purpose of the hearing: it is not a mini-trial. But it is to deal with the issues ordered to be dealt with, as to an extent they evolved during the hearing; it includes strike-out proceedings but it is also an application for summary judgment. Still less, however, would any trial of the action be a form of public inquiry into the overall actions or omissions of the UK Government towards the Chagossians over three decades and more, notwithstanding many comments and arguments from him which were more addressed to heaping moral opprobrium on the Defendants than to dealing with the issues to which the applications give rise. Neither the applications nor any trial of the action would constitute a high level, independent and comprehensive review of the rights of the Chagossians, the absence of which Mr Allen complained about. Nor could any trial constitute an inquiry at a general level into governmental wrongdoing or incompetence.

153. If, as Mr Howell QC said, the actions or parts of it should be struck out or summary judgment entered in whole or in part, that is the application of the system of law to the case. It would be the proper form of personal adjudication. Justice does not require an obviously unmeritorious case to be allowed to proceed. Ill-treatment does not require a hopeless case to be allowed to continue. Indeed, to raise false hopes would not be fair. There is every good reason to avoid the waste of public money and court resources which the continuation of hopeless claims or contentions would otherwise create.

154. In saying that, I am acutely conscious of the position of at least some of the Claimants. I have not heard oral evidence from the Defendants on any issues of real significance, although I have had a great deal of material in the form of documentary evidence about what happened over the years, upon which the Defendants rely. It does appear that, in the absence of unexpectedly compelling evidence to the contrary, at least some Claimant Chagossians could show that they were treated shamefully by successive UK Governments. Whatever view might be taken of the importance of the strategic defence aims underlying the creation of BIOT, the evacuation of the islands and the establishment of the base on Diego Garcia, some who had lived there for generations were uprooted from the only way of life which they knew and were taken to Mauritius and the Seychelles where little or no provision for their reception, accommodation, future employment and well-being had been made. Ill-suited to their surroundings, poverty and misery became their common lot for years. The Chagossians alone were made to pay a personal price for the defence establishment on Diego Garcia, which was regarded by the UK and US Governments as necessary for the defence of the West and its values. Many were given nothing for years but a callous separation from their homes, belongings and way of life and a terrible journey to privation and hardship. Such arrangements as were made in the early 1970s did not take effect for several years and came too little and too late to alleviate their problems. An eventual accord in 1982, driven by litigation, produced an offer which was intended to improve their sad conditions but which was not evidently generous. Their poverty, sadness and sense of loss and displacement impel their continuing desire to return to the islands which were their home.

The Chagossians' Oral Evidence

155. It was the Claimants who wanted to provide some oral evidence for the purpose of these applications. Initially, this evidence was to show the way of life which they had led on the Chagos, the manner in which they had been compelled to leave the islands or prevented from returning to them, the harsh conditions of their voyages to Seychelles and Mauritius and the destitution in which they had been left there for so long, without assistance or compensation from the UK Government. It was to re-assert their entitlement to return, and their strong attachment to the Chagos, indeed to particular islands within the Archipelago. But it became clear to me during the cross-examination of the witnesses whom the Claimants had initially decided to call, that there was much relevant evidence on other issues in respect of which obvious witnesses were not being called. Those issues related to the series of negotiations leading to the 1982 Agreement, the Agreement itself, the signing or thumbing of renunciation forms, the way in which the ITFB had dealt with those forms, the withdrawal of the Vencatessen litigation and the nature and extent of the legal advice which, over the years, the Ilois, or some of them at any rate, had received and to which publicity had been given. Those

issues were directly relevant to the Claimants' case on limitation.

156. The evidence of the individual Chagossians was given through interpreters of varying experience. Some of the Chagossians were elderly; some had been very young when they left the Chagos and arrived in Mauritius and the Seychelles. Inevitably, for all, the events surrounding the 1982 Agreement were twenty years past. The individuals were mostly illiterate in any language, spoke only Creole, and lacked significant education. Documents had to be translated in the witness box, and could not be read by them to assist understanding or recollection. Legal concepts were, not surprisingly, poorly understood, at least at any level of complexity, though the witnesses all had and expressed a strong sense of their rights as they perceived them and what rights they would or would not give up. Some legal ideas, notably the making of a claim or bringing proceedings, lacked a clear or consistent Creole translation. Witnesses were also often troubled by ideas of time, how long ago something had happened, and whether something had happened at the same time as something else. Witnesses would sometimes lose the thread of the questions, and could not be brought back to it, and when reminded of what they had recently said, would deny it or give a very different answer as that earlier question was then put again. Accordingly, their evidence requires a careful appraisal.

157. But certain observations are apposite at this stage. It was plain that the written witness statements, which for the most part the witnesses were prepared to adopt as true, could not be regarded as accurate or reliable or as the witnesses' testimony on many aspects. The language of many of the witness statements was far too advanced and detailed to be the true recollection of the actual witness in anything approaching their own words. It appears that one of the problems with the way in which the statements were taken in Mauritius is that the person preparing the statement provided information in it which may be true, for example exchange rates, but which is not within the knowledge of the deponent. This leads to a false impression of the witness' knowledge. It is impossible to tell the extent to which the written statement has been influenced by the statement taker, no doubt acting in good faith, or the extent to which the statement has been affected by the way in which the story has been taken down in Creole and translated into English and then back again.

158. But, even making those allowances, there are some surprising errors in the witness statements and some surprising omissions. There was a surprising lack of material in the witness statements on issues of real importance including the relevant material for the claim to property rights by prescription, as to their beliefs about the nature and purpose of the 1982 Agreement, the existence of the renunciation forms and what they and the Chagossian community more generally had known or believed about the availability of legal advice, and about certain of the wrongs said to have been done, such as the alleged denial of British citizenship. This is not a criticism that each document upon which the witnesses were cross-examined should have been previously considered, but there was often scarcely a reference to important aspects.

159. The witnesses, quite properly in this case, gave evidence in chief at some length; this evidence was often at variance, in matters large or small, with their statements. The oral evidence itself was frequently self-contradictory; what was said in cross-examination being at variance with evidence in chief, or with earlier answers in cross-examination.

160. The lack of reliability may, in part, be attributed to a lack of understanding of the questions and a loss of the thread, but it also reflected an unreliable memory. Some answers would be given to questions about events which they at other times would deny happened or deny that they remembered. The frequency with which witnesses were unable to remember events or simply did not know about them itself suggested that they had unreliable memories of events now too long ago for more reliable evidence to be forthcoming. Indeed, the lawyers who gave evidence were often unable to do more than rely upon the documents for their recollection as to what had happened.

161. Evidence was also given, as if at first hand, about events which the witness could not have seen or

heard. As Mr Allen put it, there was an element of "collective" or "folk memory". As Mr Howell suggested, stories went round which became lodged in people's minds as events which had happened and then as events which they had witnessed. Those amount to much the same, but the evidence thus given is of little practical help, for it is impossible to know whether it has any foundation in fact or not. There might be value in "collective" or "folk memory" evidence, or in a fairly sound general picture in which the individual details were more uncertain, if one were seeking a generalised or collective view for the purposes of an inquiry into the conduct of the UK Government. But I am concerned with litigation in which, on issues such as negligence and damages for personal injury, what happened to each individual Claimant would need to be measured with rather greater precision.

162. The unreliability of so many memories and the large gaps in recollection and knowledge were compounded by the willingness of a number of Chagossian witnesses to take refuge in a loss of memory and a denial of knowledge in order to evade questions on obvious problems: in particular, about the Vencatessen litigation, the withholding by the ITFB of £250,000 while sufficient renunciation forms were collected, and the occasions when legal advice had been sought. At times, Mr Allen's repeated emphasis on their naivety and ignorance as an explanation was overstated and did the Chagossians in their determination and endeavour less than justice. Many were, I concluded, alive to the significance of the passage of time since 1982 and the importance of what they had or had not been told about their rights and used their asserted poor recollections as a device to avoid facing up to evidential problems. For some, this did not appear to be an unfamiliar refuge. Even if that were too harsh a judgment, those gaps in memory show how difficult it now is for reliable evidence to be given on important issues.

163. I also concluded that some Chagossian witnesses gave deliberately false evidence on a number of issues, notably, but not only, Mrs Charlesia Alexis.

The Witnesses

164. **Mrs Talate** was the first witness and gave much evidence which other Chagossians were to agree with or to be affected by. She had been born, she said, on Diego Garcia but she could not remember when, because of her suffering.

165. She was asked in cross-examination why the statement which she had sworn in the Bancourt Judicial Review proceedings said that she had been born on Peros Banhos and said that it was a mistake on the birth certificate for it to record that she had been born on Diego Garcia, the mistake having arisen because she had moved from Peros Banhos to Diego Garcia when she was one month old. In that statement, it had said that her principal interest would be to return to Peros Banhos where her grandparents were buried, and her parents and she had been born. In order to explain the discrepancy, she said that she had told the truth but the person who wrote down what was in the first statement had written down a lie, which I found surprising. She could not remember when she was born but her witness statement said it was 19th March 1941, which I assume someone inserted from her birth certificate. She was unable to read or write or to speak English.

166. She had left Diego Garcia when the island was sold, as she put it, and had gone to Peros Banhos. She described how she was told that they had to leave Peros Banhos, the terrible conditions on the "Nordvaer", and the poor conditions in Mauritius. Over time, she became closely associated with the CRG, one of its leaders from the very beginning although she denied being its Treasurer. She was elected to the ITFB in December 1983.

167. Her evidence was striking for the difference between her witness statement and her oral evidence, in style and content, and for the contradictions and changes to which her evidence was subject. She was an

important Chagossian figure, and their main witness on many areas. When the renunciation form was translated to her, it was for many subsequent witnesses, they said, the first time they had heard of any such document or its contents. But the gaps in her evidence about what she had known or understood, or what the Chagossians generally had thought were very extensive.

168. I concluded that Mrs Talate was not a credible or reliable witness, certainly on any matter of detail, and could be persuaded that things had happened which either did not happen to her or did not happen at all, or that she had seen things which she had not. Her witness statement bore no resemblance to any evidence which she could give in her own way; it drew conclusions eg over poverty, which were far too legalistic and sophisticated for her; its language was not hers, translation apart; so much of it she disagreed with that it cannot be taken, beyond the most general level, as an accurate or reliable piece of evidence.

169. Her oral evidence gave rise to many problems. Initially in chief she remembered signing her statement after it had been read to her in Creole and she said that the statement was true. She told me, however, that her statement was read back to her in French, some of which she understood and some of which she did not; it had all been read back to her in one go, reading from a prepared document, although she had spent nearly a whole day being asked questions. There was an element in her evidence of collective memory, that is, evidence which describes what happened to others, where she was absent, as if she had been present and which might be true. There was also undoubtedly confusion of language and thought and an inability to relate questions and answers to specific times. The strength and depth of feeling for Diego Garcia and the emotions attached to her experiences are entirely genuine. The general picture of life on Chagos, the fears of simple and in every sense ill-informed people, and the general picture of life in Mauritius can be taken, for present purposes and in view of the limited scope for challenge, as a basis for showing the general picture which the Claimants' overall might be able to prove at trial. Mr Howell did not take substantive issue with them for these purposes. It is much more problematic when it comes to the details of what happened to whom, when, and to what degree; here it is unreliable.

170. I also formed the strong view that she was being evasive when answering questions about what she knew of the Vencatessen litigation, the 1982 negotiations, what she knew when she was on the ITFB about the 1982 Agreement, the existence of a possible legal remedy which either had been used or could still be used, and of the extent to which Ilois were informed of what was going on through their various organisations. She was in a general sense aware of the significance which that had for the case as a whole. I do not regard her as having been a truthful witness in a number of instances. If that judgment is too harsh, she is, by reason of the passage of time, a witness whose memory is no longer reliable on specific and important individual details. Her evidence had real significance because, overall, it showed how difficult it would be, with the passage of time, to place reliance on what she said in detail. She was not alone in this; it was commonplace among the Chagossian witnesses. It goes directly to their prospects of success.

171. **Jeanette Alexis** was the Chairman of the Chagos Social Committee (Seychelles) and a personnel manager in a Seychelles Ministry. She was the daughter of Mrs Mein, who was Charlesia Alexis' sister. Her father had been the Assistant Administrator and the shopkeeper on Diego Garcia at East Point, registering those who came to work, doing administrative jobs and taking Mass when there was no priest. She was born on Diego Garcia in 1961 and her parents and her grandparents had also been born on the Chagos islands. Her brothers and sisters had been born there too. She described a stress-free existence. Her mother had never had to work. She had had a happy childhood with plenty to eat. She left Diego Garcia in 1971 for Peros Banhos and then had gone to the Seychelles with her parents. She described the harshness of life there, the difficulties of obtaining Seychelles citizenship, and the occasional contacts with Mauritian Ilois groups. Her father had set up an informal group which she helped with. The Seychelles Government had done nothing to help and the Ilois were frightened of making a fuss in what became a one-party state in case they were deported. She could afford no lawyers.

172. Her committee was set up in 1997. Her correspondence with the Foreign Secretary had been ignored

until the FCO wrote explaining why there had been no compensation for Ilois on the Seychelles: there had been few Ilois there and the resettlement problems of Mauritius did not exist.

173. She struck me as a generally honest and intelligent witness, except she was surprisingly now unaware of her father's efforts to obtain compensation or her aunt's campaign in the 1980s. Other evidence showed that she must have known of Mrs Alexis' activities. She may have forgotten subsequently, what she once knew.

174. **Mrs Mein**, the mother of Jeanette Alexis, was born in 1933 on Diego Garcia as her parents, grandparents, and sisters and brothers had been. She had gone from Diego Garcia to Peros Banhos before coming to the Seychelles. She had met her husband when he came to work on Diego Garcia. He was a Seychellois. Her husband did administrative work for the company, accounting work and keeping the registers. She did no employed work. Her house was in concrete blocks with iron sheets, four bedrooms and other rooms. When she left Diego Garcia, she had had to leave behind all her furniture, all the flowers and fruits of her garden, all her animals, ducks, chickens and so on. They had to leave behind the small boat her husband used for fishing. She described her evacuation and the life in Seychelles.

175. She was an honest witness, although clearly some of the detail had dimmed in her memory and her ability to follow a line of questions had diminished over time and with ill health, because I would judge that she had a clear general picture of what life was like on Diego Garcia and how it had subsequently changed. She had no recollection at all of making her witness statement, though her daughter explained how carefully it had been done. She could not remember her age or when she was born, nor going to see a lawyer about a case.

176. **Mrs Piron** was born on Diego Garcia and left when she was 26. She was now 57. Diego Garcia had been her home, but her mother had been born on Peros Banhos, her father in Farquhar, and her mother's parents had been born in the Seychelles and Mauritius. She was 20 years old when she started work. Her evidence supported the general picture of life in the Seychelles to which she had gone from Diego Garcia with her husband or partner, who was a Seychellois and their three children. (It was not altogether clear whether one or more gentlemen were involved but a certain informality in family arrangements appears not to have been uncommon.) Some of her descriptions, in particular living in a ditch with her family after having lived with her mother-in-law, seemed exaggerated and affected by a failing memory.

177. **Rita David** was born in 1947 on Diego Garcia, as were her brothers, sisters and all the ancestors she could trace, back to her great-great-grandparents who had been born on Chagos. She had worked on the copra plantations as a child; her parents worked on them. She had lived on Salomon when she got married and appears to have lived on Peros Banhos from 1969 to 1971 after which she went to Mauritius. Her evidence about the general conditions on Chagos or Mauritius fitted with other evidence. She was half-sister to Simon Vencatessen, but not Michel's daughter, and niece to Mr Saminaden. She said she did not remember receiving any money after Michel's case, contrary to her witness statement. She could neither read nor write.

178. Mrs David's evidence was of importance because it demonstrated the high level of fragility of memory about events so long ago and the unreliability of the witness. Events which one would have expected to have been firmly in her mind, and about which she had made sworn statements, were the subject of contradictory evidence from her.

179. **Marie Elyse** was 77 and the mother of Olivier Bancoult. She was born on Peros Banhos, as was all the rest of her family. She worked for the plantation company doing a variety of lighter jobs and her husband was in the heavy copra industry, a sawyer. She had six children on Peros Banhos, but one of them Noellie was

injured in 1968 and the Administrator said that she had to take the baby to Mauritius for an operation. She went with her husband and all the young children. She expected to be in Mauritius for just three months, but after her child had died on Mauritius, she went to the office of Rogers & Co to seek to return. Mr Autard of Rogers & Co said to her in Creole three times that Peros Banhos had been closed and he could not arrange for her passage back to Peros Banhos, that all the islands had been sold by the English, and that it would be too dangerous there because of the bombs. She had to go back to tell her children and husband what had happened and that she could not return; she was very upset in court.

180. But for all the personal trauma of which she spoke, she agreed that paragraph 3 of her present statement was wrong when it said she had lived all her life on Peros Banhos until 1973 (because she had left in 1968) and that she was forced to leave (whereas her evidence was that she was not forced to leave at all). The contradiction between 1968 and 1973 is plain on the face of her statement, however. There was other confusion over whom she travelled with, her son Alex and his five children or not; her Judicial Review statement had said so, but this time she denied it. Later, she said Alex was nine when they left but that could not be right as Olivier was four and is ten or so years younger.

181. She was a confused witness, not reliable on matters of significance in her life, in particular in her description of what she had discussed or not discussed with her son, Olivier Bancoult, about litigation and the activities of the Chagos Refugee Group. He did not describe any problems with his father's health in his statements in the way in which his mother had done in hers. She could not remember making her statement, but at another stage apparently did so.

182. **Marie Jaffar** had been born in 1952 on Salomon and her father and grandfather were also Chagossians. In 1966, she had left the Chagos islands voluntarily when her mother needed medical help in Mauritius. After she was better again, she and her mother had gone to Rogers & Co in April 1967 to book the return journey but Rogers & Co had said that the British had sold the islands because of independence but did not say to whom. Her witness statement said her mother had returned from Rogers & Co to tell her what had been said which included the islands had been sold to the Americans. They did not know what to do because all their belongings were on Salomon. They cried in despair. They quickly had to find work. After two years, her mother found work as a part-time maid, but her step-father got no employment at all. She started work as a maid servant at the age of sixteen, which would mean it was about 1968. Later, she said she had got a small children's allowance (child provision) of Rs 15 and had started work straight away on arrival at fourteen. Her written statement endorsed what Mrs Elyse and Mrs Talate said about conditions in Mauritius.

183. It was difficult to reconcile the various pieces of her evidence. The only issue in my mind was whether she was deliberately untruthful or whether, as I would prefer to believe, the major discrepancies and improbabilities over relevant and significant features of her experiences were the product of the passage of time and the unreliability of her memories over that period, which undermine the value of what she had to say except at the most general level. It was the quality of recollection which, as with others, was the most telling feature of her evidence.

184. **Joseph Laval** had been born on Diego Garcia in 1955, as had his parents and grandparents. He described leaving in 1971 and going to the Seychelles en route for Mauritius where he and his family were put up in the prison on the other side of the courtyard from the prisoners, but they were still locked up by 6 o'clock in the evening.

185. When he was asked questions about the money received from the ITFB, he was very slow in answering and rather resistant to explaining what he knew about where the money had come from. He had been in debt and unable to pay his debts from the money which he had received. He was unable to read or write or speak English. He seemed unaware that he was one of the Claimants in the case. He had never thought of bringing

a case before.

186. He then remembered that he had received Rs 7,000 from the ITFB which, he said, was because he was a Chagossian; then Rs 10,000 and finally Rs 36,000 for a house. He thought that the Mauritian Government had paid this because they had taken him from the islands. He had not understood that if he signed the document to get the last sum of money which he got that he would lose his rights. He had met Mr Mardemootoo and now understood his rights, although previously he had said he only knew Mr Mardemootoo by name. His written statement makes reference to the value of rupees in 1982, part of which is said to explain why the sum he received was an insignificant amount. He did not know before he came to England that the currency in England was pounds, nor did he know how many rupees were necessary in 1982 to buy pounds. He could not remember anybody telling him anything about that, although he had agreed that he had told his story to Mr Mardemootoo who had written it down and that it had been read back to him by someone else in Creole and that he had signed to show that it was correct.

187. He said that he earned Rs 10,000 a month. But in one of the claim form documents, the questionnaire, about which he had no recollection, his monthly income had been given as Rs 1,500. He could not remember how much he was earning in 1982 either. He did not know either how much he could have earned in 1982. He thought that the Mauritian Government was giving them money in 1982 so that they could feed themselves. He said he did not know that people were trying to get money from the British Government. They just put their thumbprint down when they got money. He had forgotten about signing any form when he got money from the ITFB in 1983. He could see his signature but had never asked what he was signing. He never went to any meetings or supported any Ilois groups. He had only got to know Mr Bancoult four years ago, and was in favour of the Chagos Refugee Group.

188. He had used the Rs 36,000 to buy property, although in his written statement he said that it had all been used to pay off money lenders. I asked him about this and he then said that he had used the money to repay Mauritian money lenders. He said that he had forgotten that he had used the money to repay the money lenders, but that in fact is what he had done. It was his brother who bought the land, but he then said that he did own the house in Baie du Tombeau and the Government had given him the land.

189. Baie du Tombeau and Point aux Sable were the areas where, according to Mr Bancoult's Judicial Review statement, 85 houses were built for the Ilois by the Central Housing Authority and 450 plots of land were made available free for house building by the Ilois but which they had to pay for. But he said, many Ilois needed the money and used compensation to pay debts and so sold the land or house.

190. Mr Laval's evidence was somewhat unreliable and not always truthful. It may be that some allowance has to be made for the way in which the statement was taken and information inserted which the maker of the statement could not possibly know. It may mean that the witness statement itself is of limited value, but even making that allowance, the oral evidence which he gave was nonetheless self-contradictory on a number of occasions. He rather exemplified the evidential problems of the Chagossians so long after the event.

191. **Mr Ramdass** said that he had gone to Mauritius from Diego Garcia where he was born in 1934, with his mother for her medical treatment. He was then an adult, already married, but they had been unable to return. He was somewhat vague about when this was but agreed that his son, Eddy, had been born in Mauritius in 1957 and that he, the father, had never subsequently returned to the islands. This suggested either that he was mistaken about being refused a return passage, or that such refusals happened because of employment reasons quite independently of BIOT. At all events, by 1971, he must have known something of Mauritian ways. He said that he established not so much a committee as a small family group, which included Mr Piron and Mr Saminaden. Michel Vencatessen was his uncle. Committee or not, he organised petitions and by 1974 agreed that he had become recognised as an Ilois leader along with others in his group. He was in

contact with Ilois in different communities including Mrs Alexis. He had been an Ilois representative on the Resettlement Committee and had been involved in setting up the Michel Vencatessen litigation and in meeting with Mr Sheridan in 1979 when 1,200 quittances were signed. In 1981 and 1982, he was part of the Ilois group in the Mauritius Government delegations. He had witnessed the signing of the renunciation forms in 1983 and had become an elected Ilois ITFB member in December 1982.

192. It was plain from Mr Ramdass' evidence, as to events in 1979 to 1981 as it was in relation to later events, that his memory had faded, as he himself asserted. He said that he often got confused. What he could remember was often unreliable and plainly in conflict with reliable contemporaneous material. His evidence changed repeatedly. He could not remember evidence he had given recently. Although he was elderly, not in good health and his wife in Mauritius was unwell, he was clearly evasive at times when his memory was not playing him tricks, and some of his answers were untrue. There was clearly some pressure on him from Mrs Alexis, not just as a result of past disagreements in 1979, 1980 and subsequently, but also directly as a result of him accusing her in court, correctly as it happens, of having been engaged in fraud on the ITFB. (This led to an altercation outside court. Mr Ramdass repeatedly denied that there had been any communication between them; but he later changed his evidence to say that they had only spoken about food; Mrs Alexis always spoke in a loud voice. He explained that he could not remember why he had said what he had said and denied that there had been any conversation at all and wanted to apologise to Mrs Alexis. He denied being afraid of her. From all that I had been told, this was plainly untrue. Indeed, after a sequence of denials by Mrs Alexis that there had been any conversation at all between them, she admitted that in fact they had been talking but only about what to eat. She too persistently lied over that.)

193. Whether or not his evidence was the result of evasion or forgetfulness, I am quite satisfied that in 1981 he knew of the role of the litigation in the settlement negotiations and of his role as the representative of Mr Vencatessen's interests. I reject as incredible the idea that in 1979 and 1980 he had no idea what were the basic requirements of the UK Government in relation to a settlement as relayed to his group by Mr Sheridan. Likewise, I regard as incredible his contention that he had no idea what was in the letters or petition which were organised by the JIC. Mrs Alexis, according to reports, had denounced the petition saying that people had not understood what was in it. There is nothing to suggest that Mr Ramdass was surprised at what had been done in his name in 1980. It was all of a piece with what had happened in 1979. It is difficult to see how he could only have found out about the contents of the letters in court in the light of his witness statement or in the light of his answer that he had begun to distance himself from Mr Mundil because Mr Mundil had betrayed them. He could not remember the manner in which he was saying he had been betrayed. Mr Ramdass said also in his evidence that he could no longer understand all the letters that were written relating to his group and in his name, in which negotiations leading to a final settlement had been discussed, because he was now too old. That may be the explanation, but it does not add to the reliability of his evidence.

194. **Mr Sheridan** had been the senior partner in Sheridans. It was when Mr Ramdass contacted Gaetan Duval, a leading lawyer-politician in Mauritius, who had put him in touch with Donald Chesworth, an English adviser to the Mauritius Government, that Mr Ramdass' group contacted Mr Sheridan. Thereafter, he was involved in the Vencatessen litigation, though Mr Glasser, the Head of Litigation, had day-to-day procedural charge of the case. He had been to Mauritius often, was involved in the settlement attempt in 1979 and his firm had been involved in giving subsequent advice on settlement before and after the 1982 Agreement. He regarded his firm as acting for Mr Vencatessen in a test case for the Ilois, and indeed he came to regard the Ilois more generally as clients.

195. It was plain from many answers which Mr Sheridan gave that his memory of the events of the late 1970s and early 1980s had faded. He could not remember many matters which were referred to in the documents or which, from other sources, it was plain had happened in fact. He had a good recollection of the specific events surrounding the signing of the quittances in 1979 but not of those to whom he spoke and for whom he acted, but was very dependent on documentary material. He did not disagree with what it showed.

196. **Mr Glasser's** evidence was largely superseded by Mr Sheridan's. He could recollect little beyond the correspondence and that did not always remind him of what had happened anyway.

197. **Mr Gifford**, the partner of Sheridans in charge of this case, gave evidence about its origin in the Bancourt Judicial Review and the impediments, including lack of leadership, confidence and important documents to the bringing of an action earlier than was done. He was asked about the Statements of Truth attached to various Particulars of Claim and the investigations made to establish them.

198. **Mr Grosz** of Bindmans was instructed in about April 1981 by the CIOF. He advised the Ilois delegates on the 1982 negotiations and Agreement with the benefit of the advice of Mr Macdonald QC whom he instructed. He advised that it was a fair settlement including the provision of renunciation forms, as did all the English lawyers. He was involved again in 1990 and through till the mid 1990s for the CIOF, first in seeing what proceedings could be brought against the UK and Mauritius Governments and then in seeking entry permits to Chagos. He instructed Professor Bradley who considered much of the same ground as this current action covers. The view arrived at was that no case in the UK had a reasonable prospect of success.

199. His evidence, as was not surprising, was very much drawn from the documents. He had limited independent recollection as he often said, even though his evidence goes back only twenty years.

200. **Mrs Alexis** also gave evidence about the events in 1979 and subsequently. She had been born on Diego Garcia on 8th September 1934, the same year as Mr Ramdass. Her parents, grandparents, and great-grandparents had also been born there as had her husband and all but two of her children. She, her husband and children had gone to Mauritius in 1967 when her husband needed medical treatment. When that was concluded, Rogers & Co said that the islands were closed. They had suffered terribly after that because they were unable to return and all their things were left behind. They got a small house through an aunt of her husband. It was plain from all the documentary material, though not from her witness statement, that she had been a leading figure in the endeavours by the Chagossians over twenty or more years to gain compensation and the right to return to the islands. She was involved in setting up a committee in July 1979 which was instrumental in leading opposition to the quittances brought by Mr Sheridan. This Beau Bassin Committee evolved into the CIOF of which she became President. She was on the delegations which negotiated in 1981 in London and in 1982 in Mauritius. Subsequently, she was on the ITFB for a number of years. She became President of and remained active in the CRG. She was a regular visitor to the British High Commission in Mauritius seeking more money and assistance in various ways. She participated in various campaigns including demonstrations and hunger strikes over the years. She was convicted of making a fraudulent claim on the ITFB in respect of her two dead children; she served three months. She had an undoubted strength of character, a conviction in the rightness of her cause and in the ill done to the Chagossians. She said if things were going wrong, Ilois would come to her and if a row or noise were necessary, she would play her part. She was also willing to lie and did so on a number of occasions, including about her altercation with Mr Ramdass over his pointing out that she had been involved in fraud. Her manner on that occasion, about which there is no doubt that she was lying, sullen, downcast and dogged, was repeated on a number of occasions, although I recognise the limitations of demeanour as a guide to truthfulness, especially of a witness from a different background mediated through a translator. Like other Chagossian witnesses, she took refuge in her illiteracy and in the passage of time since a number of the events about which she gave evidence, to avoid facing up to important but difficult questions for their case.

201. It is difficult to convey without going through all the questions and answers, how reluctant Mrs Alexis was to answer even simple questions if she could see that there was some element of difficulty for her case which an answer would create, but it happened time and time again.

202. **Mr Rosamund Saminaden** was born on Salomon Island in 1936, but he grew up in Diego Garcia.

When he was sixteen, his mother moved back to Mauritius where she had been born and although she returned to the Chagos later, he stayed behind in Mauritius until, in 1967, he went to Peros Banhos as the Administrator needed a blacksmith, but he had not signed a contract. His witness statement did not mention his living in Mauritius for fifteen years up to 1967 because he had not been asked about it. He then said he had gone from Peros Banhos to work on Diego Garcia, but on his timings he must have returned to Peros Banhos. In 1973, the islands closed. He was forced to leave and they went to Mauritius. He lived in Dockers Flats for fifteen years after he returned to Mauritius. In 1973, he met Christian and Eddy Ramdass and Michel Vencatessen and they started to make representations to the Governments for financial support. Michel Vencatessen was his brother-in-law. He became part of a group with those three, together with Mr Piron and Mrs Vythilingam. He was on it to represent people deported in 1973. The others represented those who had come earlier. He represented the Dockers Flats area, Mr Piron another area and Mr Ramdass and Mrs Vythilingam lived in Roche Bois. He agreed that he remained an elected Ilois representative, working with Olivier Bancoult on the Welfare Trust Fund.

203. Mr Saminaden was, at times, rather an evasive witness but he was also one, like others, whose age slowed his ability to remember what had happened. Not all the problems were down to the lapse of time, although, with him, there was clearly a good deal of room for an honest lack of comprehension of all the details, as well as for the comprehension, which there might once have been, to have disappeared. Mr Saminaden was inclined to downplay the significance of his role in advancing the Vencatessen litigation, in liaising with Mr Sheridan and his role on the Resettlement Committee as a representative of the Ilois from Dockers Flats. The impression might be gained that the Chagos organisation in the 1970s was rather less than in fact it had been. There were a number of discrepancies between the oral evidence and the witness statement, for example over whether he saw Mr Sheridan speaking in 1979 or merely heard about it. I do not regard those as of any real significance as to honesty, but they demonstrate the problems of reliability which events so long ago give rise to.

204. **Simon Vencatessen**, who was born in 1944 on Diego Garcia, is the son of the late Michel Vencatessen and a cousin of Christian Ramdass. He said his father had stayed in Mauritius for seven years until 1971; he thought he had left Diego Garcia for Mauritius in 1968 and was still there when his father went back. He could read and write a bit in Creole and French, but not English. He was involved in the withdrawal of the Vencatessen litigation in 1982. He became a member of the ITFB with his half-brother, Francois Louis. He brought a case against the ITFB claiming that it was not entitled to require Ilois to sign renunciation forms in order to receive compensation from it. He was another whose evidence was unreliable, evasive and not credible in important areas, particular over the nature of his father's case and over the significance of what he knew about the renunciation forms in 1983.

205. **Mrs Kattick** now lives in France, but she was born in 1953 on Peros Banhos, leaving in 1967 to go to Mauritius from where she was unable to return to the Chagos. She learned no English but had learned a little reading and writing in French when she left school in Mauritius. She supported the CIOF in around 1977 or 1978 and did various organising tasks for it; she was elected to the ITFB in December 1982, beating her sister, Mrs Naick, and Mrs Alexis. She witnessed, with Mr Ramdass, the thumbing of the renunciation forms in September 1983. Thereafter, she lost interest in Ilois affairs, left the ITFB and went to France in the late 1980s. When she was in Mauritius she only got one year's schooling, but it was free because she was too old for entry to school when she arrived there. She learned to read some French when she was in France.

206. Her questionnaire as a Claimant in this case said that she had been forced on board the boat to leave Peros Banhos like animals. She was asked about that. She said she had to go with her parents. She could not remember exactly whether anybody had forced her parents on board. She had to go because her parents went. She was asked why she had said on the form they would have to be deported because the island had been sold. She said that was true. She had a brother whose form said that they left in 1965 and his parents went to Mauritius for vacation but she said that was not so. She did not know that her sister also said that her parents went for a vacation. All she could remember was that they had to leave the island as it

had been sold. But a 1967 departure does not fit with deportation. Her evidence in chief was contradictory and one version contradicted her questionnaire. She had said in chief that she had been at school in Peros Banhos and was still there when she left. In cross-examination, she said that she had had three years' education in Peros Banhos, leaving school at ten, some three to four years before she left. That fits with a departure in 1967, but contradicts deportation. (Otherwise, she would have had some six to seven years' education in Peros Banhos.)

207. Mrs Kattick was intelligent and astute; she knew where the problems lay for the Ilois in terms of the length of time that had elapsed and the importance of their knowing or not knowing what had been said or done in 1982. She frequently contradicted herself because, although she did not want to lie, she did not want to say things which would harm the Ilois case. She was prepared, however, to give completely untruthful answers if she thought that it was necessary. Again, if that is too harsh a judgment on her, her evidence is completely unreliable. Many of the things that she said are simply not credible for someone who had been active in Ilois affairs in the late 1970s and early 1980s. She had not pursued obvious questions with her sister and colleagues in the CIOF. She had been keen to point out the anger which Chagossians would have felt about renunciation forms, but gave the feeblest of reasons as to why she herself had not pursued the matter at the ITFB or later with anyone else when she heard renunciation forms being mentioned. She again took refuge in saying that she could not remember and in what she said she had not been told.

208. **Olivier Bancoult** was born on Peros Banhos in 1964. His family had come to Mauritius in 1967 for medical treatment for a younger sister who had died. They had been unable to return to the islands because his mother had been told that the islands were sold and there was no shipping. He recalled the poverty and family misery and desperation that followed.

209. He had attended Port Louis College where he was taught in English and French and attained Grade 5 School Certificate in subjects including English, French, Maths and Commerce. He could write French, but he did not have to read in English in order to pass his exam at school. His English was very poor when he spoke to the High Commissioners in Mauritius whom he met. He had recently taken steps to improve it.

210. He had been a founder of the CRG in 1983, as an Ilois group for Ilois, because they felt betrayed by Mauritian politicians and intellectuals. He was its first Secretary. After his success in the Judicial Review, the CRG, which had been dormant for some time, had come back to life. His mother, he said, had been in the CIOF. He had served in the ITFB from 1984. I did not find all aspects of his evidence wholly reliable; on many aspects, including importantly what he knew and understood had been the impact of the Vencatessen case, the final nature of the 1982 Agreement, backed up by renunciation forms, and the subsequent actions of the Chagossians in pursuing various political and legal avenues, he was, I regret, not straightforward or truthful. He knew why it was a problem.

211. **Mr Marcel Moulinie** relied upon his witness statement used in the Bancoult Judicial Review dated November 1999 to which he annexed an unsigned statement which had been prepared for the Government in 1977 in connection with the Vencatessen litigation. He made a number of comments, correcting what he had said in that 1977 statement, but he appeared to have very limited recollection, if any, of giving it. He also produced a supplementary witness statement. He described the background to events over the years. He had been born in the Seychelles in 1938. In 1965, he had begun to work for his uncle Paul in the Chagos Agalega Company, going to Diego Garcia in 1966. He was the company manager there, Peace Officer and the BIOT agent. He received instructions, after 1970 by telex, from Mr Todd and Sir Bruce Greatbatch, the Commissioner and Governor of the Seychelles. He managed the plantations and workforce and had been involved in the meetings at which the Ilois were told what was happening to them. He gave evidence about the interaction between Government and plantation operations, workforce and evacuation. Although his memory was unclear at times, he did his best as a witness.

212. **Mr Henry Steel**, Principal Legal Adviser to the BIOT Government, gave evidence about the legal system in BIOT. He was one of only two witnesses called by the Defendants. There was no registrar or judge of the BIOT Court until 1981 and no registry either, even though the relevant ordinance had been in force in 1976. The relevant laws were published in the BIOT Gazette in London and he thought copies would have been sent to BIOT, but not Mauritius or the Seychelles. Until 1984, the registry would have been in BIOT, but there was a sub-registry in England publicly notified for the first time in 1994. The BIOT Supreme Court could exercise all its powers in the UK. There was no formal legal aid system in the BIOT courts. A complicated table setting out the history of the BIOT courts, its registry and powers, was agreed by Mr Steel, it having been prepared by Mr Taylor.

213. **Mr Canter**, a former RN Lieutenant Commander, gave unchallenged evidence that he arrived on Diego Garcia in November 1971 after all the plantation workers had left, that there were no RN Officers there when he arrived and that he was the first to be stationed there permanently.

Employment

214. It was clear from the evidence that, with very few exceptions, there was no employment on the islands other than that provided directly by the plantation company, by the company staff or in its administration. In his 1977 statement, apparently prepared for the purposes of the Vencatessen case, but not signed, Mr Marcel Moulinie had said that all persons on the islands were employed by the company but he corrected that in his statement for the Bancoult Judicial Review to say that there were some Ilois employed privately by the administrators in domestic work. In his statement for the Judicial Review, Mr Moulinie said that although it was not the practice to require Ilois to sign written contracts, he thought that there was a practice adopted by the company's shipping agents to require all workers returning from holidays in Mauritius and the Seychelles to sign contracts before returning. Contracts were not signed on the Chagos islands anyway because they had to be signed in front of a magistrate who came rarely and no-one saw the need for Ilois to sign or renew contracts on such occasions. The contracts contained standard terms which required a worker to be returned either to Mauritius or the Seychelles, or rather an obligation on the company to pay for a return fare, but he said that he did not see how those terms could properly be applied to those settled on the Chagos islands for generations. They spent most of their working life engaged under purely informal contracts. Children could work without a written contract.

215. He said in evidence to me that the workers were the company workers employed by the Seychelles-based Chagos Agalega Company Limited. The practice of requiring contracts to be signed upon return from leave was maintained lest young Mauritians decided to take advantage of the boat trip to go for a free ride and then come back. Most people who went on holiday had to sign contracts when they returned, just like Michel Vencatessen. These were for two or three years. (But Mrs Talate and Mrs David said that they had not signed contracts on return.) The nurse and teacher worked for the company, which also provided the priest. The meteorological station on Diego Garcia was rather separate. All needed and earned rations through working for the company or its staff, and had a variety of spare-time activities.

216. There was no evidence, nor even a suggestion, that people came to the islands other than to work for the plantation company or its staff, or on the Meteorological station. There were no independent traders or craftsmen, farmers or fishermen. Although people went fishing and built boats and houses, this was not an independent means of existence. Indeed, the low pay, and payment in kind through rations and other supplements such as assistance with accommodation at least in the form of construction labour and materials, would have prevented such an independent economy arising. It was the plantation company which employed those who helped in the company shop or in house building and all the evidence pointed to those as being activities directed by the company to make necessary provision for its workers. See also paragraph A63 for example.

217. There was no evidence that people left employment with the company and stayed on the islands, and found some other occupation or survived with no occupation at all, except for those too old to work who could receive a pension and rations. As Mrs Talate said, everyone got rations. Even pensioners often did light work for the company. There would have been no basis for rations to be distributed to such people, and as the witnesses said, the provision of rations was necessary. Women in general worked; there do not appear to have been any who declined to work, and it was exceptional if someone lived or could live off their husband's wages. Mrs Mein was one such - her husband was in a senior position. She said no-one stopped working - even people without pensions had an easy job like cutting grass. The children, by the same paternalistic or feudal process, were given company jobs after their education finished at 12; they were not left unemployed, to fend for themselves without rations. They worked and, in turn, their own offspring, if they stayed, became workers. There was no unemployment because everyone worked and had to work for the company. Mr Bancoult's evidence in the Judicial Review suggested that people could choose not to work for the company though, in practice, they did, or had domestic jobs. Some wives or "co-habitees" were not employed but were housewives. The unfit or disabled were not forced to work or leave the islands. Mrs Piron said that parents might let a child stay in the house and not work but she had not known it.

218. There was no sufficient evidence at this stage as to ascertain the contractual terms of employment of those who had no written contract or whose written contracts had expired but who remained on the islands working for the plantation company. The evidence suggested that it was rare for people to be compelled to leave, though unruly or un-co-operative workers were occasionally removed.

Property

219. In 1965, there were 12 villages in Diego Garcia, of which the largest was East Point which had a church, cemetery, school, sanatorium and senior management housing. Mr Moulinie, in his witness statement, said that houses were restricted to residential areas to maintain security and sanitation. There was a traditional labourer's house type with a concrete base and wooden frame, and a roof which needed replacing every two years. It would typically have three bedrooms and one living room, with toilet, shower, kitchen and a front and rear garden on which families were encouraged to grow fruit, vegetables and to rear animals. He said that it was clear when he arrived in 1966 that many families had lived in the same house for many years and even generations.

220. When somebody wanted to start their own home, they would look for a plot of land within a designated residential area and, having found that, would come to him to identify the plot, because he needed to know where each worker lived. He organised the labour force to build the home, and had a more or less permanent labour force of eight workers skilled in building houses. He would refuse anyone permission to build on a remote part of the island. It would take about two weeks to build a house and the couple who then moved in would occupy it "*as their home, free from interruption as far as I was concerned. It was their home to live in until they chose to leave. If either or both of them died, then their children might take over occupation of it or alternatively, if they were of age, they could arrange for friends or other relatives to take over the home when they died. I know many examples of children who inherited their parents' property but cannot actually say that I know of a case where friends inherited. In principle, I would not have objected to this taking place*

. In cross-examination, he said that the land always belonged to the company but they gave the land when someone came to ask for a piece of land, providing it was in a building area. He meant that if permission was asked and it was in the right area, then they always allowed them to live there. In the 1977 statement, he had said that the island belonged to the company, they never allowed anyone to own plots of land or houses and the islanders understood who owned the land. If he had to relocate a worker, which happened occasionally, arrangements would be made for a suitable house of equivalent quality to be built and a payment would be made to compensate for the loss of garden produce. But he did not recall any occasion when he forced a labourer to move from one home to another against his wish. Islanders were free to go wherever they liked all over the islands except for the private property of individuals, and they could do so on carts, on foot, on bicycles or walking. They could go where they wanted by boat.

221. Mrs Talate said that on Diego Garcia she had moved from house to house, from time to time, but all of the houses had been close to the beach. She had had a four-bedroomed house on Diego Garcia with a kitchen, living area and toilet, but no shower. The houses were boarded with iron sheets and some had concrete. The houses she lived in had not been built by her husband. There had always been land by the house for cultivation and rearing poultry. She said that when people moved house on Diego Garcia, they did so because there was different work which they were required to do in different places on Diego Garcia. But when people moved house, nobody gave them any money for it. People did not move into a house that someone else had occupied, although she did not accept that that necessarily meant that they moved into a new house every time. "*We knew from the Administrator that we could take the land for the house*".

222. Mrs Mein said that people would choose a piece of land and build a house; they did not choose a house. Once they had chosen the piece of land, they would consult the Administrator who would agree because he was a good man and he would then get male workers to go and help build it. It then belonged to them, and if the father and mother died it would go to the children; it would be the Administrator who would tell them that the house was for the children in such circumstances. They would be able to give their house to someone else if they had no children. It was unclear whether she could remember that happening. But the Administrator had to agree because he had given them the land. She said that people did not change houses, it was a question of finding another place to make a house. They did not just agree to change with friends. There were one or two empty houses where people had gone away but not come back. I found it difficult to get a clear answer as to what would happen if a coconut worker had to leave working in a particular place and go somewhere else, but eventually she said that if someone had to change the place at which they worked, the house would remain empty just as if someone had gone abroad; but the Administrator could permit someone to move into it, and if the worker came back then they would build another house for him. But it was a rare occurrence for Ilois to be sent to Mauritius for bad behaviour and when the person she had in mind was sent, his house just rotted and fell down. If they got a pension, they could stay in that house. The Administrator did not force people to leave their houses.

223. Mrs Elyse went further - they did not even need the Administrator's permission; they would choose the land and he would provide the building materials. Mrs Jaffar's and Mrs David's evidence was similar. There does not appear to have been any difference between the three island groups in this respect.

224. Mrs Talate's witness statement, for what it is worth, said that they were all regarded as owners of their plots of land and houses. They chose "*free, private and available land*", telling the Administrator so that he knew who occupied which land but "*everybody respected other's property rights*". They lived on their property "*continuously, without interruption, peacefully, publicly, without challenge as owners*". Those are not her words; I rather doubt she ever thought in those terms. Someone has drawn inferences from what she may have said and expressed that as her evidence.

225. Mrs Elyse said all they had to do to get a house was to tell the Administrator where they wanted it and he would provide the materials.

The nature of the Vencatessen litigation

226. It had been apparent to the Treasury Solicitor and Sheridans that the Vencatessen case was in the nature of a test case and they negotiated accordingly. The Mauritius Government knew that it was an important case. A number of Ilois witnesses said what they had believed the significance of the Vencatessen litigation to be. Mr Ramdass insisted that he did not know Mr Vencatessen's approach to a settlement because it was Mr Vencatessen's decision about a case which he had brought for his own family on his own account. Mr Allen suggested that Mr Vencatessen was "*a cipher*". The evidence does not support that, but Mr Allen's submission involves rejecting the reliability of what Mr Ramdass said. Mr Ramdass agreed that he had been to London in 1981 as an observer, to represent Mr Vencatessen's interests but when it was

suggested that that was because the British needed to know the terms upon which the Vencatessen litigation would be withdrawn, he simply said that he did not know about it. He was not sure whether the Vencatessen case had been a way of putting pressure on the British Government. He denied that they had ever sought publicity for their cause.

227. Mr Ramdass gave inconsistent evidence about this aspect of the litigation. He said variously that the case had not been brought for the benefit of the Ilois but for Mr Vencatessen personally and that Mr Ramdass did not know if it was hoped that if he won everyone would benefit. The case was Mr Vencatessen's idea. Very shortly afterwards, he said that he had helped in the case for the well-being of the Ilois because he thought that compensation to Mr Vencatessen could be distributed for their benefit. He could not say whether his uncle hoped that all Chagossians would benefit but he imagined that if he took the money and distributed it, it would be good for the Ilois. Mr Ramdass' curiously contradictory evidence derives, in my judgment, from a realisation as to the importance for this case of the extent of knowledge about the existence of the Vencatessen litigation.

228. Mr Saminaden in his witness statement said that he had first learned about the Vencatessen case from Mr Duval in 1978. It was a family affair which Mr Vencatessen kept to himself. In chief, he said that he had learned about the case when he disembarked in Mauritius years earlier. Later, he said that the committee of his group had not been in existence before the Vencatessen case started but asserted that he had still only learned of the case through Mr Duval and had then become a member of the group but then said that the group had been in existence in 1974. He agreed he had been on the committee when he had to sign the paper (in 1975) in order for Mr Vencatessen to get legal aid. He did not know why Mr Vencatessen had been chosen to bring the case in Britain but he was seeking compensation from the British Government because it had done something wrong in uprooting him from Chagos and thought that others would benefit if Mr Vencatessen won his case. He described the case as Mr Vencatessen's, but said that Mr Ramdass looked after it. Although Mr Vencatessen was his brother-in-law, at no time did he mention it to him. It was clear, notwithstanding what his witness statement said about 1978, that he knew of the case from the outset. This was an unsurprising confusion over dates.

229. His committee, he said, helped Mr Vencatessen decide what to do by discussing matters with the committee, although the letters went to Mr Ramdass' address because Eddy, his son, knew English; sometimes they would go there to be told what was in the correspondence. He had left the committee after a while because he needed to go to work.

230. Mrs Alexis claimed that she had first heard of the Vencatessen case only after 1982 which I simply do not believe. Later, she said that Mr Ramdass had been on the 1981 delegation because there was something related to the court case which Mr Ramdass could sign for Mr Vencatessen. It was only in 1981 that she knew that Mr Vencatessen had a case in court but she said that was a case for his family. I do not believe that that is how she understood things in reality. Later, she said, when explaining that Mr Ramdass was there to represent Mr Vencatessen's interests because he could not travel, that she did not know that he had a case in court. She might have been tired or confused, but my very firm impression is that she knew very well why Mr Ramdass was there but equally knew very well the problem of admitting that in 1981 she knew that someone had brought a case which led to the payment of money to the Ilois. The problem was, if what she later said about the Agreement and the renunciation forms were true, why had others not been pressed to bring cases? She said she had not asked Mr Ramdass what he was doing there because his case was a family thing and she did not have the right to enter into discussions about it. It was not a case for the Chagossians but for him alone.

231. Mrs Talate, in her witness statement, said she was aware of the case and at first, in chief, said she knew nothing of it, though she had known Mr Vencatessen, because they lived far apart in Mauritius. Later, she agreed that she did know about it when the English came to Mauritius and brought money. She had known Mr Vencatessen as an important Ilois in Diego Garcia. Later still, she remembered that Mr Ramdass

had gone to London as Mr Vencatessen's representative because of the case, and that was when she had found out. She recalled no lawyers from the 1970s, but agreed that she had known Mr Sheridan had been helping the Ilois. She was wary and unwilling to be truthful; she was aware of the importance of what had been known of the potential for litigation. Later, she agreed she had become aware of it when Mr Ramdass went to England - her third version.

232. Simon Vencatessen knew Christian Ramdass because he was his cousin but knew nothing of any committee, saying that they simply had meetings within family groups. He remembered his father bringing a case; so far as he knew it was a private or family case brought in England and he could not remember whether any other Ilois would benefit if he won, and that he did not think that the other Ilois knew about the case in effect until 1982, when he first knew of it, when it had to be withdrawn. But he later agreed that it was Mr Ramdass' committee which looked after his father's case and that his brother, Joseph Fleurie, was also on that committee. He took some interest in the case, as his father's son and agreed that he remembered signing a letter of 21st May 1981 to Sheridans, (16/326), about the case, somewhat before it was withdrawn, in contradiction to his other evidence. He could not remember any discussions with his father or Mr Ramdass about the case. He said he was quite unaware of whether the Ilois took any interest in his father's case at all. He simply did not know. He did not remember any newspaper articles about it because he did not read the newspapers.

233. Others gave equally vague and contradictory answers. Mrs Kattick denied knowing of the case or that Mr Vencatessen had had to withdraw it in 1982, until very recently.

234. Rita David, half-sister of Simon Vencatessen (but not the daughter of Michel), and niece of Mr Saminaden, had heard of the case as she heard a lot of people talking about it. Olivier Bancoult's mother, Marie Elyse, had heard of it, according to her statement, some three to four years ago. But despite a possible translation problem as to when she knew, in oral evidence she denied three times ever having known. She looked very bemused.

235. Mrs Jaffar's witness statement said she knew Michel Vencatessen and was aware of his case and that it had led to the compensation in 1984. In chief, she said she did not know him till four or so years ago, when she met Mr Mardemootoo, and did not know where the ITFB got its money from. Her witness statement, which she earlier confirmed as correct, was untrue she said. She also said at one point that it was only now in court that she had heard his name. This was not credible.

236. Olivier Bancoult had heard of the case but said that it had been a family case. So far as he knew, no Ilois had received legal advice about proceedings in an English court until 1998. He agreed that he had known that Mr Vencatessen had had to withdraw his case in order for the Ilois to receive the money under the 1982 Agreement. This, he thought, was because there were people outside the scope of the Agreement who wanted a share, but he was unable to say why he thought the UK Government might pay £4m and still leave themselves open to be sued.

The organisation of the Chagossians

237. There were Ilois on Mauritius by 1971, who had left the islands voluntarily or who had done so and had been unable to return. Others arrived at various stages, some, rightly or wrongly, under the impression that they had been promised some assistance in resettlement.

238. An Ilois committee of some sort was set up by Christian Ramdass in the early 1970s. However representative or otherwise Mr Ramdass' committee was, it had organised petitions and held meetings for

the Ilois. Mr Ramdass said that by 1974 he was recognised as an Ilois leader. Mr Sheridan's judgment that they were a representative body was informed in 1978 and 1979 by his experiences of meeting them and the Mauritius Government. It was also the Mauritius Government's judgment that they were representative because they were on the Resettlement Committee. They played a part in the collection of 1,200 signatures for the quittances in 1979 in the first attempt to settle the Vencatessen case on a group basis. Simon Vencatessen said it was a family group, but that underplays the role. This group, according to Mr Saminaden, had about 100 adult members, but the CIOF was rather larger. Even after the departure of the rival CIOF from the JIC, Mr Ramdass continued to represent the JIC with Mr Mundil in the 1981 and 1982 negotiations which received advice from Sheridans before and after the negotiations of 1981 and 1982. Even though the JIC was wound up in September 1982 because it regarded its work as having been completed, Mr Ramdass, Simon Vencatessen and Francois Louis were made members of the ITFB in December 1982.

239. Although there was to be much criticism by the Chagossian witnesses of political interference by Mauritians who were alleged to have been seeking to use the condition of the Ilois for their own ends, the intervention of the Mouvement Militant Mauricien or MMM in 1979 seems to have had the support of some Ilois of a more militant tendency. A committee was elected on 8th July at Beau-Bassin, a meeting of what the press reported to be 1,400 Ilois. There are reports that a committee of 28 was elected. The President was Mrs Alexis and other committee members included Elie Michel and Mrs Talate. This committee was to become the Ilois Committee of a Mauritius Creole organisation, the Organisation Fraternelle. Mrs Kattick said when she joined in 1977 or 1978, it had more than 1,000 supporters particularly from Roche Bois. It was this group that was responsible for the campaign to stop the quittances in 1979. The disagreements between Mrs Alexis and Mr Ramdass were still reverberating in 2002 before me. They joined together in the Joint Ilois Committee along with the Ilois Support Committee of Mr Mundil (which, according to Mr Saminaden, did not include Ilois) and the FNSC. Initially, the JIC appointed Sheridans to act for them after the return of Mr Sheridan to London in November 1979. But the CIOF broke away in June 1980 and pursued its more militant line with demonstrations and hunger strikes. The CIOF, with the backing of the OF, were able to instruct Bindmans in 1981 to bring a case for 225 Ilois against the Mauritius Government. It was accepted as the main representative body for the Ilois, although it combined with the JIC to seek £8m from the UK Government. Three of its members were part of the Mauritius Government delegation to the negotiations in 1981 and 1982. They were Mrs Alexis, Mrs Naick and Elie Michel.

240. Mrs Alexis said that her committee received publicity and sometimes held press conferences so that the Ilois' needs would be known. She knew that Ministers read the newspapers and so would hear about what the Ilois wanted. They also held public meetings, and not just in relation to the period 1979 to 1981, attended by a large number of Ilois at which what was happening would have been explained. She agreed that her committee, the CIOF, had had quite a number of members who came from the different places where Ilois had communities in Mauritius. At one point, in 1980, she had wished to persuade the Mauritius Government that the CIOF represented the Ilois, but she could not remember obtaining a document signed by over 1,100 Ilois in order to prove that point to them. Later, she remembered a meeting of 400 Ilois at Beau-Bassin in 1980 which had passed resolutions when it was trying to prove that it represented the majority of Ilois. She remembered resolutions about interest on the money paid to the Mauritius Government and about their rights on Diego Garcia. She and Mrs Naick were, she said, the Ilois representatives rather than Mr Mundil, Mr Michel or Mr Ramdass.

241. The CIOF instructed Bindmans initially in 1981 and then again in 1982 together with Mr Macdonald during and after the negotiations for the Agreement. The CIOF supported the Agreement and urged the Mauritius Government to sign it. At some point around 1983, it lost the support of the Ilois and was supplanted by the Chagos Refugee Group of which Mrs Alexis became the first President. She was joined in the CRG by Mrs Talate, Mrs Lafade and Olivier Bancoult. Mr Bancoult said that the CRG was founded because Mauritian intellectuals and politicians such as Elie Michel had taken decisions above their heads of which they were not aware, and would say that they would find solutions for the Ilois in the Creole constituencies as a way of getting votes and yet betrayed them. I asked him what betrayal there had been up to the point where the Chagos Refugee Group had been created, to which he replied that he knew they had

been betrayed when he saw the letters to which reference had been made in court during the course of his cross-examination, which he had not been aware of at the time. He said that the 1982 Agreement was an act of betrayal and he thought so at the time. He then said that today they could see that there were conditions attached, but he did not know about them in 1982 and 1983.

242. He said that the Chagos Refugee Group became more official from the time when they started to combat fraud because a lot of people were trying to get money dishonestly in the name of Chagossians who had died. (In fact one of those was its leading light, Mrs Alexis.) The Group had gone dormant for a time, coming back to life about two years ago. Insofar as the Chagos Refugee Group was founded because by 1983 (and before the renunciation forms) the Chagossians had lost confidence in the ability of Mauritian politicians and intellectuals to help them, I found it difficult to see why reliance was placed on them for the purposes of subsequent correspondence and meetings and that there was not greater suspicion sooner about the forms. Mrs Alexis said it was founded in 1980.

243. Mr Michel remained in the CIOF. CRG representatives were elected to the ITFB in September 1983 and launched their campaign to unblock the £250,000, to establish that the Ilois were British citizens, to obtain social benefits accordingly, to obtain £4m from the USA and to raise complaints against the UK Government in an international forum. They persuaded the ITFB to pay for a US lawyer to advise them. They too appear to have lost influence in turn in about 1989 when the CIOF regained support and Elie Michel was re-elected to the ITFB and remained there until 1994. As Mr Grosz said, the Ilois had then come back to the CIOF. The CIOF again instructed Bindmans and obtained legal advice from Mr Grosz, Mr Macdonald, Mr Bradley and Mr Lassemillante. They held general meetings with the Ilois.

244. In October 1995, the BIOT Social Committee was formed which garnered individual support on a large scale and had some involvement with Bindmans.

245. It was surprising, as Mr Howell said, that in view of the issues so little was said in the witness statements of the Chagossians about the organisations which, during the 1980s and 1990s, had taken up the Ilois interests. The documentary material, much of it press reports, contains many references to substantial meetings of the Ilois both before 1981 and on many subsequent occasions. Significant publicity was given to demonstrations, hunger strikes and press conferences organised by Ilois. Ilois affairs were a matter of keen political interest in Mauritius because they related to international affairs and defence; they also provided an opportunity for Mauritian politicians to attack the Mauritius Government for the way in which it had allowed the Chagos Islands to be separated from Mauritius before independence, for the way in which it had handled resettlement and for the way in which various conditions attached to any agreement with the UK might affect the claims over the islands which Mauritius was keen to maintain. A meeting was held and publicised during the 1982 negotiations at Roche Bois on 27th March 1982. Many witnesses said that they had been betrayed by Mauritian politicians. Mauritian politicians may have had their own interest to pursue, whether gaining Ilois votes to secure election, or using Ilois issues as a means of attacking the Government of the day or other rival political organisations. But the number of people who, from differing standpoints, were interested in Ilois affairs, however selfishly, can only mean that the range of interests of the Ilois would have been kept to the fore in Mauritius by its politicians. They would have taken opportunities to advance rather than to hinder the Ilois cause as a means of enhancing their own position, however selfishly. There was a community rather than a diversity of interest in maintaining the right of the Ilois to return to the Chagos as a component of the claim by Mauritius. That is a feature which comes out strongly in the material relating to the 1982 Agreement and subsequently.

246. There was no evidence of any act of betrayal by Mauritius politicians; a number of witnesses complained that they had been betrayed by Mauritian politicians, when faced with correspondence in English or other statements which they were said to have made which referred to the renunciation of certain claims. These usually related to claims for money. But there is no justification for that thought, if the thought was indeed a genuine one rather than a dishonest means of denying knowledge of what they had done. To agree

to take a sum of money in full and final settlement of financial claims or to offer to do so did no more than reflect what the UK Government had required as a matter of principle before any sum was paid to the Ilois. It was also what all the English lawyers advised was appropriate so long as the sum itself was satisfactory. No-one advising or leading the Ilois can have supposed otherwise and it cannot honestly be regarded as an act of betrayal for such finality to have been offered in return for the sums of money which the Ilois were asking for. If there was a point at which the interests of Mauritius politicians and the Ilois diverged, it arose either after the 1982 Agreement when the Mauritius Prime Minister in 1984 said that to pursue claims against the UK Government would be an act of bad faith or, when during and after the 1982 negotiations, it was suggested that the Agreement should not be completed because it did not retain sufficiently clearly the rights of the Ilois to return to Chagos. I am dealing here with the Mauritius politicians such as Mr Michel and Mr Mundil who were helping the Ilois, rather than the Mauritius politicians in power against whom complaint was made about the insertion of Article 4 into the 1982 Agreement and the obtaining of renunciation forms in respect of claims against the Mauritius Government as well. It is not that I regard those complaints as well-founded, it is simply that they are irrelevant to the Ilois claims that those who were helping them were in fact betraying them. They attributed the betrayal to the fact that they were either not Creole and were clever such as Mr Mundil, who was Rector of the University of Mauritius, or were Creole but not Ilois such as the Michel brothers of the CIOF.

247. The picture painted by the Chagossian witnesses of the community of Chagossians in Mauritius in the late 1970s, 1980s and 1990s was also too partial to be realistic. I accept Mr Howell's submissions that the evidence shows that the Ilois constituted a relatively small community, largely concentrated in a few areas of Port Louis. Some of the groups, notably CRG and CIOF, had local representatives as Mr Ramdass and Mr Saminaden made clear. Many were inter-related through the fairly informal familial arrangements which appeared to have existed among many. It is not credible that relatives would not talk to each other about matters which went to the very heart of the conditions in which they lived. Quite apart from general meetings, it is clear that news and rumours would travel fast by word of mouth. What happened in 1979 over Mr Sheridan's quittances illustrates the point. It was further illustrated by the pressure put on Mr Vencatessen in 1982 to withdraw his case. It was a constant refrain of Mr Allen that the Ilois were poor and illiterate, unused to the ways of the world or of Mauritius. They themselves were happy to describe themselves as stupid and childlike but that too is only a very partial picture. Some had received modest education in Mauritius, such as Mrs Kattick, Eddy Ramdass and Francois Louis. Some could speak and read a little English. The ITFB placed press advertisements in relation to the distribution of money. There were press communiqués. The Ilois listened to radio and television and had wanted major decisions of the ITFB broadcast. Mrs Jaffar and Mr Ramdass could read newspapers which often contained substantive material about the Ilois and their cause. Mrs Alexis said that a number of Ilois had come to claim part of the distribution of funds under the 1982 Agreement from France, the UK and the USA because they had been written to by their families.

248. The Ilois were capable of organising, not merely demonstrations and hunger strikes or contact with lawyers in Mauritius, the UK and the USA; they also organised petitions. Some of these were designed to show how much support a particular group had and both Sheridans and Bindmans received such petitions although some thumbprints were duplicated on the 800 thumbprint or signature petition to Sheridans in 1980 and this may have been the position on others as well and although not all of the Ilois may have known the substance of what they were petitioning for, it is not credible that there was a general unawareness of what the groups were doing for the Ilois community and what progress was being made, with what outcome.

249. It is unrealistic for the Chagossians on Mauritius to portray themselves as ineffectual and ignorant, led by the nose by cynical Mauritians who would betray them or as people who knew nothing over a period of twenty years of what had been happening. The groups showed themselves able to obtain legal advice, to obtain the support of the Mauritius Government financially for the payment of their fees. They persuaded the Mauritius Government to organise a delegation at Government level to press the cause with the UK Government in 1981 and 1982. This was notwithstanding the agreement which Mauritius itself had reached with the UK over resettlement costs and concerns which had been expressed about whether the Ilois might become better off than Mauritians, however fanciful that might seem. The Chagossians were able to and did

reject offers which they regarded as too low and were supported in that by those who led them including Mr Mundil. Although a number of the Chagossian witnesses, notably Mrs Alexis, Mr Ramdass, Mr Saminaden, Mrs Kattick, Mr Vencatessen and Mr Bancoult, were not always reliable witnesses, whether because they were forgetful or not altogether truthful, they were not stupid. The development of the Ilois cause over the years showed that they were extremely determined and in their varying ways had been effective in obtaining for the Ilois compensation which the UK Government had never wished to pay.

250. It is inconceivable, after the storm created in 1979 by the Sheridan quittances, that Mr Ramdass, Mrs Alexis and other Ilois leaders such as Mr Michel and Mr Mundil would have been unaware of the importance of what was in documents which they were asked to sign in connection with the receipt of money from the UK Government or in relation to any compensation claim. I accept Mr Howell's point that if someone had wanted to deceive the Ilois about the negotiations in 1982, the terms of the Agreement or the renunciation forms, there would always have been others, whether politicians or Ilois, who would have been only too keen to expose that deception. There were ample means because of the press publicity and political debate whereby any such attempted deception would have come to the notice of such leaders and politicians. Gaetan Duval, Paul Berenger and other leading politicians had taken an interest in the Ilois cause. There had been debates in the Mauritius Assembly about Mr Sheridan's visit and the attitude of the Government towards the quittances. Indeed, there had been a critical report to the Mauritius Parliament about the very creation of BIOT and the excision from the Mauritian dependencies of the Chagos Archipelago. A report in 1980 (para 586) to the Mauritius Parliament was critical of the way in which the £650,000 had been distributed and of the delay in its distribution.

251. In November 1980, a further Ilois committee came into being, the FNSI which included the MMM, the PSM, the JIC and nine other Ilois bodies. It did not include the CIOF. This appears to have split away in June 1980 as a result of a petition which suggested that the right to return to Chagos might be given up. Mrs Alexis denounced that petition although she had put her thumbprint to it because she said many of those signing it had not understood what they were doing and the Ilois would never renounce their right to return to Chagos. She then set out to show that her committee represented the majority of Ilois and had obtained a petition containing 1,133 signatures out of the 1,300 Ilois in the country (para 580).

252. The Ilois also had a degree of political support in the UK from MPs, including Mr Dalyell and Mr Cook, from a religious leader, Trevor Huddleston, and a support committee. Journalists were interested in what had been done to them by the UK Government. If any Ilois had wished to be put in contact with solicitors with a view to advice or litigation, there were means directly or indirectly for them to use, as Mr Ramdass had done, with fewer support resources in 1974, and Mr Michel in 1981.

253. None of the Chagossian witnesses described any of their political activities on behalf of the Ilois, how they were organised and how the groups related to each other and the Mauritius Government except in the most perfunctory way. Cross-examination elicited information grudgingly and not wholly truthfully. Mrs Alexis' witness statement did not mention that she had been President of the CIOF and of the CRG. Mr Allen suggested that a false impression of their organisation could easily be gained. I agree, but that would only be by taking their witness statements at face value.

254. On all the evidence, there was a very different level of organisation among the smaller number of Ilois on the Seychelles. Mrs Charlesia Alexis, who was Mr Mein's sister-in-law and aunt to Jeanette Alexis, had gone to the Seychelles in 1980 with Mr Michel for the CIOF. There had been a Comite Fraternelle des Ilois de Seychelles, and Mrs Alexis explained to them at a meeting to which Mr Mein and Jeanette Alexis went, that they were demanding compensation. Mr Berenger by 1981 did not think much of Mr Michel's endeavours to involve the Seychellois Ilois in the negotiations. The UK Government did not want to involve them and thought that the Seychelles Government did not want to involve them either. A few, it appears, tried to make claims on the ITFB but were unsuccessful.

255. There had only been one group of Ilois on the Seychelles before Jeanette Alexis' group, the Ilois Group of Seychelles. It existed when they had visits from Mauritius in the 1980s and she helped at the committee to register people, but it never did anything. She was just assisting her father as the unofficial secretary. He died in 1989. It had just faded away. She was unaware, though she assisted in his letter-writing, that her father had sought compensation from the British in 1978, (8/1473 and 1478). He had not mentioned it to her, or indeed to her mother. I found that odd. Her eldest sister had gone to live in Mauritius, but they had had little contact with her, but she had said that there were payments being made in the 1980s and Jeanette Alexis said that they had tried to get their names registered, but she had been told that the list was closed and the payments were for Mauritius residents only. She said that they had visits in the 1980s from two Mauritian Ilois groups who took their names and birth certificates, but that nothing came out of it. But it is surprising that she could not remember more of what Mrs Alexis, I am sure, had explained about what she was doing on her visits.

256. The Seychelles Government had done nothing to help because it did not want to get involved or to upset the Mauritius or UK Governments. After the Seychelles became a one-party state run by the SPUP, she had become scared because there were threats that if they continued asking for money they would be deported. She had not been aware in the 1970s and 1980s that she was a sort of British citizen because they had been told they were Mauritians. She had found out later. It was not until 1997 that the committee of which she was Chairman had been set up and there had been no contact with lawyers or professional advisors in the early 1980s.

Misfeasance in Public Office

The Bancoult decision

257. It is important before turning to the detail of the submissions, to ascertain the limits of the *Bancoult* case because of the effect which it has on what is reasonably arguable. I accept that the *Bancoult* decision makes it reasonably arguable that the passing of section 4 of the 1971 Immigration Ordinance was unlawful because it permitted the wholesale removal or exclusion of the population from BIOT. It is also reasonably arguable that the exercise of prerogative powers to achieve that same end would be unlawful; see paragraph 61 where Laws LJ expressed considerable doubt as to whether the prerogative could enable such an end, and he concluded that there was no other existing legislation which empowered the enactment of section 4. If it were desired to achieve the aim of clearing the whole of BIOT, specific legislative power would have been necessary. It is to be noted that the Divisional Court accepted the high importance of the defence facility and did not suggest that that its provision could not have been a proper purpose for the clearance of the population, quite the contrary. Its point was confined to the need for a different legislative power to achieve that end. That legislative power could have been provided by Her Majesty, for the Court concluded that BIOT was a ceded and not a settled colony, judged, as it had to be, at the time when it became part of the Crown's dominions in 1814 and so was not subject to the same limiting effect of the words "peace, order and good government" as is found in the British Settlements Act 1887; paragraph 52 of *Bancoult*. That was not suggested to be incorrect by the parties in this case. Both those last conclusions are obiter and Mr Howell was inclined to submit that the conclusions should be given a narrow reading and he reserved the right, if it existed, to argue that the whole decision was wrong. For my part, whatever reservations I have about the decision and various parts of it, I do not see that the conclusions which I have referred to can possibly be said to be unarguable. It follows from that that if the Defendants excluded the Chagossians from returning to the islands between 1965 and 1971, in 1967 and 1968 in particular, and did so as a step towards the removal of the BIOT population, that too would be arguably unlawful. It may have been unlawful to prevent Ilois returning whatever the reason in the absence of legislation. Indeed, the same reasoning would apply to all subsequent exclusions up to the enactment of the BIOT Immigration Ordinance 2000.

258. I have expressed my conclusion that it is reasonably arguable that section 4 of the Immigration

Ordinance was unlawful even though that is the clear conclusion of the Divisional Court, from which there was no appeal on the leave granted. I put it that way because I do not consider that the Divisional Court is by any means clearly correct in treating section 4 as empowering the removal of the population. Section 4 sets up a permit system, and requires anyone present in BIOT to have a permit to be there or to be exempted from that requirement. These permits are to be issued by an immigration officer who is given the widest possible discretion as to their issue or cancellation; a four year period is the normal period of grant. An appeal lies against the refusal of a permit to the Commissioner. It is an offence to remain without a permit after the coming into force of the Ordinance. The removal power in sections 10 and 11 permits the Commissioner to make an order directing the removal, of someone unlawfully present, from out of the territory, indefinitely or for a period, and to direct how that order be carried into effect. That removal "out of the territory" can be either "*to the place whence he came, or, with the approval of the Commissioner, to a place in the country to which he belongs, or to a place to which he consents to be removed*" if its government consents. Section 4 is thus an essential component in the system of control over residence but it is not sufficient by itself as a matter of the structure of the Ordinance to achieve removal of a person or population. Its operation requires an order. It is inapplicable to intra-BIOT movement.

259. It is the making of the removal direction which, it could well be said and indeed was said by Mr Howell, is the point at which any unlawfulness in the exercise of the power to remove would arise, were it to be used against an Ilois; the restrictions on the place to which he could be removed needed to be considered in judging the lawfulness of section 4 of the Ordinance or its operation. What therefore needs to be examined is the lawfulness of section 4 in an Ordinance with those removal restrictions. I see some force in those points and they have not been considered in the *Bancoult* case. I do not accept Mr Allen's submission that Mr Howell is precluded from taking them because there was no appeal. The parties are different and more importantly, there was no misfeasance action then envisaged which would have made a substantial difference to the way in which the evidence was presented and analysed. This matters because of the evidence about the way in which it was envisaged that the discretionary removal power would be exercised, by those framing the 1971 Ordinance, and whose purposes, deduced from the documents, were given such weight by the Divisional Court. The nature of any unlawfulness and the purposes of the officials or Ministers is plainly relevant to the mental component of misfeasance.

260. Mr Howell's point takes on a wider significance in this case because he submits that there is no evidence at all of the making of any removal order by the Commissioner and that is correct. Therefore he submits the Divisional Court was wrong to hold that the removals were effected under the 1971 Ordinance. I shall deal later with why he is obviously right but I have had the advantage of much fuller documentation and argument on these aspects than the Divisional Court and so I feel less anxiety about differing from their briefly stated and factual premise on that point. Mr Howell was also critical of the Divisional Court's approach to the concept of "*belongers*" and citizenship.

261. I do not consider on the material before me that I should be influenced by the Divisional Court conclusion, in paragraph 1, that in 1971 the whole of the population of BIOT was compulsorily removed to Mauritius. Leaving aside the fact that the removals took place over a period of 18 months, and that the inhabited islands in the Seychelles part of BIOT were never depopulated, there is no dispute but that when Diego Garcia was evacuated, a choice was given to the Ilois of going to Peros Banhos, Salomon, (both in BIOT), Agalega or Mauritius. There was only one choice available of staying on. Moreover, section 4 did not apply to this choice: they could choose and some did to go to other BIOT islands; even if they had been forced to do so, sections 4, 10 and 11 had no application to such a transfer within BIOT; it had no application to a decision not to stay in BIOT. Although the Defendants admitted that their acts led to the run down of Peros Banhos and Salomon, there is at least room for argument on the evidence that the later departures from Salomon, whether of the Ilois who were long term residents of those islands or of those who chose to go there when Diego Garcia was evacuated, were voluntary albeit in the context of a Government caused run down, and that it was only the last departures from Peros Banhos which were a compulsory removal out of BIOT. I am for those reasons unable to regard the *Bancoult* decision as closing off what may be a raft of arguments which can properly be developed on the fuller evidence which I have had. The Claimants too,

took issue with the apparent conclusion that the Chagossians had no real property rights on Chagos.

262. It seems to me also to follow from the *Bancoult* decision that where the Crown acquires land for a public purpose, as it did, there may be a public law limitation on the way in which it exercises its rights of ownership, and not necessarily simply to ensure that it uses it for the purpose for which it was acquired; this is reflected in paragraph 58 of *Bancoult*.

263. I have difficulty, however, with the obiter comment that the use of private property rights makes no difference. I can see no basis upon which it can be said that a private landowner would have been obliged to permit an islander to remain on his land or to create property rights in his favour. The authorities would have been obliged, if upholding the rule of law, to assist in removing the trespassers. The solution to the evident problems would have lain in the realm of politics and legislation. Further, if the power to acquire land compulsorily, or by agreement is exercised for the purpose provided for by statute, the exercise of private land ownership powers is necessary to give effect to what is a proper public purpose. I have seen no authority which, absent statutory provision, requires the former owner or occupier of land so acquired to be given further rights or entitles him to defy the new owner in the exercise of his rights. If the Crown is inhibited from removing the Ilois as a landowner, it is difficult to see how that inhibition alone could impose some obligation on the Crown to keep some plantations going, with whatever else is necessary such as managers, transportation, rations and subsidies, for an indefinite period. The purpose of compulsory purchase, or of acquisition by agreement in its stead, is to enable land ownership powers to be exercised.

264. Additionally, the *Bancoult* reasoning was that the purpose behind the taking of the powers in the Immigration Ordinance was what mattered. I say that because of the weight apparently given to the documents which record the thinking of various officers at various times. The reasoning does not appear to have been, or at least confined to, an analysis of the powers actually obtained set against the limits of section 11. Indeed, it appears to have been contemplated that the same powers could lawfully have been obtained for the purpose of dealing with a catastrophe. The reasoning does not appear either to be that the powers obtained were lawful but that the assumed exercise of those powers was an unlawful exercise of the discretionary powers. It follows that if a part, or a substantial part, of the purpose behind the taking of the powers in the Private Treaty Ordinance was to assist in the removal of the population from BIOT, then it is arguably open to the same objection as was the Immigration Ordinance.

265. There was an issue as to whether it was unlawful for the UK to evict the Chagossians for the purposes of the defence interests of the UK itself even though such a step might have been entirely unnecessary for the defence interests of BIOT judged in isolation. Mr Allen said that it was unlawful to clear BIOT completely for those purposes; there was an obligation to leave so much of the islands as would enable Chagos (which was only part of BIOT) to function as an economic entity, supporting the Chagossians. He said that there had been no defence requirement for a base on Diego Garcia in order to protect BIOT. Accordingly, and paragraph 4 of the Group Particulars notwithstanding, Mr Allen submitted that no power existed which could permit defence interests to assume such an importance that the islanders were unable to continue their way of life, not just somewhere in BIOT or Chagos, but moreover on each island notably Diego Garcia. I did not understand him to submit that it would be unlawful under the BIOT Order for the defence interests of the UK and Colonies to be taken into account in passing BIOT Ordinances, provided that the islanders could continue their way of life, the logic of the *Bancoult* decision notwithstanding.

266. It is clear from *Bancoult* that the defence needs of the UK, and of its colonies as parts of the world which shared its security and defence interests, entitled the Sovereign to permit the creation of the US defence facilities and to evict the entire population of BIOT in order to advance their effectiveness in protecting the interests of the UK. The issue was only whether, in order to give effect to that, albeit upon the creation of a colony with the express intention that it should be used for precisely such defence purposes, it was sufficient to give to the Commissioner power to legislate for "peace, order and good government" of the territory or whether some other legislative power had to be invoked. There was no issue as to whether it

could be done at all. Mr Howell rightly pointed out that the constitutional reality was that the external affairs of BIOT were the responsibility of the Crown; the colony had been created for the collective security of the UK, its colonies and her allies.

267. I do not regard it as arguable that there could be no power at all, however it might be enacted or expressed, to remove the whole indigenous population of BIOT for defence purposes. It might not be necessary to do so; it might be disproportionate; whether it should be done is a matter of political judgement. But to say that it could not be done, where the people were removed to countries of which they were also citizens and which were willing to accept them, is to deny the essence of sovereignty, and its essence in a Parliamentary democracy with power over the Crown in right of its colonies and is to substitute for it the rule, not of law but of judges. If there were such governing responsibilities as those of which Mr Allen spoke, they were the responsibilities of politicians elected and answerable to Parliament. Misfeasance is not an action in respect of the views of Parliament still less a judgment on its failures.

268. *Bancoult* however seems to me to proceed on a wider basis than simply that a restriction on the relevance of UK defence interests arose, only at the point where the inhabitants were removed from BIOT. It is an arguable consequence of the line of reasoning in *Bancoult* that the sole interests relevant to the exercise of the powers under section 11 are those of the inhabitants, or as paragraph 57 of *Bancoult* suggests variously, its population, belongings, or "*subjects of the Crown, in right of their British nationality as belongings in the Chagos Archipelago*". The high political reasons underlying the creation of the defence facility "*are not reasons which may reasonably be said to touch the peace, order and good government of BIOT ...*". To my mind, UK and Colonies defence interests are thereby excluded from relevance in the exercise of section 11 powers. It follows that the very declaration of the public purpose behind the Private Treaty Ordinance shows that it was enacted for a purpose which lies outside section 11. It would not matter for these purposes what property interests the population might or might not have had, or simply moved within BIOT. I have some difficulty with the starting point of that line of reasoning but the consequence seems to me to follow from the central thinking in *Bancoult*.

269. Mr Allen's more limited submission as to the scope of the powers contained in the BIOT Order is not one which is addressed in *Bancoult*. But the limitations, which he suggests, go further than that the BIOT Order did not empower legislation to permit the exclusion of all the islanders from the whole of BIOT. Mr Allen accepts that it is relevant for the Commissioner to have regard to the defence interests of the UK and Colonies when passing legislation. But, for *Bancoult*, I would have thought that is obviously right. The UK is responsible for BIOT's defence and foreign policy affairs; indeed it is difficult to see that BIOT could have any such interests distinct from those of the UK and Colonies. For the Commissioner to be unable to enact legislation to advance the interests of the UK and Colonies, of which BIOT was part, in the sphere for which the UK was responsible would be a considerable restriction. But if that interest is a relevant interest, it is difficult to see how the Commissioner is limited as a matter of law in the significance which he attaches to that interest as opposed to those of the islanders. They are both relevant interests for the territory. Again, this is relevant to the mental ingredient of the tort.

270. It cannot be for the Court to assess the degree of disturbance to the islanders which any given defence or foreign policy interest might justify, and to rule an enactment or its use unlawful or lawful accordingly.

271. It may well be that *Bancoult*, should be taken as imposing a limit, on the scope of the BIOT Order, only to the extent that it cannot permit the total removal of a population, the logic of *Bancoult*'s reasoning notwithstanding. Any more extensive limit as contended for by Mr Allen would inevitably involve the Court in making judgments as to defence and foreign policy matters, weighed against the islanders' interests and economic prospects which it is not for the Courts to do.

272. The alternative views would then be either that the UK and Colonies' defence interests had no part to

play under the BIOT Order at all (which has not been suggested by the Claimants), or that *Bancourt* is wrong in its approach to the existence of a limit at all on the powers in the BIOT Order, and in its underlying reasoning that the defence interests of the UK and Colonies are irrelevant to the exercise of powers for the peace, order and good government of a territory created to advance those very interests.

273. Either way, I do not regard Mr Allen's more limited submission as arguable; it is either too bold or insufficiently bold.

1. The Law

274. The Claimants and Defendants agreed that the starting point for a consideration of this tort was the decision of the House of Lords in *Three Rivers District Council v The Bank of England* (No 3) [2003] 2 AC 1, [2000] 2 WLR 1220. The essence of the tort is the deliberate abuse of his powers by a public officer, dishonestly or in bad faith, a conscious disregard for the interests of those who will be affected by official decision making. It is an intentional tort which cannot be committed accidentally or negligently or from a mere failure to act or from a misunderstanding of the legal position. The tort had two forms. The first arose where a public officer used his power for an improper purpose with the specific intention of injuring a person, known as targeted malice. The second form arose where a public officer acted in a way in which he knew he had no power to act, or was recklessly indifferent to the legality of his act, knowing that his act would probably injure the Claimant or a class of persons of which the Claimant was member, or recklessly indifferent as to the probability of such harm. It was sufficient recklessness if the act was done, not caring whether it was illegal or whether the consequences happened. It is sufficient if the act is done without an honest belief that it is lawful because misfeasance is the purported exercise of power otherwise than in an honest attempt to perform the relevant duty. A decision not to act can also give rise to liability. The illegality can arise from a straightforward breach of statutory provisions, from acting in excess of powers or from exercising them for an improper purpose. The only recoverable losses were those which the public officer had foreseen as the probable consequence of his act. There was general agreement on those principles.

275. In this case, the Claimants did not allege targeted malice, though Mr Allen suggested that disclosure of the papers behind the drafting of the various property Ordinances might show that they had been drafted with a view to circumventing the property rights of the Chagossians and so justify a pleading of targeted malice. Subsequently, more documents were disclosed to deal with this new allegation, volume 23. There is nothing in those documents to support any such case and the Claimants' supplementary written closing submissions did not suggest that there was. The Claimants' case is of deliberate misconduct with foresight of injury.

The identification of individuals

276. The first issue which I deal with arises from paragraph 79(k) of the Amended Particulars of Claim, in which the Claimants say that it is unnecessary as a matter of law for them to identify bad faith on the part of a single officer in order for the Defendants to be liable. The Defendants say that that pleading should struck out and that as the Claimants do not identify any individuals who are said to have acted in bad faith the whole claim under this head should be struck out; it also has no reasonable prospects of success.

277. Mr Howell accepted that a corporate body could be liable for misfeasance, where the actions of some individuals could be attributed to a corporate body other than by vicarious liability, such as in the case of a decision by councillors, and that there could also be vicarious liability for employees if the appropriate tests were satisfied for such liability. But none of those situations were what this pleading had in mind.

278. Mr Howell also accepted that it was not always necessary for a pleading to name an individual if, from the particulars given and from the documents, it was possible for sufficient notice of the case against the officials to be given for the Defendants to prepare their defence. This was the position in the *Three Rivers District Council* case when the strike out application was considered in the House of Lords on the detail of the allegations; [2001] UKHL 16, [2001] 2 All ER 513 4 and 62 per Lords Steyn and Hope respectively. But the averment at issue here was so framed for a different reason; it was not because the Claimants thought that adequate particulars had been already been given one way or another of the case against the individual Ministers and officials. A perhaps different approach is to be found in the speech of Lord Hutton at paragraph 126, where he says that particulars do not have to be given of the individual officials whose actions brought about the misfeasance alleged, if the allegation is one of corporate misfeasance.

279. The vice in the pleading, submitted Mr Howell, was that it was intended to support an argument that the tort, which involves bad faith, could be committed even though no one individual satisfied the necessary ingredients of the tort. So, one official could reach a decision on the basis that he honestly believed that an act would be lawful, while another official knew that it would be unlawful to so act but did not know that anyone was going to do that. That would not involve committing the tort. Mr Howell relied on *Armstrong v Strain* (1951) 1 TLR 856 at 872. Devlin J held that the necessary knowledge for the tort of deceit could not be found by adding the innocent mind of a principal, who knew facts which showed what his agent said to be untrue but did not know what the agent was saying, to the innocent mind of the agent who did not know that what he was saying was untrue. This was not a case of someone being used as an innocent dupe for the purposes of furthering the deceit. This decision was upheld in the Court of Appeal, [1952] 1 KB 232. The necessary mental ingredients for the tort of deceit have a close relationship to the mental ingredients for misfeasance. This approach was applied in the context of corporate contempt in *Z Ltd v A* [1982] 1 All ER 556 CA.

280. I am not at all sure that the Claimants had thought through the point of this pleading. Mr Allen suggested that it covered the position of a policy maker who possessed the necessary mental ingredients for the tort, but whose policy was implemented by others who lacked it. It might cover the adviser, who knew that a policy was unlawful but did not advise the decision maker of that. Otherwise he invited me simply to prefer the approach of the House of Lords in *Three Rivers* to the pleading of names.

281. This averment should be struck out. It is misconceived in law and cannot afford a basis upon which the claim can succeed; if it remained, it would cause the focus of this part of the litigation to move from the knowledge of individuals, which lies at its heart, to a more general inquiry into governmental wrongdoing. From the whole tenor of Mr Allen's submissions, I am satisfied that is what underlies this pleading. He complained that the Defendants' applications were intuitively unjust partly because there had never been "*an independent comprehensive high-level review*" of the rights of the Chagossians or of the wrongs done to them. He argued that the starting point for the examination of the misfeasance claim was the catalogue of maladministration, bias, unfairness, reckless incompetence, omissions, buck passing and evasions over the years. I do not accept this approach. Misfeasance is a tort of personal bad faith; it is a serious allegation. At trial the necessary ingredients will have to be shown. The making of the allegation should not be the vehicle for a general inquiry into wrongdoing.

282. Mr Howell is entirely right in his submission that the tort cannot be shown by adding one innocent mind to another innocent mind. The averment is not necessary in order to provide for the policy maker who knows of the illegality where those he knew to be implementing it did not, or for the adviser who deliberately kept the decision maker in the dark about the illegality. Each of those cases involves a guilty mind, deliberate silence and innocent dupes; liability, perhaps vicariously, for misfeasance can be found. *Armstrong v Strain* does not preclude that at all. What would not constitute misfeasance would be the situation where an official knew that a policy would be unlawful but did not know that it would be carried out, and the person carrying it out did not know that it was unlawful. It would not show competence in government and it might not be readily believed on the facts but it would not involve misfeasance.

283. Insofar as Mr Allen suggests, by his reference to preferring the approach in *Three Rivers*, that in corporate misfeasance it is unnecessary to identify individuals, he is wrong. If Lord Hutton was differing from the other two in the majority as to the basis upon which the pleadings were adequate, and suggesting that in corporate misfeasance it was not necessary to show that anyone had the requisite knowledge, I do not think that the authorities cited by him bear out the point. In *Bourgoin SA v MAFF* [1986] QB 716, it was an agreed assumption that the Minister himself had the relevant knowledge; in *Dunlop v Woollahra Municipal Council* [1982] AC 158 PC, it was clear against which persons the allegation as to knowledge were made and it was their acts and knowledge as councillors which would have been attributed to the Council for the purposes of corporate misfeasance. I think that in reality Lord Hutton, like Lords Steyn and Hope, is making a narrower point as to pleading adequacy in the context of the pleadings and documentation in that case.

284. Viewed in that light, I do not derive much assistance from *Three Rivers*; the state of the pleadings and documentation is not discussed in detail and in any event any detailed comparison of that case compared to this would be wrong. Each case has to be decided on its own material. All that can be drawn from it is the pleading point that it is not always necessary for the Particulars of Claim to identify the individuals who it is alleged had the requisite knowledge and who did the acts complained of, provided, and this is important, that the nature of the case which the Defendants have to meet appears adequately for the just, effective and expeditious preparation and disposal of the case, from the pleadings with the documentation. On that basis, I reject Mr Howell's further submission that if I struck out the contentious averment, I should dismiss the whole misfeasance case. It is not always necessary as a matter of pleading that the individuals should be identified, whether by name or position or in some other way, such as by authorship of a particular document. Whether it should be required depends on the whole documentation and the nature of the case.

285. A very large amount of Government documentation has been produced. There are several strands of correspondence: internal FCO memos between various of its departments and between various officials some of which related to the preparation of advice to Ministers, advice to Ministers, correspondence with and between the FCO and the two Governors or High Commissioners, correspondence between the FCO and the UK Mission to the UN. Some are advisory, some are drafts or comments on drafts and internal debate. There are many officials who appear in the written material and Ministers as well. The Claimants rely on this documentation for their misfeasance case. I regard it as wholly unfair for this serious allegation to be made without any attempt in the light of all this material to identify in the pleadings those against whom so serious an allegation is made. It must be possible for the Claimants to identify them, or the major ones, by name or position, or authorship of documents. The Defendants could not possibly know how far back and how widely they would have to interview potential witnesses and those witnesses would not know whether an allegation was being made against them which their statements had to answer. The Claimants argued that the claim should not be struck out as having no reasonable prospect of success because cross-examination might help their case. For the immediate purposes of this pleading, that only reinforces my conclusion: how are the Defendants to know whom to call for any such cross-examination without any particulars of the persons against whom this allegation is made? Are they to face a speculative cross-examination to see if an allegation can be made against them? That would be a wholly unfair and wasteful way of conducting litigation. Whatever else may result from these applications, the Claimants must plead the names, or other identifying material, of those who they say had the relevant knowledge, of what precisely and what they are alleged to have done. These allegations should have been tied in to the documents disclosed. There is ample material for them to have been working on if they truly have a case of misfeasance.

286. I am reinforced in my firm conclusion by what Mr Allen said, under some judicial prodding, as to whether he did indeed contend that certain individuals had the requisite knowledge or whether he accepted that the striking out of the averment would end his misfeasance case. I received the distinct impression that this aspect of the case had not been thought through with the care it deserved for the making of such serious allegations. He said that the Prime Ministers and Foreign and Colonial Secretaries between 1964 and 1973 would be included. (The Prime Ministers are not actually parties at all.) The Foreign Secretary in 1982 was included and, it appeared, all subsequent ones because the policy of denying that there was a permanent population on the islands had been maintained throughout the 1990s. All Permanent Under-Secretaries

involved in drafting advice to Ministers were included because, if they removed relevant material from the eyes of the decision maker, that would be misfeasance for which the UK Government would be vicariously liable. The BIOT Administrators and the Commissioners over time were also to be named. Mr Aust was then too junior for reliance to be placed on his advice. But Mr Allen also seemed to suggest that any officials who wrote the documents upon which he relies would have the relevant knowledge. Such extemporisering is not the way litigation should be conducted. The allegation must be properly pleaded if the action is to continue.

287. Once the misconception underlying this averment is recognised and the averment is struck from the Claimants' case, the importance of the 1968 and 1969 Prime Ministerial submissions is undeniable. The decisions made in reliance on approval of those submissions were the justification for what followed, not some excess of official zeal concealed from Ministers, whilst officials somewhat improbably took the burden of implementing their own policy, politically and morally controversial, leaving Ministers free from any opprobrium over the execution of policies of the highest importance, sensitivity and controversy. But it means that for the Claimants to succeed, they have to have reasonable prospects of contending that the Prime Minister of the day knew of or was recklessly indifferent to the illegality of his policy, or that his Foreign Secretary was or that the Commissioner of the day was or that unnamed officials duped them over illegalities to which they alone were alive. There is nothing to suggest that officials were acting off their own bat.

The "framework" submissions

288. Mr Allen outlined the history of what he called the Defendants' "wrongs". The UK and US Governments wanted an island which had no resident population. The UK Government had earlier information available which contradicted the conclusions of the Newton report which had probably been slanted to assist defence purposes. They also had subsequent information which put matters in a different light. The UK Government had always been aware that there would be difficulties at the UN and so sought to conceal from it that there was a permanent population, to represent them as transient workers who belonged to the Seychelles or to Mauritius. Misleading information about the purpose behind the creation of BIOT was provided to the UN. After the Government bought the islands in 1967, the decisions which it made or permitted to be made, eg about permitting Ilois to return from Mauritius, impinged on its "*governmental obligations*".

289. Notwithstanding fresh statistics in 1967 which showed that there were more Ilois than had been thought there was no modification in policy and approval was given to the US proposal. By 1969, the Government had decided that all the Chagos had to be evacuated even though there were no definite defence plans beyond the use of Diego Garcia. This was to prevent a permanent resident population giving rise to obligations under Article 73 of the UN Charter and also because the Treasury were reluctant to invest in the plantations. The approval of the Mauritius Government to the resettlement of the Ilois was a temporary expedient but to assist in obtaining the approval of that Government, the UK Government, as a matter of policy withheld information from the Ilois that they were UK Citizens.

290. Those Ilois who went to Mauritius expecting to be able to return to Chagos were left to their fate, and not brought back. The Government either decided this itself or acquiesced in Mr Moulinie's policy. Negotiations over resettlement were deliberately stalled.

291. The Immigration Ordinance was brought in to clothe the expulsion of the Ilois with apparent legality but was given the minimum possible publicity. The Ilois were given no real choice; the offer to go to Peros Banhos and Salomon was illusory because the Government intended to close them anyway. Those clearances were managed inhumanely and the departing Ilois had no choice of where to go. The resettlement negotiations were slow, the sum paid inadequate, the pig-breeding scheme known to be unworkable and the payment of anything for the benefit of the Ilois long delayed.

292. The UK Government received frequently inadequate and misleading advice, and relied on its position as plantation owner to remove all the population without statutory or other public law authority. Later, at the 1982 negotiations, the UK Government seemingly abandoned individual quittances but later included them in the Agreement and insisted that the Mauritius Government collect them. Mr Allen identified fifteen wrongs perpetrated in that history some of which could not be tortious, eg letting the plantations run down, and others could not be justiciable, eg failing to honour UN Charter obligations.

293. I have already adumbrated the way in which the Claimants advance their case on the pleadings. The overarching theme was that the Defendants and their officials knew at all relevant times that there was an indigenous population of two or more generations on the Chagos, and pretended to the outside world that these were only, or virtually only, contract labourers by which they meant transient or temporary workers. They then removed that population when they knew or were recklessly indifferent to the illegality of so doing. They did so not only for defence purposes but also because, BIOT having been created, an indigenous population in that new colony would attract the protection of Article 73 of the UN Charter. The structure of Mr Allen's submissions did not therefore involve any analysis, by tracing through the documents in a coherent way, what any one official or Minister did and knew in relation to any one of the allegations of illegality and dishonesty. The evidence upon which they rely at this stage is largely the documentary material disclosed by the Defendants, but it is supplemented by the Ilois' own evidence about their way of life, their ancestry, their employment, the way property was dealt with, about what happened to them at the time of the expulsions or when they were unable to return, their reception and subsequent life in Mauritius and the Seychelles, and their dealings with the UK Government. But it is the documentary material upon which the Claimants rely for showing what the Ministers and officials were doing and with what knowledge. The documentary material has been set out at length in Appendix A and I do not propose to summarise the material here. The Claimants' case was that they had a reasonable prospect of success in their allegations from that material alone and in effect submitted that reading it made out their case sufficiently for this stage of proceedings.

294. The attack mounted by the Defendants is their contention that there are no reasonable prospects of success for this claim.

295. Mr Allen made a number of what he called "key" submissions as to illegalities which did not as such feature as allegations in the Particulars of Claim under that head, but which can be seen as the underlying theme of a number of his specific allegations. These related to what he called the governmental obligations which the Defendants owed to Chagossians because the Defendants remained collectively their Government; alternatively the Commissioner of BIOT was their Government with the UK Government in a governmental relationship with them because of the control which it could exercise, albeit only through the lawful use of the prerogative or legislative act. Mr Allen drew on what was said by Laws LJ in *Bancourt* at paragraph 57: "*peace, order and good government of any territory means nothing, surely, save by reference to the territory's population*". They were to be governed not removed under that power. This was said to require fair consultation, a recognition that no international agreement could trump all their rights, adequate funding for resettlement, and a duty of good faith which required the Government to put right in the 1982 negotiations, and to acknowledge, what it had done wrong. These were mandatory duties which the Defendants could never abandon nor could it contrive to get its citizens to forego those rights. They could only be removed by legislative act by a body with the power to pass such legislation. This asserted governmental relationship ran through other parts of the Claim, such as the claim in negligence. The consequence for the misfeasance claim was that, just as the Defendants were not able to rely on section 4 of the Immigration Ordinance for the removal of the population, they were unable to rely on any other power, such as the prerogative or private landowner powers. Those powers might enable the base to be set up but they could not make lawful the exclusion of the population or taking so much land that it was impossible for them to live on the islands.

296. A good deal of this was not particularised at all; it is not in the pleadings and the source of the duty to act justly, to whom it was owed, and what all these governmental obligations entailed was not clear. They

appeared to be very extensive with positively enforceable obligations to care for the citizens, to house and educate, to provide for community life and employment opportunities without any limit in time or cost.

297. Expressed in those broad terms, Mr Allen's framework submissions are untenable. The Commissioner of BIOT has no positive duty to do anything other than that which relevant legislation and the Royal Instructions may require him to do. A power to do only that which is in the interests of "*peace, order, and good government*" may impose a limit on what the Commissioner can do, but it does not impose any legally enforceable duty to act in some vague way for "*the people*". No legislative power of the width necessary for Mr Allen's submission was identified. The Commissioner is subject to the limitations of the BIOT Order and is neither compelled to enact the legislation for which the Claimants contend, nor has he done so. Neither the Commissioner nor the UK Government has any duty to provide for a welfare state in the absence of legislation. I can see no basis for saying that there is a legal duty to provide employment, or housing on or transportation to Chagos, including Diego Garcia or to compel the private landowner and employer to do so for any individual Chagossian or all of them. There was no obligation to maintain an economy and to prevent the coconut plantations closing or to provide substitute work. There was no obligation to prevent landowners exercising their private rights to prevent someone living on a particular piece of land or to require them to provide land for Chagossians to live on, or to permit the landowners' rights to be overridden by a form of mass trespass; that would be the antithesis of a civil society unless accomplished by legislation. If the landowner had decided to give up running coconut plantations and to remove the islanders from the land to make way for tourist enterprises, there would have been room for political debate as to what should happen but not for legal debate as to the power of the landowners, (assuming that the Ilois had no property rights themselves). There is no obligation on the legislature to prevent private landowners exercising their rights and refusing to permit onto land those whom they are not willing to allow to reside there. There is no obligation to require employers to employ particular individuals or to provide them with transportation to or from the Chagos. There is no obligation on the legislature to so enact nor has the Sovereign required the Commissioner to so legislate nor has She passed any such Act herself. I do not see anything in *Bancoult* which would support such an approach.

The components of the misfeasance claim: prevention of return

298. I propose to deal with the sequence of allegations as to misfeasance in chronological order. I have already accepted that it is reasonably arguable that if the prevention of the return of Ilois in 1967 and 1968 was on the instructions or, indeed at the request of the Defendants, that was unlawful. I think that it is also reasonably arguable that, in those circumstances, if the Commissioner or his agents knew that those who were going to Mauritius might not be able to return for that same reason, there was a duty on them to forewarn the Ilois. However, there is no evidence that any Defendant or its agents knew or thought that those who left would be prevented from returning. Mr Moulinie may have known what the general pattern of recruitment would be and it may have been a common expectation that Ilois would be re-employed and transported back to the Chagos if they so wished; of course there was no obligation on them to return or to do so at any particular time. It is clear from the evidence of the Chagossians that they regarded themselves as free to make that choice and some stayed for substantial periods in Mauritius, some arriving before BIOT was even created. It must have been obvious to the islanders that there were no new recruits or returners from Mauritius in 1967 and yet others left in March 1968 apparently without inquiry as to their prospects for return. Mrs Talate's witness statement for what that is worth suggests that they were aware of the decline in numbers and of the absence of people who had gone to Mauritius. There is also some evidence that, even before the creation of BIOT, there could be difficulties for those who left the islands for Mauritius as others were recruited to take their place, as would seem inevitable, as there appears to have been no obligation on the Ilois to return after a particular period. But Moulinie was not the agent of BIOT in transporting to Mauritius those who wished to go there nor when they said or failed to say anything about whether they might return. The fact that some Ilois were advised to go to Mauritius in connection with medical treatment imposed no different duty and certainly not upon the Defendants. Mr Moulinie may have realised that recruitment of those leaving in 1967 and 1968 was not certain and nothing was said; he might be criticised for that. But that is not something for which any responsibility arguably lies with the Defendants as a breach of any duty by them or

other illegality, let alone one of which they knew or were recklessly indifferent to.

299. Mr Howell's main point was that there was no evidence that the Defendants had been instrumental in fact in preventing the return of anyone in 1967 or 1968. Those decisions were the consequence of the Moulinies' recruitment policies. The position to my mind is as follows. The contemporaneous material shows that there were two boatloads of Ilois, one in May 1967 and the other in March 1968, some or all of whom were unable to obtain passage back and were left stranded. First, it is quite plain that the proposals for the defence facility were at the root of the problem because of the uncertainty which they created for investment and the related need for labour; the company had given notice to quit its lease, effective at the end of 1967 and there were negotiations about a management agreement in the latter part of 1967. The UK Government in that period faced the prospect of direct management of the plantations. Second, the focus of Moulinies' recruitment was to become the Seychellois because the islands' economic links and shipping ties from July 1968, following acquisition of the "*Nordvaer*", were focussed on the Seychelles. That refocus itself may well have been independent of the defence proposals. Third, the evidence of Marcel Moulinie was that there had been no instructions, so far as he knew, from Mr Todd to Rogers & Co not to take returning Ilois, although he had also said that they had given no such instructions either and was not aware that his uncle had done so. The documentary evidence shows, however, that recruitment instructions were given by the company to Rogers & Co to take no more workers from Mauritius. Fourth, the evidence of Mrs Jaffar and Mrs Elyse on what was said, to whom and in what circumstances or when, suffers from certain problems, but does not assist in answering the question of who gave instructions that they were not to be recruited. They said that they were refused passage for reasons connected with the creation of BIOT, the defence arrangements with the Americans and the closing of the islands (even though at that time their closure was not imminent). The telegram of 29th February 1968 from Moulinie & Co to Rogers is consistent with their evidence.

300. In my judgment, it is clear that the decisions were made by Moulinie & Co on the basis of what it thought necessary for employment purposes. First, there was a clear change in recruitment pattern so as to employ more Seychellois than Mauritians as contract workers. The uncertainty of what would happen to the islands or any of them and when was an obvious factor for Moulinie & Co to worry about. This pattern is evident in the May 1967 Administrator's Report of his visit to the islands. The discussions between the Commissioner and the CO refer to Mr Moulinie saying that he would not be recruiting additional labour from Mauritius on the second trip there of the "*Mauritius*". Second, the Commissioner's concern, as it was of the CO, was to make the most of the asset for which it had paid and to make appropriate arrangements for running the plantations, not for removing the population or running down the plantations. The references upon which the Claimants rely need to be seen in that overall context. Third, the Mauritius Government raised the question of those who had arrived in May 1967 when the "*Mauritius*" was due to return to the islands in March 1968; it wanted them re-employed on Chagos. But it was dealt with by the Commissioner as an employment matter for Moulinie & Co. Moulinie had no need for the 75 workers. So the Commissioner told the CO that it would tell him to recruit what labour was needed for the efficient running of the islands and who was employed was up to him. That reflects a legitimate position from a plantation management point of view and there is no reason to suppose that Moulinie would have acted any differently if he had not been told that. Fourth, it is clear that Moulinie told Rogers & Co not to recruit any more in its telegram of 29th February 1968 because the islands were fully manned; the reference to concluding negotiations with the MoD shows the effect of uncertainty and not interference. This may be the source of the information which Rogers gave to the Ilois who were refused a return passage. Fifth, the degree of control exercised over the cost of running the plantations can be seen from the extent of approval necessary for materials. Mr Allen argues that this shows the extent to which the BIOT administration would have been involved in the decisions about recruitment. That may be so but the evidence points clearly to the reason for that: the desire to make the plantations work economically; that may have affected the levels of recruitment and that may have affected indirectly who was recruited. But that is not the point. The question, sixth, is: did the Defendants try to stop the recruitment of the Ilois in Mauritius? There is nothing in the Commissioner's advice, if it was advice, to Moulinie about what to do over the Mauritius Government request which amounts to a prevention of the Ilois returning, let alone that it was so advised in order to exclude them so as to assist in depopulating the islands. That is the nub of the point.

301. There is a recognition, at least arguably, in the May 1968 BIOT memorandum, (23/171-5), that recruitment could be used as an aid to resettlement, but it is merely a discussion document and one which precedes the July 1968 US decision, which affected the future planning significantly. There is no suggestion in any other of the pre-July documents that the recruitment of Ilois on Mauritius should be minimised for resettlement or other reasons; the concern was with the overall level of the workforce. The emphasis is on making the islands economically efficient.

302. Again, in relation to the Ilois stranded after their arrival in March 1968, a similar picture emerges clearly. The Defendants' line at that time was that the matter was one between employer and employee. It is also plain that the CO and High Commissioner in Mauritius were aware that there were Ilois who had connection by descent with the islands and who might have been affected by the defence proposals. There is nothing in the exchanges to suggest that they were however trying to prevent the recruitment of Ilois. The most that can be said is that they were not trying to encourage or to facilitate it, or to bring about their return to Chagos; they were more washing their hands of the problem. The notes reiterate that it is an employment matter, or one for resolution as the picture became more certain as to how long the islands would be functioning. It was also pointed out in the FCO paper of 24th October 1968 that Moulinie now wanted to recruit more Ilois for Diego Garcia; the documents also show that they were aware that recruitment of Ilois would pose additional resettlement problems and that there was a potential problem if only some of those stranded in Mauritius were recruited. Thus recruitment of those Ilois was seen as unadvisable. Nonetheless, and to my mind crucially, the upshot of it was that because Moulinie wanted to recruit 100 Ilois from Mauritius in November 1968, he was authorised to do so albeit on one year contracts only. That latter requirement shows a degree of control over recruitment being exercised by the Defendants; but, generally, the signing of a contract upon return to the islands is something which at least some Ilois certainly did, because some contracts have been produced, and there was a company concern about recruits joyriding around the islands on the boat and then returning free of cost. It shows however that the Defendants did not prevent the return of the Chagossians. It does not matter for these purposes that the recruitment did not in fact proceed.

303. The language of the documents of 28th October 1968 certainly shows that the Defendants could and at times did exercise control directly over recruitment of Ilois. It was not simply a matter left entirely to Moulinie's commercial judgement. But the general tenor of the documents is that the Defendants were looking at the economics of the plantations and save at the last were not concerned with whom Moulinie recruited, whether Ilois or not. There is nothing in the pre-November 1968 documents to suggest that they had given secret instructions that Ilois were not to be recruited and were deceiving each other about their motives or decisions. I do not consider it to be a reasonable inference that what was seen in October or November 1968 to be the attitude of the Defendants towards Ilois recruitment must have been their attitude at an earlier date. The Mauritius Government in March 1968 might have thought the non-return was a BIOT responsibility but that is simply not borne out by the evidence. By October 1968, after the July 1968 US decision, there is evidence that the Defendants contemplated preventing the recruitment of Ilois because of the resettlement implications, but they did not in fact do so. Indeed there was a limit, according to Mr Moulinie, of 250 on the number of male adult workers on Diego Garcia. There is no documentary evidence to support that, but if it is correct, the population figures show that that limit was not in danger of being exceeded and so it never acted as a constraint on the recruitment of Ilois.

304. The Defendants did not do anything to assist or to require the return of the Ilois but that is not the basis of the allegation of misfeasance here. There is no domestic legal obligation on a Government to arrange for the return of its citizens to those territories where they can reside. It cannot be said that there was a duty on the Defendants to arrange for the Ilois to return to the islands, let alone one which left aside any question of employment or how they would be fed or housed. It is not sufficient for this allegation of misfeasance for the Claimants to show that the defence proposal was an unsettling factor which contributed to or even caused the company's refusal to recruit the stranded Ilois. Nor is it sufficient to identify some discussion about what numbers should be employed, for the Defendants had a legitimate interest in the size of the labour force whether they were to manage the plantations directly or through an agreement under which they would bear the cost burden. I consider that the Claimants have no reasonable prospect of showing that the Defendants

in fact prevented the return of the stranded Ilois.

305. In any event, if there had been a duty not to prevent the return of the islanders or even to facilitate it, there is no evidence at all that any Defendant or official knew of any such duty, or was recklessly indifferent to it. There is nothing to suggest that there was or was ever thought to be a duty to re-employ those who went to Mauritius or to require their re-employment regardless of economic needs or to provide transportation or a means of subsistence for them. Neither Defendant had ever employed the Ilois or transported them; they were not abandoned by either Defendant in a remote or inaccessible spot to which they had taken them. These Ilois went voluntarily to a country of which they were citizens and with which some enjoyed varying degrees of family connection.

Components of misfeasance: a duty to consult

306. Mr Allen, in the re-amended Particulars of Claim, for which amendment I give permission, contended that there was a failure and I suppose therefore he suggests a duty, to consult islanders over "*important decisions*" as to the future of the islands or as to their own futures. As an allegation of fact, that failure is undeniable. Reading between Mr Allen's lines, he means that they should have been consulted about where they were to go and with what provision for housing, employment and the replacement of the amenities of life which they had hitherto enjoyed. It is reasonably arguable that, as the law has developed and notwithstanding the absence of supporting analysis, there was a duty to consult the Chagossians over what their future was to be, once it had been decided to clear any island for defence purposes. I find rather difficult, however, the notion that there was an obligation to consult the Ilois, (and if them why not the temporary residents or the Moulinies, or UK residents and taxpayers?) about the defence interests of the UK and its colonies. There is plainly no obligation to consult those who might be affected by any international obligation which the UK Government might have it in mind to enter and I cannot see why there was any obligation to consult on whether BIOT itself should have been created. There is no obligation to consult before legislation is proposed or enacted in the absence of a statutory duty or a promise to do so. Neither is alleged to have existed here. If there were, as the Claimants say, any obligation to carry out an assessment, as a Government, of the consequences of the setting up of the base, and there plainly was such an assessment pursued over time, that does not itself oblige consultation about those consequences more generally.

307. I do not regard there as being any prospect at all of the Claimants being able to succeed in demonstrating that such a duty was one of which the relevant officials were aware in 1971 or 1973 or to which they were recklessly indifferent. The wider he seeks to make the duty, the more hugely improbable his case becomes. It was recognised by Ministers that it would have been desirable to consult the Ilois about their future, but there were reasons why that could not be done. There is nothing to suggest that they realised that they were under some obligation to consult or that they were recklessly indifferent to any such duty. I think that in the late sixties and early seventies there would have been some surprise at the thought that there could be an enforceable legal duty to consult at all, let alone over defence matters. Even were the Claimants to succeed in establishing that there had been a duty to consult the Ilois over whether there should be a defence facility on Diego Garcia, it is not conceivable that it would have made the remotest difference to the outcome. It must have been perfectly obvious to the Defendants that the Ilois would wish for no change for the worse in their situation but their desires were not important in this context. They were given an element of choice about where to go when Diego Garcia was evacuated.

Components of misfeasance: removals

308. I have already set out the brief facts as to the evacuation of the islands which shows why what is said in *Bancoult* about the timetable of removals is wrong. It was not a process of compulsory removal all at one go. That is what gives rise to the Defendants' argument that, on the ratio of *Bancoult*, the removal from Diego

Garcia was lawful because only those who chose to do so left BIOT, and thereafter it was economic circumstance rather than Government compulsion which led to the evacuation of the other Chagos islands in BIOT, coupled with the voluntary decisions of the islanders exercised so as to leave Salomon, and then so as to leave Peros Banhos in part before its final closure. At worst, say the Defendants, the only ones compelled to leave BIOT were those left on Peros Banhos who had not left voluntarily beforehand.

309. One allegation of the Claimants was that it was unlawful to close Diego Garcia because it was the one part of BIOT which had an assured economic future, as a result of the base. But the UK Government tried on a number of occasions to persuade the US to allow Chagossians to work on the defence facility, particularly in construction work. It had no success at all ever. The US adhered to the position which it had adopted at the outset. The UK tested whether there was any need to close the whole of Diego Garcia for defence reasons but the US asserted that it was so and the UK accepted that position. It is more than a little odd to take advantage of the defence proposal to argue that that is what gave Diego Garcia its future, but at the same to deny an essential feature of it as seen by those responsible for creating it, namely that it had or would have no resident population to limit its effectiveness as a location for that very facility. In substance, this is an allegation that the base should not have been created on the terms upon which it was. The Court is not in a position to judge the defence assessment which underlies that and will not do so. It is inconceivable that the Defendants could have thought that there was a legal obligation to compel the US to accept Ilois workers or to forego the facility, or were recklessly indifferent to the legalities of the position.

310. In the same paragraph of the Particulars, there is a different allegation that it was unlawful to close the one part of Chagos with an assured future as a coconut plantation and thereby to withdraw support from the other islands' plantation economies. The two allegations do not fit easily together nor does the allegation fit easily with the contention that the departures from Peros Banhos and Salomon were engendered for other than economic reasons. It was pleaded that the Defendants had run down the plantations deliberately or allowed that to happen knowing that they were thereby depriving the entire population of the territory of economic support. This is untenable. The Defendants wanted to keep the plantations going for as long as possible as is evident from all the documentation. There was a tension between that and their desire to avoid having a permanent population on BIOT. That latter objective argued for a rapid decision. I cannot see what the illegality is in what they did in the interim between 1965 and 1971. If, however, the allegation includes any later period, the allegation becomes in effect that they could not remove the islanders from the whole of BIOT and that they had to leave enough land for the Ilois to maintain a viable economy. The agreement with the US could not be given effect, therefore, whatever the route taken to provide for the removal of the Ilois. This is an example of the governmental obligations which Mr Allen relies upon. I deal with that point as part of the allegation that the removal of the Ilois from the whole of BIOT was unlawful, regardless of the means whereby that was accomplished.

311. Mr Allen put the allegations of unlawfulness over the removal of the population in a number of ways. The Defendants ignored their governmental obligations to the permanent inhabitants; their interests were a material consideration which was ignored in the formulation of policy. It was unlawful to clear the Ilois off Diego Garcia if there was nowhere else for them to go which had a viable economy. The Defendants proceeded as if they were operating a private estate. There was no authority for the removal of a British citizen as such from the place where he was entitled to reside. The 1971 Immigration Ordinance clothed the BIOT administration with an ostensible power even if it had not been used in fact to bring about the evacuations. He made an allied submission to the effect that it was unlawful to have a policy of clearing the islands which was based upon the deceit that there was no permanent population and to seek to give effect to that deceit. Whether there is a reasonably arguable case depends, for so many of these allegations, upon what power was used and upon whether it could ever be lawful to remove the whole BIOT population for defence or other purposes in the absence of specific legislation.

312. I have already expressed the view that *Bancoult* held, strictly obiter, that legislation enacted through the

Sovereign's powers could provide that authority and certainly could do so where the people are citizens of the country to which they are removed and that country is willing to receive them. Although it may be necessary to consider some of Mr Allen's arguments in more detail when dealing with the existence of a tort of unlawful exile, much of the material upon which he relies demonstrates that exile is permitted if done by legislative authority but not if done by virtue of the prerogative. English history contains legislation which has had that effect, in the Transportation Acts. The UK has not ratified the 4th Protocol to the ECHR, which in Article 3 prohibits expulsion of a national from the territory of the state of which he is a national and requires him to be permitted entry there. There is some authority which supports the permissible scope of legislative authority. In *Thornton v The Police* [1962] AC 339 PC, leave to appeal was refused on the ground that the judgment of Hammet J was clearly correct. He held that nothing in the British Nationality Act 1948 "precludes either the United Kingdom or any of the colonies from enacting such legislation as they chose to regulate and control the entry into their territory or residence therein of persons whatever their status may be". In the same vein, Lord Denning MR held in *R v Secretary of State ex p Thakrar* [1974] QB 684 CA that the obligation in international law owed by one state to another to admit its nationals expelled by another could not be relied on by an individual, conflicted with immigration legislation and in any event only arose if the national had nowhere else to go. It is perfectly clear that the Ilois were not removed until arrangements had been made for them to go to countries of which they were citizens and which were willing to take them. The legal issue is as to the lawfulness of so acting without specific legislative power. I have said that in the light of *Bancoult* that unlawfulness is reasonably arguable. The other factual issues relate to which power was used or whether the departures were voluntary and whether the Claimants have reasonable prospects of showing that the Defendants knew that they were acting unlawfully or were recklessly indifferent to that.

313. The starting point for the Defendants' submissions is the acceptance that the relevant international agreements with the US were ones which the UK Government could properly enter into and seek to implement. The point at which that implementation cut across the rights of individuals is the point at which it would require to be examined for its legality in the absence of legislative powers. The Defendants were entitled to take steps to procure the implementation of the defence facilities subject only to any supervening rights which the islanders had. It cannot by itself justify the breach of the rights of individuals. Once the lease to Chagos Agalega Company Limited had terminated, there was no individually enforceable domestic legal obligation on the Commissioner or on the UK Government to cause the plantations to continue to operate in order to provide employment opportunities or the other concomitants of a viable society, food, housing or education and so on. The Ilois contracts might come to an end, but there would be no obligation on the Defendants to employ them or to procure that the company renewed their contracts. There would be no legally enforceable obligation to prevent the company landowner requiring the workers to leave its property if they had no rights to be there. To my mind, this otherwise compelling analysis has to recognise that the thinking in *Bancoult* was not confined to the specific effect of the Immigration Ordinance but extended to any legislation with the same purpose or effect and was thought also to cover the use of private landownership rights by the Crown, albeit obiter.

314. The Defendants' case is that it is clear upon all the evidence, including that of the Chagossians, that a choice was offered to the Ilois of Diego Garcia as to whether to go to another BIOT island. They were encouraged to go to those islands, or to Agalega. They were not at that stage all removed from BIOT or required to leave. There were also Ilois who subsequently left Peros Banhos and Salomon voluntarily. It may have been uncertainty which caused some to choose to go to Mauritius rather than to a BIOT island or to leave when they did, but that does not alter the position and does not amount to a compulsion to leave BIOT. But the illegality contemplated by the Divisional Court is a compulsory removal through the specific exercise of a purported statutory power. Accordingly, whilst the Divisional Court may be right as to the legal position if the facts had been as it apprehended them to be, on the incontestable facts, the illegality which it contemplated could only arise for those who were compelled to leave Peros Banhos. There is no evidence that that was accomplished by use of the Immigration Ordinance. The evidence is that the island had become unviable as a coconut plantation; there were too few workers and the company and the Defendants decided to close them as the landowner and to evacuate the inhabitants. The dependency of the Ilois on work for rations, building materials and transportation was evident from the way in which they described life on Chagos and the problems they felt arose when the rations were running down; that may not have

happened in fact but they perceived it as an attempt to starve them out. There would have been no comparable means of the Ilois subsisting there alone without employment or other subsidy. This is a powerful analysis, but it has to be seen in the light of what I see as the thinking in *Bancoult*.

315. At the stage of seeing whether there is an arguable case, I appreciate that it can be said that the offer of employment on another island in BIOT was illusory because of the uncertainty over the future of the islands created by the defence proposals and no guarantees were offered as to the future of Peros Banhos and Salomon. Mr Todd told the Ilois, according to his notes, that the other islands would be open for some time. The reality was that the Ilois could see that the time would come when the plantations would close and they would be compelled to leave. Additionally, the US had always made it clear to the UK Government that it might want to have the whole of Chagos. There was, in the background, also the concern of the UK Government that unless the population were removed from BIOT, there would eventually be a permanent population, if there were not one already, which would attract the obligations of Article 73 of the UN Charter and constitute an economic problem for the UK. All the decisions on the future of the island plantations after 1965 can be attributed to the creation of BIOT, the defence proposal and to the uncertainty which it created. The UK Government compelled the closure of Diego Garcia and the removal of the Ilois from it. Even on the Defendants' own case, it was the economic conditions created by the closure of the plantations on Diego Garcia for defence purposes and the subsequent uncertainties, which led to the drift of Ilois away from Salomon and then from Peros Banhos leading to their ultimate economic collapse. It is possible to say that in those circumstances the Defendants closed the islands and compelled the removal of the population from BIOT. Whether they used the Immigration Ordinance, or as I think overwhelmingly probable, they used their private law rights, a possible case, derived from *Bancoult*, could be mounted that the actions were unlawful as a sequence of events which flowed from the closure of Diego Garcia, which foreseeably led to the enforced removal of the whole population without specific legal authority. I saw no evidence to support Mr Allen's contention that the closure of Peros Banhos was brought about by subtle pressure from the Defendants on Moulinie & Co.

316. I regard it as being clear that the private law rights were used because there is no evidence that the procedures envisaged by the Immigration Ordinance were ever deployed even in a vestigial form, second the language used at the meetings was that the islands were being closed, and third, having acquired the land and as they believed all the interests in it, private powers would have been the simplest method of saying that the Ilois had to go. It would have been consistent with the argument that they had no rights there, property or otherwise. The documents show that the Ordinance was a back up to stop Ilois making for another island and to control their return should it be attempted. It could not apply to transfers within BIOT, or to the making of a choice to stay in or leave BIOT; it could only have applied to the final closure of Peros Banhos anyway and there is no evidence that it was used at that stage.

317. I turn from whether the actions were arguably unlawful in achieving the complete removal of the Ilois from BIOT, to examine whether there is an arguable case that any Defendant knew that to be the case or was recklessly indifferent to it.

318. Even if the Ilois from one or more islands had been compelled to leave under the Immigration Ordinance, there is no evidence that anyone thought that that was unlawful or was recklessly indifferent to that. This is closely related to the allegation that the enactment of the Ordinance was unlawful because of the purpose to which it was to be put, but again there is no evidence whatsoever that anyone knew or was recklessly indifferent as to its lawfulness. It is useful to put this in the context of what the law was. Specific legislative power was necessary on the assumption, which I make for these purposes, that the private powers could not be used. The form of Immigration Ordinance was more than a simple vehicle for expulsion as I have explained. The provision of the BIOT Order under which it was made enabled the Commissioner to make laws for "peace, order and good government" and that plainly encompasses the ability to pass immigration and residence controls. The only question is as to the limits on that power and whether it is more limited than the full power of the Sovereign who retains the power to make laws outside those limits. There is

no issue but that the complete, removal of all the inhabitants could lawfully be achieved. If anyone had researched the scope of that phrase in 1971, they would have come to the case of *Ibralebbe v The Queen* [1964] AC 900,923. Viscount Radcliffe said of that phrase, which was used to confer legislative power on the Parliament of independent Ceylon, that it connotes "in British constitutional language, the widest law-making powers appropriate to a Sovereign". This was not an unusual conclusion for in *Winfat Enterprise (Hong Kong) Co Ltd v A-G of Hong Kong* [1985] AC 733, the Privy Council remarked that that had been repeatedly stated. It was argued in *Liyanage v The Queen* [1967] 1 AC 259 PC, again in relation to Ceylon that a Ceylon Act, passed after an abortive coup, which severely trammelled the rights of suspects, was unlawful because it offended against fundamental principles which had been inherited into the Ceylon constitutional framework. But it was held that the Ceylon (Constitution) Order in Council, which contained the phrase in issue, coupled with the Ceylon Independence Act were intended to and did give the full legislative powers of a sovereign independent state. The Independence Act provided for certain limits on UK legislation which had previously been enacted and for the removal of a bar to enactments repugnant to UK laws. It did not enlarge the law-making power. "*Commonwealth and Colonial Law*" by Roberts-Wray 1966 contains much in the same vein at p 369.

319. The Divisional Court's conclusion that those words were something less than the full sovereign power in the case of BIOT may be right but it could not possibly be said that someone enacting the 1971 Ordinance could have known that that was so or could have been recklessly indifferent to legality. The phrase is capable of permitting acts which infringe the fundamental rights of citizens as they might be regarded conventionally; a lawyer pre-*Bancoult* might have asked why it would not cover the removal of the inhabitants to a place of which they were citizens and which had agreed to take them especially where it was being done was for a sound reason in the interest of the security of the UK and her allies. The UK was responsible for the external relations of BIOT. Although the Sovereign might be divisible, Queen of Mauritius or BIOT and separately Queen of the United Kingdom, the power to legislate in section 11 was provided for the territory to be governed by reference to the needs of the UK and Colonies as a whole and their defence and foreign policy needs in particular for which aspect of BIOT the UK was responsible. Indeed it had specifically created BIOT for defence of the UK and Colonies. Section 11, if the scope of the phase in issue varied with context, has to be read in that light. The restrictions on the legislative power would be found in the Royal Instructions, the power of disallowance, any applicable UK law and the BIOT Order. The Chagos population could all have been removed to Mauritius, if BIOT had not been created. Indeed, as the only evacuation to which the Ordinance could conceivably have applied was that of Peros Banhos in 1973, there would have been a reasonable argument along the lines referred to by Gibbs J, that the removal of those who had lost all practical means of support and life was a proper use of such powers.

320. None of the material leading up to the enactment of the 1971 Ordinance suggests that any lawyer, draftsman, policy maker or whoever thought that the powers in the BIOT Order did not permit the Ordinance to be enacted. Nor is there any suggestion that there was no power to pass such an enactment because of the object for which it was to be passed, taking that to be the removal of the Ilois to Mauritius and the Seychelles. Insofar as its objective was to back up or permit the evacuation of the colony, that objective was seen as a necessary one and the Ordinance was a way of achieving it. There is no suggestion that anyone doubted that that could lawfully be done. It was recognised that politically the objective of permitting a US defence facility to be created in the Indian Ocean at the expense of people who had lived there for a number of generations would be controversial; but never that it could not be done lawfully. Nor do I see any evidence from the whole of the documents that this was because the Ministers and officials were ignoring the possibility, suspecting that it could not be done. The purpose of obtaining such powers, in so far as they related to the removal of the population, was to promote the defence interests of the UK, its Colonies and allies. The use of powers taken under section 11 of the BIOT Order with the aim of promoting that interest had been made explicit in the 1967 Property Ordinances and the subsequent acquisition which was not a secret. No one suggested until the *Bancoult* judicial review that that might be unlawful. The passage or use of an Immigration Ordinance to promote that same interest would not have been any more obviously unlawful, once defence interests were acknowledged to be relevant under section 11, whatever the political controversies.

321. Legal advice was obtained, and not just about how to draft the legislation. The Commissioner received some legal advice; he was entitled to suppose that if it had been thought unlawful, the Legal Adviser would have raised the point, but he did not. I do not think that, in view of the material disclosed, it could be that he gave advice orally and that there are no notes of it or that the notes have not been disclosed. There is no reason to suppose that the Legal Adviser would have kept the Commissioner in the dark about it. It is perfectly clear that if a lawyer is involved, the Commissioner is entitled to take it that he is not doing something which may be unlawful. He would have realised the controversial nature of it and I can see why he would agree to give the Ordinance no more publicity than the legal minimum. But I do not accept Mr Allen's basic point that any politician would have known that the Ordinance was outside the powers of the Order because it was to be used to assist in the removal of the Ilois.

322. The Prime Minister was told of the position in a Brief from the Foreign Secretary attached to the Defence. It is a full brief. It refers to the numbers of Ilois, their status and nationality and to the advantages of preparing to resettle all of them out of BIOT. This would be achieved by negotiations with Mauritius and the Seychelles. It was approved by the Prime Minister. There is no suggestion in the Brief or in the Annex, or in any of the working papers which contributed to the Brief, that the proposal to resettle the Ilois was unlawful although the precise means were not discussed. It was clear that they were not to be given the option of staying. Legal advice was given in Paper No 3 that an Immigration Ordinance, which was necessary for other reasons too, could provide for the Ilois to be removed but that it could not be administered so as to leave them with nowhere to go.

323. There had already been a debate within the FO on 23rd October 1968, (5/555), between Mr Aust, the Legal Adviser and others about immigration legislation which was needed for other reasons too, including the need to reconcile the former Mauritius and Seychelles laws which applied to the different parts of BIOT depending on their previous attachment. There were further discussions in February and March 1969. Again, none of them suggest that the removal of the Ilois from BIOT, whether by an Ordinance or through private rights would be unlawful. That is not because they thought that it would be, but that it would be better to keep quiet or to keep Ministers in the dark. Ministers were fully briefed and there is no suggestion in the documents that officials would carry out the dirty work or leave Ministers out of it or ill-informed nor that they exceeded their authority or instructions. There is no realism to the notion that they were trying to deceive themselves and not say what they thought. It is because they did not think that it would be unlawful. It was not obvious to Ministers that there was some illegal act afoot as Mr Allen suggested it should have been; there was an appreciation that this would be unpopular with the Ilois and others, but not that it could not lawfully be done. The same applies to lawyers. They saw wide powers under the BIOT Order and there were no legal restrictions on what they did. The actual or incipient application to BIOT of Article 73 of the UN Charter did not create a relevant legal obligation for these purposes although it added to the political problems. In January, February and December 1970, there were further discussions about the way in which removal might be effected, with the private law rights more to the fore, but again there is nothing to suggest that anyone knew, or was recklessly indifferent to the legality of what was being proposed. It is clear that the many individuals involved all thought that it was lawful to remove the Ilois from BIOT using either an Immigration Ordinance or private rights or both. In December 1970, Miss Emery suggested to the PIOD that there was something repugnant to the general tenor of British immigration legislation in the Ordinance. Mr Aust replied that it was severe but not so very different from the then proposed reforms to UK immigration law.

324. Mr Allen made some play, understandably, of Mr Aust's note of 16th January 1970, (6/842), in which Mr Aust spoke of the role of the Immigration Ordinance in "*maintaining the fiction*". The fiction was that there was no permanent population. It could then be said that they had no permanent rights. Mr Howell said that it had not been passed for that purpose in the end but to provide the power to deport and to control entry. I think that the real point of this is in the recommendation which is that the whole of BIOT should be cleared because of the problems which a partial evacuation would pose for the fiction, enabling the permanent population to grow. There is a different issue here, which I shall deal with later which arises from what Mr Allen submits is a whole series of deceptions about the true status of the islanders. But I do not see that that

remark shows that Mr Aust was recklessly indifferent to the law. After all, a major purpose of the Ordinance was to remove or to provide legal back up for the removal of the permanent population and that fiction does not suggest that he thought that it might be unlawful to remove them.

325. Mr Allen also said that the Foreign Office could not shelter behind the advice of Mr Aust, because he was only comparatively junior at the time although he has subsequently attained some eminence. In March 1971, he was only 29, and 27 when he wrote the above memo. He had been in post as an Assistant Legal Adviser for only a few years; it should have been obvious that he lacked the seniority to be dealing with these issues. Mr Allen said that Mr Aust had been instructed to advise on how to maintain the fiction. I do not see such instructions. That is his worldly wise assessment of the position which the Government was maintaining. I have only read his notes; they do not read as though he was out of his depth in the law or in dealing with those who sought his advice. On the face of it, there is nothing to warrant Mr Allen's submission.

326. It is not alleged that subsequently, the Defendants became aware of or were recklessly indifferent to the unlawfulness of the Ordinance until the *Bancoult* decision. That decision is the reason why the UK accepted before the UN Human Rights Committee that its prohibition on Ilois returning to the islands was unlawful and only to that extent. The Immigration Ordinance 2000 was enacted so that, in short, British Dependant Territories citizens connected with BIOT could return to the islands, save Diego Garcia. But that still does not entitle them to go on private land.

327. I turn from the Immigration Ordinance to the use of private landowner powers. It can only be said that the Defendants were not entitled to close an island to pursue the defence facility on the basis of the *Bancoult* reasoning, that no public body's powers could be exercised, having regard to the defence interests of the UK and Colonies. Dealing first with the enactment of the relevant land acquisition Ordinances, which I accept *Bancoult*'s reasoning as to the irrelevance of defence interests to section 11 makes arguably unlawful, I find nothing in the evidence to suggest that anyone ever contemplated that such a limitation existed, let alone knew or was recklessly indifferent to it. Mr Allen's own advocacy shied away from the underlying reasoning. I am less than persuaded as to the correctness of the underlying reasoning as to the scope of section 11 in *Bancoult*.

328. Mr Allen argued that there was an obligation to leave so much of the island of Diego Garcia as would enable the Chagossian way of life on the main island to continue so that there would be work for the Chagossians. This is unarguable, as I have already said. There is no obligation on a government to provide for a particular level of economic activity; how many was it to provide for given that the Ilois were not obliged to stay? Were they obliged to work? If so, on what terms? The argument becomes no more than an argument that a government owes a legally enforceable duty to provide some form of welfare state and subsidised economy for its people, even if its legislature has not so enacted. But whatever the merit in that argument, which is somewhat beyond the cutting edge of public law jurisprudence, it is quite impossible to suppose that any Defendant or any official should have put his mind to such a legal proposition and realised that that was the law or that anyone who did not do so was recklessly indifferent to the legality of what he was doing.

329. I have accepted that it is reasonably arguable that the use of private land ownership rights to remove the whole population of BIOT was unlawful, because of the obiter remarks of the Divisional Court. I assume for these purposes that the earlier acquisition Ordinances were lawful. But there are real problems with that dictum which go directly to whether someone arguably knew that private law powers could not be so used or was recklessly indifferent to that. It is commonplace for compulsory purchase powers to be taken but for a private purchase agreement to be reached instead. The removal of those who once had rights or none is achieved through the exercise of private ownership powers for the public purpose. It has not been suggested that, if relevant, a balanced assessment of defence needs against the needs of the population could not properly lead to the conclusion that the former were the weightier. But the Crown in those circumstances is nevertheless, on the obiter remarks, disabled from using the private powers which it has taken under an

unchallenged public Act for an unchallenged public purpose. The basis for the illegality must be that, even though the Ilois were arguably compelled to leave the whole of BIOT for a country of which they were citizens and which was prepared to take them, specific legislation was necessary for that specific removal. The Divisional Court does not contemplate any obligations on the Commissioner once the lands had been lawfully acquired: was he to provide jobs and if so what and for how long, or housing and education? Insofar as there was an inhibition on the use of the private landowner powers, it is difficult to see why it should endure once arrangements had been made for the islanders to go to a country of which they were citizens and which was prepared to take them. No-one was compelled to leave BIOT until that point. However, whatever the true legal position, there is no basis for saying that any Defendant knew that the dicta of the Divisional Court represented the legal position or was recklessly indifferent to it.

330. The points which I have already made about legal advice apply to this power too.

331. It is said, of the re-amended Particulars of Claim, (paragraph 79/E/5), that there was no lawful authority for the removals, which were achieved by coercion. This adds nothing; if it is intended to do so it should be particularised or struck out. There is no evidence that coercion in a physical sense was used in the removals. The pleading and the Claimants' statements have used language which suggests it but there is no evidence for that. If the allegation is that the Ilois had no choice about leaving Diego Garcia and that they had no choice about leaving Peros Banhos, because none were given the unappealing option of staying without support, that is obviously true, but I do not think that that is what is meant. There is no allegation that there was any trespass to the person to anyone nor that anyone on behalf of the Defendants authorised or carried out any such act. The assertions about intimidation through threats of bombing or of being killed were not sustained in any evidence; the witnesses who claimed in their witness statements to have had such conversations with US or British officers did not speak English and did not support those allegations in their oral evidence. Mrs Talate's evidence is pleaded as typical of the Ilois experience. There was a fear of the planes which they saw taking off low over where they lived on Diego Garcia. I do not find it difficult that fears and rumours spread but that does not make them true, however real the fear. Mr Prosper, according to Mrs David, said that there might be bombs on the base which would make Peros Banhos unsafe; but she agreed that what was in her recent statement about being removed by British Officers was wrong and she agreed that there was no British official present at that meeting. There was understandable distress and fear created by the killing of the dogs. But there were no British Officers present at the evacuations, although there is photographic evidence appended to the witness statement of Mr Mandary, who was not called, that an American Officer was present at a meeting in January 1971 where the closure of Diego Garcia was announced to the Ilois. There was no evidence as to the position on Salomon when the last worker left and the evidence about what happened on Peros Banhos was vague. There were inconsistencies in the evidence of Mrs Mein and her daughter as to when they left but it appeared from her oral evidence that they left before the end because other labourers stayed and Mr D'Offay replaced her husband. Mrs Talate left in 1972, before the end having chosen to go there from Diego Garcia; she was told by Mr Prosper that the islands were closing. There is not the slightest evidence of the threat of or the actual use of force or intimidation to bring about the removal of the Ilois, or that there was any for which either Defendant was responsible.

332. The allegation in paragraph 79(e)(7) of the re-amended Particulars of Claim that the removals were unlawful because no adequate system for compensating the displaced population had been set up is not a basis for alleging misfeasance. There was some form of compensation, Rs 500 for those who went to BIOT, and the resettlement agreement with the Mauritius Government which had been reached before the closure of Peros Banhos. I have no difficulty with that being arguably inadequate if there were a legally enforceable duty to provide an adequate scheme but no such duty has been identified. There is no duty to so legislate and no existing power has been identified; if there were a duty to legislate, there is simply no basis for saying that anyone knew of such a duty or was recklessly indifferent to it. This should be struck out.

333. It is not an allegation which appears to derive from the evidence about promises of compensation which

were said to have been made by Moulinie or Mr Prosper or Mr Todd before people left the islands. Even if it did, it would not arguably found a case of misfeasance. Mr Todd's note of the meeting on Diego Garcia does not suggest that any promise was made by him and it would have been against policy for him to have done so; it is not realistic to suppose that he would have done so in advance of arrangements being made with Mauritius. Mr Moulinie had no authority to say anything about compensation being paid by the UK in 1966 which is the only vaguely recollected occasion when he might have done so. So far as statements by Paul Moulinie are concerned, there is no evidence that he had any authority to make them for the Defendants or that any such authority would have been given earlier than the agreement with the Mauritius Government in 1973. The real problem with the oral evidence, apart from its many unreliabilities generally looking back over 30 years, is that is inconsistent with the compensation intentions which the Defendants had before any arrangement with Mauritius in 1972. The sum was agreed at £650,000 in September 1972 and paid in spring 1973. The UK aim was to persuade those leaving Diego Garcia not to go to Mauritius and to go instead to the other islands, so it would have been especially surprising if the promises of compensation had been related to the option which the UK did not wish them to take. There is ample room for confusion in Ilois minds over what was promised to those on Diego Garcia if they would go to Peros Banhos and Salomon. There is no evidence about what was said on Salomon. What Mrs David said was said on Peros Banhos could have related to that agreement with Mauritius. The Ilois petition of about October 1974, referring to the promises made by a "*military chief*" that money would be paid to the Mauritius Government by the UK for compensation for the Ilois could also refer to that agreement but it would not have been said before the departures from Diego Garcia. Accordingly, it does not seem remotely likely that anything before the agreement with Mauritius or before the departures from Diego Garcia about compensation in Mauritius, was said with the permission or authority of the UK Government. If it was said after the agreement with Mauritius, and affected the Ilois' decision as to whether or when to leave, it is not untrue. There was provision for compensation; it turned out to be far smaller in practice when eventually disbursed in part because of the rampant inflation over the period in Mauritius and the growing debts of the Ilois.

Components of misfeasance: land acquisition

334. It is now alleged that the purchase of the lands of Chagos Agalega Company Limited under the Acquisition of Land for Public Purposes (Private Treaty) Ordinance 1967 was additionally unlawful because the Ilois had some property interests which meant that they should have been notified of the purchase. The method had been adopted to avoid giving them notice. There are a good many hurdles in the way of that as an argument as to illegality at all. The Commissioner had legal advice about the making of the Ordinance. There is no evidence that he knew or was recklessly indifferent to any illegality in the making of the Ordinance or in its use on this occasion. No Particulars are provided to assist. This allegation should be struck out of the misfeasance claim. I deal further with this point when considering the property claim.

Components of misfeasance: deceit and the UN

335. There are a series of allegations about deceit and pretence. In summary, the Claimants allege that the Defendants had a policy of denying that there was a permanent population of Ilois even though they knew the truth; they used language in public which was designed to convey a picture which they knew to be untrue and to quiet anxieties and controversies which would otherwise have arisen. This was done to deceive the UN in relation to the application of Article 73 to BIOT, the Commonwealth Heads of Government, and MPs. It is pleaded that it was unlawful for a policy and administrative decisions to be based on a pretence and that that constitutes an illegality for the purposes of misfeasance. This was given effect to in the removals and exclusions with which I have dealt. There is a related allegation that the Defendants adopted a policy in 1970 of concealing from the Chagossians, the Mauritius Government, (until 1972), and others that the Chagossians were Citizens of the UK and Colonies in order to encourage the Mauritius Government to take them in and on more favourable terms than might otherwise have been negotiated. Deceiving one's citizens is also illegality for the purposes of misfeasance. There is also an allegation that the Defendants wilfully failed to balance the individual needs of the Ilois against the foreign and defence interests of the UK by

failing to communicate to them their true legal position and the Government policies that affected them.

336. The pleading of these allegations suffers from some drawbacks. It looks as though they are intended to form the basis for saying that the removals were unlawful, but some relate to subsequent periods. So they must be free standing allegations of misfeasance.

337. It is quite clear that the decisions and actions of the Defendants were not taken on a false basis, which appears to be the first allegation. They investigated through surveys what the population was and certainly knew by the Todd report of 1967 that the Newton Report might have underestimated the numbers of Ilois at a time after the creation of BIOT, which some of the documents show was intended to have no permanent population at all. They were very well aware of the dual citizenship which was acquired upon the independence of Mauritius and that therefore the BIOT population retained its UK and Colonies citizenship. They had a clear and honest picture that the Ilois had no property rights. It is not said in this respect that the Defendants deceived the Claimants, who obviously also knew the true position.

338. I accept that, without going through all the documents, the Government arguably sought to paint a different picture from the one it knew to be correct in its dealings with the UN over whether there was a permanent population. The Defendants would have maintained that same stance generally. But this does not advance the Claimants. This is not an allegation of deceit on the Chagossians who knew what the true position was. I do not see how it can be alleged that there is an actionable legal duty of candour and truthfulness towards the UN, other governments or politicians or MPs, let alone one which can ground an action for misfeasance by those to whom the remarks were not made. The consequence of the lack of candour or half truths may have been that those who might have created more political controversy in support of the Ilois or in opposition to the defence facility, did not do so, but that does not ground an action for misfeasance. It is perfectly possible to recoil from some of the comments without them grounding an action in misfeasance. But whether or not it is wise to conceal facts from the UN or to give a false impression to other Governments must depend on a political judgement which it is for Parliament to judge. There might have been good reasons for not giving ammunition to those who would oppose the UK's defence policy and for trying to find formulae which are partial truths and only to be used if necessary. The judgement that the defence policy might require UN obligations not to be fulfilled is a matter which is not justiciable in this Court. This is a matter of foreign relations and defence strategy. The way questions are answered in the House of Commons is a matter for the House of Commons.

339. Mr Allen made broader submissions about the UN in relation to deceit, but it is convenient to deal with them here. The essence is that the Defendants made false representations to the UN knowing them to be false in order to prevent the protection of Article 73, which it is said the UK knew would apply to BIOT, being afforded to the islanders. But for those deceptions, the UN would have tried at least to give effect to their rights. Mr Howell submitted that this was in effect either trying to enforce rights under an international treaty or trying to obtain the ruling of the Court on the meaning of an international treaty, because the essence of Mr Allen's argument was that what the UK did was in breach of the UN Charter, which was a matter which could not be determined without reaching a conclusion on what it meant or how it applied to the facts. This was not the same as the deception of A, through representations to B, intending B to be the conduit for A to be told.

340. Mr Howell relied upon a number of authorities. In *J H Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418 499-501, Lord Oliver said that municipal courts could not adjudicate on or enforce rights arising out of international treaties, unless they had been incorporated into domestic law. Individuals cannot derive rights from such treaties nor are their rights affected by them, as Mr Allen pointed out correctly was the position with the various UK/US agreements which led to the establishment of the defence facility. The UN Charter was outside the purview of the court not only because it had been made in the pursuit of foreign relations but also because it was irrelevant. This was said to be well established. In a thorough review of the authorities in *Lonrho Exports Ltd v Export Credit Guarantee Department* [1999] Ch

158 at p179, Lightman J said that the court had to follow the interpretation of the Crown and cannot venture its own interpretation of international treaties, nor could it seek to see whether the Crown had implemented its provisions in good faith as required; there are of course exceptions but they do not apply here.

341. It is not possible to reach a view on whether the UK acted in breach of the Charter without analysing what the Charter means. Mr Howell persuaded me that I could not say that the UK Government had decided what it meant; it had acted because of the way in which it knew others might seek to interpret it. He illustrated that in relation to BIOT: it was not clear that all non-independent territories were non self-governing for the purposes of Article 73 and had a duty to be brought to independence; that would rather depend on the circumstances. There had been no General Assembly resolution that BIOT was a NSGT. The UN's concern has been with the detachment of BIOT. Here Mauritius would be, and would have been after the creation of BIOT, anxious lest BIOT became independent and would not support the UK in achieving that; the Seychelles likewise till its islands were restored in 1976.

342. In *R (Abbasi) v Secretary of State for Foreign Affairs* [2002] EWCA Civ 1598, 6th November 2002, [2003 UKHRR76] the Court of Appeal held that there was no authority which supported the imposition of an enforceable duty to protect the citizen, and that although the court was able to intervene, in limited ways, in the way in which the FCO used its discretion whether to exercise its right to protect a citizen, the court would not interfere with matters of foreign policy. The question of whether a court would intervene rather depended on how administrative the decision was or whether there was a policy which might give rise to a legitimate expectation. Here, the relationship with the UN and other states over how to deal with the proposal for an internationally controversial defence arrangement and the consequences for the people on the islands in terms of UN rights is plainly a matter of high policy, in which relationship the Court should not interfere. This allegation should be struck out anyway. I am also satisfied that the Claimants' broader submissions seek to recover damages for misfeasance or deceit by reference to what was said to the UN or to other Governments and to that extent those claims are unarguable. But, as Mr Allen pointed out, the terms could be referred to for what they showed about the factual background and I shall deal later with whether this is a case of deceit through a third party who was intended to be the conduit for the deceit.

343. I accept that the Government also arguably sought to avoid referring to the dual citizenship of the Ilois between 1970 and 1972 when dealing with the Mauritius Government. Again, I do not see how that can ground an allegation of illegality, let alone one upon which the Claimants can rely in a misfeasance action. This is a matter of foreign relations. Besides, the Mauritius Government only had to look at its Constitution and the Mauritius Independence Act which made the position clear. The Prime Minister of Mauritius knew of the position.

344. One needs to be careful about what is deduced from the documents anyway about what was known or said about the status of the Ilois. Some are drafts or discussion documents and not necessarily the actual public stance adopted. Some are only for use if necessary and it is not in evidence whether what was proposed to be said actually was said. Some contain comments to protect or advance a particular departmental interest. I say that because there is a danger that the internal documents are treated as the final acts, although they may suggest an outlook, thought process, intention or knowledge. At this stage it is reasonably arguable that what was the agreed line was used on some occasions to the UN or other bodies. However, the description of the Ilois as workers is true on the evidence. No-one worked other than for the plantation company or in a domestic capacity for senior staff. There was no independent economy. Even if for those who were too old to work, there was a company pension or rations, many did light work. There may have been women who did not work at various times but their husbands were working for the company. But there is no evidence of self-employed labourers or fishermen or retailers. At least that is a view which could properly and honestly be held and the reports of Mr Todd suggest that all the Ilois were employed. It is also clear that no-one thought that the Ilois had any property rights to any part of the islands; the islands were owned either by the plantation company or by the Crown. It may be that that view is possibly wrong, but it is a view that was genuinely held and there were perfectly good reasons for holding it. How such a position fits

with the rights of those same people who have been there for a number of generations is a matter of some difficulty. The partial truths focussed on the former and ignored the latter part of the problem. The problem with the phrase "*contract workers*" is that whilst it is true in one sense, it also conveys, perhaps intentionally, the different impression that they are short term or transient. At other times the language shifted to refer to "*transients*" which pushes further still away from the truth and the numbers who might have a wider right were minimised by aligning them with the short term workers. But the arguable factual point needs to be seen in that light.

345. I do not consider that it is misfeasance for the Defendants, without more, to seek to make the facts fit what they have said the position is. That simply goes to the question of whether the removals were lawful or not, and whether it was lawful to remove a permanent population. If it is, the fact that their status has not been told truthfully and fully to the world does not alter the lawfulness of the act. I do not consider that the Defendants' approach to the description of the Ilois' status evidences the requisite mental state for misfeasance. The purpose of the half truths or lies was not to deceive themselves as to the law and to enable decisions to be taken on a false basis. They knew only too well what the true position was and that is why they acted to bring about the clearance of BIOT, if that is what they actually did. They misrepresented the position to others for political reasons so as to quell opposition to the defence proposal, to the creation of BIOT and to the removals.

346. I do not consider that the fact of such an approach to the existence of a permanent population, as is arguably revealed by the documents, evidences guilty knowledge in relation to other acts which are alleged to be illegal. There is no connection between them. Nor do I consider that the sometimes harsh and contemptuous language used about the Chagossians shows any requisite knowledge or recklessness, much though I understand why Mr Allen sought to rely on it.

Components of misfeasance: deceit and citizenship

347. So far as citizenship and the Chagossians is concerned, this pleading, unlike the allegation over the permanent population does contend that the true position was kept from the Ilois. It is said that the Defendants sought to conceal the position and also that they deceived the Ilois, which is I suppose, an allegation that the Defendants' endeavours were successful. This latter allegation is entirely unparticularised. There is no documentary evidence suggesting that the Ilois should be told that they were not UK citizens or that the Mauritius Government be asked not to tell them. There is no evidence of any Ilois being told that he was not a UK citizen when he was, whether in their oral evidence or in the documents. The evidence is all the other way: when they asked they were told. Michel Vencatessen had "*British Citizen*" stamped in his travel card in the Seychelles. It was set out perfectly clearly and accurately in the Defence to the Vencatessen litigation in 1975. The Minister, Mrs Chalker, was asked about the position in 1981 before the delegation came to London and replied correctly. Cherry Alexis applied for and got his British passport in 1985.

348. As to the former allegation that the Defendants sought to conceal the position, it is readily arguable that the UK Government was deliberately not forthcoming to the Ilois, and especially not in the early days of the decision to evacuate or during the removals and the early years in Mauritius. It arguably adopted the policy of saying something less than the whole truth in the hope that the implicit denial would be effective. In October 1974, (8/1373-1374), it declined to assist the Ilois, in response to a petition seeking its help, by saying that Mauritius had accepted responsibility for their resettlement and that it could not intervene between Mauritians and their Government. A Mauritian newspaper was pursuing the line that the Ilois were British citizens. Mr Howell said that it was an accepted principle of nationality law that one Government would not intervene between its citizens and the Government of the other country of which they were nationals when they were in that country and that is the principle which underlay the stance. Mr Allen said that that principle could not apply where the individuals were in that other country as a result of wrongs done to them by the country from which they were now seeking protection. Either contention may be the legal

position, but the principle of dominant nationality was not the reason, arguably, for the non-intervention. The documents are consistent with a desire to avoid it being known that the Ilois were dual nationals, unless the truth had to be told. The UK Government may well have known that the Ilois did not know really what their British status was, and have done nothing to enlighten them.

349. I do not consider that omission to be an arguably illegal act or one which would have been known to be illegal. I do not accept the general premise of so much of Mr Allen's argument which relies on the assertions of a governmental responsibility arising out of the fact of citizenship. I do not see the source of a positive obligation on a Government, unpalatable though it may be, to tell its citizens of their legal status. No untruth was said; although the Defendants were avoiding telling the whole truth, they did tell the truth when the issue directly came up. If the author intended to create a false impression, I can see a basis for his acknowledging that that was wrong in a moral or political sense; but, if that were illegal, there is nothing to suggest that he suspected that it might be. The Defendants' actions were on a number of occasions harsh, callous and less than wholly candid, arguably. It may be that the Defendants should have communicated more with the Ilois about their situation as a matter of responsible politics; it may be that there are many views possible on that. But I am unable to find the illegality in that which would ground an action for misfeasance, arguably.

Components of misfeasance: overriding the islanders' interests

350. Finally, it is alleged that the Defendants acted with a conscious disregard for the rights of the islanders and allowed other interests to override them completely. This may in part be the same point in fresh language as I have already considered. It is also wrong on the facts. The documents show some concern about whether the US can be persuaded not to take the whole of BIOT; there were some albeit fruitless endeavours to persuade the US to take Ilois workers. The submission to the Prime Minister and other documents show that although the removal of all the islanders was envisaged, their welfare was to be regarded as an important consideration. There were no removals until after arrangements had been put in place for them to go to countries of which they were citizens and which would take them. Some already had a degree of connection with those countries. There was an agreement for a resettlement fund which would have been more effective had it been distributed earlier by the Mauritius Government. Some thought went into provision for their resettlement. What was done and omitted can readily be criticised but it is simply wrong to say that all was done in disregard of the Ilois and conscious disregard is not justified at all. The fundamental problem was that there was an irreconcilable clash between the interests of the Ilois and the defence interests of the UK and USA. The resolution of that clash was a matter of politics at a fraught time internationally. Whether as the losers in that clash, the Ilois were treated as they should have been is another matter.

Misfeasance: conclusion

351. Accordingly, I do not regard there as being an arguable case of misfeasance. If there were, I would stay proceedings until there were a proper pleading of who did what and with what knowledge or recklessness. The pleading is wholly inadequate for allegations of that gravity and the material exists for a far more explicit pleading, if the case exists. Some of the individual allegations are inadequately pleaded, or are too vague to remain anyway and I have indicated those which I would have struck out. It is also impossible to see how the tort could apply to those who left Chagos whilst the islands were still part of Mauritius, or who had not been born there by 1973.

352. Mr Allen says that it is premature to reach a conclusion on this, as on other matters, in advance of full disclosure of documents and cross-examination. This, he reminds me correctly, is not a mini-trial. He pointed out all that was said by the majority in the House of Lords in *Three Rivers*, although there is also an application for summary judgment here. I am acutely conscious of the gravity of the allegations and of the treatment meted out to the Chagossians by this country as a colonial power. But I cannot allow an argument

to continue for no better reason than sympathy with the Claimants' collective misfortune. There is no basis for supposing that there are any significant documents on the Defendants' side which have not been disclosed. The spirit in which the Defendants have conducted this litigation is different from that in which the earlier litigation started so long ago by Michel Vencatessen was conducted according to Mr Gifford. In any event, the Claimants can read all the relevant documents released under the 30 year rule. Mr Allen proclaims the arrival of volume 23 as the proof that it could not be said that there were no more documents. I accept that there may be documents which have not been disclosed; but that is because the allegation leading to their disclosure has not been made. Volume 23 responds to the allegation that the Private Treaty Ordinance documents had not been disclosed and the Claimants might have wished to make an allegation of targeted malice, a late piece of speculation by the Claimants. The disclosed documents do not support that allegation, they show it to be unsustainable and it has not been pursued. Mr Allen seeks to make something of the documents which have been revealed in another context. But that amounts to saying that if he makes more unfounded allegations, some other documents may emerge by that sideward. I do not think that anything of significance emerged from that late volume. I am wholly unpersuaded that I should allow the misfeasance case to continue on the speculative possibility that something significant will be thrown up in view of what has already been disclosed, the 30 year rule, the evident openness of the Defendants, and in the absence of any obvious undisclosed stream of correspondence.

353. One of the factors which persuaded the House of Lords to allow the *Three Rivers* case to continue was the prospect that cross-examination of the Bank's witnesses might throw light on events. Mr Allen suggested some topics upon which he would like to cross-examine. It is not helpful to his cause in that respect that he was, until his closing submissions, unwilling to identify anybody against whom an allegation personally was made. How was the witness to be identified to whom he might wish to put these points? As I understood his case, after taking up some time trying to discern the legal framework to what he had painted with a broad brush and general feeling, the senior Ministers were not the only targets of these allegations but anybody who featured as the author of the documents which he relied on. So he had a large cast list. But the Prime Minister and Foreign Secretary in office from 1964 to 1970 are dead; the Foreign Secretary from 1970 to 1974 is also dead. Sir Edward Heath is not recorded as having any personal involvement, unlike his Foreign Secretary. A number of other Ministers, from that and later periods are dead, though not all. I do not know about the Commissioners or High Commissioners and Governors. But Mr Todd is dead. Many of those who are alive or who might be are elderly. All those who gave evidence about that period would be doing so about what they had known or believed thirty or more years ago, and however wide Mr Allen casts his net the period crucial for this claim is 1965 to 1974 or thereabouts. I do not believe that they would be able to do more than to rely upon what the documents say. Mr Sheridan, giving evidence about events 20 to 25 years ago was reliant on the documents for his understanding; he accepted what they showed even though he had no actual memory of many events. Mr Glasser was in much the same position. Mr Grosz, who is not elderly, dealing with events of 10 to 20 years ago was unable to remember important details and was reliant on interpreting documents, which did not always refresh his memory. The evidence of the Chagossian witnesses showed how the passage of time had diminished the accuracy and extent of their memories. Where the evidence of a witness is inconsistent with the extensive array of contemporaneous material, it is very difficult to see how the former rather than the latter would be preferred.

354. There is no reason to suppose that the role of a witness, linking and explaining documents, is of particular importance in this case. The documents are extensive. They were not written for public consumption for the most part and there is no reason to suppose that they do not contain the actual views and beliefs of the authors. They had no reason to deceive each other. The documents, by their very tone, suggest internal candour. There may, of course, be an element of self-protection in some of what is written by one official to another on a controversial plan in case of trouble later if it all unravels, but that aspect is unhelpful to Mr Allen's approach. Mr Allen's case as to the iniquity of the Defendants' actions and motives is that the documents show it. I have dealt with what they may show, but it is difficult to see that a new case could be fashioned out of cross-examination. A witness might be asked about what he knew or suspected for the purpose of the mental element of the tort, but the documents explain what was known and believed and why the stances and lines which Mr Allen criticises were adopted. Appealing though it might be, and in one sense perhaps justified, it is not the function of litigation to provide a forum in which, outside of the framework

of the torts alleged, cross-examination is permitted so as to achieve the effect of an inquiry into possible government failings and wrongdoings of the nature generally alleged by Mr Allen as his starting point for the consideration of this tort.

355. Mr Allen suggested that particular areas where cross-examination would advance his case were about why the Chagossians were not consulted in relation to the plans for the Chagos, what was said in Whitehall but which is not referred to in the documents and what historical research was done into the position of the Chagossians in the 1960s and if none, why not. As to the first, I have already dealt with the possible duties as a matter of law. I would have thought that the answer as to why they were not consulted about whether there should be a defence facility was tolerably obvious; it is discussed by the then Foreign Secretary in the memo of April 1969. I cannot see what any cross-examination would advance. They could have been consulted about what was to become of them; that failure is arguably unlawful. But I cannot see how cross-examination has any prospect of showing what the documents do not even hint at, which is that whoever Mr Allen targets as a relevant malefactor, knew or suspected that there was a legal duty to do so.

356. As to the second, I have already dealt with the significance of the documents. People communicated by documentary means, they minuted meetings, they wrote notes on each others' memos. Communications with the UN mission or the BIOT Commissioner or High Commissioners were in writing. There was every reason for officials to put down what they thought in writing. So many were involved that it is difficult to see that there could have been some general conspiracy or even a tight knit one to keep off paper the supposed recognition that there was something perhaps unlawful about what was proposed. More curious still, the notion that they were prepared in robust or callous language to deal with the way in which the political problems were to be handled, upon which Mr Allen relies so heavily, and yet were to deal with other, legal, anxieties in conversations never to be recorded. His case is that the papers raise an arguable case of misfeasance; they do not. He cannot hope to make it good by a speculative, wide-ranging cross-examination of whomsoever he eventually identifies, who is still alive and can remember what he thought at the time other than through the documents. It is not without importance in this context that, at any trial, the burden will be on the Claimants to prove their case and to do so with the cogency required in relation to allegations of such gravity.

357. As to the third, it is clear from the documents what research was done. There are also subsequent internal reviews, one in particular by the FCO in 1983. Whilst in certain respects its conclusions may be inadmissible, it is a relevant document in showing what material was available within the FCO at the relevant times. None of his other suggested topics bear upon this tort eg why was no provision made for Seychelles Ilois, to which the answer appears many times in the documents, or why did the UK Government not insist on simultaneous Creole translations in 1981 and 1982 (for which no-one asked).

358. It may be right that there is more evidence which the Chagossians could give on the evacuations and their inability to return. But it was their wish to give oral evidence about these matters so as to establish that their various allegations had a factual base and to give colour and context to the legal issues. They were put forward as typical. If they did not support all the allegations of fact in the pleadings, as they did not, there is no reason to suppose that any others would do any better. The pleadings were presumably based on the witness statements which had been prepared for the hearing and on those prepared for the Bancourt Judicial Review. In certain respects the basis of the pleading has been shown to be inaccurate. I do not accept that an allegation should be made and then the witness found to sustain it. In other respects, the evidence has clarified what was ambiguously alleged in a way which was capable of suggesting one thing while meaning another. I refer to the use of the words "*forced*" and "*coercion*" in relation to the actual evacuations which suggest possibly that physical force was used when it plainly was not; it means that they had no choice.

Deceit

359. There is a familial resemblance between the pleadings, and their deficiencies, in this tort and misfeasance. It is pleaded that the Defendants made false statements of existing fact to a range of people, including but not limited to the Chagossians, knowing them to be false, intending the Chagossians and others to act on them to the detriment of the Chagossians. Although the individuals making the representations are not specified, this is a case where the pleadings incorporate by reference specific documents which may or may not identify some of those against whom this serious allegation is made. But the pleading makes it clear that it relies as well on other unspecified documents. As with the inadequate pleading of the misfeasance claim, this vagueness is not appropriate for the reasons which I have given. A claim of dishonesty against a large group of individuals, or some and perhaps not others, is unfair and a wasteful way of conducting proceedings. There is no reason why they should not be identified even if it is only as the author of the document. I would require that to be done before any further steps were taken. That should enable it to be seen what is alleged to have been represented to whom and how. Anything less would make the efficient preparation of the case very much more difficult. There is no more scope for corporate dishonesty in deceit than in misfeasance, other than by the attribution to a corporate body of the dishonesty of an individual. *Jaffray v Society of Lloyd's* [2002] EWCA Civ 1101 CA 26th July 2002 at 65, 70-74, and the individual conclusions, illustrate that in the context of deceit.

360. The false statements of past or existing fact alleged were that the Chagossians were not permanent residents or belongers of the Chagos islands, that they had no right to remain in the Chagos islands, that they were not British citizens and that they had no rights under the UN Charter. These representations were made expressly in the identified documents or impliedly "*from non-disclosure or inaction*" to the Chagossians, the UN, the UK Parliament, the British press and to the Government of Mauritius. There was a duty on the UK to provide full and frank information to the UN so that it could carry out its obligations to protect the Chagossians. The Defendants acted dishonestly because they created and maintained the fiction that there was no permanent population even though they knew that not to be true. They did not tell the Chagossians of their possible rights as belongers or British citizens and they deceived the Mauritius Government on the same point. They failed to report to the UN on BIOT as they knew they should have done. They tried to mislead the press and Parliament and tried to minimise the publicity given to the Immigration Ordinance.

361. What was pleaded as the purport of the identified documents, and of the whole documentary record, was that the Defendants knew that there was a permanent population, that they devised terminology to convey the opposite to others than the Chagossians, and sought to conceal their UK citizenship from the Mauritius Government. Those particular representations are acknowledged not to have been made to the Chagossians to whom the representations are rather different. The purpose of this pleading was to allege that the deceitful representations were made so that those who might have helped the Chagossians to assert their rights did not do so. These agencies and organisations included the UN, Parliament, the press and the Government of Mauritius. This led, as intended, to evacuations without international interference and significant demur from those bodies, so they acted on the misrepresentations as intended by doing nothing.

362. Recognising that the Chagossians would have known that a representation to them that there was no permanent population was untrue, Mr Allen pleaded that different but related representations were made. These were that they had no choice but to move out when required and were not told of their rights or their position as UK citizens. They had rights as the permanent population of a non self-governing territory under the UN Charter. Unfolding events were presented as a fait accompli. The representations were "*butressed*" by statements at meetings that the islands would become dangerous, that the US needed all the islands, that compensation and homes would be provided. They were "*reinforced*" by intimidation: the arrival of troops, low flights and the killing of the dogs. The Chagossians acted as expected and left, complying with instructions with which they thought, wrongly, they had to comply, unaware of their rights. The Defendants took advantage of their poverty, ignorance and illiteracy; they controlled their means of communication with the outside world.

363. Mr Allen argued that the representations to others than the Chagossians were relevant because misrepresentations did not have to be made directly to the person for whom they were intended. He referred to *Swift v Winterbotham* 1873 [LR] 8QB 244. A bank employee gave a false reference to another bank, inquiring of it as to the solvency of its customer, intending that the inquirer's customer should act on the lie and engage in a business deal which failed. The misled customer sued the bank which had given the false reference. This does not support the sort of case which Mr Allen mounts. It is plain that a misrepresentation can be made through a conduit, and that it can be made to an agent. It can be made to someone who, having sought the information as an agent, is expected to pass it on to the person who acts upon it in the way intended. But Mr Allen's case is that the representations were not passed on. They were acted on by others in an entirely different way. I also found the case of *Farah v Home Office*, 6th December 1999 CA (unreported) of no assistance. It concerned a representation about immigration status to a carrier in the expectation that it would decide not to carry the passenger; such a representation arguably founded a negligence action because there was arguably a sufficient degree of proximity between the Home Office and the passenger to give rise to a duty of care.

364. I do not consider that it is arguable that the Claimants can sue in deceit in respect of representations which were not made to them directly or to an agent and in reliance upon which they did not act, being unaware of them. I regard that as obvious. *Jaffray* illustrates it, but it is incontrovertible. I accept that it is arguable that false statements were knowingly made to third parties about the status of the Ilois as residents on Chagos, but with the intent that those third parties should act on them, rather than communicate them to the Ilois, who would have known that the statements were untrue. They may have been intended to persuade those third parties to do nothing to investigate or assist the Ilois, or to reduce opposition to the Defendants' defence policies. Mr Allen sought to create a variant tort of deceit to fit the problem. He urged that it was arguable that if a false representation is made to a third party, intending him not to alert the Claimant to harm which is intended to be done to him by the representor, but which he would have helped to avert or to warn the Claimant about, the variant tort of deceit would have been committed. This he said was consistent with principle. It was stronger if there was a duty owed to the Claimant by either of the others but not essential. I do not follow this. If the act done or representation made to the Claimant, whether by word or deed, is a wrong which sounds in damages as a tort, the Claimant has his remedy. If it is not, I do not understand why the fact that a lie has been told to a third party converts it into one. This whole basis of claim is posited on an absence of communication between third party and Claimant. This is not a case where the third party owed a legal duty to communicate with or to look after the interests of the Claimants, in the exercise of which the false statements interfered, deceiving the Claimants. Indeed, Mr Allen really sees this part of his argument as strengthening his case that there was a deception practised on the Chagossians.

365. The only relevant representations are, indisputably, those which were made to the Chagossians. There are no agents to whom they were made. It has to be pleaded that they were as to past or present fact, the natural and probable result of which was to induce the Chagossians to act on them in the way in which they did act, that they were intended to act in reliance on them and suffered loss in consequence. The representation must have been known to be untrue or to have been made recklessly, not caring whether it was true. As with misfeasance, this is a tort which requires to be proved with cogent evidence.

366. The specific documents pleaded cannot constitute any relevant representations because they are all internal documents with a restricted circulation and there is no evidence, and it would be hugely improbable anyway, that they came into the hands of the Claimants or were read by them. Other documents may evidence what was said to them at various times, but the striking feature of those documents is that not one was for public consumption and although some may have led to a public statement, those are not referred to specifically. What is meant by the assertion that they were made by implication from non-disclosure, is that the specified representation was not made and that its content was not expressly denied either. There may be occasions where there is a duty to speak such as where a representation was made believing it to be true but the representor discovers that it was untrue, but none of those circumstances apply here. Silence does not ground deceit by itself in the absence of a duty to speak and no such duty is alleged.

367. There are a series of allegations about the way in which the evacuations were effected through the representation that the Chagossians had no right to remain on the Chagos islands and no choice but to go, buttressed and reinforced in various ways. The representation is not alleged to have been that they could not remain on any individual island, or that they could not remain because their contracts had been terminated or their employment ceased with the closure of the plantations. It is not said that they were falsely told that they had no right to be on any particular island, only that they were falsely told that they had no right to remain on even one island.

368. There is very limited oral evidence that any such representation was made but I can see an argument that it is implicit in the conduct of the Defendants, is consistent with what they reveal about their thoughts in the documents and is what would have been said if the issue had come up. So I think the Claimants have some prospects of getting some kind of case to that effect off the ground even before the evacuation of the last island in 1973. If it were said it would, arguably, have been to encourage islanders to go peacefully when the time came. I have already expressed my views on the prospects of the intimidation allegations, the promises of compensation and the statements of danger being made good but that does not mean that the basic premise for the allegation that the representation was made is ill-founded. I have also dealt with the absence of evidence to show that they were made on behalf of the Defendants.

369. The representation is alleged to be false because the islanders were the permanent population of a NSGT and thereby entitled to the protection of the UN under Article 73. I do not understand how this can be thought to be arguable. The Article confers no individual rights and can scarcely be thought to have done so. The UK is entitled so far as any domestic law obligations go to ignore it. It is fanciful to suppose that there could have been representation which was intended to cover international treaty obligations between states. Mr Todd, for example, would not have intended any statement to cover that. He would have been focusing on the contract and residence position. Even if there had been such a representation, it would be necessary to show that it conferred rights against the UK on the people of BIOT. I have already explained that the nature of those obligations, as between states and the UN, are not justiciable nor are any representations about them capable of founding any arguable deceit claim. There is no evidence that anyone who might have made any such representation to the Ilois knew of or was reckless as to the falsity of that statement. As the Article could not ground a right anyway, even if the position was falsely stated, it would not have entitled them to stay and so no loss flows. The representation, arguments about the UN apart, is either true or, insofar as the effect of the *Bancoult* case is to falsify it, it is not arguable from any of the material that it would have been known to be false or suspected to be false. There is no evidence which suggests that those who made the statement did so other than in the belief that what they did and said was true.

370. It is not clear whether the allegation that they were said not to be belongers was something which was said to the Chagossians. I rather doubt it, but the concept is sufficiently uncertain for it to be very difficult to see how any statement about it could be made deceitfully. Neither of those representations are of existing fact either. There is no evidence that any Claimant was intended to or did act upon any such representation anyway.

371. Dealing with what was said about UK citizenship in connection with achieving the removals, there is simply no evidence that any representation about it was made at all. It is therefore alleged that the position was concealed. That goes nowhere in the absence of an arguable duty to state the position. The usual suspect of "governing responsibility" is the only candidate, no duty being specifically identified in this context. It is not an arguable basis for imposing a duty, breach of which amounts to deceit. There is no arguable case in relation to the tort of deceit.

Exile

372. Mr Allen submitted that there was arguably a tort of unlawful exile but that the court should be slow to

attempt any compendious definition. I am prepared to go along with that. Its essential features would be that the Crown could not send out of British territory a British citizen of the territory or a belonger of that territory without either the free consent of the person or by statutory authority. Similarly the Crown may not prevent or obstruct the return of such a person without statutory authority. The tort continues to be committed from the moment of wrongful departure until return. Here, it was alleged that the Chagossians were "*belongers*" to Chagos (rather than BIOT), and were citizens of the UK and Colonies or British Dependant Territory citizens by connection only with BIOT. They were removed without their consent, or without fully informed consent, and those who had left voluntarily were prevented from returning or their return was obstructed as was that of the islanders who left on the evacuations. The tort continues in relation to Diego Garcia because the Crown has not contemplated that they can return there at least to live; it continues in relation to Peros Banhos and Salomon because the Crown has not removed the practical impediments to that return, which include the cost of transportation and the creation of an infrastructure which would sustain a modest but viable way of life.

373. Mr Allen submitted that the right not to be exiled otherwise than with consent or statutory authority is well established. He referred me to Magna Carta: "*No man shall be ... exiled ... but by lawful judgment of his peers or by the law of the land*". A number of academic histories of the law and well known commentaries from Blackstone, Holdsworth, Stephen and others broadly support that position. Exile or transportation as a punishment, to which consent was given to avoid something worse, was replaced by statutory provisions for the transportation of convicts to colonies. International treaties, to which the UK is a party, reflect that developing law. The Universal Declaration of Human Rights, 1948 states in Article 13(2) that "*Everyone has the right to leave any country including his own and to return to his country*". The International Covenant on Civil and Political Rights, 1966 states in Article 12(4) that "*No-one shall be arbitrarily deprived of the right to enter his own country*", a Covenant ratified by the UK in 1976.

374. He next reasoned that those treaties and the developing jurisprudence over the years meant that there was a common law right not to be exiled. In *Plender* on "*International Migration Law*" 2nd ed 1988 p133, it is said that "*The principle that every State must admit its own nationals to its territory is accepted so widely that its existence as a rule of law is virtually beyond dispute*". But he also considers who can enforce that right, whether it is the expelling state or the individual and whether it is the enforcement of a right at international law which requires the domestic law to have incorporated the principle of international law. He does not set it out as a principle of common law in the UK which can only be removed by specific legislation; that may be the position but the quote relied on by Mr Allen does not support his proposition read in context. In *Van Duyn v Home Office* [1974] ECR I 1337 at p1351, the European Court of Justice remarked, in relation to its approach to the free movement of workers and public policy within the Treaty of Rome, that "*Furthermore, it is a principle of international law ... that a state is precluded from refusing its own nationals the right of entry or residence*".

375. Mr Allen then made the very broad submission that such rules of international law were incorporated into English law without Act of Parliament being necessary even though Protocol 4 of the ECHR had not been ratified. I have referred to this earlier. Mr Allen relied upon the analysis of the doctrines of incorporation or transformation of international law by Lord Denning MR in *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529 553. The case concerned the developing international law to cope with the commercial activities of state bodies which might enjoy state immunity. Lord Denning took the view that international law was incorporated into domestic law unless it was in conflict with statutory provision; his change of view since Thakrar was to enable domestic law to respond to changes in international law rather than it being bound by the interpretation of international law upon a particular point when it was first decided, if international law had later evolved. Domestic law could evolve as the incorporated international law evolved. It may be that Mr Allen has put somewhat too broad an interpretation on *Trendtex* if he regards it as authority for the proposition that international law is enforceable without more by subject against Crown so long as no Act of Parliament is contravened.

376. Mr Allen also suggested that no Government could sever its connection with its citizens; it owed the obligations to them which reciprocated the duties and loyalties owed by them. But he appears also to have accepted that the state could sever that relationship, if it did so by lawful means.

377. He said that where there was a right, there was a remedy for its breach in tort citing *Ashby v White* [1703] 92 ER 126 at p134 and in what he called modern jurisprudence, *Neville v London Express Newspaper* [1919] AC 368 at p392 and 405. I am not sure how far this sort of general point can advance his case. The first case is the earliest in the line of authority which developed into misfeasance. The question in the second case was not whether a tort should be held to exist, nor was the conclusion that wherever loss was suffered through a wrong, a tort should be created so that damages could be awarded. If that were so, damages would be available routinely for administrative acts which were unlawful, but they are not. The question was whether in order to recover damages for the tort which existed, it was necessary to show specific loss. He said that there were analogies with other torts such as trespass to the person or to property. That may be so but tells against rather than for another tort to be recognised, after so many years of the developing law on exile, during which time it has never been the subject of any argument, that I was shown, that it was a tort. An additional reason why it was argued that it should be a tort was that it would provide a remedy for wrongs and in that way hold liable those who did wrong, maintain the obligations of those who wield power to wield for its lawful ends only and thus vindicate the rule of law in a civil society.

378. The fundamental reason why the existence of this tort is unarguable derives from the very nature of the tort. It does not rely on any allegation of trespass to person or property. It is not a tort of deceit or misfeasance. It is not a tort of false imprisonment or negligence. It is no more and no less than a particular example of a tort for unlawful administrative acts, attempted in the field of immigration. It would be of wide scope. There is no logical reason why it should not apply to any judicially reviewable error in a deportation or entry visa decision. If the justification is that the Government should be encouraged to act lawfully, that argument would apply to very many categories of case. It is difficult to see why one group of people should have the benefit of tortious protection from unlawful acts, on the basis of citizenship or nationality or "*belonging*" whereas others entitled to enter or to consideration should not. It has been clear for many years that an *ultra vires* act does not of itself give rise to tortious liability; *Three Rivers DC v Bank of England* (No 3), per Lord Steyn at p190 (AC) and at p1230 WLR citing other recent House of Lords authority.

379. Mr Allen put forward no reasons why those principles should not apply to this case. Accepting for present purposes that a citizen could not be exiled as a matter of common law, that provides no reason for a tort to be created. The remedy is by way of Judicial Review, and the difficulties in that respect faced by these Claimants do not afford a basis for creating a tort sounding in damages. There is no parallel in false imprisonment; this is false exclusion and there are no analogous cases such as exclusion from the highway or a public place. There is no parallel in any general tort because this tort can by its very nature only be committed by the state; it was not seriously suggested that a private landowner other than the state would not be able to exercise its private law rights so as to exclude an individual from a territory if it owned the necessary land.

380. Nor did Mr Allen seek to rely on any statutory duty which he said was breached and which might sound in damages within the limited categories set out in *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633. The Confirmation of the Charters, giving statutory effect to Magna Carta, was relied on by him to show how the common law had developed, not as the statute breach of which arguably founded a claim for damages. His references to international law do not directly assist. They create no individual rights. There was, contrary to what Mr Allen said, a relevant reservation to the ratification of the ICCPR 1966, which reserved the right not just to apply the Convention separately to each of the territories of the UK and Colonies, but also to apply such immigration legislation in each of its territories as it thought fit for those who did not have the right to enter or remain. This thus leaves open the question of who has such a right. I think that it is of some significance that Protocol Four of the ECHR has not been ratified. I do not find the concept of the "*belonger*" of real help. It is of significance where it is provided for in specific colonial legislation, but it

was not part of the BIOT local statutory provision.

381. Mr Allen also alleges that the tort comprises the obstruction or prevention of the return of those who were exiled or who left voluntarily but wish to return. By "obstruction", Mr Allen has in mind, at least, a breach of an obligation to assist in the return of those who left voluntarily. An omission in that respect is said to be tortious. The indissoluble bonds of citizenship and the governing obligations imposed such a duty. This is untenable. There is no duty to provide transport, employment, the wherewithal to sustain life or accommodation and a refusal to do so cannot be tortious. There can be no obligation, still less a tort if it is breached, to make private land available. I have already dealt with the prevention of return on the facts, but there is no better justification for prevention of return being part of a tort of exile than there is for obstruction.

382. There can be no tortious liability for enacting the 1971 Immigration Ordinance, nor for enacting the property acquisition Ordinance which enabled the Crown to acquire the private rights which it then exercised. There can be no tort of exile in relation to the enforced move of islanders from one island to another; there is no possible right to stay on one particular island unless that particular island itself is the relevant territory of citizenship. There is no basis for arguing that there is any right, in principle, for the Chagossians who lived on Diego Garcia not to be removed from Diego Garcia to another BIOT island, let alone to another island within the Chagos Archipelago. If there is a right not to be exiled, and a right to return, it can only apply to BIOT and not to Chagos, let alone to every island within the Archipelago. None of the law relied on by Mr Allen would support such a right. It is a commonplace for people to have to leave the area in which they live because of Government proposals. Here the Claimants can only succeed in relation to the removals from Diego Garcia, because the move from Diego Garcia to another BIOT island was temporary and the other islands were closed as a consequence of the effects of the defence proposals. Much of the pleading of this tort is designed to promote such a right and to apply it to the other islands individually. (There is some evidence that the islanders regarded themselves as residents of one particular island rather than as residents of the whole Archipelago.) It is also designed to counter the effect of the 2000 Immigration Ordinance which permits return to Peros Banhos and Salomon, and which puts an end to any argument about the tort continuing. One can see how this is important to the Claimants but that is not the point in law. It is reflected in a pleading which makes no distinction between those who left the Chagos before the creation of BIOT, those who were born there, and those who were born on Mauritius and have never been there.

383. The tort does not arguably exist.

Property and rights under the Constitution of Mauritius

384. These two heads of claim did not entirely overlap but as most of the relevant argument in relation to the Mauritius Constitution concerned property rights it is convenient to deal with them all here. Once again, the pleadings, at the third attempt in the Re-Amended Particulars of Claim, do not contain all the allegations raised by the Claimants' submissions. I shall deal first with those which are raised by the pleadings. The other points could be the subject of a further amendment.

385. The property case as pleaded is that the Chagossians acquired ownership of the land which they occupied by prescription or succession under the French Civil Code which was applicable in Mauritius and hence in its Chagos Dependency both before the creation of BIOT and in 1967 when the land was acquired from the Chagos Agalega Company Limited. This required thirty years occupation of the land but that did not have to be by the same person for the whole period. Once acquired, those rights were capable of being transferred or inherited. The Chagossians did the acts of an owner, such as building a house or growing crops, with the intent that they should be owners. All this was manifest and uninterrupted. The rights thus acquired entitled them to enjoy, exploit and to alienate the land. The rights were not acquired over Crown land; and it must follow that the claim is that they were acquired over the private land of the plantation company. I say this because although there is some land on Diego Garcia, at least, which was not in the

freehold ownership of the plantation company, that land was thought to be Crown land, and the land which the company did own covered on any view the main areas where houses were to be found. No other private owner has even been hinted at as the person against whom this acquisition by prescription has occurred.

386. There are obvious problems in the way of this as the source for some of the general assertions about the rights of Chagossians and of the wrongs which it is said, but not pleaded, were done by the passing of the relevant legislation and by the acquisition of the land from the Chagos Agalega Company Limited. The right asserted is not one which is confined to someone who was born on the islands but could apply to the last occupier in the thirty year period, who could have been a contract worker. There are many Chagossians who might not have lived in a house which had been erected for thirty years. The latest point at which someone's house would have had to be erected on Chagos, in order to take advantage of this argument, is 1937 because, if by 1967 the right had not accrued, there would have been no right which it could have been said the relevant legislation and purchase improperly removed. No witness gave evidence that there was any such property although Mr Marcel Moulinie said that when he arrived in 1965, he had understood that some houses had been lived in by generations of Chagossians. But from the evidence as to how the houses were built, it is plain that in the years about which the witnesses spoke, many Chagossians built the houses in which they lived far more recently than 1937. Indeed, no person at all is identified as enjoying a right so acquired. The questionnaire which is supposed to be part of the Particulars of Claim is quite incapable, except by happenstance, of identifying any person who could claim to be the beneficiary of the right as pleaded. The actual evidence given revealed the difficulty of statements attributing legal concepts of ownership, possession and occupation to those who naturally say in respect of where they live, that that is their house. Their claims were not supported by Mr Marcel Moulinie who denied that they owned any land. In the *Bancoult* case, Laws LJ said at paragraph 7 that no Ilois enjoyed property rights in any of the land but he did not have the advantage of the current pleading or evidence. I do not consider that I can at this stage hold that it is not reasonably possible that such a claim could be made out and Mr Howell did not press its unlikelihood. So I shall proceed on that basis. Nonetheless, the very weakness of the evidence to support the claim is relevant to the assertion that there was any knowledge of or reckless indifference to illegality or that the legislation was enacted or used to acquire land in a manner which was designed to defeat the property rights of Chagossians.

387. The unpleaded allegations are, first, that the Acquisition of Land for Public Purposes (Private Treaty) Ordinance 1967 No 2 was *ultra vires* the BIOT Order, as was the subsequent acquisition because the Ordinance and the acquisition had been undertaken for the purpose at least in part of depopulating the islands. The logic of the *Bancoult* case, in relation to the Immigration Ordinance, meant that other legislation with the same purpose was likewise unlawful. Second, the Ordinance was unlawful because it contained no provision for notifying those Chagossians in apparent possession that their rights were to be over-reached into compensation, they had no means of challenging the lawfulness of the acquisition or of disputing the amount of compensation due or the portion which they might receive or even of knowing that any was available to be claimed. This was closely related to the submissions made about the Mauritius Constitution.

388. The pleading in relation to the Constitution was to the effect that the Mauritius (Constitution) Order 1964, an Order in Council, was part of the law of BIOT and that the fundamental rights which it contained were infringed by the actions of the Defendants. The rights relied on are property related save for the right to protection from inhumane treatment. The pleading is seriously deficient as it contains no particulars of any act relied on as constituting a breach of any of those rights; if the action were to proceed, the allegation should specify what acts are relied on under each head. At present, the best that can be said is that I have from the submissions some sort of sense of what the Claimants are driving at in relation to property and I assume that everything from the fact and manner of evacuation, the journey and the lack of reception or assistance in Mauritius is encompassed by the allegation of inhuman treatment. These allegations were said to encompass torts, unpleaded, which included trespass and conversion, which were torts by BIOT law and under English law.

389. I shall deal first with the pleaded property case on the basis that a Claimant might be found with the arguable real property interest. Mr Howell relied on a sequence of Ordinances to show that any property rights which the Chagossians might have had were extinguished. First, the Private Treaty Ordinance of 1967 provided in section 3 as follows:

"Whenever the Commissioner is satisfied that it is necessary or expedient to acquire on behalf of the Crown any land in the Territory for any purpose which in the opinion of the Commissioner is a public purpose he may, if the owner or apparent owner agrees to sell such land at the price offered by the Commissioner, acquire such land in accordance with the provisions of this Ordinance."

390. "Public purpose":

"... includes the provision of defence and other necessary facilities for or on behalf of the United Kingdom Government or for or on behalf of any Commonwealth or foreign Government with which the United Kingdom has agreed to the provision of such facilities."

391. Section 7 stated:

"A declaration in the instrument of acquisition that it was necessary or expedient to acquire the land for a public purpose or that the purpose for which the land was acquired is or was a public purpose shall be conclusive proof of the matters stated herein."

392. Section 5 provided for the vesting of the land in the Crown free of any other interests, and section 6 for those interests which thus extinguished to be related to the price paid; in effect they were over-reached into the purchase price. They stated:

"5. The land described in the Schedule of the instrument of acquisition shall ... vest absolutely and irrevocably in the Crown free from any mortgages, charges, interests or rights whatsoever of any interested party, except as may have been specially reserved in the aforesaid instrument.

6. (1) The rights, interests, charges or mortgages of any interested party in or over the land thus acquired shall, upon such land vesting in the Crown, be related to the price stated in the instrument of acquisition which shall be deemed for all purposes to be the price agreed upon between the Commissioner and the owner or apparent owner of the land so acquired."

393. An "*interested party*" and "*owner*" were defined as follows:

"*Interested party*' means any person being an owner or co-owner of land the subject of acquisition under this Ordinance or having any right, beneficial interest, charge or mortgage in or over such land.

'Owner' includes a lessee, a usufructuary or any other person having a beneficial interest in the land."

394. Mr Howell's simple submission was that that vested land free of any other rights and so the Chagossians had no property rights thereafter. They had been extinguished insofar as they had had any in the first place. As a simple matter of statutory construction, I accept that is unanswerable. The claim related only to the price to which others could look to the vendor. If there had been any acquisition by prescription, the owner would have been an "*interested person*" within the definition of that word. The contrary was not argued.

395. Mr Taylor for the Claimants in response first pointed out that there was some land on Diego Garcia which did not belong to the vendor, Chagos Agalega Company Limited, at all. Without investigating title in any depth, this appears to be well-founded but unimportant in this context, for the areas which it did own were the areas of residence of the Ilois; they were the settlements round the coconut plantations and copra production areas. No-one has suggested that there was any other private freehold owner. The Crown already owned some land. The instrument of acquisition dated 3rd April 1967, (3/28), referred in the Schedule to what was conveyed as being the islands of Diego Garcia, Peros Banhos and Salomon and two other groups together with all buildings, rights and interests whatsoever. Any other land would have been acquired from the other owner anyway, under the same instrument, but no other owner has come forward to assert any title.

396. Mr Taylor next said that this instrument of acquisition meant that land vested, without notice to anyone in apparent possession as he said the Chagossians were, whereupon the interests became interests only in a purchase price which was distributed through a rapid procedure of which the Chagossians had no notice. He contrasted this with the notice provisions in the Compulsory Purchase Ordinance 1967 No 1. Notice had to be given to "*the owner or person in apparent possession*". Any "*interested person*" could then claim a higher price than that stated in the notice of acquisition and any dispute could go to arbitration. The Commissioner could then decide whether to proceed with the acquisition, if that were the price which he had to pay, and if he did so, the rights acquired would then relate to the purchase price in the same way. The relevant expressions were defined in the same way in both Ordinances. He suggested that the Private Treaty Ordinance had been enacted in bad faith to avoid these provisions in the Compulsory Purchase Ordinance. This was *ad hominem* legislation directed at the islanders.

397. There is no evidence to support that at all. It is commonplace to have the two powers. There is no legal obligation to proceed by one route as opposed to another. The legality of the purchase could have been challenged but never has been until now. There is a suggestion in the documents that it was seen as an advantage in the Private Treaty Ordinance to include some provisions from the Compulsory Purchase Ordinance. These appear to relate to the clearing of other interests off the title acquired. There is nothing at all to suggest that it was intended to avoid giving notice to any Chagossians. There is nothing to suggest that anyone thought that they might have any rights of possession at all; Mr Moulinie did not think that they did. It is perfectly clear that workers, even if there for many generations, can occupy property simply as service occupiers for the better performance of their duties. There is no contemporaneous evidence from any source that suggests that anyone thought the position was otherwise. There is no evidence of anyone erecting a house without the company's assistance to him as its worker. It is just simpler in those circumstances to proceed by private treaty. Moreover, occupation is not possession. If notice had to be given under the Compulsory Purchase Ordinance to the owner "*or person in apparent possession*", there is no basis for supposing that notice would have been given to anyone other than Chagos Agalega Company Limited; just as with the Private Treaty Ordinance, the agreement was with the owner "*or apparent owner*" looking at the definitions. I do not think that there is a difference in meaning in the two expressions or in the people to whom they might be applied. If the owner differed from the person in apparent possession, there was no obligation to give notice to more than one.

398. Mr Howell's first statutory provision clearly disposes of the claim.

399. The second statutory provision upon which Mr Howell relied was the Acquisition of Land for Public

Purposes (Repeal) Ordinance 1983. This provided:

"Whereas all land in the Territory is Crown Land, the Compulsory Acquisition of Land for Public Purposes Ordinance 1967 and the Acquisition of Land for Public Purposes (Private Treaty) Ordinance 1967 are repealed, and it is hereby confirmed and declared that all land in the Territory is Crown Land."

400. The confirmation and declaration do not just have the effect of putting beyond doubt the effect of the repeal of the Acquisition Ordinances. Mr Taylor submitted that this could not add anything to the position which had already been arrived at. But, in my judgment, if "confirmed" adds nothing, it is quite clear that "declared" does. I can see no way round the construction which Mr Howell seeks to put upon this Ordinance. In *Winfat Enterprise (Hong Kong) Co Ltd v Attorney -General of Hong Kong* [1985] AC 733 PC, the effect of similar language in the New Territories Land Court Ordinance 1900 was considered. Section 15 of it provided: "*All land in the New Territories is hereby declared to be the property of the Crown ...*". It deemed the occupiers to be trespassers unless their occupation was authorised by the Crown. This replaced Chinese customary tenure, which was assignable and heritable. One of the issues in the case was whether that customary interest survived so that a developer whose land was being acquired for a price below its market value, could rely on it. It was held that the land vested in the Crown under that wide declaratory power. The effect of the BIOT Repeal Ordinance is thus unarguably to remove any Chagosian property rights which had survived the acquisition of land from Chagos Agalega Company Limited. If there were any surviving interests over the intervening fifteen years from the acquisition, and no claim had come forward, they were thus ended. More than twelve years had elapsed since the evacuation of Diego Garcia anyway, when the land was fully possessed by others.

401. Mr Taylor submitted that these two acquisition Ordinances were ineffective because they did not comply with the Royal Instructions to the Commissioner as to how he should legislate. He argued that they did not comply with sections 4(2) or 5(7). These provide:

"4. In the enacting of laws the Commissioner shall observe, so far as is practicable, the following rules:

(2) Matters having no proper relation to each other shall not be provided for by the same Ordinance: no Ordinance shall contain anything foreign to what the title of the Ordinance imports ...

5. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes ...

(7) Any Ordinance of an extraordinary nature and importance whereby Our prerogative, or the rights of property of Our subjects not residing in the British Indian Ocean Territory, or the trade, transport or communications of any part of Our dominions or any territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced."

402. He said that the former was breached because the one Ordinance made provision for both acquisition and for the consequences of acquisition; the latter was breached because of the severe effects which the 1983 Ordinance had on the rights of the individuals who were not resident in BIOT. As to the former, I conclude that there is nothing which arguably breaches the Royal Instructions; the two matters relate to each other and are sensibly included in the one Ordinance, the title of which is apt to cover its total content. An

extinguishment provision upon an acquisition for a public purpose is not unexpected. But, even if there had been a breach of the Instructions, that does not invalidate the Ordinances by virtue of section 4 of the Colonial Laws Validity Act 1865, which provides:

"No colonial law passed with the concurrence of or assented to by the governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorising such governor to concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last-mentioned instrument."

403. The BIOT Order itself provides, in section 11(2) and following, for the Sovereign to disallow legislation and She has not done so. As to the latter asserted breach, the same two points apply. In addition, any acquisition made in this tidying up provision, is no more than a tidying up acquisition where the principal power has been exercised or was thought to have been and where there were not thought to have been rights outstanding anyway.

404. The third Ordinance upon which Mr Howell relied was the Courts Ordinance 1983 No 3 in force from 1st February 1984. Section 3(1), (3) and (4) provide as follows:

"3. (1) Subject to and so far as it is not inconsistent with any specific law for the time being in force in the Territory and subject to subsections (3) and (4) of this section and to section 4, the law to be applied as part of the law of the Territory shall be the law of England as from time to time in force in England and the rules of equity as from time to time applied in England:

Provided that the said law of England shall apply in the Territory only so far as it is applicable and suitable to local circumstances, and shall be construed with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

(3) Subject to subsection (4) of this section, no enactment, rule of law or any other part of the law of Mauritius or Seychelles shall form part of the laws of the Territory after the appointed day, except to the extent that any such enactment, rule of law or part of such law may have been applied to the Territory by a law made by the Commissioner after the appointed day under section 9 of the British Indian Ocean Territory Order 1976 or any corresponding provision superseding that section.

(4) In any proceedings commenced before the appointed day, the law to be applied shall be the law in force immediately before the appointed day, unless all the parties to the proceedings agree that the law to be applied shall be as in subsections (1) to (3) of this section.

405. "*Specific law*" is defined as a law made under section 11 of the BIOT Order or its replacement in 1976, when the Seychelles islands were returned to the Seychelles, and an applicable UK Act or statutory instrument.

406. Mr Howell submitted that the effect of this was to disapply the Mauritian civil property law upon which the Claimants relied and hence to remove any rights which they may have had. (I accept that it is reasonably arguable that the "*rules of law*" in section 15 of the BIOT Order, below, is a phrase wide enough to include

the common law or equitable principles which would be invoked as substitutes for the disapplied provisions of the Civil Code under which the Claimants might have enjoyed property rights.) This is too ambitious a submission at any rate for this stage of proceedings. Section 11 of the Interpretation and General Clauses Ordinance 1981 No 4 prevents the repeal of any local enactment affecting any right previously acquired under any enactment. Mr Taylor relied upon this provision and it may be that the Civil Code of Mauritius falls into that category. But I consider the stronger point to be that section 3 is inapt, arguably, to remove rights at all. If, despite the two Ordinances which were already effective, some property right had survived, I do not read section 3 as removing it. It would have to be transformed instead into something recognisable in English law, but subject to the permitted local variations which would give ample scope for adaptation. It does mean that any pleaded right would have to be couched in perhaps different language from that of the Civil Code but I have no difficulty in seeing that something could be pleaded. However, that still leaves intact Mr Howell's two earlier and better points, which are conclusive as to property rights subject to the effect of the Mauritius Constitution.

407. I now turn to the asserted application of the Mauritius Constitution which was relied on as a source of rights and to defeat the position in which the two Ordinances showed the Claimants clearly to be, in relation to property rights. Mr Taylor relied on the rights set out in the Schedule to the Mauritius (Constitution) Order 1964. It is the Schedule which contains the Constitution. The first Chapter contains the fundamental rights which represent the Claimants' primary target for inclusion in the BIOT legislative canon but, surprisingly, they did not limit their case to that part and said that other parts might also be included. Those other parts include Chapters dealing with the setting up of the legislature in Mauritius, the Council of Ministers, the judiciary, the public service and the Governor. I regard the inclusion of those parts, other than Chapter 1, in the BIOT legislation as nonsense. It would be wholly inconsistent with the BIOT Order.

408. The rights relied on from Chapter 1 are as follows:

"1. It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist ... each and all of the following human rights and fundamental freedoms, namely -

(c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation.

and the provisions of this Chapter shall have the effect for the purpose of affording protection to the said rights and freedoms subject of such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

6. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say - ...

(b) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition -

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by the government of Mauritius.

7. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required -

(a) in the interests of defence, ...

14. (1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 1 to 13 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may also apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section."

409. Mr Taylor submitted that these fundamental rights applied in the Chagos immediately before BIOT was created. It should not be assumed, without clear words, that the legislative structure of the new colony was designed to remove those rights, which the islanders had enjoyed hitherto. Although there might be power to do that when a colony was granted independence, as the case of *Liyanage v The Queen* [1967] 1 AC 259 PC showed in relation to the independence of Ceylon and fundamental rights to a fair trial, that had no application to the creation of a new colony, especially when the territory had already enjoyed those rights. The BIOT Order should be construed accordingly. Accordingly, those rights were still enjoyed when the acquisition Ordinances were enacted, when the actual acquisitions took place and when the population was removed.

410. Mr Howell relied upon the wording of the BIOT Order. He also pointed out that Laws LJ in *Bancoult* had held that there was no written constitution embodying fundamental rights for BIOT; paragraph 43. I do not find the latter point conclusive in the light of the more extensive arguments which Mr Taylor has provided, a

team overlap notwithstanding. Each side before me has relied on and taken issue with what was said in that case on a variety of issues. Whilst *Bancoult* can make something arguable, I am not disposed to accept it as making anything unarguable as far as the Claimants are concerned.

411. The relevant provisions of the BIOT Order are as follows:

"5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him, and subject to the provisions of this Order and any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such a manner as the Commissioner may direct.

15. (1) Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.

(2) In this section 'enactments' includes any instruments having the force of law."

412. Section 18 of the Order is also important. It alters the Mauritius Constitution by deleting from the definition of Mauritius in section 90, as from the creation of BIOT, those Mauritius Dependencies which became part of BIOT.

413. Mr Howell argued that the Mauritius Constitution had no application at all in BIOT. His first contention relied upon the geographical extent of "*Mauritius*" as redefined by the BIOT Order. If section 1 of Chapter 1 was indeed part of the BIOT legislation, it was immediately disappplied by its own terms because it only applied to Mauritius. It did not matter what had been the position immediately before the creation of BIOT, because the continued application of the Mauritius Constitution rendered it inapplicable on its own terms. It only declared rights to exist in Mauritius and therefore by necessary application of the definition of "*Mauritius*" did not declare those rights in BIOT. Mr Taylor submitted that section 15 of the BIOT Order permitted that wording to be adapted to meet the position in BIOT by treating "*Mauritius*" as being BIOT or as the Mauritius part of BIOT. I was not wholly persuaded by Mr Howell's argument on this in isolation though there is force in it. It needs to be considered with other points to see if the Claimants' case is not reasonably arguable. I say that because the alteration to the Mauritius Constitution was obviously necessary to limit its future geographical application, and although it may be a pointer as to what was intended in BIOT, that has to be considered also against the pre-existing rights enjoyed in the Chagos.

414. To Mr Taylor what primarily mattered was the fact that the rights had been enjoyed in Chagos immediately before the creation of BIOT. It is upon the words of section 15 that the Claimants rely. That depends upon the meaning given to "*enactments and rules of law*". "*Enactments*" is defined as including "*instruments having the force of law*". The Constitution, submitted the Claimants, was one such instrument or enactment. There was no need to give the word a narrow meaning as contended for by the Defendants which would confine it to Acts of Parliament or a broader meaning which extended only to secondary

legislation in addition. The significance of previously enjoyed fundamental rights was important here. Mr Taylor referred to *R v Conway* 1943 EDL 215, Gutsche J, who described "enactment" as a wide and general word; but however wide he said was its ambit, he did not suggest that it covered a constitutional Order in Council. Mr Howell found support in *Rathbone v Bundock* [1962] 2 QB 260 D Ct 273. This held, in the different context of road traffic regulation, that unless extended to statutory instruments expressly, "enactment" meant an Act of Parliament. I did not find that compelling in view of its very different context and the fact that, as in *Conway*, the issue here was not considered.

415. No resolution is to be found in the Interpretation and General Clauses Ordinance 1981, though in it "*Imperial*" or "*United Kingdom enactment*", to which the Ordinance does not apply, includes any Order in Council.

416. Notwithstanding the absence of decisive authority, (although what there is tends to support Mr Howell), I do not regard the position as doubtful. The phrase has to be construed in context. The BIOT Order was the Constitution for BIOT. It provided for a new colony, drawn from both the Seychelles and Mauritius. Its creation had a purpose. Mauritius was redefined by the BIOT Order so as to exclude BIOT from the Mauritius Constitution. It would be very odd if by the sideward of the general incorporation of existing laws from the two colonies from which the islands had been detached, BIOT had incorporated a part of the Constitution of one colony from which it was being detached, and had provided for fundamental rights to be enjoyed only by those who were in the former Mauritius part. This is the importance of the definition of "*Mauritius*". It confirms what is clear enough from the other factors in the interpretative matrix. When Mr Howell's first point is joined to these others, it seems to me incontestable that the Mauritius Constitution was not incorporated. It is not controverted by authority or interpretative provision.

417. I recognise what Mr Taylor says about fundamental rights but that does not seem to me to be an argument of any real force in the light of those other factors. Had their incorporation been intended, there would have been an express incorporation or listing of the rights to be enjoyed. His distinction between what can be done upon the independence of a colony and upon the creation of a new colony is unsupported by any reason. I see no reason in law why there should be any difference; the rights created depend upon the way in which the sovereign power is exercised and that can deliver what Laws LJ described in *Bancoult* as "*wintry asperity*" instead of the benignity hitherto enjoyed if the sovereign power so wishes and can do so politically. It may be brutal but the context of the legislation shows that the preservation of fundamental rights, and in one part of BIOT only, was not a legislative objective. I do not consider that the phrase "*rules of law*" is apt to cover the constitutionally derived rights upon which Mr Taylor relies.

418. Even if Mr Taylor were right, I do not see how that would avail his property rights arguments. If the Ordinances are otherwise valid, they would take precedence over any such rights as were preserved by the incorporation of part of the Mauritius Constitution. The Claimants' argument is that the rights in question are within the scope of section 15 of the Order and it is that which enables them to be preserved as an enactment. But it is clear from the terms of section 15 that it does not entrench them as rights which cannot be overridden or as rights against which the constitutionality or validity of Ordinances has to be measured. Accordingly, by virtue of section 15 (1), they can be repealed or modified by legislation passed under section 11 for the "*peace, order and good government*" of BIOT or passed under other lawful authority. I regard Mr Taylor's argument that an Ordinance could only have the effect of overriding existing law under section 15 if it expressly said so, as an understandable but untenable attempt to interpret section 15 as some half effective entrenching provision. It could only require clear words as to the legislative effect intended and there is no doubt about that in the Ordinances. If the Ordinances do conflict with any provisions of the constitution, their language is clear enough to enable them to override those constitutional provisions. I do not accept that the effect of section 3 of the Private Treaty Ordinance is to require all actual owners of all interests to agree to the sale of property; that is wholly contrary to the rest of the provisions of the Ordinance, including the overreaching provisions. Mr Howell pointed out that in *Winfat Enterprises*, above, the Crown Lands Resumption Ordinance was made under the power in the New Territories Order to make laws for the "

peace, order and good government" of the Territories. That was held to permit the acquisition of land at a price which ignored the development value of the land, even though the Peking Convention, under which the New Territories were leased, forbade expropriation and required a fair price to be paid for land acquired. Unless an attack can be mounted on the legislation in question as not being within section 11, that legislation could remove property rights without compensation or compliance with other provisions of the Mauritius Constitution. There is no English law to which the Ordinance has been shown to be repugnant in the sense of section 2 of the Colonial Laws Validity Act.

419. Mr Howell further submitted that it would be very difficult for the Court to give effect to the Mauritius Constitution, even if somehow it were incorporated into BIOT legislation as entrenched rights. The rights are subject to the limitations set out in the Constitution. First, the right in section 6 was not breached nor that in section 1 because what happened was legislative extinction of title with the interest overreached into the purchase money. Section 1 dealt with deprivation of property and section 6 dealt with compulsory purchase; neither dealt with legislative extinction of title with a provision for overreaching into the purchase price; *La Compagnie Sucriere v Government of Mauritius* 1995 (3) LRC 494 PC. As a matter of dry legal analysis that is clearly correct. The Claimants might however have been able to make something of the manner in which the payments were made, to say that this was in reality a deprivation of property and that the availability of knowledge as to the acquisition and possible share of the purchase money was so limited as to amount to deprivation without compensation. But it is difficult to see how that would invalidate the legislation itself. Second, section 6 permits compulsory acquisition in the interests of defence; unless the defence interests of the UK and her Colonies are irrelevant, and the only relevant defence interest is that of BIOT itself, which was not suggested by Mr Allen, it is difficult to see how the Court could be in a position to assess the nature and extent of the defence needs, national security and foreign policy against the interests of the islanders. The only argument was that the UK had balanced the interests in a way which was unlawful because of the interests of the islanders which were completely overridden. However, that might go to the vires of the legislation and whether the appropriate compensation procedures had been emplaced and followed through. If the Claimants had overcome the many hurdles to establish an entrenched right in BIOT to the benefit of the property provisions of the Mauritius Constitution, it is arguable that they were breached, but I do not see that they can achieve the necessary steps on the way.

420. There was some argument about the role of double actionability in relation to the Claimants' reliance upon the incorporated parts of the Mauritius Constitution, to the extent that it had been incorporated. Mr Howell launched the argument as yet another reason why the Claimants' case was hopeless. Part of the problem of analysis arises from the rather poor pleading which underlies this part of the case. If it is said that acts were done which were torts recognisable as such both in English law and in BIOT law, that meets the requirements of the principle of double actionability in tort and the Constitution is irrelevant. On that basis there is no need at all to examine the double actionability rule, even before the coming into force of the Private International Law (Miscellaneous Provisions) Act 1995 on 1st May 1996, which removes the double actionability rule in relation to acts done after that date. None of the acts relied on in relation to the property rights arise after 1996, and there are no pleaded acts in relation to inhuman treatment which arise after that date, or none which are not already pleaded in relation to other torts. For example, part of Mr Taylor's argument was that there had been a conversion of or trespass to the Claimants' property. But that raises no double actionability issue.

421. If it is said that there is a cause of action based directly upon the parts of the Constitution which were allegedly incorporated into BIOT law, that is not an action in tort, and since it is to torts alone to which the double actionability rule applies, its disapplication under the principles in *Red Sea Insurance Co v Bouygues SA* [1995] 1 AC 190, 197-200 does not arise. It appears, despite some of the submissions, that this is the Claimants' point and that it includes an argument that section 14 of the Mauritius Constitution was also incorporated into BIOT law, providing a direct means for enforcing those rights. If it had been, which it has not, there might have been a case for the direct enforcement of those rights through the English Courts, if the relevant property legislation did not override the property related rights including privacy here. I refer to enforcement through the English Courts rather than the BIOT Courts because the Defendants do not seek to

take jurisdictional points and are prepared at present for the English Courts to be regarded as having the same powers as the BIOT Court. Jurisdiction, which is absent, cannot be created by consent but at this stage, that is no adequate reason for holding against the Claimants.

422. If the enforcement of rights said to be derived from the incorporation of the Mauritius Constitution is by way of an action for damages for tort, rather than directly, such a claim in the English Courts would infringe the principle of double actionability. There was and at present still is no cause of action in tort for breach of privacy or for taking property under statutory authority, if it clearly so provides, without compensation. An action in trespass in theory would satisfy the double actionability rule, but the alleged breach of the Constitution is not arguably the same as the tort of trespass. There is no tort as such of subjecting someone to inhuman treatment; it may constitute other recognised torts, in which case double actionability is satisfied but there is no pleading of any such tort or reference to the facts upon which it might be based. There is no tort of breaching a constitutional right.

423. Mr Allen submitted that it was inconsistent with the Defendants' position that it was not taking any forum or jurisdiction point, for the Defendants to argue that the tort must be doubly actionable in order to found the applicable law upon which the Claimants rely, in the forum in which they seek to contest matters. The choice of law is not a jurisdictional point. The Claimants relied on the *Red Sea* case and *Pearce v Ove Arup Partnership* [2000] Ch D 402 CA. These are two authorities relevant to the contentions that there are exceptions to the rule of double actionability in certain circumstances, in which the law of the place where the wrong was done could be enforced by the Court dealing with the case, even where there was no comparable tort in that country. At this stage, I would not regard it as impossible for the exception to be made out if the torts existed in BIOT law; the problem lies with the inclusion of the rights in the first place.

424. I turn to the unpleaded argument that the Private Treaty Ordinance was outside the powers of section 11 of the BIOT Order because it was not made for the "*peace, order and good government*" of the territory. This argument proceeds by way of analogy with the Immigration Ordinance 1971 and the reasoning of the *Bancoult* decision. The purpose of the Ordinance and of the consequential acquisition of land from Chagos Agalega Company Limited was in part the legitimate one, on the Claimants' case, of providing for a defence facility for the UK and the USA. But it was also in part for the illegitimate purpose of removing the population of BIOT whether as an end in itself or as a means to the achievement of the particular defence facilities actually provided. However powerful a case could be made for the UK's defence interests, section 11 did not provide such an enabling power. On the *Bancoult* reasoning, this was not a matter of balance between the competing interests for the Commissioner to decide, but rather the Commissioner simply lacked the power to enact legislation under section 11 which was not in the interests of the people who were to be governed, regardless of the strength of the competing defence and foreign policy interests. The Private Treaty Ordinance was invalid, the acquisition of land under it and the consequential extinction of title was either ineffective or sounded in damages for trespass or conversion of real and personal property. The Compulsory Purchase Ordinance was likewise ineffective.

425. The Claimants' position was that the defence interests were a relevant matter for the colonial power to take into account but that it could not allow them to override the interests of the inhabitants or belongings of BIOT. The Claimants accept that the acquisition of land for the defence purposes of the UK is a legitimate purpose for the exercise of section 11 powers but with a limit on the extent to which the interests of the population can be affected. At this stage, the point being made by the Divisional Court as to the extent of the powers available under section 11, namely that those who represent the established population cannot be removed through the use of section 11 legislation, must be reasonably arguable, however persuasive Mr Howell's contrary arguments and whatever the possible extent to which the legal analysis was affected by an erroneous factual premise about the evacuations.

426. On a narrower basis, Mr Howell argued that the stated objective of the Private Treaty Ordinance, to permit the acquisition of land to give effect to the defence needs of the UK or other allied governments, falls

within section 11 as providing a perfectly good reason for the acquisition of private land. The Claimants' argument was unsound because it posited that there was some obligation on the Commissioner to prevent a private land owner exercising his powers if that had the effect of removing the population. If there were some limit on the powers of acquisition, how much private land had to be left, for whom and why, when they had no right to reside there? The Government should not be in a worse position when exercising its powers to acquire and use land for a public purpose. There was no purpose, behind the legislation or the land acquisition, of removing the population but it would not have been unlawful if it had been part of the purpose to remove people from part of BIOT, Diego Garcia, to another part, as happened. A distinction should be drawn, in any event between the Ordinance and the acquisition which were perfectly lawful, and any unlawfulness associated with the removal of all the population which is what offended in *Bancoult*. Finally, any unlawfulness in the Ordinance or in the acquisition could not now affect the ownership or the lease subsequently granted to the US or the extinction of title.

427. I take the view that what is reasonably arguable in this context has been settled by *Bancoult*, whatever may be the position after all the argument as to what the true ratio is and whether it is right in what it says, as I have discussed earlier. I do regard it as reasonably arguable that one purpose behind the land acquisition was to enable private land owning powers to be used, if necessary, to remove the whole population, even though that was not the prime aim in 1967. The memo of 25th February 1966, (4/179), (A62) from the Colonial Secretary to the BIOT Commissioner illustrates the point. It was moreover landowning powers which it is quite clear were used to remove the people who were removed. This is reasonably arguably not a case where powers to remove were taken but not used and powers taken for another purpose, entirely or substantially, were the powers used. Following *Bancoult's* reasoning, it is not the removals alone which might be unlawful, it is the taking of the power to do achieve that.

428. I accept, however, Mr Howell's submission that any unlawfulness in the Ordinance could not now affect the effectiveness of the acquisition, the lease granted to the US or the extinction of any title, Chagos Agalega Company Limited's or a Claimant's. Too long has passed with no challenge being raised. A return to the previous position is not possible.

429. There are plainly delay and prejudice considerations of some magnitude which lie in the way of an application for judicial review to quash the Private Treaty Ordinance, not least because it was repealed in 1983. Its purpose in relation to the UK's defence interests was plain on its face and had been so for the 16 years before its repeal without any point being taken. Third party interests had intervened together with those of the defence and foreign policy interests of the UK and the US. This argument would involve quashing the 1983 Ordinance. I do not see the basis upon which that could be done. It does not appear either to have the same continuing effect as the 1971 Immigration Ordinance and its quashing would have to be accompanied by restitution of interests acquired long ago for it to have a direct effect on any claim to return. Any claim for damages for trespass which relied upon the possible unlawfulness of the Private Treaty Ordinance to remove a defence argument as to lawful authority, but which left intact the 1983 Ordinance, would be governed and defeated by the ordinary law relating to limitation. There is no basis for that aspect of the pleadings to be amended to raise a case which cannot succeed.

430. There is no arguable claim for damages in relation to property rights, whether arising under the rights said to be incorporated from the Mauritius Constitution or otherwise, nor for breach of any other fundamental rights so derived.

Negligence

431. This claim related solely to the conditions faced by the Chagossians upon their arrival in the Seychelles and in Mauritius after the evacuations and faced by those who were prevented from returning to Chagos after going to Mauritius for vacation, medical treatment or the like. It did not relate to the conditions

experienced on some of the voyages and indeed despite the evidence about them, there is no specific cause of action pleaded which relates to them. They might be relevant to any claim for aggravated damages.

432. The basis of the claim is that there was and is a duty to provide for the well-being of those Chagossians who were removed from or prevented from returning to Chagos and for their descendants. The pleading is unclear as to whether it covers those who left the Chagos voluntarily before the creation of BIOT, or indeed afterwards. No limit on the number of generations to whom this duty is owed is stated, though in their further closing submissions, the Claimants say that this means those who are entitled to British citizenship as a result of their connection with the Chagos under the British Overseas Territories Act 2002. That is of limited help in defining those to whom the duty was owed before that date. It appears from submissions and from the contention that this is a continuing tort and that a duty is owed in 2003 to the children and grandchildren of someone removed in 1971. It is not clear if those who are not living on Mauritius or the Seychelles are included. It is another piece of inadequately thought out pleading.

433. This duty continues so long as they suffer. The duty is to take reasonable steps to provide for their well-being, which includes housing, feeding, employment, healthcare, social needs and community facilities. It is a duty to take care of them. What was necessary was the wherewithal to lead a roughly comparable lifestyle to the one which they had enjoyed on the Chagos. Although the duty is said to be to take reasonable steps, the steps required are in fact those necessary to achieve that particular outcome; they involve the direct or indirect payment of money.

434. The source of this wide-ranging duty is the governmental obligation owed, the assumption of responsibility for them and the events to which they were subjected. Part of the unpledged background but which surfaced in submissions was the Defendants' knowledge that the Chagossians were illiterate, did not speak English, had no access to lawyers to assist in the enforcement of their rights and were made indigent by the acts of the Defendants. Another part was the allegation that the Defendants were the employers or paymasters of the Chagossians or in a closely analogous position. (The former is just wrong; the latter merely an inaccurate way of saying that the Defendants exercised control indirectly over many aspects of their lives, daily and in the longer term.) The Defendants were responsible for the creation of communities of Chagossians in Mauritius and in the Seychelles "*many of whom were compelled to live in conditions of abject poverty with no means of escape ...*". The assumption of responsibility was evidenced by the payment of some compensation under the 1982 Agreement. The pleadings point to the creation of BIOT, the acquisition of the land and the day to day control which the Defendants had over the plantations and over their long term future, and over the islanders and their long term future as well. It was the Defendants who decided to close the plantations and to evacuate the islands. The Defendants had accepted that there would be a resettlement obligation upon them.

435. The breach of duty, it was said, started with the initial failure to make adequate provision for those who were stranded on Mauritius and prevented from returning, and then for those who were evacuated from the Chagos. The pleading assumes that all left involuntarily or that it makes no difference to the liability of the Defendants. There is a continuing failure to make adequate provision for them. The pleading refers to the great poverty in which most have lived, with few of the amenities of life or adequate facilities in relation to jobs, healthcare, education and housing. This had been caused by the displacement from the Chagos with inadequate resettlement arrangements. Such facilities have never been provided and so there is a continuing failure. The Agreements of 1972 and 1982 did not discharge those obligations in fact and could not do so in law, as they were Agreements with a third party, the Government of Mauritius.

436. The full scope of this pleading cannot be appreciated without regard to the second revision to the draft Amended Reply on Limitation and Abuse, which accompanied the written closing submissions. This repeated a point made at an earlier stage that the negligence claim, and the other causes of action, should be seen as including a claim for damages for personal injuries. I would not have realised that just from reading the original Particulars of Claim. But in the proposed Re-Amended Particulars of Claim it is said that the personal

injuries included diseases linked to poverty and poor living conditions. These included malaria, stomach disorders, Hepatitis A, mental illness, suicide and drug addiction. These were caused by the Defendants' unspecified "wrongful acts" and by the poverty into which those acts cast the Claimants. It is not alleged that those personal injuries were reasonably foreseeable as a result of those acts. It is not clear, but I think it probable that there are two causes said to be at work, wrongful acts and poverty, which may act both separately or together. The pleaders excuse the vagueness about which individual Claimants have suffered from what injuries, on the grounds that these are only group Particulars. I am not at all persuaded by that. This claim came in as a means of dealing with a very obvious and potent limitation argument, so as to try to take advantage of section 33 of the Limitation Act 1980. It does not appear to have been thought of before then. None of the questions on the individual questionnaires relate directly to such a head of claim and they are part of the group Particulars. If the questionnaires had yielded the basis for such a head of claim, it would only have been by happenstance.

437. Mr Howell contended that the pleadings gave rise to no arguable case, first, by contending that no duty of the width contended for could arguably arise in negligence; in effect it was a matter for legislation. Mr Taylor supported the pleadings by the following submissions. Whether a duty of care arose was a fact-dependant question of law. It would be a startling result if there were no duty requiring reasonable conduct from the Defendants towards the Claimants, leaving the behaviour of unreasonable governments to be moderated only by Judicial Review. This claim did not depend upon it being established that any of the removals or the prevention of return was itself an unlawful act. The Defendants had control over the Claimants' destinies, took the decisions which led to their departures and to their being unable to return, and did so knowing that they would be harmed thereby. The Defendants accepted in many documents before and after the removals that they were responsible for the Claimants' resettlement. BIOT had been created with removals in mind. The Claimants had been "*hijacked*". That made it fair, just and reasonable that there should be a duty of care imposed on their relationship. The level of control, the governing obligations and the weakness of the Chagossians created a relationship of sufficient proximity. There was a duty to take reasonable steps to avoid harm to them. The Claimants asserted that their case was close in principle to the circumstances in which liability arose in *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004. The Home Office owed a duty of care to neighbouring owners to take reasonable steps to control the boys so as to avoid the manifest risk to their property if they did not do so. As Mr Howell correctly pointed out, the acts which the boys ought to have been inhibited from doing were unlawful acts. That decision is some distance away from this case.

438. Mr Taylor responded to Mr Howell's next submission that if there were any such duty, the discretionary or policy component was such that it could not be justiciable, by contending that the relevant decisions leading to the evacuation of the islands were unlawful, but that in any event, what was being complained of was not the removals as such but the lack of provision for those removed or prevented from returning. Anyone could see the scope for psychological or other harm. The governmental discretions exercised here were not of such a nature as to mean that the court would be substituting its views for those of the executive, in circumstances where it was Parliament's intention that the executive should make the decisions. Alternatively, this should be seen as an abuse of discretion.

439. Mr Howell had relied upon *X v Bedfordshire County Council* [1995] 2 AC 633 738h where Lord Browne-Wilkinson had held in relation to a statutory discretion, that a decision within it was not actionable at common law, and that a decision outside its ambit might be. The courts could not adjudicate on that ambit if the exercise of the discretion involved policy matters. So "*a common law duty of care in relation to the taking of decisions involving policy matters cannot exist*". Accordingly, for a decision in the exercise of a statutory discretion to be actionable at common law, it had to involve no element of policy matters, had to be outside the scope of the discretion, if that were justiciable, and then it had to be fair, just and reasonable for a duty of care to be imposed. Policy matters would include the allocation of resources and the determination of general policies. An allegation about the appropriate level of service for someone's needs might involve policy matters.

440. Mr Howell also relied on *Stovin v Wise* [1996] AC 923. It held that the minimum conditions for basing a duty of care on a statutory power were that there was in effect a public law duty to act and exceptional grounds for holding that the policy of the statute required compensation to be paid to those who suffered loss because the power was not exercised.

441. Mr Taylor responded with *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619. He rightly pointed out that there has been some qualification to the full breadth of what Lord Browne -Wilkinson said in X. Lord Slynn, at p653, held that the mere fact that an act was done within the ambit of a statutory discretion did not mean that no action at common law could arise from it. Whilst other conditions for tortious liability would have to be satisfied, it would only be non-justiciable if what had been done involved the weighing of competing public interests or was dictated by considerations upon which Parliament cannot have intended that the court should substitute its views for those of the executive. Lord Clyde, at p674, further stated that if what were done amounted to an abuse of the discretion because it was totally unreasonable, it too could be actionable.

442. Mr Taylor's primary case was that there had been no statutory power exercised when the resettlement provisions were being made. No power under the BIOT Order section 11 had been exercised and it did not matter thereafter whether the power was a prerogative power or some private power. This meant, submitted Mr Taylor that if the removals were an act of discretionary policy, the way in which it had been done, "*without the greatest care and planning for the well-being of the displaced Chagossians*" was such an abuse. He submitted that the Defendants were not exercising a statutory discretion when dealing with resettlement, but that if they had been exercising a power under the BIOT Order, it had been abused.

443. Mr Howell's third submission was that any duty to take reasonable steps had been discharged by the 1972 Agreement or by the 1982 Agreement. It did not matter that these were not agreements with the Chagossians individually because it was obvious that any duty of the sort pleaded by the Claimants was capable reasonably of being discharged by arrangements made with the Government of the country in which the Chagossians were residing. The situation in the Seychelles was different anyway. Mr Taylor submitted that the real issue was whether there had been a remedy for the breach of duty and that there could not have been a remedy as the damage continued to occur. The sum offered in 1972 was not and was known not to be sufficient. It was patently not possible to argue that a payment ten years after the Chagossians had left the islands discharged the duty of care. The only question was whether there had been a remedy for the breach of the duty not whether there had been a discharge; the 1982 payments could not be determined at this stage to be adequate compensation so as to remedy the breach. In any event this argument had no application to the Chagossians on the Seychelles.

444. This duty continued to the present because, according to Mr Taylor, there had been a pre-existing governmental relationship and the Defendants had knowingly put the Claimants in a position of destitution. I remained unclear as to whether this duty could ever be brought to an end because even if the Claimants were all to returned to Chagos, assuming that they all wanted to go there, there would be, claim the Chagossians, an obligation to provide them with a maintained economy to enable them to live a decent, basic life.

445. The starting point for an examination of the arguability of this pleading in relation to economic loss is the general approach to whether a duty of care arises. In addition to the foreseeability of damage, there must exist between the parties a relationship characterised by the law as one of "*proximity*" or "*neighbourhood*" and that the situation should be one in which the court considers it "*fair, just and reasonable*" that the law should impose a duty of a given scope upon one party for the benefit of the other. The law has moved towards attaching greater significance to the more traditional categorisation of distinct and recognisable situations as guides to the existence, the scope and the limits of the varied duties of care which the law imposes; *Caparo Industries Plc v Dickman* [1990] 2 AC 605 618. Mr Taylor referred to Lord Slynn's comment in *McFarlane v Tayside Health Board* [2000] 2 AC 59 76, that an alternative test is to ask whether there has

been an assumption of responsibility for the economic interest of the Claimant, with concomitant reliance upon that by the Claimant. It is to be noted that in that case, a duty of care in relation to contraception did not involve any assumption of responsibility for the costs of bringing up the child whose arrival pointed to earlier failings. Mr Howell drew my attention to *Williams v Natural Life Health Foods* [1998] 1 WLR 830 835 HL. This is consistent with McFarlane upon which the Claimants relied. The relevant assumption of responsibility has to create a special relationship; whether such an assumption of responsibility had occurred depended on an objective analysis of what was said or done by the Defendants, and whether the Claimants did in fact and could reasonably have relied upon an assumption of responsibility. So far as personal injury was concerned, all that had to be shown was that it was reasonably foreseeable that the Defendants' actions would lead to personal injury and that there was sufficient proximity of relationship, the former usually demonstrating the latter too.

446. I shall deal first with the claim as originally formulated and then with the claim based on personal injury. As pleaded, it is far too broad a claim to be arguable. Indeed it is scarcely possible to recognise it as a claim in negligence at all. It confuses the concept of a common law duty of care, with a general moral obligation to care for someone. It is not alleged to be a duty to avoid a reasonably foreseeable type of harm. It is not dependant upon an unlawful act. I understand why the case is pleaded in the broad terms in which it is; the Claimants seek redress for the treatment meted out to them in the 1970s, in circumstances where the idea that there is no legal redress at all, not even arguably, could seem to be an affront to moral justice. But the case has to be seen in a legal framework, nonetheless. An affront to justice is not a cause of action nor do unfulfilled moral or political obligations become the source of legal obligations.

447. The claim as pleaded, asserts a common law duty, owed by government to citizens of a very wide nature. It could not be argued that any such duty was owed by a private landowner to those who might be evicted from his land or by an employer to those whom he dismissed or to those who in consequence might lose tied accommodation. There is no duty on a contractor to renew a contract with a supplier who in consequence goes out of business. Neither the degree of proximity nor the policy component for the existence of the duty would be satisfied. There is no common law duty to avoid economic harm to others even if it is foreseeable or even if someone is knowingly put in a position where that harm may happen to him.

448. Given the asserted source of the duty in indissoluble governing obligations which endure from generation to generation, it is difficult to see how it could not also apply to anyone who was destitute or lacking their former lifestyle or basic amenities, whether they were in their country or in another one. It is not clear why it should not apply to any UK citizen resident in the UK, or to any UK citizen who was not in the UK but happened to be abroad. The pleaded case is not confined to those who were removed from the Chagos or prevented from returning, so that characteristic of some Claimants is not a necessary characteristic for the duty to arise. In any event there are many people who, in roughly analogous situations, may suffer at the hands of a government decision in respect of which compensation is either unavailable or inadequate to enable resumption of a previous lifestyle. That is an unhappy consequence of blight, aircraft noise, planning decisions and compulsory acquisition, particularly where the acquired interests have no real market value. The duty would apply to all those too. The restrictions which the Claimants may try to impose upon their version of the tort are not principled but arbitrary, and disguise the wide and general ramifications which it would have. There is no reason why the duty should only arise upon removal to another country rather than upon removal to another BIOT island, or to another part of the same country upon which the means of sustaining the former lifestyle were absent or upon which conditions of destitution prevailed. Why should such a duty not exist to prevent the withdrawal of economic support for the plantations or transportation upon which the islanders depended for their lives in the islands? But the duty is more extensive yet. It covers not merely the then unborn children and grandchildren of those who were removed or prevented from returning, together with any who qualify under the British Overseas Territory Act 2002 as British subjects, but also all those who left the Chagos voluntarily even before the creation of BIOT. Indeed, the 2002 Act creates the further problem that section 6 gives British citizenship to people who were not British citizens before that Act, so the duty only began to apply to them when it was brought into force.

449. The scope of the duty is akin to a duty of equivalent reinstatement and perpetual maintenance whenever a Government decision impacts adversely on an individual. As pleaded, it is akin to the requirement to provide an advanced welfare state, with all the aspects of modern social welfare covered together with jobs. Although the duty is couched as a duty to take reasonable steps, it is in effect an obligation to achieve that outcome. This is to treat the law of negligence as requiring the sort of provision which it must be for the legislature to decide, for the implications for policy and expenditure are enormous. The claim does not depend upon any statutory duty being found nor upon any statutory power existing. The law of negligence would be exploited to impose on government a very extensive duty which no legislature has seen fit to impose. No power or duty has been identified either in UK legislation or in the BIOT legislation whereby either Defendant may undertake such extensive responsibilities for anyone, let alone citizens outside those territories. In the absence of such a statutory power, it cannot be negligent to act as if that power did not exist. Assuming that it is the prerogative which enabled the resettlement agreements to be made, it would be a quite extraordinary extension of the court's role for it to be enabled to impose such a duty on the exercise of the prerogative. The same would apply to any argument that section 5 of the BIOT Order gave the necessary power to the Commissioner. The law of negligence would be used not so much to regulate the exercise of a power but to impose duties and to make their non-performance actionable in damages in a way in which neither legislature has seen fit to do. It is akin to a judicially imposed duty to legislate with the terms imposed by the courts. I do not see any basis for the creation of such a duty at common law. A duty of care for its citizens, which is the fundamennt of the pleading, cannot comprise a duty to provide a welfare state for the citizenry wherever in the world they may be.

450. Nor can a government, without legislation, take upon itself so large an obligation and assume a responsibility sounding in damages for its breach. The 1982 Agreement cannot be relied on as the basis for any alleged assumption of responsibility in any case, because it was declared to be without acceptance of liability and was entered into several years after the arrival of the Chagossians in Mauritius. It could not help those who went to the Seychelles any more than could the 1972 Agreement. This too was only with the Government of Mauritius, and it was not an agreement with the Chagossians. It too could not be a source for the assumption of responsibility. Responsibility for the removal of the impoverished and dependent Chagossians cannot create an assumption of responsibility for these purposes. There was no communication of responsibility to them for or on behalf of the Defendants, and none is pleaded. There were no acts done by the Chagossians in reliance upon anything which was said or done by the Defendants, and none are pleaded. If any were to be, the action thus based could only be brought by those individuals who satisfy those requirements. However, this claim is not so fine grained; quite deliberately, it is all-embracing. The questionnaire is incapable of refining the pleading.

451. Even if it were confined to a group of Chagossians who were removed or prevented from returning, the scope of the duty is so extensive that it cannot be found in any duty born of the tort of negligence. It is to be remembered that the case does not depend on any unlawfulness in the removals themselves. The claim assumes that the Commissioner could require the plantations to cease to operate, the islanders' employment and support to cease and even the islands to be cleared. I can see no reason in principle why the same duty on the Defendants would not arise if the Chagossians had been removed by the decision of the Chagos Agalega Company Limited. If a duty arises from the relationship of citizenship, it is difficult to see the rationale for such a restriction; why should there not be a duty imposed on a landowner who ceases to have a requirement for his workers and requires them to leave his land? His duty would be to provide for them as if they were still his workers. I note in parenthesis that the medical treatment which the Claimants receive on Mauritius is what they would have received in Mauritius had they remained on Chagos, and the education on Chagos was very limited indeed. But the duty appears to require not a 1971 Chagos lifestyle nor a 1971 Mauritius lifestyle but one which changes as the circumstances around them change.

452. There is no duty, nor even a power, let alone one actionable for damages, to do whatever may seem reasonable. The statutory power to do that has not been identified. The Claimants' contention that the Defendants' submissions stand in the way of the regulation of unreasonable conduct and impose no obligation to do what is reasonable shows how wide their submissions really have to be cast. There is no

duty at common law to avoid even conditions of destitution for the citizen. This claim, in the guise of a negligence action, seeks to erect a duty to care and to create thereby a cause of action for circumstances in which neither misfeasance, statutory provision or constitutional right, or other recognised tort has provided.

453. As Mr Howell points out this is not a claim for breach of statutory duty. Nor is it a claim for damages for a negligent exercise of powers within the exercise of a statutory discretion. No such duty has been identified. If it had been, it is difficult how a duty of so wide an ambit could be justiciable; it plainly would give rise to major policy issues as to the allocation of resources and the determination of an appropriate lifestyle in which someone was to be kept. It would involve an interaction with a foreign government; it is plain that there was concern in Mauritius about the impact which special treatment for the Ilois would have on Mauritians; the Seychelles Government was of the view that all were Seychellois and that no differentiation should be made between its citizens. The definition of a form of welfare state, with foreign policy overtones, is not a judicial function. Parliament and the BIOT legislature could not have expected this to be an area in which the courts would substitute their views for those of the executive.

454. I regard as untenable the argument that the absence of the sort of provision for which Mr Taylor contends could show that there had been an abuse of some unidentified discretion. This is at present no more than a submission; no relevant parts of it have been pleaded. If the relevant statutory discretion were to be identified, as Lord Hoffmann said in *Stovin v Wise*, the Claimants would still have to show the exceptional grounds upon which the Court should hold that liability in damages arose for that irrational act. They have not attempted to address that point.

455. The claim in negligence for damages for economic loss is untenable. There is no duty situation of the sort necessary to justify the claim, and it could be neither fair, just or reasonable to impose the asserted duty if there were. Any claimed statutory duty of the sort which the Claimants would need to assert could not be justiciable. I do not know whether a more narrowly and precisely pleaded claim might have something in it but this claim does not.

456. Does the claim for damages for personal injury provide a better prospect for those who suffered from personal injury, on the assumption that the deficiency in the pleading as to reasonable foreseeability of harm is remedied? I bear in mind the breadth of the concept of personal injuries for Limitation Act purposes revealed by Phelps, above. I do not think that at this stage it can be said that it is clear that personal injuries of that breadth were not reasonably foreseeable. The essential features of life for the islanders were well known: they were used only to a very defendant and simple existence, they had very limited education, work skills of no relevance in Mauritius, they were unused to coping with unemployment, or with seeking private or public housing or dealing routinely with cash, social security, officials or a modern way of life or Mauritian social attitudes towards them. Their dietary needs on Chagos were reasonably catered for and their housing was adequately provided with sanitation. Their roots were known to be in the Chagos. It is arguable that it was reasonably foreseeable, as evidenced by the resettlement agreement in 1972, the preparations for resettlement and the Prosser Report, that at least so far as those going to Mauritius were concerned, the inadequacies of the proposals for their reception, housing, transport of personal possessions, social assistance for immediate needs to obtain food, some training or education for the life ahead, would lead to serious psychological effects, recognisable psychiatric illnesses and the illnesses associated with malnutrition and insanitary housing conditions. This would apply not just to the limited category of those who were the last to leave Peros Banhos but arguably, to all those whom I have identified as arguably having been compelled to leave the Chagos through the sequence of decisions made by the Defendants which they then implemented over time. It could not cover their descendants. I would not draw a distinction between those who went to Mauritius and those who went to the Seychelles for these purposes. It would not cover those who were unable to return. The duty arose upon removal; it is not a continuing duty.

457. The duty to take reasonable steps to avoid that harm arises not just from its arguable reasonable foreseeability, but also from the fact that it was the Defendants' acts, lawful or unlawful, which put them in

that position of risking harm, about which they had limited choice. Even those who went temporarily to Peros Banhos and Salomon were told that it would not be forever. There was an option of going to Agalega but it is arguable that the choice of another island so far away or Mauritius itself, or the Seychelles is not so obvious that to decline it makes for a voluntarily assumption of risk. There was no obvious means whereby the full extent of the information necessary for an informed choice to be made was provided to them. Accordingly, it is arguably not unreasonable for them to have chosen to go to Mauritius or to the Seychelles. It is arguable that that duty was breached. The material derives from the condition of the Chagossians some years after their arrival; after all they did not see any benefit from the 1972 agreement for several years during which inflation was rampant.

458. I accept that it is obvious that an agreement with the Mauritius Government, once it has been implemented, is capable of being a or indeed all the reasonable steps which it is necessary to take; but I do not regard it as unarguable that the 1972 Agreement was insufficient. The documentary material leading up to the evacuations shows an awareness of needs and of the difficulties which would be faced, but the Defendants arguably knew that the conclusion of the Agreement before the evacuation did not mean that anything would actually be done in practical terms by the time the islanders arrived. There is arguably no evidence that even any temporary arrangements for shelter, social security, money to tide them over and so on had been made, let alone anything which would give them a reasonable chance of avoiding personal injury. The evidence arguably shows that the Defendants knew that nothing was being done with the £650,000 as inflation ate away at its capability to achieve what was needed, and did nothing. It is arguable that the minimum requirement of a reasonable step is that it achieve something for the intended beneficiary rather than be merely an agreement with another for the discharge of the obligation, with no subsequent actions to ensure that it has been implemented. It is not necessary for me to identify the reasonable steps which should have been taken in the 1970s to avoid the personal injuries which were suffered. I appreciate that there is a significant causation problem but that is not a matter for this stage.

459. So far as the 1982 Agreement is concerned, obviously it does not affect those who went to the Seychelles. It would arguably still leave a claim for delayed performance of the duty of care even if it were discharged in 1982. It was plainly not an unconscionable bargain as a matter of settling speculative litigation as I discuss later. But that is not conclusive as to whether it plainly discharged the duty to take reasonable steps. The problem with that argument is that on the necessary hypothesis that there was a duty of care to certain individuals, its discharge depends more upon individual circumstances than a general assessment of the needs of the Chagossians. It would be a significant hurdle in the way of any action but I do not consider that that Agreement can now be said to render unarguable any claim for damages for personal injury.

460. The claim should be re-examined for the way in which it is pleaded should this case proceed. It would apply to a limited category of Chagossians, those who were compulsorily removed, who would have to plead and then prove a personal injury for which damages are given at common law, and that it was caused by the lack of reasonable steps being taken by the Defendants to prevent personal injury arising from the removals among the Chagossians generally. The reasonable foreseeability of injury arises from it being reasonably foreseeable that, among those who were removed, there would be some who would so suffer, rather than from it being foreseeable that any particular individual would so suffer; the nature of the steps required would reflect that rather than being those required to prevent any identified individual suffering personal injury. Credit would have to be given for any sums received or facilities provided under the 1972 and 1982 Agreements, and allowance made for any facilities, treatment or funds made available by the Governments of Mauritius and the Seychelles.

461. There is an arguable claim in negligence but only for personal injuries.

Abuse of Process

462. The abuse of process issues pursued before me were whether:

(i). it was an abuse of process for those who had signed renunciation forms (paragraph A642) and received Rs 8,000 in consequence from the ITFB, or for anyone claiming through such a person, to bring these proceedings; and

(ii). a lesser, but related issue, arose as to the position of Michel Vencatessen and his heirs, in the light of the withdrawal of his action in 1982.

463. The Defendants did not pursue their claims that these proceedings were an abuse of process because a challenge to the administrative conduct of the Defendants had been withdrawn in the *Bancoult* case, or because this present case involved a challenge to the vires of the 2000 Immigration Ordinance which ought to have been made by way of Judicial Review. That was a sensible position to adopt, in relation to the pleaded basis of challenge.

The effect of the Renunciation Forms

464. It is not entirely clear how many of the Ilois eligible for compensation under the terms of the ITFB Act, as amended, signed these forms. There were either 1,332 who signed out of the 1,342 to whom ID cards were issued, or 1,344. Mr Beal for the Defendants had, however, found forms for all but four of those to whom ID cards had been issued, suggesting that a trickle of signatures were obtained after June 1984. Either way, it would affect a considerable number of Claimants and their heirs.

465. It is difficult, however, to relate the forms to Claimants directly; their questionnaires are silent about them and the Claimants have not referred to the forms or to the compensation in their pleadings, even by way of acknowledging that any credit was due for it against damages claimed. I found that silence surprising.

466. The Defendants' case was that the renunciation forms covered precisely the causes of action now being pursued. Although the 1982 Agreement was an inter-governmental agreement, and although the Defendants could not contend that the signing of the renunciations constituted a series of contracts of compromise, nonetheless as a matter of principle, the pursuit of these claims by those who had signed or were their heirs was properly characterised as an abuse of process.

467. Mr Howell submitted that where a person A (an Ilois) agrees with another person B (the ITFB) that he will receive payment in settlement of any claim that he may have against a third person C (the UK Government), he A may no longer sue that third person C, even though that person C is not a party to that agreement and the person undertaking to make the payment B is not the third person's agent. Any subsequent proceedings that he A may bring against that third person C are an abuse of the process of the court.

468. He relied on a number of authorities summarised in *Chitty on Contracts* 28th ed Vol 1 3-118: *Welby v Drake* [1825] 1 Car & P 557; *Hirachand Punamchand v Temple* [1911] 2 KB 11 CA; *Morris v Wentworth Stanley* [1999] QB 1004 CA 44-45. The Court, he submitted, would regard it as an abuse of process to allow a payee to take money to settle a case and thereafter to seek to maintain the original case. A litigant could not accept money on one basis and pursue the claim on another. If a form was signed in order to receive money, the money was accepted on the basis of what was in the form. *Non est factum* required both an absence of knowledge as to the document and that reasonable care had been taken in signing it. He recognised that a defence of *non est factum* would be available in principle and that its availability in practice

to any Claimant would depend on the facts relating to that particular individual. But Mr Howell sought an indication from the court that that was to be the position. It was said that that would aid the future management of this case.

469. The Claimants' final position emerged in their latest version of the Amended Reply on Limitation and Abuse, for service of which I give permission. I appreciate the Defendants' submission that permission should be refused because it came too late and after evidence had been heard, a point made more in the context of the limitation arguments. But I do not consider that these applications should succeed on remediable pleading points or through the exclusion of relevant material. I was singularly unimpressed by the refusal of the Claimants to respond to the Defendants' request in February 2003 for information relating to the Amended Reply; the absence at that time for permission to amend was an inadequate basis for most of the information to be refused. But I do not regard that as a justification for refusing permission for the latest version to be served as the Amended Reply.

470. The Claimants submitted, first, that because, as the Defendants acknowledged, the proceedings could not be struck out in whole or against any individual Ilois, since any individual might be able to rely on *non est factum*, this ground of attack should fail immediately.

471. Second, Mr Allen sought to turn the tables and argue that on a generic basis, this abuse argument was untenable, and should be dismissed. The Chagossians had had only a hazy idea as to the effect of the 1982 Agreement and no idea at the time that they were being required to waive for all time any claims against the Defendants. The relative position of the parties mattered; the UK Government had abandoned any attempt to compromise claims in the legally binding ways which they knew and there was nothing wrong with the Chagossians taking advantage of their failure to do so. There was neither a contract of compromise nor a clear and unequivocal waiver of rights, either of which would have sufficed.

472. He referred to *Johnson v Gore Wood* [2001] 1 WLR 72 81-82 and *Gairy v Attorney General of Grenada* [2002] 1 AC 167 as setting out the relevant principles in an abuse claim. These were concerned with fundamental rules of justice between litigants, a necessary power to protect against oppressive or vexatious litigation. In the former, the House of Lords said that whether an action constituted an abuse of process should be judged broadly on the merits taking account of all the public and private interests involved. A scrupulous examination of all the circumstances was required before an action should be dismissed as an abuse. The authorities relied on by Mr Howell were not referred to. The Claimant had a personal claim which had not been compromised, separable from, though clearly related to, the community claim which had been. It would be unjust, submitted Mr Allen, for the court to allow the UK Government to rely upon those forms unless the point had been taken at the first opportunity; they had been held by the FCO since they were sent there in 1984 as the recently disclosed letter of 12th September 1984, (19A/D/44), had shown and they had not been disclosed until 25th October 2002. They could have been deployed against the Bancourt Judicial Review, because that raised issues about the lawfulness of the 1971 Immigration Ordinance which were covered by the renunciation forms, and he had signed such a form; indeed, their existence had been referred to in the evidence in that case by both sides. The Defendants' deployment of those forms in pursuit of an abuse of process argument did not arise in their pleadings or before Master Turner, but was first raised before me on 26th September 2002.

473. Mr Allen submitted, third, that the forms could not affect infants who signed or those under a disability. He submitted, fourth, that the form was not an agreement, or, if so, that it was not the entire agreement - who were the other parties? What was the resettlement in Mauritius and by whom? What was the consideration? What was the compensation? Could any person signing the form sue on it in respect of any deficiencies in resettlement? For how long was declaratory renunciation to be effective?

474. Fifth, there was no evidence that any person signing it knew what was in it; the evidence was that they

thought it was a receipt not a promise or agreement. The Chagossians would not have signed away the right to return leaving no enforceable right to return, which is the apparent effect of the agreement. It was not a mere giving up of the ability to enforce a right. They could not be negligent in signing the forms, when so many were being processed and there was neither translation, explanation, forewarning or advice available.

475. The fact that Elie Michel sought Bindmans' advice again in the early 1990s suggests that the effect of taking the money was seen as simply postponing for five years the right to take proceedings. Besides, to the extent that *non est factum* is a rule of justice to protect third parties, the Defendants were not true third parties. It is a rule of justice and individual circumstances matter; illiteracy is very important. Their signature could not constitute a clear and unequivocal waiver.

476. Sixth, in essence, the court should approach this as it would a bilateral contract of compromise; the label of abuse of process, if correct, was not important. Seen in that way, the court should be very slow to infer that a party intended to surrender rights and claims of which neither party was or could be aware or of which the releasing party was not and could not have been aware: *BCCI v Ali* [2001] UKHL [2001] ICR 337 16017. The relevant words had to be read in the context of the Agreement, the parties' relationship and all the circumstances known to the parties; an objective view of the parties' intention would then be reached. If the words were to cover claims of which no party was aware, or of which one party was unaware, appropriately clear words would have to be used. The form, covering, as it did, what was done "*pursuant to the BIOT Order 1965*" could not cover common law claims or *ultra vires* acts. It did not use the language of "*full and final settlement*".

477. Seventh, the requirement for such forms was a surreptitious insert into the 1982 Agreement. The negotiations had commenced on the basis that the earlier requirement for individual quittances which had proved such a stumbling block for Mr Sheridan in 1970 would be abandoned, as had already been signalled. The provisions of Article 4 were introduced to protect the Mauritius Government which was ultimately at risk of indemnifying the UK Government and were not in the first draft of the Agreement. This Article was not translated for the Ilois. The Trust Fund Act did not place any duty on the ITFB to obtain them.

478. Eighth, no individual had legal advice, let alone on an individual basis looking at his or her individual circumstances; a mass meeting was not an equivalent. Negotiations could be collective but not advice. Ninth, it was unlawful for the Defendants to bargain away its governmental responsibilities or its citizens' fundamental rights. In the light of all the circumstances, it would be unconscionable for Defendants to be allowed to rely on this abuse argument. They were aware of the problems of the Ilois, with different groups, political interference, the difficulties in seeking individual advice, but it had a governmental relationship with them and knew how desperate they were and how inadequate the £650,000 had been.

479. Mr Allen recognised that group litigation had not existed in 1982 in the way it now does and that the settlement in the thalidomide litigation afforded some practical guidance. But for all the difficulties in 1982 in achieving a global settlement for all the Ilois, as they then all seem to have wanted, he submitted that the only proper way to have proceeded was by individual advice and explanation for each Ilois and by developing the sort of practices which have only been seen much more recently in the settlement of group litigation, with dissentients trying to carry on as best they can or being barred. He recognised that this would have given rise to considerable practical difficulties over, say, conflicts of interest between groups of Ilois with different views, and their legal advisers; this could have led to very considerable delays in Chagossians, in their plight, receiving any money. But Mr Allen said that the UK Government ought to have learned from the speed with which it had attempted a settlement in 1979 and ought to have made sure that there were opportunities and time for alternative advice, with copies of the Agreement in Creole, or ought to have sought a parallel oral agreement.

480. The Defendants, in response, submitted that the fact that some, but not all, Claimants' cases, might be

an abuse of process was no reason not to strike out those which were. That I regard as obviously correct in principle. Here, the fact that those Claimants to whom the argument applies, if it is otherwise sound, cannot immediately be identified, does not deprive the argument of force. If it is sound, the Claimants will have to be more explicit about who received money having signed renunciation forms.

481. If Claimants could be barred from bringing proceedings because they are an abuse of process, and yet defences, in principle, may be available to some against such a step, it becomes matter for individual adjudication as to whether such a case or defence succeeds in practice. To my mind, it assists effective case management for those issues to be so identified, focusing the minds of the parties upon the factual issues which they need to address. The fact that an argument as to abuse may not ultimately succeed, because particular facts may justify its defeat, is no reason to refuse to identify what the Claimants need to show in fact for their action to succeed. There is a force, which I accept, in the Defendants' submission that, if its abuse point is sound and if the Claimants' evidence that no-one asked about the contents of the forms is destructive of any potential defence of *non est factum*, the Defendants' abuse case should be allowed to succeed now. Likewise, it is relevant for the consideration of the group litigation as a whole if it proceeds, by way of establishing a benchmark, if I conclude that those who have given evidence would have no reasonable prospect of establishing any defence to this abuse of process argument.

482. I accept that the authorities bear out Mr Howell's submission as to circumstances in which an abuse of process can occur as a result of someone accepting money from B to settle C's debt, but then suing C. I also accept that cases such as *Johnson v Gore Wood* show that there are different categories of abuse for which no exhaustive list exists. One category is where an issue could have been raised in earlier litigation between the same parties; another is where settlement of a corporate action leaves open or is expressed to leave open a related action by a shareholder. This abuse argument relates to what Mr Howell described as a "settlement" case. The point which Mr Allen made, which I accept, is that in consequence, the way in which that sort of allegation of abuse is examined bears a close familial relationship to the way in which an allegation that proceedings were in breach of a compromise agreement would be analysed. However, categorisation of cases is not the answer by itself. Mr Allen's point is well made that *Johnson v Gore Wood* shows an overarching requirement that the action be abusive of processes of the court, on its merits, looking at all the interests after a careful examination.

483. However, if in fact a Claimant has accepted payment of a lesser sum from B than was his due from C, in circumstances where the payment by B was agreed to be a substitute for payment from C, usually because B's payment was certain but C's was not, there is nothing unjust at all in relation to the principles of *Johnson v Gore Wood* in that person being unable to sue C - quite the reverse - the court should not allow its procedures to be used to enforce the debt which the creditor had settled by payment from another. Mr Allen's arguments to the effect that in each of the cases relied on by Mr Howell there was an acknowledged debt, and in one an election made as to whom to sue, are beside the point. It is a point which can only be relied on by the payer by intervening in the action. Mr Allen did not suggest that the authorities relied on by Mr Howell had been disapproved of or overtaken by *Johnson v Gore Wood*.

484. The real issue is whether a signatory to the renunciation form accepted in so doing the Rs 8,000 in return for not suing the UK Government; in other words, did the facts here fit the settlement type of case where the court would intervene to prevent an abuse of process? I emphasise Rs 8,000 because no other component of the distribution of £4m plus £1m land was subject to such a requirement. I regard as untenable the suggestion by Mr Allen that what would otherwise be an abuse of process, ceases to be one because circumstances subsequently changed, whether to show increased prospects of success in litigation or to show the inadequacy of the sum accepted.

485. Mr Allen submitted that, viewed as a settlement type case, there were a number of reasons which showed that no agreement of the sort relied on by the Defendants had been reached. I do not understand his point, on the parol evidence rule, as to what other terms might have been part of the Agreement, as opposed

to his argument about what the terms stated actually meant; no other orally agreed terms were suggested.

486. I do not accept Mr Allen's argument about the wording of the renunciation forms, to the extent that it goes to whether any agreement at all was reached when they were signed; it only goes to what was agreed. It does not matter that there was both a UK and a Mauritius Government form or that the ITFB were involved in their collection. Nor does it matter that no other party is specified; it is perfectly clear that the form involves acceptance of money from the ITFB in return for a renunciation of certain claims against the UK. For the purposes of this aspect of abuse, that is what matters.

487. I turn now to the various arguments as to the scope or meaning of the renunciation form, construing its language objectively in the relevant factual context. First, Mr Howell sought to distinguish the *BCCI* case, while not disputing its authority. It was, he said, a general release of all claims of any description; it was that which gave rise to the issue of whether or not a claim, the nature of which was not envisaged at the time of settlement by either party, fell within the scope of the compromised claims. *BCCI* was distinguishable on those grounds - the renounced claims are set out with some particularity in the renunciation form, although there may be room for debate as to their precise meaning. His case did not rely on general wording or unknown claims. *BCCI*, in my judgment, is concerned with the construction or application of the terms of a seemingly all embracing release to a claim the nature or existence or basis of which was unknown to all parties; the general release could not cover such claims; objectively judged in that factual matrix, the words did not cover such a claim. It would have applied also if one party had not known of the possibility of a claim. This was subject of course to clearer and more precise wording than had been provided in *BCCI*. There was also a concern that giving such a clause a very wide construction could be a vehicle for sharp practice, by someone with the relevant knowledge against another who acted in ignorance.

488. But that is rather different from the position here: the claims precluded are all claims arising out of an identified series of acts and omissions. The claims upon which the Claimants now rely and which the Defendants contend are covered by the form, were all in existence in 1984 as a matter of law, apart from the alleged tort of exile. They all bear a close kinship, albeit expressed in different language, to the Vencatessen claims, which the renunciation forms would obviously have been addressing, together with any similar claims however expressed. Indeed, much of the factual material was known or capable of being ascertained, although I accept that the question of what the UK Government knew, compared to what it said, was not fully known until papers were released under the 30-year rule, but the fact that some material had been withheld was known. Mr Allen's submission that a lack of knowledge of existing rights precludes an effective settlement, is too broad for *BCCI* to provide him with support. Assuming that the Ilois knew, or are to be taken to have known, what they were signing, none of the rights which they gave up were rights the very existence of which they were unaware of. They gave up rights which they say they were asserting. Their case is rather that they did not know that they had given up any rights, not that they had given up, through a form of words, rights which neither they nor the Government knew existed or even contemplated might exist. *BCCI* does not help Mr Allen. The Ilois were not obliged to sign the forms; they could decline the ITFB money and maintain an action.

489. I do not accept Mr Allen's next submission that the claims surrendered are not common law claims or claims in respect of *ultra vires* acts. Such a contention empties the form of meaning; the only claims which could arise were those in respect of unlawful acts, unlawful at common law or for want or abuse of statutory power. It is plainly not confined to future acts; it refers specifically to past acts.

490. It is perfectly clear that the form covers all the damages claims in these proceedings. It is less clear that it constitutes a renunciation of the right to return (as Mr Allen suggested) as opposed to the renunciation of a claim in respect of preclusion from returning or enforcement of the right to return, which right remained in existence (as Mr Howell suggested). Certainly, a claim in respect of preclusion is renounced; but so too (using the material words of the form) is any claim relating to:

"Any future situation occurring in the course of or arising out of the consequences of what was done pursuant to BIOT or any such preclusion."

491. On any view, however, it covers all the claims in these present proceedings. I see no force in Mr Allen's question as to the duration of the renunciation of claims: it is indefinite. If Mauritius were to regain sovereignty or if the bases were to disappear (the lease has a maximum of 70 years from grant absent any renewal), the legal enforcement of any right to return would remain precluded; the claim could not be made.

492. Mr Allen's submissions about whether anyone could sue on the form, for compensation or resettlement and as to what the compensation was are not substantial responses to the issue raised by the Defendants as to the effect of these forms. Whatever else was included, the consideration clearly covered the Rs 8,000; it covered the remaining distributions by the ITFB including the anticipated community facilities. There is, I accept, past consideration as well in the references to compensation and resettlement, the bulk of the individuals' money having already been paid out. But that does not assist Mr Allen: this form of abuse may resemble the breach of a contract of compromise, but it is not the same as a breach. The real question is what was the basis upon which the ITFB paid over the Rs 8,000 and is that inconsistent with the claim now advanced?

493. There was no right to sue the Governments, who were not parties, so as to enforce more compensation and better resettlement. As was decided in the *Permal* case in 1984 and 1985, (paragraph A693), there were alternatives open: sign and bring a claim against the ITFB for the due portion; refuse to sign and sue either or both Governments. The Defendants' position on that aligns with what the Mauritius Supreme Court decided in both *Permal* and subsequently in the case brought by Simon Vencatessen, decided in 1989, (paragraph A743).

494. Accordingly, subject to the two substantive points remaining, I consider that the Defendants have clearly established that the form covers the claims in the present case and that, in principle, having accepted the money from the ITFB and signed the form renouncing claims, it is an abuse of process for those Claimants to bring these proceedings. The basis for the ITFB payment was that the form had to be signed; that issue was in fact litigated and upheld. There is no issue about that. The issue is about whether they knew what they were signing and nonetheless want to sue the Defendants in these proceedings.

495. I now turn to those two points which can be broadly described as the Claimants' absence of knowledge as to what they were signing and unconscionability. This entails some analysis of the factual material.

Knowledge

496. The immediate evidence about how the renunciation forms were signed has to be put into the factual circumstances leading up to their signature and indeed some subsequent events cast a light upon what was known in 1983 and upon what was fair.

497. Mr Howell submitted that in view of the signatures or thumbprints, the signatories were bound and the proceedings were an abuse unless there were reasonable prospects that the Chagossians could establish at trial the defence of *non est factum*. He referred me to *Norwich and Peterborough Building Society v Stead* [1993] Ch 116 12607 Court of Appeal, which also sets out the principles from *Gallie v Lee* [1971] AC 1004. It is for the person who has signed the document to show that the transaction which it effects is essentially different from the transaction intended so that the signatory can say that he did not consent to it. But he also has to show, even if illiterate or lacking in understanding of the law, that he acted responsibly and carefully according to his circumstances, although the law is readier to relieve him against hardship. That second

requirement is expressed by reference to the position of innocent third parties who, knowing nothing of the circumstances of the signing of the document, may rely upon it.

498. There was no great dispute as to the law as opposed to its application to these facts. Mr Allen suggested, but I reject it, that because the principles in *Gallie v Lee* were expressed to originate in the need for protection for innocent third parties, *non est factum* did not apply where no innocent third party was at risk. I take the view that it protects the other party to the transaction as well, and is just as applicable to protect him, present at or absent from the signing by the person raising the plea. But the UK Government can also be seen here as an innocent third party, albeit that it would have been aware of the illiteracy of the Ilois; it was not in charge of the signing arrangements, and imposed no requirements as to how it was to be done. Nor did it "connive" in a particular form of process. It can be said, but that is another matter, that, despite the involvement of the Ilois on the delegations, the legal advice which they had and the publicity given to the full agreement, the UK Government organised no legal advice for the Ilois on an individual basis before they signed the form.

499. Mr Howell submitted that those signing had made no enquiries, or asked for it to be read or explained. The forms were evidently not simple receipts; they were asked to sign two forms, once for the UK and once for the Mauritius Governments. They could simply enquire whether these were receipts. Mr Abdullatif was present. Mrs Kattick and at least Mr Ramdass would have known what they were. They could have waited.

500. Besides, submitted Mr Howell, any appraisal of what the Ilois knew had to be set against the background of the long campaign for compensation. It had long been plain that the UK Government would only pay more money if there were to be no more claims like Michel Vencatessen's. It was absurd for the Ilois to seek to portray that case as a family case; the Ilois tended to be concentrated in a few places in Port Louis and word would travel fast. It had received considerable publicity, as a test case. All the negotiations in 1979, the subsequent correspondence, the legal advice showed the Ilois organisations to be well aware of the UK Government's requirement that a settlement to be final, even though they would not renounce their rights to return. The Ilois themselves were using the litigation route as well as the political route and cannot have supposed that one case could settle leaving others to be commenced.

501. Through the 1982 negotiations, the position of the UK Government on this point had been clear, though it would not insist on the individual abandonment of the right to return. The evidence showed that the issue of a renunciation form had been raised with some of the Ilois delegation before Mr Grosz and Mr Macdonald left; the Agreement had been discussed and it was in a final form.

502. The Ilois delegates would not just have sat quietly, as observers; they were vocal, activist and organised. Elie Michel could understand enough English to get the gist; Mr Mundil was bilingual; Paul Berenger and Mr Bacha spoke Creole. There were meetings with the Ilois delegates alone. There was no incentive for concealment; the Agreement, with Article 4, was widely reported in the press. The CIOF took subsequent advice about it.

503. Mrs Alexis had lied over her knowledge of what had been the focal achievement of her long and tireless campaign: the CIOF contact with lawyers in correspondence before and after the 1982 negotiations, and their presence at the 1982 negotiations to advise the delegation, or that they had twice threatened litigation if negotiations failed; it was not credible that she had not known this was to be a full and final settlement, though she had written to President Reagan in those terms.

504. If she had thought that she had obtained £4m plus £1m and that anyone could still bring an action against the UK Government, it was a remarkable negotiating achievement and better than had been sought. But that had not been reflected in subsequent conduct: while dissatisfied with the amount of money, in

practice once it had been distributed, no-one had brought an action against the UK; instead they had sought money from the USA. For her not to know about Article 4, and renunciation forms, there would have had to have been a conspiracy to deceive her whilst simultaneously all the relevant forms were being put in the press. She said she distrusted non-Ilois and so would not rely on the Mauritius Government. She said that the ITFB had no copy of the 1982 Agreement: "*we knew it well*", as she would have needed to do to tell the Ilois she represented about it. She had been an activist in 1983 in the CRG, not "*just sitting at home*" as she had said. She was pressing for payment of the money and for signatures to unblock the £250,000.

505. Mr Ramdass, submitted Mr Howell, was likewise not credible. Mr Mundil, with him on the JIC, had been his translator in 1981 and was fluent in English and Creole. It was not credible that he had no copy of the Agreement; his son sent one to Sheridans, who drew the renunciation obligation to the JIC's attention.

506. The 1982 Agreement was not difficult to understand in essence. It was highly improbable that the Ilois who initialled it were unaware of its essential features. There was every incentive for the Ilois representatives to understand it in light of what happened in 1979, when some of the Ilois delegates in 1982 had led the opposition. They would need to explain the position to those whom they represented. There were plenty of people who could assist with the 1982 Agreement quite apart from the CIOF's English lawyers. Mr Bacha was a governmental official; Mr Berenger, an important politician, was on good terms with the CIOF.

507. The 1982 Agreement was the major event for the Ilois for a decade; it would have been discussed widely and the 1979 experience would have made them aware of the importance of the conditions which might be attached. It was inconceivable that anyone would try to keep the Ilois in the dark; there was no value in doing so, nor with the legal advisers, publicity and political interests any prospect of doing so. There was nothing in 1981 or 1982 to suggest that the Ilois could not distinguish between compensation claims which were settled and the right to return, or that they had any objection to settling compensation whilst leaving intact any right to return.

508. The ITFB conducted its meetings in Creole. Mr Ramdass' suggestion that they reverted to English for important matters rather begged the question of how he knew they were important. There were five Ilois. There had been controversy at the ITFB in February to April 1983 about whether the ITFB should be involved in collecting renunciation forms: Elie Michel, Francois Louis, Simon Vencatessen, Josephine Kattick and Christian Ramdass were there.

509. Those last two were to play a part in witnessing forms, not to identify people, because ID cards had been produced for that purpose. The Rs 8,000 were to be paid at Astor Court and not through the Post Office. It was being paid in a different way - there would have been discussion as to why.

510. There was a delay in the planned timetable which oddly no Ilois witness could remember.

511. It was not believable that the Ilois did not know of the forms. Mr Bancourt and Mr Louis could read and write some English. It was implausible that Mr Bancourt, who was quite confident and assertive, would have signed the document when most of it had been hidden from him, as he answered when pressed on the fact that it did not look like a receipt. It was a lie for him to say that he did not know what was in it till Mrs Talate gave evidence. He lied because if he knew, as a "B", most others with later initials to their surnames would also have known. He himself witnessed some signatures. He had written to President Reagan in 1984; he said "*full and final*" was bandied about the whole time. He was involved on the ITFB in 1984 in seeking to unblock the £250,000 and expressed no surprise at renunciation forms being raised in that context. For him to say that he did not know was not credible in the light of the many references to them at the ITFB. The CRG raised the issue with the High Commission in Mauritius, and he was part of the 1985 delegation to it which raised it. His denial of ever having seen one was untrue; he witnessed a later one.

512. Others resisted signing because they saw the risk of the forms being used to support preclusion; Francois Louis and Kishore Mundil formed an organisation (KMLI) to make that point. There was no protest that this was a dreadful revelation. KMLI helped CRG prepare a claim for £4m from the US.

513. Simon Vencatessen and Francois Louis had been elected representatives on the ITFB; they held a press conference. He pursued litigation on the point. They had no desire to hide their position. If they had an incentive to do so, it would be lest Ilois wanting the £250,000 unblocked would try to make them sign. Simon Vencatessen's evidence had been implausible. His witness statement and oral evidence were inconsistent over when he said he found out about the forms. In the former, he said Mr Bacha had said they were necessary and he had protested. The Minutes show his presence when advice was given that they were not for the ITFB to collect. His oral evidence was that he did not know of them till September 1983. He knew that £250,000 would be retained unless they were signed. He knew that it was full and final and hence did not sign.

514. The ITFB Minutes are full of discussion about how to get the £250,000 unblocked through obtaining the last few renunciation forms or persuading the UK that they had enough.

515. If the Ilois had not known generally, there would have been a cry of betrayal. Mrs Alexis said that they would have revolted. Yet it is clear that they did not do so at any stage. It is clear that the existence of the renunciation forms was talked about before and after signature in 1983 in the KTFB, and the press. No-one kept them a secret. The obvious inference is that they were known about.

516. No litigation was started or thought about for some years, although fresh advice was sought by the CIOF in 1990. If the inhibition lasted till 1985 or five years from the Agreement as Ilois witnesses suggested, it is surprising that their poverty did not drive them to it. Mrs Alexis and Mr Saminaden exaggerated the lack of organisation and stupidity of the Ilois. It was implausible that Mr Ramdass had not known of the forms till after the 1982 Agreement, and after a protest heard nothing more till he met Mr Mardemootoo recently. He was on the ITFB in 1983 when the forms were discussed. His son had a copy of the Agreement. He was related to Francois Louis and Simon Vencatessen who refused to sign, the latter bringing a case about it.

517. Mr Howell described Josephine Kattick as evasive when it came to dealing with whether the settlement had been "*final*". She had been an activist, a member of the CIOF Committee and her sister had been prominent in Ilois affairs and part of the Ilois delegation. Her evidence was contradictory about her knowledge of the Agreement in 1982. She had been aware of the renunciation forms from discussions in September 1983 at the ITFB, and that those were the forms which she had witnessed. She made no protest and told no-one of them. It was obvious that she had known what they were. She was an intelligent witness, but not always honest or reliable as was shown by other aspects of her evidence, over her education and being deported from Chagos when she had left in 1967, later saying that she had been prevented from returning by Rogers & Co.

518. Mrs Talate was an active Ilois campaigner in the late 1970s and early 1980s; she was a leading member of the CIOF and was one of those who thumbed the CIOF letter instructing Bindmans. She knew Mr Ramdass and Mrs Alexis on the 1982 delegation. She had been on the ITFB for three years. She had received money from it. Her variable evidence about her knowledge of the source of the money, or of her receipt of it, and on other matters made her unreliable and at times untruthful. Her witness statement had not dealt with many important areas, failing to disclose her true role.

519. Rita David was similarly unreliable. She completely changed her evidence midstream about whether she had been aware of the 1982 Agreement, the payment of money and that no more would come from the UK Government from saying that she knew of those events to denying all knowledge.

520. Rita Elyse, Olivier Bancoult's mother, had said that she had been involved in meetings and protests seeking money from the UK Government. Her later claims not to know that the Agreement meant that no more could be sought were not credible. She played down her contact with her son and his ability to read English; she denied that what he said about that in his Judicial Review witness statement was correct. Given what he must have known about the unblocking of the £250,000 when he was on the ITFB, it is incredible that he would not have told her and of the associated renunciation forms.

521. Mrs Jaffar's evidence that she never went to meetings, thought committees merely took advantage of her, never heard of negotiations, lawyers or protests, was not credible and was contradicted in part by her witness statement and in part by her involvement as a CRG elected committee member. She denied the truth of her witness statement which referred to her knowledge of the Vencatessen case. Her CRG involvement would have led to knowledge of the renunciation forms. She was unreliable in other respects too.

522. Mr Laval was not credible. Mr Saminaden, however, did know that the £8m sought in 1981 had been final and that Michel Vencatessen had to withdraw his case. His evidence as to what he and the Ilois then thought they could do about other cases was vague, at one time accepting that they could bring no more cases, then resiling. He had known that the forms were not receipts. He had only recently heard of his nephew's, Simon Vencatessen, case.

523. None had asked for an explanation of what they were signing: none of those who gave evidence could discharge the burden. It was for the signer to take reasonable steps to obtain an explanation and to receive legal advice. None were compelled to sign or to sign that day. There was no evidence of adult disability. It was reasonable for parents to sign for those under eighteen.

524. Mr Allen put the renunciation forms into a different context in which he said that they were a manifestation of the deceit and dishonesty practised by the UK Government on the Chagossians for more than ten years by 1983, and subsequently. They were at a real and obvious disadvantage of which the UK Government was aware and which it did nothing to address. He developed those arguments further in relation to unconscionability.

525. He pointed out the absence of full and informed individual advice being given to each Chagossian being asked to sign away fundamental rights. The forms were in English, which he said showed that this was a wilful attempt to prevent the Chagossians understanding the document. (English, however, was the official language of Mauritius and there was no evidence of much greater literacy in Creole.)

526. It is my task at this stage to say whether or not there is a reasonable prospect of Ilois who signed those forms making out a defence of *non est factum*. I consider that it is important to focus primarily on what happened when the forms were signed and the immediately preceding period. I recognise the contextual arguments and regard them as relevant but not, at this stage, decisive for most of the Ilois. I accept, however, Mr Howell's analysis of the sequence of events and the reliability and truthfulness of the Chagossian witnesses, as it is clear from the references to it in Appendix A. I can deal briefly with it here.

527. The Ilois had plainly become, to a significant degree, sensitised to the idea of renouncing their right to return to Chagos as a result of the political storm which led to Mr Sheridan's departure in 1979. It had been an issue in the run-up to the 1981 negotiations and again in 1982. It had become clear that there had to be some other solution if there were to be any agreements. It was envisaged and expressed in correspondence before the 1982 negotiations and again verbally at the 1982 negotiations that individual renunciations of that right would not be sought. The adverse reaction of the Ilois to suggestions of giving up that right had always been strong and genuine. I do not think that the difference between giving up the right and giving up the

claim to the right would have been understood by them generally then, any more than it was now.

528. There was a mass meeting at which the outcome of the 1982 negotiations were explained, and the 1982 Agreement received widespread publicity. But it is not easy at this stage, indeed I doubt very much whether it will ever be possible, to be sure how well known it was in 1982 that there was a provision in the Agreement for some renunciation form, which individuals would have to sign.

529. This is by no means the same as saying that they did not know generally that the 1982 Agreement was final, that further actions could not now be brought against the UK, and that there might be some mechanism for preventing that.

530. There was a widespread awareness that the Vencatessen litigation had to be withdrawn because of the pressure put on Mr Vencatessen by the Ilois to withdraw it, so as to enable the money to be paid. It is obvious that that suggested that there would be some bar to the bringing of further money claims, but not necessarily that the precise means of prevention was known.

531. I regard as wholly unreliable or as positively untrue most of what the Chagossian witnesses said about the correspondence in 1979-1982 which referred to money being paid in full and final settlement. There was no reason for Mr Mundil to deceive them about his seeking compensation on that basis, or to keep them in the dark. Eddy Ramdass could read a little English. There were plenty of helpers. It would have reflected the UK Government's unvarying position, which it always sought to make clear, to everyone. I found their accounts of how the 1981 and 1982 negotiations proceeded to be untruthful and wholly unreliable. I do not believe that the Chagossian delegates were kept in the dark by anyone - it was not in anyone's interests for the Agreement to founder or to be torn up when its contents were made public. Nor do I believe that they did not ask what was going on or felt inhibited from doing so. They had felt no inhibitions in 1979. Their personal activities were demonstrations, allegations, protests, hunger strikes, organising committees, seeking publicity and political support.

532. There was advice available in 1981 and 1982 from Sheridans and Bindmans, though only Mr Grosz and Mr Macdonald were present in 1982. Both sets of lawyers were fully alive to and accepted the justification for the UK Government's persistent theme that it would not pay over any money without guarantees that it would not have to pay more. I am sure that that point was communicated to the Ilois delegates, even through translation, and was understood by them. It is not a difficult point. I find it very hard to believe that that broad position was not also obvious to the Ilois generally as a result of the mass meetings, press publicity, and discussions among themselves. The general air of congratulations and gratitude all round on this result after so long cannot have left an impression that more could be asked for. The means by which that was to be achieved, which included the individual renunciation form and the withholding of £250,000 was explained to the Ilois delegates by the English lawyers. I am less certain how far those precise requirements were known to the Ilois in general as a result of the 1982 Agreement meetings, despite the report in "*L'Express*".

533. After the Agreement, the leaders of the CIOF took further advice on the Agreement. I do not believe that Mr Michel did not know what Bindmans advised, nor that he kept it from at least the leaders of the CIOF, including Mrs Alexis. I am sure that the renunciation forms were discussed by the English lawyers with the Ilois delegation before they left because Bindmans and Mr Macdonald did not raise it as a new clause in the Agreement they subsequently saw. I am sure they would have noticed it and specifically referred to it, if it had been new. Sheridans also advised the JIC on the Agreement specifically referring to the renunciation forms. I am quite satisfied that it was generally known this Agreement was intended to put an end to financial claims and that there was to be some mechanism for preventing further claims. I am not so clear that beyond the delegates and the leaders that it was appreciated that the mechanism included individually signed renunciation forms.

534. The Minutes of the ITFB record discussions on at least one occasion in March or April 1983 (Minutes signed 16th April) about the role of the ITFB in collecting the forms. The Ilois representatives on the ITFB at that time were Simon Vencatessen, Francois Louis, Christian Ramdass, Elie Michel and Mrs Kattick. However, no forms had been drafted by that stage.

535. There is also evidence that there was a hitch in the process on 29th August 1983; that may have been about the amount and not the forms. It does seem, however, that Mauritian politicians had been clear, at least with Ilois leaders including Mrs Alexis, that the forms had to be signed, but it is not clear at how large a meeting that was. Mr Berenger, Leader of the Opposition, and two MLAs representing the largest concentrations of Ilois, were there.

536. I turn now to focus more closely on the events surrounding the signing of the forms. It is to be remembered that the 1982 Agreement was reached in April of that year. The first tranche of payments of Rs 10,000 was made in December 1982, paid out at the central Post Office - no renunciation forms were required. The second, land purchase related, tranche was paid by June 1983 - no renunciation forms were required. The third tranche, where the forms were signed, proceeded without any radio or press announcement that renunciation forms were required. There is nothing in the fact that a Ministry Office was chosen as the venue for the distribution to alert anyone to a different process. True it is that the forms do not look like receipts - they are too long and there are no figures such as might have become familiar from handling money, wages in the Chagos "carnet", pension or other benefits. But if the document itself was thought sufficient to raise a query in someone's mind, it is surprising that the proposal to collect them was not announced in advance. The fact that two forms had to be signed, one for each Government, would not of itself have told the Ilois much.

537. There was no-one to read or translate the documents. Most Ilois were illiterate and spoke Creole, whereas these documents were in English with some legal complexity.

538. I am quite satisfied that Mr Ramdass and Mrs Kattick knew very broadly what function the forms performed in relation to the 1982 Agreement, as part of the mechanism for preventing further claims and making the settlement full and final and that they were not receipts; I do not think that they knew the precise terms especially in relation to the right to return. There is no evidence that they had had any opportunity to see them beforehand or to go through them. They were not in a position to offer more than a rudimentary explanation that they were part of making the 1982 Agreement full and final. They, too, were illiterate and unsophisticated.

539. But I am not clear at all that explanation was any part of their function anyway. They were there to witness, because the forms might have a legal significance, showing that the person who thumbed it was the person who should have thumbed it. ID cards might well have sufficed, but this witnessing was also to invest the document with some legal proof in a simple way. They may not have been very efficient, but Mr Howell put over much weight at this stage on their presence. They were often not immediately beside the person as he thumbed or indeed always there at all.

540. It is not clear for how long Mr Abdullatif was there or what his role there was, although he could have furnished an explanation.

541. Mrs Talate said she asked a civil servant what the form was, but did not reveal the reply, beyond saying that they treated Ilois like dogs. One asked why there was more than one form to sign and was told that was because they were getting Rs 8,000. No-one else asked anything about them. One said they did not have the right to ask. Mr Saminaden said they were told that they had to sign to get the money. Others, however, described in similar language how they thought it was a receipt:

"All that I know whenever I go to a bank, even to get my pension, I have to sign in order to get a sum of money." (Mrs Alexis)

"What I understood was that I signed it and got my money, that was it." (Mr Ramdass)

"I thought I was signing for a sum of money." (Mr Bancoult)

"Wherever you go when you get money you have to sign."

"When I signed the paper I signed in order to get Rs 8,000." (Mrs Jaffar)

No copies were available to be taken away. There was no separate arrangement for minors other than that their parents had to sign for them. There were no arrangements for those under other disabilities and there was no evidence that there were any.

542. Only a dozen or so refused to sign. Francois Louis could read and understand and told Simon Vencatessen. But there was seemingly no widespread dissemination of their views or other reaction. His later litigation provoked no uproar about renunciation. Renunciation forms were discussed in the ITFB when Mrs Alexis, Mr Bancoult, Mr Vencatessen and other Ilois representatives were present. The discussion was about the unblocking of the last £250,000 and the UK Government's requirement for the forms. But it provoked no outcry. All of that subsequent absence of reaction suggests strongly that the leaders at least knew that they had signed forms which put an end to compensation claims and assumed that the Chagossians generally knew it, because they had all understood that back in 1982. It also points strongly to their evidence that it was thought just to be a receipt being untrue.

543. However, even Mr Berenger seems to have been surprised to discover later that there were two forms, one in favour of the Mauritius Government, which covered the claim or right to return.

544. At this stage, however, notwithstanding the way in which the evidence points and the compelling analysis by Mr Howell, I cannot conclude that it is plain that the Chagossians in general knew that the document was more than a receipt. It is possible that they could show that that is what they thought. My reluctance derives from the lack of public notification some sixteen months after the 1982 Agreement that it was on the third and smallest tranche that these forms were to be signed. The Chagossians were poor and so in need of the money, illiterate and no explanation was offered of a written document in another language. They generally knew, I am satisfied, that the Agreement was final and contained some mechanism to give effect to that end; but that is not to say that when they signed these forms, they knew what they were signing was more than a receipt and was that mechanism in the form of promise to abandon all claims, financial or otherwise. The distinction between a general awareness of a broad position and the knowledge of the particular document being signed at a particular time is one which I consider it necessary to draw.

545. I do not consider that the Chagossians generally have no reasonable prospects of showing that they took reasonable care in the circumstances. The first relevant circumstance is their knowledge of the potential legal significance of the document: they had not been alerted to its having any significance beyond that of a receipt by past events or current warning. On that assumption, there was no reason to ask. As I have discussed, I do not consider that the size of the document and the absence of figures is, at this stage, a compelling counter factor. Second, there was only limited evidence that there was anyone to ask - no-one

had any translating, explanatory or advisory function. Mr Abdullatif may have been there, but that is not the same as his having an explicit function. They generally were illiterate, simple and trusting and English was not their language. I have already dealt with the role of Mrs Kattick and Mr Ramdass.

546. Third, the process was conducted with some rapidity; it was not a form of legal consultation or group meeting. It appears that people came in one at a time, approached a grille, took the money and signed the document: no signature, no money. Fourth, although a handful could read and some did object and it might have been possible to return having taken advice, there was an emphasis on achieving a timetabled distribution. Fifth, the Ilois were desperate for money; that would have reduced their opportunity for calm deliberation.

547. Mr Howell is right that being in a hurry or being illiterate is no cause for carelessness, but he has not yet the strength of case to succeed. There is force in Mr Allen's more general submission about the role of justice in abuse proceedings. I do not consider that it would be just for the individual Claimant to be precluded from showing individually what they knew or did not know. Those considerations do not, however, apply to some of those who gave evidence before me.

548. My strong impression was that the translation of the forms in court, which would have meant little enough as Creole legalese, caused the witnesses all to focus on the renunciation of the claims to return to Chagos. They denied knowledge of the form in consequence and were unable or unwilling thereafter to distinguish compensation from other claims. But that by itself is not enough to exclude all those witnesses. I am quite satisfied that any Claimant who was a member of the 1982 delegation or who served on the ITFB in 1983 and signed the forms is in a different position. First, the former knew of the requirement for individual forms as part of the mechanism for giving effect to the finality of the 1982 Agreement. The latter, if they did not know it before, would have known it through the ITFB discussions. They all would have appreciated that the document being signed in September 1983 was that form. The gap between agreement in April 1982 and the signing of the forms in September 1983, and the absence of forms for the first two tranches, would have been of much less significance for someone who knew what the mechanisms were.

549. Second, the form as signed is not radically different in character from what they expected. I say that despite the fact that it includes a renunciation of claims to return to Chagos which they may not have known of and would have resisted, had they known. The document is still a renunciation form; it deals with BIOT related claims and ends their ability to sue. The inclusion of an unknown but important provision does not make it radically different for these purposes.

550. Third, whatever their precise knowledge of that, they were in a position to ask about it and to ask for time to take advice. They had been in touch with English and Mauritian lawyers and could have asked for advice again. They had ready access to English speakers and to Mauritian politicians, civil servants, or indeed to the ITFB and Father Patient. They could have asked to see the form and take one away. Those on the ITFB were in a position to ask to see them in advance because of the April meeting and the emergency meeting on 30th August 1983. Mrs Alexis knew of them in advance; she could ask Mr Berenger what they said. They did not exercise reasonable care about what they were signing, and have no prospects of showing that they did. Olivier Bancoult is not within the category which I have referred to, but I am quite satisfied, from his position in the CRG, his relationship to other active Ilois leaders, and from all his evidence, that he knew that the forms were part of the mechanism for preventing further claims, albeit that he may not have known that they referred to claims to return to Chagos.

551. Mr Saminaden agreed that he knew that the forms were not receipts, that the £8m claim had been "final" and that Michel Vencatessen had had to withdraw his case. He initially agreed that it all meant that the Ilois could bring no more cases, and although he resiled from that, I am quite sure that that was not because he was correcting himself but because he realised the problems which his answers were creating for the

case as a whole. I am satisfied that he knew that the forms were part of the mechanism for preventing any further claims being brought, although he too may not have known what it contained about claims to return to Chagos. Even if he thought that it was a restriction on bringing claims for five years, which I doubt, he knew the essence of the form, that it prevented claims. He took no step to inform himself better, which he too could have done through the contacts which had acquired over the years, up to 1983.

552. Mrs Talate had been an active Ilois campaigner at the relevant time, and a leading member of the CIOF. I accept what Mr Howell submitted about her, as set out earlier. The burden of proof would be upon her to show that she did not know what the document's essential character was, and that she had taken reasonable steps. Her evidence was so poor, of such unreliability that she has no prospect of discharging any evidential burden on this matter.

553. That same point is true of the evidence of Mrs David, Mrs Elyse, Mr Laval and Mrs Jaffar. Rita Elyse was also Olivier Bancoult's mother; they must have spoken about this. Accordingly, the inclusion of the following claims is an abuse of process: Mrs Talate, Mr Ramdass, Mr Saminaden, Mrs Kattick, Mrs David, Mrs Elyse, Mrs Jaffar, Mr Laval, Mr Bancoult, and should she become a Claimant, Mrs Alexis. Their heirs as such have no claim either other than in their own rights.

554. It is convenient at this stage to deal briefly with Michel Vencatessen's heirs. There was some prospect at one time that it might be said that the withdrawal of his action was vitiating by duress. That was not in the end pursued. Mr Thompson QC for the Defendants submitted that, as the present proceedings covered the same ground as that case and that Michel himself would be barred from bringing these proceedings, his heirs should likewise be barred from claiming through him. This was not disputed and is obviously correct. It does not, however, prevent any of his heirs suing in their own right.

555. At one time, it appeared that the Claimants were seeking to suggest that the forms had been signed knowingly but under the economic duress of their circumstances. This was in their skeleton argument, but not actually pleaded. (Indeed, it was not until the draft Re-Amended Reply of 29th November 2002 that it was pleaded that the Chagossians had not known what they were doing, although it had come out with their first witness.) But there was no evidence to support the contention of economic duress. The witnesses said that they would simply not have signed away their rights for Rs 8,000.

556. I turn now to deal with unconscionability.

557. Mr Allen put his case in two ways. First, the renunciation forms were not binding because there had been an unconscientious use of power by the Government in the way in which it had procured their signature. Second, it was not possible for the Government by a financial settlement to provide proper consideration for the forced removal of the fundamental rights of the Claimants; it ought to meet its inalienable governmental responsibility towards them.

558. For his first contention, Mr Allen submitted that what was necessary was for a party to make unconscientious use of its superior position or superior bargaining power to the detriment of someone suffering from some special disability or disadvantage. This weakness had to be exploited in some morally culpable manner, leading to an oppressive transaction. These propositions are drawn from the judgement of Mr Peter Millett QC in *Alec Lobb Ltd v Total Oil Ltd* [1983] 1 WLR 87 94-95. This decision was affirmed in the Court of Appeal [1985] 1 WLR 173; the principles were not in dispute but the Court emphasised the need for unconscientious behaviour rather than a mere disparity of bargaining power. That point was not at issue.

559. A serious disability was one which affected significantly the ability of the weaker party to make a

judgement as to his best interests. Categories of disability which were well-established were illiteracy or lack of education, lack of assistance where explanation was necessary, age and poverty. The courts were ready to set aside unconscionable transactions with "*poor and ignorant persons*" where there had been no independent advice; *Fry v Lane* [1888] 15 Ch D 679. A modern description of those persons was provided by Megarry J in *Cresswell v Potter* 1968 reported in [1978] 1 WLR 255. "*Poor*" was "*of a lower income group*" and not destitute; "*ignorant*" was "*less highly educated*". This needs to be judged in the light of the transaction in question and of the documentation which it involves. Again, I regard those points as established.

560. It is also clear that the availability of legal advice will not necessarily save a transaction. *Cresswell v Potter* illustrates that. The need for advice and the true nature of the transaction would have to be drawn to the weaker party's attention before the availability of legal advice could save a transaction. The advice given would have to be independent. That I accept as a general point but much may depend on the circumstances.

561. Moreover, the quality of the advice had to be examined by the court. It was necessary to see whether the lawyers had access to all the relevant information, the time and resources to deal with the problem properly. The advice had to be sufficient to protect the weaker party's interests. Even if the lawyer explains the disadvantages and that the client is under no obligation to sign that may not be sufficient however forcibly that is done. It may be necessary to refuse to act. Mr Allen relied on *Credit Lyonnais Bank Nederland BV v Burch* [1997] 1 All ER 144 CA and *Boustany v Piggott* [1995] 69 P&CR 298 CA. These cases bear out Mr Allen's point. Mr Allen submitted that there was an analogy between that and the provision of advice collectively but not individually. That rather depends on the circumstances.

562. Usually, there had to be knowledge of the weakness of the other party and for these purposes it is clear enough that the Defendants were aware of the condition of the Ilois upon which Mr Allen relied as constituting disabilities: illiteracy, ignorance of legal matters and poverty. The UK Government was clearly aware that it had a stronger position than they had. It was also aware that they were very unlikely to have access individually to legal advice about the signing of the forms. If the disability and the absence of independent advice are established, the burden of showing that the transaction was not oppressive in conduct or in its terms is cast upon the stronger party, here the Government; *Cresswell v Potter* above, 257.

563. I shall for present purposes accept that argument as to the change in burden of proof, but I am not at all clear that it is right. It certainly is so said in that case and in *Burch's* case at page 152. However, in *Portman Building Society v Dusangh* [2000] 2 All ER (Comm) 221 CA, Ward LJ 234 said that where a case was strong enough on its face in terms of conduct and terms, unconscionable conduct could be inferred if there was no explanation offered to displace that inference. The idea of a change in burden of proof was not supported. Yet the two other cases are reasonably clear that there is a point at which the burden switches.

564. I accept that it is possible to infer from the terms of the transaction that the stronger party has exploited his position in an unconscionable way as well as from the manner in which the negotiations proceed. But the test is couched in strong terms; the transaction must be oppressive. There must be some impropriety in the conduct of the stronger party and in the terms of the transaction which offends the conscience of the court so that the stronger party should not retain what he has unfairly obtained. If an intermediary is involved, the stronger party must be shown to have actual or constructive notice of any relevant impropriety; *Credit Lyonnais*.

565. There was an issue as to whether it was necessary for the position of the parties to be restored in order for relief to be granted. It is not necessary for me to resolve that because I accept that, for these purposes, a sufficient restoration would be achieved by the giving of credit for the sums received against any damages awarded. The forms were only signed in return for Rs 8,000.

566. The relevant principles have recently been dealt with in *Dusangh* and what I have set out and accepted above reflects those principles. *Dusangh* makes it clear that the importance of legal advice is not so much that it is a necessity in all cases for the disproof of unconscionable conduct but that its absence assists in the drawing of the inference that there had been such conduct.

567. Both parties placed their submissions in the differing contexts as they saw them in which the forms were signed. The UK Government, submitted Mr Allen, had not merely known of the disabilities of the Chagossians, it had been responsible for them being in that state in Mauritius. They were a weak and vulnerable population engaged in adversarial negotiation with the very Government which should have been taking responsibility for them. They had been kept in the dark for years about the actions of the Government and it was only recently that its deceptions had come to light.

568. The legal advice was inadequate. First, the lawyers were unaware of all that was to come out about those deceptions and accordingly did not give advice with full knowledge of the relevant facts. Second, it was not clear how representative was any group which had instructed lawyers, whether the CIOF or Mr Ramdass' group. Nor could anyone know how far or how accurately any such advice had been disseminated; their structures and memberships were as far from clear as were their means of communicating with their members or the Chagossians generally. The Treasury Solicitor had been aware in 1979 of what was required for any settlement to be effective but those safeguards had been abandoned in 1983. As Mr Allen acknowledged, the scale of the task of getting everyone to agree or dealing with those who wanted more than others from an overall pot or who did not want to sign the forms at all would have been a huge task and could have involved many different lawyers as conflicts of interests arose. The lawyers in 1982 had neither the time nor the money to undertake the necessary work. The Claimants themselves were unfamiliar with lawyers and legal ways.

569. The conduct of the UK Government was unconscionable. It did not conduct the negotiations in 1982 in Creole or provide for adequate translations into Creole by those whom the Claimants could trust. It did not attempt to communicate the outcome of the negotiations to all the Chagossians. The requirement for the forms came into the Agreement late and despite Sir Leonard Allinson saying that individual renunciations of the right to return would not be required. There was evidence, (19/B/8), that the UK side was trying to keep that quiet because questions about how it was to be implemented were said to be best left until the agreement was signed. They were printed in English without any translation or explanation being available. The fact that they were in English was part of a deliberate attempt to prevent the Chagossians understanding what the forms were. There was no forewarning that they were to be required in return for the smallest tranche of money some sixteen months after the Agreement had been reached. The sum paid was of the order of £2,500 for each Chagossian and the Rs 8,000 represented only £400.

570. Mr Howell submitted that the UK Government had plainly not acted in an unconscionable manner and that the terms of the form were not oppressive. The 1982 agreement was intended to be the solution to the problems faced by the Ilois and to their claims. It was intended to be final and to contain mechanisms to make that effective. This was understood by the Ilois, by their representatives and their lawyers with the latter at least understanding more of the detail as to how that was to happen. The lawyers had all realised that, whoever precisely their clients may have been, they were in effect advising the Ilois generally. In 1979, Mr Sheridan had been advised by Mr Blom-Cooper QC that £1.25m was a fair settlement. In 1982, Sheridans had advised that the Vencatessen case be withdrawn and had not suggested that the settlement was unfair; Mr Glasser confirmed in evidence that they had thought that it was fair. Mr Grosz and Mr Macdonald had both concluded that it was fair and should be accepted.

571. Measured by the claim, reduced to £6 million in December 1981 by the CIOF, the overall settlement was five sixths of what had been sought. That figure had been sought for distribution among 900 families and although the UK Government was not concerned to define how the money was to be distributed, it did its calculations on the basis that there were at most only 426 families to be compensated. It was the ITFB which

decided who was to receive the money and widened the range of participants from those accepted as entitled to compensation by the UK Government, but not so extensively as to cover 900 families; it was the ITFB also which decided that the money was to be distributed on a per capita basis without reference to any difference in needs or losses which might have been experienced. There was no complaint from the Ilois about those decisions. Mr Beal, for the Defendants, produced a valuable table of the Ilois populations surveyed on the islands, (so it would not include those Ilois who were unable to return from Mauritius), which showed 680 Ilois individuals in total on the three island groups in July 1970.

572. That settlement was reached in relation to a case which was at best speculative, and indeed with the benefit of hindsight and more materials remained so, at its highest. Anyone rejecting the offer on the basis that he wished to pursue litigation would have had to calculate his possible claim, assess how long it would take, perhaps without legal aid and with limitation problems, and decide whether he would prefer the certainty of the money now.

573. It is not easy to compare exchange rates over time to obtain a real sense of what the money was worth but Mr Howell pointed out that the benefit income of the poor in Mauritius in 1981 could be as little as Rs 3,600 pa (although I think that that is too low to be realistic), but that each of 426 families would receive over Rs 111,000 from the original offer of £2.5m and Rs 223,000 from the total of £5m. That sum of £5m would be worth today about £10.5m. At the 1982 exchange rate of Rs 19: £1, Rs 111,000 was about £5,000.

574. Although each individual Ilois might be poor and ignorant, it was necessary to realise that they did not live in isolation from each other or from the groups which had campaigned for them. They were a well-organised community, represented on the 1981 and 1982 delegations, their groups had instructed lawyers and started what was in reality a test case. They had plenty of political support and access to lawyers and advisers in Mauritius. They were participants on the ITFB. In reality, unfair advantage could not be taken of their position.

575. There had been no morally culpable behaviour in seeking to make the agreement final and to make that finality effective. In reality, the Ilois had recognised that in their correspondence. The Ilois sought a settlement. The Claimants' criticisms of the 1982 negotiations were ill-founded; there was nothing wrong with Sir Leonard meeting privately with the Prime Minister of Mauritius or with the Foreign Secretary writing to him. The Ilois had legal advice to the UK Government's knowledge and the arrangements for translation were a matter for the Mauritius Government. There was no evidence that the Ilois delegation was kept in the dark or that matters were concealed from them by the UK delegation. The inclusion of the requirement for individually signed forms during the 1982 negotiations was not done covertly nor did it hold up the payment of money to the ITFB nor did it hold up the bulk of the payments. There was no point in reaching an agreement which the Ilois were not prepared to sign up to. The terms of the agreement were the subject of a press communiqué. If there were failures on the part of the Ilois or their lawyers to keep up with or to explain what was happening, those were not matters for which the UK Government was to blame, let alone morally culpable.

576. The UK Government had not stipulated the terms of the renunciation forms nor drafted them. It had not specified how they were to be collected. The evidence showed only that the High Commissioner was aware that some Ilois had refused to sign, which would have suggested to him that they knew what they were, but that subsequently they had decided to do so and it showed that the few who then did not sign were under some Ilois pressure to do so. There was no Ilois complaint that they had been tricked at any stage when the forms were discussed, as they often were on the ITFB, and as the Ilois continued to campaign for more money particularly from the USA.

577. If there was any shocking conduct attendant upon the obtaining of the signatures, it was the responsibility of the ITFB or of the Mauritius Government but there is no evidence from them to that effect. In

reality, there was no point in trying to keep the Ilois in the dark as the Claimants suggested. There was no evidence that they had been prevented from inquiring about the forms. There was no evidence of protest about them from those on the ITFB or when Simon Vencatessen brought his action. There was no satisfactory answer to why there was no protest other than that there was knowledge of the purpose of the forms.

578. Mr Howell submitted that the absence of individual legal advice only went to the question of whether someone was in a weaker position capable of being exploited and did not of itself show that they had in fact been treated in a morally culpable manner, shocking the conscience of the court. There was no evidence that even one claimant who signed the form had such prospects of success that he would have been advised individually to litigate rather than to accept what was then on offer, let alone such prospects that it could be said that his acceptance of the offer was oppressive. Indeed, a global offer was what the Ilois themselves sought, they did not seek to differentiate on an individual basis and none of them made the sort of complaint pursued by Mr Allen. Their complaint was a collective one that they would not have signed the forms at all if they had known what they contained and collectively lacked advice about them.

579. My task is to say whether the Claimants have a reasonable prospect of showing that they were in a position in which they could be exploited and if so, whether the Defendants have shown that the Claimants have no reasonable prospects of showing that the Defendants behaved in a morally culpable manner leading to an oppressive transaction from which the Claimants should be relieved. I put it that way in the light of the point I made earlier about the burden of proof.

580. It is clear that the signatory claimants have reasonable prospects of showing that they fall into a number of categories of weaker party: illiterate, ignorant or ill-educated and very poor and in real need of money. It is also clear that they have reasonable prospects of showing that the UK Government was fully alive to their problems. I consider that they may be able to show that as the forms were sought by the UK Government, indeed pressed for, to serve its interests under the agreement and that in collecting them the Mauritius Government was acting as its agent, the UK Government should be treated as being on constructive notice as to the manner in which they were collected. The High Commissioner was in a position to observe or to inquire, had he so wished but he did nothing so far as the evidence before me goes. There is scope for arguing that the manner in which the signatures were obtained involved the exploitation of those weaknesses in a morally culpable manner. They were asked to sign a legal form without explanation at the time as to its purpose or content by those who knew of their weakness. I was wholly unpersuaded that there was any sound evidence that there had been any attempt to prevent them understanding what was in the form, it is rather that no positive attempt to inform them was made at the time. There is no justification for saying that there was any trickery. The signing of the forms was to the UK Government, to the Mauritius Government and to the ITFB the working out of what had been agreed in 1982 with the knowledge and consent of the Ilois. I do not think that it adds to the Claimants' case that the UK Government was, on any view, responsible for at least many of the signatories being in Mauritius.

581. The crucial issue is whether the transaction itself is clearly not oppressive or shocking to the conscience of the court. I am satisfied that the signatories cannot succeed on this first limb of Mr Allen's case. I accept the broad thrust though not necessarily all the detail of the arguments of Mr Howell on this matter, which I have set out above. The matter does have to be looked at in the context of the 1982 agreement which I am quite clear was understood by the Ilois in general to be a final agreement. It was generally known that that was an enduring requirement of the UK Government, if it were to pay over any more money. That had been accepted in correspondence, at least to the eyes of any reader, by the Ilois representatives. I have said elsewhere that I do not accept as remotely true that they did not know what was being said in that correspondence and would not have agreed to that point had they known; that would simply have ended negotiations straightaway and the litigation would have followed its course.

582. The delegates had legal advice and members who were able to translate what was said or to explain it.

There was no reason for the UK Government to suppose that that had not been done. Although it may not have known about the subsequent legal advice, the fact that it was sought and no complaint was raised about the terms of the agreement, supports the conclusion that all that had been done properly. It also makes it more difficult for it to be said that the transaction envisaged, but to which no objection was taken, was oppressive. I do not accept that there was anything covert about the insertion of Article 4. It was not a secret protocol, it was discussed with the Ilois' lawyers and they advised on it. The agreement and all its terms were publicised. The UK government had no reason to suppose that the Ilois representatives were not representative or unable effectively to communicate with the Ilois. Indeed, there is plenty of evidence that the Ilois met and had the agreement explained to them at least in broad terms.

583. The advice which was given by two firms of solicitors and by a QC was that the terms were fair, including the obligation to sign an individual renunciation form or perhaps more accurately in the case of Sheridans, that requirement was not said to be unfair. The amount in total was seen as a fair settlement by the parties to the agreement, though no doubt any compromise leaves some desires unmet. There is no evidence that any part was seen as oppressive or obtained by unfair tactics or the exploitation of the weaknesses of the Ilois. They had not merely had legal advice but political assistance from people whose interests however selfishly coincided with theirs at that time. Whether measured against what the Ilois asked for in December 1981 or against some other measure, the sum in total could not remotely be described as evidencing an oppressive transaction. The Ilois were being asked to give up what all the lawyers knew was a speculative piece of litigation which might in due course provide some with an unknown amount of money in return for something now to relieve their poverty.

584. The subsequent working out of the distribution of the ITFB money was the responsibility of the Board and its Ilois members, initially appointed and then elected. There is no evidence that any Ilois disagreed with the per capita payment. There was disagreement over who should qualify but that working out of the agreement was not the responsibility of the UK Government.

585. Mr Allen exaggerates the need for individual legal advice. As I have said, it was not the concern of the Ilois at any stage to divide up the sum according to some assessment of individual losses or needs. The sort of process which he envisaged would have entailed each individual being advised as to the amount which he might receive if the litigation succeeded, discounting that by the prospects of success, reaching some agreement with his fellow Claimants as to how the sum was to be shared and meanwhile receiving nothing whilst lawyers got themselves utterly enmeshed in conflicts of interests between clients who disagreed on how to split the global sum and who should benefit. The sophistications of settling group actions would have had to be invented and given effect to among people who were admittedly not familiar with legal concepts. Alternatively, the matter would have been fought to an individual conclusion in a series of test cases. If any such process had been instituted in 1982 or 1983, holding up the payment either of the £4m or the payment of the Rs 8,000 for what, so far as I could tell from the way in which Mr Allen explained how it all ought to have been done, would have been a very long time, the lawyers would have had a very hard time of it from the Ilois people themselves who really needed the money. They would have been extremely cynical of the way in which the only beneficiaries of the proposed settlement would have been the lawyers. No one suggested this farandole in 1982 or 1983 as the way in which these matters should be done. His submission was a counsel of perfection, utterly remote from the real world of the Ilois' needs in 1983. The fact that it was not done does not remotely show the oppressiveness of the transaction. Neither Bindmans nor Sheridans were said to have been negligent at any stage yet they were responsible for advising Ilois about the wisdom and mechanics of the settlement. Bindmans thought that they were advising the Ilois generally through the CIOF and saw nothing wrong at any stage with the negotiations, the content of the Agreement, or the mechanics as described in the Agreement for procuring Ilois assent, generally or individually.

586. There was no obligation on the individual Ilois to abandon litigation before the agreement was signed and it remained open to any Ilois to bring proceedings rather than take the money if he so wished. If an individual Ilois had calculated that instead of taking Rs 8,000, he would be better suing for damages, he

could have done so. But it is impossible to believe that anyone would have advised him to do so; he would have been told that the form was just what the agreement envisaged, that there would no more money without litigation for years and I do not see on what basis there would have been any legal aid for such a case. It would not have been privately funded. There is no evidence that in 1983 any lawyer would have offered such advice or that any Ilois would have heeded it. Indeed there is evidence, from the concern over the few non-signers after September 1983 needed to procure the unblocking of the £0.25m, that there would have been intense pressure placed upon those Ilois to sign, with the CRG and Mrs Alexis to the fore.

587. The advice which the Ilois needed was collective advice about whether the global sum with the conditions attached was a reasonable offer. The UK Government was entitled to approach the signing of the forms on the basis that that advice is what the Ilois had had and that the signing of the forms was the working through of the terms collectively agreed. I do not accept the picture painted by some of the Chagossian witnesses of the way in which there was no communication between them; it is wholly at odds with the evidence of meetings, protests, organisations, relationships and their concentration within a few parts of Port Louis. It is conceivable that there might have been collective advice in September 1983 not to sign the forms, to forego the Rs 8,000 and the blocked money in return for the right to continue litigating but that speculative possibility, which the evidence suggests would have been turned down flat, does not remotely show that the transaction was oppressive.

588. Mr Allen is wrong in his submission that the legal advice was deficient, and was to be discounted in judging the unconscionability of the Defendants' conduct and of the transaction, because the lawyers lacked the information which now has come to light about what the UK Government was doing. It is inevitable in settling litigation that the decision is not made in the light of all the information which a trial might bring. The lawyers all knew that the UK Government was resisting the disclosure of some documents and that the potential for argument about discovery had not been exhausted. Those advising at the time were aware of all those points. There is no suggestion that the agreement was procured by some deception practised at the negotiations which has only now come to light.

589. On that limb of his argument, Mr Allen fails to persuade me that he has any real prospects of showing that the transaction was oppressive or shocking to the conscience of the court. Viewed in 1982 and 1983, it was a reasonable offer which was worked through according to its terms. There was a global settlement in the form of the 1982 agreement with legal advice; the terms of the distribution, the amount and to whom, was decided by a Trust Fund; the renunciation forms gave effect to the other side of the deal in the way envisaged by the agreement. If an Ilois did not want to settle on that basis, the agreement left it open for him to bring proceedings if he were so minded. Ilois had instructed lawyers on a number of occasions and threatened litigation as well. They had rejected offers in the past which they did not find acceptable. Neither the *Permal* nor *Simon Vencatessen* cases in the Mauritius Supreme Court elicited any reaction that the settlement, with individual renunciation forms, was unconscionable.

590. I now turn to the second basis upon which Mr Allen said that the forms were unconscionable. As the Government responsible for the Ilois, it could not reach an agreement with them to wash its hands of responsibility for them or to remove their fundamental rights. This point goes to the content of the renunciation forms rather than to the manner in which they were signed. As I understood it, no matter how much advice had been given, the removal of those rights was not open to a government to accomplish. I was not clear as to the source or scope of this inhibition on the ability of two parties to litigation or potential litigation to settle their differences, nor as to whether a judgement in favour of the Government in the Vencatessen litigation would have suffered from the same disability.

591. This ground is untenable. It is no different from saying that there can be no settlement of a case against the Crown or of these cases.

592. Accordingly, I reject the contention that the signing of the forms, if otherwise effective in law, could arguably be set aside as unconscionable. Mr Howell complained that this contention came too late for it to be considered, that he would have asked questions about it in cross-examination had he known that this was to be argued and that I should not allow the amendment to the Reply which raised it. I disagree. It is not so very different a point from others which Mr Allen raised; it is rather a new garb for some well-known complaints about the Defendants' conduct over the years. I could not see how more cross-examination would have advanced Mr Howell's case whereas I could see every advantage in strike out proceedings for allowing pleadings to raise the full case which either party wished to raise.

593. So far as infants are concerned, I do not see any reason to reach a different conclusion on unconscionability because what was done seems to me to have been wholly sensible. But the question of capacity may affect the effectiveness of the forms in creating the foundation for the abuse argument in the first place. That is not a point which I consider I can deal with at this stage on the material before me; it may also be a matter which depends on individual cases.

594. The final point raised by Mr Allen against this abuse of process argument was that it should have been raised earlier either in the Bancourt Judicial Review, or in these proceedings. I do not accept either contention. It would have been pointless in the former; a Claimant could have been added to challenge the *vires* of the 1971 Immigration Ordinance who had not signed such a form. It would have provided the occasion for prolonged evidence and submission on an issue, in effect, of standing, when there was a real issue of general application in the *vires* of legislation. There is a significant difference between saying that a claim for compensation, made after a final settlement has been reached, is an abuse and saying that an application for Judicial Review to determine the validity of legislation in force is an abuse of process. The fact that such a point was not taken, so as to prevent or delay that application, is not a reason why it should not be deployed in this subsequent but related action. It is an argument mirrored by the Defendants' now abandoned arguments about what should have been dealt with in those or other Judicial Review proceedings.

595. There was no objection from the Claimants to this abuse issue being dealt with as part of this application. The question is not whether it is open for consideration in view of the timing or manner in which it was raised. The question is whether it could be dealt with fairly in those circumstances; the Claimants did not suggest to the contrary.

Limitation

596. On the face of the claim, all the causes of action for damages are statute barred. The Claimants have raised a number of arguments as to why that is not so, or as to why time has not stopped running or should be extended. It is for the Claimants to show that they have reasonable prospects of success in their arguments. These were deployed in their revised form in a proposed Amended Reply.

Limitation: the applicability of the Limitation Act 1980

597. Mr Allen's first contention was that the Limitation Act 1980 did not apply to any person who had a good cause of action but was unable to enforce it. For this startling proposition, he did not refer to any part of the Act itself but rather to a dictum of Lord Atkinson in *Board of Trade v Cayzer, Irvine and Co Ltd* [1927] AC 610 628 at which he said that the whole purpose of the applicable Limitation Act "is to apply to persons who have good causes of action which they could, if so disposed, enforce, and to deprive them of the power of enforcing them after they have lain by for the number of years... and omitted to enforce them. They are thus deprived of the remedy which they have omitted to use". Upon this, Mr Allen constructed an argument that because the Defendants had deprived the impoverished and illiterate Claimants of access to the courts of

BIOT or of the UK, they had not omitted to use their remedies and so the Act did not bite.

598. This is one of his weaker points. There is no relevant provision to that effect within the Act and this dictum does not constitute a rule of interpretation. All that was being said was that where the particular form of contract provided that a particular cause of action should not arise until certain conditions were fulfilled, in that case the making of an arbitrator's award, the Limitation Act did not bite at an earlier stage; see *O'Connor v Isaacs* [1956] 2 QB 288 326, Diplock J.

The Limitation Act and unconscionability

599. Mr Allen's next and related point was no more arguable. It was to the effect that the Court could suspend the effect of the Act where it would be unconscionable to allow the Defendants to rely upon it. He referred to the sort of wrongs which he regarded as the starting point for, though not the content of, his misfeasance claim. He added that there had been no legal system in BIOT to which the Claimants had had access and no legal aid system either. Even if all his facts were incontrovertible, he demonstrated no basis upon which a court could decide that a statute could be removed from the arena to which its language made it apply, simply because a court thought that it would be unconscionable to allow a party to rely upon the rights which Parliament had given him. The 1980 Act is quite explicit in prohibiting the bringing of a cause of action after the relevant time limit, and has made varied and explicit provision for the circumstances in which time should not run against a Claimant or should be extended. That represents the Parliamentary view of where it would be wrong to allow a Defendant to take advantage of the passage of time and marks the balancing of the interests of finality in litigation and fairness to a Claimant.

The Foreign Limitation Periods Act 1984

600. Thirdly, Mr Allen argued that the operation of the 1980 Act was excluded or modified by the Foreign Limitation Periods Act 1984 and the BIOT Courts Ordinance 1983. Section 1(1) and (2) of the 1984 Act provide:

"1 Application of foreign limitation law

(1) Subjection to the following provisions of this Act, where in any action or proceedings in a court in England and Wales the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter -

(a). the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and

(b). except where that matter falls within subsection (2) below, the law of England and Wales relating to limitation shall not so apply.

(2) A matter falls within this subsection if it is a matter in the determination of which both the law of England and Wales and the law of some other country fall to be taken into account."

601. Also relevant are the following parts of section 2 which make exceptions to section 1; Mr Howell relied

upon them.

"Exceptions to s 1

2 (1) In any case in which the application of section 1 above would to any extent conflict (whether under subsection (2) below or otherwise) with public policy, that section shall not apply to the extent that its application would so conflict.

(2) The application of section 1 above in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings."

602. Mr Allen contended that the effect of the 1984 Act was that BIOT limitation law applied unless both BIOT law and English law fell to be taken into account, in which case the 1980 Act should still be discounted under section 2 of the FLPA because of the public policy and undue hardship considerations.

603. He related that argument to the provisions of the BIOT Courts Ordinance 1983 No 3, which contains the BIOT provisions on limitation, incorporating, subject to some scope for adaptation, the English law on limitation. Section 3 of the Ordinance, which I repeat here for convenience, provides:

"3. (1) Subject to and so far as it is not inconsistent with any specific law for the time being in force in the Territory and subject to subsections (3) and (4) of this section and to section 4, the law to be applied as part of the law of the Territory shall be the law of England as from time to time in force in England and the rules of equity as from time to time applied in England:

Provided that the said law of England shall apply in the Territory only so far as it is applicable and suitable to local circumstances, and shall be construed with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary."

604. Section 13 is also relevant. It reads so far as material:

"13. The jurisdiction of the Supreme Court shall be exercised, as regards practice and procedure

(a) in civil matters, in accordance with rules of court made under section 14, and in default thereof, in substantial conformity with the practice and procedure for the time being observed in England by the High Court of Justice."

605. There are no Rules of Court under section 14.

606. Mr Allen drew the threads of his argument together by submitting that, whether under the undue hardship/public policy rubric in the 1984 Act or under the adaptation of English law to local circumstances as might be necessary under the proviso to the Courts Ordinance, the circumstances of the Claimants warranted the exclusion of the 1980 Act. He referred to the displacement of the Chagossians, their continued wrongful exclusion under the Immigration Ordinance, their extreme poverty, their lack of familiarity with a

legal system in a paternalistic society, their general lack of access to legal advice, the lack of time, funding and access to information of those lawyers who had been involved; they had acted on behalf of only tiny numbers of Chagossians anyway and their advice was not communicated effectively to the community as a whole. Others who had helped had their own political motives.

607. Mr Howell objected to so late an amendment, after cross-examination, as unfair. He said that the form of pleading about legal access was vexatious and irrelevant. There are certain problems, as ever, with the loose and imprecise way in which the pleadings have been drafted. For the present I am prepared to see whether there is anything of substance in the Reply as proposed.

608. I do not consider that Mr Allen can be right in seeking to say that the 1984 Act permits the English law on limitation to be disapplied. It is the foreign law on limitation, which, if otherwise applicable, can be disappled for reasons of public policy including hardship. Section 1 disappplies English law subject to exceptions set out in both subsection (2) and in section 2(1). The existence of the circumstances relied on by the Claimants are irrelevant unless they show that the foreign law is to be disappled, but they have been relied on to precisely the opposite effect by the Claimants. The language of the 1984 Act might be thought a trifle muddled in section 2, as to what parts of section 1 are to be disappled but a little thought makes it tolerably clear. Evans J held in *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep 543 592 that the relevant hardship was that caused by the application of the section, that is the application of the foreign law. That assessment involves a comparison of the relevant competing laws on limitation. Besides, it is obvious that Parliament did not consider that the English laws on limitation were contrary to its public policy or created hardship, or did only so when compared to foreign law.

609. Even if Mr Allen were right and the question were whether English law on limitation fell to be disregarded in favour of BIOT law, the factors relied on are incapable themselves of giving rise to undue hardship or of being contrary to public policy unless they too were capable of leading to an extension, postponement or suspension of the running of time under the 1980 Act. That is because it is not for the Courts to hold that the balance contained within the 1980 Act is contrary to public policy, including the creation of undue hardship. Mr Allen also has some difficulty in showing that any tort upon which he relies falls outside the scope of section 1(2), though if he were to have a direct action upon the content of the Mauritius Constitution, it might be one within the scope of section 1 of the 1984 Act. I note that Mr Allen only relies upon the law of BIOT although it is far from clear that the negligence claim would not fall to be governed by Mauritius and English law.

610. If BIOT law does apply to any cause of action, and is not disappled because of double actionability, or public policy including hardship, it is necessary to see what it consists of as a matter of limitation. I accept Mr Howell's submission that section 3 of the Courts Ordinance deals with substantive law and that it is sections 13 and 14 which are relevant here because it deals with procedural laws, of which limitation forms part. There may be exceptions to that general rule, where a right is barred and not just a remedy, but Mr. Allen did not take issue with it. As the practice and procedure is to be in substantial conformity with English law, there is no reason to disapply the relevant statutory provisions and no case was put forward under this section that they should be disallowed. Even if section 3 were the relevant section, there is nothing in the local circumstances which warrants an adaptation. No adaptation was specified; what was sought was a wholesale disallowing of the periods of limitation for a particular group of claimants who do not live in BIOT, and have not done so for almost the whole of the period in question, and where few of the acts relied on as constituting the various torts were done. This is misconceived; the process of adaptation is not one which varies according to the needs of various claimants, which is what they argue, but is something which would be good for all as a result of local conditions. It would be odd indeed if the English law on limitation were thought incapable of dealing with disability, access to lawyers, and the fact that someone has been disadvantaged in the pursuit of a claim by the very acts in respect of which he seeks to sue. There is nothing in this argument of Mr Allen's.

Limitation and continuing torts

611. The fourth argument is that there are continuing torts in respect of which, as I understand the argument, it is said, not that time is not barred in relation to anything which has continued to be done in the period of limitation, but that no limitation period has started yet to run. Presumably the argument is that until the tort has stopped, any damage can be sued for irrespective of when it was done and that remains the position for so long as the tort goes on. This was asserted to be the law. No reasons were given. I do not find this easy to follow. Limitation periods are expressed to run from when the cause of action accrued. If it has not started to run, that would mean that the cause of action had not yet accrued. The claim should be struck out on that ground. I assume that the Claimants do not seek that. If the tort continues, it means that a fresh cause of action accrues daily or with each fresh damage. So, the continuing tort of exile, if it existed, would not be time barred in relation to the period of six years preceding the commencement of this action; but that is all. Deceit was alleged to be a continuing tort, but that is clearly wrong. No fresh act of deceit or further damage is alleged in the six years preceding the commencement of the action. The continuing duty of care towards citizens is said to be a duty which continues to be breached. If it existed in the form claimed, the breach would be continuing in the six years preceding the commencement of the action. Those are the only two claims which would be affected by this argument in isolation.

Limitation and disability

612. Mr Allen next relied upon disability. The relevant provision of the 1980 Act is section 28(1) which provides:

"28 Extension of limitation period in case of disability

(1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired."

613. Section 38(2) declares that an infant or person of unsound mind is a person under a disability. Mr Allen contended that that was not an exhaustive definition of disability, and that "*disability*" could include being outside the jurisdiction of the BIOT Courts or of the High Court of England and Wales as a result of the Defendants' acts, and being impoverished, ignorant and illiterate and physically separated from those Courts as a result of their acts. The former had historically been a disability; he referred to the 1623 Limitation Act.

614. This is unarguable. The definition is not a deeming provision leaving other disabilities to be allowed for by judicial improvisation, or by reference to the repealed legislation of 1623. It is unwise to construe the 1980 Act as if it incorporated provisions from earlier repealed Acts without any express provision to that effect. Section 38(2) is clearly a definition section, as *Yates v Thakeham Tiles Ltd* [1995] PIQR 135 CA makes clear at pp139-140 and 143. It relates to legal not to physical disability. No Claimant under such a disability at the date when any cause of action accrued has been identified, though that is not to say that there are none, nor has the ending of any such period of disability been identified. In reality, there is only one arguable claim in tort, for negligence giving rise to personal injuries. It is difficult to see how even for an infant in 1973, the period of disability did not expire many years before this action was brought and indeed before 1998.

An action based on fraud

615. Mr Allen then contended that the running of the period of limitation had been postponed under section 32(1)(a) or (b) of the 1980 Act, because the whole action was based upon the fraud of the Defendants or the deliberate concealment of facts by them. Section 32 provides, so far as material:

"(1) Subject to [subsections (3) and (4A)] below, where in the case of any action for which a period of limitation is prescribed by this Act, either -

(a). the action is based upon the fraud of the defendant; or

(b). any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or ...

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

(2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty."

616. The whole action was said to be based on fraud, not just because an action in deceit was a case based on fraud, but rather because "*fraud*" in this context meant unconscionable behaviour, falling short of "*fraud*" or even of moral turpitude. What was required was behaviour which made it unconscionable for a defendant to rely on the lapse of time as a bar to the claim.

617. The acts of unconscionable behaviour relied on, in summary, were (1) the Defendants' failure to treat the Chagossians as their citizens, which they were, (2) concealing that the Chagossians were permanent inhabitants of the Chagos and citizens of the United Kingdom and Colonies and belongers to BIOT, (3) preventing the return to the islands, without lawful authority, of those who had left temporarily, (4) deporting Chagossians without lawful authority, (5) infringing their property and constitutional rights, and (6) knowingly making no or inadequate provision for the displaced Chagossians.

618. Mr Allen relied upon a number of authorities in support of his proposition that "*fraud*" for the purposes of section 31(1)(a) covered claims based on unconscionable behaviour. In *Applegate v Moss* [1971] 1QB 406 CA at p413, Lord Denning M R considered the predecessor provision of section 32, which was section 26 of the Limitation Act 1939. It is correct in one sense that Lord Denning gives "*fraud*" the meaning, wider than the common law meaning, for which Mr Allen contends. The context was a claim for concealed defective foundations. But the Court was considering, not the equivalent of section 32(1)(a), an action "*based on fraud*", but the rather different predecessor to "*deliberate concealment*" in section 32(1)(b) of "*fraudulent concealment*", a phrase not to be regarded as included in disguise in the 1980 Act. The same distinction is true of *Clark v Woer* [1965] 1 WLR 650 and *Kitchen v RAF Association* [1958] 1 WLR 563. *Sheldon v RHM Outhwaite Ltd* [1996] AC 102 HL, to which Mr Allen also referred, is not in point at all, save for the emphasis which it places, unhelpfully to him, on not construing the 1980 Act by reference to the 1939 Act.

619. Indeed, the importance of the distinction between an action based on fraud, (1)(a), and fraudulent concealment, (1)(b), was borne out by one of the other cases upon which Mr Allen relied, *Beaman v ARTS Ltd* [1949] 1 K B 550 CA at p558. It held that an action based on fraud requires an allegation of fraud to be a necessary part of the cause of action. So a claim for conversion, with the added but unnecessary epithet "*fraudulent*", was not a claim based on fraud. But the unconscionable conduct of the bailee of the goods postponed the running of time under section 26(1)(b) of the 1939 Act, fraudulent concealment. As Mr Howell submitted, it is highly unlikely that now repealed and difficult expression "*fraudulent concealment*" which has disappeared from section 32(1)(b) was intended to reappear in section 32(1)(a). Lord Millett in *Cave v Robinson* [2002] UK HL 18, [2002] 2 WLR 1007 at p19 drew attention to the limited value of looking at new statutory expressions in the light of earlier expressions which they did not mean to reproduce.

620. On the Claimants' proposed Amended Reply, the only action which could fall within section 32(1)(a) is the deceit claim. Paragraph 19A(i) does not suggest that the misfeasance claim falls within section 32(1)(a). The Claimants plead that the fraud, and the unconscionable behaviour for that matter, was not discovered, or its full extent at any rate, until the Bancourt Judicial Review was being researched or until the availability of documents under the thirty year rule. Disclosure was given in *Bancourt* and again in this case and "*a truer and fuller picture began to emerge*". I deal later with when relevant matters were or could have been discovered, after dealing with deliberate concealment. But my conclusion is that even if the deceit claim were arguable, time began to run well before 1996, six years before the commencement of this action.

Deliberate concealment

621. The Claimants also relied on section 32(1)(b). An array of facts were said to have been deliberately concealed. In the original version of the Reply, paragraph 20, these were:

- "(1) The Claimants were citizens of the United Kingdom and Colonies.
- (2) The Claimants had rights to remain in the Chagos islands as belongers.
- (3) The Defendants knew that the Claimants (or at least some of them) had rights to remain in the Chagos islands as belongers.
- (4) The Defendants, their servant or agents, were responsible, directly or indirectly, for preventing the return to the Chagos islands of those who had lawfully left and wished to return between 1965 and 1973.
- (5) The Defendants had no lawful power to order the Chagossians to leave the Chagos islands or to require them to be so ordered.
- (6) The Defendants themselves had anticipated in numerous internal documents, the need to make adequate provision for the exiled Chagossians."

622. In the proposed Amended Reply, paragraph 20(vii), a further list was added by reference to parts of the Claimants' closing submissions:

- "(7) '*the fiction that there was no permanent population*' (the main point); this appears to relate

to (5) above, but does not appear to be the sole basis for (5), but rather a related but distinct point.

(8) in relation to *misfeasance*, the pleaded '*bad faith and illegality*';

(9) in relation to *unlawful exile*, '*the fact that there had been no lawful authority for the exile*' and '*the fact that there had been no pressing need for the exile in any event*',

(10) in relation to *negligence*, certain facts relating to the calculation of £650,000, the fact that it was merely all that was left from an original budget which had been overspent and the fact the pig breeding scheme was impractical and underfunded;

(11) in relation to property rights, '*the fact ... that Chagos Agalega had been paid for its interests in the island*' and that '*the UK Government had passed legislation which in its view overreached any subsidiary property rights onto the purchase price*';

(12) in relation to *constitutional and property rights*, '*the fiction that there was no permanent population*';

(13) in relation to *deceit*, the fact that the Government had deceived the UN in relation to the presence of a permanent population and that the Government had not given the Chagossians '*the choice to which they were entitled*'. The '*nub*' of these two alleged facts '*being that the Chagossians were entitled to stay on the islands*'."

623. The acts principally relied on as the acts of deliberate concealment appear to be that documents had been withheld or redacted in the Vencatessen litigation under an extensive public interest immunity claim. At its conclusion, those disclosed had had to be destroyed . A number of documents were also not disclosed at all. He relied on the same processes of disclosure for the purposes of section 32(1)(b) as he did for section 32(1)(a), as showing that the concealment ceased, with the *Bancoult* case, this case and the ending of the thirty year period.

624. Documents from 1965 examined at the Public Record Office were said to illustrate some of the key points which the Claimants made. They showed that at that time, the Defendants knew (1) that there were second generation Chagossians, (2) that they had obligations (of an unspecified source, whether legal, moral, political, and if legal, whether domestic, colonial or international, public or private) to compensate them, to assist in their resettlement, to "*ensure ... appropriate employment opportunities*" for displaced Ilois, to consult them, and (3) that they had obligations under the UN Charter to secure the advancement of the Chagossians in a number of ways, to protect them, to develop their self-government, and to report on their conditions. (This latter is pleaded as a known UN obligation in 1965 - though Chagos was never a territory or political entity in 1965 either before or after the creation of BIOT.)

625. They also showed, submitted Mr Allen, that (unnamed) British officials (but not Ministers, seemingly at this stage) developed "*an untrue account*" of (I infer) the existence of a permanent population with the intention of evading obligations to the Ilois under the UN Charter and obtaining the support of other nations at the UN. The documents showed no immediate requirement for any evacuation from Diego Garcia, and a not so immediate requirement for Peros Banhos or Salomon. Acquisition of land was intended to reduce scrutiny of the UK Government's actions and the compensation payable to a minimum.

626. This was relevant to deceit, misfeasance and negligence. Mr Allen related the documents to the causes of action in this way. For misfeasance, they showed knowledge and concealment of the existence of a permanent population of Ilois, awareness of the "governmental obligations" owed which the concealment of the population's existence would assist in evading. They evidenced, as it was expressed, the Government's dishonesty and conscious disregard of the interests of those who were going to be affected by official decision-making. The same applied to deceit. For negligence, those documents which showed an early knowledge of the position of the population and the likelihood of harm to it were relevant to the question of whether it was fair, just and reasonable that tortious liability should exist and whether there was a breach of a duty of care.

627. Mr Allen referred to volume 17 of the documents to support his point about the significance of what had been withheld in the Vencatessen case. It showed what, he said, had been concealed or redacted in the Vencatessen litigation. Mr Howell made submissions about it, to the opposite effect. Mr Allen said that the redactions showed that the UK Government had misled the UN about a permanent population, had taken decisions about clearance at the behest of the US, which were based on the geographical ignorance of the US as to the distance of Peros Banhos and Salomon from Diego Garcia and on an unformulated, distant and unspecified defence need, and had decided on a compensation/resettlement figure which had not been calculated by reference to individual or community needs. Those redactions related to all the causes of action. Essentially the same points emerged from the documents for which public interest immunity had been claimed in the Vencatessen litigation; added points were the different treatment of Ilois in the Seychelles, immigration control if the Ilois had no right to permanent residence and the deliberate policy, for a while, of not mentioning that the Ilois had British citizenship.

628. The proposed Amended Reply also includes a further contentious paragraph, 22A, which appears to relate either to the effect of the deliberate concealment of facts on the ability of the Claimants to bring an action, or to constitute a second set of acts of deliberate concealment. It is said that whenever a Chagossian, pre-Bancoult, sought legal advice, "*no lawyer has been able to advise with any confidence on the basis of evidence*" as to the rights and remedies now claimed. This was because of their lack of resources, "*the strategy and tactics*" of the Defendants, until the Bancoult case, not to reveal the truth as to what had been done to the Chagossians, to deny legal responsibility for their plight, to deny access to information which might help them, to ignore their destitution and to rely on their confusion. They were treated as a problem, to be solved by others and "*not as individual citizens for whom [the Defendants] had an inalienable governing responsibility*".

629. He further relied in this context upon the acceptance, only in October 2001, by the UK Government to the UN Human Rights Committee that the prohibition on the return of the Ilois, who had been removed from the Chagos, was unlawful. There is rather less in that last point than Mr Allen thought. There was no such general acceptance of unlawfulness. The UK Government's acceptance simply related to the limited effect of the *Bancoult* decision on section 4 of the Immigration Ordinance 1971.

630. Mr Allen relied thirdly on section 32(2) for the purposes of his deliberate concealment argument. There were, he said, a number of duties owed, although only those obligations under chapter XI of the UN Charter were actually specified in the pleading. Those obligations were to secure the advancement of the Chagossians in various ways, and to protect them, to develop their self-government and to send certain information about their condition to the UN Secretary-General on a regular basis. These duties were alleged to have been breached "*particularly*", but no other period was specified, in the late 1960s and early 1970s.

631. These breaches of duty were concealed, it was said, in the internal and confidential decision-making processes of the UK Government, and were only revealed thirty years after the events to which they related. It was thus unlikely that the breaches would be discovered for some time.

632. The facts involved in those breaches of duty, which were concealed deliberately, are pleaded in paragraph 29, they are similar but not identical to the first six facts relied on under section 32(1)(b), in paragraph 20. (Curiously, the newly pleaded facts in paragraph 20(vii) are not added to paragraph 29; the amendment to one fact in paragraph 20(v) to assert that the false premise for all important decisions was that there was no "*or no substantial*" permanent population, is not carried across, but a new allegation is added only for the purposes of section 32(2) that the Defendants were engaged in a policy of clearances of the islands. The differences may not be great; but they appear to have been deliberate. The reference to there being concealment of the fact that there was "*no substantial permanent population*" is an unusual averment in the pleadings; "*substantial*" is omitted elsewhere. It may admit that the existence of a less than substantial population was not concealed. This is not surprising in view of the material disclosed in the Vencatessen case. It is highly debatable how sizeable a population has to be before it is "*substantial*".) It may be fairer to treat this part of the pleading as also having some of the vague and haphazard characteristics of all the Claimants' pleadings and to incorporate the other facts into this allegation as well. Insofar as there is an allegation of deliberate concealment through non-disclosure, it was wrapped up in the material deployed by Mr Allen in the course of those other submissions.

633. It was only in the final version of the proposed Amended Reply that the Claimants addressed the question of when they actually or with reasonable diligence could have discovered the fraud or concealment. So, despite the Defendants pointing out this omission at an early stage, it was only rectified as closing submissions were nearing completion.

634. Paragraphs 31A and 31B are a peculiar piece of pleading; they combine proper pleading with submission, and a little political theory. It asserts that the burden of proof in relation to this matter lies upon the Defendants. That is wrong and plainly so, as I shall deal with later. It next asserts, in my view uncontentiously, that in principle the behaviour of a Defendant is relevant to when the use of reasonable diligence might have uncovered fraud or concealment, and equally uncontentiously, that in principle the personal circumstances of a Claimant can likewise be relevant.

635. Their reasonable diligence case is that the relevant matters could not have been discovered earlier than they were, ie in the run-up to the *Bancoult* litigation, with the thirty year period expiring. That is said to be because of three broad contentions. First was the nature of the Chagossians: uneducated, illiterate, poor, unsophisticated, struggling merely to survive. Second was the absolute power of the Defendants over them, ignoring their rights, refusing any economic development in the Chagos, following the dictates of the US, unnecessarily allowing the closure of the plantations, not consulting the Chagossians and saying nothing about them to the UN. Third was the behaviour of the Defendants after the clearances: denying their British citizenship, refusing to look after them, paying to the Mauritius Government a sum which the UK Government knew to be inadequate, failing to ensure that it was properly spent, paying nothing for the Seychelles Chagossians, concealing the existence of a permanent population, setting up a scheme in 1982 which required its citizens to renounce their rights without ensuring their access to the BIOT Courts or legal aid, and denying their responsibility in preventing return to the islands or for evacuating them (as the Defendants still did).

636. In short, it was pleaded that the Defendants' persistent and deliberate deceit of its citizens as opposed to governing them with the good faith and concern for their welfare which was and is "*the hallmark of a modern reasonable government*", was the cause of the Claimants being unable, until 1998 or even later, to discover the fraud and deliberate concealment of facts.

637. There are very substantial hurdles in the way of the Claimants' contentions and they have no prospect of overcoming them overall. First, most of the so-called facts said to have been concealed are not facts at all, but contentious assertions as to law: (2), (3), (5), (8), (9), (13); or as to the inferences to be drawn from a complex of primary and secondary material: (4). Others are irrelevant to the existence of a cause of action: (6), (10), (11).

638. Second, what matters is not simply whether a fact which might provide evidential support for a claim has been concealed; what matters is that, as section 32(1)(b) requires, the concealed fact be "*relevant to the plaintiff's right of action*". That means that a fact which suffices to constitute or to complete a cause of action. This is clear from *Johnson v Chief Constable of Surrey* 19th October 1992, CA (unreported), in which the "concealment" of the unreliability of a confession, made manifest by the quashing of the conviction, might evidentially assist but was not a necessary part of the action for false imprisonment. The Court of Appeal agreed with what was argued to be this narrow approach to section 32(1)(b) in *C v Mirror Group Newspapers* [1997] 1 WLR 131. It therefore behoves the Claimants to relate the concealed facts to the causes of action in that way. I shall deal later with how the asserted facts allegedly concealed relate to the cause of action in the statutory sense, but suffice it to say for the present that the Claimants have not drawn in their analyses the clear and vital distinction between facts necessary for a cause of action and facts which provide evidential support for it.

639. Third, it is necessary that the facts relevant to the right of action should have been "*deliberately concealed*". The first and principal act of deliberate concealment relied on by the Claimants is the claim for privilege and other related non-disclosures in the Vencatessen litigation. I should point out that the Claimants, when tested, disclaimed any allegation that there was any impropriety at all by anyone in the conduct of the Vencatessen litigation or in the processes of discovery: it was not said that privilege had been wrongly let alone dishonestly claimed. In any event, Mr Vencatessen, on the advice of Sheridans and leading counsel and on the accepted facts, voluntarily accepted a settlement rather than pursue the chances of success in a contested action, after the lawyers debated whether further discovery should be sought in court, in which Mr Vencatessen might or might not have been successful. Accordingly, the Claimants' contention that the uncontested but honest and legitimate non-disclosure of documents in the Vencatessen action was an act of deliberate concealment from all the current Claimants, rests entirely upon the assertion, which I accept as correct for current purposes, that the discovery decisions were conscious, and in that sense deliberate, decisions of the Defendants, which involved the withholding of material, and were in that sense alone acts of concealment.

640. This is not a realistic analysis of the statutory provisions. I do not consider that the honest use of the protections afforded by the law, let alone their uncontested use, can be regarded as deliberate concealment for these purposes. Were it otherwise, non-disclosure sanctioned by the Court on evidence honestly put forward by a defendant, would prevent time running if a writ were issued even on a specious or hopeful basis. The connotations of the statutory language are not those of the honest use of legitimate restrictions on disclosure.

641. It is also clear from *Cave v Robinson Jarvis & Rolf* [2002] UKHL 18, [2002] 2 WLR 1107 at pp23, 59 and 60 that section 32 requires more than a conscious or deliberate decision to withhold information, and more than mere non-disclosure. It requires active concealment, or withholding information which is actively sought, or withholding it when there is some other circumstance which imposes a duty to disclose it. It is possible only to conceal deliberately that which a person knows, not that which he ought to have known. It requires a deliberate breach of duty which is unlikely to be discovered for some time and which is then actively concealed or not disclosed when there was an obligation to disclose.

642. Accordingly, I regard it as clear that the Claimants cannot rely on the non-disclosure of documents in the Vencatessen litigation as constituting an act of deliberate concealment for the purposes of these proceedings.

643. It is in any event conceptually rather an odd position for the Claimants to have assumed. Implicit in their approach must be the contention that what had been withheld from Mr Vencatessen had been withheld from them all, and conversely that, if material had been disclosed to him, that would have precluded an assertion of deliberate concealment from any of them. Yet, the Claimants have been at pains to assert that the Vencatessen litigation was not in reality representative litigation, settled in 1982 along with the individual

Vencatessen case. But unless they do accept that, which creates other significant hurdles for them, it is nigh on impossible to see how non-disclosure to Mr Vencatessen can be an act of deliberate concealment so far as they are concerned; it would be in reality simply an irrelevance and the acts of deliberate concealment would have to be sought elsewhere.

644. The Claimants' difficulties in this are accentuated by their reliance on the obligation on Sheridans to destroy the documents, which had been disclosed, at the end of the Vencatessen litigation. This is not said to be an act of deliberate concealment undertaken on behalf of the Treasury Solicitor but some unspecified significance appears to be attached to it. But it is difficult to see how it could go to what could be discovered with reasonable diligence, if disclosure in the Vencatessen litigation was or would have been disclosure to all. And if it was not or would not have been such disclosure, how can the non-disclosure be other than confined to Mr Vencatessen himself?

645. Fourth, reliance on the degree of non-disclosure of documents in the Vencatessen case is itself incapable of satisfying the requirements of the statute. It is the fact, relevant to the right of action, which must have been deliberately concealed. As Mr Howell pointed out, that fact may have been disclosed in some other way or document or indeed never concealed at all.

646. Fifth, I do not accept what is implicit in Mr Allen's alternative argument on deliberate concealment which is that mere non-disclosure can of itself constitute deliberate concealment. There must be a duty to disclose the information withheld. No such duty has been identified. Deliberate concealment otherwise plainly entails a positive act.

647. Sixth, I shall deal later with other aspects of paragraph 22A of the proposed Amended Reply, but I cannot find in it any act of deliberate concealment. At its highest, it is an allegation of non-disclosure. The concealed but possible allegations of duties of disclosure can only derive from the "*governmental obligations*" of the Defendants, which I reject conceptually and as containing any duty of disclosure, or from the obligations in the UN Charter, which are not justiciable, for the reasons which I have given and are accordingly irrelevant to the legal position.

648. Seventh, and it is related, Mr Allen relies upon the UN Charter obligations, for the purposes of section 32(2). As I have said, these obligations are not justiciable. It is in any event far from clear that these alleged obligations existed at all. They are not pleaded as BIOT obligations. Had they been, the following problem would have been highlighted. Between 1965 and 1976, the Seychelles, and from 1965 to the present day, Mauritius, would have found moves to BIOT independence objectionable. This is only available as an argument against the UK Government anyway; it is not arguably an obligation on the BIOT Commissioner.

649. I accept Mr Howell's submission that such obligation as exists, if applicable, under the UN Charter is not within the scope of the "*duty*" in section 32(2). The duty in question in section 32(2) must be a duty in respect of a breach of which the Claimant seeks damages, but here they do not and cannot; they misconceivedly rely upon a deceit in relation to those obligations but they do not and cannot sue directly to enforce UN Charter obligations as individuals.

650. Moreover, it is perfectly obvious that the allegation that the breach was committed in circumstances where it would not be discovered for some time is unsustainable. It is all very well referring to the Government's internal and confidential decision-making process. It was clear what the UK Government was saying to the UN about the population (which the Claimants have been in a position to contest for years), that the population was not being nurtured to independence (because it was displaced thirty and more years ago) and that no information on its condition was passed to the Secretary General either before the evacuation of the Chagos or at any subsequent stage.

651. Further, the breach, if breach it was, was plain at all times from 1965 onwards, and it is hopeless for the Claimants, or any of them to argue, if that is the point upon which they rely, that the breach could not have been discovered with reasonable diligence at least twenty years ago.

652. Eighth, the approach which Mr Allen urged towards reasonable diligence is wrong. It is for the Claimants to plead and to show that they have reasonable prospects of proving that they could not have discovered the concealed facts earlier with reasonable diligence. They do not draw any distinction in the pleading between groups of Claimants other than, perhaps here, between those in the Seychelles and those in Mauritius. Otherwise, these pleadings treat them all alike. It is not arguable that the burden of proof rests on the Defendants. As Mr Howell submitted, it is for the Claimants to show that they could not have discovered the concealed fact, without taking exceptional measures of the sort which they could not reasonably have been expected to take. *Paragon Finance v DB Thakeran & Co* [1999] 1 All ER 400 at p418F per Millet LJ refers to the position, which I regard as generally understood and well-established. The Claimants know what they knew and when, and what steps they did or could take to discover matters. The dictum of Lord Millet in *BP Exploration Ltd v Chevron Shipping* [2001] UKHL 50, [2001] 3 WLR 949 at p111, deals with a provision in a different Act (though not dissimilar in import), was clearly a short comment obiter, which is not referred to, let alone assented to, by any other of their Lordships.

653. Ninth, in the light of those considerations, it is appropriate now to examine each of the purported facts, said to have been deliberately concealed.

(1). The Claimants' UK citizenship: the desire on the part of the UK Government to avoid mentioning it to the Mauritius Government is not concealment from the Chagossians; the true position was in any event plain from the Mauritius Constitution and Independence Acts. Mr Allen's best point is the arguably implicit suggestion that they enjoyed no UK citizenship in the letter of 11th November 1974, (8/1374), emphasising that the UK Government could not intervene between the Mauritius Government and its citizens. But the evidence shows that whenever thereafter the direct question was raised, it was answered accurately by the UK Government eg by Mrs Chalker in 1981. It also shows that the Chagossians themselves actually knew of the position throughout eg Mr Vencatessen's case asserted it; lawyers such as Mr Duval knew of it. The publicity given to the breakdown of negotiations referred to it. All the lawyers advising in 1981 and 1982 knew of it; Mr Macdonald so advised the CIOF representatives in July 1981. Mrs Alexis' son, Mr Cherry, brought what was described as a test case in Mauritius, receiving widespread publicity in 1985 which confirmed their status. The CRG wrote many letters asserting their rights as UK citizens; Mr Bancoult's complaint was that he was not being given the fullness of the rights to which he thought he was entitled as a UK citizen. Bindmans advised on it again in the 1990s. All anyone who wished to know the position had to do was ask the UK Government or keep his eyes and ears open to events over the 1980s and 1990s, or ask any of the many lawyers who had been involved. Any Claimant could have discovered the position, if he did not already know it, at any time and well before 1998. This fact might be related to all the causes of action, in the sense required by section 31(1)(b).

(2). Rights to remain in Chagos as belonglers: I do not regard this as a fact at all, even if it had been expressed as right to remain in BIOT rather than the Chagos. The existence of such rights is perfectly reasonably in dispute. The position of the islanders in BIOT based upon their period of residence there was at least as much within their own knowledge as that of the Defendants. If they wanted to know what legal rights that might arguably give rise to, it is again difficult to see what act of deliberate concealment can be relied on. In any event, their various organisations were asserting their available rights; Mr Vencatessen asserted it; some basis must have existed in their minds for the oft-repeated assertion in 1979 and subsequently in the 1980, 1981 and 1982 negotiations and in the ITFB that they would not renounce their rights to return to Chagos. That can only be based on some tie encapsulated by the concept of "

belonging" there. The 1994 Common Declaration of the Ilois People, signed or thumbed by 812 people asserted their right to live where they were connected by birth, descent, and citizenship. The CRG made similar points in 1985. I accept Mr Howell's submission that the Claimants have not begun to discharge the onus of proof on them in relation to showing that any of them did not know this "*fact*" or could not have discovered it with reasonable diligence well before 1998. This "*fact*" again might however relate to all causes of action.

(3). The Defendants' knowledge of such rights: the evidence does not establish that such knowledge existed as a matter of fact. The Defendants clearly were uncertain as to whether there were *belongers* rights or whether such rights yet existed in the absence of legislative provision. But Mr Howell is right to point out that, if that knowledge were a fact, it is difficult to see that it was deliberately concealed for the purposes of the section. No-one asked either Defendant what it knew the position to be. It would be a basic act of diligence, reasonably to be undertaken, for someone to inquire what the Defendants thought about what to the Claimants was an important assertion. It is not an answer to say that the UK Government was pretending that there was no permanent population: the Newton report was disclosed in the Vencatessen case, and it shows a permanent population however much debate there may be over the numbers it shows. This fact might relate, as best I see it, to the misfeasance and deceit case.

(4). The fact that the Defendants were responsible for preventing Chagossians returning before the evacuations: the problem with the Claimants' argument is that, whether or not in fact the Defendants were directly or indirectly responsible for that, they believed the Defendants to be responsible, for the most part. Their evidence was that Rogers & Co told them that the islands had been sold. Even if it were believed by some that Mauritius was behind it, or even Moulinie & Co at the time when they were unable to return, it is impossible to accept that any of the relevant Claimants have any prospect of establishing that they did not realise that fact, if such it be, a very long while ago, no later than the 1981 or 1982 negotiations or that they could not have discovered it by then with reasonable diligence. No evidence was given to me to suggest that those who could not return thought that the Defendants were not involved, until 1998 or thereabouts eg Mrs Elyse or Mr Bancoult, Mrs Jaffar. Mrs Jeanette Alexis, who was an evacuee and not in the same category as those prevented from returning, said she did not realise that the Defendants were involved till recently in the evacuations. It is a surprising view for her to have had, but she struck me as generally an honest witness. But even so, given the visits of Mrs Charlesia Alexis to the Seychelles in 1980, who stayed with the family, the discussions about compensation and claims which must have taken place, the visits of other politicians such as Mr Berenger and Mr Michel, it is inconceivable that reasonable diligence eg a simple question to Mrs Charlesia Alexis or any Mauritian group, would not have put her right many, many years ago. Mr Macdonald thought the Defendants responsible, (15/121-2). This fact might go to all causes of action.

(5). The absence of lawful authority to require the Claimants to leave: this is not a fact, but a highly contentious issue of law. It is however an assertion plainly made in the Vencatessen litigation and was considered on a number of occasions. Reasonable diligence would have involved asking a lawyer. If section 11 of the BIOT Order is restricted as was concluded in the Bancoult Judicial Review, it is necessary only to juxtapose the legislative power granted with the legislation enacted to see that it was *ultra vires*. It had never been suggested that it was enacted to make provision for the sort of catastrophe which the Divisional Court thought might justify it. This arguably goes to all causes of action, save negligence.

(6). Anticipation of the need to make adequate resettlement provision: it is difficult to see how this "*fact*" relates to the negligence cause of action in the statutory sense, still less to the one arguable way in which such a case could be put, as I see it. There was no assumption of

responsibility communicated to the Claimants. Insofar as it said to relate to it because it shows that it would be fair, just and reasonable to impose a duty and that it was then breached, the relevant facts are shown by the 1972 Agreement, and the payment, indeed by the 1982 Agreement. Neither were concealed.

(7). The fiction that there was no permanent population: in reality the fact alleged to have been deliberately concealed is the Defendants' knowledge that there was such a permanent population. Mr Allen says that this was "*a massive cover up and fundamental lie*". Yet the problem with this argument stems from the fact that the Claimants themselves knew the true position about their permanence. They were in a position to say, with the Newton Report albeit differing from its figures, that by the time it was disclosed in 1976 or thereabouts, the Defendants must have known that there had been some permanent population. Their legal advisors, notably Mr Macdonald, were seeking material to show that the description of "*contract workers*" to convey short-term residence was a myth. I find it impossible to accept that reasonable diligence, including asking the Moulinies what they had said to the Defendants or asking Mr Todd about his surveys, which the Moulinies could have told them about, could not have disclosed that the Defendants must have known that there was a permanent population, however sophisticated were their attempts to avoid actually having to say so. This fact goes arguably to all causes of action.

(8). The bad faith and illegality in the misfeasance pleading: this is an unsatisfactory way of alleging the deliberate concealment of facts. I do not see any new point not otherwise covered.

(9). The absence of lawful authority for the exile has already been covered above; the absence of pressing need is not a fact, or a relevant fact to a right of action. Diego Garcia was not evacuated until it was needed as a whole for defence purposes; it has only been the Claimants who say that the defence facilities and they can co-exist on Diego Garcia - the Court cannot weigh the competing defence needs. As to the outer islands, the US wanted them cleared at some stage and there was a longer term UK interest in removing the population too. But it is not possible to say that there was a concealed fact that the US did not want them cleared, or only wanted them cleared because one US Defence Official got his distances significantly wrong.

(10). Negligence: the calculation of the £650,000 and various points about the resettlement scheme. Even if all those points are facts and correct, the negligence claim does not depend on those facts and they are irrelevant to section 32(1)(b). There is no evidence that anyone asked how the £650,000 was calculated or how much the Mauritius Government had asked for (though it was £650,000 - and there was an Ilois number based calculation). Reasonable diligence would have involved asking the Mauritius Government or the Resettlement Committee, on which Ilois were represented. That would also have been a reasonable step to take in relation to any other matters about the adequacy of the sum, and the progress or wisdom of the pig breeding scheme. The Prosser Report was published in 1976. Documents dealing with reservations about the pig breeding scheme were among those disclosed in the Vencatessen litigation. Mr Macdonald, (15/124), advised that the adequacy of the £650,000 offer be investigated to see if it was made in good faith. There is no evidence to support the claim that a Claimant, if ignorant of any relevant fact, could not with reasonable diligence have discovered it.

(11). Property rights and the overreaching legislation: the legislation, the fact of purchase and the payment of the price were never concealed. There is no evidence of anyone asking or not being told the precise position. The purchase price was referred to in the press in 1975 and by

Mr Macdonald in his advice. He too knew of the Property Ordinances, (15/119, 128). He also advised that property rights be investigated.

(12). Repeats (7) above in relation to constitutional and property rights.

(13). Deceit: the deceit of the UN and the Chagossians entitlement to stay. This adds nothing to what I have already dealt with. Certainly what the UK actually said would have been ascertainable with reasonable diligence.

654. These "facts" therefore do not assist the Claimants in overcoming the statutory bar to these proceedings. It is necessary to say a little about their documentary analysis however.

655. The Claimants' Note on documents produced from the Public Record Office does not exemplify their contentions as to when they first saw what they contend was the true character of the Government's actions, even if that were a relevant concept within the Limitation Act. The fact that certain documents were not disclosed does not assist in showing that the relevant facts were concealed unless they are also known to be the only relevant source for the fact in question.

656. But, as Mr Howell, pointed out, volume 17 shows that the documents disclosed in the Vencatessen litigation, including the Newton Report, demonstrate the Defendants' awareness that there was a permanent population in the Chagos. The known population figures were disclosed eg in the March 1967 Report (paragraph A85), in the May 1967 Report (paragraphs A97-100), in the September 1967 despatch (paragraph A11), in the despatch of 4th June 1968 from the BIOT Commissioner to the CO (paragraph A134), of 1st August 1968 (paragraph A149), and in the report of Mr Todd's visit in July 1969 (paragraph A249). The position over the undertaking of the Mauritius Government in 1972 and its basis in humanitarian assistance not legal obligation had also been disclosed. Indeed, a limited amount of material about the stance at the UN had also been disclosed.

657. The newly disclosed documents do not bear out the implicit contentions by the Claimants that the Defendants thought that there were, or that there were in fact, legally binding obligations to compensate, consult, resettle, provide employment or to secure their political, economic and social advancement. They bear out a sense of moral or political or at best international but not individual legal obligation. The existence of the original undertaking by the UK Government to the Mauritius Government was publicly known, referred to in a Parliamentary Question by Mr Duval in the Mauritius Legislative Assembly; the agreement for £650,000 resettlement money was known, as was the way in which it was not spent for years. Whatever may be said about the dilatoriness or effectiveness or generosity of the UK Government's resettlement offer of £650,000, the newly disclosed documents do not show a conscious disregard for the Chagossians other than that their interest in remaining in BIOT was regarded as of too little significance when tested against its competition: defence and foreign policy interests.

658. The now disclosed correspondence between the Canadian Government official and the FCO over consultation does not begin to evidence any obligation to consult or promise to consult. All the correspondence as a whole shows that consultation was considered but thought pointless or impractical. After all, the one option which the Claimants really wanted was not open.

659. The correspondence now shows that the UK Government was very alive to the arguments that chapter XI might or did apply and to the political disadvantages which might attend its application. But the overall documentation shows the criticism of the stance adopted, by other countries and by Chagossian legal advisers such as Mr Macdonald. The contradiction between the UK's position and the facts as asserted by

others or as said to be known to the UK was evident or readily ascertainable with reasonable diligence.

660. One of the real difficulties facing the Claimants with all their various causes of action is the extent to which the current arguments, sometimes in a different legal cloak, were foreshadowed by what was argued in the Vencatessen case. This means that it is very difficult to say that a fact relevant to the existence of the right of action was deliberately concealed as opposed to material which might advance or support the case, or offer flavour but not substance to it.

661. I have also tried to stand back from the detail to see to what extent in reality, shorn of the rhetoric, the Claimants needed either a fact contained only within the documents not disclosed in the Vencatessen or the documents themselves in order to make the averments necessary to set up the causes of action upon which they rely.

662. For misfeasance, the illegal actions are all acts of which the Claimants knew or could readily have discovered. I did not find in the documents, let alone only in the documents not so disclosed, the otherwise concealed fact of knowledge or reckless indifference to any illegality.

663. For deceit, the position as declared at the UN, if untrue, was at least known or discoverable to the Claimants. They have no chance of showing that they could not have discovered such deceits as they say exist with reasonable diligence. But the cause of action is misconceived anyway.

664. Exile depends on the unlawfulness of the acts of displacement or exclusion. What is necessary for that, as for illegality in misfeasance, is not dependant on what the Defendants knew. A permanent population cannot be displaced, in the absence of extraordinary circumstances which are not here relied on, by virtue of powers to make laws for the "*peace, order and good government*" of the territory, according to Bancourt. But I have no clear picture of what Mr Allen says the documentation relied on adds, beyond what is clear from the Order, the Ordinances and the known aim, for whatever reason (but not natural catastrophe or the like) of removing the islanders. The documentation does not provide that purpose, hitherto unknown. What was it supposed that the aim and upshot of the various legislative powers was? So, although the Bancourt judgment refers to various documents (but so far as I can see the decision should have been exactly the same if they had not existed, on the Divisional Court's reasoning), I do not see that they are necessary ingredients for the alleged illegality in the tort of exile. Indeed, if they are relevant to the vires of the Ordinance because, as the Divisional Court acknowledges through Gibbs J, precisely the same power can be taken for a proper and for an improper purpose, that suggests strongly to me that the documents really go only to the question of whether the use to which the power was put was within the proper scope of the discretionary power which had been enacted in the Ordinance. But the use to which the powers were put, whether the Immigration Ordinance or the private land ownership powers, was never disguised - it was all too manifest.

665. No facts only revealed in the documents "*relate*" to any property or constitutional rights based cause of action.

666. I cannot see how anything in the documents "*relates*" to the negligence case. The duty of care exists either because, on the Claimants' case citizens should be cared for, or because I see it, it is arguable that those so displaced should not be put at risk of personal injury. The breach is not dependant on the documents any more than the existence of the duty. The Claimants fail adequately to distinguish between documents which evidence facts relevant to rights of action in the statutory sense, documents which are only evidentially supportive, and documents relevant to the asserted catalogue of wrongs, which have never had the high-level review which they seek.

667. There is in essence only one point of substance which it might be said emerges from the documents - that is that the UK Government was prepared to give a deliberately false impression as to the existence, or rather extent of the permanent population, to the UN and others. That is not itself unlawful. That could in theory, but does not in practice, go to knowledge for the misfeasance or deceit cases. The documents do not show that the true position was deliberately concealed and not ascertainable with reasonable diligence.

668. The next point which I deal with under this head is the collation of points made under paragraph 22A of the proposed Amended Reply. I regard this paragraph as misconceived if its aim is to establish an additional basis of concealment to the non-disclosure in the Vencatessen case. There is no evidence to support the very vague and ill-considered pleading of dishonesty and bad faith; had it been properly particularised, its weakness would have been yet clearer. Much of it is simply at odds with the documents and any known facts. I would not permit this paragraph to remain, whatever else happened to the case. It is irrelevant to concealment what a lawyer may have been able to advise about with confidence. Even with the documents, no rational advice could have been confident.

669. Finally, I turn to those other matters relied on by the Claimants in paragraph 31B of the proposed Amended Reply, as going to what could have been reasonably expected of them by way of taking steps to ascertain the facts which they said had been concealed.

670. The contentions in relation to access to legal advice for the ignorant, the struggling, poor, ill-educated and unsophisticated, are in principle relevant. The difficulty is the facts. Mr Ramdass' group was able indirectly through a Mauritian lawyer-politician to contact Sheridans to bring the Vencatessen case in 1975. Other committees which became the JIC pursued it; they all knew of its relevance for the negotiations, and Agreement. The litigant, and the supporting committees, plainly had access to lawyers notwithstanding all those disadvantages. What that group did, others could have done, if they had not all seen the Vencatessen case as an action leading to a global settlement from which they would all benefit. Others could have contacted Sheridans in 1979, 1980, 1981, 1982 and at any time subsequently. Sheridans' costs were in part paid by the legal aid fund and, for the Ilois community, by the Treasury Solicitor and the Mauritius Government. They thought they were advising the generality of Ilois and so conducted themselves.

671. There was nothing secret about their involvement; it was widely publicised. If any individual had wanted advice, they could have found their name through support groups, they could readily have ascertained what the variety of support groups were doing and the politicians whose interests at least at times coincided with those of the Chagossians. I do not accept the picture of the non-Ilois painted by the Chagossian witnesses; these were excuses and deceitful evasions.

672. But it was not just the one firm involved. By 1981, Bindmans were instructed by the main representative group, the CIOF. Their involvement, physical presence, and the counsel instructed were widely publicised. They too were part funded by the Mauritius Government and at the time saw themselves as representing the Ilois generally, and advised on that basis. They did so in 1982 before and after the Agreement. They were again involved in the 1990s, instructed by the CIOF and the BIOT Social Committee. The substance of the matters upon which they advised were many of those relevant to these proceedings.

673. It was the lack of prospects of success which meant that legal aid was not sought for proceedings in this country; with better prospects, Mr Grosz said that it would have been sought, as it was in the Vencatessen case.

674. I have already dealt with the extensive organisation and variety of groups available to the Chagossians. They could raise money for advice and support for actions. Their rights were a constant political issue. Their leaders were elected annually to the ITFB; they had contact with civil servants and the Mauritius

Government. Lucien Permal and Simon Vencatessen were able to bring proceedings against the ITFB. A group brought proceedings against it in 1991 for documents. With Bindmans' advice, proceedings were brought under the Immigration Ordinance.

675. If they thought that the 1982 Agreement had created but a temporary embargo on suing the UK Government, there is no reason for further proceedings not to have been brought along the lines of the Vencatessen case by 1985 or 1987. It was suggested that there were attempts in 1990 or thereabouts. To the extent that further advice was sought, that undermines the contention about the absence of access. To the extent that it was not sought, that undermines the view that the Chagossians genuinely, and however improbably, thought that the 1982 Agreement and the withdrawal of the Vencatessen case was not the end. Mr Gifford may well be right in saying that they had called their best shot in 1982, and after the inadequacies of the money became apparent, they had and knew they had nowhere else to go.

676. The attempts by the Chagossians to play down the role of their organisations was discreditable. They did not seek to present a reasonably complete and truthful picture to the Court, when they knew that limitation was a major issue. It was only when I pointed out that significant witnesses were omitted, who could speak to what was or was not known, that several relevant witnesses were called. The allegations that the organisations were not representative were not supported by evidence: the claimants simply challenged someone else to disprove their counsel's assertions and to prove the contrary of their witnesses' failing or untruthful recollections. The burden is on them to show the matters which would justify an extension of time.

677. Finally and highly contentiously, the Claimants plead in paragraph 34(vi) that "*a very large majority*" of the Claimants living in Mauritius did not obtain "*real and comprehensive*" legal advice and because of the deprivation created by the Defendants had no "*real effective and practical*" means of access to "*comprehensive*" advice on English law before the involvement of Mr Mardemootoo in 1998. Thereafter, documents freshly available in the Public Record Office and disclosed in the Bancourt Judicial Review enabled the Claimants, since the result of that action, to take decisive legal action. The lawyers whom individual Chagossians (unspecified) did instruct had faced difficulties (unspecified but I infer the Claimants rely on the same conduct by the Defendants and non-disclosure of documents as already referred to).

678. This last pleading was highly contentious first, because until the amendment made with the closing submissions (though the Claimants had acknowledged the need to make an amendment to their Reply) it had been asserted, plainly untruthfully and it ought to have been plain to all the Claimants' lawyers that it was untrue, that no Claimant had had any practical access to legal advice. The amendments so far as material are in quotation marks in the preceding paragraph. It ought to have been obvious because Sheridans were involved earlier on, it was known to Sheridans and Mr Bradley, and plain from Bindmans' documents that the CIOF had sought legal advice in the 1990s and that other lawyers too had been involved. I accept the explanation as to how the pleading had not been checked and that there was no intention to mislead the Court. But I am left with a deep concern that this pleading of the Reply was constructed on the basis of what the position was wished to be, and not on the basis of any thought or investigation such as would permit the original or first draft amended pleading to be supported by a statement of truth. That concern rather persists with the final amended Reply because, for reasons to which I shall come, it is so at odds with the evidence.

679. It was highly contentious for a second reason. The reference to "*a very large majority*" was said to "*de-particularise*" the claim, rendering it uncertain. The allegation was vexatious according to Mr Howell; the Claimants' disclosure had been late and partial, its witnesses were supposed to provide the best evidence which they could call and when all had failed, they had sought to avoid the consequence, the dismissal of time barred claims, by lumping Claimants together in a way which prevented the identification of those whose claims might or might not be statute barred. Mr Howell urged that the proposed amended Reply at least in this respect should be refused permission to be served.

680. In my judgment, although there is force in what Mr Howell says, it is not itself a sufficient basis to refuse permission for the amendment. The real problems with the pleadings should be dealt with on their merits which I have yet to come to. The assertion that almost all Claimants, as opposed to all Claimants, may be imprecise but the essence of the contention is clear enough. If the real issue was one of form, I would remedy the pleadings by staying the action, requiring the completion of a new questionnaire by all Claimants, which was directed to answering the more specific and detailed questions, to be approved by the Court, relevant to the issues which are now raised and identifying which issues related to which named Claimant. This would be necessary for many aspects of the pleaded claims.

681. It is perfectly clear that the JIC, the CIOF, the BIOT Social Committee, the CRG and others represented and were relied on by most Chagossians. Those they did not represent knew what organisations existed and could find out what they knew and had been advised.

682. In any event, through the long years of Chagossian struggle, they were advised by many lawyers in addition to Sheridans, Bindmans and English counsel. There was advice available from Mr Duval QC, Mr Marc David QC, Mr Lassemillante, Mr Ollivray, Mr Bhayat and others. I accept that not all the others would have been well placed to offer direct advice on the complex issues in the case. But Mr Duval was in a position at least to point Chagossians in the right direction as the instructions to Sheridans showed. In the UK, lawyers pointed the CIOF to Bindmans. Mr Ollivray and Mr Bhayat were at the 1982 negotiations. Mr Lassemillante may have been more noisy than effective, as Mr Bancoult in effect described him, (and he would not be the first advocate of whom that could be said), but that is not the point. He was a legal adviser with relevant knowledge.

683. The criticisms of the behaviour of the Defendants in paragraph 31B(ii) and (iii) do not show or tend to show that the Claimants could not have discovered the allegedly concealed facts with reasonable diligence. They do no more than explain why the Claimants were in the position set out in paragraph 31B(i).

684. The Seychellois Chagossians were not in so strong a position as those in Mauritius: there was no agreement on resettlement, or negotiations to settle litigation. The Seychelles Government was not interested in exploiting the Ilois for sovereignty claims, because on independence its islands were returned.

685. Nonetheless, there was information available to them, in 1980 about the Mauritian Chagossian claims and the Vencatessen litigation through the visits of Mrs Alexis and others. Some tried to claim under the 1982 Agreement. They could have contacted the Mauritius or English lawyers for their case to be pursued.

686. Mr Howell objected to these proposed amendments coming after cross- examination but I see no reason not to consider them, and to deal with the points which he raises against them on their merits. Section 32 is of no avail to the Claimants.

Limitation and personal injury

687. Mr Allen lastly relied upon the special provisions in relation to personal injury in section 33 of the 1980 Act. This provides:

"(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which -

(a). the provisions of section 11 [or 11A] or 12 of this Act prejudice the plaintiff or any person whom he represents; and

(b). any decision of the court under this subsection would prejudice the defendant or any person whom he represents; the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to -

(a). the length of, and the reasons for, the delay on the part of the plaintiff;

(b). the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 [, by section 11A] or (as the case may be) by section 12;

(c). the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d). the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e). the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f). the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received."

688. Sections 11 and 14 are also relevant. So far as material, they provide:

"11 Special time limit for actions in respect of personal injuries

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5) below.

(4) Except where subsection (5) below applies, the period applicable is three years from -

(a) the date on which the cause of action accrued; or

(b) the date of knowledge (if later) of the person injured."

14 Definition of date of knowledge for purposes of sections 11 and 12

(1) [Subject to subsection (1A) below,] in sections 11 and 12 of this Act references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts -

(a) that the injury in question was significant; and that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and

(c) the identity of the defendant; and

(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant; and knowledge that any acts or omissions did nor did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably have been expected to acquire -

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek; but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice."

689. I have already referred to the Claimants' pleadings in respect of the personal injuries and to some of their drawbacks when dealing with the negligence claim. It was accepted by the pleading that, for the purposes of sections 11 and 14, all of the Claimants who made a claim in respect of personal injuries knew of the statutorily relevant facts before the start of the three year period ending with the issue of these proceedings. No specific date or dates for such knowledge is pleaded, but reliance is placed for the purposes of section 33 on the disclosure of information in the *Bancoult* proceedings. It is indisputable but that the causes of action accrued many years ago. So the key issue is whether or not there is any reasonable prospect of time being extended under section 33. I use the expression "*reasonable prospect*", not solely because that is how the question was formulated, but also because although I recognise that, in principle, a decision on the application of section 33 can be made before trial, it may also be appropriate for that decision to await trial in certain circumstances, unless the answer to its application is already clear.

690. The Claimants' pleadings and submissions on section 33 only partially follow the structure of section 33. So far as section 33(3) is concerned, the first submission is that the injuries will continue to occur until their previous "*basic decent living conditions*" are restored. I have already dealt with the unarguable nature of the general claim in negligence. If there is a continuing breach of duty leading to personal injuries in respect of those compelled to leave the Chagos by the sequence of decisions for which the Defendants were responsible, no individual has been identified nor his related circumstances so as to sustain such a case, and I do not see how it can be said that there is a continuing duty to them anyway, of the limited nature which I regard arguably as existing.

691. The Claimants assert, without much elaboration, that the evidence of neither party would be made any less cogent by what delay (unspecified) there might have been. In support, they simply say that the evidence of the Defendants is "*largely contained in official documents*"; this suggests a very limited role for cross-examination and oral evidence from the Defendants. I consider that appraisal to be correct and such recollection as any witnesses had, would be almost wholly dependant on those documents, and even those documents could well fail to enable events accurately to be recalled; this was the nature of the evidence of Mr Sheridan, Mr Glasser, Mr Grosz and, to some extent, Mr Moulinie. But this assertion contradicts the Claimants' stance in relation to the continuance of the misfeasance proceedings, which posited that much of value could emerge from cross-examination of the Defendants' witnesses, whoever they might be. The evidence of what happened to the Chagossian community was said to be "*still plain for all to see*". But, to my mind, that can relate to current circumstances only; it cannot deal with the sequence of events or with causation, or the position in 1973, 1982-3, 1990 or at any other time. The pleading, so far as individual Claimants were concerned, was merely that what happened to individuals would be a matter of evidence in due course. As an attempt to deal with section 33(3), it provides nothing of value, and its very paucity suggests that there is little more to be said about the obvious difficulties which the Claimants face.

692. The Claimants blame the Defendants' conduct in not providing information which might have allowed the Claimants to ascertain the facts relevant to this cause of action, until the Bancourt Judicial Review proceedings. The partial disclosure and subsequently required destruction of what was disclosed in the Vencatessen action is also referred to. The Defendants' conduct was simply to deny responsibility for the Claimants, it is pleaded.

693. Next, it is asserted (without any being identified) that some had periods of disability as minors or through mental illness.

694. It is then pleaded that the Claimants, I infer all of them, acted promptly and reasonably in the circumstances in bringing this case (not just the personal injury claim) in the light of the information disclosed in the Bancourt Judicial Review. This is not further particularised or elaborated. The Claimants also rely on the highly contentious pleading in paragraph 34(vi) about what access to legal advice was available to the vast majority of Chagossians.

695. I accept Mr Howell's submission that the particulars of claim do not comply with the requirements of CPR 16 PD rule 4. This is because the relevant details are not available from the questionnaires as to injury, losses, or medical reports, if any are to be relied on. It is not clear if any of the suicides are alleged to be fatal accidents. Nonetheless, this deficiency is remediable and not a justification for summary judgment or strike out against the Claimants. But I propose to deal with these pleaded claims on their substantive merits, or lack of them. There is an interaction however; the vagueness and opacity of the pleadings, their rather uncertain approach to facts which ought to be set within a properly understood legal framework has resulted to an extent from or permitted the substantive problems to be overlooked, not wrestled with and thought through. Had that been done, the weaknesses of the case must have become clearer.

696. I do not regard the Claimants as having any reasonable prospects of success in their limitation

argument in relation to personal injuries. For these purposes, I accept that some Chagossians might have suffered personal injuries of the type asserted, that those might constitute personal injuries for the purpose of sections 11 and 33, and that some might have been caused by the negligence of the Defendants. But it is to be emphasised that it is only the material relevant to the requirements of sections 11, 14 and 33 which matters; ie non-disclosure, say, is only relevant to the extent that it bites upon the claim for personal injuries. The question of when knowledge arose of relevant facts and what advice was available, and when, are relevant for and conceded by the Claimants for the purposes of sections 11 and 14 but arise again under section 33.

697. I accept that the burden of proving that the claim has been brought within the relevant period of limitation is on the Claimants; *London Congregational Union Inc v Harriss and Harriss* [1988] 1 All ER 15 CA at pp30, 34, 37. This also applies to the justifications for stopping time running and for extending it.

698. The relevant causes of action for the purposes of a claim for damages for personal injuries obviously encompasses the negligence claim. It also covers a breach of duty; the duty which must be breached for these purposes is not the broad duty to avoid infringing the rights of others, a duty to avoid committing torts or breaches of contracts; it is a duty to take care to avoid personal injury; *Stubbings v Webb* [1993] AC 498. So, the only relevant facts, knowledge, delay and legal advice for these purposes are those which relate to a negligence-based personal injuries claim. No other relevant duty has been pleaded.

699. The issue which section 33 raises is whether the application of section 11 would prejudice either party. Thus, the Court has a discretionary power to direct that the section shall or shall not apply. This more general power to disapply the time limit may well reflect the shorter three year time limit applicable to personal injury cases. The statute lists, non-exhaustively, the relevant factors.

700. It is self-evident that there is no prejudice from being unable to pursue an unarguable case. The personal injury claim is not unarguable but is not strong; at present it passes muster. Accordingly, the application of the three year limitation period does not prevent the Claimants putting forward a powerful claim, with good prospects of success.

701. The prejudice to the Defendants in relation to any personal injury claim, which for these purposes is the claim that matters, is clear and serious. It relates to the cogency of the evidence which they can produce, and so I shall consider it later under that head.

702. I now turn to the specific factors set out in of section 33(3) of the 1980 Act. First, the reasons for delay. In my judgment, the affected Claimants were in a position to bring proceedings for damages for personal injury when the asserted personal injury manifested itself in a significant way. These injuries, principally ill-health of one form or another, are relevant because they were supposedly unusual in Chagos. The conditions which led to them were evident; the change was evident. Even if a period is allowed for the realisation of what was happening, the establishment of trends, and the time taken for problems to manifest themselves, the first cases should have been started by the time of the 1982 Agreement. The Prosser Report, the slowness of resettlement, the submissions to the negotiations in 1981 and the experiences and claims of the Chagossians gave them the relevant knowledge. It is difficult to imagine any whose claims manifested themselves later than 1990, but again no such date with supporting justification are put forward in respect of any Claimant.

703. Their argument appears to be that relevant facts were not disclosed. This is wrong. The Claimants knew of their injury, the change of conditions, who was responsible for that change, and that, save for the 1972 and 1982 Agreements, nothing had been done for them. They knew of the availability or lack of health care and what those who provided them with health care thought about the impact on their well-being of the

change of circumstances in which they lived. If they did not, it was in any event an obvious question to ask. They could reasonably have been expected to inquire of medical experts and of lawyers as to their position. The section provides that it is irrelevant whether the Claimants knew that the acts or omissions of the Defendants amounted to negligence or a breach of duty of care.

704. So, I conclude that the period of delay is between just under thirty years and a lesser period, unlikely to be less than ten years but varying from Claimant to Claimant, and in respect of which the Claimants have provided far too little material to sustain any argument that the delay is not of a very substantial scale, given the obvious starting point.

705. The Claimants' reasons for any delay appear to be the Defendants' conduct in putting them in Mauritius and the Seychelles in the first place without proper provision, denying responsibility for them and not providing information. But these are inadequate reasons. The very existence of the cause of action is that they were displaced there without provision or adequate provision. They knew that all along. It is difficult to see what denial of responsibility or of information occurred which was relevant to this cause of action, or to delay.

706. The only documents of any possible significance which were not disclosed were those which related to the concern that the resettlement scheme by way of pig breeding would be unattractive to the Chagossians. The Claimants appear in their amended Reply, however, to be making assertions related to the generality of their claims rather than focusing on the reasons for delay and any non-disclosure of documents relating specifically to a claim in negligence for personal injuries.

707. Second, the reduction in the cogency of the Defendants' and Claimants' evidence by reference to the delay. I regard the Claimants' assertions as to the Defendants' evidence insofar as they relate to the personal injuries claim as wholly inadequate to justify any extension. The Defendants' evidence in relation to any duty of care or its breach may very well be confined to the written material in practice. But there are issues as to whether any Claimant suffered in fact the alleged personal injury eg was Claimant A depressed, did he or she suffer from stomach or respiratory disorders? The evidence of the Claimants was sufficiently unreliable to suggest that that itself would be a major issue. Yet how could that now be tested for a period of perhaps thirty years? Some of that may be a diagnosis unsupported by any medical evidence; if it is, there has been no disclosure of even one contemporaneous medical report to illustrate the point, nor of any hospital records. The Defendants' prospects of evidence challenging factual assertions as to past ill-health are obviously significantly and adversely affected.

708. Even more problematic would be issues as to causation. In view of the absence of sound illustration as to the nature of even one individual's case, how it might be supported by expert evidence, medical history and personal testimony, it is difficult to see how any evidence in response from the Defendants could be other than immensely reduced in cogency. They do not have the opportunity to test any history with anything approaching contemporaneity. Whatever wrongs the Defendants did in the past, they could not now fairly defend themselves on that score.

709. The evidence which the Claimants themselves called was to my mind the clearest proof of why the cogency of the evidence of both Claimants and Defendants would be seriously adversely affected. The evidence as to what happened to individuals in terms of accommodation and social security was usually self-contradictory and incomplete; what they did with the money which they received was at times problematic. The general picture must yield for these purposes to the specific details provided by individuals to what happened to them. Evidence as to the availability and use made of medical care was unreliable and incomplete. Evidence about when individuals became ill, and what form that illness took was likewise unreliable eg Mrs Elyse's and Mr Bancoult's evidence about his father's condition. It was of a piece with a general lack of reliability over the detail of the Claimants' evidence and yet the detailed reliability of each

individual's evidence matters here. There was no evidence suggesting that what they had to say on an individual basis could be reinforced by medical records, and to what degree.

710. Section 33(3)(c) deals with the conduct of the Defendant. I have already dealt with this in part in relation to the reasons for delay. The relevant conduct is that which relates to the negligence claim for damages in personal injuries, rather than the other claims. Such acts as were identified do not relate to delay or concealment or any other act relating to whether it was equitable for this claim to proceed. Certainly, no request for information and no refusal by the Defendants to supply requested information was identified for the purposes of this particular claim. General references to non-disclosure in the Vencatessen litigation and to a failure to provide unspecified information, which it was never said had been requested anyway, simply do not begin to grapple with the statutory provisions which the Claimants seek to invoke. The problems with reliance on non-disclosure in the Vencatessen litigation have been dealt with already; the Claimants face both ways on its significance for this case: what was disclosed to one, was not disclosed to all, yet what was not disclosed to one, was concealed from all. That litigation did not fully test discovery because it was settled. No fact, relevant to this cause of action, has been said, or plausibly said, to have been deliberately concealed. The Claimants may not have been aware of what transpired between the UK and Mauritius Governments in 1972 and onwards, or of the advice which the former received about the poor prospects of the pig breeding scheme, but this cannot advance their case. As Mr Howell pointed out, this shows that no assumption of responsibility, had been communicated to the Claimants, which is the opposite of what they wish to prove. In any event, the relevant agreements and the slowness of payment under the 1972 Agreement was a matter of contemporaneous public knowledge or ready ascertainment. The condition of the Chagossians and their health was known to them; they knew of the involvement of the Defendants in their removal. There were no equivalent agreements with the Seychelles but I do not think it plausible that the Seychelles Chagossians did not know or could not readily have found out, quite simply, about the Defendants' involvement.

711. As to "*disability*" in section 33(3)(d), if a narrow view is taken of its scope, it is correct that no "*disabled*" Claimant has been identified for this claim, still less the impact of any such disability after the accrual of the cause of action. If "*disability*" is given a wider interpretation than section 38 would provide, so as to encompass illiteracy, the arguments in relation to this particular claim do not change. The information in question was not unknown because unread; it was available from what the Claimants could see had happened, from any medical notes which they could see being written and from any inquiries which they could make in person, or through their organisations or representatives, whether in Mauritius or in the Seychelles. Poverty and ignorance of the law are not relevant disabilities.

712. Section 33(3)(e) requires a Claimant who seeks to persuade the Court that it would be equitable to allow his action to proceed, to provide some evidence about the promptness and reasonableness of what he did, once he knew that what the Defendant did or did not do could justify a claim in damages. Mr Howell submitted that this provision had not been addressed by the Claimants. That is correct.

713. The pleadings imply that the Claimants or almost all of them had no relevant knowledge until 1998. But it is plain that the generality of Claimants knew of their uprooting, that that had been caused by the Defendants' actions and had led to the poverty, malnutrition, unsanitary, housing and the consequent physical and mental illnesses. If any Claimant had not known that, there were many Chagossians who would have put them in the picture without any difficulty upon a simple inquiry. The Claimants likewise knew that this might be capable of giving rise to an action either by the time of the start of the Vencatessen action, or at the latest by the time of the 1982 Agreement and the well-publicised withdrawal of that action. The reality is that the Bancourt Judicial Review and its outcome have nothing to do with the personal injuries claim. The documents disclosed may assist in arguing that the Defendants were negligent but it is not arguable that those documents reveal the ingredients of a cause of action for damages for personal injury which was hitherto unsuspected.

714. The Claimants identify no steps which they took promptly, because their argument is the untenable one that the starting point for an examination of what they did is 1998 or later. Hence they impliedly contend that these proceedings were started reasonably promptly (albeit more than three years after the relevant knowledge was obtained). Even on that basis, they have not acted promptly. But that is not the real point. The real point is that they did nothing after the 1982 Agreement.

715. After 1982, the Claimants face this problem. If, as most of the witnesses asserted, there was no individually binding settlement and the renunciation forms were ineffective, there is no reason for them not to have started proceedings at any subsequent time. If, as others thought, the upshot of the Agreement and the payment of money by the ITFB, merely meant that they could not sue until 1985 or for five years, there is no reason for proceedings not to have been begun by the late 1980s.

716. I do not believe that that is what they actually thought at the time. All their actions show that, whether or not the precise mechanism was fully understood, they knew that there was a full and final settlement and they could not have money from the ITFB and bring a claim against the Defendants. They started no proceedings, although legal advice was available; their organisations started no proceedings for personal injury whether before or after the late 1980s. They made claims on the US Government. They never asserted that damages became payable again. Yet they knew that they were still living in poverty and that they had concluded that the ITFB money was insufficient, and thus they had every incentive to sue again.

717. However, taking the Claimants' evidence at face value, they thought that they could start proceedings after 1985 or five years from the Agreement. But they did not do so. Their reasons were difficult to follow in view of the poverty and harsh conditions in which they were still living. They said they had no leaders; yet they elected representatives to the ITFB; they had organisations whether solely Chagossian or not; they had political contacts; they could obtain legal advice as to their position. Some in fact did so. Some asserted that they had been deceived by Mauritians; yet the evidence of that was no more than that there had been some letters or petitions suggesting full and final compensation in return for the giving up of claims, including at times but not always the right to return to Chagos. There was some potential for a conflict between the desire for Mauritius sovereignty eventually and a right of return to Chagos immediately, but there was and is a strong common interest in the islands becoming Mauritian. But they set up their own organisations led by Chagossians in 1983 to 1985, notably the CRG, so the alleged malign influence of those who had wanted to assist them, would by then have been neutralised.

718. Mr Gifford felt that the reason for inaction was that the Chagossians had called their best shot in the 1982 Agreement and had thought thereafter that there was nothing they could do until documents emerged in 1997 and 1998 making a re-examination of litigation, buoyed by the success of Olivier Bancoult, feasible. I am not sure that that fully reflects the seeking of advice in the 1990s but as a conclusion I felt that it indicated that the Claimants had reached a final agreement with the Defendants in 1982. In any event, I do not consider that the events of the late 1990s had any real bearing on the personal injury claim, which was advanced to assist the limitation argument.

719. The Seychelles Chagossians knew the same relevant facts at the same time as their counterparts in Mauritius or could readily have ascertained them. Some would have had an awareness of the 1982 negotiations, and that lawyers had been involved. I do not consider it realistic to conclude other than that they knew by 1982 at the latest that a damages claim might be capable of arising from any illnesses from which they suffered as a result of their poverty in changed circumstances. The pleadings do not differentiate between the Chagossians in this context.

720. I have regarded the Chagossians who have given evidence relevant to the limitation issues as in effect giving evidence which is of general relevance to the Claimants. The Claimants correctly submitted that their individual cases were not test cases. But the purpose of the applications being considered was quite clear;

the Claimants selected the witnesses whom they thought appropriate in order to explain and illustrate, not just what they thought of their individual position, but what the Chagossians as a community had or had not known or done. When it became clear that relevant witnesses were not being called to deal with these issues, the Claimants were given a further opportunity to call other witnesses who were supposedly better able to deal with the issues.

721. Finally, section 33(3)(f). It is in relation to the obtaining of medical and legal advice that the highly contentious pleading, in paragraph 34(vi) of the amended Reply, to which I have referred is presumably made. It does not actually refer to any steps which were taken; it refers to the reasons why no steps were taken, by the "*very large majority*" of Claimants. It is said that the advice and access was not "*real*"; I assume it is meant that the opportunities were theoretical and some of the lawyers not skilled in the relevant areas. There was no legal aid. But, the assertions in the pleadings are simply and obviously wrong.

722. It is clear that the Chagossians, at least in Mauritius, had access to both Mauritian and English lawyers. A few used that access personally and very many did so through representatives. To the extent that any Chagossians were not represented by those groups, many more were aware of their activities.

723. In sequence, an illiterate Chagossian, with the support of a group of largely illiterate Chagossians, was able by 1975 to start legally aided litigation in the UK, having been put in touch with a firm which prides itself on being one of the few willing and able to take on such work. Mr Vencatessen had been able to use a Mauritian lawyer-politician and his contacts to instruct Sheridans. That case raised many of the issues now raised. It was quickly seen as a test case and generally beneficial. The description of it as a personal or family case, by some Chagossian witnesses, begs the question: each could have done likewise. No-one suggested some personal peculiarity possessed exclusively by Mr Vencatessen which entitled him alone to bring proceedings.

724. Sheridans instructed distinguished counsel who provided advice on causes of action, the conduct of litigation, prospects of success and the reasonableness of the settlement. If Mr Allen's point is that "*real*" advice cannot be given until disclosure is complete (including disclosure of that which is privileged), it is nonsense.

725. Sheridans visited Mauritius on three occasions. In 1979, the visit of English lawyers was not a secret. It was deliberately publicised by Sheridans. Their presence and activities were widely known. Of course, it is right that the advice given was short, was not tailored to individuals and may well have been partially grasped at best. But it was clear that access to English lawyers was possible and practical. The JIC continued to instruct Sheridans and to receive advice. Mr Ramdass went to the 1981 and 1982 negotiations on behalf of Mr Vencatessen. This was agreed to at a public meeting at which his role in relation to the Vencatessen case was explained - it was obvious that that case related to the ensuing negotiations.

726. Another group, the CIOF, also claiming to be the most representative, instructed Bindmans. They also, through a circuitous route, were able to instruct one of the other of the firms which Mr Gifford regarded as able to do this type of case. Bindmans also instructed distinguished counsel. They advised the CIOF before, during and after the 1982 Agreement. They regarded themselves as advising the Chagossian community, because of the representative nature of the CIOF. Their presence and role was publicised.

727. Bindmans were again instructed in 1990 and 1995 by the CIOF and then by the BIOT Social Committee. The advice given covered many areas of relevance to those proceedings including the effect of the renunciation forms and the problems of limitation.

728. These bodies did not exist in a vacuum; representatives were elected to the ITFB, CIOF members brought an action against the ITFB in 1991 to obtain documents so that Bindmans could advise on them; the CIOF obtained 812 signatures in 1994 for the Common Declaration of the Ilois People and the BIOT Social Committee claimed to represent 1,000 people.

729. There were other lawyers, in Mauritius, who provided advice or could have done, notably Mr Duval, Mr Ollivray and Mr Lassemillante. It is all very well Mr Bancoult saying that the latter was always talking about human rights but was ineffective. There was a real opportunity for advice. Chagossians could have sought advice about a personal injuries claim from a wider range of lawyers than might have been available for a misfeasance claim.

730. There is no evidence that medical advice about the possible causes of the conditions from which they suffered was ever sought; perhaps it was regarded as obvious.

731. I do not consider it reasonable to suppose that a Court might regard it as equitable to extend the time for bringing the personal injuries claim. As Mr Howell pointed out, it was inherent in the negotiations in 1982 that there might be a claim by Chagossians. If it was thought that it had then been settled, it cannot now be said that those who took that view, even if wrongly, should now be entitled to sue. Those who were not of that view, chose not to proceed with a personal injuries claim.

732. The UK Government paid a substantial sum by way of settlement twenty years ago. The settlement was considered to be reasonable by two experienced firms of solicitors advised by leading English counsel. If the Claimants thought that there had been no effective settlement, they could have sought advice.

733. The Seychelles Chagossians did not benefit from that settlement but there was sufficient knowledge among them that it had occurred and that the ITFB would distribute money, for them to have been put on inquiry as to whether they too should pursue an action as Mr Vencatessen had done. It would have been quite simple for them to be in touch with the CIOF, Mr Berenger, Mr Michel and Mrs Alexis to find out how matters had evolved. Mrs Alexis had been to the Seychelles in 1980 and, I am quite sure, did explain what was happening at least in broad terms. Seychelles Chagossians knew enough to attempt to make claims on the ITFB, albeit unsuccessfully. It would not have been difficult, at any stage, for contact between the two groups to have revealed the names of the solicitors and to pursue the claims.

734. They may not have done so because of a fear of the Seychelles Government, which might not have welcomed a group of what it saw as Seychellois obtaining benefits which other Seychellois could not. This feeling may have been initially more intense at the time of the "*Liberation Day*" coup, but I have had no evidence which suggests that it was an abiding fear through till 1998 when, just coincidentally, Mauritian Chagossians instructed Mr Mardemootoo.

735. Accordingly, I conclude that the Claimants have no reasonable prospects of persuading a Court that it would be equitable to direct that this action for damages for personal injuries be allowed to proceed.

Property

736. Section 17 of the Limitation Act operated so as to extinguish any title which the Claimants might have had in any property on the Chagos by say 1979 (twelve years from the acquisition from Chagos Agalega Company Limited) or 1983-1985 (twelve years from the removal of the Chagossians). No claim in relation to a breach of trust has been alleged. Mr Taylor submitted that the extinguishment of title left intact any other

remedies which the Claimants might have in respect of their property. This is misconceived. If there is no title, they have no cause of action or rights to be enforced by remedies.

The Specific Issues

737. There were fifteen issues which I ordered to be dealt with. Although the issues developed, as a result of the evidence and submissions, beyond the precise scope of the questions contained in the amended Schedule to my Order of 26th September 2002, it would, I feel, be useful to set out in one place, my conclusions on those defined issues.

738. There are Claimants who arguably could show that they were compulsorily removed by the Defendants from Chagos. The compulsory removals were arguably unlawful. There are Claimants who were unable to return to the Chagos but those who arrived in Mauritius in 1967 and 1968 were not arguably prevented from returning by the Defendants. Nor were the Defendants under any arguable obligation to assist their return. After the evacuation of the Chagos, the Defendants have forbidden their return to any part (subject to scope for individual permits) until the 2000 Immigration Ordinance. It is arguable that any reliance on section 4 of the 1971 Immigration Ordinance to inhibit return to Chagos was unlawful.

739. There is however no prospect of the Claimants showing that the Defendants enacted the 1971 Immigration Ordinance knowing or being reckless that it was unlawful, or that any removal or prevention of return whether before or after 1973 was unlawful.

740. There is no arguable tort of unlawful exile.

741. There is no arguable duty of care to take reasonable steps for the well-being of the Claimants, as pleaded in paragraph 87 of the Group Particulars of Claim. There is an arguable duty of care to take reasonable steps to avoid personal injury to those who were compulsorily removed from BIOT between 1971 and 1973 but it is not a continuing duty. It arose upon removal and accrued when personal injury resulted, subject to the effects of the Limitation Act.

742. It is possible that some Claimants or their successors may be able to show that before 1967 they had real property interests in BIOT. The Crown acquired land in BIOT for a public purpose in 1967 by the agreement of 16th March 1967 pursuant to Ordinance No 2 of 1967. It is not arguable that any such rights were not thereby acquired and extinguished or extinguished by a later Ordinance even though it is arguable that that Ordinance of 1967 was *ultra vires*. If the Claimants had any surviving real property rights, it is arguable that the 1983 Courts Ordinance required those rights to be adapted from the Mauritius Civil Code into English law.

743. The Constitution of Mauritius did not arguably apply to any part of BIOT after the creation of BIOT, and could not override any BIOT legislation. If it had done, its effect would arguably not have been removed by the 1983 Courts Ordinance.

744. The matters pleaded in paragraph 96 of the Group Particulars do not constitute the tort of deceit. There is no real prospect of any Claimant showing that any false statement of existing fact was made to a Claimant by or on behalf of the Defendants, that it was intended that it should be acted on by that Claimant to his detriment or that any Claimant did so act. Although it is arguable that false statements of fact were made to third parties by the Defendants, it is not arguable that they were made so that the Claimants would act on them to their detriment. It is arguable that some third parties omitted in consequence to do what otherwise

they would have done to support the Ilois or oppose the UK's defence policies or both, and that that was intended.

745. The Claimants have no prospects of success of recovery in view of the Limitation Act and any title to land in BIOT was extinguished at the latest by 1985 by the operation of section 17 of the Limitation Act 1980.

746. The present proceedings involve an abuse of process by the Claimants whom I have identified as a result of the signing of the renunciation forms. It may or may not be an abuse for other Claimants, which would have depended on their evidence. There are no other abuses involved.

747. These questions do not specifically cover the claim for a declaration as to the right to return to Diego Garcia, to receive assistance in doing so and in achieving in the Chagos a certain lifestyle. It is however plain from the conclusions which I have expressed that I do not regard the claim for the latter declaration to be arguable. The former is unarguable on the basis pleaded, which does not involve an attack on the vires of the 2000 Immigration Ordinance, by reference to the relevance under Section 11 of the BIOT Order of UK and Colonies defence interests. Those conclusions were arrived at in the course of dealing with the specific issues, notably misfeasance and exile.

Conclusion

748. I shall hear counsel on the precise form of Order, but the Defendants succeed on their application for summary judgment against the Claimants. Had I not been of that view, there are a few passages in the Claimants' pleadings, which I give leave to serve, which I would have struck out as vexatious. Principally, however, I would have stayed proceedings until a proper questionnaire, relevant to all the claims in question had been drafted and filed, and I would have required Particulars of Claim to identify by category which Claimants pursued which claims. I would have required the many deficiencies in the pleadings to be remedied thereafter.

APPENDIX TO JUDGMENT

INDEX

Paragraphs

1-55	The creation of BIOT
56-30	Events leading up to the evacuation of Diego Garcia
331-369	The evacuation of Diego Garcia
370-404	The closure of Salomon and the evacuation of Peros Banhos
405-437	Resettlement in Mauritius and the Seychelles
438-528	The Vencatessen litigation
529-567	The Vencatessen litigation
568-614	The 1982 Agreement
615-744	The implementation of the 1982 Agreement
745-795	The further claims of the Chagossians

APPENDIX A

Note: The asterisk marks a document relied on by the Claimants in the misfeasance claim; two asterisks mark one upon which they placed particular reliance. P, R, D, ND indicate from the Claimants' markings or omissions, as best I could interpret what was not always a consistently applied methodology, those documents upon which the Claimants here relied on for their misfeasance case but which were claimed by the Defendant in the Vencatessen case to be Privileged, or were supplied in a Redacted form, were Disclosed or were Not Disclosed on the list at all.

Events leading up to the creation of BIOT

1. In 1962, the Chagos Agalega Company Limited acquired the freehold of the greater part of Diego Garcia, Peros Banhos, the Salomon Islands and Agalega from the Mauritian companies which owned them. It saw an opportunity for a profitable coconut based enterprise, reversing the steady economic, and population, decline of the islands.
2. In February 1964, official discussions began in secret and in earnest between US and UK officials over their defence interests in the Indian Ocean. The US had no bases between the Mediterranean and the Philippines. Increasing influence and interest was being shown by the USSR in countries bordering the Indian Ocean. The US wished to be able to counter communist encroachment and to have a facility from which it could deal rapidly with situations developing in the countries around the Indian Ocean. It wanted to develop an island for a communications facility, anchorage, airfield and other related purposes. This was seen to be beneficial to UK foreign and defence interests, especially as its own presence east of Suez was diminishing. Diego Garcia was not the only island discussed but it was an important part of the discussion.
3. This proposal was very sensitive because of the reaction expected from countries hostile to the UK and US, and from others who simply did not wish to see a US presence in the Indian Ocean, a hostility expected to be expressed at the United Nations.
4. Mauritius and the Seychelles already enjoyed a considerable degree of local independence and some local politicians were feared likely to be hostile to such a development. The independence of Mauritius was imminent, and the independence of the Seychelles was at least anticipated. All of this meant that the defence facility could not be provided on an island or islands which might become subject to hostile political control. The islands which might be required therefore had to be separated from local control and detached from the colonies to which they were dependencies. That could only be done in consultation and in agreement with the Governments of the Seychelles and of Mauritius. Whatever the legal position, a variety of political reasons, including the assuaging of a hostile reaction at the UN and depriving the USSR of an argument with which to inflame hostilities, meant that such consent was necessary.
5. The proposal was agreed: the US would provide the defence facilities, to be shared with the UK; the UK would provide land, and provide for population resettlement and any necessary compensation.
6. An internal Foreign Office ('FO') minute of 11th May 1964, (4/03) shows an awareness of other risks at the UN. The partial disruption of a nation's territorial integrity was incompatible with the UN Charter. Article 73 of the Charter, to which the Claimants' submissions attached great weight, required "*non-self-governing territories*" to be administered according to the principle that the interests of the inhabitants were paramount. They had to be developed towards self-government with full regard for their culture, their economic and social advancement, and they had to be protected from abuse. Information about conditions in such territories had to be transmitted regularly to the UN Secretary-General.
7. But the FO also said internally that fear of criticism should not prevent the UK pursuing "perfectly

legitimate constitutional arrangements in support of genuine defence interests ...".

8. On 30th May 1964 a joint US/UK memorandum recorded agreement on the next political steps towards implementation of the proposal, with the aim of minimising adverse reaction at the UN: a survey of the islands (Chagos Archipelago, Agalega and Aldabra) to determine their suitability for defence purposes, administrative arrangements for the islands selected and "*the repatriation or resettlement of persons currently living on the islands selected*". This survey should be done "*to attract the least attention and should have some logical cover ...*", (4/7).

9. The memorandum reveals a concern that, if the intentions of the US/UK became known, the plans would be undermined by a campaign mounted by the USSR which Afro-Asian nations would feel obliged to support, but it was recognised that the third step involving "*the transfer of populations no matter how few ... is a very sensitive issue at the UN.*" This should be undertaken on the basis that "*the populations must be induced to leave voluntarily rather than forcibly transferred. This may necessitate a readiness to spend more funds and energy than might normally be expected.*" The need for discretion was emphasised by the fact that the UN Committee of 24, which dealt with non-self-governing territories was considering Mauritius and the Seychelles for the first time in May 1964.

10. It was also recommended that if the survey could not be carried out without revealing the true intentions behind it and an announcement therefore had to be made as to what was going on, "*the line taken with regard to those persons now living and working in the dependencies would relate to their exact status. If in fact they are only contract laborers rather than permanent residents, they would be evacuated with appropriate compensation and re-employment. If, on the other hand some of the persons now living and working on the islands could be considered permanent residents, ie their families have lived there for a number of generations, the political effects of their removal might be reduced if some element of choice could be introduced in their resettlement and compensation.*" No reference was made to the possibility of their remaining there.

11. For the purposes of the first step, an Anglo-American survey team visited the islands from mid July to mid August 1964. The report of the survey was prepared by Mr Robert Newton of the Colonial Office *(4/12)(D); it is a long report but it is important for the reliance placed on it by the Defendants as showing the official state of knowledge as to the Chagos population before the creation of the British Indian Ocean Territory ('BIOT'). The report describes its purpose as being to "*determine the implications for the civilian population of strategic planning, and especially to assess the problems likely to arise out of the acquisition of the islands of Diego Garcia and Coetivy for military purposes.*" The primary problem was the "*practicability of providing continued and congenial employment and of evaluating the social and economic consequences of moving island communities*". The only other island in which a strategic interest was said to be likely was Aldabra, (which was more noted for its turtles).

12. The total population of Diego Garcia in 1964 was reported to comprise 483 people of whom 172 were Mauritians and 311 Seychellois. The population of Peros Banhos was 291 of whom 30 were Seychellois. The population of Salomon was 219 of whom the vast majority were Mauritians and the population of Agalega was 371, of whom about 90% were Seychellois. This made a total population including children of 1364, some 80 or so fewer than in 1960, though the population of Diego Garcia itself had gone up in that period. There were only 3 people unemployed on Diego Garcia and Peros Banhos and a further 7 unemployed on Agalega.

13. The acquisition of the islands by Chagos Agalega Company Limited in 1962 was described. Mr Paul Moulinie's conclusion in March 1963 as to the scope for copra production in the islands was referred to: although Diego Garcia had been very badly neglected, it was capable of increasing its output considerably, and labour should be retained at its present level for the time being. A labour force of 80 was adequate for

Peros Banhos and no increase in labour force was required for Salomon. The report commented that Mr Moulinie's appraisal was not objective but was rather a prospectus designed to raise speculative capital.

14. Paragraph 24 of the report referred to the difficulty of recruiting labour for Diego Garcia and to the fact that it was recruited from Mauritius and the Seychelles. All the Seychellois labourers and 7 Mauritians were said to be under contract. The report continued:

"There is certainly little trace of the sense of a distinct Diego Garcian community described by Sir Robert Scott in his book '*Limuria*'. Sir Robert Scott holds that '*physical characteristics of the island have made the Diego Garcians more down and hard headed than the residents in the other islands*'. They are said to be '*more diligent in supplementing their basic rations and their cash resources than the other islanders*'.

In the postscript to his book Sir Robert Scott discusses the impact of change and makes a plea 'for full understanding of the islanders' unique condition, in order to ensure that all that is wholesome and expansive in the island society is preserved'."

15. Mr Newton reported that, judging by conversations with the manager, and with others on the island, most of the inhabitants of Diego Garcia would gladly work elsewhere if given the opportunity. Four fifths of the labour force were said to be Seychellois on short term contracts. He said that there were grounds for concluding that the evolution of life on Diego Garcia was fostered by the easy-going ways of the old company rather than by an attachment to the island itself.

16. In paragraph 26, Mr Newton dealt with the population make-up:

"Of the total population of Diego Garcia, perhaps 42 men and 38 women with 154 children, might be accepted as Ileois. According to the manager 32 men and 29 women made relatively frequent visits to relatives in Mauritius and perhaps no more than 3 men and 17 women including a woman of 62 who had never left Diego Garcia, could really be regarded as having their permanent homes on the island. The problem of the Ileois and the extent to which they form a distinct community is one of some subtlety and is not within the grasp of the present manager of Diego Garcia. But it may be accepted as a basis for further planning that if it becomes necessary to transfer the whole population there will be no problem resembling, for instance, the Hebridean evictions. Alternative employment on a new domicile under suitable conditions elsewhere should be acceptable."

17. In paragraph 35, Mr Newton said:

"HMG should therefore accept in principle responsibility for facilitating re-employment of the Mauritians and Seychellois on other islands and for the resettlement in Mauritius and the Seychelles of those unwilling or unable to accept re-employment. Settlement schemes would have the additional advantage of retaining the Diego Garcian labourers as a community subject to supervision and guidance. Very few are wholly ignorant of life in the main islands and the conditions of the Black River area of Mauritius might well be suitable for dispossessed Ileois. Even so, some guidance will be required. The cost will be relatively heavy."

18. Mr Newton recognised that Mr Moulinie had plans for increasing his labour force especially on Agalega, albeit that some Ileois might be reluctant to move there. The report also dealt with the administrative

arrangements on the island and the way in which they had evolved their own way of life and self discipline. He considered that the islands were being drawn more closely into the Seychelles sphere of influence, a pull likely to be increased with the advent of Chagos Agalega Company Limited. There was nothing remotely resembling life in modern Mauritius.

19. In paragraph 67, he dealt with compensation for Mauritius.

"HMG should assume responsibility for Mauritians evicted from the islands and likely to lose their traditional livelihood. The cost of transfer to other islands and of the construction of houses should be borne by HMG as part of the disturbance element in compensation due to the Company. Otherwise the cost of resettlement in Mauritius should be met. Payments, of this nature however, are obligations towards private persons rather than to the Government of Mauritius."

20. In his summary, Mr Newton considered that expenditure had to be directed towards the resettlement of dispossessed labour unable or unwilling to find work in other islands and pensions for islanders beyond active work. Although there should be no obstacle in principle to the transfer of labour and there was a plan to increase the labour force in Agalega, resettlement on Mauritius or the Seychelles was not thought likely to involve more than a small residue of the existing island population.

21. It is this report, which on the material before me, appears to have been relied on at the time of the creation of BIOT, although on many subsequent occasions, Ministers sought further information as to the numbers and status of Ilois. Mr Allen said that it was "slanted" so as to advance defence interests; it did not strike me in that way - rather it seemed to me reasonable for Ministers to take steps in reliance upon it.

22. Mr Allen pointed out, perfectly correctly, that they also had available to them the book "*Limuria*" written in 1961 by a former Governor of Mauritius, Sir Robert Scott, about mid-50s Chagos, which described a "permanent" population of 1500. By this he meant "*the islanders*" who had been there for generations, many two or more, some for five or more. Mr Allen suggested that the Newton Report presented an atypical analysis, neither consistent with earlier material, of which "*Limuria*" was but an exemplar, nor with the FO's or BIOT's later surveys.

23. That is not correct. Mr Beal produced a careful analysis of the census and other survey figures for Chagos from 1883 onwards. None contain a separate figure for Ilois. The total population figures though the 1950s for the three islands drop from about 1100 in the early 1950s to 900 by the late 1950s, to 747 in 1962. This is all consistent with the evidence of economic decline. It is the Scott figure, if any, which is out of line. Mr Newton's overall figure of 993 with 483 on Diego Garcia is not significantly out of line. The figures for the islands thereafter fluctuate: 793 (431 Ilois), 924 (487 Ilois), both in 1967, the latter reflecting the last major recruitment, to 807 (434) in 1968, 691 (422) and 652 (350) in two 1969 visits, 680 (343) in 1970 and 630 (387) in February 1971. It is the number of Ilois, which was neither a readily defined nor ascertained category, which gave rise to the greater fluctuation in assessment. But the Newton report adverts to that problem of assessment and Ministers continued to seek more refined information. Mr Gifford produced in the Bancoult Judicial review (13/301) figures for births and deaths on the three island groups over similar periods of about 70 years; the registrations, assuming them to be only of Ilois which is not clear, show neither birth rate, nor population, nor do they relate to the same individual. For Diego Garcia it suggests a crude average of 20 births a year, 14 for Peros Banhos and 9 for Salomon. This advances matters very little.

24. Mrs Talate's portrayal of life on Diego Garcia in her witness statement was largely unchallenged for the purposes of these proceedings and was adopted by a number of Chagossians in their witness statements. It was plain, at the conclusion of her evidence, that her statement bore no resemblance to anything which she

might have said in her own words, by its style, phraseology or language. But the general picture was supported by other evidence and I am content for these proceedings to accept it as a reasonably accurate picture of life in the 1960s on Chagos, though seen through longing eyes and a misty recollection, engendered by the passage of time in a fairly wretched life in Mauritius.

25. There was a house for each family with a garden or land around to provide vegetables or poultry or pigs to add to the variety of the diet yielded by the company's rations. Fishing added to its variety. Many types of work were available, though mostly in the copra industry; there was also domestic work for women, construction, administration and fishing or boat building for the men. The small population had a varied, healthy diet, with no unemployment. The educational system, on Diego Garcia a missionary school, provided no more than was necessary for such a lifestyle; values were taught. They rarely handled cash. Contract workers had to sign contracts but never Chagossians. (She was clearly wrong about that.) There was no "*mad rush, we all lived according to our own rhythm*", without fear, stress, hunger, poverty or misery.

26. There was a community life, peculiar to the islands, which had their own food, drink, games and festivities. It was a religious, Roman Catholic community. The work, diet and life led to few diseases, but every so often, people would have to go to Mauritius for medical treatment. The climate was benign. From here, they were "*forcefully removed*"; there was no elaboration in the statement as to what "*forcefully*" meant, from violence, to threats, to an absence of choice. This vagueness was common and potentially misleading.

27. In October 1964 a Colonial Office minute, *(4/38)(ND), to the Secretary of State recommended that the Chagos Islands be detached from Mauritius to enable the development of defence facilities on Diego Garcia, which was described as "*a coconut island whose present population under 500 is largely contract labour from Seychelles*". The Mauritius Prime Minister had reacted "*not unfavourably*" to the proposed detachment but compensation would clearly be required. The figures reflect the Newton report.

28. In January 1965 the US Embassy wrote to the Foreign Office Permanent Under-Secretary's Department stating that the consequence of the survey group report was that they had concluded that it was Diego Garcia which had the most potential for US military requirements, (4/42). They anticipated starting construction work in 1966 and being operational by 1968. They asked for the entire Chagos Archipelago to be detached both in the interests of security and so as to have other sites available for future contingencies. They also asked for other islands to be detached from the colonies to which they were dependencies. The Foreign Office enquired of the US Embassy (4/44) as to whether the islands would need to be completely cleared of population and if so which and when and whether local labour could be used on the proposed facilities. The reply on 10th February 1965 (4/52) was that there was no reason to re-locate population prior to an island's coming into use for defence purposes, other than Diego Garcia's if Diego Garcia were needed. Practical problems were raised about the use of local labour for construction work. The Officer administering the Seychelles Government wrote to the Colonial Office ('CO') in June 1965, (23/39), saying, in the course of a letter dealing with land valuation and resettlement, that for costing he had assumed that all "*locals*" would be evacuated from the islands taken, but he would be delighted to be wrong.

29. In a memo of 30th January 1965, **(4/45)(P), the Secretary of State for the Colonies told the Foreign Secretary that the islands had "*few if any permanent inhabitants; contract labour works on them for limited period producing copra*" but "*substantial compensation payments both to dispossessed land owners and islanders and to the Mauritius and Seychelles governments would be involved. Resettlement problems might arise.*" By 25th February, the Foreign Office was estimating that clearance of the populations from all the Chagos group was not a likely eventuality. A resettlement cost for Diego Garcia, Peros Banhos and Salomon was put at approximately £350,000. A brief for a meeting between the Foreign Secretary and Dean Rusk, the US Secretary of State, in May 1965, **(4/56)(ND), said that it might be pointed out that "*we were taking great care to see that the local inhabitants were fully protected*" in the context of a unique opportunity to detach "the small and barely inhabited islands for strategic purposes". The references to the population reflect Mr Newton's report, paragraph 23.

30. By June 1965, Chagos Agelaga Company Limited had become aware of rumours about defence facilities. It was recognised by the Treasury that, before the Mauritius and Seychelles Governments were approached which should be done soon, it was necessary to be clear on the compensation to be paid. The increasing cost of detachment, including compensation, led the US to agree to fund part of the cost by way of set-off from payments due to the US for Polaris submarines. The total cost of detachment was now estimated to be in the region of £10m.

31. In July 1965 the United Kingdom Government opened negotiations on detachment with the Council of Ministers in Mauritius and the Executive Council in the Seychelles, (12/182). Negotiations with the Seychelles proceeded on the basis that compensation would include the costs of resettling displaced labour and that the use of local labour would be difficult for the Americans. The new civil airport for the Seychelles would generate significant employment and other economic benefits. The Mauritius Government was to be told that the US Government was insisting on complete constitutional and administrative detachment and that leasing or defence agreements with Seychelles or Mauritius were not possible, (19/76a). Compensation needed for the consent of the two Governments would include the resettlement costs of displaced labour. American use of local labour was unlikely. It was intended, according to a telegram from the FCO to the Governor of the Seychelles, *(19/76e and 4/77), that people from Diego Garcia should be resettled in the outer islands rather than in Mauritius or the Seychelles and that the resettlement of people from the other detached islands was to be avoided. As many Ilois as possible would be re-settled on Agelaga.

32. High Commissions were briefed, *(4/67)(P), that the population of Diego Garcia was about 500, "*almost all contract labour*". The Canadian High Commissioner told, *(4/82)(ND), the Canadian Head of the Commonwealth Division, as part of the information given to some countries to enlist their help at the UN that the Chagos population was "*mostly contract labour from Mauritius and the Seychelles*", meaning that they were not permanent residents. But the Canadian Government had sought more information which the High Commissioner asked the Commonwealth Relations Office to provide. The same point was made to the UK Embassy in the Philippines, (9/1962). The information reflected the Newton report.

33. A memo, **(19/68a), from an official in the PIOD of the FO dealing with the detachment of the Islands sought to respond to points raised by another official about its administrative implications. The legal means of detaching Chagos was dealt with. The High Commissioner's only initial administrative task would be "*the evacuation of the population of Diego Garcia and their resettlement elsewhere*". An important point had been raised about improving the administration in the islands, which "*were managed by plantation owners by methods that are almost entirely feudal*". The publicity which would be given to the "*compulsory evacuation*" of Diego Garcia, which was anticipated to be in the near future, would generate strong demands for improved administration in the dependencies of Mauritius and Seychelles, which in context means the islands which were to make up BIOT.

34. Although this process had been carried out in secret, the UK Government had been aware that questions might well be asked about it at the UN, by the Committee of 24 and prepared its answers accordingly. They dealt with the anticipated status of the islands, their progress to self-government, and if there were no local inhabitants left, what arrangements would be made for the present inhabitants. The Colonial Office advised the UK Mission to the UN to say that the Government's understanding was that "*the great majority*" of the population were contract labourers on the copra plantations on the islands but that there were a small number of people who had been born there and in some cases their parents had been born there too. In a phrase on which the Claimants put weight, the memo of 28th July 1965, **(4/84)(ND), continued: "*The intention is, however, that none of them should be regarded as being permanent inhabitants of the islands*". The islands were to be evacuated as and when defence interests required. "*Those who remain ... will be regarded as being there on a temporary basis and will continue to look either to Mauritius or to Seychelles as their home territory*". The memo emphasised that "*there will be no permanent inhabitants ... those remaining ... will have no separate national status*". In the absence of permanent inhabitants, no question of their constitutional development could arise. Details of the arrangements had yet to be settled. The internal

Colonial office advice was therefore that the facts were to be made to fit or presented as fitting the assumptions upon which BIOT had been created. But this was neither a final nor consistent position.

35. In September 1965, during the constitutional conference at Lancaster House on the forthcoming independence of Mauritius, there was a meeting between the Prime Minister of Mauritius, Sir Seewoosagur Ramgoolam, and the Colonial Secretary at which the detachment of the Mauritian islands was discussed. The Mauritian Ministers present in London agreed to the detachment of the Chagos Islands in return for up to £3m in compensation, other benefits, the retention of mineral rights and the return of the islands once they were no longer required for defence purposes, (4/101). This was in addition to the payment of compensation to the landowners and the costs of resettling others affected from the Chagos. The possibility of a land resettlement scheme was touched upon and Mauritius agreed to produce some ideas. By October 1965, the agreement of the Mauritius Government and of its Prime Minister had been confirmed, (4/98). This was formalized in February 1966; the money was to be used in development projects which were to be agreed.

36. There was no process of consultation with the islanders and no part of the Mauritian islands were included within any constituency for the Mauritius Legislative Assembly; there was a Seychelles MP within whose constituency the Seychelles islands fell, but all discussions at this stage were confidential.

37. In a memo from Mr Greenwood, the Colonial Secretary to the Prime Minister dated 5th November 1965, *(4/109)(P), he summarised the agreements reached with the two colonial governments, the compensation and resettlement provisions, the political hostility which the new colony could generate at the UN "*in an period of decolonisation*", and the pressure which would be placed on Mauritius to withdraw its consent unless the creation of BIOT could be presented as a "*fait accompli*" according to a rapid timetable which was then set out. It was to be done before the UN Fourth Committee started discussing the Indian Ocean islands.

38. On 8th November 1965, the BIOT Order in Council, SI 1965/1920, was made. It detached the islands of the Chagos Archipelago from Mauritius, and Aldabra, Farquhar and Desroches from the Seychelles; it created a new territory, BIOT. The Governor of the Seychelles was appointed to be its Commissioner. It provided for the continuation of Mauritian law in the islands detached from Mauritius and for the continuation of Seychelles law in the islands detached from Seychelles, subject in each case to any necessary modification.

39. The detachment of the islands was effected under the Colonial Boundaries Act 1890, and the Constitution of BIOT within the same Order in Council was made under the Royal Prerogative. The Commissioner's powers effectively made him head of the Government of the Territory on behalf of the Crown, and also its legislature. He had power to make laws "*for the peace, order and good government*" of the territory, which had been created for the purpose of establishing defence facilities for an "*indefinitely long period*" according to the UK/US Agreement. There were Royal Instructions which prohibited the enactment of certain laws and regulated aspects of the manner in which enactments were framed.

40. The Colonial Secretary announced the creation of BIOT in a written answer to the House of Commons on 10th November 1965, (4/103, 127); he referred to the agreements of the two governments to the detachment, to the intention that the islands would be available for UK and US defence facilities and to the population of the islands, approximately 1,000 in the Chagos Archipelago and rather smaller numbers in the others and recorded that "*appropriate*" compensation would be paid.

41. On the same day, following discussions with the Colonial Office about how those populations should be described, the Governor of Mauritius released a press statement, (4/128), in the form of a more extended answer to the House of Commons than was in fact given to it. It referred to the £3m for expenditure on development projects to be agreed between the UK and Mauritius Governments. It said that the population of

the Chagos Archipelago consisted "*apart from civil servants and estate managers, of a labour force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations*". There were 638 Mauritians on the Archipelago of whom 176 were adult men employed on the plantations.

42. The draft guidance from the FO and CO to embassies and High Commissions about the creation of BIOT referred to there being "*virtually*" no permanent inhabitants, *(4120)(D). The disadvantages of there being "*virtually*" no permanent inhabitants was that that implied that there were at least some, albeit small in number, who were permanent inhabitants of the Chagos with all that that might entail in terms of their rights under Article 73 of the UN Charter, and the inhibition which that might place upon their removal to make way for the defence facilities. The political hostility which could be fomented with so potent a weapon to hand was obvious. Part of the thinking behind the creation of BIOT in the first place had been to avoid the obligations towards an indigenous non-self-governing people which Article 73 imposed. In a foreshadowing of bitter comments which were to be made in 1982 by the Ilois, the existence of a small permanent population on the Falklands which the colonial power might wish to protect and whose rights it might wish to assert, was seen as a potential point of contrast which others could use against the UK. The memo of 9th November 1965, *(4/118)(P), from the UK Mission to the UN to the FO said that these difficulties would not arise if "*we could say that there are (repeat are) no permanent inhabitants...but the use of 'virtually' seems to preclude this*". Further information about the numbers of "*permanent*" inhabitants was thought to be useful. The reply, *(4/125)(P), recognised the difficulties and that it could not be asserted that there were no permanent inhabitants, advantageous though that position would have been. It was advised that all references to "*permanent inhabitants*" be avoided. This advice underlay the formulations seen in the guidance for answers to the press. If questioned, the advice was to say that the Government had their interests very much in mind; many details had yet to be worked out. Similar advice was given to the Governor of Mauritius. This is internal advice to avoid saying what was untrue, without at the same time saying what the truth was.

43. This problem about how to describe the inhabitants of the Chagos who were born there or whose parents had also been born there, without declaring them to be permanent inhabitants, continued to tax the FO and the CO, with intermittent requests for more information about them.

44. On 12th November 1965, **(4/130)(ND), Mr Jerrom of the CO had also written to Sir Hilton Poynton, Permanent Under-Secretary at the Colonial Office, saying that there was one awkward point which the Secretary of State wished to know about. "*It is: how can we avoid treating the new territory as a non-self-governing territory under Chapter XI of the Charter? The answer to this question depends on the status and treatment to be accorded to the civilian population who remain in, or go to the Islands*". He said that in 1964 the understanding was that any population of the islands would be dealt with in such a way that they need not be regarded as "*belongers*", which would be reasonably straight forward if they were settled elsewhere or given citizenship rights elsewhere and then employed in the Islands under temporary residents' permits. He now understood however that only one of the islands would be taken and so the treatment of the civilian population in the other islands would require early consideration. This was recognised as an awkward problem and, because the inhabitants would not be removed from any of the islands until the islands were required for defence purposes, it would make it very difficult to avoid having to report on the new territory under Article 73 of the Charter. The matter was being discussed against the possibility that an awkward question would be asked in the House of Commons about this point. The hope was expressed by officials that it would be possible to avoid answering the question. One said: "*I have no doubt that the right answer under the Charter is that we should [transmit information to the United Nations] for the territory is a non-self-governing territory and there is a civilian population even though it is small. In practice however I would advise a policy of "quiet disregard"*". Hence the recommendation that it would be advantageous from the UN point of view to put into effect a general resettlement programme. The question was raised for discussion and advice; the issue was to be ducked if possible.

45. By a telegram dated 12th November 1965, (4/132), the Secretary of State for the Colonies to the

Governor of the Seychelles said that the resettlement of populations would not be a serious problem, but that it was essential that contingency planning for the evacuation of the population from Diego Garcia should begin at once. The CO could not say, it told the Governor of Mauritius, that there were no permanent inhabitants, however advantageous that might have been, (4/134 and 136). However, because of a receding US interest in Diego Garcia for the time being, the plans, when prepared, were to remain contingency plans because there was no immediate need to evacuate anyone. The most urgent problem was to find a satisfactory basis for compensation. Mr Jerrom's memo of 18th November made it clear that his suggestions were given "*very much as a first thought*" and that legal advice would have to be taken on the local status of the persons and the nature of any UN Charter obligations, (4/116). One of the reasons why the issue of compensation had to be settled quickly was that Mr Paul Moulinie was complaining bitterly about what he saw as an intended forcible expropriation of his property; and his co-operation would be necessary if he was to be persuaded to take people from Diego Garcia to work on the Agalega plantations, if they were willing to go there and if the UK Government paid for the cost of housing there (4/138).

46. In an exchange of memos between FO and CO officials on 18th and 19th November 1965, **(4/115-117)(ND), each continued to advise against references to permanent inhabitants; they could be referred to instead as Mauritians or Seychellois.

47. Mr Jerrom's memo said that he thought it would be highly desirable from the UN point of view "*to put into effect a general resettlement programme*" which could tie up with arrangements for procuring the use of land on islands belonging to private citizens. "*One idea which occurs to me, probably impracticable, is that people at present engaged in copra plantations on the islands might be given some sort of alternative either resettlement in Mauritius or Seychelles, or continued engagement under contract in the islands with a temporary residents permit*". It would be necessary to think about their "*belonger status*" and their rights of representation in the legislative assemblies of Mauritius and Seychelles. "*Subject to New York views I think that the best wicket for us to bat on in the United Nations would be that these people are Mauritians and Seychellois; that they were making a living on the basis of contract or day-to-day employment by the companies engaged in exploiting the islands*" They would be resettled in Mauritius or Seychelles when the defence facilities made those operations impossible and insofar as they could continue, they would do so with temporary residents' permits.

48. This line was approved by Mr Hall in a minute to Mr MacKenzie quoting what Mr Robert Newton had said following his 1964 survey, namely that the people on the islands "*could not be regarded as permanent inhabitants, but were in fact in the category of contract labour employed by the estate owners or commercial concerns. He stated that, as a matter of personal interest, he was anxious to try to find established communities on the islands He failed to find any.*" (4/116). The labour force could be expected to return to their permanent homes in Seychelles and Mauritius in due course.

49. Mr MacKenzie confirmed his agreement with Mr Hall's comments: "*These people are essentially comparable to residents of Basutoland who go off to work in the Republic of South Africa or even to those Spaniards who go daily to work in Gibraltar rather than to the permanent inhabitants of either Gibraltar or the Falklands Islands*". (4/117)

50. On 16th December 1965 the UN General Assembly passed, too late, a resolution urging the UK not to dismember the territory of Mauritius or to violate its territorial integrity and viewed with deep concern any step by the UK to detach islands from Mauritius for the purpose of establishing a military base. (9/2072).

51. This led Mr MacKenzie of the CO to write a minute, *(4/142)(ND), to the Cabinet Office saying, as had been said before, that even if no more than one island was to be cleared within the next few years, it might still be highly desirable from the UN point of view to put into effect a general resettlement programme; "*this would help us maintain the argument that the present inhabitants are Mauritians and Seychellois; that they*

are making a living on the basis of contract or day-to-day employment ... but that they will remain 'belongers' of Mauritius or Seychelles".

52. On 21st December 1965, Mr Gaeten Duval, a lawyer and Mauritian MP who was to become closely involved with representative groups of the Chagossians in the 1970's and 1980's, asked in the Mauritius Legislative Assembly whether the British Government had undertaken to meet the full cost of the resettlement of all Mauritians now living in Diego when re-settled in Mauritius. Mr Forget on behalf of the Premier and Minister of Finance said: "*The British Government has undertaken to meet the full cost of the resettlement of Mauritians at present living in the Chagos Archipelago*".(4/104).

53. A Foreign Office minute to the Cabinet Office of 20th December 1965, *(4/147)(ND), stated that there was "*an urgent need to take over the territory and evacuate its permanent inhabitants, so that it could be made clear that the islands were defence installations and not a new colony*". This minute was but one view of the way to handle a problem which was to manifest itself on a number of occasions over the next five years, namely the need to continue commercial use of the territory until the construction of the defence facilities began, but on the other hand the desire for a formal evacuation to be completed as soon as possible. The minute advised that "*The best arrangement would be for the formal evacuation of the Company to be completed as soon as possible and for a new lease to be granted them for as long as seemed prudent.*" The American Embassy said that they had no need for it at least during 1966 but nonetheless urged early acquisition of the land. The Permanent Under-Secretary's department at the FO agreed that an acquisition of title to the land throughout the territory followed by a leaseback at reasonably short notice would be an appropriate response. It was also recognised that it would be difficult to justify resettlement of the populations before there were any definitive plans for the use of the islands for defence purposes.

54. Thus at the end of 1965 BIOT had been created; there was uncertainty as to when or indeed whether any of the islands would be required for defence purposes. This uncertainty was damaging to the commercial interests operating the copra plantations. There was a tension between the need to use the islands commercially until they were required for defence purposes and the political problems which would arise at an international level if there were to be a permanent population on the islands which had to be resettled. There was no evidence before me that the generality of inhabitants of the islands of the Chagos Archipelago were aware at this stage of the creation of BIOT or of the plans for defence use and their resettlement.

55. It is also clear that before the creation of BIOT, some of those who are now Claimants had left the islands and that their departure had nothing whatever to do with its creation or the plans which underlay it.

Events leading up to the evacuation of Diego Garcia

56. In January 1966, Mr Paul Moulinie was told by the Governor of Seychelles, the BIOT Commissioner, that the islands would not be needed for defence purposes in 1966, but that negotiations for the acquisition of the land interests would be undertaken and concluded during the year, (19/41(a)). The BIOT Administrator, who was also the Deputy Governor of the Seychelles, was told by the CO that a leaseback of the plantations was envisaged, although Paul Moulinie's position on this had yet to be ascertained, (19/156(a)). By February, the CO was envisaging negotiations backed up by compulsory purchase powers, but the Administrator complained to the Commissioner that the discussions which he had had with the CO were rather inconclusive, (19/161(a)). It would be necessary to ascertain what labour might be required on other islands, and what grants might be available for that purpose. The MoD were to negotiate the purchase and a specific BIOT Compulsory Purchase Ordinance was advised. The relevant legislation was not in fact enacted until 1967.

57. Meanwhile, the status of the islanders continued to trouble officials from a variety of angles and a draft Immigration Ordinance began to be discussed. CO minute of 6th January 1966, **(4/153(ND), seeking advice, said that they wanted to convert all existing residents into short term, temporary residents by giving them temporary immigration permits, and asked whether the existing Mauritius and Seychelles immigration enactments provided the basis for that. It was suggested by one official that something "*pretty rudimentary*", was all that was required with permits and as few rights with as little formality as possible, would be appropriate, (4/168). Mr Jerrom, in a minute of 3rd February 1966, *(4/165-166)(ND), said that it was necessary to regularise the position of those who lived on the islands, dealing with their position as temporary residents, with their "*belonger*" status and citizenship rights in Mauritius or the Seychelles. He did not know exactly what had been agreed between the Governments but it was important to avoid giving the impression that "*we are trying to get rid of these people*". It was recognised that the two parts of the issue went together and that the question of their status in Mauritius would have to be raised with the Mauritius Government.

58. The CO told the UK Mission to the UN in January 1966, *(4/154)(ND), that there was no alternative to developing the line that the people on the islands were Mauritians and Seychellois, would remain "*belongers*" to those countries, that no Article 73 obligations would be accepted, but that until it was certain that there were no permanent inhabitants it could not be said that there were none. The CO indicated its supporting arguments and the steps to be taken to strengthen them. They had not risked the assertion yet although Mr Newton thought that it was arguable. An interim line was set out. The UK Mission continued to express to the CO its concerns about the status of the islanders and the impact which that could have on the status of BIOT as a non-self-governing territory on which it had to report to the UN, **(4/157)(ND). It thought that some of the present inhabitants would remain and that presented the main difficulty; it was difficult to avoid the conclusion on the present information that BIOT was such a territory because it seemed to have "*a more or less settled population, however small*". A contemporaneous marginal note says "*no*". Various measures were proposed which would help what was nonetheless seen as a reasonable case, on the basis that the UK Government was doing its best for the few concerned. These measures dealt with clarifying the absence of property rights in the inhabitants and the availability of full political rights for them in Mauritius and the Seychelles in one of which they would enjoy citizenship. Mr MacKenzie, *(4/172)(ND), suggested that it would be best to recognise that defence interests were paramount rather than pretend that the interests of the inhabitants were, beguiling though the arguments were in favour of accepting Article 73 obligations. But there remained no agreed line. Ministers had not considered the matter. These exchanges between officials, with differing responsibilities, deal with the way in which the line might be developed. The UK Mission to the UN emphasises what it saw as the UN Charter position and the problems which might be faced there.

59. On 14th February 1966, the Government of Mauritius agreed to accept £3m as full and final settlement for the transfer of the island; it was to be used for the Mauritius Development Programme which was to be agreed in due course. This was "*without prejudice to direct compensation to landowners and to the cost of resettling others affected in the Chagos Islands*". (4/171).

60. It appears from a note prepared in connection with the Vencatessen litigation, (8/1516), that MV "*Mauritius*" had arrived in Port Louis on 26th June 1965 with 53 passengers from Diego Garcia, 38 from Peros Banhos and 40 from the Salomons. It arrived again on 20th February 1966 with 63 from Diego Garcia, 20 from Peros Banhos and 25 from Salomon and a further voyage arrived in August 1966 and again on 24th June 1967.

61. In order to assist the development of an agreed line on the status of the inhabitants of the islands, Mr Jerrom concluded that their status should be clarified together with their position as belongers of Mauritius or the Seychelles, (4/175). A savingram, a communication in the name of superiors but not written by them, was sent by the Colonial Secretary to the BIOT Commissioner dated 25th February 1966, *(4/179)(P). It was particularly concerned with the arguments about the application of Article 73. As a provisional view which had yet to be presented to Ministers, it was pointed out that the Government could hardly accept that the

interests of the inhabitants should be regarded as paramount, but that it had to be expected that such a stance would attract a good deal of criticism.

62. It says:

"3. Our primary objective in dealing with the people who are at present in the Territory must be to deal with them in the way which will best meet our future administrative and military needs and will at the same time ensure that they are given fair and just treatment. If it is decided to take up the position that Article 73 of the Charter does not apply to the Territory our secondary objective will be to make arrangements which will put us in as strong a position as possible in defending this policy in the United Nations.

4. With these objectives in view we propose to avoid any reference to '*permanent inhabitants*', instead, to refer to the people in the islands as Mauritians and Seychellois. It would be helpful if we were soon in the position to say that the existing inhabitants were being resettled; as you know, however, this is unlikely.

We are, however, taking steps to acquire ownership of the land on the islands and consider that it would be desirable, either at the same time or even earlier, for the inhabitants to be given some form of temporary residence permit.

We could then more effectively take the line in discussion that these people are Mauritians and Seychellois; that they are temporarily resident in BIOT for the purpose of making a living on the basis of contract or day to day employment with the companies engaged in exploiting the islands; and that when the new use of the islands makes it impossible for these operations to continue on the old scale the people concerned will be resettled in Mauritius or Seychelles.

5. We understand from a recent discussion with Mr Robert Newton that, in his opinion, the people on the islands cannot be regarded as permanent inhabitants but are in fact in the category of contract labour employed by the estate owners or commercial concerns. He said that as a matter of personal interest, he was anxious to try to find established communities on the islands, particularly people who have made their living by fishing or market gardening etc. He failed to find any. The labour force came from Seychelles and Mauritius and expected to return to their permanent homes in due course. He added that the estate managers on Diego Garcia would have welcomed local initiative on the part of the labour in fishing and market gardening, but the labour force had been content to be entirely dependent on the company for all their means and showed no interest in trying to establish themselves as individuals on the islands.

6. Against this background we assume that there would be unlikely to be any undue difficulty with the inhabitants of BIOT themselves in moving over to a position in which they all held temporary residence permits on the basis of which their presence in the Territory would be allowed. For this to be a satisfactory arrangement however, it is essential that there should be no doubt that the individuals concerned are, and are accepted as being, belongers of Mauritius or Seychelles. . .

7. Whatever arrangements are made to establish the status of the people in the BIOT as belongers of either Mauritius or Seychelles, there will in any case be a need for the enactment

of appropriate immigration legislation for the Territory itself. In this regard we are advised that until you make a law under section 11 of the BIOT Order of 1965, labourers working in the new territory will fall under Mauritius or Seychelles law by virtue of section 15(1) of the Order."

63. The Commissioner's views were sought on these points. Essentially, he agreed with the proposals, (4/187); he did not foresee serious problems with resettlement provided that this was not rushed and grants were available to assist Mr Moulinie in absorbing people from Diego Garcia on Agalega. In a later savingram of 28th March 1966, *(4/196)(P), the Commissioner added these comments to the Colonial Secretary, sent also to the Governor of Mauritius:

"2. On the subject of the non-Seychellois I speak without first-hand knowledge, for, in the absence of a ship at my disposal, I have not yet had an opportunity to visit Chagos. I note that Mr Newton considers that all the non-Seychellois there may legitimately be classed as Mauritians and it may be that the Governor of Mauritius will feel able to share this view. My own impression, based largely, I admit, on hearsay but also on some written evidence, is that there are in Diego Garcia some people who, by normal standards, would be classed as 'belongers' of the Territory. In paragraph 26 of his Report, Mr Newton puts the number of people who '*might be accepted as Ilois*' at 80 adults and 154 children, and of these at least 20 adults (and presumably many of the children) had never left Diego and '*could really be regarded as having their permanent homes on the island*'.

3. It seems to me that the problem, if there is one, is created by the Ilois - or at any rate the more insulated of them. I do not mean by this that there should be any serious difficulty about their resettlement. But, seeing that the object of the exercise is to avert criticism by the United Nations, is there not some risk that, if these permanent or semi-permanent residents are now treated as '*belongers*' of Mauritius, we may fail to achieve our object, since the whole operation may take on the appearance of a sham?"

64. The Commissioner suggested that a possible solution, although one which had its own disadvantages, would be to resettle all the Ilois on Agalega without waiting for further developments. He thought that the bulk of Ilois from Diego Garcia could be absorbed by Moulinie on Agalega without difficulty, (23/59). There was some discussion about whether Moulinie should be told that the Government would pay for transport and new houses on arrival for those resettled, a possible incentive to Moulinie to co-operate, (23/47 and 69/70). Nothing directly came of it and no such incentive was offered, but this might provide a context in which such matters were discussed orally with Paul Moulinie.

65. The Ilois continued to trouble the FO and the UK Mission to the UN, said an FO Briefing for US/UK talks on BIOT and the UN, *(4/182)(P). It was thought preferable not to accept that Article 73 applied to BIOT, an approach which would be helped if there were no permanent inhabitants, although the present population included people who were born on the islands. But if they were not permanent inhabitants and were instead belongers of Mauritius or of Seychelles with full civil rights there, Article 73 would be irrelevant. Detail to support this line was required.

66. No line had yet been decided when, on 18th March 1966, an official within the Defence Department of the FO, reviewed the line which the CO was contemplating taking in an internal minute, *(4/190)(ND), upon which the Claimants placed some weight. He recognised the problem which would arise at the UN under Article 73 and with the consequent attentions of the Committee of 24, if there were a permanent population whose rights had to be safeguarded. The whole of the defence aims in setting up BIOT would be jeopardised. Accordingly, the note continued; "*It is therefore of particular importance that the decision taken by the Colonial Office should be that there are no permanent inhabitants in the BIOT*". A full examination was

necessary of the numbers of residents, whether they were born there and how long they had lived there; then it might be necessary to issue them with documents of temporary residence, whilst making clear that they were belongers of Mauritius or the Seychelles. This was seen as a rather transparent device. But it would be embarrassing to tell the Americans that the islands which had been proposed as being suitable for defence purposes were now within the purview of the Committee of 24.

67. A respondent to the minute, *(4/193)(ND), said that, in effect until the position of the inhabitants had been established, the line which the CO was proposing to take was like cooking the books before their contents were known: all would be well if in fact there were no permanent inhabitants, but that if there were some, "*we have a certain old-fashioned reluctance to tell a whopping fib, or even a little fib, depending on the number of permanent inhabitants*". The information had to be established urgently. The 18th March 1966 minute cannot be regarded as establishing a line; it was a point for debate.

68. In April 1966, the BIOT Commissioner, responding to a CO suggestion that no one knew the make-up of the islands' population but that there appeared to be an increasing preponderance of Seychellois, said that whilst HMG might find it convenient to regard everyone in BIOT as Mauritian or Seychellois, he had suggested that there might be a third class at least in Diego Garcia who could be regarded as belongers of BIOT, (19/197(b)).

69. On 3rd May 1966, *(4/198)(ND), the CO minuted to the FO its suggestion that the UN position could be dealt with by removing the inhabitants earlier than intended so as to present the Chagos as "*empty real estate*" or by finding some other way. The Governor of Mauritius, to whom this had been sent, responded that so far as Mauritius was concerned, they had been regarded without distinction as Mauritians who would have to be resettled at the expense of the UK Government, (4/199). It minuted MoD Lands, at the end of May, (23/67), that as a fallback against Moulinie not co-operating over taking a lease back of the islands, alternative proposals for economic activity on Chagos should be sought or early resettlement.

70. Mr Darwin of the FO in an internal minute of 24th May 1966, *(4/202)(ND), commented on this contemplated position in terms upon which again the Claimants put considerable reliance. It evidences the debate.

"This is really all fairly unsatisfactory. We detach these islands - in itself a matter which is criticised. We then find, apart from the transients, up to 240 'Ilois', whom we propose either to resettle (with how much vigour of persuasion?) or to certify, more or less fraudulently, as belonging somewhere else. This all seems difficult to reconcile with the '*sacred trust*' of Art 73, however convenient we or the US might find it from the viewpoint of defence. It is one thing to use '*empty real estate*'; another to find squatters in it and to make it empty."

To certify the more or less permanent Diego Garcians as belongers of Mauritius seems to strengthen the case of those who criticise its separation from Mauritius, or whichever it was detached from."

71. But even in June 1966, a note in reply from another official suggested that the most important point still was to establish their numbers and their transferability, (4/203).

72. A letter from the Commonwealth Office (Mr Donohoe) to the UK Mission to the UN of 12th August 1966, *(4/215)(ND), continued the rather unproductive debate.

"6. The crux of our case must be the purely legal one that legally these people are Mauritians or Seychellois. So far as I understand it, there will never be citizens of the British Indian Ocean Territory. It helps us greatly in arguing this that all but about 100 of the present inhabitants are short-term contract labour: but it is again an untidy aspect of our case, that as far as can be ascertained about 100 or so were born there. Another untidy feature is that though these inhabitants are either Mauritians or Seychellois, neither have at present, while they remain in BIOT, an essential right of citizenship i.e. the right to vote in elections in their parent countries.

7. But it is a long way from showing that our case is untidy to showing that it is untenable, and, as you point out, we are in for trouble in any case on this issue in the UN. Birth has not conferred more right to remain in BIOT to the 100 or so second-generation inhabitants than several generations of occupation might confer on the inhabitants of a village about to be inundated to build a dam; the scale in fact is somewhat less than usual. Voting rights were absent even before BIOT was created when its inhabitants were indubitably citizens either of Mauritius or Seychelles and it will be from their parent Governments, as it always has been for the new expatriated inhabitants to seek enfranchisement. Finally, though, it would not be a major administrative task to resettle 1,000 Mauritians or Seychellois back in their parent countries, there has so far been no practical need to do so and it would not be easy to do so while we are still coping with the essential preliminaries of setting up an administration in the Territory."

73. This was a personal view, (4/216), and the line remained to be settled; it was hoped, *(4/219)(ND), that the issue would not be raised and a position would not have to be declared, just yet.

74. However, this met with a blast from the Permanent Under-Secretary of the FO, **(4/221)(ND), which with the reply from Mr Greenhill presents the FO in a light which does it no credit, as the Defendants recognised. The former commented:

"We must surely be very tough about this. The object of the exercise was to get some rocks which will remain ours; there will be no indigenous populations except seagulls who have not yet got a Committee (the Status of Women Committee does not cover the rights of Birds).

Unfortunately along with the Birds go some few Tarzans or Men Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius etc. When this has been done I agree we must be very tough and a submission is being done accordingly."

75. In a better tone, another official said that the CO had to get with clarifying the status of those on the islands as soon as possible, making their status as Ilois as justifiable and real as possible, (4/222).

76. A CO memo to the Minister, Mr Stonehouse, dated 31st August 1966, *(4/224-5)(ND), advised that the UK should stand firm on the application of the UN Charter to BIOT. The islands had been selected not just for their strategic location but also because they were not permanently settled, being almost entirely contract labourers:

"4. ... though having their permanent homes there. We are not certain of the number of these and opinions as to whether any should be so regarded vary but not more than about 100 or so are involved."

77. The Minister in September 1966 approved a Brief for the UN Mission, *(4/228)(ND), prepared by the FO in conjunction with the CO and MoD, but it was secret and only prepared as a contingency document. This Brief reflected what had been discussed over the past months: the population was entirely or almost entirely contract labour with no interest in the islands other than their jobs but there was a small number in Diego Garcia who could be regarded as having their permanent homes there; no immediate need to resettle the population existed but should military needs arise, evacuation could be done at six months notice. Evacuation should not present any insuperable difficulty; the relevant islands were wholly owned by the Chagos Agalega Company Limited. *"From all accounts, none of the population would have a real interest in staying in the islands unless employers were to find them jobs there. In this sense there is no real community and the great majority should be happy with settled occupations elsewhere."* If they were forced to make their position clear on Chapter XI, they should say that there were no "peoples" in BIOT and although people might stay for greater or lesser periods that did not alter their essential character as a migratory labour force. If pressed they should say that "*genuinely*" they did not have precise records of the length of stay of individual families, but if necessary could find out.

78. During the second half of 1966, the CO, (which came under the Commonwealth Office in August), and the BIOT Commissioner discussed the acquisition of the land from Chagos Agalega Company Limited, the CO sought from MoD proposals for the maintenance of economic activity or resettlement in the event that Mr Moulinie was unwilling to cooperate during the period until the islands were required for defence purposes.

79. The passenger list for the sailing of the MV "*Mauritius*" from Diego Garcia to Mauritius in August 1966 shows that a number of Claimants sailed on that voyage, who must subsequently have returned to Diego Garcia, (4/209). One of them was Michel Vencatessen, who upon his return from Mauritius in 1964 had signed a two year contract starting 1st April 1964, (4/02a).

80. On 30th December 1966, the UK and US Governments exchanged Notes (Cmnd 3231) concerning the availability of BIOT for defence purposes. This was presented to Parliament in April 1967. It provided that the islands of BIOT should be made available for the defence needs of both Governments, *"for an indefinitely long period"*, comprising fifty years initially, followed by a twenty year period unless notice had been given to terminate it towards the end of the fifty year period. The agreement refers to using workers from Mauritius and the Seychelles as far as practicable. It was for the UK to take what were described as *"those administrative measures that may be necessary to enable any such defence requirement to be met"*, as the US might want. There was to be consultation with it over the time required for the taking of such measures provided that in the event of an emergency requirement, *"measures to ensure the welfare of the inhabitants are taken to the satisfaction of the Commissioner of the territory"*. There are no other provisions which deal with the islands' inhabitants.

81. A supplementary minute of agreement between the UK and US Governments dated 30th December 1966 identified the administrative measures referred to in the Exchange of Notes, (4/247). These included terminating or modifying any economic activity and the resettlement of any inhabitants. The notice given by the US of its requirements was expected to be sufficient for the UK to give the lessee of any of the land required by the US that notice which the lease might require; this could be six months. There had been prior discussion within the FO as to the position of the BIOT inhabitants which reiterated that they were for the most part transients but that their well-being could not be prejudiced, (4/242).

82. From mid-December 1966 onwards, discussions were afoot between the CO and the BIOT administration about a survey of the islands to examine their military potential. Aldabra had been surveyed, and a survey of Diego Garcia was planned for July 1967. Resettlement issues were discussed with the CO and FO; the anticipated UN concerns could be met by classifying all persons present in BIOT as either Mauritians or Seychellois, and by issuing travel documents to that effect which would be endorsed with phraseology which would enable the population to be moved on six months notice. It was pointed out that if the aim were to clear the BIOT islands as a whole, they could not be resettled on non-strategic islands. The

BIOT administrator, Mr Todd, responded in January 1967 to the minute of those discussions by saying that it would not be possible to "regularise" the position of those present in BIOT by July, that the most which could be done by then would be a survey of the population "*in order to see whether the suggestion that there should be no Ilois is capable of implementation*", *(19/152a,b,249a).

83. On 8th February 1967, the Earl of Oxford and Asquith, the Governor of the Seychelles and the BIOT Commissioner, enacted the BIOT Ordinance No 1 of 1967 which provided him with powers to acquire compulsorily on behalf of the Crown, land required for a public purpose. This was defined so as to include the defence purposes of the UK and other foreign governments with whom the UK had entered into an agreement.

84. In March 1967, the Commissioner enacted the BIOT Ordinance No 2 of 1967, which empowered the acquisition of land for the same public purpose by agreement.

85. On 2nd March 1967 the BIOT Commissioner reported to the CO, *(4/250)(R), on the possibilities of immigration legislation for BIOT. This was a response to a savingram of 25th August 1966. The Commissioner said that he had recently had the opportunity of visiting Chagos and provided figures showing the approximate population structure in November/December 1966. The tables which he presented are muddled but they showed a total population on the islands of Peros Banhos, Salomon and Diego Garcia of 793 of which 563 were Ilois and 155 Seychellois. 166 of the 345 people on Diego Garcia were Ilois and only 46 Mauritian, the rest being Seychellois. 247 of the 280 on Peros Banhos were Ilois and 150 of the 168 on Salomon. Of the 563 Ilois, 327 were children and 236 adults. By contrast for the non-Ilois, children represented less than a quarter of the total.

86. The Commissioner commented that the figures did not represent the results of a close survey but were collected from the managers who might vary in their accuracy and their definition of "*Ilois*". He continued: "*It was however interesting to note that individuals questioned never felt any doubt about their status and would answer unhesitatingly 'Mauritian', 'Seychellois' or 'Creole des Iles'*". But whatever definition was placed on Ilois, it was apparent to him that there were a large number of children who appeared to be Ilois of at least a second generation.

"4. Although I do not claim a high degree of accuracy for the figures I have given, it is clear that, even allowing for a considerable margin of error they present a very different picture from that originally envisaged. Whether, for the purposes of the present draft legislation (in particular clause 11) this predominance of Ilois need cause us much concern, depends on whether or not the Ilois can be regarded as 'belonging' to Mauritius. I think it is arguable that they can, for although they have been in Chagos for a long time, they have lived there only on sufferance of owners of the islands and could at any time have been sent back to Mauritius if no longer wanted in connection with the estate. They have never in the past had any right to reside permanently in Chagos. It seems therefore that there may be nothing inappropriate in the way our law is framed."

87. The Commissioner then suggested that this point would at some stage have to be cleared with the Mauritius Government to avoid there being embarrassment with the Mauritians and the UN. He suggested that if the maximum numbers of Ilois to be evacuated in the foreseeable future were the 166 (comprising the 88 workers and 78 children) now living on Diego Garcia, the bulk of those should be capable of absorption on Agalega if BIOT had reasonable notice. Agalega was not part of BIOT but was rather an island of coconut plantations operated by Moulinie & Co.

88. It is plain that at this time there was already a draft Immigration Ordinance in existence, of which clause

11 dealt with the removal of persons from the Territory to the place whence they came or to any other place to which they consented to be removed with the consent of the Governor of that place.

89. In a note to the Commissioner, *(4/257)(D), the CO referred to the discussions which it and other departments had had in London with Mr Todd, the BIOT Administrator, on the question of the status of the present inhabitants of BIOT. The note said that it had been explained to Mr Todd that:

"It has now been decided not to treat BIOT as a non-self-governing territory for the purpose of Article 73 (e) of the United Nations Charter. It is a matter therefore of some urgency to ensure that the status of all the present inhabitants of BIOT as belongers of either Mauritius or Seychelles is established. Although we have always realised that this would not be possible until the Administrator had been appointed and got around his enormous Parish."

It was recognised that Mr Todd had only recently arrived.

90. The Administrator replied on 15th March 1967, (4/258), saying that it seemed certain that the question of "belongers" only applied to Chagos and he was proposing to carry out a census on Chagos in April which should provide the necessary details on which to make resettlement plans.

91. March and April 1967 saw the acquisition of the land interests of Chagos Agalega Company Limited on behalf of the Crown and the lease back of the islands to that same company. Valuing the islands had been a contentious process both internally for the purchasers and in negotiations with the vendors; valuation presented unconventional problems. None of the documents suggest that anyone thought, the legally all-embracing language of the conveyances notwithstanding, that there were any interests or property rights of any sort enjoyed by Ilois. They featured as a resettlement cost or problem. On 16th March 1967 the BIOT Commissioner and Chagos Agalega Company Limited entered into an agreement whereby the company granted an option to the Crown to purchase for £660,000 all the company's rights in the islands with all buildings and other interests belonging to them. Those islands included Diego Garcia, Peros Banhos and the Salomon Islands. On the same day in March 1967 as the BIOT Ordinance No 2 was enacted, the BIOT Commissioner told the CO of its proposals for the acquisition of the various islands within BIOT. In brief terms, the negotiations were covered by an answer given by the Secretary State for Defence, Mr D Healey, in the House of Commons on 17th April 1967, (4/269).

92. The islands were conveyed from Chagos Agalega Company Limited to the BIOT Commissioner on behalf of the Crown on 3rd April 1967. For the purposes of the conveyance the extent of the ownership within the islands of Chagos Agalega Company Limited was certified by the Conservator of Mortgages. It described the three "*établissements*" on Diego Garcia owned by the company: these were "*Pointe de L'Est, Mini Mini and Pointe Marianne*". This is confirmed by the Domain Book (23/92). The conveyance also covered Agalega although it was not part of BIOT.

93. There is a certificate of freehold title from the Books of the Conservator of Mortgages of Mauritius dated 22nd July 1966, (4/208a), showing Chagos Agalega Company Limited as owners of three groups of properties on Diego Garcia, the islands of Perhos Banhos, the Salomon and other islands including Agalega, together with buildings, boats, animals, trees and more besides and everything else as befits a real property document. It appears to be a summary of the conveyancing document in French of 26th May 1962 whereby that company purchased its interests in the islands.

94. A note from the Attorney-General of the Seychelles dated March 1967, (19/249b), refers to the fact that the company did not appear to own six acres on and some small islands at the entrance to the bay of Diego

Garcia which had been excluded from the 1962 sale because they belonged to the Government of Mauritius. It was thought that these properties had become vested in the Government of BIOT when it was created. The nature of the company's title was based on concessions made by the Crown in perpetuity, which was in practical terms a freehold.

95. On 6th May 1967 (23/140), the procedures for the attribution of the purchase price were completed, the provisional scheme having been advertised for 2 weeks on the verandah of the Registry Supreme Court in Victoria, Mahe, Seychelles. This was the means whereby those who wished to assert a property interest, overreached into the purchase price, were able to claim a proportion of that money. None did and it went to Chagos Agalega Company Limited.

96. On 15th April 1967 the Commissioner on behalf of the Crown leased back to Chagos Agalega Company Limited most of the islands of BIOT, including Diego Garcia, Peros Banhos and Salomon Islands. This lease covered the whole of the islands to which it related, with the exception of the meteorological station on Diego Garcia, and did not just extend to those parts of the islands owned formerly by Chagos Agalega Company Limited. The lease was to last for an unspecified period terminable by six calendar months notice in writing from either party, yielding a rent of 80% of the net income before taxation derived from the islands. The islands were to be cultivated beneficially in accordance with the principles of good husbandry.

97. Mr Todd, the BIOT Administrator, visited the islands of Diego Garcia, Peros Banhos and Salomon in the early part of May 1967. He prepared a report on the condition of the islands, *(4/284)(P). On Diego Garcia he said that the plantation was generally in poor condition but that the labour force had been increased and a clearance programme had started; the plantation buildings were basically sound but in several cases required extensive maintenance. Labour relations appeared generally good; there were 15 quarters in the camp made from permanent materials and in good condition. Rations were supplied and there was a well stocked shop with prices appreciably less than on the Seychelles. The basic wage was Rs 25 per month for men and Rs 10 for women. He said:

"The male labour force consists of 16 artisans, 15 boys and 180 labourers, 7 women are employed as domestic servants and 5 in the hospital and crèche. Most of the other 87 women on the island are employed for one task per day on the plantation."

98. He referred to a medical dresser and midwife at the 12-bed hospital. The manager's wife assisted in the hospital. The school was staffed by the manager's daughter and the dresser's daughter. Communications and the function of the Peace Officer were described. The Civil Status records were said to be untidily kept but there was no indication that they were incomplete. The population was checked from the manager's figures and arrangements were made to enable full details to be collected on a subsequent visit. Conditions on the other islands visited were described in a similar format and essentially with similar conclusions. On Salomon a new detachment of labour had recently arrived from the Seychelles.

99. In his conclusions, Mr Todd said that the islands had been neglected for the past 18 months due to uncertainty as to their future but that on the basis of the present lease the company was increasing the labour force, and re-organising the management to increase the number of coconuts collected and their yield in areas at present neglected. He said that the company at present was experiencing no difficulty in recruiting especially from the Seychelles. He produced a table showing the number of workers and families taken by the MV "*Mauritius*" and the number returning during the present tour. These showed that of the Ilois (by their own definition and including those who had spent several contract periods on the islands), 24 men, 20 women and 50 children had arrived and 43 men, 39 women and 74 children had departed. 106 Seychellois men had arrived but with a much smaller number of women and children and only 3 had departed. The number of Mauritians arriving and departing was very low. In total 291 had arrived and 164 had departed. He recognised that the use of the MV "*Mauritius*" which had been run jointly by Rogers &

Company, and the Mauritian Government, the former being one third shareholders in Chagos Agalega Company Limited, and the latter having responsibility for the islands, might no longer be possible with the change in ownership and responsibility and that other arrangements for communication by sea would have to be made. The administrative services run by the managers for the Government (as to legal and civil status) were generally satisfactory.

100. The Administrator's figures also showed the population totals after the departure of the MV "Mauritius". On Diego Garcia there were 166 Ilois, 327 Seychellois and 10 Mauritians. Of the Ilois 35 were men, 38 women and 93 children. By contrast, the Seychellois comprised 172 men, only 53 women and 102 children. On Peros Banhos there were 181 Ilois of whom 36 were men, 41 women and 104 children. There were 70 Seychellois, more than half of whom were men and there were only 6 women. 140 Ilois were present on Salomon, 29 of whom were men, 34 women and 77 children; there were only 28 Seychellois and Mauritians there altogether. In total therefore 487 of the 924 population of the Chagos were Ilois, 100 were men, 113 women and 274 children. Children were defined as those up to and including 12 year olds; Ilois were classified on the basis of their own assessment and included Mauritians who had worked on the islands for long periods and wished to continue doing so. With some overlaps and imprecision, I see this as showing 100 or so Ilois families on Diego Garcia.

101. The documents before me contained drafts of answers to Parliamentary questions about the status of BIOT and its population, ("*almost entirely temporary ... mainly contract labour and their dependants from Mauritius and the Seychelles.*"), *(4/278)(D).

102. It is convenient here to interject a little of the evidence given to me by Marcel Moulinie about events up to this point, as he understood them. It was in January 1966 that Marcel Moulinie told the people on Diego Garcia that BIOT had been created, that the Americans would put a base there and that they might be asked to leave; if there was any compensation they would get it, but he never promised anything. His uncle had been told that, he said, by Lord Oxford. His uncle and Mr Todd spoke to the islanders in May 1967 and compensation probably cropped up again; however, no-one spoke of the British Government paying compensation.

103. In his Judicial Review statement for the Bancoult case, Mr Moulinie spoke of a meeting that had taken place before the May 1967 meeting, when the Ilois were addressed and were told they would have to leave, but that compensation would be paid. At the earlier meeting, he said that he remembered the shock of the announcement he made to 400 or 500 Ilois in the presence of Mr Mein. He was told by his uncle of the May 1967 meeting where both Mr Todd and his uncle had told the Ilois that there would be compensation.

104. They had been shocked to learn that the British Indian Ocean Territory had been created and that the islands had been given to the Americans for military purposes and that they would eventually have to leave. He had advised them to stay as long as possible, that compensation would be paid unless they left voluntarily, and he said that because he truly believed the British Government was going to make proper arrangements for them to be housed and employed. He said that the islanders were very sad.

105. Orally, he said that in mid-1967, which was shortly after the last major intake of labour, he went to Mauritius with his uncle; Mr Todd and Paul Moulinie went to a working lunch with the Governor. His uncle told him that he had suggested to Sir John Rennie and Mr Todd and others that either Crown land or housing compensation should be provided and a trust fund for the islanders should be set up, but had said that the reaction had been rather negative according to his uncle. There was discussion about Agalega and resettlement on other islands. He explained in his witness statement that his uncle and he had many discussions with Mr Todd about resettling the islanders over the next few years, but that nobody came forward from the Government with a sensible solution; this put a blight on the islands. There was no clarity to the Government's intentions and no answers to enquiries made of them. He complained in a statement,

which was prepared for him in 1977, about the lack of communication between the BIOT Administration and the company about its intentions and its failure to exploit the islands properly. The advice given by the company to the Administration that proper compensation should be paid and that the Ilois should be properly looked after was not taken. They had never received any compensation other than small amounts given by the company.

106. Returning to the documents, on 29th June 1967 Chagos Agalega Company Limited gave six months notice to the BIOT Commissioner terminating its lease of the Chagos Islands; it referred to its Mauritian partners experiencing certain technical difficulties, (4/283). Those difficulties related to the tax which Mauritius contemplated levying following the payment to the company of the purchase monies by the UK Government.

107. Sir Hugh Norman-Walker, who was by now the BIOT Commissioner and Governor of the Seychelles, wrote to the CO explaining that the main difficulty in running the islands at a profit was the provision of transport with the "Mauritius" unlikely to continue, now that the Mauritius Government had no interest in subsidising its sailings as a means of communication between Mauritius and the islands. In the absence of shipping, Mr Moulinie would lose interest in the lease and no-one else would be able to solve the transportation difficulties either. A decision on a vessel for BIOT would be necessary soon so that the plantations would not be closed in the relatively near future, (4/336).

108. On 10th July 1967, the CO prepared a background note on BIOT which repeated some of the points which had been made in other documents over the preceding few years: namely, that the present population of the islands was believed to be entirely or almost entirely composed of contract labour, employed by the present lessees and living in housing provided by their employers, that they had no interest in the islands other than in their jobs, for which they had short term contracts, that the pull of the islands had been solely the economic one of finding work there. It was followed by an interesting analysis of the origins of the population and its administration, *(4/331)(D). The migratory nature of the inhabitants was given as the reason why no details of the BIOT population had been given in reply by the CO to a UN housing questionnaire, (4/341)(ND).

109. The July 1967 report to the CO from the BIOT Commissioner referred to the keen interest which there had been to join the island labour-force, which now exceeded the lessee's requirements, because it was thought that they would either have first chance of employment on a defence project, or alternatively of compensation should their contracts be terminated. It was said that there was no indication that the creation of BIOT was resented by the Ilois or that their co-operation in any resettlement scheme would be difficult to obtain. Indeed, the creation of BIOT had had little effect in the islands themselves.

110. In August 1967, (23/147), the MoD wrote to Mr Aust, a legal advisor in the CO, saying they understood there to be virtually no indigenous population which could call for independence, although a survey would be carried out; the concept of establishing BIOT "was, to a large extent, influenced by that fact". Mr Aust responded that "*small, seemingly insignificant islands have a nasty habit nowadays of asserting themselves*"; although there was no substantial indigenous population at present, they had to look to the future, (23/149). On 15th August 1967, (23/153) dealing with whether title should be vested in MoD, a PIOD official wrote that so long as the Commissioner fully protected the "*inhabitants*" interests until they were cleared for defence use, who had title did not matter much.

111. In September 1967, concern was further expressed by the CO to the Defence Department of the Foreign Office about the implications of the notice of termination of the lease of the Chagos Islands and Farquhar by Chagos Agalega Company Limited. It reported on the problem created for the profitability of the islands by the provision of suitable transport, but another issue was the question of what the Americans might decide to do in Diego Garcia and what effect that would have on the copra plantations. The CO was

concerned about the possible resulting unemployment if the islands were abandoned, as some 100 Mauritian labourers and their families would have been repatriated and 200 Seychellois would be sent to the Seychelles. Defence Lands would lose the income which it expected from the rent on the plantations. The letter, *(4/344)(ND), continued:

"While of course these developments had already been envisaged if Diego Garcia should be required for defence purposes, we had not bargained for these difficulties occurring as a result of the lessee's uncertainty as to the future."

The letter sought information to try and reduce the uncertainty.

112. On 18th September 1967, (4/346), the CO wrote to the Officer Administering the Government of Mauritius referring to the proposed Immigration Ordinance for BIOT; it set out the population structure in Chagos as at November-December 1966 which appears to be drawn from the March 1967 figures sent by the BIOT Commissioner to the CO, which are different in a number of respects from those reported on by the Administrator after his visit to the islands in May 1967. It was said that those figures did not represent a close or accurate survey, as indeed the March 1967 letter said. But it did say that it was apparent that there were a large number of children who appeared to be Ilois of at least the second generation and the question was whether or not the "*so-called Ilois*" can be regarded as belonging to Mauritius. The Commissioner felt that it was arguable that they could be so considered for "*although they have been in Chagos for a long time, they have lived there only on sufferance of the owners, and could have been sent back to Mauritius if no longer wanted in connection with the estates. They have never in the past had any right to reside permanently in Chagos and it would appear that there may be nothing in appropriate in the way the law is framed*". This note draws significantly on the letters and notes previously exchanged. Nonetheless, the views of the Officer Administering the Government of Mauritius were sought in relation to the proposed Immigration Ordinance. The views were sought on the assumption that reasonable notice would enable the bulk of the workers on Diego Garcia to be absorbed in Agalega, to which it was not thought the Mauritius Government would have any objection.

113. However, that Officer replied, (4/348), on 29th September 1967 to the CO saying that the basic question of whether Ilois could be regarded as Mauritians was a legal question to which he could give no answer, and in respect of which legal advice should be taken. He said that he himself was not sure about the validity of the argument that the Ilois had lived in Chagos only on sufferance, since the question was whether they "*belonged*" in the national sense, rather than had rights of residence on private property. This thought was the precursor of some of the arguments which the Claimants were to raise before me.

114. The BIOT Commissioner, on 2nd October 1967, wrote to the CO with reference to Mr Todd's figures derived from his visit in May which he considered were "*pretty complete*", although further details were being sought, (4/353). Although the details might be relevant, the Commissioner expressed the rather cynical view, as he described it, that the details would do nothing to stifle criticism from those who were hostile to the existence of BIOT and the defence proposal and, in any event, the position could very readily be misrepresented by them. He said:

"It is true to say that all those on Chagos (with the exception of the Mauritian Meteorological Station staff) are contract labour on contracts of from one to two years and their dependants. But how often and over what period and over how many generations you have to renew contracts before becoming a belonger is not something about which argument would produce any great profit. Nevertheless, we agree with you that we must have the facts ..."

And so a further visit by Mr Todd to Chagos was envisaged. His population figure, not separately identifying

Ilois, was supplied to the UK Mission to the UN; it was not known how many would have to be removed if coconut production ceased, as the population fluctuated, *(4/363)(ND).

115. At about the same time, discussions were under way between the BIOT Commissioner, the CO and Mr Paul Moulinie about the continued operation of the estates following the giving of notice to terminate the lease, which was to expire at the end of 1967. He had formed a new company, Moulinie & Company, which would manage Agalega on behalf of Chagos Agalega Company Limited, but which was not prepared to take the lease of Chagos but would probably be prepared to manage the BIOT islands on behalf of BIOT if a suitable agreement could be made. The two reasons why he was not prepared to continue with the lease were the transport difficulties and the cost of repairs to buildings and equipment. If these repairs were to be made under the present lease, they would be uneconomic for the company "*should the lease be terminated in the near future*". This was obviously the risk associated with a lease which, albeit for an indefinite period, was nonetheless terminable by the lessor at six months' notice; this was a necessity given the uncertainty over the timing and extent of any American defence requirements.

116. The Commissioner pointed out to the CO that to abandon the islands would be to throw people out of work at a difficult time and would be a waste of an economic asset. To run the islands on a management basis might be less satisfactory, but on the other hand might turn out to be the only available solution and Mr Moulinie's attitude towards such a proposal had been sought. He was said to be arranging for one more voyage of the "Mauritius" in 1967, but would not be recruiting additional labour from Mauritius. Much of the Mauritian labour on the island was said to be due to return to Mauritius reducing the need for a regular shipping via an expensive vessel with Mauritius, but on the other hand an alternative shipping connection between the Seychelles and Chagos would have to be established. He needed to know whether the "Nordvaer" would be available because it was the only vessel capable of meeting the Chagos requirement, (4/350).

117. Thereafter, in October and on until December, discussions continued between the BIOT administration and Mr Paul Moulinie as to the terms upon which he might be prepared to take over the management of the plantations on behalf of the Crown under a management agreement. In November 1967, Mr Moulinie, on behalf of Moulinie & Co (Seychelles) Limited, which was based in the Seychelles, said that it was prepared to accept a management agreement for a trial period of six months at 8% commission, based on the gross value of the produce. Mr Moulinie did not think that the basis upon which the Administration wanted the plantations run was in accord with his ideas of good husbandry, (4/362).

118. On 21st December 1967, (4/365), the BIOT Administrator wrote to the CO about the negotiations with Mr Moulinie. He said that the new arrangements would involve the Administration more closely in the running the islands than it had wished. BIOT was to meet expenditure in relation to staff, to set maximum numbers of labourers which were not to be exceeded without permission, and no vessels were to be chartered without the agreement of the Administration. The company in return was to receive 8% of the gross sales. They were to set the wages for the labourers. The new management agreement was to run from 1st January 1968, even though at that stage it had not been prepared let alone signed; until that time Mr Moulinie said that he was prepared to continue co-operating.

119. Indeed, no management agreement was ever signed, although it was prepared and the management of the islands appears in fact to have been undertaken in accordance with its provisions.

120. Uncertainty, however, over the timing and extent of the American interest in Diego Garcia continued and that uncertainty was reflected in the notice periods in the management agreement and would necessarily affect the application of the principles of good husbandry. As the independence of Mauritius drew near, specific questions needed to be dealt with about who would be a Mauritian citizen or a citizen of the UK and Colonies, or both, on independence. In November 1967, an internal FO minute advised that there would be

three categories: those who would remain solely citizens of the UK and Colonies which would normally be someone who was born in BIOT and whose father was also born there, but whose other parents and grandparents were born in Mauritius; those who would be of dual nationality, most commonly those born in BIOT whose fathers were born in Mauritius; and those who would become citizens of Mauritius and cease to be citizens of the UK and Colonies, who would normally be those who were born in Mauritius like their fathers and grandfathers before them, but who had lived in BIOT for many years, (4/360).

121. A set of internal minutes recording a debate within the FCO concerning citizenship in March 1968 includes a note from a legal advisor, (5/370). It advised that the effect of the Mauritius Constitution as proposed would be to give automatic citizenship of Mauritius on independence to persons in the Mauritius section of BIOT except for people born there whose fathers were born in the Seychelles or the Seychelles section of BIOT. But automatic Mauritius citizenship would not deprive them of their citizenship of the UK and Colonies and their entitlement to British passports, though that would not give them a right of entry to the UK. The matter now came up for discussion because it had recently been proposed by Mauritius Ministers that the relevant constitutional provision should be changed so that those born in the Mauritius section of BIOT would only acquire Mauritian citizenship if their fathers or paternal grandfathers were born in Mauritius. However, the FCO foresaw that the evacuation of the islands would involve the population having somewhere else to go, and that they would have no right of entry to Mauritius unless they became Mauritian citizens. Otherwise, they could be in the same position as the Kenya-Asians. Accordingly, there was a concern about those who might retain citizenship of the UK and Colonies, but more importantly that there were some who might only have citizenship of the UK and Colonies. This memo was commented on by others, (5/374).

122. On 8th March 1968, Miss Terry of the FO, to whom the minute had been addressed amongst others, said that the automatic citizenship which those on BIOT would obtain upon Mauritius' independence would enable them to have a right of entry to Mauritius in the event of evacuation of islands, the position of which the Mauritius Government was aware.

123. Another official took the line that it had been arranged that those born in the Mauritius section of BIOT would be Mauritius citizens automatically with no retained UK and Colonies citizenship, so that if evacuated they could all go to Mauritius. Yet another commented that a person who automatically became a Mauritius citizen on its independence would cease to be a citizen of the UK and Colonies except for those categories specifically set out in the Mauritius Independence Act which included those born in BIOT. That official added that he did not see how citizenship could be taken away from someone born in what was still a colony, even though he acquired another citizenship. Anxiety was expressed by another as to the position if Mauritius, at some future date, legislated to deprive those persons of their Mauritian citizenship leaving the United Kingdom with responsibility for them. "*Fortunately, there are not many*", he ended, (5/371).

124. On 12th March 1968, Mauritius became independent and had a new constitution. Independence was granted by the Mauritius Independence Act 1968. Section 2 of that Act provided that, in general, any person who immediately before 12th March 1968 was a citizen of the UK and Colonies should from then on cease to be a citizen of UK and Colonies if he became on that day a citizen of Mauritius. By section 3, however, that did not apply to a citizen of the UK and Colonies if he or his father or his father's father had been born in a colony, which expression was defined in such a way as to include BIOT but not Mauritius. In effect, the Ilois retained their citizenship of the UK and Colonies and gained Mauritian citizenship.

125. Sections 2 and 3 of the Mauritius Independence Act were later to be repealed by the British Nationality Act 1981, section 52(8) and schedule 9.

126. From the point at which Moulinie & Co took over the management of the islands on the basis of the unsigned agreement, the question of labour recruitment reared its head. It appears that the Mauritius

Government was insisting that some 75 persons of Ilois origin be re-employed in Chagos and should travel back on the "Mauritius" which was due to sail for the islands on 5th March 1968. The matter was raised between the BIOT Commissioner and the CO. The Commissioner said that it seemed probable that among the 75 were a number whose contracts were terminated as they were unsatisfactory labourers. It commented that, in any event, Moulinie had no need for the 75 additional labourers. The Commissioner questioned whether the pressure to re-employ these persons on Chagos came from Mauritius officials who were unaware of the citizenship position set out in the Independence Act. Moreover, the labour recruitment from Mauritius was likely to reduce as shipping would be centred on voyages between the Seychelles and Chagos, (5/373). The Commissioner said to the CO, in a passage relied on by the Claimants as showing the role which the Commissioner and CO had in recruiting or managing labour on the islands:

"Unless you have any objections, I therefore wish to inform Moulinie that they should only recruit such labour as they need for efficient running of the Islands and that sources of recruitment and decision which individuals should be employed rests with them."

127. On the previous day, Moulinie had sent a telegram to Rogers & Co in Port Louis, *(5/372)(ND), saying that the islands were fully manned and that he regretted that BIOT was not in favour of further labour intakes for the time being, until negotiations with the Ministry of Defence had concluded. It was contended by the Defendants that there were no negotiations with the MoD at that time, and that the message had not been sent on the Defendants' instructions, (10/49), but this does not entirely support the point. Other documents of the same time were relied on as showing the relationship between Moulinie & Co and the BIOT Administrator, (5/373)(P), limiting recruitment to what was necessary for the efficient running of the islands. Approval was sought for a detailed list of merchandise and goods required by the managers for the islands; ranging from specific quantities of various sorts of spices, to writing paper, onions, fish hooks and the like. Approval was sought because it was the Administrator who would be bearing the costs under the management agreement. Moulinie & Co also obtained the Administrator's approval for the employment of a manager on one of the BIOT islands. The Administrator approved the itinerary for the voyage of the "Isle of Farquhar" from Seychelles to the Chagos and revealed its intention to open postal services making the manager postal agent on a commission basis. A police presence was thought appropriate because of difficulties in Chagos "*with labourers demanding passages and a report of illegal tapping of toddy*". Again, the Administrator's approval was sought for the engagement or non-engagement of named persons from Mauritius as dressers and midwives, though it was left for decision by Moulinie & Co.

128. Mr Allen placed weight for the same theme of control by the Defendants on an internal memorandum of May 1968, (23/171-5). He suggested that volume 23 evidenced the potential for undisclosed documentation helpful to his case to exist, notwithstanding the volumes already produced. He said also that it showed the BIOT Government's use of recruitment policy to regulate the number of Ilois within Chagos. It refers to the Ilois population who had recently requested passage to Mauritius; "*How many will return depends on our recruitment policy*" and the communication with Mauritius maintained after the arrival of the "Nordvaer". The Ilois population would be left at its current level on Diego Garcia "*by adjusting our recruitment and posting of Ilois between the three atolls*". Various resettlement options were examined including resettlement of Diego Garcian Ilois on Agalega, which was seen as "*helping to prove our point that they have no right to permanent residence in BIOT*". They would also not have to be resettled if the whole of Chagos had to be cleared. This internal discussion document was followed up in 5/388 and 5/396; although it preceded the US requirement for Diego Garcia in July 1968, and in a sense can be seen as contingency planning, at a time when there was no management agreement, it contemplates control of recruitment as an aid to resettlement planning.

129. On 10th May 1968 Paul Moulinie wrote to the BIOT Administrator dealing with the sailing of the "Isle of Farquhar" from Seychelles to Diego and back to collect a load of copra, saying "*since we consider that there are already enough labourers on the island, we are not engaging any more to send there this trip*". (10/49). Amongst the matters raised at the end of February in relation to the requirement for goods was that there was a rice shortage, that rice was unobtainable, that in consequence rations would be changed to ½ flour

and ½ rice and flour should be sent as a replacement for the unobtainable rice. This exchange is relevant because of suggestions that there was a deliberate running down of provisions on the islands to encourage departure. Mr Marcel Moulinie disagreed with Mrs Talate's evidence of a severe ration shortage - he said there were enough basic rations, but an occasional shortage of cigarettes. This applied up to the evacuation.

130. Meanwhile, the shipping records show the arrival of the "Mauritius" in Port Louis on 30th March 1968, (5/377). The 142 steerage class passengers included a number of Claimants among whom were the 4 year old Olivier Bancoult and Rita Marie Elyse. They are listed as coming from Peros Banhos. The Bancoult family had gone to Mauritius to be with their daughter Noemie who had suffered a serious accident and needed medical treatment which only Mauritius could provide. Sadly she died a few months later. Some of the passengers off this boat, as with those who arrived in 1967, were among those who later tried unsuccessfully to return to the islands in circumstances which were crucial to a number of issues in the case.

131. The issue of resettling the Ilois was a constant pre-occupation at various levels in the UK Government. In April 1968, a CO official circulated a memo, *(5/382)(ND), to various Government departments including MoD and the Treasury concerning the costs so far of setting up BIOT and how the costs of the new Seychelles airport were to be met from the £10m budget set for the UK side of establishing the defence facilities on BIOT. £4.1m had been spent and the airport was estimated now to cost £5.7m. The uncertainty over whether and when that commitment to the Seychelles could be met needed to be resolved. To that end, the CO official proposed that the costs of resettling Ilois from Chagos should be met from CO funds for aid; thus the uncertainty as to how much they would amount to would no longer hold up the Seychelles airport. But the thinking behind the willingness of the CO to take on this financial responsibility was that there were very few permanent inhabitants who would require resettlement, and even those might well be accommodated upon other coconut islands in BIOT or Agalega. It was regarded as very questionable whether a defence facility would ever proceed and it would not be for some years anyway.

132. The reply from the Seychelles agreed that Ilois could be transferred as a resident labour force to other BIOT islands or to Agalega and that there was no need to pursue the suggestion once made by Robert Newton that they be resettled as smallholders; they would retain their "*present status as labourers resident on private property*". This reply was also sent to the MoD, (5/385).

133. The BIOT Commissioner followed this up on 3rd June, (5/388), with a detailed analysis of various resettlement schemes for those on Diego Garcia: resettlement on Peros Banhos and Salomon, or on Agalega or on one of the uninhabited islands of the Chagos archipelago such as Egmont or Three Brothers which had been used for coconut plantations in the past. Thought was also given to the possibility that the other Chagos islands might also have to be evacuated; Agalega was seen as the likely place for resettlement in that eventuality. Apart from that eventuality, however, the Commissioner thought that resettlement on one of the currently uninhabited Chagos islands was the best option.

134. The next day, he sent another despatch to the CO, **(5/396)(D). It showed the total Ilois on the three inhabited islands of BIOT to number 434 in March 1968. This figure was said to derive from an objective assessment of where individuals were born, which was contrasted with the earlier and higher assessments of November 1966 (563) and May 1967(487), which was based on how people classified themselves. There were 128 on Diego Garcia and 40 more on Peros Banhos. Of the 128 Ilois on Diego Garcia, there were 57 adults and 71 children. There were in addition on Diego Garcia 230 Seychellois, mostly adults and predominantly male, with a further 22 Mauritians. What then follows is important to the Claimants' case.

"4. The definition used for Ilois, (ie persons born in Chagos or Mauritius whose father, or in the case of illegitimate children whose mother was born in Chagos), means that all those shown under this heading are at least second generation Ilois, and that 354 of these are at least third generation Ilois. No attempt has been made to go further back, but the figures show 434

persons whose roots are firmly established in Chagos and who would not normally be thought of as temporary inhabitants. To this must be added an unknown number of people at present living in Mauritius who are also of Ilois origin.

5. If we are to maintain that there are no permanent inhabitants, it is therefore apparent that we shall have to find some other basis than birth to support our claim"

135. He referred to the fact that a number of Ilois have taken holidays in Mauritius, or paid other visits there, but said:

"5. ... The length of their absence varies, but we cannot on this basis alone deny their more than temporary connection with the islands.

6. We must now turn to the question of the status of the Ilois on the islands, and it is here that we can find some justification for denying them the status of permanent inhabitants. As far as we are aware, the islands have been either leased or in private occupation ever since they were inhabited and the inhabitants have been on the island only because they were employed by the owners or lessees or were members of the family of persons so employed. None of the inhabitants owns any land on the islands and the houses in which they live are the property of the owners. Neither do they have the permanent right to use any land on the islands. The position therefore seems to be that the owners or lessees of the islands have a legal right to remove any person from any of the Chagos islands provided that in doing so they do not break the terms that persons' contract ... and equally that they have the right to refuse to allow any person to return to the islands. The fact that the islands are owned by the Crown and either leased or managed on behalf of the Crown does not change this position and we may therefore contend that as no-one has any right to reside permanently on the islands, there can be no permanent inhabitants.

7. It seems to be accepted by the labourers that the owners have the right to transfer them to other islands and that, if their work or conduct is unsatisfactory, they may be dismissed and returned to Mauritius. Such cases do occur, although they are not numerous. On the other hand, we had in February the case of 70 Ilois in Mauritius, apparently claiming the right to return to work in Chagos and being supported in this by the Mauritius Immigration and Labour Authorities ... therefore, if we do have to remove Ilois from the islands, we shall have to expect some opposition from the people themselves and possibly from the Mauritius Government. When making resettlement plans, we can attempt to overcome the first problem by making the transfer advantageous to those moved (eg by providing better accommodation) and we shall have to attempt to forestall any objections by the Mauritius Government by securing their admission that the Ilois are Mauritians"

136. On 19th June 1968, the Commissioner sent to the CO a draft Immigration Ordinance, *(5/402)(P); he said that as the Ilois were Mauritians with no right to permanent residence in Chagos, then all persons living in Chagos could be required to hold a pass allowing them to live there. He did recognise however that he was not an expert on the difficult question of domicile. The draft which he enclosed was not noticeably different from what had been previously discussed.

137. On 24th June 1968, in an internal CO minute, Mr Seller of the CO said to Mr Jerrom, (5/411):

"As you know, the prime objective of the BIOT exercise was that the Mauritian and Seychelles islands hived off into the new territory should be under the greatest possible degree of United Kingdom control."

138. He referred to the purchases of the freeholds in Chagos, using part of the £10,000,000 earmarked for the BIOT operation. He said that only Aldabra did not belong lock, stock and barrel to HMG. Defence Lands, on whose behalf the former owners were managing the plantations, had expressed themselves to be not entirely happy to have responsibility for the plantations to which they had no access and over which they could not exercise any real control. Defence Lands wanted responsibility for the management and administrative arrangements to be placed upon the Commissioner of BIOT. This memo also appears to initiate an intricate minuet between Defence Lands and the CO as to whether the title to the islands vested in the Commissioner should continue to be vested in him or the MoD on behalf of the Crown. Part of the problems about what to do with the islands is reflected in two letters from the BIOT Commissioner to the CO on 6th June 1968, (23/178 and 180). These reflect his belief that with capital investment and a quick decision, the islands could be made to pay their way and be profitable within 3 to 4 years. This was at a time when the timescale of the American requirement was unknown but there was obviously a desire to make the most of the capital laid out on the purchase in the interim, as is clear from other documents. But it was to be affected by the unwillingness of the Americans to say that no other islands were to be required. It suggests that, absent US requirement, the islands could have been profitable but I do not accept Mr Allen's suggestion that it itself shows that Peros Banhos and Salomon alone could have been profitable and disproves the Defendant's contention that economic conditions caused the evacuation of Peros Banhos. But it points to the Chagos as a whole as having had the potential, on certain assumptions as to costs and investment, to be profitable over time.

139. On 2nd July 1968, Moulinie & Co wrote to the BIOT Administrator, referring to the temporary agreement under which it managed the islands, and sought confirmation that the agreement would be renewed under the same conditions as outlined in the November 1967 correspondence until the end of 1968, (5/412).

140. However, an important development occurred on 5th July 1968, when the US informed the FO that it had decided to go ahead with a facility on Diego Garcia described as an austere communications facility with runway, storage and anchorage. However, Congressional approval had yet to be obtained but it was hoped that that would be forthcoming within the next 12 months. This seemingly reduced uncertainties, but hastened the need to consider resettlement, but the timetable was to be stretched as time went by, (5/414).

141. The FO explained to the MoD the difficulties which would arise at the UN if BIOT were found to have a resident population, as the aim had been to find a territory without one, and pointed out that there were advantages in postponing the announcement of the project until 1969. It suggested that these difficulties should, however, not be spelt out to Ministers on the assumption that it was more important to facilitate the project at Diego Garcia than to provide a water-tight case at the UN. The minute of 18th July **(5/421)(P), excused the FO's position by stating that when BIOT had been established "we then had no precise idea of the degree of permanency of the inhabitants, although we knew that there were a few Ilois ie people born in the islands of parents who were also born in the islands". It was now aware of the March 1968 census showing that on Diego Garcia, 128 out of 380 were at least second generation inhabitants, and acknowledged that it would be very difficult to assert "*that normal objections to moving a population and the normal requirement to consult them do not apply*".

142. A draft submission to the PM was prepared and comments requested. One of the comments from the FO related to the passage in the draft which said that there was no indigenous or permanent population. It commented that it would be advisable to establish, in advance if possible, what the "*shifting population*" of the islands consisted of and how they would be affected as this was seen as a key point for potential criticism, *(5-420)(ND).

143. On 24th July, the CO commented, *(5/428)(P), on the draft submission to the Prime Minister, dealing with the resettlement of the existing population and the employment of local labour. It acknowledged that resettlement would be complicated, but said that it did not need to be examined in detail at this stage. The Ilois were entitled to Mauritian citizenship, but the Mauritian Government's reaction was not yet clear over the recognition of that citizenship. It was recognised that the position in the United Nations could be difficult, but in the light of the fact that the islands were occupied "*largely by migrant workers, and that it could be said that there was no indigenous population*", it would be possible, if necessary, to deny the competence of the United Nations to concern itself with that territory. However, the object had to be:

"(a) to demonstrate that we are dealing fairly and humanely with them, and (b) to do this in a way which does not weaken our case for saying, if necessary, that the United Nations has no competence to concern itself with this territory. Clearly the Ilois present the main difficulty here."

144. The Foreign Secretary sent a minute to the Prime Minister dated 25th July 1968 seeking approval for the UK response to the US decision to proceed with the defence facility on Diego Garcia, *(5/434)(P). Approval appears to have been given. The Defendants rely strongly on this. It was accompanied by an annex on the position of the inhabitants. The minute deals with the origin of the proposal, acknowledging that it was one of the reasons for the inclusion of the island in BIOT. Political concerns over the position of the Indian Government were touched on and then the position of the inhabitants was dealt with in these terms:

"It must be expected that the argument will be put forward in the General Assembly that the interests of the local population are being ignored, and this may receive appreciable support; but we have been able to resist such arguments by pointing out that the inhabitants consist mostly of migrant workers from Mauritius and Seychelles. We have not yet completed arrangements for resettlement of the inhabitants of Diego Garcia or for showing that they remain Mauritian or Seychellois, nor have we consulted the Mauritius Government. Resettlement will involve some small expenses, but it is not expected that there will be any financial difficulty in this. When the arrangements are complete, and they may be complicated by a recently completed survey which found that 128 individuals (about 34% of the total population of 389) are now second generation inhabitants of Diego Garcia, we would propose, as agreed at the time of the creation of the British Indian Ocean Territory, to deny, if necessary, the competence of the United Nations to concern itself with a territory which has no indigenous population." [An official has written beside that last sentence that it was difficult to square the beginning of it with its end.]

145. The annex on the position of the inhabitants said that there were at present 380 people living on Diego Garcia, of which 22 were Mauritians, 230 Seychellois and the remaining 128 were described as Ilois, who had some connection by descent with the Chagos Archipelago, "*eg some of them are now second-generation inhabitants of the Archipelago*". The annex said that it had been understood when BIOT was set up that the people living on islands required for defence purposes would probably have to be moved and that the majority in the UN might well protest against the movement of people from the islands. It had been agreed, however, that in the light of the fact "*that the islands were occupied largely by migrant workers, and that it could be said that there was no indigenous population*" it would be possible, if necessary, to deny the competence of the United Nations to concern itself with such a territory. The note repeated what had been said elsewhere, (5/449):

"It can be said that the Mauritians and Seychellois are temporary residents on Diego Garcia. From the point of view of descent, most of the Ilois will be able to establish more than a temporary connexion with the Chagos Archipelago and some of them with Diego Garcia itself. But, as far as we are aware, the islands have been either leased or in private occupation ever since they were inhabited, and the inhabitants have been there only because they were

employed by the owners or lessees or were dependants of persons so employed. None of them owns any land and the houses in which they live are the property of the owners. The position seems to be that the owners or lessees of the islands have legal right to remove any person from any of the islands (provided they do not break the terms of that person's contract of employment) and equally that they have the right to refuse to allow any person to return to the islands. In this sense, it can be contended that as no-one has any right to reside permanently on the islands, there can be no permanent inhabitants; and it seems to be accepted by the labourers that the owners of the islands (now the Crown) have the right to transfer them to other islands".

146. The Commonwealth Secretary also sent a minute to the Prime Minister in which he expressed his special concern about the resettlement of the 380 people living on Diego Garcia, none of whom could be classed as permanent inhabitants. He said that further information was required as to whether other islands would be required and whether the Americans would wish to keep some of the present inhabitants on the island of Diego Garcia, *(5/451)(P,R).

147. As from around this time, resettlement plans began to be looked at in more detail, but there remained uncertainty over the timing of the US requirement on Diego Garcia, the extent of the displacement of its inhabitants which that would require and over the question of whether the US would require, for defence purposes, any other islands in the Chagos upon which otherwise the inhabitants of Diego Garcia might settle.

148. On 16th July 1968, the BIOT Administrator, Mr Todd, sent a letter to Mr Seller at the CO requesting advance details of the resettlement proposals and in particular details of whether plantations on islands other than Diego Garcia were to be maintained. He said that it would be a great help if Moulinie & Co could be taken into their confidence because of the resettlement plans which needed to be made, (5/418).

149. The BIOT Commissioner followed this up in a despatch to the CO on 1st August 1968 in which he raised the question of whether it would be possible to continue running some of the cultivated areas on Diego Garcia even with the US facility. He saw there as being a difficulty in relation to security and a difficulty in relation to the existence of a permanent population. This he saw as capable of being met by removing the Ilois and resettling them elsewhere and running the plantation with contract labour. Although he saw the advantages of being able to use Mauritian and Seychelles labour on construction projects associated with the facility, he said: (4/454)

"If the Ilois are to be resettled, I consider we should remove them as family units and not leave the men behind to work on the defence project."

150. He referred to the fact that on Diego Garcia male Seychellois outnumbered other labourers by three to one. He also assumed that the other islands would continue to be operated as coconut plantations.

151. A CO minute of 31st July 1968 raised, in the context of the uncertainty over the US requirement, the interests of the inhabitants of Diego Garcia and all the other BIOT islands, saying that those interests had to take first place in any "exercise" which might be undertaken by way of resettlement, *(5/453)(R). (This links in with the correspondence about moving as family units and Seychellois outnumbering others 3-1.) A number of measures were proposed to deal with methods of resettlement and resolving these uncertainties. One matter in respect of which agreement was said to be necessary, at least between the CO and the FO, was "*on the form of words to be used in future regarding the limited status of the people in the islands from the point of view of permanency of tenure (ie we try the line of argument put forward by the Commissioner on the lawyers) and work out with them a formulation which can be used when necessary*", *(5/458)(P). But it also

sought agreement from the US that BIOT could use the other islands of the Chagos for the resettlement of the inhabitants of Diego Garcia and that was a feature of subsequent official discussions in August.

152. Officials met on 12th August 1968, (5/463)(P). It was generally agreed to be best that Diego Garcia be cleared of its population, from all points of view including presentation at the UN. Those concerned with the UN pointed out the need to maintain the stance that the population was "*merely a bunch of migrant labourers*" and that it was necessary to show that all those living on Diego Garcia were nationals of either Mauritius or the Seychelles and had no rights other than those of dismissed employees. This, in practical terms, made it desirable that there be a suitable nationality and immigration law and there be no treatment of the Ilois suggesting that their resettlement outside Diego Garcia was "*in some way contrary to their natural rights*". The wrong impression might be given if they were resettled within Chagos, particularly if this were done with compensation, ie that UK had "*some moral obligation to maintain the Ilois in this area because it was their natural home*", **(5/463)(P). The representatives of the Foreign Office department concerned with the islands pointed out the difficulties which might arise if the islanders were settled outside the Chagos Archipelago and were offered opportunities for resettlement on a Mauritius dependency or in the Seychelles. The Americans had to give clear reasons if they wanted to clear any other islands of their inhabitants or prevent settlement on uninhabited islands. There was no definitive answer as to the US position and it was possible that they would not insist on the evacuation of the whole Archipelago. The minute records that the meeting came to no very firm conclusions, but that from all points of view it would be best to clear Diego Garcia of all plantation activity. The proposals for resettlement put forward by the Governor presented problems, some of which might be resolved if the US position were made clearer.

153. A minute by the CO, (5/466), to its legal adviser dealing with Ilois tenure and citizenship raised doubts about whether the Commissioner's view that the Ilois could be treated as Mauritians in the way in which he had described was right, and legal advice was sought. But Mr Jerrom expressed his own view that the peculiar system of property tenure did not justify the actions suggested by the Commissioner and confirmed that it would have to be accepted that the Ilois staying in BIOT would continue to possess dual nationality of Mauritius and of the UK and Colonies. These were, however, seen as only a small number and Article 73 could not apply either to the Mauritians or Seychellois migrant workers or just to a small section of population with dual citizenship. The legal adviser's response, *(5/478)(P), on 26th August was to the effect that it would not be right to compel inhabitants of BIOT, who were citizens of the United Kingdom and Colonies, to leave BIOT without giving them the option of settling either in some other UK dependency or in the UK itself or of going to some other country to the citizenship of which they were entitled or the Government of which was willing to admit them. It said that it should be possible to persuade them that it was in their best interests to leave voluntarily rather than to be deported. Although there was a need to take account of UN obligations, there was no objection in principle to immigration controls, including a system of revocable passes for all inhabitants. He took the view that it should be possible to meet the criticisms which might arise in the UN based on Article 73, on the grounds that BIOT had no indigenous population and that the interests of the inhabitants required their resettlement elsewhere. He concluded, however, that Clause 11 of the draft Immigration Ordinance was objectionable.

154. The aim, as expressed by one official, (5/482), was to establish "*a situation where there were no individuals with claims on BIOT or without claims on either Mauritius or Seychelles*" but that was still a matter for discussion within Whitehall.

155. In August 1968, UK Ministers approved the US proposal for the development of the defence facility on Diego Garcia and recognised the need for consequent negotiations with them about a range of issues. The CO said to the BIOT Commissioner that the UK had to give the Ilois "*special consideration (both on presentational and humanitarian grounds) but without broadcasting this aspect of our policy or acting in a way calculated to build up their existence as a separate community. It seems to us that it would be helpful from this point of view if some measure of choice for separate families could be included in resettlement planning*", **(5/477)(P,R). This choice could consist of other Chagos islands or Agalega or even possibly the

Seychelles for a few.

156. On 2nd September 1968, however, the BIOT Commissioner had written to the CO saying that if Diego Garcia had to be resettled, there were only 30 Ilois families, but if all the Chagos Ilois had to be resettled, there would be some 90 families and it was doubtful whether Agalega could accept all of those people. If only Diego Garcia were to be resettled, it was agreed by the Commissioner that a choice of elsewhere in the Chagos or Agalega should be offered as far as possible, (5/483).

157. An internal minute from the UN Political Department of the FO expressed surprise that the PIOD of the FO was said now to be coming to the view that the UK might have to resign itself to having a permanent population in BIOT. "*Since BIOT was created at great expense and some international criticism to avoid having a permanent population, I think Ministers would wish to be aware of the situation.*" This was said to be rather a different position from that presented by the Foreign Secretary to the Prime Minister on 25th July, (5/486).

158. The issue raised by Mr Donohoe in the minute of 3rd September was echoed in a further minute from Mr Lambert to Mr Jerrom on 4th September 1968 **(5/492)(P), within the CO. It started by referring to the legal advisers minutes which suggested that "*rather more radical difficulties stand in the way of our originally agreed objective than those of which we advised the Foreign Secretary when he minuted to the Prime Minister on ... 25th July*". He referred to the inter-departmentally agreed objective of establishing "*a situation where there were no individuals with claims on BIOT or without claims on either Mauritius or Seychelles*". The purpose of this was to "*avoid acknowledging charter obligations towards these people*". Hence the public argument that the inhabitants are "*migratory labourers*". The note continued, in paragraph 3:

"We advised the Foreign Secretary that the latter argument might be difficult to sustain in view of the recent discovery that the numbers of second-generation '*Ilois*' were much greater than originally anticipated. However, it then seemed to us possible, by the legislation proposed by the Commissioner ... to require the inhabitants to have documents showing either that they were citizens of Mauritius or could be identified as coming from the Seychelles."

159. The fact that 500 from the Chagos, including the Ilois, had Mauritian citizenship and that the Governor of Seychelles had said that his Government would issue certificates of nationality in respect of the remaining 300 in Chagos underlay what had been written by the Foreign Secretary to the Prime Minister on 25th July. But he then pointed out:

"We did not then know that by virtue of Section 3(1), (2) and (3) of the Mauritius Independence Act, those inhabitants of BIOT which had acquired Mauritian citizenship when Mauritius became independent did not cease to be citizens of the UK and Colonies"

160. As Mr Aust, a legal adviser at the FCO, noted on the minute, that only applied to certain BIOT inhabitants. This is described as a "*revelation*" by the author, who then set out the situation as he understands it:

"All the inhabitants of BIOT are citizens of the UK and Colonies and they are all entitled to a UK passport with the Colonial endorsement;

... In the case of Seychellois living in BIOT, no doubt the Governor of Seychelles could ensure that the colonial endorsement would record the fact that they belonged to Seychelles ...; these

form the majority of persons living in BIOT, but are unlikely to exceed 1,000 [of the estimated population of under 1,500];

Some 500 others (including the 434 second-generation 'Ilois') have dual nationality. If they applied for a UK passport, presumably the Colonial endorsement could only reveal that they belong to BIOT since there was no other British Colony to which they could belong. This would create difficulties for our public assertion that BIOT had no permanent population. On the other hand, if they applied for and got a Mauritian passport they would not automatically lose their UK citizenship, unless they formally renounced it. If they went to live in Mauritius, however, they could presumably be refused re-entry into BIOT. This latter point is worth bearing in mind.

If my analysis is correct, it clearly contains the seeds of a serious problem; viz. the original purpose of creating a territory without a permanent population is unlikely to be fulfilled unless something radical is done about it."

161. Mr Aust appears to have made some comments dissenting from parts of this analysis in handwriting. The author's suggested alternatives were leaving the inhabitants within BIOT, which would give rise to the problems of the Charter obligations which BIOT had been created to avoid, or the piecemeal removal of the inhabitants of BIOT as individual islands were required for military use, which, in the case of Diego Garcia, would be 380 people but up to 1,000 others could remain in BIOT; or the complete removal of the inhabitants elsewhere which would require a far bigger resettlement scheme, but would solve the problem "*which the creation of BIOT was intended to solve, once and for all*". It was recognised that this would face rather more criticism but that was inevitable anyway, and, from the point of view of justifying matters in the UN, he would prefer the latter course to be adopted. But he said that Ministers should be given the opportunity of choosing the alternatives and said "*Had Ministers known that there was a serious prospect of retaining a permanent population in BIOT, I doubt very much whether they would have approved the expenditure of several million pounds to create the territory*".

162. On 3rd September 1968, the FO informed the US of its approval to the US proposal. The letter conveying this, **(5/487-8)(P), reiterated that there were no permanent inhabitants on Diego Garcia and none owned land or houses, but that an early decision was necessary on which other islands, if any, would be required for the purposes of resettling any displaced people, an issue which could give rise to difficulties at the UN. An announcement was best left till after the end of the session of the UN General Assembly. But the problems facing the UK Government in making plans for resettlement or for the continued operation of the plantations were compounded by a letter from the US dated 19th October 1968 in which it was advised that the project was undergoing a review by the US military and a decision on budgetary implications could not be taken until the new administration had approved them in the new year and detailed discussions would have to wait until then; for public consumption the consideration of defence facilities was under review as it had been since 1966. Nonetheless the UK Government continued to press for answers to the questions which it had raised because of the resettlement problems which it anticipated.

163. The BIOT Administrator made a further visit to the Chagos islands in the first two weeks of September 1968. He went with Mr Marcel Moulinie, who was representing Moulinie & Co (Seychelles) Limited. He reported, (4/293), that the plantations on Diego Garcia were generally in poor condition and that much clearing remained to be done. "*The number of labourers on the island has decreased, as many of the Ilois have returned to Mauritius and it has not proved possible to replace them from Seychelles. This is the main reason for the drop in production for the first seven months*" There were pigs and cattle on the island and the labourers were noted as keeping hens and ducks. On Peros Banhos there had been a reduction in production, despite an increase in the number of labourers, although on Salomon the labour-force had remained the same. The Administrator's general comment was that the plantations were all producing less than could be produced, due to the uncertainty as to their future. If production were to be improved, a

short-term increase in labour-force was necessary, but that depended upon the availability of labour and housing. Seychelles labour was not at present available in large numbers because of the airport project; Mauritius labour was available but it was more economic to reduce communications between the islands and Mauritius because the "Nordvaer" plied between the Seychelles and Chagos, but it should be possible, he thought, to increase the labour force to fill the housing. The general standard of that housing was low and unoccupied houses rapidly fell into disrepair. For the longer term, considerably more investment would be required in a number of ways, which would be unlikely with the prospect of the islands having to be abandoned at short notice.

164. The Administrator described the general standard of quarters on Chagos as poor, except for the new type of quarters on Diego Garcia. In general, the standard was lower than that on the average Seychelles outlying island. The camps were generally clean, but ration supplies suffered from periodic shortages because they were now being ordered on a three-monthly rather than a six-monthly basis by the management company so as to reduce the capital outlay on those items and to reduce the period over which they had to obtain a return. He commented that the physical conditions of the labourers were acceptable but there was no provision for their social welfare. Medical provisions were good and the schools were run rather in the way they had been before, but attendance was irregular. The civil status records were in good order, but he referred to the high degree of mobility between families, reflected in the percentage of illegitimate births which would add to the problems of resettlement should that become necessary. He concluded overall that the islands were suffering from uncertainty as to their future, and that whilst this uncertainty lasted there was little that could be done to increase production except in the case of Diego Garcia where the present labour-force could be more economically used. In general, the condition of the islands was as good as could be expected with the present limitation on exploitation. There does not appear to have been a separate population count done for this visit but it lists a total of 232 people in employment on Diego Garcia, of which 175 were male and 57 female. 181 of the 232 were labourers, and 20 more are listed as "Boys". The remainder include managers, clerical staff, the teacher and 13 artisans and 6 overseers. There were 99 employed on Peros Banhos and 91 employed on Salomon.

165. The Administrator and the Commissioner of BIOT paid a visit to the islands in November 1968, again accompanied by Mr Marcel Moulinie. The notes of the visit maintain the position that the labour-force on Diego Garcia was too small to run the islands efficiently "*or even to maintain the present position*". The ration supplies and shops on the islands were adequate, with the exception of that on Diego Garcia. The general conclusion was again that the Chagos islands functioned as coconut plantations "*but with a gradually declining population and an almost complete lack of capital investment, they are reaching the point where they are becoming uneconomic and the condition of the plantations and buildings is steadily deteriorating*". (4/308).

166. It was after Mr Todd's return from his September visit to the Chagos that the BIOT Commissioner contemplated recommending an increase in the recruitment of Seychellois for Peros Banhos and Salomon, but proposed to delay that if Diego Garcia were to be evacuated because the Ilois could be recruited instead. But in the absence of an increase in the labour-force, there would be decreased production and economic loss so a decision soon was to be desired. A decision was sought before the beginning of November when Moulinie was expected to begin recruitment of additional Seychellois for Peros Banhos and Salomon. The PIOD suggested to Mr Jerrom that until the position of the Americans as to the clearance of the whole of the Chagos was known, the BIOT Commissioner could be advised "*to instruct Moulinie to cease recruitment of further labour*". He suggested as a possible solution to the resettlement problem that action should be taken quickly before the American proposal became public when it was submitted to Congress, and that to "*preserve the image that these people [on Diego Garcia] are being offered alternative employment on other islands, or their contracts terminated resulting from the decision by management to terminate the lease, we have until say the end of 1969 to complete the operation. I would imagine this could be done gradually with not more than slight opposition by perhaps some of the plantation workers*", **(5/503) (R).

167. In another memo of 20th September 1968, the same official raised the question of whether, with the new management company on Chagos, Diego Garcia should not be allowed to run down leaving the management to gradually dispense with labour as contracts expired, whilst simultaneously offering jobs as they arose in the other Chagos islands and in Agalega. It was thought that if the management company could be taken into their confidence over the resettlement problem, they could divert the Ilois to Agalega and the Seychellois to other Chagos islands and thus dispose of the Diego Garcia problem. But it was said that: (5/505)

"As time appears to be all important if a smooth and economical exercise is to be carried out with the minimum of publicity, it is for consideration whether a plan of this nature might resolve the situation well before the Diego Garcia project is presented to Congress and becomes public knowledge.

In summary, the recognition by the management that copra production in Chagos is not a sufficiently economic proposition for them to wish to continue with the lease, leaves the way open for us to abandon the plantation on this score, leaving the commercial management to gradually run down the plantation under guidance from the Commissioner."

Advantages were seen in removing as many Ilois as possible from Deigo Garcia before the US announcement.

168. The issue of citizenship continued to vex the CO's legal advisors and, in a note Mr Aust said, on 9th October 1968, *(5/518)(P,R) that the only place to which UK citizens living in BIOT could "belong" if they did not belong to another colony would be the UK itself. He said that he imagined that this was not wanted but then continued that he could not see how "*we could therefore refuse such a person the right to re-enter BIOT even if he were also a Mauritian citizen*". Entry to BIOT could not be refused unless, someone added, they were given rights to enter some other colony eg Seychelles, to which the legal adviser, Mr Rushford, added "no". I doubt that this simply declines an invitation to a meeting.

169. The problems created in running the plantations by the uncertainty over their future was reflected in the accounts for the year ending 31st December 1967 submitted by Chagos Agalega Company Limited and which the BIOT Commissioner transmitted to the CO. It was noted that although it would be preferable to run the islands on a lease, because any such lease would require a provision enabling it to be terminated on six-months notice, such a basis would make it impossible to develop the islands because the necessary capital investment would not be forthcoming. Indeed, so long as the islands were run on a care and maintenance basis, the profit made in 1967 was expected to decrease year by year. He pointed out that there was no choice but to accept the management agreement proposed as long ago as December 1967, unless the politically unacceptable choice were made of not running the islands at all, (5/522).

170. The uncertainty created by the American proposal again featured in the BIOT Commissioner's dealings with the CO in October 1968. He pointed out that although the labour-force in the other islands had increased between May 1967 and March 1968 it had fallen in respect of Diego Garcia. The reduction in labour-force on Diego Garcia, said the BIOT Commissioner, "*undoubtedly results from uncertainty of the position*". The regular change-overs in the labour intakes could only be at a reduced rate dictated by the present position, *(5/536)(R). "*You will understand even Ilois return regularly to Mauritius*." He thought that references to negotiations with the Ministry of Defence might relate to discussions over the management agreement.

171. Apart from the problems created by the uncertainty over the future of the other islands, and the timing of the US requirement on Diego Garcia, which in turn was counter-balanced by the desire of the UK

Government to see some form of commercial exploitation of the coconut plantations for as long as possible, the physical arrangements for the accommodation of any Ilois displaced from Diego Garcia on the other islands was identified. Because there was insufficient housing for an increased labour-force on Peros Banhos or Salomon, either there would have to be a return of Seychellois to Seychelles or Diego Garcia, or an increase in housing. To move the Seychellois would cause adverse comment if they went to the Seychelles, or if to Diego Garcia, that would make it "*impossible to disguise the move of the Ilois from Diego Garcia as a commercial operation*", *(5/537), Seychelles Governor to CO, 12th October 1968. In any event, the Ilois needed some incentive to move and that could not be provided if they had to move to inferior quality houses on the other islands. Hence, there had to be suitable pre-fabricated buildings brought in from South Africa and to proceed on that basis would take six months.

172. Discussion over BIOT immigration continued within the FCO. Mr Aust set out a note on 23rd October 1968, (5/555) *(P), explaining the position in some detail as he saw it. He urged that there be a definite policy with regard to the future of the inhabitants decided upon by the various departments before any decision could be taken in relation to passports or immigration. He added:

"Whilst the details of that policy are not my concern, I should make the point that the legal position of the inhabitants would be greatly simplified from our point of view (though not necessarily from theirs) if we decide to treat them as a floating population without real ties to BIOT".

173. Mr Aust next dealt with the term "*Belonger*". He said this was seldom used in legislation and was a much misunderstood concept. The term was found in non-statutory administrative rules where a decision had to be made as to whether a person had a sufficient connection with a particular territory to justify that territory issuing him with a passport. It had a more general use in a loose analytical way to describe a person with certain tangible connections with a particular country. I consider this analysis to be obvious and correct. But a person could be a "*Belonger*" for passport, but not for immigration, purposes. He added:

"With the present problem, we should be careful not to be misled into thinking that, because some of the inhabitants of BIOT were born there or have lived there for some years, they have thus acquired a '*Belonger*' status which gives them a legal or moral right to remain there. By treating them so, we shall be tying our own hands when at present there is no reason why we should do so."

174. He then turned to immigration. He identified the problem that arose from the application of Seychelles immigration law to part of BIOT and of Mauritian law to the rest of it. He then said:

"6. There is nothing wrong in law or in principle to enacting an immigration law which enables the Commissioner to deport inhabitants of BIOT. Even in international law, there is no established rule that a citizen has a right to enter or remain in his country of origin/birth/nationality etc. A provision to this effect is contained in Protocol No 4 to the European Convention on Human Rights, but that Protocol has not been ratified by us and thus we do not regard the UK as bound by such a rule. In this respect, we are able to make the rules up as we go along and treat the inhabitants of BIOT as not 'belonging' to it in any sense. If, however, the inhabitants of BIOT become an established community in the future, then to take powers to deport them would have obvious political and moral objections. We may even ratify Protocol No 4."

175. Mr Aust then turned to passports, and said that subject to the odd exception, all the inhabitants of BIOT

were citizens of the UK and Colonies and that many were also citizens of Mauritius whether or not they held Mauritian passports. He said that if a UK citizen asked for a passport, he would almost certainly be granted one, although that was a matter of prerogative and not entitlement. He then finished by saying that citizenship was only relevant to the question of whether a person was eligible for a passport. Both Claimants and Defendants relied on various passages in that note for their cases.

176. It was apparent from other internal memos that there had been as yet no policy agreed on the removal of citizenship of the UK and Colonies from someone born in a colony.

177. Discussion over the proposed BIOT Immigration Ordinance continued with a telegram from the FCO to the Commissioner and Administrator of BIOT on 25th October 1968 *(5/564 and 568)(ND). The FCO said that the difficulty in dealing with this subject "*has arisen from the fact that it was not appreciated at the time that the grant of Mauritius citizenship to many of the Ilois would not affect their rights as citizens of the UK and Colonies*". He then said that it was recognised that persons born in BIOT with automatic Mauritian citizenship would not be deprived of their UK and Colonies citizenship and could be granted UK passports, though without an unrestricted right of entry into the UK. It would not have been justified to take away citizenship of the UK and Colonies from a person born in the colony even if he had acquired another citizenship, but the point was not considered very far at the time. Retention of that citizenship put in question any action to prevent their return to Chagos particularly if they could not be settled elsewhere. The FCO then referred to the legal advice which had been given that it was not right to compel BIOT inhabitants who were CUKC to leave without options and that draft section 11 was objectionable. The FCO continued that as it was now clear that not all inhabitants of BIOT were either solely Mauritian nationals or citizens of the UK and Colonies entitled to a Seychelles passport, it was necessary to consider how to deal with any citizens of the UK and Colonies "*who may, by prolonged residence in BIOT, be able to claim 'Belonger' status in BIOT*". If a UK passport were issued by the Commissioner of BIOT to those persons "*it seems to be inevitable that this would be regarded or interpreted as establishing 'Belonger' rights in the immigration sense, and we should rapidly reach a position where it was not possible to maintain that there were no persons with claims to permanent residence in BIOT*". The only other course would be for citizens of the UK and Colonies who derived that status from being born in BIOT to be allowed unrestricted entry to the Seychelles and to be eligible for UK passports issued by that colonial government.

178. On 19th July 1968, the Mauritius Government, through its Ministry of Social Security, raised with the British High Commissioner in Mauritius the problem of people who had been working in BIOT who, in May 1967, had come to Mauritius to spend their leave and when they wanted to go back had found out in March 1968, from Messrs Rogers & Co "*who had taken up the matter with their Principals in that territory that they would not be recruited for further employment. A further batch of persons arrived in Mauritius from that territory on 30th March 1968.*" (5/425). The Ministry pointed out that it had decided to give these people assistance on a temporary basis as they were destitute, that there were 120 persons, exclusive of children, who received assistance and that it had been decided that no further assistance should be given and the question of compensation should be raised with the British. In support of that, reference was made to the agreement between the British and Mauritius Governments in 1965 under which the British Government had undertaken to meet the full cost of the resettlement of Mauritians at present living in Chagos. The CO considered this matter and in a minute of 10th September 1968, *(5/496)(ND), said that this problem did not appear to arise from the question of possible future removal of workers and:

"*... it appears, from the facts available, to be a matter between employer and employee in which BIOT would not be directly involved, and ... the persons ... would ... appear to have no right to further employment in BIOT.*

It would seem advisable not to go beyond this on the evidence available, but there could possibly be some further complication if it was proved that some of the party concerned could

be described as Ilois and have some connexion by descent with Chagos Archipelago. Without arising suspicion, could the HC discreetly obtain further information on the party concerned - are they Mauritians or could they claim a connexion by descent?"

179. This was the line taken in the CO's advice to the High Commissioner in Mauritius; the problem was one between employer and employee and could not stem from any defence proposals, *(5/498)(ND).

180. However, the matter did not end there because on 17th September 1968, (5/499), the Prime Minister's Office in Mauritius wrote to the British High Commission stating that there were 55 persons born in BIOT now in Mauritius who had asked to be repatriated with their families "*to their native island, where most have them have left their personal belongings*". A list of names was attached. It said that the people had been employed by Chagos Agalega Company Limited but that, on expiry of their contract signed in Mauritius before a Magistrate, they had been returned to Mauritius on 19th May 1967 by the employers through Messrs Rogers & Co. (Some of those involved are among the Claimants.) The Prime Minister's Office said that it was understood that their contract had not been renewed "*because the BIOT was not in favour of further labour intakes and that the Chagos-Agalega Limited have started negotiations with the British Ministry of Defence on this question*". (This appears to be a reference to the telegram from Moulinie to Rogers.) In addition, it was said that there were 84 adults and 56 children from the Chagos who had arrived in Mauritius on 30th March 1968 and were also "*stranded here*". Relief provision had now been stopped. The Mauritius Government wanted proposals from the British Government for their resettlement.

181. The High Commissioner followed up this matter by asking his official to call on the Chairman of Rogers & Co to see if he "*could throw any additional light on the problem of 'displaced persons' from Diego Garcia and the Chagos and Salomon groups of islands*". The official reported to the High Commissioner that Rogers & Co claimed to know nothing about the actual recruitment of workers, merely providing passages for them on instruction from the Chagos Agalega Company Limited. He said that he could well understand that with the cessation of operations by that company, the majority of workers had little option but to leave the islands. The High Commissioner did not accept that because the departures preceded the development on Diego Garcia that they stemmed primarily from an employer/employee dispute, and indeed thought that subsequent information suggested the contrary, (5/513-4).

182. However, in reply on 9th October 1968, the CO said to the High Commissioner in Mauritius and to the BIOT Commissioner that there had been no formal written agreement between the two Governments on the cost of resettling Mauritians formerly living on the Chagos Archipelago but there had been a verbal acceptance in principle of payment to the Mauritius Government of the cost of resettling others in the Chagos islands who were affected. It emphasised that the phrase "*others affected*" referred to persons "*necessarily removed from one or other of the islands because of the development of defence facilities thereon. Obviously there are not yet 'any persons affected' in this context. It is difficult to see how HMG can be held in any way responsible for action taken by Rogers & Co in 1967 in deciding against re-employment of these Mauritians*". This was suggested to be the basis of a reply to the Mauritius Government, *(5/515; 19/52(a))(ND). The removal of all Ilois from Diego Garcia to Peros Banhos and Salomon in November was suggested by the CO.

183. The BIOT Administrator, writing to the CO on 17th October 1968 and dealing in particular with the Ilois in respect of whom the Mauritius Government had been making representations, said that the employment of additional labour on the Chagos and the consequent acceptance of responsibility for their resettlement was an expensive commitment which could not be justified economically unless it were decided to develop the islands. He expressed sympathy with those displaced Ilois who had been, by their own standards, among the most fortunate of labourers in that they had had almost guaranteed employment. But now, for defence reasons, the guarantee had gone and they now found themselves in Mauritius, a country with an acute unemployment problem and as Mauritius had virtually no copra industry, with no opportunity to use the skills

they possessed. He recognised that the relief provided for them by the Mauritius Government had been cut off. He recognised the advantages, however, of re-employing the Ilois before any announcement was made of the Diego Garcia project as a matter of a moral obligation but that doing so would place the Government in an economically very disadvantageous position as against the political advantage. He referred to Moulinie & Co's desire to recruit 100 extra labourers and expressed the view that the families thus recruited from the displaced Ilois on Mauritius could be resettled on Peros Banhos and Salomon because of its needs for labour should Diego Garcia have to be evacuated. The risk of a loss would only arise if the whole of the Chagos had to be evacuated. Hence the advantage of obtaining agreement from the Americans and then securing the agreement to the development of Peros Banhos and Salomon. The development of such an idea would require Moulinie & Co to be taken into their confidence as well as a certain future for Peros Banhos and Salomon, (5/541).

184. By this stage, it had become apparent as what, on 17th October 1968, had become the FCO, minuted to the BIOT Commissioner that it was not worth waiting for an American response any more. The FCO told the High Commissioner in Mauritius that the decision to curtail further labour intakes did not stem from the BIOT authorities, (5/550). But it did agree, *(5/551)(P), that it would be very ill-advised to have any Mauritians back on Diego Garcia or any BIOT island. In connection with the Ilois on Mauritius, the FCO suggested to the BIOT Commissioner and High Commissioner of Mauritius, (5/553), that the obvious course was to avoid any reinforcement of labour-force in the islands until American plans were clearer, but that a strictly limited recruitment of labour in Mauritius could take place if a refusal to recruit any labour would lead to a serious political outcry there. It was obviously desirable not to increase the possible future resettlement problem.

185. The prospect of recruiting some of those who were the subject matter of these exchanges was raised in October 1968 as Moulinie & Co were looking for further recruitment. An FCO paper of 24th October 1968, *(5/558)(P), said that any question of resettlement in Mauritius of former residents of Chagos could presumably only arise when plans for the development of Chagos were announced; this had not yet occurred. However, the present position appeared to be that Moulinie & Co wished to recruit more Ilois from Mauritius in order to increase its labour-force on Diego Garcia. This appeared to suggest that their cutbacks, if any, in their labour-force had not been because of the suggestions for defence facilities on Diego Garcia. The note continued:

"Nevertheless, from our point of view this might raise longer term problems if any future labour intakes have eventually to be resettled elsewhere. The possibility is at present being explored confining any labour intakes to a limited number of persons only."

186. The note also said that the BIOT Commissioner had been consulted by the FO who had told them "*that the decision to curtail labour intakes did not stem from the BIOT authorities as the Mauritians later suggested. Moreover, no negotiations had taken place, as the Mauritians also suggested, between the Chagos-Agalega Company and the Ministry of Defence.*"

187. The BIOT Commissioner said to the FCO in a telegram of 28th October 1968 dealing with various aspects of the resettlement of the Ilois that, so far as those currently in Mauritius were concerned, that even though many would be acceptable to Moulinie, any selective recruitment would give rise to intensified pressure for the remainder to be taken back and that a one-year contract could lead to greater future embarrassment. Refusals of extensions to contracts "*and possible subsequent forcible removal to Mauritius would presumably cause acute embarrassment and I consider that if we accept any returning Ilois, we must also accept responsibility for their ultimate resettlement,*" *(5/578)(DR). This was in line with FCO advice of 28th October that it would be very ill-advised to have any Mauritians back on Diego Garcia or any BIOT island.

188. On 30th October 1968, Mr Johnston of the FCO reported on discussions which he had had with the US

Administration in which he had explained why "we were authorising Moulinie to recruit a limited amount of extra labour for Chagos, and also our intention of continuing to develop the copra industry on Peros Banhos and Salomon", (5/585). The purpose was to explain how the UK needed to take decisions and wished to know whether the Americans really intended that Peros Banhos and Salomon be cleared of its population. He sent a minute dated 31st October 1968, (51/586), to the Minister in which the problem was raised, in these terms:

"Whether we should permit some 100 labourers who left Diego Garcia and other islands in the Chagos Archipelago over the past two years to return there from Mauritius on 6th November with their wives and families who may number up to two hundred and fifty."

189. In favour of allowing their return was the fact that they were mostly born in the Chagos, and could claim to be "*Belongers*" of BIOT itself. Mr Moulinie wished to bring them back from Mauritius, and such a decision would avoid further friction with the Mauritius Government which was urging that the UK was financially responsible for the resettlement of these people who were, at present, unemployed and destitute. A refusal to allow them to return would lead the Government of India to assume that "*we are planning to use Diego Garcia for defence purposes*". The alternative argument was that the "*British Indian Ocean Territory was established for Defence purposes, and we have agreed that the Americans may establish an 'austere Naval facility' on Diego Garcia*". That island would probably have to be evacuated and Peros Banhos and Salomon, which could take those evacuated from Diego Garcia, and the extra labour proposed from Mauritius, might nonetheless also be evacuated at the Americans request.

190. The issue was put as whether "*our long term aim is to 'sterilise' the Territory by resettling elsewhere the whole of the existing population (and thus avoid our United Nations Charter obligations to a 'people'); or whether we should try to run those parts of the Territory, not required for Defence purposes at any given time, as an economic unit*". Ultimately, authority was given to Moulinie & Co for him to recruit the labour on one year contracts.

191. Eventually, because Moulinie wished to ship 100 Ilois and families from Mauritius for BIOT on 6th November 1968 with a survey party on a one-year contract of employment, it was decided at a meeting on 29th October 1968 that he would be told that 100 Ilois would be readmitted on this occasion on one-year contracts only but that no commitment could be made about the renewal of these contracts at this stage or about similar entry permits for others. Nonetheless, none of the officials in the FCO or MoD liked the position but yielded to that course to avoid a row with the Mauritius Government and the risk of early exposure of the plans for Diego Garcia. Those objections did not apply to a medium-term expansion of the population on other islands in the Chagos group, in respect of which the Americans were to be asked to make their position clear quickly. It was now agreed that the Commissioner of BIOT could authorise Moulinie to employ the displaced Ilois which he could do profitably, as soon as he received authorisation, he would authorise Moulinie to recruit and ship the labour to BIOT. On 1st November, those instructions were given by the FCO to the Seychelles with the associated restrictions. It was suggested to the BIOT Commissioner, however, that although it was a matter for him how he handled it, it might be put to Mr Moulinie that in view of the uncertainty about the future working of the plantations, the arrangements had been limited to a one-year contract and that that would act as a warning against future recruitment, (5/594).

192. The BIOT Commissioner sent a telegram to the FCO on 5th November 1968, (5/601), saying that Moulinie & Co were today requesting Rogers & Co to recruit up to 100 men if passage could be obtained. It said that Moulinie's have accepted the terms which were imposed (one year contracts limited to Ilois and maximum 100 men) and that that had been accepted "*as normal commercial operation, without our needing to give further explanation*".

193. After all of that, on 5th November 1968 the Commissioner of BIOT informed the FCO that Mr Moulinie

had told him that the "Mauritius" was now unable to carry labourers as she was carrying petroleum products and no proposals were made for any other ship to carry the labourers and their families. The availability of any other ships is unknown and it appears that there had been no further voyages after that one by the "Mauritius" to Chagos by May 1969. Accordingly, the Ilois who had arrived in Mauritius in 1967 and 1968 remained there. The focus of shipping connections had changed as well, with the arrival in July 1968 of the "Nordvaer" in the Seychelles.

194. The BIOT Commissioner responded to the FCO on 28th October 1968 dealing with the resettlement of the Ilois currently on Mauritius. Once again, the problem of recruitment of such labourers in relation to resettlement was raised, particularly as the Americans had not decided whether outer islands would need to be cleared, (5/578).

195. Evidence was given to me by some Chagossians affected by these events who had gone to Mauritius in 1966 and 1968. Mrs Elyse said that after the death of her daughter, Noellie, she had gone to Rogers & Co, the shipping agent, to book their return passage but had been told that there were no more sailings, the islands or Diego Garcia had been sold to the Americans, and it would not be safe to return to Peros Banhos because of bombs kept on Diego Garcia. When her husband had heard that the islands had been sold he became ill as if paralysed and just sat there doing nothing for two to three days. He then with his hand and leg paralysed lay on the bed until he died in about maybe 1976. He was suffering from "congestion" which means a stroke and its after-effects. She said that her husband fell down and became paralysed when she told them the news that they could not go back to Peros Banhos. Her son, in his statement, said that from 1971 onwards his father, distressed at the loss of his home and way of life, had had heart problems and died of a heart attack in May 1976. Mrs Elyse said that after they had tried to return to Chagos in 1968 they were living in one room with just one mattress, paying Rs 150 rent, but eventually they could not pay even that. They had left with all their savings which were Rs 10,000. While they were in the island they got lots of rice and foodstuffs given to them. All their personal possessions were left behind there. After one month and a half they went to live in another house, and she found domestic work and paid Rs 200 a month. She described the severe difficulties of life on Mauritius. She went to stay with her mother for about six years because she could no longer afford the rent. Mrs Elyse then said that when she left Peros Banhos for Mauritius she had gone to stay with her mother, who had come for a stomach operation before her, and she had stayed with her for two to three months before taking a house. When she had said that she had stayed six years with her mother, her head had been spinning. She had gone to stay with her mother first then to a family where she had to pay Rs 150 a month. She had got money from her brother, who worked in the docks, when she first arrived. Although her statement said that after she had seen Rogers & Co they found a small plot of land and squatted on it, building a small shelter with tin and wood and lived there for twenty years, she had said in her evidence how they rented houses. She said the reason for the contradiction was because her head was turning and she was distressed. They were now living in a house made by a South African company with four rooms and a drainage system, and had been for 14 years; previously she had bought land but the accommodation had been very bad. She was still working as a maid, because the pension was insufficient. If she got ill, she got free healthcare at the hospital but she had to pay to get there if someone could not take her. Although her statement said that she had no "effective access" to healthcare in Mauritius, she agreed that she had said that she had been to hospital recently, but she said that she had no right to free transport and free medicine, but she goes to hospital when she has the money. She received treatment for dizziness and mental health, her eyes and stomach.

196. Mrs Jaffar said she had gone to Mauritius in 1966. She and her mother were told (it appears in 1967) by Rogers & Co that the islands had been sold by Mauritius, she did not say to whom, in return for independence. Their personal possessions also were left on Salomon. When they were told that they could not go back to Salomon they were staying with a neighbour and she had to leave school and abandon her education in order to find a job. Her mother had been unable to find work in Mauritius because she had become mad by that time; her witness statement said that her mother had been able to get a job after two years. They had had to rent a house made of corrugated iron with no running water or toilet facilities.

197. She said that her step-father whom she called Sinevessel, but is clearly Seeneevassen, stayed behind on Salomon until 1973, which drove her mother mad because he came with another woman. This was in a response to documents suggesting that her step-father (Seeneevassen) returned from Salomon in 1967 to live nearby and that another gentleman was actually living with them, in Cassis, (7/1247, 1260 and following which is a list of those displaced by December 1971 who received pension, outdoor relief or family allowance.) She denied that she had mentioned her step-father in her statement, although paragraph 11 refers to him. Various documents were put to her (relating to Ilois listed by the Mauritius Government as having been stranded when contracts were not renewed and for whom relief payments had stopped) which suggested that her step-father (Seeneevassen), his "concubine", as they put it, and four children had arrived from Salomon by October 1968 but she denied that that was possible and said that it showed that the British and Mauritian Governments did something false, (5-521, 499, 469 and following). She was not the child referred to because she was already married by March 1968 and her daughter had been born then. This material supports the basic point that her family was stranded when she was about 14 (she was born in 1952), but not the detail of the circumstances as she variously described it. It is quite plain that some Ilois received some public assistance, which the witness statements do not address.

198. Marcel Moulinie, according to the unsigned 1977 statement, had been asked in 1968 by the Deputy Colonial Secretary to produce a five-year plan for all of the Chagos Islands within one week. He thought he could do it in a month and was extremely optimistic about the economic future of the Chagos Islands based on the quality of the coconuts and guano. He said he received no serious response to the plan from BIOT administrators. He recalled the period between 1967 and 1970 as a period of increasing labour requirements. He was unable to recruit the labour he required because a limit of 250 was put on at the end of 1967 or 1968. In fact, the workforce was depleting because some who left did not return and houses were lying unexpectedly empty. He had to reduce the labour on the outlying areas; John Todd had refused him further labour intakes in about February.

199. He agreed orally, however, that, in March 1968, the population of Chagos appeared to be 138 male adults, (15/396 and 5/400), so that the limit of 250 did not look as though it was close to being exceeded. Moulinie & Co's letter of 10th May 1968 to BIOT Administrator, (10-49), saying that the company was not going to recruit more, because there were enough already, accordingly appeared not to relate to the limit of 250 as opposed to the needs of the island plantations. He said on two or three occasions, when questioned about this, that everything was very uncertain and they did not really know what was going on in this period. The 250 limit on the number of labourers was for male labourers on Diego Garcia because the British were going to pick up the bill for expenditure under the draft management agreement as it operated, and so they were concerned about the number of labourers, but who was employed within those figures was left to the company. Mr Moulinie denied that any instructions had been given by him to Rogers & Co not to allow back people who had left the islands. His uncle had never told him so to instruct Rogers & Co and had never said that Mr Todd had told him to instruct Rogers & Co, nor was he aware of any instruction from Mr Todd to Rogers not to let people back. He was uncertain in his evidence about the evolution of the population and the reduction in Ilois families in the early 1970s. Over 1967 to 1968 there were a gradual reduction in the numbers of workers and it was difficult to get them back, probably because the islands were being evacuated. He thought requests for labour might have been refused but could point to no occasion when that happened. His perspective was clearly that of the plantation manager. He had heard in 1969 of people not being allowed back, but Rogers & Co had never told them that they had got instructions not to allow people back. He had never heard of the cases spoken of by the individual Chagossian witnesses of people never being allowed back. He did notice that people had left and never came back. Their notebook with the cash would be sent back to the Seychelles by the Head Office. When asked whether islanders could communicate with those who had left, he said they used the Met Office for communication, even those who could not read or write; there were BIOT stamps and a post office but he did not know how many islanders sent letters. He was unable to shed any light on the request for 100 additional workers in November 1968. He said it was because of the oil fuel that the Captain of the "Mauritius" refused to take 100 people.

200. On 1st November 1968, the FCO wrote to the BIOT Commissioner, (5/596), classifying the BIOT

inhabitants for the purposes of the proposed legislation on immigration and citizenship, pointing out that it was the citizens of the United Kingdom and Colonies or those who held dual citizenship of the United Kingdom and Colonies and Mauritius who really concerned the FCO and on which further information was required, particularly as to their numbers.

201. Meanwhile, the uncertainty as to the American position continued as the then Administration in Washington came to an end. The US position was that it hoped that no decision would be taken to redeploy workers from Diego Garcia to the other two islands in case one day the Americans wished to use those other islands for defence purposes and people then had to be moved on a second time, but on the other hand it was not necessary to clear those other islands at this stage.

202. The debate within the FCO about the legal status of the inhabitants of BIOT continued with a response to Mr Aust's note from Miss Hawson of the Nationality and Treaty Department of the FCO. Issue was taken in it with the definition of a "*Belonger*": a "*Belonger*" had to have an unrestricted right of entry to that territory. The concept of being a "*Belonger*" was more relevant to immigration than to passport purposes. Passports were not relevant to rights of entry into the UK and Colonies, (19/606(a)). Mr Aust riposted, (19/606C), on 7th November 1968 saying that he found it very hard to comment on Miss Hawson's minute "*which, quite frankly, I found muddled*". Her views were dissected at length. "*Belonger*" status was irrelevant to the law of immigration into the United Kingdom. He dealt with the issues which might arise under the Commonwealth Immigrants Acts 1962 to 1968 and the grounds upon which citizens of the UK and Colonies might be subject to immigration control. As if to end the debate, he said that his minute had been approved by the legal advisers to the Passport Office and to the Migration and Visa Department.

203. On 8th November 1968, the FCO prepared a chronological summary of events relating to the establishment of BIOT, which is an interesting summary of events between 1962 and 1968 and gives some insight into what were the international political concerns of the US and UK Governments, (5/608). In its introduction, it says that in creating the new territory of BIOT, the intention had been to make available for defence purposes "*islands with few or no permanent inhabitants, under direct British administration*". This would ensure maximum security of tenure and freedom from political pressures. Those pressures from hostile governments and governments concerned about US defence facilities in the Indian Ocean are set out in the subsequent history. A series of largely handwritten notes, dating between November 1968 and April 1971, contain internal minutes passing between members of the BIOT Administration, including the Commissioner, the Seychelles Attorney General and the BIOT Administrator, (19/368(b)). On 8th November 1968, the Attorney General for the Seychelles stated that "*I agree there is no need for an immigration law to solve the resettlement problem. Yet there is a need to have some immigration law on the statute book to control entry into BIOT*". On 17th December 1968, Mr Todd, recognising that the Ilois had rights as citizens of the UK and Colonies, stated: (19/368(c))

"This right, however, seems to be modified by their right to enter private property, which still remains the status of the BIOT islands except for Nelson. In these circumstances, it would seem better to continue to exercise immigration control through contracts than to risk difficulties which could arise over the issue of travel documents."

204. On 23rd November 1968, the BIOT Commissioner wrote to the FCO following his visit in November 1968 with the Administrator to the Chagos Islands and the continuing uncertainty as to the US long-term requirements for islands other than Diego Garcia. The Commissioner said that the islands were slowly running down for the lack of labour and lack of reinvestment. He maintained his previous preferences over the alternatives and said that it would be "*folly ..., to reinvest or to increase labour-force (other than by re-importation of approximately 100 Ilois now in Mauritius) until comparatively long-term defence requirements are known*". The present labour-force on Peros and Salomon was only half that needed for care and maintenance and a break-even operation, and only one third of that necessary for a profitable

operation. The alternatives were to clear the whole Archipelago which would be a "*culpable waste of a fine asset, and wholly untimely by any standards of which we are aware*", or to clear Diego Garcia and fully redevelop the other islands which would mean trebling labour on those islands but with only a small increase over the Archipelago as a whole, a further alternative was to forget the defence facility and to exploit in full "*what could be a small goldmine*", *(5/643)(DR). The BIOT Commissioner two days later pressed for an early decision in order "*to facilitate resettlement plans*". He sent a further despatch on 28th November 1968, *(5/646)(D). He identified two overlapping problems: how to make the best use of Chagos as an economic asset and how to fit the resettlement of the Ilois into the necessary overall plan for Chagos. Even the full development of Peros Banhos and Salomon alone would require an increase in labour force which would absorb not merely the Ilois on Diego Garcia but those in Mauritius. Because the present labour force was insufficient to maintain the islands, he estimated that a further 530 men would be required if the maximum use were to be made of all three islands, and some 310 on Salmon and Peros Banhos. He set out a tentative estimate of the investment costs required but concluded that the yield "*is so good as to demand further action*". He was convinced that the islands "*could be made a paying proposition*" and urged that Moulinie & Co be asked to give preliminary estimates for the cost of developing the islands to the point where the future policy could be decided upon as soon as the American intentions were clear. He said that if useful plans were to be made "*we cannot afford to wait for their decision on the use of the Chagos islands before beginning work on the detailed planning*". The FCO agreed to the Commissioner approaching Moulinie & Co. in that way but said that the working assumption had to be that the Americans wished Diego Garcia to be cleared. Indeed on 19th December 1968 following a discussion between the FCO and the UK Embassy in Washington that working assumption was confirmed. But it was recognised that the deteriorating condition of the plantations meant that planning meanwhile had to go ahead on investment, (5/651, 652).

205. The year ended with a further despatch of 23rd December 1968 from the BIOT Commissioner to the FCO on BIOT citizenship and immigration control, **(5/655)(D). He said that it seemed that everyone at present in BIOT "*with the exception of a few children born of Ilois stock since the creation of BIOT*" can claim a right to enter either Mauritius or Seychelles. A number might also be able to claim on citizenship grounds the right to enter BIOT. He continued:

"But the BIOT islands until 1967 were either privately owned or leased and no-one had a right to be on the islands other than by virtue of his employment by the owner or lessee. Although the islands have now been acquired by the Crown, the position has not fundamentally changed. The islands are in private ownership of the Crown, run as coconut plantations and there is no public land in the sense of land to which the public has an absolute right of access. The right to reside on the islands has, therefore, I assume, remained dependant on employment on the island and I am advised that a refusal to employ a person would over-ride his right of entry based on citizenship."

206. This meant he said "*that no-one has an absolute right either to enter or remain in BIOT*". He continued:

"4. We have never envisaged difficulties with settlement except in the case of the Ilois and it was with the intention of ensuring their right of re-entry to Mauritius that we drafted the immigration legislation."

207. Although it had been intended that the Ilois should all be in possession of Mauritius travel documents "*it now seems that many of them could instead ask to be issued with a BIOT travel document*". This would further complicate the issue and accordingly he recommended that it would be better for the time being "*to continue to control entry to BIOT by means of the labour contracts, rather than introduce separate permits and require everyone to have a travel document*".

208. The Commissioner recognised that if the Chagos or indeed only Peros Banhos and Salomon were worked as plantations, the Ilois in Mauritius could be re-employed without difficulty, but that if the whole of Chagos were abandoned there would only be 2,000 acres of coconut plantation within BIOT on Farquhar and Des Roches plus the virtually uninhabitable island of Aldabra. The point has some importance.

"In these circumstances employment would not be available for the Ilois and a documentary right of re-entry would become valueless unless they were to be supported on these islands as permanent Government pensioners."

209. Again it was a question of a decision needing to be taken on the future of Chagos in order that the problem could be tackled, but till then nothing should be done to "*embarrass the position*" and the issue of BIOT travel documents would do just that. Accordingly he recommended against immigration control on the lines proposed so far as labour was concerned, although it might be necessary to have some means of controlling casual visitors. Accordingly the immigration legislation should have provisions enabling the plantation employees to be exempted. He pointed out that the manner of the creation of BIOT and the "*individual sociological pattern of the islands*", and the situation generally was likely to remain unique. The debate therefore continued; no line had been laid down, no final decision taken about the role of immigration legislation.

210. On 7th January 1969 the BIOT Administrator asked Mr Moulinie to prepare development plans for each of the main island groups ie Diego Garcia, Peros Banhos and Salomon in order that a decision could be made on what development was to be undertaken as soon as a decision on Diego Garcia was taken, (6/667). However, at the same time the Commissioner wrote to the FCO enclosing population tables accurate for employed persons but less accurate so far as children were concerned. The working population for Diego Garcia including 12 children and 87 women was 247, (6/672).

211. On 3rd February 1969 the US Embassy wrote to the Defence Department of the FCO informing it that the Diego Garcia project had been included in the budget request presented to Congress but that it would not be considered by Congress until March or April; many matters could not be answered until the hearings were completed, (6/676). The author of the letter said "*as indicated in my letter ... of November 22, we have no plans for the use of Peros Banhos and Salomon islands, with the proviso that the absence of current plans does not preclude consideration of using other islands in the Chagos Archipelago should this become desirable at some later time*". There was no objection to Moulinie being asked to draw up plans for expanded development on those two islands but that was subject to the understanding that consideration of the use of those islands had not been precluded. It was estimated that all migrant labourers would need to be removed from Diego Garcia on six months notice. The US agreed that it would be politically unwise to re-locate Diego workers on Mauritius where it was acknowledged that there were serious unemployment problems and stated that therefore the US agreed to the use of Peros Banhos and Salomon islands to re-locate them. He expressed concern about the proposal, of which nothing had come, to transport 50 Chagos born labourers on Mauritius to Diego Garcia.

212. The UK mission to the UN urged the FCO to speed up the arrangements under which all Ilois would be accepted as Mauritian or Seychellois for the purposes of presenting its case, should it prove necessary to do so, at the UN, *(6/682)(P). The FCO responded to the US letter on 6th February 1969, (6/689). It referred to the two solutions to the problem posed by the US requirement that Diego Garcia be evacuated. The first solution would involve the transfer of the population to Peros Banhos and Salomon followed by the abandonment of the Diego Garcia coconut plantations and the development of those on Peros Banhos and Salomon to employ not only the Diego workers but the Ilois in Mauritius. But in order for Moulinie & Co, to be persuaded to continue to manage those plantations "*they would have to be sure of sufficient security of tenure to make the work and investment worthwhile*". This was estimated by the BIOT Commissioner to be about 20 years' tenure with some provisions for compensation if earlier repossession for defence purposes

was required. The US were asked to agree that those two islands could be exploited economically for a period of 20 years. The alternative solution would be to clear the whole population of the Chagos and to re-locate in the Seychelles and Mauritius:

"In UN terms, this would be the ideal solution since we could argue that there are no '*inhabitants*' anywhere on BIOT: this is of cardinal importance since the only legitimate way in which BIOT could be raised ... would be in the context of Art 73 ... and our obligation to the inhabitants. On the other hand, we could have considerable difficulty in persuading the Mauritian Government to take the ex-Mauritian Ilois and we could also be criticized in humanitarian terms for uprooting people from the Chagos and depriving them of a livelihood there. We must bear in mind that these people are expert only in Copra production and that there is no outlet for their skills in Mauritius."

213. Mr Aust commented on the BIOT Commissioner's despatch dealing with the Immigration Ordinance of 23rd December 1968, *(6/693)(ND); in general, he said it analysed the problem correctly. It also identified the problem as "*how to avoid making BIOT a 'non-self-governing territory' within the meaning of Article 73 of the UN Charter*". If it were not decided to remove all the inhabitants "*certain legal measures will have to be taken so that we can present a reasonable argument based on the proposition that the inhabitants of BIOT are merely a floating population*". He referred to three measures which were essential: first, to retain the system of yearly contracts and to avoid the creation of any permanent settlements so that the labour force and their families could "*truly be said to be ... migratory labour*"; second, that all inhabitants including contract labour should be brought under immigration control under a new Immigration Ordinance to be enacted as soon as possible; labourers should not be exempt; third, should any inhabitant of BIOT who is a UK citizen apply for a passport the BIOT Government should not issue it; it should be issued either by the Seychelles Government on its behalf or the High Commissioner in Mauritius on behalf of the Government of Seychelles.

214. He identified a longer term problem presented by children born in BIOT after 8th November 1965 but born before the date of Mauritius independence on 12th March 1968. Some of those and even some born after that date would be dual UK and Mauritius citizens. But most would be only UK citizens. After those children reached adulthood and ceased to be dependent on their fathers they would lose the right to enter Seychelles or Mauritius. "*Thus in about 14 years a new class of persons will emerge who will have no automatic right of entry to either Mauritius or Seychelles. They would be able to legitimately claim to be 'belongers' to BIOT in the sense that they have no unrestricted right of entry elsewhere (not even to the United Kingdom).*" He suggested three solutions: total evacuation now or in the near future, or amendment to Seychelles immigration law or assurances, about the movement of such persons from the Seychelles Government. The last two would not be enforceable once Seychelles had become independent.

215. The UK mission to the UN did not agree with the analysis of the problem set out in the 6th February 1969 memo from the FCO to the US Embassy, *(6/695)(P). It thought that it would be possible to maintain that the territory had no settled population and that the small number of people living there were for the most part transients, and that argument could continue to be used even if the Ilois moved to Peros Banhos and Salomon. It pointed out that BIOT had been referred to in the Committee of 24 every year since 1966 and the Committee had declined to recognize the separate existence of the territory.

216. The position taken by the FCO on 14th February 1969 to the BIOT Commissioner was that Diego Garcia's evacuation would be required but the evacuation of Peros Banhos and Salomon would not be. The two alternatives being studied were the re-location of labour to Peros Banhos and Salomon or the evacuation of the whole of Chagos. Further information was required was required for a decision to be made: a report from Moulinie in relation to Peros Banhos and Salomon, and information from the High Commissioner in Mauritius for the latter, (6/697).

217. In order to make progress in considering the latter alternative, the FCO asked the High Commissioner about the likely reaction of the Mauritius Government to the removal of all Ilois to Mauritius and the likely resettlement costs there. It was presumed that the Mauritius Government would expect the UK Government to accept some responsibility for the Ilois already in Mauritius and sought information about whether they had been able to find employment, (6/698).

218. On 20th February 1969 Mr Moulinie sent to the BIOT Administrator what appeared to be some very skimpy calculations covering a five-year period which were then passed to the FCO, (6/699). On 20th February 1969 the UN political department of the FCO wrote to the Defence Policy Department of the FCO dealing with the comments on the letter of 6th February to the US Embassy. It said "*We in this Department are concerned that the picture being put forward of a possible return of the Ilois to Mauritius is one involving the dumping of unemployables in the heavily over-populated island of Mauritius against the protest of an indignant Mauritius Government - not to mention the Ilois themselves*". It suggested that Agalega which was outside BIOT but within the control of Mr Moulinie be investigated as a place for resettlement on coconut plantations. Agalalega was under Mauritian jurisdiction.

219. On 21st February 1969 the FCO responded to the UK mission to the UN, **(6/702)(ND). It agreed that there was a prospect that the ignorance and confused thinking prevailing in international circles on this island "*could enable us to dodge the real issues*" in the first instance when the Diego project was announced. But the lack of publicity and interest so far could not be taken as a lasting cause for complacency. Future hostility could be anticipated from Afro-Asian countries. It said:

"5. It is now extremely doubtful whether it is still open to us to use the formula ... that the inhabitants are essentially a migratory force."

This followed the discovery in 1968 that nearly half the BIOT population were at least second generation inhabitants, "*the so-called 'Ilois'*". There were 434 of them. He said that in 1966 "*we thought that there were many fewer second generation inhabitants than this and in any case we had hoped to dispose of the Ilois problem while Mauritius was still a Colony*".

Percipiently, the author commented that neither in the longer nor the shorter term could the possibility be excluded:

"That this semi-permanent population will find themselves in the international limelight ... If attention were drawn to them, we should find it difficult to assert that BIOT is not a '*non-self-governing territory*' and that we had no obligations in respect of it under Chapter XI of the Charter. In particular, we should find it extremely difficult to deny that we had sufficiently honoured or are now honouring our Charter obligation 'to ensure ...' their political, economic, social and educational advancement".

A contrast was drawn between the case presented in respect of Gibraltar and the residents of this dependency. There were distinctions which could be drawn by reference to their Mauritian citizenship, but nonetheless UK legislation had accorded them citizenship of the UK and Colonies as well and there would be some who were only citizens of the UK and Colonies. It was said "*our strongest card is the fact that the Ilois are still contract labourers with Mauritian citizenship, but until we can judge whether there is any prospect of returning them to a Mauritian island, it could be unwise to refer to them as essentially migratory*". This, however, represented preliminary thinking.

220. On 22nd February 1969, the potential development of Peros Banhos or Salomon for a twenty year

period was rejected by the US, which stated that such a proposal would seriously derogate from the principles underlying the 1966 agreements which the US interpreted as authorising the transfer of local workers elsewhere, the curtailment or closure of economic activity including copra plantations, and making the UK Government responsible for relocation costs. The US, therefore, did not wish to enter into a twenty year self-denying commitment, (6/708). Their acquiescence to the resettlement of Chagos copra workers on Peros Banhos and Salomon was with a caveat that it should not prejudice the use of those islands ultimately for defence purposes. That remained the US position, even though such use and exclusion of workers from those islands was not at present foreseen. Movement of workers, however, from Diego Garcia was seen as premature in advance of a Congressional decision on the proposal.

221. The other strand in the resettlement options was dealt with by the High Commissioner to Mauritius in a telegram to the FCO on 25th February 1969, (6/710). It said that the Mauritius Government would be unlikely to welcome the return of some 250 families "*except on generous compensation terms*" because of the already high unemployment rate of 20%. A calculation of the lowest resettlement costs which could be envisaged was presented: it covered low-cost housing, relief work payments and family allowance for three years, totalling per family 7,700 Rupees or £600 sterling. It cautioned that three years' payments might not be regarded as "*generous or indeed adequate in light of near impossibility of finding suitable employment*". There was no copra industry and there would be an increased pressure on educational and health facilities, social and community services. It was unlikely that many of those already in Mauritius from BIOT had found employment and the Mauritius Government would almost certainly expect them to receive the same treatment as those who might later be displaced.

222. The UK Mission to the UN responded to the letter of 21st February 1969 on 26th February 1969 (6/711). It noted that the Ilois were very much in the majority on Peros Banhos and Salomon, but made up only one third of the total population of 380 on Diego Garcia. This would still enable the Mission to maintain, at least in relation to Diego Garcia, that the small number of people were for the most part transients. However, it was recognised that the position based on the character of the population of the Chagos as a whole was much less tenable than had previously been thought, and "*that it would certainly be difficult to maintain the defensive position suggested in respect of Diego Garcia, if Peros Banhos and Salomon were also at issue*". The strongest card was said to be that the Ilois are resident in the islands by virtue of contract arrangements and are entitled to Mauritian citizenship.

223. Internal FCO minutes *(6/712)(ND) referred to increasing interest in offering Ilois the opportunity to go to Agalega when their contracts expired in BIOT. It commented "*there is, of course, no raison d'être for the Ilois in BIOT without employment, since their housing & everything else is provided by their employer. In the past they have commuted between contracts to & from Mauritius*". There was not thought to be a human rights objection to the removal of migratory workers if they wished to move. But there was a risk over the question of nationality. An official advised "*We must be very careful not to let it appear that our object in moving the Ilois out of BIOT altogether is to prevent there being an 'indigenous population' who would be British citizens and not citizens of Mauritius*".

224. In March 1969, the PIOD of the FCO, which at this time had responsibility for BIOT, produced a draft working paper on the relocation of the plantation workers from Diego Garcia on to Peros Banhos and Salomon, (6/713). This also involved looking at the position of the Ilois families already living in Mauritius. The development plan prepared by Moulinie over a period of five years was described, together with its labour-force requirements, and the sum of £61,250 capital expenditure on housing and social services in addition to the investment required on the plantations of £126,000. It was recognised that, if the plantations were to be successfully developed, a long-term basis would be required, say fifteen years, in order to justify the substantial capital expenditure required over the first five years. Indeed, it was only after the first five years that there would be a return sufficient to begin to offset the investment. No commercial operator would be likely to risk the capital involved without certainty of tenure including a compensation clause for termination of the agreement. The alternative would be for HMG to provide the capital and run the

plantations through a manager who would receive a fee. Taking account of the average price of copra, the Commissioner's view had been that the plantations on Peros Banhos and Salomon could be run at a profit but could not be regarded as an enterprise capable of earning really substantial profits, or weather in a serious recession in the copra market. Although the adults from Diego Garcia could be accommodated, there were a number of growing children who would require employment and a yet longer-term problem of population increase, although the movement out of Chagos would offset that if contacts with Mauritius were maintained.

225. Mr Aust returned to the Immigration Ordinance in a note of 5th March 1969, *(6/717)(ND), to Mr Jerrom. He said that immigration legislation would be needed, whether there was total evacuation of the whole of Chagos or permanent resettlement on Peros Banhos and Salomon, or temporary resettlement on Peros Banhos and Salomon. He described the provisions of the draft Ordinance which required anybody entering or remaining in the territory to be in possession of a pass, the issue of which would be at the entire discretion of the immigration officer, whose decision would be appealable only to the BIOT Commissioner. It would be unlawful for somebody who needed a pass to enter or remain without one. Provisions for removal for those whose presence was unlawful were included. Mr Aust commented that if there were to be permanent resettlement on Peros Banhos or Salomon, these provisions would obviously be too severe because a permanent resident should not be required to apply every four years for a pass to remain in the colony. If there were to be temporary settlement of the Ilois from Diego Garcia on Peros Banhos or Salomon, or if the Chagos as a whole were to be totally evacuated, Mr Aust advised that very rigorous controls would be needed. If the Chagos were to be totally evacuated "*there must be no permanent population*", and if the resettlement were temporary "*until a final decision is taken, we must continue to treat the inhabitants as a floating population*" otherwise total evacuation "*would be politically very difficult*". The power of removal, to which objection had previously been raised, was acceptable in view of the discretionary power which it gave to the Commissioner as to whether to make an Order removing somebody. It was to be assumed that the Commissioner would act properly and not deport a person who could not get entry elsewhere.

226. A draft submission for Ministers to make to the Prime Minister was circulated amongst officials for comment on 1st April 1969, *(6/724)(P). It would deal with the arrangements for the future of the population of Diego Garcia and the other islands in the Chagos group within BIOT. A recommendation was made that the Foreign Secretary should send a minute to the Prime Minister seeking approval for the evacuation of the Chagos, which had been cleared at official level with other relevant departments. The background to the submission referred to the problem of the population as being "*highly complex and difficult*" and one which had been actively and comprehensively considered within the Foreign Office and with the Treasury and Ministry of Defence for many months. They had now reached an agreed view "*and the Treasury in particular have made it clear that they would be strongly opposed to any alternative solution which would entail open-ended, long-term financial responsibility for the population of the Chagos*". A note at the bottom of the draft submission, regretting its length, said that as islands had a habit of causing troubles "*it seems important that Ministers should have access to the full facts*".

227. It appears that "*Paper No 3 The problem of the people living in the Chagos Archipelago*" was attached to the draft submission, but it is not clear whether ultimately it was attached to the minute sent to the Prime Minister. The paper referred to it being understood, as a general proposition, "*that the cost of resettling elsewhere the people who could no longer make a living in the Chagos Archipelago because of the construction of defence facilities there would be met by the British Government*", (6/726). There had been no precise definition of who would be entitled to resettlement or what resettlement would cover. The Ilois were said to be those who can claim to have their main roots in Chagos. Mr Allen relied strongly upon a comment in the paper that since the creation of BIOT and the purchase of the islands by the Crown in 1967:

"The relationship of the United Kingdom Government with the people in Chagos has been a dual one:-

- (a) That between the government of a colony and the people living in it, either on a fairly temporary basis or those who could claim, as in the case of the Ilois, a substantial connexion with a colony (including eg 'Belonger' rights so far as entry is concerned);
- (b) The relationship between a landowner and employees/tenants who make a livelihood on his land.

It was said that in 1965, when BIOT was established 'our information' was that the population of the Chagos consisted almost entirely of contract labourers and their dependants from Mauritius or Seychelles, employed by the then lessees of the land and living in housing provided by their employers. It was thought that almost all of them were relatively short-term inhabitants on contracts, which they might or might not renew. It was, however, known that there were 'a small number' of Ilois (in one estimate not more than 200) who could be regarded as having their permanent homes in Chagos."

228. The intention had been that although BIOT was a colony, it was not to fall within the scope of Chapter XI of the UN Charter. The object of its creation was to obtain unrestricted use of the islands. It continued:

"7. The long-term expectation was that when defence needs arose, the inhabitants of the islands would be 'resettled' outside of BIOT, the cost being met by HMG. In the short-term, it was hoped to establish that the inhabitants were all either 'Belongers' to Mauritius or to Seychelles having unrestricted rights of entry to one or the other territory. This would have allowed us to issue them with only temporary residence permits to stay in BIOT. At the time it was envisaged that we should then have established a situation in which there were no individuals with claims on BIOT or without claims on either Mauritius or Seychelles."

229. A formula had been worked out for use at the UN in 1966 which referred to the essential character of the labour as a migratory labour-force.

230. The paper continued, however, that between 1966 and 1968 it had become clear that the number of people who could claim to be Ilois was greater than estimated and that although the number was still small they "*present a more awkward problem of status than had been foreseen*". They were included among those who automatically became Mauritian citizens on independence and it was said that after independence "*they no doubt continued to regard themselves as Mauritians and they are probably so regarded by the Government of Mauritius*". But a right to citizenship of the UK and Colonies could not be taken away, nor could the possibility be removed that some might claim to regard themselves as people of Chagos. The total Ilois population of 128 on Diego Garcia and 434 on the total Chagos was set out. Paragraph 13 of the paper said:

"The Ilois, island born, clearly have a more substantial connexion with Chagos. Although as noted above they still regard themselves as Mauritians, they also look on themselves as Chagos islanders. They have some experience of movement between the atolls. Some are second generation, a few third. The men are contract labourers and they go to Mauritius, where many have family connexions, from time to time. These visits to Mauritius have an element of leave about them and for many years it has been normal for them to be re-engaged, although some have been refused on grounds of bad conduct. In summary, while being accepted as Mauritians they can be regarded as having their main roots in Chagos, although their continued presence in Chagos has always depended on their being employed there."

231. There were no accepted rules of international law regarded the responsibilities of States to permit the entry of their own citizens when those citizens are also citizens of another state. The argument that they should be permanently resettled in Mauritius despite their citizenship of the UK and Colonies might rebound if the Ilois regarded Chagos as their home. The paper said:

"Whilst it is legally possible for us to enact legislation which could permanently exclude them from BIOT, we could not of course administer such a legislation in such a way as to deprive them of any right of entry anywhere: for example, if Mauritius were to change its immigration legislation, which at the moment gives all Mauritius citizens (including dual citizens) an unrestricted right of entry to Mauritius. As we have done this in the case of our own citizens (Kenya Asians) it is theoretically possible that Mauritius might do the same."

232. The draft Immigration Ordinance would be necessary, it was said, were Chagos to be evacuated and during any interim period prior to a final decision being taken. The Commissioner would have a discretion to allow a person whose presence in BIOT was unlawful to stay, if that person could not lawfully enter any other country or his entry to a particular country would cause trouble. The problem of the children of those Ilois who were born in the Chagos part of BIOT after Mauritian independence on 12th March 1968, who would only be citizens of the UK and Colonies, was referred to as a problem for fourteen to fifteen years hence, and they could truly claim to be "*Belongers*" of BIOT unless the Ilois were removed outside BIOT.

233. The continued occupation of Peros Banhos and Salomon, although a partial solution to resettlement, would not solve the problem of national status and indeed would make the problem worse as time went on. The problem of resettlement would merely have been postponed if the atolls were to be evacuated later, and if not there would be continuing financial commitment and an increasing political commitment. On the other hand, evacuation of the whole of the Chagos and resettlement would be intended to remove the difficulties of national status once and for all. It would require the co-operation of the Mauritian Government and the acquiescence of the people concerned. However, in that event, resettlement, while it would not deprive the dual citizens of their UK and Colonies citizenship, would put the UK Government on much stronger ground in refusing them entry to Chagos. The Ilois were described as "*simple islanders, not versed in the obscure problems of their national status touched on above . . . The Commissioner feels that there is a probability that they would prefer to stay in Chagos rather than to be resettled elsewhere; but no doubt much will depend on the arrangements which can be made for them, especially for housing and employment*".

234. A fifth BIOT working paper of April 1969, on evacuation and resettlement, gave the total Ilois population of the Chagos as 434, of whom 128 were on Diego Garcia, (6/739). That figure included men, women and children. There were also 56 Mauritians and 317 Seychellois on the Chagos, of whom respectively 22 and 230 were on Diego Garcia. The existence of the 370 Ilois on Mauritius already, thought to be awaiting re-employment on Chagos, was referred to and it was assumed that any public statement on resettlement would lead some of them to apply to be treated on the same basis as the Ilois in the Chagos. The main object of evacuation and resettlement was seen to be the provision of a solution once and for all to the latent political problem of the continuing presence of the Ilois in Chagos. Although the whole of the Archipelago was being considered for evacuation, a different timescale could apply as between Diego Garcia and Peros Banhos and Salomon. The high unemployment rate in Mauritius itself and the difficulties and expense of finding suitable employment for any families returning from the Chagos meant that a more satisfactory solution might be to negotiate resettlement of the Mauritian citizens from Chagos on Agalega as the only coconut producing island within Mauritian territory. It was said that this had been the original intention when BIOT was established. The unemployment rate of 27.5% in the Seychelles was even worse than on Mauritius but there were hopes with the new airport of economic development. The Ilois were identified as presenting the main problem because they had traditionally worked and lived in Chagos and had no skills other than those of coconut plantation workers. The movement of this class therefore "*would involve not only uprooting them from their traditional homes and settling them elsewhere, but also providing them with a new livelihood, unless they can be resettled in an area where a copra industry exists*". There was no such

industry on Mauritius. An approach to the Mauritius Government was necessary and it was pointed out that that Government could be expected to negotiate for the best possible terms of resettlement in which humanitarian considerations, as well as the need to avoid adverse publicity would be factors. The continued use of Peros Banhos and Salomon after the evacuation of Diego Garcia, then envisaged for early 1970, could provide some valuable breathing space. There was also attached a paper on Agalega.

235. Lord Shepherd, *(JR/3/256)(ND), agreeing with the submission to the Prime Minister, said that although the numbers involved in the evacuation was small, they presented a serious difficulty because of the severe unemployment problems in both the Seychelles and Mauritius and "*we must insist on these people being properly resettled and with reasonable prospects for their future*".

236. On 21st April 1969, the Foreign Secretary sent a minute to the Prime Minister seeking his approval for the clearance of all the Chagos islands of their inhabitants, *(6/745)(P). He asked his colleagues to agree that "*we should aim at the return of the inhabitants of the whole Chagos Archipelago to the Seychelles and Mauritius and should enter negotiations with the Mauritian Government to that end*". The minute set out the background and referred to the need to consider immediately what should become of the contract labourers at present working on Diego Garcia and pointing out that that also called for a decision on the future of Peros Banhos and Salomon, as the only other inhabited atolls of the Chagos Archipelago. It was said:

"4. ... The problem of the future of these people exists independently of American plans, but the decision to proceed with a communication facility on Diego Garcia, which will necessitate evacuating that atoll, has brought it to a head.

5. There is no ideal solution. It has always been envisaged that the population should be resettled outside the BIOT as and when the islands become needed for defence purposes. Our aim must be to ensure the welfare of the people concerned, but at the same time we must seek to limit the financial burden falling on Her Majesty's Government, as well as follow a course which is defensible in the United Nations and which does not store us up greater trouble for the future. I agree with the conclusion reached in the paper that, on balance, the best plan will be to try to arrange for these people, all of whom are citizens of the United Kingdom and Colonies or of Mauritius or both, to return to the Seychelles or Mauritius. The people with whom we are concerned are working the Chagos under contract and own no property or other fixed assets there. However, some of them have established roots in Chagos and I should naturally have wished to consult at least these in advance of any decisions about their future, if this had been possible. Officials have examined closely the possibility of giving them some element of choice, but have advised that this would seem wholly impracticable. We are not able, at this stage, in advance of talks with Mauritius, to offer resettlement there as an option; and even if we could, these workers might express a preference to stay in Chagos. This ... would have severe drawbacks from our own point of view."

237. The minute pointed out that the UK Government had undertaken to meet the cost of resettlement of displaced labour, but further information was needed in order to make a realistic estimate for that cost. The particular problem was seen in persuading the Mauritian Government to accept the return of dual citizens there on reasonable terms. Negotiations to that end were proposed with the Mauritius Government. The Foreign Secretary continued:

"We should not seek agreement at any price, and it may later transpire that we are unable to make fair and satisfactory arrangements with the Mauritians for these people's welfare at a reasonable cost to ourselves. It would then still be open to us to fall back on less satisfactory solutions such as the resettlement of some of the population of Diego Garcia on Peros Banhos

and Salomon and the development of these two atolls by Her Majesty's Government. This latter alternative is, however, one which we should try to avoid, since it might later involve moving people a second time for defence reasons. It might also prove expensive in that continuing development and budgetary aid might be required."

238. Attached as Annex A to the minute from the Foreign Secretary to the Prime Minister was a paper which reflected much that was in the working papers to which reference has already been made, (JR/3/264). This referred to the small but growing number of workers and children who were establishing claims to belong to the Chagos which could cause considerable problems in the future, and some of whom might one day claim a right to remain in BIOT by virtue of their citizenship of the UK and Colonies. The plantations were run down because it had not been possible to develop them properly, pending decisions on defence use of the islands. When BIOT was created, it was not envisaged there would be any permanent inhabitants and the problem of the Ilois was, at present, not widely known. If, however, they remained within BIOT, whether resettled from one island to another, the risk of being forced to acknowledge UN Charter responsibilities arose and it would be helpful if any move could be presented as a change of employment for contract workers. The advantages of a short-term solution involving removal from Diego Garcia to Peros Banhos and Salomon were outweighed by the long-term disadvantages and there was an option of relocating them to other islands in the Archipelago. The population of the Archipelago was a maximum of 800 and the 434 Ilois were dual nationals. A relocation solution to another island within Chagos might not be in their long-term interests.

239. On 26th April, the Prime Minister signified his agreement to the proposal of the Foreign Secretary that the Government should aim at the return of the inhabitants of the whole Chagos Archipelago to the Seychelles and Mauritius and should enter negotiations with the Mauritian Government to that end, (6/752). The Chancellor of the Exchequer and the Secretary of State for Defence also agreed, (6/753, 754).

240. The problem of those Ilois who had returned to Mauritius in 1967 and 1968 and who had not been re-engaged by Moulinie & Co was raised again in May 1969. But the FCO minute of 7th May 1969 appears to accept that nothing should be done at that stage about it, and it does not suggest that the UK Government should do anything to help, (6/755). It refers to the Ilois being left in Mauritius because Moulinie would not re-engage them "*owing to doubts about the future of the plantations*". It was unlikely that the numbers had changed because there had been no sailings of the "*Mauritius*" from Mauritius to Chagos. However, the "*Nordvaer*" was due to leave for the Chagos from Seychelles in early June 1969 and Seychellois would eventually be leaving Diego Garcia on it. Moulinie would wish to replace those who left "*unless instructed otherwise*". The BIOT Commissioner sent a telegram to the FCO saying "*on grounds of administrative convenience, I should prefer to instruct Moulinie not to recruit replacements, giving as reason that the whole question of future commercial exploitation is under consideration ... Moulinie will begin recruitment later this month*", (6/760). The pros and cons of this course of action were considered, there being a conflict between the need to keep the plantations viable as a fallback for resettlement of Ilois from Diego Garcia, but uncertainty over the whole problem of resettlement from the other islands in the Chagos which could be made more difficult with increased recruitment. The advice from the FCO to the BIOT Commissioner was that although there was no ideal way of dealing with the situation "*further recruitment should be avoided on this occasion unless you consider it feasible to limit further contract to six months*", (6/766). Mr Moulinie should be told that, pending a decision on the question of commercial development, it would be preferable not to contract further labour at this stage. It would be helpful, said the FCO, if information could be obtained about the number of persons and of what category whose contracts would expire in the coming twelve months.

241. Mr Todd suggested, towards the end of May, that the proposed immigration legislation be kept in cold storage, pending the commencement of the US defence works and that contract labourers be exempt from such immigration control and be dealt with through their employment contracts, (6/763).

242. On 2nd June 1969, the FCO authorised the Mauritius High Commission to approach the Prime Minister

of Mauritius to give him advance notice on a confidential basis that, under the 1966 agreement, the UK Government had approved in principle a US facility on Diego Garcia subject to Congressional approval, in respect of which the secret hearings were about to start, (6/768). The Prime Minister should also be told that the UK Government would wish to enter into confidential discussions with it later in the summer about arrangements for resettlement and employment in Mauritius of the Mauritian citizens in Chagos and of those who were already in Mauritius but had been workers on the copra plantations. Some 30 Seychellois families were sent to Diego Garcia on the "Nordvaer's" next voyage, (6/770). Information was provided that all Ilois contracts would expire within the next six sailings, but that the great majority would probably stay on as had been the practice in the past. The present labour force was already below the minimum required and if six months passed without the replacement of labour, that would be equivalent to commercial abandonment and would probably lead to Moulinie not continuing his management, according to the dispatch from the BIOT Commissioner to the FCO.

243. Internally it was recognised that the resettlement discussions would also include those Mauritians "*who were Ilois already 'on the beach' in Mauritius*", (6/771). The FCO said to the BIOT Commissioner what was set out in the Foreign Secretary's minute to the Prime Minister to the effect that agreement was not to be sought on compensation at any price, (6/772). There were other, albeit less satisfactory, options. Advice was also sought on whether the Seychelles would seek assistance with any cost of resettlement or compensation. The present understanding was that there would be unlikely to be any political outcry. The Seychelles Governor replied to the effect that the effect of the Diego Garcia project would be to make 150 Seychellois labourers redundant in Chagos but that there were projects, including the airport, which would potentially provide them with employment opportunities, particularly if they returned on a phased basis. Their position was seen as being better than that of the Ilois because of their being more likely to be able to find work to which they were accustomed and they, in any event, had no possible claim to a right to stay in Chagos, (6/775).

244. The FCO Defence Policy Department, writing to the UK Embassy in Washington, described a meeting that had taken place in London with the US Embassy, *(6/778)(ND). Agalega had been discussed and Ministers needed to be satisfied that Ilois returned to Mauritius "*would not merely languish there unemployed for the rest of their lives*". The problem was that they were only skilled in copra and as there was some copra industry on Agalega, there were advantages in their being re-employed there. He wished to emphasise the importance of a confidential advocacy to the Government of Mauritius of the secret Congressional hearings and American contacts in Washington and London were asked to be careful about divulging inadvertently that certain Mauritians, that is to say the Ilois, might have "*a special claim on us*". This was said to be of "*cardinal importance*".

245. The Claimants put some weight on the briefing of 24th June 1969, *(6/787)(P), from the FCO to certain foreign missions on the Diego Garcia defence proposal. A number of lines to take in response to leaks or to questions following a public announcement were set out. The briefing note said:

"We are anxious that no publicity should be given to the problem of these contract labourers. If asked about their future, you would merely say that there would be detailed talks between Her Majesty's Government and the United States Government about the administrative aspects of the Diego facility. ... all the people on Diego Garcia ... are Mauritian and Seychellois labourers working on contract on the copra plantation ... and that the future of the plantations will naturally be discussed at these talks."

246. The reason for this formula was so that it would apply equally to the Ilois "*since we are particularly anxious to avoid distinguishing between them and the purely migratory labourers*". It pointed out that neither the Ilois nor the Mauritian Government may have realised that they were entitled to dual citizenship. The use of Agalega to absorb some of the displaced labour continued to interest the BIOT Commissioner who, on 1st

July 1969, told the FCO of the way in which Moulinie & Co had been impressed by progress on the island and were interested in further development, (6/787A). There was some potential for increased labour. The FCO briefed the Foreign Secretary for his meeting with the Prime Minister of Mauritius that the US would wish the contract labourers from Diego Garcia to be resettled elsewhere. The fact that some might have dual nationality was not to be admitted to the Prime Minister of Mauritius, *(6/789) (D). The FCO was anxious, even after the meeting, that no distinction between mono-Mauritians and Ilois should be drawn in the eyes of the Mauritius Government, *(6/804).

247. The BIOT Administrator presented up-to-date population figures for June 1969 in Chagos, (6/794). There were 129 Ilois on Diego Garcia out of a total population of 330. 189 were Seychellois and 12 Mauritians. Of the 129 Ilois, 27 were men, 30 women, and 57 children, ie 30 Ilois families. A similar breakdown was provided for Peros Banhos, where 140 of the total population of 164 were Ilois, and on Salomon 153 of the total population of 197 were Ilois. A table of resettlement of the population of Chagos indicated that the 129 Ilois from Diego Garcia were to be sent to Peros Banhos and Salomon in the first instance. There would be a gradual removal of population from those two island groups later to be resettled in Agalega and Mauritius. When the Foreign Secretary and the Prime Minister of Mauritius met on 4th July 1969 and the question of the resettlement of the Ilois was raised, the notes record Dr Ramgoolam saying that this point had been taken care of in 1965 under the Defence Agreement, (6/800).

248. The question of whether and when immigration legislation should be introduced into BIOT, which had been raised again between Mr Whitnall and Mr Aust in June, was dealt with on 8th July 1969 in a note from the FCO to the BIOT Administrator, *(6/803)(ND), saying that it had been decided to postpone doing anything until the US proposals for the development of Diego Garcia were definite. It did, however, comment that it might be better to use the word "*permit*" rather than "*pass*" in the legislation because the latter had South African military connotations. If there were to be an exemption for Ilois, it would have to be on the basis that they were contract labourers as Mr Aust had previously advised and this had to be stated expressly in the Ordinance.

249. The Administrator of BIOT, together with Mr Marcel Moulinie, paid a further visit to the Chagos in the latter part of July 1969. They found that the plantation on Diego Garcia was gradually becoming more overgrown as the number of workers on the island was insufficient, (6/805). They were less overgrown on the other islands. There had been a decrease in the population since 1967 of 155 and the main decrease had been in the number of Mauritians and Ilois because the communications with the island were now being confined to the Seychelles. But it had also been difficult to obtain Seychellois for the Chagos and their numbers had also declined. The report followed a similar pattern and its general conclusion was that the islands continued to be run satisfactorily on a care and maintenance basis and that the conditions of life on the islands remained acceptable, which was as much as could be expected under the current restrictions. The total population of Diego Garcia following this visit was put at 319, of which 93 were Ilois, comprising 27 men, 21 women and 45 children. There were 121 Ilois on Peros Banhos, comprising 22 men, 26 women, and 73 children. On Salomon there were 136 Ilois out of a total population of 182 (151 total on Peros Banhos) made up of 26 men, 28 women and 82 children.

250. There had been some discussion about the resettlement table prepared by Mr Todd when he enclosed the June population figures for Chagos. But it was said by Mr Whitnall of the PIOD of the FCO that he recalled Mr Todd mentioning "*that the labour-force is unlikely to be disturbed by change of location, providing there was no deterioration in their living standards*". (6/816).

251. In August, the BIOT Administrator agreed that the Immigration Ordinance could be put back into cold storage, (19/817(a)). The approach adopted by Mr Todd to the resettlement of the Ilois had occasioned debate because of the distinction which he seemed to draw between those who were Ilois and those who had only Mauritian nationality. The FCO pointed out to Mr Todd that it was anxious to maintain the position that no such distinction should be drawn, that the Mauritius Government had not drawn any distinction itself

and accordingly it would be better if all Ilois and "mono-Mauritians" went from Diego Garcia to Peros Banhos and Salomon, *(6/818)(P). The BIOT Administrator accepted that point. He also supplied a list of names of Ilois and Mauritians who had left Chagos between January and July 1968. There are some 90 names on the list and there were children as well, not separately named. The vast majority were Ilois, (6/820).

252. On 23rd August 1969, the BIOT Commissioner notified the FCO that Mr Moulinie was asking Rogers & Co to recruit 50 families from Mauritius to go to Agalega on a sailing due that week, but he had been successful in recruiting only 14 families, who were probably Ilois, (6/826, 827). The FCO replied, suggesting that if this were to take place it would be of some assistance if Ilois were recruited, (6/826(a)). It would be hoped, and the making of a distinction between Ilois and "mono-Mauritians" was not something which in other contexts they wished to make, that the numbers could be drawn from those who had recently returned from Chagos to Mauritius. There was, it was hoped, time to discuss that with Moulinie. Mr Todd wrote to the FCO on 28th August 1969 expressing his surprise that, in view of the previous anxiety of the Ilois in Mauritius to return to Chagos and their apparent destitution, the response had been so poor to Moulinie's recruiting effort, (6/827). He wondered whether there was a resistance amongst Chagos Ilois to going to Agalega, which, after all, was not a Chagos island. It was some 1,000 miles away. The FCO suggested that this failure of recruitment was probably due to the relatively short notice which the Ilois had and to the fact that they might to some extent have dispersed within Mauritius.

253. There is a handwritten note on the list of names, (5/470), supplied by the Mauritius Government to the United Kingdom Government of Ilois left behind in Mauritius in 1967 and 1968, which indicates those who appear to have been recruited to work on Agalega in August 1969. There are five families so marked.

254. In November 1969, an official in the FCO's Defence Policy Department, dealing with the proposed timetable for construction of the defence facility and the removal of the labourers from Diego Garcia, commented that it was highly unlikely that within six months they would have agreed satisfactory arrangements with the Mauritius Government for resettlement on either Mauritius or Agalega of the contract labourers with Mauritian citizenship. If only six months' notice were given, it would be necessary to contemplate the fall-back position of temporary relocation of some contract labourers to Peros Banhos and Salomon, however undesirable in other contexts that might be. There would be less of a problem with Seychellois labour, which could be phased back into that labour market within twelve to eighteen months, (6/830).

255. On 21st November 1969, the BIOT Administrator produced his proposals for the removal of the population, (6/832). The "Nordvaer" would be leaving the Seychelles for the Chagos on 30th December and it was hoped that the project would by then no longer be secret. The voyage had to take place then in order to collect the copra for a profitable contract. He could see no difficulty in clearing Diego Garcia by June 1970, but not both Peros Banhos and Salomon as well. Negotiations with the Mauritius Government and with Moulinie, if Agalega were to be used, would take some time. A two-phased plan was necessary. The first phase dealing with Diego Garcia, the second phase with the other two islands. It was suggested that some Seychellois and mono-Mauritians could be removed from Peros Banhos and Salomon to make way for Diego Garcian Ilois in the first instance to go there. Accommodation would have to be improved for them. Seychellois and Mauritians were entitled to more than one month's notice and to payment for the unexpired portion of their contract. The plan was thus: that in April 1970, Ilois should be removed from Diego Garcia by the "Nordvaer" and Seychellois and Mauritians from Peros Banhos and Salomon; second, that mono-Mauritians and some Seychellois should be removed from Diego Garcia by a non-commercial voyage; and thirdly, that in June 1970, the remaining Seychellois should be removed from Diego Garcia and there would be an undated subsequent removal from Peros Banhos and Salomon. The BIOT Commissioner sought the permission of the FCO to take Moulinie into his confidence about the proposal because his co-operation would make resettlement much easier.

256. 1970 began with the refusal of the US Congress to approve the Diego Garcia facility and it was cut out

of the Appropriations Bill. This would delay the Administration's timetable for the facility by at least seven months, and possibly more, and compelled the UK to take another look at the state of play on resettlement according to the Defence Policy Department's minute of 5th January 1970, (6/838). There was a choice between continuing to defer action until the outcome of the consideration by Congress of the 1971 US Budget, which would involve a probable delay of a year, or of taking steps now on resettlement in any event. The advantage of the former was that it reduced the leakage of information about the proposed US facility. The argument in favour of the latter was that the problem of the contract labourers in the Chagos existed independently of Diego Garcia plans. The Treasury was getting restive. The Mauritian Government might renew its pressure for compensation for those Ilois already in Mauritius which had been expected to be covered in the talks on resettlement which Dr Ramgoolam had expected to start in the summer of 1969 or thereabouts. Moreover, if the plan were begun now, it would be possible to avoid the two-stage resettlement plan. The key to the success of that plan would be the reaction of Mr Moulinie to the BIOT Commissioner's approach and his ability to keep the Government's intentions secret from the labourers. His co-operation was important, not merely because he managed Chagos but because he also leased Agalega from the Mauritius Government. The risk of a leak if he were informed, and provided the Americans agreed, had to be accepted "*in view of the stultifying inaction that must persist unless he is brought into our confidence*".

257. An impending visit by Dr Ramgoolam would be an opportunity to bring him up-to-date and it was recognised that the Mauritius Government had to be given an indication that the UK Government was prepared to assist with the resettlement of the Ilois who had been "*on the beach*" in Mauritius for up to two years now. The key to the resettlement problem was seen as Agalega. If most of the Ilois could not be sent there, negotiations for resettling the remainder in Mauritius were thought likely to be difficult and protracted.

258. The new year was just over two weeks old when the draft Immigration Ordinance was brought out of cold storage for further discussion by Mr Aust, who had been asked to advise on whether it should be enacted and, if so, when. He set out the purpose of the Immigration Ordinance, *(6/842)(P):

- (a) To provide legal power to deport people who will not leave voluntarily;
- (b) To prevent people entering;
- (c) To maintain the fiction that the inhabitants of Chagos are not a permanent or semi-permanent population."

259. He dealt with the power to deport in this way:

"3. The question has been asked whether the Government of BIOT needs this power. The Chagos Archipelago is, I understand, wholly Crown land, the private interests having been bought out when BIOT was established. ... it would therefore be possible for the Government to exercise its rights as landowners to turn people off the islands in the Archipelago. If people refused to go when asked, they would be trespassers and could be ejected with reasonable force. People who might refuse could be contract labourers, whose contracts had been terminated, or the pensioners who have stayed in Chagos. But forcible removal of such persons on the grounds that they were trespassers might be less attractive than forcible removal on the grounds that their presence was unlawful under the Immigration Ordinance; it also has a serious legal disadvantage in that the Government would have no power to say where they must go to. They could get on a boat and go to another island.

4. However, the Administrator of BIOT and the Attorney General of Seychelles should be asked for their opinions on which method they would prefer to be used. I do not think that the fact that a majority of those affected, the Ilois, are citizens of the United Kingdom (as well as citizens of Mauritius) affects the decision which method to use. If we are criticised for the deportation of citizens of the United Kingdom, it does not really matter whether the Government of BIOT is wearing its governmental or landowner hat. Either way, it will be 'the Government' which is pushing them out. The real test is which method is the most practical and convenient. It may be that both methods will have to be used . . . On balance, we would prefer to have an Immigration Ordinance in force in case it was needed. . .

6. Maintaining the fiction.

As long as only part of BIOT is evacuated, the British Government will have to continue to argue that the local people are only a floating population. This may be easier in the case of the non-Chagos part of BIOT . . . however, the longer that such a population remains, and perhaps increases, the greater the risk of our being accused of setting up a mini-colony, about which we would have to report to the United Nations under Article 73 of the Charter. Therefore, strict immigration legislation, giving such labourers and their families very restricted rights of residence would bolster our arguments that the territory has no indigenous or settled population."

260. He then turned to timing, which he regarded as a matter for local advice. It could create trouble if introduced now, unless it was made clear that contract labourers and their families would not be required to have a pass for the duration of their contracts. Pensioners could be assured they would be allowed to remain so long as defence requirements permitted. Mr Aust then turned to the evacuation of the whole of BIOT. His advice on the need for an Immigration Ordinance in relation to this had been specifically sought. He said this: the evacuation of the whole of BIOT was the most desirable solution to the BIOT problem from at least a legal, financial and UN point of view. An Immigration Ordinance would be necessary in those circumstances to stop people entering BIOT. "*Whether it would be needed in order to evacuate people from the non-Chagos part is more doubtful, as most are Seychellois and the numbers are much smaller*", *(6/844)(P).

261. On 22nd January, Mr Knight of the FCO's PIOD sent a memo, *(6/846)(P), to Mr Lee dealing with the resettlement of the inhabitants of BIOT. He referred to an earlier note of Mr Sykes of 5th January urging that resettlement of the inhabitants of Chagos should be now considered rather than waiting for the Diego Garcia project to get underway, and to his discussions with Mr Aust. Mr Knight had previously had discussions with Mr Thomas of the Defence Policy Department which was clearly under the impression that the contracts with the labourers, plus the fact that the Crown owned all the land in BIOT, gave it sufficient powers to effect the resettlement of the inhabitants; but that did not appear to be the advice of Mr Aust, with whom he had subsequently discussed matters and who had felt that, on balance, an Immigration Ordinance was needed prior to any resettlement programme. Mr Aust had pointed out that one advantage of the Ordinance over the use of landowner rights was that the Commissioner would have power to direct a person to leave BIOT altogether, and indeed to send that person to the country to which he belonged, which would prevent a person island-hopping within BIOT.

262. On 27th January 1970, the FCO Defence Policy Department was asked for its views about the general problem of progress towards depopulating the territory. It was suggested that hitherto it had been the accepted view that the Archipelago should be depopulated whether the Americans went ahead with their plans or not, and because of the lack of certainty for many months, the view was expressed within the FCO that a start should be made now on depopulation, notwithstanding the difficulties which that would cause. Depopulation could take place over a longer time and the financial position on the plantations would worsen considerably the longer matters were left.

263. The BIOT Administrator thought it appropriate to distinguish between the Seychelles and Mauritian parts of BIOT, (6/852). The Chagos islands had an uncertain future, but considerable economic potential; if they were abandoned now, and the Diego Garcia project did not proceed, it would be probably too expensive later to resurrect them. The administrative advantages of relocating the population were seen by the Administrator as being the last consideration. It would be better to relocate the population over a period of two to three years. But no revocable decision should be made until Congress had reached a view later on in 1970. The BIOT Administrator thought that it would be unjustifiable economically and administratively to depopulate Farquhar and Desroche which were both profitable plantations and among the most productive of the islands of the Seychelles group, the abandonment of which would cause an uproar in the Seychelles. (It is to be noted that, the Immigration Ordinance notwithstanding, BIOT was not depopulated.)

264. The PIOD of the FCO disagreed, *(6/855)(P). It was of the view that, in the circumstances, steps should be taken now to resettle contract labourers in the Chagos because of the risk that the longer the wait, the greater the danger of acquiescence, the continued existence of a settled population and of being held accountable to the UN for them, an ever-increasing financial commitment for islands which could never be economically viable and in relation to which the Treasury had shown impatience, and lastly, the Americans could be understandably vexed with the UK's dilatoriness after all the time which it had had to make a start on depopulation. Mr Carter of the PIOD was not just in favour of the evacuation of the Chagos Archipelago but of the whole of BIOT. The whole objective behind the acquisition of BIOT was defence purposes and "*the sooner we clear the islands with that objective in view, the better.*" He was emphatic that, in order to prevent people entering and to clear the islands, the legal means of enforcement were necessary. To that end, he called on the advice of Mr Aust to the effect that an Immigration Ordinance was required to back up the Crown's rights as a landowner. The development potential of Agalega had to be established.

265. Mr Le Tocq of the East African Department commented on Mr Carter's minute, which had been sent to the FCO's Defence Policy Department, *(6/856)(P). He was of the view that clearances should start without waiting for an Immigration Ordinance. He thought it unlikely that more than a very few Ilois would wish to remain in the islands if their contracts were terminated and they were deprived of their livelihoods. The presence of the Ilois in Mauritius and the need to deal with the Mauritius Government over them added urgency to his point. The US fears of leaks would be reduced if it was said that the islands were being cleared because the plantations were becoming uneconomic, *(6/856)(P).

266. The FCO sent a telegram to the Seychelles on 18th February 1970, copied to many others. The memo identified the FCO's present thinking which was that a complete evacuation of the whole of Chagos was preferable to a two-stage operation to avoid undue attention being focussed on the Ilois and to avoid time for Ilois opposition to their resettlement on Mauritian territory to gain momentum. A US Congressional decision should not be awaited any longer and Moulinie, if it were safe to take him into Government confidence, should be asked to produce a development plan for Agalega to absorb as many as possible of the Chagos contract labourers. After receipt of that report, talks should begin with the Mauritius Government about resettlement of the Chagos contract labourers. Before those talks were concluded, it might be necessary to send an independent expert to Agalega to ensure that the new community would be established in decent conditions and a viable economy set up and maintained. Prior to resettlement, the BIOT Immigration Ordinance would be necessary. The resettlement of labourers from the former Seychelles islands of BIOT could not be deferred indefinitely. The Agalega plantations might be able to absorb them as well, (6/857).

267. The US agreed that Moulinie could be put in the picture to some extent by Mr Todd, who would put the proposal for closure of the plantations to him in the context of their declining viability and the Government's unwillingness to provide capital for their development. He should not refer to US intentions, but Mr Todd could confirm there was still a possibility that a facility might be established on Diego Garcia. It was necessary to put the approach to Moulinie straight away because of pressure from the Mauritius Government about those Ilois already there. The FCO told the Washington Embassy that even if there were no US proposal for Diego Garcia, *(6/858)(R):

"We would still wish to close down the copra plantations on Chagos:

- (a) on economic grounds because they cannot be kept going as a profitable concern without the investment of new capital, and
- (b) because we do not want a mini-colony whose inhabitants could, as time goes by, claim a right to remain in the BIOT by virtue of their citizenship of the UK and Colonies and who would have no right of entry to either Mauritius or the Seychelles when the latter achieves independence ..."

268. Failure to get things moving now could also delay the eventual US timetable for construction of their facility on Diego Garcia, particularly as after production by Paul Moulinie of his plan, an independent expert would be needed to vet it and construction of houses on Agalega could still take between nine and twelve months, and it was desired to avoid a two-stage resettlement process.

269. On 24th March 1970, the BIOT Administrator wrote to the FCO PIOD referring to a visit which one of the partners of Moulinie & Co had paid to him. He said that it seemed that Agalega had been struck by two cyclones and had had a bad season. Production had almost stopped. It would take two to three years to come back to full production. This was seen as having an adverse effect on resettlement plans because of the reduced need for labour and the reduced availability of money for investment. It was still, however, proposed to proceed with a request to Mr Moulinie to provide a development plan for Agalega, (6/860).

270. The United States agreed to Mr Moulinie being informed of the UK Government's intention to close the Chagos copra plantations and to him being asked to produce a development plan for Agalega to absorb as many as possible of the Chagos contract labourers and the Ilois already in Mauritius, (6/861). The declining viability of the plantations could be stressed and the fact of pressure from the Mauritius Government on resettlement help for those already in Mauritius could be alluded to. He was to be asked to stop recruiting Seychellois contract labourers and not to renew existing contracts with them.

271. Contingency press guidance, *(6/874)(ND), was prepared by the FCO in case there was a leak about the Government's intentions to close the copra plantations in Chagos. It was to be said, if necessary, that they had been run down to the point at which it was uneconomic to continue their operation, that the people living on BIOT were contract labourers, engaged to work on the copra plantations, that the Government owned all the land and that the labourers owned no property or fixed assets and that except for some fishing, perhaps, and the meteorological station, the copra plantations were the sole means of livelihood for those resident on Chagos. They were all either from Mauritius or the Seychelles and possessed no land or houses on the island. The plantations were owned by the British Government and managed on their behalf. It was sent to the UK embassy in Washington.

272. In May 1970, the internal minutes in BIOT dealt with how Mr Paul Moulinie had reacted to being told by Mr Todd, the BIOT Administrator, that the operation of the plantations was not economically viable and the Chagos were to be closed down, (19/837(a)). Moulinie had agreed that there was no economic justification for continuing the operation unless capital could be made available, and that it would be best to close the plantations. Problems arose, however, when the question of Agalega was raised. The cyclones meant that the labour force now was sufficient to enable them to continue their planting programme and would be sufficient for the normal running of the plantation until some eight years hence when the newly planted areas were in production. The Commissioner therefore had to tell the FCO that the creation of extra jobs on Agalega would not happen as had been expected. It would not be popular to replace the Seychellois with

Ilois because of problems which that would create in the Seychelles, and Moulinie regarded the Seychellois as the better workers. There would be local opposition to any resettlement on Seychelles or ex-Seychelles BIOT islands. The question originally raised by Robert Newton in his report in 1964 that islanders might be given plots of land and settled on them, which had hitherto been thought of as too generous for land-less labourers, was mooted again as a starting point for negotiations on resettlement with the Mauritius Government. The only other alternative seemed to be, according to the Commissioner "to send the Ilois back to Mauritius and to give them compensation in cash, either in a lump or in instalments. Either is unlikely to prove very satisfactory to the Ilois in the long run. They lack the knowledge, tradition and education to make satisfactory small-holders and any form of cash grant is likely to be soon spent". The upshot of the meeting was conveyed to the PIOD.

273. In his letter to FCO, Mr Todd described a lump sum and instalments as probably leading to the establishment of a class of permanent pensioners. As Mr Todd feared, the question of defence facilities had been buried so deep in the conversation that Moulinie & Co came back with an offer to lease the Chagos group from BIOT. This was considered by Moulinie & Co as likely to resolve for some time the problem of the Ilois on the islands. The plantations, according to Moulinie & Co accounts, had been run at a loss of Rs 80,000 in the year 1970-1971, (6/871).

274. This proposal from Moulinie required the Administrator of BIOT on the FCO's advice to have a further meeting with him, at which he laid special emphasis on the Government's firm intention to close the plantations and to permit no other economic activity. Moulinie provided Mr Todd with what he described as a long lecture on the economic opportunity which the UK Government was foregoing, (6/879). Moulinie also took what was described as a gloomy but realistic view of the future of the Ilois if they were returned to Mauritius. No labour was being recruited in July 1970 for the Chagos. He awaited the reaction on the islands to that development with interest. As the autumn wore on, Moulinie affirmed his willingness to provide resettlement for some Ilois on Agalega for some Ilois, if he received financial assistance. Detailed proposals and a five year plan were sought, but it was thought to be a good idea. There was a debate about a one off settlement versus a continuing subsidy. But it would not solve the whole problem.

275. Through the summer of 1970, the UK Mission to the UN was being advised to maintain the same line, if questions arose, which it had done so far as to the competence of the Committee of 24 to deal with Chagos. So far, the interest had been confined to the Seychelles context. The Mission had always tried "*to give the impression that there were no inhabitants as such in BIOT*", though that was known not to be strictly true of Chagos, but any concession on that would mean Article 73 applied, *(6/883)(ND). The people of BIOT, it was suggested to the UK Mission, were to be described as or implied to be "*transients*", contract labourers from Mauritius or the Seychelles; the less said, the better, *(6/928)(P). But this suggestion was rebuffed by the FCO as inapplicable to those who had been on Chagos for 3 generations but the wording, without "*transient*" still contrived that impression, *(6/930)(P).

276. On 16th June 1970, the High Commissioner in Mauritius reported to the Foreign and Commonwealth Office on political developments in Mauritius. Unemployment and under-employment were stimulating what was described as "*much extra parliamentary pressure on Government. Indeed, this is virtually the only topic of public debate in the political or economic sphere. Government hyper-sensitive on subject and are desperately seeking labour-intensive palliatives*". It pointed out that the resettlement of Mauritian contract labourers in Mauritius would inevitably be acutely embarrassing even with compensation. Its political line towards the presence of other powers in the Indian Ocean was changing as well, and special consideration would be needed to maintain its original generally favourable approach to the UK/US proposals, (6/885).

277. The FCO began to criticise the BIOT Administration for the poor performance of the plantations which had produced a net deficit in the three years to March 1971 of £62,300. Mr Todd explained that the deficit was due to capital expenditure occurring in 1968 when buildings and stores owned by Chagos Agalega Company Limited were purchased. The relationship between the Administrator and Moulinie & Co had to be

put upon a legal and business-like basis according to the FCO, (10/94).

278. In July 1970, the Treasury took a further interest in the progress of resettlement proposals and it was concerned, in particular, with four simple questions: (6/886)

- a. when would the evacuation take place;
- b. where would the inhabitants go;
- c. how much would it cost; and
- d. what would be the total cost of the operation and would it exceed the £10,000,000 authorised by the Ministers for the BIOT proposal.

279. Although the BIOT Administrator sought to prevent the recruitment of additional labour, it was accepted that it would be impracticable to stop all recruitment and therefore one year contracts should be provided so that staff could run the plantations at the minimum acceptable levels, (19/886(b)). Discussions between the FCO and the US about the difficulties of resettling the contract labourers examined the arguments for delaying the resettlement until after Congressional approval had been given to Diego Garcia. The problems with Agalega were identified, as well as the problems in Mauritius with the very high unemployment which it experienced. The question was raised as to whether discussions with the Mauritians should be deferred until after approval of the proposal by the US Congress, (6/887).

280. In the latter part of July 1970, Mr Todd, with a representative of Moulinie & Co, visited the Chagos islands, (6/910). Little had changed since his previous visit. The population on Diego Garcia was 324, of which 108 were Ilois, made up of 30 men, 25 women and 53 children. All but one of the rest were Seychellois. On Peros Banhos, 111 of the total population of 202 were Ilois, and again the vast majority of the rest were Seychellois. Of the Ilois, 25 were men, 25 women and 61 were children. On Salomon, 124 of the 154 population were Ilois, 21 men, 25 women and 78 children; again, the vast majority of the remainder were Seychellois. The number of Ilois were therefore reported as almost static. Two Ilois families left for leave in Mauritius and were to be re-employed on Agalega. The stock of rations on the islands was adequate and the shops were quite well stocked. A substantial increase in production was expected in 1971.

281. The UN Committee of 24 considered the detachment of the three islands from the Seychelles to make up BIOT in July 1970, (6/890). Various criticisms were made by the USSR, Sierre Leone and Ecuador. Tanzania expressed its hostility to the establishment of BIOT. But the criticisms were directed to the Seychelles part rather than to Mauritius. The UK representative said that there was no military activity on the three islands detached from the Seychelles, which was a point he made in response to what he regarded as a suggestion by the USSR that there were military activities of some kind which were impeding the independence of the Seychelles. But the USSR, with other countries, criticised the creation of BIOT for its detachment of islands from the Seychelles with the aim of establishing military bases in conjunction with the USA.

282. By the end of July, the FCO was writing to the High Commissioner in Mauritius explaining that the US "wished to avoid publicity if that is still possible", (6/905).

283. The High Commissioner in Mauritius advised the FCO in August to make a financial settlement for

those people already in Mauritius who had already lost their jobs in BIOT; money might cover the cost of the provision of housing and social services by the Government of Mauritius, *(6/908)(P). In November, *(6/933)(PR), recognising severe unemployment in Mauritius, he said that "*we have been stalling now for far too long over the request for assistance in the resettlement of Mauritians who arrived from BIOT in March 1968*", untrained and destitute, and as the result of events in BIOT over which Mauritius had no control. This problem should be dealt with before the far graver problem arose, of the rehabilitation of a further 450 Ilois, a UK responsibility. The existing basis of compensation was inadequate; could they not stay in Chagos or go elsewhere?

284. In Parliament in November, Mr Dalyell renewed his interest in BIOT. Stimulated by an article in the Observer, lines to follow in answer to possible questions were prepared. The advice to Ministers in answering questions *(6/936)(P) was that it was undesirable for it to become general knowledge that some inhabitants had lived in Diego Garcia for at least two generations and could be regarded as "*belongers*". The whole object was to avoid admitting that. It was proposed to say that it might have been the custom for the last generation or two that certain families had been contract workers, *(6/938 and 9)(P). Discussions continued on the precise drafting and the average contract time. So far as I am aware, I have not seen any actual answer.

285. The US Congress approved an "*austere naval communications centre*" for Diego Garcia in December 1970, (6/943). The Governor of the Seychelles thought by December 1970 that temporary resettlement on Peros Banhos and Salomon was the "*only practicable solution*"; the Ilois should receive special treatment. Mr Todd should be able to give them some indications of the ultimate resettlement proposals; resettlement in Agalega would take at least a year, but the Ilois on east Diego Garcia could be moved to Peros Banhos and Salomon, *(6/948)(P). This would meet the US proposal for evacuations by March and July 1971; construction was expected to start in March 1971 and to last for 3 years.

286. The FCO thought it appropriate to consider the timing of the enactment of the Immigration Ordinance with as little publicity as possible and so informed the BIOT Commissioner, *(6/953)(ND).

287. In a further telegram of 11th January 1971, the BIOT Commissioner referred to the Immigration Ordinance and said that it would have to be published in the BIOT Gazette "*which has only very limited circulation both here and overseas*". The publicity would be minimal. He sought the approval of the FCO for the enactment of the Ordinance, (7/979).

288. There was a report in "*Le Mauricien*" of the expulsion without compensation of 300 Ilois from Diego Garcia. A Mauritian lawyer-politician, Guy Ollivry, was reported as saying that they had returned to Mauritius since independence and seemed still to have British nationality, (6/955). But the FCO legal adviser noted that Ilois had dual nationality; some young Ilois might lose their Mauritian nationality if they did not renounce UK nationality by the age of 22. He counselled the wisdom of keeping quiet if possible about that dual nationality, *(6/956)(P).

289. On the preceding day, the High Commissioner in Mauritius had sent to the FCO a newspaper report in "*Le Mauricien*", the national newspaper in Mauritius, of 300 Ilois said to have been expelled from Diego Garcia without compensation and to be in some difficulty as a result. This, he said, was the first reaction to the news of the US base, (6/954). M Guy Ollivry, a lawyer and deputy for the Rodrigues constituency, had said that the Ilois had come back to Mauritius since independence "*and it would seem therefore that they still have British nationality*". (6/955) It was thought that more would be heard of the problem of these people, given, in particular, M Ollivry's interest in it.

290. By 23rd December 1970, the FCO was sending a telegram to the BIOT Commissioner dealing with how

best to meet the US request for total evacuation of Diego Garcia by July 1971. The FCO recognised the difficulties, but said "we must try our utmost to [meet this timing]". He recognised that some Ilois had reached the age of 21 since Mauritian independence and had not renounced their Mauritian nationality which meant that might have to be forfeit because they failed to renounce their UK nationality. This would be an additional embarrassment if the Mauritius Government "*tumbled to dual citizenship of Ilois*", *(6/957)(P). There were no new thoughts as to resettlement. The same options as had already been discussed were repeated, but the only difference now was that the shortness of time would be the key factor. It was likely that resettlement in Peros Banhos would have to apply on a staged basis to at least some of the Diego Garcia Ilois. The Government of Mauritius had given no indication that it would not regard Mauritius as the natural home for the resettlement of Ilois, but it was worth considering a variety of options. These included the use of the outer islands of the Seychelles, staged resettlement on Peros Banhos and Salomon and the resettlement of some on Agalega. There was a need to have further information as to costs of termination of contracts, resettlement compensation and the implications of a staged resettlement on Peros Banhos for the displaced Seychellois labourers. The Commissioner said that there was no objection to a two-stage move. The Ilois could be relocated on Peros Banhos and Salomon.

291. A letter from Mr Todd to the FCO of 13th January 1971 confirmed that he had been told by Moulinie & Co that the normal contract had been for a two year period for Chagos rather than a specific named island, (7/983). He further explained what he called the "*migratory habits*" of the Ilois. This was that, according to Mr Moulinie, up to 1967 when direct links with Mauritius ceased and only a few families had gone to Mauritius via Seychelles and a few had taken new contracts, Ilois would do two to five years on the islands and then take advantage of their free passage to Mauritius staying there for a period which depended on how long their money and welcome from their families lasted, but normally returning after an absence of between three months and one year. Often Ilois women would go to Mauritius to give birth and be away for between three and six months.

292. An inter-departmental meeting took place on 15th January 1971 concerning resettlement arrangements in the light of the visit which had been paid by US officers to the Seychelles, (7/985). The upshot was a general expectation that Peros Banhos and Salomon could be gradually cleared by normal wastage as contracts expired, provided there was scope for gradual absorption on Agalega. Although this was thought to be perhaps over-optimistic, few snags were expected.

293. There was to be a Commonwealth Prime Minister's conference in January 1971 and a briefing paper dealing with BIOT was prepared for it, *(6/960)(P). It continued to advise that reference to dual nationality should be avoided and that the position of the 100 families already in Mauritius should be dealt with by saying that action had been delayed pending the opening of general discussions on resettlement. The US intended to use only Service personnel and if it was asked whether Diego Garcia was inhabited, they should say that "*a small number of labourers from Seychelles and Mauritius work on the plantations*". *Their contracts would be terminated and they would be returned*".

294. In January 1971, in preparation for discussions between the Mauritius Government and the UK Government on resettlement compensation, the High Commissioner in Mauritius urged the FCO that compensation should be generous. He urged that the UK Government furnish aid and technical assistance to cover the cost of repatriation and rehabilitation (housing and resettlement), both of the Ilois in Chagos and of the Ilois in Mauritius under a scheme "*which is designed to benefit the Island's economy as a whole*" taking account of economic and sociological difficulties. A pilot project was suggested which would amount to a cost of £750 per family exclusive of housing. However, it was thought necessary that an outside expert in resettlement schemes should visit Mauritius and the Ilois to enable him to be familiar with their skills and background and come up with a comprehensive scheme "*designed to reintegrate them economically and socially into the pattern of life here*". The High Commissioner also said that the Mauritius Government might feel that the UK had "*got away with the Ilois here and must not be allowed to get away with any more*". He said that if they were no longer wanted in a British possession and were to be cast out in "*this inhuman*

fashion", the Mauritius Government attitude might be that they had to find some other British possession to take them. The Governor of the Seychelles did not think that there was a danger of extra compensation being claimed for the Seychelles but publicity for extra compensation for the Ilois could trigger such a claim and so publicity was best minimised until after resettlement. Differential treatment could be explained by the high unemployment in Mauritius, *(7/980).

295. On 13th January 1971, *(7/984)(ND), the High Commissioner in Mauritius wrote to the PIOD of the FCO pointing out that the resettlement of Ilois in Mauritius had not been discussed with the Prime Minister of Mauritius since 1965, notwithstanding anxious enquiries which they had received in relation to Ilois from BIOT arriving in Mauritius some years before. The High Commissioner said that when the Prime Minister of Mauritius was approached on the question of the resettlement of more Ilois, it would "*come to him as an unpleasant shock*". He had not expected a further 450 Ilois from Diego Garcia. The Commissioner said:

"Naturally, I shall not suggest to him that some of these have also UK nationality; this, as you say, would make for increased difficulties if the Mauritians realised that some were also of UK nationality. However, I suppose it is always possible that they may spot this point, in which case, presumably, we shall have to come clean".

296. By the end of January 1971, the FCO made a submission to Ministers on resettlement, *(7-1004)(ND). The US were seeking evacuation of Diego Garcia by July, if possible, because of their security arrangements. The submission to Ministers dated 26th January 1971 by civil servants in the FCO AIOD said that the time had come to implement arrangements agreed in principle by the previous Administration by which the population of the Chagos Archipelago should be resettled, partly in Seychelles and partly, subject to negotiations with Mauritius Government, in Mauritius. The submission pointed out that it had been known since 1965 that if a defence facility were established, the contract copra workers would have to be resettled elsewhere. But it continued:

"It is desirable moreover, to arrange for the total evacuation from the Chagos Archipelago of the present population, who are essentially migrant workers. If BIOT is to fulfil the defence purposes for which it was created, there should be no permanent or even semi-permanent population, in respect of which we might in time incur, under Chapter XI of the UN Charter, a variety of obligations including the 'sacred trust ... to develop self-Government'."

297. The submission said that there were about 829 in the Chagos Archipelago, (7/1004), of whom 359 lived on Diego Garcia and the remainder on the two other inhabited island groups. Of this total, 386 were dual citizens of the UK and Colonies and of Mauritius but these, the Ilois, were unaware of their dual nationality, nor were the Mauritius Government aware of it. There were 35 citizens of Mauritius and 408 citizens of the UK and Colonies from Seychelles. The submission referred to the Mauritius Government spokesman's answer in the Legislative Assembly in December 1965, given with the approval of the Colonial Office that the British Government had undertaken to meet the full cost of the resettlement of Mauritians at present living in the Chagos Archipelago. It had always been assumed that the resettlement would be in Mauritius and it was thought that that was the understanding of the Mauritius Government as well. However, because of the already high level of unemployment, it was to be expected that negotiations would be difficult. There were already about 100 families in Mauritius whose contracts to work in Diego Garcia had not been renewed and in respect of whom the Mauritius Government had been asking how the UK Government intended to fulfil its obligations. An answer to that had been delayed pending a decision about resettlement as a whole. Once again, the suggestion that some might be resettled in Agalega raised its head, but it was recognised that there would have to be some inhabitants moved temporarily to Peros Banhos and Salomon. This interim measure was seen to have no practical difficulties. There was a strong objection to Mauritians being settled in the Seychelles. It was pointed out that of the £10,000,000 originally allocated for the establishment of BIOT, all the money had virtually been spent on payments to Mauritius, the building of the Seychelles Airport

and the purchase of the islands, and accordingly there was virtually nothing which could be used for resettlement purposes and that additional funds would be required for it. It was recognised that the evacuation and resettlement of several hundred people would attract unfavourable publicity from critics of the UK's Indian Ocean strategy. The submission had the concurrence of the relevant departments within the FCO, the Overseas Development Agency and the Ministry of Defence. The Treasury had concurred on understanding that any expenditure over £10,000,000 would be met from within existing provisions and "*subject also to the conditions that resettlement costs shall be kept as low as possible and shall be charged in the first instance to the unspent balance of the sum of £10,000,000*".

298. The problem of who was to pay for what was to be of some significance. On 26th January 1971, the FCO Finance Department, concerned that it might be the FCO which had to find any extra money, was already pointing out in relation to the draft submission, that it had no more than a minimal sum of money available without facing very difficult problems, and expressed the view that the expenditure was defence or aid expenditure, (7/991). Mr Kershaw, one of the Ministers at the time, was concerned about criticism in Parliament arising from the removal of people, but is recorded as having the view that provided the arrangements for treating the inhabitants, and particularly the Mauritian Ilois, were "*demonstrably fair*", it should not be too difficult to rebut criticism, (7/1001).

299. On 8th February 1971, *(7/1008)(ND), the AIOD pointed out that there was no real prospect of employment in BIOT, that it was a non-starter to suppose that any Mauritian Ilois might be settled in Seychelles, that there were very few opportunities in Agalega and there would be difficulties in persuading the Seychellois and Mr Moulinie to employ Ilois there rather than Seychellois. He pointed out that all interested departments, FCO, MoD and ODA "*are on record with well-argued reasons why the costs [of resettlement] should not fall to their particular Vote. The Treasury have agreed to arbitrate, but have not yet given their ruling. There may be dust and heat before departmental liability is finally determined, but there is not, I think, any disposition to argue against HMG's having to pay up*". (7/1010). The Secretary of State noted on this memorandum "I smell trouble here, and we should make a definite plan now. I don't see why the Americans shouldn't allow some to stay. Could they not be useful?" (7/1013, 016). Mr Kershaw had also concluded, according to a minute of 11th February 1971, *(7/1017)(ND), that more definite plans were needed and that it was necessary to know exactly what was to be done for the inhabitants before a firm decision to move them could be taken. The Americans should be asked to examine employing some on Diego Garcia. So far as the people on Diego Garcia were concerned, the Secretary of State advised the BIOT Commissioner that when Mr Todd visited Diego Garcia with the Americans later in January, he should tell the contract workers that construction work was to begin in March on Diego Garcia and it would therefore be necessary to stop work on the copra plantations. "*The British Government are considering what can be done to help the people concerned. A first step is likely to be a move from west to east side of Diego Garcia*". It would be important at that stage to avoid any distinction being made between what was said to Seychellois and what was said to the Mauritians including the Ilois, (7/975). If necessary, and if he were asked questions about Mauritians going to Mauritius, he would have to say that he could not speak for the Government of Mauritius, but that all workers were to be assured that he will see that, insofar as it was in his power, the best possible arrangements were to be made for their future. That was to include Ilois.

300. The Secretary of State followed this up with a further telegram on 8th January 1971 seeking to know, as soon as possible, the proposed timetable for the movement of all the inhabitants off Diego Garcia to meet the July deadline, whether the contracts specified that the labourers worked anywhere in Chagos or on a particular atoll, and whether there would be adequate housing and other welfare facilities when the inhabitants moved within Diego Garcia and later to Peros Banhos and Salomon, (7/977). The use of civilian labour should be avoided as much as possible. The timetable was set; Seychellois would be moved in March or April 1971, and the balance in July. The majority of contracts specified Chagos, but some the particular atoll. The BIOT Commissioner also told the FCO that, so far as costs were concerned, a detailed estimate was not yet possible, but there seemed no danger of a claim for extra compensation for Seychellois, but if a more generous scheme for resettling the Ilois were publicised, it might spark off claims from them and negotiations with Mauritius should avoid such publicity at this stage, (7/980). It was hoped that publicity

would be minimised until final resettlement. Once again, there was confirmation from the Americans that there would be no employment of Ilois as local labour.

301. Mr Watt, of the AIOD of the FCO, prepared a note of 12th February 1971, *(7/1018)(ND), on resettlement in which he referred back to his earlier memos of 8th February 1971 and 26th January 1971. He traced the background to the resettlement proposals. He dealt with the arguments for and against the permanent resettlement of Peros Banhos and Salomon; the advantages of keeping labour on the islands which were unlikely to be wanted by the Americans against the problems that a permanent population would attract for UN purposes. He referred to the problems about consulting the Mauritius Government until after the US Congress had approved the proposals because of the Americans' desire to avoid publicity. He reiterated the view which he had expressed that the Seychelles Government should be asked if it were willing to take at least some Mauritian Ilois as a further service, which strengthened the relations between the Seychelles and the UK. But his final conclusion was that the best course would be to go ahead with negotiations with Mauritius "*and be prepared to pay the price*", an approach to the Chief Minister of the Seychelles notwithstanding.

302. On 16th February 1971, Mr Aust of the FCO Legal Advisers Department, noted the potential implications for BIOT of the proposed new British Nationality and Immigration Legislation, *(7/1020)(ND). BIOT, he said, is "*of course, in law, a colony, although we do not accept that it has any indigenous population ... Thus to create a citizenship for BIOT is politically quite out of the question*". He said that there would be no objection to depriving dual nationals of their British nationality but that there would still be some who would have lost or might yet lose their citizenship of Mauritius: those who attained the age of 21 after Mauritius independence and did not renounce their UK citizenship within twelve months of becoming 21. A separate category of citizenship would be needed to cover such persons or they would become stateless. They would lose their Mauritian citizenship unless they had been absent from Mauritius during the twelve months after becoming 21, (this exception would appear to cover Ilois).

303. On 17th February 1971, Mr Todd, the BIOT Administrator, wrote to the FCO describing the visit which he paid to Chagos at the end of January. He went with a US reconnaissance party and Mr Paul Moulinie. He said: (7/1021)

"On 24th January, I told all the inhabitants that we intended to close the island in July but, that for some time, we would be continuing to run Peros Banhos and Salomon and that we would send as many people as possible from Diego Garcia to those two islands. This drew no comment from the Seychellois but a few of the Ilois asked whether they could return to Mauritius instead, and receive some compensation for leaving their 'own country'. I played this one into touch by saying that our intention was to cause as little disruption of their lives as possible and that due to the difficulties of communications with Mauritius, it would not be possible to arrange a return there until towards the middle of the year... ."

304. He estimated that in July on Diego Garcia there would be 36 Ilois families, made up of 36 men, 37 women and 64 children, together with 1 Mauritian and 45 Seychellois families. He said that the Ilois families should go to Peros Banhos and Salomon. It should be possible to absorb them with some reorganisation, without premature termination of the Seychellois contracts on those islands, (7/1021). He said:

"It would, I consider, be fair to pay each of the Ilois families who are moved to Peros Banhos Rs 500 to compensate them for the move which will involve them in some expense as they will have to leave some of the fittings which they own in their own houses."

305. This would add a further £1,350 to the cost of the move. He then dealt with the problem of those Ilois

who would prefer to go to Mauritius or Agalega. Mr Moulinie had agreed to transfer those who wished to go to Agalega, but the Administrator said that it would be embarrassing if those who wished to go to Mauritius arrived there with at most "*their Rs 500 disturbance payments in their pockets*". The only solution would be to try to encourage them to go to Peros Banhos and Salomon, confining the offer of Rs 500 only to those who did so would help, but it would also be helpful to say that the move to Peros Banhos and Salomon was only temporary "*whilst we worked out a detailed scheme to provide adequately for their future*". Mr Moulinie was said to remain hesitant about plans for Agalega.

306. On 19th February 1971, Mr Watt prepared a further memo internally in the FCO, *(7/1029)(ND). This confirmed that there would be no local labour employed on Diego Garcia, but that, for the foreseeable future, labourers moved to the other islands in Chagos, where facilities were adequate, would not be disturbed. A draft Parliamentary answer that the population was a small number of contract labourers from the Seychelles and Mauritius attracted the comment: "*is 400 a small number?*", but the Minister, Mr Kershaw, noted that it would do from a Parliamentary point of view. The Foreign Secretary said that he could see no reason why some should not stay. It appeared that there might be some signs that the Chief Minister of the Seychelles might be prepared to take some Ilois Mauritians, but a good deal more information and assessment would be necessary. He repeated his recommendation that the Mauritius Government should be approached in order to establish how far they would be prepared to help. Mr Moulinie should be encouraged to take 50 families on Agalega, a Mauritius island. Although it appeared from discussions with Sir James Mancham, the then Chief Minister of Seychelles, that there might be some possibility in certain circumstances of Mauritian Ilois being resettled in the Seychelles, there were considerable doubts as to whether Mr Rene and his party would agree to that without causing trouble. Ministers were anxious to resettle the Chagos inhabitants without major upset with the Mauritius Government or at the UN, *(7/1033)(ND).

307. On 26th February 1971, *(7/1042)(ND), the FCO and the High Commission in Mauritius discussed who would be an appropriate person to advise on the resettlement programme in Mauritius for the Ilois, negotiations with the Mauritius Government and negotiations with Moulinie & Co over Agalega. For the latter, it was said that HMG had to make a concrete offer of assistance to Moulinie which had now been approved by Ministers. The discussions with the Mauritius Government were to cover the 100 families already "*on the beach*" in Mauritius and "*say 60*" Mauritian families from Chagos. The High Commissioner's views were noted; he placed great importance "*on offering immediately, in principle, both a free grant and technical assistance to help set up a proper viable economic scheme ... to benefit the Mauritius economy as a whole*".

308. Mr Aust, meanwhile, was concerned with nationality and the undertakings offered in 1965 by the UK Government to the Mauritius Government. In a memo of 26th February 1971, *(7/1036)(P), internally within the FCO, he said that he thought that undue emphasis had been placed on dual nationality and the line should be taken that that was irrelevant to the question of resettlement. He discussed the effect of the Mauritius Independence Act 1968 pointing out that it preserved dual citizenship of Mauritius and UK and Colonies for those inhabitants of Chagos who, or whose fathers or fathers' fathers, were born in Chagos. Persons born in Chagos before BIOT was created were regarded as having been born in Mauritius and therefore automatically entitled to Mauritian citizenship on independence, unless they were persons whose fathers had been born in Seychelles. The dual citizenship had not been removed because, said Mr Aust, it would have been contrary to the principles of our Nationality Law to deprive persons born in a colony of their UK citizenship. Mr Aust then turned to the term "*Ilois*". He said the term had no relevance to nationality and had been used as a convenient, though thoroughly misleading term, to cover dual nationals when, in fact, "*the Ilois population is made up of citizens of the UK and Colonies, dual nationals and mono-Mauritian citizens, with origins in Seychelles or Mauritius*". There was no advantage in using the term in negotiations and it could be to the disadvantage of the United Kingdom to do so because it indicated that the inhabitants of Chagos "*have a close, if not closer, connection with Chagos than with mainland Mauritius*". He thought that fears of referring to dual nationals in Chagos, lest the Mauritius Government used such knowledge to their advantage at the UN or in negotiations, were exaggerated and that instead of concentrating on nationality or the meaning of "*Ilois*", the Government should concentrate upon the undertakings given to Mauritius in 1965. He said that it was clear from the undertakings in 1965 that the resettlement of persons in

Mauritius of Mauritian origin was contemplated. There was no suggestion that it would not apply to Mauritians who were also United Kingdom citizens because, in 1965, all the inhabitants of Chagos were UK citizens since there was no Mauritian citizenship until 1968. It was a necessary implication of the agreement to meet the full cost of resettlement that that placed an obligation on the Mauritius Government to permit resettlement in Mauritius. There would have been no need for such an undertaking if settlement elsewhere had been in contemplation. Mr Knight agreed with these comments, but added that if the question of nationality were raised by the Mauritius Government, the FCO line should be to: (7/1044)

"(i) Admit immediately to the existence of the dual nationals, and

(ii) Maintain that nationality has no bearing on the negotiation."

309. He also pointed out that there was still no decision from the Treasury as to who would bear the costs of resettlement if it took the BIOT budget over £10,000,000. In a further note, *(7/1046)(ND), Mr Knight said that it was not at present the UK Government's policy to advise the "*contract workers*" of their dual citizenship nor the Mauritius Government, but this policy "*of concealing this dual nationality*" might change in the coming months, but otherwise agreeing with the previous comments of Mr Aust on the effect of new nationality legislation.

310. On 12th March 1971, the FCO wrote to the High Commission in Mauritius saying that it had been accepted by Ministers that "*our best course is to resettle, as quickly as practicable, the entire population of the Chagos Archipelago*", notwithstanding that the Americans had recently confirmed that it was only Diego Garcia that was likely to be required for the foreseeable future, (7/1048). It was not considered appropriate to "*clear out Diego Garcia*" alone because the other islands might be required one day, the possibility that they might be required discouraged new investment, and "*third, we do not wish to be accountable to the United Nations for any permanent inhabitants of BIOT*". Thus, the move of Diego Garcians to Peros Banhos and Salomon was only a temporary measure, pending final resettlement. It was not thought that there would be any difficulty in re-absorbing Seychellois workers in the Seychelles, but resettlement of the remaining Mauritian/Ilois workers in Mauritius might cause difficulties there "*since these people have little aptitude for anything other than growing coconuts which doesn't happen in Mauritius; and may add to the already grave unemployment problem*". Hence, Ministers were anxious that "to the extent possible" resettlement of Mauritian or Ilois families on other coconut plantations in the Indian Ocean area should take place. Agalega was the only place identified and that for 50 families. The advice to the Commissioner described how negotiations might be tackled: an acceptance of the commitment to meet the full cost of resettlement of the Mauritians living in Chagos in 1965, which included therefore the 100 or so families who returned to Mauritius after 1965; a repatriation and rehabilitation scheme based upon expert advice would be necessary, but possible methods were yet to be considered in detail and the Commissioner could not commit the Government to any particular scheme or to any particular amount of money because no realistic figure had been put to the Treasury. The Treasury was insisting that all costs be kept "*as low as possible*". Mr Aust's views were to be used if dual nationality were raised, but it had to be assumed that the Mauritian authorities were aware of the dual nationality of some of those involved. Mr Watt of the FCO also sought to use an identified expert, then in the Seychelles, to examine the feasibility of the development of plantations in Agalega.

311. On 23rd March 1971, (7/1060), an FCO official wrote to the Treasury pointing out that Ministers had agreed to the proposals in the submission dated 26th January 1971 and that therefore arrangements were being put in hand to resettle as quickly as practicable the entire population of the Chagos Archipelago with Diego Garcia being cleared of its population by June. The High Commissioner was to approach the Mauritius Government but without authority to commit the UK Government to any expenditure, accepting the Treasury's conditions that total resettlement costs had to be kept as low as possible "*(but, consonant, of course, with equity and HMG's interests as defined by Ministers)*". The cost of preparing houses on Peros

Banhos and Salomon would be met from BIOT's annual account, £3,000 would be required in respect of Seychellois on Diego Garcia as compensation for premature termination, and £1,350 would be required for Mauritians being removed temporarily from Diego Garcia to the other islands. This was suggested "*both to avoid hardship to the individual families concerned, and because we consider there is a risk of endangering the success of the resettlement negotiations if a back-stage chorus of islanders were to come into being protesting loudly to Mauritian politicians that HMG were treating them callously and unfairly*". (Note from Mr Knight).

312. On 25th March 1971, the Governor of Seychelles and the BIOT Commissioner wrote to the FCO (Mr Scott) pointing out a number of matters relating to resettlement, *(7/1063)(P). First, he said that:

"It is important when dealing with the problem of the Ilois from Chagos to appreciate what type of people they are. They are extremely unsophisticated, illiterate, untrainable and unsuitable for any work other than the simplest labour tasks on a copra plantation. This is not altogether surprising as they have spent all their lives on remote islands."

313. The effect of that was that they would be limited to work on copra plantations on the Seychelles outer islands or similar agricultural work, but there was not yet any need to import low-grade labour. The Chief Minister of the Seychelles was extremely worried at the political implications of any Ilois coming to the Seychelles because he would be in real difficulties over completely unskilled foreign labour going there when there was no need for it; Ilois would be regarded as Mauritians who were particularly unpopular there. By now, it was clear that there was no prospect of any Mauritian Ilois being settled on the Seychelles. The alternative of Farquhar island, also within BIOT, was raised as a possible place for 100 extra men. Agalega was also referred to, but there would be problems in the Seychelles if the Seychellois working there were displaced in large numbers at any one time. It might be better, he thought, to allow the Ilois to remain on the plantations on Peros Banhos and the Salomon islands, even though the copra plantations on those two islands would not be, by themselves, viable. Around this time there were thought to be 103 Mauritian families in Chagos who would need to be resettled, whether in Agalega or Mauritius.

314. On 29th March 1971, the High Commissioner and the Prime Minister of Mauritius met to discuss resettlement. In a telegram, (7/1057), the High Commissioner said that the Prime Minister of Mauritius had accepted the plans for rehabilitation for workers of Mauritian origin in Agalega and Mauritius, but wanted the possibility of local employment for Ilois on Diego Garcia to be pursued with the Americans, recognised the possibility of resettlement in Agalega provided that the families themselves were happy to live there, considered that a British expert should examine seriously the possibility of coconut plantations in Mauritius because that would be a new development in the economy, and said "*that we must treat these displaced persons with the greatest of consideration and that he counted on HMG to do their best to cushion the impact of this inevitably unpopular move*".

315. By the end of March, however, one issue appeared to have been settled by the Treasury ruling that the ODA budget should be the source of funds to meet the cost of resettlement in excess of the £10,000,000 originally provided for BIOT from defence votes. The ODA, however, notwithstanding that ruling wished to continue to debate the point. Mr Watt complained about this, saying "*but we have all along been concerned to resettle these people humanely and, if at all possible, usefully*", (7/1072). The possibility of coconut plantations being created on Mauritius was now to be examined and so the ODA was the obvious source of resettlement funds. On 2nd April 1971, Mr Watt prepared a note for the discussions with the Prime Minister of Mauritius when he visited the UK at the end of April, (7/1074). He said that he had asked the BIOT Commissioner to look at the possibility of the coconut expert going to Mauritius to look at a plantation scheme "*though at this stage, we cannot be committed to it or indeed to employ Mr Windsor. It may be that the scheme is agriculturally or economically unsound, but we shall have to keep open minds on this ...*". He pointed out that even if the ODA were to lose its Ministerial appeal against the Treasury ruling, it would

continue to be reluctant to do more than the minimum and the Treasury would be reluctant to see more money spent.

316. Once again, the FCO proposed to approach the Americans to see if there any prospects of their employing local labour but without much hope. Indeed, it transpired shortly that the Americans themselves had told the Prime Minister of Mauritius that there was no prospect of their doing so. The FCO were clear that this avenue was closed and that their several approaches to the Americans had yielded no change of heart and that had to be explained to the Prime Minister.

317. On Diego Garcia meanwhile, construction work had commenced shortly after the landing of US construction battalions. A report from a RN Captain visiting the island noted the rapid build-up of men and machines and the prodigious progress which they were making. He said of the plantation manager that he was sad that he and his workers had received no offers of compensation and reported his comments that the older islanders were also apparently sad at going and those born on Diego Garcia were apprehensive.

318. By mid-April, the FCO was pressing the ODA for the offer to the Mauritius Government of an expert in coconut plantations, unless this was a waste of time, and of a resettlement expert. However, there was no real prospect of any expert visiting Agalega and reporting on the development proposals of Mr. Moulinie before even mid-May.

319. On 16th April 1971, the BIOT Immigration Ordinance was enacted. It was published in the BIOT Gazette three days later.

320. The FCO responded to the BIOT Commissioner's note of 25th March pointing out that even though the Seychelles was recognised to afford no solution, Ministerial instructions had been to explore every option and to keep open as many options as possible including a gradual replacement of Seychellois on Agalega with Ilois, *(7/1082)(P). One option which was not attractive was resettlement on other BIOT islands, because of the inadvisability of having a permanent population in which the UN could take an interest. But this did not mean that the workers should be hurried out before "*satisfactory arrangements*" had been made to resettle them.

321. The Prime Minister of Mauritius had a further meeting with the High Commissioner in April but, apart from expressing concern over the need for more British defence support in Mauritius, seemed to have no great concern about the repatriation of Ilois to Mauritius, although he had been emphasising his desire to slow that down so as to reduce the impact on the Mauritius economy as much as possible. The High Commissioner advised the FCO to "*play this affair slowly*" with a view to avoiding any further repatriations. But there had been no response to the UK Government's request for discussions about resettlement schemes, (7/1088).

322. On 27th April 1971, Mr Watt, to whom the Mauritius High Commissioner had reported on his meeting with the Prime Minister, received a letter from the ODA in which the discouraging views of its agricultural adviser on possible coconut plantations in Mauritius were reported. This had been the idea of the Mauritius Prime Minister. A particular problem was the long period of time before any new plantations would yield any return. However, it was prepared in principle to finance a study, (7/1090).

323. On 30th April 1971, the Treasury was asked to agree to the payment of Rs500 to each of the 37 Ilois families who would leave Diego Garcia for Peros Banhos and Salomon. This would total £1350. Their chickens could not be transferred because of disease, their vegetables, which were recognised to form part of their basic diet, would have to be left and replanted, and certain fixtures and fittings in the houses would

have to be left behind and replaced. The Treasury agreed a week or so later.

324. At the beginning of May, the Secretary of State met the Prime Minister of Mauritius. He was briefed on what to say by FCO officials. The Brief, *(7/1093)(P), refers to the 55 families ,or some 170 people, whose contracts had been terminated in 1967 and who had returned to Mauritius where they seemed "*to be loafing at cost to Mauritius social services*" There were 103 families or just under 400 people still working in BIOT to be resettled, if possible elsewhere than Mauritius. Agalega was the best place and an expert in copra had produced an encouraging report; it appeared that he had yet to go there. A pig-breeding scheme on Mauritius was a possibility now that coconut plantations did not offer much hope. Officials of both governments should work together to pursue the various ideas with experts, "*with the aim of devising a comprehensive plan of resettlement acceptable to both Governments.*" The pig-breeding scheme appears to have been the idea of a Mauritius Minister, Mr Ringadoo.

325. Mr Ringadoo told a High Commission official that the Ministry of Labour had tried unsuccessfully to interest the Ilois on Mauritius in tea and fibre production; they were a continuing liability on social services and outdoor relief. Other ideas for a resettlement scheme were canvassed with him, (7/1097).

326. Meanwhile Mr Moulinie was continuing to make optimistic noises about the prospects of production on Agalega and with costs and compensation covered, he could provide work for 50 families in the short term and 200 families in the long term. This was something which it was thought he should discuss with Mr Ringadoo. An early indication of the views of Mr Windsor, the copra expert who had by now visited Agalega, was favourable. The attitude of the Prime Minister of Mauritius, in discussion with an FCO Under-Secretary, was that resettlement in Agalega was fine provided that the workers wanted to go there, for there could be no question of forcing them to go there. The difficulty of such plantations in Mauritius was pointed out.

327. Mr Windsor concluded in his Report that at least another 100 Ilois families could be absorbed on Agalega if there were increased mechanisation, new housing and improved medical and educational facilities. The BIOT Commissioner thought that the next step should be a development plan based on a more detailed report from Mr Windsor, followed by negotiations over what financial assistance the UK Government should give. Internal FCO minutes assessed the costs of resettling 160 families, including 55 who were "on the beach" in Mauritius, would be of the order of £210,000 plus various other items. This was seen by at least some in the FCO as the way to proceed, persuading Mr Moulinie to accept 150 or so Ilois families, but if they were unwilling to move, local arrangements would have to be made for them.

328. On 4th June 1971, the US Commanders on Diego Garcia and the Seychelles asked Mr Todd for "*dates for soonest removal*" of the copra workers as within the month, construction would have displaced several more families and greatly limited copra production, (19/1127(a)). But as the Commissioner pointed out, the timing of the sailings of the "*Nordvaer*" and the Moulinie organisation did not permit a strict military timetable to be met.

329. By June, Mr Moulinie seemed to be getting cold feet about the possible development of Agalega because he feared political instability in Mauritius and possible nationalisation of the plantations, although the FCO were trying to persuade the ODA to back the scheme with development aid, and it appeared to have support from the Prime Minister of Mauritius. The FCO pressed the BIOT Commissioner to pursue Mr Moulinie over this although emphasising to him that the scheme had to be as economical as possible and, as he was expecting to profit ultimately from it, he would have to bear some of the costs himself. The Mauritian Minister of Labour was thought to be in favour of dealing in that way with those still on Chagos as well as with those variously described in the FCO material as "*beachcombing*" or "*on the beach*" in Mauritius. He was reported as thinking that the latter would be anxious to go to Agalega, *(7/1134)(ND).

330. In mid-June and early July, the FCO, at the suggestion of the Mauritian Minister of Labour, also asked MoD if it could give some casual work on a naval base on Mauritius to those Ilois already in Mauritius but nothing came of it because the Royal Navy did not employ the civilian labourers who worked there.

331. Although a draft brief of 13th July, from FCO to MoD for a visit to Washington, expressed the hope that by then all the contract labourers had been removed from Diego Garcia, "as the first stage in our scheme to cease all economic activity in the Chagos Archipelago", matters had not proceeded so smoothly, (7/1138).

The evacuation of Diego Garcia

332. The "Nordvaer", which was to carry out the evacuation of Diego Garcia, broke down en route and needed temporary repair from the Americans there. There appear to have been just over 100 Ilois, some 36 or 37 families on Diego Garcia at this time, and some 200 or so Seychellois. On about 25th and 26th July, passengers were loaded for Peros Banhos and Salomon, but after they had been discharged there, the ship had to return to Mahe for repair without completing the evacuation of Diego Garcia. There was some anxiety among the remaining "*natives*", according to a telegram from the Island Commander to the BIOT Administrator, about the limited food supply on the island. The "Nordvaer" had also arrived with a veterinary team and crates in order to catch and transfer to the Seychelles five wild horses from among those on the island, at the request of the Department of Agriculture in Mahe. The team had been warned that shipboard accommodation for them would be rugged. Mr Marcel Moulinie on Diego Garcia expostulated in a telegram to the BIOT Administrator: "*With all the deck passengers I have for Mahe how on earth can we carry horses?*" Although, as he said, the removal of the horses would have to await the arrival of a ship bound for Mahe, the passengers on that eventual voyage were to compare unfavourably their accommodation with that provided to the horses and "*rugged*" would not have done it justice.

333. On 24th August, Moulinie & Co agreed to send the "*Isle of Farquhar*" to Diego Garcia to complete the evacuation of the people and a later trip of the "Nordvaer", when repaired, would remove the remaining copra, supplies and equipment. The food situation was described in a telegram from the US Island Commander to the BIOT Administrator of 28th August, in response to a request for information and, if necessary, help, (19/1162(a)). Food support by way of flour and milk had been made and would continue, there was for the while sufficient rice and salt, cooking was not an insuperable problem but there was a shortage of fresh fruit and vegetables.

334. The various shipping problems meant that evacuation was not now expected to be complete until the end of September. Mr Moulinie's position in relation to taking families to Agalega vacillated; - he thought that taking 25 families would be possible but he then became concerned lest that became a long term commitment of his without the backing of a firm development plan approved by the UK Government. He wanted firm proposals to be put forward by the UK for his board to consider rather than for him as a share holder to have to put them forward. The BIOT Administrator told him that he would begin work on a scheme with their co-operation for the expansion of copra production to absorb 150 families with a UK financial contribution.

335. On 30th September 1971, the "Nordvaer" arrived in Mahe with the last of those to be evacuated from Diego Garcia. The Seychelles United People's Party publication, "*The People*", (7/1199), hostile to the then local administration, described the background under the heading "*BIOT throws out Islands Natives*". It referred to the length of time for which some of those had lived or had families living on the Chagos. It anticipated a UK/US defence requirement for the other Chagos islands. It gave the 1968 population figures for both the Chagos and for the western islands of BIOT which were formerly part of the Seychelles, Aldabra (42), Farquhar (50), and Desroches (120). It pointed out that several of them felt deceived and tricked because in 1968, Mr Moulinie in the presence of Mr Todd and various UK and US personnel, had promised them that when they left the islands for good they would receive some compensation by way of disturbance

pay, but they had received nothing of what they had anticipated they would receive in Mahe and Mr Moulinie had denied making any such promise. The Ilois were deposited on the jetty and had to be put up in the prison with prison food. The Seychellois were simply left to their own devices and many slept homeless for a while. The majority of the Ilois left for Mauritius on the "Mauritius" on 8th October arriving on 14th November. But a number had been left behind, 4 adults and 7 children. They were to receive medical attention before the adults departed for Agalega. But the adults who left on the "Mauritius" had rejected the offer of employment on Agalega because they felt so bad about having been deceived by Mr Moulinie over compensation. This was to be taken up with the BIOT Commissioner. The article concludes by referring to the UN's condemnation of the base and of the breach of the territorial integrity of the Seychelles involved in the creation of BIOT. The SPUP sent a copy of this article to the UN Committee of 24 in March 1972; it received some press publicity in the Seychelles.

336. Michel Vencatessen was among those who landed in Mahe and left for Mauritius later on 8th October. He was issued with an identity document in the Seychelles on 5th October 1971 in a form for those who were unable to obtain a passport. It was issued to him for the purposes of his journey to Port Louis, Mauritius. It describes him as "*British Subject Citizen of UK & Colonies*". (7/1170).

337. There was indeed an inquiry about compensation made to the BIOT Commissioner on 5th October 1971 by a Seychellois lawyer on behalf of an Ilois family; he believed that compensation would be paid to those who went to Mauritius. He described the family as having been evicted from their homeland. The Commissioner's manuscript note asks how to reply—"we must be very careful what we say", *(19/1170a). Three other families also wrote in early October in a similar vein stressing that they were all born on the Chagos, had their roots there, had nothing on the Seychelles and were in desperate straits. One of them is a Claimant in these proceedings.

338. On 2nd November the Seychellois lawyer wrote again, pressing for a reply and saying that he was now acting for the parents of 35 children. Eventually, on 11th November the BIOT Administrator replied saying that the Seychellois were contract workers who since their return had been paid what was due to them under their two year contracts, (19/1213(a)). A similar answer was given to the SPUP in December though he left open the possibility of considering individual cases which might be referred to him, (19/1243(a)).

339. The SPUP, which was to become the ruling party in a single party state following the "*Liberation Day*" coup, also wrote enquiring as to the availability of compensation. There were rumours that it was in contact with the "*Mouvement Militant Mauricien*" led by Mr Paul Berenger, which the Seychelles Governor passed on to the FCO. At the same time, he said that the prison accommodation had been previously unused, that Mr Moulinie had paid for the food, he was dismissive of discomforts on the voyage and thought that the Ilois had failed to act on promises made to them by Mr Moulinie as to future work on Agalega.

340. Mr Moulinie asked the BIOT Administrator what he should say to those who were to embark for Mauritius from Mahe about compensation: should he say that they were to receive nothing, or should he negotiate something and if so should a single woman labourer get anything?

341. Through October, the inconclusive discussions between the BIOT Administrator and Mr Moulinie continued. From the perspective of Mr Todd writing to the FCO, Mr Moulinie was going round in circles without any real advance in weeks on the production of a development plan by anybody or any firm commitment to anything from anybody, (7/1171). But what would not be part of any such plan was any indefinite commitment to subsidise any losses which might be made; at some point he would have to take the risk.

342. At the same time, Mr Todd was expressing concern to the FCO that if more workers left Peros Banhos

and Salomon for Agalega to replace the diminishing numbers of Seychellois workers there, the plantations on those two islands would become unviable. There had also been 8 Ilois and Mauritians from Diego Garcia who wanted to return to Mauritius as their contracts had expired and they could not be prevented from doing so.

343. By 20th October 1971, the press and politicians in Mauritius were raising the problems of the distressed Ilois arriving in Mauritius. This was reported on by the High Commission to the FCO and to the Governor of the Seychelles. "Le Militant", the newspaper of the MMM, reported a conversation between Mr Berenger and a Mauritian lawyer, Guy Ollivry and journalists deplored the treatment of Mauritians "*torn from their country of origin*". The SPUP from the Seychelles had warned him of what was happening to these people in the Seychelles. They had no compensation despite the Rs500 which had been promised by Mr Moulinie, or resettlement benefit; there were 300 families in utter distress and there were several Ilois in distress in Seychelles. He would campaign for compensation for them and against the nuclearisation of the Indian Ocean. It was up to the British to assist these latest victims of imperialism. The High Commissioner commented that Mr Berenger was now in a far stronger position to make trouble.

344. The Governor of the Seychelles told the FCO, *(7/1181)(R), in response to the SPUP article, that those who had come to Mahe on the "Nordvaer" on 30th September were 8 employees and their families whose contracts had expired and who could not be prevented from returning to Mauritius where arrangements were in hand for them to receive their contractual entitlements. No one would be compulsorily repatriated to Mauritius but instead would be offered employment on Peros Banhos, Salomon or Agalega. They had been accommodated in a modern unused prison building completely separate from the main prison, because no other accommodation was available. They were told by Mr Moulinie that he would give them first consideration for jobs on Agalega if they applied after leave in Mauritius. In this telegram, it was not said that they ought to have made such applications before leaving Mahe.

345. The Secretary of State said that it should be emphasised that the great majority of Ilois had not gone to Mauritius but to other Chagos islands and that only 8 families had gone to Mauritius and that that was at their own request, (7/1185). Rs 500 disturbance was being paid to those who had gone to the other Chagos islands. This was the line which the High Commissioner said he would advise the Prime Minister of Mauritius to take in response to an anticipated Parliamentary Question, (7/1186). In this telegram to the FCO, repeated to the Governor of the Seychelles, dated 22nd October, the High Commissioner records the Prime Minister of Mauritius telling him of his understanding that many of those in Seychelles awaiting onward shipment to Mauritius were UK citizens. The concern was that with pressure from Mr Berenger, and high local unemployment, it would be "*embarrassing*" if UK citizens were shipped to Mauritius and it would be very much better if the Seychelles could be persuaded to accept them. He continued "*I cannot understand how these people have suddenly been evacuated from Chagos without any prior notification to Mauritius Government if it is seriously intended to ship them here*". He thought that something might have gone grievously wrong with the original scheme, (7/1186).

346. The Prime Minister did as advised and answered the Parliamentary Question along the lines suggested, adding that he had constantly been assured by the UK Government of its readiness to co-operate in resettling all Mauritians evacuated from Chagos. Resettlement plans taking account of their wishes and interests were being designed which would also cover those already in Mauritius.

347. On 28th October 1971, Mr Berenger and Mr Ollivry had a meeting with the High Commissioner who, reporting to the FCO, said that their real concern was for the Mauritians who had been destitute since their arrival in 1968 and subsequently, living in conditions of extreme poverty most of whom were now having to fend for themselves without social security. They had described the Mauritian authorities as apathetic but, in his telegram, he commented that that was largely due to their reliance on the UK Government meeting a commitment the extent of which had not been specified. Although he had told his visitors that the matter was being examined urgently, he urged that some form of interim assistance be given without delay pending a

firm decision about their future. Mr Ollivry had been told by the Prime Minister of Mauritius that they were probably UK Citizens but the High Commissioner said that that question should not be allowed to cloud the issue of resettlement. He urged that resettlement in Agalega be pursued with some concrete offer of help.

348. The Secretary of State was unhappy about this meeting and did not want further such contact lest it enable those politicians to make claims, however falsely, that they had been more effective in looking after the interests of the Ilois than the Mauritian Government. He hoped that a resettlement plan based on Agalega would soon be at hand. The High Commissioner re-iterated the need for a clear statement as to how the UK Government saw its obligations in order to advance any meaningful resettlement scheme. He said that the Mauritius Government had suggested £300,000 as a conservative estimate covering disturbance, resettlement and reimbursement of public assistance payments. He said that the present estimate by the Mauritians was that there were 250 families or about 1,000 people who had arrived in Mauritius from Chagos since 1965 to whom the resettlement obligation applied. He was given permission to provide to the Government, but not to other politicians, the FCO advice from Mr Watt dated 12th March and sent to the BIOT Commissioner which dealt with citizenship, because he had been asked to be more explicit about this as it was seen as an important point in Mauritius, (7/1036).

349. On 29th October 1971, a meeting was held between the High Commissioner and Mauritian civil servants about resettlement, following up meetings in May. The Prime Minister's Permanent Secretary referred to 474 families whose heads had registered with the Employment Service since their arrival in Mauritius. A co-operative pig breeding scheme was discussed and thought to be appropriate. It was thought by a senior Mauritius civil servant that those living and working on Chagos had acquired British nationality. The High Commissioner would investigate employment potential in Agalega and other neighbouring islands, and severance pay; the Mauritians would examine the length of service of those displaced since 1965, the sums paid to them by way of outdoor relief, the use of Crown land for resettlement. The inhabitants would be asked whether they wished to go to Agalega or Mauritius. The High Commissioner was not content with the notes of the meeting on severance pay because Mauritian law might be inappropriate.

350. The population figures then being discussed showed the decline in Chagos since 1964 when there were 638. In 1968, there were 434 and by 1970 that had reduced to 343 of whom just under half were adults. In January 1971, the FCO told the Deputy High Commissioner that there were 103 families on the Chagos, *(7/1212)(D). These were described as "*Mauritian contract workers*".

351. The advice given to the High Commissioner as to the significance of the nationality issue related to the way in which he might contest any argument from the Mauritius Government about its responsibility for resettlement or for better terms rather any denial of dual nationality. After all until 1968, Mauritians and Ilois were Citizens of the UK and Colonies and they had a close connection with Mauritius; the issue should be seen as a technicality in this context, *(7/1213)(P). The Mauritius Government was known to be assuming that the resettlement agreement with the UK covered those who had returned to Mauritius since 1965, *(7/1207)(ND).

352. On 31st October, the "*Isle of Farquhar*" arrived in Mahe having completed the evacuation of Diego Garcia; it brought only one Ilois woman and child in addition to a few Seychellois. When reporting this to the FCO, the Governor of the Seychelles said that there was an advantage in resettling Ilois on Agalega rather paying a lump sum because they would all take the lump sum and ex-employees from the Seychelles would want the same. The idea of a lump sum had been mooted as a solution to the problem of the Mauritians "*on the beach*". Others too within the FCO thought it important that they "*be put to work*".

353. I turn to the oral evidence given about these events. The first time Mrs Talate said she was told she would have to leave Diego Garcia was six months before they left. They were all called to the Administration Office for a meeting at which Paul Moulinie came with an Englishman (Mr Todd). There had been no

Americans there. He told them what the Englishman was saying: the Mauritians had sold Diego Garcia and they would have to leave, including her husband who had been born on the Seychelles. They had to leave because Paul Moulinie said there would be no food. However, before their meeting there had been no food, soap, milk, medicine, nurses or teachers and everybody had left and that was why she left. They had to go to Peros Banhos and Salomon and those who wanted to could go to Mauritius, but they had to go to Mauritius if they did not go to Peros Banhos or Salomon. They could not stay in Diego Garcia and they had no right to stay. Paul Moulinie said the British Government had given the Mauritius Government money not to remove people straight away and to give them time to build houses.

354. She said they thought they were only going to have fish balls, that the dogs were going to be poisoned and that they were going to give all the islanders poisoned fish balls. She said that the Administrator and the people in charge had said that. She said then that nobody had said that but she could see it because they had killed her dog.

355. She said that at the meeting Marie Louina had a shock and just fell, and that she did not see her on the islands again. In her witness statement she said that she died of what must have been a heart attack, upon hearing that they had to leave, and died on the spot. They rushed to her, but it was too late. She gave no such evidence in chief or in cross-examination, nor did anyone else nor was there any reference to it in any contemporaneous documents.

356. She said that before they left there was a jet plane, but she was not sure about whether there were helicopters. Later, she said she was not sure about whether there were jets. She said orally she remembered fighter jets only because her parents used to tell her about them, since she was a child and scared. She said they saw planes and children went out to see them, but they were scared because there was no food. She then said that nobody said anything about jets, they just hid everything. She thought planes were dangerous. She thought there was danger because there was no food, everyone had gone and there were no drugs for when she was hurt. In her witness statement, it was written that she remembered the British sending a helicopter, an aeroplane to fly very low to scare them. It was quite plain at this stage in her evidence that she was very confused and that she had no idea that it said in her statement that there had been any risk or threat of their being killed or bombed.

357. Later she said that the dogs were given poison and taken to the calorifer, a sort of oven which was part of the copra production, where they were killed, and she said that they were going to kill the islanders in the same way. She said that there were many English and United States people living there, but that she did not speak to any of them because she did not speak English. She said there were British officers there but she did not know if they were soldiers. There were American and English living at Norwa, on Diego Garcia, but she did not know who was who. There were big boats there and she went to see the films played by the English, although she could not speak it. Her witness statement draws no distinction between those English speakers to whom she said she spoke and what she may have understood from others. Her witness statement, but not her oral evidence, said that the British officers had decided that those who lived on Diego Garcia would move to Peros Banhos and Salomon and they were threatened by the British officers and told that they had no choice but to leave.

358. She was forced to go to Peros Banhos on the "Nordvaer" boarding in the afternoon, but leaving at night in case anybody wanted to escape. She said how painful it was to leave, seeing some of the dogs had escaped, including her own, following the boat as it left Diego Garcia. But it is clear that by "forced" she meant that she had no choice rather than was physically compelled to board. This suggestion of threat, as with other allegations, was not maintained or justified by the evidence which she gave.

359. Mr Canter, a former RN Lieutenant Commander, gave unchallenged evidence that he arrived in Diego Garcia in November 1971 after all the plantation workers had left; there were no RN Officers on his arrival

and he was the first RN Officer to be stationed there permanently. The only people were US construction battalions, a small US Naval Communications Unit and a few civilians. There was a temporary airstrip used only by C130 Hercules transport aircraft, but no helicopters. C130s would take off flying low on full throttle over the main settlement at Pointe de l'Este.

360. When Mrs Talate went to Peros Banhos, she lived in Peros Town in a house that was unfurnished because she had had to leave behind the things which she owned on Diego Garcia. When she went to Peros Banhos she thought she was going there forever because Peros Banhos had not been sold.

361. Jeanette Alexis said that her father had come home one day and told her mother that the island was closing down because the Americans were moving in to build a base. She realised, as time went by, that it was a military base and she saw military planes. She said they were scared because there had not been many planes on the island and they were noisy and she and her sisters used to hide from them. She felt that they had been invaded by foreigners. There were no British Officers living there. As the "*Isle of Farquhar*" sailed with them from Diego Garcia they could remember seeing their dogs running up and down on the quayside barking, although other people's dogs had been caught and burnt in the calorifer.

362. Her mother, Mrs Mein, said the islands were literally closed. The first thing she heard was that the English were giving the island to the Americans. Mr Todd and Marcel Moulinie came to a meeting to which everyone was invited. Marcel Moulinie translated when the meeting was over, giving an explanation of what had happened, then Paul Moulinie gave an explanation. She had cried with her husband because they were very sorry and did not want to leave, but there was no possibility of staying on Diego Garcia. There were English and Americans doing work in various parts of Diego Garcia and they destroyed everything there: they had been unable to go there but they were taken there before they left. She said that no proper arrangements had been made for them to leave; the Americans said "*Do you want your fate to be the same as the dogs who are left behind, who were killed?*" She agreed, however, that she could not speak English. Marcel Moulinie said nothing much but he repeated the story about the dogs, but, she said, he was speaking in English. She freed her animals before she left. They could not take their possessions and everything including her furniture remained in the house. She took just three mattresses to Peros Banhos and her ten children. Paul Moulinie had promised them compensation; Mr Todd had made promises of compensation with cash and land and that he would follow on after them, but they got nothing. She said she never spoke to the English or Americans but her husband spoke a little English.

363. Mrs Piron's evidence was much the same; she chose the Seychelles because the other islands were not for her, a Diego Garcian.

364. Marcel Moulinie said that at first they had understood that the whole of Chagos would close. Later, the British Government said that Diego Garcia would close but they did not know about Peros Banhos or Salomon.

365. He pleaded with people to go to Peros Banhos and Salomon when Diego Garcia closed. Mr Todd and his uncle had been to Salomon and Peros Banhos to see if appropriate accommodation was available and that he had been told that Rs 500 was to be paid to those who went to Peros Banhos. They would have had to be closed in the absence of a capital injection in the islands. He had known that when the islands closed most of the islanders would go to Mauritius.

366. No physical force had been used on the evacuations but he said that the islanders had been told that there was no more food and that there would be nothing left on the island. He said the islanders had not wanted to leave the islands because it was their island, rather than because of conditions on the boat. He thought that about 25 families had gone to Peros Banhos and Salomon, or even 30. He said Salomon

islanders were very reluctant to go to Peros Banhos and vice versa and the same for interchange with Diego Garcia. For some of the younger ones it was an excitement, but they were not able to take all that they possessed. The employees had an option as to where they went. They were told that at a meeting and that the only way of getting on or remaining on the island was being employed by the company. He would not have said to Jeanette Alexis that threats of force had been used to make people leave the islands, he made no personal promise of compensation, but he would have said that if they had to move there would have been some compensation.

367. The Americans arrived in two groups at the end of 1969 and November 1970, by which stage Diego Garcia had effectively been divided into two parts; from the arrival of the Americans in 1969 a number of ships came to take the Ilois away, according to his Bancoult Judicial Review statement. This involved a number of trips by the "Mauritius", the "Nordvaer" and the "Isle of Farquar". He had not encouraged the Ilois to leave but thought that many had become frightened by the Americans and felt they had no option but to go. The island population began to dwindle between 1968 and 1970.

368. The 1977 statement said that Michel Vencatessen was a bit shaken at news of the evacuation and talked about his forefathers, but accepted that if he were told he had to go by the company he would have to go. He was instructed to tell them that they had to leave and did so. No-one argued that he had no right to move them.

369. He got authority for what he said from his uncle. "*You do not just kick the whole population off without compensation*". This was early in 1966, when the Ilois could come and see him individually. They discussed compensation among themselves but he did not know what they were going to get.

370. In his Judicial Review statement, Marcel Moulinie said that the declining population by 1970 led to over 800 dogs on the east side of Diego Garcia where the coconuts were; the Governor ordered these strays to be destroyed which he tried to manage by using first of all US sharpshooters and then poisoning, finally gassing them in the calorifer. He hated doing this but he could understand that if these actions caused the Ilois to fear some form of violence. He had never said that any Ilois would be put in the calorifer.

The evacuation of Peros Banhos

371. Reverting to the documents, on 12th November, the anxieties which had previously been expressed by Mr Moulinie about the long term obligations to Ilois with which he might be landed on Agalega had hardened and he no longer wished to proceed jointly with the UK Government. The future of the copra was uncertain. He would prefer to recruit in the normal way, the Governor of the Seychelles told the FCO, (7/1220). He had also expressed doubt about continuing to run Peros Banhos and Salomon as the labour force was inadequate and "*on economic grounds early closing is desirable*". The Governor saw an increase in the labour force there as the answer but recognised that Agalega was no longer an option for resettlement except for a gradual absorption. The Ilois could not be settled there as copra small holders. Compensation could be paid. This telegram led the FCO to comment that it had put a ceiling on resettlement costs of £750,000 in case of this sort of eventuality.

372. The FCO still wished to pursue an arrangement with Mr Moulinie and asked the Commissioner of BIOT to find out why he had changed his mind but it recognised that he was unlikely to change it again. He was to be asked about the numbers which he might take on a commercial basis, encouraged perhaps by a loan from the UK Government. It scotched the idea that resettlement on Peros Banhos and Salomon was a practicable answer by reference to earlier correspondence. Mr Moulinie confirmed his concerns adding that such labourers would feel themselves to be in a special position, but he remained willing to take Ilois from Chagos provided they returned to Mauritius first for recruitment in the normal way. He told the BIOT

Commissioner on 25th November that he had tried to recruit 25 couples from Mauritius but had only obtained 18 people. He told Mr Todd in a letter of 30th November that the present management agreement was unworkable and that most people on the islands were just waiting to leave.

373. The figure of 1,000 people to whom the resettlement obligation applied caused some alarm as it was larger than expected. The FCO said, *(7/1225)(P), that in 1964 there had been 658 Ilois in Chagos, of whom 55 with their families had arrived on Mauritius in 1967, and a further 140 individuals including children had arrived in 1968. There were now 332 persons on Peros Banhos and Salomon, Diego Garcia having been completely evacuated. The difficulty of knowing which way the Mauritius Government wished to deal with resettlement was also thought to impede any immediate action: did it want a scheme which might create internal problems by placing Ilois in a distinctly better position than other Mauritians, or would it rather receive money by way of reimbursement of public assistance whereby the Ilois would effect their own resettlement? It recognised the danger of appearing to go round in circles.

374. The High Commissioner reported to the FCO on 17th November that the Prime Minister of Mauritius had suggested a lump sum payment to those "*on the beach*" so as to be "*shot of the problem*" as he was said to have put it. But this was not a resettlement scheme and would simply attract more Ilois to return aggravating the unemployment problem, as the High Commissioner saw it. The Prime Minister thought that this form of payment had been agreed but there was some uncertainty as to the basis upon which that might be the case. The FCO was to investigate this, the total cost and the true position of the Mauritius Government towards such payments as discharging the UK's obligations to Mauritius according to a telegram of 2nd December from the Secretary of State to the High Commissioner, (7/1242).

375. The difficulties of knowing how many Ilois there were pre-BIOT and at various later dates was referred to in a note by the BIOT Administrator for the FCO. The High Commissioner waited for a definitive list of Ilois who had returned to Mauritius from the Mauritius Government. But he was now of the view that a lump sum payment was the easiest means of dealing with the problem because of the difficulties in the way of a resettlement scheme. However, the Governor of the Seychelles pointed out that a lump sum scheme would have repercussions there and would not compensate the Ilois for the jobs which they would be losing. That could only be done by resettlement on Agalega. He thought that political pressure could enhance their demands considerably and that they were "*completely unsophisticated but capable of taking opportunity to drive a hard bargain and liable to respond to irresponsible leadership*",(7/1234). Differentiating compensation based on age would lead to interminable wrangling and would not normally be expected by the Ilois. He estimated that allowing for free rations and accommodation, wages for two people would be about Rs 2,000 pa although the FCO thought that the correct figure was Rs 1,400 for labourers, apparently excluding any allowance for free housing. The Governor of Seychelles persisted in his concerns about a lump sum payment to the Ilois; it would cost about £25,000 to provide two years' wages and benefits to all those now on Chagos.

376. On 10th December 1971, the Office of the Prime Minister of Mauritius wrote to the High Commissioner saying that the total number of persons who had come to Mauritius from Chagos since 1965 was 1,151, made up of 97 couples, 241 singles and 716 children upon whom some Rs 2,140,000 had been spent on public assistance. The High Commissioner forwarded to the FCO from the Mauritius Government a list of those who, following their arrival from Chagos after 1965, had registered with the Mauritius (Ministry of Labour); it showed the names of those who had also received public assistance. They had come from all three Chagos island groups. Some are Claimants. (It is by no means clear how many were Ilois rather than Mauritian contract workers, perhaps of longstanding in the Chagos.)

377. The FCO appeared as at mid-December to have accepted that pig-breeding would not provide an acceptable resettlement scheme, and pursued a lump sum payment scheme instead but it had decided that there was to be no liability to the Seychellois. The Governor of the Seychelles repeated his dissent; any such payment would be seen as a redundancy payment rather than as a resettlement payment and so would be

said by the SPUP to be applicable also in the Seychelles.

378. 1972 revealed the first signs of stirrings within the Ilois on Mauritius. Mr Christian Ramdass of Roche Bois, Port Louis sent a typed letter in English, dated 17th January 1972 to the US Ambassador to Mauritius purporting to be on behalf of all the inhabitants of Diego Garcia. He complained that they had been forcibly asked to settle in Mauritius, "*thus leaving behind all our properties and wealths acquired through years of hard labours*", (8/1283). It expressed astonishment that compensation had been proposed in the form of pig rearing and asked instead for cash. Others had taken their jobs when they had recovered from the illnesses which had brought them to Mauritius in the first place. They had been deprived of their rights and asked for justice and fair play. He sought compensation for those who had left Chagos before 1965.

379. On 1st February 1972, the High Commission reported to the FCO that the Prime Minister of Mauritius had received a request from Mr Moulinie for transport for 130 adults and 240 children from Peros Banhos and Salomon to Mauritius. The FCO recognised that it had little choice but to concur if the Mauritius Government did, but thought that this would cause great embarrassment as no compensation had yet been agreed for those already there. The Seychelles Governor reported to the FCO that Mr Moulinie would like to see the islands closed as they were no longer profitable to him on the present basis; the Governor would, however, discourage their staggered departure on the "Nordvaer"; those islands would not be evacuated until the compensation issue had been settled. The Mauritius Prime Minister agreed this approach.

380. The resettlement proposals received a rebuff at the hands of the Mauritius Ministerial Committee on Resettlement. Its report of 17th February rejected the payment of Rs 3,000 for a single adult and Rs 4,000 for a couple as inadequate. It had examined the issues and concluded that the 300 families should be adequately rehoused on two housing estates at 8 houses to the acre with space for a vegetable garden and communal amenities. 250 heads of households were unemployed (86) or only in casual employment, which included dock labour, (134), apart from those who were too old to work. Only 43 were in permanent jobs but these included very poorly paid domestic service. A pig-breeding scheme was recommended. Rabbits could be bred around the houses. It was assumed that 130 more families remained to be resettled from Chagos. The total estimate for the resettlement was Rs 8,560,000 or about £642,000. For the purposes of this report, 286 people were interviewed covering 986 individuals altogether, with 44 households which could not be traced.

381. On 18th February 1972, the Mauritius Cabinet approved a scheme which the High Commissioner urged the FCO to accept. Two housing estates comprising 330 houses would be built, a pig-breeding co-operative would be established nearby with grants and loans, and a further grant would be made for vegetable growing and rabbit breeding on individual plots of land. There was confidence, following the Government survey in which these possibilities had been canvassed, that most of the 296 families would wish to participate and that those who did not would receive a cash grant instead. It was assumed that the 13%, as it was put, on Peros Banhos and Salomon would participate. If all 460 heads of families and unmarried men participated, the total cost including reimbursement of social security payments would amount to Rs 8,558,000 or £642,000. The Prime Minister of Mauritius urged acceptance of these proposals.

382. The ODA was unconvinced. It told the FCO that some of the costs were reasonable but it doubted whether all the Ilois would wish to be or could become pig-breeders, that the resettlement would only add to the over-population and unemployment on Mauritius and that if this were a potential aid project, it could not be supported in any circumstances. The FCO was more favourably inclined, even were a third housing estate necessary for those Ilois yet to come: it was still not an expensive scheme, would not have been jibbed at but for the over-expenditure on the Seychelles airport, and with the economic problems facing Mauritius, the Ilois had to be treated reasonably well so as to avoid the Mauritius Government turning round and telling the UK to look after its own people. The FCO thought that it had a weak hand and wanted to avoid cheese-paring. Shortly after, there was a suggestion from the Acting Prime Minister that the Ilois should go to England and that it was only due to some last minute and skilful drafting that they had become Mauritian

citizens. The High Commissioner did his best to "*enlighten him*". By the end of February, the ODA was raising further questions about the reality of the costs and return on the pig-breeding scheme although the High Commissioner remained of the view that the scheme was as realistic and viable as any likely to be produced by the Mauritians, for all its difficulties; at least it would not be seen as providing competition for jobs which would otherwise go to Mauritians in the way in which industrial training would. The Governor of the Seychelles thought that it would be acceptable to the Ilois still on Chagos once they realised that there was no lump sum available.

383. An FCO Brief on Ilois resettlement, *(8/1308)(ND), dated 1st March 1968 recapitulated the history: there had been no permanent population, as a matter of policy the plantations had been allowed to run down since 1965, the number of workers dropped steadily and workers had returned to Mauritius, the US had accepted that handling the Ilois was to govern subsequent planning. The subject was not one to raise.

384. The FCO response to the concerns of the ODA was that time was pressing, the scheme fulfilled the essential requirements of the kind of resettlement scheme which it had in mind and that it should not be judged as a normal development project. Such a resettlement scheme, acceptable to the Mauritius Government had been sought for a long time: it offered reasonable prospects of success in extremely difficult conditions, "*so that we can get ourselves off the hook on which we impaled ourselves, without too much thought, a good many years ago*", *(8/1317)(ND). Through March, the ODA criticised the agricultural aspects of the scheme from a practical point of view; its failure was certain, *(8/1319)(ND). Pig-breeding was too complex for the Ilois and the economics of production and marketing were unfavourable.

385. However, by 8th March 1972 the FCO was warning that the remaining plantations would be closed as soon as the Mauritius Government confirmed its willingness to receive the remaining Ilois, said by the BIOT Commissioner to number 65 men, 70 women and 197 children. He also advised that there had been only limited mixing on the islands between the Ilois and the Seychellois, who rarely spent more than two contractual periods there. He advised in April that 100 Seychellois had been returned to the Seychelles when Diego Garcia had been closed, and that 95 Mauritians (18 men, 18 women and 49 children) had gone to the other Chagos islands with a further 25 (7 men, 6 women and 12 children) choosing to return to Mauritius as their contracts had expired.

386. Notwithstanding the points raised by the ODA, the FCO pressed the Treasury to approve the resettlement package on 19th April 1972, (8/1330). It saw the obligation to Mauritius as being to meet the costs of a scheme rather than to evaluate or even devise a scheme. It accepted the force of the ODA points but said that it was not for it to become involved in the preparation or execution of the Mauritius Government scheme; it simply had to be sure that the obligation could not be discharged more cheaply. This scheme was almost certainly under-costed and if it were examined more closely, there would almost certainly be a substantial increase in cost. It did have the advantage that the scheme was devised and supported by the Mauritius Government and its adoption would enable an increasingly urgent problem to be disposed of quickly. (This emphasis may have reflected the need to fashion argument in such a way as to appeal to the recipient, and it succeeded.)

387. On 23rd June 1972, at a meeting in London between the Prime Minister of Mauritius and an FCO Minister, the UK Government offered £650,000 in full and final discharge of the obligation which it had undertaken at the Lancaster House meeting in September 1965 to meet the cost of resettlement. On 4th September, the Prime Minister wrote to the High Commissioner accepting that sum on that basis: it discharged the UK Government's obligation to meet the cost of resettlement of those displaced from the Chagos Archipelago since 8th November 1965, including those still there. The UK Government could make a public statement to that effect. He noted that this did not affect the verbal agreement giving to Mauritius "*sovereign rights relating to minerals, fishing, prospecting and other arrangements*". He asked for payment at earliest convenience. It appears to have been paid in the spring of 1973. When acknowledging receipt, the Prime Minister emphasised the rights which Mauritius retained over Chagos and which he said had been

agreed in 1965; this included the return of the islands to Mauritius without compensation, if the need for their use by Great Britain disappeared. The Governor of the Seychelles wanted no such public statement because SPUP could be expected to make a similar demand on behalf of Seychellois. However, on 7th November 1972, the Prime Minister made an announcement in the Legislative Assembly stating the sum to be paid by the UK Government and its broad purposes, including housing and land sufficient to enable the Ilois to earn a livelihood. He said that the nationality of those displaced was still being studied.

388. Returning to the events on the islands in May 1972, rations were due to be taken to Peros Banhos and Salomon at the end of May. The BIOT Administrator, having discussed matters with Mr Paul Moulinie, suggested to the FCO that labour should be concentrated on Peros Banhos because this would be the most economic way in which to use the available labour force which was too small to run the two islands efficiently. He advised that, on economic grounds, "*we should close Chagos as soon as possible*", (8/1332(a)). The island manager and Deputy BIOT Administrator Mr Prosper, told Mr Todd in June, *(19/1288a), that 90% of the labour force wanted those islands evacuated as soon as possible and that should be done, or the labour force increased.

389. On 17th June 1972, Mr Todd told the FCO that the "Nordvaer" had just arrived in Mahe from Chagos, carrying 53 Ilois (30 adults and 23 children) from Peros Banhos and Salomon who wished to go on leave to Mauritius and to return later to Chagos. He said that they had been told that "*we cannot guarantee return passages*", (8/1333). They would sail for Mauritius from Mahe in July. What he described as "*this latest exodus*" had reduced the labour force to 50 men, 50 women with 174 children. Nonetheless, those on Salomon had refused to move to Peros Banhos and the issue had not been pressed by the island manager. Mr Todd recognised that people could only be moved between islands with their willing co-operation. The Captain of the "Nordvaer" had told him that there was an air of general apathy on the islands and a general acceptance that the islands would close one day; it appeared increasingly difficult to get the workers to work. "*I am afraid that it all boils down to the old cry of the sooner we evacuate the islands the better.*"

390. On 3rd July 1972, the BIOT Administrator had to write to the FCO commenting on the trading losses shown in the plantation accounts. He thought that a fair estimate of the total cost for copra from Chagos delivered in Mahe would be £60 per ton which compared with a local cost of £35. A high production was necessary to overcome the freight cost in order to make a profit "*and circumstances have made this impossible*". Additionally, Mr Moulinie's costs were higher than £60 partly because of his inefficiency but also because "*We have been running the islands on a care and maintenance basis and have kept the labour force below an economic level due to the uncertainty on the islands' future*". (8/1337). He thought that they had done as well as could be expected out of the islands and deserved credit for keeping them going until the resettlement problems had been solved. His Commissioner thought that the islands would be evacuated by the end of the year. Mr Moulinie wrote to Mr Todd to say that compensation for displacement of Rs 500 per head had been paid to those on an attached list.

391. On 24th October 1972, the UK and US Governments exchanged Notes which contained the UK approval for the specific facility on Diego Garcia. One of its terms was that access to Diego Garcia, service and scientific personnel apart, should not be granted to any other person without prior governmental consultation.

392. The Office of the Prime Minister of Mauritius raised a question in November, shortly before the announcement of the resettlement agreement in the Legislative Assembly, seeking an answer to a forthcoming Question about nationality; it concerned the status of children born in Chagos of parents who had Mauritian citizenship. The High Commissioner told them and the FCO that they were Mauritian citizens by descent and citizens of the UK and Colonies by birth but would have to be dealt with as Mauritians for resettlement because their parents would be so dealt with, (8/1342).

393. On 6th November 1972, the BIOT Commissioner signalled to the FCO, *(8/1343)(ND), that the "Nordvaer" would arrive in Mahe the next day with 120 Ilois on board, 73 adults and 55 children. These were said to be contract expired workers who had exercised their right to leave Chagos, of whom 30 couples were expected to accept offers of work on Agalega. It arrived in Mauritius on 14th November. On 12th December 1972, the BIOT Commissioner told the FCO that Salomon had now been closed and that the labour force left on Peros Banhos was too small to run it. It would be advantageous to clear it when the "Nordvaer" made its voyage there in March with rations but some might chose to go back to Mauritius anyway as had happened previously. "*Moulinie & Co are also anxious to close the island as the fee they receive on the basis of copra very small.*" (8/1345). There was no objection from the High Commissioner to the arrival in Mauritius in March 1973 of 32 adults and 119 children, and the Secretary of State, who had discussed the matter with the BIOT Administrator on leave in London, agreed to the acceleration of the rundown of the Chagos plantations and to notifying the Mauritius Government of the arrival in April 1973 of the remaining Ilois.

394. However, in February 1973 came warning that Ilois who had returned to Mauritius more recently were finding life difficult; the resettlement scheme had not been put into operation. The High Commissioner asked if some could be diverted to Agalega; they should be warned that life in Mauritius would "*not be a bed of roses*". (8/1348). Mr Moulinie sought guidance as to what he should do and the BIOT Administrator told him that the FCO had given permission for Peros Banhos to be closed down; the means were up to him and some money for compensation payments was transferred to him.

395. The arrangements for the final evacuation were discussed between the FCO, BIOT and Mr Moulinie. The Ilois for Mauritius were to be taken on the first trip of the "Nordvaer" from Chagos arriving in Mauritius on 28th April and a second voyage would then remove those returning to the Seychelles. The Mauritian authorities were to be forewarned. Mr Moulinie thought there would be no difficulty with the inhabitants over this. He was still prepared to offer work to the majority of them on Agalega but they would still have to be recruited in Mauritius in the normal way.

396. The "Nordvaer" left Peros Banhos on about 27th April 1973 carrying 133 persons for Mauritius: 26 men, 27 women and 80 children according to the passenger list. It arrived a couple of days later and the High Commissioner informed the FCO that the 150 Ilois had at first refused to disembark saying that they had nowhere to go to, no money and no employment. But then homes were found for the 30 families and a small amount of money was provided by the Mauritian authorities. Mr Moulinie had told the BIOT Administrator that he had offered employment to all those on board on Agalega but that no one had wanted to go there. He would not commit himself to the next recruitment. On 26th May, the "Nordvaer" left Peros Banhos again, this time bound for the Seychelles with 8 men, 9 women and 30 children. The last Ilois were thus removed form the Chagos and the islands were closed. Mr Moulinie provided the BIOT Administrator with a list of the costs incurred forwarded to the FCO for inclusion in the next accounts.

397. Mrs Talate, who had gone from Diego Garcia to Peros Banhos described events. Salomon was the next island to close and no boat brought any food to Peros Banhos. When she left Peros Banhos, the plantations were still open but all closing. There was no food and no-one had the courage to work. The ship from Diego Garcia to Peros Banhos brought nothing. "*They told us to go, and said that if we didn't go the white people would leave and there would be no food and so what would we do.*" When asked whether any English person had told her to leave, she said that she did not see any English people there but the English had told Paul Moulinie that they had to go. Mr Prosper had told them they had to go a few months before they left.

398. She left Peros Banhos on the "Nordvaer". They were told they had to go. 150 people left on the boat from Peros Banhos and they were treated on the journey just like people she had seen in a film about slaves. They had no food and conditions were vile.

399. She had heard that someone had jumped into the sea. In her witness statement, she said that she

remembered in particular Christian Simon, a 28 year old, committing suicide in that way; he disappeared in front of their eyes. But in evidence in chief she only said that she had heard that someone had jumped into the sea, and they told her his name. Later she said that she did remember Christian Simon who had jumped into the water and had not been found. There is no evidence of such a person on the passenger list.

400. She remembered going to the Seychelles en route, but being kept on the boat rather than going to the prison; others had gone to the prison for accommodation. In her witness statement, she referred to there being horses on the voyage she was on, but in her oral evidence she denied that there had been horses on it.

401. Jeanette Alexis' father, Mr Mein, was in charge of Peros Banhos. There had been sufficient food when they got there and they stayed there for six months when her father said that Marcel Moulinie told them that they had to leave, because that island too was closing down and it was not safe for them to stay because they were too close to the base on Diego Garcia, and that they had heard that it might be bombed. This was a general fear amongst the population. Her mother said that she was told that the Americans did not want anyone in their area. They left Peros Banhos because they had to. The labourers had left bit by bit.

402. She described the terrible voyage when they left Peros Banhos on the "Nordvaer" with the horses. Because of her father's position, they had a less uncomfortable, but nonetheless cramped, journey. Her mother said she lost a baby on arrival in the Seychelles.

403. Mrs David said that she had to go to Peros Banhos in May 1969 for the birth of her third child and whilst she was there people arrived from Diego Garcia and told her that the island had been sold and that those who wanted to go to Mauritius could do so and those who wanted to work more in Chagos could go to Peros Banhos or Salomon. She appears from her witness statement to have remained on Peros Banhos from May 1969 until 1971. She described how Mr Prosper, the Deputy Administrator on Peros Banhos, had called a meeting at which he passed on what Mr D'Offay had told him which was that Peros Banhos would be closed and that the American base on Diego Garcia meant that there might be bombs and explosions and that it would not be safe. He said that they had a week to get ready to leave, but they had no time to prepare their possessions. If they were left behind, they would be abandoned there. Her clothes, her animals, pots and pans were left behind. Mr Prosper told them that when they got to Mauritius they would have a similar house, animals and compensation. They had travelled directly to Mauritius on the "Nordvaer"; in her witness statement, she refers to travelling via the Seychelles.

404. However, she had sworn a statement in the Bancoult Judicial Review, (12/46/4a), in which she said she had moved to Peros Banhos from Diego Garcia when she was seven. It appears that she was saying that a mistake had been made, but it was not clear which was the correct statement. She said that the move had not been an immediate one, but they had gone to Salomon first and then to Peros Banhos. Her most recent statement states that they were removed by the British officers from Salomon. But she said in oral evidence that they were removed from Peros Banhos. She agreed that she left Salomon not because British officers asked her to go, but because there were no medical facilities there. She also agreed she was not asked to leave Peros Banhos by British officers, but it was Mr Prosper who told them that the boat would come and take them away. When asked to explain the reference to British officers in her most recent statement, which she said had been translated to her in Creole and thumbed by her because it was true, she said that it was only now that she knew exactly what she signed.

405. She had been in Peros Banhos for may be a year or a year and a half before the meeting at which Mr Prosper spoke. She said at that meeting they were told that both Peros Banhos and Salomon were being sold, although previously she had said that the people had arrived from Salomon very shortly after she had arrived on Peros Banhos. She said they had no food, milk or drink, but only some rice and water and this state of affairs had lasted for quite a long time before they left Peros Banhos. She said that her husband had

gone to Mauritius before she arrived because he was ill. She agreed that he had been in Mauritius for about two years before she arrived there, and that it had been an error on her part just a bit earlier to say that he left Peros Banhos with her. She said "*I am just a bit forgetful. It's so long ago*".

Resettlement in Mauritius and the Seychelles

406. Although in April 1973, a Mauritian lawyer who described himself as acting for 280 Ilois (including some of the Claimants and witnesses) had written to the Mauritius Government seeking payment on an individual basis of the sums available for resettlement, the first significant public complaint about their circumstances arose over a year later when in October 1974, two representatives of the Ilois called at the High Commission and left a petition which was also sent to politicians, newspapers and two ambassadors. Mr Saminaden, Mr Fleury (also known as Michel Vencatessen) and Mr Christian Ramdass organised it. It was typed in English. It described their origins on the Chagos islands, how a "*Military Chief*" told them that there would be large compensation, how on Mauritius it was only the animals which were given anything and all their pleading and pressure on the Mauritius Government had produced nothing, (8/1365). They were not against the purchase of the islands nor the base but they wanted to explain to the UK Government how they had no food, jobs or care. Forty had died through sorrow, poverty, lack of food and care. They asked the UK Government to ask the Mauritian Government to give them each a separate piece of land and house which their children could inherit tax free, and a job which they knew how to do. If they did not receive these, it would be preferable for them to be sent back to their islands. They also asked for permission to visit the cemetery on Diego Garcia where their ancestors were buried, so as to tend their graves and the church.

407. The High Commission sought the advice of the FCO, *(8/1372)(D), saying that the Prime Minister of Mauritius had said that arrangements had been made with the UK and that resettling the Ilois was a Mauritian responsibility. There was a fear that opposition politicians, including Mr Duval, might pursue their line about the UK nationality of the Ilois. The FCO advised that they be listened to sympathetically but be told that "*we are unable to intervene between a government and its people and, perhaps, drawing their attention to the statements made by the Prime Minister of Mauritius ...*". (8/137). There was a possibility that a very few might be allowed to visit the graves and church on Diego Garcia. The High Commissioner replied on 11th November. He said that a copy of the petition had been sent to the UK Prime Minister. He was sorry to hear of their present difficulties and hoped that matters would improve. But he "*cannot intervene between yourselves as Mauritians and the Government of Mauritius, who assumed responsibility for your resettlement under the arrangements outlined*" in various statements, *(8/1374)(ND). The request to visit the islands was being considered. A copy of the statement of 7th November 1972 was enclosed.

408. Before turning to the Vencatessen litigation, I set out en bloc the way in which the £650,000 resettlement fund was eventually spent.

409. On 13th October 1975, Mr Ennals, an FCO Minister, told Mr Dalyell MP in written answers, that he had received no communication from Mr Duval, who was described as legal adviser to the Diego Garcian community, that the Mauritian Government accepted that their standard of living was below the average in Mauritius; he said that out of 421 families, 243 heads of family were in more or less fixed employment, 57 received Mauritian old-age pensions and 74 were on public assistance, (8/1383). Urgent consideration was being given to the sending of advisers to Mauritius to help formulate a practical resettlement plan. On 16th October the written exchanges continued. They covered the housing of Ilois in the Mahe prison in October 1971, the absence of investigation into the denial of return passages to Ilois after 1968; the Vencatessen litigation prevented other questions being answered but the Minister did say that at all times in 1971 the "Nordvaer" was operated on the instructions of the BIOT Administrator.

410. In late January and early February 1976, Mr Prosser, an Adviser on Social Development from the Ministry of Overseas Development, visited Mauritius and reported to the Mauritius Government in May 1976

on resettlement proposals, (8/1387). The Report was concerned with 426 households previously resident in the Chagos. This was a figure based on two "reasonably complete" surveys of Ilois, one by the Department of Public Assistance and another by the National Council of Social Service. Mr Prosser had discussions with the relevant Departments, two meetings with Ilois, although as the Claimants pointed out, these lasted no more than half a day each, and he had visited the areas where they lived. His Report recognised that there had been very little interest in the pig-breeding scheme and that there were real practical difficulties in converting copra workers into efficient small-holder producers. It continued: *"The Mauritius Government have already taken a by no means inconsiderable interest in the welfare of the Ilois. In fact, the whole range of social services has been available from the outset to the families concerned. Those eligible for old age pensions have been granted their rights as full citizens of Mauritius, and those in need of public assistance and family allowances have been visited by ... the Department ... who have assessed need and made appropriate payments. In addition, the Mauritius National Council of Social Service has developed a considerable programme of work with the Ilois."* It referred to rabbit breeding, home economics classes to assist with the adjustment to life in an urban environment and special educational classes to help integrate teenagers into school and to the employment of a full time social worker to work with the Ilois.

411. The most intractable problem for the Ilois had been housing, of which there was a grave shortage at the bottom end of the scale, compounded by the effects of cyclone Gervais, which had destroyed so many houses. The Report said that, notwithstanding the severe constraints on housing, *"a commendable attempt has been made to share with the Ilois what housing is available"*. (The Ilois pointed out that there were no cyclones passing over the Chagos.)

412. He took the view that the Ilois had gradually merged with Mauritius society and that there was a consensus among all groups that what was required was an agency which would focus on their complete integration; he says that they did not wish to be moved to another island, but rather wished to be established as residents of Mauritius, with no more than 30 or 40 families wishing to return to Diego Garcia if they could. He started from the basis that the majority were reasonably well settled with 243 in paid employment. He recommended the establishment of a Resettlement Committee upon which the Ilois should be represented because *"they are now suspicious of decisions taken for their welfare without their knowledge, and the success of a scheme for integrating the Ilois depends upon their whole-hearted cooperation and assent"*. This Committee should first look at funding the training of the unemployed Ilois with the £650,000 from the UK Government, welfare problems should be addressed by the appointment of a full-time welfare worker, and a capital allocation should be provided to each family. There were some urgent welfare cases: 78 people were in receipt of old age pension, but there were others who were unable to work and for whom the extended family system did not provide adequate support and who should be taken care of immediately. For the others, the first call on their individual allocation should be the provision of adequate housing with some furnishing. All this taken together would exhaust the £650,000 but would achieve *"reasonable satisfaction"* for the Ilois and could be quickly implemented. He hoped that the problems of the Ilois could be resolved as quickly as possible. The problems were largely financial. *"The fact is that the Ilois are living in deplorable conditions which could be immediately alleviated if action is taken along the lines I have suggested."* It was an unfortunate fact that, since the sum of £650,000 had been agreed, the cost of housing in Mauritius had risen by more than 500%. Nonetheless, this appears to have been allowed for in his calculations of what could be done.

413. The Foreword to the Report, written by the Prime Minister's Office in Port Louis in September 1976 when it was published, said that not long after the scheme involving pig-breeding had been devised, it had become clear that the Ilois did not want it and preferred a scheme in which they each received money from the UK Government regardless of their need for proper housing or for a planned means of future livelihood. The problems which they faced had been compounded by a cyclone in 1975. The Report had recommended the construction for each family of a house which was a little below the standard which was allowed by Building Regulations in Mauritius; this proposal had been rejected by the Mauritius Government which undertook to allocate funds to ensure that the houses, which it accepted should be built, were not below standard. It hoped that resettlement would become a non-partisan issue in the long term interests of the Ilois,

and hoped that the Report, which in other respects the Government welcomed, would form the basis of their resettlement.

414. In February 1976, there was a further Exchange of Notes between the UK and US Governments permitting additional developments on Diego Garcia, and repeating the same provisions as to who could go to the islands, (8/1384(a)).

415. On 29th June 1976, the Seychelles gained independence and shortly beforehand the islands of Aldabra, Farquhar and Desroches were detached from BIOT and returned to the Seychelles. The BIOT Commissioner ceased to be the Governor of the Seychelles and became the person who for the time being was head of whichever FCO department was responsible for BIOT.

416. On 12th September 1977, (16/132), a Resettlement Committee, composed along the lines recommended in the Prosser Report, met in the Office of the Secretary to the Mauritius Cabinet. This was not the first meeting of this Committee. The Cabinet Secretary chaired it. There were several senior officials present together with Mr Ramdass, Mr Piron and Mr Saminaden as the representatives of the Ilois. Mr Bernard Sheridan is also recorded as "*In Attendance*" in the Minutes; he had been specifically told of the meeting by the Mauritius Government, (8/1406). The Minutes record that the Chairman said that the Government was aware of "*a test case*" in the UK and felt that the opportunity should be taken to introduce to the Ilois the lawyer who was representing the person who was bringing the case. The Chairman stated that its outcome would affect all Ilois because it could be assumed that the consequences of success would be that the same treatment would be meted out to all those in similar circumstances. Hence the benefit for all the Ilois if the lawyer met their representatives to obtain their help in preparing the case. However, Mr Ramdass with the support of the other two Ilois, expressed concern that the delays in such a case would delay a solution to their urgent problems. The Government reassured them that the work of the Committee would not be delayed pending the outcome of that case. But as Mr Sheridan was not appearing for any official body, no mention was to be made to the press of his attendance. Nonetheless the Ilois pressed for an urgent decision in view of their plight and the difficulties which they faced when reporting back on progress to those whom they represented. Mr Sheridan had no recollection of this meeting but it obviously happened.

417. The Committee met again on 17th December 1977; there was an additional Ilois representative, Mrs Vythilingum, (8/1409,20-103). The Chairman opened by referring to the apparent wish of the Ilois that the resettlement money provided by the UK Government be distributed to them as a cash payment. The question arose as to how that sum was to be apportioned; the Ilois representatives are minuted as saying that they were all agreeable to the 595 families surveyed in January 1977 sharing in the money even though the Prosser Report mentioned only 426 families who had been transferred between 1965 and 1973. The others had returned to Mauritius before 1965. The mechanics of its distribution were discussed.

418. On 9th January 1978, the High Commissioner reported to the FCO on a discussion which he had had with the Chairman of the Committee at which the strong sense of solidarity among the Ilois was identified as the reason for the inclusion of those returning before 1965 among the recipients of resettlement cash, even at the inevitable price of a lesser sum for the 426 families. Allocations would be weighted according to family size. He reported that when the Ilois collected their share from the Post Office, they would sign declarations accepting that they had no further claim. "*There was a good hope therefore that this would be the end of the matter.*" (8/1452). Deductions would be made for rent but social welfare services would continue, and a welfare officer would be paid for by the Mauritius Government. A letter was sent on 9th February 1978 by the Mauritius Government to the FCO setting out the proposed distribution. Sheridans were informed by the Committee Chairman. The sum of £650,000 which had been received on 28th October 1972 had been augmented by just over 25% over the subsequent five years by interest payments. No objection was raised to the inclusion of the extra families but the High Commissioner responded that although the FCO welcomed the disbursement, it recalled that the funds had only been provided for the benefit of those displaced since 8th November 1965.

419. An anxious letter from the High Commission to the FCO, of 17th February 1978, referred to the political in-fighting engendered by the resettlement, with the MMM of Mr Berenger claiming credit in its newspaper "*Le Militant*" for having taken up the Ilois cause, complaining about delays and the erosion of its value caused by inflation, while the Parti Mauricien Social Democrat of Gaeten Duval claimed in "*Le Populaire*" that he had been instrumental in the bringing of the Vencatessen action, that he had met with a group of Ilois to keep them abreast of its progress and that he thought that it had good prospects but should not hold up the distribution of the resettlement funds. This point scoring by the two parties could raise Ilois expectations and lead to more direct political pressure for a better deal for them.

420. The resettlement fund had been agreed only between the UK and Mauritius Governments and was only to be distributed to Ilois on Mauritius. However, on 15th March 1978, Mr Raymond Mein who had settled in the Seychelles after leaving Diego Garcia, sought compensation for his family. This was at around the time that the payments in Mauritius were actually being made to Ilois, (8/1473). Neither Mrs Mein nor her daughter, Jeanette Alexis, knew of this. The FCO replied that the only individual compensation had been for premature termination of contract and in certain cases Rs 500 for loss of personal effects. The resettlement agreement was with the Government and not with individuals, even though that was the manner in which the Mauritius Government had decided to distribute the money. It had been paid to the Government in recognition of the particularly acute economic difficulties which an independent Mauritius faced; the Seychelles had still been a colony when the plantations had been closed, had still received sizeable grant aid and substantial compensation for the detachment of its islands (which had not been evacuated) and did not face such severe economic problems. The FCO added for the benefit of its representative on the Seychelles that the recent offer to settle the Vencatessen case for £500,000 to include all eligible islanders on Mauritius, had been made in that same spirit rather than to compensate for the loss of contested individual rights. It was feared that those now in the Seychelles, having left the Chagos, might start litigation taking their cue from the Vencatessen case.

421. The distribution of the cash, according to the High Commission in April 1978, led to additional Ilois seeking compensation from it; others wanted Crown land upon which to build a house; others had spent their money quickly. The MMM and PMSD "*were stirring the pot*". 1,081 adults and 1,284 children had received compensation. In April 1979, as the Vencatessen case made it important to know who were post 1965 Ilois in Mauritius and who had received what money, the High Commission reported to the FCO that the Prosser list of the 426 families who had arrived between 8th November 1965 and 1973 had been lost, that not all of them had registered in the 1977 survey and so had not all received a share of the £650,000 but that some of the extra 200 claimants probably included unregistered families from among the 426. There were not thought to be any post 1965 arrivals omitted from the list of 426. The figure used by Sheridans, which was some 200 higher, was not thought to be sound. Some lists with names were made available.

422. The Press took an interest in Diego Garcia and in the displacement of the inhabitants in particular, an interest which may have been further stimulated by hearings which were being held by a sub-committee of the US House of Representatives into the establishment of the military facilities on Diego Garcia and which dealt with the nature of its population and what had become of them. In September 1975, the *Guardian* suggested to the MoD that there had been deliberate misrepresentation about the inhabitants of Chagos. It referred to the treatment meted out to the islanders, to the violation done to their human rights by uprooting them from their native land. An *Insight* article in the *Sunday Times* in September 1975, under the headline "*The Islanders that Britain sold*" described the background to the departure of the islanders and drew attention to their poverty and ill-treatment, to the absence of compensation and to the fact that one of them was suing the Government. It referred to "*1,000 British citizens*". (8/1376).

423. The Chagossians gave evidence about this. Mrs Talate gave the principal evidence about conditions in Mauritius. For the purpose of these proceedings, there was little challenge to the general description of conditions, which can be therefore accepted and it is supported by much contemporaneous material. But it was tested to a limited extent for its reliability. Failing memories, contradictions, exaggerations and omissions

of relevant parts of the picture eg as to social security benefits, accommodation and medical treatment for what ailments were commonplace. It is again apparent that reliance cannot be placed on written witness statements, now or past, as being what the witnesses can say or meant to say.

424. When Mrs Talate arrived in Mauritius, she said that some officers had come onto the boat and said that there was some cheap housing in the city which she went to see, but it had no door, windows, light or water, and that cows and goats were living in the house. She only had with her the Rs 8,000 which she had earned. She went to see her brother who had arrived before her in Mauritius in 1965 but had not been able to return. She had been forced to live with him, his wife and ten children, in four rooms with her six children.

425. She had been taken to hospital when she arrived in Mauritius and her children were ill; two died shortly after. One was less than a year old, another was eight. They had no food or drinks or milk and had to feed their children on citron tea. There were no jobs related to coconuts or copra in Mauritius.

426. After two or three months with her brother, she rented a house with three rooms, corrugated iron and a concrete floor, smaller than the one she had had in Diego Garcia, which cost Rs 300 per month and in addition she had to pay for light and water. She had no choice but to take it. She had left her belongings behind.

427. She knew nothing of debt or drugs in Diego Garcia. In Diego Garcia they had had plenty of rice, which was part of the rations, which they could cook while they went fishing. They were devastated by cyclones in Mauritius which destroyed their houses, took all their furniture and everything which they had bought. She experienced just poverty and misery. All the promises that had been made to them were lies. Paul Moulinie had promised them a house to leave the islands, the English Government had given the Mauritius Government money and time to build houses for them, their children would be educated, they would receive animals such as chickens and rabbits if they wanted to, but when they arrived in Mauritius there was nothing.

428. In order to get money to pay the rent, she had gone to work as a domestic servant, washing and ironing and doing the degrading jobs which Mauritians would not do. They had been discriminated against and ignored by the Mauritians. Those who knew them would not mix with them. They were looked down on and felt no self-respect. All they had to feed the children on was bread or water. She had got into debt just to pay for something to eat. She had repaid the interest but the capital which she owed remained the same. Sometimes people asked for charity or drank river water in order to live.

429. She had moved from place to place in Mauritius but they were not nice places. Sewerage was no more than a hole in the ground which was flooded when it rained and there was all kind of rubbish and the conditions were unsanitary and bad for the children's health. Dirt came into their houses when it rained and children played in the dirt, picking up infections. People laughed at the poor conditions and poverty of the Ilois. They had no uniform to go to school in or exercise books and arrived dirty and came home dirty.

430. She had bought her own home and lived there with her six children, who were all grown up and married, and fifteen of their children. She found it difficult to talk about the numbers of people who had lived in her house and with whom she had bought it, and when they had left. It appeared that two had had to be taken into some sort of care. She was more precise later about the house. Her mother had died recently. She was not sure about the number of grandchildren in the end and how many were living in the five-roomed house.

431. She was asked about her health and said that she did not understand the word "*depression*", although in her witness statement she said that she had suffered from severe depression for a long time. She referred to the living conditions of other families as being the same as those which she had experienced, without light

or water which was fit to drink and with houses that had leaky roofs. Their conditions were bad whether they suffered from cyclones or not.

432. Jeanette Alexis said that when they arrived on the Seychelles, they were put in quarantine and that they had lived, after a year, in an abandoned cow shed for many years, having lived for a year with an aunt. Her aunt had thrown them out when they ran out of money. Her father had difficulty getting a job. She remembered that they had to go onto other people's property to get mangos to boil and had no electricity or toilet or treated water. She could not go to school at the beginning because they were thought to be foreigners, but eventually all but two were allowed to go to school for a while. She said that on the Seychelles they had been called names and life had been made difficult for them. All the Chagossians in the Seychelles had faced a lot of difficulties in accommodation, food and clothing, and that most of them had lived in poverty and did not have the same privileges as Seychellois and were not considered as Seychellois, but rather as foreigners.

433. She said that her father was a Seychelles citizen and it was only after she got a job that she was told she was working illegally and had to renounce her Mauritian citizenship when she was nineteen. She was made to pay for Seychelles citizenship. She said those years of her life had been a terrible experience. Gradually, in the early 1980s the cow shed, in which she still lived, had been improved. Her father had been to see Marcel Moulinie about the compensation which had been promised but he was not very supportive, and she had found the same in 1997. He had said that he had to do as asked as manager of the islands for the British, which was to clear the islands. This he had done by bringing in a ship and asking people to leave. He had admitted to her that at some point, people who had left were not allowed back. She was not really sure how much the UK Government had been involved.

434. Her mother said that when they arrived in the Seychelles her children were very poor and had nothing to eat so her husband had had to work as a carpenter. Her present house has just three rooms. She owns it. It is concrete with a corrugated iron roof; her husband had bought it from the uncle. It had taken her husband six to seven months to find a job on the Seychelles. They had stayed for a few months with her brother-in-law in a cattle area. She could not remember her husband working for Public Works in the Seychelles as the statement said which he was said to have given to the Seychelles Attorney General in August 1975, (19/1383). She and her daughter both said that he had not gone to Agalega for a year. She said that he had worked as a carpenter when he had no job. He had not told her that he had been to see anyone about compensation or had sat on a committee about compensation. (That is surprising and probably reflects her failing memory; she had diabetes.)

435. Mrs Piron said that in the Seychelles there was no money for her to live on and nowhere to live. She stayed at her mother-in-law's for a time; they lived in a ditch in the open air without food with her children and husband. She lived in this trench on the Seychelles until an old lady let her stay somewhere else. She could not remember how long she had stayed there for. She agreed that her older child born on the Seychelles was born in 1973 after she had left the ditch, so she had lived there for three to four months. She said that she had no work but he went fishing, selling his fish to get money, but there were days when he got no fish. He was a fisherman with his uncle. Her possessions had been left behind in Diego Garcia including her furniture and kitchen utensils and she had only brought out two mattresses, two cooking pots and her clothes. She had never tried to make any kind of claim for compensation before. She had been to hospital and had many illnesses. She was sad and had received blood twice. After two years, her children were old enough to go to school.

436. Mrs David said that she arrived on Mauritius with about Rs 7 or 8,000 saved from her work, kept in the employer's notebook and from which she got a cheque that they could change in an office; in her witness statement, she said that they arrived with no money. She said that when they arrived, they left the boat after four days, the Government gave them a house to go to at Baie du Tombeau, but it was not a good house because animals had been sleeping there but it was a proper house, though it lacked doors and windows,

water and light. It appeared in re-examination that her husband had lived with his godmother in Mauritius. She told me that when she first arrived in Mauritius she was taken to the Dockers Flats area because they had nowhere to go. The Mauritius Government had provided them with a lorry to take their mattresses and things there. She received no social security.

437. She then agreed in further cross-examination that although she had previously said that the Government had never given her money and she had asked for a pension and had never got any, she had in fact received a monthly payment from the Government for maybe a year or a year and a half before the payment of Rs 10,000 was made. She said that the money she got (Rs 184 per month) was less than Mauritians got. She said that she had moved from Dockers Flats to the house which she rented in Cassis, referred to in the record of social security payments.

438. They then moved to a house in Cassis for which she had to pay Rs 400; it had corrugated iron walls and roof and an earth floor. They got into debt. She remembered receiving Rs 7,000 and then Rs 10,000 and the means to buy some land. She got enough land for three houses, which is where she now lives. Hers is a corrugated iron house and it was no good in a cyclone. Her husband eventually got a job with a lorry and she got poor quality work.

The Vencatessen Litigation

438. One of the most important, if not the most important, driving forces of events was the Vencatessen litigation.

439. The documents before the Court show that on 22nd October 1974, there was a conference between Bernard Sheridan, the London solicitor, and Louis Blom-Cooper QC about Diego Garcia. A note of a conference between the two in early 1975 recorded that the "*claim appeared to be good*", (16/25). There was also a conference with Gerald Levy in early 1975. This was the first fruit of an approach by the informal Committee organised by Christian Ramdass, who had already been pressing for compensation for the Ilois.

440. Mr Ramdass had contacted Gaetan Duval, an important lawyer politician whom he described as sorting out problems relating to Diego Garcia, who had put him in touch with Donald Chesworth, an English adviser to the Mauritius Government. It was Mr Chesworth who suggested Sheridans. That account of how an illiterate, non-English speaking Ilois had been put in contact with a well-reputed firm of English solicitors with relevant expertise was consistent with what Mr Sheridan said. Eddy Ramdass, his son, did write some English but Mr Ramdass had a number of helpers in that respect. Mr Ramdass said, though not Mr Sheridan, that Michel Vencatessen had been chosen by Mr Sheridan to bring the proceedings as the oldest person.

441. On 17th February 1975, the Writ was issued in the High Court in London. Mr Vencatessen sued the Attorney General on behalf of the Secretaries of State for Foreign Affairs and Defence. He claimed compensatory, aggravated and exemplary damages for intimidation, deprivation of liberty and assault arising out of his enforced departure from Diego Garcia and transportation to Mauritius. It was later amended to include allegations that there was a conspiracy between 1965 and 1971 to enforce compulsorily his departure from Diego Garcia and to prevent his return there, to terminate his contract of employment and to deprive him of his rights as a UK Citizen.

442. The Statement of Claim asserted the rights of the Plaintiff as a UK Citizen and asserted the unlawfulness of the Defendants' behaviour, not only in the fact and manner of his removal from Diego Garcia, but in their refusal to allow him to return. Unlawful force had been used to compel his departure from the islands. He had been deprived of his rights as a UK Citizen, and of his rights to live on Diego Garcia or

on BIOT, of his opportunity of obtaining employment, growing vegetables and rearing animals, and enjoying the amenities of life on Diego Garcia.

443. Although the litigation was brought in the name of Michel Vencatessen, Sheridans corresponded principally with Mr Ramdass or with Mr Duval. On 4th March, Mr Ramdass wrote seeking Sheridan's advice as to how he should respond to the inquiry by the Mauritius Government about whether the Diego Garcians wanted compensation in cash or land and houses. Sheridans replied on 15th March, (16/29), that they had instructions to press a claim in the English Courts for compensation on behalf of Michel Vencatessen "*and thereafter for all those Diego Garcian Islanders and others who were removed from their homes ... you may be assured that now the case has started all the Islanders' interests will be taken into account ...*". Mr Duval would be kept informed of progress.

444. On 20th June 1975, Sheridans applied for Legal Aid. The accompanying letter made specific reference to the dual nationality provisions of the Mauritius Constitution. The further forms for signature by Mr Vencatessen were sent by Sheridans to Gaeten Duval in Mauritius for him to arrange for their signature. On other occasions too, he acted as the point of contact between the Plaintiff and Sheridans.

445. On 8th July 1975, they wrote to the Law Society pointing out that some 400 other families were affected in a similar fashion to this Plaintiff, but that there were some voluntary removals for whom no complaint could be made. Those affected, however, could either participate later in these proceedings or join in a global settlement. Mr Blom-Cooper QC was also identified as one of those advising the Plaintiff; he may have been doing so since October 1974. He was sent information when he was in Mauritius as to the outcome of an interlocutory hearing in July 1975, which Sheridans anticipated he would discuss with Mr Duval. Sheridans sent him the Defence and hoped that he would be able to do some research whilst in Mauritius.

446. With the benefit of legal aid for a full opinion, Mr Levy produced an opinion on 11th November 1975, (16/1). He said that "*prospects of success ... are sufficiently high to justify proceeding further, particularly in view of the importance of the action to Mr Vencatessen and others in his position*". He considered whether it would be tortious to expel someone from the place where he was born or whether that would inevitably be covered by an action in trespass to the person; he examined the question of whether the Crown could lawfully rely on its rights as owner of the land to remove the inhabitants, which he said was a difficult issue, and advised that the BIOT Immigration Ordinance was arguably ultra vires; he also doubted whether the Crown could rely upon the Ordinance because the procedures which the Ordinance envisaged had not been put in train. This opinion was sent to Mr Duval. Legal aid was continued to cover discovery.

447. In June, Sheridans wrote to Mr Ramdass saying that they wished to advise in person when next in Mauritius but pointed out that the interests of the Ilois, suffering from cyclone damage were "*protected to a large degree by the proceedings ... issued ... on behalf of Mr Vencatessen*". *Information would eventually be required "from each of you who qualifies to complain against the Government for the loss of your land"*", (16/37).

448. The Defence, served on 19th August 1975, was drafted by Treasury Counsel. It pleaded the acquisition of the islands in 1967, and that Moulinie & Co had managed the islands in accordance with the terms of an unexecuted agreement. It specifically pleaded that, if Michel Vencatessen had been born in 1922 on Diego Garcia as he claimed, he would have become a British Subject by birth and later a citizen of the UK and Colonies by virtue of the British Nationality Act 1948. On the independence of Mauritius in 1968, he would also have become a Mauritian citizen. This pleading is of significance for the claim in these proceedings that the UK Government sought to deceive the Ilois as to their citizenship. It contended that the work on the plantation ceased and that the workers were transferred at their choice either to other Chagos islands or to Mauritius and that those transfers took place with the consent of the employees. In response to a Request for Further and Better Particulars, it was specifically pleaded that this Plaintiff agreed to leave at a meeting

with the Moulinies shortly before departure. Residence on Diego Garcia was as an employee and with the leave of his employers; without such leave, he had no right to enter or remain on the island. No acts of force had been used, if at all, by or on behalf of any servant of the Crown. The BIOT Immigration Ordinance 1971 was pleaded, not as the basis for the removal of the Ilois, but as the basis upon which the refusal of their return was lawful: they had no right to enter, they had no permit and indeed had never sought one, or if they had and it had been refused, they had never appealed against such a refusal.

449. The pleadings were amended in 1976. The purpose of the Re-Amended Statement of Claim was to allege that, in effect it was the UK Government which was behind the enforced departure of the Ilois and that it was the Government which caused their removal, the prohibition on their return, the deprivation of the right to live on Diego Garcia or on BIOT, their wrongful loss of employment and the deprivation of their rights as UK citizens to return. A Declaration was sought that Michel Vencatessen was entitled to return to live on Diego Garcia. In July 1976, the Plaintiff alleged that it was a term of the UK/US Agreements that the Ilois be removed by the UK Government.

450. The Reply of October 1976 asserted that the Crown was not entitled to rely upon the rights of the managers of the plantations or their lessees so as to remove a subject from the realm where he would otherwise be entitled to live. It was unlawful to expel the Plaintiff from the whole of BIOT or Diego Garcia. He never consented to leave and if he did, that consent was procured by the false representation that the Secretaries of State would pay compensation. The BIOT Immigration Ordinance could not be relied upon by the Defendant: it was ultra vires the BIOT Order 1965 because its purpose was to remove the whole or the larger part of the population of BIOT and accordingly was not made for the peace, order or good government of BIOT. This was the issue upon which the Bancoult case was fought and won by Mr Bancoult in 2000, but that precise issue had been raised in the Vencatessen litigation nearly 25 years earlier.

451. It was alleged by the Plaintiff that it had been an Officer of the Royal Navy who had been responsible in October 1971 for the enforced departure of the Ilois, something which the Defendant denied and of which it sought Particulars. Later the Plaintiff alleged that the person was the officer in charge of the "Nordvær", who was said, in Further and Better Particulars of December 1976, to have told a meeting of the islanders that they could not stay but that they would receive compensation in Mauritius. This meant that the Plaintiff would be forced to leave or left to starve on Diego Garcia; his wishes were not sought or taken into account; Mauritius was the only "*final*" destination offered.

452. One of the important features of the Vencatessen litigation for the purposes of the present case is the extent to which, as long ago as 1976, issues had been identified which are very similar to those which underlie this action. There are differences; the property claim had not been formulated and there was no reliance placed upon the Mauritius Constitution. The causes of action are not pleaded as misfeasance, negligence, exile or deceit; but the Immigration Ordinance is said to be unlawful on the grounds relied on 25 years later; the issue is raised as to whether it was lawful for the Crown to rely upon its property rights to remove the population of BIOT and that it was in any event unlawful for it to do so without consulting the population, offering them a choice as to whether to stay or go and if the latter, where to go. The essential unlawfulness of compulsorily removing a whole population or the greater part of it from the BIOT was at the centre of the Vencatessen litigation.

453. The Defendant began to gather evidence for its case from witnesses in the Seychelles through the Seychelles Attorney General. In August 1975, he interviewed Paul and Marcel Moulinie and Raymond Mein, who was the Assistant Manager for Moulinie & Co on Diego Garcia. He recorded Paul Moulinie as saying that the company and the BIOT Administration had arranged for the transfer of employees to Peros Banhos and Salomon and that the company had carried out the transfer. They could choose to go instead to Mauritius. They could take their personal belongings to those islands. They received a sum by way of resettlement which the BIOT Administration reimbursed. They left willingly. No naval vessels or personnel were involved; the transfer took place without incident or the use of force or coercion as he understood it

from Marcel who had been in charge. The same applied when they were transferred from Peros Banhos and Salomon. Paul had said that he dealt with the refusal to disembark on arrival in Mauritius by saying, I infer from the missing words in the note, that the Mauritius Government would pay some further sums to them, (8/1421). Marcel was interviewed with Mr Mein, (19/1383d). They confirmed that no military personnel had been involved in the transfers. They both said that the fifty or so families on Diego Garcia were given the choice of going either to Mauritius or to Peros Banhos or Salomon. Only twelve took the latter course and the majority chose Mauritius in order to be first in line for any jobs there. Michel Vencatessen, who had been the senior overseer on Diego Garcia, as with the rest of the families, had been reluctant to leave Diego Garcia and the older people had been particularly reluctant to go but the younger people had seen it as more of an opportunity. Nonetheless, the promise of compensation and the fact that they were allowed to take all their possessions helped them to make up their minds to go. He said, according to the Attorney General in a note made when he sought further details in March 1976, (19/1384b), that the company treated the islands as an estate and no-one could enter or stay without their permission and none did except as employees.

454. Mr Marcel Moulinie told the Court that he had no recollection of the interview or discussion or even of being contacted by anybody in connection with the Vencatessen case (though it is not conceivable that these were simply fabricated conversations). He confirmed though the accuracy of what was said about compensation and the evacuation. He disagreed that Mr Mein had gone to Agalega for a year, as did Mrs Mein. Although it was a commercial estate, Diego Garcia was also the islanders' permanent home, for those who had been there for generations, and was not just a question of their having contractual rights as employees. A bad employee would be locked up for a few days, only one had been sent back.

455. Later, when asked by the Attorney General, whether the consent of the employees to the transfer from Peros Banhos and Salomon had been given orally or in writing, Paul Moulinie replied in April 1976, (19/1384g), that there had been no question of consent because as the islands were being evacuated, it was not possible for anyone to stay. He also said that he had at last found a reference showing that Mr Vencatessen needed no contract in order to stay on Diego Garcia because he was domiciled there. The Attorney General wrote to the BIOT Administrator in April 1976 (19/1384m) saying that Mr Paul Moulinie had told him that Mr Vencatessen had no contract because he had been born on the island "*and was employed in the normal course of events*".

456. Mr Mein, according to the interview, said that he had gone from the Seychelles to Diego Garcia when he was twenty and had lived there for twenty five years. He had assisted in the evacuation of Diego Garcia and had then gone to Peros Banhos for a few months. He had gone reluctantly because of his ties with Diego Garcia. After a short spell on Peros Banhos, he had gone to Agalega for a year, (8/1442). Mrs Mein, who gave evidence to me, said that he had not been to Agalega at all. He had had a year's salary in lieu of leave when he finally left the company and on the Seychelles, he had had employment in Public Works. He also said that he was not pressing for the Rs 500 which he and all the others who left Diego Garcia had been promised, and which none of them had received. He was on good terms with the company, unlike Mr Prosper, who had been in charge of records on the islands for the company, who also lived in Mahe but was bitter at what had happened.

457. In August 1976, the Seychelles Attorney General conducted a further interview with Paul Moulinie. He dealt with the contractual position of Michel Vencatessen who on certain documents was referred to as "*pas engage*". This meant, he said, that they were Ilois and "*were never engaged on a contractual basis, being already on ... Diego Garcia*", (8/1400). But Mr Paul Moulinie did not mean by those documents or by saying that Mr Vencatessen was domiciled there, that he was entitled to live there or even thought that he was. It meant that he regarded the island as his home. Mr Moulinie still thought that the workers looked upon themselves as working on an estate, rather than as having any permanent right of abode. They were given houses rent free which the company repaired and, if they left, re-allocated to another worker. Workers from the island differed only from those recruited from off the island in that they had no contract. They were never given the impression that they would continue to be employed on the island. The children of workers took up

employment with the company when they were about twelve unless they were thought bright enough to go to school in Mauritius. Many had done so and some of them had returned to the island if trouble had arisen in Mauritius. The question of a prescriptive right of residence had never arisen. Whenever a worker had had to put off the island, he had just done as told and went. The plantations were run on paternalistic lines, with the company providing free medical care, food in the store, the religious services and the school. Some people had been living on the island for many years, possibly from families who had been there for a hundred years.

458. Passages in the Prosser Report were seen as helpful to the argument that the evacuation was the result of deliberate policy rather than being the natural order of events leading to a voluntarily departure. Mr Duval was kept informed as to the progress of the case. By October 1976, pleadings were closed, discovery had yet to take place and it was soon hoped to set the case down for trial in view of the urgency attaching to it because of the plight of the Ilois. Mr Sheridan and Mr Levy discussed in conference the existence of "*another 425 potential Claimants*" as a further reason for not pursuing any interlocutory appeals to the Court of Appeal; (16/103). Boreham J had refused leave to amend the Statement of Claim so as to add an allegation of conspiracy against various Ministers and they obtained legal aid to pursue it although they never did so. Sir John Foster QC appears to have become involved at this time for the Plaintiff.

459. Mr Robin Cook MP also contacted Sheridans to express his close interest in the wellbeing of the islanders; they told him of the constitutional implications of the case and of the international dimensions. He was to be re-acquainted with it as the defendant in the Bancourt Judicial Review.

460. Sheridans asked for the Summons for Directions to be placed in Counsel's list in November 1976 because they contended that the case concerned not just the Plaintiff but also the rights of some 400 other families in Mauritius. In January 1977 it was ordered to be set down for a 15 day trial within 35-42 days, which prompted Sheridans to contact the Treasury Solicitor to see if there was any point in the two sides talking. Mr Munrow recorded Mr Sheridan as saying that he had the ear of a number of people in Mauritius, and that there were people other than Mr Vencatessen who were interested parties in the case. Mr Munrow said that they had always appreciated that it was a "*representative action*", (8/1405). Strictly, it was not, but that is loose language for the general importance for all the Ilois which at least both sets of lawyers appreciated it had.

461. Indeed, the general importance of the case was such that Mr Sheridan had meetings in July 1977 in London with the Prime Minister of Mauritius who suggested a meeting with the Secretary to his Cabinet, Mr Burrenchobay who chaired the Resettlement Committee.

462. In August 1977, Sheridans wrote to Mr Duval saying that the action would soon be set down for trial but that there was the possibility of a settlement which would be in the interests of the "clients" and the three governments. Mr Sheridan was to come to Mauritius, and with the assistance of Mr Burrenchobay, would have facilities to pursue necessary researches but it was best if the trip were not publicised and played "*in low key*", (16/128). He sent a copy of that letter to Mr Burrenchobay because, as he explained, he had received his instructions originally from Mr Duval and would be professionally bound to meet him. It was on this visit that Mr Sheridan attended a meeting of the Resettlement Committee on 12th September; although he could not remember actually doing so, he agreed that he must have done. He obviously met with at least some representatives of the Ilois. He also contemplated proceedings in the BIOT Courts. He also asked for the help of the Mauritius Government in compiling a list of the house holds who had come from the Chagos to Mauritius and when, together with their addresses. He received this information from the Prime Minister's Office in early November. He was also sent the questionnaire upon which that list was based.

463. By the Autumn of 1977, there had been some discovery of documents by the Defendants. But it was already plain that there was going to be a very considerable area of dispute over which documents were subject to public interest immunity or not. Privilege was claimed for some 600 listed documents. A Summons

for Discovery had been taken out but it was adjourned to the judge by consent on 8th December 1977. Sheridans sought a date earlier than the Court envisaged because of the urgency of the position of the "400 people now living in ... conditions of abject poverty ...", (16/145). On December 1977 and again in January and February 1978, some further documents were released to Sheridans, some of which were expurgated.

464. Another important feature of the litigation was the extent of privilege claimed for documents which are now before the Court. The Defendant's Discovery Schedule of August 1977, listed documents which they were not prepared to disclose because their disclosure would be harmful to the public interest. These included the high level consideration of defence policy including the resettlement of workers, and discussions with foreign governments or the UN. Some documents were disclosed after negotiation and others were disclosed in a redacted form. The differences have been identified for me by reference to the extensive chronology with which I have been provided. A Summons was issued for hearing before a Master in December 1977 at which the issue would be resolved; the Master would have been asked to examine the documents himself in order to assess their privileged status. The extent to which those documents were truly privileged was never tested in the litigation before a Master or a Judge. It was said before me by Mr Cyril Glasser of Sheridans that this was because the Treasury Solicitor had made an offer of settlement shortly before the hearing, which offer had been timed to deprive his client of the opportunity of pursuing the application without a further consideration of the prospects of success, and thus to postpone the point at which disclosure might be ordered of embarrassing documents.

465. Whether that was so or not cannot now be resolved, and I do not consider it wise to speculate as to one solicitor's motivation based upon his opponent's appraisal of the tactical manoeuvrings of litigation. The point of relevance is that these Claimants have access to a far wider range of documents than did Mr Vencatessen but he did not pursue any application for discovery as he could have done, rather than settle on the terms upon which he did. That aspect of the conduct of his litigation was a matter for the advice of his lawyers, weighing the prospects of success and the timing of any victory against the risk of losing or waiting with nothing for perhaps a number of years.

466. However after the summons for the discovery hearing was adjourned by consent, there were no formal Court proceedings until the formal Order staying all further proceedings after the settlement in 1982 as part of a wider negotiation of Ilois claims, the significance of which was a matter central to the proceedings before me.

467. On 23rd February 1978, the Treasury Solicitor wrote an open letter to Sheridans offering to pay £500,000 to the Ilois families who left BIOT after its creation in 1965 and who went to Mauritius. It was said that the sum was offered in the same spirit as motivated the £650,000 offer to the Mauritius Government and had not been calculated by reference to any heads of damage. It was envisaged that the sum would be shared equally among the families according to a mechanism of their choosing. "*The UK Government would not, however, be prepared to pay out this money and yet still remain open to legal proceedings of the kind brought by your client. It will therefore be a necessary condition of any payment that the Crown shall receive receipts and discharges adequate to protect it against the possibility of any future actions against either the UK or BIOT Governments*" (8/1467). Court approvals would be necessary for any infants. The Treasury Solicitor recognised that Sheridans might wish to complete the process of discovery before advising their client "*and those other members of the Ilois community for whom you act*" If, however, after the consideration of any further documents which might be ordered to be disclosed, the action was continued, the offer would be withdrawn. It was thought that Sheridans might be able to obtain instructions for other families in addition to Mr Vencatessen, and for those whom Sheridans did not act, the Crown would have to tell them of the offer. A list of those for whom Sheridans acted was asked for. The Government of Mauritius was informed.

468. This offer was made shortly before the actual distribution of the £650,000 to the Ilois, which was due to take place in stages over three weeks in March 1978. "*Le Militant*", the MMM paper criticised the payments

as scandalously inadequate. It had previously reported on the demonstrations of the Ilois. No doubt, it had an interest in using their plight as a means of criticising the compensation terms agreed at the time of the creation of BIOT and hence the then Government. Mr Ramdass wrote or had written for him two letters in English to Sheridans, first complaining about the delay in the distribution of this sum and then saying that the distribution dates had been fixed. He referred to what had been on the radio, TV and in some newspapers.

469. Sheridans replied to the offer letter on 20th March 1978. It said that although they acted for Mr Vencatessen alone, they also represented a committee "*purporting to represent the Ilois community, to whom we shall arrange for the communication of your offer*", (8/1474). It raised difficulties over ascertaining the precise scope of potential claims, and the possible inclusion of those who left earlier than 1965. It was not thought reasonable to have to consider the offer and to take proper instructions on it without visiting Mauritius, for which purpose Sheridans sought the financial help of the Defendants, and an adjournment of the Summons for Discovery which was becoming imminent. It was adjourned sine die by consent. It was thought that a week would suffice for the purpose of communicating with the community, seeking their views and advising them on the offer. A request was made for legal aid to cover the visit on the basis that Sheridans had received instructions from "*a representative group of Ilois*", that it needed to take instructions direct from the community which would "*engage in long and earnest debate*" in which the presence of the lawyer would be of help. Legal aid was refused because there was only the one formal client and the community in general were not the legally aided client. But in May, the Treasury Solicitor offered to pay up to £5,000 towards the costs of two lawyers from Sheridans going to Mauritius because of the proposals which needed to be put to the Ilois generally. Assistance was also sought from the Mauritius High Commission by Sheridans. Both Mr Sheridan and Mr Glasser, the Sheridans Head of Litigation, went to Mauritius in June 1978. Mr Glasser said that they had discussed the offer of £1/2m with Ilois representatives. They had gone to meet Ilois community representatives and to see where the Ilois lived. There was critical publicity of the offer in Mauritius. One problem had been that the Mauritius Government was unhappy with money being distributed to individual Ilois, which could be divisive if they became better off than Mauritians. But it was aware of the case and of its importance. Mr Sheridan agreed in Court that the Vencatessen case would be a precedent for other Ilois and he had viewed it in that way when it was in progress, as had the Treasury Solicitor. The offer of £1/2m and the subsequent offers were clearly directed to the Ilois community as a whole. Mr Sheridan said that, although when the first offer of £1/2m was made he did not know whom the Ramdass Committee represented or how representative it was and could not now remember who the committee members were, he did know that this visit had made him more sure of the committee and it seemed that he must have been convinced that they were spokesmen for the community.

470. In July, an article appeared in "*L'Express*", a Mauritian newspaper in French, referring to the possibility of a second round of compensation for the displaced Ilois, (19A/F/17). Mr Duval was off to London to meet his British lawyer, Mr Sheridan with a Mr Naiken who had been elected president of the "*Ilois Group*" at a meeting of some 400 Ilois. Its aim was to bring pressure to bear on the UK Government whilst what it called Mr Vencatessen's "*test case*" was before the Privy Council. Mr Sheridan remembered meeting Mr Duval in 1978 but not Mr Naiken.

471. Mr Glasser of Sheridans wrote to the Treasury Solicitor on 6th July 1978, saying that he had been instructed through a committee "*representing the various communities of Ilois to negotiate*" with the Government on the offer made "*on behalf of all the Ilois in Mauritius*", (8/1489). A similar letter was written to the Law Society on 26th July, in which Mr Glasser also said that Mr Vencatessen wanted his case "*dealt with in conjunction with negotiations in relation to his fellow islanders*", (16/467). Mr Ramdass pressed for information as to what had happened since Sheridans return to England, describing what had been done with the compensation paid out in March. In Mauritius, the Ilois maintained political pressure by hunger strikes among the women; one of whom, Mrs Talate, was admitted to hospital. The press reported these events. The pressure had at least the effect of causing the Prime Minister of Mauritius to ask Sheridans in November how negotiations were faring, because of the pressure it was under from the Ilois.

472. On 27th September 1978, Sheridans made their substantive reply to the offer of £500,000. The letter recapitulated the background to the UK's legal and moral responsibility for the plight of the Ilois, the inadequate thought given to the resettlement scheme and to the inadequacy of the cash paid out in lieu to provide for their needs. The major problem was housing; their conditions were deplorable and exacerbated by unemployment, the numbers of children and elderly, and the cost of providing land and buildings. What there was had been devastated by a hurricane. The letter emphasised that the Ilois "*who lived together in a number of communities*" wanted negotiations to be carried out "*on behalf of all the Ilois in Mauritius and not merely those that had come since their removal from the island by the British Government*". A further survey of numbers was being carried out on behalf of the Ilois, (8/1490).

473. Following a "*without prejudice*" meeting on 9th January 1979, at which it was agreed that a settlement was in everyone's interest, a further offer was made on 9th May 1979. The offer was increased to £1.25m subject to the same conditions as the earlier offer. It was made only for those who had left BIOT since its creation, and not accepting responsibility for those who had left earlier. It was hoped that Sheridans would obtain instructions from all those to whom the offer was addressed, act for them and obtain the quittances for giving effect to the settlement. Shortly before receiving that letter, Sheridans had sent telexes to Francoise Botte, a social worker who was assisting them and to Mr Ramdass saying that a new offer which was believed to be "*very*" or "*more*" favourable was imminent and asking her to advise the Ilois community of what was expected.

474. Sheridans sought financial assistance from the Treasury Solicitor to return to Mauritius, which was agreed to, for a visit in July. Meantime, discussions focussed on the identification of those for whom Sheridans acted. Sheridans wrote to Miss Botte seeking her help in compiling a definitive list of those who left the islands after the creation of BIOT, even though the Ilois themselves might decide to distribute the money more widely. The lists already obtained from the Mauritius Government had omissions. The UK Government merely wanted a receipt from those to whom money was paid. She was asked to circulate this information to the whole Ilois community. She replied saying that she had done as asked but that the Ilois were all of the view that those who had worked on the islands, even if they had been born in Mauritius should be included in the payments. The Mauritius Government should be asked to help with additional registrations. On 13th June, an enlarged list of those from Diego Garcia was sent by Sheridans to the Treasury Solicitor, which it was recognised went well beyond those who might be the agreed list (as it included the whole Ilois community), but was seen as a basis for comparison between the various lists then in circulation. He sought the help of the Mauritius High Commission which was kept informed of his travel plans.

475. In June, Sheridans also received a hand written letter from Mr Vencatessen; it is full of gratitude to Mr Sheridan for what he is doing for "*us*" and "*our cases*". Mr Sheridan was also in touch with the then, Anglican Archbishop in Mauritius, Trevor Huddleston, and an English support group for the exiled Diego Garcians.

476. On 28th June 1979, the Treasury Solicitor replied with incomplete details of three lists, one of which matched one sent by Sheridans. The letter emphasised the need for there to be agreement as to the precise steps to be taken to satisfy the Crown that it would not be at risk of future actions if this offer proved acceptable, dealing with the problem of identifying those who fell into the group to be compensated and dealing with those who might not come forward to participate, in respect of neither of which could there be guarantees.

477. A further letter was written by the Treasury Solicitor on 11th July 1979. It emphasised the need for a resolution to the questions of to whom the offer was directed, how quittances were to be obtained and how any necessary court approvals for those under a disability were to be obtained. Detailed suggestions were made on a number of these points. The possibility of sharing in an improved offer should be advertised before Mr Sheridan's visit. Mr Sheridan wrote to the Mauritius Deputy High Commissioner seeking some financial assistance for the visit and in communicating his arrival and the terms of the offer to the Ilois. The

UK High Commission warned the FCO of the risk of a flood of ineligible claimants unless the advertisement was very carefully worded.

478. Discussions between the parties included the form of the quittance which recipients of compensation were to sign. A first draft was sent to Sheridans in September, which was examined by Mr Blom-Cooper and amended in a number of ways in the course of discussions. A form was agreed in October, and a thousand copies were provided, and later a French translation, as Mr Glasser thought that none of the Ilois spoke English and the Treasury Solicitor wanted to ensure that the Ilois understood what they were signing. The problem of illiteracy was left unresolved. Mr Blom-Cooper drafted a trust deed to hold the settlement monies for the Ilois. He advised at the beginning of October that: (16/151).

"Having regard to the difficulties, both procedural and substantive, that stand in the way of a successful conclusion to the litigation and to the already protracted nature of the litigation I am firmly of the view that the offer of £1,250,000 ought to be accepted in full and final settlement of all the claims by Ilois displaced from their homeland in Diego Garcia by the British and American authorities."

479. Mr Sheridan arrived in Mauritius on 27th October 1979 with his wife. They stayed until 9th November. He could not remember, but agreed that he had to accept from the later correspondence, that he had met the committee instructing him before holding more general meetings, that he had asked them to discuss matters among themselves and that they had not demurred from the terms, because if they had done so he would not have proceeded as he then did. He had relied on Miss Botte and Mr Ramdass to spread word of the offer already. They then arranged meetings and helped him obtain the signatures for the quittances. He had no recollection of meeting Mr David QC, although there was a letter written to him shortly after Mr Sheridan had arrived in Mauritius because he was a leading QC in Mauritius and likely to be a trustee of any money. Everyone was taking an interest in the Ilois and there was some debate in Mauritius, he remembered, on the terms of the offer.

480. He explained as he saw it the role of the quittances. He did not regard the signing of the quittances as more than a preliminary step on the way to a settlement and that the quittances would be conditional on a later deed. Although there had been discussions about the form of the quittance before he left England, other considerations remained to be resolved such as who was to qualify and how any sum was to be distributed. He did recognise, however, that a good deal of negotiating work had to be done on the quittances before he went to Mauritius and the form referred to the appointment of "*Bernard Sheridan as our Attorney*", as "*our Solicitor to act on our behalf*". The form of quittance expressed acceptance of the money in full and final settlement of all claims arising out of the creation of BIOT, the closure of the plantations, the departure or removal of the inhabitants and workers, their transfer and resettlement in Mauritius and "*their prohibition from ever returning to the Islands*" of BIOT. Clause 3 included: "... we further abandon all our claims and rights (if any) of whatsoever nature to return to" BIOT. This was where the chief problem lay, (16/537).

481. His wife, who was not a lawyer and did not work for Sheridans, had gone to Mauritius with him for a holiday and was pressed into service when he saw the volume of work which he had to do. People outside were pushing to come in to the hall where he worked, so he assumed that they were aware of what was happening. They were eager to sign. Large numbers of people had heard of the offer and wanted to come in so they made use of small rooms. He had seen people in small groups of 12 to 15 and told them of the terms of the Government's offer. He had done his best to explain the contents and effect of the quittance, and what he said, namely that the Ilois would be giving up through the quittances any rights to seek compensation or to return to BIOT, was translated into Creole, although he could not assess how accurately. He agreed that it was part of his task to explain the quittances and to ensure that those who signed them understood them. He had not been able to give legal advice or in the time available to explain what the rights to compensation or the right to return to BIOT actually were. He did not elaborate on those claims although their nature would

have been explained, and he did not advise on the merits of the offer. It would not have been practical to take statements or instruction from each family. He spent over an hour talking to each group because there had to be an address followed by a translation. They would confirm their willingness to accept the offer by signing or putting a thumbprint on the quittance. At the start of each document were the parts which his wife and he had asked each individual to complete, explaining what their circumstances were in order to see whether they qualified for the offer. They were dealt with individually in relation to that part of the document which contained individual questions relating to their qualification for the offer. He had worked at this for seven to eight long consecutive days.

482. He was satisfied that acceptance of every signature was properly and voluntarily given as a result of the steps which he had taken. They had been told that if they wanted the money they would have to sign and they were not compelled to sign. He thought that they were motivated by the offer of compensation and in all probability, in view of their wretched living conditions, the question of getting advice did not enter their heads. However, he agreed that the Ilois were quite capable of making their views known, campaigning about it and indeed had rejected an earlier offer of £1/2m. Most Ilois wanted to deal with their immediate distress by the payment of money.

483. However, at least some Ilois had taken strong action against his presence and the terms of the offer had become known very quickly, and he had done his best to explain the contents and effect of the document. His meetings had not all been at one venue because of hostility of some in the community, street demonstrations and threats of disruption.

484. The Vicar General warned Mr Sheridan of the fast spreading view in Mauritius that signing the quittances would jeopardise the chances of the Ilois returning to the islands; he also thought that the Ilois had been given too little time at the meetings in which to consider their position before being talked into signing the forms. He left earlier than planned because of the demonstrations.

485. Mr Glasser remembered how very upset Mr Sheridan had been when he returned from Mauritius in 1979 about the way things had gone. He had seen the MMM as behind the disturbances at meetings and he had been worried about his wife's safety at one meeting. The correspondence then reflected a calmer tone than his conversations had done upon his return. The MMM were complaining about the renunciation clause which was politically controversial and had caused the problems.

486. Mr Sheridan said that in retrospect more time and consideration had been needed and although he was satisfied at the time that he had received instructions from a representative group of Ilois, he was not in the end sure how representative those purportedly representative committees really had been.

487. Mr Ramdass' evidence about what had happened in 1979 and subsequently was confused. He could not remember the Resettlement Board set up in 1970 nor being a member of it. He said that Mr Sheridan had spoken to his group about the 1979 offer and explained that there was a requirement for claims to be renounced. Accordingly, they had told him that they could not take that decision on their own and so arranged a hall and invited people to come where Mr Sheridan explained the position. Mr Ramdass said that those who heard of the proposal were very annoyed about it and no one agreed with it. This was scarcely consistent with Mr Sheridan's evidence that 1,200 quittances had been signed, in his view voluntarily, and that there had been no demur from Mr Ramdass' committee when he spoke to them about it in advance. At another point in his evidence he said that he was unable to remember Mr Sheridan coming with a second offer or that a new committee had been established before that by Mrs Alexis. He said that he did not know whether the offer of £1.25m was for Vencatessen alone or for all the Ilois. His group had not agreed with the renunciation of rights but he also said he did not know what conditions had been attached or whether it had been a condition of the offer that the Ilois could no longer sue. He simply repeated that the Ilois did not agree with renunciation of rights. He denied that there had been any discussion with him or any explanation about

what was being renounced.

488. Questions were frequently unable to keep Mr Ramdass on track and time and again he did not know things which he might have been expected to know in the light of what else he remembered. Notwithstanding the fact that he was elderly and in poor health, he was plainly selective in what he remembered and in what he said he knew. He was frequently evasive. He agreed that Mr Sheridan had told the committee that his offer had a renunciation of rights attached but he said that Mr Sheridan had always been speaking in English. When pressed, he accepted that there had been a translation but he then said that he did not know that for the offer to be accepted all the Ilois had to accept it. He denied helping Sheridans to get the renunciations signed or to arrange for the Ilois to come and meet him and he said that it was just a small number of people who came who disagreed with the proposal. He said in response to the existence of 1,200 signatures that people did not understand what renouncing rights meant. His committee had not been in favour of accepting the offer. Eventually he said that people were happy to receive money but not to give up rights in relation to their land in Diego Garcia.

489. Mrs Alexis described how in 1979 when Bernard Sheridan had come to Mauritius, the word had spread through the Ilois community about the proposed renunciation of their rights as Chagossians (plainly word of mouth was effective in that instance). This had led to what she described as "*intervention*" by a number of Chagossians which had caused Mr Sheridan to leave Mauritius "*in a hurry*". She said that she had realised that many who had signed those forms had not realised their implications. In cross-examination, however, she denied that there had been a meeting in Beau Bassin in July 1979 to set up the Committee Ilois, then she said that she did not remember the meeting but accepted that there had been a big meeting where there could have been 1,400 Ilois. She could not remember that it had elected a committee of 28 people or becoming a member of that committee - "*it was all so long ago*".

490. She said that she did not think that Mr Sheridan had brought an offer of compensation in 1979 and Mr Michel with whom she was working had not told her about the offer. She next said that although she had not gone to any meeting held by Mr Sheridan, her group had led a campaign to make the Ilois aware of the consequences of accepting this offer; Bernard Sheridan had prepared to put a noose around their necks. His offer had conditions attached which involved renouncing rights; they had all put their heads together and said that that would be impossible. It was her constant position that she did not know that Mr Sheridan had brought an offer of money. There was confusion as to why, therefore, her group had got so upset about the quittances and also about what she had said about that in court.

491. After a short break she said that she did not know even now whether Mr Sheridan's offer from the Government meant that they would have to give up the right to return if they wanted the money, then that she did not know what Mr Sheridan was asking them to renounce because she had not been at the meeting. She was again asked what had annoyed her in 1979 leading to her intervention, to which she said that that was because they had renounced their rights and could not ask the English for more money but she had only heard that from other people and nor Mr Sheridan. It may be right that she only heard indirectly about the offer but she was clearly dodging the questions in case her knowledge of that offer and its terms prevented her claims to ignorance of subsequent developments being believed.

492. Mr Saminaden said that he knew when Mr Sheridan came to Mauritius in 1979, he was bringing a new offer though he could not remember whether Mr Ramdass had told him about that or that there had been a meeting of the Ilois to say that Mr Sheridan was coming. He had not heard what Mr Sheridan had to say but he had heard people saying that they had snatched the papers back from Mr Sheridan because they had had to renounce their rights to return to Diego Garcia and did not like that. He remembered nothing about it being said that there was an obligation to bring no more cases. He remembered writing with others to Mr Sheridan saying that he should not use the forms which had been signed. He thought that the letter merely told Mr Sheridan to stop work. He could not read or write in Creole and it was Mr Mundil who used to write letters for them in 1979.

493. The impact of the condition on the return of the islanders to the Chagos was highlighted by the press. "Le Mauricien" questioned why such a condition was necessary and why Mr Sheridan had not been in contact with a particular Ilois support group elected in July at a big meeting in Beau Bassin. It suggested that he was there as the guest of the Government of Mauritius. Certain politicians in Mauritius were concerned that if the Ilois renounced their right to return to Diego Garcia, Mauritius would have a weakened argument for the return of the islands. To that extent, their national interests and those of the Ilois were in harmony. The MMM, the opposition party in which Mr Berenger was a leading light, claimed some influence in persuading the Ilois to reject the abandonment of their rights as proposed by Mr Sheridan - as it was seen by some. Questions were asked in the Mauritius Parliament about the Government's attitude towards this particular condition - it saw it as a matter for the Ilois. It was questioned too about the assistance which it had provided to Mr Sheridan. The Guardian reported on his visit; he told it that the committee which he had spoken to on his arrival had accepted the terms without demur, that the response from the Ilois had initially been so overwhelmingly favourable that he had had to prevent some coming in, so as to have some order to the meetings. But he recognised that their poverty would make them willing to sign almost anything in order to receive some money.

494. When Mr Sheridan returned to England, he received on 13th November 1979 a telex from some Ilois saying that they were revoking their acceptances. The High Commission in Mauritius warned the FCO that there were two Ilois Committees with the MMM in the lead, opposed to the settlement terms, especially to the requirement to give up the right to return to the Chagos. Mr Sheridan described the events of his trip to the Treasury Solicitor in a letter of 19th November 1979. He said that until he had received the political objections from the MMM, he "*had managed to see the greater part of the Ilois community and am satisfied that the acceptances that I have received in respect of every signature was properly and voluntarily given as a result of steps which I took ... It is abundantly clear to me that the overwhelming majority of people wish to accept the offer*", (8/1541). He was not sure how far these political objections went but he did think that what people really wanted was a financial settlement and an end to this long drawn out matter.

495. On 25th November 1979, three committees sent a joint type written letter in English to Mr Sheridan, (20/99). The first committee was that elected on 8th July at Beau-Bassin and their signatories were Charlesia Alexis, Elie Michel and Marie Lisette Talate. The second was the "*Older Committee Which Has Been Liaising with You from Mauritius*" whose signatories were the four Ilois representatives on the Resettlement Committee: Mr Ramdass, Mr Piron and Mr Saminaden together with Mrs Vythilingum. The third committee was the Ilois Support Committee of Mr Mundil. They had also met with Mr Elie Michel of the Organisation Fraternelle. The first two described themselves as having been at the forefront of the Ilois' struggle. They had had discussions with the representative of an Ilois support group based in England, who had also corresponded with Sheridans. They had started the process of discussions within the Ilois community and whatever legal document he now received from the Ilois would be the product of those discussions. They explained why events had taken the turn which they had.

496. Although the conditions were read out and explained, the people focussed on the money and regarded the forms as a mere formality which had to be got over with in order to get the money. They had had only a short time in which to consider matters and had had no time to consult others wiser, more literate than themselves or to take alternative legal advice. Nonetheless they appreciated the efforts which he had made over the years for them. They regretted that he had not discussed the offer "and the conditions attached to it" with the committee with which he had been liaising or provided a copy or one in French, so that they could have reached an informed view on the whole offer before assisting him obtain the signatures. However, they did not wish to reject the whole offer: "*We would like to state categorically that we accept the compensation of Rs 20 million*". But this could not be regarded as final so long as their basic problems of housing, jobs and general well-being remained unresolved. Rs 20 million was insufficient to cover also those who had worked for a long time on the Chagos and those who were still working on Agalega. They were unhappy with the idea of a trust fund and the composition proposed by Sheridans. They were emphatic that they would not accept the abandonment of the right to return to Chagos and although they recognised the practical problems of returning to Diego Garcia in the near future, there were no such reasons why they could not

return to Peros Banhos and Salomon. They were not prepared to undermine the position of all those who wished to see the Chagos returned to the sovereignty of Mauritius. Why, they asked, should the compensation to which the Ilois were entitled have such tough conditions attached?

497. Bernard Sheridan said that this joint letter of 25th November 1979 seemed a well-considered letter, but as to the complaint that they had not had the opportunity to seek alternative legal advice, he said that they could have got advice in Mauritius where there were many lawyers who took an interest. He was conscious that not everyone who interfered were Ilois and that there were political interests with axes to grind: to criticise the Government of the day over the detachment of Diego Garcia and to avoid any settlement between the Ilois and the UK Government affecting any Mauritius claims to sovereignty. He had thought in 1979 or 1980 that they were a community who would meet and discuss matters amongst themselves. They received support from many politicians and lawyers and the Mauritius Government was not unsympathetic to their claims.

498. Mr Sheridan wrote to Mr Vencatessen referring to his hope that a settlement could have been achieved to the benefit of all the Ilois, the vast majority of whom had been prepared to accept the offer until politics intervened. He wanted to know if an individual settlement should be pursued. Mr Sheridan also wrote to Mr Ramdass, although not in reply to the joint letter. He affirmed his satisfaction that the majority wished to settle. But it needed to be clear to everybody that there had been no pressure at all on anyone to sign. He did not think that the giving up of rights to return would affect the sovereign rights of Mauritius over the Chagos but he was concerned for individuals and not the Government. Eventually rights to compensation would be time-barred although a right to return could, in theory, endure for ever. But their arguments would be met by the Immigration Ordinance, and although it had been challenged in the proceedings, it was not the strongest part of the case.

499. Sheridan's reply to the joint letter was dated 31st December 1979, (20/117). Mr Sheridan agreed in evidence that in correspondence in 1979 he had described the Ilois as his clients and had a file for them, separate from the Vencatessen file.

500. It was up to the client to give instructions; nothing had been forced on anyone nor would it be. It had been difficult to see and advise over 1,000 people and was not made easier by the hostility encountered and related problems over the use of the hall. No decisions would be communicated to the UK Government until everyone had had the opportunity to consider the document and to make their views known. He affirmed that he had discussed the offer with the committee which he advised and they had not asked for more time. It was not at all clear that they had any right to return to the island and there was certainly no power to compel the UK Government to send ships to provision the island. Compensation might only be available for those born on the islands and who were forced to leave. "*... the chances of success ... are probably not high and even if the case was won, it would probably apply to only a small number of Ilois, the rest getting nothing.*" There would be no compensation paid out by the UK Government without a condition that there were to be no further claims and no right to return to the islands. The amount on offer had to be judged against the rejection by the UK of responsibility for the large proportion of Ilois who, they say, were never permanent residents or who left before the creation of BIOT; their case would be very difficult. He dealt in detail with the many points raised by the joint letter before turning to the imposition of the tough conditions. The UK Government had only ever accepted responsibility, if it had done so at all, for a small proportion of the Ilois "*and there are severe difficulties in proving the case of even these ... Even if you were to succeed, the amount of compensation would be divided amongst this small number and may be a very low figure indeed. Even then, the Courts might not grant a right of return to the Islands.*" The Ilois had to decide whether they were going to accept the conditions imposed by the UK Government or whether they would favour a political campaign. He was very conscious of their poverty, and of the passage of time with nothing being done to alleviate their conditions. But it was for the Ilois to decide what to do.

501. On 18th February 1980, three representatives of the three Committees instructing Sheridans signed a

typed letter in English telling Sheridans to expect a petition signed by a majority of the Ilois in response to that letter. These three were now the Joint Ilois Committee; a general meeting of the Ilois had insisted on unity and he was to correspond with that body. On 2nd March 1980, the same three, namely Mr Ramdass for the Older Committee, Mr Michel for the July Committee and Mr Kishore Mundil for the Ilois Support Committee, signed a detailed, typewritten letter in English containing instructions on various matters and enclosing a petition to be sent to the UK Government, said to have been signed by the majority of Ilois, (16/179). The petition said that it came from the former inhabitants of the Chagos. It was typed and in English. It said: "*We, members of the Ilois Community, solemnly declare that we are prepared to renounce our rights to return to Diego Garcia, and accept an offer of compensation in full and final settlement, provided that it is paid to us in accordance with the following proposals*", which were then set out. They sought compensation to enable the purchase of land for house building and to start a trade or business. They appointed Mr Sheridan to be "*our legal adviser*" and proposed that further negotiations be carried out by him together with two Ilois representatives plus an interpreter. They urged the dire conditions in which they lived. "*We shall not give up our rights to be repatriated unless the above proposals are agreed to and implemented.*" The names of the supporting Ilois from the various districts in which they lived are set out and against those names, at least on the face of it, are the thumb prints, or in a few cases the signatures, of the petitioners. Some of them gave evidence before me.

502. Sheridans asked them for clarification of a number of matters: as to why a minority had not signed and whether the signatures were those of the heads of households or Ilois eligible for compensation.

503. In March 1980, the JIC wrote to the President of the USA asking for compensation and pointing out that, if they were paid the compensation which they were seeking, they were now prepared to give up their rights to return to Diego Garcia which thus far they had retained. They sent a copy of the petition, saying that it contained some 800 signatures.

504. On 3rd April 1980, (8/1546), the JIC replied to Sheridans' questions. The letter referred to the difficulties in working out how many Ilois there were to be compensated, partly because this included those who had worked on the Chagos for a long time. The 800 signatures constituted a majority of the Ilois because it was more than half of 1,200, which was the number of quittances which Mr Sheridan had obtained. But they recognised that there must be considerably more Ilois than that. It was signed by those over 18. The reason why others had not signed it was that it had been collected in rather a hurry; going from door to door was a long drawn out job and they did not manage to get around to everyone, particularly those who lived in more isolated parts of Mauritius, and the weather had been terrible.

505. Mr Sheridan had no recollection of a petition being sent to him, nor of being appointed by the JIC as their legal adviser to negotiate although he recognised what the correspondence said. He agreed that the documents seemed to suggest that the petition came from his clients and that by April 1980, he was of the view that the committees represented the large majority or possibly all of the Ilois.

506. Mr Ramdass could not recall the letters sent by the three committees in November 1979 to Sheridans even though in his written statement of 22nd November 2002, made some two weeks before he gave evidence, he had specifically dealt with that letter. He said that he had no memory of that statement. He said that he could not remember Sheridans replying to the letter, saying that the UK Government would only pay money if it was accepted in full and final settlement. He had not known that that was their position or that Sheridans had said that that was one of the conditions laid down by the UK Government.

507. He said that it was only here in court that he had found out that Mr Mundil was sending letters without telling him what was in them. He believed that Mr Mundil had betrayed them because he was interested in claiming sovereignty rather than in the interests of the Ilois. But he could not remember how he had learned that letters had been sent without his knowing and could not remember who had told him; they had begun to

avoid Mr Mundil when he started writing letters without consulting him. I concluded that he must therefore have found out what Mr Mundil was doing, if indeed Mr Mundil was doing that, some time before he came to court. When I asked what letters he had regretted signing, he said that it was some letters sent with his name on but that he had not known what they had said. He was unable to remember a single thing in a single letter which he had signed which he felt that he ought not to have signed. He agreed that his son, Eddy, who understands English, would have signed letters if he had been around but otherwise Mr Mundil would have got Mr Ramdass to sign; but Eddy would have been able to look at the replies which were addressed to Mr Ramdass and could have advised him not to sign the letters.

508. He said that he did not know what was in the letter which accompanied the petition sent to Sheridans in 1980 because Mr Mundil had prepared it and they had signed it without knowing its contents. He then denied knowing what a petition was: he said of its contents that nobody would have been in favour of signing a document appointing Sheridans as an adviser, putting forward proposals for compensation in full and final settlement, or saying that they would be prepared to renounce the right to return. Repeatedly he said that nobody would have been in favour of renouncing rights. He said that he did not remember whether the committee had organised the petition but deliberately kept those who signed it in the dark about what it contained.

509. Mrs Alexis said that after Mr Sheridan had left in 1979, she and a number of representatives had met to discuss what to do about the quittances. At Mr Ramdass' house, she with Mrs Talate, Mr Michel and others had made Mr Mundil write a letter to Mr Sheridan saying they wanted him to stop working for them. Mrs Alexis said that she had first heard of Mr Ramdass' committee when she started working on the street for the Chagossians. But then she said she had only heard of it after Mr Sheridan had left in 1979 rather than in 1978 and could not explain why Mr Sheridan had her name on a list of those representing Ilois in 1978. When she had told the Ilois who had signed the forms what was on them (which means that she must have found out), they were very angry because they had never imagined that Mr Sheridan would make them do that. Mr Mundil had translated Mr Sheridan's reply but said that he had not told them that it said that the British Government wanted two things in return for compensation, one of which was a renunciation of the right to return to the islands. Mr Mundil had only said that Mr Sheridan would not be working for them anymore. She could neither read nor write nor speak English or French.

510. It is difficult to convey, without going through all the questions and answers, how reluctant Mrs Alexis was to answer even simple questions if she could see that there was some element of difficulty for her case which an answer would create, but it happened time and time again.

511. She remembered a meeting of the Ilois at which the Ilois had insisted that all three committees act together under the umbrella of the JIC, that is, the CIOF, Mr Ramdass' committee and Mr Mundil's. Mr Mundil did not represent many Ilois; most of the Ilois were working with her, Mr Michel and Mrs Naik. She was constantly demonstrating with the CIOF and others against the British and Mauritius Governments. She knew Mr Berenger and with the CIOF went to see him sometimes; he had put them in touch with Mr Elie Michel in 1978, whose brother, Sylvio, unlike Elie himself, could read and write in English and do letters if they had to be done. She did not remember the three committees organising a petition; her group had never organised petitions.

512. She said she had prepared proposals orally in her group to put to the British Government after Mr Sheridan had gone back to England, but she had never told the Ilois to sign a petition. She said that she did not know whether the petition had been sent to Mr Sheridan because she did not know him. If Mr Michel, Mr Mundil and Mr Ramdass had sent that petition to Mr Sheridan, they were wanting only to crush the Ilois and the Ilois knew nothing of it. Those people alone had organised the petition looking for a list and taking thumbprints. A lot of the names were false. She denied that she had signed it. She complained about the Mauritians tricking the Ilois.

513. Forensic evidence showed that it was her thumbprint but also that at least some other thumbprints had been placed on the petition more than once. On being told about that she then agreed that she had signed the petition but had done so without knowing what it was. She remembered signing a petition asking for compensation but it had said nothing about renouncing rights; her group had organised a petition and details of it were reported in the newspaper. She plainly became confused in later questions about what the petition she was referring to might have asked for. She remembered a petition about animals and land. She was either unable to focus on the question because her memory was bad or she knew well enough the general thrust of what was being sought by the Ilois in 1980 but did not now want to acknowledge it. There is evidence that she had denounced the petition in 1980 because its signatories were unaware of its purport, which would mean that she at least had been aware of it. She reiterated that they had not been in agreement with a sum being accepted as final with no more to be paid or giving up the right to return to Diego Garcia.

514. Mr Saminaden said that they had not organised a petition but when it was pointed out to him that he had signed it, he said that he remembered it but there had been no letter with it saying that they would in certain circumstances renounce their rights to return and accept an offer of compensation. The petition he signed related to animals, housing and land. He gave evidence after Mrs Alexis. He said that if Mr Ramdass and Mr Michel had prepared the petition saying that rights to return would be renounced, they had tricked the Ilois. He was the representative of the JIC in Dockers Flats but did not know who had passed the petition around. He had heard nothing about a demand for £8m compensation as a final sum in 1981. Even if £8m had been paid he thought there would have been no agreement because the Americans ought to be paying an annual rent.

515. On 22nd April 1980, Sheridans wrote to the Treasury Solicitor referring to the recent correspondence with the JIC. They now felt that they had instructions on behalf of the great majority of Ilois, as they had also told the JIC. The instructions which they were now getting were much more detailed, well written and comprehensive than hitherto. They asked if the UK Government would be prepared to pay the costs of the Ilois members of the negotiating team plus interpreter to come to London for the final negotiations because Mr Sheridan pointed out that the Ilois were very clear that they wanted to be present at any negotiations he conducted. The petition was not then sent to the Treasury Solicitor as Sheridans were awaiting clarification of its make-up. The Treasury Solicitor was prepared to contemplate this but only if it were clear that the Ilois were ready to agree to abandon any right to return, and all further claims and if the lists of those eligible were clearer.

516. The position of the Ilois as set out in the petition was given press publicity in Mauritius. "*L'Express*" reported it at the end of May 1980, setting out those parts of the petition in which the Ilois declared their willingness to abandon their right to return in exchange for compensation of Rs 50,000 or £3,000 per head, (19A/F/31). The article in French referred to the JIC and named its representatives. Mr Sheridan was described as the legal adviser. A few days later, it also reported on a mass meeting of about 450 Ilois, following internal divisions among the Ilois. Mr Michel of the Organisation Fraternelle, who was linked to the July Committee, was concerned about negotiations being left to Mr Sheridan alone. It withdrew from the JIC as it appears did the July Committee, or at least its leaders did. "*L'Express*" reported in July on a new committee, the Comite Ilois Fraternelle with Mrs Alexis, Mrs Naick and Mrs Talate, (19A/F/35). They held a press conference. Mr Michel announced that their lawyer was going to bring 6 test cases on behalf of those who had missed out on part of the £650,000 when it was distributed. Mrs Alexis, according to the report, denounced the petition; people who could not read had signed it without knowing what they were signing; the Ilois would never renounce their rights to return to Diego Garcia. She would show that her committee represented the majority and to that end she had obtained a petition containing 1,133 signatures out of the 1,300 Ilois in the country.

517. On 22nd July 1980, the reduced JIC wrote to Sheridans saying that they would only renounce their rights to Diego Garcia if the compensation enabled them to lead a simple but decent life in Mauritius, as they had done in their islands.

518. Sheridans consulted Professor Griffiths who doubted that anyone could bargain away citizenship as such but that they could perhaps bargain away incidents of it such as the right to enter a country but even that was doubtful. It might depend on dual nationality, (16/258).

519. In August 1980, according to her passport, Mrs Alexis visited the Seychelles for 18 days. Mrs Alexis remembered going to the Seychelles in August 1980 for 13 days with Mr Michel on behalf of their Committee. There she saw her husband's sister, Therese Alexis and her daughter, Jeanette. She stayed with them in their house. She said that the Ilois in Seychelles included some who were living quite well and had work and some living in poverty who had no work. She remembered meeting a Comite Fraternelle des Ilois de Seychelles. They arranged a meeting with the Seychelles Ilois through a Government Minister to seek to work together with them. Then she said that they just met all the Chagossians who at that time had formed no grouping. She had explained to them that her committee was demanding compensation from the British Government and that the committee thought that the Government was responsible for the removal of the Ilois from Chagos. They told them that they thought they had a right to return to the islands and were adamant that they had a right to return. She said that Seychelles Ilois did not think they would be able to return but the Seychelles committee did not say that they would renounce their rights. Mr Mein and Jeanette Alexis came to the meeting. She could not remember the Seychelles committee sending a message of support when she was later arrested during a demonstration in Mauritius.

520. It was not until August that Sheridans forwarded the petition to the Treasury Solicitor. Mr Glasser pointed out that the requirement for the Ilois to abandon the right to return was one major stumbling to the negotiations which he hoped to resume based on the petition; he intended to continue with the Vencatessen action.

521. Political activity by the Ilois in September 1980 included a hunger strike by 9 Ilois women, among them Mrs Alexis, which received publicity in the "*Nouveau Militant*", and featured the role of Elie Michel and the Comite Ilois- Organisation Fraternelle, its hostility to the renunciation of the right to return and how it had left the Ilois Support Committee when it had learned of the proposal seemingly brought by Sheridans to that effect. "*Le Weekend*" reported on endeavours to maintain a united front among the Ilois groups for the purposes of negotiations with the UK Government. A third reported that Mr Michel had plans to contact 198 Ilois who lived in the Seychelles. On 6th October, he reported to a meeting of some 400 Ilois on the favourable conditions which those Ilois there enjoyed. However, in March 1981, the CIOF and FNSI asked the Mauritius Government to see if there were any Ilois in the Seychelles who were in a position similar to the Mauritius Ilois. Hunger strikes and demonstrations became a feature of Ilois political pressure for a number of years; they were regularly reported in the Mauritius press.

522. That meeting had been called by the OF and the MMM; it passed many resolutions about compensation for the Ilois and Mr Michel reported to "*L'Express*" that Mrs Charlesia Alexis, Mrs Naick and he had been chosen later to represent the CIOF on a new mixed committee dealing with Ilois matters. Mr Sheridan was hopeful, and so told the Treasury Solicitor, that there was a new committee which appeared representative of the various groups. This appears, in his mind, to be the Ad Hoc Committee set up by the Mauritius Government to examine newly registered cases seeking compensation from the £650,000 fund, the terms of reference of which they wanted enlarged to cover any additional compensation paid by the UK Government.

523. On 3rd October 1980, the Special Report of the Public Accounts Committee of the Mauritius Legislative Assembly was published. It was critical of the way in which the £650,000 had been distributed and of the delay in its distribution. It pointed out that of the 557 families registered in 1977, more than 300 had said that they would prefer a house to cash compensation. It referred to the difficulty in establishing the relevant numbers of Ilois: one survey carried out by Public Assistance Officers every time a group landed supported a figure of 426 families arriving since 1965, the same figure as arrived at by Mr Prosser; the second survey, under the aegis of the Resettlement Committee in January 1977, after a press, radio and TV campaign asking displaced persons to register, arrived at 557 families. This comprised 1,068 adults and 1,255 children.

The numbers who actually received compensation were slightly different, perhaps due in part to the passage of time between the survey and payment in March 1968. The 557 families included 150 people who had arrived before 1965, and from the survey this would have been at least 113 families.

524. On 13th November 1980, Sheridans sent to the Treasury Solicitor a redraft of the deed which would govern the anticipated settlement of the Ilois' claims. They had removed references to the islanders promising never to return to the island, but thought that they would probably concede that they had no intention of returning while it was in defence use. Sheridans sent a letter to the JIC saying that those references had been removed and seeking instructions on the deed which related to the offer of £1.25m. On 16th January 1981, the Treasury Solicitor replied saying that the removal of the clause about return did not give rise to any problem.

525. In November 1980, a further Ilois committee came into being, the Front National de Soutien aux Ilois des Chagos. According to the press, this Front included the MMM, PSM, the JIC and nine others. Its aim was to obtain more compensation without foregoing any rights to return or affecting Mauritius' claims to the Chagos; it intended to mobilise national and international opinion. It was to examine the work of the new Government established Ad Hoc Committee dealing with resettlement as well as seeking a second round of compensation. In December 1980, Mr Ramdass wrote to Mr Sheridan saying that he did not know why the CIOF had split from the JIC and gone its own way.

526. On 26th November 1980, the Mauritius Ministry of External Affairs wrote to the High Commissioner referring in confidence to the unexpectedly large number of Ilois who appeared entitled to have claimed a share of the £650,000 but who for one reason and another, had failed to register their claim, eg they were away on fishing vessels or were wary of identifying themselves as Ilois. They numbered 582 adults and 727 children. The UK Government rejected any further payment on that basis because it had been for the Mauritius Government to decide how to organise the distribution of the sum which had been agreed.

527. The next day, the press reported on the new UK offer of £1.25m or Rs 20m, sent by Mr Sheridan who was described as the UK Government's delegate. It noted that the condition requiring the Ilois to renounce a return to the Chagos had been removed. When Mr Ramdass wrote to Mr Sheridan on 15th December, he said that the JIC were split on renouncing rights to return and that the FNSI would need to be consulted on the terms of the deed.

528. On 10th January 1981, Mr Mundil of the ISC wrote to Sheridans setting out the varying positions which various Ilois groups had taken at times to the renunciation of the right to return, but saying that the JIC and the ISC and many other Ilois had now decided that however favourable the conditions might otherwise be, there would be no renunciation of that right; the position set out in the March 1980 petition which it had sent was denounced. Mr Blom-Cooper was asked to give further advice which he did at the end of March 1981. An attendance note records his view that the case should proceed and that there were two substantive claims: status as an islander and a claim for inducing a breach of contract, with damages which could exceed £10,000.

The 1981 negotiations

529. At about this time the Ad Hoc Committee, through its secretary Mr Bacha, had commissioned a further report along the lines of the Prosser report into the living conditions of the Ilois and the extent of their needs. It appears that the references to a new and representative committee by Sheridans were based on a misunderstanding as to the nature of the Ad Hoc Committee. The committee(s) instructing them remained therefore to some extent unclear.

530. However, another committee in England took an interest in Diego Garcia; in March 1981 a further hunger strike was undertaken by Ilois women. On 20th March 1981, (9/1638), the various Ilois groups sent a memorandum to the UK Government. It was signed on behalf of the CIOF and the FNSI. It sought £8m in compensation based on land, housing and a business allowance for each family; this would be a "*final*" compensation. This was to be distributed to the 900 families which the Ad Hoc Committee report had identified. There should be no link between the compensation and their right one day to return to their native land. The JIC wrote to Sheridans saying that they had sent the revised draft trust deed to the "*mixed committee*", that the hunger strike was also to put pressure on the UK Government to pay "*proper final compensation*" and had the support of all the Ilois. The JIC instructed Sheridans on 27th March to press for £8m in compensation.

531. The High Commissioner reported to the FCO that the Mauritius Government had sought its help at the end of March, as the hunger strike continued, over whether Rs 3m could be paid to the new claimants. But the UK Government would not entertain this, notwithstanding the growing possibility of international press interest in the Ilois. Although he reported that Mr Duval (PMSD) thought that the Ilois were being manipulated by the MMM, he also said that the influence of the JIC was rather less among the Ilois as a whole than that of the CIOF and that Sheridan's role as an intermediary with the Ilois as a whole was minimal. He had a meeting with Mrs Charlesia Alexis, one of the leaders of the hunger strikers and other Ilois from the FNSI, on 2nd April 1981 which he reported to the FCO. Mr Mundil said that Sheridans had not been dispensed with but were no longer the primary vehicle for the advancement of the Ilois claims.

532. It appears, (16/242 and 307), that in early April 1981, the CIOF and FNSI met the Prime Minister of Mauritius and agreed that Rs 3m would be paid to the new claimants, but would be deducted from any further compensation paid by the UK Government; a joint Government and Ilois delegation would press for £8m from the UK Government and deal with other issues including their nationality. Generous assistance would be given to destitute Ilois after their cases had been studied by a group comprising three Ilois and three Government officials. The press reported on the proposal to send a delegation to London and set out its composition.

533. The Mauritius Government asked if the UK Government would receive the delegation seeking £8m. It was to include two Government Ministers, Mr Berenger and two other MLAs and four representatives of the Ilois, three from the Ad Hoc Committee namely Mrs Alexis, Mrs Naik and Mr Michel and one from the FNSI who was later identified as Mr Mundil. Sheridans were instructed in a letter, which arrived through the diplomatic bag, to seek £8m. They advised that there was no objection to direct negotiations so long as they were coordinated with the Sheridans' efforts in the litigation. Mr Blom-Cooper's advice recommended a further limited application for discovery.

534. On 22nd April 1981, the Ad Hoc Committee report was published. It describes the attachment of the Ilois to the Chagos and the way in which they had, as islanders, enjoyed their trips to Mauritius but living on Mauritius was very trying for them. Some had reasonable accommodation but others had living conditions which were very poor indeed. The report confirmed that housing was the highest priority; they badly needed money. However merely sharing money would not provide a solution and some had just spent the first compensation "*blindly*", (9/1656). 144 were receiving old age pensions and 62 Social Aid. Some three fifths of the men were in employment and about one quarter of the women. Just over three quarters of them wished to return to the Chagos. The report was sent to the UK Government.

535. On 23rd April 1981, the delegation which was proposing to come to London met a UK Foreign Office Minister in Mauritius. They ran through the issues which were to be raised in London. Mrs Chalker promised a reply for Mr Berenger on the question of the nationality of those born on the Chagos after the creation of BIOT. The reply sent to Mr Bacha, then Secretary for Defence, was that those born before Mauritian Independence were both Mauritian citizens and citizens of the UK and Colonies, and those born after that date were citizens of the latter, (9/1688). The internal correspondence before it was sent shows the FCO

pointing out that the issue of citizenship was not helpful to them. It also describes the role of the master/citizenship principle when a dual national is in one of the countries of which he is a national, (9/1684). He cannot be given protection by the authorities of the other country of which he is a national. The reply received press publicity in "L'Express" on 1st June 1981. The point was repeated in June after a further request by the Mauritius Government on behalf of delegation members.

536. The High Commissioner's own notes referred to one delegation member saying that there should be no link between the Vencatessen case and the payment of just compensation, and to the debate over whether those to be compensated could include those who had left before 1965 or those who were born on Mauritius after the passage of a certain number of years had elapsed following their parents' departure, and to the need for the delegation to be able to speak for all Ilois.

537. There had also been some rumours that some Seychellois Ilois wanted to join the delegation, but Mr Berenger said that he had been wrong in supposing that there were many Ilois on the Seychelles, (9/1680). He had gone there for a week to ascertain the position according to a report made by the High Commissioner to the FCO, (19A/A/26), and the issue of Ilois there was really a "hate" run by his political rival, Mr Michel from the CIOF. The FCO, in a widely distributed but nonetheless internal Government memo of May, (9/1685), had also said that the Ilois on the Seychelles were believed to be fully integrated and that Mr Rene, the Seychelles President, did not want them involved.

538. The relationship between the delegation and the Vencatessen case gave rise to difficulties in a foretaste of problems to come. On 21st May 1981, Mr Vencatessen sent a letter typed in English but witnessed by his son Simon, saying that his nephew Christian Ramdass had been appointed as his agent for bringing the case to an end in the favourable climate created by the delegation's endeavours, but that he was not prepared to release the pleadings to the Prime Minister of Mauritius as the latter had requested, because his role and the importance of his case was not appreciated by that Government or by others who were now taking an interest. The JIC asked if Mr Ramdass could come to London at the same time as the delegation so as to bring the case to a conclusion at the same time as the negotiations; Mr Mundil who was already part of the delegation could translate but Mr Ramdass' expenses would have to be paid by the UK Government. Meanwhile the proceedings were put on hold pending the outcome of the talks.

539. Mr Purryag, the leader of the delegation and the then Minister for Social Security, was reported by the High Commissioner to the FCO to have been insistent that the problems were the responsibility of the UK and that the delegation would be claiming on behalf of 900 families, even though this included those who had left before 1965, those who were married to a Mauritian and those who were the offspring of such a relationship.

540. Before the delegation left Mauritius, there was a mass meeting of Ilois in Roche-Bois to give the Ilois members their instructions, according to an article in "L'Express" of 11th June 1981. It reported that more than 1,000 attended following a call issued by the delegation members over radio and TV. It also was asked to and did approve the participation of Mr Ramdass in the delegation because he was one of those who had brought official proceedings against the UK Government through Mr Sheridan. He did join the delegation and the Mauritius Government paid his expenses on that basis. "Weekend" described the delegation as seeking "*compensation finale*". Sheridans said that they needed to meet in order to coordinate the case and the negotiations which they did after the first day's session. Mr Mundil explained that they were part of the JIC which only represented a minority of the Ilois and Mr Ramdass was only there for Mr Vencatessen. Mrs Alexis remembered a meeting of the Ilois, to tell her what to do. She remembered that Mr Mundil explained to the meeting that Mr Ramdass had to go to London because he represented Mr Vencatessen who had brought the case in England. This accords with what Mr Ramdass said.

541. The various papers prepared by the delegates set out their cases. The Mauritius Government was critical of the UK's displacement of the islanders and of the limited compensation paid for those who were living in such very poor conditions. It referred to the various surveys which had been carried out since 1974 when 476 families were shown as displaced, to the new registration exercise and to the Sylva report which related to 942 families. It annexed reports from the FNSI and from the CIOF which detailed the various sufferings of the Ilois, including the mental and physical illnesses which named individuals had suffered from, the suicides, and the prostitution into which women had been forced through poverty. They had to leave their homes and furniture behind, their animals, church and graves, all that made them a community. The force which was said to have been used in their removal was the curtailment of supplies and the running down of the plantations with the effect that people who had left the islands for a specific reason were not allowed to return. The FNSI annex refers to the Vencatessen "test case".

542. Sheridans' notes record that Mr Mundil spoke to them again on 30th June 1981 saying that the offer made by the UK might be withdrawn but that the withdrawal of the Vencatessen case had been made a condition of the offer. During the period of the talks, Mr Michel and Mr Berenger attended a meeting of a London Solidarity Group according to a note of which, the latter rejected the lawfulness of BIOT and said that the case would be fought in Court, (9/1725).

543. The minutes of the Sessions, marked "*Restricted*", (9/1711-1724), refer to Mrs Alexis and Mr Michel speaking. Mr Purryag asked about the £1.25m offer and to whom it was made. The UK said that while it was made in the context of a private action, it was made to the Ilois community. A Ministerial member of the UK delegation, Mr Luce, said that the offer terms were intended to remove any possibility of further litigation against the UK in this matter. A further £300,000 in aid was proffered but was seen as wholly inadequate by the Mauritian delegation. Mr Berenger and Mr Michel were forceful in their rejection of it. There were difficulties over the number of Ilois, and over the term of the draft quittance discussed at the sessions which referred to the suspension of the right to return until the islands were "*ceded*" to Mauritius, because that suggested that they were not now part of Mauritius. There was a dispute over whether families with just one displaced Ilois member should qualify and over how reliable the 426 and 942 assessments of Ilois households were. Nothing further was agreed and the four days of talks ended on 2nd July 1981 with no more than an agreement that they should be regarded as adjourned.

544. The absence of progress led to Ilois demonstrations in Mauritius. "*L'Express*" reported that the right to return would have had to be given up and the Vencatessen case withdrawn. "*Le Mauricien*" commented on "*Perfidie Albion*" and its imperial attitude to those who dared to talk of their rights and their British citizenship. Mr Purryag saw the High Commissioner on 23rd July to complain at the absence of progress and at the UK's stance, although acknowledging that the £8m bid had been high. The latter told the FCO of the increasing interest and protest locally and of reports that Mr Michel had instructed UK lawyers.

545. On 10th July 1981, the Ilois members of the delegation sent a typed Memorandum in English to the UK Government. It recalled the UK's responsibility for their plight, the inadequacy of the settlement sum, the illegality of the UK's actions in creating BIOT and in exiling them, of the breaches of their human rights, the death and mental disability which those actions had caused and demanded compensation and a proper programme of resettlement until such time as BIOT was dismantled and the sovereignty of Mauritius re-established over Chagos. It finished by saying that only duly accredited representatives of the Ilois could commit them to any agreement, (9/1740).

546. Sheridans advised, on 13th July, (16/278), that the case proceed to the next stage of discovery but that the chances of the case succeeding were not high. It was agreed that matters should be adjourned pending the outcome of negotiations.

547. Mr Sheridan did not recall the delegation in 1981 but accepted that it was perfectly possible that, as the

documents suggested, Mr Glasser had seen Mr Ramdass and Mr Mundil both before and after the negotiations and that he might have done so as well. He accepted that even after 1980 the correspondence to and from Sheridans suggested that his firm was involved in advising the JIC in connection with the 1981 negotiations and the 1982 negotiations' outcome but he himself had no recollection of any such advice before or after the withdrawal of the Vencatessen action. He had had little contact with the matter after April 1981. Bindmans, instructed by the CIOF, became the legal advisers to the Ilois more generally.

548. Mr Ramdass agreed that he had been to London in 1981 as an observer, to represent Mr Vencatessen's interests but when it was suggested that that was because the British needed to know the terms upon which the Vencatessen litigation would be withdrawn, he simply said that he did not know about it. He was not sure whether the Vencatessen case had been a way of putting pressure on the British Government. He denied that they had ever sought publicity for their cause. He complained that Mr Mundil had spoken in their name, without telling them, but also denied that Mr Mundil had gone as their interpreter. Mr Mundil had not explained what had been said, but Mr Ramdass had not asked him either, although Mr Mundil and Mr Michel had been there to help.

549. Whether or not in these respects this evidence was the result of dishonesty or forgetfulness, I am quite satisfied that in 1981 he knew of the role of the litigation in the settlement negotiations and of his role as the representative of Mr Vencatessen's interests. I reject as incredible the idea that in 1979 and 1980, he had no idea what were the basic requirements for a settlement, as relayed to his group by Mr Sheridan. Likewise, I regard as incredible his contention that he had no idea what was in the letters or petition which were organised by the JIC. Mrs Alexis had denounced the petition saying that people had not understood what was in it. There is nothing to suggest that Mr Ramdass was surprised at what had been done in his name in 1980. It was all of a piece with what had happened in 1979. It is difficult to see how he could only have found out about the contents of the letters in court, in the light of his witness statement or in the light of his answer that he had begun to distance himself from Mr Mundil because Mr Mundil had betrayed them. He could not remember the manner in which he was saying he had been betrayed. Mr Ramdass said also in his evidence that he could no longer understand all the letters that were written relating to his group and over his name, in which negotiations leading to a final settlement had been discussed, because he was now too old. That may be the explanation but it does not add to the reliability of his evidence.

550. Mrs Alexis said that in 1981 in London the negotiations were carried on in English and the Ilois representatives just sat there looking like dolls. She also said that hunger strikes and demonstrations were responsible for getting the Mauritius Government to send the delegation. No one told her what was happening. There was no discussion that she was aware of about the renunciation of rights in London. She said that she and her group had never been willing to renounce their rights. She said, however, that they did not know what was happening at the negotiations because Mr Bacha did not tell them. The negotiations broke down because the English would not give what they were asking so they continued with their noise, disorder and hunger strikes in Mauritius. She remembered that in 1981 the British Government had wanted some conditions attached to the compensation of the same kind that Mr Sheridan had mentioned.

551. Mrs Alexis denied saying anything at the 1981 negotiations but in the minutes of the negotiations, (9-1711), were references to things that she said including coming to Mauritius for treatment for a child. She could not remember saying that. She said it was a lie for the meetings to record her, Mr Mundil and Mr Michel saying things. She said it was possible that Mr Mundil said things but thought that Mr Michel had said nothing. The whole sequence of questions and answers showed a pattern of deliberate evasion so as to protect her contention that she knew nothing about the substance of the negotiations. She said that it would have been difficult for Mr Michel to reject the offer because he could not speak English. Mr Mundil did not translate. She then agreed in cross-examination that in the sessions she and Mr Michel had spoken and that Mr Bacha had translated for them.

552. It is not entirely clear when Bindmans became involved; they were paid some money in April 1981 by

the Mauritius Government for the preparation of papers relating to the payment of money to the Ilois community. Mr Grosz said that Mr Michel, when in London, had come via the Brixton Law Centre, who had suggested the solicitors who had dealt with the Ocean Island case but who could not take him on; the Law Centre had put him in touch with Mr MacDonald QC who had suggested Bindmans. Mr Grosz confirmed that the documents revealed the course of events as he had understood them. He had spoken briefly to Sheridans who had confirmed that the case was not strong. Bindmans were instructed by Mr Michel on behalf of the CIOF by July 1981. On 14th July 1981, they sent instructions to Mr John MacDonald QC to advise in consultation. Questions were asked about where the money to pay for lawyers was coming from. The CIOF representative said that it represented all the 6,000 Ilois on Mauritius except Mr Vencatessen and that the Organisation Fraternelle, to which the Comite Ilois was attached, had 15,000 members with some means and they contributed a little each month to help their fellow blacks. The Ilois had political help from both Government and opposition parties. Mr MacDonald did advise that the Ilois were citizens of the UK and Colonies. They should seek documents from the UK Government. On 30th July, "L'Express" reported that the CIOF had decided to bring a second case in the UK Courts; this had been announced at a demonstration organised by the FNSI and attended by its leaders and some 200 Ilois.

553. Mr Grosz of Bindmans sought details of whom he was representing; he wanted a signed list. The Treasury Solicitor's attendance note for 11th August 1981 records a conversation with Mr Grosz in which the latter stated that he was instructed by an Ilois group and that he would be going to Mauritius to investigate the position. He wrote to Mr Michel commenting on the inaccuracy of press reports about the bringing of a second action, saying that this should be corrected, that his provisional view was that no action could be brought and seeking information. By the end of August, Mr Vencatessen pressed for his action to proceed in accordance with a letter of instructions from the JIC. This sought £8m in compensation and no renunciation of the right to return. This would bring pressure to bear on the UK; legal and political pressure would go together. They raised the possibility of proceedings against the USA.

554. On 24th September 1981, the CIOF wrote to the High Commissioner pleading their cause and threatening that something ugly would happen. He agreed to meet them. Nothing of substance emerged. The press reported on threats to emulate the hunger strikes in Northern Ireland and claims that the occupation of the Chagos by the USA was illegal. However, Mrs Alexis, according to the press, was acquitted with the help of her lawyer, Mr Bhayat, of charges arising out of an earlier demonstration.

555. On 26th October 1981, Mr MacDonald provided his Opinion to Bindmans, (15/112). He reviewed the facts as he then saw them; he advised that statistics be collected to show that the contract worker theory was a "*convenient myth*"; he advised that the Immigration Ordinance was not merely an example of the UK Government's unattractive behaviour but was also "*completely contrary to the traditions of English law*". There was the possibility of a breach of contract claim against Chagos Agalega Company Limited but there was not likely to be any such claim in respect of the distribution of the £650,00; he drew attention to the limitation period. He thought that if the Ilois could be shown to have had land rights, there might be a trust based action and that a claim based on possible land rights, the nature of which was then unclear, provided the most promising line of investigation. He also advised that there would be a serious defect in the law if the Ilois could be expelled without legal redress and that a Court would be sympathetic to a claim alleging intimidation, wrongful imprisonment and assault. It would be difficult to argue that the creation of BIOT itself was unlawful but that if there had been any deception about the nature of the interest which the USA had, that might found an action by the Mauritius Government, the proceeds of which might be held in trust for the Ilois. He concluded that it was political pressure which gave the Ilois the most hope for although it would be easy to show that the Government had behaved badly, he could not say that it would be possible to frame an action which would be taken seriously in the Courts, which ought to be the High Court rather than BIOT Courts for maximum potential political impact.

556. On 16th November 1981, Mr Michel, Mrs Alexis and Mrs Naick wrote a typed letter in English to the High Commissioner asking if the £1.25m offer could be paid as an instalment of compensation and offering

to accept £8m as "*full and final compensation from your government*", (19A/A/56). But they would not renounce their rights to their homeland. They handed it in together to him. He pointed out to them, (19A/A57), that this was going nowhere: the settlement had to be with all the Ilois and the Government of Mauritius and include the withdrawal of legal cases. He also said that he did not think that the Government would insist on the abandonment of claims to return for all time in individual quittances. He wrote to the FCO suggesting that the discreet help of the Mauritius Government be sought in achieving a settlement. The same Ilois wrote subsequently asking if he would confirm in writing that something more might be negotiated as "*final compensation*" even if £8m was not acceptable. He offered no more money but said that they were willing to consider any fresh proposals; any settlement would have to be supported by the Ilois community as a whole and by the Mauritius Government and they would not wish to see the condition concerning return to Chagos becoming an obstacle to agreement.

557. Mr Ramdass said to me that he was still not in favour of £8m as final compensation because he was against ever saying that and had not known that the British would only pay compensation if it was a final amount.

558. Mrs Alexis remembered that in 1981 her committee and the Front National had together demanded £8m from the British Government and that that should not be linked to an abandonment of a right to return. But she next said that they would never have asked for £8m as final compensation in money terms because they did not know how the cost of living would go and that they would never have said '*final*'. She did not know that those words were in the document. Compensation could not be final unless it would enable them to live well in Mauritius. They had decided to ask for £4m per person but the bigshots from the Mauritius Government prevented them from doing that, saying that it was too much. They had no rights to propose anything and things were always decided on their behalf. She eventually agreed that the CIOF and FNSI had in fact presented £8m as a demand for final compensation to the High Commission and the Mauritius Government in March 1981, and that there had been a lot of support from people to persuade the Mauritius Government to send a delegation to negotiate compensation and the demand for £8m. She agreed that the bigshots were in fact helping her to make that demand.

559. She had regarded herself as representing the Ilois community, acknowledged that if she could not go to negotiate on behalf of the Ilois there would have been no point in her going there, and that she had told Mrs Chalker, then a British Minister, in Mauritius that she did represent the Ilois. She also remembered that Mrs Chalker had been asked for information about British citizenship and that the answer was that those people who had been born on the islands before 1968 retained their British citizenship. The answer was published in the Mauritius press, (19A/F/65).

560. Mrs Alexis remembered discussions between the five Ilois delegates in Mauritius asking the British Government to change its position, but not whether a letter was written following that. She remembered after they returned there was a demonstration in Port Louis and speakers at a rally, who included Mr Berenger, Mr Mundil, Mr Michel and herself. She did not remember anyone saying that their group had decided to lodge another case in the English court, (19A/F/70). Mrs Talate had not told her that she had signed a document giving instructions to English lawyers and Mr Michel did not tell her that he had seen English lawyers. She thought that sometimes they wanted to keep things secret from the Ilois (even though it appeared that those matters were announced at a public meeting and were done by her group). When she was shown a photograph of herself in a newspaper with three others announcing that the CIOF had retained the services of English lawyers, she said she had heard about it but did not know the lawyers themselves. She then said that she did not see him giving any help and knew nothing about the group retaining an English lawyer. She said that consulting a lawyer was not one of the things they had thought they could do to help to bring about a change in the British Government's position.

561. She was referred to a letter, (19A/A/56), to the British High Commission in 1981 saying that after a special general assembly of the CIOF, the Committee supported the Ilois claim for £8m as full and final

compensation but without renouncing the rights to the homeland, and seeking £1.25m as part payment while discussions continued. She said that no one had asked for the Ilois' permission to use the word "*final*" in that letter. She had gone to meet the High Commissioner and had left that letter with him without knowing what was in it rather than going, as the document, (19A/A/57), suggested, with Mr Michel, Miss Navarre and Mrs Naick. She could not remember the High Commissioner saying that £8m was not realistic and the solution had to be final, nor remember well a subsequent letter saying that they wanted to discuss an improved offer from the British Government, nor a letter sent to Mr Michel suggesting that the British Government would consider new proposals and perhaps modify the conditions.

562. On 5th December 1981, the same three wrote to the High Commissioner suggesting payment of £6m as "*further and final compensation*" without prejudice to the £8m claim which they regarded as wholly justified, (9/1748). The £6m was based on those displaced between 1965 and 1973 but it relied on the 1321 adults and 1708 children identified in the Sylva report. They wanted to resume discussions with the UK Government as soon as possible with a delegation similar to the one which had been involved in the summer. A meeting of Ilois had been held at which this figure of £6m had been unanimously agreed, they said. It appears that 500 Ilois attended this meeting. When this letter was handed to the High Commissioner, he told them that these figures were completely unrealistic; his note to the FCO refers to the figure of £3.1m suggested by the Mauritius Minister for Information, which had been publicised on TV and which appeared to have the support of all the Ilois except for Mr Michel and his group. On 10th December 1981, he told the FCO more of the various intrigues among the Ilois, the anti-Michel faction who wanted £3.1m distributed among a smaller number of families and the dominance at an Ilois meeting of Mr Berenger. Both the group prepared to settle for £3.1m and the CIOF met the High Commissioner but he told them that there had to be a common position among the Ilois. The papers include an undated petition signed by the group of 426 and of 516 (942) led by Mrs Velloo and Mr Raphael Piron which would share the £3.1m made up of twice £1.25m and twice £300,000. She thought that the payment of compensation to those who left the Chagos after 1965 had been delayed by the overall politicisation of the Ilois around Mrs Alexis, according to a note of a meeting which she had with the High Commissioner in February 1982, (9/1762). Some of the political arguments raised at various times went beyond sovereignty and the creation of BIOT, to the associated militarisation of the Indian Ocean as it was seen.

563. Mrs Alexis said that she could not remember a meeting in December 1981 in Roche Bois at which it was suggested that £6m should be paid rather than £8m to those displaced between 1965 and 1973. She rejected the idea that she would sign a letter accepting any settlement as final and indeed said that they would never have asked for £6m. When asked who the people were who got her to put her mark to letters she did not agree with, she said that the person writing the letter might just be saying what he wanted to say. She thought those people might have been Sylvio Michel and Mr Mundil. Those were the two who were in the habit of writing their letters.

564. On 12th December 1981, Mr Ramdass and Mr Michel Vencatessen, in a letter witnessed by Simon Vencatessen, asked Sheridans to meet Mr Mundil, their "*friend and collaborator*" who would be visiting London shortly and had their authority to discuss the case for the JIC and Mr Vencatessen, (16/290). Mr Vencatessen recognised his signature but could not remember the letter; he might have been a member of the JIC at some point.

565. After payment of the necessary fees, the opinion of Mr MacDonald was released to the CIOF which sent a letter to the Prime Minister of Mauritius telling him of it and seeking assistance in paying for it, and saying that a further action might be brought. Some press publicity was given to the opinion. The "*Weekend*" identified the lawyers involved and that they were working on a possible case in the British Courts on behalf of the CIOF, supported by the MMM.

566. In January 1982, Sheridans wrote to the JIC to say that they were now pressing forward with the litigation which might have an effect on the Ilois as a whole. Discovery was to be pursued. There was a clear

link between the case and the negotiations with the Government. A Notice of Intention to Continue was served.

567. On 15th January 1982, the FCO wrote to the High Commissioner in the Seychelles asking about the attitude of the Ilois in the Seychelles, if indeed there were any and strictly speaking there were not, towards the dispute in Mauritius.

The 1982 Agreement

568. The UK Government began to make arrangements for another round of negotiations, and on 20th January 1982, the FCO sent a brief to Sir Leonard Allinson who would lead the UK team. A settlement of between £3 and £5m was commended. They could advance from the £1m disbursed in 1978 (£650,000 plus accrued interest) to £4m with a further £3m; anything less would not be acceptable to the Mauritius Government; if necessary it could go to an additional £4m but the last million was only to be offered if really pressed. It should be maintained that only 400 families were eligible but that the Mauritius Government and the Ilois could decide how to distribute it. FCO research produced a paper showing that the total population of the Chagos of all nationalities up to 1964 did not exceed 1000 or so, and the figure of 2867 relied on by the Ilois was grossly excessive. The Prosser figure of 1150 Ilois or 426 families was too high (although those figures do not include any Ilois who were outside the Chagos at any one time but were intending to return). There was a briefing on the fracturing and fractiousness of the Ilois groups, (19A/B/16). Nearer the time of the talks, more extensive briefing papers were prepared, one theme of which was the need to ensure that there would be no further litigation if an agreement were reached and another was the use of the figure of households (426) which emerged from the Prosser report, as the least unreliable of the many figures which had emerged. This would affect the calculation of compensation but not necessarily the way in which any sum was in fact distributed. The sum of £2.5m, based on 426 households, would involve the complete acceptance of Mauritius Government figures for housing and land costs and almost complete acceptance of Ilois figures for family businesses and collective needs. This offer would replace the £1.25m plus £300,000 and would bring the total compensation including the £650,000 to £3m+.

569. On 11th February 1982, the High Commissioner was presented with a list of the 75 Ilois families receiving Social Aid. Shortly after, he also reported that Mr Michel had presented a petition of 1,100 signatures to the Prime Minister of Mauritius calling for the Government to pay for Bindmans to fly to Mauritius to advise on the settlement of the Ilois claims, which it did. Their role was to represent the Ilois through the CIOF, according to Mr Grosz, although, in re-examination, he said he regarded himself as advising only the CIOF. I do not think that in 1982 he drew that distinction. He thought the CIOF and he represented the Ilois, in my view. It makes no sense for the delegates to be representative of an unknown, let alone insignificant, number of Ilois. The CIOF had made the running; if they were satisfied, who could be dissatisfied apart from those who would have settled earlier, for less? He had been told by Mr Michel that the CIOF represented the overwhelming majority of Ilois but he himself had seen no proof of that beyond its representation on the delegation. He did not have such reservations as he expressed in re-examination at the time, in my view. He had no specific instructions but his impression from Elie and Sylvio Michel was that if the money were sufficient, the Ilois would renounce damages claims and put the right to return into cold storage for an indefinite period. The UK Government wanted to wash its hands of the business of the Ilois.

570. Formal talks were due to begin in Mauritius on 22nd March 1982. The arrival date of the UK delegation was announced and the terms which would be sought by the Mauritius delegation were publicised: £8m plus reimbursement of the Rs3.5m disbursed on the new claimants. A Government press communiqué announced the composition of both delegations. Sir Leonard Allinson, Assistant Under-Secretary at the FCO would lead the four-man UK Delegation which included one legal adviser. The Mauritius delegation would include Mr Purryag, the Minister of Social Security, the Attorney General, other officials, Mr Berenger, Mr Bacha of the Ad Hoc Committee and, as Ilois representatives as they were described, Mr Michel, Mrs Alexis, Mrs Naik, Mr Mundil and Mr Ramdass. The communiqué also stated that two British legal advisers to the

CIOF would be in Mauritius during the talks. "L'Express" gave publicity to the schedule for the talks and referred to the arrival of the British lawyers who were preparing a case against the UK Government and would meet various Ilois representatives.

571. Mr Grosz remembered a large group of Ilois awaiting their arrival at the airport on 19th March. He had been to a public meeting of the Ilois conducted in Creole.

572. The talks opened on 22nd March 1982. In his opening statement, Sir Leonard Allinson made the points as he had been briefed to do. The UK Government accepted no legal responsibility for the Ilois who left BIOT after its creation. The offer was made ex gratia and in a spirit of goodwill and no attempt had been made to evaluate the different heads of claim. It was made to enable them to settle with land, a house and money to start a business together with community facilities. The Government considered that 426 was the best figure to take for households who left BIOT as a direct result of its creation and those who left before November 1965 did not do so as a result of the UK Government's acts. The number of those temporarily away would not significantly alter that figure. Accordingly, the offer of £2.5m or £5,800 per family was put on the table. He also said that the Government was prepared to forego the requirement for individual Ilois to sign quittances provided that the terms of the agreement were incorporated into an inter-governmental agreement which would provide for the establishment of a Trust Fund; this would be the best way of ensuring that the money was used for the proper purposes. This agreement would provide for all claims against the UK Government to be renounced or withdrawn. A slightly different version from the Brief, (19A/B/62), which probably reflects what was actually said, refers to the need for the Vencatessen case also to be withdrawn. An agreement was tabled. The two London lawyers sat with the Mauritian delegation. The negotiations were conducted in English; there was no official translation.

573. During the negotiations, the High Commissioner kept the FCO informed as to how matters developed. He referred to a meeting which Sir Leonard Allinson had had with the Prime Minister of Mauritius, Sir Seewoosagar Ramgoolam, before the first session on 22nd March 1982, at which the latter had offered to add £1m to the UK offer, provided that the UK matched it with an additional £1m, an offer which he repeated in a private meeting the next evening. Lord Carrington had previously written to him asking for his support for Sir Leonard. It was then pointed out by the Mauritius Government Ministers present that they did not accept the figure of 426 as appropriate but the Sir Leonard said that £6m was out of the question. The offer of £3m was leaked to the press, notwithstanding pleas at the session for it to be confidential. Mr Allen was critical of these private meetings of which the Ilois were unaware. I see nothing objectionable in them. The negotiations were not exclusively direct negotiations between the Ilois and the UK Government.

574. It appears from these telegrams that the next day's negotiations focussed not on the households but on the global sum; the Mauritius Government offered £1m by way of land to which the UK delegation responded by increasing its offer by £1m so as to make £5m (£4m from the United Kingdom) in total in addition to the £650,000. A post negotiation report, (19A/B/84), said that Mr Mundil's efforts to press for more had been foiled. The UK delegation stance was that it was for the Ilois to decide how the money was to be distributed. The delegation's lawyer met with Mr Grosz and Mr MacDonald in the afternoon to go through the trust fund arrangements. He is reported to have told them of the need for the Vencatessen case to be withdrawn and for an indemnity to be provided against other claims. Mr Grosz said that Mr MacDonald had said that the Ilois would need to give practical assurances that they were not going to bring claims about the right to travel to Diego Garcia. He confirmed that the need for all claims, including Vencatessen's, to be withdrawn was a key point which would have been explained and translated to the Ilois delegates or to the whole Mauritian delegation. He said in re-examination that he could not form a view as to how much they understood. However, he never gave any indication that he had remotely formed the view in 1982 that they had failed to understand what was being said. In private, Mr Purryag explained the difficulties which a renunciation of rights to return and a Government indemnity would pose for the Mauritius Government, which was then facing a general election. Mr Grosz said that he had noted Mr MacDonald advised the delegation that the withdrawal of claims would be difficult to enforce and, as an inter-governmental agreement, it could not bind

the Ilois.

575. The lawyers met again on 24th March and solutions were debated. The Mauritius Government was also concerned about a clause in the draft agreement which could be interpreted as giving up its claims to sovereignty. The details of the discussions on the agreement, as set out in those telegrams, show that the concern about the indemnity from the Government was proposed by the Ilois (or at least their lawyers) and by the Mauritians to be met by individual renunciations, (19A/B67 and 73). This would protect the Mauritius Government in relation to its indemnity. This was thought to be as satisfactory as it could be, if coupled with the retention of £0.25m in the trust fund until the end of 1985 to be used as a source of funds for an indemnity against other claims being brought, for example by those who refused to sign a renunciation. The end of 1985 was thought to represent a point after which the limitation period would provide protection. In practice, the best protection was that the Ilois were apparently ready to initial the agreement with its provisions for individual renunciations, which the Mauritius Government envisaged would be signed at the first distribution of funds and which it was willing to undertake to procure, motivated by their acceptance of the obligation to indemnify the UK against further claims. It was recognised, at least internally by the UK delegation, that there was no hope of getting the Ilois to abandon claims to return to BIOT. Mr Grosz recollects a lawyers' meeting at which the terms of the Agreement, including individual renunciations, were discussed. But he did not think Article 4 was actually in the Agreement before he left, although it was certainly in at some point on 24th March, and he later agreed that subsequent events suggested he was familiar with the provision. All drafts had, however, referred to full and final settlement of all Ilois claims and Mr Grosz said that that had been understood. There was, he said, no point in an agreement with the British if the Ilois were unhappy with it.

576. Bindmans' attendance notes for the negotiations records a meeting, but not its content, with Ilois: Simon Vencatessen, Christian Ramdass, Eddy Ramdass, Kishore Mundil and one other. There is a note of a discussion with Elie Michel and Paul Berenger about individual signed abandonments of claims, which Mr Grosz thought had taken place. They also refer to a meeting at which Mr MacDonald advised what appears to be the Mauritius delegation, that although it could ask for more than the £4m on offer, that sum was a fair settlement and that he did not think that any more would be forthcoming and that it should be accepted. Mr Berenger said that such acceptance would require a general meeting of the Ilois. Mr Grosz confirmed this.

577. Mr Grosz and Mr MacDonald left for London during the afternoon of 24th March 1982. Their departure was regretted by the UK delegation because it was felt that their contribution had been helpful and constructive, conscious of the weaknesses of some of the Ilois claims. The post negotiation report said that Mr MacDonald had been helpful in advising his clients of the desirability of reaching an agreement.

578. A further problem blew up with an attempt by Mr Berenger and Mr Mundil to insert a provision into the agreement which would have had the effect of keeping open claims arising out of the very creation of BIOT. This was regarded as totally unacceptable by the UK delegation and simply as a political ploy. The Mauritius delegation received advice from both its Law Officers and from the three lawyers advising the Ilois. The telegrams and the post negotiation report both state that the UK delegation wanted its position made clear to the Ilois in Creole so that there was no misunderstanding that this would be a sticking point for the UK and if it were persisted in would lead to the end of the negotiations; it was a political gambit irrelevant to their need for compensation. After several hours, a solution was reached by which Ilois claims arising out of the creation of BIOT would be precluded but not those which Mauritius might have.

579. This, it was said by Mr Allen, was the only occasion when the UK delegation set out to make clear what was happening to the Ilois in the language which they understood. Mr Grosz said that he believed but could not be certain, that at meetings of the Mauritius delegation and of its Ilois part at which he and Mr MacDonald spoke, what they said was explained in Creole and vice versa. The language of those meetings was Creole. His recollection of the Ilois delegates was hazy, but he could not remember any points of disagreement between the Ilois and CIOF. He did not meet the 34 individuals named as the CIOF Committee on the list

sent to him. There is a letter of thanks from Sir Leonard Allinson to Mr Purryag dated 29th March 1982, (19B/1), in which the usual courtesies are expressed and specific thanks are given for the service of Mr Bacha in interpreting for "us and the Ilois".

580. There was an initialling ceremony on 27th March 1982; the members of both delegations initialled the last page of the agreement. Mr Vencatessen himself attended, and Mr Purryag handed to Sir Leonard Allinson a letter saying that instructions would soon be given for the case to be withdrawn. Speeches were made; Mr Purryag said that it was "*a satisfactory and final solution*", (9/1787). He congratulated his Government on its paying for Mr Grosz and Mr MacDonald to come as the Ilois' legal advisers. A joint press communiqué was issued referring to the £4m UK contribution and to the £1m Mauritius addition. The £4m was "*in full and final settlement*" of all Ilois claims. It was so announced in the House of Commons, on 1st April 1982. The Mauritian press reported the agreement widely. "L'Express" specifically referred to the need for the Government to obtain from each member of the Ilois community "*un acte signé de renonciation à loger d'autres plaintes*" which it had then to hold for the UK Government, (19A/F/81). Other lawyers were referred to as having been there to help the Ilois including Maitres Ollivry and Bhayat; the High Commissioner told the FCO that they had been unhelpful in the wings. On 27th March 1982, Mr Purryag and Mr Bacha visited Roches Noires and were greeted rapturously by the Ilois on account of the settlement so they told the High Commissioner; they had played down the role of Mr Berenger to their satisfaction. Mr Berenger told the High Commissioner that the elimination of this dispute boded well for future relations between the UK and the MMM/PSM Government which he saw in power after the elections. (He became the Finance Minister).

The agreement as initialled needs to be set out in full:

"AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MAURITIUS

The Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the Government of the United Kingdom) and the Government of Mauritius,

Desiring to settle certain problems which have arisen concerning the Ilois who went to Mauritius on their departure or removal from the Chagos Archipelago after November 1965 (hereinafter referred to as "the Ilois");

Wishing to assist with the resettlement of the Ilois in Mauritius as viable members of the community;

Noting that the Government of Mauritius has undertaken to the Ilois to vest absolutely in the Board of Trustees established under Article 7 of this Agreement, and within one year from the date of entry into force of this Agreement, land to the value of £1 million as at 31 March 1982, for the benefit of the Ilois and the Ilois community in Mauritius;

Have agreed as follows:

i

ii Article 1

The Government of the United Kingdom shall ex gratia with no admission of liability pay to the Government of Mauritius for and on behalf of the Ilois and the Ilois community in Mauritius in accordance with Article 7 of this Agreement the sum of £4 million which, taken together with the payment of £650,000 already made to the Government of Mauritius, shall be in full and final settlement of all claims whatsoever of the kind referred to in Article 2 of this Agreement against the Government of the United Kingdom by or on behalf of the Ilois.

iii Article 2

The claims referred to in Article 1 of this Agreement are solely claims by or on behalf of the Ilois arising out of:-

- (a) all acts, matters and things done by or pursuant to the British Indian Ocean Territory Order 1965, including the closure of the plantations in the Chagos Archipelago, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their preclusion from returning to the Chagos Archipelago (hereinafter referred to as 'the events'); and
- (b) any incidents, facts or situation, whether past, present or future, occurring in the course of the events or arising out of the consequences of the events.

a. Article 3

The reference in Article 1 of this Agreement to claims against the Government of the United Kingdom includes claims against the Crown in right of the United Kingdom and the Crown in right of any British possession, together with claims against the servants, agents and contractors of the Government of the United Kingdom.

Article 4

The Government of Mauritius shall use its best endeavours to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims referred to in Article 2 of this Agreement, and shall hold such renunciations of claims at the disposal of the Government of the United Kingdom.

Article 5

- (1) Should any claim against the Government of the United Kingdom (or other defendant referred to in Article 3 of this Agreement) be advanced or maintained by or on behalf of any of the Ilois notwithstanding the provisions of Article 1 of this Agreement, the Government of the United Kingdom (or other defendant as aforesaid) shall be indemnified out of the Trust Fund established pursuant to Article 6 of this Agreement against all loss, costs, damages or expenses which the Government of the United Kingdom (or other defendant as aforesaid) may reasonably incur or be called upon to pay as a result of any such claim. For this purpose the Board of Trustees shall retain the sum of £250,000 in the Trust Fund until 31 December 1985

or until any claim presented before that date is concluded, whichever is the later. If any claim of the kind referred to in this Article is advanced, whether before or after 31 December 1985, and the Trust Fund does not have adequate funds to meet the indemnity provided in this Article, the Government of Mauritius shall, if the claim is successful, indemnify the Government of the United Kingdom as aforesaid.

(2) Notwithstanding the provisions of paragraph (1) of this Article the Government of the United Kingdom may authorise the Board of Trustees to release all or part of the retained sum of £250,00 before the date specified if the Government of the United Kingdom is satisfied with the adequacy of the renunciations of claims pursuant to Article 4 of this Agreement.

Article 6

The sum to be paid to the Government of Mauritius in accordance with the provisions of Article 1 of this Agreement shall immediately upon payment be paid by the Government of Mauritius into a Trust Fund to be established by Act of Parliament as soon as possible by the Government of Mauritius.

Article 7

(1) The Trust Fund referred to in Article 6 of this Agreement shall have the object of ensuring that the payments of capital (namely £4 million), and any income arising from the investment thereof, shall be disbursed expeditiously and solely in promoting the social and economic welfare of the Ilois and the Ilois community in Mauritius, and the Government of Mauritius shall ensure that such capital and income are devoted solely to that purpose.

(2) Full powers of administration and management of the Trust Fund shall be vested in a Board of Trustees, which shall be composed of representatives of the Government of Mauritius and of the Ilois in equal numbers and an independent chairman, the first members of the Board of Trustees to be named in the Act of Parliament. The Board of Trustees shall as soon as possible after the end of each year prepare and submit to the Government of Mauritius an annual report on the operation of the Fund, a copy of which shall immediately be passed by that Government to the Government of the United Kingdom.

Article 8

This Agreement shall enter into force on the twenty eighth day after the date on which the two Governments have informed each other that the necessary internal procedures, including the enactment of the Act of Parliament and the establishment of the Board of Trustees pursuant to Articles 6 and 7 of this Agreement, have been completed.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

581. The FCO legal adviser at the talks sent a copy of the agreement to Bindmans on 1st April 1982 who passed a copy on to Mr MacDonald, pointing out changes made to the draft which they had seen before departure, after the long debate which they had missed. Mr Grosz agreed that he had not reacted to Articles

4 and 5 as if they were surprising or new. There was no suggestion of anything untoward in those changes. He was thanked for his work.

582. One UK adviser was concerned that the size of the offer would provoke claims from the hitherto quiescent Ilois on the Seychelles but it was thought that in 1981 Mr Berenger had failed to interest President Rene in his campaign and that nothing had since changed.

583. Although the attitude of the Mauritius High Commissioner, as expressed to the FCO, was that the agreement would go a long way to alleviating the plight of the Ilois, the FCO was warned by the UK High Commissioner that the FNSI under Mr Mundil had sought advice from a radical lawyer about the sovereignty implications of the agreement and, with the likes of Mr Bhayat, was now against the signing of the agreement or at least delaying its signature. On 6th April 1982, Bindmans sent a letter to Mr Sylvio Michel saying he had heard of such concerns. He had taken the advice of Mr MacDonald, with which he agreed, and thought that nothing in the agreement, as initialled, precluded any international claim which Mauritius might wish to bring against the UK over the sovereignty of the Chagos. He set out their reasoning in some detail. The CIOF appear to have accepted this advice and pressed for the signing of the agreement and this was reported in the press. Mr Grosz agreed that neither he nor Mr MacDonald had suggested that Articles 4 or 5 contained anything untoward. He would have commented on anything new and important. He agreed that this suggested that he had in fact been familiar with the text before he left Mauritius.

584. Sheridans sought payment from the UK Government of their costs in advising the Ilois generally; they too were envisaging an end to the litigation, in April 1982. In May, Bindmans told them that the Ilois were pleased with the outcome but that although he had met Mr Ramdass and Mr Mundil, the former had been unable to get any more for Mr Vencatessen.

585. However, on 21st May 1982, the JIC wrote to Sheridans raising the point that there were doubts in Mauritius about the sovereignty issue and that the proceedings were not to be withdrawn until the Mauritian delegation was satisfied and ready to sign the agreement, a copy of which was enclosed. This stance was communicated to the Treasury Solicitor whose reply appeared to suggest that the deal had been done. The litigation was nonetheless put into abeyance. Sheridans advised the JIC in a letter dated 2nd June 1982 on the terms of the agreement, identifying the provisions of clause 2(a) precluding a return to Chagos and commenting that they must have taken a view on that point; they said it was preferable, as now provided for in clause 4 that it should be the Mauritius Government which would be responsible for procuring the renunciations, and that was one of the major issues which needed to be considered. Sheridans sent a copy of the agreement to Mr Blom-Cooper.

586. The CIOF, including Mrs Alexis, met the new MMM/PSM Government in June 1982 to discuss foreign expert views on the sovereignty issue. They held a press conference at which they are reported as saying that while they did not doubt the advice of Mr Grosz and Mr MacDonald, the agreement concerned only compensation and not sovereignty and they wanted steps taken to implement it.

587. On 7th July 1982, the agreement was actually signed on behalf of the two Governments. Speeches were made. The new Mauritius Government welcomed "*the end of the saga of the Ilois community*", (9/1819). The role of Mr Berenger, of the Michel brothers and of the Ilois representatives was praised. They had all agreed to this sum despite the great sufferings of the Ilois in a spirit of compromise. The new opposition and even the UK High Commissioner were praised for their part. The agreement had only been concerned with compensation and not with sovereignty and had no bearing on it. The agreement was embodied in an Exchange of Notes, (Cmnd.8785), with a minor change to Article 8.

588. Mr Ramdass and others gave evidence about what they knew of the negotiations in 1982. He again

complained that Mr Mundil had spoken in their name without telling them, and that Mr Mundil, who could speak Creole and English, did not explain to them what was happening in the 1981 or 1982 negotiations; but he agreed that he did not ask Mr Mundil what had been said during the negotiations, although Mr Mundil and Mr Michel had been there to help.

589. He said there had just been discussions in groups in 1982 and they were just sitting down watching. Mr Michel was there and Mr Ramdass did not know how he might have understood what was happening. There were several English people there. There might have been some English lawyers to advise Michel and Mrs Naick but he could not remember; that group had told him they had English lawyers but they had not advised him, that he could remember. Proceedings had been summarised once, at the end. There were no English lawyers present when the Ilois groups asked for things to be translated. At the meetings around the 1982 Agreement, they were just in a corner not together. He could not remember trying to get more money with Eddy and Mr Mundil for Mr Vencatessen.

590. Mr Ramdass had understood that the Government would keep back money for five years under the 1982 Agreement and use that to defend any cases that were brought against them. There would be no renunciation of rights and this formula enabled the problem of renunciations to be resolved. No one had been given a copy of the agreement. He did not know how his son had then managed to send a copy of the agreement to Sheridans to seek their advice. By this time he did not understand what agreement was being talked about. He could not remember his son saying that he had received a reply from Sheridans giving advice on the agreement. All this was too long ago he said; his memory was very short, there had been too many letters and too many events. He was asked about the initialling of the agreement which at first he appeared to understand, but yet when a query arose about a translation and the questions were restarted, it was impossible to bring him back to the 1982 Agreement. He simply could not remember anything about it. Finally, he remembered there might have been some ceremony at which something was signed but he could not remember. He did not know what was in it.

591. Mrs Alexis agreed that she had known before the 1982 negotiations started that the British Government would not insist on the renunciation of the right to return to Chagos and what the British Government wanted was a renunciation of any more claims for compensation. A doubt about the translation was then raised and not for the first time the effect of the doubt being raised, which was perfectly proper in itself, led to a change in the answer. She said then that she had not known at the 1982 negotiations that the British Government wanted them to give up the right to make further claims for compensation.

592. She denied there was a meeting in December 1981 attended by 500 Ilois at which it was decided who the 1982 delegation should include and that the demand should be for £6m. Mrs Alexis' evidence became very vague about the run-up to the 1982 negotiations. She did not remember that they had tried to get the Mauritius Government to fund English lawyers, nor that they had asked for the Mauritius Government to pay for them. A letter saying that she had met with the Mauritius Prime Minister and Mr Berenger in September 1981, when the Prime Minister said he would meet the English lawyers if they came, was simply not true and they had been tricked by the Mauritius Government and all those who disagreed with them.

593. She was referred to a newspaper in which it was said that her group had handed a petition to the Mauritius Prime Minister signed by 1,000 Ilois calling for an immediate visit to Mauritius by Mr MacDonald and Mr Grosz. She said she had no knowledge of that, (19A/B/15 para 3). She was shown a photograph of herself standing next to Mr MacDonald published in the newspaper, (19B/93). She said she had forgotten, so many English people came to Mauritius.

594. Mrs Alexis said that in the 1982 negotiations she did not understand what was going on because the meetings were conducted in English. They again sat around like dolls not knowing what was being talked about. However, she said they refused to accept that some form of release should be given. She said the

solution was that a sum of money would be kept to compensate the British Government in case Chagossians initiated claims against the British Government within the first five years after the compensation was paid. Things were only explained in Creole after the negotiations were finished. Only Mr Bacha explained in Creole what had happened; Mr Mundil explained nothing because he had come only for his own personal interests; Mr Michel explained nothing. She only could remember that Mr Bacha had told her they would get £4m and the Mauritian Government would give £1m for land. He also explained that if anyone brought a case in five years against the British Government, money had been held back against that. The agreement was never summarised or translated to her and she said that if Article 4 had been explained there would have been big trouble. Mr Bacha never said that the British Government would pay only £4m and that there would be no more than that. She did not know whether Mr Bacha might have hidden things from her. She was unaware that there was any requirement in the Agreement that the Chagossians renounce their rights to get money from the ITFB. She said that she did not know that the Vencatessen case was being discussed at the time of the 1982 Agreement or at that time that it would have to be withdrawn; it was only afterwards that that was mentioned. She could not remember putting her thumbprint to the Agreement.

595. Although she was President of the CIOF which had instructed Bindmans, she said that she could not remember that there were two English lawyers at the negotiations or that Mr Michel had made contact with English lawyers; there were just a lot of English there. She said that they did try to find out what they were talking about, but only after all the negotiations were over and they had dispersed did they find out what it was about "*because then we had the responsibility for informing the Ilois over whose heads they had been talking*". This was not a credible picture of Mrs Alexis, a very active and determined woman and President of a well-organised group.

596. In cross-examination, Mrs Alexis explained a little more about what happened in 1982. She said that in the 1982 negotiations there were meetings between the two delegations and among the Mauritius delegates themselves to decide what to say. Her committee had meetings all the time to decide what to do but not during the negotiations. They had had no meetings with Mr Berenger during the negotiations. She could not remember Mr MacDonald and Mr Grosz being there when they had discussions as a group of Ilois or delegates. She said that all the Mauritius delegates spoke Creole but there were times when they spoke in English. She was then very evasive about why she made no efforts to find out what was being said in English of those who could speak English. She asked rhetorically of whom she could have asked. She said that Mr Mundil was not part of it at that time, in the sense he was not part of the committee and she did not work with him. She asked Mr Bacha during the negotiations but they were just sitting like dolls and were only told things after the negotiations were over. They just told them things were in order so that they could be finished with the Ilois more quickly. She said she had asked Mr Bacha what was being said before the end of negotiations but it is possible that he did not tell them what was being said. She was shown a photograph which she accepted appeared to show her sitting next to Mr Mundil at one of the sessions of negotiations.

597. It is perfectly clear to me that she was in a position to enquire readily what was going on during negotiations and it is quite incredible to suppose that she did not ask Mr Mundil what was happening and get an explanation. She was President of the CIOF and no shrinking violet. She agreed that the Ilois wanted their representatives to have full authority. She explained that she could not remember an opening statement by the British nor what their first offer was and explained that she had not asked because she said they did not have the right, although they were members of the delegation, to ask because they were too insignificant. She had no idea what was being offered until the negotiations ended. I find that impossible to believe.

598. She remembered that Mr Purryag, a Mauritian Minister, was head of the delegation but she said that they had not gone to see him after the opening session. She said she did not know that the British had made it clear that there would only be £4m from them.

599. She did not remember that during the negotiations there was a meeting in Roche Bois addressed by Mr Berenger, Mr Michel and Mr Mundil. She said she might have been ill and did not go. She was pressed about

a newspaper report of 25th March 1982 referring to a meeting the previous day and whether she remembered a meeting during the negotiations to tell the Ilois what was happening, to which she said she did not believe there was a meeting because during the negotiations the Ilois were dying of hunger. (The newspaper report referred to Mr Berenger telling a mass meeting of Ilois that the British and Mauritius delegations were in full agreement over the amount of compensation, the non-renunciation of the right to return but that the provision preventing a future Mauritius Government (he hoped to be in the new one after imminent elections) from raising the issue of the creation of BIOT was unacceptable; paragraph 578 describes how that was resolved).

600. There is no doubt that she was not answering the question, not because she did not understand it, but because she understood it only too well. The implications of answering the question truthfully were that the Ilois knew very well what the gist of the negotiations were about.

601. She did not remember a stage in the negotiations towards the end when the British delegation arranged for the Ilois to be told specifically in Creole about a dispute which was risking the successful conclusion of negotiations and the payment of money by the English. But later she recollects that there was a disagreement about sovereignty between the two Governments and the British Government had said that if the Mauritius Government could not agree on sovereignty there was a real risk that there would be no agreement on compensation it appeared. She then said that the British Government had not arranged for that to be said in Creole. In re-examination, she said that it had been translated into Creole, but not why it had been nor that the Mauritius Government's attitude put the Agreement at risk.

602. She said that the Mauritius Government was concerned about sovereignty and for that reason the Mauritius Government had not told them what was going on, because the Ilois said that the Ilois had sovereignty over Chagos. She could remember no discussion between the Ilois and the Mauritius Government along the lines that the acceptance of the money would not weaken the sovereignty claims. (It is plain that such a line was taken).

603. She thought that at the end of the negotiations the Mauritius Government had got money for the Ilois to end their poverty. The Ilois knew that money was coming to a fund but they knew nothing about renouncing their rights. She did not know what the terms of the Agreement were in the paper or if they were secret. She knew that there was a condition in the Agreement requiring money to be put into a fund because Mr Bacha told her, but they did not ask him any questions because they had no right to do so. This was in answer to the question about what steps she had taken to find out what the Agreement contained so she could tell the Ilois. The Ilois had no right to do anything and Mr Michel, who could not read or write, was not in a position to ask Mr Bacha either. She did not remember a communiqué issued by the delegations and she did not know that anything ever had been said about full and final settlement. She would never accept a final settlement. She said the money was being paid, not as final compensation or to get them to renounce their rights, but because they needed money and so the English were paying for the suffering they had caused.

604. The British Government never said they would not pay more than £4m, but the reason they did not pay £6m or £8m was that they did not understand the needs of the Ilois. She was asked why if the British Government were happy to pay more, they wanted money retained in the fund to deal with claims against the British Government. Once again, the answer to the questions trailed off into nothingness. She said that it was the Governments who decided to keep the money in the fund; that they had kept some aside in case anyone should bring a case against them and then that it had to be kept for five years and that it could not have been released early if the Ilois had signed renunciation forms.

605. She denied that the CIOF had sought legal advice about the 1982 Agreement. It was plain from the documents that it had. She did not remember a press conference held by her Committee saying they wanted to press the Mauritius Government to ratify the Agreement, (19A/F/87). When pressed again about her

Committee obtaining legal advice from Bindmans she repeated her answer that she knew no law and was just saying the Ilois were dying. She only remembered putting pressure on the Government to unblock the money.

606. Mr Saminaden said that he did not know the result of the 1982 negotiations other than that he had heard that £4m and £1m was to be paid for all the Ilois and that Vencatessen had to withdraw his case, and did not think that it was a condition that the Chagossians would never ask for any more money or that they could be required to abandon the islands. Even £8m could not be final, and he was not aware that the CIOF were looking for £6m, or any final settlement. He accepted that Vencatessen would not be paid twice over and would only get money from the ITFB and that was all the other Ilois were going to get. He knew the English in 1982 had wanted the Agreement to be final but he said it was not part of the Ilois' intention. He appeared to think that if there had been another case that would have yielded another large sum of money in order for that to be withdrawn. I asked him why if he thought that was so, there were not more cases, but he said they did not have other people to take the action. They needed someone to encourage them and it was only now that they had the right kind of support. He realised that Vencatessen himself could not bring another case but it had to be somebody else who brought it. The case was final for Mr Vencatessen but he was either evasive or simply unable to understand the point as to why it should not have been final for anybody else who might want to bring a case. He did not speak to the delegates about the terms of the 1982 Agreement but he heard it from others who had read it in the newspapers.

607. Mrs Kattick described herself as having been a simple member of the CIOF; her sister, Mrs Naick had been on the Committee. Her sister had not told her about the visit to England in 1981, because they did not have enough contact even though they both lived in Roche Bois. It was possible, she said, that her sister had been a prominent member of the CIOF but she did not read the papers often. She could not read in French. She then said that she was aware that they had gone in 1981 to negotiate with the UK Government and that Mrs Naick was in the 1982 delegation. They had never talked about the Agreement, but she remembered that there had been an agreement with the British Government giving £4m and the Mauritius Government £1m of land for which the ITFB was responsible. She was asked whether the payment was intended to represent settlement of the Ilois claims for compensation. By this time she was aware of the dangerous path the questions were going down and started laughing at the questions. She said that because the money was not enough she did not think that it was final. She was asked again, not having answered clearly, whether the £4m had been intended to be final. "*Final?*" she said. The question was repeated followed by silence. Now she said she understood that the question was whether the agreement was final. There was an agreement as to the amount of compensation to be paid: that was the £4m. She remembered there was a claim for £8m in 1981 and after negotiations broke down the Ilois made a further demand asking for compensation. But she could not remember any of those negotiations, although she was still a supporter at that time of the CIOF, which was represented on the 1981 negotiations. She then said she did not know that there had been any delegation to Mauritius from Britain to negotiate claims in 1982. I gained the impression that she understood the questions before they were translated on a number of occasions and anticipated the problems that were coming up. She then said that she knew there was an agreement in Mauritius between the two Governments because the British Government delegation had come to Mauritius to reach an agreement. She said that she could not remember if it was intended to be a final settlement. She agreed that £250,000 was kept in reserve to meet a claim against the British Government, that the money could be released if no claims were brought, and released early if all the Ilois promised not to sue the British and that the Mauritius Government had to do its best to get the Ilois to sign the forms not to sue the British Government. Her evidence on this changed later - she said she did not know that. She was unaware of any meeting in April to tell the Ilois about the Agreement but agreed there were many meetings and that it probably had been explained. She said she only discovered the terms when she was on the ITFB in 1983.

608. Mr Bancoult was asked about the 1982 Agreement. I considered that Mr Bancoult was very reluctant to give straight answers to obvious questions about what the Chagossians thought was going on and about what interest they took in the progress of the Agreement and its purport. He said that the Ilois had wanted to be paid compensation without conditions. They had not just agreed because they were poor. He said that

nobody had agreed to renounce their rights but they would have wanted to know if there were conditions attached to the payment of the money. He was unaware that there had been a debate associated with the negotiations about whether the Agreement in effect required the Mauritius Government to give up sovereignty over the Chagos Islands. He did not know that the money to be paid was in full and final settlement of claims or that the aim of the UK Government was that the Ilois would not be able to claim any more from it. He did not know of the terms of the Agreement, and sometimes he did not have enough money to buy a paper, so he was not aware of the communiqué in which both Governments said that £4m was in full and final settlement; the term "*full and final*" was bandied about all the time. It had not been said that the 1982 Agreement required them to renounce their rights and there was a protest when Mr Berenger said they had to renounce their rights; all that was said was that part of the money would be kept back until 1985 if anyone decided to sue the British Government or the ITFB. The Ilois had agreed to nothing in the 1982 Agreement, and the payment did not discharge any obligations owed to the Ilois. They were free at any time after 1985 to bring proceedings for more money, he thought, and the people on the delegation never told the Ilois that they would not be able to sue the British Government again. He thought that the Government required the withdrawal of the claim before it paid £4m because there were people outside the scope of the Agreement who wanted compensation. But he could not answer why he thought the British Government might pay £4m and still leave themselves open to being sued by Mr Vencatessen.

609. Mr Bancourt said that Mrs Alexis did not understand what was happening, and had only said that if the Vencatessen case was withdrawn, that would allow compensation to be paid; she never said that there were any conditions. He had not been told that the Mauritius Government had agreed to use its best endeavours to get renunciations from the Ilois. Each time there was a mention of renunciations there was a demonstration. Renunciations had not been agreed even in 1982 and that is why it had been decided that they should keep part of the money back in case there were people who sued the British Government.

610. Mrs David remembered that there were negotiations between the British and Mauritius Governments, that they reached an agreement and that money was paid as a result. She remembered that there were meetings of the Ilois about that. She agreed that once those two Governments had reached an agreement, she could expect money in Mauritius but nothing more from the British. But she asked for the question to be repeated and for water saying she had a headache. The sequence of questions was started again and this time she said that she did not remember negotiations between the two Governments or that there had been any agreement. After a break, she said again that she did not remember negotiations between the two Governments, although she did remember several hunger strikes by women. She thought they were on strike against the Mauritius Government. She did not know where the ITFB got its money from. She remembered signing the August 1980 petition seeking compensation, that a lot of others signed it but there was no discussion about it. They had never discussed asking the British Government for money, because they would never renounce the right to return. She said that she knew Mr Ramdass by name and face but had never supported his committee. She also remembered Elie Michel who ran the CIOF and Mr Mundil, but she had not participated in his activities or the Front Nationale de Soutien des Ilois, nor the CIOF. She supported the Chagos Refugee Group because Olivier Bancourt was in it. She had not talked to Michel Vencatessen about his case but she heard about it. She never asked him about it because they did not meet much and would only pass the time of day. She had heard that Michel was claiming a right to come to England and seeking money as compensation for having to leave the islands. She talked to her uncle, Rosamund Saminaden, but he did not tell her that he had met an English solicitor. She could not remember Mr Sheridan but she knew he was helping the Ilois.

611. Mrs Elyse could not remember any agreement between the two Governments, or that the money which she knew the UK Government had paid was all it intended to pay.

612. Mrs Jaffar had not been aware, she said, of any negotiations: the Ilois did not meet to discuss things because they were scattered through Port Louis. She thought the ITFB money came from Mauritius, as did Mr Laval.

613. Mrs Talate remembered that a delegation of ten people had been to see the Mauritius Government and that there had been protests by the Chagossians in Mauritius about returning to Diego Garcia. She remembered getting Rs 7,000, given by the British to the Mauritian Government to give to the Chagossians. She had got the money from the Post Office, but she already had Rs 15,000 debt at the time.

614. She denied knowing who Mr Sheridan was or knowing anything about a lawyer or knowing what the August 1980 petition was. She simply said that she would never and had never renounced her rights. Before she signed anything, somebody would have to explain things to her because she could not read. No-one explained anything to her. She did remember attending Ilois community meetings because she was a member of a Creole defence organisation. Some of those meetings were attended by very many Ilois. They discussed compensation to get money to feed themselves, but they never put signatures to any papers before getting money. In cross-examination, she said that she did not know in Mauritius of groups supporting the Ilois. She knew Ramdass but did not mix with him. She knew there were several groups but she did not support them. She supported the Organisation Fraternelle Cite de Roche Bois, and eventually she agreed that she knew the Chagos Refugee Group; but said that she had not been the Treasurer, saying that she cannot read and cannot understand anything. But she agreed that she had been closely associated with it, and had been one of the leaders of the group at the very beginning. I found her reticence on this unsatisfactory; she knew much more than she said and was aware of the problems which that would create.

The implementation of the 1982 Agreement

615. As a necessary part of implementing the agreement, the Mauritius Legislative Assembly passed the Ilois Trust Fund Act 1982. The objects of the Fund, as set out in section 4, were to receive the £4m paid under the agreement, to use it for "*the social and economic welfare of the Ilois and the Ilois community in Mauritius*"; to acquire land for the same purpose and to indemnify the UK Government under the terms of the Agreement, (9/1850). There is no definition of "*Ilois*". Section 5 provided for the establishment of the Board: an independent chairman, 5 Government representatives and 5 Ilois to be appointed in a prescribed manner. The first Ilois members were identified in the schedule to the Act. They were Mr Mundil, Mr Michel, Mrs Alexis, Mrs Naik, and Mr Ramdass. The Chairman was Father Patient and Mr Bacha was one of the Government representatives. As a precaution, section 12 stated that nothing in the Act affected Mauritius' sovereignty over the Chagos.

616. The ITFB first met on 11th August 1982. It was decided, according to the minutes, that the discussions would be in Creole and that the minutes would be in both Creole and English. Mr Ramdass raised the question of expenses for Mr Vencatessen and was told by Mr Bacha that Mr Vencatessen had given his word that the case would be withdrawn and he should withdraw it unconditionally. If he did not do so, no money would come in for the Fund. The bringing of any other action would amount to a breach of promise. Those who wanted work in Agalega should be identified. But Sheridans told Mr Mundil that they still had no instructions from Mr Vencatessen on 25th August. The delays in the withdrawal of the case led to concern among the Ilois as to when they were going to receive the monies. The High Commissioner reported that the delay was due to Mr Vencatessen seeking payment of expenses.

617. On 31st August the ITFB met for a second time. According to the Minutes, Mr Vencatessen had been asked to submit details of his expenses but not for the ITFB to pay. He wanted Rs 15,000 and a public meeting on 5th September so that he could tell the public of all that he had done for the Ilois cause. Mrs Naick said that voluntary subscriptions had been raised for the case. Mr Bacha spoke of the anxiety of the Ilois at the delay. Mrs Alexis said that she too had incurred expenses. Mr Michel said that he was not prepared to be responsible for what might happen if the case were not withdrawn.

618. Mr Simon Vencatessen gave evidence to me that the first time he became aware of his father's case was after the 1982 negotiations, when Mr Berenger addressed a meeting of 500 Ilois in Cite Rochebois

saying that the Ilois had won £4m but only on condition that his father withdrew his case. From that moment there was intense pressure brought to bear on his father. His house was surrounded, people threatened to beat his father up, he could not go out and had a police escort for 17 days. Up till that moment his father had not known that he would have to withdraw his case in order for the £4m to be paid. Later Mr Vencatessen said that it was thanks to his father that all the negotiations had started and that he had wanted money for his case and the thanks of the Ilois. With those, he would have been happy to withdraw. But Mr Vencatessen said that the Ilois did not want to wait while his father got his money, which they thought was holding matters up.

619. On 3rd September 1982, Mr Vencatessen wrote to Sheridans, in a letter witnessed by his son Joseph, giving instructions for the withdrawal of his case. On 5th September, Mr Mundil and Mr E Ramdass for the JC wrote to Sheridans explaining what lay behind this. There had been a demonstration on 3rd September by "some impatient Ilois" and the acting Prime Minister had called an urgent meeting to which Michel and Joseph Vencatessen had been summoned along with some of the demonstrators, some members of the ITFB and two Ministers, (16/356). There, the Government had promised to pay him Rs 15,000 if he withdrew the case immediately. This he agreed to do. The Government had then taken it upon itself to cancel the meeting called for the 5th at which the work of the JIC was to have been explained to the Ilois and at which the withdrawal of the case was to have been announced publicly. But a letter of 6th September 1982 from Eddy Ramdass to Sheridans alleged that Mr Vencatessen had been forced to sign that letter under pressure at the meeting from people who included members of the "*National Intelligence Unit*". Simon Vencatessen in his evidence said that he wrote the letter of 3rd September 1982 to Sheridans asking them to withdraw the action following his father being taken "*by big strong people*" in a car to the Prime Minister's office. His father told him about that. They had made him sign the letter. What was said in the letter of 5th September was true so far as he knew and so the next day they wrote to Sheridans and told him not to withdraw any action, but he said that the request seemingly signed by Simon Vencatessen made by Michel for the withdrawal of his case in the letter of 5th September 1982 was not something which he had signed. He said that his brother Joseph was a drunkard and was given rum to get him to sign the piece of paper withdrawing the case.

620. On 22nd September 1982, a letter in the names of Christian and Eddy Ramdass, Simon and Michel Vencatessen was sent to Sheridans saying that all had been a misunderstanding and that the instructions to withdraw remained good. At the same time, Sheridans asked a Mauritius QC, Marc David, to see Mr Vencatessen and check whether his consent was genuine and free. Mr David met Mr Vencatessen on 27th September 1982 with his son Simon and the two Ramdass' in the presence of Mr Bacha, at Mr David's home. Mr David wrote to Sheridans to say that he was satisfied that Mr Vencatessen freely and unreservedly wished the action to be withdrawn and was fully aware of the nature and implications of what he was doing.

621. Simon Vencatessen said that he knew nothing about the letter of 22nd September 1982 (very much later he agreed that its contents were correct). He remembered going to the meeting at Mark David's house because Mr Sheridan had proposed that they contact him as an apolitical lawyer. He went there with his father and Christian Ramdass. He said that there were maybe 10 to 15 cars behind them, and outside there were lots of people who said that they would not come out alive unless they signed to withdraw the action. Mrs Naick was outside and could be seen through the window, and Mrs Alexis was in one of the cars. They insulted those inside, but Mr David did not see them because of the way Mr David opened the door, or hear them because they knew he was important and kept quiet. Mr Bacha, who was the Secretary of Defence, was there to make sure that they signed the document and they were unable to discuss anything with Mr David. Only Mr Bacha and Mr David did any talking. No one was happy that Mr Bacha was there. Mr Bacha was a very authoritarian person and when he told you what to do, you had to do it. This account was not in his witness statement. Mr Howell suggested this was incredible; why had he not written to Sheridans as soon as the £4m had been paid over? He was an uncomfortable witness, possibly giving evidence in some fear.

622. Mr Ramdass said that Mr Bacha had done the talking in English with no Creole translation; he thought the discussion was about ending the case and ending the pressure on Mr Vencatessen. He knew that Mr

Vencatessen had to do that if the money were to be paid, but said that Mr Vencatessen was not happy to withdraw it. There had been 15 cars outside putting pressure on them and people looking through the windows to put pressure on. One was a female Ilois but he did not know her name, (which is odd if it were Mrs Naick). He did not know of Rs 15,000 being paid to Michel Vencatessen.

623. Mrs Alexis, in chief, remembered that Chagossians had demonstrations about the Vencatessen case saying to him that he had to withdraw his case so that they could get their money. She knew of his case because she had heard through other people that he had a case in court. There had been a third hunger strike because of the delay in payment caused by his case. She went to see Mr Bacha who said it was necessary for the case to be withdrawn in order for the Chagossians to get their money; she had pestered him, so Mr Bacha had sent the police to bring Mr Vencatessen to the Government offices from his home. She said that he was forced to withdraw his case but if he had not withdrawn it, the Ilois would have attacked his house and smashed it down. Then she said that she did not know whether the money could be paid to the Ilois before the case had been withdrawn. No one told her that it had to be withdrawn at the time of the Agreement. It was the English, she knew, who required the case to be withdrawn because Mr Bacha said so and that the English would not give the money otherwise. She remembered that Mr Vencatessen was very upset at having to withdraw his case. She had wanted him to withdraw the case so they could get the money.

624. In cross-examination she denied knowing that he had to withdraw his case; she had never gone to Mr David's house. She could not follow, at least according to her answers, the concept that if Mr Vencatessen had had to withdraw his case as part of the Agreement, the British Government would not want other people to bring cases against them. When asked why she thought the Mauritius Government was insisting that the case be withdrawn, she said that that was so that they could get a bit of the money for themselves because they were always torturing the Chagossians, then, so that all the money would go into the hands of the Mauritius Government, which could have then said untruthfully that it had gone to the ITFB.

625. After the letter of 22nd September, Mr Vencatessen's supporters in turn pressed Sheridans to withdraw the action, saying that the Ilois community was impatient to hear that it had been withdrawn. The Mauritius Government, with a view to cooling the situation, according to a telegram from the High Commissioner to the FCO on 27th September 1982, had taken five minutes of the main evening news to broadcast in Creole to the Ilois explaining the situation over the Vencatessen case and what had been happening over the last month to it. It had emphasised its desire to speed things up.

626. On 7th October 1982, an attendance note of Sheridans on the Mauritius High Commissioner speaks of a hostile crowd outside Government House in Mauritius refusing to disperse until Sheridans had withdrawn the case. There had been an ongoing demonstration there for some days, addressed on one occasion by Mr Berenger. On 8th October 1982, the High Commissioner sent a letter to the FCO enclosing a handwritten letter which he had received from Mrs Alexis which complained at the slowness of Sheridans in dealing with the letters which Mr Vencatessen and Mr David had sent instructing them to withdraw the action. The prolonging of what the letter described as the test case was prolonging their suffering.

627. On that same day, the Order staying proceedings had been drawn up and the litigation ended. The Treasury Solicitor agreed to pay the costs of Sheridans acting for the Ilois in general.

628. On 28th October 1982, the £4m was paid over at a ceremony at which, on the Ilois side, Mrs Alexis, Mrs Naick, Mr Ramdass and Mr Mundil were present. The Mauritius Foreign Minister said that it was a happy conclusion and that the long sufferings of the Ilois were at an end. The UK Government was thanked and so were the Ilois representatives. The Indian Government also added Rs 1m to the Fund.

629. The ITFB decided on 11th October 1982 that it would communicate with the Ilois about the distribution

of the monies by press communiqué and TV advertisement for December. There were heated debates as to who were Ilois, how they were to be identified when collecting compensation and as to how the money was to be disbursed. Mr Duval wrote saying that he had been retained to protect the rights of certain people and criticised the settlement in the Assembly. It was eventually agreed in the ITFB that there would be a first payment in December to each individual Ilois of Rs 10,000 in cash. There would be a list of Ilois posted and objections could be raised to names on the list and to those omitted from it. They would attend with a birth certificate and would be identified by an Ilois. Payment of the next, larger sum, which was calculated on the basis of 1453 adults and 122 minors, would be made for the purchase of housing on production of title deeds. Adults would receive an additional Rs 36,986 and children one half of that. The proposed system of payment was publicised. A large queue formed at the central Post Office where the money was distributed.

630. The payment of Rs 10,000 (then worth £556 at the prevailing exchange rate), was largely complete in December, but there were still 200 or so who had yet to receive it in January. A High Commissioner's memo to the FCO said that 1419 adults and 160 minors had registered for compensation in 1982 of whom 1288 and 83 respectively had received the first tranche. There were elections for the Ilois members of the ITFB in late December 1982; Mrs Alexis and Mrs Naick were not elected and instead two sons of Mr Vencatessen, Simon Vencatessen and Francois Louis were elected along with Christian Ramdass, Elie Michel and Mrs Kattick.

631. At this time the High Commissioner reminded Mr Abdullatif, who was the Secretary/Treasurer of the ITFB as well as being the Permanent Secretary at the Ministry of Social Security, of the Mauritius Government's obligation to obtain signed renunciation forms, none of which had been obtained so far. The issue was taken up with the Mauritius Foreign Minister. The FCO urged that the pressure be maintained on the Mauritius Government on this point. The Mauritius Government sought advice as to whether the task of procuring them fell to the ITFB or to the Government, which it received in February 1983 to the effect that the ITFB could not be responsible for the renunciation forms.

632. The Ilois who had been Citizens of the UK and Colonies became British Dependant Territories citizens on 1st January 1983 after the coming into force of the British Nationality Act 1981. Their dual citizenship remained. They had had no right of abode in the UK previously either.

633. The Ilois representatives on the ITFB were minuted on 25th January 1983 as being in favour of Identity Cards so as to reduce the risk of impersonation but at the next meeting but one, on 24th February, two Ilois representatives reported opposition to such cards from among the Ilois. There had also been a decision in January to seek the advice of the Solicitor General as to the eligibility of Ilois who were in the Seychelles or who had emigrated from Mauritius after their departure from the Chagos. There were discussions at the meeting on 3rd February about how the money for the purchase of land or a house should be dealt with.

634. The fate of the Ilois continued to be raised in the UK Parliament. An FCO Research Paper of February 1983, prepared for a Question from Mr Onslow discussed the circumstances of their departure. This is relevant in relation to any allegations relating to the state of knowledge of Ministers in 1983 and later. The researcher said that she thought that there were probably few, if any, who left BIOT entirely voluntarily and without expectation of return "*until the life of the islands was clearly at an end*", (19A/C/7). It appeared that direct physical coercion was not used to remove them. There were those who were stranded and not re-employed who left between 1965 and 1971; there were those who left Diego Garcia without reportedly any physical force being used but to whom it must have been apparent that there would be no further food as all the company's supplies were being removed on the last boat; and there were those 332 Ilois on Peros Banhos and Salomon who left "*voluntarily*" when their contracts ran out in the knowledge that the islands would be closed in the near future, and the 150 who were removed by boat from Peros Banhos in April 1973, most of whom would probably have been resigned to leaving. Substantial background papers were produced for the briefing of Ministers appearing before the Select Committee on Foreign Affairs.

635. On 3rd March 1983, after the ITFB meeting, three Ilois ITFB members, Simon Vencatessen, Francois Louis and Mr Ramdass wrote to the Chairman and to the Prime Minister of Mauritius and to the High Commissioner, saying that they were suspending participation in the Board until it did some real planning for the resettlement programme with reference to the sites for housing and identifying the eligible families. They were strongly of the view that ID cards were essential to avoid fraud. They appear to have missed a couple of meetings.

636. Mr Abdullatif had become aware of the advice that it was not for the ITFB to collect renunciation forms from the Ilois, and in the light of a Government decision that they should be collected by the Ministry of Employment and Social Security, asked for a letter of renunciation to be drafted. At the ITFB meeting of 1st April 1983, Mr Bacha referred to Article 4 of the Agreement and the need for renunciation forms. Mr Abdullatif said that this was not a matter for the ITFB to deal with and Mr Bacha said that he thought it was a matter for the Employment Ministry.

637. The Select Committee of the Mauritius Legislative Assembly into the Excision of the Chagos reported in June 1983. It had been set up after the elections of June 1982 and was chaired by the new Foreign Minister. It rejected parts of the evidence given by the previous Prime Minister of Mauritius and of Mr Duval of the PMSD, which had been in government. It accused the UK Government of flouting the UN Charter and of blackmailing the Mauritius Government into accepting the excision of the Chagos as a necessary step on the road to independence.

638. By June 1983, there was evidence of restlessness among the Ilois and dissatisfaction at the absence of progress towards any development of the land for housing which the Government had put into the settlement. However, Mr Abdullatif told the High Commissioner on 6th June 1983, (19A/C/65A), that land payments had been made. House owners received Rs36000 per adult and minors had received Rs 23,000, 50% of which had gone to their parents. Other categories had been paid in cash, notably the elderly. No renunciation forms had been obtained. But it appeared that the ITFB was generally restricting payment to some 1,420 people, including some 200 children.

639. At a meeting of the ITFB on 10th June 1983, there was a discussion about a claim from a Noelline Paul from the Seychelles, which would have to await an Affidavit from the Seychelles Government. "Le Militant" reported on 30th June 1983 that Mrs Alexis was supporting the right of Ilois on the Seychelles to participate in the compensation. The particular case concerned an Ilois who had gone to the Seychelles in 1971 for an operation and had not had the money to go to Mauritius when her parents had left the islands in 1973. Mrs Alexis also took up other cases and requested press releases of what went on at meetings of the ITFB. She planned a demonstration outside the Board's meeting on 30th June 1983 to which Simon Vencatessen and Francois Louis sent their letters of resignation. The issue of ID cards and impersonation continued to vex the ITFB. The two held a press conference at which they explained their concern at the use of the names of dead persons to claim compensation, the need for ID cards and the opposition which that had met from some other Ilois on the ITFB.

640. Another Ilois group was started in about mid 1983 - the Chagos Refugee Group. Mrs Alexis was its first President (though her witness statement had not said so). Mr Bancoult and Mrs Talate were involved in setting it up. Mr Bancoult said that it was necessary because Mauritian politicians and intellectuals had betrayed them. His evidence about that was unsatisfactory. The CRG would be Chagossians helping themselves, he said. There had been some claims that the Ilois could regard themselves as refugees, although the aim of the compensation as seen by both Governments had been to enable them to integrate into Mauritius. It petitioned the ITFB on various issues. It wanted to examine the lists of Ilois eligible for compensation to see if there were ineligible or even dead people included. The CRG expressed disagreement with those on the list and the ITFB responded in August by saying that 1,260 Ilois had registered in 1982 plus 96 who were latecomers, or away abroad or working on boats, but that the CRG could send the names of those who should not be there for investigation. The CRG had also sought the early

payment of the final instalment of compensation.

641. Allegations continued to be made in the summer of fraudulent claims; one individual accused Mrs Alexis of making a fraudulent claim. Mrs Alexis was later convicted of making a fraudulent claim on behalf of two deceased children and served a short custodial sentence. In July 1983, ID cards were issued to the Ilois and the ITFB asked if Mr C Ramdass could be given time off work to assist in the process by identifying them. 1,303 were issued.

642. In July 1983 Mr Lucine Permal sent a list, containing the names of some 80 workers, to the ITFB at the request of Mr Bacha. He said that he was their representative and that they were entitled to compensation.

643. By the middle of August arrangements were being made for the final instalment of compensation to be paid. (Final is the way it is described by a number of people in the documents, but there was still some money to be retained by the ITFB to support the indemnity.) There had already been a small further payment from the Rs1m donated by the Indian Government. The enduring pre-occupation of the UK Government with renunciation forms was to be met before this last payment and the Mauritius Government had prepared the forms. On 26th August 1983, the Secretary to the ITFB told the High Commissioner that the Minister of Social Security would arrange for their collection when the final payment was made, which had been set for 29th August to 13th September 1983. The police had been notified and asked to attend at Astor Court, the Ministry Offices where this payment was to be made. The letter from the ITFB to the police refers to the fact that renunciation forms will be signed.

644. There was however, according to the documents, a problem which arose at the start of the payment process, which was postponed on 29th August until further notice, (22A/162). On 1st September, the High Commissioner wrote to the FCO, (19A/C/72), saying that the Secretary to the ITFB, Mr Abdullatif had told him that the Ilois had refused to accept the money and to sign the renunciations. There was an emergency meeting of the ITFB on 30th August at which it had been decided to increase the amount paid by adding in the notarial and survey fees for the land which they might receive after the implementation of the two housing projects, which the ITFB had been holding back. There had been a meeting with Mr Berenger, now Leader of the Opposition and the two MLAs who represented the constituencies with the greatest concentration of Ilois. He said that Mr Berenger had been "*very firm with the Ilois and said that there could be no question of them not signing the renunciations*". It appears from an article in "*Le Militant*" on 1st September that Mrs Alexis was present. On that basis, the arrangements were reinstated for the following week with a payment of Rs 8,687 per adult and Rs 4,340 per minor.

645. A press communiqué was issued on 1st September by the ITFB setting out the arrangements for this distribution. It was in Creole and the ITFB asked for them to be broadcast on radio. The Ilois were to come to the Ministerial Offices between 5th and 20th September, with specific days being allotted according to the initial letter of their surnames. "*Le Militant*" reported the proposed increase, saying that the hold-up had been because of confusion over the amount of the pay out. It also said that there was to be a general meeting of Ilois called for 4th September so that the four who had met with the ITFB could explain the last payment.

646. The process of payment and of signing the renunciation forms seemed to pass off without any real difficulty. On 4th October 1983, the High Commissioner wrote to the FCO saying that only 12 people had refused to sign them, among whom were Simon Vencatessen and Francois Louis, for reasons which were unknown, but not sufficient to prevent their wives signing them for their share.

647. There were two forms, identical except for the fact that one related to claims against the UK and the other referred instead to the Government of Mauritius. (Mr Westmacott, Director of the Americas Command of the FCO service 1997, said in paragraph 79 of his Affidavit in the Bankrupt judicial review (12/201) that

waivers had only in fact been obtained in respect of claims against the Mauritius Government. That clearly is wrong. He also makes it clear that his understanding was that waivers were to be obtained in respect of claims against the UK, including those which asserted a right to live in BIOT.) The UK form was as follows:-

a. "FORM A

ii. GOVERNMENT OF MAURITIUS

Ministry for Employment and

Social Security and National

Solidarity

I,,

of age, an Ilois, Residing at

In consideration of the compensation paid to me by the Ilois Trust Fund and of my resettlement in Mauritius, do by these presents declare that I renounce to all claims, present or future, that I may have against the Government of the United Kingdom, the Crown in right of the United Kingdom, the Crown in right of any British possession, their servants, agents or contractors, in respect of anyone or more of the following -

(a) all acts, matters and things done by or pursuant to the British Indian Ocean Territory Order 1965, including the closure of the plantations in the Chagos Archipelago, my departure or removal from there, loss of employment by reason of the termination of contract or otherwise, my transfer and settlement in Mauritius and my preclusion from returning to the Chagos Archipelago;

(b) any incidents, facts or situation, whether past, present or future, occurring in the course of anyone or more of the events hereinbefore referred to or arising out of the consequences of such events.

Made and subscribed on the1983,

Signature/Right thumbprint of Ilois

We certify that the above is the right thumbprint of

(Provision is made for the signature of two witnesses and name and address of the two witnesses)

Note: Where the subscriber is unable to sign, he/she should affix his/her right thumbprint in the presence of two witnesses who can sign."

648. A Westminster MP on behalf of a constituent wrote to the FCO to see if any more compensation would be paid by the UK. The Ministerial reply of 21st September 1983 was that the £4m was a full and final settlement.

649. A number of witnesses gave evidence about this process and what happened on the ITFB from when it was first set up, to this distribution. Mr Ramdass and Mrs Alexis were among those initially appointed to the ITFB when it was first set up.

650. Mr Ramdass said that discussions at the ITFB started in English and were then changed to Creole, but secret things were in English and not translated; later, he said that Mr Bacha translated important matters briefly. Father Patient could speak Creole; it is the language of Mauritius. He could not remember that documents were requested at the first meeting of the ITFB; they were all so silly they did not think to ask for them. He could not remember the ins and outs of the Ilois being elected to the ITFB over time. He said of the 1982 Agreement that the English had said that they would pay no more than £4m in English, so that he would not understand what they were saying. When pressed as to whether the English had said that no more money would be paid, he said he did not remember. It was a long time ago, however, that he realised that there had been one condition to the Agreement, there would be no more money. In re-examination, he said that Father Patient had just translated the preamble as Mr Allen quoted the agreement to him to see how much had been known. Nor had the Mauritius Government explained it to the Ilois.

651. Although he said he had been a witness to forms being signed in 1983, in his witness statement he said he was shocked to discover when he signed his statement of 22nd November 2002 that the form he had signed was a renunciation form. They had not been told about what the renunciation forms contained, although he had said that he knew when he was on the ITFB that the English had said there would be no money. When I endeavoured to follow up what that meant, he said that he did not know that that had been the position; they had never been told it. But his committee came to an end because the work was finished, the British Government had paid and there was nothing more to do.

652. He agreed that the English had always said that Vencatessen's case had to be withdrawn before the Ilois got money and that was something that most of the Ilois knew was required. Always, he agreed, the English had insisted on the withdrawal of their case. He did not remember the suspension of payments or an emergency meeting of the ITFB. He heard nothing about Mr Berenger saying to Mrs Alexis that there could be no question of the Ilois not signing the renunciation forms after the issue had been raised in the ITFB. There had been no mention about renunciation of rights when the distribution of the Rs 8,000 was announced on the radio. He said they always had to sign to say that they had received the money. There had always been a witness to the receipt of ITFB money. Identity cards were required because they thought they had noticed fraud, and they were required to be shown when the Rs 36,000 for land was paid over. Nonetheless, he said that Mrs Kattick and he were witnesses for the people whom they knew when they came to collect their money. People did not read the paper; they were called to put their thumbprint on it. No one translated them. No one had told him what the documents were. It was not significant to him that there were two forms to sign. People would have reacted very unfavourably to any suggestion that they should give up their rights for Rs 8,000. He thought the ITFB had betrayed them. As soon as anybody had been aware that the forms involved renunciation, he said that they would not have signed such a thing, but he did not remember what happened when Francois Louis came to collect his Rs 8,000 or that Simon Vencatessen had not agreed to sign his form. He said that he had withdrawn from the ITFB because there was fraud on it, in the form of adding names of people who had died to the lists of Ilois to get money. He did not raise these matters with the Board because the people doing this were very violent and it was people on the ITFB itself who added the names of the dead people. He then said that he could not say who the violent people were because it was delicate and there were some he did not know. They did not include Mr Simon Vencatessen, Francois Louis or most of the other names put to him who were Mauritians or non-Ilois. He was prepared to

say that it could have been Mrs Kattick or Mrs Alexis because he knew that she had been jailed for such a fraud, and Mrs Naick. He was clearly in some anxiety as he spoke of these things.

653. He found out that Francois Louis and Simon Vencatessen had refused to sign the forms but not at the time. He said that they lived some way apart in Port Louis even though they had worked together on the ITFB. He did not remember that they had been elected together and this notwithstanding that they were closely related and had cooperated over the Vencatessen litigation. It was only some time after that he realised what had happened. He did not meet Francois Louis and discuss the press conference at which Francois Louis had described the dangers created by signing these forms. He said that Simon Vencatessen's case was a case simply for Simon Vencatessen. He had never discussed what the case was about then or later. They had not told him about it. When asked why Francois Louis would not have told other people about what the document contained, even though he was quite happy to go to press conferences, Mr Ramdass said that it would have been Francois Louis' own opinion as to whether the document should be signed.

654. Mrs Alexis said that, as a representative on the ITFB, she had taken part in the discussions drawing up the list of those who were to be qualified to receive compensation, the establishment of housing, the withdrawal of the Vencatessen action and other administrative matters. She said that during no meeting in 1982 was there any mention of rights having to be given up in return for compensation.

655. She had been a member of the ITFB at the outset and said that discussions were to be in Creole. She was asked whether the Board had called for the agreement between the Governments at the outset and she said that it had not because they knew the agreement very well. When she failed in her bid to be elected to the ITFB in December 1982, she did not stop agitating and the CRG was formed and she became its first President; it was formed in 1980 rather than in 1983. She agreed that in July 1983 a petition had been submitted by the CRG to the ITFB including demands about ID cards. She remembered organising a sit-down in front of Government House. In July and August 1983 she was not sitting at home but was active on behalf of the Ilois. She had said, untruthfully, in chief that after she had failed to be re-elected in December 1982, she had just sat at home, fed up having done the work. She did not remember any postponement of the payment of Rs 8,000. She was unable to remember specific meetings because there were so many meetings which she attended. She remembered there was a problem about the amount of money to be paid but not that Mr Berenger had said there could be no question of the Ilois signing the renunciations; she could not remember such a meeting addressed by Mr Berenger before she signed the form.

656. She described the various processes whereby they had obtained the money in relation to the Rs 8,000 in 1983; there had been nothing said about renunciations or about final payment in the announcement. If there had been they would not have accepted the money. She had no idea of what the form she put her thumbprint to had said; no-one explained the form. She said she could not remember Simon Vencatessen and Francois Louis resigning from the ITFB and had not known that they had not taken the Rs 8,000. Neither had spoken to her about that, though she had spoken to them.

657. She prevaricated over whether she could remember being successful in the December 1983 ITFB elections (which she was). In a sequence of questions, she was clearly evading questions by saying she did not understand and she did not remember, she did not know. Frequently her answers bore no relation to the question.

658. Mr Saminaden agreed that the renunciation form had not been a receipt because it had no figures on it, but no-one had said what it was, merely that it had to be signed to get the money. The forms had not been explained; he had heard that it was a condition of compensation that the Vencatessen case be withdrawn but never that rights had to be renounced.

659. Mrs Kattick, a CIOF supporter and organiser, was elected to the ITFB in December 1982. She beat both her sister, Mrs Naick, and Mrs Alexis. She initially denied remembering Mr Michel explaining that it would be necessary for them to renounce any right of return before the forms were signed and she recalled no explanation of any of the terms or conditions attached to the distribution. She attended the distribution on a number of occasions as an observer for the ITFB and later to sign certain forms. She thought the purpose of that was to identify the person who signed. She was unable to, and gave no explanation of what was in the documents. Sometimes the person getting the money had already left and she would sign the forms for the Rs 8,000 after they had left. She said that the discussions at the ITFB were in English. She was not present that she could remember when Francois Louis or Simon Vencatessen came to get their money in September 1983 and she did not know until this case that either of them had refused to sign the forms.

660. She elaborated somewhat in cross-examination, but the only consistent pattern to her answers was their evasiveness and contradiction.

661. She said that she did not know why in addition to ID cards, the Board required two Ilois representatives to sign the renunciation forms as witnesses; she was only there every other day, and was often given forms which had Mr Ramdass' signature already on it which she trusted. She would have objected to signing or getting Ilois to sign a form in English. The process took about a fortnight. There might have been a delay for a week after the first day and she remembered a dispute over notarial and survey fees.

662. She agreed that when she signed a receipt it said how much she had been paid but the forms did not do so. She knew that figures were the same in English and in Creole, but she debated before agreeing it saying that she did not know whether there was a figure in it or not, but she then agreed that there were no figures in it. She said it was only now that she had become aware that these forms had no figures in them. This was one of many examples of this witness trying to duck away from the issues because she was very well aware where the questions were going and what they signified. If she felt she could throw the questioner off the scent by her prevarications and picking up on small points in the questions, she did. She was quite an intelligent woman and knew what the issues were.

663. She thought that it was not correct that they had signed something they did not understand, but it did not occur to her, she said, that she should find out what it was she was signing. It was only now, rather than when Mr Michel spoke of the forms at the Board meeting, that she realised what she had signed. This was rather a different answer from the one she had given but a moment or two before. She said the discussions in 1983 in the ITFB about the forms were very clear, but she said that she did not know that what she had signed was a renunciation form, until a few days later in 1983. She said she could not remember agreeing earlier (as she had) that the Mauritius Government had agreed to do its best to get the Ilois to promise not to sue the British. She said renunciation forms would have been a surprise to the Ilois.

664. She could not remember advice being sought about whether the Trust Fund should collect renunciation forms, nor that it was suggested that the Ministry should do that or that in the end the Trust Fund did it. It was possible that there was a delay. She had not heard Mr Berenger say that the renunciation forms had to be signed. She had had no dealings with him and thought him possibly hostile to the Ilois. She knew that there were a number of Ilois who had not signed the renunciation forms because it was discussed in the Board. She knew those were the forms that she had been witnessing, after she had signed them, when Mr Michel talked about them in the ITFB.

665. She was aware of Mr Michel's view that the £250,000 would be unblocked when enough forms had been signed by the Ilois promising not to sue the British Government. Mr Michel had said there was a form to be signed but he did not say that it was to give away their rights; she did not remember what he had said about it. She said she did not say anything back to Mr Michel about that view but she was not very happy because he had said that they should sign the renunciation forms. Later, surprisingly, she said she could not

remember what he said. She also said she knew that if the Ilois promised not to sue, the £250,000 would be released early. But she did not remember the Ilois being asked to promise not to sue. She thought the money could be released before the end of 1985 if the Board agreed, but she said that she did not know why the Board had not agreed and then said possibly it could have been in part because not all the forms had been signed.

666. Mrs Kattick said she was not aware that Francois Louis and Simon Vencatessen had not signed the forms, though she knew that some people had not signed them. She said there was a discussion about whether Ilois should or should not sign the forms but, somewhat surprisingly, she could not remember what the arguments were. She said that Mr Louis should have told her and the Ilois about the dangers of the forms but she could not remember him saying anything at the time. She was unaware of an organisation being set up by Mr Mundil and Mr Louis.

667. She was asked what she thought was going to happen about renunciation forms as a result of the ITFB discussions, to which she simply replied that as an Ilois she could not renounce her rights and then said that she did not know there had been discussions about the forms at the Board meeting and was unaware, albeit as an elected representative, that the Ilois signed something, the contents of which they were unaware. Her evidence here was simply evasion piled upon evasion.

668. She was asked why when she had heard Mr Michel talking about the forms which she thought they ought not to have signed, she did not tell the Ilois what they had done. She said that was because they had already signed them. She was asked why she did not tell them what they had done and she said she did not give them an explanation. She was asked why again and said simply because she did not say anything. She said she discussed it with Mr Michel and Mr Ramdass who had said that as the Ilois needed the money they had to sign it. Mr Michel did not say much about it. She denied that she had spoken to anybody outside the ITFB meeting about it, although she was angry over what had happened about the signing of forms which nobody knew about. Mr Michel did not give an opinion, but Mr Ramdass was angry. She did not remember the CIOF meeting to discuss this or protest to the Mauritius Government or telling her sister about it, because they did not have good relations. She did not speak to Mrs Alexis about it either. She said later that the Ilois community would have refused to sign the renunciation forms if they had known what they said. There would have been hostility and it would have become known quickly that that was what was being asked. She thought there would have been an objection also if they had thought they were just renouncing the right to ask for more money.

669. Olivier Bancoult said that nobody knew what the form was. If he had known what it was he would not have signed it; he thought it was a receipt. He would not have renounced his rights for Rs 8,000. He said that on the earlier occasions when money was received, he had had to sign for it. An official had just put his hand over the writing and said, "*Sign here*". No-one had translated the document for them. He agreed that he had witnessed the signatures of others in 1984 and 1985, signing as a representative of the people along with Mrs Lafade. People signed, however, without knowing what was in it and he was not given one to read. The first time he had become aware that he had signed a renunciation and not a receipt, was when he saw it in court when Mrs Talate produced it. His witness statement says that they were mentioned at the ITB in 1984 but when he asked to look at one, there was no reply and he felt too junior to pursue it. Mr Bacha had mentioned renunciations at the ITFB which was when he first learnt of them but he gave no explanation. Mrs Alexis saw Mr Berenger about this and he told her there were no problems with it but she never had the chance to see the form and take legal advice about it. This happened after 1984.

670. Olivier Bancoult said that in 1983 he was a member of the CRG but was not active, some decisions were taken when he was not there. He was its Secretary in its early days, kept its minutes in Creole and copies of letters. None had been produced because no-one had asked and some got lost in cyclones and bad weather. He did not remember the headed notepaper, but did not reply to the question of whether he was a founder member of it or not. He had never heard of ITFB payments being suspended briefly before

they were completed in relation to the Rs 8,000. He had not heard of an emergency meeting of the ITFB. He then said that he had not heard of a meeting between Mr Abdullatif and Mr Berenger, to which Mrs Alexis had been, where Mr Berenger had made it clear the renunciations had to be signed. He said that she had gone to that meeting as President of the CRG without telling them.

671. Mrs Elyse was confused about various documents to which she put her thumbprint. She thought she had put her thumbprint to a demand for compensation. She said that she would never renounce her rights and always had to put her thumb on documents to get money but did not know what was in them and did not ask. She too said that now was the first time she learnt what was in the form which she remembered thumbing for the money. Her son, Olivier Bancoult, had not told her. Although he could read and write, she did not know if he could do that in English. Although his statement said that he had got examination certificates in English, she did not know that he could write English, he had not told her that he could and he would have done had he been able to. Some Ilois were well educated, and a Seychelles Government Minister was a Chagossian Claimant. She knew of the Chagos Refugee Group and supported it. She said that her son told her what they were doing. Later, she said they rarely spoke as they lived in different parts of Port Louis. She had heard about the £250,000 in the ITFB but not about the British Government not releasing it. She had never talked to Mr Ramdass about the ITFB money. They discussed the payment of money by the ITFB with family and outside the family with all their friends. But there had never been any discussion about if they took the money there would not be any more. Only after he left school did Olivier Bancoult take part in these discussions. After they got the money, there were more demonstrations asking for money by her and friends in order to get money to return to their country.

672. Mrs Talate remembered getting money in 1983; she got Rs 10,000 at the Post Office, and then Rs 36,000 "only if you had a contract for the purchase of a house" and then a further Rs 10,000 in December. The Rs 36,000 was not enough, even with all her family contributing their share, to buy a house. She, her mother, her three children and another person clubbed together, but her son still had to borrow Rs 10,000 to buy the house. After that, she got Rs 8,000 and then a further Rs 3,600.

673. There were five representatives to witness her putting her thumbprint on a document. One was Josephine and another Christian. They did not say anything to her, or explain anything, such as why this time there was more than one form. She did not ask them, because they could not read or understand English. The British Government sent nobody to explain anything to her before she signed the paper. Nobody translated into Creole what was on the document or said anything. She had to sign to get the money. When she went to sign and get the money, she waited for some time in the queue with her birth certificate and identity card. She would not have renounced her rights for Rs 8,000 because they would not solve her problem.

674. She agreed that she had had to sign for her children and had gone back to get the money on more than one day. She said that they had asked a civil servant to explain the forms. But they had no rights in Mauritius. They were just treated like dogs. She just signed. She did not see Ramdass and Kattick sign her form, although she knew them well. The lady was outside and she was by the door. Ramdass was inside, standing by the table where the money was being paid. But they could not read, they were just signing for her to get the money.

675. Mrs David said she did not know what she was doing when she put her thumb print to the renunciation form, because she could not read or write. She did not ask for an explanation from Mr Ramdass or Mrs Kattick because Mr Ramdass did not know how to read, nor had she had the chance to speak to them. She was just told to sign two or three papers; she did not know exactly what for. The first time that she had learned that there was a form in existence, requiring claims against the British to be renounced, was in court. She said that she was unaware that her brother Simon had brought a court case in Mauritius so that he could get the money without being required to sign such a form. She said she never thought about whether she was renouncing her rights, because she could not renounce her rights as she was still living in poverty.

676. She never thought that there would be no more money. She thought the Mauritius Government was just giving them money and that in one or two year's time they could return to the islands. She gave no very satisfactory answer as to why the Mauritius Government might have provided them with land if they were to return in a year or two, but she said that she thought that it was because her roots were still there. She could never forget it and she was still extremely impoverished and suffering. She said that she could not remember whether the Government of Mauritius paid this money as a result of negotiations with the Ilois community or that she could ask for more because she was an Ilois.

677. In July 1983, Simon Vencatessen had resigned from the ITFB, to which he had been elected in December 1982, because they were asking for an ID card in order to prevent fraud and other people on the ITFB were not working. He also disagreed with the others over the distribution of land. He was already in 1983 of the view that they had been victims of Mauritian intellectuals. He heard no mention while he was a member of the ITFB of any discussions about renunciation forms or the preparation of renunciation forms, but he later said that he had heard renunciation forms mentioned at the ITFB. This had made him angry and he had said that they would not sign away their rights and that this was not something the ITFB should be doing. Legal advice had supported him in saying that the ITFB was not responsible for implementing Article 4 of the 1982 Agreement. He resigned before the forms were signed when the Rs 8,000 were paid.

678. Francois Louis, his half-brother, had gone to get his Rs 8,000 ahead of Simon Vencatessen and had not signed the renunciation form because he understood English well, read it and was not in agreement with it. Two or three days later, he explained to Simon Vencatessen what was in the form and so Simon Vencatessen did not sign it. He saw no reason to sign for Rs 8,000 when he had not had to sign such a form for Rs 46,000. He blamed Mr Mundil for making people sign the form. He went to see a lawyer. After the Ministry had refused to pay him any of the Rs 8,000 without him signing the form, he began a court case to contend that he did not have to sign the renunciation form; he offered to sign a different form but that was rejected. Did he fear an adverse reaction from the Ilois, if this were publicised because it would hold up the distribution of further sums? But why not say what it was they were signing? After much prevarication, he said that he did not tell any other Ilois about the forms or his case because, having resigned from the ITFB, all his contacts were cut and he took no further part in Ilois affairs (and most had signed anyway, since "V" was quite late). He said that Francois Louis had also told no Ilois about the renunciations, saying that it was because he too was a victim.

679. He was unable to answer whether it would have been a great shock to the Ilois to learn that they had signed a renunciation form rather than a receipt because he was not there as a representative and could not answer for them. But he then said that anyone would be shocked to learn that it was a renunciation form and not a receipt. When he was asked why at the press conference in November 1983, his brother and Mr Mundil had not said how shocking it was to discover that the Ilois had signed renunciation forms and not receipts, he said that he had only seen it now; he did not read newspapers. His brother had had letters about this in his possession. He had cut himself off from these things, devoting his time to his family. Later in answer to my questions, he said that part of the case, which he brought in the Mauritius court, involved it being asserted that the document was a renunciation form. He said that the Ilois were shocked that the form was a renunciation form. He said in answer to a question about how they came to know that it was a renunciation form in order to be shocked by the discovery, only that they revolted against it.

680. He said Francois Louis and his wife had had a very heated discussion about it when she had gone to get the money. He said that three to four years as well after that, when he was pursuing his case as part of which it was necessary for him to say that the document to be signed was a renunciation form, people were shocked to discover it was a renunciation form, which they showed by swearing. He did not remember whether they had had demonstrations. His understanding of events had long past the point at which he could be regarded as a reliable witness.

681. Mr Vencatessen said that his father should have had at least Rs 500,000 because his case had inspired

the £4m payment. He said, however, that the Ilois did not understand that it was his father's case that had brought the £4m. They thought that it was a mixture of politics and the case. He could not say why no other Ilois had started legal proceedings, like his father, after the conclusion of the 1982 agreement. He said that if someone had started litigation before payment of the £4m, the Ilois would have been angry because the British Government would not have paid the £4m. But he did not know whether they thought that a case could be brought as soon as the £4m had been paid. Nor did he know why after the money had been paid, no Ilois had brought a case seeking compensation in the same way in which his father had done.

682. Mrs Jaffar first said that she had first heard of Michel Vencatessen four years ago, but later she said that she had just heard his name since she had come to court right here, and now in this country, although she had referred to him in her statement. She denied the truth of what was set out in her statement about her knowing Michel Vencatessen and being aware of the fact that he had taken legal action as a result of which compensation had been paid in 1984 and had led to her buying a small piece of land where she still lived with 13 others, her children and grandchildren. She said she never said that because she did not know Mr Vencatessen, not having been born on Diego Garcia. Then she said it was only roughly four years ago that they were aware that they had a case and that the case had been brought in London. Bringing a case in London had not occurred to her until Olivier Bancoult's case. I believe that her statement is the true position and that she lied about her knowledge.

683. She expressed her concern that Mr Mundil, as a Mauritian, did not like them as Ilois and that Mr Michel used Mr Ramdass as a Diego Garcian who did not speak English. She did not go to any meetings. The committees formed by Mr Michel and Mr Mundil were formed to take advantage of the Chagos people. She had no confidence in any of them. She knew nothing of any document appointing Mr Sheridan to be her legal adviser, nor of the August 1980 petition. She participated in the Committee of Creole but she did not want to work with Elie Michel. It was the Ilois not the Creole who were suffering.

684. She had been unaware of any claim for compensation before she met Mr Mardemootoo, which I do not believe. She read "*l'Express*" but not "*le Mauricien*" because it did not take the side of the Chagossians. She only read things in the newspaper which were in her interest, and she could not afford to buy a newspaper, at least every day. She would have known quite a lot in those circumstances. She had never heard that the CIOF had obtained legal advice, because her mother was suffering from madness and she had no time to deal with those matters. She heard that there had been an offer of compensation of £250,000 which she thought came from the Mauritius Government because they had sold her people for independence. At times she said that they had to hide their identities from the Mauritians. They had confidence in no-one. She was not aware of negotiations between the British and Mauritius Governments. The Ilois did not meet to discuss things because they were separated in the various parts of Port Louis, even though there were Ilois representatives on the Mauritius delegation. I do not believe this is true or what she thought.

685. It was only four years ago that she came to the Chagos Refugee Group, but they had not talked about what had been signed in 1983. She was, however, a committee member, assisting in identifying Chagossians. She knew that there were Ilois on the ITFB including Mr Bancoult and she had heard that her sister (not a true sister), Mrs Talate, was a member of the board but did not know when she became a member. She knew Mrs Lefade, but she had not been part of the Chagos Refugee Group when Mrs Lefade might have been its President. She did not have the time to talk to her.

686. Although her statement had said that on many occasions they would be arrested by the Mauritius police and jailed because of their protests in the early 1970s, she said that she had never had any kind of problem with the Mauritius police. She said she had taken no part in demonstrations because her mother was mad. This was only something that she had heard about from the radio and it had also been in the newspapers.

687. She denied signing the petition of August 1980 and, as with many other witnesses, she instantly turned

to make comment as if those questions related to the renunciation forms, making no distinction between the two. The first time that she had heard of what was in that form was when her sister (Mrs Talate) had given evidence here and she cried a lot because the English had raped their confidence because they had not shown them the paper. She would never sign a paper renouncing her island. She said it was because they were a poor black people that they had been dealt with in that way. Rs 8,000 was not the value of a people. She signed it in front of a grille and the signatures on it were not there when they signed. They had had no right to ask what they were signing. She had known nothing of Ilois meetings before she went to collect the money. There was a queue of people to sign to get the money, who went in one by one and were told to sign by Government officials and then they would get their money. She just signed to get the money. There was no opportunity or the right to discuss things with other Chagossians.

688. She could write a little and read a little and could understand some, but not read any English. She could understand a little French. Her statement had been read back in Creole and she agreed with it after it had been written down and signed it to show that she agreed with it.

689. She had said orally that no lawyers took any notice of them. They had all just tricked them. When asked who, she said that in fact she had never met such people, she just meant that if they had met such people they would have tricked them. It was only in Olivier Bancoult and Mr Mardemootoo in whom she had confidence. She knew about Olivier Bancoult's case because she worked with him, but until they met Mr Mardemootoo four years ago, they did not know how to bring a case. Her evidence was wholly unreliable.

690. The ITFB met on 23rd September 1983, shortly after the payment process had concluded. Its Minutes show that the Crown Law Office advised that Mrs Paul, who had gone to the Seychelles, was ineligible for compensation but that she had already been paid as the ITFB had decided. It had also advised that only those who came after November 1965 were eligible under the Agreement but that the ITFB had adopted as its sole criterion for eligibility, whether someone had been born on the Chagos. Mr Ramdass is minuted as asking that legal advice be sought on certain issues. It was reported that 1,161 adults and 128 minors had received compensation. Mr Michel (a Creole speaker) enquired whether the £250,000 which was being withheld pending the signing of the renunciation forms could now be released, but the answer was that it could not be released yet because not all Ilois had signed them. It was up to the UK Government as to whether it retained that money until 1985. Mr Ramdass said that he could remember no such discussion, or mention of renunciation forms, (22A/164). The Government, he said, was responsible for the minutes.

691. On 27th October 1983, the High Commissioner wrote to the FCO about the renunciations. He reported that Mrs Alexis and a number of other Ilois "were giving the non-signatories hell"; (19A/C/77) their refusal to sign was impeding the release of the £250,000. Mrs Alexis could not remember that; she said she could not make people sign or prevent them; I was less than convinced by her reticence. The CRG, now with Mrs Alexis as President, asked him for his help in getting the promised housing and land for the 200 families which she said were without accommodation. He reported that whilst he had made the right sympathetic noises, he had stressed that the UK now had no locus in the compensation process. He described Mrs Lefade, the CRG Secretary as an impressive and sharp personality. The FCO asked him to find out what was actually happening on the housing front.

692. The UK Mission to the UN wrote to the President of the General Assembly on 17th November 1983 responding to the recent claim at the UN by the Prime Minister of Mauritius that his country had a legitimate claim over Chagos. He said that the Chagos had never been part of Mauritius as an independent state and that before its independence the islands had been administered from Mauritius for convenience and had been legally distinct. But they would be ceded to Mauritius when no longer required for defence purposes. The Mauritius Mission repeated its claim relying on the claim that the detachment had been in breach of the UN Charter. These exchanges were circulated to the General Assembly.

693. An FCO Research Report of December 1983, (19B/58), describes the way in which the BIOT issues had been debated at the UN. The controversy in 1965 had been about the fact of the creation of BIOT and the associated detachments, although the UK told the Committee of 24 that the population consisted of labourers and their dependants from Mauritius and the Seychelles. Great care would be taken with the welfare of the few local inhabitants which would be discussed with those governments. The attachment of these islands, uninhabited when acquired, to Mauritius and the Seychelles had been a matter of administrative convenience. In 1966, the controversy had the same focus, although the UK representative is said to have spoken of "*almost all*" the workers being migrants and "*virtually no permanent inhabitants*". The debates in 1967, 1968, 1969, 1970 all focussed on the creation of BIOT. In 1971 for the first time, and more obviously in 1972, the question of the interests of the BIOT inhabitants was raised but in the context of the compatibility of their rights with the establishment of military bases. The Committee of 24 in 1972 condemned the evacuation of people of Seychellois origin from the Chagos to make way for a UK/US base, but the BIOT inhabitants were not mentioned in the omnibus resolution adopted by the General Assembly. The same pattern followed in 1973, with the further evacuations being condemned by the Committee of 24. Nothing of further significance was discussed. The return of Aldabra, Desroches and Farquhar to the Seychelles on independence was noted.

694. On 28th November 1983, "*Le Mauricien*" reported that Mr Mundil had dissolved the FNSI and had established a new committee with a wider reach. The article said that he thought that the compensation had only just been sufficient to pay off debts and for re-housing. He referred to the document which the Ilois had to sign before they could get the remaining compensation and said that it had serious implications for "*nos droits*", that is those of the Mauritians, for he was not himself an Ilois, over Chagos, (19A/C/83). They were also to fight for compensation for the Ilois from the USA.

695. On 24th January 1984, the five newly elected Ilois members of the ITFB sent a letter to the President of the USA. The five were Mrs Alexis, Mrs Talate, Olivier Bancoult, Mr Siatous and Mrs Lefade. They asked the US Government for £4m because they had originally needed £8m and the UK Government had only paid £4m which with the £650,000 "*would be in full and final settlement of all claims against the Government of the United Kingdom by or on behalf of the Ilois*", (19A/D/2). This too received press publicity in the context of the way in which the compensation paid by the UK Government was proving inadequate.

696. At the ITFB meeting of 26th January 1984, Mrs Alexis asked, according to the minutes, if the remaining funds could be unblocked. Mr Bacha said, according to the minutes, that the UK Government wanted the maximum number of "*formes de renunciation*" which the Mauritius Government could collect, (22A/186). It was important to show which Ilois had signed, which Ilois were not Mauritian and which Ilois did not want to sign. In that way, it could be shown that the great majority of Ilois had signed and that would show their good faith in this respect. Mrs Lefade said that the release of the money would be a great help to the Ilois. The ITFB's administrative officer said that as soon as the forms were in alphabetical order, he would write to the Foreign Ministry along those lines and write to the English to ask for authority to unblock the funds.

697. At the next meeting, Mrs Alexis asked if there could be a press communiqué after each meeting of the ITFB so that the Ilois could be kept up to date. It was agreed at the meeting after that, that there should be a short and clear resume of the decisions.

698. Mr Permal brought a test case, as "*L'Express*" described it, against the ITFB, which was heard in the Mauritius Supreme Court in March 1984, to try and establish that the workers whom he represented were also entitled to compensation. Mrs Alexis said she was aware of the case. There appears to have been a dispute as to whether he had or had not been expelled or whether he had left Peros Banhos in 1968 but was Ilois nonetheless. He was represented by lawyers. He wanted Rs 100,000. He succeeded at first instance, the judge found that he had been expelled and awarded him Rs 74,000. He rejected an argument that no action could lie against the ITFB at the suit of an individual Claimant for failing to provide a grant similar to those which it had made to other Ilois. The ITFB appealed but the Court of Appeal dismissed its appeal on

26th April 1985, (19A/E/3). It agreed with the first instance judge who said that:

"What the Agreement did provide for, however, was payment in anticipation and in full settlement of all claims that might be made by those people against the United Kingdom Authorities. The payment was designed to be administered by Mauritius through the Trust Fund which the Government of Mauritius undertook to set up and, if any claims were made by those people against the British Authorities, the Trust Fund, and failing it, the Government of Mauritius would indemnify the United Kingdom Government. The undoubtedly purpose of the Agreement, as is abundantly clear from its terms, was to provide the means of an amicable settlement of claims by those people and thus conferred on those people a remedy obtainable in Mauritius as an alternative to their right of action against the United Kingdom Authorities which itself would have been cognisable by the Courts of the BIOT or else by the Courts of the United Kingdom.

I conclude, therefore, that the scope and purpose of the Act in all the circumstances was to benefit members of the Ilois Community both individually and as collectivity and that any individual Ilois does have a cause of action under the Act in Mauritius so as to avail himself of the remedy there provided as a statutory alternative to any other cause of action in the UK or the BIOT against the United Kingdom Authorities that he might also possess."

The Court of Appeal continued:

"We may now come back to the grounds of appeal left for our consideration and appreciate how misconceived and fallacious they are. It is certainly not the Agreement alone which created the right of action. It was the Agreement with all the events that preceded it and which followed it in the passing of the Act with a view to honouring such agreement and culminating in the payment by the Board of compensation in cash grants to a great number of people who could have a claim for having been displaced, as the appellant had been, from the Chagos Archipelago after November 1965, and referred to as 'the Ilois' in the second paragraph of the preamble to the agreement which reads -

'Desiring to settle certain problems which have arisen concerning the Ilois who went to Mauritius on their departure or removal from the Chagos Archipelago after November 1965 (hereinafter referred to as 'the Ilois'). We find no substance in the grounds of appeal'."

699. The litigation had the effect of causing the Government to amend the ITFB Act on 17th May 1984. It was designed to limit the number of Claimants, and defined "*Ilois*". An "*Ilois*" was "a person who has been identified as such by the Board and has been issued an identity card on or before the 14 May 1984", (19A/D/23). Amendments were made to the powers to deal with property and the Board was declared not to be liable to any person outside the scope of that definition of "*Ilois*" and no action could be brought by them in respect of the distribution of cash or the allocation of land.

700. The ITFB discussed this litigation as well as the cases of 124 workers which had been presented on a number of occasions. Mrs Alexis and the Ilois representatives were present.

701. On 16th May 1984, the five Ilois representatives on the ITFB, including Mrs Alexis and Mr Bancoult, wrote to the High Commissioner asking for the release of the £250,000 "*given that no claim against the [UK Government] has been entered ...*" (19A/D/9). They again pressed the USA for compensation, explaining why the UK sum was inadequate and the poverty which they still faced; it had been too little, too late. The

Prime Minister of Mauritius described this claim as ridiculous in an interview in "African Affairs". What had been done to the Ilois was appalling and inhuman but the matter was now closed; anyone raising it again would be doing so in bad faith after the agreement. (He may have had Mr Berenger in mind, as his party was no longer part of the Government, and no doubt this magazine was not everyday reading material, but the Ilois representatives became aware that those were his views).

702. The next day, as the High Commissioner reported to the FCO, an Ilois delegation including Mrs Alexis, came to see him asking about the release of the £250,000. He recorded that he told them that as some "revocations" were still outstanding, there was no immediate hope of that.

703. On 28th June 1984, the Mauritius Government sent to the High Commissioner 1332 renunciation forms saying that there were only 10 outstanding and explaining that only 2 people had refused to sign, 2 were disputed, 5 people were abroad and 1 was dead. Thus all the 1,342 to whom ID cards had been issued were accounted for. (A later Annual Report for the ITFB refers to 1,344). They were sent to the FCO in September 1984. The FCO wrote back saying that they would keep them in London in case someone else brought proceedings against the UK Government.

704. The FCO was asked at Ministerial level to review the position with the Ilois. The review in July 1984 recommending holding to the line that there had been a full and final settlement of their claims. The Minister agreed, being of the view that although they had been treated badly and deprived of democratic rights, the £4m compensation was fair.

705. The release of the £250,000 was discussed at the ITFB meeting on 5th September 1984. Mrs Lefade asked what the position was. Mr Kewal, a civil servant, explained that the UK still wanted all the "renunciation forms". She asked why it had been said previously that the sum could be unblocked if there were one or two forms not signed but now it appeared that all of them had to be signed. Mr Bacha said that the Law Officers had advised that the spirit required that but that as only a few were outstanding, a small sum could be asked for. Mr Bancoult asked that that be done. Mrs Alexis asked the ITFB, which had done nothing for the Ilois, to ask the Mauritius Government to support the Ilois request for compensation from the USA.

706. On 15th September 1984, (19A/D/45), a letter from the 5 Ilois on the ITFB, and signed by Mr Bancoult asked the High Commissioner for the release of the £250,000. "We had to let you know that most of the Ilois had already signed the renunciation form . . . We know that there are about ten Ilois who had not yet got the renunciation form signed . . ." 'Le Mauricien' reported on the letter, referring to "renonciation form" and its purpose as being to prevent new claims; most Ilois had signed one. "Le Nouveau Militant" reported on a delegation led by Mrs Alexis to the Mauritius Government seeking its help in procuring the release of the money. It made the same point about the majority having signed "les formulaires de renonciation des îles."

707. On 12th November 1984, four of the five Ilois on the ITFB, including Mrs Alexis and Mr Bancoult, with Mr Berenger and others met the Employment Minister. He was unwilling to release the money as there were still many cases pending before the Courts. Mr Berenger said that he was aware of the interview in the "Africa" review but contested the view that the 1982 agreement impeded claims against the USA and so asked if the Government would help in that claim. There was a discussion about legal advisers to the Ilois but the context of that is unclear. Notes were made in English and in Creole. This Ad Hoc Committee met again on 3rd December. Mr Berenger said that the money could not be released because of the inadequacy of the renunciation forms. One of the senior civil servants said that a few Ilois had intimated that they would be prepared to sign a different form of renunciation form.

708. Throughout the minutes of the ITFB and of this Ad Hoc Committee are references to the many and varied interventions of the Ilois, notably of Mrs Lefade and of Mrs Alexis.

709. At a meeting of the Ad Hoc Committee on 6th May 1985, the Minister told Mr Berenger that advice would be sought as to whether the £250,000 would be released at the end of the year, if there were no more cases pending before the courts.

710. The CRG through Mr Bancoult wrote to the High Commissioner on 17th May complaining that the £4m had proved to be inadequate for the proper resettlement of the Ilois. The housing programme had absorbed much of the money, it had come late and the Ilois were in debt as a result of buying land or houses. They were destitute, unskilled and unemployed. They wanted part of what they thought was the rent paid to the UK by the USA for the use of the Chagos. In a letter written about a month later, he complained at the political affiliation of the ITFB chairman and said that all the problems of the Ilois were the same as before.

711. In June, the High Commissioner told the FCO that a further 7 renunciation forms had been received and that 2 more were expected, leaving only Simon Vencatessen and Francois Louis who were refusing to sign. One of the registered Ilois of the 1,344 had died.

712. By July 1985, the CRG was threatening legal action against the UK Government in the "*International Court of Human Rights*" on the grounds that they were British subjects who were denied the right to reside both in the UK and on Diego Garcia. A delegation led by Serge Perrault told the High Commissioner so, according to his note, when complaining about the ITFB and warned of a demonstration outside the High Commission and its possible occupation. An article in "*Le Mauricien*" referred to his seeking the same social security as would be paid in the UK; he had told the French Communist Party of the situation. They returned to the High Commission in August, with Mr Perrault as their spokesman. Similar demands were repeated.

713. At a meeting of the Ad Hoc Committee on 13th September 1985, Mr Berenger said that he had only just discovered that the Ilois had been asked to sign a renunciation form in favour of Mauritius as well as one in respect of the UK. The Government had been wrong to ask for that.

714. It is relevant to note, in view of the evidence of Mrs Alexis as to what she was able to understand of the ITFB meetings, that in the minutes of the meeting on 10th October 1985, she is recorded as having seconded the adoption of one set of minutes and an amendment to another set. This is not the only occasion when an Ilois proposed the adoption of the minutes.

715. Sheridans informed the Treasury Solicitor that they were doing as asked and destroying the documents of which discovery had been given.

716. In October 1985, according to an article in "*Le Mauricien*", the CRG alleged that the UK Government had breached the agreement by failing to release the balance of the money because the Ilois had signed the required renunciation forms giving up all claims on the territory of the Chagos, as it was put. They had been forced to sign them without knowing what they really meant. The sum would not be paid out if there were any cases against the UK Government. "*Le Nouveau Militant*" reported the complaints of the CRG that the Ilois had signed "*un formulaire de renonciation*" without being put in the picture as to its contents. Mr Bancoult and Mrs Alexis were among those who reportedly denounced this as a breach of their human rights. They wanted to involve Greenpeace in the provision of a boat to go to the Chagos.

717. However, at a meeting of the ITFB on 24th October 1985, at which the Board's two lawyers were present, they pointed out that even if the UK Government were to release the funds at the end of the year, there were still outstanding Permal-related cases, from those whose entitlement as workers had been accepted until the change in the Act, and the ITFB would still have to retain the money itself against such claims as it might have to meet. This remained the position at the meeting of 15th November 1985; there

were 155 cases outstanding. The Ilois asked to see a copy of the written advices about this which had been received by the ITFB.

718. The CRG wrote to the High Commissioner at the end of October 1985, rehearsing the grievances of the Ilois about their forcible exile from their native land, referring to the 1982 agreement and the renunciation forms and accusing the UK Government of being in breach of its obligations now to release the £250,000. They were loyal to the Crown but hostile to the Governments. Another note from the CRG referred to their rights as British citizens, explaining how that had come about, and asserting that the agreement had been reached under the duress of their great poverty.

719. Mrs Alexis was re-elected to the ITFB at the end of 1983. She denied that she had given the interview to the "*Nouvel Militant*" in December 1983, (19A/F/109), referring to the Mauritius lawyer, Mr Vallat. It was an interview with her as candidate. It was all lies, she said. She was asked about the minute of the January 1984 meeting of the ITFB, (22A/188), at which renunciation forms were discussed. She said that after she had heard the word mentioned at the Board, she took a delegation to meet Mr Berenger to tell him that she had heard talk of renunciation at that meeting. That was when she first learnt of them. Mr Berenger had said that it did not matter. She did not know at the time of the agreement that the Mauritius Government had to try to get the Ilois to sign such forms and no Ilois representative had suggested that such forms should be signed. She remembered that there had been a conversation in the ITFB about unblocking the £250,000 even if there were only a small number of Ilois who had not signed the renunciation forms. She said that her head would sometimes spin at the Trust Fund meetings. She did not always keep a close eye on what was being discussed. She then said she did not understand that there was a discussion about when the £250,000 could be unblocked; she could see where this was leading.

720. She denied later that on the ITFB there was talk about renunciations in the context of unblocking the fund money and said that if she had known about the renunciation in connection with the money, she would have broken up the Board. That is plainly wrong. She was either lying or hopelessly unreliable. She agreed she knew that a sum had to be kept in reserve but said that she did not know that it could be released early if all the Ilois signed such forms. There was a difficult passage of questions in which she first said that she had not known, then answered several times that she had never known and did not know that the £250,000 could be released early if all the Ilois signed renunciation forms but she then said that she knew that in 1984. She said that the CIOF had not had lawyers to help it. She denied knowing that minutes were kept of the ITFB meetings and approved at the next meeting, or that they were kept in Creole and English. She could not remember proposing a change to the minutes or seconding their adoption as is shown in minutes of the ITFB on occasions. She said she agreed things were put down on paper but she did not know what it was. She could not remember the President of the ITFB reading out the minutes at the start of the meeting. She then agreed that sometimes her group would look carefully at the minutes including Olivier Bancourt but sometimes there were English words he got stuck on. Sometimes the minutes of the previous meeting were read at the start of the next meeting, she eventually agreed. She had said that she had sat like a doll saying nothing.

721. She was referred to another meeting at the end of 1984, (22a/260). Mr Berenger was concerned about the inadequacy of the renunciation forms. She said that she had never heard Mr Berenger say that the money could not be released because there were not enough forms signed and he would never have said that in front of the Ilois. It was difficult to make sure that Mrs Alexis had understood the question. She then said after repetition that she did not remember any discussion about the release of money being prevented because a handful of Ilois had not signed renunciation forms or a discussion about a different form. She then said she remembered raising the question of whether the £250,000 plus interest should be kept separately. The minutes show that this happened at the same meeting as the renunciation forms were discussed, but she said that she did not remember renunciation forms being discussed. She could not remember asking that money should be advanced from the £250,000.

722. Mrs Alexis also denied remembering a concern about the £250,000, and then persisted in saying that she had never heard about the renunciation forms at the Board; if she had known about it she would have turned the table upside down. But then she said she had heard them talking about renunciation in 1984 and Mr Berenger had told her not to worry about it. She had not been told what they were renouncing and she had not asked him what was in the form and had only found out in court. There would have been a big war in Mauritius, she said, if the Chagossians had been known to have renounced their rights. All the Ilois leaders would have done the same. She would have expected Ilois leaders, Mr Michel and Mr Ramdass to tell the Ilois about it. No-one told her of any problems with the forms. But none of them knew what they were signing. They just did what they were told. They were just asking for money to relieve their suffering and the Mauritians were saying that the money could not be unblocked because they had not finished "*tying the rope for the Ilois*".

723. She was asked specifically about the minutes recording a debate about whether the money could be unblocked when there were only a few other people who had not signed renunciation forms. But she said that she understood nothing. She said that the Governments were trying to make life difficult for them over the £250,000 and that the money was held back in case somebody brought a case against the British Government in the next five years. I asked whether she thought there was a connection between unblocking the money and the money that was being kept back and she said "No". The money was simply to be used if anybody sued the English and that was the money which the Ilois were trying to unblock before the five years were up. She said there was a fear that people from outside Mauritius, such as the Seychelles or France or England, would make a claim because there were claims from there, because she imagined families had written to them. I asked her whether what the British Government wanted, in order to unblock the money early, was an assurance that there would be no further claims. She said that so long as they lived they had to claim their rights. It was too small a sum to be compensation. She did not know what would make the British Government unblock it before the five years were up, nor what the Ilois had to do to persuade them to release it early. She was asked what arguments she had used, but no sensible answer emerged other than that they would be completely unmoveable. She said that she did not know whether she had been keen to get the money released early. Nobody had known that it was in full and final settlement. She could not remember asking the Americans for £4m on top of the £4m given by the British Government. She said nobody had ever thought of asking the Americans or writing to the President or the American Embassy. She then appeared to remember later that they had made a request for £4m to the Americans because they were desperate. She agreed that whilst she was on the ITFB they had never made another demand for £4m from the British Government.

724. She did not know that Simon Vencatessen had brought a case in Mauritius against the ITFB, about not signing the forms. These were his personal affairs, though she was a member of the Board at the time. She agreed that he and his brother were popular with the Ilois but she did not know whether the Ilois would listen to them or not.

725. Mr Ramdass could not think of a reason why Simon Vencatessen and Francois Louis would not say to the Ilois that they had been tricked into signing forms that renounced their rights. They were trustworthy people, although there had been some disagreement between the Ilois.

726. Mr Saminaden knew the people who had been elected to the ITFB but he did not have much to do with them. It was only when he heard from other people that Vencatessen and Louis had resigned that he found out about it. He had never heard the reason. He did not see Simon Vencatessen very often although they were related, and lived about four to five miles away. He did not know that they had refused to sign forms and until this case began he had not heard of Simon Vencatessen's case. He had not heard why they were concerned about the danger of signing the forms. He agreed that the word "renunciation" in the Chagossian context caused immediate anxiety as to what was happening and they were always on the look-out for such a problem. He thought that if Mr Michel and Mr Ramdass knew that they had signed renunciation forms they would have objected very strongly.

727. Olivier Bancoult had heard that Simon Vencatessen had brought a case against the ITFB because he had not signed the form. The case had been dealt with by lawyers and he had only found out what it was about today in court. It had been a personal decision of Mr Vencatessen's and if he had told the community what he was doing, there would have been a reaction. He said that he had not known what the case was about; it was simply a legal matter. He was not aware of the judgment of the court that the ITFB could require someone to sign a form. He was only aware that Simon Vencatessen had lost his case.

728. Mr Bancoult had heard that Francois Louis and Simon Vencatessen had not signed the forms, but not of the press conference which Mr Louis had held. He agreed that when he was elected to the ITFB in December 1983, the immediate concern of the members of the Group had been to unblock the £250,000 which had been blocked because of cases brought against the ITFB. He said that it was after the reference to renunciation forms that the ITFB meeting of 26th January 1984, (22A/118), that they had asked about these forms which till then they had never seen. He explained the fact that there was no reference to Ilois asking what these forms were and who had signed them by saying that, at the meetings, what the Ilois said most of the time had not been recorded in the Minutes, whereas what the Government members had said was written down. This was the point at which Mrs Alexis had been to see Mr Berenger. He said that they asked Mr Bacha to explain the position all the time to the five Ilois representatives and they asked the Secretary to the ITFB to produce the forms, but they never did. They had also asked Father Patient, the Chairman, but he was Mr Bacha's puppet.

729. He said in response to being shown the letter of 24th January 1984 to the US Ambassador from the CRG which he signed, (19A/D/1), referring to the agreement with the UK Government as "*full and final*" that he was never fully aware of this full and final settlement. When he was pressed as to why they were going to the US Government rather than to the British Government, he said that they were in a very difficult situation and were looking for other ways out of the problem. They asked a lot of people for money, like beggars. But he had never heard that the British Government would not pay any more and had been looking for an assurance that they would not be sued. I asked whether the CRG had agreed to turn to the US as the next best source of money, given that the British would not pay more. He said that there were so many people wanting to help them and so many letters written. However, the letter said that they had originally wanted £8m but the British Government had only given them £4m, and so they were turning to the US for the other £4m, and that letter had not been written by Mr Perrault, Mr Mundil or Mr Michel, but by the five ITFB members. He said that all the contents of the letter could have been written for them by someone else and that they just signed. He said, "*In the end they betrayed us by telling us things that weren't true*". It was plain beyond peradventure that Mr Bancoult was simply being evasive and was well aware of the significance of the awareness demonstrated 20 years ago that they could not sue the UK Government.

730. He agreed that the letter of 16th May 1984, (19A/D/9), had been signed by him quoting Article 5. He said that they were looking for ways to get the community out of its problems without renouncing its rights. Although he had referred to Article 5, he said that they had never had a copy of the agreement, never saw it, and could not remember who wrote it. He said they did not get replies to most of their letters. He could not remember the letter being taken to the British High Commissioner on 17th May 1984, (19A/D/22). He did not remember going to the High Commission; it was too long ago. He pointed out that that letter concerned revocation. Mrs Alexis had never said she was going about renunciation.

731. Mr Bancoult said that they never had a report of the ITFB meetings in Creole; it was only ever provided in English. He said they asked questions but did not always get replies. He later agreed that the Minutes were sometimes in English and sometimes in Creole. He was referred to the Minutes of the ITFB, (19A/D/41, 22.8.84). He said he had never seen Article 4 and so could not have asked about it. He was referred to the Minutes of 5th September 1984 of the ITFB, (22A/232), which referred to Mrs Lefade asking for a copy of the ITFB Act and whether the Secretary had got a reply about the unblocking of the £250,000, in the light of the fact that only a few Ilois had not signed the forms. He said that he was unaware that Mrs Lefade had mentioned those forms. He said that things were not reported in the Minutes as the Ilois had said them

because the Minutes were controlled by Mr Bacha. He said that the Mauritian Prime Minister, as with other politicians, changed his mind all the time. He was unaware that Mr Jugnauth had said that they would be acting in bad faith if they raised the claim again. He was referred to the Minutes of a meeting of 12th November 1984 which he, Mr Berenger, Mrs Alexis, Mrs Lefade and a number of others had attended with the Minister, (22A/248). He had not heard Mr Berenger say that there was an agreement with the British Government that no further claim would be made by the Ilois community. He said that Mr Berenger had never said that in his presence.

732. Mr Bancoult was referred to a meeting in December 1984, minuted in Creole, in which there were references to a possible signing of a different renunciation form. He said that there were so many words he did not understand, he could not explain what it was. He said that over the years he had asked again and again to see a renunciation form but had never been shown one, but if he had known that he had signed one he would never have sued the British Government again. He had not seen the form until he came to court and saw Mrs Talate give evidence. All he believed was that the £250,000 had been kept back in case the British Government were sued or there was a case against the ITFB. Although he knew a little English, he did not know everything and did not know what he had signed. He was not suspicious about all the references to renunciations because they had trusted a lot of people who, he said, betrayed them. Mr Berenger had told Mrs Alexis that there was no problem. None of the other initial members of the CRG, Mrs Alexis, Mrs Lefade or Mrs Talate could read English. Sometimes he wrote letters in English, sometimes they went to those who had betrayed them because they had a bit more education and were able to help them. He did not know who typed the letters that were typed and said that he needed to see them in order to be able to tell who had done so.

733. Olivier Bancoult said that he was unaware of the letter sent on 31st October 1985 by the CRG complaining about the refusal to release money, (19A/E/18). Although this letter referred to the Group's contentment with the 1982 agreement, to Article 4 of the 1982 Agreement and the renunciations, but sought the unblocking of the money, he had not been aware of it and did not approve it. All he knew was that the Governments had decided to keep £250,000 back until December 1985 in case the Ilois did not sign or in case someone sued the British Government or the ITFB. At no time had he known or heard that the renunciation forms were amongst the conditions. The retention had been because workers from the Chagos, but who had not been born there, were delaying the payment out of monies. The letter must have been written by Mr Perrault. He knew nothing about Article 4 or the renunciation forms. Mrs Lefade had never told him or discussed that she was trying to get the £250,000 released earlier because enough renunciation forms had been signed. The letter would not have been written by Mrs Lefade (who signed it), as they had no office. Everything was done from Mr Perrault's office.

734. Mr Bancoult said that after 1985 they could have started again. They had not done so because they always thought that when they approached the British Government and explained their problems, the Government would understand and would have "*some love for them*", but every time the Government simply took advantage of them. He said that they had no adviser to tell them in 1986 that they were free to argue the same things again that Mr Vencatessen had argued. They had no contact with Bernard Sheridan at that time.

735. For all Mr Bancoult's intelligence, ability and commitment to the Chagossian cause, he was an evasive and not always honest witness. I formed the strong impression that he was well aware of the problems created by the 1982 agreement, the renunciation form, the lack of subsequent action by the Chagossians against the British Government and the level of public knowledge of what had happened. He could read English and it is not credible that he was unaware of the content of all of the letters which were sent from the CRG or on which his name appeared. It is not credible, having concluded that they were being betrayed in 1983, that he was not subsequently on his guard against politicians or non-Ilois.

736. Mrs Talate had been elected to the ITFB in December 1983, but said there was no money when she

was elected, though they had heard that the money had come from England to the ITFB. Later, she agreed that there was still money for the ITFB to distribute when she joined and that there were disputes about it. When she had been in the ITFB there had been a dispute about £250,000 because the British Government would not agree to release it because the renunciation forms were not signed, although she said it was never explained that they had to be signed. When she was asked "So, when you were on the ITFB you knew that the renunciations had to be signed?", she said "I didn't know that because when I joined the ITFB the Rs 8,000 had already been done". She was clearly having difficulty over what she knew at the time when the renunciation forms were signed and what she subsequently knew when she was on the ITFB. The ITFB meetings were in Creole, she said, after Mr Bancoult told them to speak Creole. I asked on a number of occasions why she thought that the English Government would not release the money, but her answers always related to what she had been told or understood at the time when the renunciation forms were signed. I found it impossible to get any closer to her understanding of the position in 1984 and 1985. This was when she was on the ITFB and that issue was being discussed.

737. It is appropriate here to pick up the oral evidence about citizenship. Mrs Alexis' son, Mr Cherry, who had been born in the Chagos applied for a British passport and obtained one. Both events were publicised in "L'Express" in February 1985. She was photographed with him and the passport for a British Overseas Citizen. This does not appear to have been an altogether welcome development for the UK Government which had been keen to emphasise the Mauritian citizenship of the Ilois. Mr Duval reminded the press that he and the PSMD had always supported the Ilois and had thought that they had British nationality. There were reports that a lawyer, Serge Perrault who was the CRG's adviser, was going to London to discuss this with Sheridans. Others applied for a like passport. Their endeavours were publicised again in August. The Ilois continued to send delegations to the High Commissioner to enlist his support for more effective action by the Mauritian authorities in providing housing. Mr Bacha told him that the Ilois were to blame for they had not made up their minds about how many wanted houses, according to his report to the FCO in March 1985.

738. Mr Bancoult gave evidence about the allegation that the Defendants deliberately concealed from the Claimants the fact that they were citizens of the United Kingdom and Colonies. To my mind, it became clear as the cross-examination proceeded that Mr Bancoult, and indeed other Ilois of whom he was speaking in the generality, were well aware that they were British citizens but were really complaining that as citizens of BIOT they lacked the same rights as other British citizens would have and, in particular, the right of abode in the United Kingdom.

739. He said that the Chagossians had always believed that they were BIOT citizens and not full British citizens, because BIOT passports were different and did not give them the same rights. They were very happy to remain subjects of the Queen when Mauritius became independent, but they did not have the same treatment as an English person, because they could not stay in England or work or get benefits. They had got the lowest grade of British passport and had been turned away in Reunion because it was said not to be a proper passport.

740. He could not remember, notwithstanding the photograph of him at the press conference, that in 1985 Mrs Alexis' son, Mr Cherry, had applied for a British passport in what was described as a test case, but he said that they had wished to remain British subjects. He then acknowledged that after Mr Cherry had got his passport, the CRG based a campaign on the claim that the Ilois were British citizens; but his complaint was that they did not get the same treatment as British subjects in terms of residence, social security and education and that they had all thought that a British passport meant that they could come and go just as if they were British.

741. Mrs Talate said that she first realised she was a British citizen when she met Mr Mardemootoo. She recognised the photograph of Mrs Alexis and her son in 1985 holding his British passport, but she said that she only remembered a little bit and could not remember the question of passports. She later said that she remembered Mr Cherry obtaining a passport and that he was the first person on the test case, but that there

was no discussion about him coming to England, other than that he could come if he had enough money.

742. Mr Bancoult was asked about a letter from the CRG dated 7th October 1985, (19/1877kk), which he signed but could not remember. It refers to "*British citizens of BIOT*" or "*category C*". He signed it without being able to be sure what it said because at that stage they had hope in the intellectuals and politicians who had then betrayed them. Although the CRG had been set up, because Mauritians, he asserted, had betrayed them, and it was an Ilois group with a Mauritian adviser on it, most Mauritians who advised them had betrayed them, he insisted.

743. He did not remember seeing the High Commissioner in Mauritius on 16th May 1985 with CRG colleagues seeking to argue that they were virtually all British citizens. He said that he had never gone to the High Commissioner to raise the question of British citizenship and that he had gone only to deal with social assistance. He suggested that the Mauritian adviser, Mr Perrault, could have used his name. He was asked about a CRG letter in late November 1985 to the UN Secretary General, (19A/E/27), which referred to the successful campaign to be recognised as British citizens, the 1982 agreement being reached under duress and the violation by the United Kingdom of their human rights. He said that the signature was not his. He said that it was only from the time at which they started a case here, that they had launched a campaign for equal rights with other citizens. It was, however, perfectly clear from the other answers which he had given, that that was the complaint which had been made since at least 1985. It had not been a complaint that they had not been British citizens. It was quite apparent that he was using that answer to avoid answering the questions, which he knew were coming, about what the Group knew about British citizenship. It had been pointed out to him that the Particulars of Claim said that it had been deliberately concealed from the Claimants that they were citizens of the United Kingdom and Colonies. He eventually agreed that they had been after the same advantages as other British citizens. He said Mr Perrault himself did try to obtain those advantages for them but then added it was something that he did on his own account. This made no sense at all, and was merely an endeavour to persist in the allegation that no-one had ever assisted them when it was perfectly clear that they had received assistance in this area and legal advice.

744. His mother did not know that she was British before she got a passport in 2001, although she was proud that the Queen was her Queen. Although she had said that she always thought she was British, she then said that she had only realised that last year when she got her passport, but she agreed with what her son had said in his statement that when Mauritius became independent they were happy to stay subjects of the Queen.

The further claims of the Chagossians

745. The inadequacy of the compensation in the eyes of the Ilois led Mr Berenger to seek the assistance of UK opposition leaders in his fight for more compensation. The Ilois met a visiting MP to press for more money. Towards the end of November 1985, the Ilois met the Prime Minister of Mauritius and, according to a note from the High Commissioner to the FCO who appears to have been present, he told them that the £4m was in full and final settlement and that they had to forget the past and concentrate on integrating into Mauritius society. "*Le Nouveau Militant*" reported that the money would be distributed provided that there were no claims against the UK in the courts, the £4m was final although inadequate. It was about this time that the CIOF produced the "*Common Declaration of the Ilois People*", (B/387A), thumbed or signed by 812 individuals asserting their rights as citizens of BIOT to reside on the islands of Chagos.

746. In February 1986, the CRG sought the advice of Mr Allen, an American lawyer, who visited Mauritius. He advised in April 1986 that the Ilois should set up some representative structure, that there was a "*compensable*" claim against the UK by the Ilois and possibly by Mauritius and lobbying could be undertaken in a number of quarters; however, \$150,000 would be needed initially, (A215). Lawyers in Mauritius should be retained. The ITFB decided to pay for his expenses. Mr Bancoult remembered that.

747. The case of fraud against Mrs Alexis was discussed at a meeting of the ITFB in March 1986 at which she was present. There was later some discussion about whether the case could be dropped if she repaid the ITFB.

748. At the ITFB meeting of 15th December 1986, the minutes record that it still retained Rs 7.6m. It calculated that it needed to keep back Rs 2.6m to meet outstanding claims including by now the 238 workers, unregistered Claimants, unclaimed money due, and so on. Rs 5m was thus available for distribution. This was about £250,000. It would go to the 1,281 adults, 63 minors and 75 successors. This would mean Rs 3,600 per adult and half per minor. The financial work of the ITFB was by now very largely done. In May 1987, the ITFB decided that it would no longer publicise all its decisions but only the major ones. In May 1989, it was minuted that almost all the Ilois going there had signed the notarised contracts in connection with the accommodation being built at the two sites chosen.

749. On 28th June 1989, the Supreme Court in Mauritius gave judgment in the action brought by Simon Vencatessen against the ITFB. He had contended that it was unlawful for the ITFB to make it a condition of payment of its funds to an Ilois that he should have to sign a renunciation form, as he had refused to do. He lost. The Court held, adopting the reasoning in *Permal*:

"It is therefore beyond any possible doubt that the Trust Fund which will ultimately have to indemnify the United Kingdom Government against any loss, costs etc as a result of a claim made against it by an Ilois, is perfectly entitled, by virtue of section 6 of the Act, to insist that any person applying for '*a payment in anticipation and in full settlement of a claim*' he may have against the United Kingdom Government should sign a renunciation of any further claim."

In the course of his able arguments counsel for the appellant submitted that the Board could not insist on the appellant having to sign a renunciation of a possible claim for a violation by the United Kingdom Government of the appellant's right to return to his place of his birth. The short answer is that the appellant is in no way compelled to claim and/or accept from the fund '*any payment in anticipation*' for any claim he may have against the U.K. Government."

750. On 31st July 1989, it was minuted at the ITFB meeting that the Ilois had recently had legal advice from the Board's legal adviser that there could be no case against the USA but that they could press the UK for more compensation on humanitarian grounds. The Mauritius Government refused Mr Michel's request of September 1989 for a further delegation to be funded to go to London; agreement had already been reached. However, the ITFB minutes for 29th September 1989, said that Mr Michel, who was on the Board as an Ilois representative after wholesale changes in their representation, was in touch with Mr Grosz with a view to re-opening the case for compensation. The Chairman refused the assistance of the ITFB in this. At the meeting on 24th October 1989, he said that they should concentrate on obtaining compensation on a humanitarian basis, and that the Ilois leaders all knew perfectly well that the £4m had been paid as a final sum. Only Rs 1.2m remained for disbursement and the ITFB would soon be wound up.

751. The CIOF sought legal advice from Bindmans again in March 1990; Mr Michel wanted to bring an action against the Mauritius Government because of the way in which it had signed the 1982 agreement without removing the provisions for the Ilois to renounce the right to return to Chagos. In particular, he wrote that the Ilois had signed the forms believing that they were only to be effective for five years. On 29th March 1990, six Ilois representatives sent a letter to the Mauritius Government asking for its financial assistance in obtaining the services of Mr MacDonald to come to Mauritius to advise the Ilois on possible legal proceedings which they wished to bring. No Defendant was specified. The six signatories included Mr Michel, Mr Bancoult, Mr Permal and Mr Mundil. The groups represented included the CRG and the CIOF, a range of political parties and other support groups. This was refused because the ITFB already had the

benefit of legal advice and the sovereignty position was said to be well known. Mr Bancoult said he had never heard of Mr MacDonald and was unaware of signing that letter. Nobody had asked him about the CIOF seeking more advice from Bindmans.

752. In order to obtain advice, the CIOF had to send £2,000 to Bindmans in May 1990. In its letter of 18th May 1990, the CIOF said that the Ilois had been made to sign documents, of which copies were attached, renouncing claims against the UK Government as required by the 1982 agreement, but what they had signed "*unknowingly*" were the documents, of which copies were also enclosed, which related to the Mauritius Government. Mr Grosz consulted Mr MacDonald about whether the Mauritius Government had been entitled to require releases of claims against it, and whether there was any effective restriction of the definition to those who were born or ordinarily resident in the Chagos at the time of their forcible removal; the question of the limitation period in Mauritius for claims for breach of trust was raised. He thought that there might be a case against the Mauritius Government but required sight of a number of documents. Mr Grosz met Mr Michel, whose concern appeared to be that the Mauritius Government, which was mainly Indian, would ignore the interests of Creoles when the islands were re-inhabited and were not permitting Ilois to undertake work with Mauritian companies which obtained contracts on Diego Garcia. Mr Grosz asked him to obtain the relevant documents including ITFB minutes and on 9th July 1990 advised him that, among other matters they needed the assistance of a reliable Mauritius lawyer. On 20th July, Mr Herve Lassemillante, wrote to Bindmans saying that he had been retained by Mr Michel to act for the Ilois. Thereafter, despite chasing from Bindmans, nothing appears to have happened until January 1991 when Mr Michel wrote to say that they were going to court in Mauritius to obtain documents from the ITFB which had refused to provide them. Mr Bancoult said that he knew nothing of this, for he was now in full-time work, but had no money to buy newspapers. Work was his priority, he had no time for the CIOF and he went to no meetings. On 19th July 1991, "L'Express" reported that the Supreme Court had ordered the ITFB to hand over the documents; these were said to include the forms of release and details of where the money had gone. The report said that the Ilois were intending to send them to Bindmans for use in a case which was to be brought against the UK Government relating to the Ilois' right to return to Chagos.

753. Again there appears to have been little done by these Ilois until May 1992, when Sylvio Michel sent instructions to Bindmans, which included documents which had been disclosed by the ITFB. But these were insufficient for Bindmans to advise on and clearer instructions were sought.

754. On 22nd July 1992, the Michel brothers, saying that they had been unable to meet Mr Ollivry QC, sent to Bindmans, (or referring to what they had already sent) what they described as "*release forms*", "*documents whereby most Ilois have renounced their rights to return to the Chagos, their native land in exchange of a financial compensation*". But some had not so signed and it was on their behalf that advice was sought. Various other relevant material was sent in August 1992. There was also an issue about the entitlement of the Mauritius Government to require renunciations in its favour. A preliminary internal memo of Bindmans shows awareness of the need to instruct a Mauritian lawyer in particular in relation to land rights and of the problem created by limitation periods. They also researched nationality and citizenship. Eventually, on 29th October 1992, instructions were sent to Professor Anthony Bradley to advise the CIOF. General advice was sought initially. He was sent the advice of Mr MacDonald, the Permal decision, the renunciation forms and relevant statutory material. The instructions refer to the rights which the Ilois might have in respect of their compulsory removal from the Chagos, but the problems of legislation and of limitation were referred to. The question of the renunciation forms was raised. The Ilois were said to have signed them when they could not read them and had had no explanation of the contents; many thought that they were only renouncing their right to return for five years. They were also interested in what rights they might have to return when the islands were returned to Mauritius and whether Mauritius could legitimately demand renunciation forms as a result of the 1982 agreement.

755. He gave advice in conference on 16th February 1993, at which a draft opinion was considered. After a long discussion, records the attendance note, "*we came to the conclusion that there is no arguable remedy*

against the Governments of the United Kingdom [or] Mauritius and that any arguable claim would, in any event be barred by the lapse of time", (C/1053). Nonetheless, further research was contemplated into the rights of indigenous peoples, and political avenues were suggested. Professor Bradley mentioned the rights of "Ilois who had not signed away any of their own rights" but was cautious about the effect of the lapse of time.

756. His long and considered Opinion of 5th April 1993 made the same points, (A/174). He said, "*It is necessary to consider whether, against what are likely to be long odds, it would be possible to put together an arguable case that might be mounted in a judicial forum, as a means of drawing public attention to their grievances - and in the hope that this might be the catalyst for political action*". The legal issues which he examined were whether the Ilois had any rights arising out of their compulsory removal from the Chagos, whether the ITFB acted properly in requiring renunciation forms, what the effect was of those forms, and whether those who had not signed such forms and had received no compensation had any enforceable rights, particularly of return. As to the first, a number of jurisdictional problems were considered but Professor Bradley concluded that proceedings in respect of the events of 1968-1973 would now be time barred. As to the second, he concluded that the 1982 agreement did not of itself take away any rights which the Ilois might have had against the UK Government, but that the *Permal* decision meant that a statutory alternative to a claim against the UK Government had been provided; this did not have the effect of barring claims against the Mauritius Government. He then considered claims to return; in order to justify a refusal to allow the Ilois to return, the BIOT Commissioner would have to rely on the Immigration Ordinance of 1971, and he touched upon the validity of that Ordinance and its "*draconian*" powers as he saw them. But he did not suggest that it was ultra vires. He concluded that the renunciation forms would not provide a defence to all possible claims which might be covered by its very wide wording and that there were arguments which might be mounted to overcome any effect which they might have, such as mistake, duress and unconscionability. However, the Ilois "*today could not sue in respect of wrongful acts committed 10 or 20 years ago*". Those who had received no compensation and had signed no renunciation forms and those who had, if those forms were ineffective, could assert a right to return and maintain proceedings but the difficulty would be to overcome the 1971 Ordinance. International law remedies were addressed but held out little hope. More research might be valuable.

757. The Ilois held a meeting to discuss this Opinion; both were reported on in "*L'Express*" on 24th May 1993 in an article referring by name to Anthony Bradley and to Bindmans as lawyers. It reported on the two resolutions passed: claims were to be made against the UK Government in respect of the right to return at the Hague, and against the Mauritius Government for damages arising out of the conditions in which they had been living.

758. Sylvio Michel wrote to Bindmans on 8th August 1993 saying that after consultation with Ilois leaders and on the advice of Mr Lassemillante, it had been decided to bring proceedings in Mauritius and in Vienna, with possible proceedings in London on behalf of those who had not signed renunciation forms. By 8th September, the CIOF had appointed a new attorney to review matters with Mr Lassemillante. Advice was sought from Bindmans as to whether those 13 who had not signed renunciation forms could sue the UK Government. Shortly after, Harbottle and Lewis contacted Professor Bradley on the recommendation of Mr Dalyell MP, because they were advising a TV company interested in the Ilois and sought to explore the legal issues over the right to return.

759. On 12th October 1993, Mr Sylvio Michel wrote to Bindmans asking a number of pertinent questions which he had been advised to pursue by the Mauritian lawyers. These included the prospects of bringing an action against the UK Government over the constitutionality of the BIOT immigration laws, the compulsory acquisition of land, damages for the removal of the Ilois, and the limitation periods. A number of these issues were discussed in conference between Mr Grosz and Professor Bradley, Mr Elie Michel and Mr Lassemillante on 22nd October 1993. The latter met the BIOT Administrator and Commissioner at the FCO and discussed the availability of BIOT legislation and other matters relating to the return of the Ilois and their

well-being.

760. On 16th November 1993, Mr Lassemillante wrote to Bindmans explaining the scandalous citizenship position, as he saw it, of those Ilois who had not renounced their BIOT based nationality when they became 18, and who in consequence had lost their Mauritian citizenship. A draft letter was discussed on behalf of Marie Elyse to the BIOT Commissioner, who was by now based at the FCO, in London, seeking to return to the Chagos as a BIOT subject for a visit. Bindmans redrafted it and advised that other Ilois should make similar applications. The Michel brothers proposed that they should try to register all Ilois at the British High Commission. In December 1993, Bindmans made applications on behalf of 12 Ilois enclosing letters which identified the lawyers who were advising them. Mr Grosz said that neither he nor Mr MacDonald had ever doubted that the Ilois were citizens of the United Kingdom and Colonies.

761. Discussions then ensued early in the New Year between Bindmans and the BIOT Commissioner about the trip. The proposal received press publicity in Mauritius; it said that this was the first step towards regaining a right of residence which had been renounced in the forms which they had had to sign. The article referred to the lawyers and to the legal advice which the Michel brothers had had, and said that they had been advised that these forms were null and void. Another article referred to the claims for UK passports which had been made on behalf of over 200 Ilois.

762. By April 1994, the negotiations over the trip were becoming complicated by the fact that the CIOF wanted to take along with their leader, a well known journalist and a film crew. Despite the continuing involvement of lawyers, research by Mr Lassemillante in the USA and possible sources of political support, permission was refused for the trip on 6th June 1994. Mr Grosz, whose evidence tallied with and effectively relied on the documents, as he often made clear, remembered a petition in June 1994 from Sylvio Michel with 812 Ilois signatures or thumbprints demanding immediate entry to Chagos, including Mr Bancoult. These were activists rather than just CIOF members, thought Mr Grosz. Sylvio, a non-Chagossian, could read and write English, unlike Elie Michel. Mr Bancoult said he knew nothing of this.

763. The BIOT Representative on Diego Garcia was concerned about the real purpose of the visit. This decision was not however, conveyed to the applicants until 15th July. The CIOF were already urging judicial review of any refusal of the visit or of any delay in the decision together with applications for permanent residence, in a letter to Bindmans of 30th June 1994, before they knew of the decision. After taking advice from Professor Bradley, Bindmans threatened an application for mandamus. It was thought that a good nuisance tactic would be to make the BIOT Commissioner set up the BIOT Court. The letter of 15th July merely said that the Commissioner would not authorise the group visit in its present form. But it did provide the address of the BIOT Supreme Court sub-registry in the UK, which at that time was "*The Glebe Cottage, Woolfardisworthy East, Nr Crediton*", (D/1552). Legal Aid was not available in that Court system. A letter of 1st August 1994 from the BIOT Commissioner provided more details for the refusal. He was concerned that the party would not leave at the end of the visit, a concern which for him was reinforced by the proposed presence of journalists. He also saw no justification for a visit to Diego Garcia. Bindmans advised against a trip without permission and against including people by subterfuge. The BIOT Commissioner supplied Bindmans with copies of some BIOT legislation and told them where other BIOT legislation could be obtained.

764. On 19th August 1994, Mr Sylvio Michel wrote to Bindmans pointing out the two routes which could be followed, appeal or a challenge to the very constitutionality of the BIOT Immigration Ordinance. Bindmans advised that the appeal route be followed first; he did not consider that the latter route was available. Accordingly, an appeal was lodged. Mr Grosz said to the Court that if there had been a case in the United Kingdom with reasonable prospects of success, legal aid would have been sought, but in the light of the advice which he had received, there was no such case.

765. The Commissioner agreed that he would appoint a delegate to hear the appeal in his stead and an offer which he made to grant permits for only some of the group was rejected. With various toings and froings and submissions, it was not until 12th May 1995 that Mr Wenban-Smith issued his decision on the appeal. He granted the applications of the 8 Ilois on compassionate grounds to visit Peros Banhos and Salomon, and subject to further authorisations, Diego Garcia. The applications of the journalists and of Elie Michel were refused because they showed no compassionate grounds. The details of the visit remained to be worked out.

766. There was a suggestion from Mr Michel that those who had been refused permission to go on the trip would nevertheless attempt to make the voyage, but Bindmans counselled against this. However, cost and other difficulties led to the trip being postponed till April 1996. There were internal ructions in the CIOF between Sylvio Michel, who eventually left it, and Mr Lassemillante. Mr Grosz did not know how far the advice which was given at various times was communicated to the Ilois, but in 1990 he thought that the CIOF, his clients, were generally representative.

767. On 25th October 1995, the BIOT Social Committee was set up, advised by Mr Lassemillante, its Rules were promulgated and it was registered with the Registrar of Associations. Its supporting signatories number some 1,200, (B510). Mr Bancoult said that it was not his signature on the forms; he had always opposed Mr Lassemillante. His address, however, was correct and his wife had signed, as had his sister-in-law and others at the address. They had not told him. He had kept press cuttings about the BIOT Social Committee and Mr Lassemillante and Ilois activities in the 1990s because he decided to do so and not because he supported Mr Lassemillante, who was always talking about human rights but never did anything serious. Mr Grosz said that this was the organisation to which the Ilois turned, though Mr Saminaden said he had not heard of it.

768. It is this Committee which represents the Claimants living in Mauritius and has organised them for the purposes of these proceedings.

769. Through 1995 and 1996 there was some desultory and inconclusive correspondence between Mr Lassemillante, Mr Sylvio Michel and Bindmans. It was proposed by Mr Lassemillante that a visit to Diego Garcia be organised for his clients for May 1996. But in April the BIOT Administrator advised Mr Grosz that a fresh application for a permit would be needed. Little came of this. The Ilois clients of Mr Lassemillante decided to apply for a permit to make a visit in September 1996.

770. On 16th December 1996 some Ilois in the Seychelles wrote a petition to the Secretary General of the UN, the Queen, the Prime Minister, the President of the USA and others which described themselves as refugees and exiles and implored that their case be examined so that they receive a monthly compensation from the date of their exile until their return to Chagos. On 24th January 1997 the FCO wrote to the Ilois Group of the Seychelles saying that the UK Government was under no obligation to pay compensation. This was in response to a letter from that group to the UK Prime Minister, among others, seeking compensation.

771. On about 3rd October 1997, the Chagos Social Committee (Seychelles) Association was registered. The Committee aimed to establish the rights of the Ilois in the Seychelles as British citizens and passport holders, intending to seek for them fair and just compensation and a safeguarding of their rights under UNHCR. In November 1997 there was an exchange of correspondence between Jeanette Alexis on behalf of the Chagos Social Committee in Seychelles and the High Commission there, which referred to some 200 Ilois deported from Chagos. The High Commission denied that there was any compensation due to any Seychellois because they had all been on terminable work contracts and there was no possibility of their returning to Chagos. The correspondence from the High Commission pointed out that the British passport holders were citizens of the British dependent territories and had no right of abode either in the UK or automatically in the dependent territory of which they were citizens. That depended on the immigration policy of that territory. It also said that the majority of those returning to Seychelles were contract labourers

returning home and that the structural problems which were faced in Mauritius did not arise in the Seychelles. There was no infrastructure which would permit a return to the Islands and there was no commercially viable prospect of establishing a community. This debate continued into the spring of 1998. On 30th March 1998, the FCO wrote to Jeanette Alexis referring to the compensation paid in 1973 to the Government of Mauritius and to the further payment in 1982. It said that those were designed "*to assist with the resettlement of the contract workers in Mauritius*", (9/1925). The resettlement problems in Mauritius were said not to have existed in the Seychelles on the same scale.

772. On 15th April 1998, the BIOT administration wrote to Mr Gifford of Sheridans which firm was again involved, (9/1925A). This letter denied that there was any right at common law to return to the country of nationality or birth and that there was no limit on the power of a colonial legislature, represented by the power to make laws for the "*peace, order and good government*" of the colony. It denied any suggestion that the Immigration Ordinance 1971 was invalid. But on 1st May 1998 legal aid certificates were granted to two individuals for the purposes of a proposed Judicial Review. There then followed correspondence between Sheridans and the BIOT Commissioner contending that the Immigration Ordinance was invalid, which the Commissioner rejected. On 30th September 1998 the Bancoult application for leave to apply for Judicial Review was filed. On 3rd March 1999 leave to apply for Judicial Review was granted by Scott-Baker J after a contested hearing. The application contended that the Immigration Ordinance was *ultra vires* the Commissioner's powers to make laws for the peace, order and good government of BIOT. It also contended that the policy of refusing Chagossians the right to return BIOT was unlawful and disproportionate because there was no reason to prevent their return to Peros Banhos and Salomon.

773. In the meantime, the Seychellois Ilois had continued to press for the payment of compensation and had received the same reply to the effect that the reason why no compensation was to be paid was that there were very few Chagossians who went to the Seychelles and they did not face the same problems as those going to Mauritius had faced. The Chagos Social Committee (Seychelles) Association was the committee which organised the Seychelles part of the Chagossians for the purpose of these proceedings. For the purposes of the Judicial Review proceedings, the Treasury Solicitor wrote to Sheridans on a number of occasions in 1999 responding to the suggested obligation on the government or the BIOT Commissioner to permit the return of the Chagossians to the Chagos Archipelago. Correspondence pointed out that there was no infrastructure or means of support and no practical way of subsisting there without such support, and seeking information as to what it was the Chagossians said the governments should do in that respect. It was said by Sheridans that there was considerable commercial interest in restoring economic life to the Islands. On 21st June 2000, the Assistant Secretary of State for Political-Military Affairs to the FCO sent a letter, (9/1954a), expressing serious concern at the impact on the strategic value of Diego Garcia that would follow from any permanent resident population on the Archipelago. Even the resettlement of Peros Banhos and Salomon would risk other states or hostile organisations monitoring or impeding strategic operations and add to the vulnerability to terrorist attack.

774. The Claimant in the Judicial Review proceedings did not pursue the argument in relation to the obligation on the Defendants to facilitate the return of the Chagossians to Chagos or any island in the Archipelago. Nonetheless, the Claimant succeeded in his contention that that part of the Immigration Ordinance which permitted the Islands to be cleared of its resident population was outside the Commissioner's legislative powers. Judgment was delivered by the Divisional Court (Laws LJ and Gibbs J) on 3rd November 2000; [2001] QB 1067, [2001] 2 WLR 1219. Permission to appeal was granted but not pursued.

775. The BIOT Immigration Ordinance 2000 altered the position so that permits were not required for BIOT British Dependent Territory citizens to go to islands other than Diego Garcia.

776. Following the success of this action, the Chagossians felt a sense of confidence in a single leader, Olivier Bancoult, and confidence in lawyers and the ability of a legal system to provide redress. Over recent

years, documents previously withheld in the Vencatessen litigation or provided in only a redacted form, were becoming available at the expiry of the 30-year period. The present proceedings were contemplated, the preliminary steps were undertaken and finally on 25th April 2002, the Group Claim Form was issued and these proceedings commenced.

777. Much of the oral evidence to which I have already referred is relevant to the limitation arguments. There was additional oral evidence also relevant to these arguments to which I now turn. It dealt with why no further proceedings had been brought if it had been thought that no rights had been renounced and there was only a five year embargo, or until 1985, on suing the United Kingdom.

778. Mr Ramdass remembered a little about the Board retaining £250,000 until 31st December 1985, or the conclusion of prior claims. He had understood that there was to be no renunciation of rights because of this retention. The £250,000 was kept back in case other claims were made within five years of the time of signing the Agreement. He said that nobody had brought proceedings after the expiry of the five years, which he thought was the period that had to elapse without cases being brought before the £250,000 would be paid out, because Mr Mandarin, another lawyer, was striving to get into negotiations but unfortunately nothing came of it. It was a long process for Mr Ramdass to grapple with the question about whether the Ilois could ask the British Government for more, after the £4m had been paid. He thought that definitely that could be done but when he was asked why it had not been done, bearing in mind the poverty from which they said they suffered, he said that was a matter for other people but he was tired and had stopped doing it. He said that Mr Mandarin had been trying to arrange negotiations all the time as an Ilois. He agreed that because he had not thought that he had renounced his rights until very recently, he had thought that he had all his rights still left intact. It was extremely difficult to get him to answer the question as to why, if he thought he had not given up his rights until very recently when he discovered what was in the document, no Ilois had brought any proceedings. He answered by saying that nobody had told him that he had given up his rights. He did eventually say that he thought that the Ilois could have brought another case in the same way that Mr Vencatessen had done but Mr Mandarin had failed in his negotiations.

779. In about 1982, Mr Saminaden said that he had heard about the fact that some of the money, which the ITFB received, had to be kept back for five years to meet claims which might be brought against the British Government and that the money could be released early after all the Ilois had promised not to bring claims against the British Government. He agreed that the Ilois wanted the money actually paid out although he did not know when it was actually released. He knew nothing about signing forms in order to unblock the remaining £250,000. He could not say why no case had been brought in the years since the five year period ended, even if he was able to grasp that the money might have been released earlier if all the Ilois had signed. He did not think that the reason why no case had been brought was because the Ilois thought they had no right to do so. They had never promised not to do so. He thought that the Chagossians had always thought they could make a new claim against the British Government but did not do so because there was nobody to lead them; they were all blind or drowning. It was about four or five years ago under the CRG that they realised what they could do. He agreed in 1990 that he was poor and blamed the British Government for his poverty, knew that his brother-in-law had brought a case in Britain but he did not do so because he just followed the groups. He knew nothing of Mr Lassemillante.

780. Mr Michel and the CIOF did not have the vision, he said, to help the Ilois and Mr Saminaden was in any event not part of that group. He did not think that people had full confidence in Mr Michel even though he had been elected by the Ilois to the ITFB.

781. He had only found out about five or six years ago that the Chagossians were British citizens. He said that he did not think that the Ilois knew that after the £4m had been paid they knew that there would never be any more payments. They had thought that £4m might be enough but it became clear that it was not.

782. I asked why, when they realised that the money was not enough, which was a long time ago, what he thought they had to do persuade the UK Government to pay more. He said that they would have to organise again to come to court but it took a long time to organise Chagossians. They would have to do the same thing which was to make a claim in the courts. He said that for seven or eight years they had been trying to make a claim but each person had to get things organised. It was after they had met Olivier Bancoult that everything was put together.

783. I asked Mrs Alexis why, after five years had passed after 1983, no other Ilois family brought a case against the Government in view of their continued poverty and she said they had not thought about that until the CRG spoke of it last year. The Vencatessen case was not well known as it was a private case, but it was well known to the Ilois that he had been made to withdraw it. She said they knew that after five years they would have the right to claim the blocked money. They also knew, she told me, that after the five years had passed and the money had been claimed, as she understood it, that there was nothing to prevent them bringing a case. She said that the £4m was not the final payment and the sort of steps they could take to make the British Government pay more would be to bring a case to court. I asked her why no case had been brought ten years ago. She said that the Chagossians did not have that mentality; they were very, very stupid, but later they formed the Chagos Refugee Group. She knew Gaetan Duval and he had helped over getting a passport for her son in the test case. She had not had direct contact with Ollivrey. She also knew the lawyer who had represented her when she had been prosecuted as a result of a demonstration. She could remember no Ilois trying to raise money to pay for a lawyer in 1990-1992 because they could scarcely afford to eat.

784. Mrs Alexis said she did not recall meeting any lawyers in the 1970s. Nobody explained anything to her about a legal right to return to Chagos. It was not until four years ago that Olivier Bancoult had taken her to see Mr Mardemootoo, the Mauritian lawyer. No-one had given her advice about her legal rights before that.

785. Olivier Bancoult said that nobody had told them about their rights and that the Claimants had not obtained legal advice about remedies in the English courts until 1998. But they all held the British responsible. He produced a sort of group statement, signed by many Chagossians, saying that they supported CIOF or CRG and had never received information from an English lawyer about bringing a case in England, nor had they renounced any rights. He had heard of Mr Lassemillante; he had "*supposedly*" represented the Ilois but had never told them they had a right to sue the British Government. He had simply been concerned to be seen as a defender of human rights but was never an advocate representing them in the British courts. Mr Bancoult said that by the age of 15 or 16 he was discussing rights and compensation with his family, but he did not understand the relevant law.

786. Jeanette Alexis said she could not afford a lawyer although she thought of it, but she did not know anybody who had brought a case in a court of law.

787. Mr Gifford said that faced with the denial of responsibility by the FCO and BIOT for the removal of the islanders and their subsequent plight and in light of the obvious difficulties for those living in Mauritius or the Seychelles of gaining access to evidential materials, it was difficult to see how any of the Claimants could be said to have known all of the relevant facts constituting the alleged torts involved in this action. The material relied on in the Bancoult Judicial Review had been drawn almost entirely from public records available after the expiring of the 30-year period, at the Public Record Office. He said that the possibility that the islanders might return one day to the islands had led to the preliminary study prepared by the Defendants and a more detailed preliminary study, Phase 2B, examining the scope for return to the outer islands. The whole case had been about the desire to return to the Chagos Islands. The feasibility of this return was being discussed in late 2002. He took issue with the factual basis upon which Laws LJ had held (paras 7 and 58) that the islanders had no property rights.

788. He said that the current case had come about, when in January 1998 he had been first instructed by Mr Mardemootoo on behalf of two ladies in connection with their nationality claim, and he first met Mr Bankrupt, who was Chairman of the Chagos Refugee Group, the first organisation set up by the Ilois for the Ilois. He had dealt with Mr Bancoult as an individual, however. The whole community had coalesced around this group after leave had been granted in the Judicial Review proceedings in June 1999 and which gave hope to the Ilois community.

789. He said that his understanding of what had happened after the Vencatessen litigation was that the Chagos Social Committee, like the other groups, had suffered from a lack of communication between the Ilois and the leadership. Its leader could not read or write. In practice, the whole Ilois community was led by Mr Lassemillante who was quite close to the Mauritius Government which regarded the Chagos issue as one of sovereignty. The Ilois did not trust the Mauritius Government because it thought that it had sold out the community for the eventual gaining or regaining of Mauritius sovereignty over the Chagos.

790. The position of the Ilois was a burning issue right through the 1980s and 1990s. He thought that the leaders of the Chagos Social Committee were aware of the position but that the Ilois were just a lumpen mass in terrible circumstances who knew nothing and the CSC which held the stage he thought from 1983 till about 2000 had discouraged the pursuit of claims against the British Government based on British citizenship.

791. He derived this appraisal from contacts which he had in preparing the Bancoult Judicial Review, which included meetings with the former Prime Minister, a participant in the 1968 independence negotiations, the High Commissioner, various political and professional people, newspapers, journalists and Mr Mardemootoo. The Chagos Refugee Group were one of those organising this action and he was aware that people associated with this group had been elected at various times to the ITFB. The success of the Judicial Review enabled Mr Bancoult's group to sweep the slate.

792. He accepted that there were some Ilois who had had access to legal advice before 1998 because Bindmans had advised the CIOF. He thought the causes of action were different from those which were then the subject matter of advice. He said that many of the Committee members were not Ilois and the committees did not have the penetration or representation amongst the Ilois as they had claimed.

793. He was asked questions about the affidavit sworn by Mr Bancoult in the Judicial Review proceedings in September 1998 which is in English and not translated or signed as having been translated to Mr Bancoult before he signed it. However, Mr Gifford said that when he first spoke to Mr Bancoult, which was around that time, he could not then speak English. Mr Gifford accepted that there were certain practices about taking statements in Mauritius which concerned him.

794. He thought that the Legal Aid system in Mauritius would provide only very limited legal aid, perhaps confined to criminal cases. Although lawyers sometimes took work on a compassionate basis, if that happened it would only be for existing clients. Although there was a strong overlap between law and politics, the lawyers who went into politics did not generally practise and because of the mix of law and politics in Mauritius to go to a politician there for legal advice would be unsatisfactory. Even if a politician was able to offer some assistance putting them on the right track as Mr Duval helped Mr Vencatessen, there would be very few lawyers willing to take on a case like this because of its complexity, the poverty of the clients and the strength of the opposition. It would only be a firm like Sheridans or Bindmans who could do it.

795. He said that Mr MacDonald's advice had been pretty forlorn, because it was beyond anyone at that stage with the extent of documentation in respect of which immunity from disclosure had been claimed, to have assessed the position fairly. Indeed, taking instructions from the clients would be difficult and even for

the committees difficult too. He said it was quite wrong that there was a period of quiet after the 1982 agreement. He said that there was an almost constant clamour of demonstrations. But on the legal front, they had come to a dead end and having called their best shot, had failed. He said that unlike this current case and the Judicial Review, the Vencatessen litigation had been conducted in an obstructive way. The position of the Ilois was a more or less constant political sore in Mauritius, but by 1982 they had come to a dead end in Britain.

Case No: A2/2004/0224

Neutral Citation Number: [2004] EWCA Civ 997
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(MR JUSTICE OUSELEY)

Royal Courts of Justice
Strand,
London, WC2A 2LL

Thursday 22 July 2004

Before :

THE PRESIDENT
LORD JUSTICE SEDLEY
and
LORD JUSTICE NEUBERGER

Between :

CHAGOS ISLANDERS – and –	<u>Applicants/Claimants</u>
(1) THE ATTORNEY GENERAL (2) HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY COMMISSIONER	<u>Respondents/Defendants</u>

(Transcript of the Handed Down Judgment of
Smith Bernal Wordwave Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr Robin Allen QC and Mr Thomas Coghlin (instructed by Sheridans) for the Applicants/Claimants
Mr John Howell QC, Mr Rhodri Thompson QC and Mr Kieron Beal (instructed by The Treasury Solicitor) for the
Respondents/Defendants

Judgment
As Approved by the Court

Crown Copyright ©

Lord Justice Sedley :

1. All three members have contributed to this judgment of the court. In view of the importance of the issues, it will not be subject to the usual restraints on its use.
2. The application before the court is made by Robin Allen QC, on behalf of former inhabitants of the Chagos Islands and their descendants, for permission to appeal against the decision of Ouseley J to strike out the entirety of their claim against – in effect – Her Majesty's Government for damages and declaratory relief designed to compensate for and if possible to reverse the effects of their enforced removal or exclusion from their homeland some three decades ago.

The background

3. The Chagos Islands are an archipelago in the Indian Ocean which includes the island of Diego Garcia. During the 1960s the United States administration decided that it required Diego Garcia as a strategic military base. The government of the United Kingdom set about accommodating this request, but at an early stage realised that it and the neighbouring islands had a substantial population, mostly Seychellois contract workers, but some (known as the Ilois) sprung from former slaves who had remained there after emancipation or from migrant labourers who had settled there. It decided that both Diego Garcia and the neighbouring islands needed to be cleared of their population.
4. To accomplish these ends the islands were separated in 1965 from the British colony of Mauritius and (together with some other islands detached from the Seychelles) made a separate colony, the British Indian Ocean Territory (BIOT). Mauritius itself in 1968 became an independent state. Its constitution gave Mauritian citizenship to everyone born in what had previously been the colony of Mauritius. This of course include the Chagos islanders, who were thereby entitled to settle in Mauritius.
5. In 1967 the United Kingdom bought out the freehold interest of the company which now farmed copra on the islands and which employed virtually its entire population. It was the claimants' case that those of them who went to Mauritius or the Seychelles for medical treatment and other things that could not be had on the islands were prevented from returning, and that the remainder were deported by ship. The defendants attributed the depopulation to the closure of the plantations on the islands. What is clear is that between 1967 and 1973 the entire population was removed to Mauritius and the Seychelles, where they had neither homes nor work.
6. The political history of the removals and of the endeavours to secure redress can be found in compelling detail, first in the judgment of Laws LJ in *Bancoult* (below) and secondly in the judgment of Ouseley J in the present proceedings. In the light of it, it would be wrong of us to move on to the legal issues without acknowledging, as Ouseley J went out of his way to do in a judgment to the comprehensiveness of which we pay tribute, the shameful treatment to which the islanders were apparently subjected. The deliberate misrepresentation of the Ilois' history and status, designed to deflect any investigation by the United Nations; the use of legal powers designed for the governance of the islands for the illicit purpose of depopulating them; the uprooting of scores of families from the only way of life and means of subsistence that they knew; the want of anything like adequate provision for their resettlement: all of this and more is now part of the historical record. It is difficult to ignore the parallel with the Highland clearances of the second quarter of the nineteenth century. Defence may have replaced agricultural improvement as the reason, but the pauperisation and expulsion of the weak in the interests of the powerful still gives little to be proud of.
7. In *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067 Laws LJ and Gibbs J held that Immigration Ordinance 1971 by which the enforced removal of the population was purportedly authorised was beyond the powers of governance conferred by the colony's constitutive instrument, the British Indian Ocean Territory Order 1965, and so unlawful. The decision was not appealed. Although John Howell QC for the defendants has indicated that, if permission to appeal is granted, he will contend that *Bancoult* was wrongly decided, we unhesitatingly approach the present application on the footing that (at least in this respect) it was rightly decided. It follows for present purposes that there is no defence of statutory authority to any tort which can be established.
8. It cannot be supposed that the United Kingdom, having bought the Chagos freeholds, was as much at liberty as any other landowner to evict the occupants for any or no reason. Unlike the landowners and tenant farmers who cleared the Highlands of their labouring population, the state is not at liberty to act arbitrarily or unjustly: it is the task of the courts, which are part of the state, to see that it does not. It cannot lie in the mouth of the United Kingdom government, having enacted powers for the governance of the islands, to contend that its officials can ignore the limits on those powers and act outwith them.

9. The many hundreds who were initially displaced have grown to a still impoverished population of several thousand. A compensation payment of £650,000 from the British government, with accrued interest, was distributed in 1977–8 to a total of 595 displaced families then in Mauritius. It did little if anything to relieve their massive problems of rudimentary housing, unemployment and social isolation. Nor did the partial reversal of the Immigration Ordinance in relation to two of the islands following the divisional court's judgment afford any concrete help, since there are now effectively no means of subsistence there. But over the intervening years attempts have been made to secure fuller compensation and redress from the British state which displaced them.

Renunciation

10. In 1975 proceedings were issued in London by Michael Vencatessen, one of the last deportees from Diego Garcia, claiming damages for intimidation, deprivation of liberty and assault arising out of his enforced removal. The action was settled in 1982 for a payment by the defendants (in effect Her Majesty's Government) of £4,000,000 plus costs, designed to settle all the claims of all the islanders. 1,344 quittance forms were signed (that is, for the most part, thumbprinted) upon receipt of a share of this sum. It is accepted by Mr Allen that the claims to which this settlement related are in substance the same as the present claims. What he does not accept is that any of the forms of renunciation should bar the present action.
11. Mr Howell has made it clear that it will not be sought to debar any claimant who, despite having taken reasonable steps, did not understand what he or she was signing. But none of the cases so far examined by Ouseley J has fallen into this class.
12. The form of renunciation, executed by the great majority of the claimants during 1982 and 1983, contained a clear statement by the signatory to the effect:

"In consideration of the compensation paid to me by the Ilois Trust Fund and of my settlement in Mauritius × I renounce to all claims, present or future, that I may have against the government of the United Kingdom, the Crown in the right of the United Kingdom, the Crown in right of any British possession, their servants, agents or contractors ×."

in respect of actions which, it is realistically accepted on behalf of the applicants, form the basis of the current claims. The Trust Fund was established by a Mauritian statute, and was endowed principally by the United Kingdom government. In *Permal –v– Ilois Trust Fund* [1984] MR 65 at 70, the Supreme Court of Mauritius held that an individual Ilois had

"a cause of action under the [Ilois Trust Fund] Act [1982] in Mauritius [against the Trust Fund] so as to avail himself of the remedy there provided as a statutory alternative to any other course of action in the United Kingdom × against the United Kingdom authorities that he might also possess".

13. The contention that those claimants who signed the renunciation forms are nonetheless entitled to maintain their present claims is based on the following propositions:

- i) It is an abuse for the defendants to raise the issue in these proceedings, given that they failed to raise it in *Bancoult* ;
- ii) It is and was not open to the defendants to contend that the Ilois could compromise or renounce "their fundamental and constitutional rights".

We do not consider that either of these propositions is tenable.

14. In *Bancoult*, the issue was whether or not s4 of the Immigration Ordinance was ultra vires the BIOT constitution. The divisional court held that it was. We are very doubtful whether the fact that Mr Bancoult had signed a renunciation form would have been held by the divisional court to disqualify him from pursuing his successful

challenge to s.4 of the 1971 Ordinance. We do not consider that the renunciation forms could sensibly be construed as applying to the creation of ordinances.

15. Even if that is putting it too high, we agree with what the judge said in paragraph 594 of his judgment:

"There is a significant difference between saying that a claim for compensation, made after a final settlement has been reached, is an abuse, and saying that an application for Judicial Review to determine the validity of legislation in force is an abuse of process."

16. Accordingly, even if, which we doubt, a claimant who had signed a renunciation form would have been debarred from seeking the relief sought and obtained in *Bancoult*, we consider that it is perfectly understandable that the point was not taken against Mr Bancoult in those proceedings. It would have been a departure from the high standard of fairness with which government ordinarily conducts litigation before our courts had it been contended that Mr Bancoult's public law proceedings should be struck out on the unattractive and limited ground that he had signed a renunciation form in a related private law claim. It is one thing for the government to rely on the renunciation form, and the financial benefits which it conferred on the signatory, as a reason for striking out a subsequent claim by the signatory for compensation; it is quite another for it to seek to shelter behind the renunciation form in order to avoid a finding that its secondary legislation was unlawful. In any event, as Mr Howell says, to have taken the point against Mr Boucault would have been "a pointless diversion", because the Ilois would have found a substitute applicant who had not signed a renunciation form.
17. As to the second ground advanced for not giving the renunciation forms their natural effect, we were not referred to any recognisable principle of law, any discussion in any textbook, or any authority, whether in this or any other jurisdiction, to support the proposition that it is not open to a person who has had his fundamental rights infringed by the state validly to compromise any claim which he may thereby have for damages or other relief in private law. Clearly, if the state put unreasonable or improper pressure on the claimant in order to persuade him to settle his claim, that would be a different matter, but in such a case the claimant would be able to impeach the settlement on the ground that it had been induced by such pressure.
18. It is right to mention that, in the Notice of Appeal, albeit not developed in their skeleton argument, the claimants contended that "the renunciation forms did not meet the test for abuse of process set out in *Johnson –v– Gore-Wood & Co* [2002] 2 AC 1". Given that the point was raised in their Notice of Appeal, it is right to mention it, but, given that it has not been developed in their skeleton argument, or indeed orally, we merely record our agreement with the judge's reasoning on this issue at paragraphs 482–484 of his judgment.
19. In our judgment Ouseley J was therefore right to hold that those who signed quittance forms on receipt of compensation payments, inadequate though the payments may have turned out to be, bindingly compromised the claims which they now seek to pursue. What follows is therefore strictly material only to those Chagossians who signed no disclaimer or who did not appreciate what they were signing. But it is relevant to all the claims should we be wrong about the signed renunciations.

The causes of action

20. The three principal causes of action which Mr Allen seeks to resurrect, each of them having been held unsustainable by the judge, are misfeasance in public office, unlawful exile and deceit. Each of these is a private law claim against the British state. In a civil law system, the judgment in *Bancoult* would be enough to entitle the claimants, other things being equal, to an award of damages against the state: see the historic decision of the French Conseil d'État in *Blanco* (TC 8 Feb. 1873), and see generally D. Fairgrieve, *State Liability in Tort: a comparative study* (2003). The unlawful exclusion and removal of the islanders would be regarded in such a system as *faute lourde* and would be compensable in damages. But the English common law has no knowledge of the state. Public law recognises the Crown as the repository of a range of prerogative and statutory powers. By the prerogative writs and orders, it has for centuries called ministers to account if they abuse the latter, and in recent years if they misuse the former. But the State has no tortious liability at common law for wrongs done by its servants, from ministers down. In England at least (Scottish law has historically differed) either the Crown's servants are personally liable or there is no redress. It was to change this anomalous situation that the Crown Proceedings Act 1947 was passed. But the 1947 Act does not work by making the state a potential tortfeasor: it works by making the Crown vicariously liable for the torts of its servants. It has only been with the enactment of

the Human Rights Act 1998 that the Crown, in the form of a 'public authority', has acquired a primary liability for violating certain rights. Where, of course, a limb of the state has corporate legal personality - a local authority, for example, or the Bank of England - no such problem arises; but this is not such a case.

21. Mr Allen's submissions have not faced squarely up to this problem. He has sought in relation to each of his three main causes of action to implicate the state directly, and has fallen back on vicarious liability for individual wrongdoing only as a second resort.

Exile

22. The fallacy of his approach is seen most plainly in the contention that to exile people from the Queen's dominions without lawful authority is – because it must be – a tort. Exile without colour of law is forbidden by Magna Carta. That it can amount to a public law wrong is already established by the judgment in *Bancoult*. But to make it a state tort requires a legal system in which the Crown, in private law, can do wrong; and this, apart from the Human Rights Act, we do not have.
23. It may well be, however, that removing or excluding people from an entire territory against their will, at least in the legal situation set out earlier in this judgment, is a trespass to the person committed by whoever threatens them with force if they do not comply. At least one of the individual accounts, that of Marie Therèse Mein, set out by way of example in the particulars of claim, tells a harrowing story of enforced removal from Diego Garcia, although when called as a witness Mrs Mein was able to recall very little.
24. On the evidence which he heard, however, Ouseley J found no such trespass. This is not to say that there were no such cases, though they cannot include those of the second generation of exiles. Mr Allen offered to particularise any such cases by way of amendment if we were to hold that actions lay in trespass to the person. This is not an acceptable way of proceeding. Ouseley J in paragraph 331 drew specific attention to the want of any pleaded case in trespass: "There is no allegation that there was any trespass to the person to anyone nor that anyone on behalf of the defendants authorised or carried out any such act." Even at this stage we have no proffered case histories from which to derive the facts which would controvert Ouseley J's conclusion on the written and oral evidence before him: "There is not the slightest evidence of the threat or the actual use of force or intimidation to bring about the removal of the Ilois, or that there was any for which either defendant was responsible."
25. We cannot believe that the possibility of pleading trespass to the person was not considered at an early stage of these proceedings. It seems to us probable that it was rejected because it would divide the claimants almost arbitrarily into those who had been forcibly removed or prevented from returning and those who had not. Beyond this, however, it would be necessary to show not only the threat of force to effect the removals and exclusions, but also to show that the threat came from persons for whom the Crown was liable as if it were a private person and they were its servants or agents. Beyond the point to which Ouseley J's findings go, the evidence still does not offer to fill the space.

Misfeasance in public office

26. Mr Allen's principal contention, here too, has been that the state can be institutionally liable. But the same fundamental problem arises: the state is not a potential tortfeasor. The nature of misfeasance in public office is tailored to this fact: it is concerned with individuals who consciously abuse powers entrusted to them by the state and do so knowing that it may well harm someone: see *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1, per Lord Steyn at page 191.
27. Mr Allen finds upon what Lord Hutton said at paragraph 126 of his speech on the application to strike out the claims against the Bank of England: "It is clear from the authorities that a plaintiff can allege misfeasance in public office against a body such as a local authority or a government ministry: see *Dunlop v Woollahra Municipal Council* [1982] AC 158 and *Bourgoign SA v Ministry of Agriculture, Fisheries and Food* [1986] QB 716." But *Dunlop* self-evidently concerned a local corporation. The claim against the nominated department of state in *Bourgoign* depended on proof that "the minister's motive was to further the interests of English turkey producers by keeping out the produce of French turkey producers - an act which must necessarily injure them" (per Oliver LJ at 777). In other words, if the necessary knowledge and motive could be brought home to the minister, the Crown in the nominal form of MAFF (pursuant to the list of authorised departments published under s.17 of the Crown Proceedings Act 1947) would be vicariously liable. It is in that sense that Lord Hutton was speaking of departmental liability for misfeasance in public office.
28. Faced with this inescapable difficulty, Mr Allen submits that he is able to implicate officers of state in the tort so as to make the Crown vicariously liable. He points to the documentary evidence that the Foreign Secretary and Prime Minister of the day were both privy and party to the scheme – he would say the scheming – by which the glands

were to be depopulated. What he cannot point to, however, is evidence that they or any of their subordinates (who constitutionally are their alter ego) knew that it was illegal. Such case-law as there was (for example *Ibrelebbe v The Queen* [1964] AC 900, 923) confirmed that the power to make ordinances for the government of dependencies went extremely wide. It was not until the divisional court decided *Bancoult* that a line was drawn.

29. For all these reasons there is no viable claim here for misfeasance in public office.

Deceit

30. The claimants raised two arguments in relation to deceit, based on:

- i) allegedly deceitful representations made to the claimants;
- ii) allegedly deceitful representations made to third parties.

31. So far as the representations made to the claimants are concerned, the judge accepted, in paragraphs 367 and 368 of his judgment, that it was arguable that it had been represented to the claimants that they had no right to remain on any of the Chagos Islands. In their application for permission to appeal, the claimants contend that this representation was false, because "as a permanent population of a non-self-government territory, the islanders had a right to be consulted and to make choices for themselves", which is a slightly different formulation from that adopted by the judge.

32. Despite this difference in formulation, we consider that the judge was right in holding that this aspect of the claim was unarguable, and that there is no real prospect of an appellate court holding otherwise. Apart from anything else, the judge's finding in paragraph 369 that there was "no evidence that anyone who might have made any such representations knew of or was reckless as to the falsity of [the relevant] statement" is fatal to any such case on deceit. Further, the fact that at least some of the claimants could be described as "a permanent population" does not mean, as a matter of domestic law, that they had a right to be consulted about their removal. This aspect of the claim, as put to the judge, involved reliance on article 73 of the UN Charter, which he held could not assist the claimants, because the article "confers no individual rights" and could be disregarded by the UK "so far as any domestic law obligations go" (paragraph 369). We do not understand that conclusion to be challenged, and, if it is, we would be bound to reject the challenge. In any event, in reality, this aspect of the deceit claim is a reformulation of the claim based on misfeasance in public office; if the misfeasance claim cannot succeed, then this aspect of the deceit claim could not succeed either.

33. We turn to the second way in which the claim in deceit is made, namely that the defendants had made false representations to the UN, the UK Parliament, the British press and the government of Mauritius, to the effect that none of the Ilois were permanent residents, or had the right to be on the islands, or were British citizens, or had any rights under article 73 of the UN Charter. To quote from the claimants' skeleton argument before us, it is said that such representations "were known by the defendants to be false and were made by the defendants with the intention that [the relevant] bodies should desist from intervening in the situation and otherwise giving help to the Chagossians, so that the Chagossians would suffer harm".

34. In paragraph 364 of his judgment, the judge accepted

"that it is arguable that false statements were knowingly made to third parties about the status of the Ilois as residents of Chagos, but with the intent that these third parties should act on them, rather than communicate them to the Ilois, who would have known that the statements were untrue. They may have been intended [to] persuade those third parties to do nothing to investigate or assist the Ilois or to reduce opposition to the defendants' defence policies."

35. But the basis upon which the judge rejected this head of claim was that the law did not recognise a cause of action by a claimant who sought to recover damages as a result of loss suffered from a deceitful statement made by the defendant to a third party, in circumstances where the third party was not the agent of the claimant and did not communicate the statement to the defendant.
36. There is no authority which suggests that the tort of deceit has been, or can be, extended to apply to the case which, on the arguable facts found to be established, the claimants seek to bring. The judge may very well be right in his conclusion that, as a matter of law, no such cause of action exists as a matter of principle. But it is conceivable that in certain exceptional circumstances, for instance where the defendant, by the very making of the deceitful statement or for some other reason, had assumed liability to the claimant, a cause of action could exist.
37. Had there been no other conclusive answer to the claim in the present proceedings, we would have been prepared to give permission to appeal on this issue, if only because the possibility of such an enlargement of the kinds of situation giving rise to a cause of action in deceit was a question of principle which deserved the attention of the court.

The Mauritius Constitution

38. The case argued before Ouseley J under the Mauritius Constitution, and rejected by him as unarguable, was of great range and complexity. The single ground of appeal now pursued is that, contrary to what the judge held, the Mauritius Constitution applied to the British Indian Ocean Territory - that is to the Chagos Islands - and was justiciable violated by the enforced removals.
39. Mauritius was given a constitution by the United Kingdom in 1964, four years before it became independent, in the graceless but customary form of a schedule annexed to an Order in Council. (It was, however, drafted by the doyen of English public lawyers, Professor de Smith.) It set out a right to the protection of the home (s.1) and to protection from inhuman treatment (s.5). It applied, naturally, only to Mauritius, but in 1964 Mauritius included much of what in the following year became the British Indian Ocean Territory. The BIOT Order by s.18 altered the Mauritius Constitution by excising from Mauritius those islands which by the same instrument became part of the BIOT. It also, as was usual, contained a provision in s.15 continuing in force in the BIOT the laws that were in force immediately before the making of the Order.
40. The claimants submit that s.15 thereby continued in force in the new territory the material provisions of the Mauritius Constitution. The defendants submit that the whole purpose of the Order was to sever the Territory from Mauritius and therefore to exclude the latter's constitution from its laws. The judge at paragraphs 416–7 pointed out that BIOT was also to include islands which until then had been part of the Seychelles, and concluded: "It would be very odd if by the sidewind of the general incorporation of existing laws from the two colonies from which the islands had been detached, BIOT had incorporated a part of the Constitution of the colony from which it was being detached, and had provided for fundamental rights to be enjoyed only by those who were in the former Mauritius part." He considered it "incontestable" that the Mauritius Constitution had not been incorporated.
41. We are not so sure. Holt CJ three centuries ago remarked that while an Act of Parliament could do no wrong, it could do some pretty strange things; and Orders in Council are no different. Knowing what we do of the ulterior purpose of the BIOT Order, we can accept that Whitehall would not have wanted to grant the people of the BIOT any of the fundamental rights conferred by the Mauritius Constitution. But the court's task is to give meaning and effect to the words on the page, not to the agenda of those who wrote them. And it is not in fact strange that a newly created territory should be given as its patrimony the body of laws previously in force there. There is in reality no other way of providing continuity of governance, and the process was used in grants of independence throughout the former Empire.
42. Standing by itself, therefore, we consider this point to be arguable.

Limitation

43. On the face of it, given that the present proceedings were only begun in 2002, while the matters complained of took place in the 1960s and 1970s, there is an unanswerable defence based on limitation. The judge held that, if any of the claims had been otherwise valid (and in two respects we have held that they might have been), they would have been defeated by a limitation defence.

44. However, the claimants raise three arguments to defeat the defendants' limitation case, namely:

- i) unconscionability;
- ii) disability; and
- iii) concealment.

It is relevant that, this not being an action in respect of defamation or malicious falsehood (cf s.32A), and the judge's rejection of any possibility of enlargement of time in relation to personal injury (cf. s.33) being now unchallenged, the court has no residual discretionary power to enlarge time.

45. The claimants' first argument is that it would be unconscionable for the defendants to be allowed to rely on limitation. We consider that the judge was very probably right in rejecting this argument as a matter of principle, on the grounds that the Limitation Act 1980 is intended to provide a complete code, including the circumstances in which it is unconscionable for a defendant to seek to invoke limitation, and that it is simply not open to the courts to seek to circumvent the effect of the 1980 Act by adding fresh grounds.

46. However, it is plainly possible for a defendant validly to contract not to take a limitation point, or to estop himself from taking a limitation point. Particularly bearing in mind the basis of estoppel, it is, we think, conceivable that a court may be prepared to hold that, by his conduct, a defendant had rendered it so inequitable for him to take limitation point that the court will effectively not permit him to do so. In the present case, the claimants would seek to argue that, by the very actions complained of in these proceedings, namely removing them to Mauritius, and leaving them in a position where they were poor, ignorant, and without recourse to the courts, the UK government and its representatives cannot now be heard to say that the claimants have lost their right to seek relief promptly where the delay is due to these very circumstances.

47. We also consider that the claimants' second argument, while unlikely to succeed, could conceivably do so. Thus it seems to us that there is a case for contending that, owing to the circumstances just described, the claimants were "under a disability", so that time was prevented from running by virtue of s. 28(1) of the 1980 Act. It is true that in s38(2) of the same Act it is provided that "a person shall be treated as under a disability whilst he is an infant, or of unsound mind", but we think that there is just scope for arguing that this is not an exhaustive definition of disability. We do not think that the contrary is established beyond doubt by *Yeats –v– Thakeham Tiles Limited* [1995] PIQR 135 (relied on by the judge at paragraph 614 of his judgment) or by *Thomas –v– Plaistow* (unreported 23rd April 1997) as suggested by the defendants. Subject to other considerations, the point is not one which in principle the claimant should be shut out from taking on appeal.

48. However, even assuming, what for present purposes we are prepared accept is arguable, that the claimants would have a sufficient case based on unconscionability and/or disability to contend that time did not start running when they were first removed from the Chagos Islands, it seems to us that these two arguments face insuperable difficulties after 1983 at the very latest. We have mentioned earlier in this judgment that in 1975 one of the islanders, Mr Michael Vencatessan, brought proceedings in this country by which he claimed damages for his removal from Diego Garcia and the subsequent events. This action proceeded to discovery, which the judge described in paragraph 56 as "particularly complex", and resulted in an open offer from the United Kingdom government in 1978 to settle all the claims of the Ilois for £500,000 plus the costs of the claim brought by Mr Vencatessan. The Treasury Solicitor agreed to pay for the claimant's solicitor to go to Mauritius and advise all the Ilois, which he did in October 1979. By then, he had the benefit of an increased offer from the UK government, and the advice of Louis Blom-Cooper QC. He held meetings with many of the Ilois, who had appointed a committee to negotiate on their behalf. The detailed history of the negotiations thereafter is set out in paragraphs 62–80 of the judgment. A group of Ilois who had not been anxious to accept the original offer set up a committee, known as CIOF, who instructed a new firm of solicitors. They in turn sought the advice of John Macdonald QC. As a result of further discussions, the UK government substantially increased its offer, which finally resulted in the Trust Fund, set up for the benefit of the Ilois, to which reference has already been made.

49. In light of this history, it appears to us that any argument which might otherwise have a chance of stifling the defendants' limitation defence on grounds of unconscionability or of rebutting it on grounds of disability would be doomed to failure. The unconscionability argument could only prevent time starting to run so long as the effect of the events giving rise to the unconscionability continued to operate. Equally, it is clear from s28(1) that any disability merely suspends the limitation period until the disability ceases. It appears to us that, given the events of 1975–1983, from the initiation of Mr Vencatessan's action to the setting up of the Trust Fund, there is no prospect at all of showing that the unconscionability or disability, assuming that either or both can be established, survived beyond 1983. Given that the present proceedings were issued in 2002, we are therefore of the view that there is no prospect of the Court of Appeal disagreeing with the judge's conclusion on limitation, unless the claimants can succeed on their case of deliberate concealment, to which we now turn.
50. The proper effect of s32(1) and (2), which prevent time running under the 1980 Act during such period as the defendant has "deliberately concealed" relevant facts from the claimant, has been considered in a number of cases, perhaps most importantly *Cave –v– Robinson Jarvis & Rolf* [2002] 2 WLR 1107.
51. The judge's analysis and conclusions in relation to the claimants' case on deliberate concealment are set out in paragraphs 621–686 of his judgment. It is full and careful. We agree with the judge that, in light of the disclaimer on behalf of the claimants that there was "any allegation that there was any impropriety by anyone in the conduct of the Vencatessan litigation during the process of discovery", it is impossible for the claimants to succeed in any contention that there was deliberate concealment by non-disclosure of documents in the Vencatessan proceedings.
52. The judge's statement in paragraph 646 of his judgment that "deliberate concealment otherwise plainly entails a positive act", although the claimants take issue with it, appears to us to be unexceptionable, particularly in light of what was said in paragraph 14(iii) of the judgment of this court in *Williams –v– Fanshaw Porter* [2004] EWCA Civ 157. Further, we do not consider that the judge can be criticised, as the claimants suggest he can be, for having concluded at paragraph 652 of his judgment that the claimants had to prove that they could not, with reasonable diligence, have discovered the concealed facts earlier. That requirement was clearly established in this court in *Paragon Finance Limited –v– D B Thakerar & Co* [1999] 1 All ER 400 at 416F–418F, and endorsed in *Biggs –v– Sotniks* [2002] EWCA Civ 272 at paragraph 50.
53. In these circumstances, we consider that, even if the judge was wrong in holding that the claimants could not establish a valid cause of action against the defendants, any such claim would inevitably be defeated on grounds of limitation.

Conclusion

54. This judgment brings to an end the quest of the displaced inhabitants of the Chagos Islands and their descendants for legal redress against the state directly responsible for expelling them from their homeland. They have not gone without compensation, but what they have received has done little to repair the wrecking of their families and communities, to restore their self-respect or to make amends for the underhand official conduct now publicly revealed by the documentary record. Their claim in this action has been not only for damages but for declarations securing their right to return. The causes of action, however, are geared to the recovery of damages, and no separate claims to declaratory relief have been developed before us. It may not be too late to make return possible, but such an outcome is a function of economic resources and political will, not of adjudication.
55. In dismissing this application for permission to appeal, we record our acknowledgement of the prodigious amount of work put into the case by the lawyers for both sides and by the judge.

Order: Application for permission to appeal is dismissed.

(Order does not form part of the approved judgment)

S. I. No. 1 of 1965.

The British Indian Ocean Territory Order 1965.

Made

8th November 1965

At the Court at Buckingham Palace, the 8th day of November 1963

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895(a), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

- | | |
|--|---|
| Citation | 1. This Order may be cited as the British Indian Ocean Territory Order 1965. |
| Interpretation | <p>2. (1) In this Order
"the Territory" means the British Indian Ocean Territory;
"the Chagos Archipelago" means the islands mentioned in schedule 2 to this Order;
"the Aldabra Group" means the islands as specified in the First Schedule to the Seychelles Letters Patent 1948(b) and mentioned in schedule 3 to this Order.</p> <p>(2) The Interpretation Act 1889(c) shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.</p> |
| British Indian Ocean Territory to be a separate colony | <p>3. As from the date of this Order
(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and
(b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles,
shall together form a separate colony which shall be known as the British Indian Ocean Territory.</p> |
| Establishment of office of Commissioner | 4. There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure. |
| Powers and duties of Commissioner | 5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other |

functions as Her Majesty may from time to time be pleased to assign to him and subject to the provisions of this Order and any other Law by which such powers or duties are conferred or imposed shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Oaths to be taken by Commissioner

6. A person appointed to hold the office of Commissioner shall before entering upon the duties of that office, take and subscribe the oath of allegiance and the oath for the due execution of his office in the form set out in schedule 1 to this Order.

Discharge of Commissioner's functions during vacancy, etc.

7. (1) Whenever the office of Commissioner is vacant or the Commissioner is absent from the Territory or is from any other cause prevented from or incapable of discharging the functions of his office, those functions shall be performed by such person as Her Majesty may designate by Instructions given under Her Sign Manual and Signet or through a Secretary of State.

(2) Before any person enters upon the performance of the functions of the office of Commissioner under this section he shall take and subscribe the oaths directed by section 6 of this Order to be taken by a person appointed to hold the office of Commissioner.

(3) For the purposes of this section

(a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another: and

(b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of Commissioner's functions by deputy.

8. (1) The Commissioner may, by Instrument under the Official Stamp of the Territory, authorize a fit and proper person to discharge for and on behalf of the Commissioner on such occasions and subject to such exceptions and conditions as may be specified in that Instrument such of the functions of the office of Commissioner as may be specified in that Instrument.

(2) The powers and authority of the Commissioner shall not be affected by any authority given to such person under this section otherwise than as Her Majesty may at any time think proper to direct, and such person shall conform to and observe such instructions relating to the discharge by him of any of the functions of the office of Commissioner as the Commissioner may from time to time address to him.

(3) Any authority given under this section may at any time be varied or revoked by Her Majesty by instructions given through a Secretary of State or by the Commissioner by Instrument Under the Official Stamp of the Territory.

- Official Stamp.
9. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith.
- Constitution of offices.
10. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise
- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and
 - (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.
- Power to make laws.
11. (1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct.
- (2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.
- (3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.
- (4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.
- (5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.
- Commissioner's powers of pardon. Etc.
12. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf
- (a) grant to any person concerned in or convicted of any offence against the laws of the Territory a pardon, either free or subject to lawful conditions; or
 - (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence; or
 - (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
 - (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.
- Concurrent appointments.
13. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office
- (a) another person may be appointed substantively to that office;

	(b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.
Disposal of land.	14. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or 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 lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.
Existing laws	<p>15. (1) Except to the extent that they may be repealed amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.</p> <p>(2) In this section "enactments" includes any instruments having the force of law.</p>
Exercise of jurisdiction by court.	<p>16. (1) The Commissioner, with the concurrence of the Governor of any other Colony, may, by a law made under section 11 of this Order, confer jurisdiction in respect of the Territory upon any court established for that other Colony.</p> <p>(2) Any such court as is referred to in subsection (1) of this section and any court established for the Territory by a law made under section 11 of this Order may, in accordance with any directions issued from time to time by the Commissioner, sit in the Territory or elsewhere for the purpose of exercising its jurisdiction in respect of the Territory.</p>
Judicial proceedings.	<p>17. (1) Notwithstanding any other provision of this Order, but subject to any law made under section 11 thereof,</p> <p>(a) any proceedings that, immediately before the date of this Order, have been commenced in any court having jurisdiction in any of the island comprised in the Territory may be continued and determined before that court in accordance with the law that was applicable thereto before that date;</p> <p>(b) where, under the law in force in any such island immediately before the date of this Order, an appeal would lie from any judgment of a court having jurisdiction in that island, whether given before that date or given on or after that date in pursuance of paragraph (a) of this subsection, such an appeal shall continue to lie and may be commenced and determined in accordance with the law that was applicable thereto before that date;</p> <p>(c) any judgment of a court having jurisdiction in any such island given, but not satisfied or enforced, before the date of this Order, and any judgment of a court given in any such proceedings as are referred to in paragraph (a) or</p>

Amendments of
Seychelles
Letters Patent
1948 and
Mauritius
(Constitution)
Order 1964 etc.

Power reserved
to Her Majesty.

paragraph (b) of this subsection, may be enforced on and after the date of this Order in accordance with the law in force immediately before that date.

(2) In this section "judgment" includes decree, order, conviction, sentence and decision.

18. (1) The Seychelles Letters Patent 1948 as amended by the Seychelles Letters Patent 1955(a) are amended as follows:

(a) the words "and the Farquhar Islands" are omitted from the definition of "the Colony" in Article 1 (1);

(b) in the First Schedule the word "Desroches" and the words "Aldabra Group consisting of", including the words specifying the islands comprised in that Group, are omitted.

(2) Section 90(1) of the Constitution set out in schedule 2 to the Mauritius (Constitution) Order 1964(b) is amended by the insertion of the following definition immediately before the definition of "the Gazette":

"Dependencies" means the islands of Rodrigues and Agalega, and the St. Brandon Group of islands often called Cargados Carajos;".

(3) Section 2(1) of the Seychelles (Legislative Council) Order in Council 1960(c) as amended by the Seychelles (Legislative Council) (Amendment) Order in Council 1963(d) is further amended by the deletion from the definition of "the Colony" of the words "as defined in the Seychelles Letters Patent 1948".

19. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order).

W. G. AGNEW:

SCHEDULE 1

Section 6

OATH (OR AFFIRMATION) OF ALLEGIANCE

I do swear (or do solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

OATH (OR AFFIRMATION) FOR THE DUE EXECUTION OF THE OFFICE OF
COMMISSIONER

I do swear (or do solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of Commissioner of the British Indian Ocean Territory.

SCHEDULE 2

Section 2(1)

Diego Garcia	Salomon Islands
Egmont or Six Islands	Trois Freres, including Danger Island
Peros Banhos	and Eagle Island.

SCHEDULE 3

Section 2(1)

West Island	Cocoanut Island
Middle Island	Euphratis and other small Islets.
South Island	

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision for the constitution of the British Indian Ocean Territory consisting of certain islands hitherto included in the Dependencies of Mauritius and certain other islands hitherto forming part of the Colony of Seychelles.

S. I. No. 7 of 1976.

1976 No. 893.

OVERSEAS TERRITORIES

The British Indian Ocean Territory Order 1976

Made 9th June 1976
Coming into Operation 28th June 1976
At the Court at Buckingham Palace, the 9th day of June 1976
Present,
The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act, 1895(a) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :-

Citation

1. This Order may be cited as the British Indian Ocean Territory Order 1976 and shall come into operation on the appointed day.

Interpretation

2. (1) In this order unless the context otherwise requires -
"the Territory" means the British Indian Ocean Territory specified in the Schedule hereto ;
"the appointed day" means the 28th day of June 1976 ;
"the Commissioner" means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner.

(2) The Interpretation Act 1889(b) shall apply, with the necessary modifications, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting and otherwise in relation to Acts of Parliament of the United Kingdom.

Revocations

3. (1) The British Indian Ocean Territory Order 1965(c) and the British Indian Ocean Territory (Amendment) Order 1968(d) are revoked.

(2) The revocation of those Orders shall be without prejudice to the continued operation of any laws made and laws having effect thereunder and having effect as part of the law of the Territory immediately before the appointed day; and any such laws shall have effect on and after the appointed day as if they had been made under this Order and (without prejudice to their amendment or repeal by any law made

under this Order) shall be construed with such modifications, adaptions, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

Establishment of office of Commissioner

4. (1) There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) During any period when the office of Commissioner is vacant, or the holder thereof is for any reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

Powers and duties of Commissioner

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Official Stamp

6. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith.

Constitution of offices

7. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise –

- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

Concurrent appointments

8. Whenever the substantive holder of any office constituted, by or under this Order is on leave of absence pending relinquishment of his office –

- (a) another person may be appointed substantively to that office;
- (b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

Power to make laws

9. (1) The Commissioner may make laws for the peace, order and good government of the Territory.

(2) All laws made by the Commissioner in exercise of the powers conferred by this Order shall be published in such manner and at such place or places in the *Official Gazette* for the Territory as the Commissioner may from time to time direct.

(3) Every such law shall come into operation on the date on which it is published in accordance with the provisions of subsection (2) of this section unless it is provided, either in such law or in some other enactment, that it shall come into operation on some other date, in which case it shall come into operation on that date.

Disallowance of laws

10. (1) Any law made by the Commissioner in exercise of the powers conferred by this Order may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner and in such place or places in the *Official Gazette* for the Territory as the Commissioner may from time to time direct.

(3) Every law so disallowed shall cease to have effect as soon as notice of disallowance has been published as aforesaid; and thereupon any enactment repealed or amended by, or in purs(u)ance of, the law so disallowed shall have effect as if such law had not been made, and, subject thereto, the provisions of section 38(2) of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Commissioner's powers of pardon, etc.

11. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf –

- (a) grant to any person concerned in or convicted of any offence against the laws of the Territory a pardon, either free or subject to lawful conditions; or
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Judicial proceedings

12. (1) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the existing Order may be continued and concluded after the commencement of this Order before the corresponding court established under the provisions of this Order.

(2) Any decision given before the commencement of this Order by any such court as aforesaid shall for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by or under this Order.

Disposa, of land

13. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or 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 lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.

Amendment of Seychelles (Constitution) Order 1975.

14. The First Schedule to the Seychelles (Constitution) Order 1975(a) is amended as follows:-

(a) the word "Desroches" is added to the list of islands under the heading "*Poivre Islands*";

(b) the words

"*Aldabra Group, consisting of:*

West Island

Middle Island

South Island

Cocoanut Island

Polymnie Island

Euphratis and other small islets"

are added immediately below the list of islands under the heading

"*Cosmoledo Group*";

(c) the words "*Farquhar Islands*" are added immediately below the list of Islands under the heading "*Aldabra Group*".

Power reserved to Her Majesty

15. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order).

N.E. Leigh

THE SCHEDULE**Section 2(1)**

Diego Garcia	Salomon Islands
Egmont or Six Islands	Three Brothers Islands
Peros Banhos	Nelson or Legour Island
	Eagle Islands
	Danger Island

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order makes new provision for the administration of the British Indian Ocean Territory and for the return to Seychelles of the Aldabra Group of islands, Desroches and Farquhar Islands from the Territory.

**THE BRITISH INDIAN OCEAN TERRITORY (AMENDMENT)
ORDER 1984**

At the Court at Buckingham Palace
THE 25th DAY OF JUNE 1984

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Her Majesty, by virtue and in exercise of the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation and Commencement

1. (1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1984 and shall be construed as one with the British Indian Ocean Territory Orders 1976(a) and 1981(b) (hereinafter referred to as "the principal Orders"), and this Order and the principal Orders may be cited together as the British Indian Ocean Territory Orders 1976 to 1984.

(2) This Order shall come into operation on such date as the Commissioner by notice in the Official Gazette of the Territory shall appoint.

Amendment of Section 11A of the principal Orders

2. Section 11A of the principal Orders shall be amended:-

(a) by deleting subsection (1) and substituting the following subsection-

"Power of Supreme Court to exercise certain jurisdictions outside the Territory.

(1) The Supreme Court of the Territory may, in accordance with any directions issued from time to time by the Chief Justice of that Court, sit in the United Kingdom for the purpose of hearing an appeal or application, if, but only if, the parties to the appeal or, as the case may be, the parties to be heard on the application

have agreed to its being heard in the United Kingdom:

Provided that where an order has been made on an application heard in the United Kingdom under this subsection, the party who obtained the order shall not be entitled to withhold consent to the hearing in the United Kingdom of any application by any other person or party for the variation or rescission of that order.";

Editor's note(30th December 2006): In the printed copy available there is clearly a page or more missing at this point form the text of this Order in Council. The printed copy continues as follows:

"(4) A sub registry of the Supreme Court may be established in the United Kingdom for filing, sealing and issue of such documents (whether or not relating to an appeal or application to be heard in the United Kingdom) as may be prescribed by rules of Court made by the Chief Justice.".

N. E. Leigh

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order amends the British Indian Ocean Territory Orders 1976 and 1981 by providing that a party who has obtained an order of the Supreme Court of the Territory in an application heard by consent in the United Kingdom may not refuse consent to an application to vary or rescind the order being heard in the United Kingdom. The Order also provides for the establishment of a sub-registry of the Court in the United Kingdom.

**THE BRITISH INDIAN OCEAN TERRITORY
(AMENDMENT) ORDER 1994
At the Court at Buckingham Palace**

THE 8th DAY OF FEBRUARY 1994
PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

HER MAJESTY, by virtue and in exercise of the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation and commencement

1. (1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1994 and shall be construed as one with the British Indian Ocean Territory Order 1976(a) (hereinafter referred to as "the principal Order").

(2) This Order, and the British Indian Ocean Territory Orders 1976 to 1984(b) may be cited together as the British Indian Ocean Territory Orders 1976 to 1994.

(3) This Order shall come into force on 9th February 1994.

(a) S.I. 1976/893.

(b) S.I. 1976/893. 1981 III, p. 6524. 1984 II, p. 4336.

Revocation and Replacement of section 11A of principal Order

2. Section 11 A of the principal Order is revoked and replaced by the following:-

"Supreme Court may sit in United Kingdom

11A. (1) The Supreme Court of the Territory may, as the Chief Justice may direct, sit in the United Kingdom and there exercise all or any of its powers or jurisdiction in any civil or criminal proceedings.

(2) Subject to subsection (3) of this section, the Chief Justice may make a direction under subsection (1) of this section where it appears to him having regard to all the circumstances of the case, that to do so would be in the interests of the proper and efficient administration of justice and would not impose an unfair burden on any party to the proceedings.

(3) A direction under subsection (1) of this section may be made at any stage of the proceedings or when it is sought to institute the proceedings and may be made on the application of any party to the proceedings or of any person who seeks to be or whom it is sought to make such a party or of the Chief Justice's own motion.

(4) Subject to any law made under section 9 of this Order, the Chief Justice

may make rules of court for the purpose of regulating the practice and procedure of the Supreme Court with respect to the exercise of the Court's jurisdiction and powers in the United Kingdom.

(5) A sub-registry of the Supreme Court may be established in the United Kingdom for the filing, sealing and issue of such documents relating to proceedings in the Court (whether or not they are proceedings in which the Court exercises its jurisdiction and powers in the United Kingdom) as may be prescribed by rules of court made by the Chief Justice.

(6) Anything done in the United Kingdom by virtue of this section shall have, and have only, the same validity and effect as if done in the Territory.".

Revocation of article 5 of the Admiralty Jurisdiction Order 1984

3. Article 5 of the Admiralty Jurisdiction (British Indian Ocean Territory) Order 1984(a) is revoked.

N.H. Nicholls

EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the British Indian Ocean Territory Orders 1976 to 1984 so as to authorise the Chief Justice of the Territory, in certain circumstances, to direct that the Supreme Court of the Territory may sit in the United Kingdom and there exercise its powers and jurisdiction in any civil or criminal proceedings. It also revokes article 5 of the Admiralty Jurisdiction (British Indian Ocean Territory) Order 1984, as amended, which authorised the Chief Justice of the Territory, in certain circumstances, to direct that the Supreme Court of the Territory may exercise in the United Kingdom its jurisdiction and powers in Admiralty proceedings and which the present Order renders unnecessary.

(a) S.I. 1984/540 which was amended by the Admiralty Jurisdiction (British Indian Ocean Territory) (Amendment) (No. 2) Order 1992 made on 4th June 1992.

S. I. No. 2 of 1965.

The British Indian Ocean Territory Royal
Instructions 1965.

Dated: 8th November 1965

ELIZABETH R.

INSTRUCTIONS to Our Commissioner for the British Indian Ocean Territory or other Officer for the time being performing the functions of his office.

We do hereby direct and enjoin and declare Our will and pleasure as follows:—

1.—(1) These Instructions may be cited as the British Indian Ocean Territory Royal Instructions 1965. Citation, commencement and revocation.

(2) These Instructions shall come into operation on the same day as the British Indian Ocean Territory Order 1965(a) and thereupon the Instructions issued to Our Governor and Commander-in-Chief for Mauritius and dated the 26th February 1964(b), and the Instructions issued to Our Governor and Commander-in-Chief of the Colony of Seychelles and dated the 11th March 1948, and the Additional Instructions issued to the said Governor and Commander-in-Chief and dated the 2nd May 1960(c) and the 29th July 1963(d), shall, without prejudice to anything lawfully done thereunder, and in so far as they are, respectively, applicable to the islands comprised in the British Indian Ocean Territory as defined in the British Indian Ocean Territory Order 1965, cease to have effect in respect of those islands.

2.—(1) In these Instructions, "the Commissioner" means Interpretation the Commissioner for the British Indian Ocean Territory and includes the person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of his office.

(2) The Interpretation Act 1889 (e) shall apply, with the necessary adaptations, for the purpose of interpreting these Instructions and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

3.—(1) These Instructions, so far as they are applicable to any functions of the office of Commissioner to be performed by such person as is mentioned in paragraph (1) of the preceding clause, shall be deemed to be addressed to, and shall be observed by, such person. Instructions to be observed by deputy.

(a) S. I. 1965 I 1920. (b) 1964 I, p. 1206. (c) 1960 III, p. 4212. (d) 1963 II, p. 277. (e) 52 & 53 Vict. c. 63.

(2) Such person may, if he thinks fit, apply to Us through a Secretary of State for instructions in any matter; but he shall forthwith transmit to the Commissioner a copy of every despatch or other communication addressed to Us.

*Rules for the
enactment of
laws.*

4. In the enacting of laws the Commissioner shall observe, so far as is practicable, the following rules:—

- (1) All laws shall be styled Ordinances and the words of enactment shall be "Enacted by the Commissioner for the British Indian Ocean Territory."
- (2) Matters having no proper relation to each other shall not be provided for by the same Ordinance; no Ordinance shall contain anything foreign to what the title of the Ordinance imports; and no provision having indefinite duration shall be included in any Ordinance expressed to have limited duration.
- (3) All Ordinances shall be distinguished by titles, and shall be divided into successive sections consecutively numbered, and to every section there shall be annexed in the margin a short indication of its contents.
- (4) All Ordinances shall be numbered consecutively in a separate series for each year commencing in each year with the number one, and the position of each Ordinance in the series shall be determined with reference to the day on which the Commissioner enacted it.

*Certain Ordin-
ances not to
be enacted
without in-
structions.*

5. The Commissioner shall not, without having previously obtained instructions through a Secretary of State, enact any Ordinance within any of the following classes, unless such Ordinance contains a clause suspending the operation thereof until the signification of Our pleasure thereon, that is to say:—

- (1) any Ordinance for the divorce of married persons;
- (2) any Ordinance whereby any grant of land or money, or other donation or gratuity may be made to himself;
- (3) any Ordinance affecting the currency of the British Indian Ocean Territory or relating to the issue of bank notes;
- (4) any Ordinance imposing differential duties;
- (5) any Ordinance the provisions of which shall appear to him to be inconsistent with obligations imposed upon Us by Treaty;
- (6) any Ordinance affecting the discipline or control of Our Forces by land, sea or air;
- (7) any Ordinance of an extraordinary nature and importance whereby Our prerogative, or the rights or property of Our subjects not residing in the British Indian Ocean Territory, or the trade, transport or communications of any part of Our dominions or any

territory under Our protection or any territory in which We may for the time being have jurisdiction may be prejudiced:

- (8) any Ordinance whereby persons of any community or religion may be subjected or made liable to disabilities or restrictions to which persons of other communities or religions are not also made liable, or become entitled to any privilege or advantage which is not conferred on persons of other communities or religions;
- (9) any Ordinance containing provisions which have been disallowed by Us;

Provided that the Commissioner may, without such instructions as aforesaid and although the Ordinance contains no such clause as aforesaid, enact any such Ordinance (except on Finance the provisions of which appear to him to be inconsistent with obligations imposed upon Us by Treaty) if he shall have satisfied himself that an urgent necessity exists requiring that the Ordinance be brought into immediate operation; but in any such case he shall forthwith transmit a copy of the Ordinance to Us together with his reasons for so enacting the same.

6. When any Ordinance has been enacted, the Commissioner shall at the earliest convenient opportunity transmit to Us, through the Secretary of State, for the signification of Our pleasure, a transcript in duplicate of the Ordinance duly authenticated under the official stamp of the British Indian Ocean Territory and by his own signature, together with an explanation of the reasons and occasion for the enactment of the Ordinance.

7. As soon as practicable after the commencement of each year, the Commissioner shall cause a complete collection to be published, for general information, of all Ordinances enacted for the British Indian Ocean Territory during the preceding year.

8. Every appointment by the Commissioner of any person to any office or employment shall, unless otherwise provided by statute, be expressed to be during pleasure only.

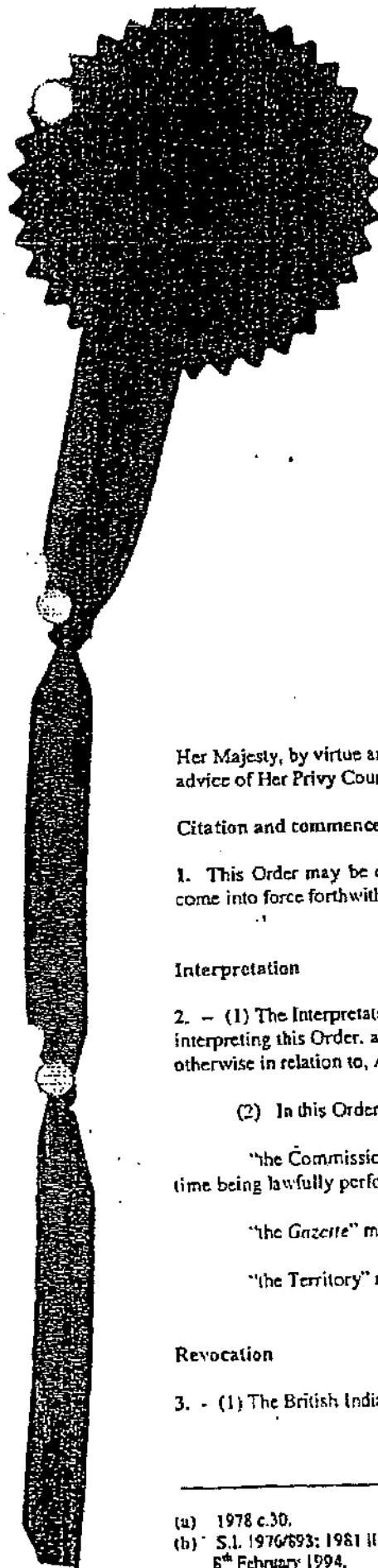
9.—(1) Before disposing of any lands to Us belonging in the British Indian Ocean Territory the Commissioner shall cause such alterations to be made therefrom as he may think necessary for the public purpose.

(2) The Commissioner shall not, directly or indirectly, purchase for himself any land or building in the British Indian Ocean Territory to Us belonging without Our special permission given through a Secretary of State.

Power of
pardon in
capital cases.

10. Whenever any offender has been condemned by the sentence of any court having jurisdiction in the matter to suffer death for any offence committed in the British Indian Ocean Territory, the Commissioner shall call for a written report of the case from the judge who tried it, and for such other information derived from the record of the case or elsewhere as he may require, and may call upon the judge to attend upon him and to produce his notes; and if he pardons or respites the offender, he shall, as soon as is practicable, transmit to Us through a Secretary of State a report upon the case, giving the reason for his decision.

Given at Our Court at St. James's this eighth day of November 1955 in the fourteenth year of Our Reign.



At the Court at Buckingham Palace

THE 10th DAY OF JUNE 2004

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

Her Majesty, by virtue and in exercise of all the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

Citation and commencement

1. This Order may be cited as the British Indian Ocean Territory (Constitution) Order 2004 and shall come into force forthwith.

Interpretation

2. - (1) The Interpretation Act 1978(a) shall apply, with the necessary modifications, for the purpose of interpreting this Order, and otherwise in relation thereto, as it applies for the purpose of interpreting, and otherwise in relation to, Acts of Parliament.

(2) In this Order, unless the contrary intention appears-

"the Commissioner" means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

"the Gazette" means the Official Gazette of the Territory;

"the Territory" means the British Indian Ocean Territory specified in the Schedule.

Revocation

3. - (1) The British Indian Ocean Territory Orders 1976 to 1994(b) ("the existing Orders") are revoked.

(a) 1978 c.30.

(b) S.I. 1976/693; 1981 III, p.6534; see also the British Indian Ocean Territory (Amendment) Order 1994 made on 6th February 1994.

(2) Without prejudice to the generality of sections 15, 16 and 17 of the Interpretation Act 1978 (as applied by section 2(1) of this Order)-

- (a) the revocation of the existing Orders does not affect the continuing operation of any law made, or having effect as if made, under the existing Orders and having effect as part of the law of the Territory immediately before the commencement of this Order; but any such law shall thereafter, without prejudice to its amendment or repeal by any authority competent in that behalf, have effect as if made under this Order and be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Order;
- (b) the revocation of the existing Orders does not affect the continuing validity of any appointment made, or having effect as if made, or other thing done, or having effect as if done, under the existing Orders and having effect immediately before the commencement of this Order; but any such appointment made or thing done shall, without prejudice to its revocation or variation by any authority competent in that behalf, continue to have effect thereafter as if made or done under this Order.

Establishment of office of Commissioner

4. - (1) There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) During any period when the office of Commissioner is vacant or the holder thereof is for any reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

Powers and duties of Commissioner

5. The Commissioner shall have such powers and duties as are conferred or imposed on him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Order and of any other law, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Official stamp

6. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be required by any law to be stamped therewith.

Constitution of offices

7. The Commissioner, in Her Majesty's name and on Her Majesty's behalf, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise-

- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted; and

- (b) terminate any such appointment, or dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

Concurrent appointments

8. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office-

- (a) another person may be appointed substantively to that office; and
- (b) that person shall, for the purposes of any functions attaching to that office, be deemed to be the sole holder of that office.

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.

Commissioner's powers to make laws

10. - (1) Subject to the provisions of this Order, the Commissioner may make laws for the peace, order and good government of the Territory.

(2) It is hereby declared, without prejudice to the generality of subsection (1) but for the avoidance of doubt, that, in the exercise of his powers under subsection (1), the Commissioner may make any such provision as he considers expedient for or in connection with the administration of the Territory, and no such provision shall be deemed to be invalid except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or with this Order or with any other Order of Her Majesty in Council extending to the Territory or otherwise as provided by the Colonial Laws Validity Act 1865(a).

(3) All laws made by the Commissioner in exercise of the powers conferred by subsection (1) shall be published in the *Gazette* in such manner as the Commissioner may direct.

(4) Every law made by the Commissioner under subsection (1) shall come into force on the date on which it is published in accordance with subsection (3) unless it is provided, either in that law or in some other such law, that it shall come into operation on some other date, in which case it shall come into force on that other date.

Disallowance of laws

11. - (1) Any law made by the Commissioner in exercise of the powers conferred on him by this Order may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of the disallowance to be published in the *Gazette* in such manner as he may direct, and the law shall be annulled with effect from the date of that publication.

(a) 1865 c.63.

(3) Section 16(1) of the Interpretation Act 1978 shall apply to the annulment of a law under this section as it applies to the repeal of an Act of Parliament, save that a law repealed or amended by or in pursuance of the annulled law shall have effect as from the date of the annulment as if the annulled law had not been made.

Commissioner's powers of pardon, etc

12. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf-

- (a) grant to any person concerned in or convicted of any offence against the law of the Territory a pardon, free or subject to lawful conditions; or
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person for any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any such offence.

Courts and judicial proceedings

13. - (1) Without prejudice to the generality of section 3(2), all courts established for the Territory by or under a law made under the existing Orders and in existence immediately before the commencement of this Order shall continue in existence thereafter as if established by or under a law made under this Order.

(2) All proceedings that, immediately before the commencement of this Order, are pending before any such court may be continued and concluded before that court thereafter.

(3) Without prejudice to the generality of section 3(2), the provisions of any law in force in the Territory as from the commencement of this Order that relate to the enforcement of decisions of courts established for the Territory or to appeals from such decisions shall apply to such decisions given before the commencement of this Order in the same way as they apply to such decisions given thereafter.

(4) The Supreme Court may, as the Chief Justice may direct, sit in the United Kingdom and there exercise all or any of its powers or jurisdiction in any civil or criminal proceedings.

(5) Subject to subsection (6), the Chief Justice may make a direction under subsection (4) where it appears to him, having regard to all the circumstances of the case, that to do so would be in the interests of the proper and efficient administration of justice and would not impose an unfair burden on any party to the proceedings.

(6) A direction under subsection (4) may be made at any stage of the proceedings or when it is sought to institute the proceedings and may be made on the application of any party to the proceedings or of any person who seeks to be or whom it is sought to make such a party or of the Chief Justice's own motion.

(7) Subject to any law made under section 10 (and without prejudice to the operation of section 3(2)), the Chief Justice may make rules of court for the purpose of regulating the practice and procedure of the Supreme Court with respect to the exercise of the Court's powers and jurisdiction in the United Kingdom.

(8) Without prejudice to the operation of section 3(2), a sub-registry may be established in the United Kingdom for the filing, sealing and issue of such documents relating to proceedings in the Supreme Court (whether or not they are proceedings in which the Court exercises its powers and jurisdiction in the United Kingdom) as may be prescribed by rules of court made by the Chief Justice.

(9) Anything done in the United Kingdom by virtue of subsections (4) to (8) shall have, and have only, the same validity and effect as if done in the Territory.

(10) In this section, "the Supreme Court" means the Supreme Court of the Territory as established by or under a law made, or having effect as if made, under section 10 and "the Chief Justice" means the Judge (or, if there is more than one, the presiding Judge) of that Court.

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.

Powers reserved to Her Majesty

15. - (1) There is hereby reserved to Her Majesty full power to make laws for the peace, order and good government of the Territory, and it is hereby declared, without prejudice to the generality of that expression but for the avoidance of doubt, that-

- (a) any law made by Her Majesty in the exercise of that power may make any such provision as Her Majesty considers expedient for or in connection with the administration of the Territory; and
- (b) no such provision shall be deemed to be invalid except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or otherwise as provided by the Colonial Laws Validity Act 1865.

(2) Without prejudice to the generality of the power to make laws reserved to Her Majesty by subsection (1), any such law may make such provision as Her Majesty considers expedient for the purposes for which the Territory was constituted and is set aside, and accordingly and in particular, to give effect to section 9(1) and to secure compliance with section 9(2), including provision for the prohibition and punishment of unauthorised entry into, or unauthorised presence in, the Territory, for the prevention of such unauthorised entry and the removal from the Territory of persons whose presence in the Territory is unauthorised, and for empowering public officers to effect such prevention or, as the case may be, such removal (including by the use of such force as is reasonable in the circumstances).

(3) In this section-

- (a) "public officer" means a person holding or acting in an office under the Government of the Territory; and
- (b) for the avoidance of doubt, references in this section to the prevention of unauthorised entry into the Territory include references to the prevention of entry into the territorial sea of the Territory with a view to effecting such unauthorised entry and references to the removal from the Territory of persons whose presence there is unauthorised include references to the removal from the territorial sea of the Territory of persons who either have effected an unauthorised entry into the Territory or have entered the territorial sea with a view to effecting such an unauthorised entry.

(4) There is hereby reserved to Her Majesty full power to amend or revoke this Order.

Anel

THE SCHEDULE

Section 2(2)

Diego Garcia	Three Brothers Islands
Egmont or Six Islands	Nelson or Legour Island
Peros Banhos	Eagle Islands
Salomon Islands	Danger Islands

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes new provision for the Constitution and administration of the British Indian Ocean Territory.

S. I. No. 1 of 1969.

Proclamation No. 1 of 1969.

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

BRUCE GREATBATCH,
Commissioner.

By His Excellency Sir Bruce Greatbatch, Knight Bachelor, Companion of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Royal Victorian Order, Member of the Most Excellent Order of the British Empire, Commissioner for the British Indian Ocean Territory.

I, Bruce Greatbatch, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State do hereby proclaim and declare that

1. There is established for the British Indian Ocean Territory a fisheries zone contiguous to the territorial sea of the British Indian Ocean Territory.
2. The said fisheries zone has as its inner boundary the outer limits of the territorial sea of the British Indian Ocean Territory and as its seaward boundary a line drawn so that each point on the line is twelve nautical miles from the nearest point on the low-water line on the coast or other baseline from which the breadth of the territorial sea is measured.
3. Her Majesty will exercise the same exclusive rights in respect of fisheries in the said fisheries zone as She has in respect of fisheries in the territorial sea of the British Indian Ocean Territory, subject to such provisions as may hereafter be made by law for the control and regulation of fishing within the said zone.
4. In this Proclamation "the British Indian Ocean Territory" means the islands of the British Indian Ocean Territory set out in the Schedule to this Proclamation.

GOD SAVE THE QUEEN

Given at Government House, Mahe, Seychelles this tenth day of July, 1969.

SCHEDULE

The Islands of the British Indian Ocean Territory
The Farquhar Islands The Island
of Desroches

The Chagos Archipelago consisting of

Diego Garcia	Three Brothers Islands
Egmont or Six Islands	Nelson or Legour Island
Peros Banhos	Eagle Islands
Salomon Islands	Danger Island

The Aldabra Group consisting of
Middle Island Cocoanut Island
West Island Polymnie Island
South Island
Euphratis and other small Islets

THE BRITISH INDIAN OCEAN TERRITORY

THE FISHERY LIMITS ORDINANCE 1971

Ordinance No. 2 of 1971.

An Ordinance to make provision for the control of fishing and the taking of marine products by foreign fishing boats within the fishery limits of the British Indian Ocean Territory and for matters incidental thereto and connected therewith.

Arrangement of sections.

	Page.
1. Short title and commencement.	2.
2. Interpretation.	2.
3. Fishing from foreign fishing boats controlled in fishery limits.	2.
4. Exemption for certain foreign fishing boats.	3.
5. Powers of seizure, arrest and detention.	3.
6. Trial of Offences.	3.
7. Regulations.	3.

ENACTED by the Commissioner for the British Indian Ocean Territory.

17th April, 1971

B. GREATBATCH

Commissioner.

THE BRITISH INDIAN OCEAN TERRITORY
Ordinance No. 2 of 1971.

Short title and commencement.

1. This Ordinance may be cited as the Fishery Limits Ordinance, 1971, and shall come into operation on such day as the Commissioner may, by notice in the Official Gazette of the Territory, appoint.

Interpretation.

2. In this Ordinance, unless the context otherwise requires -

"contiguous zone" means the zone contiguous to the territorial sea of the Territory which was established as a fisheries zone for the Territory by Proclamation No. I of 1969 ;

"fish" means fish of any kind found in the sea and includes crustacea and mollusca ;

"fishing" means taking fish or marine products ;

"fisheries inspector" means a person appointed by the Commissioner to be a fisheries inspector for the purposes of this Ordinance;

"fishery limits" means the territorial sea of the Territory together with the contiguous zone;

"fishing boat" means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea-fishing ;

"foreign", in relation to a fishing boat, means a fishing boat whose owner or one of whose owners is not resident in the Territory ;

"marine product" means a turtle, sponge or any other natural product of the sea ;

"take" and "taking" with reference to fish or marine products includes collecting, capturing, killing and destroying.

"the Territory" means the British Indian Ocean Territory.

Fishing from foreign fishing boats controlled in fishery limits.

3. (1) Subject to the provisions of this section and of section 4, where any person on board a foreign fishing boat takes any fish or marine product within the fishery limits, then that person and the person in charge of the boat and, if he is on board that boat, the owner shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and in addition the boat used in such taking shall be liable to forfeiture.

(2) Where any fish or marine product is found on board a foreign fishing boat within the fishery limits or where any fish or marine product is landed from a foreign fishing boat at any island within the Territory such fish or marine product shall be deemed until the contrary be proved to have been taken within the fishery limits by a person on such foreign fishing boat.

(3) A taking by a person on board a foreign fishing boat may be deemed not to be in contravention of sub-section (1) of this section if such taking was made for commercial research, scientific research or sporting purposes under authority and in accordance with the terms and condition of a licence in that behalf granted by the Commissioner to the person who owns or operates the boat

- | | |
|---|---|
| Exemption
for certain
foreign
fishing boats. | <p>4. (1) For the purpose of enabling fishing traditionally carried on in any area within the contiguous zone by foreign boats to be continued, the Commissioner may by Order designate any country outside the Territory and the manner in which and descriptions of fish or marine products and which fishing boats registered in that country may fish.</p> <p>(2) Nothing in section 3 shall prohibit or restrict fishing from a foreign fishing boat in an area or for any definition of fish or marine product designated by an Order made under sub-section (1) of this section in relation to any country so designated in which such fishing boat is registered.</p> |
| Powers of
seizure, arrest
and detention. | <p>5. (1). A fisheries inspector and any person whom he may call to his assistance may at any time stop, go on and search any fishing boat within the fishery limits, and if the fisheries inspector has reason to suspect that a person on board such boat has contravened any of the provisions of this Ordinance he may without warrant or other process seize the boat and detain any person found on board.</p> <p>(2) A fisheries inspector and any person whom he may call to his assistance may arrest and detain without warrant any person who such inspector has reason to suspect has committed an offence against this Ordinance.</p> <p>(3) Any person who assaults, resists or obstructs any fisheries inspector or any person whom he may call to his assistance in the exercise of any of the powers conferred by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand Rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.</p> |
| Trial of
Offences. | <p>6. (1) Where an offence against any of the provisions of this Ordinance is committed within the contiguous zone then, for the purposes of the jurisdiction of any court in the Territory or in Seychelles, that offence shall be deemed to have been committed in the Territory.</p> <p>(2) The jurisdiction conferred by sub-section (1) of this section shall be in addition to, and not in derogation of any jurisdiction or power which is enjoyed by any court in the Territory or in Seychelles apart from the provisions of the said sub-section.</p> |
| Regulations. | <p>7. The Commissioner may make regulations to carry out the objects and purposes of this Ordinance, and without prejudice to the generality of the foregoing, such regulations may make provision as respects -</p> <ul style="list-style-type: none"> (a) any person, vessel or thing detained under this Ordinance; (b) the forfeiture of any fish or marine product taken in contravention of section 3 ; (c) the forfeiture of any foreign fishing boat used in taking any fish or marine product in contravention of section 3 ; |

(d) the fees to be paid on the issue of any licence under this Ordinance.

THE BRITISH INDIAN OCEAN TERRITORY.

THE FISHERY LIMITS ORDINANCE, 1984

Ordinance No.11 of 1984.

Came into force

Gazette notice ? 1984

REPEALED

Gazette Notice ? 1991/2

Ord. 1 of 1991

An Ordinance to make fresh provision for the control of fishing and the taking of marine product within the fishery limits of the British Indian Ocean Territory and for matters incidental thereto and connected therewith.

Arrangement of sections.

Section		Page.
1.	Short title and commencement.	2.
2.	Interpretation.	2.
3.	Control of fishing in fishery limits.	2.
4.	Designation of Foreign Countries.	3.
5.	Licensing of fishing boats.	3.
6.	Exemption for sporting fishing.	3.
7.	Appointment and powers of fisheries inspectors.	3.
8.	Trial of offences.	4.
9.	Detention of fishing boat on failure to pay or secure fine.	4.
10.	Regulations.	4.
11.	Repeal of Ordinance No.2 of 1971.	5.

Enacted by the Commissioner for the British Indian Ocean Territory.

1984.

W. N. Wenban-Smith,

Commissioner.

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No.11 of 1984.

- Short title and commencement.
1. This Ordinance may be cited as the Fishery Limits Ordinance, 1984, and shall come into operation on such date as the Commissioner may by notice in the Gazette appoint.
- Interpretation.
2. In this Ordinance unless the context otherwise requires—
- ‘British fishing boat’ means a fishing boat registered as such under Part IV of the Merchant Shipping Act 1894 or under any similar provisions superseding the same;
- ‘fish’ means fish of any kind found in the sea and includes crustacea and mollusca;
- ‘fishery limits’ means the territorial waters of the Territory and any fisheries zone contiguous thereto established by the Commissioner by Proclamation published in the Gazette;
- ‘fishing boat’ means a vessel of whatever size and in whatever way propelled, which is for the time being employed in fishing operations;
- ‘foreign fishing boat’ means a fishing boat other than a British fishing boat;
- ‘taking’ and ‘fishing’ and other grammatical variations of those words with reference to fish and marine product, include collecting, capturing, killing and destroying, or attempting to do any of those things;
- ‘unauthorised fishing gear’ means fishing gear the use of which is prohibited under Regulations or under a licence granted under section 5.
- Control of fishing in fishery limits.
- 3.—(1) Subject to the provisions of this Ordinance, no person on board a fishing boat shall take any fish or marine product within the fishery limits except under and in accordance with the conditions of a licence granted in respect of that fishing boat under section 5, and in the case of a foreign fishing boat unless, in addition, that fishing boat is registered in a country designated under section 4.
- (2) If any person contravenes any of the provisions of subsection (1) of this section, that person and the person in charge of the boat, and, if he is on board that boat, the owner, shall each be guilty of an offence and shall be liable to a fine of £5,000 or to imprisonment for two years, and any fish or marine product and any fishing gear found in the boat or taken or used by any person from the boat, and the boat used in such taking, shall be liable to forfeiture. -
- (3) Where any fish, marine product or- unauthorised fishing gear is found on board a fishing boat within the fishery limits or where any- fish or marine product or unauthorised fishing gear is landed from a fishing

boat on any island within the Territory, such fish or marine product shall be deemed to have been taken, or as the case may be, such unauthorised gear shall be deemed to have been used, within the fishery limits by a person on board such fishing boat, until the contrary be proved.

Designation of Foreign Countries.

4. For the purpose of enabling fishing traditionally carried on in any area within the fishery limits by foreign fishing boats to be continued, the Commissioner may by order published in the Gazette, designate any country outside the Territory, and upon such designation any fishing boat registered in such country may take fish and marine product within such areas and subject to such conditions as may be specified in a licence granted under section 5.

Licensing of fishing boats.

5. The Commissioner or an agent authorised by him may grant licences for fishing boats permitting the taking of fish and marine product within the fishery limits. Any such licence may be for such period and in respect of such areas within the fishery limits as the Commissioner may think fit and may contain such conditions as to the descriptions or quantities of fish or marine product which may be taken, the gear which may be used, or as to such other matters, whether similar to the foregoing or not, as the Commissioner may impose, and shall be subject to variation or revocation by the Commissioner in his discretion. Without prejudice to the generality of the foregoing, a licence may be granted for the purposes only of taking of fish or marine product for - commercial research or scientific research.

Exemption for sporting fishing.

6. Nothing in this Ordinance shall prohibit any person lawfully temporarily resident in or visiting the Territory from taking fish or marine product in the course of sport and not for profit in any area in which that activity is not prohibited by the Commissioner's Representative by notice in the Gazette.

Appointment and powers of fisheries inspectors.

7.—(1) The Commissioner may appoint fisheries inspectors for the purposes of this Ordinance. Every Peace Officer shall be ex officio a fisheries inspector.

(2) A fisheries inspector and any person whom he may call to his assistance may at any time stop, go on board and search any fishing boat within the fishery limits, and may require the person in charge, the crew, or any of them, to produce any certificate of registry, licence, official logbook, official paper, article of agreement or any other document relative to the fishing boat or to the crew or any member thereof or to any person on board the fishing boat which is in their respective possession or control or on board the fishing boat, and may require the person in charge to appear and to give an explanation concerning the fishing boat or its activities or any crew or other person on board the fishing boat or any document mentioned in this subsection. -

(3) If a fisheries inspector has reason to suspect that any person on board a fishing boat has contravened any of the provisions of this Ordinance he may without warrant or other process seize the boat and detain any person found on board, and may take, or require that the person in charge of the boat take, the boat and any persons thereon to

any island in the Territory and detain it and them until the alleged contravention is adjudicated upon.

(4) A fisheries inspector and any person whom he may call to his assistance may arrest and detain without warrant any person who such inspector has reason to suspect has committed an offence against this Ordinance.

(5) Any person who assaults, resists or obstructs any fisheries inspector or any person whom he may call to his assistance in the exercise of any of the powers conferred by this section shall be guilty of an offence and shall be liable to a fine of £10,000 or to imprisonment for two years.

(6) A fisheries inspector and any person assisting him and acting under his instructions shall not be liable in any civil or criminal proceedings for anything done in purported exercise of the powers conferred on him by this section, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Trial of offences.

8.—(1) Where an offence against any of the provisions of this Ordinance is committed within the contiguous fisheries zone referred to in section 2 then, for the purposes of the jurisdiction of any court in the Territory, that offence shall be deemed to have been committed in the Territory.

(2) The jurisdiction conferred by subsection (1) of this section shall be in addition to, and not in derogation of, any jurisdiction or power which is enjoyed by any court in the Territory apart from the provisions of the said subsection.

(3) Notwithstanding anything contained in the Criminal Procedure Code, a Magistrates' Court presided over by either a Senior Magistrate or a Magistrate may impose any fines in respect of offences under this Ordinance, up to those specified as maxima.

Detention of fishing boat on failure to pay or secure fine.

9. In default of payment forthwith of any fine imposed under this Ordinance, the court may order that the person convicted shall give or obtain to be given security for payment thereof, and if security to the satisfaction of the court is not given may order the detention of the fishing boat concerned with the offence in respect of which the fine was imposed; and such fishing boat may accordingly be detained in the Territory until the fine is paid or until sufficient security for its payment is given to the satisfaction of the court.

Regulations.

10. The Commissioner may make regulations to carry out the objects and purposes of this Ordinance, and without prejudice to the generality of the foregoing, such regulations may make provision as respects— 3

- (a) the types or sizes of fl or marine product which may or may not be taken;
- (b) the types or sizes of fishing gear which may or may not be used;
- (c) any person, vessel or thing detained under this Ordinance;
- (d) the forfeiture of any fish or marine product taken contravention

- of section 3;
- (e) the forfeiture of any fish or marine product or any fishing gear or fishing boat used in taking any fish or marine product in contravention of section 3;
- (f) the fees to be paid on the issue of any licence under this Ordinance.

Repeal of
Ordinance
No.2 of
1971.

11. The Fishery Limits Ordinance, 1971 is repealed.

PROCLAMATION

PROCLAMATION NO.1 OF 1991

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of Commonwealth, Defender of the Faith.

Richard Edis,
Commissioner

By Richard John Smale Edis, Commissioner for the British Indian Ocean Territory.

I, Richard John Smale Edis, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby proclaim and declare that –

1. There is established for the British Indian Ocean Territory a fisheries zone, to be known as the Fisheries Conservation and Management Zone, contiguous to the territorial sea of the British Indian Ocean Territory.
2. The said fisheries zone has as its inner boundary the outer limits of the territorial sea of the British Indian Ocean Territory and as its seaward boundary a line drawn so that each point on the line is two hundred nautical miles from the nearest point on the low-water line on the coast or other baseline from which the territorial sea is measured or, unless another line is declared by Proclamation, the median line where this is less than two hundred nautical miles from the baseline. The median line is a line every point of which is equidistant from the nearest points of the baseline of the British Indian Ocean Territory and the corresponding points on the coasts of the Republic of the Maldives.
3. Her Majesty will exercise the same jurisdiction in respect of fisheries in the said fisheries zone as She has in respect of fisheries in the territorial sea of the British Indian Ocean Territory, subject to such provision as may hereafter be made by law for the control and regulation of fishing within the said zone.
4. In this Proclamation "the British Indian Ocean Territory" means the islands of the British Indian Ocean Territory set out in the Schedule to this Proclamation.
5. Proclamation No.8 of 1984 is hereby revoked.

GOD SAVE THE QUEEN

Given at the Foreign and Commonwealth Office, London this 1st day of October 1991.

SCHEDULE

The Islands of the British Indian Ocean Territory

The Chagos Archipelago consisting of:

Diego Garcia
Egmont or Six Islands
Peros Banhos
Salomon Islands

The Brothers Islands
Nelson or Legour Island
Eagle Islands
Danger Island

THE BRITISH INDIAN OCEAN TERRITORY.

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1991

Ordinance No.1 of 1991.

Came into force	Gazette notice(s) 1991	
Amended	1.02.1993	Ord. 1 of 1993
Amended	1.01.1994	Ord. 5 of 1993
Amended	1.11.1994	Ord. 8 of 1994
Amended	1.11.1995	Ord. 2 of 1995
Amended	1.01.1996	Ord. 4 of 1995
Amended	1.03.1997	Ord. 2 of 1997
REPEALED	Gazette notice	Ord. 4 of 1998

AND THEREFORE NOT PROOF READ FROM SCANNED COPY.

An Ordinance to make fresh provision for the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and matters incidental thereto.

Arrangement of sections.

Section		Page.
1.	Citation and commencement.	2.
2.	Interpretation.	2.
3.	Fishing waters.	4.
4.	Fishing prohibited without a licence.	4.
5	Notification of fish on board by fishing boats entering fishing waters.	6.
6.	Stowage of gear.	6.
7.	Transhipment and export of fish without a licence.	7.
8.	Manner of exercising of licensing powers.	8.
9.	Director of Fisheries and Fisheries Protection Officers.	8.
10.	General powers of Fisheries Protection Officers.	9.
11.	Release of boat or thing if no proceedings instituted.	11.
12.	Security for release of fishing boat.	11.
13.	Indemnity.	12.
14.	Obstruction of Fisheries Protection Officers.	12.
15	Offences, penalties and proceedings.	12.

16.	Jurisdiction of Summary and Magistrates' Court.	14.
17.	Forfeiture of licence.	14.
18.	Administrative penalties for minor offences.	14.
19.	Detention or forfeiture of fishing boat on failure to pay or secure fine.	16.
20.	Immigration Control.	17.
21.	Regulations.	17.
22.	Repeal of Ordinance No. 11 of 1984.	18.

Enacted by the Commissioner for the British Indian Ocean Territory.

1 October 1991

Richard Edis

Commissioner.

BRITISH INDIAN OCEAN TERRITORY

ORDINANCE No. 1 of 1991

- Citation and commencement.
1. This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 1991 and shall come into force on such day as the Commissioner may by notice in the Gazette appoint and the Commissioner may appoint different days for the coming into force of different provisions.
- Interpretation.
2. In this Ordinance unless the context otherwise requires: -
 - “Director of Fisheries” means the Director of Fisheries appointed under section 9(1);
 - “fish” means any marine animal not being a mammal or bird, whether fresh or cured including shellfish and any part of such animal;
 - “shellfish” includes crustaceans and molluscs of any kind, and includes any (or any part of any) brood, ware, half-ware or spat of shellfish and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish.
 - “Fisheries Protection Officer” means the Director of Fisheries and any of the Fisheries Protection Officers provided for in section 9(3) and (4) or any person authorised by a Fisheries Protection Officer for the purposes of this Ordinance;
 - “fishing” means —
 - (a) the catching or taking of fish;
 - (b) any other activity which can reasonably be expected to result in the catching or taking of fish; or
 - (c) any operations at sea in support of, or in preparation for, any activity described in (a) and (b);
 - “fishing boat” means any vessel of whatever size and in whatever way propelled, which is for the time being employed in fishing operations or for the processing, storage or carriage of fish or of any operations (including transhipment of fish) ancillary thereto;
 - “fishing licence” means a licence provided for under section 4;
 - “fishing waters” means the fishing waters of the British Indian Ocean Territory provided for in section 3;
 - “Fisheries Conservation and Management Zone” means the zone of that name established by and defined in the Proclamation by the Commissioner of the 1st October 1991 as amended by any subsequent proclamation defining the zone;

“internal waters” means those seawaters on the landward side of the baselines from which the territorial sea is measured;

“master” includes, in relation to a fishing boat, the person for the time being in command or in charge of the boat or in charge of fishing operations on board the boat;

“transhipment licence” means a licence so described provided for in section 7;

“transhipment of fish” includes the passing of fish from one fishing boat to another whether or not the fish has first been taken on board the boat from which the fish is passed.

Fishing waters

3. The fishing waters of the British Indian Ocean Territory comprise -

- (a) the internal waters;
- (b) the territorial sea; and
- (c) the Fisheries Conservation and Management Zone.

Fishing prohibited without licence.

4. (1) Fishing by a fishing boat in the fishing waters is prohibited unless authorised by a licence granted under this Ordinance.

(2) Where any fishing boat is used in contravention of subsection (1) the master, the owner and the charterer shall each be guilty of an offence.

PENALTY - £300,000.

(3) A fee may be charged for a licence.

(4) A fishing licence shall be granted to the master, owner or charterer in respect of a specified fishing boat and may authorise fishing generally or may confer limited authority by reference to, in particular —

- (a) the area within which fishing is authorised;
- (b) the period, times or particular voyages during which fishing is authorised;
- (c) the descriptions, quantities, sizes and presentation of fish which may be taken; or
- (d) the method of fishing and construction of fishing equipment.

(5) A fishing licence may authorise fishing either unconditionally or subject to such conditions as appear to the Director of Fisheries to be necessary or expedient for the regulation of sea fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of the British Indian Ocean Territory and in particular a licence may contain (without prejudice to the generality of

the foregoing) conditions as to —

- (a) the landing of fish taken under the authority of the licence;
- (b) the use to which the fish taken may be put;
- (c) the marking of the licensed fishing boat in a manner consistent with international accepted practice, including the display of its assigned international radio call sign;
- (d) the records of fishing operations which shall be kept on board the licensed fishing boat;
- (e) the navigation equipment and charts to be carried on board the licensed fishing boat; and
- (f) the place or places where the licensed fishing boat may carry out transhipment of fish;

and if a licence condition is broken the master, the owner and the charterer of the fishing boat concerned in such breach shall each be guilty of an offence.

PENALTY — £100,000.

(6) It shall be an offence for a master to allow to remain on board a fishing boat within the fishing waters fish which has not been taken under the authority of and in accordance with a fishing licence:

Provided that it shall be a defence to a prosecution for an offence arising under this subsection if the person charged satisfies the court that the fish was not taken, caught or captured in the fishing waters.

PENALTY — £200,000.

(7) The master, the owner or the charterer of a fishing boat prior to making an application for a fishing licence shall notify the Director of Fisheries of such relevant information (including information in relation to any period before the commencement of this Ordinance) as he may direct, and a person who fails without reasonable excuse to comply with such a requirement or provides information which he knows to be false or recklessly furnishes information which is false shall be guilty of an offence.

PENALTY — £15,000.

(8) A fishing licence may be —

- (a) varied from time to time, and
- (b) revoked or suspended,

if this appears to the Director of Fisheries to be necessary or expedient for the regulation of sea fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of the British Indian Ocean Territory.

(9) No exercise by the Director of Fisheries of the power contained in subsection (8) shall be liable to be challenged, reviewed, quashed or called in question in any court on the ground that the conditions for the exercise of the power by him had not arisen or had ceased.

(10) If a fishing licence is varied, revoked or suspended the Director of Fisheries may, if he considers it appropriate in all the circumstances of the case, refund the whole or part of any fee charged for the licence.

(11) Nothing in this Ordinance shall prohibit any person lawfully temporarily resident in or visiting the British Indian Ocean Territory from fishing in the course of sport, by rod and line only, and not for profit in any area in which that activity is not prohibited by the Commissioner by notice in the Gazette.

Notification of fish on board by fishing boats entering fishing waters.

5. (1) The master of a fishing boat that has fish on board shall

(a) prior to entry of the boat into the fishing waters, or

(b) prior to the boat leaving an area of the fishing waters in which the master, owner or charterer of that boat is licensed to fish,

notify a Fisheries Protection Officer of the amounts, descriptions, sizes and presentation of fish on board the boat.

PENALTY — £50,000.

(2) The giving of a notification under subsection (1) shall not of itself constitute a defence to a prosecution for an offence under section 4(6).

6. (1) At any time when a fishing boat is in any area of the fishing waters and either —

(a) it is prohibited by section 4 from fishing in that area; or

(b) it is permitted by fishing licence to fish only for certain descriptions of fish in that area,

then its fishing gear, or so much of the gear as is not required for permitted fishing, shall be stowed in such manner that it is not readily available for use for fishing or in such manner as may be prescribed.

(2) If this section is contravened in the case of any fishing boat —

(a) the master of the boat shall be liable on conviction to a fine; and

(b) the court may on convicting him order the forfeiture of any

Transhipment
of fish
prohibited
without licence

fish or fishing gear found in the boat or taken or used by any person from the boat.

PENALTY — £100,000.

7. (1) Within the fishing waters the transhipment from a fishing boat or the receiving of fish by a fishing boat from another fishing boat or the transport from the territorial seas or internal waters by any fishing boat of fish transhipped from any other fishing boat is prohibited unless authorised by a transhipment licence granted under this section.

(2) Where any fishing boat is used in contravention of a prohibition imposed by this section the master, the owner and the charterer shall each be guilty of an offence:

Provided that it shall be a defence to a prosecution for an offence arising under this subsection if the person charged satisfies the court that the fish was not taken, caught or captured in the fishing waters.

PENALTY — £50,000.

(3) A fee may be charged for a shipment licence.

(4) A transhipment licence shall be granted to the owner or charterer in respect of a specified fishing boat and may authorise the transhipment or transport of fish generally or may confer limited authority by reference to, in particular —

- (a) the area within which the fish is to be transhipped;
- (b) the periods or times during which the fish is to be transhipped or transported;
- (c) the descriptions and quantities of fish that may be transported out of the fishing waters; or
- (d) the number of times that the fishing boat specified in the licence may transport fish out of the fishing waters.

(5) A transhipment licence may authorise the transhipment or receiving of fish either unconditionally or subject to such conditions as appear to the Director of Fisheries to be necessary or expedient for the regulation of the transhipment of fish, or the economic benefit of the British Indian Ocean Territory including conditions as to the treatment on board a fishing boat receiving fish of the fish received by it and different conditions may be so imposed with respect to different fishing boats or fishing boats of different descriptions.

(6) If a condition under subsection (5) is broken the master, the owner and the charterer of the fishing boat shall each be guilty of an offence.

PENALTY — £20,000.

(7) The Director of Fisheries may require the master, the owner

and the charterer of the fishing boat named in a transhipment licence and any agent named in the licence to provide him with such relevant information as he may direct, and any person who fails without reasonable excuse to comply with such a requirement shall be guilty of an offence.

PENALTY — £15,000.

(8) Any person who —

(a) for the purpose of obtaining a transhipment licence or
(b) in purported compliance with subsection (7),
provides information which he knows to be false or recklessly furnishes information which is false shall be guilty of an offence.

PENALTY — £20,000.

(9) A transhipment licence —

- (a) may be varied from time to time, and
- (b) may be revoked or suspended,

if it appears to the Director of Fisheries to be necessary or expedient for the regulation of transhipment or for the economic benefit of the British Indian Ocean Territory.

(10) No exercise by the Director of Fisheries of the power contained in subsection (9) shall be liable to be challenged, reviewed, quashed or called in question in any court on the ground that the conditions for the exercise of the power by him had not arisen or had ceased.

(11) If a transhipment licence is varied, revoked or suspended the Director of Fisheries may, if he considers it appropriate in all the circumstances of the case, refund the whole or part of any fee charged for the licence.

8. The licensing powers conferred by this Ordinance may be exercised so as to limit the number of fishing boats, or any description of boat (including boats of any description or boats registered in a specified country) engaged in fishing, transhipping or transporting fish to such an extent as appears to the Director of Fisheries necessary or expedient for the regulation of fishing or transhipment, the conservation or management of fisheries or for the economic benefit of the British Indian Ocean Territory.

9. (1) This Ordinance and regulations made hereunder shall be administered by the Director of Fisheries appointed by the Commissioner who shall be responsible for: -

Manner of
exercise of
licensing
powers.

Director of
Fisheries and
Fisheries
Protection
Officers.

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of data, statistics and any other relevant information;
- (c) the development and management of fisheries;
- (d) the monitoring, control and surveillance of fishing operations;
- (e) the regulation of the conduct of fishing operations and operations ancillary thereto;
- (f) the issue, variation, suspension and revocation of licences for fishing, transhipment, export and ancillary operations;
- (g) the collection of fees in respect of licences;
- (h) the making of such reports to the Commissioner as the latter, acting in his discretion, may require;
- (i) other matters referred to in this Ordinance.

(2) In the performance of his duties under this Ordinance the Director of Fisheries shall be subject to the direction of the Commissioner except that in the performance of his duties as a public prosecutor for cases arising under this Ordinance he shall be subject to the express directions of the Principal Legal Adviser.

(3) This Ordinance and regulations made hereunder shall be enforced by Fisheries Protection Officers acting subject to the direction of the Director of Fisheries, and for that purpose Fisheries Protection Officers shall have the powers set out in section 10.

(4) The following persons shall be Fisheries Protection Officers, that is to say every person appointed in that behalf by the Commissioner, every Peace Officer and Imports and Exports Control Officer of the British Indian Ocean Territory, commissioned officers of any of Her Majesty's ships and persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

Exercise of powers.
10. (1) For the purpose of enforcing this Ordinance or of any regulation made hereunder a Fisheries Protection Officer or any person authorised by him may exercise the following powers with respect to any fishing boat within the fishing waters: -

- (a) he may stop the boat;
- (b) he may require the master to cease fishing and take back on board the boat's fishing gear;
- (c) he may require the master to facilitate the boarding of the boat by all appropriate means;

- (d) he may go on board the boat and take with him such other person as he may require to assist him in the exercise of his powers;
- (e) he may require the master, the crew or any of them to produce and he may examine and take copies of any certificate of registry, licence, official logbook, official paper, article of agreement, record of fish caught, and any other document relating to the boat or to the crew or any member thereof, or to any person on board the boat, which is in their respective possession or control on board the boat;
- (f) he may muster the crew of the boat;
- (g) he may require the master to appear and to give any explanation concerning the boat and any crew, or any person on board the boat, and any document mentioned in paragraph (e);
- (h) he may make any search, examination or enquiry which he considers necessary to find out whether any provision of this Ordinance or any regulation made hereunder has been contravened;
- (i) he may take or require the master to take the boat to any place in the British Indian Ocean Territory for the purpose of carrying out of any search, examination or enquiry;
- (j) in the case of any person who appears to him to have committed any offence against this Ordinance or any regulation made hereunder, he may, without summons, warrant or other process, take the suspected offender and take or require the master of the boat to take the boat in respect of which it appears to him there has been an offence together with the crew thereof to the British Indian Ocean Territory, and bring him or them before a competent court and detain him and them and the boat in the British Indian Ocean Territory until the alleged offence has been adjudicated upon;
- (k) he may, having regard to the safety of the boat, take steps to immobilise any fishing boat seized, taken or detained in accordance with this section for the purpose of preventing the boat being taken by any person prior to the release of the boat under section 12 or by the court;
- (l) in the case of any offence against section 4(2) or (5) or section 7(2) or (6), he may seize any boat (together with its equipment, stores and cargo) which he believes has been used in the commission of such offence or in respect of which he believes such offence has been committed;

Release of boat or thing if no proceedings instituted.

Security for release of fishing boat.

(m) he may seize any fishing gear, instruments or appliances which he believes have been used in the commission of such offence;

(n) he may seize any fish which he believes have been taken or fish products produced in the commission of such offence;

(o) he may seize or take copies of any documents which he believes are relevant to any such offence.

(2) In exercising the powers referred to in subsection (1) a Fisheries Protection Officer may use such force as may be reasonably necessary.

(3) The powers contained in this section may be exercised in respect of a fishing boat irrespective of whether the boat is at the time of such exercise engaged in fishing or any activities in any way related to fishing.

11. Where a fishing boat or any other thing has been taken seized or detained in accordance with section 10 the Director of Fisheries shall on demand release the boat or other thing to the master, owner, charterer or agent of the owner or charterer if no proceedings are instituted within 14 days of the arrival of the boat or thing in the British Indian Ocean Territory.

12. (1) Where a fishing boat is taken, seized or detained under this Ordinance or any regulation made hereunder and an information or charge is laid against the master, the owner or the charterer or the agent of the owner or charterer of the boat in respect of the offence for which the boat has been detained, the master, the owner or the charterer of the boat may at any time before the determination of the information or charge apply to the court by which the information or charge will be determined for the release of the boat on the provision of security in accordance with this section.

(2) On hearing the application the court shall either:

(a) being satisfied that adequate security has been given to the Crown in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Crown may recover under section 16(2), order the release of the fishing boat; or

(b) order the release of the fishing boat on the execution by any suitable person or persons approved by the court for the purpose of a bond in the prescribed form and conditioned in accordance with subsection (4) in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Crown may recover under section 16(2).

(3) Notwithstanding subsection (2) the court may, where it is satisfied that there are special circumstances to justify it in doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

(4) The condition of the bond shall be that if:

(a) the defendant is found not guilty to the information or charge; or

(b) the defendant on being convicted of the information or charge pays in full within 14 days after he is convicted the amount of the fine imposed by the court, and the amount of all costs and expenses due by him to the Crown under section 16(2),

then the bond shall be of no effect, but that otherwise the bond shall remain in full force and effect.

(5) The amount specified in the bond shall be recoverable in full, in any court of competent jurisdiction, as a debt due to the Crown jointly and severally by the person or persons by whom the bond is given, unless the person or persons prove the due performance of the condition on which the bond is defeasible.

(6) in this section “fishing boat” includes all equipment on board or used by the boat, and also includes all fish that has been seized from the boat under this Ordinance or any regulation made hereunder and is detained on board the boat in the custody of the Crown.

Indemnity.

13. No civil or criminal action shall lie against a Fisheries Protection Officer in respect of any act done or omitted to be done by him in good faith in the purported exercise of his powers under this Ordinance or any regulations made hereunder if there shall have been reasonable cause for such action or omission.

Obstruction of
Fisheries
Protection
Officers.

14. If any person obstructs a Fisheries Protection Officer when acting in the exercise of his powers under this Ordinance or any regulations made hereunder, or refuses or neglects to comply with any order, requisition or direction lawfully made or given by, or to answer any question reasonably asked by, a Fisheries Protection Officer in pursuance of this Ordinance, or prevents or attempts to prevent another person from complying with such orders, requisitions or directions or from answering such questions, such person shall be guilty of an offence.

PENALTY —£100,000.

Offence,
penalties and
proceedings.

15. (1) Any person who contravenes any provision of this Ordinance or any Regulation made hereunder where no offence is specifically provided commits an offence.

(2) Any person who commits an offence against this Ordinance or any regulation made hereunder, for which no other penalty is specifically provided, shall be liable to a fine not exceeding £100,000.

(3) Where a person is convicted of any offence against this Ordinance or any regulation made hereunder the court may, in addition to any other penalty it may impose, order that any fishing gear, instruments or appliances used in the committing of such offence, and any fish on board a fishing boat shall be forfeited to the Crown and if so forfeited shall be disposed of in such manner as the Commissioner, acting in his discretion, may direct.

(4) For the purposes of any proceedings under this Ordinance any fish found on board a fishing boat shall be presumed to have been caught

(a) within the fishing waters and

(b) within the vicinity of the boat at the time the fish was so found where the licence to fish, specifying the boat, restricts fishing to a particular area unless the contrary is proved.

(5) An attempt to commit an offence under this Ordinance shall itself constitute an offence and may be dealt with in like manner as if the attempted offence had been committed.

(6) Any master who transhipps, receives on board a fishing boat, transports or in any other manner deals with fish caught or transhipped in contravention of this Ordinance shall be guilty of an offence.

(7) Notwithstanding any law providing for the limitation of time within which proceedings may be commenced any proceedings in respect of an offence against this Ordinance or any regulation made hereunder may be commenced at any time after the commission of the offence.

(8) The Commissioner shall appoint the Director of Fisheries and may appoint any Fisheries Protection Officer or other officer under section 75(1) of the Criminal Procedure Code 1986 as a public prosecutor for all prosecutions and proceedings in respect of offences under this Ordinance or any regulation made hereunder.

(9) A certificate purporting to be signed by the Director of Fisheries or any officer authorised by him for that purpose to the effect that on a date specified in the certificate:

(a) a fishing boat specified in that certificate was not licensed under this Ordinance; or

(b) the defendant or any other named person was not the holder of a licence under this Ordinance;

Jurisdiction of
the Supreme
Court and
Magistrates'
Court.

shall in the absence of proof to the contrary be sufficient evidence of the matter stated in the certificate.

16. (1) All penalties, offences and proceedings under this Ordinance or any regulation made hereunder may be recovered, prosecuted and taken before the Magistrates' Court or the Supreme Court.

(2) In respect of offences charged under this Ordinance or any regulations made hereunder, and notwithstanding the provisions of the Criminal Procedure Code, 1986, the Magistrates' Court is hereby given extended jurisdiction to impose any fine provided for under this Ordinance or any regulation made hereunder and may award to the Crown such costs and expenses (including expenses incurred in exercise of the power under section 10(l)(j) and (k)) incurred in relation to the prosecution of such charges or in relation to opposing an appeal against a conviction of such charges as may appear to it to be proper.

Forfeiture of
licence.

17. (1) Every person who is convicted of an offence against this Ordinance or any regulation made hereunder and is again convicted of an offence against this Ordinance or any regulation made hereunder shall, in addition to any other penalty, forfeit any licence granted under this Ordinance and any fees paid for that licence and shall be incapable, for a period of three years from the day of conviction, of holding any such licence under this Ordinance.

(2) Notwithstanding subsection (1) the Commissioner may in the circumstances of any particular case and upon application being made to him by the person concerned within 30 days from the date of conviction or such extended period as the Commissioner may allow direct that the provisions of that subsection may be varied or are not to apply.

Administrative
penalties for
minor.

18. (1) Where the Commissioner has reasonable cause to believe that:

- (a) an offence against this Ordinance or any regulation made hereunder has been committed by any person in respect of any fishing boat;
- (b) the offence is of a minor nature;
- (c) having regard to the previous conduct of the boat and the person concerned it would be appropriate to impose a penalty under this section;

he may cause a notice in writing in accordance with subsection (2) in the prescribed form to be served on that person.

(2) A notice under subsection (1) shall specify:

- (a) the date and nature of the offence;
- (b) a summary of the facts on which the allegation that an offence has been committed is based (being a sufficient summary fully and fairly to inform the person of the allegation against him); and
- (c) any other matters (not being previous convictions) that the Commissioner considers relevant to the imposition of a penalty; and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within 28 days after such service, by notice in writing in the prescribed form served on the Commissioner require that proceedings in respect of the alleged offence shall be dealt with by the court, in which case the following shall apply:

- (a) no further proceedings shall be taken under this section by the Commissioner; and
- (b) nothing in this section shall be construed to prevent the subsequent laying of any information or charge in respect of the alleged offence, or the conviction of the person of the offence by the court, or the imposition of any penalty or forfeiture under this Ordinance upon such conviction.

(4) Any person on whom a notice under subsection (1) is served who does not require that proceedings in respect of the alleged offence shall be dealt with by the court may by notice in writing served on the Commissioner:

- (a) admit the offence; and
- (b) make submission to the Commissioner as to the matters he wishes the Commissioner to take into account in imposing any penalty under this section.

(5) Where a person on whom a notice under subsection (12) is served does not within 28 days after the notice is served on him:

- (a) require that proceedings in respect of the alleged offence shall be dealt with by the court; or
- (b) admit the offence;

he shall on the expiration of that period be deemed to have admitted the offence.

(6) Where under this section a person admits or is deemed to have admitted an offence the Commissioner may, after taking into account any submissions made by that person under subsection (4), impose a monetary penalty on that person in respect of the offence not exceeding one third of the maximum monetary penalty to which the

person would be liable if he were convicted of the offence by the court.

(7) An admission or deemed admission of an offence and the imposition of a penalty under this section shall not count as a conviction of an offence for the purposes of section 17.

(8) Where the Commissioner imposes a penalty on a person under this section in respect of an offence the Commissioner shall cause a notice in writing in the prescribed form of the particulars of the penalty to be served on the person.

(9) A person on whom a penalty is imposed under this section shall pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on him in accordance with subsection (8).

(10) Without prejudice to the requirement of subsection (9), a penalty imposed under this section shall be recoverable by the Crown from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction for an offence.

(11) Notwithstanding any other provision of this Ordinance or of any other enactment, where an offence has been admitted or is deemed to have been admitted under this section no information or charge may be laid in respect of the offence against any person by whom it is admitted or is deemed to have been admitted.

(12) Nothing in this section shall apply:

(a) in respect of any offence or alleged offence under section 4(2); or

(b) in respect of any offence or alleged offence in respect of which any information or charge has already been laid.

Detention or
forfeiture of
fishing boat on
failure to pay or
secure fine.

19. (1) If any fine or amount of costs is adjudged to be due by the master, owner or charterer of any fishing boat in respect of a contravention of any provision of this Ordinance or any regulation made hereunder, the court may, if no security or it considers that insufficient security has been given to the Crown, order that in default of payment forthwith the defendant shall give security for payment of the amount due, and if such security to the satisfaction of the court is not given, the court may order the detention of the fishing boat concerned with the contravention, and such fishing boat may accordingly be detained in the British Indian Ocean Territory until the amount due is paid or until sufficient security shall be given to the satisfaction of the court.

(2) If a fine is not paid or security given within 30 days of the date of the order of the court, or such longer period as the Court may determine, the court may order that in the case of any offence against

section 4(2) or (5) or section 7(2) or (5) any boat and its equipment used in the commission of such offence shall be forfeited to the Crown and if so forfeited shall be disposed of in such manner as the Commissioner, acting in his discretion, may direct.

Immigration Control.

20. Pursuant to the provisions of the Immigration Ordinance 1971, no person on a fishing boat in the fishing waters shall land, or enter in any other way, the British Indian Ocean Territory unless he is in possession of a permit or his name is endorsed on a permit in accordance with the provisions of the Immigration Ordinance 1971.

Regulations.

21. (1) The Commissioner may make Regulations for the better carrying into effect of the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing such regulations may provide for:

(a) anything which is to be, or may be, prescribed under this Ordinance;

(b) the forms to be used for the purposes of this Ordinance;

(c) the persons to whom and the manner in which applications may be made;

(d) the procedures to be followed by applicants for licences;

(e) terms and conditions that shall apply to licences issued under this Ordinance;

(f) the fees to be paid in respect of licences;

(g) the equipment to be carried on board fishing boats;

(h) the reports to be made for the purposes of this Ordinance;

(i) the designation by applicants for licences and licensees of authorised agents in the British Indian Ocean Territory in respect of fishing boat operations and otherwise for the purposes of this Ordinance;

(j) the provision by applicants for licences or licensees of bonds or other forms of security for securing their compliance with the obligations under the terms and conditions of their licences or their compliance with the provisions of this Ordinance;

(k) the placing of Fisheries Protection Officers and official observers on fishing boats and the terms for their presence thereon;

(l) a penalty not exceeding one hundred thousand pounds for contravention of any of such regulations.

(3) Regulations made under this section may make different provisions for different parts of the fishing waters.

Repeal of
Ordinance
No.11. of 1984

22. The Fishery Limits Ordinance, 1984 is repealed.

THE BRITISH INDIAN OCEAN TERRITORY.

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 1998

Ordinance No.4 of 1998.

Came into force 1.11.98 Gazette notice 1998 issue 3

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

Arrangement of sections.

Section		Page.
1.	Short title and commencement.	2.
2.	Interpretation.	2.
3.	The fishing waters of the Territory.	4.
4.	Director of Fisheries and Fisheries Protection Officers.	4.
5.	Prohibited fishing methods.	5.
6.	Possession of prohibited fishing gear.	6.
7.	Fishing Licences.	6.
8.	Notification of fish on board fishing boats.	8.
9.	Stowage of gear.	9.
10.	Transhipment.	9.
11.	Exercise of Director's powers.	10.
12.	General enforcement powers of Fisheries Protection Officers.	11.
13.	Disposal of detained or seized boats, etc.	13.
14.	Security for release of seized or detained boat, etc.	14.
15.	Fisheries Protection Officers' immunity from process.	15.
16.	Obstruction of Fisheries Protection Officers.	16.
17.	Offences, penalties, evidence and proceedings, etc.	16.
18.	Revocation of licences of repeated offenders.	18.
19.	Administrative penalties for minor offences.	18.
20.	Non-payment of fines, etc: detention and forfeiture of boat.	20.
21.	Regulations.	20.
22.	Saving for laws regulating access to Territory, etc.	22.
23.	Repeal and savings.	22.

Enacted by the Commissioner for the British Indian Ocean Territory

12 October 1998

C J B White

Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 4 of 1998

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

Short title and commencement. 1. This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 1998 and shall come into operation on such date as the Commissioner may appoint by notice which shall be published in the *Gazette*.

Interpretation. 2. - (1) In this Ordinance, unless the contrary intention appears -

"the Director" means the Director of Fisheries appointed under section 4(1);

"fish" means any marine animal (other than a mammal or a bird but including shellfish), irrespective of whether it is fresh or cured, and any marine plant; and references to fish include references to any part of a fish;

"a Fisheries Protection Officer" means any person declared by section 4(5) to be such an Officer and includes the Director;

"fishing" means -

- (a) the catching or taking of fish;
- (b) any activity which can reasonably be expected to result in the catching or taking of fish;
or
- (c) any operation at sea in support of or in preparation for any activity mentioned in paragraph (a) or paragraph (b),

and, for the avoidance of doubt, includes exploring or prospecting for the presence of fish;

"fishing boat" has the meaning assigned to that term in subsection (2);

"a fishing licence" means a licence granted under section 7;

"the fishing waters" means the fishing waters of the Territory, as defined in section 3;

"the Fisheries Conservation and Management Zone" means the zone of that name which was established by the Proclamation made by the Commissioner on 1 October 1991 (Proclamation No.1 of 1991) and

whose extent is defined in that Proclamation (as it may be amended from time to time by further such Proclamation);

"the internal waters of the Territory" means the sea-waters on the landward side of the baselines from which the territorial sea of the Territory is measured;

"a licence" means a fishing licence or a transhipment licence;

"the master", in relation to a fishing boat, includes any person for the time being in command or in charge of the boat and any person in charge of fishing operations on board the boat;

"prescribed" means prescribed by or under regulations made under section 21;

"shellfish" includes crustaceans and molluscs of any kind, any (or any part of any) brood, ware, half-ware or spat of shellfish, any spawn of shellfish and the shell (or any part of the shell) of any shellfish;

"a transhipment licence" means a licence granted under section 10 and includes a fishing licence operating as a transhipment licence by virtue of section 10(4); and

"transhipment", in relation to fish, means the passing of the fish from one boat to another, whether or not it was first caught or taken by the boat from which it is passed.

(2)(a) In this ordinance, unless the contrary intention appears, the term "fishing boat" means, subject to paragraphs (b) and (c), any vessel of whatever size and in whatever way propelled which is for the time being employed in fishing or in the processing, storage or transport of fish or in any operations (including the transhipment of fish) ancillary to any of the foregoing; and, for the avoidance of doubt but subject as aforesaid, the term includes any vessel, of whatever size and in whatever way propelled, which is for the time being operating as an independent support vessel in support of one or more other vessels that are themselves engaged in fishing.

(b) The term "fishing boat" does not, in this Ordinance, include a vessel (such as, but not limited to, a net tender) whose principal use is in support of, and is integral to, the fishing operations of a larger vessel (being itself a fishing boat) and which, when not being so used, is normally stored on board that larger vessel as part of its fishing gear; but the term does include any vessel, whether or not normally stowed as aforesaid, which is itself employed in the catching or taking of fish.

(c) For the purposes of section 7(11), the term "fishing boat" has the meaning provided in that subsection.

(3) Unless the contrary intention appears, any provision of this ordinance, or of any regulations made under section 21, that confers powers on a Fisheries Protection Officer or on a person acting under his direction in relation to a fishing boat that is within the fishing waters, or in relation to a person or thing connected therewith, shall be

construed as conferring those powers also in relation to a fishing boat that is outside the fishing waters, or in relation to a person or thing connected therewith, in any circumstances in which, in international law, those powers may properly be exercised as a incident of the right of hot pursuit for an offence or suspected offence against any provision of this ordinance or any such regulations.

The fishing waters of the Territory.

3. The fishing waters of the Territory comprise -

- (a) the internal waters of the Territory;
- (b) the territorial sea of the Territory; and
- (c) the Fisheries Conservation and Management Zone.

Director of Fisheries and Fisheries Protection Officers.

4. - (1) There shall be a Director of Fisheries for the Territory who shall be appointed by the Commissioner.

(2) The Director has charge of the administration of this Ordinance and of any regulations made under section 21 and, in particular and without prejudice to the generality of the foregoing, is responsible for -

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of data (including statistics) and other information relevant thereto;
- (c) the development and management of fisheries;
- (d) the monitoring, surveillance and control of fishing and of operations ancillary to fishing;
- (e) the regulation of the conduct of fishing and of operations ancillary to fishing;
- (f) the grant, suspension, revocation and variation of licences under this Ordinance;
- (g) the collection of fees for licences; and
- (h) the making of such reports to the Commissioner as he may require.

(3) This Ordinance and any regulations made under section 21 shall be enforced by Fisheries Protection Officers who, for the purposes of their functions, have the powers conferred on them by this Ordinance and by or under any regulations made under section 21.

(4) In the exercise of their function Fisheries Protection Officers shall be subject to the direction of the Director:

Provided that in acting as a public prosecutor in relation to any proceeding arising under this Ordinance or under any regulations

made under section 21 a Fisheries Protection Officer shall be subject to the direction of the Principal Legal Adviser.

(5) The following persons shall be Fisheries Protection Officers:

- (a) every person appointed as such by Commissioner;
- (b) every Peace Officer;
- (c) every person for the time being appointed to be an Imports and Exports Control Officer for the purposes of the Imports and Exports Control Ordinance 1984;
- (d) all commissioned officers of Her Majesty's ships; and
- (e) any person for the time being in command or in charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

Prohibited
fishing
methods.

5. - (1) Any person who -

- (a) uses or permits to be used any explosive, poison or other noxious substance for the purpose of killing, stunning or disabling fish with a view to its being caught or taken or to rendering it more easily caught or taken; or
- (b) carries or has in his possession or control any explosive, poison or other noxious substance which is intended for any of the purposes mentioned in paragraph (a),

is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat, the owner, master and charterer of the boat is each guilty of an offence.

(2) Any explosive, poison or other noxious substance which is found on board any fishing boat in the fishing waters shall be presumed, unless the contrary is proved, to be intended for a purpose mentioned in subsection (1)(a).

(3) Any person who lands, transhipps, sells, buys, receives or is found in possession of fish which has been caught or taken by the use of an explosive, poison or other noxious substance in contravention of subsection (1)(a) and who, at the time when he did so or was so found, knew or had reasonable cause to believe it to have been so caught or taken is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat or by any member of the crew of a fishing boat, the master, the owner and the charterer of the boat is each guilty of an offence.

(4) In any proceedings for an offence under subsection (3) a certificate signed by a Fisheries Protection Officer stating the cause or manner of the death of, or of any injury suffered by, any fish shall be accepted as prima facie evidence of that matter, and any certificate purporting to be so signed shall be received in evidence as such unless credible evidence to the contrary is adduced.

- (5) A person who is convicted of an offence under this section is liable to a fine of £50,000.
- Possession of prohibited fishing gear. 6. - (1) Any person who uses any prohibited fishing gear for fishing within the fishing waters, or who is found in possession of such gear with the intention to use it within the fishing waters, is guilty of an offence.
- (2) The master, the owner and the charterer of any fishing boat on which there is found, within the fishing waters, any prohibited fishing gear which any person on board that boat has used or intends to use for fishing within the fishing waters is each guilty of an offence.
- (3) In this section "prohibited fishing gear" means -
- (a) any net whose mesh size is smaller than the prescribed minimum size for nets of that type;
 - (b) any other type of fishing gear which does not conform to the standards prescribed for that type of gear; and
 - (c) any fishing gear which is prohibited by regulations made under section 21.
- (4) Where, in any proceedings for an offence under subsection (2), it is proved that prohibited fishing gear was found on board a fishing boat within the fishing waters, the onus of proof that no person on board that boat had used or intended to use that gear for fishing within the fishing waters shall lie on the accused person.
- (5) A person who is convicted of an offence under this section is liable to a fine of £50,000.
- Fishing Licences. 7. - (1) Fishing by a fishing boat within the fishing waters is prohibited unless carried out in accordance with a licence (a "fishing licence") granted by the Director under this section.
- (2) Where subsection (1) is contravened, the master, the owner and charterer of the boat is each guilty of an offence and is liable, on conviction, to a fine of £500,000.
- (3) Every fishing licence shall be granted in respect of a single fishing boat specified in it and may be granted to the master, the owner or the charterer of the boat.
- (4) The authority to fish in the fishing waters that is conferred by a fishing licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to)-
- (a) the area within which fishing is authorised;
 - (b) the period, times or particular voyages during which fishing is authorised;
 - (c) the descriptions, quantities, sizes and presentation of the fish that may be caught or taken or, conversely, that may not

be caught or taken, whether as by-catch or otherwise; and

(d) the method of fishing and the type or construction of the fishing gear to be used.

(5) Within any limitation imposed under subsection (4) and subject to any regulations made under section 21, a fishing licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to -

(a) the landing of any fish caught or taken;

(b) the use to which any fish caught or taken may be put;

(c) the marking of the licensed fishing boat in accordance with accepted international practice, or as directed by a Fisheries Protection Officer, including the display of its assigned international radio call sign;

(d) the installation on the licensed fishing boat of any equipment specified in the condition, including equipment for monitoring the position or operation of the boat;

(e) the records of fishing operations to be kept on board the licensed fishing boat.

(6) Where a condition to which a fishing licence is subject is contravened, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £200,000.

(7) Fees may be charged for fishing licences in accordance with regulations made under section 21.

(8) The master, the owner or the charterer of a fishing boat in respect of which he intends to apply for a fishing licence shall, before so applying, supply to the Director such information as the Director may require or as may be prescribed by or under regulations made under section 21; and a person who, for the purpose of obtaining a fishing licence or in purported compliance with any such requirement or prescription, supplies information which he knows to be false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(9) The Director may at any time suspend or revoke a fishing licence or vary it in any respect; but no part of any fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(10) Subsection (1) does not apply to fishing, by persons who are lawfully present in the Territory, if the following conditions are

satisfied: -

- (a) the fishing is, or is to be, for sport and not for sale, barter or other profit;
- (b) the fishing is, or is to be, carried out by an attended line (whether or not with a rod);
- (c) there is, or there is to be, at any one time no more than two such lines in use under the control of any one person, each line having no more than three hooks attached to it (or such other number of hooks as may, for that occasion, have been specified to that person by a Fisheries Protection Officer); and
- (d) the fishing is not, or is not to be, carried out in any area of the Territory which is specified, by a notice signed by the Commissioner and published in the Gazette, to be an excepted area for the purposes of this subsection.

(11) The exception to subsection (1) that is provided by subsection (10) does not apply to any fishing carried out by a fishing boat (other than one based in and operating out of Diego Garcia) in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; and any boat that is being used in such circumstances is deemed to be a fishing boat for the purposes of this subsection.

(12) The foregoing provisions of this section are without prejudice to -

- (a) any prohibition, restriction, condition or requirement imposed by or under a regulation made under section 21; and
- (b) any other law for the time being in force in the Territory with respect to the protection and preservation of wildlife or with respect to the conservation of the natural resources of the Territory or with respect to the regulation of activities within the waters of the Territory.

Notification of
fish on board
fishing boats.

8. - (1) The master of a fishing boat that has fish on board shall -

- (a) before the boat enters the fishing waters; and
- (b) before the boat leaves an area of the fishing waters in which it is licensed to fish,

notify a Fisheries Protection Officer of the quantities, sizes, descriptions and presentation of the fish on board.

(2) A master who, without reasonable excuse, contravenes subsection (1) or who, in pursuance of that subsection, gives a notification which he knows to be false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(3) The giving of a notification under this section is not a defence

to a prosecution for an offence under section 17(8).

Stowage of gear.

9. - (1) At any time when a fishing boat is in any area of the fishing waters and either -

(a) it is not authorised by a fishing licence to fish in that area; or

(b) it is so authorised to fish only for certain descriptions of fish in that area,

its fishing gear, or so much of it as is not required for the fishing which it is authorised to carry out, shall be stowed in such manner as is prescribed or, if no manner is prescribed, in such manner that it is not readily available for use for fishing.

(2) If subsection (1) is contravened, the master of the fishing boat in question is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Transhipment.

10.- (1) The transhipment of fish from a fishing boat within the fishing waters or the transport from the territorial sea of the Territory or the internal waters of the Territory by any fishing boat of fish transhipped from another fishing boat is prohibited unless it is carried out in accordance with a licence (a "transhipment licence") granted by the Director under this section in respect of every fishing boat concerned.

(2) Where subsection (1) is contravened, the master, the owner and the charterer of each boat which took part in the contravention is each guilty of an offence and is liable, on conviction, to a fine of £500,000.

(3) Every transhipment licence shall be granted in respect of a single fishing boat specified in it and may be granted to the owner or the charterer of the boat.

(4) If (but only if) it purports to do so, a fishing licence may also operate as a transhipment licence and may accordingly include, in addition to conditions or other provisions relating to fishing by the fishing boat specified in it, such conditions or other provisions relating to the transhipment or transport of fish as are authorised by this section.

(5) The authority to carry out the transhipment or transport of fish that is conferred by a transhipment licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to) -

(a) the area within which fish may be transhipped;

(b) the periods or times within which fish may be transhipped or may be transported by a fishing boat authorised by the licence to do so;

(c) the descriptions and quantities of fish that may be

transported by a fishing boat authorised by the licence to do so; and

(d) the number of times that fish may be transported by a fishing boat authorised by the licence to do so.

(6) Within any limitation imposed under subsection (5) and subject to any regulations made under section 21, a transhipment licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to the treatment of transhipped fish on board the fishing boat to which it has been passed.

(7) Where a condition to which a transhipment licence is subject is contravened, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £100,000.

(8) Fees may be charged for transhipment licences in accordance with regulations made under section 21.

(9) The Director may require the master, the owner or the charterer of a fishing boat in respect of which a transhipment licence has been granted, or any person who is for the time being designated to the Director, under regulations made under section 21, as the agent of the owner or charterer in respect of that boat, to provide him with such information, relevant to the licence or to the operation of the boat, as he may direct; and any person to whom such a requirement is addressed who fails without reasonable excuse to comply with it is guilty of an offence and is liable, on conviction, to a fine of £20,000.

(10) Any person who, for the purpose of obtaining a transhipment licence or in purported compliance with a requirement under subsection (9), provides information which he knows is false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(11) The Director may at any time suspend or revoke a transhipment licence or vary it in any respect; but no part of the fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

Exercise of
Director's
powers.

11. - (1) The powers vested in the Director by this Ordinance or by or under regulations made under section 21 may, subject to any such regulations and subject to subsection (3), be exercised by him in his absolute discretion to such extent, in such manner and in such cases as he considers necessary or expedient for the regulation of fishing or of the transhipment of fish, for the conservation or management of fisheries or for the economic benefit of the Territory.

(2) Without prejudice to the generality of subsection (1) but subject as provided in that subsection, the Director may, in exercising his powers as aforesaid, make different provision or impose different requirements (including provision or requirements as to fees) for

different boats or boats of different descriptions and may impose different limitations on or attach difference conditions to licences granted in respect of different boats or boats of different description, and he may in particular exercise his powers as aforesaid for the purpose of limiting the number of boats, or boats of any particular description, that may engage in fishing, transhipping fish or transporting fish within the fishing waters; and the references in this subsection to the description of a boat include references to the country in which is registered.

(3) In the exercise of his powers and duties under this Ordinance or under any regulations made under section 21, the Director shall be subject to the direction of the Commissioner, who, in giving him any such direction, shall enjoy the same discretion as is vested by this section in the Director:

Provided that in acting as a public prosecutor in relation to any proceedings arising under this Ordinance or under any regulations made under section 21 the Director shall be subject to the direction of the Principal Legal Adviser.

General enforcement powers of Fisheries Protection Officers. -

12.- (1) For the purpose of enforcing the provisions of this Ordinance and of any regulations made under section 21, a Fisheries Protection Officer and any person acting under his direction may exercise the following powers with respect to any fishing boat within the fishing waters or with respect to any boat within the fishing waters which he believes to be, or to have been, employed as a fishing boat within those waters: -

- (a) he may stop the boat;
- (b) he may require the master to cease fishing and take back on board the boat's fishing gear;
- (c) he may require the master to facilitate the boarding of the boat by all appropriate means;
- (d) he may go on board the boat and take with him such other persons as he may require to assist him in the exercise of his powers;
- (e) he may require any person on board the boat (including the master or any member of the crew) to produce, and he may examine and take copies of, any document relating to the boat or to any such person that is in that person's possession or control on board the boat, including (without prejudice to the generality of the foregoing) any certificate of registry, licence, official logbook, official paper, article of agreement or record of fish caught or taken;
- (f) he may muster the crew of the boat;
- (g) he may require the master to appear and give an explanation of any matter that he may put to the master concerning the boat or concerning any such person or any

such document as is mentioned in paragraph (e);

(h) he may make any search, examination or enquiry which he considers necessary to establish whether there has been an contravention of any provision of this Ordinance or of any regulations made under section 21;

(i) he may take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint for the purpose of enabling any such search, examination or enquiry to be carried out;

(j) where he suspects any person connected with the boat of having committed an offence under this Ordinance or under any regulations made under section 21, he may, without warrant, summons or other process, take the suspected offender and take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint, and he shall then bring the suspected offender before a competent court; and, subject to section 13 and to any order made by the court, he may cause the suspected offender, the master, the crew and any other such person as aforesaid, and also the boat, to be detained in the Territory until the suspected offence has been adjudicated upon;

(k) in the case of a boat which, in the exercise of his powers under this Ordinance or under any regulations made under section 21, he has taken or caused to be taken to any place in the Territory or has caused to be detained in the Territory or has seized, he may take such steps as he considers necessary, while having regard to the safety of the boat, to immobilise it for the purpose of preventing it from departing from that place before the completion of the search, examination or enquiry for which it was taken there or, as the case may be, before it is released from detention or seizure under the provisions of this Ordinance or by order of a court;

(l) in any case where he suspects that an offence under section 7(2), section 7(6), section 10(2) or section 10(7) has been committed, he may -

(i) seize any boat which he believes to have been involved in the commission of that offence;

(ii) seize the equipment and fishing and other gear of any such boat, and also its instruments and appliances and its stores and cargo;

(iii) seize any fish which he believes to have been caught or taken or transhipped or transported in the commission of that offence or any fish products produced from any such fish; and

(iv) seize, or take copies of, any documents which he believes to be relevant to that offence.

(2) In relation to any action which, under paragraph (i) or paragraph (j) of subsection (1), a Fisheries Protection Officer may take, or may require to be taken, in respect of a fishing boat, the references in that paragraph to the boat include references to its fishing or other gear, to its instruments and appliances, to its stores and cargo and to any fish or fish products on board it.

(3) In exercising the powers conferred on him by subsection (1), a Fisheries Protection Officer or any person acting under his direction may use such force as is reasonably necessary.

(4) The powers conferred by this section may be exercised irrespective of whether any fishing boat in respect of which, or in respect of whose operations or suspected operations, they fall to be exercised is, at the time when they fall to be exercised, engaged in fishing or in operations ancillary to fishing.

Disposal of
detained or
seized boats,
etc.

13.- (1) Where, in exercise of a power conferred by section 12 or by any regulation made under section 21 or in pursuance of a requirement imposed in the exercise of such a power, a boat is seized or is taken to a place within the Territory and there detained, then, if no proceedings for an offence under this ordinance or under such regulations, being an offence alleged to have been committed in connection with that boat, have been instituted within 14 days after the boat is brought to Diego Garcia following the seizure or, as the case may be, within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer or the agent of the owner or the charterer so demands, the boat, together with any person on board it and any thing seized with it or on board it at the time when it was seized or was so taken, shall be released.

(2) Where any thing is seized under section 12(1)(I)(ii), (iii) or (iv) and the boat concerned (that is to say, the boat from which it was seized or to which the court is satisfied that it belongs) is not itself either seized under section 12(1)(I)(i) or taken by a Fisheries Protection Officer or a person acting under his direction to a place within the Territory under section 12(1)(j), then, unless the master of that boat has, within the specified period, taken his boat to the appointed place within the Territory in pursuance of a requirement laid on him under section 12(1)(j) or, if he is not subject to such a requirement, unless he has, within the specified period, otherwise taken it to Diego Garcia or such other place with(in) the Territory as a Fisheries Protection Officer or a person acting as aforesaid may appoint and has there reported its arrival to a Fisheries Protection Officer, the thing seized may, subject to the following provisions of this section, be ordered by a court to be forfeited to the Crown and shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) Where any thing has been seized in the circumstances referred to in subsection (2) and, within the specified period, the fishing boat concerned has been taken to a place within the Territory as specified in that subsection, then, if no proceedings in respect of

the suspected offence in connection with which the seizure was made have been instituted within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer of the boat or the agent of the owner or the charterer so demands, the thing shall be released.

(5) In this section "the specified period" means the period of 14 days after the seizure of the thing in question or such longer period as a court may allow in any particular case.

(6) Notwithstanding any other provision of this Ordinance, where any perishable goods (that is to say, fish or fish products or other goods which are subject to decay unless kept in storage facilities specially designed or adapted for that purpose) have been seized under any provision of this Ordinance and -

(a) before the elapse of any period after which, under any provision of this Ordinance, those goods must, on demand, be released; or

(b) before any such demands is made; or

(c) before the conclusion of any proceedings pending which those goods are being held,

a court is satisfied that, because of the deteriorating condition of the goods, it is no longer practicable to keep them, the court may order them to be destroyed or otherwise disposed of; and no compensation therefor shall be payable to the owner of the goods or to any other person claiming an interest in them.

Security for release of seized or detained boat, etc.

14.- (1) Where a fishing boat is seized or detained under this Ordinance or under any regulations made under section 21 in connection with a suspected offence under this Ordinance or under any such regulations and proceedings for that offence are instituted against the master, the owner or the charterer of the boat or the agent of the owner or the charterer, the master, the owner or the charterer may, at any time before the conclusion of those proceedings, apply to the court which is, or will be, seised of the proceedings for the release of the boat on the provision of security in accordance with this section.

(2) If, on an application under subsection (1), the court is satisfied that adequate security has been given to the Crown as specified in subsection (3), it may order the release of the boat.

(3) The security which is to be given to the Crown for the purposes of subsection (2) is security for the aggregate of -

(a) the maximum fine that may be imposed on the defendant for the offence with which he is charged;

(b) a sum representing the value (as estimated by the court) of anything that may in due course be ordered under section 17(3) to be forfeited to the Crown; and

(c) such sum by way of costs and expenses as the court estimates may in due course be ordered by the court to be paid to the Crown under section 17(6),

or for such lesser aggregate sum as the prosecution agrees to and the court approves.

(4) If, on an application under subsection (1), the court is not satisfied as mentioned in subsection (2), it may order the release of the boat on the execution by one or more suitable persons approved by it of a bond, in the prescribed form (or in such form as it may specially approve) and conditioned in accordance with subsection (5), in an amount corresponding to the aggregate of the sums specified in paragraphs (a), (b) and (c) of subsection (3) or in such lesser amount as the prosecution agrees to and the court may fix having regard to any special circumstances of the case; but the order for release shall not have effect until the bond is executed to the satisfaction of the court.

(5) The condition of a bond executed for the purposes of subsection (4) shall be that if -

(a) at the conclusion of the proceedings, the defendant is not convicted of the offence with which he was charged; or

(b) having been convicted of that offence, he pays in full and within 14 days (or such longer period as the court may, on application by him, allow) the fine imposed on him by the court, the sum specified in subsection (3)(b) (or such lesser sum as the court may allow, having regard to such order for forfeiture as has in fact been made) and the amount of any costs and expenses ordered by the court to be paid to the Crown,

the bond shall then be of no effect, but that it shall otherwise, on the expiry of the said 14 days (or such longer period as aforesaid), be of full effect and enforceable.

(6) Without prejudice to any remedy available for the enforcement of any fine imposed, or any other order made, by the court, the sum for which a bond is executed for the purposes of this section is, when the bond has become enforceable, due to the Crown as a civil debt owed by the person, or owed jointly and severally by the persons, who executed the bond, and is recoverable as such.

(7) In this section references to the release of a boat that has been seized or detained include references to the release of any person on board it and any thing seized with it or on board it at the time when it was seized or detained.

Fisheries
Protection
Officers'
immunity from
process.

15. No civil suit or criminal process shall be brought against any Fisheries Protection officer, or against any person acting under the direction of a Fisheries Protection Officer, in respect of any act performed by him, in good faith and with reasonable cause, in the exercise or purported exercise of his functions under this Ordinance or under any regulations made under section 21.

- Obstruction of Fisheries Protection Officers.
16. Without prejudice to any other provision in that behalf contained in this Ordinance or in any regulations made under section 21, any person who wilfully obstructs a Fisheries Protection Officer, or any person acting under the direction of a Fisheries Protection Officer, in the exercise of his functions under this ordinance or under such regulation or who, without reasonable cause (the onus of proof of which lies on him), refuses or neglects to comply with any order, direction or requirement lawfully given to him or laid on him by a Fisheries Protection Officer, or by any person acting as aforesaid, or to answer any question reasonably put to him by a Fisheries Protection Officer, or by any person acting aforesaid, or who prevents another person from so complying or so answering is guilty of an offence and is liable, on conviction, to a fine of £100,000.
- Offences, penalties, evidence and proceedings, etc.
- 17.- (1) Any person who commits a contravention of any provision of this Ordinance or of any regulations made under section 21 (being a contravention which is not, by any such provision other than this subsection, specifically declared to be an offence) commits an offence under this subsection and is liable, on conviction, to a fine of £100,000.
- (2) Without prejudice to section 319 of the Penal Code, any person who attempts to commit an offence under this Ordinance or under any regulations made under section 21 commits an offence under this subsection and is liable, on conviction, to the same fine as if he had committed the attempted offence.
- (3) Without prejudice to any provision of this Ordinance authorising the imposition of a fine in any such case, where a person is convicted of any offence under this ordinance or under any regulations made under section 21 (being an offence in respect of the use or operation of a fishing boat), the court may, in addition to imposing a fine but subject to subsection (4), order that any fishing or other gear, or instruments or appliances, on board the boat (whether or not used in the commission of the offence), and any fish or fish products on board the boat (whether or not the offence related thereto), shall be forfeited to the Crown; and anything so forfeited shall then be disposed of as the Commissioner may direct.
- (4) A court may not make an order for forfeiture under subsection (3) save on application made by or with the authority of the Principal Legal Adviser.
- (5) Notwithstanding any provision of law limiting the time within which proceedings may be commenced, proceedings for an offence under this Ordinance or under any regulations made under section 21 may be commenced at any time after the commission of that offence.
- (6) Notwithstanding section 194(1) of the Criminal Procedure Code 1986, the Magistrates' Court, on convicting any person of an offence under this Ordinance or under any regulations made under section 21, has jurisdiction to impose on him any fine to which he is liable under this Ordinance or under those regulations for that offence; and notwithstanding section 226(1) of that Code, any court may, in such a case, order that person to pay to the Crown such costs and

expenses incurred by the Crown in preparation for or otherwise in connection with the proceedings as it thinks proper (including the expenses incurred, whether before or after the commencement of the proceedings, in the exercise of any of the powers vested in a Fisheries Protection Officer).

(7) Every Fisheries Protection Officer shall be *ex officio* a public prosecutor in proceedings for offences under this Ordinance or under any regulations made under section 21.

(8) Without prejudice to any liability for an offence under section 7(2) or under section 10, the master of a fishing boat on which there is found fish that has been caught or taken within the fishing waters otherwise than in accordance with a fishing licence or that has been transhipped to the boat within the fishing waters otherwise than in accordance with a transhipment licence is guilty of an offence and is liable, on conviction, to a fine of £200,000; and in any proceedings in any such case, whether for an offence under this subsection or for an offence under section 7(2) or section 10 or under regulations made under section 21, it shall be sufficient for the prosecution to prove that the fish was found on the boat and the onus of proving -

- (a) that the fish was not caught or taken within the fishing waters; or, alternatively,
- (b) that it was caught or taken in accordance with a fishing licence; or, alternatively,
- (c) that it was transhipped to that boat outside the fishing waters or in accordance with a transhipment licence,

shall then lie on the accused.

(9) A certificate signed by the Director or by any person authorised by him to sign such a certificate -

- (a) as to whether or not, at any material time specified in the certificate, a fishing boat so specified was licensed under this Ordinance; or
- (b) as to the nature of any such licence; or
- (c) as to any limitations imposed on, or conditions attached to, any such licence;
- (d) as to who was the person to whom any such licence was granted,

shall, if tendered in evidence in any proceedings under this Ordinance or under any regulations made under section 21, be sufficient evidence of that matter unless the contrary is proved.

(10) Any certificate which purports to be such a certificate as is mentioned in subsection (9) shall, in any such proceeding as aforesaid, be received in evidence as such, without proof of signature

or of authorisation to sign, unless credible evidence to the contrary is adduced; and a facsimile copy of such a certificate shall be received in evidence as if it were the original certificate.

Revocation of
licences of
repeated
offenders.

18.- (1) Where any person has once been convicted of any offence to which this section applies and is, within the period of five years following the date of that conviction, convicted of the like or any other such offence committed after that date, then, subject to subsection (3), any licence which he then holds is thereupon revoked and he shall, for the period of three years following the date of that subsequent conviction, be disqualified from being granted any further licence.

(2) Where a licence is revoked in accordance with subsection (1), no part of any fee that was charged for the licence shall be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(3) If any person whose licence is revoked in accordance with subsection (1) applies to the Director within 30 days of the conviction by virtue of which it is revoked or within such longer period as the Director may allow, the Director, in his discretion and having regard to all the circumstances of the case, may restore the licence, with effect from such date and with such variations and subject to such conditions as he thinks fit, and may remove, or reduce the duration of, or vary in such other respect as he thinks fit, the disqualification imposed by that subsection.

(4) The offences to which this section applies are any offences under this Ordinance (or under any Ordinance repealed by this Ordinance) or under any regulations made (or deemed to be made) under section 21.

Administrative
penalties for
minor offences

19.- (1) Where the Commissioner believes that an offence under this Ordinance (other than an offence under section 7(2)) or under any regulations made under section 21 has been committed by any person in connection with a fishing boat and he considers -

(a) that the offence is a minor offence; and

(b) that, having regard to the previous conduct of that person and the way in which the operations of the boat have previously been conducted, it would be appropriate to impose a penalty under this section instead of instituting proceeding before a court for that offence,

then, unless proceedings for that offence have already been instituted against that person, he may cause a notice in writing, in accordance with subsection (2) and in the prescribed form, to be served on that person.

(2) A notice under subsection (1) shall specify -

(a) the date and nature of the alleged offence;

(b) a summary of the facts on which the allegation is based (being a sufficiently full and fair summary to inform the recipient of the notice of the allegation against him); and

(c) any other matters (other than previous convictions) which the Commissioner considers relevant to the imposition of a penalty,

and a copy of the provisions of this section shall be attached to the notice.

(3) Any person on whom a notice under subsection (1) has been served may, within 28 days thereafter, serve a notice in writing and in the prescribed form on the Commissioner, requiring that any proceedings in respect of the alleged offence shall be dealt with by a court; and, when a notice under this subsection has been so served, no further proceedings may be taken under this section but nothing that has previously been done under this section shall prevent the institution of, or in any way affect, any proceedings before a court for the alleged offence or for any other offence.

(4) Any person on whom a notice under subsection (1) has been served who does not require that any proceeding in respect of the alleged offence shall be dealt with by a court may, within 28 days of that notice, serve a notice, in writing and in the prescribed form, on the Commissioner -

(a) admitting the offence; and

(b) making such submissions to the Commissioner as he wishes concerning any matters which he asks the Commissioner to take into account in imposing a penalty under this section.

(5) If a person on whom a notice under subsection (1) has been served does not, within 28 days thereafter, serve on the Commissioner either a notice under subsection (3) or a notice under subsection (4), he shall be deemed to have admitted the offence.

(6) Where a person has, under subsection (3), admitted the offence or is deemed, under subsection (4), to have admitted it, the Commissioner may, after taking into account any submissions made under subsection (4), impose a monetary penalty on that person, not greater than one-third of the maximum fine to which he would be liable if convicted of that offence by a court.

(7) The admission, or deemed admission, of an offence, and the imposition of a penalty, under this section shall not be regarded for any purpose as a conviction for an offence.

(8) Where the Commissioner imposes a penalty under this section on a person, he shall cause a notice in writing and in the prescribed form to be served on that person, giving the particulars of the penalty.

(9) A person on whom a notice has been served under subsection (8) shall, within 28 days thereafter, pay the penalty thereby notified, failing which it may be enforced in like manner as a fine imposed by a court for an offence.

(10) Where an offence is admitted, or deemed to be admitted, under this section by any person, no proceedings for that offence may be instituted against him before any court.

Non-payment of fines, etc:
detention and forfeiture of boat.

20.- (1) When any fine is imposed on the master, the owner or the charterer of a fishing boat for an offence under this Ordinance or under any regulations made under section 21, or where any sum is ordered by a court to be paid by him to the Crown by way of costs or expenses incurred in connection with the proceedings for that offence, then, if no security therefor has been given, or bond for the payment thereof has been executed, under section 14, or if the court considers that any such security or bond is inadequate to secure the payment of the sums due from him in consequence of his conviction (including the value of anything ordered to be forfeited to the Crown that is not already being detained under this Ordinance), it may order that, in default of payment forthwith of all such sums, he shall give security (or additional security) therefor to the satisfaction of the court; and, subject to subsection (2), his fishing boat may then be detained (or continue to be detained) in such place within the Territory as the court may order until all such sums are paid (and anything ordered to be forfeited but not already detained has been surrendered to the court) or until security is given as aforesaid.

(2) If any such fine as is referred to in subsection (1) or any such sum by way of costs and expenses as is there referred to remains unpaid for more than 30 days (or such longer period as the court may allow) after it was imposed or was ordered to be paid, the court may, subject to subsection (3), order that the fishing boat concerned shall be forfeited to the Crown; and it shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) An order for the forfeiture of a fishing boat under this section may extend to such of its fishing and other gear, its instruments and appliances, its stores and cargo and any fish and fish products on board it as the court may direct.

Regulations.

21.- (1) The Commissioner may make such regulations as he considers necessary for the purposes of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made by the Commissioner may provide for or may authorise the Director to provide for or to determine -

(a) anything which is to be, or which may be, prescribed under this Ordinance;

- (b) the forms to be used for the purposes of this Ordinance;
 - (c) all questions relating to the procedures for applying for licences;
 - (d) all questions relating to the procedures for granting licences;
 - (e) the conditions subject to which licences are to be, or may be, granted;
 - (f) the fees to be charged for licences and the method of computing such fees;
 - (g) the equipment to be carried on board fishing boats;
 - (h) the reports and notifications to be made, and the records and logs to be kept, in respect of fishing boats or in respect of fishing or otherwise for the purposes of this ordinance or for the purposes of any regulations made under this section (and the procedures relating thereto);
 - (i) the designation, by applicants for licences or by licensees, of authorised agents, and the authority to be attributed to, and the obligations and liabilities to be assumed by or imposed on, such agents;
 - (j) the place or places where persons who are to be designated as authorised agents may reside or have their place of business;
 - (k) the execution, by applicants for licences or by licensees or by other persons, of bonds (or the provision by them of other forms of security) for securing compliance with obligations arising under a licence or otherwise arising under the provisions of this Ordinance or of any regulations made under this section;
 - (l) the placing on board fishing boats of Fisheries Protection Officers or of observers, and the facilities and conditions to be accorded to them while on board;
 - (m) the conferment on Fisheries Protection Officers, or persons acting under their direction, of such powers, additional or supplementary to those conferred by this Ordinance, as the Commissioner considers necessary or expedient for the regulation of fishing boats or of fishing or otherwise for the purposes of this Ordinance or for the purposes of any regulations made under this section.
- (3) Regulations made under this section may make different provision for (and the Director, in exercising an authority conferred by such regulations to make provision for any matter or to determine any matter, may make different provision for or a different determination in respect of) different parts of the fishing waters or

different boats or boats of different descriptions (including descriptions which differ by reference to the countries in which the boats are registered) or different licences or different descriptions of licences.

(4) Regulations made under this section may provide that the contravention of any provision thereof shall constitute an offence, and may prescribe, as the penalty for any such offence, a fine not exceeding £100,000.

Saving for laws regulating access to Territory, etc. 22.- For the avoidance of doubt, nothing in this Ordinance shall be construed as in any way derogating from the provisions of the Immigration Ordinance 1971 or the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997.

Repeal and savings. 23.- (1) The Fisheries (Conservation and Management) Ordinance 1991 ("the 1991 Ordinance") and the Fisheries (Conservation and Management) (Extension of Enforcement Powers) Ordinance 1997 are repealed.

(2) Without prejudice to section 21(1) or section 22(2) of the Interpretation and General Provisions Ordinance 1993, the repeal of the 1991 Ordinance does not affect -

(a) the continuing operation, according to its tenor, of any licence granted or other instrument made under or for the purposes of that ordinance; or, in particular,

(b) the continuing operation of the Fishing Regulations 1993;

and any such instrument (including the said Regulations) shall thereafter be deemed to have been granted or made under the relevant enabling provision of this Ordinance or, as the case may require, for the purposes of this Ordinance, and any reference therein to a particular provision of the 1991 Ordinance shall thereafter be construed as if it were a reference to the corresponding provision of this Ordinance.

(3) Notwithstanding subsection (1) and without prejudice to subsection 21(1) of the Interpretation and General Provisions Ordinance 1993, proceedings may be instituted after the commencement of this Ordinance for an offence alleged to have been committed before that commencement under any provision repealed by subsection (1), and any such proceedings shall be dealt with for all purposes as if this ordinance had not been enacted and the repealed provision remained in force; and any proceedings that were instituted before the commencement of this ordinance by virtue of any provision repealed by subsection (1) may be continued thereafter and may likewise be dealt with for all purposes as if this Ordinance had not been enacted and the repealed provision remained in force.

THE BRITISH INDIAN OCEAN TERRITORY.

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2007

Came into force 1.1.2008

Ordinance No. 5 of 2007.

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

Arrangement of sections.

Section		Page.
1.	Short title and commencement.	2.
2.	Interpretation.	2.
3.	The fishing waters of the Territory.	4.
4.	Director of Fisheries and Fisheries Protection Officers.	4.
5.	Prohibited fishing and fishing methods.	5.
6.	Possession of prohibited fishing gear.	6.
7.	Fishing Licences.	6.
8.	Notification of fish on board fishing boats.	8.
9.	Stowage of gear.	9.
10.	Transhipment.	9.
11.	Exercise of Director's powers.	10.
12.	General enforcement powers of Fisheries Protection Officers.	11.
13.	Disposal of detained or seized boats, etc.	13.
14.	Security for release of seized or detained boat, etc.	14.
15.	Fisheries Protection Officers' immunity from process.	15.
16.	Obstruction of Fisheries Protection Officers.	16.
17.	Offences, penalties, evidence and proceedings, etc.	16.
18.	Revocation of licences of repeated offenders.	18.
19.	Fixed penalty notices and procedure.	18.
20.	Non-payment of fines, etc: detention and forfeiture of boat.	20.
21.	Regulations.	20.
22.	Saving for laws regulating access to Territory, etc.	22.
23.	Repeal and savings.	22.

Enacted by the Commissioner for the British Indian Ocean Territory

21 December 2007

(signed) Leigh Turner
Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 5 of 2007

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

Short title and commencement.

1. This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 2007 and shall come into operation on such date as the Commissioner may appoint by notice which shall be published in the *Gazette*.

Interpretation.

2. (1) In this Ordinance, unless the contrary intention appears -

"the Director" means the Director of Fisheries appointed under section 4(1);

"fish" means any marine animal (other than a bird but including shellfish), irrespective of whether it is fresh or cured, and any marine plant; and references to fish include references to any part of a fish;

"a Fisheries Protection Officer" means any person declared by section 4(5) to be such an Officer and includes the Director;

"fishing" means -

- (a) the catching or taking of fish;
- (b) any activity which can reasonably be expected to result in the catching or taking of fish;
or
- (c) any operation at sea in support of or in preparation for any activity mentioned in paragraph (a) or paragraph (b),

and, for the avoidance of doubt, includes exploring or prospecting for the presence of fish and the collecting or taking by any means of sea cucumbers (all species of Holothuria) or molluscs;

"fishing boat" has the meaning assigned to that term in subsection (2);

"a fishing licence" means a licence granted under section 7;

"the fishing waters" means the fishing waters of the Territory, as defined in section 3;

"the Fisheries Conservation and Management Zone" means the zone of that name which was established by the Proclamation made by the Commissioner on 1 October 1991 (Proclamation No.1 of 1991) and

whose extent is defined in that Proclamation (as it may be amended from time to time by further such Proclamation);

"the internal waters of the Territory" means the sea-waters on the landward side of the baselines from which the territorial sea of the Territory is measured;

"a licence" means a fishing licence or a transhipment licence;

"the master", in relation to a fishing boat, includes any person for the time being in command or in charge of the boat and any person in charge of fishing operations on board the boat;

"prescribed" means prescribed by or under regulations made under section 21;

"shark" means all species of shark (elasmobranchii taxon)

"shellfish" includes crustaceans and molluscs of any kind, any (or any part of any) brood, ware, half-ware or spat of shellfish, any spawn of shellfish and the shell (or any part of the shell) of any shellfish;

"a transhipment licence" means a licence granted under section 10 and includes a fishing licence operating as a transhipment licence by virtue of section 10(4); and

"transhipment", in relation to fish, means the passing of the fish from one boat to another, whether or not it was first caught or taken by the boat from which it is passed.

(2) (a) In this ordinance, unless the contrary intention appears, the term "fishing boat" means, subject to paragraphs (b) and (c), any vessel of whatever size and in whatever way propelled which is for the time being employed in fishing or in the processing, storage or transport of fish or in any operations (including the transhipment of fish) ancillary to any of the foregoing; and, for the avoidance of doubt but subject as aforesaid, the term includes any vessel, of whatever size and in whatever way propelled, which is for the time being operating as an independent support vessel in support of one or more other vessels that are themselves engaged in fishing.

(b) The term "fishing boat" does not, in this Ordinance, include a vessel (such as, but not limited to, a net tender) whose principal use is in support of, and is integral to, the fishing operations of a larger vessel (being itself a fishing boat) and which, when not being so used, is normally stored on board that larger vessel as part of its fishing gear; but the term does include any vessel, whether or not normally stowed as aforesaid, which is itself employed in the catching or taking of fish.

(c) For the purposes of section 7(11), the term "fishing boat" has the meaning provided in that subsection.

(3) Unless the contrary intention appears, any provision of this ordinance, or of any regulations made under section 21, that confers

powers on a Fisheries Protection Officer or on a person acting under his direction in relation to a fishing boat that is within the fishing waters, or in relation to a person or thing connected therewith, shall be construed as conferring those powers also in relation to a fishing boat that is outside the fishing waters, or in relation to a person or thing connected therewith, in any circumstances in which, in international law, those powers may properly be exercised as an incident of the right of hot pursuit for an offence or suspected offence against any provision of this ordinance or any such regulations.

The fishing waters of the Territory.

3. The fishing waters of the Territory comprise -

- (a) the internal waters of the Territory;
- (b) the territorial sea of the Territory; and
- (c) the Fisheries Conservation and Management Zone.

Director of Fisheries and Fisheries Protection Officers.

4. (1) There shall be a Director of Fisheries for the Territory who shall be appointed by the Commissioner.

(2) The Director has charge of the administration of this Ordinance and of any regulations made under section 21 and, in particular and without prejudice to the generality of the foregoing, is responsible for -

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of data (including statistics) and other information relevant thereto;
- (c) the development and management of fisheries;
- (d) the monitoring, surveillance and control of fishing and of operations ancillary to fishing;
- (e) the regulation of the conduct of fishing and of operations ancillary to fishing;
- (f) the grant, suspension, revocation and variation of licences under this Ordinance;
- (g) the collection of fees for licences; and
- (h) the making of such reports to the Commissioner as he may require.

(3) This Ordinance and any regulations made under section 21 shall be enforced by Fisheries Protection Officers who, for the purposes of their functions, have the powers conferred on them by this Ordinance and by or under any regulations made under section 21.

(4) In the exercise of their function Fisheries Protection Officers shall be subject to the direction of the Director:

Provided that in acting as a public prosecutor in relation to any proceeding arising under this Ordinance or under any regulations made under section 21 a Fisheries Protection Officer shall be subject to the direction of the Principal Legal Adviser.

(5) The following persons shall be Fisheries Protection Officers:

- (a) every person appointed as such by Commissioner;
- (b) every Peace Officer;
- (c) every person for the time being appointed to be an Imports and Exports Control Officer for the purposes of the Imports and Exports Control Ordinance 1984;
- (d) all commissioned officers of Her Majesty's ships; and
- (e) any person for the time being in command or in charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

Prohibited fishing and fishing methods.

5. (1) Any person who within the fishing waters or within the Territory-

- (a) uses or permits to be used any explosive, poison or other noxious substance for the purpose of killing, stunning or disabling fish with a view to its being caught or taken or to rendering it more easily caught or taken; or
- (b) carries or has in his possession or control any explosive, poison or other noxious substance which is intended for any of the purposes mentioned in paragraph (a); or
- (c) collects, takes by any means, or has in his possession any sea cucumber (which expression includes all species of *Holothuria*) or mollusc;

is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat, the owner, master and charterer of the boat is each guilty of an offence.

(2) Any explosive, poison or other noxious substance which is found on board any fishing boat in the fishing waters shall be presumed, unless the contrary is proved, to be intended for a purpose mentioned in subsection (1)(a).

(3) Any person who lands, transhipps, sells, buys, receives or is found in possession of fish which has been caught or taken by the use of an explosive, poison or other noxious substance in contravention of subsection (1)(a) and who, at the time when he did so or was so found, knew or had reasonable cause to believe it to have been so caught or taken is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat or by any

member of the crew of a fishing boat, the master, the owner and the charterer of the boat is each guilty of an offence.

(4) In any proceedings for an offence under subsection (3) a certificate signed by a Fisheries Protection Officer stating the cause or manner of the death of, or of any injury suffered by, any fish shall be accepted as *prima facie* evidence of that matter, and any certificate purporting to be so signed shall be received in evidence as such unless credible evidence to the contrary is adduced.

(5) A person who is convicted of an offence under this section is liable to imprisonment for 6 months, or a fine of £50,000 or to both such imprisonment and fine.

Possession of prohibited fishing gear. 6. (1)(a) Any person who uses any prohibited fishing gear for fishing within the fishing waters is guilty of an offence.

(b) Any person who is found in possession other than on a fishing boat of any prohibited fishing gear, whether or not with the intention to use it within the fishing waters, is guilty of an offence.

(2) The master, the owner and the charterer of any fishing boat on which there is found, within the fishing waters, any prohibited fishing gear is each guilty of an offence.

(3) In this section "prohibited fishing gear" means -

(a) any net whose mesh size is smaller than the prescribed minimum size for nets of that type;

(b) any other type of fishing gear which does not conform to the standards prescribed for that type of gear;

(c) any fishing gear which is prohibited by regulations made under section 21.

(d) any net which, for the purpose of fishing, is set or operated otherwise than by a fishing boat unless it is so set or operated in accordance with a permit issued by the Commissioner's Representative or a Fisheries Protection Officer;

(e) any trap, including (without prejudice to the generality of that term) any pot, barrier or fence;

(f) any gear for grappling or wounding, including (without prejudice to the generality of those terms) any harpoon, spear or arrow;

(g) in relation to fishing otherwise than by a fishing boat, any line unless the use of that line satisfies the conditions specified (in relation to fishing by a fishing boat) in paragraphs (a) to (d) of section 7(10);

(h) any diving equipment or underwater swimming equipment unless the person in possession of that equipment has a permit to use it issued by the Commissioner; and

(i) any wire trace line.

(4) A permit issued for the purposes of sub-sections (3)(d) or (h) may be unconditional or may be made subject to such conditions as the Commissioner or the officer issuing it thinks fit.

(5) The Director of Fisheries may impose, or authorise the imposition of, fees for the issue of permits for the purpose of subsection (3)(d) and, without prejudice to the generality of section 43 of the Interpretation and General Provisions Ordinance 1993, different fees may be imposed for different permits or for different categories of permits.

(6) Sub-section (3)(d) does not apply to the use of nets for fishing under arrangements, approved for the purposes of this paragraph, made by the Morale, Welfare and Recreation organisation of the United States Forces ("MWR") and if all of the following conditions are satisfied: -

- (a) the nets used are hand-held cast nets;
- (b) they are used only for fishing for bait fish; and
- (c) they are used only in the waters of Diego Garcia and its environs and are not used in areas of actively growing coral.

(7) Arrangements made by MWR are approved for the purposes of sub-section (6) if they provide, to the satisfaction of the Director of Fisheries, for MWR to collect, and to make available to any Fisheries Protection officer on request and to the Director at such intervals as may from time to time be notified to MWR by or on behalf of the Director, accurate data (in such form as may be so notified to MWR) giving the following information: -

- (a) the total catch, in weight, of the major species of fish caught on each occasion when nets are used as specified in sub-section (6);
- (b) the number of nets so used on each such occasion; and
- (c) the locations in which nets are so used on each such occasion.

(8) Where, in any proceedings for an offence under sub-section (2), it is proved that prohibited fishing gear was found on a fishing boat within the fishing waters, the onus of proof that no person had used or intended to use that gear for fishing within the fishing waters shall lie on the accused person.

(9) (a) A person who is convicted of an offence under sub-sections 1(a) or 2 is liable to a fine of £50,000.

(b) A person who is convicted of an offence under sub-sections 1(b) is liable to a fine of £5,000.

Fishing
Licences.
7. (1) Fishing within the fishing waters is prohibited unless carried out in accordance with a licence (a "fishing licence") granted by the Director under this section.

(2)(i) Where sub-section (1) is contravened by fishing by a fishing boat, the master, the owner and charterer of the boat is each guilty of an offence and is liable, on conviction, to a fine of £500,000.

(ii) Where sub-section (1) is contravened by a person fishing other than by a fishing boat such person shall be liable upon conviction to a fine of £5,000.

(3) (i) Every fishing licence for fishing by a fishing boat shall be granted in respect of a single fishing boat specified in it and may be granted to the master, the owner or the charterer of the boat.

(ii) Every fishing licence for fishing other than by a fishing boat shall be granted in respect of the person specified in it.

(iii) No fishing licence may permit fishing for marine mammals.

(4) The authority to fish in the fishing waters that is conferred by a fishing licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to)-

(a) the area within which fishing is authorised;

(b) the period, times or particular voyages during which fishing is authorised;

(c) the descriptions, quantities, sizes and presentation of the fish that may be caught or taken or, conversely, that may not be caught or taken, whether as by-catch or otherwise; and

(d) the method of fishing and the type or construction of the fishing gear to be used.

(5) Within any limitation imposed under subsection (4) and subject to any regulations made under section 21, a fishing licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to -

(a) the landing of any fish caught or taken;

(b) the use to which any fish caught or taken may be put;

(c) the marking of the licensed fishing boat in accordance with accepted international practice, or as directed by a Fisheries Protection Officer, including the display of its assigned international radio call sign;

(d) the installation on the licensed fishing boat of any equipment specified in the condition, including equipment for monitoring the position or operation of the boat;

(e) the records of fishing operations to be kept on board the licensed fishing boat;

(f) the records of fish caught to be kept and maintained by a person licensed to fish other than by a fishing boat.

(6) (i) Where a condition to which a fishing licence is subject is contravened in respect of fishing by a fishing boat, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £200,000.

(ii) Where a condition to which a fishing licence is subject is contravened by a person fishing otherwise than by a fishing boat such person shall be liable upon conviction, to a fine of £5,000.

(7) Fees may be charged for fishing licences in accordance with regulations made under section 21.

(8) The master, the owner or the charterer of a fishing boat in respect of which he intends to apply for a fishing licence and each person applying for a licence to fish other than by a fishing boat shall, before so applying, supply to the Director such information as the Director may require or as may be prescribed by or under regulations made under section 21; and a person who, for the purpose of obtaining a fishing licence or in purported compliance with any such requirement or prescription, supplies information which he knows to be false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(9) The Director may at any time suspend or revoke a fishing licence or vary it in any respect; but no part of any fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(10) Subsection (1) does not apply to fishing, by persons who are lawfully present in the Territory, including but not limited to United States personnel and United Kingdom personnel lawfully present in Diego Garcia, if the following conditions are satisfied: -

(a) the fishing is, or is to be, for a reasonable amount for personal consumption within 3 days by the person fishing, and not for sale, barter or other profit;

(b) the fishing is, or is to be, carried out by an attended line (whether or not with a rod);

(c) there is, or there is to be, at any one time no more than two such lines in use under the control of any one person, each line having no more than three hooks attached to it (or such other lesser number of hooks as may, for that occasion, have been specified to that person by a Fisheries Protection Officer);

(d) the fishing is not, or is not to be, carried out in any area of the Territory which is specified, by a notice signed by the Commissioner and published in the Gazette, to be an excepted area for the purposes of this subsection; and

(e) any shark or other large game fish caught while fishing is released live into the fishing waters, save that "game fish" for these purposes does not include species of Tuna and Wahu whenever such fish are intended for the personal consumption of the person fishing and result from fishing in accordance with the other provisions of section 7(10).

(11)(a) The exception to subsection (1) that is provided by subsection (10) does not apply to any fishing carried out by a fishing boat (other than one based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat); and any boat that is being used in such circumstances is deemed to be a fishing boat for the purposes of that subsection.

(b) No fish caught by fishing in accordance with the provisions of subsection 10 may be frozen, and the burden of proving that frozen fish was not caught within the fishing waters of the Territory or was caught from a licensed fishing boat shall lie on the person in possession of such frozen fish.

(12) (a) Subsection (1) does not apply to fishing, by persons who are lawfully present in the Territory, if such fishing is part of a fishing tournament, the limitations and conditions for which have been arranged or approved in writing by the Commissioner's Representative not less than seven days before the tournament.

(b) No such tournament may last more than one day.

(13) The foregoing provisions of this section are without prejudice to -

(a) any prohibition, restriction, condition or requirement imposed by or under a regulation made under section 21; and

(b) any other law for the time being in force in the Territory with respect to the protection and preservation of wildlife or with respect to the conservation of the natural resources of the Territory or with respect to the regulation of activities within the waters of the Territory or with respect to visitors and visiting vessels.

Notification of
fish on board
fishing boats.

8. (1) The master of a fishing boat that has fish on board shall -

(a) before the boat enters the fishing waters; and

(b) before the boat leaves an area of the fishing waters in which it is licensed to fish,

notify a Fisheries Protection Officer of the quantities, sizes, descriptions and presentation of the fish on board.

(2) A master who, without reasonable excuse, contravenes subsection (1) or who, in pursuance of that subsection, gives a notification which he knows to be false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(3) The giving of a notification under this section is not a defence to a prosecution for an offence under section 17(8).

Stowage of gear. 9. (1) At any time when a fishing boat is in any area of the fishing waters and either -

(a) it is not authorised by a fishing licence to fish in that area; or

(b) it is so authorised to fish only for certain descriptions of fish in that area,

its fishing gear, or so much of it as is not required for the fishing which it is authorised to carry out, shall be stowed in such manner as is prescribed or, if no manner is prescribed, in such manner that it is not readily available for use for fishing.

(2) If subsection (1) is contravened, the master of the fishing boat in question is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Transhipment. 10. (1) The transhipment of fish from a fishing boat within the fishing waters or the transport from the territorial sea of the Territory or the internal waters of the Territory by any fishing boat of fish transhipped from another fishing boat is prohibited unless it is carried out in accordance with a licence (a "transhipment licence") granted by the Director under this section in respect of every fishing boat concerned.

(2) Where subsection (1) is contravened, the master, the owner and the charterer of each boat which took part in the contravention is each guilty of an offence and is liable, on conviction, to a fine of £500,000.

(3) Every transhipment licence shall be granted in respect of a single fishing boat specified in it and may be granted to the owner or the charterer of the boat.

(4) If (but only if) it purports to do so, a fishing licence may also operate as a transhipment licence and may accordingly include, in addition to conditions or other provisions relating to fishing by the fishing boat specified in it, such conditions or other provisions relating to the transhipment or transport of fish as are authorised by this section.

(5) The authority to carry out the transhipment or transport of fish that is conferred by a transhipment licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to) -

(a) the area within which fish may be transhipped;

(b) the periods or times within which fish may be transhipped or may be transported by a fishing boat authorised by the licence to do so;

(c) the descriptions and quantities of fish that may be transported by a fishing boat authorised by the licence to do so; and

(d) the number of times that fish may be transported by a fishing boat authorised by the licence to do so.

(6) Within any limitation imposed under subsection (5) and subject to any regulations made under section 21, a transhipment licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to the treatment of transhipped fish on board the fishing boat to which it has been passed.

(7) Where a condition to which a transhipment licence is subject is contravened, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £100,000.

(8) Fees may be charged for transhipment licences in accordance with regulations made under section 21.

(9) The Director may require the master, the owner or the charterer of a fishing boat in respect of which a transhipment licence has been granted, or any person who is for the time being designated to the Director, under regulations made under section 21, as the agent of the owner or charterer in respect of that boat, to provide him with such information, relevant to the licence or to the operation of the boat, as he may direct; and any person to whom such a requirement is addressed who fails without reasonable excuse to comply with it is guilty of an offence and is liable, on conviction, to a fine of £20,000.

(10) Any person who, for the purpose of obtaining a transhipment licence or in purported compliance with a requirement under subsection (9), provides information which he knows is false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(11) The Director may at any time suspend or revoke a transhipment licence or vary it in any respect; but no part of the fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

Exercise of
Director's
powers.

11. (1) The powers vested in the Director by this Ordinance or by or under regulations made under section 21 may, subject to any such regulations and subject to subsection (3), be exercised by him in his absolute discretion to such extent, in such manner and in such cases as he considers necessary or expedient for the regulation of fishing or of the transhipment of fish, for the conservation or management of

fisheries or for the economic benefit of the Territory.

(2) Without prejudice to the generality of subsection (1) but subject as provided in that subsection, the Director may, in exercising his powers as aforesaid, make different provision or impose different requirements (including provision or requirements as to fees) for different boats or boats of different descriptions and may impose different limitations on or attach different conditions to licences granted in respect of different boats or boats of different description, and he may in particular exercise his powers as aforesaid for the purpose of limiting the number of boats, or boats of any particular description, that may engage in fishing, transhipping fish or transporting fish within the fishing waters; and the references in this subsection to the description of a boat include references to the country in which is registered.

(3) In the exercise of his powers and duties under this Ordinance or under any regulations made under section 21, the Director shall be subject to the direction of the Commissioner, who, in giving him any such direction, shall enjoy the same discretion as is vested by this section in the Director:

Provided that in acting as a public prosecutor in relation to any proceedings arising under this Ordinance or under any regulations made under section 21 the Director shall be subject to the direction of the Principal Legal Adviser.

(4) The exercise of the Director's power to grant licences shall be sufficiently signified if signified under the hand of a person authorised by the Director in writing to signify on his behalf.

General enforcement powers of Fisheries Protection Officers.

12. (1) For the purpose of enforcing the provisions of this Ordinance and of any regulations made under section 21, a Fisheries Protection Officer and any person acting under his direction may exercise the following powers with respect to any person whom he believes to have committed an offence in contravention of any provision of this Ordinance, and with respect to any fishing boat within the fishing waters or with respect to any boat within the fishing waters which he believes to be, or to have been, employed as a fishing boat within those waters: -

- (a) he may stop the boat;
- (b) he may require such person, or in respect of a boat the master of the fishing boat to cease fishing and take back on board the boat's fishing gear;
- (c) he may require such a master to facilitate the boarding of the boat by all appropriate means;
- (d) he may go on board the boat and take with him such other persons as he may require to assist him in the exercise of his powers;
- (e) he may require any person (including the master or any member of the crew of a boat) to produce, and he may

examine and take copies of, any document relating to the person, the boat or to any person that is in that person's possession or control, including (without prejudice to the generality of the foregoing) any certificate of registry, licence, official logbook, official paper, article of agreement, passport, or record of fish caught or taken;

(f) he may muster the crew of the boat;

(g) he may require the master of the boat to appear and give an explanation of any matter that he may put to the master concerning the boat or concerning any such person or any such document as is mentioned in paragraph (e);

(h) he may make any search, examination or enquiry which he considers necessary to establish whether there has been an contravention of any provision of this Ordinance or of any regulations made under section 21;

(i) he may take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint for the purpose of enabling any such search, examination or enquiry to be carried out;

(j) where he suspects any person or master or member of the crew of a fishing boat of having committed an offence under this Ordinance or under any regulations made under section 21, he may, without warrant, summons or other process, take the suspected offender and take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint, and he shall then bring the suspected offender before a competent court; and, subject to section 13 and to any order made by the court, he may cause the suspected offender, the master, the crew and any other such person as aforesaid, and also the boat, to be detained in the Territory until the suspected offence has been adjudicated upon;

(k) in the case of a boat which, in the exercise of his powers under this Ordinance or under any regulations made under section 21, he has taken or caused to be taken to any place in the Territory or has caused to be detained in the Territory or has seized, he may take such steps as he considers necessary, while having regard to the safety of the boat, to immobilise it for the purpose of preventing it from departing from that place before the completion of the search, examination or enquiry for which it was taken there or, as the case may be, before it is released from detention or seizure under the provisions of this Ordinance or by order of a court;

(l) in any case where he suspects that an offence under section 6(1), 6(2), 7(2), section 7(6), section 10(2) or section 10(7) has been committed, he may -

(i) seize any fishing gear,equipment or boat which he believes to have been involved in the commission of that

offence;

(ii) seize the equipment and fishing and other gear of any such person or boat, and also any instruments, appliances, stores and cargo;

(iii) seize any fish which he believes to have been caught or taken or transhipped or transported in the commission of that offence or any fish products produced from any such fish; and

(iv) seize, or take copies of, any documents which he believes to be relevant to that offence.

(2) In relation to any action which, under paragraph (i) or paragraph (j) of subsection (1), a Fisheries Protection Officer may take, or may require to be taken, in respect of a fishing boat, the references in that paragraph to the boat include references to its fishing or other gear, to its instruments and appliances, to its stores and cargo and to any fish or fish products on board it.

(3) In exercising the powers conferred on him by subsection (1), a Fisheries Protection Officer or any person acting under his direction may use such force as is reasonably necessary.

(4) The powers conferred by this section may be exercised irrespective of whether any person or fishing boat in respect of which, or in respect of whose operations or suspected operations, they fall to be exercised is, at the time when they fall to be exercised, engaged in fishing or in operations ancillary to fishing.

(5) Upon any person, including, but not limited to the master or a member of the crew of a fishing boat, refusing or failing to comply with any order or direction given by a Fisheries Protection Officer in the exercise of his powers under this or any other section of this Ordinance or obstructing such an officer in relation to the exercise of his said powers, and upon such officer reporting such refusal, failure or obstruction to the Director, any licence held by such person, or held by some other person in respect of the fishing boat of which such person is master or a member of the crew shall forthwith be revoked, and the holder of such licence shall not be entitled to any refund of fees paid in respect of such a revoked licence.

Disposal of
detained or
seized boats,
etc.

13. (1) Where, in exercise of a power conferred by section 12 or by any regulation made under section 21 or in pursuance of a requirement imposed in the exercise of such a power, a boat is seized or is taken to a place within the Territory and there detained, then, if no proceedings for an offence under this ordinance or under such regulations, being an offence alleged to have been committed in connection with that boat, have been instituted within 14 days after the boat is brought to Diego Garcia following the seizure or, as the case may be, within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer or the agent of the owner or the charterer so demands, the boat, together with any person on board it and any thing seized with it or on board it at the time when it was seized or was so taken, shall be released.

(2) Where any thing is seized under section 12(1)(l)(ii), (iii) or (iv) and the boat concerned (that is to say, the boat from which it was seized or to which the court is satisfied that it belongs) is not itself either seized under section 12(1)(l)(i) or taken by a Fisheries Protection Officer or a person acting under his direction to a place within the Territory under section 12(1)(j), then, unless the master of that boat has, within the specified period, taken his boat to the appointed place within the Territory in pursuance of a requirement laid on him under section 12(1)(j) or, if he is not subject to such a requirement, unless he has, within the specified period, otherwise taken it to Diego Garcia or such other place within the Territory as a Fisheries Protection Officer or a person acting as aforesaid may appoint and has there reported its arrival to a Fisheries Protection Officer, the thing seized may, subject to the following provisions of this section, be ordered by a court to be forfeited to the Crown and shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) Where any thing has been seized in the circumstances referred to in subsection (2) and, within the specified period, the fishing boat concerned has been taken to a place within the Territory as specified in that subsection, then, if no proceedings in respect of the suspected offence in connection with which the seizure was made have been instituted within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer of the boat or the agent of the owner or the charterer so demands, the thing shall be released.

(5) In this section "the specified period" means the period of 14 days after the seizure of the thing in question or such longer period as a court may allow in any particular case.

(6) Notwithstanding any other provision of this Ordinance, where any perishable goods (that is to say, fish or fish products or other goods which are subject to decay unless kept in storage facilities specially designed or adapted for that purpose) have been seized under any provision of this Ordinance and -

(a) before the elapse of any period after which, under any provision of this Ordinance, those goods must, on demand, be released; or

(b) before any such demand is made; or

(c) before the conclusion of any proceedings pending which those goods are being held,

a court is satisfied that, because of the deteriorating condition of the goods, it is no longer practicable to keep them, the court may order them to be destroyed or otherwise disposed of; and no compensation therefor shall be payable to the owner of the goods or to any other person claiming an interest in them.

Security for
release of
seized or
detained boat,
etc.

14. (1) Where a fishing boat is seized or detained under this Ordinance or under any regulations made under section 21 in connection with a suspected offence under this Ordinance or under any such regulations and proceedings for that offence are instituted against the master, the owner or the charterer of the boat or the agent of the owner or the charterer, the master, the owner or the charterer may, at any time before the conclusion of those proceedings, apply to the court which is, or will be, seised of the proceedings for the release of the boat on the provision of security in accordance with this section.

(2) If, on an application under subsection (1), the court is satisfied that adequate security has been given to the Crown as specified in subsection (3), it may order the release of the boat.

(3) The security which is to be given to the Crown for the purposes of subsection (2) is security for the aggregate of -

(a) the maximum fine that may be imposed on the defendant for the offence with which he is charged;

(b) a sum representing the value (as estimated by the court) of anything that may in due course be ordered under section 17(3) to be forfeited to the Crown; and

(c) such sum by way of costs and expenses as the court estimates may in due course be ordered by the court to be paid to the Crown under section 17(6),

or for such lesser aggregate sum as the prosecution agrees to and the court approves.

(4) If, on an application under subsection (1), the court is not satisfied as mentioned in subsection (2), it may order the release of the boat on the execution by one or more suitable persons approved by it of a bond, in the prescribed form (or in such form as it may specially approve) and conditioned in accordance with subsection (5), in an amount corresponding to the aggregate of the sums specified in paragraphs (a), (b) and (c) of subsection (3) or in such lesser amount as the prosecution agrees to and the court may fix having regard to any special circumstances of the case; but the order for release shall not have effect until the bond is executed to the satisfaction of the court.

(5) The condition of a bond executed for the purposes of subsection (4) shall be that if -

(a) at the conclusion of the proceedings, the defendant is not convicted of the offence with which he was charged; or

(b) having been convicted of that offence, he pays in full and within 14 days (or such longer period as the court may, on application by him, allow) the fine imposed on him by the court, the sum specified in subsection (3)(b) (or such lesser sum as the court may allow, having regard to such order for

forfeiture as has in fact been made) and the amount of any costs and expenses ordered by the court to be paid to the Crown,

the bond shall then be of no effect, but that it shall otherwise, on the expiry of the said 14 days (or such longer period as aforesaid), be of full effect and enforceable.

(6) Without prejudice to any remedy available for the enforcement of any fine imposed, or any other order made, by the court, the sum for which a bond is executed for the purposes of this section is, when the bond has become enforceable, due to the Crown as a civil debt owed by the person, or owed jointly and severally by the persons, who executed the bond, and is recoverable as such.

(7) In this section references to the release of a boat that has been seized or detained include references to the release of any person on board it and any thing seized with it or on board it at the time when it was seized or detained.

Fisheries
Protection
Officers'
immunity from
process.

15. No civil suit or criminal process shall be brought against any Fisheries Protection officer, or against any person acting under the direction of a Fisheries Protection Officer, in respect of any act performed by him, in good faith and with reasonable cause, in the exercise or purported exercise of his functions under this Ordinance or under any regulations made under section 21.

Obstruction of
Fisheries
Protection
Officers.

16. Without prejudice to any other provision in that behalf contained in this Ordinance or in any regulations made under section 21, any person who wilfully obstructs a Fisheries Protection Officer, or any person acting under the direction of a Fisheries Protection Officer, in the exercise of his functions under this ordinance or under such regulation or who, without reasonable cause (the onus of proof of which lies on him), refuses or neglects to comply with any order, direction or requirement lawfully given to him or laid on him by a Fisheries Protection Officer, or by any person acting as aforesaid, or to answer any question reasonably put to him by a Fisheries Protection Officer, or by any person acting aforesaid, or who prevents another person from so complying or so answering is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Offences,
penalties,
evidence and
proceedings,
etc.

17. (1) Any person who commits a contravention of any provision of this Ordinance or of any regulations made under section 21 (being a contravention which is not, by any such provision other than this subsection, specifically declared to be an offence) commits an offence under this subsection and is liable, on conviction, to a fine of £100,000.

(2) Without prejudice to section 319 of the Penal Code, any person who attempts to commit an offence under this Ordinance or under any regulations made under section 21 commits an offence under this subsection and is liable, on conviction, to the same fine as if he had committed the attempted offence.

(3) Without prejudice to any provision of this Ordinance authorising the imposition of a fine in any such case, where a person

is convicted of any offence under this ordinance or under any regulations made under section 21 (being an offence in respect of the use or operation of a fishing boat), the court may, in addition to imposing a fine but subject to subsection (4), order that any fishing or other gear, or instruments or appliances, on board the boat (whether or not used in the commission of the offence), and any fish or fish products on board the boat (whether or not the offence related thereto), shall be forfeited to the Crown; and anything so forfeited shall then be disposed of as the Commissioner may direct.

(4) A court may not make an order for forfeiture under subsection (3) save on application made by or with the authority of the Principal Legal Adviser.

(5) Notwithstanding any provision of law limiting the time within which proceedings may be commenced, proceedings for an offence under this Ordinance or under any regulations made under section 21 may be commenced at any time after the commission of that offence.

(6) Notwithstanding section 194(1) of the Criminal Procedure Code 1986, the Magistrates' Court, on convicting any person of an offence under this Ordinance or under any regulations made under section 21, has jurisdiction to impose on him any fine to which he is liable under this Ordinance or under those regulations for that offence; and notwithstanding section 226(1) of that Code, any court may, in such a case, order that person to pay to the Crown such costs and expenses incurred by the Crown in preparation for or otherwise in connection with the proceedings as it thinks proper (including the expenses incurred, whether before or after the commencement of the proceedings, in the exercise of any of the powers vested in a Fisheries Protection Officer).

(7) Every Fisheries Protection Officer shall be *ex officio* a public prosecutor in proceedings for offences under this Ordinance or under any regulations made under section 21.

(8) Without prejudice to any liability for an offence under section 7(2) or under section 10, the master of a fishing boat on which there is found fish that has been caught or taken within the fishing waters otherwise than in accordance with a fishing licence or that has been transhipped to the boat within the fishing waters otherwise than in accordance with a transhipment licence is guilty of an offence and is liable, on conviction, to a fine of £200,000; and in any proceedings in any such case, whether for an offence under this subsection or for an offence under section 7(2) or section 10 or under regulations made under section 21, it shall be sufficient for the prosecution to prove that the fish was found on the boat and the onus of proving -

(a) that the fish was not caught or taken within the fishing waters; or, alternatively,

(b) that it was caught or taken in accordance with a fishing licence; or, alternatively,

(c) that it was transhipped to that boat outside the fishing waters or in accordance with a transhipment licence,

shall then lie on the accused.

(9) A certificate signed by the Director or by any person authorised by him to sign such a certificate -

(a) as to whether or not, at any material time specified in the certificate, a fishing boat so specified was licensed under this Ordinance; or

(b) as to the nature of any such licence; or

(c) as to any limitations imposed on, or conditions attached to, any such licence;

(d) as to who was the person to whom any such licence was granted,

shall, if tendered in evidence in any proceedings under this Ordinance or under any regulations made under section 21, be sufficient evidence of that matter unless the contrary is proved.

(10) Any certificate which purports to be such a certificate as is mentioned in subsection (9) shall, in any such proceeding as aforesaid, be received in evidence as such, without proof of signature or of authorisation to sign, unless credible evidence to the contrary is adduced; and a facsimile copy of such a certificate shall be received in evidence as if it were the original certificate.

Revocation of
licences of
repeated
offenders.

18. (1) Where any person has once been convicted of any offence to which this section applies and is, within the period of five years following the date of that conviction, convicted of the like or any other such offence committed after that date, then, subject to subsection (3), any licence which he then holds is thereupon revoked and he shall, for the period of three years following the date of that subsequent conviction, be disqualified from being granted any further licence.

(2) Where a licence is revoked in accordance with subsection (1), no part of any fee that was charged for the licence shall be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(3) If any person whose licence is revoked in accordance with subsection (1) applies to the Director within 30 days of the conviction by virtue of which it is revoked or within such longer period as the Director may allow, the Director, in his discretion and having regard to all the circumstances of the case, may restore the licence, with effect from such date and with such variations and subject to such conditions as he thinks fit, and may remove, or reduce the duration of, or vary in such other respect as he thinks fit, the disqualification imposed by that subsection.

(4) The offences to which this section applies are any offences under this Ordinance (or under any Ordinance repealed by this

Ordinance) or under any regulations made (or deemed to be made) under section 21.

Fixed penalty notices and procedure

19. (1) Where, on any occasion, a Fisheries Protection Officer finds a person who he has reason to believe is committing or has on that occasion committed an offence under this Ordinance or under any regulations made under section 21, he may give that person a fixed penalty notice in respect of that offence.

(2) In this section "fixed penalty notice" means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this section.

(3) A fixed penalty notice must –

- (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
- (b) be issued from an authorised sequentially numbered official pad of notices in the form prescribed in the schedule;
- (c) state the amount of the fixed penalty;
- (d) state that the fixed penalty may be paid forthwith to the Fisheries Protection Officer,

and a copy of the provisions of this section shall be attached to the notice.

(4) The fixed penalty for an offence is -

- (a) £5000 for an offence relating to fishing from a fishing boat and £200 for an offence relating to a person fishing other than from a fishing boat or relating to a person fishing from a fishing boat based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; or
- (b) one-half of the maximum fine to which a person committing the offence would be liable on conviction of that offence by the Magistrates' Court,

whichever is the less.

(5) Where a fixed penalty notice has been given to a person no proceedings may be brought against him for the offence if he has forthwith paid the penalty to the Fisheries Protection Officer.

(6) A Fisheries Protection Officer shall issue to the recipient an official receipt for every payment made to him in respect of a fixed penalty and every Fisheries Protection Officer shall account to the Commissioner for each fixed penalty notice form and receipt form issued to him and for all payments received by him.

(7) For the avoidance of doubt, nothing in this section obliges an officer to issue a fixed penalty notice when he decides that the alleged offender should be prosecuted for the alleged offence.

(8) Where the fixed penalty notice relates to the unlawful

possession of prohibited fishing gear, in addition to the payment of the penalty, the recipient shall surrender to the officer the prohibited fishing gear for destruction.

Non-payment of fines, etc:
detention and forfeiture of boat.

20. (1) When any fine is imposed on the master, the owner or the charterer of a fishing boat for an offence under this Ordinance or under any regulations made under section 21, or where any sum is ordered by a court to be paid by him to the Crown by way of costs or expenses incurred in connection with the proceedings for that offence, then, if no security therefor has been given, or bond for the payment thereof has been executed, under section 14, or if the court considers that any such security or bond is inadequate to secure the payment of the sums due from him in consequence of his conviction (including the value of anything ordered to be forfeited to the Crown that is not already being detained under this Ordinance), it may order that, in default of payment forthwith of all such sums, he shall give security (or additional security) therefor to the satisfaction of the court; and, subject to subsection (2), his fishing boat may then be detained (or continue to be detained) in such place within the Territory as the court may order until all such sums are paid (and anything ordered to be forfeited but not already detained has been surrendered to the court) or until security is given as aforesaid.

(2) If any such fine as is referred to in subsection (1) or any such sum by way of costs and expenses as is there referred to remains unpaid for more than 30 days (or such longer period as the court may allow) after it was imposed or was ordered to be paid, the court may, subject to subsection (3), order that the fishing boat concerned shall be forfeited to the Crown; and it shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) An order for the forfeiture of a fishing boat under this section may extend to such of its fishing and other gear, its instruments and appliances, its stores and cargo and any fish and fish products on board it as the court may direct.

Regulations.

21. (1) The Commissioner may make such regulations as he considers necessary for the purposes of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made by the Commissioner may provide for or may authorise the Director to provide for or to determine -

(a) anything which is to be, or which may be, prescribed under this Ordinance;

(b) the forms to be used for the purposes of this Ordinance;

(c) all questions relating to the procedures for applying for licences;

(d) all questions relating to the procedures for granting licences;

- (e) the conditions subject to which licences are to be, or may be, granted;
 - (f) the fees to be charged for licences and the method of computing such fees;
 - (g) the equipment to be carried on board fishing boats;
 - (h) the reports and notifications to be made, and the records and logs to be kept, in respect of fishing boats or in respect of fishing or otherwise for the purposes of this ordinance or for the purposes of any regulations made under this section (and the procedures relating thereto);
 - (i) the designation, by applicants for licences or by licensees, of authorised agents, and the authority to be attributed to, and the obligations and liabilities to be assumed by or imposed on, such agents;
 - (j) the place or places where persons who are to be designated as authorised agents may reside or have their place of business;
 - (k) the execution, by applicants for licences or by licensees or by other persons, of bonds (or the provision by them of other forms of security) for securing compliance with obligations arising under a licence or otherwise arising under the provisions of this Ordinance or of any regulations made under this section;
 - (l) the placing on board fishing boats of Fisheries Protection Officers or of observers, and the facilities and conditions to be accorded to them while on board;
 - (m) the conferment on Fisheries Protection Officers, or persons acting under their direction, of such powers, additional or supplementary to those conferred by this Ordinance, as the Commissioner considers necessary or expedient for the regulation of fishing boats or of fishing or otherwise for the purposes of this Ordinance or for the purposes of any regulations made under this section.
- (3) Regulations made under this section may make different provision for (and the Director, in exercising an authority conferred by such regulations to make provision for any matter or to determine any matter, may make different provision for or a different determination in respect of) different parts of the fishing waters or different boats or boats of different descriptions (including descriptions which differ by reference to the countries in which the boats are registered) or different licences or different descriptions of licences.

(4) Regulations made under this section may provide that the contravention of any provision thereof shall constitute an offence, and

may prescribe, as the penalty for any such offence, a fine not exceeding £100,000.

Saving for laws regulating access to Territory, etc. 22. For the avoidance of doubt, nothing in this Ordinance shall be construed as in any way derogating from the provisions of the British Indian Ocean Territory (Immigration) Order 2004, the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997, or the Visitors and Visiting Vessels Ordinance 2006.

Repeal and savings. 23. (1) The Fisheries (Conservation and Management) Ordinance 1998 ("the 1998 Ordinance") is repealed.

(2) Without prejudice to section 21(1) or section 22(2) of the Interpretation and General Provisions Ordinance 1993, the repeal of the 1998 Ordinance does not affect the continuing operation, according to its tenor, of any licence granted or other instrument made under or for the purposes of that ordinance; and any such instrument shall thereafter be deemed to have been granted or made under the relevant enabling provision of this Ordinance or, as the case may require, for the purposes of this Ordinance, and any reference therein to a particular provision of the 1998 Ordinance shall thereafter be construed as if it were a reference to the corresponding provision of this Ordinance.

(3) Notwithstanding subsection (1) and without prejudice to subsection 21(1) of the Interpretation and General Provisions Ordinance 1993, proceedings may be instituted after the commencement of this Ordinance for an offence alleged to have been committed before that commencement under any provision repealed by subsection (1), and any such proceedings shall be dealt with for all purposes as if this ordinance had not been enacted and the repealed provision remained in force; and any proceedings that were instituted before the commencement of this ordinance by virtue of any provision repealed by subsection (1) may be continued thereafter and may likewise be dealt with for all purposes as if this Ordinance had not been enacted and the repealed provision remained in force.

THE SCHEDELE

Fixed Penalty
Notice form



BRITISH INDIAN OCEAN TERRITORY

Section 19 The Fisheries (Conservation and Management) Ordinance 2007

FIXED PENALTY NOTICE

Notice official number

1. **To**(Here set out name and details of recipient)

2. **Circumstances constituting offence.**

It is alleged that you have committed an offence under sectionof the Fisheries (Conservation and Management) Ordinance 2007/regulation of the Fishing Regulations 2007.

The circumstances alleged to constitute that offence are as follows:
(Here set out sufficient particulars of the offence alleged, including date and approximate time, to give the recipient reasonable information about what he is alleged to have done)

3. You have the opportunity to discharge any liability to be convicted of the above offence if you immediately pay the fixed penalty which is specified in paragraph 4 below to the Officer who gave you this notice. If you fail to do so you may be detained and prosecuted for the offence.

4. **Fixed penalty (insert £5000/£200 or half the maximum penalty for offence, whichever is the least amount)**

.....

.....

(Date of Notice)

(Signature and name of officer

issuing notice)

Section 19 The Fisheries (Conservation and Management) Ordinance 2007.

Fixed penalty notices and procedure

19. (1) Where, on any occasion, a Fisheries Protection Officer finds a person who he has reason to believe is committing or has on that occasion committed an offence under this Ordinance or under any regulations made under section 21, he may give that person a fixed penalty notice in respect of that offence.

(2) In this section "fixed penalty notice" means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this section.

(3) A fixed penalty notice must –

- (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
- (b) be issued from an authorised sequentially numbered official pad of notices in the form prescribed in the schedule;
- (c) state the amount of the fixed penalty;
- (d) state that the fixed penalty may be paid forthwith to the Fisheries Protection Officer,

and a copy of the provisions of this section shall be attached to the notice.

(4) The fixed penalty for an offence is –

- (a) £5000 for an offence relating to fishing from a fishing boat, and £200 for an offence relating to a person fishing other than from a fishing boat or relating to a person fishing from a fishing boat based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; or
- (b) one-half of the maximum fine to which a person committing the offence would be liable on conviction of that offence by the Magistrates' Court,

whichever is the less.

(5) Where a fixed penalty notice has been given to a person (in this section referred to as "the recipient") under section 53, no proceedings may be brought against him for the offence if he has forthwith paid the penalty to the Fisheries Protection Officer.

(6) A Fisheries Protection Officer shall issue a to the recipient an official receipt for every payment made to him in respect of a fixed penalty and every Fisheries Protection Officer shall account to the Commissioner for each fixed penalty notice form and receipt form issued to him and for all payments received by him.

(7) For the avoidance of doubt, nothing in this section obliges an officer to issue a fixed penalty notice when he decides that the alleged offender should be prosecuted for the alleged offence.

(8) Where the fixed penalty notice relates to the unlawful possession of prohibited fishing gear, in addition to the payment of the penalty, the recipient shall surrender to the officer the prohibited fishing gear for destruction.

No. 3 of 2003

PROCLAMATION

PROCLAMATION No.1 of 2003

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of Commonwealth, Defender of the Faith.

ALAN EDDEN HUCKLE,
Commissioner.

By Alan Edden Huckle, Commissioner for the British Indian Ocean Territory.

I, Alan Edden Huckle, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby proclaim and declare that:

1. There is established for the British Indian Ocean Territory an environmental zone, to be known as the Environment (Protection and Preservation) Zone, contiguous to the territorial sea of the Territory.
2. The said environmental zone has as its inner boundary the outer limits of the territorial sea of the Territory and as its seaward boundary a line drawn so that each point on it is two hundred nautical miles from the nearest point on the low-water line on the coast of the Territory or other baseline from which the territorial sea of the Territory is measured or, where this line is less than two hundred nautical miles from the baseline and unless another line is declared by Proclamation, the median line. The median line is a line every point on which is equidistant from the nearest point on the baseline of the Territory and the nearest point on the baseline from which the territorial sea of the Republic of the Maldives is measured.
3. Within the said environmental zone, Her Majesty will exercise sovereign rights and jurisdiction enjoyed under international law, including the United Nations Convention on the Law of the Sea, with regard to the protection and preservation of the environment of the zone.
4. In this Proclamation "the Territory" means the British Indian Ocean Territory". The British Indian Ocean Territory comprises the islands of the Chagos Archipelago, as set out in the Schedule to this Proclamation.

Given at the Foreign and Commonwealth Office, London, this 17th day of September 2003

GOD SAVE THE QUEEN

SCHEDULE

The Islands of the Chagos Archipelago, which constitute the British Indian Ocean Territory, are the following:

Diego Garcia Egmont or Six Islands Peros Banhos Salomon Islands	Three Brother Islands Nelson or Legour Island Eagle Island Danger Island
--	---

[19th April]

Official Gazette

1



THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 1 of 1971.

Official
Stamp

An Ordinance to regulate immigration and residence in the Territory and for matters incidental thereto and connected therewith.

ENACTED by the Commissioner for the British Indian Ocean Territory.

B. GREATBATCH,
Commissioner.

16th April, 1971.

1. This Ordinance may be cited as the Immigration Ordinance 1971.

Interpretation. 1. In this Ordinance, unless the context otherwise requires—

"Commissioner" means the Commissioner for the British Indian Ocean Territory;

"endorsement" means an endorsement made on a permit in accordance with the provisions of section 7 of this Ordinance;

"immigration officer" means any person appointed as an immigration officer in terms of section 3(2) of this Ordinance and includes the Principal Immigration Officer;

"permit" means a permit issued or renewed under this Ordinance;

"Principal Immigration Officer" means the Principal Immigration Officer for the Territory;

"prescribed" means prescribed by regulations made under section 14;

"Seychelles" means the Colony of Seychelles;

"the Territory" means the British Indian Ocean Territory.

Principal Immigration Officer and other officers.

3.—(1) The Principal Immigration Officer of Seychelles shall be ex-officio the Principal Immigration Officer for the Territory. The Principal Immigration Officer shall have the superintendence and control of all immigration officers.

(2) The Commissioner may appoint as many immigration officers as he may deem necessary.

(3) The Principal Immigration Officer and all immigration officers may act as such in any part of the Territory and in Seychelles.

(4) The Commissioner may from time to time give the Principal Immigration Officer and other immigration officers general or special directions as to the exercise of any powers, discretions or functions or the performance of any duties under this Ordinance and the Principal Immigration Officer and other immigration officers shall comply with any such general or special directions so given.

Restriction on entering or remaining in the Territory.

4.—(1) No person shall enter the Territory or, being in the Territory, shall be present or remain in the Territory, unless he is in possession of a permit or his name is endorsed on a permit in accordance with the provisions of section 5 and section 7 of this Ordinance respectively.

(2) The provisions of this section shall not apply to members of Her Majesty's Forces, or to persons in the public service of Seychelles or the Territory or in the service of any of Her Majesty's Departments of State, while on duty, or to such other persons as may be prescribed.

5. An immigration officer, acting in his entire discretion, may issue or renew a permit and may cancel such permit before its expiration, subject to the right of appeal as provided under section 8 of this Ordinance. Issue, renewal and cancellation of permits.

6. A permit shall, unless cancelled, remain in force for a period of four years from the date of issue or for such shorter period as may be stated in the permit. A permit renewed shall, unless cancelled, remain in force for a period of four years from the date on which the renewal takes effect or for such shorter period as may be stated in the permit. Duration of permits.

7. An immigration officer may, in his entire discretion, but subject to the right of appeal as provided under section 8 of this Ordinance, endorse on a permit :—

(a) the name or names of the wife and child of the applicant or holder of such permit. Such endorsement shall expire—

(i) on such wife or child ceasing to be a dependent of the holder or in the case of a male person on his attaining the age of 21 years, whichever is the earlier; or

(ii) on the cancellation or expiration of the permit on which it was made.

(b) a condition that the applicant or holder of such permit and his wife and child shall reside, or shall not reside, in such part or parts of the Territory as may be specified in the condition.

8. A person aggrieved by any decision of an immigration officer may appeal to the Commissioner whose decision shall be final and conclusive and shall not be questioned in any court. Appeal to Commissioner.

9. It shall be unlawful for any person to enter the Territory or to be present or to remain in the Territory in contravention of the provisions of section 4 of this Ordinance or after the expiration or cancellation of his permit or after the expiration of an endorsement on the permit made in respect of him or in contravention of a condition When unlawful for person to enter or to be present or remain in the Territory.

endorsed on his permit or on a permit made in respect of him.

Power to remove persons unlawfully in the Territory. 10.—(1) The Commissioner may make an order directing that any person whose presence within the Territory is, under the provisions of this Ordinance, unlawful, shall be removed from and remain out of the Territory, either indefinitely or for a period to be specified in the order.

(2) An order made under this section shall be carried into effect in such manner as the Commissioner may direct.

(3) A person against whom an order under this section is made may, if the Commissioner so directs, while awaiting removal and while being conveyed to the place of departure, be kept in custody, and while so kept shall be deemed to be in lawful custody.

(4) An order made, and any directions given, by the Commissioner under this section may at any time be varied or revoked by the Commissioner.

(5) The master of a ship or the commander of an aircraft due to call at any port or place outside the Territory, shall, if so required by an immigration officer, receive a person against whom an order has been made under this section on board such ship or aircraft and afford him, on due payment, a passage to or towards his final destination and proper accommodation and maintenance during the passage.

(6) Any person who fails to comply with the provisions of subsection (5) of this section is guilty of an offence and liable to a fine of three thousand rupees.

(7) Any person who, in contravention of the terms of any order made under this section, enters or is found within the Territory, having previously left or been removed from the Territory, in virtue or in pursuance of such order, may again be removed from the Territory without further order, and the provisions of this section and of this Ordinance shall apply in any case as if an order had been made against such person under subsection (1) of this section directing that he be so removed, without prejudice however to any penalty to which such person may be liable under this Ordinance or any other law for the time being in force.

II. A person who is removed from the Territory under section 10 of this Ordinance shall be removed to the place whence he came, or, with the approval of the Commissioner, to a place in the country to which he belongs, or to a place to which he consents to be removed if the Government of such last-mentioned place consents to receive him.

II.—(1) Any person who—

Offences and penalties.

- (a) for the purpose of obtaining for himself or for any other person or of assisting any other person to obtain a permit or an endorsement or with intent to deceive any immigration officer, makes or causes to be made any declaration, return or statement which he knows or has reasonable cause to believe to be false or misleading ; or
- (b) otherwise than with the authority of the Principal Immigration Officer alters, or wilfully defaces or destroys a permit or an endorsement ; or
- (c) resists, hinders or obstructs any immigration officer or other officer or person in the lawful execution of his duty, or in the lawful exercise of his powers, under this Ordinance ; or
- (d) knowingly misleads or attempts to mislead any immigration officer in relation to any matter material to the performance or exercise by any immigration officer of any duty, function, power or discretion under this Ordinance ; or
- (e) uses or without lawful authority has in his possession any forged or unlawfully altered permit or endorsement ; or
- (f) knowingly uses or has in his possession with intent to make use thereof any unlawfully issued or otherwise irregular permit or endorsement ; or
- (g) unlawfully enters or is unlawfully present within the Territory in contravention of the provisions of this Ordinance ; or
- (h) harbours any person whom he knows or has reasonable cause to believe to be a person whose presence in the Territory is unlawful ; or
- (i) uses any permit issued to, or endorsement made in respect of, any other person as if it had been issued to or made in respect of himself ; or

(j) gives, sells or parts with the possession of any permit in order that, or intending or knowing or having reasonable cause to believe that, it may be used in contravention of the provisions of paragraph (i) of this subsection; or

(k) having been directed by an order made under section 10 of this Ordinance to remain out of the Territory, returns to the Territory in contravention of such order,

shall be guilty of an offence against this Ordinance.

(2) Any person who commits or attempts to commit an offence against this Ordinance is liable to imprisonment for three years and to a fine of five thousand rupees.

(3) Any person who aids or abets any other person in committing, or counsels or procures any other person to commit, an offence against this Ordinance is liable to the penalty provided for such offence.

(4) In any proceedings for an offence under this section a person shall be deemed to know the contents of any declaration, return or statement which he has signed or marked, whether he has read such declaration, return or statement or not, if he knows the nature of the document.

Burden of proof

13. For the purposes of this Ordinance, the burden of proof that the presence in the Territory of any person or was at any time lawful shall be on that person.

Regulations.

14. The Commissioner may make regulations published in the Official Gazette of the Territory to carry out the objects and provisions of this Ordinance, and, without prejudice to the generality of the foregoing power, such regulations may—

(a) prescribe anything which is required to be or may be prescribed under the provisions of this Ordinance;

(b) prescribe the fees to be charged for anything done or for any permit or endorsement issued, made or renewed, under this Ordinance or any regulations made thereunder.

Commencement

15. This Ordinance shall come into force on such day as the Commissioner may by notice in the Official Gazette of the Territory appoint, and different dates may be appointed for different parts of the Territory.

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 3 of 1983

Official
Stamp

An Ordinance to make provision for the administration of justice in respect of the British Indian Ocean Territory and to provide for matters incidental thereto and connected therewith.

Enacted by the Commissioner for the British Indian Ocean Territory.

23rd December 1983.

W. N. Wenban-Smith
Commissioner

PART I.—GENERAL

1. This Ordinance may be cited as the Courts Ordinance, 1983 and shall come into operation on 1st February 1984 (hereinafter referred to as "the appointed day").

Short title
and
commencement.

2. The courts for the administration of justice in the Territory are the Courts, Supreme Court, the Court of Appeal and the Magistrates' Court.

3.—(1) Subject to and so far as it is not inconsistent with any specific law for the time being in force in the Territory and subject to subsections (3) and (4) of this section and to section 4, the law to be applied as part of the law of the Territory shall be the law of England as from time to time in force in England and the rules of equity as from time to time applied in England:

Law to be
applied.

Provided that the said law of England shall apply in the Territory only so far as it is applicable and suitable to local circumstances, and shall be construed with such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

(2) In this section "specific law" means—

(a) any provision made by or under a law (including this Ordinance) made in pursuance of section 11 of the British Indian Ocean Territory Order 1965 or section 9 of the British Indian Ocean Territory Order 1976 or any similar section superseding the last mentioned section;

(b) any provision of an Act of Parliament of the United Kingdom which of its own force or by virtue of an Order in Council or other instrument made thereunder applies to or extends to the Territory;

(c) any statutory instrument (as defined in the Statutory Instruments Act 1946) or prerogative Order in Council which applies to or extends to the Territory.

(3) Subject to subsection (4) of this section, no enactment, rule of law or any other part of the law of Mauritius or Seychelles shall form part of the laws of the Territory after the appointed day, except to the extent that any such enactment, rule of law or part of such law may have been applied to the Territory by a law made by the Commissioner after the appointed day under section 9 of the British Indian Ocean Territory Order 1976 or any corresponding provision superseding that section.

(4) In any proceedings commenced before the appointed day, the law to be applied shall be the law in force immediately before the appointed day, unless all the parties to the proceedings agree that the law to be applied shall be as in subsections (1) to (3) of this section.

Declaration
as to
application
of laws of
England.

4.—(1) The Commissioner may declare that any United Kingdom enactment, statutory instrument or prerogative Order in Council, other than a provision referred to in section 3(2)(b) or (c), does or does not form part of the law of the Territory.

(2) Any such declaration, on publication in accordance with section 9 of the British Indian Ocean Territory Order, 1976, shall be conclusive on any question (other than the question whether it is a provision referred to in section 3(2)(b) or (c)) whether or not the enactment, statutory instrument or prerogative Order in Council forms part of the law of the Territory in respect of any right acquired or liability incurred, or anything done, omitted to be done or occurring, in or in relation to the Territory after such publication, but shall have no effect in relation to:—

(a) any decision given before such publication by a court having jurisdiction in respect of the Territory, or any right acquired or liability incurred as a result of such a decision; or

(b) any other right acquired or liability incurred, or anything done, omitted to be done or occurring, in or in relation to the Territory before such publication; or

(c) any proceedings commenced in any such court before such publication.

Law of
evidence.

5. In all proceedings before the courts of the Territory the same law and rules of evidence shall be applied as are from time to time applied by the courts in England.

PART II.—SUPREME COURT

A. Jurisdiction, Powers and Constitution

Jurisdiction
of Supreme
Court.

6. The Supreme Court shall be a superior court of record with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with all the powers, privileges and authority which is vested in or capable of being exercised by the High Court of Justice in England.

7.—(1) The Supreme Court shall have power to hear and decide Appellate appeals from the Magistrates' Court and shall exercise general powers of jurisdiction. supervision over that court and may at any time call for and inspect its records.

(2) The Supreme Court shall also have power to hear and decide appeals from any other bodies and persons as provided by any law now in force or to be enacted.

8. The jurisdiction of the Supreme Court in all its functions shall extend throughout the Territory: Extent of jurisdiction.

Provided that this section shall not be construed as diminishing any jurisdiction of the Supreme Court relating to persons being, or to matters arising, outside the Territory.

9.—(1) There shall be a Judge of the Supreme Court who shall be called the Chief Justice. Constitution of Supreme Court.

(2) The Chief Justice shall be appointed by the Commissioner in accordance with instructions given by Her Majesty through a Secretary of State and shall hold office on such terms as the Commissioner shall, in accordance with such instructions, prescribe.

(3) A person shall not be qualified for appointment as Chief Justice unless—

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

(b) he is entitled to practise as an advocate or as a solicitor in such a court.

(4) For the purposes of the preceding subsection, a person shall be regarded as entitled to practise as an advocate or as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

(5) At any time when the office of Chief Justice is vacant or the person holding that office is for any reason unable to perform the functions of that office, those functions shall be performed by such person qualified for appointment as Chief Justice as may from time to time be designated in that behalf by the Commissioner.

(6) A person appointed under subsection (2) or (5) of this section shall, as soon as may be after his appointment, take the oath prescribed in Schedule I hereto.

B. Appeals

Appeals in civil matters.

- 10.—(1) In civil matters an appeal shall lie to the Court of Appeal
- (a) as of right, from any final judgment of the Supreme Court, where the matter in dispute on the appeal amounts to or is of the value of £500 or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property, or some civil right, amounting to or of the value of £500 or upwards; and
 - (b) at the discretion of the Supreme Court from any other judgment of the Court, whether final or interlocutory is, in the opinion of the Court, the question involved in the appeal is one which, by reason of its general or public importance, or otherwise, ought to be the subject-matter of an appeal; and
 - (c) should the Supreme Court refuse to grant leave to appeal under the preceding paragraph, in pursuance of special leave to appeal granted by the Court of Appeal.

(2) An appeal shall, irrespective of the value involved, lie to the Court of Appeal from all final judgments in matrimonial causes and in matters of guardianship of minors or adoption.

(3) Notwithstanding anything in section 3(3), rules and other provisions in force immediately before the appointed day regulating the practice and procedure of the Court of Appeal of Seychelles with respect to appeals from the Supreme Court of Seychelles and, in connection with such appeals, regulating the practice and procedure in the Supreme Court of Seychelles shall have effect as if they were rules made under section 5 of the British Indian Ocean Territory (Court of Appeal) Order 1976, subject to revocation or amendment by rules made under that section, and for that purpose shall be construed with any necessary modifications, adaptations, qualifications and exceptions.

Case stated in civil matters.

11.—(1) A Judge may in his discretion, irrespective of any appeal and whether a case be appealable or not, reserve any question of law decided by him in the course of any civil cause or matter for the ruling of the Court of Appeal. The question so reserved shall be stated in the form of a case prepared and signed by the Judge himself, and such case shall be transmitted to the said court.

(2) Whenever a case shall have been so reserved and stated by a Judge, the execution of the judgment shall be stayed pending the decision of the Court of Appeal.

Appeals in criminal matters.

12. The right of appeal from decisions of the Supreme Court in criminal matters shall be governed by the Criminal Procedure Code.

C. Practice and Procedure

Practice and Procedure

13. The jurisdiction of the Supreme Court shall be exercised, as regards practice and procedure

- (a) in civil matters, in accordance with rules of court made under section 14, and in default thereof, in substantial conformity with the practice and procedure for the time being observed in England by the High Court of Justice;
- (b) in criminal matters, in accordance with the Criminal Procedure Code, rules made under section 5 of the British Indian Ocean Territory (Court of Appeal) Order, 1976 and, subject thereto, in accordance with rules made under section 14.

14.—(1) The Chief Justice may make rules of court regulating and prescribing the procedure and practice to be followed in the Supreme Court in all causes and matters other than appeals therefrom, civil and criminal, in or with respect to which the Supreme Court has jurisdiction and any matters incidental to or relating to that procedure or practice.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may be made for the following purposes—

- (a) regulating the sittings of the Supreme Court;
- (b) prescribing the jurisdiction which may be exercised by the Registrar or by a deputy or assistant registrar (including provision for appeal against decisions in the exercise of such jurisdiction) and the duties of the officers of the court;
- (c) prescribing the fees and percentages to be taken in the Supreme Court, the fees of counsel and the costs of solicitors and the costs of proceedings in that court;
- (d) the deposit, payment, delivery, and transfer in, into and out of the Supreme Court of money, securities and movable property of suitors.

D. Officers of the Supreme Court

15. The officers of the Supreme Court shall be the Registrar, the ushers and such other officers as the Commissioner may, after consultation with the Chief Justice, appoint.

Registrar and
other officers
of Supreme
Court.

16.—(1) The Registrar shall have and may exercise and perform—

- (a) the same jurisdiction, powers and duties as the Masters, Registrars and like officers of the High Court of Justice in England; and
- (b) such other jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law.

Powers and
functions of
Registrar.

(2) Subject to rules of court, all the jurisdiction, powers and duties conferred or imposed on the Registrar may be had, exercised or performed by a deputy or assistant registrar.

17. The Commissioner may, after consultation with the Chief Justice, appoint as many fit and proper persons as may be necessary to be ushers.

Appointment
of ushers.

18. An usher shall, as soon as may be after his appointment, take the oath prescribed in Schedule II hereto.

Oath to be
taken by
ushers.

19. The primary duty of ushers shall be to attend, keep order, and to act as ushers at the sittings of the Supreme Court, to execute all orders, writs and warrants which may be issued to them by the Registrar or other competent officer of the Supreme Court and generally to perform such duties as may devolve upon them under any law now in force or to be enacted.

Duties of
ushers.

20. Ushers may serve extra-judicial processes at the request of any person, on payment of the prescribed fees.

Ushers may
serve extra-
judicial
processes.

Ushers bound
to serve
documents
when
required.

Ushers may
be called
upon to serve
process of
Magistrates'
Court.

Offences by
ushers.

Suspension
and dis-
missal of
ushers.

Officers of
Supreme
Court under
authority of
Chief Justice
and
Registrar.

Inter-
pretation.

Appointment
of
Magistrates.

Appoint-
ment of
Senior
Magistrate.

21. An usher shall be bound to serve any document or to do any act appertaining to his function whenever called upon to do so, except where he is debarred by law from the performance of his duties on account of personal interest or relationship.

22. Ushers shall, in addition to the process of the Supreme Court, be bound to serve the process of the Magistrates' Court.

23. An usher who
(a) fraudulently, or

(b) wilfully, for any reason not amounting to fraud,
fails personally to serve or deliver, or endorse, or return, any summons,
notice or other document entrusted to him, is guilty of an offence and
liable on conviction in case (a) to imprisonment for two years or to a fine,
and in case (b) to imprisonment for six months or to a fine of £250.

24. An usher may be temporarily suspended by the Chief Justice for
any breach of duty or misconduct and on the report of the Chief Justice
he may be dismissed by the Commissioner.

25.—(1) The Registrar, the ushers and all other officers of the Supreme
Court shall be under the authority of the Chief Justice and shall conform
with his instructions and directions.

(2) Subject to the overriding authority of the Chief Justice, the ushers
and all other officers of the Supreme Court shall be under the authority
of the Registrar and shall conform with his instructions and directions.

PART III.—MAGISTRATES' COURT

A. General

26. In this Part, unless the context otherwise requires, "court" means
the Magistrates' Court.

27.—(1) The Commissioner may appoint as many fit and proper
persons as may be necessary to be Magistrates.

(2) A Magistrate shall, as soon as may be after his appointment, take
the oath prescribed in Schedule I hereto.

28.—(1) The Commissioner may appoint as a Senior Magistrate any
person qualified for such an appointment under subsection (2) of this
section.

(2) A person shall not be qualified for appointment as a Senior
Magistrate unless—

- (a) he is or has been a Judge of a court, whether having limited or
unlimited jurisdiction in either civil or criminal matters or both,
in some part of the Commonwealth or of the Republic of Ireland,
or a court having jurisdiction in appeals from any such court; or
- (b) he is or has been a permanent magistrate or magistrate appointed
under contract in any such part; or

(c) he is entitled to practise as an advocate or as a solicitor in a court having unlimited jurisdiction in civil and criminal matters in any such part, or a court having jurisdiction in appeals from any such court.

(3) For the purposes of subsection (2) (c) of this section, a person shall be regarded as entitled to practise as an advocate or as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

- (a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or
- (b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

(4) A Senior Magistrate shall, as soon as may be after his appointment, take the oath prescribed in Schedule I hereto.

29.—(1) The court is one court having jurisdiction throughout the Territory. Extent of jurisdiction and constitution of bench.

(2) A bench of the court consists of one Magistrate, sitting in criminal matters with or without an assessor or assessors at his discretion in accordance with the Criminal Procedure Code.

B. Jurisdiction and Powers

30. The jurisdiction and powers of the court in civil matters shall be as laid down in sections 42 to 48 inclusive and in any other law now in force or to be enacted. Jurisdiction in civil matters.

31.—(1) The jurisdiction and powers of the court in criminal matters shall be as laid down in the Criminal Procedure Code. Jurisdiction in criminal matters.

(2) Any Magistrate having cause to believe that a person has been arrested, detained or charged by a Peace Officer contrary to the provisions of this Ordinance or the Criminal Procedure Code may cause that person to be brought before him forthwith.

32. The sittings of the court may be appointed for and held on any day and at any time at the discretion of the Magistrate. Sittings.

33. The court shall hold its sittings in such buildings as the Chief Justice may from time to time by notice published in the Gazette designate for that purpose. Court house.

34.—(1) A Magistrate may hold an occasional court for the hearing or part hearing of a particular case at any place. Occasional courts.

(2) Every such place shall be deemed to be an open and public court and, as far as circumstances permit, any person desiring to hear the proceedings shall be admitted to such place, except in cases to which subsection (3) of this section or section 50 of the Criminal Procedure Code applies.

(3) Where by reason of illness or infirmity attendance of a witness at the court house is not practicable the Magistrate may hear and record the evidence of that witness in any place in the presence of the parties and their legal representatives and of such other persons as the Magistrate considers necessary or expedient.

C. Staff

Appoint-
ment of clerk
of the court.

35. The Commissioner's Representative may appoint a clerk of the court.

Clerical
work of
court.

36. The clerical work of the court shall be performed by the clerk of the court.

Issue of
process;
books,
records etc.

37. The clerk of the court shall issue all process of the court and register all orders, all judgments and keep records of all proceedings and shall keep account of all fees, fines and money paid into or out of the court and keep such other books or accounts as the Chief Justice may direct.

Magistrate
to tax costs.

38. Costs shall be taxed by the Magistrate.

Process.

39. All process of the court may be served by an usher or by a Peace Officer. In that connection section 23 of this Ordinance shall apply to a Peace Officer as it applies to an usher.

Summons
to witness.

40.—(1) Any party to a cause, inquiry or other proceeding may obtain on application at the registry of the Supreme Court or at the office of the court a summons to a witness or witnesses, with or without a clause requiring the production of books, documents or any *corpus delicti*.

(2) Any person on whom such a summons has been served who refuses or neglects without sufficient cause to appear or to produce any books or documents or any *corpus delicti* required by the summons to be produced, and any person present before a Magistrate who on being required to give evidence refuses to be examined upon oath or affirmation concerning the matter at issue or refuses to take the oath or to be affirmed or having taken the oath or been affirmed, without sufficient cause refuses to answer questions concerning the matter or refuses or neglects to produce any such books, documents or *corpus delicti*, is liable to be summarily fined and committed to prison by the Magistrate:

Provided that such fine and term of imprisonment shall not exceed £100 and fifteen days respectively.

(3) A witness not appearing though served personally with a summons may be arrested by order of a Magistrate and brought before him to give evidence.

Power to
punish for
misbe-
haviour
before
court.

41. Any person who wilfully insults a Magistrate during his sitting or attendance in court or during any inquiry or who wilfully interrupts the proceedings of the court or otherwise misbehaves in court or before a Magistrate, is liable to be summarily fined and committed to prison by the Magistrate:

Provided that such fine and term of imprisonment shall not exceed £100 and fifteen days respectively.

D. Civil Matters

Jurisdiction.

42.—(1) The court has and shall exercise jurisdiction to decide any civil suit, except as hereinafter provided, in which the amount claimed or the value of the subject matter does not exceed £500, exclusive of interest and costs.

(2) The court has jurisdiction in any suit by a landlord to obtain cancellation of a lease, with or without damages, or to recover possession of immovable property from a tenant or occupier, including suits where the value of such property exceeds £500. Such cancellation of lease, damages and possession may be claimed in the same plaint in which rent is claimed:

Provided always that the yearly rent or the rental value of the property shall not exceed £500 and the sum claimed for damages, if any, and for rent shall not together exceed £500.

(3) (i) The court has jurisdiction in possessory actions concerning any land, premises, runs of water or other immovable property or any other right arising out of immovable property including actions where such property or right exceeds £3,000 in value when the plaintiff claims to be maintained or restored to the quiet enjoyment and possession of such property or right:

Provided that—

(a) the possessory action has been entered within one year from the imputed trespass, and

(b) the plaintiff has been in quiet possession for at least one full year.

(ii) In such possessory actions damages not exceeding £500 may also be claimed.

(iii) When the value of the property or right concerning which a possessory action is brought does not exceed £3,000 the court may inquire into and decide upon the question of ownership if the same be raised.

(4) The court has jurisdiction in any suit for the payment of maintenance or alimony in a case where the law gives a right to maintenance or alimony, provided that the maintenance or alimony claimed does not exceed £500 per annum.

(5) The court has jurisdiction to entertain a claim made to goods seized in execution of a judgment of the court, or of the Supreme Court provided that the value of such goods does not exceed £500 and the claim is made within such period and in such form as may be prescribed by rules of court.

(6) The court has no jurisdiction in any suit concerning divorce, guardianship, adoption, civil status, succession, wills, bankruptcy or insolvency, or concerning rights or interests arising out of the ownership or usufruct of immovable property except in a suit under subsection (2), (3) or (4) of this section.

43.—(1) Claims may not be split nor more than one suit instituted in respect of the same cause of action against the same party.

(2) A plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court, but he shall not afterwards sue in respect of the portion so relinquished.

(3) The court has jurisdiction to decide a suit where the original claim exceeds the limit of its jurisdiction if the claim is brought within the limit by a set-off admitted by both parties.

(4) The jurisdiction shall not be ousted when in order to adjudicate upon a claim within the jurisdiction it is necessary for the court to decide upon a right to, or contract concerning, money or movable property exceeding £500 in value.

Valuation of
claims.

44.—(1) Where the jurisdiction of the court depends upon the value of any property and such value cannot be precisely ascertained the plaintiff shall state in the plaint his estimate of the value, and if the defendant does not deliver, in time for service on the plaintiff before the first hearing, either a written objection to the plaintiff's estimate or a written defence including a distinct plea alleging a greater value, he shall be deemed to have admitted the plaintiff's estimate and subject to this section, the court shall decide the suit.

(2) Where the jurisdiction depends upon a value which is in dispute the court shall try the question of value as a preliminary issue and having heard the evidence adduced on the question of value only the court shall determine or estimate the value as at the date of filing of the plaint and, for the purpose of founding jurisdiction in that suit but for no other purpose, the opinion of the court as to that value shall be conclusive.

(3) Where by reason of any bona fide mistake in stating an amount of money or making an estimate of value the court has assumed jurisdiction in a suit and it subsequently appears that the suit is beyond the jurisdiction of the court, then if the mistake is discovered before witnesses have been summoned for the first hearing the court shall call upon the plaintiff to elect whether he will amend and re-serve the plaint, if necessary relinquishing the excess, or transfer the suit to the Supreme Court, and in either event the plaintiff shall bear the costs occasioned by the mistake, but if the mistake is not discovered until after the witnesses have been summoned, the court shall have jurisdiction and the suit shall proceed, provided that no relief exceeding that which it is within the ordinary jurisdiction of the court to give shall be given.

(4) If in any suit doubt arises before witnesses have been summoned for the first hearing as to whether the court has jurisdiction and the doubt cannot be resolved under the provisions of this Part, the court may refer the question to the Supreme Court.

(5) If at any stage of the hearing of a suit doubt arises as to whether the court has jurisdiction, the hearing shall proceed and if at the conclusion of the hearing the doubt has not been resolved, the court shall, after consideration, deliver a written judgment including findings on all the issues of fact in controversy, both as to matters affecting the jurisdiction and as to the merits of the claims pleaded, and if in the opinion of the court the suit was not within the jurisdiction, the suit shall be dismissed on that ground with or without an order for costs.

Costs.

45.—(1) The court may make such order as to the whole or any part of the costs in any proceedings before it as may be just and may assess the same or direct taxation thereof:

Provided that where a civil suit is determined by arbitration, no award of costs shall include the fees of counsel or solicitor.

(2) The Crown shall be entitled to have costs and costs may be given against the Crown to the like extent and in the same way as costs may be had by and against any other party.

Execution
of judgment
or order of
court.

46. A judgment or order of the court may, without prejudice to the provisions of any enactment prescribing other ways of execution or enforcement of a judgment or order of the court, be executed and enforced as if it were a judgment or order of the Supreme Court in any of the ways in which such judgment or order may be executed and enforced.

47.—(1) Any person aggrieved by a final judgment of the court in Appeals, any civil cause or matter to which he is a party may appeal to the Supreme Court.

(2) There shall be no appeal from any interlocutory judgment of the court except where, in the circumstances of a particular case, the interlocutory judgment has the effect of disposing of the claim, or one of the claims, in the suit, in which event the Supreme Court may give leave to appeal on such terms as to security, costs and otherwise as may be just.

(3) No appeal under this section shall operate as a stay of execution, but the court, or after an appeal has been lodged, the Supreme Court, may stay execution on such terms as to security, costs and otherwise as may be just.

(4) In this section, "judgment" does not include the determination of a suit by arbitration.

48.—(1) The Chief Justice may make rules of court for the carrying out of the purposes of this Part and in particular, but without prejudice to the generality of the foregoing power, may make such rules providing for—

- (a) the practice and procedure preliminary or incidental to proceedings before the court;
- (b) the service and execution of process issued by or for the purposes of the court;
- (c) the keeping of records of proceedings before the court and the manner in which things done in the course of, or as preliminary or incidental to, any such proceedings, or any proceedings on appeal to the Supreme Court, may be proved in any legal proceedings;
- (d) the forms to be used, the fees to be taken and the costs to be allowed.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may provide for the determination of suits by arbitration under the court—

(a) in all cases, or in all cases of a particular class, where the amount claimed or the value of the subject matter does not exceed £200 or such other sum as may be prescribed by the Commissioner by notice published in the *Gazette*.

(b) by agreement of all the parties to the suit, in any case where the amount claimed or the value of the subject matter exceeds £200 but does not exceed £500.

(3) In default of any such rules, the jurisdiction of the court shall be exercised, notwithstanding anything in section 3(3), in substantial conformity with the Magistrates' Court (Civil Procedure) Rules, 1968, of Seychelles.

PART IV.—LEGAL PRACTITIONERS

49.—(1) The Chief Justice may license any qualified person to appear as counsel in the Supreme Court or in the Magistrates' Court, either generally or for the purposes of any particular cause or matter, or to practise as a solicitor in the Territory.

(2) A Magistrate may license any qualified person to appear as counsel in the court over which he presides for the purposes of any particular cause or matter.

(3) Every person holding the office of Principal Legal Adviser shall so long as he continues to hold that office enjoy all the rights and privileges in the Territory of counsel or a solicitor licensed under subsections (1) and (2) of this section.

(4) For the purposes of this section, "qualified person" means a legal practitioner admitted to practice law in any part of the United Kingdom or in the Republic of Ireland or in any part of the Commonwealth or in the United States of America or in any other country approved by the Commissioner for the purposes of this section.

(5) The Chief Justice may make rules of court prescribing the manner of application for a licence, the forms of licences and the fees to be paid for licences issued under this section.

Suspension and revocation of licences. 50. The Chief Justice may at any time suspend or revoke any licence issued under section 49.

Appeal. 51. Any person whose licence is suspended or revoked under section 50 may appeal to the Court of Appeal.

PART V.—PEACE OFFICERS

Appointment and powers of Peace Officer. 52.—(1) The Commissioner may appoint any fit and proper person to be a Peace Officer.

(2) A Peace Officer shall, as soon as may be after his appointment, take the oath prescribed in Schedule II hereto.

(3) The Commissioner may at any time terminate the appointment of a Peace Officer.

(4) A Peace Officer shall have the rights, powers, duties, privileges and protection of a constable at common law.

(5) Section 23 shall apply to Peace Officers as it applies to ushers.

Inquiries held by Peace Officers. 53. When in the Territory a person—
(a) commits suicide;
(b) is killed by another, or by an animal, or by machinery or by an accident;
(c) dies under suspicious circumstances; or
(d) disappears; or
(e) dies in custody:

a Peace Officer shall inquire into the facts and circumstances connected with the death or disappearance of such person and shall forward to the Commissioner, as soon as possible, a full written report of the facts of the case together with any statements recorded by him. If the Peace Officer is of the opinion that the inquiry discloses an offence, he shall proceed in accordance with the Criminal Procedure Code.

PART VI.—MISCELLANEOUS

Existing appointments to continue. 54.—(1) Any person who immediately before the appointed day holds office or is acting as Chief Justice, Registrar, Senior Magistrate, Magistrate, Peace Officer, usher of the Supreme Court or clerk of the court of the Magistrates' Court, shall be deemed to have been appointed on the appointed day and in accordance with the provision of this Ordinance to hold or act in the corresponding office under this Ordinance.

(2) It shall not be necessary for any such person to take the oaths required to be taken on appointment if such person has already taken such oaths in respect of the office held immediately before the appointed day.

55.—(1) Any proceedings that are pending on the appointed day in the courts established under the Courts Ordinance 1976 may be continued after the appointed day in the courts established by this Ordinance, as if they had been commenced therein.

Pending
proceedings
and
judgments.

(2) Any judgment of a court established under the Courts Ordinance 1976 given, but not satisfied, before the appointed day, may be enforced, appealed against or otherwise dealt with after the appointed day as if it were a judgment of the corresponding court constituted by this Ordinance.

56. The Courts Ordinance 1976 is hereby repealed.

Repeal of
Ordinance
No. 1 of
1976.

SCHEDULE I

JUDICIAL OATH

Sections 9, 27 and 28.

"I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth II, her heirs and successors, in the office of Chief Justice/Magistrate, and I will do right to all manner of people after the laws and usages of The British Indian Ocean Territory, without fear or favour, affection or ill-will. So help me God".

SCHEDULE II

OATH OF OFFICE

Sections 18 and 52.

"I..... do swear that I will well and truly serve Her Majesty Queen Elizabeth II, her heirs and successors, in the office of Peace Officer/Usher of the Supreme Court. So help me God".



BRITISH INDIAN OCEAN TERRITORY

**REVISED ORDINANCES OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE CROWN PROCEEDINGS
ORDINANCE 1984**

CHAPTER D.2

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN TERRITORY

THE CROWN PROCEEDINGS ORDINANCE 1984

CHAPTER D.2

Revised Edition

Showing the law as at 1 September 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Crown Proceedings Ordinance 1984 - Ordinance No.2 of 1984

As amended by:

Ordinance No.5 of 2014

© British Indian Ocean Territory Administration

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying or copying in electronic format) without the written permission of the Commissioner of the British Indian Ocean Territory, or otherwise as permitted under the terms of a licence from the British Indian Ocean Territory Administration.

REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN TERRITORY

THE CROWN PROCEEDINGS ORDINANCE 1984

CHAPTER D.2

ARRANGEMENT OF SECTIONS

Section		Page
1.	Citation.	5
2.	Definitions.	5
	PART I – SUBSTANTIVE LAW	
3.	Right to sue the Crown.	6
4.	Liability of the Crown in Tort.	6
5.	Provisions as to industrial property.	7
6.	Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence.	7
7.	Persons who may claim in respect of postal packets.	7
8.	Provisions relating to the armed forces.	8
9.	Saving in respect of acts done under prerogative and statutory powers.	9
	PART II – JURISDICTION AND PROCEDURE	
10.	Civil proceedings – how instituted.	10
11.	Interpleader.	10
12.	Parties to proceedings.	10
13.	Service of documents.	10
14.	Nature of relief.	11
15.	Appeals and stay of execution.	11
16.	Scope of Part II.	11
	PART III – JUDGMENTS AND EXECUTION	
17.	Interest on debts, damages and costs.	12
18.	Satisfaction of orders against the Crown.	12
19.	Execution by the Crown.	13
20.	Attachment of monies payable by the Crown.	13
	PART IV – MISCELLANEOUS AND SUPPLEMENTAL	

21.	Discovery.	14
22.	Exclusion of proceedings <i>in rem</i> against the Crown.	15
23.	Application to the Crown of certain statutory provisions.	15
24.	No abatement on demise of Crown.	15
25.	Rules of court.	16
26.	Pending proceedings.	16
27.	Savings.	16

REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN TERRITORY

THE CROWN PROCEEDINGS ORDINANCE 1984

CHAPTER D.2

An Ordinance to amend the law relating to the civil liabilities and rights of the Crown and to civil proceedings by and against the Crown, to amend the law relating to the civil liabilities of persons other than the Crown in certain cases involving the affairs or property of the Crown, and for connected purposes.

Citation.

1. This Ordinance may be cited as the Crown Proceedings Ordinance, ROBIOT c.D.2.

Definitions.

2. (1) Any reference in this Ordinance to the provisions of this Ordinance shall, unless the context otherwise requires, include a reference to rules of court from time to time in force in relation to this Ordinance.

(2) In this Ordinance, unless the context otherwise requires –

agent, when used in relation to the Crown, includes an independent contractor employed by the Crown;

civil proceedings includes proceedings in the Supreme Court for the recovery of fines or penalties;

officer, in relation to the Crown, includes the Commissioner and any servant of Her Majesty in right of Her Government of the Territory;

order includes a judgment, decree, rule, award or declaration;

proceedings against the Crown includes a claim by way of set-off or counterclaim raised in proceedings by the Crown;

statutory duty means any duty imposed by or under any Ordinance.

(3) References in this Ordinance to any enactment shall be construed as references to that enactment as amended by or under any other enactment, including this Ordinance.

PART I
SUBSTANTIVE LAW

Right to sue Crown.

3. Where any person has a claim against the Crown after the commencement of this Ordinance, then, subject to the provisions of this Ordinance, the claim may be enforced by proceedings taken against the Crown for that purpose in accordance with the provisions of this Ordinance.

Liability of the Crown in tort.

4. (1) Subject to the provisions of this Ordinance, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject –

- (a) in respect of torts committed by its servants or agents;
- (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Crown by virtue of subsection (1)(a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Ordinance have given rise to a cause of action in tort against that servant or agent or his estate.

(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Ordinance, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in the case of proceedings against

the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

(6) No proceedings shall lie against the Crown by virtue of this section in respect of any act, neglect or default of any officer of the Crown, unless that officer has been directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund or moneys provided by Parliament.

Provisions as to industrial property.

5. (1) Where after the commencement of this Ordinance any servant or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright and the infringement is committed with the authority of the Crown, then, subject to the provisions of this Ordinance, civil proceedings in respect of the infringement shall lie against the Crown.

(2) Save as expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Ordinance in respect of the infringement of a patent, in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in subsection (1) of this section.

Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence.

6. Where the Crown is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a private person of full age and capacity.

Persons who may claim in respect of postal packets.

7. (1) No relief shall be available under section 25(3) of the Post Office Ordinance 1967, except upon a claim by the sender or the addressee of the packet in question, and the sender or addressee of the packet shall be entitled to claim any relief available under the said subsection in respect of the packet, whether or not he is the person damaged by the injury complained of, and to give a good discharge in respect of all claims in respect of the packet under the said subsection:

Provided that where the court is satisfied, upon an application by any person who is not the sender or addressee of the packet, that the sender and the addressee are unable or unwilling to enforce their remedies in respect of the packet under the said subsection, the court may, upon such terms as to security for costs and otherwise as the court thinks just, allow that other person to bring proceedings under the said subsection in the name of the sender or the addressee of the packet.

Any reference in this subsection to the sender or addressee of the packet includes a reference to his personal representatives.

(2) Where by virtue of subsection (1) of this section any person recovers any money or property which, apart from that subsection, would have been recoverable by some other person, the money or property so recovered shall be held on trust for that person.

(3) No proceedings shall lie against the Crown under section 25(3) of the Post Office Ordinance, 1967 unless the proceedings are begun within the twelve months beginning with the date on which the packet in question was posted.

(4) In this section the expression **postal packet** has the same meaning as in the Post Office Ordinance 1967.

Provisions relating to the armed forces.

8. (1) Nothing done or omitted to be done by a member of the armed forces of the Crown while on duty as such shall subject either him or the Crown to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown if –

(a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, hovercraft, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and

(b) a Secretary of State, where that other person is a member of the armed forces of the Crown in right of its Government in the United Kingdom, certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant, Order in Council or Order of Her Majesty relating to the disablement or death of members of the force of which he is a member:

Provided that this subsection shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

(2) No proceedings in tort shall lie against the Crown for death or personal injury due to anything suffered by a member of the armed forces of the Crown if –

(a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, hovercraft, aircraft or vehicle as described in subsection (1)(a), or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and

(b) a Secretary of State, in the case of a member of the armed forces of the Crown in right of its Government in the United Kingdom, certifies as mentioned in subsection (1) of this section,

nor shall any act or omission of an officer of the Crown subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the Crown being a thing as to which the conditions set out in subsection (2) are satisfied.

(3) A certificate of a Secretary of State –

(a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of its Government in the United Kingdom; or

(b) that at any particular time any land, premises, ship, hovercraft, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces,

shall, for the purposes of this section, be conclusive as to the fact which it certifies.

(4) For the purposes of this section **member of the armed forces of the Crown**, unless the context otherwise requires, means a member of the armed forces of the Crown in right of its Government in the United Kingdom.

(5) Nothing in this section shall be deemed by implication or otherwise to confer any right of action against the Crown in right of its Government in the United Kingdom.

Saving in respect of acts done under prerogative and statutory powers.

9. (1) Nothing in Part I of this Ordinance shall extinguish or abridge any powers or authorities which, if this Ordinance had not been enacted, would have been exercisable by virtue of the prerogative of the Crown or any powers or authorities conferred on the Crown or the Commissioner by any statute or enactment, and, in particular, nothing in the said Part I shall extinguish or abridge any powers or authorities exercisable by the Crown, whether in time of peace or

of war, for the purpose of defence or of training, or maintaining the efficiency of, any of the armed forces of the Crown.

(2) Where in any proceedings under this Ordinance it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Crown, the Commissioner may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose, and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

PART II

JURISDICTION AND PROCEDURE

Civil proceedings – how instituted.

10. (1) All civil proceedings by or against the Crown shall be instituted and proceeded with in the Supreme Court and in accordance with rules of court and not otherwise:

Provided that where any enactment now or at any time hereafter in force requires or permits civil proceedings to be taken in the Magistrate's Court such court shall have jurisdiction to hear and determine any such proceedings despite the Crown being a party thereto.

(2) In this section the expression **rules of court** means, in relation to any claim against the Crown in the Supreme Court which falls within the jurisdiction of that court as a prize court, rules of court made under Section 3 of the Prize Courts Act 1894.

Interpleader.

11. The Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings in the same manner in which a subject may obtain relief by way of such proceedings or be made a party thereto.

Parties to proceedings.

12. Civil proceedings by or against the Crown shall be instituted by or against the General Counsel.

Service of documents.

13. All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall be served on the General Counsel.

Nature of relief.

14. (1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Ordinance, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that –

(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

Appeals and stay of execution.

15. Subject to the provisions of this Ordinance, all enactments and rules of court relating to appeals and stay of execution shall, with any necessary modification, apply to civil proceedings by or against the Crown as they apply to proceedings between subjects.

Scope of Part II.

16. (1) Subject to the provisions of this section, any reference in this Part to civil proceedings by the Crown shall be construed as a reference to such proceedings as the Crown is entitled to bring by virtue of this Ordinance.

The expression **civil proceedings by or against the Crown** shall be construed accordingly.

(2) Subject to the provisions of this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to such proceedings as any person is entitled to bring against the Crown by virtue of this Ordinance.

The expression **civil proceedings by or against the Crown** shall be construed accordingly.

(3) Despite anything in the preceding provisions of this section, the provisions of this Part shall not have effect with respect to proceedings brought by a Law Officer on the relation of some other person.

PART III

JUDGMENTS AND EXECUTION

Interest on debts, damages and costs.

17. (1) The provisions of any law relating to the payment of interest on judgment debts in proceedings between subjects shall apply to judgment debts due from or to the Crown.

(2) Where any costs are awarded to or against the Crown in the Supreme Court, interest shall be payable upon those costs unless the court otherwise orders, and any interest so payable shall be at the same rate as that at which interest is payable upon judgment debts due from or to the Crown.

(3) The provisions of any law empowering a Court of Record to award interest on debts and damages shall apply to judgments given in proceedings by and against the Crown.

(4) This section shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

Satisfaction of orders against the Crown.

18. (1) Where in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made in favour of any person against the Crown, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the General Counsel.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so

payable, and the Commissioner shall, subject to subsection (4) and sections 20 and 22, pay to the person entitled or to his solicitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon.

(4) Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of the court for enforcing payment by the Crown of any such money or costs as referred to in subsection (1), and no person shall be individually liable under any order for the payment by the Crown of any such money or costs.

Execution by the Crown.

19. (1) Subject to the provisions of this Ordinance, any order made in favour of the Crown against any person in any civil proceedings to which the Crown is a party may be enforced in the same manner as an order made in an action between subjects, and not otherwise.

This subsection shall apply both in relation to proceedings pending at the commencement of this Ordinance and in relation to proceedings instituted thereafter.

(2) Sections 4 and 5 of the Debtors Act 1869 (which provide respectively for the abolition of imprisonment for debt, and for saving the power of committal in case of small debts) shall apply to sums of money payable and debts due to the Crown:

Provided that for the purpose of the application of the said section 4 to any sum of money payable or debt due to the Crown, the section shall have effect as if there were included among the exceptions therein mentioned default in payment of any sum payable in respect of death duties.

(3) Nothing in this section shall affect any procedure which immediately before the commencement of this Ordinance was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the recovery of any fine or penalty, or the forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship.

Attachment of monies payable by the Crown.

20. Where any money is payable by the Crown to some person who, under any order of court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Crown were money payable by a subject, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a sequestrator or receiver to receive the money on his behalf, the Supreme Court may, subject to the provisions of this Ordinance and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that

money and directing payment thereof to that other person, or to the sequestrator or receiver:

Provided that no such order shall be made in respect of –

- (a) any wages or salary payable to any officer of the Crown as such; or
- (b) any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous.

Discovery.

21. (1) Subject to and in accordance with rules of court –

- (a) in any civil proceedings in the Supreme Court to which the Crown is a party, the Crown may be required by the court to make discovery of documents and produce documents for inspection; and
- (b) in any such proceedings, as described in subsection (1)(a), the Crown may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Any order of the court made under the powers conferred by paragraph (b) of this subsection shall direct by what officer of the Crown the interrogatories are to be answered.

(2) Without prejudice to the proviso to the preceding subsection, any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of the Commissioner, it would be injurious to the public interest to disclose the existence thereof.

Exclusion of proceedings *in rem* against the Crown.

22. (1) Nothing in this Ordinance shall authorise proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships, hovercraft or aircraft, or of any cargo or other property belonging to the Crown, or give to any person any lien on any such ship, hovercraft, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in the Supreme Court against any such ship, hovercraft, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, hovercraft, aircraft, cargo or other property did not belong to the Crown, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Crown in accordance with the provisions of this Ordinance, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

Any such order may be made upon such terms, if any, as the court thinks just, and where the court makes any such order it may make such consequential orders as the court thinks expedient.

Application to the Crown of certain statutory provisions.

23. (1) This Ordinance shall not prejudice the right of the Crown to take advantage of the provisions of an Act of Parliament or Ordinance although not named therein, and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act of Parliament or Ordinance which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

(2) Section 6 of the Debtors Act 1869 (which empowers the court in certain circumstances to order the arrest of a defendant about to quit the Territory) shall, with any necessary modifications, apply to civil proceedings in the Supreme Court by the Crown.

No abatement on demise of Crown.

24. No claim by or against the Crown, and no proceedings for the enforcement of any such claim, shall abate or be affected by the demise of the Crown.

Supplemental.

Rules of court.

25. Any power to make rules of court shall include power to make rules for the purpose of giving effect to the provisions of this Ordinance, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.

Pending proceedings.

26. Save as otherwise expressly provided, the provisions of this Ordinance shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Ordinance.

Savings.

27. (1) Nothing in this Ordinance shall apply to proceedings by or against, or authorise proceedings in tort to be brought against, Her Majesty in Her private capacity.

(2) Except as therein otherwise expressly provided, nothing in this Ordinance shall –

(a) affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the Supreme Court as a prize court or to any criminal proceedings;

(b) authorise proceedings to be taken against the Crown, under or in accordance with this Ordinance, in respect of any alleged liability of the Crown arising otherwise than in respect of the Government of the Territory, or affect proceedings against the Crown in respect of any such alleged liability;

(c) affect any proceedings by the Crown otherwise than in right of the Government of the Territory;

(d) subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of such acts or omissions if it were a private person;

(e) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Act of Parliament or Ordinance; or

(f) affect any right of the Crown to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits,

and, without prejudice to the general effect of the provisions of this section, Part III shall not apply to the Crown except in right of the Government of the Territory.

(3) A certificate of the Commissioner –

(a) to the effect that any alleged liability of the Crown arises otherwise than in respect of the Government of the Territory; or

(b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of the Government of the Territory, shall, for the purposes of this Ordinance, be conclusive as to the matter so certified.

(4) Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Ordinance be subject to any liabilities in tort by reason only of the property being so vested, but the provisions of this subsection shall be without prejudice to the liabilities of the Crown under this Ordinance in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.

(5) This Ordinance shall not operate to limit the discretion of the court to grant relief by way of *mandamus* in cases in which such relief might have been granted before the commencement of this Ordinance, despite there being some other and further remedy by reason of the provisions of this Ordinance.



HM Commissioner
British Indian Ocean Territory
Foreign and Commonwealth Office
London SW1A 2AH

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 4 of 2000

An Ordinance to make provision to regulate immigration and residence in the Territory and for matters incidental thereto or connected therewith.

Enacted by the Commissioner for the British Indian Ocean Territory

...3rd March, 2000



Commissioner

Short title,
commencement
and repeal.

1. - (1) This Ordinance may be cited as the Immigration Ordinance 2000 and shall come into force forthwith.

(2) Without prejudice to sections 21 and 22(2) of the Interpretation and General Provisions Ordinance 1993, all instruments made or other things done under the 1971 Ordinance, or having effect as if so made or done, shall have effect as if made or done under this Ordinance.

Interpret-
ation.

2. - (1) In this Ordinance, unless the contrary intention appears-

"endorsement" means an endorsement, made under section 8, on a permit;

"immigration officer" includes the Principal Immigration Officer; and

"permit" means a permit issued under this Ordinance.



(2) References in this Ordinance to Diego Garcia include references to the internal waters of Diego Garcia and to any part of the territorial sea appurtenant to Diego Garcia; but the foregoing, read together with section 4, shall not be construed as derogating from the right of innocent passage through that territorial sea.

Principal
immigration
officer and
other
officers.

3. - (1) The Commissioner's Representative shall be the Principal Immigration Officer for the Territory and shall have the superintendence and control of all immigration officers.

(2) The Commissioner may appoint such other immigration officers as he deems necessary.

(3) The Commissioner may give the Principal Immigration Officer and other immigration officers general or spacial directions as to the exercise of their functions under this Ordinance or under any other law for the time being in force in the Territory and any officer to whom such instructions are so given shall comply therewith.

Restriction
on entering
or remaining
in the
territory.

4. - (1) No person shall enter the Territory, or, being present in the Territory, shall remain there, unless he is in possession of a permit issued under section 6 or his name endorsed is on a permit under section 8.

(2) This section does not apply to members of Her Majesty's Forces, or to public officers, or to officers in the public service of the Government of the United Kingdom while on duty, or to such other persons as may be prescribed.

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

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

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

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



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

- (a) he or one of his parents or one of his grandparents was born in the Chagos Archipelago (as defined in section 2 of the British Indian Ocean Territory Order 1965); or
- (b) the Commissioner, on application made to him in that behalf, determines, and so certifies, that he is such a citizen by virtue of his connection with the Territory.

(5) A person who claims to be entitled under subsection (3) to enter or remain in the Territory as a British Dependent Territories Citizen who is such a citizen by virtue of his connection with the Territory shall, if so required by an immigration officer, prove that claim to the satisfaction of the immigration officer by the production of-

- (a) a passport showing that he is a British Dependent Territories citizen; and
- (b) either-
 - (i) such further documentary evidence relating to the condition specified in subsection (4)(a) as the immigration officer may require in order to satisfy himself that the claim is well-founded; or
 - (ii) a certificate issued by the Commissioner under subsection (4)(b).

(6) A person who claims to be entitled under subsection (3) to enter and remain in the Territory as the spouse or the dependent child, under the age of 18 years, of a British Dependent Territories citizen who is such a citizen by virtue of his connection with the Territory shall, if so required by an immigration officer, prove that claim to the satisfaction of the immigration officer by the production of-

- (a) a passport showing that the person whose spouse or dependent child he claims to be is a British Dependent Territories citizen; and



(b) either-

- (i) such other documentary evidence relating to the condition specified in subsection (4)(a) in respect of the holder of that passport as the immigration officer may require in order to satisfy himself that the claim is well-founded; or
- (ii) a certificate issued by the Commissioner under subsection (4)(b) in respect of the holder of that passport; and
- (c) such further documentary evidence concerning his relationship with the holder of that passport as the immigration officer may require in order to satisfy himself that the claim is well-founded.

(7) Any officer of the Government of the United Kingdom for the time being performing consular functions on behalf of that Government in Mauritius or in the Seychelles may, if satisfied of the relevant facts, issue to or in respect of any person a certificate of any matter relevant, in respect of that person, to the condition specified in subsection (4)(a) or a certificate that that person is the spouse or dependent child, under the age of 18 years, of another person named in the certificate; and the references in subsections (5)(b)(ii), (6)(b)(ii) and (6)(c) to documentary evidence include references to such a certificate.

(8) For the avoidance of doubt, a determination by an immigration officer under subsection (5) or subsection (6) that a person is not entitled under subsection (3) to enter or remain in the Territory shall be treated for the purposes of section 9 as a decision of the immigration officer to that effect, and the provisions of that section relating to appeals to the Commissioner shall apply accordingly.

(9) Pending the determination by an immigration officer, under subsection (5) or subsection (6), of a claim by any person to be entitled under subsection (3) to enter or remain in the Territory, and pending the determination by the Commissioner of any appeal to him by that person under section 9 as applied by subsection (8), the entry of that person into the Territory, or his presence there, is unlawful; and, without prejudice to any other provisions of this Ordinance, an immigration officer or a Peace Officer may, if that person has entered the Territory, cause him to be detained and kept in custody until his claim is finally



determined or, as the case may require, until he departs from the Territory or is removed therefrom under section 11.

(10) References in this section to a person being entitled under subsection (3) to enter or remain in the Territory are references to his being entitled so to enter or remain without being in possession of a permit issued under section 6 or having his name endorsed on a permit under section 8.

Contractor personnel.

5. - (1) Notwithstanding section 4(1), all persons whose names are for the time being included in a list which is accepted by the Principal Immigration Officer as a list of persons who are employed or to be employed as contractor personnel shall, unless the Principal Immigration Officer otherwise determines in relation to a particular person whose name is so listed, be deemed to be in possession of a permit issued in accordance with section 6.

(2) A determination by the Principal Immigration Officer under subsection (1) in relation to a particular person shall have effect as if it were the withholding or, as the case may be, the cancellation of any permit deemed in accordance with that subsection to be issued to that person, and the provisions of this Ordinance relating to the issue or cancellation of permits and to matters consequential thereon or incidental thereto shall apply accordingly.

(3) In this section, "contractor personnel" has the same meaning as in the Exchange of Notes of 20 December 1966 between the Government of the United Kingdom and the Government of the United States of America concerning the Availability for Defence Purposes of the British Indian Ocean Territory.

(4) If, in any proceedings in any court, a question arises as to whether a person's name is for the time being included in such a list as is mentioned in subsection (1) or whether the Principal Immigration Officer has made a determination in relation to him under that subsection, a certificate as to that matter signed by the Commissioner's Representative shall be conclusive of that question for all the purposes of those proceedings.

Issue,
renewal and
cancellation
of permits.

6. An immigration officer, acting in his entire discretion, may issue or renew a permit and may cancel such permit before its expiration, subject to the right of appeal as provided under section 9.



DURATION OF
PERMITS.

7. A permit shall, unless cancelled, remain in force for a period of four years from the date of issue or for such shorter period as may be stated in the permit. A permit renewed shall, unless cancelled, remain in force for a period of four years from the date on which the renewal takes effect or for such shorter period as may be stated in the permit.

ENDORSEMENT
ON PERMITS.

8. An immigration officer may, in his entire discretion, but subject to the right of appeal as provided under section 9, endorse on a permit:-

(a) the name or names of the wife or the child of the holder of such permit. Such endorsement shall expire-

(i) on such wife or child ceasing to be a dependent of the holder or in the case of a male person on his attaining the age of 21 years, whichever is the earlier; or

(ii) on the cancellation or expiration of the permit on which it was made.

(b) a condition that the holder of such permit and his wife and child shall reside, or shall not reside, in such part or parts of the Territory as may be specified in the condition.

APPEAL TO
COMMISSIONER.

9. A person aggrieved by any decision of an immigration officer may appeal to the Commissioner whose decision shall be final and conclusive.

WHEN UNLAWFUL
FOR PERSON TO
ENTER OR TO
BE PRESENT OR
REMAIN IN THE
TERRITORY.

10. It shall be unlawful for any person to enter the Territory or to be present or to remain in the Territory in contravention of the provisions of section 4 or after the expiration or cancellation of his permit or after the expiration of an endorsement on a permit made in respect of him or in contravention of a condition endorsed on his permit or on a permit made in respect of him.

POWER TO
REMOVE PERSONS
UNLAWFULLY IN
THE TERRITORY.

11. - (1) The Commissioner may make an order directing that any person whose presence within the Territory is, under the provisions of this Ordinance, unlawful shall be removed from and remain out of the Territory, either indefinitely or for a period to be specified in the order.

(2) An order made under this section shall be carried into effect in such manner as the Commissioner may direct.



(3) A person against whom an order under this section is made may, if the Commissioner so directs, while awaiting removal and while being conveyed to the place of departure, be kept in custody, and while so kept shall be deemed to be in lawful custody.

(4) An order made, and any directions given, by the Commissioner under this section may at any time be varied or revoked by the Commissioner.

(5) The master of a ship or the commander of an aircraft due to call at any port or place outside the Territory, shall, if so required by an immigration officer, receive a person against whom an order has been made under this section on board such ship or aircraft and afford him, on due payment, a passage to or towards his final destination and proper accommodation and maintenance during the passage.

(6) Where an order has been made against any person under this section directing that he be removed from the Territory and the ship or the aircraft on which he was carried into the Territory (or any other ship or aircraft owned or operated by the same person as is that ship or aircraft) is present within the Territory (which term here includes the territorial sea of the Territory), the master of that ship or the commander of that aircraft (or of that other ship or aircraft) shall, if so required by an immigration officer, receive that person on board his ship or aircraft and convey him to a place outside the Territory; and in such case no payment such as is referred to in subsection (5) shall be due.

(7) Where, under subsection (5) or subsection (6), the master of a ship is required to receive a person on board his ship, he shall, if so required by an immigration officer, take his ship to any place within the Territory designated for that purpose by the immigration officer; and, without prejudice to any other provision of this Ordinance, if the master refuses or fails to comply with any requirement under subsection (5) or subsection (6) or this subsection, an immigration officer may take such steps as are reasonably necessary, including the use of reasonable force, to compel such compliance.

(8) Any person who fails to comply with the provisions of subsection (5) or subsection (6) or subsection (7) is guilty of an offence and is liable to imprisonment for 3 months or to a fine of \$5000 or to both such imprisonment and such fine; and when a fine is imposed under this subsection, the court may order the ship of which he is the master or the aircraft of which he is the commander to be detained, in such manner as the Commissioner's Representative may direct,



pending the payment of the fine and, if the fine has not been paid in full (or security therefor given to the satisfaction of the court) within 30 days or such longer period as the court may allow, may order the ship or aircraft to be forfeited to the Crown and thereafter to be disposed of as the Commissioner may direct.

(g) Any person who, in contravention of the terms of any order made under this section, enters or is found within the Territory, having previously left or been removed from the Territory in virtue of in pursuance of such order, may again be removed from the Territory without further order, and the provisions of this section and of this Ordinance shall apply in any case as if an order had been made against such person under subsection (1) of this section directing that he be so removed, without prejudice however to any penalty to which such person may be liable under this Ordinance or any other law for the time being in force.

Place of removal.

12. A person who is removed from the Territory under section 11 shall be removed to the place whence he came, or, with the approval of the Commissioner, to a place in the country to which he belongs, or to any place to which he consents to be removed if the Government of such last-mentioned place consents to receive him.

Offences and penalties.

13. - (1) Any person who-

- (a) for the purpose of obtaining for himself or for any other person, or of assisting any other person to obtain, a permit or an endorsement, or with intent to deceive any immigration officer, makes or causes to be made any declaration, return or statement which he knows or has reasonable cause to believe to be false or misleading; or
- (b) otherwise than with the authority of the Principal Immigration Officer alters or wilfully defaces or destroys a permit or an endorsement; or
- (c) resists, hinders or obstructs any immigration officer or other officer or person in the lawful execution of his duty, or in the lawful exercise of his powers, under this Ordinance; or
- (d) knowingly misleads any immigration officer in relation to any matter material to the performance or exercise by any immigration officer of any duty, function, power or discretion under this Ordinance; or



- (e) uses or without lawful authority has in his possession any forged or unlawfully altered permit or endorsement; or
- (f) knowingly uses, or has in his possession with intent to make use thereof, any unlawfully issued or otherwise irregular permit or endorsement; or
- (g) unlawfully enters or is unlawfully present within the Territory in contravention of the provisions of this Ordinance; or
- (h) harbours any person whom he knows or has reasonable cause to believe to be a person whose presence in the Territory is unlawful; or
- (i) uses any permit issued to, or endorsement made in respect of, any other person as if it had been issued to or made in respect of himself; or
- (j) gives, sells or parts with the possession of any permit in order that, or intending or knowing or having reasonable cause to believe that, it may be used in contravention of the provisions of paragraph (i); or
- (k) having been directed by an order made under section 11 to remain out of the Territory, returns to the Territory in contravention of such order,

shall be guilty of an offence against this Ordinance.

(2) Any person who commits an offence against this Ordinance for which no other penalty is provided by this Ordinance is liable to imprisonment for three years and to a fine of £3000.

(3) The master of a ship or the commander of an aircraft which carries into the Territory any person in respect of whom he knows there to be in force an order made under section 11 requiring that person to remain outside the Territory is guilty of an offence and is liable to imprisonment for 3 months or to a fine of £5000 or to both such fine and such imprisonment; and when a fine is imposed under this subsection, the court may order the ship of which he is the master or the aircraft of which he is the commander to be detained, in such manner as the Commissioner's Representative may direct, pending the payment of the fine and, if the fine has not been paid in full (or security therefor given to the satisfaction of the court) within 30 days or such longer period as the court may allow, may order the ship or the aircraft to be forfeited to the Crown and thereafter to be disposed of as the Commissioner



may direct.

(4) In any proceedings for an offence under subsection (3) brought against the master of a ship or the commander of an aircraft which has (or which is owned or operated by the same person as is any other ship or aircraft which has) previously carried the person in question into the Territory, the burden of proof that he did not know that there was in force with respect to that person such an order as is referred to in subsection (3) shall be on the master or the commander.

(5) In any proceedings for an offence under this section a person shall be deemed to know the contents of any declaration, return or statement which he has signed or marked, whether he has read such declaration, return or statement or not, if he knows the nature of the document.

(6) The penalties authorised by any provision of this Ordinance to be imposed on any person who commits an offence against this Ordinance may be so imposed by the Magistrates' Court notwithstanding section 194(1) of the Criminal Procedure Code 1986.

Burden of proof.

14. For the purposes of this Ordinance, the burden of proof that the presence in the Territory of any person is or was at any time lawful shall be on that person.

Regulations.

15. The Commissioner may make regulations, which shall be published in the Gazette, to carry out the objects and provisions of this Ordinance; and, without prejudice to the generality of the foregoing power, such regulations may-

(a) prescribe anything which is required to be or may be prescribed under the provisions of this Ordinance;

(b) prescribe the fees to be charged for anything done, or for any permit or endorsement issued, made or renewed, under this Ordinance or any regulations made thereunder.

Claim No. HQ02X01287

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

IN THE MATTER OF THE CHAGOS ISLANDERS GROUP LITIGATION

Before Master Turner, the Senior Master

The Claimants are as set out in Schedule II of this Order

Defendants (1) The Attorney General

(2) Her Majesty's British Indian Ocean Territory Commissioner



An Application was made by application notice dated 8 February 2002 and was attended by Simon Taylor of Counsel on behalf of the Claimants and Rhodri Thompson QC and Kieron Beal of Counsel on behalf of the Defendants

The Master, having read the written evidence filed, namely the statement with exhibits including a draft Group Particulars of Claim by Richard David Gifford, Partner, Sheridans, Solicitor for the Claimants, and the statement with exhibits by Hilton Leslie, of the Treasury Solicitor's Department

And The Lord Chief Justice of England and Wales having consented to an Order being made in the following terms

IT IS ORDERED THAT:

1. This Order applies to all claims in respect of the common or related issues of fact or law outlined in schedule I hereto such schedule being subject to appropriate amendment after:
 - 1.1. Determination of any preliminary issue;
 - 1.2. The service of the Defence;
 - 1.3. Any permitted amendment to the pleadings;

CHAGOS ISLANDERS GROUP LITIGATION

to the extent that the same is necessary or appropriate.

Those claims will constitute the "Chagos Islanders Group Litigation".

2. Without prejudice to any preliminary issues which may be raised, the Claimants are those individuals whose names are set out in the Schedule II hereto, and the solicitors representing the Claimants are also set out in Schedule II to this order.
3. Further individuals whose claims fall within the group may hereafter apply to be entered in the group register referred to below and joined as Claimants under the terms of this Order.
4. The Solicitors Sheridans are the lead Solicitors for the purposes of service and receipt of documents on behalf of the Claimants.
5. A group register shall be established upon which details of the Claimants who are the subject of this Order are to be entered and which will be maintained by the Lead Solicitors.
6. The register shall include:
 - 6.1. the full name of each Claimant, contact address, and the litigation friend (if appropriate),
 - 6.2. the date and place of birth of each Claimant,
 - 6.3. a brief description as to the factual circumstances under which each claimant claims to fall under the requirements of paragraph 2; and
 - 6.4. the date of entry on the register,
 - 6.5. the Solicitors on the record.
7. The register shall be updated on 1st May 2002 and 3 monthly thereafter, and after each update a copy of the register shall be served on the defendants' solicitors within 14 days of each update, or, if no amendments have been made to the register, the Defendants' solicitor shall be notified of that fact.
8. The Claimants identified in Schedule II hereto be joined to the Group Litigation Register to the extent that they, or their legal guardians and/or litigation friends as appropriate, are able to provide (through their solicitors) to the defendant, within 3 months of the date of this order, written details in the form of completed questionnaires (per individual or per family), giving full names, dates and places of birth, residential addresses or other contact details and brief reasons why they fall within the class of claimants described in paragraph 2 hereof and provided that a period of 31 days has elapsed since service of the questionnaires without the defendants having provided any written objections to any inclusion.
9. Further individuals, not listed in Schedule I to the draft Particulars of Claim, may be hereafter joined to the group register provided that they notify the defendants in writing of their intention to be entered in and joined in the register as Claimants under the terms of this Order, and such notification is served on the defendants by no later than the last day of the 12th month following the date of this order, and such notification is

CHAGOS ISLANDERS GROUP LITIGATION

accompanied by appropriately completed questionnaires as referred to in paragraph 8 hereof.

10. The Defendant may give written notice to the Lead Solicitors of any issue which it takes on the accuracy of the updated register within 28 days of receipt.

Where the Defendants object to any inclusion a Claimant may be added to the register with the Court's consent.

11. The Royal Courts of Justice, Queen's Bench Division will be the court which will manage the claims on the group register ("the management court") and any future claims to which this Order applies are to be issued in that Court and entered in the register.

12. Any claims to which this order applies which are proceeding other than in the management court be transferred forthwith to that court and entered in the register in accordance with Rule 19.11(3)(a)(i) and (iii).

13. Master Turner shall be responsible for the management of all procedural aspects of the claims to which this order applies. His Lordship Mr Justice [] will be responsible for the overall management of the claims to which this order applies.

14. The Claimants' Solicitors shall issue and serve a Claim Form, and file and serve on the Defendants the Group Particulars of Claim by 26th April 2002. The Group Particulars of Claim shall contain general allegations relating to all the claims and shall be verified by a statement of truth to be signed by the Solicitor. The completed questionnaires of any claimant admitted to the register will become part of the Particulars of Claim.

15. The defendants shall serve their Defence by 28th June 2002. The submission of the second Defendant to the jurisdiction of this Court in these proceedings shall be without prejudice to his right to contest the jurisdiction of the courts of England and Wales in any other proceedings

16. Any documents or bundles in respect of claims to which this order applies should have endorsed on the top left hand corner "Chagos Islanders Group Litigation".

17. A copy of this order shall be lodged with:

- 17.1. the Senior Master of the Queen's Bench Division in Room E115 at the Royal Courts of Justice, Strand, London WC2A 2LL and
17.2. the Law Society at 113 Chancery Lane, London WC2A 1PL;

and notice of this Order shall be:

- 17.3. advertised in the *Mauritius News* for a period of 1 week, such period to commence within 14 days of the date of this order; and
17.4. advertised for a period of 1 week in two popular newspapers of national circulation in Mauritius, and one popular newspaper of national circulation in the Seychelles, such period to commence within 14 days of the date of this order.

CHAGOS ISLANDERS GROUP LITIGATION

18. The costs of this application are to be costs in the managed litigation.
19. The costs of the Chagos Islanders Group Litigation be those set out in the Costs Sharing Order made by Master Turner on 1 May 2002.

Dated 11 April 2002

CHAGOS ISLANDERS GROUP LITIGATION

Claim No. HQ02X01287

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

B E T W E E N:

THE CHAGOS ISLANDERS

Claimants

- and -

(1) THE ATTORNEY GENERAL

(2) HER MAJESTY'S BRITISH
INDIAN OCEAN TERRITORY
COMMISSIONER

Defendants

GROUP LITIGATION ORDER

Sheridans

Claimants' Solicitors

14 Red Lion Square

London WC1R 4QL

Ref: C/012540/20101

The Treasury Solicitor

Defendants' Solicitors

Queen Anne's Chambers

28 Broadway

London SW1H 9JS

Ref: LT14795D/A4/HXL

Claim No. HQ02X01287

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BETWEEN

THE CHAGOS ISLANDERS

Claimants

-and-

(1) THE ATTORNEY GENERAL
(2) HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY COMMISSIONER

Defendants

SCHEDULE I
LIST OF GLO ISSUES

CHAGOS ISLANDERS GROUP LITIGATION

IN THE HIGH COURT OF JUSTICE

Claim No. HQ02X01287

QUEEN'S BENCH DIVISION

BETWEEN

THE CHAGOS ISLANDERS

Claimants

-and-

(1) THE ATTORNEY GENERAL

(2) HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY COMMISSIONER

Defendants

SCHEDULE I

LIST OF GLO ISSUES

The following issues are the 'GLO issues' as defined in paragraph 3 of the Group Litigation Order of Master Turner dated [date] ('the GLO'):

A. Issues of Law

1. The jurisdiction of the English courts.
2. The governing law or laws of the claims.
3. The proper construction of the BIOT Order 1965, the BIOT Acquisition of Land for Public Purposes (Private Treaty) Ordinance 1967, the BIOT Immigration Ordinance 1971, the BIOT Courts Ordinance 1983 and the BIOT Immigration Ordinance 2000.
4. The nationality and citizenship of the Claimants.
5. The nature and extent of the Claimants' rights in relation to such nationality and/or citizenship as may be established. Specifically, the nature and extent of the Claimants' alleged rights to return to the territory of the British Indian Ocean Territory ('B.I.O.T.')
6. The constituent elements of the tort of misfeasance in public office.
7. Whether the Claimants have a claim in damages for misfeasance in public office against the Defendants.

CHAGOS ISLANDERS GROUP LITIGATION

8. The existence and/or constituent elements of the tort of unlawful exile.
9. Whether the Claimants have a claim in damages for unlawful exile against the Defendants.
10. Whether the Claimants have a claim in damages arising from negligence on the part of the Defendants, their servants or agents:
 - (a) whether the Defendants owed or owe to the Claimants or any of them a duty of care in tort;
 - (b) the nature and extent of any duty owed;
 - (c) the standard of care reasonably to be expected;
 - (d) the nature or extent of the injury, harm or loss to guard against which the duty was or is owed.
11. The nature and extent of any property rights of the Claimants in or on the territory of BIOT.
12. Whether the Claimants have a claim in damages for infringement of any such property rights as they are found to have.
13. The nature and extent of any rights held by the Claimants under the Mauritian Constitution enforceable against the Defendants.
14. Whether the Claimants have a claim in damages for the infringement of any such rights by the Defendants.
15. The constituent elements of the tort of deceit.
16. Whether or not the Claimants have a claim in damages for the tort of deceit against the Defendants.
17. Whether or not the Claimants are entitled to any of the declarations sought in the Group Particulars of Claim, namely:
 - (a) A declaration that the continued refusal to allow the return of the Chagossians to Diego Garcia is unlawful;
 - (b) A declaration of the nature of the Chagossians' property rights;
 - (c) A declaration of the steps necessary to make practicable the right of return to the Chagos Archipelago, such that the Chagossians may once again live in each and all of the previously inhabited islands;
18. Whether or not the Claimants are entitled to restitution of property.
19. In respect of each of the claims in damages:
 - (a) proof of injury, loss and damage;
 - (b) measure of damages, including entitlement to aggravated and/or exemplary damages;
 - (c) causation and remoteness of injury, loss or damage.

CHAGOS ISLANDERS GROUP LITIGATION

20. Whether or not the Chagossians, as a community, or their representative bodies, are entitled to an award of damages or other remedies in respect of any of the pleaded torts.
21. Issues of limitation, *res judicata*, issue estoppel and/or abuse of process.

B. Issues of fact

1. Whether each of the Claimants has a sufficient connection to the acts or omissions complained of to bring an action against the UK Government and the nature of any such connection.
2. The nature and extent of any historical connection between the Claimant or his or her ancestors with the territory of BIOT.
3. The current and historical citizenship status of each of the Claimants in respect of
 - (a) the United Kingdom, its colonies or dependent or overseas territories; and
 - (b) Mauritius or the Seychelles.
4. Whether or not a Claimant is a properly appointed representative of a deceased person who falls within the scope of paragraph 1 and who brings a claim on behalf of his or her estate.
5. The circumstances surrounding the creation of BIOT as a dependant territory (now British Overseas Territory).
6. The circumstances surrounding the promulgation of the BIOT Immigration Ordinance 1971.
7. The circumstances surrounding the re-settlement of persons present in BIOT prior to 1973, including whether and to what extent:
 - (a) the Claimants or any of them were prevented by the Defendants, their servants or agents, from travelling to BIOT in the period from 1967 to 1973 or subsequently;
 - (b) the Claimants or any of them were compulsorily removed from the territory of BIOT;
 - (c) physical force or economic coercion was used in the re-settlement of persons present in BIOT in the period from 1967 to 1973.
8. The circumstances surrounding the relocation of persons formerly present in BIOT in the territories of Mauritius and/or Seychelles.
9. The conditions and circumstances of the Claimants' existence in Mauritius and/or Seychelles.

CHAGOS ISLANDERS GROUP LITIGATION

10. The circumstances surrounding:
 - (a) the grant by the UK Government in 1973 of the sum of £650,000 to the Government of Mauritius in full and final settlement of its obligations to the Government of Mauritius;
 - (b) the settlement of claims made by the Chagossians against the UK Government in 1982 by payment of the sum of £4 million to the Government of Mauritius for the express purpose of establishing a trust fund to provide for the needs of the Chagossians in Mauritius.
 - (c) the dispersal of such sums to the Claimants by the Mauritian authorities; and
 - (d) the use made of such sums by the Claimants.
11. The circumstances surrounding the dismissal by consent of the claim brought by one Michel Vencatessen in Michael Vencatessen v. The Attorney General (1975 V No. 425) in 1982.

CHAGOS ISLANDERS GROUP LITIGATION

Claim No: HQ02X01287

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

B E T W E E N:

THE CHAGOS ISLANDERS

Claimants

- and -

(1) THE ATTORNEY GENERAL

**(2) HER MAJESTY'S BRITISH
INDIAN OCEAN TERRITORY
COMMISSIONER**

Defendants

SCHEDULE I
LIST OF GLO ISSUES

Sheridans

Claimants' Solicitors

14 Red Lion Square

London WC1R 4QL

Ref: C/012540/20101

The Treasury Solicitor

Defendants' Solicitors

Queen Anne's Chambers

28 Broadway

London SW1H 9JS

Ref: LT14795D/A4/HXL

Claim No. HQ02X01287

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

BETWEEN

THE CHAGOS ISLANDERS

Claimants

-and-

- (1) THE ATTORNEY GENERAL
(2) HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY COMMISSIONER

Defendants

SCHEDULE II
LIST OF CLAIMANTS

Solicitors for the Claimants: Sheridans, 14 Red Lion Square, London, WC1R 4QL.

Case No.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

B E T W E E N:

THE CHAGOS ISLANDERS

Claimants

-and-

- (1) THE SECRETARY OF STATE FOR THE FOREIGN AND
COMMONWEALTH OFFICE
(2) HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY
COMMISSIONER

Defendants

**GROUP PARTICULARS OF CLAIM
SCHEDULE 1**

b) Claimants resident in Agalega	Number:
(1) Live Natives	12

Case No.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

B E T W E E N:

THE CHAGOS ISLANDERS

Claimants

-and-

- (1) THE SECRETARY OF STATE FOR THE FOREIGN AND
COMMONWEALTH OFFICE
(2) HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY
COMMISSIONER

Defendants

**GROUP PARTICULARS OF CLAIM
SCHEDULE 1**

c) Claimants resident in Seychelles	Number:
(1) Live Natives	208

100 NOURRICE	BERNARD	25/04/1853	DIEGO	GRAND ANSE	NOURRICE BASSILA	NOURRICE ANTOINE	Married
110 NAYA	GENDRON	10/05/1854	DIEGO	MA JOIE	GENDRON COLETTE	GENDRON ROCKSEN	Married
111 PROSPER	GEORGETTE	12/10/1866	DIEGO	GLACIS	PROSPER RACHEL	PROSPER WILLIS	Married
112 PROSPER	SALOMON	12/08/1872	PEROS	GLACIS	PROSPER RACHEL	PROSPER WILLIS	Married
113 PAYET	AHMAD	28/08/1868	DIEGO	ENGLAND	PAYET MARIE RENE	PAYET ANTOINE	Married
114 PIRON	NIGEL DESIRE	02/07/1845	DIEGO	PORT GLAUD	NESTOR THERESE	PIRON MAXIME	Not married
115 PIRON	MARIE LAURENZA	15/06/1986	DIEGO	BELONIE	PIRON LORENZA	POLITE ANTOINE	Not married
116 PIRON	JEAN JOSEPH	25/02/1988	DIEGO	PORT GLAUD	PIRON LORENZA	POLITE ANTOINE	Not married
117 PHILOE	ANDRE RICHARD	16/08/1865	DIEGO	VAL D'EN DOR	PHILOE JOSEPH	PHILOE JOSEPH	Married
118 POLITE	JOSEPH	17/03/1971	DIEGO	PORT GLAUD	PIRON LORENZA	POLITE ANTOINE	Not married
119 PADAYACHY	HOLDEN	05/12/1864	DIEGO	ANSE ROYALE	PADAYACHY MARIOLA	FADAYACHY WILLIAM	Married
120 RENAUD	SONY	24/08/1855	DIEGO	ANSE LOUIS	RENAUD HUMELDA	ALBERT NOE	Not married
121 RENAUD	MARIE GINETTE	19/12/1858	DIEGO	POINTE LARUE	RENAUD JOSEPHINE	RENAUD LUDOVIC	Married
122 ROSE	LOUIS P	02/07/1863	DIEGO	ENGLISH RIVER	ROSE MARGUERITE	ESTICO ANDRE	Not married
123 RAMA	PIERRE	08/10/1846	DIEGO	BELONIE	SAIE MARIE THERESE	LABICHE MICHEL	Not married
124 SULTAN	MARIE	23/10/1868	DIEGO	ROCHE CAIMAN	SULTAN COUNTY	SULTAN DONALD N	Not married
125 SULTAN	JEAN BAPTISTE	19/04/1970	DIEGO	ROCHE CAIMAN	PIRAME GERADINA	SULTAN DONALD N	Not married
126 SULTAN	JACKOBSON	24/06/1955	DIEGO	ROCHE CAIMAN	SULTAN LAURETTA	LABICHE MICHEL	Not married
127 SOPHA	MURIANNE M.	15/12/1970	SALOMON	SOPHA MARCELINE	SOPHA FRANK	SOPHA FRANK	Married
128 SOPHA	JEAN IRENE	05/10/1860	DIEGO	PLAISANCE	ESAIE ANNCY	ESAIE MICHEL	Married
129 SABURY	OLIVERY	07/06/1965	DIEGO	FORET NOIRE	MOUSBE MARIE	MOUSBE ALAIN	Married
130 SUMEBRE	MARCELINE	14/05/1968	PEROS	MA JOIE	HOTENCE IRMA	SONGOIRE FRANCO	Not married
131 SONGOIRE	MARIE THERESE	07/04/1880	DIEGO	LA RETRAITE	SAKIR GLADYS	SANGUILION ANTOIN	Not married
132 SANGUILION	EDITH	18/07/1968	DIEGO	LA GOQUE	SAUZIER GERMAINE	SAUZIER HENRY	Married
133 SAUZIER	FRANCOISE	14/05/1968	PEROS	ANSE DE JEUNER	SAUZIER GERMAINE	SAUZIER HENRY	Married
134 SAUZIER	LOUIS	07/04/1988	DIEGO	LES MAMELLES	SAMSON LAURA	SAMSON FRANCE	Married
135 SAMSON	MARCEL	18/07/1968	DIEGO	POINTE AU SEL	SAMSON LAURA	SAMSON FRANCE	Married
136 SAMSON	DOMINGUE	24/11/1968	DIEGO	BEAU VALLON	SAMSON GEDITA	SAMSON JULIEN	Married
137 SAMSON	VIRGOLINA	18/07/1968	DIEGO	SAUZIER GERMAINE	SAUZIER HENRY	SAUZIER HENRY	Married
138 SAMSON	MICHEL	18/05/1967	DIEGO	SAUZIER GERMAINE	SAUZIER HENRY	SAUZIER HENRY	Married
139 SAMSON	PAUL	15/08/1866	DIEGO	LE S MAMELLES	SAMSON LAURA	SAMSON FRANCE	Married
140 SAKIR	BAUDRY	23/04/1946	PEROS	POINTE AU SEL	SAMSON LAURA	SAMSON FRANCE	Married
141 BIBI	GLADYS	22/10/1934	PEROS	BEAU VALLON	SAMSON GEDITA	SAMSON JULIEN	Married
142 ADELA	BASTIENNE	25/01/1840	PEROS	SAUZIER GERMAINE	SAUZIER HENRY	SAUZIER HENRY	Married
143 THERESINE	ROBELLIE	23/06/1841	PEROS	LE S MAMELLES	WOLFRIN SIMONE	WOLFRIN SIMONE	Married
144 THERESINE	MARIE THERESE	07/01/1867	DIEGO	WOLFRIN SIMONE	WOLFRIN SIMONE	WOLFRIN SIMONE	Married
	MARIE MARCELLE	08/09/1957	DIEGO	WOLFRIN SIMONE	WOLFRIN SIMONE	WOLFRIN SIMONE	Married
	MARIE CLAUDE	24/03/1960	DIEGO	ENGLISH RIVER	WOLFRIN SIMONE	WOLFRIN SIMONE	Married
	FEDORA	07/03/1961	DIEGO	MONT BUXTON	WOLFRIN SIMONE	WOLFRIN SIMONE	Married
	MARIE ANDREE	24/03/1961	DIEGO	THERE SINE RACHELL	WOLFRIN SIMONE	WOLFRIN SIMONE	Married
	THERE SINE						



BRITISH INDIAN OCEAN TERRITORY

**REVISED REGULATIONS OF THE
BRITISH INDIAN OCEAN TERRITORY**

**MARINE PROTECTED AREA
PROCLAMATION 2010**

CHAPTER E.8

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

REVISED REGULATIONS OF THE BRITISH INDIAN OCEAN TERRITORY

MARINE PROTECTED AREA PROCLAMATION 2010

CHAPTER E.8

Revised Edition

Showing the law as at 1 September 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains:

Proclamation No.1 of 2010

© British Indian Ocean Territory Administration

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying or copying in electronic format) without the written permission of the Commissioner of the British Indian Ocean Territory, or otherwise as permitted under the terms of a licence from the British Indian Ocean Territory Administration.

**REVISED REGULATIONS OF THE
BRITISH INDIAN OCEAN TERRITORY**

MARINE PROTECTED AREA PROCLAMATION 2010

CHAPTER E.8

RRBIOT c.E.8.

PROCLAMATION

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

Colin Roberts
Commissioner

By Colin Roberts, Commissioner for the British Indian Ocean Territory.

I, Colin Roberts, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby proclaim and declare that –

1. There is established for the British Indian Ocean Territory a marine reserve to be known as the Marine Protected Area, within the Environment (Protection and Preservation) Zone which was proclaimed on 17 September 2003.
2. Within the said Marine Protected Area, Her Majesty will exercise sovereign rights and jurisdiction enjoyed under international law, including the United Nations Convention on the Law of the Sea, with regard to the protection and preservation of the environment of the Marine Protected Area. The detailed legislation and regulations governing the said Marine Protected Area and the implications for fishing and other activities in the Marine Protected Area and the Territory will be addressed in future legislation of the Territory.
3. In this Proclamation **the Territory** means the British Indian Ocean Territory. The British Indian Ocean Territory comprises the islands of the Chagos Archipelago, as set out in the Schedule to this Proclamation.

GOD SAVE THE QUEEN

Given at the Foreign and Commonwealth Office, London this 1st day of April 2010.

SCHEDULE

The Islands of the Chagos Archipelago, which constitute the British Indian Ocean Territory, are the following:

Diego Garcia Egmont or Six Islands Peros Banhos Salomon Islands	Three Brother Islands Nelson or Legour Island Eagle Island Danger Island
--	---

