Case No: HQ02X01287
Neutral Citation No: [2003] EWHC 2222 (QB)

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 9 October 2003

Before:

THE HONOURABLE MR JUSTICE OUSELEY

- -

Between :

CHAGOS ISLANDERS
Claimant

- and -

1. THE ATTORNEY GENERAL

2. HER MAJESTY'S BRITISH INDIAN OCEAN TERRITORY COMMISSIONER
Defendant

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 theVencatessen 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 Ilois 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 Ileois 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 of 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 "etablissements" 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 be 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 Noelie 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 ensue 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 Amercians, 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 Salamon 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 dispatch 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.

206. 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 employee 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 advocation 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 thePrime 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 Garca 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 deploring 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 tidiest 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 suveyed 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 Democrate 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 "Nordvaer", 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 Bancoult 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 works 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: (16/515).

> "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 "hare" 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 than 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 "Perfide 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 Seewoosegar 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 recollected 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 signe de renonciation a 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 MauritiusGovernment 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 recollected 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 Bancoult 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 Bancoult 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 Abdullatiff, 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 Abdullatiff 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 Abdullatiff 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 Abdullatiff 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 Abdullatiff 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 the _____.1983,
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 Abdullatiff 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 Mauritien" 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 undoubted 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 iles."

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 Bancoult 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 form 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.