

SECRET

Mr D Scott

BIOT RESETTLEMENT: NEGOTIATIONS WITH THE
MAURITIUS GOVERNMENT

1. Now that the Secretary of State has authorised the opening of negotiations with the Mauritius Government regarding resettlement of the inhabitants of the Chagos Archipelago, it may be helpful if I provided some guidance, from the legal point of view, on the line we could take with the Mauritius Government. Up till now I think undue emphasis has been placed upon the dual nationality of many of the inhabitants of Chagos. It would, in my view, be a mistake for us to be worried unduly by this factor. We should take the line that it is quite irrelevant to the question of resettlement. In order to explain this, I will set out briefly how the dual nationality situation arose and discuss the use of the term "Ilois".

Dual Nationality

2. When BIOT was created in 1965 the inhabitants of Chagos consisted of citizens of the United Kingdom and Colonies by virtue of birth in mainland Seychelles or Mauritius, or in island dependencies of those two countries. The creation of BIOT did not alter the status of the inhabitants which until the independence of Mauritius in March 1968 remained the same.

3. Section 20(1) of the Independence Constitution of Mauritius provided that citizens of the United Kingdom and Colonies born in Mauritius became citizens of Mauritius automatically on independence.

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Section 111(1) defined "Mauritius" as the territories which immediately before independence day constituted the colony of Mauritius. As Chagos did not form part of the territories of Mauritius immediately before independence day, a person born in Chagos would not under Section 20(1) have become a citizen of Mauritius unless his father was born in mainland Mauritius (see Section 20(3)). However, because the then colonial government of Mauritius recognised that the inhabitants of Chagos had close ties with mainland Mauritius, they agreed to the very special provisions of Section 20(4) which provided in effect that (with the exception of persons with fathers born in Seychelles) a person born in Chagos before BIOT was created was to be regarded as having been born in Mauritius and therefore automatically entitled to Mauritian citizenship on independence.

4. Thus, except for certain citizens of the United Kingdom and Colonies connected with Seychelles, all the inhabitants of Chagos became Mauritian citizens automatically on independence. In addition they retained their citizenship of the United Kingdom and Colonies. The effect of Sections 3(1)(a) and 3(5)(a) of the Mauritius Independence Act, 1968, is to preserve citizenship of the United Kingdom and Colonies for those inhabitants of Chagos who, or whose father or father's father, was born in Chagos. Such persons therefore became dual citizens of the United Kingdom and Colonies

and of Mauritius. The reason why it was decided not to take away such persons' citizenship of the United Kingdom and Colonies is that it would have been contrary to the principles of our nationality law to deprive persons born in a territory which is still a colony ie BIOT of their UK citizenship.

Ilois

5. Our High Commissioner in Port Louis has confirmed that the term "Ilois" is used locally to denote a person from any of the Mascarene Islands, whether such persons have connections with Mauritius or Seychelles. It is clear that the term has no relevance to nationality and has only been used by us 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. I therefore see no advantage in using the term in any negotiations with the Mauritius Government. In fact, use of the term may be to our disadvantage in that it could be argued that the existence of the term is an indication that the inhabitants of Chagos have a close, if not closer, connection with Chagos than with mainland Mauritius.

6. Up to now we have been very careful not to refer to the dual nationals in Chagos in case the Mauritius Government used such knowledge (assuming they are unaware at the moment of the existence of such dual nationals) to their advantage at the United Nations or in negotiations with us. However, I think our fears have been exaggerated and that we should, instead of worrying about nationality

problems, or the exact meaning of the term "Ilois", concentrate upon the undertakings given by HMG to the Mauritius Government in 1965 when BIOT was created. I see no need to mention the nationality situation unless it is raised by the other side.

The British Government's Undertakings to the Mauritius Government in 1965

7. BIOT Working Paper No. 2 sets out our undertakings to the Mauritius Government and in particular our undertakings regarding resettlement. In Annex C. is the reply of Mr Forget, on behalf of the Premier of Mauritius, to a question from Mr Duval in the Legislative Assembly on 21 December 1965. The wording of the answer was approved by the British Government. In particular Mr Duval asked whether "all the Mauritians now living in Diego (sic) will be resettled in Mauritius. The costs of repatriation will be met from the British Exchequer and all costs of rehousing them will be met by the British, and that work would be found for them by the British Government". Mr Forget replied that "The British Government has undertaken to meet the full cost of the resettlement of Mauritians at present living in the Chagos Archipelago".

8. One can draw two conclusions from this undertaking:

- (a) that the resettlement of persons of Mauritian origin, was contemplated;
- (b) that such resettlement would be in Mauritius.

9. The Mauritius Government might seek to argue that the undertaking does not cover Mauritian citizens who are also United Kingdom citizens.

Such an interpretation of the undertaking would be manifestly wrong. The wording is clear; it speaks simply of "Mauritians". In 1965 all the inhabitants of Chagos were UK citizens. There was no such thing as Mauritian citizenship until 1968 when the Mauritian connections of many of the inhabitants of Chagos was recognised by the Mauritius Government by their agreement to the provisions of Section 20(4) of the Independence Constitution (see para 3 above).

10. The Mauritius Government might also try to argue that although the undertaking places an obligation on HMG to pay the costs of resettlement, it does not place an obligation on the Mauritius Government to permit resettlement in Mauritius. This would also be a wrong interpretation. The mere fact that the British Government promised the Mauritius Government that it would meet the full cost of resettlement, carries with it the inescapable implication that, but for such a promise, the Government of Mauritius would itself have to pay for the cost of resettlement. If resettlement elsewhere than in Mauritius had been contemplated there would have been no need for the undertaking as the Mauritius Government would have had no liability for meeting the cost of resettlement of the inhabitants of a different colony unless they were resettled in Mauritius. Thus resettlement in Mauritius must have been in the contemplation of both Governments at the time the statement was made to the Legislative Assembly.

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11. Failure of the Mauritius Government to agree to the resettlement of persons of Mauritian origin in Mauritius would entitle us to treat our other undertakings (e.g. as to oil and fishing rights) as no longer binding upon us, because the undertaking on resettlement is only part of a package deal and must be viewed as such.

A.I. Aust.

26 February 1971

c.c.

Mr Watt

Mr Le Tocq ✓

Mr Tesh

Mr Stratton

Mr Cox

Mr Knight