

FROM PIRATES' LAIR TO FEDERAL PARTNER...

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L'histoire des îles Rodrigues se confond avec celle des pirates et des corsaires qui tout au long du XVII^e siècle ont, à partir de ces îles idéalement situées pour s'avitailler, contrôlé l'ensemble des routes maritimes qui menaient aux Indes, en Malaisie et aux îles Cocos-Keeling. Ce territoire qui fait aujourd'hui partie de la République de Maurice, bénéficie depuis 2001 grâce au « *Rodrigues Regional Assembly Act 2001* » d'une autonomie de gestion et de gouvernement dont l'objectif principal est de le préparer à l'accession progressive à l'indépendance. Pour l'observateur, ce système fédéral n'est pas sans rappeler celui qui avait cours à l'époque de la colonisation anglaise. Les auteurs analysent les conséquences politiques et économiques de ce statut particulier des îles Rodrigues au sein de la République de Maurice.

I - INTRODUCTION

The island of Rodrigues lies 406 miles east of the island of Mauritius. Both are part of the Republic of Mauritius⁵⁵². Rodrigues has a very colourful history but would be a largely forgotten territory were it not for its strategic position on sea routes to India, Malaysia, and the Cocos-

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¹ "...Rodrigues is divided from Mauritius by politics, religion and race. Mauritius is a plural society. Two-thirds of its inhabitants trace their origins to the Indian subcontinent, and rather more than a quarter are Roman Catholic Creoles; the bulk of the Indo-Mauritian population supported independence and the bulk of Creoles opposed it. Rodrigues is overwhelmingly Creole and Roman Catholic." de Smith *Microstates and Micronesia Problems of America's Pacific Islands and Other Minute Territories* (University of London Press Ltd, London, 1970) 70.

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Keeling Islands. That location made it an excellent hideaway and victualing place for pirates and corsairs in the 18th century. Though safe access to its lagoon was difficult, the island had excellent water and a good supply of food in the form of fish and tortoises⁵⁵³.

II - HISTORY

A. - PRE-CAPITULATION

Rodrigues was probably discovered by the Portuguese mariner, Diogo Rodriguez in February 1528. There was subsequently some competition in the area between the Dutch and the French. In 1638 the French took possession of the island of Mauritius, and in June of that year had formally annexed Rodrigues for France. The island was not known to have any indigenous inhabitants⁵⁵⁴.

At the time of the next significant political and legal event there were only three settlers and their families on the island. In August 1809, a

⁵⁵³ Whether Surcouf, the famous corsair, ever used Rodrigues as his base is not known. Certainly it was the area within which he operated, though his main place of resort seems to have been the island of Mauritius itself: See Don Lailler *Surcouf* (L'Ancre de Marine, St Malo, 1987); Alan Villiers *The Indian Ocean* (Museum Press, London, 1952).

The strategic importance of Rodrigues was further highlighted with its use as a way station for the submarine telegraph cable that ran from Mauritius to Australia and China. The route was through Rodrigues and the Cocos-Keeling Islands. The cable was laid in 1901 and the officers of what became Cable and Wireless had a permanent presence in Rodrigues from that time. The cable station had excellent electricity, but it was not until the mid 1940s that there was electric lighting in the main town of Rodrigues (Port Mathurin) and the 1970s before there was an island-wide electricity grid.

On ecology matters see Alfred North-Coombes *The Island of Rodrigues* (The Standard Printing Est, Mauritius, 1971), and Gerald Durrell *Golden Bats and Pink Pigeons* (Collins, London, 1977) Ch 4.

⁵⁵⁴ "Réunion and Rodrigues provided food while Seychelles and Chagos supplied timber for shipbuilding and acted as outposts giving early warning of the presence of the English fleet..."(Jean Houbert 'The Mascareignes, the Seychelles and the Chagos, Islands with a French Connection: Security in a Decolonised Indian Ocean' in Helen M Hintjens and Malyn D D Newitt *The Political Economy of Small Tropical Islands. The Importance of Being Small* (University of Exeter Press, UK, 1992) 94.

British naval ship landed at Rodrigues, formally declared the taking of the island in the name of the East India Company, and proclaimed martial law in force on the island. The proclamation assured the inhabitants that their private rights, rights to exercise their religious beliefs, and other rights would not be interfered with and would continue in the same manner as before the arrival of the English navy. The proclamation also recorded that there was no system for the administration of justice in the island at that time.

B. - CAPITULATION 1810

The British naval fleet that was directed to take Mauritius assembled at Rodrigues and set off for Mauritius on 22 November 1810. On 3 December Mauritius capitulated. Article 6 of that Capitulation stated that “The colony and its dependencies shall be ceded unconditionally.” Article 8 stated that “the inhabitants shall preserve their religion, laws and customs”.

Rodrigues, as a dependency of Mauritius, was ceded to the British authorities and was guaranteed the continuance of its existing laws. Those existing laws included the Code Napoleon, the French Commercial Code, and the French Code of Civil Procedure. The criminal law was basically pre-Napoleonic French criminal law, which was superseded by legislation locally enacted in Mauritius by a Code d’Instruction Criminelle in 1830, and a Penal Code in 1838⁵⁵⁵. The criminal procedure law was substantially derived from the law of France, and the Penal Code was a local adaptation of the Napoleonic Penal Code. The administration of justice by British colonial authorities soon required a change to Mauritius criminal procedures. This occurred for Mauritius and probably also Rodrigues with the passage of the Criminal Procedure Ordinance of 1853.

The population of Rodrigues at the time of the Capitulation was 44 persons. That number increased gradually over the years to reach 3000 by the beginning of the 20th century⁵⁵⁶.

⁵⁵⁵ The application of the Penal Code in the dependencies of Mauritius was considered in *Ex parte Vulcain* (1881) Greene’s Criminal Reports 141 in relation to a murder trial in the Seychelles. In that context “colony” was held to include the dependencies.

⁵⁵⁶ It has continued to rise to approximately 38,000.

C. - ADMINISTRATION OF RODRIGUES

Rodrigues was administered from Mauritius through the colonial period with greater or lesser effect depending on the interests of the Governor at the time, and on the interests and ability of the Government commissioner resident in Rodrigues. In the final British colonial *Report on Mauritius* of 1967, Rodrigues and the other dependencies barely get a mention. As for Rodrigues, it was stated simply that:

Rodrigues, the principal dependency, is a mountainous island of volcanic formation encircled by a coral reef and has a total area of about forty square miles. It measures nine-and-a-half miles in length by four-and-a-half miles in width, and its population consists mostly of fishermen and peasant farmers.

The maintenance of law and order in the remote community of Rodrigues was irregular or non-existent until 1843 when, by Ordinance 7 of 1843, provision was made for the establishment of a judge and police force in Rodrigues. The Chief Government Officer from 1843 was the Police Magistrate. From 1882 to 1891 the title was changed to Civil Commissioner and Police Magistrate. From 1892 to 1950 it was the Magistrate for Rodrigues, and from 1950 to 1974 the Magistrate and Civil Commissioner for Rodrigues. After 1974 the offices of magistrate and of commissioner were separated and there was a Magistrate for Rodrigues and a Resident Commissioner. The first legally trained magistrate arrived in Rodrigues in 1875.

The court system for the island of Mauritius had been set up in French colonial times by the law of 9th Vendémiaire An XII. That law made no mention of the dependencies of Mauritius. In 1831 the jurisdiction of the District Court in Port Louis was established; it was extended to Rodrigues by Ordinance 6 of 1866. The jurisdiction was further extended by Ordinance 31 of 1882, and by Ordinance 20 of 1913. In 1945 what is now known as the Courts Act was enacted, and its effect was extended to Rodrigues by Ordinance 16 of 1948. Later legislation included Ordinance 70 of 1950 and Ordinance 24 of 1966⁵⁵⁷.

⁵⁵⁷ These matters are dealt with by Alfred North-Coombes *The Island of Rodrigues* (The Standard Printing Estb, Mauritius, 1971) chapter 17.

D. - MAURITIUS INDEPENDENCE -1968

Rodrigues made its presence felt in the run up to independence. The Mauritius (Constitution) Order in Council 1958⁵⁵⁸ had provided that, for the purposes of electing members to the Legislative Council, the Colony of Mauritius should be divided into 40 electoral districts, and that the boundaries of the electoral districts should be fixed by the Governor by Proclamation. The Governor duly fixed the electoral districts for the island of Mauritius, and totally ignored or excluded the island of Rodrigues and the other dependencies.

In the case of *Roussety v Attorney General*⁵⁵⁹ the plaintiff, an inhabitant of Rodrigues, challenged the elections held under the 1958 Constitution because the dependencies were not included in the electoral districts. The plaintiff further claimed that the bodies created by those elections were improperly constituted and unlawful and therefore all the legislation made by those bodies was also unlawful. The Supreme Court sitting with three judges held that:

Proclamation No. 10 of 1958 should have included the dependencies in the electoral districts in view of the unambiguous provisions of Section 29 of the 1958 Order and the Plaintiff would have been entitled to judgment in his favour were it not for the making of the 1966 Order.

The plaintiff therefore won, but also lost because the 1966 Order referred to by the Court had validly provided that⁵⁶⁰:

The fact that the 40 Electoral Districts established under Section 29 of the Mauritius (Constitution) Order-in-Council 1958 were wholly within the Island of Mauritius shall not be held to have affected the validity retrospectively of any election to the Legislative Council established by that Order or of anything done by that Legislative Council or any member thereof.

A positive consequence of this litigation was that electors were, in 1967, registered for a two-member constituency of Rodrigues. The number of electors in Rodrigues was then 7876. The polling for the pre-independence election took place on 7 August 1967; polling was high

⁵⁵⁸ *Statutory Instruments 1958* (London 1958) Vol II, Appendix, p2914.

⁵⁵⁹ 1967 MR 45.

⁵⁶⁰ Order in Council of 21 December 1966 *Statutory Instruments 1966* (London 1966) Vol III, p5190.

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throughout the Colony of Mauritius. Overall, the Independence Party won 43 seats. The Independence Party did not contest the two seats in Rodrigues, which were both won by the Mauritius Social Democratic Party (PMSD) with 96% of the votes cast there. The PMSD had opposed independence in favour of a form of association with Great Britain⁵⁶¹. After the election, the PMSD announced that it would accept the verdict of the electorate on the issue of independence. There was, however, some political difficulty in Rodrigues where there had been a unanimous wish to retain a form of association with Great Britain. A consequence of that feeling was that the new Mauritius national flag was not raised in Rodrigues until the first anniversary of independence on 12 March 1969⁵⁶².

⁵⁶¹ “Representatives of Rodrigues, backed by their party, urged the United Kingdom to allow the island to secede from Mauritius. Their preference appeared to be a union with the French overseas department of Reunion. On independence day March 12, 1968, the new Mauritius flag was raised and lowered in Rodrigues discreetly in darkness.” Stanley A de Smith *Microstates and Micronesia Problems of America's Pacific Islands and Other Minute Territories* (University of London Press Ltd, London, 1970) 70.

⁵⁶² See also Jean Houbert ‘The Mascareignes, the Seychelles and the Chagos, Islands with a French Connection: Security in a Decolonised Indian Ocean’ in Helen M Hintjens and Malyn D D Newitt *The Political Economy of Small Tropical Islands The Importance of Being Small* (University of Exeter Press, UK, 1992) 108 “Rodrigues voted unanimously against independence as part of Mauritius. Rodrigues’ non-identification with Mauritius is deep-seated in a number of structural features. It is the only Creole island which has never had the plantation system. The few slaves there at abolition resorted to a form of subsistence farming. Later a few fishermen from Mauritius migrated to Rodrigues. Virtually abandoned in the colonial days, except for the occasional trading ships from Mauritius which fleeced them of their small surplus, the islanders now resent the rule of Port Louis. Rodriguans are increasingly dependent on the state, however, as the impoverished island heading for ecological catastrophe cannot support the increasing population. France helps Rodrigues through Mauritius. If she was so inclined, France could exacerbate secessionist tendencies in the island (*Le Monde*, 9.10.1978; 28.8.1980; 21.8.1980). Were Mauritius to have a regime which sought to intervene in the internal politics of Réunion, France could easily retaliate in Rodrigues. As it is, Paris values a friendly stable Mauritius next door to Réunion and does nothing to weaken the unity of the archipelagic state.”

E. - LAWS FOR RODRIGUES

Although there had been proposals since the 1850s for uniform laws for the islands of Mauritius and the island of Rodrigues nothing substantial happened until 1881. In 1881, on the initiative of the Police Magistrate specific regulations were made for Rodrigues relating to employment matters, the prevention of cruelty to animals, quarantine, Crown lands, fisheries, licences and the impounding of animals.

The general presumption was that legislation made in Mauritius would not extend to the dependencies unless expressly stated to do so. By Ordinances of 1852 and 1853 provision was made to extend Mauritius law to the dependencies. By Ordinance 3 of 1881 another law was made which allowed the Governor to make specific regulations for the dependencies. As a result, two systems operated, which, by Ordinance 5 of 1883 were combined in one law. This law was ultimately repealed and replaced by Ordinance 14 of 1953.

The special legislative powers in respect of Rodrigues that were confirmed by the Ordinance of 1883 were, somewhat anomalously, consolidated into the basic statute for the courts in 1945. Those provisions from 1883 continue to this day in sections 157 and 158 of the Courts Act⁵⁶³.

Sections 157 (extension of legislation by the President) and 158 of the Courts Act (enactment of regulations by the President) have invited repeal since the time of independence and are a persistent reminder of the subordinate or lesser nature of Rodrigues when compared to the island of Mauritius. It is not likely that such a power is needed in the 21st century because there is adequate possibility for special legislation for Rodrigues either by Parliamentary enactment or by making a regulation by the relevant Minister under a topic specific statute. Alternatively, if such a power were still regarded as necessary, the appropriate place for it would probably be in the statute affecting the administration of Rodrigues, and to give power to the Minister of Rodrigues⁵⁶⁴.

⁵⁶³ Though anomalous they appear to have been used rarely since the publication of the Lane edition of the laws in force in 1945 (*The Laws of Mauritius* (London 1946)), and not at all since 1983.

⁵⁶⁴ Since the Rodrigues Regional Assembly Act was introduced in 2001, sections 157 and 158 must be read subject to the Rodrigues Regional Assembly Act. Therefore, the President's powers will be limited and will not

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The application of the laws of Mauritius to Rodrigues⁵⁶⁵ has been dealt with over the years in the interpretation legislation. In the Interpretation and Common Form Ordinance of 1898 section 1 stated that that statute applied only to the Island of Mauritius. Further, section 2 stated that Ordinances of Mauritius applied only to the island of Mauritius and not to any of the dependencies unless that was expressly indicated or required by necessary implication.

The effect of these provisions was preserved in the Interpretation and General Clauses Ordinance 1957. Section 3 of that Ordinance defined "Rodrigues" but the term itself was not used in the Ordinance. Section 4 provided that statutes extended only to the Island of Mauritius unless otherwise expressly provided, but that the Interpretation and General Clauses Ordinance itself applied to the whole of the Colony of Mauritius.

The 1957 Ordinance was in turn repealed by the Interpretation and General Clauses Act 1974, which reformed the relevant law to conform with the general spirit of the Constitution of 1968. The 1974 Act states that it applies to all future enactments⁵⁶⁶ and that all enactments apply to all of the State of Mauritius. Section 2 of the Act defines Mauritius as including Rodrigues. The Act applies unless the context requires otherwise or the enactment expressly states otherwise. The 1974 Act also applies to all pre-1974 legislation of Mauritius unless⁵⁶⁷ the context otherwise requires or the enactment itself expressly otherwise provides. There is therefore the potential for Rodrigues to be covered by pre-1974 legislation which had not previously been extended to it.

The legislative difference in respect of Rodrigues was taken up in the case of *Police v Rose*⁵⁶⁸. The applicant was prosecuted in the District Court of Rodrigues for arson. Had the offence been committed on the Island of Mauritius the accused would have been tried before the Intermediate Court with two or three Magistrates on the Bench. The accused claimed that this was discriminatory under section 16(1) of the Constitution. Section 16 says that "no law shall make any provision that

extend to laws for Rodrigues, so far as that is provided for in the Rodrigues Regional Assembly Act 2001.

⁵⁶⁵ And for that matter to the other small islands within the jurisdiction of the State of Mauritius.

⁵⁶⁶ section 3(3).

⁵⁶⁷ by section 3(2).

⁵⁶⁸ 1976 MR 79.

is discriminatory either of itself or in its effect” and, in section 16(3), “discriminatory” is defined as meaning:

affording different treatment to different persons attributable wholly or mainly to their respective descriptions by ... place of origin, ... whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

The Supreme Court held that there was a differentiation but not necessarily a discrimination. “One recognised principle of differentiation is found in geographical differences” however “it is permissible to apply different measures to different classes of persons if the classification is based on an intelligible principle having a reasonable relation to the object which the Legislature seeks to attain”⁵⁶⁹. It was further held that the statute in question:

[s]hows either positive benevolence in favour of Rodrigues, or at least a desire to adapt laws passed for Rodrigues in the light of objective conditions existing there... Unfortunately, benevolence is not enough ...The problem therefore is: do the organic, geographical differences existing between the mainland and Rodrigues justify the legislature enacting the offences triable in the mainland by two (or three) magistrates should be tried in Rodrigues by a single magistrate⁵⁷⁰?

...

We find that there are valid geographical and administrative reasons for applying distinctive treatment to Rodrigues, and that the measures adopted by the legislature are not discriminatory, either of themselves or in their effect. Where the legislature has made an honest effort to solve a difficult problem, it is not open to a Court of law to substitute its opinion to that of Parliament, and to reject the solution which Parliament has considered to be the most appropriate in all the circumstances⁵⁷¹.

⁵⁶⁹ Above n17 81.

⁵⁷⁰ Above n17, 82.

⁵⁷¹ Above n17, 83-84.

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The effect of section 4 of the Interpretation and General Clauses Act 1974 is that after 1974 there were few pieces of legislation of Mauritius that did not apply to Rodrigues, and in 2003 it is difficult to find a general Act of Mauritius which did not apply to Rodrigues. There are some Acts which state specifically that they do not apply to Rodrigues and there are one or two which by necessary implication or by administrative practice are not extended to Rodrigues. The obvious statutes specific to Rodrigues are the Court of Rodrigues Jurisdiction Act and the Rodrigues (Administrative and Judicial Provisions) Act.

One Act which does not extend to Rodrigues by necessary implication is the Local Government Act. This omission raises the second aspect of the lesser status of Rodrigues in the State of Mauritius. The existence of local body democracy has been a feature of the Island of Mauritius for nearly a century. That provision for democratic participation in government at the local level was not extended to Rodrigues.

III - REGIONAL AUTHORITY IN RODRIGUES 1990-2002

A. - RODRIGUES LOCAL COUNCIL

In 1990 a step in the direction of a representative local government for Rodrigues was taken with the enactment of the Rodrigues (Local Council) Act. It provided for a local council of 21 members, all of whom were appointed by the Minister for Rodrigues on such terms and conditions as the Minister thought fit. Most of the members of the council were representative of specific interest groups, and although it was not stated, it may be presumed that they were interest groups within Rodrigues. There was for instance to be one member representing "the Women's Associations", and two members representing "the trade unions"⁵⁷². In terms of the membership and the object of the Council, local government operated in Rodrigues in a very different way from the way it operated in the Island of Mauritius.

The objects of the Council, as stated in section 5, were to "advise the Minister on matters relating to the development of Rodrigues; and ... supervise the execution of such development projects as the Minister

⁵⁷² Rodrigues (Local Council) 1991, s4.

may refer to it". "Developmental projects" were described as the "provision of public amenities and community development projects relating to health, education, agriculture, public transport and the environment". This was a local government council without powers.

The Rodrigues (Local Council) Act included no provision for the making of supporting subordinate legislation, and no subordinate legislation was made for the Act under other existing general powers.

Rodrigues continued to be administered as a government department. The chief administrative officer on the island, the Island Secretary, was a public servant, who reported to the Minister for Rodrigues.

The Rodrigues Local Council was abolished in 1996. The Minister of Rodrigues did not renew the appointments of the council members when their appointments ended. The Minister did not give any official reason for his actions.

B. - RODRIGUES REGIONAL ASSEMBLY

1. - The 2000 Bill

A Bill to establish an elected Rodrigues Local Council was prepared in 2000. This Bill was later described, in the "Proposed decentralised system of Government for Rodrigues" prepared by Robert Ahnee, as intending to establish "a glorified status of District/Municipal Council," for local government in Rodrigues. The Bill was not, however, presented in the National Assembly.

2. - A decentralised system of government

The idea of establishing a system of local government in Rodrigues resurfaced again after the general election in September 2000. The new Government wanted to introduce a decentralised system of government.

Retired Supreme Court Judge Robert Ahnee was asked by the Government to study decentralised systems of government and to recommend a system for Rodrigues.

On 10 October 2000, Ahnee visited Rodrigues for 3 days and talked to a number of people about the proposed plans. The idea of decentralisation was already known in Rodrigues because of the media coverage and the idea was welcomed by the people of Rodrigues.

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In March 2001, the Prime Minister, the Deputy Prime Minister and the Minister of Local Government went to Rodrigues. While they were there the Prime Minister spoke again of the Government's intention to obtain "maximum possible decentralisation and autonomy" for Rodrigues.

3. - The Trinidad and Tobago system

In April 2002, Ahnee visited Trinidad and Tobago to gain information on the decentralised system in place there for Tobago⁵⁷³. In Trinidad and Tobago, the Tobago House of Assembly Act 1980 provided for a decentralised system for Tobago⁵⁷⁴. Ahnee found the Tobago system was working satisfactorily and thought it would be a reasonable one on which to base the new Rodrigues system. He also thought it would be a good idea to base the system on the Trinidad and Tobago law because that the population of Trinidad and Tobago is similar to that of Mauritius, and because the supreme law of Mauritius and Trinidad and Tobago are similar⁵⁷⁵.

It was, however, decided that the Dispute Resolution Commission provided for in the Trinidad and Tobago law "to act as arbitrator between Tobagan authorities and the central government in Trinidad in case of dispute as to the adequacy of funds put at the disposal of the Assembly of Tobago" would be omitted from the Rodrigues law. The Commission in Trinidad and Tobago had only been utilised once.

V - A REGIONAL ASSEMBLY FOR RODRIGUES

In June 2001, a draft of the Rodrigues Regional Assembly Bill and the necessary amendment to the Constitution were given to a Committee of Officials chaired by the Secretary to the Cabinet. There were discussions at this level and then the Bill was submitted to Cabinet.

⁵⁷³ Tobago has a population of approximately 50,000 people. Trinidad has a population of approximately 1.3 million people. Tobago is a ward of Trinidad.

⁵⁷⁴ There was an amendment to the Act in 1996 and now the Tobago House of Assembly Act 1996 governs.

⁵⁷⁵ The Republic of Trinidad and Tobago has a bicameral Parliament. The Parliament consists of a Senate (31 seats) and a House of Representatives. The Tobago House of Assembly is a separate body, which allows for the self-government of Tobago. In addition, Tobago is allotted 2 seats in the National Parliament.

A. - THE CONSTITUTION AMENDMENT ACT 2001

In 2001 the National Assembly of Mauritius passed a significant amendment to the Constitution of Mauritius in order to provide for a regional assembly for Rodrigues. The effect of this is to entrench within the Constitution of Mauritius, which is a unitary state, recognition of a new governmental entity different from and with greater power than the various village, district and municipal authorities operating within the Island of Mauritius under the Local Government Act.

The Constitution Amendment Act 2001 was passed on 20 November 2001, at the same time as the Rodrigues Regional Assembly Act, and received the President's assent on 20 December 2001. The Constitution Amendment Act amends Chapter VI of the Constitution by adding a new Part VIA. Part VIA has 5 sections⁵⁷⁶: The first four sections deal with the establishment of the Rodrigues Regional Assembly, the fifth section deals with the entrenchment of these provisions.

1. - The Regional Assembly

Section 75A establishes the Rodrigues Regional Assembly and provides for a Chairperson and other members of the Assembly. Section 75B sets out the powers of the Regional Assembly. Section 75C establishes an Executive Council of the Regional Assembly and provides for a Chief Commissioner, Deputy Chief Commissioner, and other Commissioners. Section 75D establishes a Rodrigues Capital Fund and a Rodrigues Consolidated Fund.

2. - Entrenchment

Section 75E entrenches the Rodrigues Regional Assembly by providing that Part VIA "shall not be altered without the concurrence of the Regional Assembly unless such alteration is supported at the final voting in the National Assembly by the votes of not less than 2/3rds of all the members."

⁵⁷⁶ sections 75A to 75E.

B. - THE RODRIGUES REGIONAL ASSEMBLY ACT 2001

1. - The Act in general

The constitutional change was complemented by the Rodrigues Regional Assembly Act 2001, (the Rodrigues Regional Assembly Act 2001 repeals the Rodrigues (Local Council) Act of 1991) which was fully in force by 30 September 2002. The statute is itself somewhat out of the ordinary because, in addition to the certification of due enactment by the Clerk of the National Assembly, the Rodrigues Assembly Act 2001 carries by way of subscriptum of the Deputy Speaker of the National Assembly: "This is to certify that the Rodrigues Regional Assembly Bill was passed by the National Assembly at the above sitting and was supported unanimously at the final voting by the votes of 62 members of the Assembly".

The measure is a substantial one. There are sixty pages of text which include 79 sections and six schedules. A substantial part of the Act deals with the membership of the Rodrigues Regional Assembly itself. Other parts deal with the Executive Council of the Regional Assembly (Part 3), finance (Part 4), meetings and proceedings at the Regional Assembly (Part 5), and staff and related matters (Part 6).

The law is a most interesting one and inevitably leads to the question, What next? If the purpose had been fully to implement the democratic principles of the Republic of Mauritius for the Island of Rodrigues, a predictable development would have been simply to extend the Local Government Act to Rodrigues. That would have been an end in itself and would have provided for a similar or identical local government system in the two main islands of the Republic.

The regime under the Act of 2001 is something different. It clearly seeks to serve the democratic need at the local government level by providing for an island assembly with elected representatives. However, there are also aspects of colonial devolution apparent in the legislation and thence both a wider potential range of powers in the Regional Assembly than in local government but also greater central government control over the exercise of those powers. By way of example, no local government authority on the Island of Mauritius has control, even of an administrative nature, over the prisons within its boundaries or the airports within its boundaries, but the Regional Assembly of Rodrigues does control those matters.

2. - Legislative powers

On the other hand Rodrigues has an extended legislative capacity but all of that capacity is subject either to procedural formalisation in the National Assembly on the Island of Mauritius, or to disallowance by the National Assembly. Though the Regional Assembly has power to debate “Bills” and to adopt them, the purpose of debating Bills is for Rodrigues to refer them to the Parliament of Mauritius “for enactment into law in accordance with section 46 of the Constitution.” No such law may have an extra-territorial effect⁵⁷⁷ and Rodrigues law is always subordinate to the Constitution of Mauritius and to any treaty to which Mauritius is a party. Subject to the qualification in respect of Rodrigues specific legislation in section 2(2)(a)(iii), Rodrigues law is subordinate to any law of the Republic of Mauritius. When approved by the Parliament of Mauritius a proposal from the Rodrigues Regional Assembly is known as a Rodrigues Regional Assembly law.

Regional Assembly Regulations are subject to disallowance by the National Assembly⁵⁷⁸.

3. - Rodrigues Regional Assembly

Under section 3 of the Rodrigues Regional Assembly Act 2001, the Rodrigues Regional Assembly is established as a body corporate and agent of the government of the Republic of Mauritius⁵⁷⁹. The Regional Assembly consists of 18 elected members - some are elected on the basis of a first-past-the-post electoral system and one third on the basis of island-wide proportional representation. Ultimately the operation of the Assembly is controlled centrally. “The President, [acting in accordance with the advice of the Prime Minister], may at any time dissolve the Regional Assembly” and issue a writ of election to elect a new Regional

⁵⁷⁷ Beyond the territorial sea surrounding the Island of Rodrigues.

⁵⁷⁸ Section 31.

⁵⁷⁹ “The exercise of its function shall be as done on behalf of the government of the Republic of Mauritius.” This gives the impression of Rodrigues being like a corporatised government department with substantial legislative powers.

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Assembly⁵⁸⁰. Membership of the Assembly is limited to citizens of Mauritius who share a Rodrigues residence qualification.

The members of the Assembly, the Chairperson, Deputy Chairperson and the Officers of the Executive of the Assembly are required to take an oath or affirmation of office at the beginning of their term⁵⁸¹. The usual provisions relating to conscientiously and impartially upholding “the constitution and the law” and undertaking to fulfil the duties of office, apply. In addition, in all three cases, there is a requirement to “bear true faith and allegiance to Rodrigues”. This can be distinguished from the oaths of office required of local government officers under the Local Government Act⁵⁸². It is much more reminiscent of the oath provisions for the President in the Constitution of Mauritius⁵⁸³ and very closely follows the wording of the oaths required under the Mauritius Citizenship Act⁵⁸⁴. Precisely what “allegiance” to Rodrigues means is not clear. In terms of fealty or the honouring of a sovereign it is an inappropriate expression because the sovereign in respect of Rodrigues is the same as for the state of Mauritius. Rodrigues as such does not exist independently of the Republic of Mauritius. There can be only one allegiance and that is the allegiance of the citizen (that a member of the Rodrigues Regional Assembly must necessarily be) to Mauritius. However, the law provides for two allegiances for a member of the Rodrigues Regional Assembly. This sets up an impossible conflict of duty and may be one more indication that this Act is just the latest chapter in the continuing story of the Island of Rodrigues. The creation and status of the Rodrigues Regional Assembly within the government structure of the Republic of Mauritius suggests a staging post in an evolution rather than a destination.

⁵⁸⁰ Section 3(6) states that “The President may at any time dissolve the Regional Assembly.” This subsection read alone suggests the President may dissolve the Regional Assembly as a body (not just the members of the assembly). However, read within the context of section 3, it is clear that it means dissolution of the membership of the assembly only.

⁵⁸¹ Sections 14, 34 and Third Schedule.

⁵⁸² That oath reads “I A B, having been elected ... a municipal councillor do hereby swear ... that I take that office upon myself, and will duly and faithfully fulfil its duties to the best of my judgment and ability.” Local Government Act s10 and Third Schedule.

⁵⁸³ Constitution of Mauritius, Third Schedule.

⁵⁸⁴ See the Mauritius Citizenship Regulations 1968, Appendix V.

4. - Executive of the Regional Assembly

The Executive Council of the Regional Assembly comprises the Chief Commissioner, the Deputy Chief Commissioner, and 5 others appointed by the President of the Republic acting on advice of the Chief Commissioner. One role of the Executive Council is to “develop policy on matters relating to Rodrigues in relation to its functions for submission to the Prime Minister.” “The Executive Council may ... refer to the Prime Minister specific matters of policy relating to Rodrigues for the consideration of Cabinet.” “The Chief Commissioner shall, if invited by the Prime Minister to do so attend meetings of the Cabinet” Section 40 provides that “It is the duty of the Chief Commissioner to keep the Prime Minister fully informed concerning the general conduct of the affairs of the Executive Council in relation to Rodrigues and shall furnish the Prime Minister with such information as he may request from time to time with respect thereof”. This particular provision could have come directly from the Letters Patent of late British colonial times as a description of one aspect of the relationship between the leader of the government and the Governor.

Sections 36 and 37 of the Act provide for the circumstances where the appointment of the Chief Commissioner can be revoked. Section 37(1)(a) states that “the Chief Commissioner shall vacate his office when his appointment is revoked by the President.” Read alone, this allows the President sole power to revoke the appointment of the Chief Commissioner. This potentially would allow for the situation where the Regional Assembly is dissolved, and the President revokes the Chief Commissioner, leaving the President free to legislate for Rodrigues under section 158 of the Courts Act⁵⁸⁵. However, it must be the case that section 37(1)(a) is dependant on section 36 which requires the Regional Assembly to pass a resolution declaring no confidence in the Chief Commissioner before the President can revoke the appointment of the Chief Commissioner.

5. - Finance

The chief financial support for the Rodrigues Regional Assembly is allocations made by the National Assembly of Mauritius provided to the

⁵⁸⁵ The President could argue that it is “desirable for the good government and general well being” of Rodrigues to provide regulations for Rodrigues.

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credit of Rodrigues⁵⁸⁶. In considering the allocation of finance to Rodrigues the Cabinet is required by section 46 to have regard to the special situation of Rodrigues by taking into account⁵⁸⁷:

- a) the physical separation of Rodrigues from the Island of Mauritius;
- b) Rodrigues' distinct history and identity;
- c) Rodrigues' isolation from the principal national growth centres;
- d) the absence of the multiplier effect from expenditures and investments (private and public) made in the Island of Mauritius;
- e) the restricted opportunities for employment and career fulfilment in Rodrigues;
- f) the impracticability of participation by residents of Rodrigues in the major educational, cultural and sporting facilities located in the Island of Mauritius;
- g) the lack of sustained development in Rodrigues;
- h) the amount of grant which could have been payable to it, had it been a Municipal or District Council;
- i) the special needs of Rodrigues in terms of accelerated development; and
- j) the state of public finance and of the economy of Mauritius in general.

The coming into force of the enactment vested all state land held in Rodrigues in the Regional Assembly in right of the Republic of Mauritius⁵⁸⁸.

6. - Rodrigues public officers

The public officers of the Rodrigues Regional Assembly are subject to the appointment, promotion, transfer and removal and disciplinary powers of "the appropriate service commission." There are a number of service commissions in the Mauritius, the principal ones are those under the Constitution - the Public Service Commission, the Judicial and Legal Services Commission and the Discipline Services Commission. There is additionally under ordinary statute, a Local Government Services

⁵⁸⁶ Section 43 lists what constitutes the Rodrigues Capital Fund. However, this must be limited by the requirement in section 75D of the Constitution which says the funds are for "the purposes of development."

⁵⁸⁷ Rodrigues Regional Assembly Act 2001 s 46.

⁵⁸⁸ another interesting allusion to a colonial type relationship rather than a local government one.

Commission. Presumably the reference in section 69 of the Rodrigues Regional Assembly Act is to the constitutional service commissions and in particular to the Public Service Commission.

7. - Regional Assembly powers

The Fourth Schedule sets out the matters within the power of the Regional Assembly. This list includes 48 items and goes further than the powers of local government on the Island of Mauritius⁵⁸⁹. In particular it includes a number of matters which are the state's responsibility on the Island of Mauritius⁵⁹⁰. In addition, though specifically limited to matters of administration, the Assembly has power in respect of civil aviation, customs and excise, health, marine services, postal services and social security. Item 48 is the catch-all clause which states that "any other matter which the President may, by proclamation, assign to the Regional Assembly"⁵⁹¹. An alternative would have been for the Regional Assembly to have had the power to amend the Fourth Schedule by regulation.

The Fifth Schedule provides for the levying of rates by the Regional Assembly.

⁵⁸⁹ Local Government Act s51.

⁵⁹⁰ For example civil status, registration, state land, transport, tourism, water resources, fisheries, forestry, information technology and telecommunications, labour and industrial relations.

⁵⁹¹ This Schedule was amended by the Rodrigues Regional Assembly Amendment Act 2002. Under the original Rodrigues Regional Assembly Act item 48 read "Any other matter which the Chairperson may, by proclamation, assign to the Regional Assembly". The amendment from "Chairperson" to "President" is a significant one. However, it seems likely that the initial reference to the Chairperson was a mistake rather than that there has been an intentional decrease in the powers of the Regional Assembly (The Rodrigues Regional Assembly Bill and the Tobago House of Assembly Act both refer to the President). The Interpretation and General Clauses Act provides that a proclamation is an enactment of the President of the Republic and further that the proclamation is a subsidiary enactment and as an enactment must appear in the legal supplement to the *Government Gazette*.

C. - COMPARISON WITH THE TOBAGO HOUSE OF ASSEMBLY ACT

It is apparent that the Rodrigues Regional Assembly Act 2001 is strongly modelled on the Tobago House of Assembly Act 1996. However, there a number of differences between the Rodrigues and Tobago Acts which are worth noting:

- 1 The Rodrigues Regional Assembly is an agent of the National Assembly (in the performance of the responsibilities assigned to the Regional Assembly);
- 2 Under the Rodrigues Regional Assembly Act, the President may dissolve the Regional Assembly at any time;
- 3 Under the Rodrigues Regional Assembly Act, the oath requires “faith and allegiance to Rodrigues.” The Tobago House of Assembly Act 1996 requires “faith and allegiance to Trinidad and Tobago;”
- 4 There are a number of differences in the Schedule lists of the responsibilities of the Assembly. The Rodrigues Regional Assembly Act list suggests the Assembly has a more administrative role. The Tobago House of Assembly Act 1996 seems to have more stand-alone powers;
- 5 The Rodrigues Regional Assembly Act states that functions that are not the responsibility of Rodrigues, remain with the Government of Mauritius. The Tobago House of Assembly Act 1996 lists in the 6th Schedule the matters the Government remains responsible for;
- 6 The Rodrigues Regional Assembly can make regulations;
- 7 The President of Mauritius can revoke the appointment of the Chief Commissioner of Rodrigues;
- 8 The Tobago House of Assembly Act 1996 provides for a Dispute Resolution System; and
- 9 The names of the persons in the Assemblies differ:
 - In the Tobago House of Assembly, the members are called Assemblymen and Councillors. The head of the Assembly is the Presiding Officer (and Deputy Presiding Officer). In the Rodrigues Regional Assembly, the members are called

members. The head of the Assembly is the Chairperson (and Deputy Chairperson).

- In the Executive Council of the Tobago House of Assembly, there is a Chief Secretary, a Deputy Secretary and other Secretaries. In the Executive Council of the Rodrigues Regional Assembly, there is a Chief Commissioner, a Deputy Chief Commissioner, and other Commissioners.
- The principal public officer in Rodrigues is called the Island Chief Executive, and in Tobago is called the Chief Administrator.

VI - CONCLUSION

The Rodrigues Regional Assembly Act 2001 is a remarkable advance in terms of representation of the interests of the community in Rodrigues at the government level. In the abstract, and looking just at the documents themselves, it may be anticipated that this will not be the last word on the government of Rodrigues. The direction indicated by this piece of legislation is potentially a disintegrative one. The island is governed under a structure which resembles a stage in the Commonwealth colonial system of development of self-government towards self-determination.

What might be the constitution of Rodrigues at the end of the century? In current practical, pragmatic terms the choices are not very many. The high reliance of Rodriguans on economic and material support from the Republic of Mauritius provides constraints on the development of regional identity and regional self-government. If Rodrigues is not to be another local government authority (and it is already more than that) within the general system of the State of Mauritius, does it have the potential perhaps to be a federal component of the Republic of Mauritius? And what does all this say about the status and the future of the other islands of the Republic of Mauritius - Agalega and of the Chagos archipelago – which are run as state corporations⁵⁹².

⁵⁹² See Outer Islands Development Corporation Act.