

# Chagos saga 2016 a make or break year



By **David SNOXELL\***

The 1966 UK/US agreement making the British Indian Ocean Territory (BIOT/Chagos Islands) available for defence needs for a period of 50 years ends on 29 December 2016 but can be extended for a further 20 years. Before that deadline, either side may seek to vary the terms. Renegotiation of this agreement provides a unique opportunity to resolve the problems that have beset Anglo-Mauritian relations since the creation of BIOT in 1965. The three main issues are resettlement of those Chagossians wishing to return, sovereignty of the Islands and the future of the Marine Protected Area (MPA).

The KPMG study into resettlement was published on 10 February 2015. It reported that there were no reasons why resettlement should not take place. But the study was too late, the British Government said, for a decision to be taken before the election. So further studies into cost and demand for resettlement were initiated, leading to another consultation with "interested parties" with a 27 October deadline for responses. The government of Mauritius was also asked for its views. Nearly a year after the KPMG report was published, a decision on resettlement is still awaited.

In October, the Chagos Islands All-Party Parliamentary Group (APPG) elected Andrew Rosindell MP to succeed Jeremy Corbyn as chairman. At its 52<sup>nd</sup> meeting in December, the Group noted that it had been three years since the then foreign secretary, William Hague, had announced a review of the resettlement policy.

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With a year to go before the renewal of the UK/US agreement, it was high time the government came to a decision. The Group, established over seven years ago, has 41 members from all 10 political parties which may be unique in the history of APPGs. Members have been assiduous in pursuing the issues in debates, Parliamentary Questions and letters to ministers. They argue that a condition of renewal of the agreement should be US cooperation and a contribution to the costs of resettlement. Since the US had already agreed to inclusion of Diego Garcia in the KPMG study, it is clear that the Americans do not have any insuperable problems with resettlement. The APPG concluded in a letter to The Times on 7 November, marking BIOT's 50<sup>th</sup> anniversary "Fifty years on, Britain should dispose of this albatross and rectify the injustices and human rights violations of the past".

The delay may partly be due to the Foreign and Commonwealth Office (FCO) waiting for a supreme court ruling on the Chagossian case, heard last June. It was an appeal against the Law Lords majority judgment in 2008, upholding the legality of the 2004 Orders in Council which had removed the Chagossians' right of abode. Lawyers for the Chagossians demonstrated that there had been a failure to

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disclose vital documents, which showed that the 2002 feasibility study (concluding that long-term resettlement was not feasible) was flawed. A ruling is expected this month. But whatever the court decides, there is nothing to stop the foreign secretary restoring the right of abode, in the same way that his predecessor, Robin Cook, restored it in 2000 following a high court judgement. The decision to allow a pilot resettlement on Diego Garcia, as proposed by KPMG, is primarily one of cost and, above all, political will.

The issue of sovereignty must also feature in the discussions with the US. The UK is committed to returning the territory to Mauritius when no longer needed for defence. Only Diego Garcia has ever been used for defence installations. So there is no reason why the outer islands could not be returned to Mauritius. The UK does not need the base on Diego Garcia, and never has.

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On 18 March 2015, an UNCLOS Arbitral Tribunal of five international judges upheld Mauritius' right to eventual sovereignty of the Chagos Islands. Two of the five judges went further and argued that the Tribunal had the jurisdiction to decide on sovereignty as part of the award.

The MPA, declared on 1 April 2010, has remained in legal and practical limbo. The same Tribunal found that it was in breach of UNCLOS as the UK had not fulfilled the basic purpose of consultation with Mauritius. Academic lawyers generally regard the MPA as unlawful. Illegal fishing has increased substantially because enforcement is inadequate. The Tribunal decided

that Mauritius holds legally binding rights to fish in Chagos waters and to the preservation of the benefit of any minerals or oil discovered in or near the territory, pending its return to Mauritius. An agreement over the future sovereignty of the Islands would resolve the legal issues and give the MPA international recognition and clout.

It has been nearly 10 months since the Tribunal announced its award to Mauritius. It ruled that Mauritius had an "interest in significant decisions that bear upon the possible future uses of the Archipelago". This of course must include resettlement and the MPA. There has not been any sign of the talks that the Tribunal said the UK should undertake with Mauritius. 2016 provides a unique, indeed once and for all, opportunity for both countries to reach an agreement on resettlement, sovereignty and the MPA. It is to be hoped that both governments are devoting their energies to achieving an overall settlement of the issues before the UK/US Agreement expires on 29 December and by default rolled over for a further 20 years. ■

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