

77 Arthur Circle, Forrest,
A.C.T. 2603, Australia,
4th February, 1976.

Mr N.O. Seed,
The Treasury Solicitor,
Matthew Parker Street,
LONDON SW1H 9NN, England.

Dear Mr Seed,

Your letter T&M/71/948/NDI/NOS of the 28th January arrived last night and I hasten to reply. First I will deal with the note on the ownership of minerals enclosed with your letter. By coincidence I had the day before sent to Mr Ing a four part digest of Banaban customary inheritance and tenure: you will appreciate that ~~law~~ is not my subject and as a consequence the memorandum is possibly ~~full~~ of legal howlers.

Re para. 1 of the note: the argument that the Banabans recognize under-surface rights originated I think with me, as a spin-off from my investigations into Banaban land tenure. The reason why I stressed it in the early 30s was to counter a prevalent view among certain officers in the Government that islanders had no conception of under-surface rights and that consequently they belonged to the Crown. Sir Murchison Fletcher, who was High Commissioner for the Western Pacific when I conducted the lands settlement of Banaba was, I believe, an exponent of this view, but there were others who followed his lead, though possibly not in writing.

If Mr Vinelott wishes to argue against this I suggest that he should base his reasoning on the fact that as the bangabanga meandered endlessly under lands belonging to many surface owners it would be impracticable for them to be owned by individuals. Grimble writes of them stretching: 'mile-long, an uncounted series of chambers and corridors, chimneys and passages, through the eastern half of the island, here rising to the light of day, there twisting amid festooned tree-roots through the middle depths, and again plunging deep through the bowels of the rock to the edge of echoing abysses!'. They therefore had to be owned communally, as an exception to the usual custom, because no one knew where they were situated in relation to the surface above.

Your para. 2. May I say here, with all deference, that your argument is based on a suppressed premise, i.e. that the Gilbertese (or Banabans) are a Polynesian people. They emphatically are not: they are a Micronesian people and their land customs are in many ways the very opposite of those

peculiar to the Polynesians. Land tenure is in the last analysis a complex in the ~~totality~~ of a people's culture, and Polynesian culture is poles apart from Gilbertese.

Neill's knowledge of Banaban custom was nil and his knowledge of Polynesian custom was presumably confined to that of the Tongans, which deviated markedly from the Polynesian norm (if there is such a thing as a Polynesian norm). All land is owned by the King, the nobles being allotted estates and the commoners country allotments and town sites on reaching 16, these being made by the Ministry of Lands. Like Neill I also served as British Consul to the Kingdom of Tonga and my son obtained his doctorate for a thesis on 'Population, land and livelihood in Tonga', which deals with Tongan customary tenure in detail, so I have some knowledge of the subject.

It would be true to say that communal tenure of some sort was the general rule in Polynesia. Not so in the Gilberts, where individual tenure was definitely the general rule and communal tenure the exception reserved for rights not conveniently dividible. Banaban land customs differ only in detail (particularly as regards te aban tibu) from Gilbertese, where an attempt to introduce Polynesian customary tenure in the Phoenix Islands by Sir Harry Luke could, if not prevented, have wrecked the colonization of the Group.

Your para. 3. I agree here, with the exception of the two final sentences. One can scarcely say there was no use for minerals when one of the Banabans' most precious possessions was manufactured from a subterranean mineral made from carbonate and phosphate of lime. And the last sentence should, I suggest, read: 'And the rule of individual property remains unless and to the extent to which it is varied by local custom'.

Your para. 4. It follows from my argument above that this paragraph might be deleted in toto.

As regards the passages marked with a red line in the margin, these are for the most part beyond my ken, being questions relating to funds concerning which I ~~have~~ absolutely nothing other than the information which I abstracted from the High Commission files and reproduced in my printed memorandum on Banaban lands and funds dated the 2nd September, 1946, of which you have at least a photocopy (please see in this connexion the second and third paragraphs on p.2 of my letter to Mr Ing dated the 6th January).

Speech 15

- (1) P.2 A-D. I have stated, in para. 8 of my memorandum, all I know on this subject. The word 'average' in the last line of my para. may be an indication that the interest was distributed on a 'per acre' basis.

- (2) P.2 H - p.3 A. No comment necessary since you have my notes on Banaban customary tenure and inheritance referred to above.
- (3) P.3 H - p.4 A. See (1) above.
- (4) P.4 B - p.5 A. Mr Mowbray appears to be talking here of the Old Banaban Royalty Trust Fund and the Banaban Provident Fund. If so all I know is in paras 11-12 of my memorandum.
- (5) P.7 B-E. I recollect nothing about this petition.
- (6) P.9 B-E. Mr Mowbray appears to be reading from a document which I do not possess.
- (7) P.12 D. Apparently I witnessed some document as Acting Secretary to Government some 40 years ago. I know nothing about it today.

Speech 16

- (8) P.5 D-H. I have not got this telegram and do not know what it is all about.
- (9) P.7 B-D. This would seem to be something for Macdonald to answer.
- (10) P.10 B-H. I know nothing about this.
- (11) P.12 A-D. I have dealt with this at the beginning of the letter.
- (12) P.13 B-E. I know nothing about this; not even its date is mentioned.
- (13) P.26 E-G. See p.5 (ii) of my notes on Banaban custom, where the Lands Commission define 'Banaban' as including 'part Banaban' and 'adopted Banaban'. This is what the Banabans wanted.

Sorry I cannot be of more help, but I know nothing about funds, trusts and other financial matters, except when they impinge on land tenure and inheritance.

Yours sincerely,



H.E. Maude.