

77 Arthur Circle, Forrest,
A.C.T. 2603, Australia,
14th June, 1975.

Mr N.D. Ing,
Assistant Treasury Solicitor,
Matthew Parker Street,
LONDON, SW1H 9NN, England.

Dear Mr Ing,

Ocean Island Phosphates

I am in receipt of your memorandum T&M71/948/NDI, of the 5th June, in which you request my comments on certain points in the evidence given by Mr Rotan Tito on behalf of the plaintiffs in an action brought by himself and other representatives of the Banaban community against the British Phosphate Commissioners and Her Majesty's Attorney-General (for the Crown).

2. I gather from para. 3 of your letter that the comments required relate to the following references contained in the transcript of Mr Rotan's evidence:-

- (a) the appropriateness of the terms 'forced' and 'coerce', on page 16;
- (b) alleged problems of interpretation and lack of advice, on page 17;
- (c) discussions with Mr P.D. Macdonald and myself, on page 17;
- (d) allegations that the Banabans were being 'frightened', on page 18;
- (e) points contained on pages 12-14; and
- (f) Mr le Quesne's cross-examination on pages 5-9.

3. I have interpreted these terms of reference in a broad sense and, as requested by you, have embodied ~~the~~ comments in a signed statement, which is enclosed herewith.

4. As you will no doubt be aware from a letter which was forwarded to you from the United Kingdom High Commission in Canberra I have been in contact with Banaban affairs from 1929 to the present day and, in particular:-

- (a) I spent five months in 1931 as Lands Commissioner settling their land disputes;
- (b) I was in charge of their affairs on a number of occasions prior to World War II;
- (c) I instigated and negotiated the purchase of Rabi Island for them;

- (d) I prepared the Memorandum on 'The Future of the Banaban Population of Ocean Island; with special relation to their lands and funds', which has formed the principal source of information on their affairs since its submission;
- (e) I initiated the arrangements for their transportation to Rabi Island after the war;
- (f) I negotiated with the Fiji Government (and notably Ratu Sir Lala Sukuna and the Governor) for their settlement there;
- (g) I drafted and discussed with the Banabans the 'Statement of Intentions' which, after a secret ballot, they signed as the basis of their ownership and occupancy of both Ocean and Rabi Islands;
- (h) I undertook to arrange for the free return to Ocean Island of those who so elected; and
- (i) I have maintained contact with them ever since, in particular on matters concerned with their historical and cultural development.

5. In view of this fact, coupled with the consideration that I had given a lifetime of loyal service to the British Government, I had envisaged that I should not only have been required to give expert factual evidence on matters within my personal cognizance but also that I should have been invited to assist with advice on the nature and location of documentation which might be of help to the Court in elucidating the truth, at the time when it was being collected.

6. In this connexion you will no doubt also be aware that I declined, for good reason, to give evidence on behalf of the Banaban plaintiffs in this action, but stated at the same time that: 'if the British Government wish me to give evidence they will no doubt, if solicited, indicate as much by a simple request to that effect'. A consideration of the tenor of Mr Rotan's evidence will, I am sure, convince you that, had I appeared for them, my own statements would necessarily have had to contradict it in so many particulars that I should presumably have had to be declared a witness hostile to the plaintiffs.

7. I subsequently offered to fly to London to give evidence if required by the British Government but was informed that it was not required, a decision which would appear to have resulted in evidence being adduced by at least one of the plaintiffs without all the means being available for its correction, since for some at least of the events I am the only

person still alive with a knowledge of what actually took place.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'H.E. Maude', written in dark ink.

H.E. Maude.

Statement on the Evidence of Mr Rotan Tito

1. (a) Interpretation of 'kairoroira'. It is true that the verb 'kairoroa' can be translated in modern usage as 'to force' in the sense of 'to use persuasion', but I should have thought that 'coerce' was too strong a word in so much as it implies a notion of compulsion. Mr Rotan is a man of my generation and I suggest would have used the word in its ordinary dictionary meaning of 'to urge' or 'to press'. I note that Mr Tofinga, who is not a Gilbertese, was the interpreter: at the time when I was working with him he would not have been aware of all the nuances of the Gilbertese language.

2. In any case, and regardless of the precise meaning intended by Mr Rotan, the request for resuscitation of the 1940 offer to negotiate the land transfer, which was finalized by the agreement referred to in your para. 2, came from the Banabans and not from the British Phosphate Commissioners (see Bundle 38, page 52), and they were conducted in a spirit of cordiality throughout. This is apparent from a perusal of the minutes of the various meetings antecedent to the signing and from a conversation which I had with Mr Maynard, the representative of the Commissioners and a personal friend of mine for 40 years, shortly before his recent death, when he particularly remarked on this fact. Incidentally the word 'bannana' at A on page 16 should read 'bonnano', and the generic term for 'vote' at D-F on page 19 would presumably be 'kaoti nano'.

3. It should be emphasized that Mr Maynard, like Sir Albert Ellis, was genuinely attached to the Banabans and had their best interests at heart, while being a loyal negotiator for the Commissioners, and he would never have employed methods savouring of coercion or force. In any event when dealing with the Banabans coercion of any kind would prove counter-productive.

4. The only instance of coercion adduced by Mr Rotan is the alleged surmise (at D) of certain Old Men that they would lose Rabi Island unless they signed the Agreement. Apart from the unlikelihood of either the Government or the Commissioners, both of whom were anxious that the Banabans should make their future home on Rabi rather than on Ocean Island, cutting off their noses to spite their faces by returning them to the latter island, any such fear could have been laid at rest by a simple enquiry to Major Holland, who would have either reassured them himself or obtained an immediate and categorical reassurance by telegram from the High Commissioner.

5. (b) Problems of interpretation and lack of advice. Mr Rotan (pages 16, 17, 18, 19) was on Tarawa at the time of the signing of the Agreement on the 10th April, 1947, the interpreters being Mr Tekai Arekibo and Mr Ben Corrie. Mr Rotan's memory is evidently failing in his statement at D on page 17 since Ocean Island was no longer Colony Headquarters, Mr Barley had long

retired and Mr Macdonald was Assistant Colonial Secretary at Suva. However I do recollect receiving a letter from Mr Rotan concerning the Agreement but not, unless I am mistaken, until some years later when I was on the staff of the South Pacific Commission. I replied informing him to whom he should write on the matter. I cannot find a copy in Major Holland's rather complete files (which he left to me on his death).

6. I suggest that if Mr Rotan really did have misgivings concerning the terms of the 1949 Agreement with the British Phosphate Commissioners he would have brought them up at the subsequent series of meetings between Mr Maynard and the Banabans which took place from the 5th to the 11th August, 1947. The record of proceedings (which you ~~XXX~~ may not have) does not indicate that he did so, although several other matters relating to leasehold rents, freehold lands, sale of Banaban buildings on Ocean Island and sale of sand, were discussed and agreements reached.

7. The transcript of Mr Rotan's examination in chief indicates some confusion in his mind (particularly in his statements on pages 17 and 18) as to events which took place at three separate meetings: with Mr Windrum on the 13th June, 1946, mainly on matters concerning Major Kennedy (see page 17, A); with Mr Maynard on the 9th April, 1947, on the Agreement regarding the transfer of phosphate mining lands; and with Mr Macdonald and myself from the 8th to the 13th May, 1947.

8. As regards the interpretation at the last-mentioned meeting, which led to the final drafting and signing of the 'Statement of Intentions', it could not have been bettered since Mr Bauro Ratieta was an Assistant Administrative Officer of great probity and ability (father of the present Chief Minister of the Gilbert and Ellice Islands Colony) and bilingual in Gilbertese and English. He was a member of the Board of Examiners in the Gilbertese Language, of which I was Chairman and Mr Macdonald the third member (Mr Sadd had been killed by the Japanese), and was specially flown down by me from Tarawa for the purpose of translating documentation, including the Statement, and interpreting at the meetings (see page 30 of Bundle 39). Mr Macdonald and I were in a position to assist where necessary. I note, however, that the Court Interpreter, Mr Takoa, has confirmed on several occasions the accuracy with which the 'Statement of Intentions' has been translated.

9. On the question of lack of advice raised at F and G on page 17, the Banabans had, in fact, advisers in Major Kennedy and later Major Holland, who were resident on Rabi for the purpose of advising and helping them. If they subsequently lost confidence in Major Kennedy it should be emphasized that it was the Banabans who had asked for his appointment (see in particular the Minutes of the General Meeting of Banaban Elders held on the 26th January, 1946, ~~in~~ which Major Kennedy was asked: 'If we return to Ocean Island, will you agree to come with us?'). They never lost confidence in Major Holland, and rightly so (see Mr

Rotan's letter, written for the Rabi Island Council, to the Chief Secretary, Western Pacific High Commission, dated the 8th November, 1948, on the occasion of Major Holland's retirement).

10. It should be stated, in this connexion, that the Banabans could, if they had so wished, obtained such legal advice as they desired but that, in actual fact, it was not until Major Holland's departure that they expressed their intention of employing a lawyer (see the final paragraph of the letter cited above). The Chief Secretary immediately concurred: 'No objection to their employing a lawyer if there is any matter which needs his attention. Everybody who has legal business to transact goes to a lawyer and no objection to Banabans doing likewise. If they want legal advice on any particular point let them by all means brief a lawyer for the purpose.' (Synopsis of Chief Secretary's address to the Rabi Island Council dated the 3rd January, 1949). In other words the Banabans could at all times obtain the advice of their Banaban Adviser, but if and when they chose to employ a lawyer for further advice they did so.

11. (c) Discussions with Mr Macdonald and myself; and (d) allegations of being 'frightened'. After reading carefully through Mr Rotan's evidence regarding what took place at the lengthy discussions which led to the signing of the 'Statement of Intentions' (see pages 18-20 of his evidence) I have formed the opinion that he was not endeavouring to mislead the Court but was suffering again from a confused and somewhat faulty memory. Whatever the reason, however, he has conveyed a misleading impression as to what transpired which could have been easily refuted had it been thought fit to call me as a witness.

12. As there appear to be some gaps in your documentation I must explain that the Banabans had originally (before the Japanese occupation of Ocean Island) requested the High Commissioner to purchase the island of Wakaya from their funds as a second home. A field survey of the island by the Fiji Department of Agriculture showed, however, that it was quite unsuitable for the purpose; and the Banabans were so informed.

13. Shortly afterwards we were able to secure an option from Lever's Pacific Plantations Pty. Ltd. for the purchase of the eminently suitable island of Rabi for £A.25,000. The Banabans, however, insisted on the purchase of Wakaya or nothing, and Sir Harry Luke, the High Commissioner, consequently declined to consider my buying Rabi.

14. I was most unhappy that the Banabans should lose such a bargain (reputably being sold at such a low price because it was thought that the Japanese would be taking over Fiji) and, after the option had expired, I saw Sir Harry in his private office one evening and pleaded to be allowed to buy Rabi as an investment. He argued that the Banaban investments were deteriorating in value and that Rabi could be sold at a considerable profit, for the

benefit of the Banabans, when the war was over. After some consideration Sir Harry said: 'Very well, Harry, you may buy Rabi as an investment, and Wakaya as a home, for the Banabans; if they agree. And if you are blamed by them later, be it on your own head'.

15. The Banabans had never seen Rabi but eventually they agreed to a package deal embracing the two islands, their consent being conveyed by telegram just before the Japanese occupation of Ocean Island. Rabi was accordingly bought, but the purchase of Wakaya fell through, after Ocean Island had been occupied by the Japanese, as the price requested by the Bentley family was considered to be too high.

16. At the end of the war there would have been no difficulty in reselling Rabi, if so desired by the Banabans, the original owners being anxious to purchase it again for £80,000, while other buyers would have probably paid more (see here the Chief Secretary's address to the Banabans during his visit on the 3rd January, 1949, in which he stated: '£25,000; now worth £100,000. Did Mr Maude look after the interests of the Banabans?').

17. All this I explained to the Banabans at the discussions preceding the signing of the 'Statement of Intentions': i.e. that if they wished to return to Ocean Island and did not want to keep Rabi there were buyers ready to purchase it at a price which would mean a handsome profit to the Banaban community. Mr Rotan comes nearest to the facts at H on p.18 but even there he implies, and elsewhere explicitly states, that I tried to persuade the Banabans to make Rabi their home by saying that if they did not it would be disposed of to others.

18. These were not my instructions, and very far from my thoughts and intentions, the proof being evident from paragraph (E) (14) of the Statement, by which the Banabans were guaranteed the right to travel freely between Rabi and Ocean Island and to reside on Ocean Island. I naturally hoped that they would retain Rabi and live there as I sincerely believed that it would be to their advantage to do so but I made it clear, and put it in writing, that they could live on either, or commute between the two, as they thought fit. And this is in fact what they have done. How could the Banabans be 'frightened', when all the 'Statement of Intentions' did was to embody in writing their own desires, as expressed by their statements to me followed by a secret ballot?

19. In further proof of the insubstantiality of Mr Rotan's misapprehensions I should emphasize that the 'Statement of Intentions' was discussed by the Banabans for three days and that it was only after 'everybody had had their say and every conceivable argument had been repeated' that the Banabans and I agreed to hold a secret ballot. Forty-eight people voted for returning to Ocean Island and I immediately reaffirmed the Government's promise to return them to Ocean Island free of charge if they would let me know their names (it was a secret

ballot, so I had no means of knowing who they were); and that I would wait on Rabi for two further days for them to come forward. In the event not one came. All the Banabans knew that they had only to come to me to be returned at Government expense to Ocean Island. How then can Mr Rotan insinuate (on page 22 of his evidence) that the Banabans were 'prevented' then, or at any time, from returning to Ocean Island?

20. Mr Rotan appears to suggest that the 'Statement of Intentions' was put to the Banabans on a take it or leave it basis. That this is contrary to fact is shown by the High Commissioner's despatch No.41 of the 12th September, 1947, to the Secretary of State, where he explains that paragraph (A) (1) in particular, affirming the Banaban rights to their lands on Ocean Island, was put in at their express desire.

21. (c) Points contained on pages 12-14 of Mr Rotan's evidence. Naturally I could comment on most of the evidence, both from personal recollection and documentation in my possession, but little of it appears to have any bearing on the main points at issue, and if any evidence was desired on matters of detail my offer to give such evidence would no doubt have been accepted.

22. As regards D on page 12 care should be taken not to suggest that Mr Rotan was in any sense a Japanese collaborator, as alleged at one time by Major Kennedy, since from written evidence in my possession it is certain that this was not the case. In fact he was badly treated by the Japanese for aid given to other Banabans.

23. Re G and H on page 1³ Major Kennedy's report on proceedings between the 23rd October, 1945, and the 28th January, 1946, (not amongst the documentation which you forwarded) states: 'In all cases, the essential details of the scheme were carefully explained and the people were asked whether they were prepared to proceed to Rabi with the writer for a period of two years with the option of permanently settling there. They were informed that their transport, the cost of establishing their temporary camp at Rabi and their rationing for one month after their arrival at Rabi would be a charge on Gilbert and Ellice Islands Colony Rehabilitation and not on Banaban Funds. They were assured that if, at the end of the period of two years, any or all of them should wish to return to Ocean Island, suitable transport would be arranged and that the expense of their return would also be borne by Government. They usually asked whether the move to Rabi would prejudice their remaining financial interests on Ocean Island and were informed that it would not. They were further assured that their proceedings with respect to the Royalty Trust Fund, the Provident Fund and Land-owners Investment Funds would remain the same.'

24. Regarding C on page 14 I cannot, of course, assert that Major Kennedy did not make this statement, but it would have been contrary to his instructions and is not mentioned in his detailed report of proceedings (cited above). If any such threat had been made and it was a matter of concern to the Banaban community,

or any section of it, it could have been easily brought to my notice during my official or unofficial conversations with the Banabans when they were on Tarawa with me from the 30th November to the 14th December, 1945. I was Acting Resident Commissioner of the Colony at the time and living on Tarawa Atoll, where I spoke with them both as a group and individually, and went on board the s.s. 'Triona' to farewell them and wish them all good fortune on Rabi.

25. Re D-G on page 14, Major Kennedy reported: 'The s.s. 'Triona' arrived at Rabi on the evening of the 24th December and the immigrants disembarked at Nuka on the following day. The camp already prepared for them proved adequate for their accommodation. The weather remained fair for several weeks and families were able to prepare individual cooking facilities, an arrangement which suited them better than having their food prepared by camp cooks.'. I had particularly requested Major Kennedy to rectify any possible inadequacies in their accommodation, food or other requisites by direct action through the Government of Fiji, since there was understood to be ample army or ex-army camping equipment available in Fiji at the time.

26. On the other hand Major Kennedy reported by letter dated the 26th January that: 'A slight depression of spirits among the older people has been noticeable during the past two weeks. This is probably due to the state of the weather. Alternate damp heat waves and chill damp winds are responsible for a considerable number of pulmonary illnesses while a plague of flies and sand-flies adds to the general discomfort.'. In my view acclimitization factors rather than inadequate accommodation was responsible for the initial discomfort felt by the Banabans after their landing at Rabi.

27. (f) Mr le Quesne's cross-examination. Once again it would seem to me, as a layman, that the best way of refuting any misconceptions which came to light as a result of Mr Rotan's cross-examination would have been to have examined me on oath, and I take it that you declined my offer to give evidence you do not require more than the most general observations.

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28. In brief, therefore, I consider that too much consistency should not be expected from Mr Rotan's evidence, since his once very acute mind would appear to have deteriorated with age. I have known him for nearly half a century and suggest that during that period he has evinced almost a pattern of agreement followed at a later date by a claim that this was obtained by misunderstanding or under duress. To illustrate that his disagreements were not confined to relations with the Government or the British Phosphate Commission I would quote the following:-

(i) Extract from Notes on Meeting of Banaban Committee: 5th October, 1939. 'Rotan expressed his intention of segregating himself, from today, from the Banaban Society. He is taking no further part in the Committee or in any other community activity.'.

- (ii) Extract from Notes on Meeting of Banaban Committee:
19th October, 1939. 'Rotan wishes it to be recorded that from this day he is no longer to be regarded as a member of the Banaban community in any way at all.'

On that occasion the Banaban Welfare Officer was informed by Rotan that he realized 'that his action excludes him from any participation in social services and other benefits available to Banabans as members of the Banaban community' (Banaban Welfare Officer to Acting Secretary to Government, G. & E.I.C., 11th November, 1939).

29. To confine myself, however, to the two points which you have referred to me, Mr Rotan has not only alleged that the 1947 agreement with Mr Maynard was made under some form of pressure but also, though not stated in his evidence, he alleged, at a meeting of the Rabi Island Council on the 20th October, 1948, that 'Maude and Macdonald had carried through the Statement of Intentions hastily as a trap to bind the necks of the Banabans'. Major Holland was included in the allegation. Mr Rotan later denied using the phrase 'as a trap' but acknowledged the remainder. (See telegram from Holland to Chief Secretary, W.P.H.C., of the 20th October, 1948). While he withdrew and apologized for his expression, 'after some attempt at equivocation', at an interview with the Chief Secretary the following January it nevertheless illustrates my point that statements made by him cannot necessarily be taken at their face value.

30. An analysis of Mr Rotan's evidence in the present issue will show, in my submission, that his mind is dwelling on various facets of a single anxiety: that the Banabans will be prevented from living on Ocean Island. That they have not been so prevented in the past is not, of course, difficult to refute by reference to the 'Statement of Intentions' and their own free access since then; but their fear that they will be so prevented in the future stems from certain unfortunate statements (two in particular) made in the Gilbert and Ellice Islands Colony House of Assembly during recent months. I am assured by the Colony Government that there is a misunderstanding on this point but until it is resolved one must expect the reiteration of allegations such as at D on page 22 to C on page 23 of Mr Rotan's examination in chief, which apparently confused his own counsel as well as Mr le Quesne and the learned Judge, but are quite explicable to anyone knowing the background.

14th June, 1975.


H.E. Maude.