

# Banabans win a clear moral victory in court but little money

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The Banabans have emerged from their mammoth legal action in the High Court with a clear moral victory but with only a small part of their financial claims satisfied.

Mr Justice Megarry, on the fifth and final day of his judgment in the two linked cases brought by the Banabans, or Ocean Islanders, awarded them damages to be assessed against the British Phosphate Commissioners (BPC) and the British Government.

The commissioners had failed to replant Ocean Island with food-bearing trees after finishing phosphate mining there. Since it would now be impossible to do this, however, damages were awarded instead.

The judge said that the damages should be neither nominal nor very large. Agreement between the islanders and the commissioners is likely to be reached at a figure of not less than Australian \$2m (about £1,200,000), but well short of the A\$10m which the Banabans are seeking.

The Banabans' big disappointment had come earlier in the judgment, when Mr Justice Megarry rejected their claim against the British Government for allegedly underpaid royalties of more than £21m.

The islanders had alleged that the BPC had been selling off the phosphate on Ocean Island at less than market value, and that, in effect, they had been taken advantage of and been the victims of an injustice.

Mr Justice Megarry appeared to agree with that and made some strongly critical comments about the behaviour of Crown representatives in their dealings with the islanders. For instance the Government had allowed a deal to be made between the BPC and the simple, commercially inexperienced islanders without offering them any advice or assistance. As a result, the Banabans obtained a disadvantageous royalties deal. That "could not possibly be called good government", the judge commented.

Nevertheless, and with some reluctance, the judge concluded that the Crown's obligation to the Banabans was not financial, but governmental, and was therefore not enforceable in the courts.

Points from the judgment will be published in the Law Report in *The Times* on Monday.

The Rev Tebuke Rotan, head of the islanders' council of leaders, said after the case that he was returning to his people weary and defeated, having

realized that it was an expensive misunderstanding to have taken the grievance to English law.

"We have failed in law because there is no English law to protect us from the exploitation we had suffered for a long time from the British Government", he said in a statement issued through his solicitors.

"Our defeat has caused a lot of confusion and sorrow both in our minds and hearts, but at the same time has enabled us to see and understand a true and correct conception of the British Government, British laws, British justice, and the British High Court of Justice".

He said his conception was that the British Government was in fact the law maker. "They do not make laws that could make their position weak in the English High Court of Justice. They have the power to change laws in order to strengthen their position in the English High Court."

Referring to Mr Justice Megarry as "distinguished, honest and straightforward" he added: "The judge has strongly condemned the British Government's failure to meet its obligations to protect its own subjects who are weak, helpless and too small to protect themselves from such exploitation."

The court action does not end the long-standing differences between the Banabans and the British Government. There is also a dispute concerning Banaba's constitutional future.

Since the last war, with Ocean Island uninhabitable because of the mining, the 2,500 Banabans have been living on the island of Rabi, near Fiji. Constitutionally, however, Ocean Island has been part of the Gilbert and Ellice Islands.

The Banabans have been unhappy with that relationship for a long time, partly because they claim that much of the colony's wealth comes from Ocean Island phosphate.

The dispute has come to a head this year with the break up of Gilbert and Ellice, and the imminent self-governing status of the Gilbert Islands on their own, with which, constitutionally, Ocean Island continues to be tied.

After protests by the Islanders, and discussions with the Foreign Office, special safeguards were provided for the Banabans in the Order in Council granting self-government to Gilbert, which is to come into effect on January 1. The Banabans do not believe that the safeguards meet their case and continue to fight.