



GILBERT AND ELLICE ISLANDS COLONY

Gilbert & Ellice.

W.P.A.C.

No 175.

THE RESIDENCY,
OCEAN ISLAND.
27th May, 1932.

Sir,

I have the honour to report that, in accordance with the verbal instructions given by Your Excellency in July, 1931, Mr. Cadet H.B. Maude was brought from Beru to Ocean Island during September of the same year to be a Lands Commissioner for the purposes (a) of ascertaining the ownership of all Banaban lands and (b) of codifying customary methods of tenure, inheritance, succession and conveyance relating to land among the Banabans.

2. Certain tracts of land have recently been transferred for mining purposes from the Banabans to the British Phosphate Commissioners, and large payments for surface rights have been received by the Resident Commissioner on behalf of the landowners. In effect, the areas transferred have been converted into money, and if the customary rights of the heirs and successors of the present beneficiaries are to be preserved, it is necessary that the native customs and reversions which formerly applied to the land should now apply to the capital sums that replace it. The chief

object

HIS EXCELLENCY
THE HIGH COMMISSIONER
FOR THE WESTERN PACIFIC
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object of Mr. Maude's enquiry was to render the existing situation as to custom and ownership quite clear, so that an Ordinance based upon usage and applying equally to land or its substituted money-value might be enacted for the control of succession and inheritance in the future.

3. A copy of Mr. Maude's report, with enclosures, is hereto attached. I have been favourably impressed by the care which this officer has expended upon the enquiry. Though I was unable myself to attend the sessions of the Lands Commission, Mr. Maude lived at the Residency throughout his stay at Ocean Island; I was thus enabled to follow proceedings closely, to give such advice from time to time as seemed necessary, and to interview individual claimants or owners whenever my intervention appeared desirable. I am now satisfied that the records of ownership made by the Commission are both exhaustive and accurate. The Banabans as a community are of the same opinion.

4. Acting upon his instructions, Mr. Maude took written notes, during the course of proceedings, of Banaban land customs. I placed my private field notes on Banaban history and culture at the Commission's disposal in this direction.

5. Certain modes of alienating land were found to have fallen into complete desuetude during the past thirty years. No case of dispute arose in connection with any such usage. The words "Banaban land conveyances

not

Enclosure (1)
NO. 4 - 773/32
Four sub-
enclosures.

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not recognised by Lands Commission" appearing at the head of Mr. Maude's list of extinct usages (marked Enclosure 2 in his letter) therefore do not mean that the Commission was obliged at any time to withhold recognition of one or another method of conveyance: they are to be construed only as the Commission's recommendation, made on behalf of the Banaban community, against any future resuscitation of the customs described.

6. In Enclosure 1, of his letter, Mr. Maude has scheduled the native methods of alienation which are still in full force, and which the Banabans desire to perpetuate.

7. The Banaban customs of succession and inheritance are seen embodied in section 3 of the tentative draft Ordinance submitted by Mr. Maude (Enclosure 4 in his letter) in accordance with his instructions.

8. I append a somewhat fuller draft of the Ordinance, also tentative, incorporating in modified form, and with one or two additions, all the matter set out by Mr. Maude, and providing for the constitution of a Native Lands Council to deal with questions of conveyance and inheritance in future. Though the Banabans do not at present make wills, it might be advisable also to include provision, as suggested in section 12, enabling the Native Council to give effect to testamentary documents concerning land.

9. I am grateful to Mr. Maude for the pains which he has taken, and should be glad

if

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Enclosure (2).

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if he might be gazetted as Lands Commissioner as from the 5th October, 1931, to the 7th March, 1932. Lest misunderstandings should arise as to the penultimate sentence of Mr. Maude's report, I have to add that no legal documents appear to have been signed by him during the sessions of the Commission.

I have the honour to be,


Sir,

Your Excellency's most obedient
servant,

Arthur Smith,

Resident Commissioner.

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Enclosure (1)
in despatch R.O. - H.C.
No. 175 of 27th May.

COPY.

(1a)

GILBERT AND ELLICE ISLANDS COLONY.

Lands Commission Office,

Ocean Island, 7th March, 1932.

C.
NO. 4.

Sir,

I have the honour to forward a Report on the Native Lands Commission, appointed under the provisions of the Gilbert and Ellice Native Lands Ordinance, No. 8 of 1922 to enquire into the ownership of all native owned lands on Banaba (Ocean Island) and to codify the native customs of land conveyance and inheritance.

2. I arrived at Ocean Island from Beru on the 19th September, 1931 and, in accordance with Your Honour's instructions, proceeded to arrange for the holding of the Commission. In pursuance of Section 4 of the Ordinance I appointed sixteen Banabans to be native members of the Commission, four being chosen from each of the village districts on the island. In addition to these members, the Native Magistrate and Chief Kaubure sat as assessors throughout the meetings of the Commission, as laid down by Section 5 of the Ordinance.

3. The Commission sat at each of the four villages on the Island, commencing at Tabwewa on the 1st October, 1931, and finishing at Uua on the 27th March, 1932. In all, 97 claims were made by the Commission, 53 at Tabwewa, 6 at Uua, 12 at Imakonikai and 16 at Uua. The majority of these claims were either

groundless

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groundless and were unanimously rejected by the Commission, in accordance with Section 7 (1) of the Ordinance, as not being well founded, or were amicably settled by the parties in the presence of the Commission. Altogether 28 claims were rejected by the Commission, either because they were frivolous or because they were clearly based on happenings before the establishment of the Protectorate in November, 1900. 15 claims were withdrawn with the consent of the Commission and 54 claims were settled by agreement between the parties. All claims recorded for hearing before the final Commission were settled by agreement during the course of the hearing.

4. 2,479 pieces of land were registered by the Commission, divided as follows among the inhabitants of the four village districts:-

- | | |
|---------------|-------|
| 1. Tabwewa | = 395 |
| 2. Tabiang | = 291 |
| 3. Buakonikai | = 343 |
| 4. Uma | = 650 |

Besides hearing claims, the native members of the Commission were instrumental in discovering many pieces of land which had been lost by their owners, as well as in settling the boundaries of lands and in erecting permanent marks where the boundaries had been hitherto in doubt.

5. The various points of native custom with regard to land which arose during the course of the inquiry were settled by the Commission at the time, and at the final sittings the land customs were codified and are annexed to this letter. In Enclosure 1 is given the customary conveyances that I recommend should be in future recognized by the administration. They have

Encl. 1

been

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been read to the Lands Commission and have been agreed to unanimously, the members asking me to inform Your Honour that the Banabans request that the Rules as laid down in Enclosure I may be enforced on the Island from henceforward and that, wherever applicable, they may be applied also in cases where their land has been leased and is now represented by a capital sum or by an annual payment of interest. Enclosure II includes conveyances customary before the coming of the Government but no longer recognized except as establishing ownership prior to the declaration of the British protectorate.

Encl. 11.

3. I recommend that the Native Government be instructed to keep records of all adoptions as "Nati" and "Tibu" in special books to be instituted for the purpose, and that no adoption be considered as legal unless the adopter, the real parents of the adopted and the "Tibu" of the adopter have signed their respective agreement to the adoption in the relevant book. A suggested specimen form of agreement to an adoption as "Nati" forms Enclosure III to this letter, and a similar form could be used for adoptions as "Tibu".

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Encl. 111.

7. I have the honour to suggest that the Banabans customs of Inheritance and Conveyance of land be incorporated in an Ordinance in order to regularize the procedure to be adopted in future. In Enclosure IV is given a suggested draft Ordinance which, while it is not couched in exact legal terminology, embodies the recommendations suggested in this Report.

Encl. IV.

In accordance with the provisions of the Native Lands Ordinance, 1920, I have the honour to request respectfully that the appointment

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appointment of the Native Lands Commission on Ocean Island may be officially gazetted retrospectively as from the 5th October, 1931, the date on which the Commission commenced its sittings. As instructed by Your Honour, I have acted from the above date as the Native Lands Commissioner appointed under the above-mentioned Section of the Ordinance and as such have signed all documents, legal and otherwise. The Commission held its final sitting on the 7th March, 1932.

I have etc.,

(Sgd.) H.E. MAUDE,

Native Lands Commissioner,
Ocean Island.

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Enclosure I in letter,
Mr. Maude to R.C. No. 4
of 7/3/32.

(18)

Banaban Land Conveyances recognized by the Lands
Commission.

Sub Enclosure
Copy sent to R.C. No. 4

1. Te Aba n Nati. Land given by an adopter to a child adopted as "Nati" (son or daughter). The child adopted as a "Nati" leaves his or her real parents and has no further claim on their lands, his land being entirely given him by his adoptive parent under the above title. Should the adopted child die without issue the land reverts to the family of the giver.
2. Te Aba n Tibu. Land given by an adopter to a child adopted as "Tibu" (grand-child), with remainder to the heirs of his or her body. Should the adopted child die without issue the land reverts to the family of the giver.

Note:- All adoptions as "Nati" or "Tibu" must be registered in the Native Court and declarations of agreement with the adoption must be signed by the real parents, the adoptive parents and the "utu ae kan" (near kindred) of the adoptive parent.

3. Te Aba n Tara. Land given in return for nursing during sickness or old age. No conveyance is allowed under this title unless the Native Court is satisfied that "Te Utu ae kan" (the near kindred) of the conveyor refused to look after him (or her) and no conveyance under this title can be made to a member of "Te Utu ae kan". The conveyance is in fee simple.

Note:- For purposes of Land Conveyance the term "utu ae kan" is defined as including the near kindred of an individual up to and including

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his "Tibu toru" but excluding his "Tibu mamaho".

4. Te Aba ni Karaure. Land devised by the owner to an individual as a token of great affection. No conveyance is allowed without the consent of the "Utu ae kan" of the conveyor and in no case should exceed a small portion of his (or her) lands. The conveyance is in fee simple.
5. Te Iria. Land given by the real parents to a child about to be adopted as "Nati". No conveyance is allowed under this title without the consent of the "Utu ae kan" of the conveyor and in no case should exceed a small portion of his (or her) lands. Should the adopted child die without issue the land passes to the family of the adopter.
6. Te Aba ni Kamaama. Land given to a foster mother or wet-nurse in return for suckling an infant. The conveyance is in fee simple.

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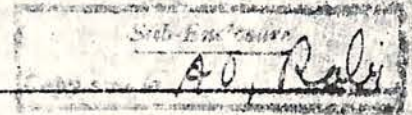


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1932Enclosure II in letter
Mr. Maude to R.C.No.4
of 7/3/32.

lc

Banaban Land Conveyances not recognized by the
Lands Commission.


1. Te Aba ni Butirake. Land given by an old man, or occasionally an old woman, to a girl who bound wreaths on him (or her). The man or woman was then bound by this custom to give her some land. This custom was usually used only when it was generally considered that certain lands had got into the wrong hands.
2. Te Aba n Rau. Land claimed by a husband from a man who committed adultery with his wife. The adulterer would usually flee, as if caught he would have been killed. In his absence his land was taken and his house broken up by the wronged individual, whereupon he was at liberty to reappear, as it was considered that his offence had been expiated by the conveyance of land under the above title.
3. Te Nenebo. On an individual being killed by another two lands would normally pass from the murderer to the family of the murdered man. These lands were called as follows:-
 - (1) "Kie-na" or the mat for the murdered man to lie on.
 - (2) "Rabuna-na" or the murdered man's shroud. The largest land that the murderer possessed would be taken as "Kie-na" and the next largest as "Rabuna-na". Should the murderer also possess a canoe it would be taken as:-
 - (3) "Bao-na" or the murdered man's coffin.
4. Te Aba ni Kamaiu. On a famine occurring, those who were destitute would go and live with those

who

who had food or were skilful fishermen. These people would look after them throughout the famine and when it was over were entitled to take all their lands under the above title. The destitute might continue to use the products of their old land sufficient to maintain life or alternatively might be supported by their relatives but in any case the land passed irrevocably on their death.

5. Te Aba n lein. Should a betrothed boy break off his engagement to a girl after having commenced sexual relations with her four or five lands would pass from his family to her's under the above title. One or two lands would often pass on a boy terminating his engagement even though no sexual intercourse had taken place. Should the girl break off the engagement no land would pass. On Banaba it was customary for betrothals to take place at a very early age, often as soon as the child was born.
6. Te Aba n Ira. Land conveyed by a thief to the owner of the property stolen. The amount of land which passed under this title would depend on the nature and quantity of the stolen articles.
7. Nenebo-n te Man. Should an individual kill any tame frigate or other bird belonging to another, one piece of land would be conveyed under the above title by the killer to the owner of the bird.
8. Te Aba n Riring. Should an individual dislocate his or her arm or leg one land would be conveyed under the above title to the bone-setter.

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Enclosure III in letter
Mr. Maude to R.C. No.4
of 7/3/32.

Namba 1.

Sub-Enclosure
Copy sent to [Signature]

Natinaki-n (ara-n te tei) mairou-ia (ara-ia te tama
ma te tina) i rou-n (ara-n te tia natinati).

Ti kariaia nati-ra ae (ara-n te tei) ba e na natinna
(ara-n te tia natinati) ao e na atongaki te tei aei
man te bong aei ba nati-n (ara-n te tia natinati).

..... Ara-n tama-na
..... Ara-n tina-na

I kariaia natinaki-n (ara-n te tei) mairou-ia ana
karo aika (ara-ia tama-na ma tina-na) ao man te bong
aei e na riki (ara-n te tei) ba nati-u.

..... Ara-n te Tia Natinati

Ngaira ana Utu (ara-n te tia natinati) ti kariaia
ba e na natinna (ara-n te tei) ao man te bong aei e na
reke tiba-na ae riai man aba-n (ara-n te tia nati-
nati).

..... Ara-ia ana Utu
te Tia Natinati.

Tani kakoaua:-

..... Ara-n te Tia-Motoki-Taeka.
..... Ara-n te Mataniwi-ia Kaubure.

..... Tai-na.

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(12)

Translation.

Copy sent to A. J. [unclear]

No. 1.

Copy sent to A. J. [unclear]

Adoption of the child of by

We agree that our child shall be adopted by and that from this day he shall be called and known as the child of

We Father of Child.
..... Mother of Child.

I agree to adopt from his (or her) parents and from this day shall be called and known as my child.

I Adopter.

We, the near kindred of agree that he (or she) shall adopt and that shall from this day be entitled to his (or her) share of the land of

We The Near Kindred of the Adopter.

Witnesses:-

..... Native Magistrate.
..... Chief of Kaubure.

..... Date.

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Enclsoure IV in letter,
Mr. Maude to R.C. No.4
of 7/3/32.

AN ORDINANCE.

Supp. Ord. to R.C. No. 4
of 7/3/32

To regulate the Inheritance and Convey-
ance of Native Lands on Banaba (Ocean
Island).

Be it enacted by the High Commissioner
as follows:-

1. This Ordinance may be cited for all
purposes as the Banaban Native Lands
(Inheritance and Conveyance) Ordinance,
1932.

2. In this Ordinance:-

"The Near Kindred (Utu ae Kan)" means
the direct ascendants or the issue of
the direct ascendants of an individual
up to and including his (or her) great
grand-parents.

"Mwi ni Mane land" means land descend-
ed through the father.

"Mwi n Aine land" means land descend-
ed through the mother.

3. Save as hereinafter mentioned no man
or woman shall possess the right to
devise his or her land to any person
save his or her issue or, failing issue,
to his or her next of kin.

Failing issue, the next of kin of an
individual shall be deemed to be, in
order of proximity of relationship:-

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Short Title.

Interpretation.

Method of
Inheritance.

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(1) In the case of "Mwi ni Mane land"-

1. remaining issue of father,
failing which
2. brothers and sisters of father,
failing which
3. issue of brothers and sisters
of father, failing which
4. brothers and sisters of
father's father (if land
originally descended from
father's father) or
brothers and sisters of
father's mother (if land
originally descended from
father's mother), failing which
5. issue of 4 above,

failing which the land shall pass to
the descendants of the collateral
branches of each preceding generation,
until an heir be found.

(2) In the case of "Mwi n Aine land"-

1. remaining issue of mother,
failing which
2. brothers and sisters of mother,
failing which
3. issue of brothers and sisters
of mother, failing which
4. brothers and sisters of
mother's father (if land
originally descended from
mother's father) or
brothers and sisters of
mother's mother (if land
originally descended from
mother's mother), failing which

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5. issue of 4 above.

failing which the land shall pass to the descendants of the collateral branches of each preceding generation, until an heir be found.

In the event of no heir being found the land shall revert to the Crown, to be held for the common benefit of the Islanders.

Save as hereinafter mentioned a man or woman shall devise his or her land in equal shares to his or her issue or, failing issue, to his or her next of kin, provided that, with the consent of all the issue, a man or woman may devise a larger portion of land to his or her male issue.

4. It shall be lawful for an adoptive parent to devise ^{land} to his legally adopted child or grandchild, equal in amount to the land given to each of his natural issue (if any). Should the adopted child die without issue, the land thus devised shall revert to the family of the giver.

5. It shall be lawful for the true parents of a child about to be adopted as a "Nati" (son or daughter), to convey to the said child a piece or pieces of land not to exceed two in number, provided that the consent of the near kindred of the conveyor is first obtained. Should the adopted child die without issue, the title to the land

thus

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"Te Aba n Nati"
and "Te Aba n
Tibu".

"Te Iria".

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thus given shall lapse in favour of the adopter.

"Te Aba n Tara".

6. It shall be lawful for an individual to devise land to a person or persons in return for nursing him or her during sickness or old age, provided that no conveyance is made under this title to a member of the near kindred of the alienator and provided that it is established to the satisfaction of the Native Court that the near kindred of the alienator refused to care for him or her during such sickness or old age. Every such conveyance shall be in fee simple.

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"Te Aba ni Karaure".

7. It shall be lawful for an individual to bequeath one piece of land to a person as a token of affection, provided that the consent of the near kindred of the alienator is first obtained. Such conveyance shall be in fee simple.

"Te Aba ni Kamama".

8. It shall be lawful for an individual to convey one piece of land to a wet-nurse or foster-mother, in return for suckling his or her infant. Such conveyance shall be in fee simple.

Land Conveyances
to be registered
in Lands Register.

9. No conveyance of land shall be valid unless it be duly registered in the Lands Register in the presence of all interested parties and the signatures of an Administrative Officer, the Native Magistrate and the Chief of Kambure appended thereto. Should the conveyance be made during the lifetime of the

Conveyor

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conveyor, the title to the lands conveyed shall not pass until his or her death, provided that the title to land given as "Te Iria" shall pass at the time of the adoption, and the title to land given as "Te Aba ni Kamamma" shall pass on the completion of the services of the wet-nurse or foster-mother.

Registration of Adoptions.

10. No adoption made subsequent to the coming into force of this Ordinance shall be lawful unless the adopter, the true parents of the adopted and the near kindred of the adopter certify their agreement to the adoption in the form prescribed in the Schedule to the Ordinance.

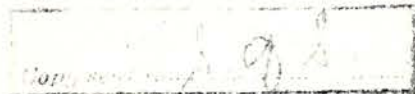
Status of an adopted child or grandchild.

11. An individual adopted as a son, daughter or grandchild, shall be regarded for all purposes of this Ordinance as the real issue of the adopter, and shall not be entitled to any share in land devised by his or her natural parents.

Procedure when Native Lands have been leased.

12. The provisions of this Ordinance shall apply in all cases where Native lands have been leased, and are represented by rent payed by the lessee.

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The Schedule.

No.

Adoption of the child of by

We agree that our child shall be adopted
by and that from this day he shall be
called and known as the child of

We Father of Child.

..... Mother of Child.

I agree to adopt from his (or her) parents
..... and from this day shall be
called and known as my child.

I Adopter.

We, the near kindred of agree that he
(or she) shall adopt and that
shall from this day be entitled to his (or her) share
of the land of in accordance with the
provisions of Ordinance No. ... of 1932.

We The Near Kindred
of the Adopter.

Witnesses:-

..... Native Magistrate.

..... Chief of Kaubure.

..... Date.

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AN ORDINANCE.

To regulate the inheritance and Convey-
ance of Native Lands on Banaba (Ocean
Island).

Be it enacted by the High Commissioner
as follows:-

Short Title

1. This Ordinance may be cited for all
purposes as the Banaban Native Lands
(inheritance and Conveyance) Ordinance,
1932.

Interpretation.

2. In this Ordinance -

"Banaba" means Ocean Island in the
Gilbert and Ellice Islands Colony.

"Banaban" means any aboriginal native
of Banaba and includes the descend-
ants of any such native whether
wholly or partly of native descent,
and also includes any native adopted
by a Banaban or his or her descend-
ants, together with the descendants
of any native so adopted whether
wholly or partly of native descent.

"Land" includes any sum of money not
being a mineral royalty paid for or
in respect of any Banaban land and
held by the Resident Commissioner
in trust for the landowner, his
heirs and successors.

"The near kindred" means the direct
ascendants

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ascendants of any person up to and including his or her great-grandparents together with all collaterals the issue of such direct ascendants.

"Nati" means a person formally adopted as a son or daughter of the adoptor. "Te aba-n-nati" means any land devised to a nati by his or her adoptor.

"Tibu" means a person formally adopted as a grandson or granddaughter of the adoptor.

"Te aba-n-tibu" means any land devised to a tibu by his or her adoptor.

"Mwi-ni-maane land" means any land not being te aba-n-nati or te aba-n-tibu descended through the father.

"Mwi-n-aine land" means any land not being te aba-n-nati or te aba-n-tibu descended through the mother.

Method of inheritance.

3. Save as hereinafter prescribed no Banaban shall devise his or her land to any person save his or her issue or, failing issue, to his or her near kindred.

Failing issue, the next of kin of an individual shall be deemed to be, in order of proximity of relationship:-

- (1). In the case of "Mwi-ni-maane land"-

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3.

1. remaining issue of father,
failing which
2. brothers and sisters of father,
failing which
3. issue of brothers and sisters
of father, failing which
4. brothers and sisters of father's
father (if land originally
descended from father's
father) or

brothers and sisters of father's
mother (if land originally
descended from father's mother),
failing which
5. issue of 4 above,

failing which the land shall pass to
the descendants of the collateral
branches of each preceding
generation, until an heir be found.

(2). In the case of "Mwi-n-aine land"

1. remaining issue of mother,
failing which
2. brothers and sisters of mother,
failing which
3. issue of brothers and sisters
of mother, failing which
4. brothers and sisters of
mother's father (if land
originally descended from
mother's father) or

brothers and sisters of
mother's mother (if land
originally descended from
mother's mother), failing
which
5. issue of 4 above,

failing which the land shall pass to
the descendants of the collateral
branches of each preceding
generation, until an heir be found.

In the event of no heir being found
the land shall revert to the Crown,
to be held for the common benefit
of the islanders.

Save as hereinafter mentioned a
Banaban shall devise his or her land
in equal shares to his or her issue
or, failing issue, to his or her

next

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next of kin, provided that, with the consent of all the issue, a man or woman may devise a larger portion of land to his or her eldest issue or to his or her male issue.

"Te Aba-n-Nati" and
"Te Aba-n-Tibu"

4. (1). It shall be lawful for an adoptive parent to devise to his or her Nati or Tibu under the Banaban titles known as te aba-n-nati and te aba-n-tibu respectively a portion of his or her mwi-ni-maane or mwi-n-aine land not exceeding the maximum portion due to any of his or her natural issue. Failing natural issue, the adoptive parent may devise the whole of his or her mwi-ni-maane or mwi-n-aine lands to the adopted Nati or Tibu.

(2) All lands held by an adopted Nati or Tibu under the titles known as te aba-n-nati and te aba-n-tibu are perpetually entailed to his or her lineal descendants. Failing such descendants the land shall revert to the adoptor or if the adoptor be deceased to such persons of the adoptor's kin defined in section 3 of this Ordinance as would have been entitled to inherit had the adoption never been effected.

5. If any person be adopted as a Tibu he or she shall thereby lose the right to inherit or otherwise receive
any

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any share of the mwi-ni-maane or the mwi-n-aiane lands of his or her natural parents, and the succession to such lands shall be determined as if he or she had not been born.

6. (1) If any person be adopted as a Nati, it shall be lawful for his or her natural parents to convey to him or her under the native title known as te iria a portion of their mwi-ni-maane or mwi-n-aiane lands not exceeding one moiety of the share which he or she would have inherited had he or she remained unadopted: provided that no land shall pass in this manner without the unanimous consent of the next of kin who would have inherited had the person adopted not been born.

(2) Should the person adopted as a Nati die without issue the ownership of all land conveyed to him under the title of te iria shall pass to the adoptor, or if the adoptor be deceased to such of his or her next of kin as may be entitled to inherit under section 3 of this Ordinance.

7. If an adoptor die before the conveyance of a portion of his lands to an adopted Nati or Tibu be legally complete, it shall be in the power of the Native Magistrate assisted by a council of Banaban elders to determine

the

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the share of adoptive lands to which the person adopted is justly entitled.

8. (1) The following gifts of land from a Banaban to another Banaban or to any person defined as a native in the Gilbert and Ellice (Consolidation) Amendment Ordinance 1925 shall be lawful-

- (a) Te aba-n-tara: a gift of land made in return for nursing services rendered to the giver by a person who is not of his or her near kindred;
- (b) Te aba-ni-karaure: a gift of land made to any other native person as a token of the giver's particular esteem, gratitude, or affection;
- (c) Te aba-ni-kamamma: a gift of land made to the wet nurse or foster mother of the giver's child when the natural mother is unable to suckle it.

(2) Provided that no gift of te aba-n-tara shall be valid unless it be first proved to the satisfaction of the Native Magistrate assisted by a council of Banaban elders that the near kindred of the owner refused to care for or otherwise grossly neglected him or her during sickness or old age; provided also that no gift of te aba-ni-karaure shall be valid unless the near kindred of the owner have first unanimously consented to such gift in the presence of the Native Magistrate and the council of Banaban elders.

(3) All gifts of land made according to the provisions of this section shall be held by the receiver in fee simple

and

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and may be given by such receiver at his absolute discretion to any other native whatsoever either in fee simple or under any Banaban title defined in this Ordinance.

9. No conveyance of land shall be valid unless it be duly registered in the Lands Register in the presence of all interested parties before the council of Banaban elders and ratified by the signatures of an administrative officer, of the Native Magistrate and of the Chief Kaubure appended thereto. Should the conveyance be made during the lifetime of the conveyor, the title to the lands conveyed shall not pass until his or her death, provided that the title to land given as "Te Iria" shall pass at the time of the adoption, and the title to land given as "Te Aba-ni-Kamamma" shall pass on the completion of the services of the wet nurse or foster mother.

Registration of
Adoptions.

10. No adoption made subsequent to the coming into force of this Ordinance shall be lawful unless the adoptor, the natural parents of the adopted, and the near kindred of the adoptor certify their agreement to the adoption in the form prescribed in the Schedule to this Ordinance.

11. The council of Banaban elders
authorised

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authorised to assist the Native Magistrate in matters pertaining to this Ordinance shall consist of twelve disinterested Banabans elected as councillors by the adult members of the Banaban community. No person shall continue in office as a councillor after the 31st December in each year unless he or she be re-elected by the community.

(2) The Native Magistrate shall be guided by the majority vote of the councillors in determining any case before him. In the event of an equal division the Native Magistrate shall give the casting vote.

12. (A section enabling the Native Magistrate and council to give effect to wills and testamentary documents concerning Banaban lands, in so far as such documents are not contrary to the terms of this Ordinance; and to distribute estates of Banabans deceased intestate, according to the law.)

13. Subject to the approval of the Resident Commissioner, the Native Magistrate and council shall enquire into and determine all cases at issue under this Ordinance, or under any custom connected with land not specifically defined herein and not contrary to the sense of anything herein contained. Provided that if a judgment of the Native Magistrate and council

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council be based upon a custom not already defined herein the said custom shall be thereupon defined in writing and the judgment shall not begin to operate until the High Commissioner has assented thereto.

14. Any person feeling himself aggrieved by any record of the Native Magistrate and Council shall within three days of the meeting at which the said record was made give notice of his desire to appeal, which notice shall be signed by the appellant or his duly authorised agent before the Native Magistrate and forwarded to the Resident Commissioner. Any appeal as to any record of the Native Magistrate and council shall be heard and determined by the Resident Commissioner whose decision shall be final if his finding upholds the record of the Native Magistrate and council. When the finding of the Resident Commissioner on appeal does not uphold the record the Resident Commissioner shall forward to the High Commissioner a copy of the record together with a copy of the evidence taken on appeal and the decision of the High Commissioner in the matter shall be final.

15. If no notice of desire to appeal is given within the specified time the record of the Native Magistrate and council shall be conclusive and final.

16. For the purposes of any inquiry the Native Magistrate and council shall have

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such powers as are vested in the Native Court to call and examine any person who may be thought able to give relevant evidence and to require the attendance of all claimants to any land the title to which is the subject of inquiry and of all persons likely to be interested in the title to such land.

17. If any person wilfully obstructs or insults a member of the council appointed in pursuance of this Ordinance while engaged in taking evidence for the purpose of an inquiry held under this Ordinance or interrupts the proceedings or in any way interferes in the inspection of land or boundaries or otherwise misbehaves during the holding of such an inquiry or fails to attend an inquiry or to give evidence when required to do so under the provisions of this Ordinance he shall be liable on conviction to a penalty not exceeding £10 or to imprisonment for a period not exceeding six months.

18. If any person being required to make a statement as a witness in the course of any inquiry under this Ordinance wilfully makes a statement material for the purposes of such inquiry which he knows to be false or does not believe to be true he shall be liable on conviction to imprisonment for a period not exceeding twelve months.

19. The future alienation of lands under
any

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any of the native titles defined in Schedule B to this Ordinance is hereby prohibited.

20. This Ordinance shall not take effect until it has been ratified by the Banaban community.

Schedule A.

The form to be used in all cases of adoption.

No.....

Adoption of the child of by
.....

We agree that our child shall be adopted by and that from this day he (or she) shall be called and known as the child of

We Father of Child.
..... Mother of Child.

I agree to adopt from his(or her) parents and from this day shall be called and known as my child.

I Adopter.

We, the near kindred of agree that he (or she) shall adopt and that shall from this day be entitled to his (or her) share of the land of in accordance with the provisions of Ordinance No.of 1932.

We The Near Kindred
of the Adopter.

Witnesses:-

..... Native Magistrate.

..... Chief of Kaubure.

..... Date.

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Schedule B.Banaban land-titles under which conveyances
are expressly forbidden.

1. Te aba-ni-butirake. Land given away by an elderly or old native to a young person of opposite sex in return for the adornment of the elder by the younger with wreaths of flowers.
(Note. Often used in the past for immoral purposes. Now in total desuetude)
2. Te aba-n-ran. The forfeit of land paid by an adulterer to the wronged husband in commutation of the death penalty.
(Note. Often used formerly in the manner of a legal fiction, as a basis for the hiring out of a wife. Now in total desuetude.)
3. Te nenebo. The forfeit of land paid by a murderer to the near kindred of the murdered man in commutation of the death penalty.
(Note. Now in total desuetude.)
4. Nenebo-n te man. The forfeit of land paid by the killer of a frigate-bird to the owner of the bird.
(Note. Now in total desuetude.)
5. Te bora or te aba-n-tinaba. A gift of land made to a young woman, or her husband or betrothed, in payment for sexual relations with her, under the custom of tinaba.
(Note. Tinaba in very early days was the sexual relationship existing between a man and the wife of his sister's son. At the coming of the Flag, the custom had become generalised, and included the following reciprocal sex-relationships:-
 - (a) Man with wife of his sister's son;
 - (b) " " wife of his brother's son;
 - (c) " " mother of his wife;
 - (d) Woman with husband of her daughter;
 - (e) " " brother of her husband's mother;
 - (f) Woman with brother of her husband's father.

A gift of land seems to have passed only in cases (a) and (b), when it was made by the senior man to the young husband or, very exceptionally, to the young woman herself. The custom is now dead.)

6. Te aba-n-ira. The forfeit of land paid by a thief to the owner of the property stolen by him or her.

(Note. Now in total desuetude.)

7. Te aba-n-iein. A forfeit of land paid by the parents of a boy to the parents of a girl to whom the boy was betrothed, in the event of a rupture of the betrothal by the boy or his parents.

(Note. The amount of land formerly paid under this title depended upon whether the boy had or had not entered into sexual relations with his betrothed before the rupture of the betrothal. The betrothal and rupture thereof might take place before either party thereto had been born: the land passing in such a case would be small. The custom is now in total abeyance.)

8. Te aba-n-riring. The fee of land paid to a bone-setter for treating a dislocation or fracture.

(Note. Now in total desuetude.)

9. Te aba-ni-kamaiu. A fee of land paid for sustenance received during a time of drought.

(Note. Formerly, when a drought occurred, those who were destitute would go to live with such as had food, or were good fishermen, or owned a large water-hole. These persons were entitled to take all the lands of the destitute parties under the title aba-ni-kamaiu, which signifies land-of-keeping-alive. The destitute might feed from the forfeited lands during life, but the ownership and usufruct passed irrevocably at their death. The custom is now in total desuetude.)

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1932.

Original sent to
 Copy
 In despatch of 13-1-33
 (K)

Reference to previous correspondence:—

~~High Commissioner's~~
Resident Commissioner's

Despatch No. 175 of 27th May, 1932. (1)

Gilbert & Ellice.
No. 4.

3

Office of the High Commissioner
for the Western Pacific,
Suva, Fiji,

13th January, 1933.

Sir,

I have the honour to transmit, for your information,
and for your observations and report,

the papers noted below on the subject of the proposed legisla-
tion to deal with land tenure and inheritance
among the Banabans.

I have the honour to be,

Sir,

Your most obedient servant,

His Honour
The Acting
Resident Commissioner,

(Signed) A.W. Seymour,

Gilbert and Ellice Islands Colony, Acting High Commissioner.

60.32

Date.	Description.
1932.	Copies of -
22nd December.	Minute by the Acting Chief Judicial Commis- sioner. (10)
30th "	Minute by the Secretary, Western Pacific High Commission. (11)
1933.	
3rd January.	Minute to the Acting Chief Judicial Commis- sioner. (12)
6th "	Minute by the Acting Chief Judicial Commis- sioner. (13)

ANSWERED.
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inate by the Acting Chief Judicial Commissioner,
of 22nd December, 1932.

The Secretary,

(19)

(1)

With reference to the draft Ordinance enclosed in the Resident Commissioner's despatch No. 173 of the 27th May, I am not, of course, in a position to comment on the actual rules of evolution which have been collected as representing the native law and custom. I will confine myself to matters of form.

2. As I understand the position, as explained to me by Sir Archibison Fletcher before his departure, the intention of this legislation is to provide for the distribution of money, paid to the Resident Commissioner for interests in the land and arising out of land in the same manner in which the land would be distributed by native law and custom.

3. I do not think that this can properly be effected by a mere interpretation of the word "land" as in the draft. My view is that there should be a substantive section providing that money held by the Resident Commissioner representing any interest in land shall be distributed to the same persons who would have been entitled to the land. I will draft a clause when I have heard from you.

(19)

4. I am not sure whether the object you have in view has been effected. Clause 3 deals only,

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so far as I follow it, with the persons to whom land may be "devised" (i.e. by will). What is to happen on intestacy? It seems to me that it will be necessary to make the rules set out in that Clause applicable to succession on an intestacy.

5. I regret having kept the papers so long but I found it necessary to read all the back files.

(Signed) C.G. Howell,

Ag. C.J.C.

2.12.32.

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Ordinance 1928 (~~copy attached~~) appears to give all the legislative sanction required for dealing with the compensation (for surface rights) money in hand. Unalienated land can continue to be dealt with as heretofore.

5. On the question of principle, it should, I suggest, be noted that no suggestion has yet been made that the native customs in respect of the devolution of the much greater areas of land in the Gilbert or Ellice Groups should be embodied in a legislative enactment. It may be a mistake to start with the small area on Ocean Island?

6. On the other hand I, personally, hold the view that it would be a step in the right direction to collect and codify the native customs and laws of land transfers and inheritance throughout the Colony. There could then be no doubt as to what the native custom prescribed in individual cases, and so long as it remains unwritten it is always liable perhaps to distortion.

7. If it is decided to proceed with the enactment of legislation in the case of Ocean Island, I suggest that it might be preferable to enact it in the form of a short Ordinance with the native custom annexed as a Schedule?

8. I would prefer, if practicable, to see one such Ordinance for the whole Colony with power for the High Commissioner to prescribe the native law or custom applicable to

any

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any island or group of islands. It could be made a condition that such would be subject to the approval or consent of the Native Governments.

(10) 9. With regard to His Honour's minute of the 22nd December, I would observe as follows:

(a) Paragraph 2. This is, as I understand the position, the reason for the proposed legislation, but the draft goes further and deals also with unalienated land. Section 6 (2) of the Mining Ordinance 1928 is apparently considered to be insufficient for the purpose?

(b) Paragraph 3. I agree. (The idea is that the land has been converted into money and the money should be treated exactly as if it were the land. The root of this idea is that the natives' interest, under native custom, in the land is a life interest only and the land is not an absolute possession.)

(c) Paragraph 4. The word "devise" has, I think, been used inadvertently or with a wrong appreciation of its legal construction. The meaning intended was, I suggest, to give or transfer, and that during the lifetime of the person concerned (that is the owner). This view is supported by clause 12 of the draft. A better style of wording might be attained if the clause were made more impersonal, that is for "Banaban shall devise &c." substitute "land shall be given or transferred". I must admit however that

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the last nine lines of clause 3 do not support my suggestion as to meaning unless it is the custom to divide up one's land before death. If this is the custom this would explain the two concluding lines under clause 12, that is, as referring to cases in which death was sudden.

10. There are other points in the draft Ordinance that require consideration, for example, the meaning and effect of clause 4 (1) in view of the last nine lines of clause 3; clause 11 would appear to require clarification, etc. etc.

(Signed) H. Vaskess.

30. 12. 32.

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1932.

Enclosure No. III. in despatch to Gilbert & Ellice
No. 4 of 15th January, 1933.

(For original see (12))

Minute by the Acting High Commissioner, of
the 3rd January, 1933.

His Honour

the Chief Judicial Commissioner.

I would be obliged if Your Honour
would see me and discuss this matter personally.

(Signed) A.W. Seymour.

3. 1. 33.

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1932.

Enclosure No. IV. in despatch to Gilbert & Ellice
No. 4 of 13th January, 1933.

(For original see (13))

Minute by the Acting Chief Judicial Commissioner,
of 6th January, 1933.

His Excellency,

With reference to our conversation,
I suggest that information should be sought on
the following points:

(i) Is "devise" in clause 3 of the draft
Ordinance intended to be used in its ordinary
legal sense of "dispose of by will"?

(ii) If yes, is it not more important to
provide for distribution on intestacy, since this
is the normal occurrence, the conception of
testamentary disposition being novel to the
Banabans (Paragraph 8 of the Resident Commission-
er's despatch No. 175 of 27th May).

(iii) Is there any particular object in
providing for wills (clause 12) if the will can
only reiterate dispositions which would in any
event occur under native law and custom.

(iv) Is individual ownership for more than
a life interest recognised? If not this issue
does not arise since there would be no interest
of which the deceased would be capable of disposing
by will. This does not of course refer to
savings in cash the disposal of which is as far as
I am aware unrestricted.

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2. As I informed Your Excellency, my impression is that the object of this legislation is primarily to provide that money representing the land for which it was paid should descend to and be distributed among the persons who would, by native law and custom, have been entitled to the land. This could be done very shortly, but I agree it might be useful, as suggested in the Secretary's minute of the 30th December, to schedule to a short bill what has now been ascertained to be the native law and custom applicable.

(11)

(Signed) C.G. Howell,

Ag. C.J.C.
6.1.33.

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Original Copy	sent to	S. J. State,
In despatch	No. 173 of 23.5.34	
(11)	herein	M.P. No. /

GILBERT AND ELLICE ISLANDS COLONY

Gilbert & Ellice.

~~XXXXXXXX~~

No. 277.

THE RESIDENCY,
OCEAN ISLAND.

11th June, 1934.



Sir,

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DIRECTOR
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19/5/34.

③

With reference to the Acting High Commissioner's despatch No. 4 of the 13th January, 1933, on the subject of proposed legislation to deal with land tenure and inheritance amongst members of the Banaban community, I have the honour to transmit the attached copy of a memorandum submitted by Mr. H.E. Maude, late Lands Commissioner at Ocean Island.

⑥a

2. I am in entire agreement in the suggestion submitted in paragraph^u of Mr. Maude's memorandum and would recommend to Your Excellency's consideration the enactment of a general Ordinance, validating the various native customs relating to land inheritance and devolution in the different island communities of the Colony as prescribed from time to time by schedules to the main Ordinance.

I have the honour to be,

Sir,

Your Excellency's most obedient
servant,

HIS EXCELLENCY
THE HIGH COMMISSIONER
FOR THE WESTERN PACIFIC,
SUVA, FIJI.

Resident Commissioner.

2082/32

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sub-enclosure
Copy sent to *S. of State.*

MEMORANDUM.

19th May, 1934.

From:-

The Administrative Officer,
Northern and Southern Gilbert
Islands Districts,
at Butaritari Island.

To:-

The Senior Administrative Officer,
Tarawa.

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DIRECTOR

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3

The Acting High Commissioner's despatch No. 4 of the 13th January, 1933, was not referred to me as Lands Commissioner although, when Acting Secretary to Government, I remember glancing through the contents of the Minute Paper containing the correspondence.

The following observations are submitted in pursuance of your invitation to express any views I may have on the matters dealt with in the minutes:-

1. The word "devise" was intended to cover both dispositions by will and distributions on intestacy. Testamentary dispositions are rare among the Banabans since land can, in any case, only be given or transferred in accordance with a recognised native custom and, in the vast majority of cases, land is either divided up before the death of the owner or distributed on intestacy.

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2. Wills have, however, a certain importance as they enable effect to be given, within the latitudes prescribed by native custom, to the wishes of the owner.
3. As a general principle individual ownership for more than a life interest is not recognised. There are, however, exceptions to this rule and, within the limits fixed by custom, an owner may under certain circumstances give or transfer land to individuals other than those who would normally inherit his land.

4. I am in entire agreement with the views expressed by the Secretary to the Western Pacific High Commission in paragraphs 6 to 8 of his minute of the 30th December, 1932. In my opinion it is unquestionably time that the various native customs of land transfers and inheritance were collected and codified throughout the Colony. At present it is extraordinarily hard to ascertain the correct customs with regard to land on any island and land matters necessitate the whole-time ^{employment} of a specialist officer, but once these customs have been reduced to a compact and simple body of rules and the arrears in land matters brought up to date it should be possible for Administrative Officers to deal with land matters as part of their normal routine duties. I would suggest that one ordinance be prepared for the whole Colony and that, as the proposed Native

Lands

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See (ii)

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3.

Lands Commission ascertains the native land customs on each island, the customs should be codified, submitted to the Native Government of the island concerned and, on their approval being obtained, should be published in the Gazette as a Schedule to the main Ordinance.

(Signed) H.E. MAUDE.

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