Part I

The Banaban Lands Settlement, 1931-1932

(1) The Native Lands Commission, appointed under the provisions of the Gilbert and Ellice Native Lands Ordinance, No.8 of 1922, was directed to enquire into the ownership of all native-owned lands on Ocean Island and to codify the customs governing land inheritance and conveyance.

(2) The Commission consisted of myself as Native Lands Commissioner and 16 Banaban members (14 men and 2 women), 4 from each of the 4 village districts (Tabwewa, Tabiang, Buakonikai, and Uma), with the Island Magistrate and Chief Kaubure sitting as assessors.

(3) The Commission commenced its sittings at Tabwewa on the 5th October, 1931, and finished its work at Uma on the 7th March, 1932.

(4) 97 claims were heard (33 at Tabwewa, 6 at Tabiang, 42 at Buakonikai and 16 at Uma).

28 claims were rejected as frivolous or because they were clearly based on happenings before the establishment of British sovereignty on Ocean Island in November, 1900.

15 claims were withdrawm with the consent of the Commision.

54 claims were settled by agreement between the parties.

(5) 2,479 lands were registered by the Commission, divided as follows among the Banabans residing in the 4 village districts:-

Tabwewa	- 695
Tabiang	- 291
Buakonikai	- 843
Uma	- 650

(6) The Banaban members of the Commission were instrumental in discovering many pieces of land which had been lost by their owners, as well as settling all disputed boundaries and in erecting permanent marks where the boundaries had been in doubt.

(7) The various points of Banaban land custom which arose were settled by the Commission, which at its final sittings codified the customs then existing and unanimously agreed to their correctness (see Part II).

(8) Conveyances customary before the coming of the British Government were recorded, although no longer recognized except as establishing ownership prior to the declaration of British sovereignty.

(9) Finally, the Banaban community, through their Commission members, requested that the Banaban land customs, as now codified, should be enforced henceforward, and that they should be applied also in cases where Banaban land had been leased and was now represented by a capital sum or by the annual payment of interest.

(10) Banaban custom relating to under-surface rights was not officially investigated by the Commission, but I have appended my observations on such rights, for the most part gathered during the course of the Commission's proceedings (see Part IV).

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Part II

Banaban Land Custom

(1) The basic principle of Banaban customary tenure is that the interest of an individual in his or her lands is a life interest only, and the land is not an absolute possession.

(2) No Banaban possesses the right to give or transfer his or her land except in equal shares to his or her issue or, failing issue, to his or her next of kin, except under the customary conveyances noted below, and provided that, with the consent of all the issue, he or she may give or transfer a larger portion of his or her land to his or her eldest issue or male issue.

Note: This represented the codification of pre-existing normal practice into a rule. Previously, while the eldest son usually received the largest share of land, cases were known where parents had left larger shares to favourite children.

(3) Failing issue, the next of kin of a Banaban is:-

In the case of Mwini Mane land, i.e. land descended through the father (other than te aban nati or te aban tibu land).

(i) the remaining issue of the father, failing which;
(ii) the brothers and sisters of the father, failing which;
(iii) the issue of the brothers and sisters of the father, failing which;
(iv) the brothers and sisters of the father's father (if the land originally descended from the father's father), or;
the brothers and sisters of the father's nother (if the land originally descended from the father's mother), failing which;
(v) the issue of (iv) above, failing which;
(vi) the land passes to the descendants of the collateral branches of each preceding generation, until an heir be found.

In the case of mwin aine land, i.e. land descended through the mother (other than te aban nati or te aban tibu land).

(i) the remaining issue of the mother, failing which;
(ii) the brothers and sisters of the mother, failing which;
(iii) the issue of the brothers and sisters of the mother, failing which;

(iv) the brothers and sisters of the mother's father (if the land originally descended from the mother's father), or;
the brothers and sisters of the mother's mother (if the land originally descended from the mother's mother), failing which;
(v) the issue of (iv) above, failing which;
(vi) the land passes to the descendants of the collateral branches of each preceding generation, until an heir be found.

(4) Customary conveyances:-

(i) Te Aban Nati: land given to a nati (a person formally adopted as a son or daughter); or

(ii) Te Aban Tibu: land given to a tibu (a person formally adopted as a grandson or grand-daughter).

This land may be given from mwini mane or mwin aine land not exceeding the maximum portion given to the adopter's natural issue. Failing natural issue the adopter may give all his or her land to the nati or tibu. Such lands pass to the lineal descendants of the nati or tibu, or failing any reverts to the adopter or if deceased to his or her next of kin. An adopted nati or tibu is not entitled to a share of the land of his or her natural parents.

(iii) Te Iria (lit. going with): land given by the natural parents to a child about to be adopted as nati.

This requires the consent of the near kindred of the parents and may not exceed two lands, which pass to the adopter should the adopted child die without issue.

(iv) Te Aban Tara (land for looking after): land given in return for nursing during sickness or old age by a person not belonging to the near kindred of the man or woman being nursed.

Requires proof that the near kindred refused to care for or grossly neglected the landowner during sickness or old age.

(v) Te Abani Karaure (land of farewell): land given as a token of particular esteem, gratitude or affection.

Subject to the consent of the giver's near kindred. Should not exceed a small portion of the giver's land.

(vi) Te Abani Kamamma (land of life-giving): land given to wet nurse or foster mother of the giver's child when the natural mother is unable to suckle it.

(5) Explanatory notes on above:-

(i) Te aban tara, te abani karaure and te abani kamamma pass to the receiver in fee simple and may be similarly given by him or her to any other Banaban.

(ii) The term Banaban includes part Banabans and adopted Banabans.

(iii) Land includes any sum of money, not being a mineral royalty, paid for or in respect of any Banaban land.

(iv) Near Kindred (te utu ae kan) means the direct ascendants up to and including his or her great-grandparents (tibu toru), i.e. the limits of incest (kanikira).

(v) Adopted nati or tibu are regarded as the real children or grandchildren of the adopter, and are not entitled to any share in the lands of their natural parents. Adoptions must be agreed to by the natural parents of the adopted and the near kindred of the adopter.

(vi) Parents usually divide up their lands among their children when they become old enough to fend for themselves, the process being known as te katautau (the disposal or settlement). The heirs walk with them around the parental lands, and have the boundaries of each piece pointed out. The parents reserve sufficient land for their own maintenance under the title of te abani kara (land for the aged), this being divided up after the death of the parents in accordance with their katautau.

(vii) Normally each child receives a share of both the mwini mane and mwin aine lands, but occasionally the parents arrange for one or more children to receive their lands from their father and others similarly from their mother alone.

(viii) Should any conveyance be made during the lifetime of the conveyor the actual title to the lands conveyed does not pass until his or her death, with the exception of the title to te iria land, which passes at the time of adoption, and te abani kamamma, which passes on the completion of the services of the wet nurse or foster mother.

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Part III

Land Conveyances in Desuetude

(1) Te Abani Butirake (land of the asking): land given by an old man, or occasionally an old woman, to a young person of the opposite sex who adorned him or her with wreaths of flowers.

Often used in return for sexual relations, or when it was considered by public opinion that lands had got into the wrong hands.

(2) Te Aban Rau (land of peacemaking): land claimed by a husband from a man who had committed adultery with his wife.

The adulterer would usually flee, as if caught he would be killed. In his absence his land was taken under this title, whereupon he was at liberty to reappear, having expiated his offence by the conveyance. Sometimes used as a sort of legal fiction to cover payment for sexual relations with someone else's wife.

(3) Te Nenebo (the blood payment): on a person being murdered two lands would normally pass from the murderer to the near kindred of the dead person, in commutation of the death penalty.

These lands were known as:-

(i) Kiena - the mat for the murdered person to lie on;
and
(ii) Rabuna - the shroud.

The murderer's largest land would be taken as kiena and the next largest as rabuna. Should the murderer have a canoe it would be taken as:-

(iii) Baona - the murdered person's coffin.

(4) Nenebon te Man (the blood payment for birds): a single land conveyed by the killer of a tame frigate bird to the owner.

(5) Te Bora or Te Aban Tinaba (land for the tinaba): a gift of land made in return for sexual relations with the wife (or betrothed) of his brother's or sister's son, who by the custom of tinaba was a permitted sexual partner.

The gift was made to the husband or, very occasionally, to the young woman herself.

(6) Te Aban Ira (land for theft): a forfeit of land paid by a thief to the owner of the property stolen.

The amount of land forfeited depended on the nature and quantity of the property stolen.

(7) Te Aban Iein (land of marriage): a forfeit of land paid by the parents of a boy to the parents of a girl to whom he was betrothed, on the betrothal being broken off by the boy or his parents.

Betrothals often took place at a very early age, even before either child had been born. If also terminated at an early age only a small land passed; if before sexual relations had commenced one or two lands were paid; but after intercourse had begun four or five lands would have been considered appropriate. No land passed on a girl breaking off the engagement.

(8) Te Aban Riring (land for bone-setting): land paid to a bone-setter for treating a dislocation or fracture.

(9) Te Abani Kamaiu (land for life-giving): land paid for sustenance during famine.

Formerly during times of drought destitute persons would go and live with those who had food or were good fishermen. Such caretakers were entitled to take all the lands of the destitute lodgers under this title. The land passed irrevocably on the death of the destitute person, but during his lifetime he could use them to maintain himself.

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Part IV

The Ownership of Under-Surface Rights

(1) It will be appreciated that few Pacific Islanders can have any conception of customary ownership of under-surface rights, as distinct from the ownership of the surface itself, simply because there was no functional use in their culture for such a notion.

(2) Admittedly land was dug to lower its level to make taro and babai pits, small ponds for cultivating fish or storing turtle, or wells, but these were merely open excavations whose connexion with the land on which they were situated was immediately apparent.

(3) On Banaba, however, there were true under-surface rights to (i) water, and (ii) stalactites and stalagmites, both of which were only found in approximately 50 subterranean bangabanga, or caves, which honeycombed the island and were more valuable than any land. The water was essential for drinking on an island where there were no wells except a few brackish ones at Uma, and the stalactites were required for the construction of bonito hooks (wakaniba) - (see my paper on 'The Stalactite Fish Hooks of Ocean Island').

(4) Certain tangible and intangible forms of property were, however, regarded as indivisible and were therefore owned by groups larger than the nuclear family. In the Gilbert Islands these included large fishponds, lagoon and offshore fishing rights, rights to flotsam and jetsam, canoe patterns, song and dance routines, and the like. These were all owned by exogamous, totemic and patrilineal boti, or clans, of which the male members were, in theory at least, descended from a common ancestor - (see my monograph on The Evolution of the Gilbertese Boti, pp.34-38, 55-57).

(5) I have given an historical reason why on Banaba the kawa, or hamlet, appears to have taken the place of the boti. Whether it be valid or not rights which would in the Gilberts be owned by boti were on Banaba owned by kawa - (see my paper on 'The Social Organization of Banaba or Ocean Island, Central Pacific', pp.269-272, 284-288).

(6) Among these rights the most important were reef fishing rights and the rights to take water and stalactites from the bangabanga. These were invariably owned by hamlets, of which there were 87 on Banaba, or else by related groups of hamlets. The members of each hamlet, or associated group of hamlets, were theoretically descended from a common ancestor and were considered to belong to the same extended kindred, te utu ae raroa (the distant

kindred), and therefore called each other brother, sister, etc., though they did not constitute an exogamous group unless individual members happened to be also related within the prohibited degrees of karikira (i.e. te utu ae kan). Whereas in early times the inhabitants of a kawa owned all the lands around it, through the marriage of girls to outsiders (in a predominantly patrilocal society) this has long since ceased to be the case. The banga-banga, however, continued to be left undivided as kawa property.

(7) The Utun te Maniba (kindred of the well), who were the descendants of the discoverer, were responsible for making the rules governing the use of each bangabanga. These committees often numbered as many as 40 or 50 members.

(8) The Tani Kauka te Maniba (openers of the well) kept the passage to each cave in repair and fixed the large stone that blocked the entrance in position. This work was hereditary provided it was properly done, failing which a new body of workers would be chosen.

(9) The Moin te Atibu (drinkers at the stone) consisted of all members of the kawa, or related group of kawa. The hamlet approached the utun te maniba requesting permission to draw water. They, if they consented, thereupon gave instructions to the tani kauka to roll away the stone and, when all had filled their coconut-shell containers, the bangabaga was resealed.

(10) Only women were allowed to enter the bangabanga, any man found in the caves, or hiding near them, being liable to be killed. This tabu was said to be due to the fact that, owing to the intense heat in the deeper caves, the women were accustomed to shed their clothes. This penalty was reduced by the British Government to a flogging followed by imprisonment. It was repealed altogether in 1939 since the Banabans had become accustomed to relying on rain water stored in cement cisterns, or in times of drought on distilled water supplied by the B.P.C.

(11) Grimble has recorded how after a drought had lasted 'for more than four quarters of the moon' it was death for anyone to be found loitering alone anywhere near a banga-banga, The women then did their water-getting all together at set times, each carrying a strictly limited number of coconut shells to fill (in a severe drought only one shell a day for a household), with a lighted torch so that her companions could ~~xxxxxx~~ check on every movement. Such precautions might eke out the cave supply for two years, after which the only possible source of supply left was in the rainfall at sea - (see Grimble's Return to the Islands, p.37).

(12) While water was not a mineral, stalactites and stalagmites undoubtedly were, being formed of carbonate and phosphate of lime, and as they were the only minerals of value known to the Banabans (apart from pumice and stones embedded in flotsam) the fact that their ownership was governed by communal and not individual tenure, unlike surface rights, would appear to be of some importance in connexion with the ownership of the phosphate deposits. It should be emphasized, however, that while it was possible to isolate one bangabanga from another and thus for hamlet, or related hamlets, to own them, this was not in practice feasible in the case of the phosphate deposits which had, therefore, to be regarded as being owned either by all the landowners within the mined area or by the Banaban community. This view of communal ownership was acceptable to the Banabans, as being in accord with their own customs regarding the ownership of under-surface rights.

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