

# A BILL

## TO PROVIDE FOR THE SETTLEMENT OF THE NATIVES OF OCEAN ISLAND ON RABI ISLAND AND FOR PURPOSES CONNECTED THEREWITH.

WHEREAS it is expedient to make provision for the settlement on the Island of Rabi of the Banaban community and generally to make provision for the peace order and good government of the community: Preamble.

Now therefore be it enacted by the Governor of Fiji with the advice and consent of the Legislative Council thereof:—

**1.** This Ordinance may be cited as the Banaban (Settlement) Ordinance, 1945. Short Title.

**2.** In this Ordinance "Banaban community" means the natives hitherto living on Ocean Island and such other persons as may now or hereafter be accepted as members of the Banaban community in accordance with Banaban custom. Definition of  
"Banaban  
community."

**3.**—(1) The Governor in Council may make regulations to provide for the peace order and good government of the Banaban community. Governor in  
Council  
may make  
Regulations.

(2) The Rabi Island Council established by section 4 of this Ordinance may submit to the Governor in Council recommendations for the making of such regulations as it may deem to be for the well-being and good government of the Banaban community.

Establishment  
of the Rabi  
Island Council.

4.—(1) There is hereby established a native council for the Island of Rabi to be known as the Rabi Island Council.

(2) Subject to the provisions of any regulations made under section 3 the composition procedure and sessions of the Rabi Island Council shall be in accordance with such directions as may be issued from time to time by the Administrative Officer in charge of Rabi Island.

Island  
Regulations.

5.—(1) The Rabi Island Council may make regulations to be known as Island Regulations relating to all or any of the following matters—

- (a) the keeping clean of the island and the promotion of public health;
- (b) the maintenance of peace order and public safety;
- (c) the social and economic betterment of the native population;
- (d) the performance of communal works and other communal activities;
- (e) the control of livestock;
- (f) the prevention or removal of public nuisances;
- (g) the care of children and aged persons;
- (h) the conservation of food supplies;
- (i) fishing and fishing rights;
- (j) the island hospitals, prisons and schools; and
- (k) the promotion of the general welfare of the native inhabitants.

(2) The making of regulations under this section shall be subject to the prior approval of the Governor.

(3) The penalty imposed under regulations made under this section shall not exceed a fine of ten shillings or a term of imprisonment exceeding one month or a combination of both such fine and imprisonment.

(4) Notwithstanding the provisions of any other law for the time being in force Island Regulations made and duly approved under the provisions of this Ordinance shall be published in such manner as is customary in the Banaban community and shall thereupon be of full force and effect.

6. Except as may be provided by regulations made under section 3 the provisions of the Public Health Ordinance 1935 shall not apply to the Island of Rabi.

Public Health  
Ordinance  
not to apply.  
No. 29 of 1935.

*Attorney-General's Chambers,  
Suva, 12th December, 1945.*

THE BANABAN (SETTLEMENT) BILL, 1945.

---

OBJECTS AND REASONS.

The object of the Bill is to enable the Governor in Council to make such regulations as may be necessary relating to the government and administration of the Banaban community which formerly inhabited Ocean Island and is now to be settled on Rabi Island, and provide for the establishment of an Island Council with the same powers of making local regulations as were possessed by the Island Council on Ocean Island under the legislation in force there.

J. H. VAUGHAN,  
Attorney-General.

76

THE STATEMENT OF INTENTIONS.

(After the SS had agreed to negotiations with the Banabans taking place on the basis of your 1946 Memorandum, it was decided that you should prepare a draft "Memorandum of Agreement", have it translated by Bauro, and brought or sent to Suva. That memorandum, which became the Statement of Intentions, was discussed by the Attorney General with Macdonald, and various changes incorporated in accordance with the former's advice).

Questions.

1. Was the "Memorandum of Agreement" sent to Suva in advance of the arrival of Bauro and Maude, to be examined by the Attorney General and Macdonald, or was it brought with you when you came to Suva (on, I think, 5th May) ?

Maude brought it with him.

2. Did you participate in the discussions with Attorney General and Macdonald ?

No.

3. Did Bauro participate in such discussions ?

Probably not.

4. Do you recall the various changes made ? if so, what were they ?

Minor drafting changes and not matters of substance.

5. Did Bauro translate the Memorandum of Agreement prior to its being brought or sent to Suva ?

Yes, at Tarawa.

6. Did Bauro translate the whole of the Memorandum of Agreement - and the various changes - in Suva, and prior to going to Rabi on 7th May ?

I think he prepared a draft incorporating the changes agreed upon in Suva.

7. Was statement of Intentions finally faired in Suva ?

It must have been faired on Rabi because of the changes there.

8. Were a number of copies of Statement of Intentions made in (a) English and/or Gilbertese ?

Yes, I presume so.

(We flew to Buca Bay on the 7th May, and arrived in Rabi that evening by launch. Meetings were held with the Banabans on the 8th, 9th and 10th May, specifically regarding the Statement of Intentions, though on 12th and 13th May, there were informal discussions with Banabans in explanation of the consequences of their final decision).

Questions.

9. Presumably at the opening of the meeting on May 8th Maude made a speech saying how glad we were to be there, etc., and the reason why we had come ?

Yes, very eloquent.

10. Presumably there was a welcoming speech in reply ? if so, by whom was it made - Rotan or another ?

Yes, almost certainly Rotan.

11. Were one or more of the (a) English and/or (b) Gilbertese versions of the Statement of Intentions handed out to the Banabans -
- (i) on the evening of 7th May; or
  - (ii) at the commencement of the meeting on 8th May; or,
  - (iii) at both times ?
- (This is a question of vital importance in my view).

I have no idea, but my feeling is that they were so distributed.

12. Presumably, after the speeches (if such there were) each clause of the Statement of Intentions was then considered ?

Yes, definitely.

13. Assuming the answer to 12 to be affirmative, this was done by Bauro reading out the clause in Gilbertese, translating questions asked, followed by discussions presumably ? (I exclude from this the numerous repetitive questions asked later in the period of three days).

Yes.

(Consideration of individual clauses of Statement of Intentions). (I only mention below aspects of certain clauses which I specifically recall being the subject of discussion, although I am sure that all clauses were exhaustively discussed).

14. Clause (A)(1) and (2) - These were exhaustively discussed, as I recall. But did the allegations of Rotan that Rabi would be sold "over their heads" if they did not agree to stay on Rabi come up under this clause, or under Clause B (14), or in the repetitious discussion after each clause had been discussed ?

In paragraph 68 of your printed Memorandum of September, 1946, you recommended that, if the majority of Banabans did not wish to stay on Rabi, it should not be sold but be run by the HC as a copra estate under European management until the day when the Banabans decided to colonize the island voluntarily or the phosphate deposits on Banaba were exhausted and the Banabans compelled to migrate elsewhere (the profits from the estate being added to the Provident Fund). Did you bring this point out either in discussion on Clause (A)(1) & (2), or on Clause B (14), or in the later general discussions ? (This is very important as showing that there was never any intention to sell Rabi "over their heads").

I do not remember the allegations coming up. My recollection is that it was brought up in the general discussion, when I mentioned that, if they did not want Rabi, others would buy it.

15. (Do interpolate, as I should have itemized this point earlier, have you a copy of your original "Memorandum of Agreement" which would answer some of the earlier questions ?) (If so, could I borrow it ?)

Alas, no.

16. Clause (B) (1), (4) (5) - I can remember a good deal of general discussion on this clause, though the only point I specifically remember (I suppose since I was the Fiji Government representative) was a request that the Fiji Government Reserve of 50 acres at Katherine Bay should be made over to the Banabans (as I think it subsequently was). Can you recall any other specific points on this clause?  
They also argued about the nature and necessity of and for a Government reserve.
17. Clause (B) (6) - I recall a good deal of discussion about the point that Banaban funds should be used exclusively for the benefit of the Banaban community on Rabi. This was mainly raised by the older members of the community who hankered to return to Ocean Island. Can you recall any other specific points on this clause?  
(See also Note 30 at the end of these Notes).  
See after Note 30.
18. Clause (C) (7) - I can recall only general discussion on this clause. It was only later, as far as I recall, that there was a specific demand that the Banaban Adviser should not be Chairman of the Board. Can you recall any other specific points on this clause?  
(See also Note 30 at the end of these Notes).  
See after Note 30.
19. Clause (C) (8) - Here again, apart from general discussion on the whole of Clause (C), I do recall that there was specific discussion on the qualification of 6 months' residence on Rabi for membership of the Banaban Trust Fund Board. Can you recall any other specific points on this clause?  
(Incidentally, we (or I, at any rate) have always used the word "Trust" quite freely in connexion with Banaban funds, etc. But I wonder whether either of us really applied our minds at any stage to just whether we intended to assign a specific legal meaning to the word?)  
No, I can recall no other point.
20. Clause (C) (9) - No comment; I can only recall general discussion.  
Me too.
21. Clause (C) (10) - I can recall very, very lengthy discussions on this and (11) 'over the Landholders' Fund, as a result of which I seem to recall that we had to agree to insert (11) as a result of our meeting in Rabi. (If we had a copy of your original Memorandum of Agreement, that would show this clearly). I recall the very lengthy discussions on (11) and the circumstances in which approval might be expected to be given. Can you recall any other specific points on this clause?
22. Clause (C) (11) - see 21 above.
23. Clause (D) (12) - I can recall that there was almost continuous pressure throughout the meeting for an increase in the rates of annuities, which we resisted. Can you recall any other specific points on this clause?

Some argued that the rates were for them to decide as they were nothing to do with the Government of Fiji.

further, it was argued that the capital as well as the interest staning to the credit of each owner in this fund, should be handed over to the onwer for investment or disposal at his absolute discretion.

24. Clause (1) (15) - I can recall that this change was welcomed, but that there was much discussion as to whether Banabans who might find themselves elsewhere could claim annuities in the payment of such other countries, e.g. New Zealand, United Kingdom. Can you recall any other specific points on this clause?

No thing else.

25. Clause (1) (14) - I recall that this clause was discussed at very great length and, particularly, with regard to Fiji immigration laws, passports, GIC immigration laws, B.C rights over lands, etc. In this connexion, see also my (14) above. Can you recall any other specific points on this clause?

But they were anxious to make sure that there would be no emigration barrier to going to OI.

26. Clause (1) (15) - I can recall being questioned at length about Fiji's laws, especially taxation, and immigration, but even more about what the phrase "all normal services" included. Can you recall any other specific points on this clause?

No.

27. Clause (3) (16) - I can recall that this was also discussed at some length, particularly the aspect that this officer would be an officer of the Fiji Government, and the circumstances in which his services could be terminated if the Banabans did not get on with him (c.f. Kennedy). Can you recall any other specific points on this clause?

Rotan and some others wanted their adviser chosen, appointed and paid for by themselves. (Finally, two very crucial points which I feel positive will arise when our evidence is being given).

28. I feel positive that we shall be asked whether any aspect of the April negotiations between the Banabans and Laynard, for the acquisition of lands, etc., was raised at our meeting by Rotan or any other Banaban. I feel that our reply should be very firm that no aspect of such negotiations was raised with us and that, even if it had been, our mission was solely to discuss the future policy of the two Governments vis a vis the Banabans <sup>were</sup> as set out in the Statement of Intentions and that we <sup>were</sup> not authorized in any way to discuss any other issues. Is this acceptable?

instructions were to decline to discuss it; if they wished they could address HE.

This may very well have been mentioned in passing, though we've no specific recollection of it. But, if it had been, our

29. In connexion with 28 above, however, I suggest that we should be careful. To suggest that Rotan and his fellows did not, at any stage during our discussions, mention matters of earlier history, e.g. Banaban funds; the arbitration of 1931, etc., would, I think, be foolish. I suggest it would be better to admit that, during the discussions, the Banabans, and especially Rotan, did raise issues of past history, which we listened to but declined to discuss unless they had direct relevance to the Statement of Intentions and our mission. Is this acceptable to you?

See above.

30. With regard to the comments on Clause (C) - see paragraphs 17 et seq. - it should also be mentioned that the Banabans demanded that all future royalties should be divided among the owners of the surface rights, in possible in proportion to the volume of phosphate taken off each block of land, for investment or disposal at his or her discretion; and further that any balance lying in the Royalty Trust Fund after the erection of the necessary communal and other buildings on Rabi and the completion of the related public works programme should be divided among the existing members of the community. The Provident Fund would be, of course, used primarily for the above purposes, but it was recognized that it would probably prove insufficient without assistance from the Royalty Trust Fund.

Pp. 195-196 -  
 42/5/10-II.

(Note - these demands were admitted by the Banabans themselves to be based on self-interest and framed regardless of the welfare of succeeding generations. The proposal as to the division of the capital in the Landholders' Fund is, furthermore, contrary to Banaban customary law while those relating to the Royalty Trust and Provident Funds are in opposition to the policy hitherto adopted by the Government of regarding royalties from under-surface rights as being the property of the community as a whole rather than the individual owners of surface rights)

Further to the above, regarding royalties (whether new or already invested in the royalty Trust Fund) the Banaban argues, as he has always done, that all under-surface rights belong absolutely to the owners of the surface rights and that the Government has no right to withhold royalty payments, which should be paid to each individual landowner and not diverted to communal use...