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Dr. H.B. Connell,  
Counsel,  
Commission of Inquiry into the Rehabilitation of Lands,  
NAURU.

Dear Sir,

## LAND TENURE: NAURU

In response to your instructions I have compiled the following tentative and preliminary comments on land tenure of relevance to the current concerns of the Republic. It should be made clear that this is done, as you requested, from the limited data available to me, and given knowledge of comparative systems. Though I have visited Nauru many times and discussed land issues informally with many people there in government and beyond, I have never undertaken research there. Any definitive report would require more systematic study.

### The nature of original tenure

No one knows the precise nature of land tenure in Nauru before contact with industrialised societies. But we do know a number of principles which applied. We know much less of which persons had what rights to which lands and this is a vital issue in evaluating current claims by descent.

One principle was that there was no market in land. It had great economic, political and psychological value but no money value and was not saleable in that sense.

But rights to land were constantly transferred - partly by inheritance in the female line, but this was modified by adoption, need, number and profile of the land holding group, conformity to socially acceptable norms of behaviour and other criteria. Land transfers also took place by threat of aggression and by actual warfare. Gifts of land rights seem to have been common, particularly at marriage, or by aged persons to those who cared for them in their old age, or by vulnerable persons seeking protection from the more powerful, or by the guilty in compensation for offenses.

Nauru's history contains many examples of immigrants arriving. All evidence is that the great majority would have been males only. None of them are recorded as landless at the time of first European contact. One assumes, therefore, that they acquired land rights by processes that would be congruent with those countries of the region which are likely to have been the source of such migrants, firstly by permissive occupancy granted by a clan leader then, after marriage, by the contingent right of an in-marrying male. The children would inherit full rights through the mother.

It is unlikely that there was any public land belonging to Nauruans as a whole, but it is also clear that no rights belonged to anyone other than Nauruans.

Difference between rights pre-contact and today

The main two changes in the early decades after European contact were technological and economic. The main technological changes were guns and ships. Acquisition of land by force became much easier for those who had guns - and there is evidence extensive warfare in Nauru, with significant implications for land rights, during that period last century, most acutely from 1878 to 1888. Advancing marine technology made increasingly frequent contact with external cultures inevitable, with the likelihood of significant inflow of various people, both transient and permanent, and an equally significant outflow of Nauruans, both temporary and permanent - again involving changes in the land rights of individuals as well as changes in the principles on which the system was based. Those changes were so drastic that it is impossible to know not only the previous principles, but more specifically and importantly, the precise boundaries or locations of lands to which they applied.

The main economic changes were that money became a factor in the acquisition of land rights, whether permanent, or for a fixed period as in a lease, or temporary and imprecise tenure as in the case of permissive occupancy, and even briefer landing and transient rights.

The other difference was in the value of products of the land. Often those products which had the greatest value in traditional terms had little value in market terms, and often items which were of minor value traditionally acquired a much

greater value. The main factors here were preservability of the products and demand for them elsewhere. During the first 50 years, products for consumption on whalers and other ships were a significant trade: including fresh water, fresh food and firewood. Products for sale overseas included coconut oil, copra, dried sea slugs etc..

The greatest economic change was that whereas the coastal rim was the most valued land, the discovery of phosphate gave the plateau much the highest value. Rights to coastal lands seem to have been more closely defined and possibly less subject to dispute than the generally uninhabited plateau lands.

#### The loss of sovereignty

Sovereignty includes, among other things, the right to make and administer the laws about the tenure and use of land.

There never had been a Nauruan sovereignty in the sense of all people of the island recognising a common authority and common rights. But no one else had such sovereignty either. The first sovereignty over Nauru as a whole was that taken by Germany in 1888. This changed with the assumption of sovereignty by Australia in 1914 - then the League of Nations Mandate in 1919 and the United Nations Trusteeship in 1947.

Independence in 1968 was the first ever assumption of national sovereignty, as distinct from the sovereignty of external powers, between 1888 and 1968.

Levels of rights to land since independence

One major change was in public lands. There must have been some recognised public easements over land before European contact - these would have been mainly in terms of rights of access. But all rights of access would have been subject to the superior rights of those who held proprietary rights to the land across which the access occurred. Rights of access are also likely to have been relatively limited, both because of the absence of transport, and of any need for frequent movement. With transport limited to that which one could carry, and that mainly being one's own produce from one's own descent group's land and waters, the extent of land used for access across lands other than ones own, and its frequency, must have been limited.

Today, by contrast, traditional patterns of access have been greatly reduced: people no longer visit their land very frequently to acquire food, firewood, building materials, medicines, ropes or other requirements, as these have been largely replaced by imported substitutes. But nationally owned public land for transport and communication has become one of the most important uses of land and the concept of public land rights belonging to Nauruans as a whole seems to be generally but not necessarily totally accepted.

The main lands in this category are those for the airport, roads, landing and loading facilities for ships, and radio and telecommunications facilities. For a long time these facilities were constructed without legal acquisition of the land, but

people are certainly accustomed to public use of such lands and aware of the need for them. Even where legally required, a customary if not legal residual right is recognised - such that if one of those facilities were to close and there was no more public use for that land, the first priority is likely to go to those who claimed rights to it immediately before it became public land. I have not looked at that in practice, but assume it to be likely in principle.

Various other public land rights are recognised e.g., those in land used for public buildings (parliament, government offices, courts etc.), schools, the two hospitals, sports fields etc.

#### Public interests in private land

In addition to rights discussed in the section above, in which the primary right is that held by the Nauru Government on behalf of the Nauru public as a whole, there has been a tremendous increase in public rights and interests in all other land. First, this is manifest in the right of the Government of Nauru to acquire any land by eminent domain. Second is the general acceptance of the right of the elected government to make laws in relation to land, and that all private lands will be subject to government regulations. Third, is the manifestation of the second right above in recognition of the central and/or local government to lay power and telephone cables, water pipes, conveyor belts etc. across private land, as well as of rights of

entry in appropriate conditions for police, medical staff and others. Fourth it is recognised in the acceptance of the Nauru Lands Committee, the court structure of Nauru and the rights and responsibilities of the Department of Lands and Survey. Fifth, it is recognised in the power to tax phosphate land, which is done indirectly in the form of royalties to government.

#### Church Lands

Lands were given to the two main missions for the construction of churches, schools houses etc. These belong legally to those churches but a customary residual right of the descendants of the original donors is recognised in some degree.

#### The radically different nature of private interests

Private interests in land became radically changed.

##### (1) Acquisition

The former pattern of transfer of land rights was radically changed by the abolition of warfare, the introduction of writing and the subsequent recording of rights and surveying of boundaries. It must be observed that the names of owners and the boundaries recorded were those considered appropriate by the registering authority at the moment of registration (and the decision would in many cases have been different if recorded at other times) and according to the evidence available to them (and again decisions would often have been different if other evidence was available - the opinions

that matter are of those who remain alive, active and assertive). The fact that land rights were not clearly recognised and unchanging is shown by the large number of land disputes brought before the courts from the earliest days of German rule onwards.

Since independence land transfer is (1) by inheritance from the registered owners as an accident of birth irrespective of such the traditionally recognised criteria as need, use, place of residence, behaviour etc. and (2) by cash sale. The extent of personal landlessness as a result of selling land is not known, but if the data is available it would indicate whether government should consider making some provision for the landless in future land policy. Conversely, the extent to which land rights have become concentrated and unevenly distributed as a result of these processes is not known.

Since 1938 most inheritance has been bilineal, thus it is not uncommon now to find land shares in hundredths, thousandths or even ten thousandths. This had no traditional precedent and is the result of an ill-informed but innocent error of the colonial government. Eventually this process will lead to all lands being owned by all people of Nauru.

#### Attitudes to land: psycho-cultural dimensions

It is universally recognised that humans develop very strong feelings for land to which they consider themselves to have a right. This tends to increase in intensity the longer the association with it, the



greater the competition for it, the greater the dependence on it, and the more frequent the use of it. The attitude also changes during the individual's life cycle. It is almost certain that such feelings towards any particular plot of land were much more intense 200 years ago (before contact with industrialised countries) or 100 years ago (before phosphate mining changed the economy) than they are today. This is not to suggest that people do not have strong feelings about land today - presumably they do.

But while the propensity for territorial behaviour is universal and innate, its application to any particular piece of land is learned. Moreover, the constant adjustments in preliterate times, the violent wars of last century, the long period of minimal use after phosphate was discovered, and the many claimants on diverse criteria before the Lands Committee, all make it most unlikely that the particular registered owners of particular defined plots today are exactly the same as they would have been had neither guns, nor trade, nor writing, nor phosphate have been important to Nauru's past century of history.

Moreover, people have such feelings, of differing depths of intensity, about many different kinds of land: eg. that of one's nation as a whole, of one's district or locality within it, of land in which one has a registered interest (varying with the degree of interest), and one's actual need for and use of that land.

Options for the worked-out lands

(i) Theoretically the easiest is for government to acquire all worked-out lands, compensate the existing owners, and then plan its use and lease out areas with commercial potential for housing or otherwise, either after levelling by government, or leaving levelling to lessees. But political and financial obstacles to this are likely to be significant:

(ii) A second approach would be to leave registered ownership as it is, but reconsider zoning (it is already zoned in practice for mining) and ~~the~~<sup>to</sup> introduce systematic land use planning. The plateau has some advantages for housing over the coastal belt, which has better potential for agriculture and some other uses.

(iii) Land taxes are never popular, but also almost universal. They exist in practice in relation to phosphate lands in the form of royalties on phosphate dug, but once that is gone, other forms of land tax will need to be considered for land which has any significant ~~political~~<sup>potential</sup> use, whether actually used or not.

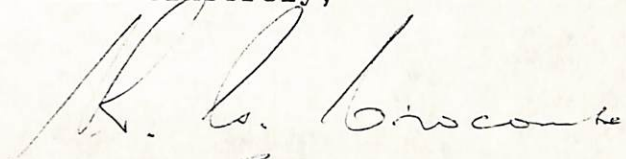
Perhaps the dominant issues are that:

1. Those now registered as rightholders acquired their rights by a rather arbitrary sequence of events and would have been radically different had traditional (in the sense of pre-colonial) criteria applied. But all rights would be held by Nauruans. Therefore, as with phosphate royalties, there is a strong case for the Nauru government exercising a strong public interest in such lands.

2. I assume that the royalties paid by the mining corporation were for the phosphate, not for damage to terrain, and that responsibility for the latter rests with the mining corporation.

I reaffirm the tentativeness of these comments, and that definitive statements would necessitate further research in Nauru and possibly beyond.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "R. G. Crocombe".

R.G. Crocombe,  
Professor of Pacific Studies.