BASILIO OGARTO and VICENTE REYES SABLAN, on behalf of themselves and all other persons similarly situated, Plaintiffs-Appellants

v.

EDWARD E. JOHNSTON, individually and in his capacity as High Commissioner of the Trust Territory of the Pacific Islands, Defendant-Appellee

Civil Appeal No. 219

DOLORES RABAULIMAN, and all other heirs of the Estate of Gregorio Rabauliman, Plaintiffs-Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant-Appellee

Civil Appeal No. 220

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant-Appellant

v.

ROSA K. ROMOLOR, and all other heirs of the Estate of Antonio Kileleman, Plaintiffs-Appellees

Civil Appeal No. 233

CARMEN S. REBUENOG, et al., Plaintiffs-Appellees

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant-Appellant

Civil Appeal No. 234

Appellate Division of the High Court

Northern Marianas District

October 5, 1979

Consolidated cases, all land disputes, with similar issues of law which were inconsistently decided in the Trial Division. The Appellate Division of the High Court, per curiam, held that Policy Letter P-1, an administrative policy letter issued in 1947 announcing Trust Territory Government's willingness to return land taken by the Japanese government in cases where fair compensation was not received, did not have the force and effect of law, and therefore Trust Territory Government was not compelled to follow its mandate.

1. Administrative Law—Generally

Once a government agency validly promulgates, or is mandated to promulgate, rules it is obliged to conform to such rules.

2. Former Administrations—Official Acts

Policy Letter P-1, an administrative policy letter issued in 1947 announcing Trust Territory Government's willingness to return land taken by Japanese government in cases where fair compensation was not received, was a mere statement of policy, and does not have the force and effect of law. (Policy Letter P-1, December 29, 1947.)

3. Administrative Law—Land Title Determination

Act of State Doctrine does not preclude the ability of the courts or the Trust Territory from determining whether or not land was purchased by the Japanese government during its occupation at market values, for purposes of determining whether Micronesian inhabitants are entitled to relief for the alleged loss of their land.

4. Limitation of Actions—Trust Territory Government

The Trust Territory Government, when acting as a trustee, cannot assert the statute of limitations as a defense.

Counsel for Plaintiff: JOHN S. TARKONG, *Assistant Attorney General,* Trust Territory of the Pacific Islands

Counsel for Defendants: JESUS L. BORJA, Micronesian Legal Services, Northern Marianas

Before BURNETT, *Chief Justice,* GIANOTTI, *Associate Justice,* LAURETA, *Temporary Justice*

PER CURIAM

These cases have been consolidated for hearing since similar issues of law were raised, and since inconsistent holdings were reached in the Trial Division of this Court.

OGARTO—Civil Appeal No. 219

This was a class action brought in the High Court for injunctive relief. Plaintiffs sought to have the High Commissioner review land transfers from Micronesian owners

to the Japanese government, Japanese corporations or Japanese nationals pursuant to Policy Letter P-1, dated December 29, 1947.

Plaintiffs are those individuals, or their heirs, who conveyed land to the Japanese government, Japanese corporations, or Japanese nationals between March 27, 1935, and the securing of the various islands of Micronesia.

Japan began military fortification of Micronesia on March 27, 1935, when she resigned from the League of Nations. One aspect of fortification was by the taking of land from the inhabitants allegedly against their will and without just compensation.

The land of Basilio Ogarto and his co-heirs was transferred to the Japanese for the construction of a military radio transmitting station and barracks, only after Japanese governmental officials threatened them with imprisonment.

Vicente R. Sablan's land was transferred to a Japanese corporation after a Japanese governmental official threatened him with life imprisonment or beheading.

Defendants filed their Motion for Summary Judgment arguing 1) that the relief requested required a judicial invasion into the domain of the legislative branch; and 2) that the government has complied with Policy Letter P-1 through legislation and regulation.

Plaintiffs filed their cross motion for summary judgment stating that there is no genuine issue as to material fact and that, as a matter of law, they were entitled to judgment in their favor.

After a hearing on the motions for summary judgment, the Trial Division of the High Court issued its decision on June 28, 1977. The court concluded that Policy Letter P-1 was not specifically enforceable. The Court then went on to say that even though Policy Letter P-1 was not specifically enforceable, it found that the government had com-

plied with the "review" requirement under Policy Letter P-1. Judgment, therefore, was granted in favor of defendants and plaintiffs' complaint was dismissed. Plaintiffs appealed, arguing that Policy Letter P-1 has the force and effect of law and that the government failed to comply with P-1.

RABAULIMAN—Civil Appeal No. 220

This is an appeal from a Determination of Ownership issued by the Northern Mariana Islands Land Commission, and a complaint for inverse condemnation in the Trial Division of the High Court. The Northern Mariana Islands Land Court on June 10, 1974, issued Determination of Ownership No. 21041 holding that the Trust Territory Government is the owner of Tract No. 21041.

Plaintiffs brought suit against defendant claiming that the land in question was owned by their deceased father during Japanese times. This land was transferred by plaintiffs' father in 1936 to the Japanese government, allegedly under threats of force and intimidation, and used by the Japanese government until 1944 when the U.S. Military Government took possession of the land as a result of World War II. Cross motions for summary judgment were filed by the parties, and the Trial Court held in favor of the Trust Territory, stating that adequate procedures were set up to review land transfers pursuant to Policy Letter P-1, and adequate notice of the procedures were made by the defendant. Additionally, the court concluded that plaintiffs did not exercise their rights pursuant to the procedures set up, and that plaintiffs failed to file a claim with the court within the twenty year statute of limitations.

Accordingly, judgment was entered in favor of the defendant and plaintiffs' complaint was dismissed. Plaintiffs duly appealed and argued that Policy Letter P-1, in conjunction with the Trusteeship Agreement, has the force and

effect of law and is specifically enforceable, and that the Trust Territory has failed to comply with Policy Letter P-1. Additionally, plaintiffs-appellants argue that the twenty year statute of limitations cannot operate to bar plaintiffs' cause of action for the reasons that 1) a trustee cannot assert the statute of limitations against a beneficiary, 2) the elements of adverse possession have not been met, and 3) no cause of action has accrued upon which time would run.

ROMOLOR—Civil Appeal No. 233

This is an appeal from a Determination of Ownership issued by the Northern Mariana Islands Land Commission, and a complaint for inverse condemnation in the Trial Division of the High Court, Northern Mariana Islands. The plaintiffs brought suit against defendant Trust Territory claiming the land owned by the heirs of Antonio Kileleman. The land involved is situated in San Jose, Saipan, Mariana Islands, and was purportedly transferred to the Japanese government under threats of force and intimidation. In 1954, a Determination of Ownership #1356 was issued which found the land in question to be owned by plaintiffs. However, in 1974, a Determination of Ownership was issued by the Marianas Land Commission determining that the Trust Territory government owned the property in dispute.

On cross motions for summary judgment, the Trial Division awarded plaintiffs $279.75 as payment for the taking, holding that Policy Letter P-1 is to be given effect and that defendant had failed to comply with Policy Letter P-1. Additionally, it held that the statute of limitations did not bar plaintiffs' claims.

Defendant appealed, alleging that P-1 was not tantamount to legislation and did not have the force and effect of law. Furthermore, the Trust Territory insists that the

Trust Territory government does not have the power to judge the validity of the official acts of the prior Japanese Administration and to correct prior wrongs. Appellant further argues that plaintiffs' father received adequate compensation for the property in question and that in any event, the action was barred by the operation of the statute of limitations.

Plaintiffs cross appealed, arguing that just compensation requires the payment of the value of the land at the time of taking.

REBUENOG—Civil Appeal No. 234

This case presents yet another similar fact situation. Plaintiffs allege that the land in question was owned by the heirs of Francisco Lairopi during the Japanese Administration. In 1936, the land was sold to the Japanese government under threats and torture.

The land was used by the Japanese government until 1944, when it was taken by the U.S. Military Government as a result of the war. Thereafter, the Trust Territory government succeeded to the possession of the land. On September 22, 1953, the Saipan District Land Office of the Trust Territory government determined that plaintiffs and the other heirs owned east and south portions of the land in question. On June 10, 1974, the Mariana Islands Land Commission issued Determination of Ownership No. 21041, which stated that the Trust Territory government was the owner of the land in question. Plaintiffs appealed from the Land Commission's determination and also asked for an inverse condemnation claim for damages against the Trust Territory.

On cross motions for summary judgment, the Trial Court ruled in favor of the plaintiffs. Defendant duly filed its appeal, and plaintiffs filed a cross appeal arguing that interest must be included in the computation of just compensation.

Both parties raised the identical issues as presented in #233.

We direct our initial inquiry to the validity and effect of Policy Letter P-1. Of primary concern is the status of the letter and of the authority under which it was promulgated. Of consequence is paragraph 1 and 13 of Policy Letter P-1, which reads in part as follows:

> 1. This is the first of a series of letters setting forth policies of the High Commissioner of the Trust Territory of the Pacific Islands which are to be followed by all persons assisting in the administration of the government of the Trust Territory.
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> * * *
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> 13. Land transfers from non-Japanese private owners to the Japanese government, Japanese corporations, or Japanese nationals since March 27, 1935, will be subject to review. Such transfers will be considered valid unless the former owner (or heirs) establishes that the sale was not made of free will and the just compensation was not received. In such cases, title will be returned to former owner upon his paying into the Trust Territory government the amount received by him . . . .

The authority of the administering authority to develop law for the Trust Territory stemmed specifically from the Trusteeship Agreement. Article 3 provides in part:

> "Article 3: The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the Trust Territory, subject to any modifications which the administering authority may consider desireable, such of the laws of the United States as it may deem appropriate to local conditions and requirements . . . ."

Article 6 provides, among other things, that the administering authority ". . . shall give due recognition to the customs of the inhabitants in providing a system of law for the Territory; and shall take other appropriate measures toward these ends . . . ."

Article 12 provides, in part, that the administering authority "shall enact such legislation as may be necessary to place the Trusteeship Agreement in effect in the Trust Territory . . . ."

Apparently, legal authority could have been derived from Treaties and International Agreements or Acts of the United States Congress, but only the Trusteeship Agreement was used during the period of Naval Administration. The legislative authority of Congress was not exercised during that period because of its failure to pass an Organic Act for the Territory.

On the same date that the President signed the joint resolution for the United States assumption of Trusteeship status for the ex-Japanese mandated islands, July 18, 1947, President Truman also issued Executive Order No. 9875 which delegated responsibility for the civil administration of the islands on an interim basis, to the Secretary of the Navy.

Numerical paragraph 2 of the Executive Order stated:

"The Secretary of the Navy shall, subject to such policies as the President may, from time to time, prescribe, and, when appropriate, in collaboration with other departments or agencies of the Federal government, carry out the obligations which the United States, as the administering authority of the Trust Territory, has assumed under the terms of the agreement and the Charter of the United Nations . . . ."

President Truman made the following public statement at the same time:

"I signed today the joint resolution authorizing approval by this government of the Trusteeship Agreement for the former Japanese mandated islands and have instructed the Secretary of State to notify the appropriate organs of the United Nations that this agreement, having been duly approved by the Security Council and by this Government, enters into force as of this date. It is the intention of this government to carry out in full the obligations toward the Trusteeship Agreement specified in the terms of the Trustee-

ship Agreement and Chapters IX, XII, XIII of the Charter of the United Nations.

Under Article 12 of the Trusteeship Agreement, the United States is obligated to enact such legislation as may be necessary to place the provisions of this agreement in effect in the Trust Territory. This is a responsibility which falls upon the Congress of the United States. In order to assist the Congress in this task, I have asked the Department of State to prepare, in consultation with other interested Departments, suggestions for organic legislation for the Trust Territory. It is expected that these suggestions will be ready for presentation to the Congress at its next session . . . .

Accordingly, I have issued an executive order today terminating military government in the Trust Territory and delegating the responsibility for civil administration on an interim basis to the Navy Department, which, as a matter of administration expediency, is necessary at this time . . . ."

See *United States Naval Administration of the Trust Territory of the Pacific Islands,* p. 48.

Also, on July 18, 1947, the President commissioned the Commander in Chief Pacific and Commander in Chief United States Pacific Fleet, Admiral Louis E. Denfeld, U.S.N., as High Commissioner of the Trust Territory of the Pacific Islands. The High Commissioner assumed his duties by immediate issuance of Proclamation No. 1, actually effective as of July 18. In Proclamation No. 1, High Commissioner Denfeld stated that:

"All powers of government and jurisdiction in the Trust Territory of the Pacific Islands, and over the inhabitants thereof, and final administrative responsibility are vested in me as High Commissioner of the Trust Territory of the Pacific Islands, and will be exercised by full subordinate administrators by my direction."

It was agreed to by the Secretary of State, War, Navy, and Interior on July 24, 1947, that the State Department (Office of the Dependent Affairs) shall sponsor all legislation concerning the Trust Territory. This was approved and presented to the Trusteeship Council of the United Nations in its annual report prepared by the Navy on

administration of the Trusteeship. (*United States Naval Administration of the Trust Territory of the Pacific Islands*, p. 52) (hereinafter *Naval Administration*).

The Naval Administration of the Trust Territory islands can be divided into two periods: the first period includes the terms as High Commissioner Admiral Louis E. Denfeld, U.S.N., July 18, 1947 to April 17, 1948, and Admiral Dewitt C. Ramsey, U.S.N., April 17, 1948 to May 1, 1949; the second period consists of the administration of Admiral Arthur W. Radford, U.S.N., May 1, 1949 to July 1, 1951. During the Denfeld-Ramsey era, direction of the area, other than in policy matters, was delegated to the Deputy High Commissioner and his staff at Guam. During the Radford regime, immediate control was by the High Commissioner who brought the Deputy High Commissioner and the majority of his staff to Pearl Harbor, Hawaii, where they became the staff of the High Commissioner. (*Naval Administration*, p. 65.)

Pursuant to instructions by the Secretary of the Navy, High Commissioner Denfeld, during August, 1947, organized his staff and appointed his subordinates. On August 5, 1947, the High Commissioner appointed Rear Admiral Carlton H. Wright, the author of Policy Letter P-1, then Deputy Commander of the Marianas area and Chief Military government Officer for the ex-mandated islands, to the position of Deputy High Commissioner of the Trust Territory of the Pacific Islands. The High Commissioner decided to retain only broad policy control and delegated to the Deputy High Commissioner responsibility for details of policy and for actual executive control of the government. The Deputy High Commissioner therefore had full authority to act for the High Commissioner in administrative and routine matters and referred only questions of policy to Pearl Harbor. (*Naval Administration*, p. 69.)

As the conduct of administration among the commands became clarified, the duties of Deputy High Commissioner were increasingly restricted to his Trust Territory assignment and concern with the logistic support for which COM Marianas was responsible. The Deputy High Commissioner continued to be assigned the additional duties of the Deputy COM Marianas and Deputy GOV Guam until the fall of 1949 when the civil administration of Guam was scheduled for transfer to the Department of Interior.

Policy proposals and coordination of the staff department were affected by the legislature advisory committee, a standing committee of staff members established informally on March 30, 1949, specifically to study questions of policy and proposed legislation for the purpose of making recommendations on those matters to the Deputy High Commissioner via the Chief of Staff, and to coordinate division of programs and projects by studying the ramifications of such programs as they affected other divisions.

In late 1949, the Congress of the United States had still not established an organic act or any constitutional basis for legislative government of the Trust Territory when the Trusteeship was established, and so the preparation on the staff level of regulatory measures, other than the proclamations of the High Commissioner, was delegated to the Deputy High Commissioner by Admiral Denfeld. These civil administration enactments, based upon the Trusteeship Agreement of Executive Order No. 9875, and the cumulative directives of the military Governors and the High Commissioner were issued in the form of interim regulations signed by the Deputy High Commissioner and numbered in series for its calendar year. Their formulation was begun soon after establishment of the Trusteeship for the area, but the first one was not promulgated until February, 1948.

In the period during which both Admiral Denfeld and Admiral Ramsey served as High Commissioner, eleven interim regulations were issued. These provided for a court system (1-48, 1-49), a criminal code (3-48, 5-48), a system of interim government (4-48, 6-48, 7-48), and regulations for the conservation of trochus (2-48), export controls (8-48), recording of transfers of land (2-49), and the conservation of fish and shell fish (3-49). (*Naval Administration*, p. 89.)

The basic policy of the Navy Department for the administration of Navy affairs within the Trusteeship was issued by the Chief of Naval Operations on January 15, 1948. Its principles were to be "considered as a guide for all officers and persons connected with several governments under the cognizance of the Navy Department," and were to be "observed in conjunction with the provisions of the Trusteeship Agreement as approved on July 18, 1947." (*Naval Administration*, p. 355.)

Paragraph (d) of the July 15 letter reads as follows:

"The protection of the local inhabitants against the loss of their lands and resources and the institution of a sound program of economic development of trade, industry and agriculture along lines which will insure that the profits and benefits thereof accrue to the inhabitants and which will assist them in achieving the highest possible level of economic independence . . . ."

Territorial law, which consisted of civil administrative enactments and provided the only written law for the Trust Territory, was promulgated at various levels of command. These enactments were of four types: (1) Proclamations issued by the High Commissioner; (2) interim regulations issued by the Deputy High Commissioner, and later, after the High Commissioner and Deputy High Commissioner staffs were combined in October, 1949, by the High Commissioner; (3) ordinances issued by the governors of the sub-areas; (4) district orders, issued by the civil admin-

istrators of the districts. A fifth type, namely a body of common law, which developed from decisions of the Courts, may also be considered as territorial law. In all law making the provisions of the Trusteeship Agreement were adhered to and an attempt made to give due recognition to the customs of the indigenous inhabitants. Local law and indigenous customs were often incorporated into the legal structure as ordinances and district orders. (*Naval Administration*, p. 425.)

Interim regulations provided the greater part of the body of territorial law. They were prepared and promulgated by the Deputy High Commissioner at Guam until the staffs were combined at Pearl Harbor; thereafter they were promulgated by the High Commissioner.

The first interim regulations, those concerning courts, conservation of trochus, and criminal code, were promulgated in February, March and April, 1948, but the regulations for the basic provisions of government were delayed because of divergence of opinion between Admiral Denfeld, the High Commissioner, and Rear Admiral Wright, the Deputy High Commissioner, concerning the administration of native affairs. (*Naval Administration*, p. 426 to 428.)

Ordinances were regulations issued by the Governors of the Northern Marianas, Western Carolines, and Marshall Island areas and were applicable to their respective areas as a whole. They acquired approval by the High Commissioner prior to their promulgation as law. (*Naval Administration*, p. 440.)

The establishment of a strategic Trusteeship in 1947 and the necessity for making it a working administration, coupled with the administering authorities' uncertainty concerning land for military requirements, further delayed the progress of land and claim problems. Not until 1949 was the first legal provision made concerning land. Interim Regulation No. 2-49, "Recording of Transfers of Land,"

was promulgated late in that year in an attempt to clarify land holdings after that date. (*Naval Administration*, p. 502 and 1182.)

During fiscal year 1951, the administration issued two "land and claim regulations" designed to expedite the procedure for effecting prompt return to the owners of public and private lands controlled by the administering authority but no longer needed for government purposes.

Based on this analysis, Policy Letter P-1 appears to be no more than a guideline, a mere memorandum issued by the then Deputy High Commissioner to all the civil administrators of the Trust Territory. It was neither a proclamation by the High Commissioner nor an interim regulation by the Deputy High Commissioner. Both proclamations by the High Commissioner as well as interim regulations were numbered; P-1 was not. It was not intended to be an interim regulation. Indeed, the first paragraph explains that, "this is the first of a series of letters setting forth *policies* of the High Commissioner of the Trust Territory of the Pacific Islands . . . ." It is doubtful that P-1 was intended to have the force and effect of law.

Plaintiffs rely on the case of *United States v. Heffner*, 420 F.2d 809 (4th Cir. 1969) for the proposition that an agency is obliged to follow its own rules. There the Fourth Circuit allowed the suppression of statements made to Special Agents of the Intelligence Division of the Internal Revenue Service. The Internal Revenue Service, in two press releases, set administrative standards for Miranda warnings. This procedure also appeared in the Internal Revenue Manual. Briefly, the procedure required that a Special Agent identify himself, describe his or her function, and advise the taxpayer of the rights of silence and counsel.

The First Circuit, following the reasoning of *Heffner*, held that the Internal Revenue Service had a "duty to conform to its procedure, that citizens have a right to rely on

conformance, and that courts must enforce both the right and duty" and evidence obtained without these warnings would be excluded. *United States v. Leahy*, 434 F.2d 7, 11 (1st Cir. 1970). The Court, however, limited its holdings to situations where two factors intersect: "(1) a general guideline, deliberately devised, aiming at accomplishing uniform conduct of officials which affects the post-offense conduct of citizens in a criminal investigation; and (2) an equally deliberate public announcement, made in response to inquiries on which many taxpayers and their advisors could reasonably and expectably rely." At 11.

The Second Circuit in *United States v. Leonard*, 524 F.2d 1076 (2nd Cir. 1975), noting that these self-imposed Internal Revenue Service strictures go beyond any constitutional obligation, indicated that it would not be inclined to apply the exclusionary rule in the case of any occasional and undeliberate departure from the voluntary procedures described in the news releases. Likewise, other courts have taken an opposite position. The Tenth Circuit in *United States v. Lockyer*, 448 F.2d 417 (10th Cir. 1971) held that an unpublished audit manual does not define rights of taxpayers under investigation. See also *United States v. Luna*, 313 F. Supp. 1294 (W.D. Tex. 1970), *United States v. Mapp*, 420 F. Supp. 461 (E.D. Wisc. 1976). *Heffner* and *Leahy* were criticized in *United States v. Fukushima*, 373 F. Supp. 212 (D. Haw. 1974) accord: *United States v. Potter*, 385 F. Supp. 681 (Nev. 1974).

The split in the circuits was apparently settled by the Supreme Court in *Beckwith v. United States*, 425 U.S. 345 (1976). *Beckwith* in refusing to extend Miranda to noncustodial investigations, civil or criminal, appears to overrule those circuits which have held that Miranda warnings must be given in *Heffner* situations. Thus we believe that *Heffner* must be strictly construed and limited to the facts of that particular case.

Even prior to the erosion of *Heffner* by the holding in *Beckwith*, the proposition for which *Heffner* stood had been effectively delimited. Following the Second Circuit's rationale, we find no "equally deliberate public announcement made in response to inquiries on which many (former landowners) and their (heirs) could reasonably and expectably rely." Indeed, the records of all these appeals evidence a general awareness of P-1 and its operations. Obviously, the Second Circuit saw fit to limit the *Heffner* holding to situations where public reliance on agency pronouncements compelled the agency to act in a uniform manner. This is not the situation here.

Prior to *Beckwith*, other courts while not disagreeing with *Heffner*, chose to hold the Internal Revenue Service to lesser standards, explaining that precise words used in the release need not be required so long as sufficient warnings were given. *United States v. Bembridge*, 458 F.2d 1262 (1st Cir. 1972), *United States v. Lackey*, 413 F.2d 654 (7th Cir. 1969), *United States v. Phifer*, 335 F. Supp. 724 (S.D. Tex. 1971). We note that the Congress of Micronesia enacted 2 TTC § 57, providing for a Land and Claims Administration. This statute together with regulations providing for the processing of claims ostensibly provided aggrieved individuals with redress for past wrongs. Thereafter, 67 TTC § 101 et seq. was enacted seeking to protect those individuals who may not have been aware of past injury. The Office of the Land Commission was to provide for the systematic settlement of disputed claims to land. Regulations attendant thereto were promulgated in 1974. Though the enactments of the Congress of Micronesia may not have, with mathematical precision, met the language of paragraph 13 of P-1, nevertheless, it is not clearly insufficient and lest we intrude too deeply into the area of legislation, we will agree with the pronouncements of the Trial Division in Civil Action 89-74, Appeal No. 220, in that adequate

procedures were set up to review land transfers from the Japanese government or Japanese nationals and adequate notice of said procedures were made.

[1] Additional cases to which plaintiffs seek authority are readily distinguishable. We take no exception to the proposition that government agencies must conform to their own rules. Indeed, we endorse the proposition that once an agency validly promulgates, or is mandated to promulgate, rules it is obliged to thus perform. Thus *Gardner v. F.C.C.*, 530 F.2d 1086 (D.C. Cir. 1971) is not inconsistent with our reasoning herein. *Kelly v. Metropolitan County Board of Education*, 372 F. Supp. 540 (M.D. Tenn. 1973) and *Red School House Inc. v. Office of Economic Opportunity*, 386 F. Supp. 1177 (D. Minn. 1974) concerned the actions of agencies in relation to rules of operation. Should there have been a question concerning the validity of rules promulgated under the authority of the Deputy High Commissioner or High Commissioner, then perhaps we could look to these cases for guidance. Inasmuch as we are concerned with a self-described policy, we find these cases of little value.

[2] Thus we hold that Policy Letter P-1 was a mere statement of policy, not intended to have the force and effect of law and never promulgated, and apparently not intended to be promulgated as a law or regulation. The words of Chief Justice Furber in *Kengsiro v. Trust Territory*, 2 T.T.R. 76, 78 (Trial Div. Palau Dist. 1959), are consistent with the rationale of this Court:

> "While this Trust Territory Policy Letter is recognized as an authoritative statement of administrative policy of which the courts must take due notice, and which has been relied upon by the courts as an aid in determining what view should be adopted as to certain questions of international law, this letter does not purport to be an enactment of law."

In passing, we note that Executive Order No. 32 appears to effectively cut off the operation of P-1. Paragraph B states in part:

"All proclamations, regulations, orders and directives of the United States Military Government, and civil administration orders (except existing district orders), and all interim regulations, amendments and supplements thereto, which are not contained in this code are hereby expressly repealed."

Should P-1 have been considered a law or regulation, then the operation of Executive Order 32 could well have eliminated it. The survival of P-1 can thus be attributed to its function as but a new expression of policy. A mere expression of policy could not be said to vest rights within any class of individuals and thus the implementation of Executive Order 32 could not be said to divest any individuals of vested rights.

[3] We disagree, however, with the Trust Territory's contention that the act of State Doctrine precludes the ability of the courts or the Trust Territory from determining whether or not land in question was purchased by the Japanese government at market values. We find this as too narrow a reading of *Banco National de Cuba v. Sabbatino*, 576 U.S. 398, 84 S. Ct. 923. Furthermore, the operation of the Trusteeship Agreement, 2 TTC § 57, 67 TTC § 102 et seq. and the Micronesian Claims Act of 1971, 50 U.S.C. § 2018 et seq. evidence at least a degree of legislative desire to provide some relief to Micronesian inhabitants. It is within these legislative pronouncements plaintiffs must seek their relief.

[4] In this ruling on the merits of the question concerning the effect of P-1, we observe that the arguments propounded by the Trust Territory asserting the bar of the statute of limitations is without substantive merit. We agree with plaintiffs that the Trust Territory as a trustee cannot assert the statute as a defense.

Our ruling should not be construed to forever bar litigation on the issue of recompense for the horrors of the war. Implicit in the rulings of this Court has been the tacit observance of the horror wreaked upon the people of Micronesia. At times we have been motivated more by the sympathies generated by the parties rather than the mandate of the law. Today, we rule only that Policy Letter P-1 cannot be given the force of law.

Accordingly, the decision in Civil Appeal No. 219 is hereby AFFIRMED.

The decision in Civil Appeal No. 220 is hereby AFFIRMED.

The decision in Civil Appeal No. 233 is REVERSED, and this obviates the necessity to discuss the issue of just compensation.

The decision in Civil Appeal No. 234 is REVERSED, and no discussion of just compensation is necessary.

The Summary Judgments in Civil Appeal Nos. 233 and 234 are hereby set aside and judgment shall be entered in a manner consistent with this opinion.