

Chapter 2

VOICE OF THE PEOPLE

INTRODUCTION

The concern of Tongans over land law and practices, their problems, aspirations and desire for some changes to make the system more equitable were freely expressed at all the Commission's public meetings both in Tonga and overseas.

There were a total of 79 public meetings held by the Commission with 31 of these public meetings in Tongatapu (931 attendance), nine in Vava'u (520 attendance), seven in Ha'apai (409 attendance), three in 'Eua (137 attendance), one in Niuatoputapu (18 attendance), one in Niuafu'ou (22 attendance), 13 in the United States of America (783 attendance), eight in Australia (349 attendance) and six in New Zealand (342 attendance). A total of 3,511 people attended the 79 public meetings with the Commission. The highest attendance to any single public meeting was in Mangere, Auckland with 125 people and the lowest attendance was in Fua'amotu, Tongatapu with seven people. Men's attendance always heavily outnumbered women at these meetings. Mainly older people attended and very few youth or younger people attended.

There were 10 other special interest group meetings also held with the commercial banks in Vava'u, the Association of Banks in Tonga, the ANZ Bank in Melbourne, the Westpac Bank in Sydney, the Tonga Chamber of Commerce and Industries, Women's groups, Church Leaders and representatives from churches, the Tonga Law Society and law practitioners, the People's Representatives to the Legislative Assembly of Tonga and hereditary estate holders.

There were also 24 written submissions received by the Commission between April 2009 and November 2011 and one petition to the Legislative Assembly that was copied to the Commission.

The proposals received clearly showed concerns and interests from the public regarding certain land issues, such as the land tenure system and its history, the law of succession, women's rights, freehold land, mortgaged land, leased land, abandoned land, land belonging to Tongans living overseas and the foreshore. The idea of a Family Trust was also brought up as a possible solution to problems within families allegedly due to the heir's selfish dealings with the family land. The Land (Amendment) Bill 2010 proposed by the Nobles was also referred to the Commission from the Legislative Assembly in October 2010. A summary of amendments proposed in this Bill were provided to the public for comment during the Commission's public meetings.

Apart from the major topics referred to above, which were frequently discussed during the Commission's public meetings, there were other more localised land matters relating to people's areas of residence. People residing in the outer islands expressed concerns that directly impacted their lives such as the erosion of land by the sea and the right of a Tongan to use the foreshores and seek a livelihood from the sea without impediment. People residing in rural villages were more concerned with tax allotments and their ability to lease these lands. People residing close to the foreshores and lagoons such as Fanga'uta were concerned with development projects in these areas that could impact their livelihoods. Tongans residing overseas were interested to know how they could contribute to the upkeep of their land in Tonga possibly by payment of taxes that could be imposed on them to contribute to the general revenue of the country. People's views and concerns also differed depending on whether they resided on Crown or hereditary estates.

The public expressed their concerns and views during the Commission's public meetings and conveyed problems they were facing because of the existing provisions of the Land Act, land practices and proposals to improve the land system. There were also continual concerns and dissatisfaction expressed with the services provided by the Ministry of Lands.

2.1 LAND RIGHTS AND DUTIES

It became clear from the public meetings that a lot of Tongans lacked knowledge of their basic rights to land and land laws in general. This resulted in proposals for change being raised despite the fact that the solutions were already available under existing laws. One such proposal was for a landholder's land to be distributed equally amongst his children. This could already be achieved under existing laws with the landholder subdividing his land while he was alive and allocate land to his sons for registration and leasing plots to his daughters.

Furthermore, it also became clear that people misunderstood land laws relating to issues such as land allocated (but not registered) at the pleasure of the Monarch ('api to), what becomes of the land of a Tongan who had acquired foreign citizenship before 2007, the correct procedure for effecting the surrender of land and its consequences, and the need for the heir (whether a widow or the eldest son) to make a claim to the deceased holder's land within a year of his death.

A lot of people mistakenly thought that the original registration of an allotment also provided an automatic right of succession upon the death of the landholder without the need for the heir to claim land he was entitled to through lodging an heir's affidavit. Where such claim was not made within a year of the death of the holder, that allotment would revert to the Estate holder. The Estate holder could grant that reverted allotment to someone else and this action was usually seen by people as "*double registration*" wrongly believing that their ancestor's registration was still active and was *re-granted* by the estate holder.

The consultation efforts of the Commission through the public meetings were well received. Tongans appreciated the opportunity to bring forward their views

and for their voices to be heard. There was an expectation by the people that the Commission would take their views into consideration and make such reasonable recommendations that would realize and meet today's needs while at the same time maintaining the visions of King George Tupou I which are the cornerstone of our land tenure system.

2.2 PROPOSALS FROM THE PEOPLE

A comprehensive report was compiled by the Secretary of the Commission of all the proposals gathered from the public meetings, special interest group meetings and written submissions. These discussions and proposals were also checked against audio recordings to ensure all important issues were considered. The Secretary's report is attached to this Report in Appendix 9.

The subject matter and proposals have been identified and listed in the Executive Summary. All public concerns and proposals have been considered in the following chapters of this Report with recommendations where appropriate from the Commission. For the purpose of this chapter the views and proposals that were put to the Commission from the public are set out in summary form.

(i) Succession to land

(a) Some people believed that no change was required to the current laws of succession apart from some tidying up, including:

- to protect the rights of the heir when land is leased, mortgaged, claimed by the widow;
- to determine the rights of a son born before his parents marry;
- to ensure the land stayed with the family when subdivided by the landholder;

(b) Some people believed that amendments to the laws of succession are required in these respects:

- a daughter's right to succeed as heir to her father's land (in the absence of a male heir) should not terminate upon her marriage;

- include illegitimate and adopted children as heirs, in very particular circumstances;
- land should be shared amongst all the children of the landholder;
- succession should begin with the eldest child regardless of gender;
- parents should decide which of their children should succeed to the family land.

(ii) Women's rights to land

There was strong public opinion expressed that women should be "freed", from the current limitations under the laws, to have equal rights with men under the Land Act. These proposals came from both men and women and included the following:

- (a) women to have equal rights as men under the Land Act;
- (b) wives to be given residential rights over land of a husband who had committed adultery or neglected marital duties to his wife and children;
- (c) rights be given to a daughter who looked after the parents and the family land;
- (d) a widow should be allowed to lease the land with the consent of the heir;
- (e) a widow should be given more rights with land that was newly acquired by the widow and her deceased husband;
- (f) commitments given by Government in national policy, regional and international and agreements giving women equal rights to land should be realized.

(iii) Freehold limited to reclaimed land

Tonga could benefit from freehold land by its introduction to very limited reclaimed land on the foreshores but not to apply to land currently under the Land Act. The public's views on the matter included the following:

- (a) sale of freehold land should be introduced to Tonga;

- (b) freehold would only benefit the wealthy;
- (c) freehold would encourage reclamation which would adversely affect the foreshore environments, customary fishing rights and the rights of people living in coastal areas;
- (d) reclamation would create more land for the people;
- (e) rights to freehold land should be reserved only for Tongan subjects living in adjoining areas;
- (f) reclamation should be limited only to lagoon areas (internal waters).

(iv) Mortgages

This topic was of great interest not only to the general public but also with the banks who expressed strong interest due to the increasing number of defaults on mortgage agreements and mortgagee sales. The Commission met with the banks and discussed the public's concerns regarding mortgage practices. Proposals from the public included the following:

- (a) the interest rate charged by banks on mortgages should be reviewed;
- (b) the principal amount of a loan should reflect the size of the land to be mortgaged;
- (c) the term of the mortgage should reflect the principal amount of the loan;
- (d) the maximum term of a mortgage allowed by law should be reviewed;
- (e) limitations should be placed on mortgage of town allotments;
- (f) the heir's consent should be obtained before a mortgage is approved;
- (g) land sold after a mortgage default should be returned in the same condition it was in at the time of sale;
- (h) mortgage agreements should always be in both the English and Tongan languages;
- (i) a widow should be given the right to mortgage her land interest provided the heir consents;

- (j) there should be a public awareness program to help the public understand mortgage laws;
- (k) bankruptcy laws are required;
- (l) "all money mortgages" should be allowed in Tonga;
- (m) an independent body should be established to provide support service to people who wish to enter into a mortgage agreement.

(v) Leases of Land

The proposals for review under this topic were received from people who experienced difficulties and hardship under the existing land laws regarding leases. Proposals called for the following changes:

- (a) the consent of the lessor should be obtained before his land is sub-leased;
- (b) leased land should be returned in the same condition it was in when the lease was made;
- (c) special attention should be given to leases to foreigners and Chinese nationals in particular, to protect land for Tongans;
- (d) the maximum term for leasing a tax allotment under current law should be increased;
- (e) the consent of the heir should be obtained before a lease is made;
- (f) rent payments on leases from Tongans living overseas should be facilitated;
- (g) notice should always be given to parties before a lease is cancelled;
- (h) the Minister of Lands should give the approval to all leases, instead of Cabinet, to expedite the process of applying for a lease;
- (i) a lessee should be compensated for improvements to the land if the lease is not renewed;
- (j) a lessee should be given reasonable notice of an intention to repossess the leased property due to non-payment of rent;
- (k) Tongans' land needs should have priority over a lease to a foreigner;

- (l) there should be an independent body to give advice to parties on leases, provide information on land available for lease, help with renewals if not automatically renewed;
- (m) a lease should be terminated if the land is not used for the purpose stated in the lease;
- (n) lease to churches;
 - special consideration should be given to land leased to churches and church schools so that the rent would not be too high and renewals should be made easier;
 - Government should pay the rent on leased land used for church schools as they assist in educating the youth of the country;
 - there should be a single lease to churches instead of multiple leases for different purposes;
 - consider giving a "perpetual lease" of 999 years to churches;
 - Government should ensure that there is sufficient land available for church schools to conduct their activities;
 - less land should be leased to churches so that more land is available for the people;
 - Cabinet's power to renew leases without the approval of the lessor under section 36 of the Land Act should be fully enforced;
- (o) Consider the amount of land leased in each estate -
 - to ensure that the total land leased in each Noble estate does not exceed the 5 percent limit imposed by law;
 - to abolish the estate holder's power to approve leases on his own estate and give it to the Minister of Lands;
 - to limit the estate holder's power to determine rent on leases and allow an independent Land Commission to exercise this power.

(vi) Absentee landholders

There are a large number of registered town and tax allotments across Tonga that were not being used for residential or farming purposes – in effect they were abandoned lands. In many cases, the landholders of these abandoned lands resided overseas but some lived in Tonga. Other views expressed by the public were as follows:

- (a) abandoned allotments should be made available to others to utilize with the landholder's consent;
- (b) the landholder should choose who will work his land;
- (c) the Town Officer should be the custodian for abandoned allotments;
- (d) abandoned land should be given to an independent body which would be the intermediary between the landholder and anyone in need of land;
- (e) abandoned land should be returned to the Government and become part of the Crown Estates;
- (f) penalties should be levied on landholders who have abandoned their land.

(vii) Rights to land of a Tongan who has acquired foreign citizenship

The majority of Tongans living overseas opposed any move to take away their rights to land in Tonga on the basis that they had acquired foreign citizenship or they had lived overseas for many years. The following views were also expressed by the public:

- (a) land rights of Tongan subjects who had acquired foreign citizenship should not be forfeited as they are still Tongans in their hearts, they help the economy of Tonga with their remittances and their long term intention is to build a home in Tonga with the money earned overseas and eventually return to live in Tonga;
- (b) land rights of Tongan subjects who had acquired foreign citizenship should be forfeited on the ground that they have benefits and entitlements in the

foreign land while they still hold on to land in Tonga, which is needed by those in Tonga who do not own any land;

- (c) the effect of the Nationality (Amendment) Act 2007 and its impact on land rights acquired or lost prior to its commencement should be clearly explained.

(viii) Family Trust

The idea of a Family Trust was put forward to allow the family to agree on how the family land would be maintained, managed and divided among the family members instead of it going only to the eldest son as heir. The public also expressed the following views:

- (a) new legislation should be enacted to allow a Family Trust to take over the rights of the heir;
- (b) a family should be given a choice whether to create a Family Trust or just let the heir take his rights as at present;
- (c) each member of the family should be involved in the decision making process for family land;
- (d) an independent body should assist families in forming a Family Trust.

(ix) Foreshores

Interest was shown by the public in the use of the foreshore, beach front and lagoon. The Ha'apai group also expressed concern because erosion caused by rising sea levels was reducing the size of registered allotments. The following proposals were also made by the public:

- (a) the Minister of Lands should consult other stakeholders before granting a lease on the foreshore;
- (b) fisheries laws should be clarified in relation to the foreshore and its use;
- (c) foreshore land should not be leased in order to guarantee public access to the sea.

(x) Land Distribution - consider new and improved ways of land distribution

Many Tongans have no land. This was of concern as more land should be made available to the people, which was the intention of our land system. The following proposals were made by the public:

- (a) to reduce the legal size for town and tax allotments;
- (b) to clarify the amount of land available in the Government and Hereditary estates for allocation;
- (c) to consider "strata titles" to land ownership which is commonly used overseas;
- (d) to simplify the process for exchange of allotments;
- (e) an heir should declare any land he 'holds' unregistered when he makes his claim as heir;
- (f) Fanga'uta lagoon area should be reclaimed and distributed as allotments;
- (g) each estate should have a reserve for recreational purposes of the public;
- (h) each town should have a Council to help both the hereditary estate holder and the people on land matters.

(xi) Improve the working relationship between hereditary estate holders and the people

People expressed concern at certain practices by some hereditary estate holders when an application was made for land. People requested more certainty and timely decisions to be made after an application was made and would appreciate Nobles being more accessible to meet with the public. The following proposals were also made by the public:

- (a) time frames should be specified within which an estate holder must make a decision regarding an application for a grant (*tala'api*);

- (b) sometimes an allotment was granted twice by the estate holder to two different people;
- (c) the Minister of Lands should not be a Noble;
- (d) surrendered land should go to the person intended by the landholder;
- (e) the practice where estate holders allow only the occupation of land but not its registration should be stopped;
- (f) the alleged practice where Estate holders stop the registration of an allotment after signing and approving the grant should be stopped;
- (g) guidelines should be drafted for the use of estate holders in the exercise of their powers;
- (h) estate boundaries should be clarified by surveying.

(xii) Practices of the Ministry of Lands should be reviewed

This is an area that received the full attention of the Commission in Phase One of its inquiries and is discussed in Chapter 5 with recommendations. The public also expressed its views as follows:

- (a) a time period should be specified within which the Ministry of Lands should complete a land transaction or query from the public;
- (b) Ministry of Lands' staff often caused available allotments in Government estates to be registered in their name or those of their relatives and friends;
- (c) surveys should be done in a more accurate and reasonable manner;
- (d) privatizing of the Survey Division of the Ministry should be considered;
- (e) to facilitate the interests of Tongans living overseas regarding their land needs;
- (f) to require identity documents from anyone who makes a land claim such as the heir;
- (g) problems that residents of outer islands experience when required to pay the extra costs involved in a survey such as hiring a boat;

- (h) to facilitate the land needs of residents in the outer islands and the Governors' offices due to all land records now being kept in Nuku'alofa;
- (i) payment of survey fees for renewal of a lease should not be required where no new survey is required;
- (j) the fees prescribed under the Land Act should be reviewed to increase efficiency;
- (k) the Ministry of Lands should have an internal, fulltime legal adviser;
- (l) a new division should be created to deal with complaints regarding the Ministry's performance;
- (m) record keeping of land information and the need for a secure archive;
- (n) the powers of the Minister of Lands should be reviewed;
- (o) Government policies and the requirement for Cabinet approval of some land matters should be reviewed.

(xiii) Cemeteries

People were concerned with the shortage of space available in cemeteries for burials and made the following proposals:

- (a) Government should provide more land to be used for cemeteries;
- (b) to allow family burials on registered allotments;
- (c) to facilitate and allow families to reserve land for family cemeteries;
- (d) to ensure that a plot of land is reserved from any new town settlement for a cemetery;
- (e) the law should clarify who has the authority over cemeteries;
- (f) consider the special case of cemeteries that belong to churches.

(xiv) Provide protection for family land and opportunities for landowners to benefit from his land.

The public expressed the following views:

- (a) to review the law on an heir's claim upon the death of the landholder;

- (b) clarify the rights of the registered holder against an occupier;
- (c) brothers of the landholder should be given an allotment where the heir sub-divides the family land;
- (d) a landholder should receive a share of any natural resources discovered on his land.

(xv) Assist the public in raising awareness and enforcing of their land rights

Some people did not fully understand their rights under the Land Act. The following proposals were made by the public:

- (a) to establish a legal aid program to advise people of their legal rights;
- (b) Government to inform the public of changes to land laws;
- (c) devise educational programs to promote public awareness;
- (d) to establish a body to deal with land disputes apart from the Land Court;
- (e) consider the work and jurisdiction of the Land Court;
- (f) consider the 10 years limitation on the taking of legal action and whether it should be increased;
- (g) Government to pay the costs of a court action where it is at fault.

(xvi) Consider the needs of people in certain situations

The public expressed the following views:

- (a) should land be separated from fixtures?
- (b) reconsider the requirement to plant 200 coconuts on tax allotments;
- (c) the law should clarify the prohibition on sale of land as opposed to a 'gift';
- (d) clarify the legal position of land that has been eroded by the sea;
- (e) Fanga'uta lagoon area, Tongatapu - should this lagoon be leased like land?
- (f) investigate the work of foreigners as estate agents;
- (g) penalties (under the Land Act) should be more severe and enforced;
- (h) should consumption tax be levied on land transactions?

- (i) the right to drill a water bore on an allotment;
- (j) situation of land for new settlement of people in Niuatoputapu;
- (m) to repeal the law that gives only Nobles the right to discuss and vote on matters regarding Noble and Royal estates;
- (o) remove restrictions on application for an allotment to people of that district only;
- (p) prohibit the practice of demanding money before registration of land and renewal of a lease.

(xvii) Development projects to ensure customary rights and land are not lost and the environment is not adversely affected

The public expressed the following concerns and views:

- (a) Fanga'uta lagoon and the Lomipeau project;
- (b) Chinese and other foreigner interests in land should be given special attention;
- (c) establish a Land Bank where people can place the land they wish to lease;
- (d) consider imposing a land tax on all land;
- (e) establish a National Land Use Policy to help the sustainable development of the agriculture sector;
- (f) designate land for tourism facilities and purposes;
- (g) consider a "Dual System" for land where one is held under the present system and the other is used for development purposes;
- (h) to establish an Independent Land Commission to deal with administrative and other matters presently attended to by the Minister;
- (i) to establish a Tribunal to deal with certain complaints against decisions of the Minister and staff and disputes not suitable for the Land Court.

All concerns and proposals in Phase One and Phase Two of the Commission's inquiries will also be considered in the following chapters of this Report with recommendations made where appropriate.

