

## Chapter 9

### RECOMMENDATIONS

ROYAL LAND COMMISSION RECOMMENDATIONS	
<b>Chapter 3: Land Ownership – Land Tenure, Rights to Land and Security</b>	
1.	THAT the legal age of entitlement to a town or a tax allotment by a Tongan male subject be increased from 16 to 21 years of age.
2.	THAT a woman who is a Tongan subject upon attaining the age of 21 years has the right to apply for grant of a town allotment, which can be registered under her name. Upon her death, the land shall devolve according to the succession laws, which shall be amended accordingly. For now women should not be allowed to apply for and gain a registered tax allotment. The status quo should remain with men being allowed to hold tax allotments.
3.	THAT the termination of an unmarried daughter's right upon proof of her having committed adultery or fornication is repealed.
4.	THAT the restriction on the inheritance of a daughter when she marries should be removed. Where there is no male heir of the deceased landholder, his daughters shall succeed as follows. If there is more than one daughter then the eldest will inherit the land until she dies then the land will go to her sisters in turn according to age starting from the eldest until they respectively die. When the final daughter dies then the land will devolve to the children of the daughters (sons in order of age, then daughters in order of age, if there are no sons) starting from the eldest daughter and continue under the laws of inheritance.
5.	THAT the termination of a widow's life interest upon proof of her

	having committed adultery or fornication is repealed.
6.	THAT a widow be allowed to lease or mortgage the land she holds as a widow but only with the consent of the heir.
7.	THAT the rights of a widow to land that has been newly acquired by her husband should allow her to lease or mortgage the land with the consent of the heir, and where she had no children with her husband, then consent is not required.
8.	THAT legally adopted children (sons in order of age, then daughters in order of age, if there are no sons) shall succeed as heir to newly acquired land in the absence of any legitimate children of the landholder.
9.	THAT a deserted wife shall have the right to remain on the family land and home with her children until she remarries or dies.
10.	THAT a family member who has, with consent from the holder lived on and looked after the family land for over 5 years should be given residential rights to the allotment and not be evicted by the landholder, widow or the heir. This residential right shall be equivalent to the number of years that the family member has lived on and looked after the family home. Should the land holder, widow or heir want to take control of the property before the end of that period then he will have to pay reasonable compensation to such family member for an amount agreed between them. If they do not agree on an amount, such compensation shall be fixed by the independent Land Commission.
11.	THAT any person who is an idiot or imbecile shall not inherit land or hold title to land. If required, a determination a person's state of

	mind for purposes of inheritance to land shall be by way of a medical certificate from the Director of Health.
12.	THAT any person who is an idiot or imbecile shall not inherit title to a hereditary estate. If required, a determination of a person's state of mind for purposes of inheritance to title to a hereditary estate shall be by way of a medical certificate from the Director of Health
13.	THAT a person may apply for an allotment anywhere in Tonga subject to section 35 of the Land Act.
14.	THAT where the heir already holds a registered allotment and elects to keep his own land then the right of election to the family land shall go to his brothers in turn, in the line of succession instead of his son in accordance with the established succession laws.
15.	THAT the right of election should not be restricted only to the son and grandson of the landholder, but this right should be available to everyone in the line of succession.
16.	THAT every Noble should make a time and place where he will be available to meet with the public with an interest within his estate each month and this should be made known to the public. In the case of a Noble who is overseas for an extended period, another family member or a Trustee should be appointed to carry out the Noble's duties. In the case of a Noble who is a minor, a Trustee should be appointed and made known to the public. The Trustee should specify a time and place to meet with the public in each month and inform the public accordingly.
17.	That a Noble must give his decision regarding an application for an allotment, within 12 months after having received the application, failing which he will be deemed to have

	approved the application. The same shall apply to Crown Land with a decision by the Minister of Lands.
18.	THAT where people have lived on an allotment for a period of one year or more with the approval of the Noble, that allotment upon application from the occupier should be registered and the Noble should facilitate such registration. Failing this, the applicant may seek remedy from the Minister of Lands to carry out the registration using his powers under section 34 of the Land Act, unless for proper reason such registration should not be effected. The same condition shall apply to Crown Land and remedy sought will be through the independent Land Commission and the Land Tribunal.
19.	THAT a Noble may not grant the same allotment to two or more people and where this has happened then the first grant shall be deemed to be the valid one in time unless there is proper reason for the Minister to exercise his discretion otherwise. Similarly, a Noble may not revoke his signature in granting an allotment unless he has a legally valid reason for doing so. The same shall apply to Crown Land with a decision by the Minister of Lands.
20.	THAT a set of Guidelines be drafted to assist the Estate Holder in the exercise of his functions and powers under the Land Act. Government should consider this in consultation with the Nobles.
21.	THAT practice of demand for money by some estate holders for the grant of land, whether directly or indirectly, should be prohibited and made an offence. The same shall apply to the Minister of Lands in respect of Crown Land.
22.	THAT when a tax allotment is subdivided by the holder, he must offer a plot of land to each of his sons, daughters, brothers and

	sisters before giving to others.
23.	THAT where the heir is identified to the satisfaction of the Minister of Lands, it is not necessary to wait for the end of one year before such surrender is made effective.
24.	THAT where the exchange involves land on different estates then the approval of each estate holder is required.
25.	THAT the period of 12 months be retained for the lodging of the claim by the heir or the widow provided the process proposed for Tongans residing overseas are satisfied.
26.	THAT claims by the heir and the widow can be made through the Consular Office and Embassies of Tonga in a foreign country. Process for the lodgment of these claims through the internet should also be considered.
27.	THAT rules including penalties be made concerning land which is abandoned so that it is used but the ownership is still retained by the registered holder. Section 44(2) should be amended accordingly.
28.	THAT the legal position of the registered holder of an allotment against that of an occupier be made clear by legislation bearing in mind the ten-year limitation and relevant case law.
29.	THAT the restriction on the term of a lease of a tax allotment be removed and put on the same basis as a town allotment provided that the rent on leases of both tax and town allotments shall not be paid in advance for more than 2 years.
30.	THAT section 34 of the Land Act is amended to give the Minister of Lands the right to determine portions to be reserved for personal

	<p>use of the hereditary estate holder on the advice of the independent Land Commission before submitting the same to be prescribed by regulations.</p>
31.	<p>THAT the 5 percent restriction on land that an estate holder is allowed to lease should be strictly enforced with penalties. Areas in excess of 5 percent should on expiration of any current lease be returned to the estate holder for distribution as town and tax allotments.</p>
32.	<p>THAT the parties to a lease are given the freedom to agree on any terms and conditions within the law. The lease form should be updated and made user-friendly to increase efficiency of processing at the Ministry of Lands. The parties shall have the freedom to vary within the law the terms and conditions appearing in the lease form. Amongst other form improvements, the lessor who has traditionally recorded as the King should be changed to now record the landholder as the lessor to the lease agreement and the signatory as lessor.</p>
33.	<p>THAT written notice of one month of intention to take possession is given to the lessee before a lessor takes possession of leased land and sells assets to recover the rent. In addition, the law should make it clear that when the lessor takes possession for default of payment of rent that on the recovery of the rent the land will be returned to the lessee. That the notice process is prescribed as follows – the lessor gives a one month notice to a lessee in default; and a month period is allowed to the lessee to make a response. If the response (or lack of any response) from the lessee is unsatisfactory to lessor then the lessor can give notice to repossess the land and dwellings</p>

	on the land.
34.	THAT the Ministry of Lands provides a way for the payment of rent for leases by overseas residents through Tongan representative offices overseas (such as the Tongan consulate or embassies) or through the internet, taking into account Recommendations 25 and 26.
35.	THAT the practice of demanding the payment of money, whether expressly or impliedly, before a grant or a renewal of a lease is made is prohibited and made an offence.
36.	THAT rent on leases to churches and charitable institutions are kept low and Government considers paying for the lease rentals for church schools. The rent should be set by Government or the independent Land Commission. Should commercial ventures be undertaken by churches on any land it has leased then Government should not pay for the rent.
37.	THAT a definition of "Charitable Purposes" is provided so that all the church's purposes are covered under the one lease.
38.	THAT the conflict between clause 109 of the Constitution and section 113 of the Land Act should be resolved by appropriate amendments to allow or not allow the leasing of the foreshore for the purpose of residing. The practice of the Minister of Lands in leasing the foreshore has to comply with the law.
39.	THAT a mortgagor be given the option to have a mortgage for a term longer than 30 years because of development purposes for which a loan is required.
40.	THAT the purpose for which the loan under a mortgage is made

	should not be restricted and Section 100(1)(iii) and 101(1)(ii) of the Land Act should be amended accordingly.
41.	THAT section 108(4) and Form 5 of Schedule VIII of the Land Act is amended so that it is the mortgagee or his lawyer who certifies that the discharge of the mortgage is correct for the purposes of the Land Act.
42.	THAT Government, after a consultation process is given the right to identify limited coastal areas, including the lagoon area that it may reclaim or allow to be reclaimed and hold as freehold land to be used for the benefit of the country. Such freehold land may be sold.
43.	THAT Government considers designating certain zones for specific purposes such as tourism facilities and accord them freehold title.
44.	THAT consideration is given to legislate allowing the creation of a Family Trust giving an option to the family to manage, maintain, divide and share the family land and interests therein instead of the current and individual landholders rights and those of the heir.
<b>Chapter 4: Land Distribution</b>	
45.	THAT the Ministry completes the process of surveying and draughting which began in the 1970's to confirm estate boundaries and all information required that would facilitate the Minister of Lands in issuing estate deeds for each estate.
46.	THAT the Ministry identify all registered allotments in the registry that have no total area and do all that is necessary to confirm those areas and update the registry.
47.	THAT the Ministry continues to re-build its registers and collate

	required data in order to provide, for each hereditary estate, Royal estates and all Crown estate lands accurate information on the total area of each estate and accurately determine what percentages of each estate has been allocated through registration (as tax and town allotments), leases (individual and religious/charitable) and permits, and what land is left unallocated and available for distribution.
48.	THAT consideration is given to strata title ownership and its introduction to Tonga.
49.	THAT (i) regulations are made to allocate clear authority for control of the allocation of plots for burials in cemeteries and resolving disputes that may arise from such allocation; (ii) the Minister of Lands work together with hereditary estate holders to identify appropriate land to be declared as cemeteries in estates where cemeteries are overcrowded.
50.	THAT the minimum size of a registered allotment be reduced to 20 perches for a town allotment.
51.	THAT a person who makes a claim as heir to a deceased person's registered land shall also notify the Ministry of any unregistered land that he currently occupies.
<b>Chapter 5: The Ministry of Lands, Survey, Natural Resources and Environment</b>	
52.	THAT the Ministry of Lands focus on performing its core functions namely (i) administration of the Minister's functions under the Land Act, (ii) registration of land titles and interests, transfers thereof and all land transactions, and (iii) survey and draughting.
53.	That Core function 4 should no longer be performed by the Ministry and all complaints are to be directed to the Land Tribunal through the independent Land Commission.

54.	THAT Core functions 5 to 8 should be divested away from the Ministry of Lands to other Ministries that Government considers appropriate.
55.	THAT the Ministry should continue to perform core functions 5 to 8 (Planning & Urban Management Division, Energy Division, Geology Division and the Environment Department) within the framework in Recommendation 56.
56.	THAT the Ministry of Lands is restructured according to the new proposed framework in Figure 2.
57.	THAT a time limit of three months is imposed on Minister of Lands or Cabinet, as the case may be, to complete land matters referred to them, with the exception of mortgage applications, which shall be completed within one month.
58.	THAT the Minister of Lands should be the person most suitable for the post but need not be a Noble of the realm. If a Noble, then decisions concerning his estate will be made by the independent Land Commission.
59.	THAT the Governors of Vava'u and Ha'apai should be present in their various districts for at least six months in a year in order to properly serve and engage the public.
60.	THAT one permanent land registration officer is assigned to each of the Governor's offices in Vava'u and Ha'apai.
61.	THAT land information on allotments in Vava'u and Ha'apai is made readily available for access by the public in those island groups.
62.	THAT new posts of Registrar-General and Surveyor-General of Lands are created at level 1 of the Public Service structure to perform the

	Minister's functions through clear delegation.
63.	THAT a fulltime post for an in-house legal counsel to provide legal advice to the Ministry is established.
64.	THAT survey and draughting services are privatised and the Surveyor General is authorised to check and endorse all surveys in the Kingdom.
65.	THAT a Surveyor and Draughting Society is established to regulate the operation of all private surveyors and draughtsmen.
66.	THAT Recommendation 64 is implemented in phases to ease transition of public surveyors and draughtsmen to the private sector by allowing them to remain in the public service and provide services as private surveyors and draughtsmen outside working hrs. The Ministry of Lands' equipment may be rented for use outside working hours subject to a fee.
67.	THAT the Ministry as a matter of priority refurbish high safety level storage facilities (strong room) for all original hard copies of land records in Tonga and maintain full back-up copies of all land records both on-site and off-site.
68.	THAT the Ministry continues working to reduce backlog files and Government consider providing sufficient funds for continuation of the Land Administration Project.
69.	THAT the Ministry establish a central computerized database system for all land registrations and titles and a high level document security system that strictly controls access, compliance and validity of all land records.
70.	THAT the Ministry consider the report by Dr. Ken Lyons and establish the pre-requisite building blocks toward full computerization and in the meantime (before full computerization) identify ways their processing of land transactions can be "computer assisted".

71.	THAT Government approach donor agencies to gauge interest in funding a project that would enable full computerisation of Tonga's land records and land registration system. This is urgent and of high priority.
72.	THAT after full computerization is in effect, Government will guarantee that all information on the deeds of title are correct. An appropriate fee to fund this guaranteed will be imposed on all payments for land transactions made through the Ministry.
73.	THAT should a survey be conducted at the expiry of a lease, with view to renewing the lease a survey fee should be charged. Should a lease renewal process be undertaken, without any survey being conducted then a new 'lease renewal fee' should be defined and charged but not a survey fee.
74.	THAT the Ministry should not impose additional costs not prescribed by law on members of the public who require a survey.
75.	THAT before a lease or sub-lease is cancelled (or submitted to Cabinet for cancellation), the Minister shall inform all parties to the lease or sub-lease giving parties one month to respond with any objections, which shall be considered by the Minister, before the proposal to cancel the lease is made.
76.	THAT the Ministry provide a clear schedule of all services and products, fees and time frames. This very basic land transfer/registrations information should then undergo a long term education programme to ensure the public are well informed of the Ministry's services and products. This recommendation should be considered together with Recommendation 57.
77.	THAT Government in consultation with the Tonga Law Society establish a duty lawyer legal service that provides initial and basic legal advice to the public for all land matters and consider how best to fund this scheme.
78.	THAT an identity verification process is established that requires the

	production of two officially recognised identity documents. That applicants for heir to land also need to have their genealogies verified.
<b>Chapter 6: Tenancy Agreements</b>	
79.	THAT Schedule 2 of the Business Licences Regulations 2007 is amended to add "Real Estate Services" to the list of business activities.
80.	THAT Section 2 of Form 1 of the Business Licences Regulations is amended to require written approval from the Tonga National Real Estate Authority to accompany an application for a Real Estate Services Licence.
81.	THAT Schedule 3 of the Business Licences Regulations is amended to prescribe the condition that Commission Agents Business Licences shall not be used to facilitate land dealings.
82.	THAT legislation is enacted to establish a National Real Estate Authority to perform the functions in a) to d). <i>(See paragraph 6.1.3 (ii) of the Report)</i>
83.	THAT the interest over land shall include interest over fixtures on that land (including dwellings).
84.	THAT the Land Act is amended to recognize tenancy agreements and their registration.
85.	THAT a specialist Internet Unit is set up by the Government to define, protect and maintain the basic rules and functions of Tonga's internet system. That, reciprocal right treaties are entered into that would assist Tonga in controlling and regulating its internet services and hence any dealings with land in Tonga.
86.	THAT funding is sought for the key recommendations made by the Commission. Aid funding could be sought from neighbouring countries such as New Zealand and Australia with well established

	National Real Estate Authorities in conjunction with supporting Governmental assistance.
<b>Chapter 7: An Independent Land Commission</b>	
87.	That an independent Land Commission is established by legislation to oversee and perform designated administrative functions over land matters.
88.	That part of the work of the independent Land Commission is to review the Constitution and Land laws to ensure equity, fairness and transparency as an ongoing process every five years.
89.	That part of the work of the independent Land Commission is to oversee and advise on the implementation of the report and recommendations of the Royal Land Commission.
90.	That part of the work of the independent Land Commission is to make recommendations to the Minister and Government on major policy issues and specific cases when they arise.
91.	Consistent with our discussion in Chapter 5 of this Report, that administrative land law functions presently performed by Cabinet and Privy Council be transferred to the Minister of Lands who will carry out these functions and functions/powers currently vested in him under the Land Act and the Constitution after receiving advice from the independent Land Commission.
92.	That all complaints shall be lodged with the independent Land Commission. A complaint against the Ministry of Lands regarding day-to-day issues such as delays in processing applications shall be referred by the Commission to the Complaints Division. Should the complainant not be satisfied with the decision he could request a review by the Land Tribunal. Complaints against the Minister's exercise of his administrative powers shall be considered by the Commission and if not resolved it shall be referred to the Land

	<p>Tribunal on a point of law and whether lawful process was followed by the Minister in reaching the decision appealed against but the Tribunal shall not otherwise re-consider the issue on its merit except in a case where the Minister has acted without the advice of the independent Land Commission. All decisions by the Land Tribunal can be reviewed by the Land Court on a point of law on application subject to leave granted by the judge of the Land Court.</p>
93.	<p>That the independent Land Commission shall submit an annual report each year to the Legislative Assembly on all the work that it had carried out together with any recommendations that it may desire.</p>
94.	<p>That the independent Land Commission shall be comprised of a member representing each of the four stakeholders in land, namely the Royal Family, Estate holders, Government and Registered landholders (recommended by the People's Representatives in the Legislative Assembly). Once appointed, the four Commissioners representing the stakeholders shall nominate a fifth member who is a law practitioner qualified to be a judge and shall be Chairman. The Commissioners and the Chairman shall be appointed by Cabinet for a term of six years. Alternates for each Commissioner and the Chairman shall be appointed in the same manner to act in the absence of the substantive Commissioner.</p>
95.	<p>THAT a Research and Advisory Unit be set up with appropriate staff to help with the work of the independent Land Commission and of the Ministry for a period of six years. The Unit's work shall include among other things, completing land records of the Ministry to confirm what land is available for distribution, fact finding and making assessments of needs for housing and cultivation in the Kingdom.</p>

96.	That a Land Tribunal is established to deal with complaints against the Ministry and appeals for review of administrative decisions over land matters, and that appropriate legislation is drafted to establish the Tribunal. The decision of the Land Tribunal can be reviewed by the Land Court on a point of law on application subject to leave granted by the judge of the Land Court.
97.	The Land Tribunal shall act independently of the independent Land Commission and the Ministry of Lands.
98.	That there shall be three part-time members on the Land Tribunal including a chairperson who is qualified to be a judge, and two other members , who shall be appointed by the King in Privy Council on the advice of the Judicial Appointments and Disciplinary Panel. The Secretariat to the Land Tribunal shall be independent of the Ministry of Lands.
99.	THAT a working group be formed to develop the formation of an independent Land Commission and a Land Tribunal. The term of the group would be for 12 months or until the Land Commission and the Land Tribunal are formed and operating whichever is sooner. The group will include the Minister of Lands and a senior staff member, the Attorney-General, two representatives of the people to the Legislative Assembly, one representative from the private sector and one from the churches and the Secretary to the Royal Land Commission. Cabinet shall appoint a chairman for the group being a person who is appropriately conversant with the land law and practices of Tonga.
<b>Chapter 8: The Nobles' Proposed Amendments to the Land Act</b>	
100.	THAT section 33 of the Land Act is amended to give the hereditary estate holder the explicit right to grant allotments or approve leases

	<p>on his estate. If the estate holder refuses to make a grant the applicant may refer the matter to the Minister for a decision on the advice of the independent Land Commission. If the Minister refuses to make a grant in respect of Crown Land, then application for review can be made to the Land Tribunal.</p>
101.	<p>THAT section 34 of the Land Act is amended to give the Minister the right to determine portions to be reserved for personal use of the hereditary estate holder on the advice of the independent Land Commission before submitting the same to be prescribed by regulations.</p>
102.	<p>THAT section 43(2) of the Land Act is amended so that application for grant of an allotment is made to the Minister in case of Crown Land and the hereditary estate holder in respect of his estate.</p>
103.	<p>THAT sections 18(1)-(2), 36, 56(i), 60 and 89 of the Land Act and Clauses 108 and 114 of the Constitution are amended so that Cabinet and Privy Council's consent is replaced by that of the Minister of Lands which is to be limited only to leases on Crown Land. The consent of the hereditary estate holder should be sought for leases on his estate, and if he refuses or no agreement is reached, the matter can be taken to the Minister of Lands who would decide on the advice of the independent Land Commission. The Minister's decision in respect of hereditary estates and Crown Land may be appealed to the Land Tribunal. All leases over 99 years would require the consent of the Minister on the advice of the independent Land Commission, subject to appeal to the Land Tribunal.</p>
104.	<p>THAT section 47 of the Land Act is amended so that such subdivision is subject to the consent of the Minister of Lands instead of Cabinet. The Minister of Lands would act on the advice of the independent</p>

	Land Commission. The Minister's decision may be appealed to the Land Tribunal.
105.	THAT sections 51(1) and 53(1) of the Land Act are amended to limit the consent for subdivisions on Crown Land to the Minister of Lands without the need to go to Cabinet. For subdivisions of land on hereditary estates, the consent of the estate holder shall be sought provided that upon his refusal the matter may be referred to the Minister of Lands. The Minister will act on the advice of the independent Land Commission. The Minister's decision may be appealed to the Land Tribunal.
106.	THAT section 55 of the Land Act is amended so that the Minister of Lands' consent is sought for exchanges of allotments on Crown Land. The hereditary estate holder's consent shall be sought where it concerns land on his estate provided that where he refuses, the matter may be referred to the Minister of Lands. Exchange of an allotment that is being held in trust for a minor shall be with the consent of the Minister of Lands regardless of whether it is located on Crown or hereditary land. The Minister will act on the advice of the independent Land Commission. The Minister's decision may be appealed to the Land Tribunal.
107.	THAT section 109(1) of the Land Act is amended so that notice of an intention to take possession of mortgaged land upon default shall also be provided to the hereditary estate holder where such land is situated on his estate.
108.	THAT sections 11, 19(3), 22(1), 36(1), 124(3), 141(1) and 143(1) of the Land Act are amended to standardize the usage of "the King in Privy Council" or "His Majesty in Privy Council" throughout the Land Act.
109.	THAT sections 14, 15, 19(4) and 93 of the Land Act are amended to

	remove the requirement for permits issues by the Minister of Lands before an alien (non-Tongan) may occupy land in Tonga for residential or commercial purposes. Such occupation should be regulated by tenancy agreements between the landholder and the occupier.
110.	THAT section 19(8) of the Land Act is amended to impose a time limit of six months from the date of death of the landholder within which the Court may appoint a Trustee after which time the Minister may make the appointment.
111.	THAT section 22(4) of the Land Act is repealed and replaced with the new wording proposed in section 7 of the Land (Amendment) Bill 2010.
112.	THAT section 23(4) of the Land Act is amended, in the English version only, as in section 8 of the Land (Amendment) Bill 2010.
113.	THAT section 56(v) of the Land Act is amended to recognize encumbrances and securities over land that is allowed under the Land Act.
114.	THAT section 57(1) of the Land Act is repealed and replaced with the new wording proposed in section 21 of the Land (Amendment) Bill 2010.
115.	THAT section 65(2) of the Land Act is repealed.
116.	THAT section 107(1) and 131 of the Land Act are amended to add caveats to documents required to be registered under those sections.
117.	THAT section 142 of the Land Act is amended to increase the notice period from 30 days to 90 days.
118.	THAT section 151 of the Land Act is amended by adding a new subsection (3) which will prohibit the issuance of charging orders over land.

119.	THAT the Supreme Court Act is amended by adding a new section 17 as proposed in the Supreme Court (Amendment) Bill 2010.
120.	That (i) the Tongan version of Clause 67 of the Constitution is corrected by changing the word "tofi'a" to "tukufakaholo" and; (ii) adding the following proviso Clause 67 - "Provided that this clause shall not apply to laws concerning the granting of allotments or the leasing of land from the estates of nobles and any other dealings with land allowed under the Land Act".

