

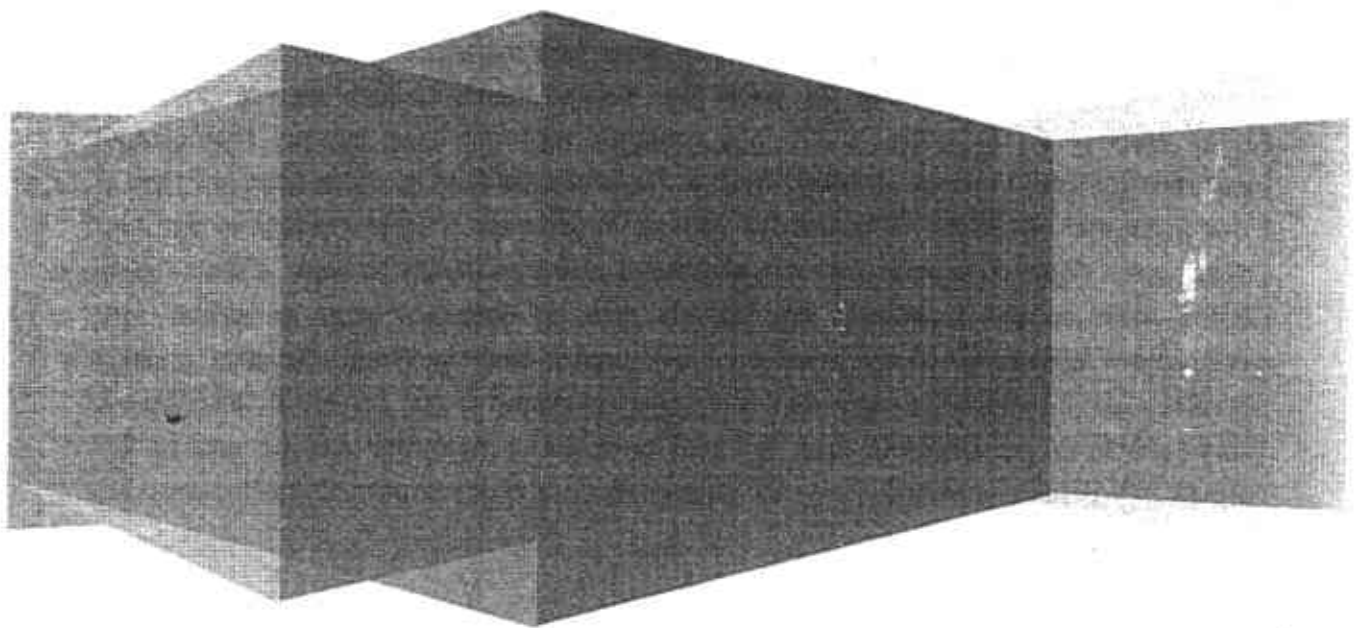
APPENDIX 9

(FAKALAH 9)

ROYAL LAND COMMISSION

PROPOSALS FOR CHANGE RECEIVED BY THE ROYAL LAND COMMISSION FROM THE PUBLIC

Compiled by the Secretary of the Royal Land Commission 17 August 2011



A. INTRODUCTION

This report provides a summary of proposals received from the public during public consultation meetings held by the Royal Land Commission throughout Tonga and overseas. A total of 79 public consultation meetings were held which comprised of 31 meetings in Tongatapu, 9 in Vava'u, 7 in Ha'apai, 3 in 'Eua, 1 in Niuatoputapu, 1 in Niuafou'ou, 13 in the United States of America, 8 in Australia and 6 in New Zealand. There were other consultation meetings with the Commercial Banks in Tonga, Tonga Chamber of Commerce & Industries, Women's groups, Church Leaders and representatives from churches, Tonga Law Society of Tonga and law practitioners, People's Representatives to the Legislative Assembly and Estate Holders.

This report also includes proposals for change that were received through written submissions. There were a total of 24 submissions received which were dated between April 2009 and November 2011. This does not include a petition that was submitted to the Legislative Assembly of Tonga in 2010 relating to the lease of part of Fanga'uta to the company Lomipeau.

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 family trusts was also brought up as a possible solution to problems within families allegedly due to the heir's selfish dealings with the family land. A Land (Amendment) Act Bill was also referred to the Commission from the Legislative Assembly of Tonga in October 2010 and provisions of this Bill were provided for the information of the public during the public consultation meetings of the Commission.

Apart from the major topics referred to above which were brought up for discussion in almost every meeting of the Commission, there were other land matters that were brought to the attention of the Commission by the public that related mainly to their area of residency. People residing in the outer islands had concerns regarding land matters that directly impacted their lives in the outer islands such as the erosion of land by the sea and the right of a Tonga to seek livelihood from the sea without impediment. People residing in the rural villages were more concerned with tax allotments and their ability to lease it out. People residing close to the foreshores and lagoons such as Fanga'uta were concerned with development projects in these areas that will impact their livelihood. Tongans residing overseas were interested to know how they may contribute to the upkeep of their land in Tonga such as the possibility of taxes that may be levied on them that may be used for this purpose which will also contribute to the general revenue of the country. People's views and

concerns also differed depending on whether they resided on Crown estate or on a Noble's estate.

People put forward their concerns and views to the Commission on their own free will and without hindrance and they conveyed particularly during the public consultation meetings problems they were facing because of the existing provisions of the Land Act and land practices. There were also overwhelming concerns and dissatisfaction with the services provided and procedures being used by the Lands Office.

People not only put forward proposals and brought problems they were faced with to the attention of the Commission, but it also became clear that a lot of people lacked knowledge of their land rights and the land laws in general. This resulted in proposals for change being raised despite the fact that the result sought with such proposals can already be achieved under existing laws. One such proposal was the proposal for a landholder's land to be equally distributed amongst his children. This can be achieved under existing laws with the landholder subdividing his land while he is still alive and allocating land to his sons for registration and leasing plots to his daughters.

Furthermore, it also became clear that people are misinformed on the status of land laws relating to some issues such as land allocated (but unregistered) at the pleasure of the Monarch, what becomes of the land of a Tonga who acquired foreign citizenship before 2007, the correct procedure for effecting surrender of land, and the need for the heir (whether it be the widow or eldest son) to make a claim to a deceased holder's land within a year of his death. A lot of people mistakenly thought original registration of an allotment also provided an automatic right of succession upon the death of a holder without the need for the heir to make a claim. When such claim is not made within a year of the death of the holder (as is specified by law) that allotment will revert to the holder. The Estate holder can grant that reverted allotment to anyone else at his pleasure and this action is usually seen by people as "double registration" believing that their ancestor's registration was still active when the same allotment was *re-granted* by the Estate Holder.

The Commission's consultation efforts were well received. People appreciated the opportunity provided to them to bring forward their views and for their voices to be heard. People expect the Commission to recommend reasonable recommendations that will realize and meet their needs in today's environment whilst at the same time maintaining the visions of King George Tupou I which is the cornerstones of our land tenure system.

B. THE COMMISSION'S MEETINGS

The Commission held a total of 79 public consultation meetings which included meetings in Tongatapu, Vava'u, Ha'apai, 'Eua, the Niuas, United States of America, Australia and New Zealand.

The details of those meetings are:

TONGATAPU			
Total meetings in Tongatapu = 31			
Total attendance = 921			
Total Female attendance = N/A			
Meeting with greatest no. of attendees = Vaini [63]			
Meeting with least no. of attendees = Fua'amotu [7]			
Meeting Venue (Hall/Village)	Date	Attendees	Females
KOLOFO'OU, Basilica Hall	10 June 2010, 7pm	47	Not available
MA'UFANGA, Catholic Hall	14 June 2010, 7pm	19	N/A
MAILETAHA, St. Andrew's Hall	15 June 2010, 7pm	11	N/A
NGELE'IA, Church of Tonga Hall	16 June 2010, 7pm	31	N/A
HOUMAKELIKAO, Catholic Hall	17 June 2010, 7pm	37	N/A
FASIMOEAFI, Anglican Church Hall	21 June 2010, 7pm	22	N/A
KOLOMOTU'A, FWC Hall	16 August 2010, 7pm	32	N/A
LONGOLONGO, FWC Hall	17 August 2010, 7pm	24	N/A
HAVELULOTO, Town Hall	18 August 2010, 7pm	38	N/A
TOFOA, FWC Hall	19 August 2010, 7pm	27	N/A
HOFOA, FWC Hall	20 August 2010, 6pm	32	N/A
NUKUNUKU, FWC Hall	1 September 2010, 7pm	29	1
TE'EKIU, FWC Hall	2 September 2010, 7pm	16	6
FAHEFA, FWC Hall	3 September 2010, 7pm	21	2
KOLOVAL, FWC Hall	6 September 2010, 7pm	16	0
'AHAU, Town Hall	7 September 2010, 7pm	17	1
MATAHAU, Catholic Hall	8 September 2010, 7pm	31	3
HOUMA, Mapu 'a Vaea Hall	9 September 2010, 7pm	11	1
HA'ALALO, Catholic Hall	10 September 2010, 7pm	22	6
PEA, FWC Hall	13 September 2010, 7pm	59	12
HA'ATEIHO, Church of Tonga Hall	14 September 2010, 7pm	33	7
FOLAHA, FWC Hall	16 September 2010, 7pm	42	4
VAINI, Church of Tonga Hall	17 September 2010, 7pm	63	20
FUA'AMOTU, Town Hall	20 September 2010, 7pm	7	1
HA'ASINI, FWC Hall	21 September 2010, 7pm	36	9
VEITONGO, Town Hall	23 September 2010, 7pm	29	3
PELEHAKE, FWC Hall	27 September 2010, 7pm	36	12
TATAKAMOTONGA, Town Hall	28 September 2010, 7pm	17	5
LAPAHA, Fatuilangi Hall	9 November 2010, 7pm	33	8
NAVUTOKA, FWC Hall	10 November 2010, 7pm	38	8
KOLONGA, Catholic Hall	11 November 2010, 7pm	45	10

VAVA'U			
Total meetings in Vava'u = 9			
Total attendance = 520			
Total Female attendance = 105			
Meeting with greatest no. of attendees = Tu'anekivale [76]			
Meeting with least no. of attendees = Houma [37]			
NEIAFU, FWC Hall	24 January 2011, 7pm	62	15
MAKAVE, Town Hall	25 January 2011, 8pm	59	12
LEIMATU'A, Town Hall	26 January 2011, 7pm	72	20
HOUMA, Town Hall	27 January 2011, 7pm	37	13
HUNGA, Town Hall	28 January 2011, 11am	50	4
FALEVAL, Town Hall	31 January 2011, 11am	53	5
TU'ANEKIVALE, FWC Hall	1 February 2011, 7pm	76	11
PANGAIMOTU, FWC Hall	2 February 2011, 7pm	71	17
TEFISI, FWC Hall	3 February 2011, 7pm	40	8
'EUA			
Total meetings in 'Eua = 3			
Total attendance = 137			
Total Female attendance = 22			
Meeting with greatest no. of attendees = Angaha [52]			
Meeting with least no. of attendees = 'Ohonua [41]			
PETANI, Town Hall	23 February 2011, 7pm	44	9
ANGAHA, Village Hall	24 February 2011, 7pm	52	9
'OHONU, 'Eua High School Hall	25 February 2011, 7pm	41	4
HA'APAI			
Total meetings in Ha'apai = 7			
Total attendance = 409			
Total Female attendance = 117			
Meeting with greatest no. of attendees = 'Uiha [119]			
Meeting with least no. of attendees = Pangai [33]			
Pangai, Church of Tonga Hall	9 March 2011, 7pm	33	6
Lotofoa, Free Church of Tonga Hall	10 March 2011, 7:30pm	46	9
Ha'afeva, FWC Hall	11 March 2011, 11am	54	18
Nomuka, Town Hall 'Amanaki Lelei	14 March 2011, 11am	60	17
'Uiha, LDS Hall	15 March 2011, 11am	119	49
Koulo, FWC Hall	16 March 2011, 7pm	34	8
Ha'ano, Tapumana'ia Hall	17 March 2011, 11am	63	10
UNITED STATES OF AMERICA			
Total meetings in the United States of America = 13			
Total attendance = 783			
Total Female attendance = N/A			
Meeting with greatest no. of attendees = Tongan South Stake, Salt Lake [113]			
Meeting with least no. of attendees = Church of Tonga, Salt Lake [21]			
LAHAINA, United Methodist Church Hall	6 July 2010, 7pm	26	N/A
HONOLULU, United Methodist Church Hall	7 July 2010, 6:30pm	86	N/A

KAHUKU , United Methodist Church Hall	8 July 2010, 6:30pm	44	N/A
INGLEWOOD , United Methodist Church Hall	12 July 2010, 8pm	76	N/A
POMONA , United Methodist Church Hall	13 July 2010, 7pm	33	N/A
RIVERSIDE , Pentecostal Church Hall	14 July 2010, 7pm	27	N/A
EAST PALO ALTO , Tokaikolo Christian Church	15 July 2010, 7pm	62	N/A
SAN BRUNO , Mormon Hall	16 July 2010, 7pm	66	N/A
OAKLAND , United Methodist Church	19 July 2010, 8pm	56	N/A
SALT LAKE , Tongan South Stake	21 July 2010, 8pm	113	N/A
SALT LAKE , Tonga United Methodist Church	22 July 2010, 8pm	86	N/A
WEST JORDAN , West Jordan Chapel	23 July 2010, 11am & 4pm	87	N/A
SALT LAKE , Church of Tonga Hall		21	N/A
NEW ZEALAND			
Total meetings in New Zealand = 6			
Total attendance = 342			
Total Female attendance = 112			
Meeting with greatest no. of attendees = Mangere [125]			
Meeting with least no. of attendees = Wellington, Church of Tonga [19]			
PONSONBY , Methodist Church Hall	6 December 2010, 7pm	43	14
NEW LYNN , Methodist Church Hall	7 December 2010, 7pm	40	16
MANGERE , Methodist Church Hall	8 December 2010, 8:30pm	125	27
ELLERSLIE , Methodist Church Hall	9 December 2010, 8pm	75	31
WELLINGTON, WESLEY CHURCH	10 December 2010, 3:30pm	40	17
WELLINGTON , Church of Tonga	11 December 2010, 10am	19	7
AUSTRALIA			
Total meetings in Australia = 8			
Total attendance = 349			
Total Female attendance = 153			
Meeting with greatest no. of attendees = Melbourne, Canterbury Uniting Church [85]			
Meeting with least no. of attendees = Melbourne, Docklands [5]			
BRISBANE , Woolloowin, Catholic Church Hall	11 April 2011, 7:30pm	36	11
BRISBANE , Highgate Hill	12 April 2011, 7:30pm	33	13
MELBOURNE , Canterbury Uniting Church	13 April 2011, 8pm	85	43
MELBOURNE , Docklands, Travelodge Hotel	14 April 2011, 10am	5	1
SYDNEY , Dee Why, Cecil Greble Congregation	16 April 2011, 8:25pm	29	11
SYDNEY , Fanongonongo Lelei Hall (Pulela'a)	18 April 2011, 8:30pm	72	33
SYDNEY , Bunchblow, Croatian Club	19 April 2011, 8pm	37	19

CANBERRA, Riley Hall, Civic Centre	20 April 2011, 8pm	52	22
THE NIUAS			
Total meetings in the Niuas = 2			
Total attendance = 40			
Total Female attendance = N/A			
Meeting with greatest no. of attendees = Niuafo'ou [22]			
Meeting with least no. of attendees = Niuatoputapu [18]			
Niuatoputapu, Church of Tonga Hall	27 July 2011, 2:00pm	18	1
Niuafo'ou, Futu Wharf	28 July 2011, 10am	22	N/A

The Commission also met with special interest groups and these meetings were not open to the public. Attendance was by invitation only. Details of these meetings are:

	DATE	MEETING	PLACE
1.	3/2/2011	Commercial Banks, Vava'u Branches	Neiafu, Vava'u
2.	13/4/2011	ANZ Bank (Headquarters)	Melbourne, Australia
3.	19/4/2011	Westpac Bank (Headquarters)	Sydney, Australia
4.	19/5/2011	Women's groups	Nuku'alofa, Tonga
5.	20/5/2011	Association of Banks - Tonga	Nuku'alofa, Tonga
6.	24/5/2011	Tonga Chamber of Commerce & Industries	Nuku'alofa, Tonga
7.	18/7/2011	Tonga Law Society	Nuku'alofa, Tonga
8.	19/7/2011	Church Leaders	Nuku'alofa, Tonga
9.	22/7/2011	People's Representatives to the Legislative Assembly	Nuku'alofa, Tonga
10.	19/8/2011	Hereditary Estate Holders	Nuku'alofa, Tonga

C. WRITTEN SUBMISSIONS

A list of the written submissions received by the Commission is provided below:

WRITER	DATE
1) Leody Vainikolo	13/4/09
2) Kilifi Afu	20/4/09
3) 'Aisea Havili Kaufusi	27/4/09
4) Siosifa Tupouto'a	2/6/09
5) Graham Ma'ilei	5/5/09
6) Melaia Ostling	17/8/09
7) Koliniasi Afuha'amango	8/9/09, 9/9/09, 28/9/09
8) Siosaia Falase	17/12/09
9) Simione Vivi	10/3/10
10) Viliami Pasikala	15/3/10, 24/1/11
11) To'ofuhe Loketi	18/8/10
12) Tevita Tai Kamilo	8/2/11
13) 'Eua Council	4/4/11
14) Rev. Siupeli Taliai	April 2011
15) Graham E Gibson	12/4/11
16) Langi Talifolau Toli	15/4/11
17) Association of Banks Tonga	20/5/11
18) Paula Taumoepeau	24/5/11
19) Kolofo'ou Development Committee	14/6/11
20) Guy Powles	4/6/11
21) Dr Elizabeth Wood-Ellem	7/7/11
22) 'Ofa Guttenbeil-Likiliki	1/8/11
23) Sione Penitua Moala	13/9/11
24) Fakataha'anga Fakafonua 'a e Kau Taki Lotu	30/11/2011

D. PROPOSALS SUBMITTED TO THE ROYAL LAND COMMISSION

The proposals submitted to the Royal Land Commission for consideration are provided in this Part.

This Part begins with Part A which was a particular topic of concern to the public. The proposals for change follow Part A and are provided in the order in which popular topics of discussions were published and provided to the public to guide discussions during the public meetings and these are provided in Parts I to IX. The Nobles' Land (Amendment) Bill was also included in the discussion topics after the Bill was received from the Legislative Assembly of Tonga. The public's view on this Bill is provided in Part X. There were other miscellaneous proposals which are provided in Part XI.

Some members of the public recognized and raised for discussion the limitation that is provided in the Commission's terms of reference. The terms of reference clearly state that any recommendations proposed from the Commission should not affect the basic land tenure system of Tonga. It is also noted that the laws of Tonga does not provide a clear definition of "basic land tenure" and people who brought up this issue were interested to know as to what proposals amongst those that have been submitted to the Commission may not be accepted by the Commission because of this limitation to their terms of reference.

Because of this limitation to the Commission's terms of reference it became clear that the Commission needs to provide their interpretation of what the "basic land tenure" is and this will determine what recommendations the Commission can or cannot accept.

In a written submission submitted to the Commission from the lawyer Guy Powles, he stated therein that his proposals and suggested changes accept the land system's designs and tenure principles and looks at the area of authority and responsibility behind their implementation.

In a written submission submitted from a well-known historian of Tonga, Dr Elizabeth Wood-Ellem, she provided detailed information on the history of the land tenure system of Tonga. She referred to visions of Tupou I as well as Queen Salote Tupou III. Parts of what she referred to is provided below:

- a) The land tenure in Tonga is based on certain fundamental principles articulated by Tupou I, especially between 1839 and 1862 and in a speech in 1882. Subsequent amendments made to the Constitution and to land laws deviated from the principles in

that they reflected the interests of already privileged parties, rather than the needs of the Tongans as a whole.

- b) Tupou I's vision for Tonga was based on his recognition that security of tenure of smallholders was necessary to ensure that food would be assured and plentiful. That was part of his vision for peace and stability in the Kingdom as well as equality and equity for all Tongans.
- c) The determination to ensure that Tonga would change were based on three factors which included (1) a society which consisted of a class of privileged chiefs and the remainder, and land wars in the late eighteenth and early nineteenth century which resulted in ravaged land, massacres and famine; (2) the events referred to in (1) demonstrated the need for inalienable land rights for those who actually cultivated the land; (3) the poverty and homelessness that Tupou I witnessed alongside the streets of Sydney in 1853 which strengthened his determination that no Tongan would be homeless or without food in his own. The 1862 Code also came about which was an emancipation of the people from slavery and from "fatongia", guarantee of security of tenure, and distribution of land among the people who would cultivate it.
- d) Nobles were appointed under the Hereditary Lands Act of 1882. The Nobles were supposed not only to be leaders of the people in their districts but also to implement Tupou I's policies and be active on his behalf. Tupou intended them to be a working elite. Neither these privileged chiefs nor their heirs saw themselves as 'leaders' only as 'beneficiaries'.
- e) Land was to be held in trust by the estate holder pending distribution to the people. Once registered, the personal tofi'a and 'api were still not 'owned' by anyone except the Crown, but could be held for life and passed on to the heir.
- f) The 1875 Constitution provided land rights, but it did not adhere fully to promises contained in the Codes which were made before the Constitution. There were references to leases but there was no mechanism for land distribution apart from distribution done at the pleasure of the estate holder. A mechanism for land registration was vital to ensure succession by the heirs to the same.

Tu'ivakano (Polutele) who was Premier from 1912-23 also believed that the 1875 Constitution had not truly expressed Tupou I's intentions and in a speech regarding the making of the Constitution he said:

"he who drew it up framed it from the Laws of the different Governments, therefore it is clear there are many Sections that are not in the least suitable to the Tongan people...he who framed it did so without seeing into or regarding the courses of events of the period in which we are now are...it is the habit of all Governments in the world to keep with the times, and it is the real duty of the people of each period to adapt the Laws and Ordinances to those periods. It is a true saying that 'Change is the Great Law of the Universe'."

In his written submission to the Commission, Guy Powles stated his belief that the important question to ask is whether now is the right time to review the interests in the land tenure system. Allied to this would be an examination of where authority lies and implementation of

those powers according to law. Political reforms also has impact on the laws that provide for the land system, just as they do in the case of health, education, finance and other sectors of Government. He provided examples of changes made during the time of Lord Sevele which is relevant to and will impact the land tenure system in the long run. This includes the reforms concerning the changed powers and functions of the Monarch, Privy Council and Cabinet which were not made to apply to the Land Act. The other example was the legislative amendment to ensure that the Minister of Lands will continue to be a Noble.

Dr Elizabeth Wood-Ellem provided proposals to enlighten the Commission in any proposed changes to the land laws that they will recommend. She believes that clauses of the Constitution that relates to land should be reviewed in light of the needs of people today and any such changes should be in line Christian beliefs as it relates to principles of equality of under the law and within civil society. It is not right that a few should have a lot and many have nothing.

Details of her proposals regarding the basic land tenure system as it relates to the Commission's work are as follows:

- A.1 That the Commission recognize the reforms of Tupou I and Queen Salote Tupou III as the basis of land tenure in Tonga, including the need to cultivate the land.
- A.2 That change to the laws of land tenure in Tonga and to the administration of these laws is made in accordance with the principles identified by Tupou I and Queen Salote Tupou III and how those principles can be changed to reflect the needs of the people of Tonga in the 21st Century.

Any changes to land laws should be transparent and apply equally to every Tongan. This will help in ensuring that food security for the Kingdom and a land tenure system that is beneficial to all Tongans. A wise Government identifies the needs of the people and is pro-active in changing laws to suit contemporary conditions before dissatisfaction will lead to petitions and more overt difficulties.

Because some principles of the land laws today and its implementation deviates from Tupou I's visions and principles of the land tenure system which He wanted for Tonga, Dr Elizabeth Wood-Ellem therefore makes the following submissions to re-affirm those basic principles that Tupou I wanted for Tonga's land laws. Some of the Nobles do not understand that they do not "own" any land, not even their personal tofi'a. If there is resistance on the part on the part of the tofi'a holders to honouring Tonga's original land tenure policy, perhaps certain measures should be considered to restore and implement the original tenets of the land tenure system. The following proposals are made:

- g) That Government should re-affirm the basic principles of the survey, distribution and registration of 'api 'uta and 'api kolo. It is proposed that Government should make regulations regarding distribution and registration of allotments that will reaffirm the basic principles desired by Tupou I and any non-conforming land (including

unregistered allotments) should revert to Government and become Crown land. This should be implemented as soon as reasonably practicable having regard to Tonga's land shortage.

- h) That boundary of the personal tofi'a should be surveyed and published with their dimensions in the Tonga Government Gazette and other media.
- i) That those tofi'a holders who have pieces of land in different districts or islands of Tonga should choose from which piece of land their personal tofi'a should be surveyed and registered.
- j) That after adequate notice has been given to allow all tofi'a holders to have the necessary surveys carried out and land distributed and registered according to law, all land remaining unregistered outside the personal tofi'a should be considered to be Crown Land. All 'rents' for allotments to be paid to the government.
- k) That after adequate notice has been given to allow every person holding an unregistered 'api to take the necessary steps to register it according to law, land that is not registered should be considered Crown Land and be available for re-distribution to those who do not already have registered 'api 'uta and 'api kolo.
- l) After adequate notice is given as per paragraph j) and k), only registered 'api 'uta and 'api kolo should be recognized as having been allocated and held legally.

As was proposed by Dr Elizabeth Wood-Ellem in paragraph 29.21 below, Guy Powles believes, based on his review of amendments to the Constitution and the Land Act in the 19th Century before it was amended, there was always an intention to protect the King and the Royal family and estate holders from any changes to their powers in many respects, and this includes the following:

- m) In the Executive, by the Monarch's power to appoint all Ministers and preside at Privy Council;
- n) In the Legislature, by reliance on a majority of votes easily obtained through a combination of appointed Cabinet Ministers who sat in the House, and Nobles' representatives;
- o) By a constitutional guarantee to the Monarch and Nobles that Nobles in the Assembly had the exclusive right 'to discuss or vote upon laws relating to the King, Royal Family, and titles and inheritances of the Nobles'.
- p) By the Monarch's power of veto.

The last two protective measures referred to in paragraphs o) and p) were not affected by last year's reforms.

It is evident from Guy Powles's recognition of the above-mentioned protective measures that it would be difficult to make any amendments to land laws particularly where it relates to powers of the King and Nobles. Any amendments recommended by the Royal Land Commission will face these protective measures that Guy Powles referred to coupled with the limitation stated in the Commission's terms of reference regarding the basic land tenure of the Kingdom.

This issue was one of the main topics of discussion between Commissioners and the public in the Commission's public meetings. It became evident from proposals submitted to the Commission that people have different views and wishes for amendments to the law of succession to land. Some people believe that the current succession laws should not be amended but retained as it contains the visions of Tupou I for Tonga which should be prolonged. Some people believed that although the current succession laws are satisfactory and should be maintained, there are a few matters that should be amended. Then there are those people who believe that it is time for a major overhaul of our succession laws to suit the society that we live in today.

These proposals are provided in Topics 1 to 3 below.

TOPIC 1: CURRENT SUCCESSION LAWS SHOULD BE MAINTAINED WITHOUT CHANGE

Some people believe that the current laws as it relates to succession to land and as it clearly stated in the Constitution of Tonga and the Land Act should not be changed, based on the following reasons:

- 1.1** It was the vision of King George Tupou I for land to be hereditary along the male line. This vision was put forward in a will that was one and the same with that of God and whatever that is of God should not be altered. Tupou I's vision was righteous in the eyes of God and accords with the conscience.
- 1.2** We have been utilizing the current provisions of the law as it relates to succession to land for many years and since 1927 and we know that our Kingdom and our lands is secured by these laws. If we decide to make amendments now and revolutionalise our land system to take into account today's thinking and internationally (such as women's rights to land) there is no guarantee as to the continued security of the land of our country. There are many uncertainties associated with change and we stand the risk of losing our hereditary rights.
- 1.3** There is a real possibility of family feuds occurring due to changes to hereditary rights to land such as the proposed inclusion of 'others' such as adopted and illegitimate children. The current succession provisions is best as it provides firstly for legal heirs (male sons) of the registered holder and in the absence of such the land will revert to the next in line such as the younger brothers of the registered holder as those in line to inherit this land have expectations towards the land that has been in their family for generations.

1.4 The current laws are fair and the provisions governing distribution of land accords with the small quantity of land of this country. The heir is the eldest son who may (out of love) subdivide and distribute the family land to the rest of the family. Women already have rights under the current laws such as an unmarried daughter's interest in the absence of a male heir, which terminates upon her marriage. A woman can also lease a piece of land which can be used as a residence, for commercial purposes or mortgaged. The current Land Act provides rights to everyone including men and women to acquire land in different ways and it is for people to make use of those rights already provided under the law.

TOPIC 2: TO AMEND SOME SECTIONS OF THE LAND ACT AND THE CONSTITUTION TO BETTER PROTECT THE RIGHTS OF THE HEIR TO HEREDITARY LAND AND TO ENSURE THE LAND STAYS WITHIN THE FAMILY

Although some people are satisfied with the current provisions of the law as it relates to succession to land, there are others who are concerned with shortfalls in the law which can undermine the rights of the heir to take, develop and earn a livelihood from the family land when he does succeed as heir. The following shortfalls in current laws were put forward by the public:

2.1 Leasing of land by the landholder

The holder of an allotment can lease his land to anyone whether or not his son (heir) consents. The Land Act allows a landholder to lease his tax allotment or his town allotment and there is no legal requirement for the lease to be conditional of consent of the heir. A town allotment can be leased for up to 99 years and a tax allotment for up to 20 years. When the heir does succeed to his father's land there is a possibility that this land is already subject to a lease with many years remaining on its term. A further problem arises for heir as the landholder determines the rent to be paid on the lease which can be quite low that the heir will not be able to make a living off it when he succeeds to the land. The public informed the Commission that there are leases of such nature whereby the landholder leases the land to his sister, daughter, and children from a second or subsequent marriage and this largely affects the male heir's right.

It is therefore proposed that an opportunity be given to the heir so that he must consent to the lease of land to which he is heir. The landholder should not have full authority over the matter.

2.2 Mortgaging of land by the landholder

The holder of an allotment can mortgage his land to a bank whether or not his son (heir) consents. The Land Act allows a landholder to mortgage his land without the consent of the heir to the **proposed mortgage**. Problems arise when the heir succeeds to his father land

where the same is already subject to a mortgage particularly where (as with most cases), the heir will have to cover the loan repayments for the mortgage. At times when the heir succeeds the landholder (his father) had defaulted on the mortgage and the bank therefore sells the mortgage to someone else for the remainder of the term.

2.3 The widow's involvement in lodging an heir's claim (fuakava 'ea) when the landholder dies

When the landholder dies, the surviving widow's life interest precedes the heir's right to succeed. It is the widow's responsibility to lodge an heir's claim so that her deceased husband's allotment is registered under her name as the widow. The heir does will only succeed to his father's land upon the death of the widow or if she remarries. A period of one year (from the date of death of the landholder) is provided for lodging the heir's claim and if this is not done within the specified time then the land will revert to the estate holder. Problems arise when the widow does not make a claim within the one year period provided by law. This effectively cuts off the male son's (heir) right to succeed as heir to hereditary land when the land reverts to the estate holder. There are various reasons provided for the widow's failure to lodge a claim. The main reason is simply forgetting to make a claim or ignorance of the requirement by law to make such a claim (believing that succession is automatic upon the death of the landholder). Another reason is alleged deliberate omission by the widow to make a claim, particularly where she is not the first wife but a subsequent wife of the landholder and the landholder had children (including an heir) from his first marriage. Upon the death of the landholder, it is the current wife who will succeed as widow and she may choose not to make the claim so that the land can revert to the estate holder providing an opportunity for her own children or others to apply for a grant of this allotment.

2.4 The right of a son who was born before his parents married

The law of succession to land clearly specifies that the heir is the eldest male son who was born within the marriage (legitimately). But there is growing concern for a son of the landholder who was born before the landholder and the mother of the said child were subsequently married. This son would be eldest male son except that he was not born within the marriage (illegitimately). Some people have put forward their wish for this eldest son who was born before his parents married to be the heir and it is proposed that the relevant laws of succession to land be amended to clearly state this.

The public are not only concerned with protecting the rights of the male heir, but they also wish for the law of succession to land to guarantee that hereditary (family) land will benefit "the family" from which the land descended and the land to continue to be passed down through generations to come without it being lost to other people. This is the basis for the proposal to curb the heir's rights to the family land by affording more rights to the rest of his brothers as well as his father's brothers. The following proposals were made as an attempt to keep the heir in check when he succeeds to the family land:

2.5 If the heir subdivides the family land he should be required to distribute allotments

from this subdivision to his family members

Many people believe that some of today's heirs are quite selfish and do not love his younger brothers and his father's younger brothers who are the family from whom the land he has inherited had descended. This allegation is usually made against the heir when he subdivides the family land and gives it away through surrendering the land. The plea from the heir's younger brothers as well as his uncles (father's younger brothers) is to give them a piece of allotment if he subdivides and gives away the family land. It is proposed that the law to succession to land and the Land Act should be amended to limit the heir's right to subdivide the family land so that the interests of the rest of the family and their right to get share of the family land are realized.

2.6 The eligibility to succeed as heir of an heir who is feeble minded should be clearly specified

It is proposed that the Land Act should clearly state the eligibility of an heir who is feeble minded. Should he still succeed as heir to land? In a meeting where this matter was brought up for discussion, it was noted that the law does specify the eligibility of a feeble minded person who is heir to succeed to a hereditary name/estate (section 30 of the Land Act) and the idea was raised that it may be appropriate to amend the law to apply the same to the law of succession to registered land.

2.7 The rights of a widow who resides overseas should be reviewed

It is proposed that the rights of a widow who has been resident overseas for many years while they hold a widow's interest over her deceased husband's land should be reconsidered. This is a widow is afforded an interest over the said land for residential purposes so that she may live in and earn a living from the land. But if the widow resides overseas for an extended period then this should be considered as it may be best to let the land pass onto the son (heir) so that he can live off the land. The proposal is to specify a set number of years in the law so that if a widow resides overseas in a period exceeding that specified in the law then the heir should be allowed to succeed to the family land.

The Commission informed the public in meetings where this issue was raised that what is being proposed can be achieved under the current provisions of the law whereby the widow can willingly surrender her right as widow which will allow the male heir to succeed. So the choice rests with the widow particularly after reaching an understanding with the male heir. A problem faced with some male heirs in a similar situation was raised for discussion which is where the widow is either the second or subsequent wife of the landholder and the male heir is from the landholder's first marriage. The widow would not readily be agreeable to surrendering her rights in these situations and even if she's been living overseas for many years whilst the land is left idle in Tonga. Sometimes the widow is also much younger than the male heir and the former would outlive the latter.

2.8 The grandson (next heir) should not have a right of election

It is proposed that a review of succession laws should be carried out particularly where land passes from the male son to the male grandson when the male son (and heir) already holds

a registered allotment at the time of he becomes entitled to succeed to the family land. When the landholder dies, if his son the heir already holds a registered allotment the law states that his son has the right to elect which of the two allotments he prefers to keep – that which is already registered under his name or his father’s land to which he is entitled as heir. If the heir elects to keep his current allotment – it is proposed that his father’s allotment should then descend to his (the heir’s) younger brothers in turn and their children instead of descending from the heir to the heir’s son (the deceased landholder’s grandson). The grandson will inherit his father’s land when he dies which is the allotment that his father elected to keep so the family land that his father did not elect should go to his father’s younger brothers.

The above proposal is relevant to the concern from the People’s Representatives to the Legislative Assembly of Tonga. The heir’s younger brothers have accused their older brother the heir of “selfishness” because he takes all the family land (by right) and this is possible because of the current provisions of the law to succession. If the heir acquires new land, he usually surrenders that land his son while he waits to succeed to the family land so the outcome is that the heir and his family will get more than one allotment amongst them while his younger brothers remain without land. It is proposed that consideration be made on whether the family land can descend to the heir’s younger brothers where the heir already has a registered allotment.

2.9 The heir and all his siblings should share the rent if the family land is leased

It is proposed that if the heir succeeds to the family land then leases out this land then the heir should share equally amongst him and the rest of his siblings the rent earned and proceeds from this lease.

2.10 An heir who resides overseas should surrender his right as heir to land in Tonga

It is proposed that an heir who resides overseas (at the time he becomes entitled to succeed as heir) should surrender his right as heir. It was also proposed that guidelines should be made to monitor such surrenders if this proposal is allowed by law.

TOPIC 3: THE LAW OF SUCCESSION SHOULD BE CHANGED

A lot of people believe that it is time to conduct a review of those who are currently included in the line of succession to family land. The current succession provisions were made in 1927 and there have been many changes in society to date which warrants amendments to the succession laws so that it is more in line with today’s circumstances. Human rights are important and there’s a need to review the discriminating provisions in the current land law including succession rights of daughter, adopted children, illegitimate children as well as the heir’s male siblings. In addition to that, people believe that when the laws were made in 1927 the heirs then were different from today’s heirs – heirs then were more understanding, more loving and managed the family land responsibly. Nowadays, the heirs are less loving and are very selfish as he now worries only for his own wellbeing and

how he himself can benefit from the family land.

Women's right to land was one of the most discussed topics in all public meetings. People (who support the proposal to provide more rights for women) questioned the basis for discriminating women and not affording them the same rights as those available to men under the land laws. This is a cause for speculation as they wonder as to what damages and problems the law makers then were trying to protect the country from when they placed these limitations of women's rights.

The following are proposals received from the public on changes to the law of succession.

3.1 To extend an unmarried daughter's right so that it does not terminate upon her marriage

It is proposed that a female heir (unmarried daughter) should be freed from current limitations in the law by allowing her to continue to hold an interest in her father's land even after she marries. The reason for affording succession rights to a female heir is due to the absence of a male heir upon the death of the registered landholder. It is not right that the female heir's rights ends when she marries because the children of the landholder is closer to him than his younger brothers and the benefits from expenses incurred by the landholder in improving his land should go to his children regardless of whether they are male or female. This proposal was made many times and it usually came from families (from either the father or mother) who only have female children and no sons. Their wish is for their land to go to their female children without any limitation.

A common Bible chapter which was brought up in the public meetings and was referred to in a written submission to support the proposal to allow female children to succeed as heir to their father's land without limitation is found in the book of Numbers 27:6-11. These verses tell the story of Moses' commands regarding the daughters of Zelophehad and their right to get a share of their father's land because there was no son. Thus, the rightful heir starts from the sons and where there are none then the line of succession should continue to the daughters and only if there are no daughters then it should devolve to the rest of the family.

The proposals put forward regarding the right of the female heir who holds an unmarried daughter's interest over the family land differs, which are as follows:

- a) The female heir should hold an interest until she dies. The land should then devolve to her younger sisters (if any) and only if there are no more siblings of that female heir should the land devolve to her father's younger brothers.
- b) The female heir should hold an interest until she dies. The land should then devolve to her children. This proposal did not state whether both the male and female children of the female heir should succeed and if all the children are to have a right of succession whether the male will succeed before the females or whether

succession will accord with what is proposed in paragraph 3.5 for the heir to start from the eldest child regardless of gender. The female heir succeeds to land because of the absence of a male heir and the basis for this proposal is to ensure that the land will not revert to the estate holder due to the lack of a male heir in the family.

There was another proposal which relates to what is proposed in paragraph b) above and it provides – the female heir's interest should end when she marries and the land should then devolve to her son who is of legal age. If her son is still a minor then the land should be held in trust until her son comes of legal age. If her son already holds an allotment then the land should devolve to her second son and so on. If all the sons of the female heir have their own registered allotments at the time of their mother's marriage then the land should devolve to younger sisters of the female heir and if she marries (or already married) then the land should devolve to her sons and the line of succession should continue accordingly through the female heir's sisters and their sons.

Despite the proposals made in paragraphs a) and b) above, some people (including some women) do not support it. They provide reasons for their opposition to the said proposals. These reasons are provided below and under each of these reasons are answers from those who support an extension of women's rights which they have put forward to rebuke the reasons provided by those who oppose:

- c) An unmarried daughter's interest ends upon her marriage because she is married to a man who will have his own land. If the unmarried daughter keeps her father's land when she marries then she and her husband will have two pieces of land whilst her father's younger brothers have expectations to succeed to the family land. It is selfish to allow a female heir to take the land with her when she marries while her husband already has land of his own which devolved to him according to the law of succession and which he will use to care for and look after his wife.
 - i. *Not every man to whom a woman marries has a piece of land. If we can provide a percentage of males who are without an allotment this will clearly show that a lot of men do not have land of their own so it won't be the norm for a couple to have two pieces of land. For example: If there is a family with 10 male children and if a woman marries the youngest son he will be without land as only the eldest son will succeed to the family land. Women are often asked to be selective in choosing a husband and for them to choose only to marry a man who has land. This suggests that the rest of the men who do not have land are to remain unmarried because they have no land?*
- d) There is concern for the family land not be "lost" to the family of the husband of the female heir. The landholder may have no son, but he may have younger brothers who will have sons to which the family land should devolve – and there will always be a male heir/line to which the land will devolve. The reason for land devolving in

the male line is to allow the men to cater for their duties to the family. The man is the head of the family and he is to work the land to provide a source of living for the rest of the family. The man also caters for duties to the estate holder which is a duty that comes with the family land.

- ii. Not every family have male heirs and people wish for the female heir to be given unlimited rights as it is better for the land go to the female rather than revert to the estate holder. For example: If the landholder is an only child and his father was also an only child. The landholder only has one child a daughter. If this daughter marries, the land will revert to the estate holder and any other person may apply to be granted the land.*
 - iii. Maybe we should consider giving only the town allotment to the female heir whilst the tax allotment will devolve on the line of succession so that the family's duties to the estate holder can be met. The town allotment devolving to the female heir will ensure that she has land to live on.*
 - iv. We should not see land as "lost" if it goes to the female heir and her children. The land is not lost because it remains with the children and grandchildren of the landholder despite their descending from a daughter.*
- e) The family land should devolve together with the family name. If land goes to the female heir and her children then the family name will be lost and no longer accompany the family land. The bloodline and the family name holds intact the devolution of land and this will be lost if the land goes to the female heir and her husband's family.
- v. If it's so important that the family name devolves together with the family land then maybe it would be more suitable for us to adopt the internationally accepted practice where each married couple keep their maiden names. Another option is to require the person who holds the interest over the family land to keep the family name as a condition of his holding such interest. So if the female heir marries she will keep her maiden name which is the family name. If the land devolves to the children of the female heir then the same applies – who ever holds the land will be required to use the family name of her mother (the female heir) from whom the land devolved.*
 - vi. Some people believe that it is not important to maintain the family name to make sure that it accompanies the family land.*

Those who support the proposals to extend women's rights to land do not support the limitations to women's rights under the current laws. These limitations demean women and they create problems within the unit of the family. Limiting women's landholding rights to leaseholds gives them the same treatment as Tonga do to foreigners as foreigners' rights

are also limited to leaseholds as they cannot own registered land in Tonga. Tongan women do not want to have equal rights with foreigners because they feel should have more rights as they are Tongan citizens who contribute to the country, family and churches. Women and men were both created in the image of God and God sees them as equals so they should also be equals in the eyes of the law.

Another proposal that relates to the proposal above (not to limit an unmarried daughter's interest) is the proposal to allow women to be able to register land in their own name. If a woman is able to obtain a piece of land from a family member or in any other way that woman should be able to register that land in her name. At present, because a woman cannot register such land in her name she usually registers the land in her husband's name. But problems have occurred in such situations due to marital problems that occur after the land is registered in the husband's name and the outcome usually sees the husband remaining in the land while the wife is told to leave despite the land having been obtained through her.

Some of the female lawyers (in the Commission's meeting with law practitioners) supported the proposal to allow women to be able to register land. They believe that a woman should be able to register land in her name based on what they have witnessed firsthand when they are required to provide legal advice to women to have encountered problems because of the limitation on women's rights to land.

This same issue was also raised by the commercial banks in their written submission. Banks believe that there are a lot of women who have adequate income on their own and they wish to own land and to build on the land, but they are faced with obstacles under the land laws. If a woman wishes to apply for a loan she must lease land which is to be used as security and she faces problems in the process and dealing with what is required to complete a lease which can be delayed up to 3 or 5 years. The other option open to women (apart from using leaseholds as security) is if she asks her father or brother who has land in his name to co-sign on the loan with her although that male will not contribute to the repayment of the loan.

The Director of the Women and Children Crisis Center stated that the proposals to extend women's rights to land are not a new school of thought, but it has been implemented for over a century. It is already happening – women are already acquiring land (from families etc) despite their inability to register this land in their name. It is just a matter of legalizing it and providing a process for registration.

3.2 To include adopted children in the line of succession to land

Some people have questioned the law leaving out adopted children from the line of succession to family land of families who have adopted them. Parents usually have a special bond with adopted children as if they were their own biological children. Adopted children love and care for the adopted parents as if they were their own children. They also contribute to family duties and help care for the adopted parents so they should get a share

of their adoptive parents' land.

There are different proposals made regarding the right of an adopted child to be included in the line of succession to land, which are as follows:

- a) To include adopted children in the line of succession to land only if the adopting parents did not have any children of their own. If they did have biological children then the adopted children should not have any succession rights.
- b) To include adopted children in the line of succession to land, but if the adopting parents also have biological children then the biological children should have first priority (over the adopted children) to succeed.
- c) To include adopted children in the line of succession to land only if they were adopted from the adopting father's (the landholder) family. Adopted children from the adopting mother's family should not be included in the succession line because the family land will be lost to another family.
- d) To include adopted children in the line of succession to land only if they were adopted from the children of the brothers of the adopting father (landholder). Adopted children from the sister of the adopting father (landholder) should not be included in the succession line.
- e) To include adopted children in the line of succession to land only if they have been legally adopted by the adopting parents and the adopted children bear the surname of the adopting father (the landholder).
- f) To include adopted children in the line of succession to land only if the land is "newly acquired land" ('api fo'ou).

The above proposals did not state whether adopted children's right of succession should depend on their gender – for example, if only male adopted children should succeed and not female adopted children or whether they should both be entitled to succeed.

Despite the proposals outlined in paragraphs a) to f) above, there are some people who believe that adopted children *should not* be included in the line to succession. They believe that we should try and allocate land to legitimate children first after which the priority should turn to the landholder's younger brothers because they are from the family bloodline. They believe that it is unreasonable to allow adopted children to succeed whilst there are those in the family who are without land. There is also concern for the family land not to be lost from the family from which it has devolved for generations as well as the family name which goes with the family land. Because of these concerns and beliefs, some people believe that family feuds will be prevalent if adopted children are included in the succession line.

3.3 To include illegitimate children in the line of succession to land

This proposal proposes the inclusion of illegitimate children (not limited to children of the landholder and his wife who were born before they married) in the succession line to the family land. These children are part of the family and descend from the same bloodline

although they were not born within a marriage. They help out in performing family duties and functions to the family, country and churches just as much as legitimate children do and they a right to be included in the succession line to the land of that family.

There are different views and proposals regarding the right of illegitimate children to succeed to land, which are as follows:

- a) To include illegitimate children in the line of succession to land only if they were the children of the landholder and his wife who were born before they married (as is proposed in paragraph 2.4)
- b) To include illegitimate children in the line of succession to land only if they were the children of the landholder and not the illegitimate children of his wife.
- c) To include illegitimate children in the line of succession to land only if there are no from the legitimate children.

The above proposals did not state whether illegitimate children's' right of succession should depend on their gender – for example, if only male illegitimate children should succeed and not female illegitimate children or whether they should both be entitled to succeed.

Despite the proposals outlined in paragraphs a) to c) above, there are some people who believe that illegitimate children *should not* be included in the line to succession. There is not much land available and we should try and allocate land to legitimate children first after whom the priority should turn to the landholder's younger brothers and their children. There is also concern for possible increase in children being borne illegitimately if such children are allowed to succeed as heir. We should emphasize the blessing of bringing children up within a marriage rather than encourage having illegitimate children. Families will be more stable where we afford a higher standard to children born within a marriage encouraging and encouraging children to be born within a marriage.

A law practitioner proposed that the current provisions of the law should still apply so that only illegitimate children who have been legitimized can be included in the line of succession.

3.4 All children of the landholder should get a share of the family land

Some people wish for all children of the landholder to get a share of their father's land. There is a belief that hereditary land is the property of the family so all the children of the landholder have a right to a share of this land. The plea from the rest of the siblings is to give them a share, particularly where the size of the allotment is large, rather than giving all to the heir and his children. Some people allege that some family feuds which result in one disowning the other, court battles and even assaults results from selfishness by the heir and his sons. This often occurs when the heir subdivides the family land and gives them away to people outside the family and leaving out his brothers and his father's brothers who all grew up on the this land.

Relevant to what is being proposed here are two other proposals for (i) that only male children of the landholder should share their father's land; and (ii) that both male and female children of the landholder should get a share.

There have been many proposals calling for changes to the law of succession to land such as those outlined in paragraphs 3.1 to 3.4 above. The intention behind these proposals is to include others in the line of succession in addition to those already afforded succession rights under the current laws. The "others" to be included are daughters (their right not to be limited to an unmarried daughter's interest), illegitimate children, adopted children, as well as other children of the landholder so that rights are not limited to just the heir.

The Commission invited the public to openly provide their thoughts on how they feel succession rights to land should be prioritized provided that "others" are proposed to be included in the succession line. The proposals made on this issue were as follows:

- i. Succession should devolve on the male sons starting from the eldest son;
- ii. If there are no sons then the daughters should succeed starting from the eldest daughter;
- iii. If there are no daughters then adopted and illegitimate children should succeed starting with the eldest child (there were no thoughts on whether adopted children should be prioritized over illegitimate children or vice versa).

There were other proposals to assist with the problem of determining how the children (male, female, illegitimate and adopted) of the landholder were to be prioritized in the succession line. These proposals are:

3.5 The line of succession to land should start from the eldest child regardless of gender

This proposal is based on the hope that succession laws would be more just (fair) and not discriminative. Some people believe that the heir should be the eldest child out of all the landholder's children regardless of whether the eldest is a male, female, illegitimate or adopted child. Current succession laws are discriminatory and it appears to look down on daughters and this would encourage people to think that it is a curse to have a daughter. Everyone should be equal in the eyes of the law.

In addition to the above proposal is the new line, if thinking not to limit the line of succession to land to just the legitimate children of the landholder. His illegitimate children should also be included. So whoever is the oldest child should be the heir regardless of legitimacy status.

3.6 The landholder and his wife should have the right to elect which of their children will succeed to the family land

Some members of the public believe that the most reasonable approach would be to afford rights to the father and mother to elect the heir to the family land. Parents love each child equally from the eldest to the youngest. They know their children well - which of them is

better off than the other and they would know who needs the family land more. The parents can make a choice that will be reasonable given all the circumstances of their children and peace will remain within the families.

Some people believe that this proposal should only be adopted if its application will be limited only to newly acquired land ("api fo'ou"). This refers to land that was firstly registered by the parents (and did not devolve on the landholder from his father) as this gives them the right to determine who the land will devolve to. If it is a hereditary (family) allotment then it should still devolve through the line of succession as prescribed by law.

Some people found it hard to accept the proposals discussed in paragraphs 3.1 to 3.6 above. The proposals are very "new" in light of the current land succession laws which are unique to Tonga and differ from those of other countries. This is why some people suggest that it may be best to start these new ideas with just newly acquired land ('api fo'ou) (as is suggested in paragraph 4.5 below), which is new land that was acquired by this couple and registered in the husband's name. These people believe that it would be easier for people to accept these new ideas if we limit their application (for now) to land newly acquired and developed by a couple. This will be fair to the couple who acquired the new land, fair to their children, and fair to the rest the family. Proposing to also apply these new ideas to hereditary land is a rather radical change. The landholder's younger brothers for example are unlikely to accept such changes as it would give the landholder's adopted children priority (over them) to succeed to the family land.

This Topic was discussed in each of the 79 meetings that were held overseas and in Tonga. There is a strong view that women should be "freed" from the current limitations under the laws so that they have equal rights as men under the Land Act and such proposals were received from both women and men. Nevertheless, there are people including women who did not support the move for more land rights for women. The proposals relating to women's land rights are provided in Topic 4. The proposals relating to the rights of the female heir were provided in Topic 3 above and will not be repeated in this Part.

TOPIC 4: WOMEN SHOULD BE GIVEN MORE RIGHTS UNDER THE LAND ACT

A lot of women question the basis for limitations on women's rights to land. They wish to see amendments made to land laws so that those laws are more in line with clause 4 of the Constitution of Tonga which states that the law should apply equally to everyone. Discriminatory provisions in land laws degrade women and encourage the belief amongst some women that it is a curse to have a female child.

4.1 Women should have equal rights as men under the Land Act

This proposal calls for women to be entitled to all rights afforded to men under the Land Act of Tonga. Men and women are of the same spirit, they both work, they both love their country so they should also have equal rights to the lands of this country.

The essence of this proposal is to amend land laws to allow women to:

- a) apply for grant of an allotment and be able to register the same in her name provided that the Estate Holder makes the grant (including the right to apply for grant of an allotment which has been surrendered (and has reverted) to the Estate Holder in order for the woman to apply for grant of that allotment);
- b) Be able to register her father's land in her name if she is a female heir (provided that the proposal in paragraph 3.1 to remove limitations on the rights of the female heir is approved).

The following are reasons provided by the public as the basis for proposals provided in paragraphs a) and b) above:

- c) Clause 4 of the Constitution of Tonga states that the law should apply equally to everyone. Therefore, laws including land laws should not be discriminatory.
- d) There is a biblical reasoning for giving women a share in land such as what is referred to in the Bible regarding the daughters of Zelophehad. He did not have any sons and according to the commandments of Moses his daughters were still given rights to their father's land. The laws of Tonga were enacted in accordance with biblical teachings and giving women rights to their father's land accords with the bible.
- e) The status and circumstances of women today differs from their status at the time when the land laws were made. Women no longer depend on men for a living but they have become more educated and have achieved the same things that men achieve. A woman should have the right to own land which she can build on and develop rather than wait for land to be secured only through her husband.

It is time to give the same land rights to both men and women so that women can excel and contribute to economic development. More than 50% of the population is women and if all women are given the opportunity (including equal access to land) to realize their potential it will be of great benefit to the country.

The limitation to women's rights under current laws is a barrier to women achieving their true potential which can help with the country's development. We as Tongans prevent other fellow Tongans from achieving their potential. Times have changed and Tonga should move with civilization like other countries do rather than subjecting our country to poverty by holding onto obsolete principles that promotes inequality and discrimination against women.

f) Giving women the same rights as men is more democratic. All democratic countries in the world provide equal opportunities to both men and women and this assists development and accumulation of wealth in these countries.

g) There are allegations that family feuds over land usually occur because women have rights to land. But if we look at Fiji and Samoa where women have rights to land we'll find that families live peacefully and family feuds are uncommon as opposed to what is being alleged.

Some women usually receive a plot of land as a gift from a landholder (whether it is from her father, a brother or a close relative) destined for the woman to live on and this usually happens in families who have a lot of family land. Because land cannot be registered under a woman such land usually ends up being registered under the woman's husband. Subsequent marital problems sometime result in the husband evicting the wife from the land which is registered under his name and the woman (for whom the land was intended) ends up on the streets while the husband remains on her land. If that woman does not have any male children with her husband then this land will be lost as it will devolve to her husband's brothers regardless of the fact that this land came from the woman's family.

h) It is right that there is not enough land, but women should still be given the "right" to land. The problem of land shortage is a matter for the Minister of Lands and Estate Holders to take into account in considering applications for grant of an allotment, but at least the door is opened allowing women to register land. This will provide opportunities for women who receive land plots as gifts (such as women referred to in paragraph h) above). A law practitioner who is also a People's Representative to the Legislative Assembly supported the proposal for women to have the same rights to land as men, but because land is not readily available this proposal should be made in a reasonable manner. He provided an example of a woman who acquired land from her father who then marries a man who also has land which will result in this couple having two pieces of land. To avoid this problem it may be best for women to be allowed to have their father's land provided that in a situation where she marries a man who already has a piece of land then this couple will choose which of the two they will keep. The other piece of land not chosen will have to revert to the line of succession in the family from which that piece of land devolved. This will avoid a conflict between the need to provide equal rights and the problem of land shortage.

People who do not support the proposals in paragraphs a) and b) above provide the following reasons for their opposition:

i) The land area in Tonga is small compared to bigger and more democratic countries such as Australia and New Zealand. Not all Tongan males are able to get a piece of land and this problem would escalate if women are also given the rights to register land. It is better to limit women's inheritance rights to those of an unmarried daughter in the absence of a male heir.

j) Women already have land rights under current laws as they can lease land in

addition to the right of an unmarried daughter and a widow. If women do not trust their husbands (to have land registered in under them) then they can always lease land. We are able to live peacefully and accept current laws and if we amend this it can cause disruption to peace. Only some women have encountered problems because of the current laws without any accurate figures to show the actual percentage of women facing these problems.

- k) Tonga's traditions provide land rights to men while the women acquire the status of a "fahu". Women do not own land because as a "fahu" her share (tofi'a) is in her brother's children who look up to her and her status as their "fahu".
- l) If women are to be provided the same rights as men then registration of land by women should be limited only to town allotments and not tax allotments, which should be left for men to work on as a source of income for the family.
- m) Land devolving on the male line is Godly as men were created by God from dust (land) and it is only right that land devolves through those (men) which were created from dust (land). Women were not created from dust (land). They were created from a small part of the man (a bone).

4.2 Wives to be given residential rights over a husband's land

This proposal is to provide rights to a married woman who is a victim of a problematic marriage where there are children whom were born within the marriage. This proposal is intended only for wives whose husband's have committed adultery because his wife is stuck with the children from the marriage and this diminishes her value and likelihood of remarrying. Usually when such marital problems occur, the husband demands that his wife and their children leave the family home. The husband usually has more power and say over the land because it is registered in his name. There should be some assurance that a husband will be bound by his duty to care for children that he has brought into this world.

This proposal calls for protection of the wife and children by clearly stating in the Land Act that a wife has a right to live on her husband's land. It would be reasonable to place limitations of the wife's proposed right (such as the rights of a widow) by providing that the wife would lose her residential right if she commits fornication/adultery or remarries.

There was no clarification on whether this right should be given only to a wife who had children with her husband or whether it should apply to all wives regardless of whether she had any children with her husband or not.

4.3 Rights should be provided for a woman who looks after the family land

There are family land/homes where the landholder, the heir and the rest of his male siblings all reside overseas and the daughter of the landholder is the only person left here in Tonga looking after the family home and tending to all duties to the Estate Holder. This proposal is to consider giving such women a right to the land that she looks after. Any such right should accord with the number of years she's spent looking after the family home so that the heir would not suddenly show up and evict the woman who has been looking after the land.

4.4 A widow should be able to lease land of her deceased husband provided the heir consents

This proposal is one of the proposed amendments contained in the Land (Amendment) Bill which was tabled in the Legislative Assembly in 2010 by Lord Fakafanua. The Legislative Assembly directed that the Bill be referred to the Commission (as is discussed in Topic 20). The proposal is to give the widow the right to lease the allotment of her deceased husband provided that the heir consents.

People who support this proposal are satisfied that the heir will have a voice in determining whether or not the land will be leased. It would be beneficial to provide more rights for the widow as is proposed because she will no longer have a husband to depend on so she should be given the opportunity to lease the land as her source of income. The heir's rights will still be protected as the lease will only be allowed if he consents. Nevertheless, some people still believe that it is better to leave laws as it is because it is selfish to allow the widow to lease the land whilst the heir awaits succession to the family land so that he may earn a living from it.

4.5 A widow's rights should be extended where land she is entitled is "newly registered land" ('api fo'ou) provided that she had no children with her husband (the registered holder)

This proposal relates to the proposal in paragraph 4.4 above but it is intended to apply only to newly acquired land, which is land that was obtained by a husband and wife and registration started with them (under the husband's name). This is not family land that has devolved on the husband from his father or his grandfather. What is being proposed is to give the widow absolute power over such land (without any limitations such as prior consent of the heir as is proposed in paragraph 4.4 above) so that she can elect for example to allow the land to devolve on her and her deceased husband's children including any adopted children. A lot of allotments are newly acquired by a married couple and this land is registered in the husband's name, but when the husband dies the widow is faced with these problems:

- a) the deceased husband was previously married and he had male children with his first wife and these male children will be the heirs to the land that was acquired and developed by the deceased husband and his second wife;
- b) the married couple did not have any biological children within their marriage to succeed to their land, but they did have adopted children that the widow would like the land to devolve to;
- c) The deceased husband's younger brothers will claim their right to succeed to this land by law (in the absence of any children of the married couple to succeed) even though they did not contribute to the development of the land or to acquiring it in the first place.

The widow who contributed and invested a lot to this newly acquired land suffers from a lot