

APPENDIX 12

(FAKALAH I 12)

REPORT
OF
THE ROYAL LAND COMMISSION 1983

On its Review
Of
All Practices, Usages and Laws
Relating to Land

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FOREWORD

God and Tonga are my Inheritance. Divine Creation has bestowed upon Mankind the right to life and enjoyment of His creations. Everywhere in the world today the right to obtain land is not free except in Tonga. We are fortunate that for over a century we have enjoyed these rights which our first Constitutional Sovereign enacted into our laws as a heritage for his people.

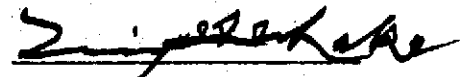
Our land tenure system and its protective arrangements guarantees the Tongan a home and land for farming so that he may be free from want and deprivation. He is also protected from losing his home. It is a noble thought and a noble Act.

With the passage of time our society has changed, our people have increased in numbers and our life styles and values influenced by our contact with the outside world and higher learning and education. Trade and commerce are also conditioning our lives and there are visible signs of new directions. All these are placing pressures and stresses on our system and our land. Land does not increase but decreases with populations growth.

As a former Minister of Lands for many years I am intimately aware of the working of that Ministry and I believe that the Commissioning of this report has been timely. During my term of office in the Ministry and now as Prime Minister I have not been unmindful of the needs of our people and some of the problems requiring resolutions.

I am pleased to welcome this Report of the Royal Land Commission which His Majesty King Taufa'ahau Tupou IV had graciously deem it desirable and necessary to ascertain the state of all practices, usages and laws relating to land in the Kingdom. It is my fervent hope and wish that we might learn from this report what is good or bad for us and adopt that which will benefit us in the future.

Our heritage of free land ownership for every male Tongan aged 16 years or over is being threatened by diminishing of land through growth of population. Those who already have land are fortunate. In respect of those who have yet to be granted land a large number will receive grants but some will be without it. There should be no grievances or sectionalisation of blame over matters which are beyond our control. We as a people have always possessed a sense of pride, belonging and sharing in our common achievement or misfortune. A new direction may have to be adopted and I believe it is timely for me to urge each and every sector of our community to be united in purpose and in the common cause of seeking and finding solutions for peace stability and well being of Tonga now and in the future.



HRH PRINCE TU'IPULEHAKE

PRIME MINISTER

Nuku'alofa

30 January 1985

ACKNOWLEDGEMENTS

The work of the Commission having been completed, I turn my thoughts to a more pleasant and equally important task of expressing and recording my appreciations and those of my fellow Commissioners. It is difficult for me personally to separate the dual roles I have in performing this task.

First as Minister of Lands I am truly grateful to have participated in this exercise and am humbled and honoured to share in the anticipation of its release. During my term of office as Minister I have realised certain inadequacies which have been partly attributed to the limitations of our land laws and difficulties in its application and partly to my own failings.

As Minister I have always strived to administer the Land Act with impartiality and fairness and to update the workings of the Ministry because of its special importance to His Majesty's subjects. It is therefore particularly pleasing that this work which I believe was long overdue, has been carried out and completed whilst it is still my humble honour to serve His Majesty, the Government and people of Tonga.

In my role as Chairman of the Royal Land Commission, I pay tribute to its completion and the fact that I and all the other Commissioners were honoured with this responsibility. Collectively and individually we extend to His Majesty King Taufa'ahau Tupou IV our greetings, humble appreciation and best wishes.

The concepts and principles embodied in the Land Act had its origins from the foresight and visions of His Majesty King George Tupou I. His impressions and speeches to parliament were restated into statutory form. Not unlike his predecessors and forefathers His Majesty King Taufa'ahau Tupou IV speeches as recited in Section A of this report and initiative have been responsible for the establishment

of the second Royal Land Commission in the history of our land system. He had graciously and benevolently deemed it desirable and necessary to review all practices, usages and laws relating to land in the Kingdom to meet the needs, interest and welfare of His subjects.

This report and its recommendations have taken into account all current practices and it is hoped that certain liberalisation appearing therein accords with Your Majesty's pleasure. In line with the progress made during the last century, the development and maintenance of a God fearing people, advancement in education, development of trade and commerce, changing values and lifestyles and in the total context of the Tongan life now and in the future, we have taken the liberty to recommend changes. Changes which we believe are consonant with the times and will constitute a new emancipation under Your Reign.

Your Majesty's Royal traditions have been perpetuated and the heritage of Your people have not been departed from. A new direction has been formulated and it is submitted with respects that the laws as recommended are updated and in line with current practices.

I am deeply honoured to have been appointed Chairman of the Royal Land Commission and to present this report with the assurances given above. With humility on my behalf and on behalf of each Commissioner we would like to extend our personal appreciations for our appointments and for Your Majesty's royal indulgence in extending the term of the Commission to the 31st January 1985 to enable our report to be completed.

∨
Whilst the work of the Commission was in progress I received personal encouragement and support from my colleagues in Privy Council and Cabinet without which we would have found our task more difficult. They were also conscious of the need for and the time within which this report must be completed. Your assistance have been welcomed and appreciated.

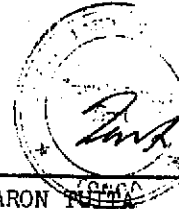
I record in this acknowledgement the untimely death and loss of one of our Commissioners. Tomiteau Finau died on the 28th October 1984 and was buried at Nukunuku. His work and contributions to the Commission are appreciated and sadly missed. To his widow and family I extend our heartfelt appreciation and condolences.

It is not possible in this tribute to personally name and thank everyone individually who contributed to the work of the Commission. Most of you were thanked personally and those who had not been thanked this report has recorded at appropriate places our appreciation. In this respect I refer to people who submitted written submissions and those who appeared before us at the public hearings and helped us at the venues where the hearings were conducted. In addition I thank the people who attended the hearings but made no oral submissions. It is said by a famous person that "those who only stand and wait, also serve". Its meaning is not lost. It applies to all the people at Vava'u, Ha'apai, 'Eua, two Niua and Tongatapu who welcomed and received the Commission.

I list here the venues and thank the owners of these premises for their generosity and kindness in allowing the Commission to conduct its meetings therein free of charge viz:

Toliafe Hall, Tongoleleka, Ha'apai
FWCT Youth Hall, 'Ohonua, 'Eua
Lupepau'u Maxi Hall, Futu, 'Eua
Fatuilangi Tele'a Ua Hall, Lapaha
Roman Catholic Church Hall, Kolonga
FWCT Youth Hall, Navutoka
Community Hall, Ha'asini
Roman Catholic Church Hall, Houma
Fele'ave Community Hall, Nukunuku
Residence of the FWCT Minister, Kolovai
Community Centre, Kolovai
FWCT Hall, Folaha
Tevita Liti's Hall, Vaini.

Finally but not least I thank my fellow Commissioners and our Secretary. I have appreciated your assistance, cooperation, dedication and willingness to give your best. Our work has come to an end, but it is the beginning for others.



BARON ~~PLATT~~
Chairman
Royal Land Commission
31.1.1985

REPORT
OF
THE ROYAL LAND COMMISSION
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Relating to Land

1. PREAMBLE

TERMS OF REFERENCE

WHEREAS The King in Council has deemed it desirable and necessary to review all practices, usages and laws relating to land in the Kingdom to meet the needs, interests and welfare of His subjects.

AND WHEREAS it is deemed necessary that a Land Commission be established to inquire into such practices, usages and laws.

NOW THEREFORE pursuant to the powers conferred by Section 2(1) of the Royal Commissions Act (Cap. 42) the King in Council hereby issue this Commission and appoint the persons whose names are set out hereunder to be Commissioners and authorise them to review and update all practices, usages and laws relating to land in the Kingdom.

The Commissioners are :

1. BARON TUITA
2. BARON VAEA
3. HON. VE'EHALA
4. DAVID P. TUPOU
5. TOMITEAU FINAU
6. W. CLIVE EDWARDS

- (a) THAT the Commissioners in carrying out this inquiry into the matters hereinbefore referred to shall make and determine their own rules of procedure and have all the powers and authority conferred by the Royal Commissions Act.
- (b) THAT BARON TUITA be and is hereby appointed Chairman of Commissioners.

II.

- (c) THAT the Chairman of Commissioners and three other Commissioners shall constitute a quorum.
- (d) THAT the Commissioners shall meet at Nuku'alofa and such other places and times as they deem necessary and shall make and render their report to the King in Council on or before the 30th day of July 1984 at such time or date as may be determined by the King in Council.
- (e) THAT the inquiry of the Commission may be held in public or private as determined by the Commission from time to time.
- (f) THAT the Commissioners shall receive such travelling expenses, monthly and meeting allowances as determined by the Cabinet.
- (g) THAT the Commissioners or one or more of them as determined by the Chairmen may travel overseas for the purpose of obtaining information to assist the Commission in its inquiry and report.
- (h) THAT 'ALISI NUMIA TAUMOEPEAU be and is hereby appointed as Secretary to the Commission and shall receive such remuneration as determined by Cabinet.

Given under my hand and seal this 22nd day of April 1983.

TAUFA'AHAU TUPOU IV
KING OF TONGA

AMENDMENTS TO ABOVE TERMS OF REFERENCE

- (a) Amendment as to Quorum of Commission:

WHEREAS the King in Council issued a Royal Land Commission on the 22nd April 1983 pursuant to the powers conferred by the Royal Commissions Act (Cap. 42).

AND WHEREAS it was provided under the said Commission that a quorum thereof shall consist of the Chairman and three other Commissioners.

III.

AND WHEREAS for easier operation and greater efficiency of the Commission it is deemed desirable that its quorum be reduced to consist of the Chairman and two other Commissioners.

NOW THEREFORE the King in Council acting in pursuance of the powers conferred under and by virtue of the Royal Commissions Act (Cap. 42) HEREBY direct authorise and declare that henceforth the Chairman of Commissioners and two other Commissioners shall constitute a quorum of the Royal Land Commission.

Made at the Palace, Nuku'alofa this 13th day of April 1984.

By Command,
Filimone M. Tongilava
Clerk to Privy Council

(b) Amendment as to date of report by Commission :

That the date for the final report by the Royal Land Commission to the King in Privy Council namely the 30th day of April 1984 be and is hereby extended to the 31st day of January 1985 pursuant to His Majesty's Privy Council decision WPF-LSR 1/1 dated the 20th day of July 1984.

COMMISSIONERS

A brief resume on members of the Commission are detailed below:

- (i) Baron Tuita : Minister of Lands - to act as Chairman.
- (ii) Baron Vaea : Minister of Labour, Commerce and Industries. Also a Noble. Dual role - representing a view point from Commerce and Industries as well as estate holder.

IV.

- (iii) Honourable Ve'ehala : At the time Governor of Ha'apai former Secretary of Tonga Traditions Committee - representing a viewpoint from Nobility and estate holders.
- (iv) Mr W. Clive Edwards : Barrister and Solicitor. Auckland City Councillor. Former Lecturer in Commercial Law (Auckland Technical Institute 1962 - 1964) - representing a view point from the people.
- (v) Mr David Tupou : Crown Solicitor. Considerable experiences and well versed in Land Law and The Constitution - representing viewpoint from Crown.
- (vi) Mr Tomiteau Finau : Former Member of Parliament. Former Member of Commodities Board. Legal Adviser of Methodist Church and Practising Lawyer representing a viewpoint from the people.

DEATH OF COMMISSIONER

TOMITEAU FINAU

As a result of a long term health problem and brief period of hospitalisation Commissioner Tomiteau Finau died at Vaiola Hospital on the 28th day of October 1984 and was buried at Nukunuku. Members of the Commission attended his funeral service and burial and paid their tribute and respects to the widow and family. His work and contributions to the Commission are appreciated and sadly missed.

POWERS OF COMMISSIONERS
UNDER ROYAL COMMISSIONS ACT
(CAP. 42)

- (a) Section 4 : (1) It shall be the duty of the Commissioners to make a full, faithful and impartial inquiry in accordance with the terms of the Commission and to report the result of the inquiry to His Majesty accordingly.
- (2) If any Commissioner fail to agree with the report of the majority of the Commissioners he shall submit a separate report, which shall be presented to His Majesty with the report of the Commission.
- (b) Section 5 : His Majesty in Council may appoint a secretary to attend the sittings of the Commission who shall record the proceedings, summon the witnesses, and generally perform such duties connected with the inquiry as the Commissioners may direct. If the inquiry should not be held in public, the secretary shall take an oath that he will not divulge the proceedings or the vote or opinion of any Commissioner.
- (c) Section 6 : The Commissioners may make such rules for the conduct and management of the proceedings as they may think fit.
- (d) Section 7 : The Commissioners shall have the following powers -
- (a) to issue summonses to witnesses in the form prescribed in the Schedule and to call for the production of books, plans and documents and to examine the witnesses and parties concerned on oath;

VI.

- (b) to admit any evidence whether written or oral and whether or not such evidence would be admissible in civil or criminal proceedings;
 - (c) to admit or exclude the press from any meeting of the Commissioners;
 - (d) to exclude any person if necessary so to do in order to ensure the due conduct of the inquiry or to preserve order;
 - (e) to enter upon any land for the purpose of obtaining any information which may be of assistance to the Commissioners.
- (e) Section 8 : (1) The Commissioners shall have the power to appoint an interpreter.
- (2) An interpreter appointed under this section shall take an oath or make an affirmation as to the proper performance of his duties in such form as the Commissioners may require.

VII.

EXPLANATORY
NOTES

Wherever the following words appear in this report they shall have the following meanings ascribed to them hereunder.

1. The Act : means the Land Act (Cap. 63)
2. Allotments : means tax or town allotment as defined under the Act
3. Bank or Banks : mean "Bank of Tonga" and/or Development Bank of Tonga
4. The Commission : means Royal Land Commission
5. The Constitution : means the Act of Constitution of Tonga
6. The Court : means the Land Court
7. Distributed Land : means allotments already granted and registered
8. Estate Holder : means holder of a hereditary estate or in case of Crown Lands means Minister of Lands
9. Landholder or holder : means holder of tax or town allotments hereditary estate
10. Registered or Unregistered : means registration under the Act
11. Undistributed Land : means hereditary estates or Crown land from which no grants of allotments have been made.

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SECTION

A. 1.1.1 BACKGROUND TO ESTABLISHMENT OF THE ROYAL
LAND COMMISSION

1.1.2 On the 18th January 1983 His Majesty's Cabinet under decision No.LSR 1/1 resolved :

(a) That a Land Commission be established to review the Land Act of the Kingdom of Tonga.

(b) That the following persons be appointed members of the proposed Land Commission :

- (i) Baron Tuita
- (ii) Baron Vaea
- (iii) Honourable Ve'ehala
- (iv) Mr W. Clive Edwards
- (v) Mr David Tupou
- (vi) Mr Tomiteau Finau

1.1.3 Prior to Cabinet's decision referred to in paragraph 1.1.2 hereof there had been mounting public pressure for a review of the Land Act. From time to time His Majesty King Taufa'ahau Tupou IV not unmindful that there existed certain problems relating to the land system and its proper utilisation made references thereto.

1.1.4 In opening the 1975 session of the Legislative Assembly His Majesty, perhaps conscious that this was the centenary of the Tongan land system, stated that changed circumstances were such as to necessitate changes to the present land holding to allow those who want to work the land access thereto.

Section A

His Majesty said that there was not enough land to give every male Tongan of 16 years a tax allotment of 8½ acres and that it may be necessary to consider reducing the statutory area so that more people could have tax allotments. He also placed emphasis on better and more profitable utilisation of all land and expressed concern at land which appear to be abandoned and absent land holders.

1.1.5 Some three months after the opening of the Legislative Assembly, the Tonga Council of Churches conducted a Seminar on "Land and Migration" from the 22 to 26 September 1975. The King in his opening address again referred to some of the problems mentioned in paragraph 1.1.4 hereof and developed the theme of proper utilisation and management of land to ensure optimum returns.

1.1.6 The Tonga Council of Churches in its Seminar called for the establishment of a Royal Commission under the Royal Commissions Act (Cap. 42) as soon as possible to examine the present land tenure system and to advise Government as to a desirable future land policy for Tonga. It made a number of resolutions among which was a declaration of its conviction that a review of the land tenure and practice in Tonga was urgently needed. One of its resolutions may be stated as follows :

"The Council of Churches resolved to establish its own Land Committee to investigate the present facts relating to the law and practice of land tenure, with particular reference to :

- (1) provisions of the Constitution and the Land Act;

Section A

- (ii) procedures adopted by the Lands and Survey Department with regard to the distribution of land and the enforcement of the Land Act;
- (iii) practices and behaviours surrounding applications for and succession to tax and town allotments.

This Seminar is concerned that the land tenure system should provide more opportunities for the landless, more security for persons living on the land, and more incentive to use land effectively. Subject to what the Land Committee may say after its investigation, the Seminar sees the need for important improvement in the land tenure system but not the replacement of the present system by a radically new one."

- 1.1.7 The Minister of Lands and his department not only felt the pressures but also considered the call for improvements and reforms and made attempts to deal with these. Cabinet was asked for the appointment to the Ministry of Land of a full time qualified lawyer. Cabinet took steps to approve Senior and trained staff to be promoted within the Ministry without transfer to other Government departments in order that the special and technical expertise obtained within the Ministry should be retained and developed further. These moves were merely adequate to cope with the day to day work load of the Ministry without further advance into the area which specifically required examination and remedial action.
- 1.1.8 The Ministry of Lands had long recognised that there were insufficient available land for distribution to every Tongan male who had attained the age of 16 years. The problem was growing. The number of male Tongans without the statutory land allotments exceeded those with allotments. Flexibility was obtained in reducing the statutory area of tax allotments from $8\frac{1}{4}$ acres

Section A to 4 acres and minimum area of town allotments to 30 perches but these had limited effects or application on the population growth.

1.1.9 Most of the arable and habitable land in the Kingdom have over a long period of time been allotted and registered by existing owners under the Act. The position of these land holders are entrenched under the Constitution and the Act. The life interest estate of owners and system of heirs under the Land Act and the Constitution have hitherto effectively prevented any changes being made to these registered holdings. Registered land holders have a life interest only and consequently are unable to make any dispositions, subdivisions or any other dealings with the land unless permission is first obtained from the heir or heirs. The procedure of obtaining consent from the heir has proved to be a frustrating and near impossible task.

1.1.10 The Act and through it the land system has over the years been the subject of ad hoc changes to keep up with changed circumstances. None was more fundamental or significant than the 1976 Amendment which introduced and made the practice of mortgaging one's land to secure a loan or loans to the Bank or other approved persons specified by Order in Council lawful. Hitherto this was not authorised under the scheme of the Act. Under Section 16 of the Act there is an express declaration that it shall be unlawful for any Tongan subject to make any mortgage agreement or other document pledging or charging or selling his growing crops of coconut, yams or other produce or any part thereof.

1.1.11 A strange and odd situation exist with regards to the prohibition under section 16 as to mortgaging or pledging of crops yet the very land on which it is grown or situated is mortgageable. The Bank or its' employees may or may not be exposing themselves to some form of

Section A

liability or action when exercising the mortgagee's power of possession if there are crops growing on the land in question. Other legal ramifications would seem to follow on possession being taken by the mortgagee but need no detailed mention here.

- 1.1.12 The departure from the concepts in the Act that land was and is inalienable except by devolution according to the law of succession and that any landholder who enters or attempts to enter into any agreement for profit or benefit relating to the use or occupation of his holding shall be liable to a fine or imprisonment or both was an important historical event. The prohibition as to any form of disposition, mortgaging or dealing for profit or benefit has been in our laws for over a century. Some may regard the move as a sign of progress others may view it in a sinister light.
- 1.1.13 Underlying a number of the resolutions emanating from the Seminar on "Land and Migration" is the common view that most of the nobles estates have not been subdivided and distributed. The nobility or estate holders are holding on to their land for their own use or dealing in them for profits and are refusing to make any grants to their people. This view point has generated a growing body of discontentment with the landless section of our population and developed a noticeable degree of distrust and animosity towards estate holders. It is highly desirable that the correct factual situation be advanced and the unsatisfactory and growing trend of animosity be rectified.
- 1.1.14 During the initial meetings of members of the Commission appointed by Cabinet they searched for and decided on an acceptable working formulae. It became apparent that public involvement would be desirable. The work of the Commission in part was to be directed towards an educational and informative programmes for public

Section A

dissemination digestion and participation. If there were any unnecessary pressure and troublesome spots these should be diffused. A sense of pride, belonging and sharing in any common achievement or misfortune should be promoted and maintained to avoid grievances and sectionalisation of blame. All these considerations inevitably called for the Commission to be properly constituted under the appropriate Act with proper terms of reference and appropriate powers to deal with the public. A Royal Land Commission was therefore drafted and submitted to His Majesty in Council for approval under the Royal Commissions Act (Cap. 42).

1.2.1 ROYAL LAND COMMISSION

1.2.2 On the 22nd April 1983 His Majesty in Council approved the establishment of the Royal Land Commission pursuant to the powers conferred by the Royal Commissions Act (Cap. 42) and appointed as Commissioners, the same six people who were appointed by Cabinet on the 18th January 1983. Baron Tuita was appointed Chairman and Mrs 'Alisi Numia Taumoepeau was appointed Secretary. The Royal Land Commission is published in the Tonga Government Gazette No.11 of 30th June 1983.

1.2.3 Pursuant to the requirements of the Royal Commissions Act all Commissioners and the Secretary were sworn in by Cabinet.

1.2.4 The terms of reference of the Commission are set out in full in this report. It has wide terms to review all practices, usages and laws relating to land in the Kingdom to meet the needs, interest and welfare of His Majesty's Subjects.

1.2.5 Reference should be made here to the considerations and reasons surrounding the selection of members of the Commission not as justification or rebuttable of the criticism that there are too many lawyers on it but by way of explanation.

It was envisaged from the outset that the work of the Commission would include a close analysis and understanding of the Act, land practices and uses and their constitutional implications. The Minister of Lands should as a matter of course be involved in that exercise. He had a contribution to make. The accumulated knowledge and details of the working of his Ministry gained over many years in his position as Minister would be and indeed found to be invaluable by his fellow Commissioners. Involvement in the work of the Commission would also undoubtedly be beneficial and stand him in good stead at least as to the future workings of his Ministry and the proper application of the law. It was desirable that an input be made from Labour Commerce and Industry and proper monitoring, be made by Baron Vaea's ministry on aspects relating to Commerce and trade. At the same time it was necessary that a representative view be received from the nobility and the estate holders as well as from the people. A degree of public involvement, all round experience, legal expertise and good common sense were some of the essential requisites sought and which were found in good measure in the persons of the other Commissioners.

B. 1.1.1 WORK AND OBJECTIVES OF COMMISSION

1.1.2 The first priority of the Commission was to determine its' procedures, objectives and target dates within which its work must be completed. The following targets were set:

- (a) Period One : (May to December 1983) - was referred to as the closed door workshon period. Working files were prepared and issued to Commissioners. It was a time set aside for selected interviews, examination of issues, fixing guidelines, deliberation and debate, announcing tentative proposals, radio programmes and interviews and receiving of written submission and public comments.

Section B

- (b) Period Two : (January to April 1984) Public hearings and meetings when tentative proposals and issues discussed. (Note : This period was exceeded)
- (c) Period Three : (May to July 1984) Time for analysis, assessments and recommendations. (Note : Because of overlapping by period two this period was not adhered to. Further extension of time was sought and obtained to 31 January 1985)

In fixing the target dates the view was expressed that more time should be given if the Commission was to properly achieve its' objectives and to produce any innovative reforms. The Commissioners all had heavy work loads and it was realised that three of them in addition to their normal duties had extra Privy Council, Cabinet and Parliamentary commitments. The Commission accepted the fact it was operating within a strict time schedule and it would have to put forward its' best endeavours to achieve its target date. It further appreciated the public pressure and demand on the Chairman to complete this work and to submit the report to His Majesty in Council. Regrettably due to delays in completing the typing of public hearing reports, its' analysis, receiving of report outside Tongatapu as to land distribution and differences on tentative proposals as to freeholding and consideration of conceptual matters, extension of time for a further 6 months to 31 January 1985 was sought and obtained from His Majesty's Privy Council.

1.1.3 The Commission sought for and established objectives and guidelines within its' wide terms of reference as a starting point in order to work within those guidelines. It formulated the following :

- (a) The heritage of every male Tongan 16 years of age or over to a tax or town allotment declared in 1875 by King George Tupou I, be and is hereby noted as no longer capable of complete fulfilment.

Section B

Our ever increasing population and shortage of land is a matter which should be made the subject of public understanding and appreciation.

- (b) The review of practices, usages and law relating to land called for a new partnership between the Government, Nobility and the people. We should be joined in a Common purpose, jointly seeking and finding solutions for peace, stability and the wellbeing of Tonga now and in the future.
- (c) That the work of the Commission be properly recorded and publicised. The radio and Chronicle be utilised as means of communication. All the workings of the Commission should be recorded and kept for future references with a special file set aside for that purpose.
- (d) That where possible liberalization of the law be made with the theme new emancipation. King George Tupou I had set a new era in Tongan history with freedom for the people and their rights to land guaranteed by the land laws of his time. It was felt by the Commission that after a century of substantially the same laws there was a need for improvements to meet the changed circumstances of our times. That the changes wherever possible be liberal and be consonant with the theme new emancipation.
- (e) That a proposal for limited freeholding of land be prepared and submitted for consideration and release by the Commission.
- (f) That the Commission examine the practices of granting allotments and determine the extent of undistributed land still retained by estate holders.
- (g) That the Commission determine the extent of public grievances, misunderstanding and animosity arising from people not being able to obtain tax or town allotments and recommend appropriate remedial action.

Section B

- (h) That the Commission investigate and consider the alleged practices of selling land in contravention of section 12 of the Land Act (Cap. 63).
- (i) That a comparative study be made of neighbouring Pacific Islands land system with a view to ascertaining any special features that may be worthy of recommendation and adoption.
- (j) That a complete study and examination of the Land Act and relevant parts of the Constitution be carried out during period one.
- (k) To examine the validity of the premises that any radical changes to the land system would destroy the traditions, customs and the distinctive life style of the Tongan people.
- (l) To consider and recommend improvements to the land system.

The Commission took the view that the above statements of objectives adequately came within its wide terms of reference already referred to at the beginning of the report and in paragraph A1.2.4 hereof.

- 1.1.4 During the early stages of period one, certain areas of responsibility were allocated to three of the Commissioners who also formed the working committee. Mr T. Finau was allocated the task of investigating the system of granting allotments and distribution of land with particular emphasis on undistributed land retained by estate holders. Mr F.C. Edwards was given the responsibility of programming, publicity and general workings of the Commission. Mr D. Tupou was required to research and report back to the Commission on the land system of neighbouring Pacific Islands which might have any value worthy of recommendation for incorporation or adoption into our system. The main function of the working committee was to prepare data and studies for consideration and determination by the Commission.

- Section B 1.1.5 Members of the Commission were interviewed over the radio and took part in a number of sessions of the Tuesday evening talk-back programme.
- 1.1.6 The Registrar of the Supreme Court (who is the clerk of the Land Court) was summoned to attend the meeting of the Commission and answered questions put by the Commissioners. He was the first person called on by the Commission. The interest here is in the cases decided by the Court and its work load. Some cases were reported in the existing 3 volumes of the Tongan Law Reports but a lot were unreported. The Commission was anxious to ensure that it did not miss any case law having an important bearing on the Act and requiring statutory clarifications.
- 1.1.7 For the Ministry of Lands the supervising Surveyor attended a meeting of the Commission and gave details of the procedures followed by this Ministry with regard to applications for town and tax allotments and leases. It became apparent that the working procedures of this Ministry depended largely on the personal knowledge of the senior members and it was suggested that it would be advisable for the Ministry to draw up a work manual and report further to the Commission.
- 1.1.8 The Commission took the opportunity of Commissioner Pupou's attendance at the South Pacific Games in August/September 1983 at Apia Western Samoa to investigate and report on the Samoan land system. Commissioner Finau also travelled to Western Samoa and American Samoa at the same time to assist with this work. A written report of the findings of these two Commissioners was presented to the Commission.
- 1.1.9 On the 21st May 1984 the Commission took the opportunity of the presence in Tonga of the Minister of Lands for Western Samoa the Hon. Tuatanga to invite him to a

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meeting of the Commission to give his views on the Samoan land system and answer questions. Hon. Funtanga confirmed most of the report made by Commissioners Tupou and Finau and the Commission expresses its gratitude for the attendance of the Hon. Minister of Lands for Western Samoa.

1.1.10 During the period of review the Commission had meetings exclusive of public hearings travelling or subcommittee meetings. It travelled to Vava'u and conducted public hearings there for a week and similar periods of time in Ha'apai, 'Eua and the two Niuas. For Tongatapu this was spread over a period of approximately 4 weeks. The working committee operated throughout, between meetings and public hearings preparing data and researching materials for the consideration of the Commission. In addition the Commissioners individually attended private meetings and radio programmes already referred to, to explain the work of the Commission. The work of the Commission involved a substantial amount of time in reading and studying what was placed before it. The typed transcript of the public hearings consists of five bound volumes totalling 1449 fullsize pages. It looked at all relevant legislation, written submissions and reports. These were not done at the meeting but privately and in preparation thereto. There are 164 information sheets prepared for the Ministry of Lands for setting out of statistics sought by the Commission. The working Committee prepared summaries of the evidence at the public hearings and tabled these before the Commission and which also appear in this report. In addition summary of statistics on land distribution as reprinted here were prepared and discussed. These were referred back again to the Ministry for rechecking because the Chairman felt they were incomplete.

1.1.11 The Commissioners received during the term of the Commission a monthly allowance as well as a meeting allowance for 48 meetings. On its travel to Vava'u,

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Ha'anai, 'Eua and the Niua's Commissioners received a travelling allowance. No travelling allowance was granted for its travels in Tongatapu. The basic and meeting allowances were fixed by Cabinet at the rate received by members of Parliament because the Commission's work was intensive and for a limited period of time.

1.1.12 The amount of time spend on reading and studying as referred to in paragraph B1.1.10 hereof was an essential prerequisite of the exercise undertaken in this review or any similar review. The function of the Commission was and is not to suggest or recommend **change** but to ascertain the prevailing practices and consensus of opinion legal or otherwise, consider them in the total context of our laws the effect of commerce or trade in our changing society and then report thereon with appropriate recommendations. The process of these considerations involved a valuation of our laws, aspirations of our people and the common good of our country. In this respect it was therefore inevitable that the Commission had to wade through volumes of paper work and periods of listening to people. Once having completed that aspect of its work it proceeded to deal with the law.

1.1.13 The Commission made reference to and studied the following statutes :

- Acts Interpretation Act
- Act of Constitution
- Legitimacy Act
- Maintenance of Illegitimate Children
- Maintenance of Deserted Wives
- Nationality Act
- Royal Commissions Act
- Tongan Government Gazettes.

In passing reference were made to some of the relevant legislation in the following countries.

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Fiji
Western Samoa
Cook Islands
New Zealand.

The following are some of records kept by the Commission :

- (1) Minute Book consisting of typed pages
- (2) 5 Volumes of evidence from public hearings totalling 1449 fullscap pages.
- (3) 65 Cassettes which recorded the discussions of the Commissioners and public hearings.
- (4) 3 Reports prepare by members of the Commission.
- (5) 120 pages of written submissions
- (6) Report from Tonga Council of Churches Seminar on Land and Migration.
- (7) Working papers and press releases.
- (8) Analysis and Summary Papers.
- (9) Working drafts - 500 pages.

B. 1.2.1 TENTATIVE FREEHOLD PROPOSAL

- 1.2.2 A basic question which exercised the mind of the Commission was what and how improvements could be effected to the present land system. The inalienable principle declared under section 6 of the Land Act and the penalty under section 12 provided absolute prohibition to any form of dealing. These with the other restrictions to be found in section 13 as to unlawful agreements for profit or benefit relating to the use and occupation of one's holding and section 16 as to mortgaging of growing crops limit the rights of the holder to one of occupation.
- 1.2.3 The estate of all land holders are declared to be a life interest only with the restrictions mentioned in B1.2.2 hereof. It is no different from a simple tenancy for residential and farming purposes with no other pursuits being permissible. In the context of the simple Tongan life this was more than adequate as it was based on subsistence farming. The Commission was able to see this demonstrated clearly by the life style of the people of Ha'apai and the remoter outlying island settlements.
- 1.2.4 The question is asked if the holder of a town allotment builds shop premises or boarding houses on his allotment and rents them out is he guilty of an offence under section 13 of entering into an agreement for profit or benefit relating to the use or occupation of his holding? There are many instances of this type of situations. Refer to sections 55A to 55G of the Act as the intent and purposes of these sections appear to be in conflict with the spirit of section 13.
- 1.2.5 The life interest estates of holders and the prohibitions already referred to were seen as the greatest inhibiting factors to any improvement, development of commerce, trade or progress generally.

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These are not the sole or all persuasive reasons, motivating change but a holder during his life time should be able to have initiative and be given incentive to decide what would be best for himself, his family and their future. He must have the dignity of self determination.

1.2.6 The devolution of land to the eldest male heir under the succession provisions of the Act embodied a preferential, selective and selfish element in our law. The eldest male heir who is first by accident of birth gets all at the expense of every other brother or sister. It would be less than frank not to refer to it as an unchristian like and a privileged creating system.

1.2.7 The Commission devised the following limited freehold proposal for discussions and testing of public reaction. It was and still is the hope that freeholding the rights of the holders, flexibility would be achieved and existing holders will be able to divide the land amongst their families and reduce to some extent the growing number of people without rights to land. A more equitable distribution might be obtained and as noted earlier in paragraph A1.1.8 of this report the reduction in the statutory area of tax allotments to 4 acres might then have greater effect. The proposal may be stated as follows :-

- (a) Rights or estates of existing landholders excluding estate holders (Nobles and matapules) be converted from life interest to freehold.
- (b) All landholders to include holders of tax and town allotments only.
- (c) Eligibility to hold freehold land limited to Tongan subjects either male or female (incorporated bodies excluded).
- (d) A Tongan Protected Person or holder of a Tongan Protected Persons Passport shall not be deemed to be a Tongan for the purposes of this part of the Act.

- Section B (e) Law of succession to land shall be amended :
- (i) in the case of nobility this shall remain unaltered
 - (ii) in the case of Tongan subjects land can be disposed to members of his family subject to restrictions imposed by the Act
 - (iii) disposition of land shall be limited to the immediate members of the holder's family, then to his extended family or with the consent of the Minister to another Tongan subject.
- (f) As a consequence of freeholding land i.e. rents payable to estate holders and other rights would be abolished. To compensate and replace these it is proposed that new form of rating be introduced payable to estate holders.

1.2.8 The proposed freeholding will have some beneficial effect on our land system and remove some of the rigid restrictions as to uses. A notable observation to be made is its distinction from the normal concept of freehold land defined in the land systems of other countries. Freehold land overseas is absolutely owned and can be disposed of by the owner as he wishes. What is proposed here limits that right to the family circle as outlined above.

1.2.9 The freehold proposal was debated at length before it was made public. The main arguments advanced against the proposal was the land holder would have the potential and ability to disenfranchise his heirs and the powerful and richer class will grab all the land - the rich will get richer and the poor more pooren. It was further argued that Tongans will lose their land to foreigners and there will be no more respect for the nobility. There will be a rapid breakdown in our national traditions and customs.

- B. 1.2.10 There are no basis or validity as to the fears expressed in paragraph B.1.2.9 hereof. The arguments are misconceived and totally fail to take note of the restrictions as to disposition and succession. If the holder has immediate family then his right to dispose of the land is limited to his immediate family. He cannot go outside his family. The Minister of Lands has power to consent to a disposition only if there are no families or heirs. Further no foreigner, Tongan protected or naturalised person can own freehold land except perhaps lease land. A careful reading of the proposal will soon eliminate any lingering doubts.
- 1.2.11 No changes are proposed as regards the position of the nobility or matafua because of their rights to titles and estates. If their estates are made freehold then any undistributed land remaining in their estates would become their absolute property and not subject to distribution to the people. By leaving their position unaltered their status and special relationship with the people will be maintained thus avoiding any major upheaval in the ordered way of life in Tonga.
- 1.2.12 The tentative proposal outlined above was made public over the radio and in the Chronicle. Members of the public were in the same publication invited to make written submissions on the proposals and any other matter they wished to bring before the Commission.

RECOMMENDATIONS

- (i) That the tentative freeholding proposal be adopted.
- (ii) That the appropriate sections of the Act be amended as recommended under Section B1.2.1 of this report to facilitate the implementation of recommendation (i) above.
- (iii) That section 13 of the Act be repealed on the grounds that it is obsolete.

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C. 1.1.1 WRITTEN SUBMISSIONS

- 1.1.2 There were 17 written submissions made to the Commission most of which were from residents in Tonga. Some were received from Tongans residing in New Zealand, Australia and New Caledonia.
- 1.1.3 Copies of the Report of the 1975 Seminar on Land and Migration sponsored by the Tonga Council of Churches were distributed among the Commissioners for consideration along with written submissions.
- 1.1.4 The content and subject matter of the written submissions covered a wide field, some of which were not relevant to the term of reference of the Commission. Such submissions covered personal legal problems confined to particular individual cases and it would have been more appropriately referred to those individuals legal advisers than to the Commission. Apart from such few cases the rest of the written submissions were well prepared, presented and most helpful. Some of those submissions are set out in the ensuing paragraphs for comment.
- 1.1.5 The Tongan Council of Churches in its Seminar on Land and Migration at pages 3 and 4 of its Resolutions made the following suggestions -

The following reforms in the law and departmental practice were considered as important possibilities by the Seminar :

- (1) introduction of a land tax payable to Government revenues at a figure (fixed every year depending on the state of the economy and reducible in cases of hardship) which will encourage all tofi'a and 'api holders to make maximum use of their land, will discourage absentee holders and will persuade tofi'a holders to distribute unused land;

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- (ii) improvement and enforcement of legislation relating to the non-use of land, such legislation to be extended to both hereditary and allotted land;
- (iii) appointment of a Land Board or Commission with the Minister of Lands as Chairman to administer the distribution of land;
- (iv) raising of age of persons entitled to allotments from 16 to 18 or 21 years ;
- (v) regulation to be passed (in accordance with section 34 Land Act) to determine how many acres out of every tofi'a the holder may reserve for himself and his successors;
- (vi) amendment to provide that, on ejection of an 'epi holder or vacancy due to the lack of an heir, the 'epi should immediately pass to the Government for redistribution;
- (vii) improvement and enforcement of the present law requiring the Minister of Lands to receive every application for an 'epi direct from the applicant without the necessity of a prior signature of the tofi'a holder who may subsequently be consulted by the Minister;
- (viii) greater flexibility in sizes of allotments and leases;
- (ix) provision for the leasing of allotments to Tongans to ensure that land will be used despite the temporary absence of the holder;
- (x) introduction of town planning and zoning for Nuku'alofa and large towns with consideration of the reversion of all urban land to the Government for leasing to the people;
- (xi) amendment of the Constitution (Clauses 67 and 79) to allow the full Legislative Assembly to

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discuss and vote on all land matters (whether amendments are needed to the Constitution or to statutes) - that is to say, all matters except succession to the Throne.

1.1.6 Some of the observations made in the preceding paragraph Cl.1.5 hereof are laudable for its sentiments and academic phraseology which regrettably do not have any real validity on closer scrutiny. Dealing with each item in seriatim form we comment as follows :

(i) Land tax is a revenue question which is a prerogative of the state to impose when and at the time it needs it. Its suggested purposes above are misconceived. Absentee holder if residing overseas will be able to afford the tax. Likewise the estate holder would be in a better position to pay but the poor land owner will suffer and it is that section of the population who will feel it most. It is strange to note however that the Church which have in the past traditionally championed the cause of the poor should be advocating that their land which is used mainly for subsistence farming be taxed. The reason given for this taxation is dubious. What is meant by maximum use and how can this be determined? Historically land tax has been the source of unnecessary revolutions when it becomes oppressive and result in people losing their land.

(ii) Penal legislation for non use which may be temporary or for any other reason is a contradiction or denial of the democratic right of freedom and sanctity of ones right to property. The Commission are not totally convinced that there is a need for every acreage in the Kingdom to be cropped or farmed. We must grow what we need and not waste.

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Supply must be regulated to meet the demand. This recommendation is reminiscent of the Communist dogma, "He who works not eat not". The land in Tonga should not be over exploited to an extent to lose its fertility as is now the case in the allotments constantly used for commercial cropping.

- (iii) The concept of a Land Board has some appeal. This appeared twice in the deliberation of the Commission under the sections E and F dealing with Distribution of Land and The Land Court. We do not favour a Land Board for the purpose suggested here principally because of the role of estate under the Act.
- (iv) The Commission favours the age of entitlement or eligibility to hold registered allotments being increased from 16 years to 21 years of age.
- (v) Provision is already under section 34 of the Land Act for this. His Majesty's Privy Council is required to make a Regulation determining the area of land for the personal use of the Estate holder, and his successors in title but no regulation has been made to date.
- (vi) Under the Land Act and Constitution the estates of the Nobles and Matapules are created and firmly entrenched. The suggestion involves an important constitutional question which cannot be easily resolved. Unless all the estates of the nobility and matapules are forfeited and transferred to the Government there is little merit in pressing this point.
- (vii) This suggestion was discussed at length by the Commission. The Minister of Lands considers it undesirable and problematic. There must be consultation with the estate holders.

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There are more comments on this point under the section in the report dealing with the act.

- (viii) This is already provided for under the act.
- (ix) Refer to Amendments made to the act in 1976.
This point is already provided for under sections 554 - 556.
- (x) The recommendation is in two parts. The first part has merit and this matter is in the planning stages. As to the second part please refer to sections 550 to 556 covering leasing of allotments by holders. There is no need for the suggestion to be taken any further. This was done in 1976.

- 1.1.7 A prominent Church leader made the following submissions :

Some Fundamental Principles

There are some basic principles that must be part of our thinking as Tongans and as Christian people when considering Land Laws :

1. That all land in Tonga ultimately belongs to the people of Tonga. It is their basic inheritance from God. The land should be used therefore for the benefit of every Tongan.
2. Man/woman is, under God, the measure and end of all undertakings that are done in our country. The primacy of the dignity of man/woman is the criterion for judgements and decisions.
3. The second criterion in formulating Land Laws for Tonga is the concern we must have for the good of our people as a whole, or what commonly is called, "The common good".
4. The estate holders and title holders are only stewards of God and not absolute owners of the land.

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5. The estate holder is God's steward to distribute the land in a just way so that every Tongan has a fair share of his God-given heritage. He/she will receive his/her share through being a title holder of land or through benefiting from productivity of the land, e.g. through taxes or leases.
6. The title holder of the land is likewise a steward of God to work the land allotted to him so as to benefit both himself and the people of Tonga.
7. An estate holder, like the rest of his compatriots, is entitled to a town allotment and to a plantation allotment.
8. Any money received from leases from land under the guardianship of the estate holder, that money is the property of the people of Tonga. It is not the private property of the estate holder and this money should be used for the benefit of the people of Tonga.
9. Power and authority are to be used for serving the good of the people especially the poor and the weak, and not for self-aggrandisement and for taking the lion's share.

Some Problems - Injustices and Unnecessary Anzieties

1. Many families and some Churches are living at the mercy of the estate holder. They occupy town allotments or use plantation allotments but these are not registered under their own name. Many of these people are eligible to have the land registered under their names. Some estate holders are unwilling that such land be legally registered. The occupants of such are enslaved by such customary arrangements. Sometimes there is a lot of demand for money or other provisions by the estate holder.

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People in this arrangement are not truly free. They live with certain fears, they are at the mercy and whim of the estate holder. This is a form of slavery. There are very many cases of people who have occupied land for many years and even for generations and have been evicted. Legally, the estate holder is right but under Divine Justice he is unjust. In many of these cases people are evicted because they are poor and powerless. Some other people who are more powerful and have influence or money to win favour or to "buy" the estate holder, now become the new owner.

2. In many cases the term of lease for land given to lease holders is not long enough and they have no guarantee that the lease will be renewed. For them to get a lease or to renew it some estate holders demand money or other goods, often exorbitant. This is bribery or "selling of land".
3. Title holders of land under Government enjoy freedom compared with those under other estate holders. If people are given a choice of holding land under Government or under other estate holders the great majority would opt to be under Government estate.
4. Because of the smallness of the country there should be protective laws on lands leased to expatriates, e.g. limitation of land leased. If this is not done it is possible that expatriates will become very powerful financially, landwise and politically in Tonga and Tongans will become alien in our own country. This will lead to greater resentment and racial tension. The situation of the Fijian in Fiji and the Maori in New Zealand are sobering and neighbourly lessons for us.

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Freehold land

Under existing Land Laws of Tonga no land can be alienated. Considering the people and the smallness of Tonga this is still a good insurance that that land Tonga has is still the heritage of the people. We learn from Pacific countries practising Freehold ownership that this land system creates more problems than it solves. Fiji and Papua New Guinea governments have been buying back some of the alienated freehold land and returning it to their indigenous people. Vanuatu was even more radical, after independence it declared that all land belonged to the indigenous people.

Possible situation if Freehold Tenure was to become Law in Tonga

1. A few wealthy people, wealthy Churches, and Business Companies will soon own all of Tonga.
2. Many short-sighted holders will deprive themselves and their heirs of the opportunity of ever owning land by the present owner selling his land for short-term immediate gains. At a guess, about 80% of the people of Tonga have this short-term approach.
3. In a short time a minority group will own the whole of Tonga, the great majority will have no land whatever. We learn from other countries like the Philippines and many countries of Latin America that the plight of the poor who are the 90% in such a system, is so degrading.
4. The estate holders will be tempted to hold on to all unregistered lands under their trusteeship. They will not carry out the provision of existing Laws of Tonga that the estate holder grant allotments to those of his people who need them. By natural law any Tongan who needs land, and if there is land available, any estate holder is obliged to give him land.

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Land for Public Purposes should not be charged.

Rental

1. Schools - Government, Church and Private Schools

All approved school sites should pay no rental. No compensation is required ^{be paid to} ~~to~~ an estate holder for the use of such land. But, of course, there should be a provision for dialogue especially with new sites that may be required. A private owner of such land, however, should be compensated.

2. Church Sites

Tonga is proud that its motto is, "KO E 'OTUA MO TONGA KO HOKU 'OFI'". We love, in Tonga, to boast as a people who are church-goers and read the Bible. If not only because church sites are for public purposes but also for Divine worship, church sites should be rental free - a divine privilege. I often wonder what this, the above Tongan motto, means. Could it mean that money is the overriding thing - "KO E 'OTUA MO E KAKAI 'O TONGA, KO 'EKU POPULA"?

3. Sport and Recreational Grounds

Existing sport and recreational grounds should be free from rent. Towns and villages should be provided with adequate sport and recreational grounds and rent should not be charged for them.

Estate holders should not be compensated but private owners whose land may be needed for such facilities should be compensated. Such grounds are essential for the development of our people. Parking areas should always be allotted around shopping centres and places of public gatherings such as hotels, village halls and churches.

Some Concrete Suggestions

1. Laws of Succession : These should be amended so that the benefit from the land will include all the heirs.

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2. Stewardship over land be taken away from estate holders and be centralised in a single Land Court. All matters relating to Land will be dealt with by this Court and its departments. The Judge and Heads of Departments of the Land Court should be chosen on their outstandingly impeccable character.
3. Leases on Land : Leases should be standardised and the evaluation of leases should take into consideration the financial situation of Tonga, the position of the land, the size and type of use of the land, e.g. business or charitable organizations. Some taxation, even nominal, be made on all lands except those for public purposes and divine worship.
4. All monies received from leases and taxation should be used for public purposes that benefit all Tongans, e.g. free education for all, free hospitalisation and old age pension.
5. There should be amendments in Laws for plantation allotments to ensure that all are being productively utilised.

1.1.8 The submissions outlined in the preceding paragraph Cl.1.7 hereof are divided into several sub headings and for easy reference the views of the Commission will be set out under the same sub headings.

Some Fundamental Principles

These are worthy and admirable principles to be born in mind particularly by the Commission in its search for a fair equitable and effective system to serve all the people and not sectarian interests. The underlying theme of depriving the nobility of their constitutional rights and giving from the rich to the poor has not gone unnoticed. We draw attention however to the episode in the New Testament of the Bible as to the meeting between Jesus and the rich young man. (Mark 10:17-31) There the young man asked Jesus what can he do to attain eternal life.

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The final advise given was "go and sell all your earthly possessions, distribute them to the poor and come, follow me." The moral to be emphasised are two fold, First Churches hold large areas of leased land. It might be advisable for some of them to follow this advice first before requiring others to do so. Secondly the advice given was essentially a voluntary act for one's own redemption rather than a coerced and compulsory act to remove the legal and constitutional rights of the nobility and estate holders. We believe that to remove the Constitutional and land rights of the estate holders would constitute a radical change with certain detrimental effects on the fabric of the Tongan society. There are constitutional safeguards which applies equally to the nobles and the people. If these safeguards and protection are removed in the case of the nobility and estate holders then they should also be removed in the case of the people. Our Constitution provides that there must be one law for all not one for the nobility and another for the people. This was a strong factor influencing the deliberations of the Commission and the other was the strong support from the people at the public hearings to retain the status quo.

Some Problems - Injustices and Unnecessary Anxieties
After reading these submissions the Commission was disappointed that at the end of the public hearings no concrete evidence at all was presented or received to support these claims. It is not to be suggested that these problems are illusionary as it is quite within the realm of possibilities that they do exist. Suffice however to say that the opportunity was given for people to come forward and present these problems to assist the Commission in finding a solution to rectify the situation if it exists but no one had seen fit to do so.

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The other points under this sub heading are noted. There are existing provision in the Land Act to cover renewal of leases (refer section 36 of the Land Act) which are often not used by lessees. The policy of granting, approving or otherwise of leases is under the control of Cabinet. It is not usual for Cabinet to approve leases to foreigners (non-Tongans) unless they have the right to reside in the Kingdom and meet such conditions as Cabinet may in its' absolute discretion from time to time impose.

Freehold Land

The section dealing with the tentative Freehold proposal in paragraph 4 hereof would cover the misgivings contained in this submission.

Land for Public Purposes should not be charged Rental

1. Schools - Government, Church and Private Schools

Here again the distinction between an estate holder and private owner is repeated and we are asked to consider separate laws for separate classes. The Commission has expressed its views on this type of submissions and its ramifications. It has been suggested to the Commission that Churches are money making organisations and are wealthy enough not to be treated as charitable organisations. It is claimed that in their annual collections of offerings they receive many hundreds of thousands of dollars, there are weekly collections, they lend money to their members at certain interest rates, run and operate certain business ventures and charge school fees. The Commission was asked not to treat the churches differently from individuals or other commercial interests. It was submitted to the Commission that the collective power and ability of any Church to meet reasonable rentals was greater than that of a private individual or a small company and for that reason should not be exempted from

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paying reasonable rental.

The Commission is not unmindful of the public purpose question relating to schools and the many good and beneficial work that churches are doing and have done in the past but are of the view that the rental question should be left to be the subject of private negotiation between the parties. People do have conscience with some to a lesser degree than others but it is believed that churches are persuasive enough with their religious and charitable objectives to expect in their dealings with people to receive reasonable or low rentals.

2. Church Sites

It was brought to the attention of the Commission that the Roman Catholic church and Tongan Methodist church have erected churches at Kolofo'ou, Longolongo and Fasi with the church sites serving dual purposes. The church buildings are divided into two parts. The top floors are used for worshipping and the ground floors for business purposes. The other instance at Fasi shows that the site is used for offices and a pharmacy and the balance for a church and hall. In this respect the Commission was compelled to look at the applicability of section 18 of the Land Act to those sites as well as other sites leases by churches.

Section 18 reads :

18.-(1) Religious bodies and charitable and social organizations holding land on lease shall not have the right to use such land for any other than the original purpose of the body or organization declared at the time of the making of the lease, or to transfer or sub-let such land without the prior consent of Cabinet.

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(2) If any such body or organization contravenes the provisions of this section the Minister may with the consent of the Cabinet institute proceedings in the Land Court against such body or organization claiming therein the cancellation of its lease and on proof of the contravention of this section by such body or organization the Court shall order such lease to be delivered up to be cancelled and upon cancellation of the lease the lands therein specified if situate in an hereditary estate (tofi'a) or town allotment ('api kolo) shall revert to the holder and if situate elsewhere shall revert to the Crown.

We direct attention also to section 108 of the Constitution prohibiting churches from using such land for anything other than religious purposes or subletting their land without the consent of Cabinet. It would appear that some churches might be breaking the law of the land and are in risk of having their leases cancelled and the land reverting to the appropriate owners. In the light of these practices and for some of the reasons given under the preceding subheading relating to schools, the Commission has been and is reluctant to recommend that no rental be charged. It would be desirable and highly advisable for some of these churches to rectify any breaches of the law immediately.

3. Sport and Recreational Grounds

The Commission favours and strongly support the concept advanced in this submission.

Some Concrete Suggestions

1. Laws of Succession : The Commission has missed the point advanced as the wording of the suggestion is unclear or confused. Recommendations for amendments are being made elsewhere in this report.

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2. Stewardship over land be taken away from estate holders

The wording of this suggestion and those found under Some Fundamental Principles are simplistic, and contrary to the statements as to the rights of estate holders under the Constitution and Land Act. The use of the words "Stewardship" or "steward" import totally different meanings from those appearing in the law.

Section 104 of the Constitution (relevant part underlined) provides :

All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or matapules one or more estates to become their hereditary estates.

It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration shall become a covenant binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever.

Under the Land Act, the land described in the Schedules thereto are declared to be estates of the nobles and matapules. In Part III of the Land Act relating to Hereditary Estates there is a reaffirmation of the position of the nobles and their estates with requirements that holders of tax allotments pay rent to them. In addition they receive rents from leases. Under sections 7 and 37 of the Act the right of entitlement to tax allotments and powers of the Minister to grant

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allotments from hereditary estates are provided. Apart from this one cannot find anywhere any suggestion of trusteeship or stewardship. As a result it would be impossible to consider this suggestion because of the provisions of section 20 of the Constitution relating to protection of existing rights. The Commission has not been given any compelling reasons at this point of time nor can it foresee into the future that such a drastic and revolutionary move with all its constitutional and social implications be now recommended.

3. Leases on Land

Most of the suggestions made under this heading are already provided for under the existing law and practices adopted by the Ministry of Lands and Cabinet. The question of taxation has not been provided for and is referred to in the earlier part of this report.

4. Suggestions 4 - 5 have already been dealt with in this report.

1.1.9 Those who made written submissions can be classified into groupings of former civil servants now business people with interest in land, a leading academic, Lecturer in land systems, lawyer and ordinary citizens. In the main they cover the following grounds :

- (a) One citizen supported the tentative freehold proposal and including women as possible heirs.
- (b) Three opposed the tentative freehold proposal much for the same reason as the prominent church leader whose submissions have been dealt with in the preceding paragraphs Cl.1.7 and Cl.1.8 hereof. It is to be noted that the leading academic presented a lengthy paper covering almost identical grounds but differently worded as those set out in paragraph Cl.1.7 hereof.

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- (c) One ordinary citizen was against any change at all.
- (d) The former civil servant now businessman proposed a land tax of \$1 payable by every landholders to help Government revenue.
- (e) The submissions from the Lawyer asked for the following proposals to be recommended -
 - (i) Every tax allotment holder to pay to the estate holder the sum of \$5 per acre i.e. Approx. \$45 per annum for $8\frac{1}{2}$ acres.
 - (ii) Every town allotment holder to pay to the estate holder the sum of \$15 for 30 perches and \$30 for 1 rood 24 perches lots per annum.
 - (iii) The restrictions on estate holders leasing more than 5% of their estates be removed.
 - (iv) Otherwise no further amendments to the Land Act in case we have trouble in the future.
 - (v) Beach frontages in the estates of Nobles should rest in them rather than the Crown.
- (f) An ordinary citizen complained about the conduct and selfish behaviour of the noble Nuku. He, like the prominent church leader and leading academic supported the removal of estates from the nobles and matapules to the Government and believed that as long as land estates are held by the nobles, people particularly those in the Eastern districts (Hahake) are suffering and are still in servitude. He submitted the following proposals :
 - (i) Give the nobles a salary and remove all their land rights or estates.

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- (ii) Include women in the law of succession to land and titles as Her Majesty the late Queen Salote Tupou III was a fine example thereof.
- (iii) Prohibit leasing large areas of town allotments such as Nuku's son having 4 acres and Tualau 16 acres.
- (iv) Church and School leases should be renewable by the Minister of Lands without the estate holders' consent.
- (g) The paper presented by the Lecturer in land system covered such topics as the environment, land conservation and preservations of coastal areas. He highlighted the shortage of land and the problems of an increasing population and stressed the need to preserve the coastal land areas as public reserves for the future. In time, if overcrowding occurs people should have some where to go for recreational purposes.

1.1.10 In the parliamentary session of 1983 attempt was made to have the foreshore area as defined under the Land Act reduced from 50 feet to 30 feet. This legislative measure has been deferred and it may return to the Legislative Assembly for enactment. In one of the submission referred to above the Commission was asked to consider recommending the vesting of foreshore land with the estate holders. Both measures should be strongly opposed. The attempt to reduce the foreshore to 30 feet and now the submission to vest it with estate holders are both short-sighted and selfish in nature. Both are directed at giving estate holders access to sand for sale without control or thought being given to conservation of our national heritage. Beach frontages are regarded in most countries of the world as valuable national assets which should be preserved for public access and enjoyment.

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Countries such as New Zealand and others are enacting laws to compulsorily buy back coastal lands from private ownership.

- 1.1.11 Alternative substitute for sand for building purposes should be considered. The digging for and removal of sand from our beaches should be strictly controlled and eventually brought to a stop. Some beach areas once beautiful and serene spots are now ugly sights and a constant reminder of the price we are paying for development without fore-thought and planning.
- 1.1.12 The Commission is of the view that the foreshore should be extended and beautified or landscaped as part of a national programme involving all the people of Tonga. A programme entitled "Beautify Tonga" or "Beautiful Tonga" with the ultimate aim of having a public road covering the entire coastal area of Tongatapu should be considered. It is not too late or early to consider such a programme being implemented.
- 1.1.13 Although some of the submissions set out above are not specifically referred to, some have already been covered in this section of the report, with some being noted for future reference and policy formulation. Some are not proper subjects of items for recommendation and legislative action.
- 1.1.14 The Commission wish to acknowledge and record appreciation to all who were concerned enough and took the time and made the effort to contribute written submissions. Whatever the comments made on them in the foregoing pages of this report, no reflection was ever intended or made as to its value and the assistance derived therefrom.

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D. 1.1.1 PUBLIC HEARING AND ORAL SUBMISSIONS

1.1.2 At the Commencement of the hearing dates for oral submissions the Commission had completed its work programme for Period One. Its' tentative freehold proposals had been broadcasted on radio and published in the Chronicle, radio interviews and talk back programmes giving it wide coverage for public awareness and understanding. Tentative issues already discussed or outlined in the radio interview and talk back programmes were listed and formulated for testing at the hearings.

1.1.3 The list of subject matters was drawn up and used by the Commission for eliciting comment from those people who attended the hearings and gave oral submissions. The list is set out hereunder for convenience viz :

NUMBER OF SUBMISSIONS

RECEIVED :

ROYAL LAND COMMISSION PUBLIC HEARING

VENUE : _____

DATE : _____

SUBJECT MATTERS

1. Freeholding
 - Family
 - Others
2. Law of inheritance
 - Present
 - Daughters
 - Illegitimate children
 - "Adopted" children
3. Life interest
4. Women's rights

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5. Illegitimate children
6. Widow's rights
7. Church and Charitable Leases
8. Leases
 - General
 - Tax Allotment
 - Town Allotment
9. Village reserves/Sports ground
10. Unlawful Dealing with Land
 - Money
 - Alienation
11. Disposition of Land
 - Money
 - Tongan Customs
12. Hereditary estates
 - General
 - 'Api fakatofi'a
 - Transfer to Government
 - 'Api fakamatapule
 - 'Api tō
13. Rental of tax allotment
14. Land Tax or Rates
15. Subdivision of town allotments
 - General
 - Minimum area
16. Mortgages of growing crops
17. Limitation of Action
18. Heir must claim within one year
19. Applicant refusing grant NOT to make second application
20. Son or grandson may elect to take as heir
21. Exchange of allotments

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22. Beach Frontage (Clause 109)
 - Government to develop beach roads
23. Forfeiture (Abandons)
24. Royal Estates
 - General
 - Schedule 2
 - Schedule 3
25. Right to allotments
 - General
 - Conditions :
 1. Development
 2. Tongan subject by birth
 3. Naturalisation
 4. Residence
26. Reservation to the Crown of all minerals
27. Power to determine life estate :
 - (a) Minister of Lands
 - (b) Land Court
28. Weeding cemeteries (foreshore)
29. Protection of innocent wife/children
30. Reclaimed areas
31. Absentee owners.

1.1.4 The range of subject matter listed above comprised some of the potential areas for review and which needed investigation. Statistical data was required to support the review and particularly recommendations made, either for changing or preserving the status quo. During period one a lot of discussions took place and many questions asked by the Commission but the validity of the views expressed or answers given could not be confirmed.

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This at times gave rise to unnecessary debate in the abstract. For the purpose of recording and keeping accurate records of the meetings of the Commission and the public hearings, a tape recorder was donated by one of the Commissioner and used throughout these sessions.

- 1.1.5 Prior to the date of any public hearing advanced radio announcements were made informing the public of the date, time and location of the hearing and inviting interested members of the public to attend and express his or her views.
- 1.1.6 At the commencement of each public hearing at each of the venues, the meeting was declared open and prayers were said by a leading Minister of the District and the Commission was officially welcomed by a matapule. The Chairman then addressed the meeting and outlined the purpose of the exercise and urged and encouraged people to participate and to be frank and open with their submissions. The Chairman conducted the meetings with an air of informality to encourage and enable people to speak freely to the Commission without fear. Questions were then asked by the Commissioners and answers given by those appearing before them. The exercise proved invaluable to the Commissioners as well as those appearing before them. It helped to break-down misunderstandings and misconceptions about the Government, the land system and the position of the nobility. People expressed gratitude and some felt deeply moved and honoured to be given the opportunity to play a part in determining their own destiny.
- 1.1.7 Public hearings were conducted throughout the Kingdom during the months of January, February, March, April and May 1984 over a total number of 30 days. The first meeting of the Commission was held at Pouono Meiafa Vava'u.

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It was a historical moment for the Commission when it remembered that it was on that hallowed spot in 1875 King George Tupou I declared freedom for the people and committed Tonga to God. It was on that first dedication that the motto - "God and Tonga are my inheritance" originated. A total of 470 people came and gave their views at the public hearings at the following venues :

(a)	VAVA'U	9/1/84 to 13/1/84	- 59
(b)	HA'APAI	23/1/84 to 26/1/84	- 51
(c)	'EUA	21/2/84 to 23/2/84	- 64
(d)	TONGATAPU	27/2/84 to 26/4/84	- 263
(e)	NIUATOPUTAPU	8/5/84	- 17
(f)	NIUAFO'OU	10/5/84	- 16
			<u>470</u>

The hearings at Tongatapu took a total of 16 days and were held at Tetakamotonga, Lapaha, Kolonga, Navutoka, Ha'asini, Houma, Nukunuku, Kolovai, 'Atele, Vaini, Foleha and Nuku'alofa. At 'Eua the hearings were held at 'Ohonua and at Futu. At the other venues the hearings were held only at the one place - Neiafu, Vava'u; Tongaleleka, Ha'apai; Hihifo, Niuatoputapu; Sapa'ata, Niuafo'ou.

1.1.8 Eleven Nobles and 2 Matapules ma'u tofi'a came and expressed their views at the public hearings. Six Magistrates, a number of District and Town Officers and ministers of religion were also amongst those who expressed views as did a small number of women.

1.1.9 It is worthy of mention that at Ha'apai the Commission used the Hika 'o e Lolohea (Tail of Lolohea) as a table during the public hearing at Toluafu Hall, Tongaleleka commencing from the 23rd day and ending on the 26th January 1984.

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The "Hiku 'o e Lolohea" was brought to Tonga from Fiji on or about the year 1610 by Baleisasa (son of Tui Nayan of Fiji) and Tuisoso and their families. It was kept by the noble Malupo and used by that noble and the people of 'Uiha on the occasion of the birth of Tupouto'a father of King George Tupou I to float the Veifua from 'Uiha to Lifuka whilst the people of 'Uiha waded and swam in the sea guiding it all the way to honour the occasion. Baron Tuita has been responsible for its restoration and storage at Toluafe Hall (named after his father), as an important and historical piece of artwork associated with the birth of an enlightened era. Tupouto'a and His Royal descendants have fought for unification, independence, freedom of the people and then granted a Constitution and made land available to the people with their rights thereto secured by law. It was therefore a fit and proper occasion to have the Hiku 'o e Lolohea on display and use as a reminder of the past and indicator for the future.

- 1.1.10 Throughout the public hearing sessions and even with the written submissions we noted considerable apprehension being entertained by people that there might be radical changes made. When suggestions of changes were made people replied that there was nothing wrong with the system. There was and is an unmistakable defensive attitude towards the system and the nobility. We were at times informed at these hearings that if the nobility are done away with or their estates removed they (people) believe it would be bad thing for Tonga. This was in contradiction to submissions made by others in writing and orally advocating the abolition of the role of the nobility with regards to land and transferring all the estates and responsibilities thereto to the Government.

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Even the Tonga Council of Churches Seminar in 1975 on Land and Migration which had high hopes of shaking the system ended up with this cautionary note at page III of its Resolutions viz :

...."Subject to what the Land Committee may say after its investigation, the Seminar sees the need for important improvements in the land tenure system but not the replacement of the present system by a radically new one"

- 1.1.11 Referring specifically to the attitude expressed by the statement from the Seminar on Land and Migration was truly representative of the views expressed at the public hearings. This type of attitude gave the Commission little option in so far as any attempt or desire to make changes. Some said there should be changes without nominating what changes were required. Others said there should be no changes. All these conflicting attitudes created difficulties for the Commission.
- 1.1.12 It is interesting to record that when the ordinary people or commoners appeared before the Commission and gave their oral submissions they were relaxed and without inhibitions. This was in marked contrast to members of the nobility or estate holders. The latter class prefaced most of their submissions with protestations of being fair, law abiding and God fearing citizens. They have dutifully done the right things to God, His Majesty King Taufa'ahau Tupou IV and the people of this Kingdom. Most claimed that they have distributed all their estates to the people. These statements did not correspond with the figures available from the Ministry of Lands.
- 1.1.13 The estate holder Tatu of Leimotolu, Vavala was a case in point. He was a humorous aged personality suffering from some form of infirmity, hard of

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hearing when convenient and alert as young buck when sensing any danger. He was making all the above-mentioned assurances and particularly adamant that his large estate had all been distributed to the people. Commissioner Edwards pressed the last point with him. Fotu flatly denied having any vacant or unallotted land and made an evasive and faint reference to being connected to his questioner. At that point it was put to Fotu to forget about the inquiry by the Commission as it was a personal matter concerning the said Commissioner's desire to find land in Vava'u to live. He was ready to leave New Zealand and move to Vava'u. A prompt reply was given by Fotu -

"If you care to visit me to night I have some land available to give you".

The visit was not made because it might have been costly and as a consequence there was no way of finding out whether the promise would have been fulfilled. We note for the record that the total estate of Fotu consists of 2816 acres 2 roods 6.4 perches. There are 117 town allotments registered by holders without defined areas, 375 registered tax allotments, 10 church leases, 1 board lease, 1 lease to a foreigner and 3 leases to Tongans. The balance of his estate consist of 486 acres 1 rood 24.7 perches which would include the 117 town allotments without defined areas, unregistered occupiers and land for his personal use. In his evidence he said that he had distributed all his estates and some of which had not been registered. This jovial character and estate holder could have been telling the truth and was perhaps merely jesting with his questioner.

- 1.1.14 The public hearing exercise proved most valuable and beneficial to the Commissioners. It gave them in sight into the attitudes and thinking of the

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ordinary Tonpan and some of the estitcholders. It also fulfilled the objectives of the Commission set out in paragraph B1.1.3. Its helpful also when the analysis of the Act was carried out.