

APPENDIX 26

(FAKALAH I 26)



**MINISTRY OF LANDS, SURVEY,
NATURAL RESOURCES & ENVIRONMENT**

GOVERNMENT OF TONGA

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Ref: ceo_rlc/1-10

Date: 24 May 2010

Gloria Pale'o
Secretary
Royal Land Commission
Fasi mo e Afi
Nuku'alofa

Dear Madam:

Thank you for your letter dated 5/5/2010 (Reference: RLC 57/2010). Please accept our sincere apologies for the delay in response. However, we hope that the following comments would assist you in your enquiry.

1. **Interpretation of the term "land" under the Land Act to include seabed under Tonga's internal waters.**

Please find attached (Appendix No. 1) the copy of the legal opinion requested regarding the interpretation of the term "land" to include seabed under Tonga's internal waters.

2. **Government policy of granting 999-year leases on Government Estates.**

Regarding the Privy Council Decision Number 9/2007 dated 26/1/2007 (Appendix No.2) approved the Government policy of 999-year leases on Government Estates, please note;

- i. That the ministry has not received any application for a 999-year lease. The applications received to date were for the 99-year leases;
- ii. That the criterion for the 999-year lease on Government estates has not been finalised. We believe that due process for such major change is necessary.

3. **Tenancy Agreements:**

The ministry's position is:

- i. The issue with the Tenancy Agreements had been raised by the so called Land Agents in the past;
- ii. The ministry only recognise the 5-year agreement for farming purposes, as has been done for decades. The ministry does not recognise these "tenancy agreements" unless it is a formal leasing agreement of the land concerned;
- iii. The validity and legality of such Tenancy Agreements need to be clearly defined.

The ministry acknowledges the work done by the Royal Land Commission, and appreciates the opportunity to collaborate with the Royal Land Commission as this is a fundamental exercise for the future administration and management of Tonga's Land Tenure System.


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Chief Executive Officer



APPENDIX No. 1

GOVERNMENT OF TONGA
SAVINGRAM

FROM : Solicitor General
TO : Secretary to Lands, Survey, Natural Resources and Environment
SVINGREF : LSP:01/08-C.19
DATE : 16 January 2008

Re: Legal Opinion on whether Fanga'uta Lagoon is land territory

We have reviewed our original legal opinion on the above subject and advise as follows-

1. It has been established that Fanga'uta Lagoon is within the internal waters of Tonga and not part of the territorial waters.
2. Tonga is a party to the United Nations Convention Law of the Sea Convention (UNCLOS) since 2nd July 1993. Therefore we have international obligations to conform to its provisions.
3. Article 2 of UNCLOS deals with the regime of internal waters in that Tonga exercises its sovereignty as on land territory, that is all Tongan laws apply as if on land. Therefore what happens in internal waters is subject to all the Tonga's onshore laws. Due to lagoons being located within internal waters, then all activities performed in the lagoons are treated as if taking place on Tonga land territory.
4. For all intents and purposes Fanga'uta Lagoon as internal waters must be considered as land territory and have the same rights as land territory proper.
5. Due to Fanga'uta Lagoon being part of Tonga's internal waters, then the Land Act (and any other relevant sectoral legislation) would be applicable to govern any activity proposed on it as if on land territory.

Maio

Linda S. Folaumoetu'i
Solicitor General

