

LAND PROBLEMS IN TONGA

LAKI NIU*

INTRODUCTION

The land problem in Tonga may not be very different from land problems in other Pacific countries, including Australia and New Zealand. It is mainly a problem of distribution.

In Australia and New Zealand, and in some Pacific countries, Crown land is distributed by way of sale; those who can afford it are distributed a piece of land from those willing to sell it for the price required by the seller. The rich have land and the poor do not. The poor pay rent to live on the land of the rich.

In countries with customary lands, even in Australia and New Zealand, there is disagreement and dissatisfaction with land distribution by those in control of the land. The rich have land and the poor do not.

Tonga faces a similar predicament. The land is held and owned by the Crown, which has allocated the lands of the Kingdom to:

1. the King personally, as his hereditary Royal Estates and Royal Family Estates;
2. the nobility, appointed by the King as hereditary noble estates; and
3. the Government (the Crown), as Crown estates.

Out of these estates are granted only two types of landholdings:

1. allotments; and
2. leases.

ALLOTMENTS

These are life estates granted to a male Tongan subject, which devolve, upon death or surrender of the holder, to his widow and then upon his eldest legitimate son or grandson or others in default, after which it shall revert to the estate-holder. If there is no heir, or if no claim is made within 12 months of the death or surrender, the allotment reverts automatically to the Crown.

The allotments cannot be transferred, sold or bequeathed. They must devolve according to law on the heir.

The other children or grandchildren have no right to share in the allotment and must apply for their own allotments. However, they cannot do this because there is no more land in the estates for allotment. This has been the case for many years now, and there are more people *without* allotments than people *with* allotments.

* President, Tonga Law Society.

LEASES

An allotment holder may lease his allotment. A noble may also lease part of his estate. The lease, however, must be approved by Cabinet and must be surveyed and registered and issued by way of deed of lease, which is for a limited period of up to 99 years. It provides for payment of an annual rent to the Land Office, 10 per cent of which is retained as government revenue. The rent may be increased every five years by agreement or by decision of Cabinet where there is no agreement. At the end of the lease, the lessee must remove his buildings from the land.

Sub-leases may be granted by the lease, but Cabinet approval must be obtained and a deed registered and issued.

UNFAIR DISTRIBUTION

Although the law grants land to every male Tongan the entitlement to hold an allotment—a tax allotment of eight-and-three-quarter acres and a town allotment of one rood 24 perches—he is not actually granted such allotments. Neither does the law compel an estate-holder to grant them to him. The estate-holder may only grant them to an applicant who pays a sufficient sum. Therefore, those with little to no money will never receive an allotment, and there are more people with little to no money than those with money.

HINDRANCE TO DEVELOPMENT

Because the allotment holder only has a life interest in the allotment, he cannot build anything beyond his lifetime on the land, e.g. a hotel, shop or any such long-running facility. When he dies, his widow will be the only one with legal interest in the land and after her death, the eldest son. No other child can have an interest.

Further, the lease depreciates in value every year. Any building constructed on the land will have to be removed at the end of the lease. Besides, the lessee never knows what the rent may be after five years.

No serious investor or businessman would want to invest or build on an allotment or leased land in Tonga.

LAND REFORMS

There is a definite need to reform the land system in Tonga, as found by the Land Commissions in 1983. However, nothing has yet been done about the 1983 recommendations.

The Royal Land Commission of 2010 also made recommendations for reforms but they were hampered by the terms of reference they were given, i.e. ‘without changing the basic land tenure of our Kingdom’. So, this Commission’s recommendations were only superficial and cosmetic.

LEGISLATURE

The legislature of the Kingdom comprises the King and the Legislative Assembly, which is made up of 17 members elected by the people and nine nobles elected by the 33 nobles who hold the bulk of the Kingdom's estates. In the 2010 election, five representatives joined the nine nobles, filling 14 seats, against 12 for the people. This formed the present Government. The five people's members are ruled by the nine noble members. Accordingly, the country is being ruled by the nine minority nobles who represent only 33 Tongans.

Until the people elect an overwhelming majority of 14 representatives of the people, i.e. 83 percent, the people will have no authority to make laws to change the present land tenure of the Kingdom.