

## Housing, Land and Property Law in Tonga

### 1 Key laws and actors

<a href="#">Laws</a>	The main laws governing housing, land, building and planning are the <a href="#">Constitution</a> , the <a href="#">Land Act 1927</a> , the <a href="#">National Spatial Planning and Management Act 2012</a> and the <a href="#">Building Control and Standards Act 2002</a> .
<a href="#">Key government actors</a>	The Ministry of Lands and Natural Resources is responsible for land administration. The Ministry houses the National Spatial Planning Authority, which is responsible for administering planning law.  In the event of a disaster, the National Emergency Operations Committee (NEOC) is responsible for coordinating the response. The NEOC is supported by District Emergency Management Committees (DEMC) and Village Emergency Committees (VEC). There is a DEMC for each of the five districts: Ha'apai, Vava'u, Niuatoputapu, Niuafu'ou and 'Eua.
<a href="#">Shelter cluster</a>	The contact details for key Shelter Cluster personnel are provided in <a href="#">Section 5 below</a> .

### 2 Common types of tenure

Almost all types of land tenure in Tonga must be created or transferred through registration. Unlike many countries in the Pacific, Tonga does *not* have a dual system of customary ownership and registered ownership. The table below summarises the most common types of tenure in Tonga.

Tenure	Commonly Registered?	Key Features	Title document
<a href="#">Crown land</a>	n/a	Land owned by the government.	n/a
<a href="#">Hereditary estate</a>	Yes	A life interest held by a Noble ( <i>tofia</i> ) or Chief ( <i>matapule</i> ) and passed down from father to son.	Tofia certificate
<a href="#">Town allotment</a>	Yes	A life interest held by a single Tongan male and used for residential purposes. Passed down from father to son. Normally located on a hereditary estate, but may be located on Crown land. Rarely held by women.	Deed of Grant
<a href="#">Tax allotment</a>	Yes	Same as town allotments but used for agriculture.	Deed of Grant
<a href="#">Lease</a>	Yes	May be granted over Crown land, hereditary estates or allotments. May be transferred or sub-leased. May be held by women or foreigners.  Maximum duration of 99 years for leases of hereditary estates and town allotments; maximum duration of 20 years for leases of tax allotments.	Form of Lease
<a href="#">Sub-lease</a>	Sometimes	Similar to leases but not required to be registered if for 3 years or less.	Form of Sub-Lease
<a href="#">Permit</a>	Yes	Similar to leases but landholder retains greater degree of control because permits cannot be transferred or sub-leased.	Form of Permit

<a href="#">Tenancy agreement</a>	No	Written agreement which may be, but is not normally, registered. Majority of tenancy agreements are not legally enforceable. Some tenancy agreements are verbal.	n/a
<a href="#">Licence</a>	No	Verbal permission to use land and/or housing. Commonly granted to family or friends. Not capable of being registered and very difficult to enforce (requires court case and evidence of landholder's conduct).	n/a

### 3 Security of tenure of vulnerable groups

<a href="#">Women</a>	Women cannot own estates and rarely own allotments. It is common for women to live on estates or allotments owned by their husbands or male family members. In this situation, women do not have a <i>legal</i> entitlement to occupy the land. Instead, they rely on their husbands' or male family members' good will, which is informed by social norms and expectations.
<a href="#">Minority groups</a>	The main ethnic minority in Tonga is the Chinese, which represent 2 % of the urban population. They can and do hold leases and permits, but they cannot hold estates or allotments. Members of the Chinese minority often have tenancy agreements, which are generally not legally enforceable.
<a href="#">Informal settlements</a>	As of March 2017, there are no informal settlements in Tonga. In 2015, the government legalised an informal settlement in Nuku'alofa, named 'Patangata', by granting 30-year leases to the head of each family occupying the settlement.
<a href="#">Landless people</a>	Adverse possession is not recognised but it is lawful for a person to occupy land without the owner's permission until the owner takes steps to evict them.

### 4 Eviction, expropriation and relocation

<a href="#">Eviction</a>	<p>There are no laws against forced evictions. However, case law establishes:</p> <ul style="list-style-type: none"> <li>– a landowner cannot evict a licensee if they have promised, or induced the licensee to believe, they would be able to use the land for a certain period;</li> <li>– a landowner cannot evict a squatter who has unlawfully resided on their land for a period of 10 years or more;</li> <li>– the Government is required to give consideration to the interests of squatters before granting leases or other interests over Crown land.</li> </ul>
<a href="#">Expropriation</a>	<p>The Land Act allows the Government to acquire land for public purposes. The Government must compensate a landowner for their land, buildings and any crops.</p> <p>Land acquisition may be a long process and is not practical in the context of a disaster or crisis. The Crown must provide a landholder 30 days' notice and the landholder has a right to appeal in Court.</p>
<a href="#">Relocation</a>	<p>There are no laws governing relocations. The principles governing relocations are developed on a case-by-case basis in conjunction with donor/funding agencies.</p> <p>For example, in response to Tropical Cyclone Ian in January 2014, the Tongan Government developed a 'Resettlement Policy Framework' which was consistent with the World Bank's principles on involuntary settlement.</p>



## 5 Shelter Cluster Key Contacts

### **Kelela Tonga / Fotu Veikune**

Reconstruction Cluster, Ministry of Infrastructure (MOI)

[ktonga@infrastructure.gov.to](mailto:ktonga@infrastructure.gov.to) / [mfotuvei@gmail.com](mailto:mfotuvei@gmail.com)

### **Leveni Aho**

Shelter Cluster Lead, National Emergency Management Office (NEMO)

+676 8752500 [levenih5@gmail.com](mailto:levenih5@gmail.com)

### **Carrie Vaea**

Shelter Cluster Coordinator, National Emergency Management Office (NEMO)

+676 8869070 [carreylvaea@gmail.com](mailto:carreylvaea@gmail.com)

### **Robert Dodds / Subesh Prasad**

Shelter Cluster support team, International Federation of Red Cross and Red Crescent Societies (IFRC)

+679 9980173 / +679 9990185 [coord.pacific@sheltercluster.org](mailto:coord.pacific@sheltercluster.org)

**Disaster Law Housing, Land and  
Property Mapping Project**

Tonga

## Contents

<b>1</b>	<b>Introduction</b>	<b>1</b>
1.1	Overview	1
1.2	Background information on Tonga	1
<b>2</b>	<b>Common types of tenure</b>	<b>2</b>
2.1	Tenure typologies	2
2.2	Documenting tenure	12
2.3	Customary ownership	14
2.4	Informal settlements	14
<b>3</b>	<b>Security of tenure of vulnerable groups</b>	<b>14</b>
3.1	Women	14
3.2	Indigenous groups	15
3.3	Minority groups	16
3.4	Landless people/squatters	17
3.5	General questions	17
<b>4</b>	<b>Eviction, Expropriation and Relocation</b>	<b>17</b>
4.1	Eviction	17
4.2	Expropriation	18
4.3	Relocation	19
4.4	Compensation	19
4.5	Shelter cluster	19
<b>5</b>	<b>Bibliography</b>	<b>21</b>
5.1	Legislation	21
5.2	Case law	21
5.3	Secondary Sources	21

## Acknowledgements

In preparing this memorandum, Allens has received extensive assistance from Rosamond Bing, Legal Counsel at the Ministry of Lands and Natural Resources in Tonga. Allens is grateful to Ms Bing for her generous and invaluable contribution to this research.

## Disclaimer

This report is the result of a desktop review of publically available information. This report is not legal advice.

## 1 Introduction

### 1.1 Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met.

The Australian Red Cross (**ARC**) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies (**IFRC**) response to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

Australian Red Cross, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

- The first section, entitled 'common types of tenure', provides an overview of the different types of housing and land tenure in Tonga. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
- The second section, entitled 'security of tenure of vulnerable groups', considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing. This section focuses primarily on women and the Chinese ethnic minority, both of which face legal barriers to owning land.
- The third section, entitled 'eviction, expropriation and relocation', considers Tongan statutory and case law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

### 1.2 Background information on Tonga

Tonga is an archipelago in the South Pacific Ocean comprising approximately 170 islands, only 36 of which are inhabited. Statistics from the 2016 Census have not yet been published. However, according to the 2011 Census, Tonga has a population of 103,000, with approximately 75% of the population living on the island of Tongatapu in the nation's south.<sup>1</sup>

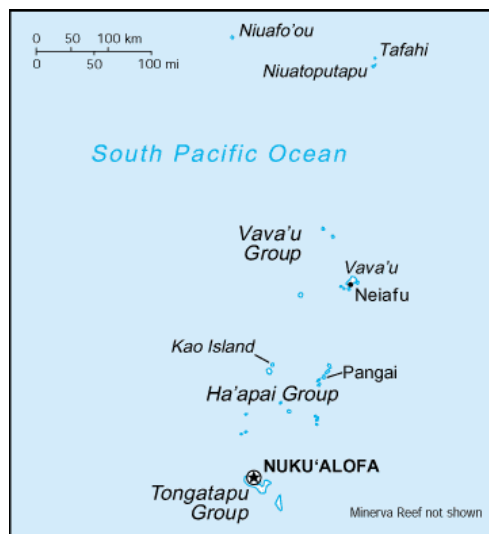
Approximately one quarter of Tonga's population lives in urban areas and this percentage is increasing.<sup>2</sup> Tonga's main urban centre, and national capital, Nuku'alofa, is located on Tongatapu and has a population of approximately 25,000.<sup>3</sup> Tonga's second-largest urban centre is the town of Neiafu on the island of 'Uta Vava'u.

---

<sup>1</sup> Tonga Department of Statistics, '2011 Census Key Indicators Vol. 2' <<http://tonga.prism.spc.int/component/advlisting/?view=download&fileId=304&Itemid=301>> 1.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid; Tonga Department of Statistics, '2011 Census Key Indicators Vol. 3' <<http://tonga.prism.spc.int/census-population>> 1.



Map from: Central Intelligence Agency, *Tonga*  
 <<https://www.cia.gov/library/publications/the-world-factbook/geos/tn.html>>.

Tonga has a relatively homogenous population, with the vast majority of the population identifying as being of 'Tongan' origin. This term encompasses both Tongans of Melanesian and Polynesian ethnicity, although the vast majority of persons identifying as 'Tongan' are Polynesian.

The main ethnic minority in Tonga are the Chinese, who established a significant presence in the 1990s. According to the 2011 Census, 0.8 per cent of the Tongan population is of Chinese origin.<sup>4</sup> This figure is greater in urban areas, where 2 per cent of the population is of Chinese origin.<sup>5</sup>

Tonga is a constitutional monarchy and a parliamentary democracy. The King, the royal family, nobles and chiefs enjoy certain privileges and responsibilities. Importantly, as discussed in the body of this memorandum, nobles and chiefs hold hereditary land estates. However, the executive role and powers of the monarchy has been substantially devolved.<sup>6</sup>

## 2 Common types of tenure

### 2.1 Tenure typologies

(a) **What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.**

The key pieces of legislation governing housing, land, building and planning are:

- the [Act of Constitution of Tonga 1875](#) (the **Constitution**);
- the [Land Act 1903](#) (the **Land Act**); and
- the [National Spatial Planning and Management Act 2012](#) (the **Planning Act**); and

<sup>4</sup> Tonga Department of Statistics and Secretariat of the Pacific Community, 'Tonga 2011 Census of Population and Housing, Volume 2: Analytical Report' (January 2014) 54.

<sup>5</sup> Tonga Department of Statistics and Secretariat of the Pacific Community, 'Tonga 2011 Census of Population and Housing, Volume 2: Analytical Report' (January 2014) 54.

<sup>6</sup> The Commonwealth, *Tonga: Constitution and Politics* <<http://thecommonwealth.org/our-member-countries/tonga/constitution-politics>>.

- the [Building Control and Standards Act 2002](#).<sup>7</sup>

**(b) What types of tenure exist?**

Section 104 of the *Constitution* provides that all land in Tonga is vested in the Crown, and prohibits any person, including the Crown, from selling land. The effect of this provision is that *only* the Crown has freehold title to land in Tonga.<sup>8</sup> Notwithstanding the foregoing, there are several other types of tenure in Tonga, as shown in the table below.

Tenure	Registrable?	Commonly Registered?	Section below
Hereditary estate	Yes	Yes	(i)
Royal estate	Yes	Yes	(ii)
Royal family estate	Yes	Yes	(ii)
Town allotment	Yes	Yes	(iii)
Tax allotment	Yes	Yes	(iii)
Leases	Yes	Yes	(iv)
Sub-lease	Yes	Yes	(iv)
Permits	Yes	Yes	(v)
Teacher's allotment	No	No	(vi)
Tenancy agreements	Yes	No	(viii)
Licences	Yes	No	(ix)

Importantly, under Tongan law, land is classified as real property, while buildings are classified as chattels.<sup>9</sup> The implications of this classification are explained in the following sections.

**(i) Hereditary estates**

A **hereditary estate** is a life interest held individually by a Noble (*tofia*) or a Chief (*matapule*); it is passed from generation to generation pursuant to the rules of succession, which are discussed in section (x) below.<sup>10</sup>

Many Nobles and Chiefs have more than one hereditary estate.<sup>11</sup> Schedule I to the *Land Act* provides a list of all of the hereditary estates in Tonga and the title of the Noble or Chief entitled to each estate. Given that a Noble or Chief must be a male Tongan, a woman or foreigner cannot hold a hereditary estate.

The holder of a hereditary estate may use his land as he thinks fit, with the notable exception that he may not transfer his estate, or any part of his estate, to another person. He may, however, mortgage the land and/or issue leases or permits to persons to use the

<sup>7</sup> The links provided in section 2.1(a) are to official English translations of the relevant statutes, published by the Attorney General's Office.

<sup>8</sup> Here, the term 'Crown' refers to King Tupou VI, rather than to the executive branch of government.

<sup>9</sup> *Yang v Manoa* (Court of Appeal of Tonga, 8 April 2016) [16]; Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>10</sup> *Land Act 1903* ss 5, 41 (the **Land Act**).

<sup>11</sup> *Ibid* Schedule 1 'Hereditary Estates'.



land.<sup>12</sup> The holder of a hereditary estate may not mortgage or lease the portions of his estate which have been granted as tax or town allotments.<sup>13</sup>

**(ii) Crown land and royal estates**

All land that is not subject to a hereditary estate is referred to as **Crown Land**.<sup>14</sup> Portions of Crown Land are subject to **Royal Estates** or **Royal Family Estates**; the remainder is administered by the Minister of Lands on behalf of the Crown.<sup>15</sup>

A Royal Estate is a life interest for the exclusive use of the Sovereign, meaning King Tupou VI. A Royal Family Estate is a life interest for the exclusive use of a member of the Royal Family.<sup>16</sup> Schedule II to the *Land Act* contains a list of all of the Royal Estates; Schedule III contains a list of all of the Royal Family Estates.

The foreshore in Tonga is *always* Crown Land.<sup>17</sup> The Minister may, with the consent of Cabinet, grant leases or permits allowing persons to reside on the foreshore, or to erect stores, wharves or jetties on the foreshore.<sup>18</sup>

**(iii) Town and tax allotments**

The *Land Act* establishes two main types of allotments, which are life interests in land. **Town allotments** (*api kolo*) are intended for residential use, while **tax allotments** (*api tukuhau*) are intended for agricultural use.<sup>19</sup>

An allotment can only be held individually by a Tongan male and is passed from generation to generation pursuant to the rules of succession, which are discussed in section (x) below.<sup>20</sup> As discussed in section 3.1 below, allotments may only be held by women in very limited circumstances.

Allotments are normally located on and granted out of hereditary estates, rather than Crown Land. This is because there is a relatively small amount of Crown land compared to hereditary estate land. Allotments are only granted out of Crown land if land is not available in an appropriate hereditary estate.<sup>21</sup>

The holder of a tax allotment is required to pay rent, as appropriate, to: (1) the Noble or Chief who holds the hereditary estate; or (2) the Crown.<sup>22</sup> The amount of rent is prescribed by the *Land Act*.<sup>23</sup> The holder of a town allotment is not required to pay rent.

An allotment holder may use his land as he thinks fit, with the notable exception that he may not transfer his allotment, or any part of his allotment, to another person. Similar to

---

<sup>12</sup> Ibid ss 33, 101.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid s 10(1).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid s 10.

<sup>17</sup> Ibid s 113.

<sup>18</sup> Ibid s 113.

<sup>19</sup> Ibid s 2.

<sup>20</sup> Ibid ss 5, 82.

<sup>21</sup> Ibid s 50(e).

<sup>22</sup> Ibid s 31.

<sup>23</sup> Ibid s 64.

the holder of a hereditary estate, an allotment holder may mortgage the land, and/or issue leases or permits to persons to use the land.<sup>24</sup>

Every male Tongan by birth who attains 16 years of age or older is entitled to one town allotment *and* one tax allotment.<sup>25</sup> A person is only Tongan by birth if:

- they were born in Tonga to a Tongan parent; or
- they were born abroad to a Tongan father or mother.<sup>26</sup>

If an eligible Tongan male has not inherited one or both types of allotment pursuant to the rules of succession, he may apply to the Minister of Lands for a tax and/or town allotment using the prescribed form.<sup>27</sup>

In practice, however, there is insufficient land to meet new allotment applications. The Ministry of Lands normally informs applicants that no Crown land is available for the grant of new allotments, and advises them to attempt to find an allotment holder who is interested in surrendering or subdividing his land.

It is common for an extended family to live on a town allotment, notwithstanding the fact that the only *legal* owner of the allotment is the male heir or grantee.<sup>28</sup> In this situation, the remaining family members do not have legal entitlements to occupy the land; they rely on the male allotment holder's good will, which is informed by cultural norms and expectations. This is discussed further in section 3.1 below.

#### (iv) Leases and sub-leases

Unlike hereditary estates and allotments, leases may be held jointly, and by women or foreigners. As shown in the table below, a leasehold interest may arise in relation to Crown Land, land that forms part of a hereditary estate, or land that forms part of an allotment.

<b>Crown land</b>	The Minister of Lands may lease Crown Land.
<b>Hereditary estates</b>	<p>The registered holder of a hereditary estate may, with the consent of Cabinet, grant leases over up to 5 per cent of his estate.<sup>29</sup></p> <p>A lease cannot be granted over land that has already been granted as allotments, or will be required for allotments within the term of the lease.<sup>30</sup></p> <p>A portion of a hereditary estate cannot be leased for more than 99 years without the Crown's permission.<sup>31</sup></p>
<b>Allotments</b>	The registered holder of a town or tax allotment may, with the consent of Cabinet, grant a lease over the whole or part of his allotment. <sup>32</sup>

<sup>24</sup> Ibid ss 56, 100.

<sup>25</sup> Ibid s 43(1).

<sup>26</sup> *Nationality Act 1915* s 2 as amended by the Nationality (Amendment) Act 2007.

<sup>27</sup> Ibid s 43(2).

<sup>28</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>29</sup> Ibid s 33, 89.

<sup>30</sup> Ibid s 33.

<sup>31</sup> Ibid s 124(3).

	<p>A tax allotment, or part thereof, cannot be leased for a period of more than 20 years.<sup>33</sup> A town allotment, or part thereof, cannot be leased for more than 99 years without the Crown's permission.<sup>34</sup></p> <p>The amount of rent for lease of a tax allotment is prescribed by the Land Act; the amount rent for a town allotment may be agreed between the parties.<sup>35</sup></p>
--	---

A religious body, or charitable or social organisation may hold a lease.<sup>36</sup> However, it is restricted to using the land for its original purposes (eg, religious worship) as declared at the time of entering into the lease.<sup>37</sup>

A leaseholder may apply to the Minister for permission to transfer their lease, or to sub-lease their land. A leaseholder may also mortgage the whole or part of the land subject to the lease.<sup>38</sup>

In the case of a lease to a religious body or charitable or social organisation, a lease transfer or sub-lease requires the consent of Cabinet.<sup>39</sup> A sub-lease of 3 years or less may, however, be created without application to the Minister.<sup>40</sup>

The fact that buildings are classified as chattels has interesting implications for Tongan leases. A lessee is entitled to build on the land, and such building will be the *lessee's*, rather than the *lessor's*, property.

Unless otherwise agreed, when the lease expires the lessee will be required to return the land to its original condition, and will be entitled to take the building with them. Lessees who wish to develop land normally, therefore, negotiate long-term leases.

Given that buildings are chattels, a lease over a parcel of land will *not* automatically encompass buildings situated on the land. It is, therefore, common practice for a lease to explicitly refer to both the land *and* the house.<sup>41</sup>

It is possible, but uncommon, for there to be separate arrangements for land and a building situated on the land.<sup>42</sup> For example, a lease for land may be combined with a tenancy agreement for a building situated on the land.<sup>43</sup> Tenancy agreements are discussed in section (viii) below.

<sup>32</sup> Ibid s 56(i).

<sup>33</sup> Ibid s 56(iv).

<sup>34</sup> Ibid s 124(3).

<sup>35</sup> Ibid s 57(1), (2).

<sup>36</sup> Ibid s 17.

<sup>37</sup> Ibid s 18(1).

<sup>38</sup> Ibid s 99.

<sup>39</sup> Ibid s 18(1).

<sup>40</sup> Ibid s 126.

<sup>41</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

**(v) Permits**

A permit may be used as an alternative to a lease. Similar to a lease, a permit entitles the holder to use or reside upon land for the period specified in the permit, in exchange for payment of the amount of rent specified therein.<sup>44</sup> A permit may relate to land only (eg, vacant land), or to both land *and* buildings situated on the land. Permits are commonly used for residential, farming and tourism purposes.

Landholders often prefer to use permits, rather than leases, because permits allow them to retain a greater degree of control over their land.<sup>45</sup> A permit cannot be transferred, sub-leased or mortgaged.<sup>46</sup> Further, a permit holder's interest expires upon the grantor's death, whereas a lessee's interest survives the lessor's death.<sup>47</sup>

Similar to a lessee, a permit holder is entitled to build on the land, and such building will be the *permit holder's*, rather than the *landholder's*, property. Unless otherwise agreed, when the permit expires the permit holder will be required to return the land to its original condition, and will be entitled to take the building with them.

**(vi) Teacher's allotments**

The *Land Act* establishes teacher's allotments, which are provided to the Head Teacher of any Government Primary School.<sup>48</sup> A teacher's allotment is *not* a registered title, and merely entitles the teacher to reside on the land for their term of office. At the end of a Head Teacher's term, the allotment passes to their successor.<sup>49</sup> A teacher's allotment may only be held by a male Tongan subject.<sup>50</sup>

**(vii) Written Agreements**

Section 13 of the *Land Act* prohibits landholders from entering into an agreement for profit in exchange for the use or occupation of their land, unless the agreement is:

- in the manner prescribed by the *Land Act* (ie, a lease or permit); or
- is approved in writing by the Minister.

The effect of section 13 is that it is possible to create an interest in land by agreement, provided that the agreement is approved in writing by the Minister. Such an agreement may subsequently be registered in a similar manner to a lease or a permit.

**(viii) Tenancy Agreements**

A tenancy agreement performs a similar function as a permit; it entitles the holder to use or reside upon land and/or buildings in exchange for payment of rent.<sup>51</sup> A tenancy agreement may relate to:

---

<sup>44</sup> *Land Act*, Schedule IV, Form No. 6, Form of Permit.

<sup>45</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>46</sup> The *Land Act* expressly entitles leaseholders to mortgage, transfer and sub-lease their land. There are no equivalent provisions for permit holders: see, eg, *Land Act*, Part VI, 'Mortgages'.

<sup>47</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>48</sup> *Land Act* s 52(1).

<sup>49</sup> *Ibid* s 52(3), (4).

<sup>50</sup> *Ibid* s 52(1).

<sup>51</sup> The information in this section was obtained from the following source: Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

- land;
- buildings; or
- land *and* buildings.

Although the nature of tenancy agreements varies, the following generalisations may be made:

- tenancy agreements are normally in writing;
- tenancy agreements cannot normally be transferred or mortgaged; and
- most tenancy agreements are held by foreigners.

A tenancy agreement is *not* one of the registered interests established by the *Land Act*. Theoretically, a tenancy agreement *may* be approved and registered by the Minister pursuant to section 13 of the *Land Act*, as discussed in the preceding section. In practice, however, this is extremely uncommon. The Ministry of Lands considers tenancy agreements which have not been registered to be unlawful.

Notwithstanding the foregoing, a recent Court of Appeal decision indicates that a tenancy agreement may be lawful and/or enforceable in certain circumstances. In *Yang v Manoa* the Court of Appeal held that a tenancy agreement for a retail shop was not caught by section 13 because it related to a building and its curtilage, and *not* to land.<sup>52</sup> The Court's decision relied on the fact that section 13 applies to *landholders* and that, under Tongan law, buildings are classified as chattels rather than land.

Although it was not necessary to decide the point, the Court of Appeal went further by indicating that a tenancy agreement may be enforceable against a landholder even if it is caught by section 13.<sup>53</sup> The Court's rationale was that the purpose of section 13 is to penalise the landholder rather than the innocent party, and that the innocent party should, therefore, be entitled to enforce the agreement against the landholder.<sup>54</sup>

Given that tenancy agreements may not be caught by s 13 of the Land Act where they *only* relate to buildings, they are increasingly being used to circumvent the prohibition on leasing hereditary estates or town allotments for more than 99 years.<sup>55</sup> This is a live issue which is likely to receive judicial attention in the next few years.<sup>56</sup>

In order to be legally enforceable, however, a tenancy agreement must satisfy the key elements of contract formation: offer and acceptance; consideration; intention to create legal relations; and completeness and certainty of terms. In practice, tenancy agreements often contain insufficient detail to be complete and certain and are, therefore, likely to be unenforceable in the event of a dispute.

#### **(ix) Licences**

A licence is a verbal permission to use or reside upon land and/or buildings for a certain period of time, or until the permission is revoked.<sup>57</sup> Licences are commonly granted to

<sup>52</sup> *Yang v Manoa* (Court of Appeal of Tonga, 8 April 2016) AC 22/2015 [16].

<sup>53</sup> *Yang v Manoa* (Court of Appeal of Tonga, 8 April 2016) [23].

<sup>54</sup> *Ibid* [20].

<sup>55</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 12 March 2017).

<sup>56</sup> *Ibid*.

<sup>57</sup> *Ibid*.

family members or friends, particularly in cases where a landholder has left Tonga for an extended or indefinite period of time (eg, to live or work in Australia or New Zealand).<sup>58</sup>

While a licensee has occupancy rights as against third parties, they are unlikely to have enforceable occupancy rights as against the landholder.<sup>59</sup> This is because permissions are generally not sufficiently certain or complete to be enforceable as contracts.<sup>60</sup>

**(x) Rules of succession**

**(A) Hereditary estates**

Section 111 of the *Constitution* outlines the rules of succession for hereditary estates and titles. The main rule is that the holder of a hereditary estate is succeeded by his eldest son *ad infinitum*. The following rules apply if this main rule is inapplicable.

- If the holder of a hereditary estate has no sons, he is succeeded by his eldest daughter and her descendants.
- If the holder of a hereditary estate has no children, he is succeeded by his eldest brother and his descendants.
- If the holder of a hereditary estate has no children and no brothers, he is succeeded by his eldest sister and her descendants.
- If there is no heir to succeed to the hereditary estate and title, the land reverts to the Crown.<sup>61</sup>

For a man, being next in succession carries an entitlement to the hereditary estate and title. Women, however, cannot hold a hereditary estate and title. If a woman is next in succession, she is entitled to *occupy* the hereditary estate, but the estate and title will pass *through* her to the next male in succession.<sup>62</sup>

The identity of the next male in succession depends on the circumstances. If the woman who succeeds has a male child, he will be the next male in succession. The hereditary estate and title will pass through her from her father to her son.

If the woman who succeeds does *not* have a male child, the next male in succession will be her younger sister's son. The hereditary estate and title will pass through her to her sister, and then to her sister's son. If, however, the woman subsequently has a male child, the hereditary estate and title will pass to him upon her nephew's death.

Importantly, a man or woman can only be next in succession if they were born *in wedlock*.

---

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> *Land Act* s 41(h); *Constitution* s 112. It is extremely uncommon for land to revert to the Crown; this has only occurred a couple of times since the Commencement of the Land Act.

<sup>62</sup> *Constitution* s 111.

**(B) Allotments**

Section 82 of the *Land Act* outlines the rules of succession for town and tax allotments. The rules of succession for town and tax allotments are similar to those for hereditary estates, with the following important differences.

- **First**, if an allotment holder dies without leaving *any* male heir, an unmarried daughter of the holder will inherit a life estate in the allotment.<sup>63</sup> If there are two or more unmarried daughters, they will inherit jointly.<sup>64</sup>
- **Second**, upon the death of any lawful male holder of a tax or town allotment, his widow is entitled to a life estate in the allotment.<sup>65</sup>

Unlike a male heir, a widow who inherits an allotment cannot mortgage or lease the allotment.<sup>66</sup> Further, if the allotment is already mortgaged or leased, those interests prevail. The widow may grant permits over the allotment in order to generate income from the land — for example, in order to service a mortgage.

As indicated in section (iii) above, a tax or town allotment may only be held by a male Tongan. There is currently litigation on foot in the Land Court concerning whether a non-Tongan widow may inherit a tax or town allotment.

The life estate of a daughter terminates upon her marriage, and the life estate of a widow terminates on her re-marriage.<sup>67</sup> The life estate of either a widow or daughter will also terminate upon proof in legal proceedings of her having committed fornication or adultery.<sup>68</sup>

If there is no heir to succeed to the allotment, the land comprising the allotment reverts to the Crown or the holder of the hereditary estate, depending on where it is located.<sup>69</sup>

**(c) Which, if any, of these types of tenure provide a high degree of security of tenure?**

With the exception of tenancy agreements, the above forms of tenure each provide a high degree of security of tenure because they are registered interests in land. Registration confers indefeasible title: the register operates as conclusive proof of the landholder's rights, and protects the landholder from challenges to their title.

Notwithstanding the foregoing, persons holding hereditary estates and allotments possess a higher degree of security of tenure than leaseholders. In turn, leaseholders possess a higher degree of security of tenure than permit holders. These varying degrees of security of tenure are due to two factors: first, the *duration* of the tenure; and second, the circumstances in which the tenure can be *terminated*.

First, hereditary estates and allotments are life estates. By contrast, leases and permits have a fixed duration, and may be for a short amount of time. Further, a permit will expire when the grantor dies, even if the agreed term has not elapsed.

---

<sup>63</sup> *Land Act* s 82(d).

<sup>64</sup> *Ibid* s 82(d).

<sup>65</sup> *Ibid* s 80.

<sup>66</sup> *Ibid* ss 89, 100(1)(ii).

<sup>67</sup> *Ibid* s 80, 82(d).

<sup>68</sup> *Ibid* s 80, 82(d).

<sup>69</sup> *Ibid* s 83.

Second, the *Land Act* provides that the holder of a hereditary estate or an allotment may only lose their landholding in certain, narrow circumstances.

- The holder of a hereditary estate can only lose their landholding if they are convicted of an indictable offence, or are certified by a medical officer to be insane or an imbecile.<sup>70</sup>
- An allotment holder can only lose their landholding if the Minister brings an action successfully proving that:
  - any rent is 2 years in arrears;
  - during the previous 5 years, 3 judgments have been made against the allotment holder for recovery of rent;
  - the allotment holder has failed to satisfy a judgment for recovery of rent within 3 months of the date of that judgment;
  - during the previous 3 years, the allotment holder has been convicted more than twice for failing to plant and/or maintain sufficient coconut trees on a tax allotment; or
  - during the previous 3 years, the allotment holder has failed to maintain a tax allotment in the average state of cultivation for tax allotments in his district.<sup>71</sup>

The *Land Act* further protects allotment holders by prohibiting the holder of a hereditary estate from dispossessing an allotment holder of his land.<sup>72</sup>

By contrast, it is easier for a leaseholder to lose their interest in the land. A lessor may take possession of the land if rent is 21 days overdue.<sup>73</sup> Further, a lease may be terminated for several reasons — for example, if the lessee has used the land for a purpose other than that for which his lease application was made.<sup>74</sup>

Compared to registered interests in land, tenancy agreements generally provide a lower degree of security of tenure. As discussed in section (b)(viii) above, a tenancy agreement will only be legally enforceable if it satisfies the key elements of contract formation. In practice, tenancy agreements often contain insufficient detail to be enforceable as contracts in the event of a dispute.<sup>75</sup>

**(d) How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**

In urban areas, there is a predominance of town allotments and commercial or residential leases.<sup>76</sup> In rural areas, there is a predominance of tax allotments and agricultural leases.<sup>77</sup> Statistical data is not readily available.

---

<sup>70</sup> Ibid s 37.

<sup>71</sup> Ibid s 68.

<sup>72</sup> Ibid s 32.

<sup>73</sup> Ibid, Schedule IX, 'Form of Lease'.

<sup>74</sup> Ibid.

<sup>75</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.



**(e) What are the main government and non-government bodies (eg, representative bodies), which administer or deal with housing, land and property?**

The government body responsible for administering housing, land and property is the Ministry of Lands and Natural Resources, whose head office is located in Nuku'alofa. The Ministry houses the National Spatial Planning Authority, which is responsible for administering planning law.

## 2.2 Documenting tenure

**(a) What statutory instruments or legal documents (eg, title deeds or leases) are used to create or transfer tenure?**

The table below identifies the statutory instruments used to create and transfer registered interests in land. Further information about these instruments is provided in the sections below.

<b>Hereditary estates</b>	Tofia Certificate
<b>Allotments</b>	Form of Application for Allotment Deed of Grant of Allotment
<b>Leases</b>	Form of Application for Lease (Form No 1) Form of Lease (Form No 3) Form of Sub-Lease (Form No 4) Form of Transfer (Form No 5)
<b>Permits</b>	Form of Permit (Form No 6)

The above interests in land do not come into existence until and unless they have been registered. The *Constitution* and the *Land Act* explicitly provide that leases, sub-leases, lease transfers and permits are not valid until and unless they are registered by the Minister.<sup>78</sup>

According to case law, a narrow exception to this general rule may be available where a person inherits a registered interest in land, but fails to have the interest registered in their name in a timely manner. In this situation, they may still hold the interest notwithstanding the lack of registration.<sup>79</sup> Absent registration, however, that person may have difficulty proving ownership.

**(i) Hereditary estates**

A hereditary estate is evidenced by a *tofia certificate*, which contains a description and diagram of the lands comprising the estate. The Minister is required to maintain a register of hereditary estates in his office at Nuku'alofa.<sup>80</sup> Every tofia certificate is, therefore, made in duplicate: one copy is delivered to and held by the Noble or Chief, the other copy is held on the register.

A tofia certificate must have an endorsement or an attachment containing a schedule of all of the allotments and/or leases granted out of the hereditary estate.<sup>81</sup> Whenever a new allotment or lease is registered, it is added to each copy of the tofia certificate.<sup>82</sup>

<sup>78</sup> *Constitution* s 110; *Land Act* s 126. Section 110 of the *Constitution* provides that no lease or transfer will be considered valid or recognised by the Government unless registered in the office of the Minister of Lands. Section 126 of the *Land Act* provides that no lease, sub-lease, transfer or permit is effective to pass or affect an interest in land until it is registered.

<sup>79</sup> See, eg, *Manu v 'Aholelei* (Land Court of Tonga, 17 April 2015) LA 13/2014 [33]–[36].

<sup>80</sup> *Land Act* s 116.

<sup>81</sup> *Ibid* s 118.

<sup>82</sup> *Ibid* s 119.

Upon the death of the holder of a hereditary estate, the King summons the successor in title to appear before him in the Privy Council to take the oath of allegiance. Within three days of taking the oath of allegiance, the successor must present the tofia certificate held by his predecessor to the Minister.<sup>83</sup>

The Minister endorses the tofia certificate, and the duplicate held on the register, with a memorial of registration stipulating the name of the male heir, and the date on which he became entitled to the hereditary estate.<sup>84</sup>

**(ii) Allotments**

**(A) Application for allotment**

An application for an allotment must be made using the 'Form of Application for Allotment'. If the application is successful, the Minister executes a 'Deed of Grant of Allotment' (*Deed of Grant*) in duplicate: one copy is delivered to the grantee, and the other copy is held on the register.<sup>85</sup> The Deed of Grant must be in the form in Schedule V to the *Land Act*, and must contain a description and a diagram of the land.

**(B) Inheritance of allotment**

Within one month of becoming entitled to inherit an allotment, a male heir must present the Minister with the Deed of Grant held by his predecessor. The Minister must endorse the Deed of Grant, and the duplicate held on the register with a memorial of registration stipulating the date on which the heir became entitled to the allotment, and a description of how they became entitled.<sup>86</sup>

**(iii) Leases, sub-leases and permits**

A lease, sub-lease, lease transfer or permit is made in duplicate using the forms set out in Schedule IX to the *Land Act*, namely the 'Form of Lease', 'Form of Sub-Lease', 'Form of Permit' or 'Form of Transfer'.<sup>87</sup>

One copy of the relevant Form is delivered to the grantee, and the other copy is held on the register. The Minister endorses the grantee's copy of the Form with a memorial of registration stipulating when the instrument was registered and where it appears in the register.<sup>88</sup>

For sub-leases and lease transfers, there is an additional requirement: the Minister must endorse a memorial of registration on the *grantor's* lease.<sup>89</sup> This requirement applies to both the copy of the lease held on the register, and the copy held by the grantor.

**(b) What non-legal documents or actions (eg, verbal agreements or handshakes) are used to create or transfer tenure?**

As a general rule, legal tenure cannot be created or transferred other than via registration. There are two notable exceptions to this general rule.

<sup>83</sup> Ibid s 117.

<sup>84</sup> Ibid s 117.

<sup>85</sup> Ibid s 120, Schedule V, 'Deed of Grant of Allotment'.

<sup>86</sup> Ibid s 122.

<sup>87</sup> Ibid s 124(1).

<sup>88</sup> Ibid s 127, 128(1).

<sup>89</sup> Ibid s 128(2).

- First, a sub-lease for 3 years or less does not need to be registered.<sup>90</sup> However, in order to be legally enforceable, a sub-lease will need to meet the key requirements of contract formation and be in the form prescribed by the Land Act.<sup>91</sup>
- Second, even if it has not been registered, a tenancy agreement may be legally enforceable. However, once again, in order to be legally enforceable, a tenancy agreement will need to meet the key requirements of contract formation.

## 2.3 Customary ownership

- Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (eg, constitution, national legislation)?**
- What are the sources of customary rules (eg, village chief, elders, oral tradition)?**
- What are the customary rules governing housing, land and property?**
- What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?**

The above questions are not relevant to Tonga. Unlike many countries in the Pacific, Tonga does not have a customary property law system that runs in parallel with statutory land law. The sources of Tongan land law are the *Constitution* and statutory law, predominantly the *Land Act*.

## 2.4 Informal settlements

- What are the locations and boundaries of informal settlements?**
- What kinds of tenure arrangements are in place in informal settlements?**

There are currently no informal settlements in Tonga.<sup>92</sup> In the 1970s and 1980s, migrants from the outer islands established an informal settlement named Patangata on the periphery of Nuku'alofa. In 2015, the Government legalised the Patangata settlement by offering 30-year leases to the head of each of the 70 families which occupied the settlement. The lessees may have the option to renew in future.

Previously, conditions in Patangata were poor: residents lived predominantly in temporary housing without running water or electricity. Since Patangata was legalised in 2015, conditions have improved. The security of tenure provided by leases has encouraged families to build permanent dwellings, and households now have running water and electricity.

## 3 Security of tenure of vulnerable groups

### 3.1 Women

- Can women legally own, rent or inherit land and housing?**

Women cannot legally own or inherit a hereditary estate.

As indicated in section 2.1(b)(x)(B) above, women may only inherit and own an allotment in the following two circumstances. First, if an allotment holder dies without leaving any male heir, his

<sup>90</sup> Ibid s 126.

<sup>91</sup> Ibid Schedule IX, 'Form of Sub-Lease'.

<sup>92</sup> The information in this section was obtained from the following source: Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

unmarried daughter(s) inherits a life estate in the allotment.<sup>93</sup> Second, if an allotment holder dies, his widow is entitled to a life estate in the allotment.<sup>94</sup>

Given that women cannot own hereditary estates, and cannot normally own allotments, it is common for women to live on hereditary estates or allotments owned by their husbands or male family members.<sup>95</sup> In this situation, women do not have a *legal* entitlement to occupy the land. Instead, they rely on their husbands' or family members' good will.<sup>96</sup>

The conduct of male family members is, however, regulated by social norms and expectations which offer significant protection to women.<sup>97</sup> For example, social norms establish an expectation that, upon marriage, a woman will move onto her husband's allotment. Further, social norms create an expectation that the eldest male child will allow unmarried sisters to live on his allotment.

There are no legal barriers to women obtaining leases or permits for land and/or housing. Further, women may inherit leases, either through the grant of probate or letters of administration.

**(b) In practice, do they? If not, why not?**

The number of women leasing land and/or housing is increasing, with approximately 20% of leases now held by women.<sup>98</sup>

### 3.2 Indigenous groups

**(a) Is indigenous customary ownership (or custodianship) of land legally recognised?**

**(b) Does customary ownership provide indigenous people with a high degree of security of tenure?**

**(c) If not, what are the barriers to indigenous people owning and/or living on their land?**

**(d) Is there conflict between indigenous groups regarding land ownership?**

**(e) If so, to what degree? Are there mechanisms for resolving these conflicts?**

The above questions are not relevant to Tonga. As indicated in section 2.3 above Tonga does not have a customary property law system that runs in parallel with statutory land law. The sources of Tongan land law are the *Constitution* and statutory law, predominantly the *Land Act*. Land disputes are adjudicated by the Land Court and may be appealed to the Court of Appeal.<sup>99</sup>

Orders or judgments relating to the determination of hereditary estates or titles are appealed to the Privy Council.

---

<sup>93</sup> *Land Act* s 82(d).

<sup>94</sup> *Ibid* s 80.

<sup>95</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>96</sup> *Ibid*.

<sup>97</sup> The information in this section was obtained from the following source: Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>98</sup> *Ibid*.

<sup>99</sup> *Land (Amendment) Act 1990* s 2.

### 3.3 Minority groups

**(a) Can minority groups (ie, ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**

**(i) Hereditary estates**

An immigrant, whether a naturalised Tongan or an alien, cannot own a hereditary estate because hereditary estates are held by Tongan Nobles and Chief, and passed onto to their successors ad infinitum.

**(ii) Tax allotments**

A person is only entitled to apply for an allotment if they are a male Tongan subject by birth. As stated in section 2.1(b)(iii) above, a person is only Tongan by birth if:

- they were born in Tonga to a Tongan parent; or
- they were born abroad to a Tongan father or mother.<sup>100</sup>

As a result of the above, no first generation immigrant is eligible to apply for an allotment.

Theoretically, a second generation immigrant may be eligible to apply for a town and tax allotment if they were born in Tonga, and their mother or father had been naturalised at the time of their birth.

**(iii) Leases and permits**

Immigrants, including both naturalised Tongans and aliens, may lease land and/or housing, or hold a permit for land and/or housing.

**(b) If so, are they subject to special conditions or restrictions?**

Section 14 of the *Land Act* establishes that an alien may not hold or reside upon land without obtaining a permit from the Minister. In practice, however, these provisions are not applied and foreigners do not require a permit to hold or reside upon Tongan land.

**(c) In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

As discussed in section 1.2 above, the main ethnic minority in Tonga are the Chinese, who represent approximately 2 per cent of the urban population.<sup>101</sup> Although a second generation Chinese immigrant may be legally entitled to apply for an allotment, this has not yet been tested.<sup>102</sup> Thus, in practice, members of the Chinese minority group do not hold allotments.

Members of the Chinese minority do lease land and/or housing. However, compared to the Tongan majority, they are more likely to have tenancy agreements, rather than leases.<sup>103</sup>

<sup>100</sup> *Nationality Act 1915* s 2 as amended by the Nationality (Amendment) Act 2007.

<sup>101</sup> Tonga Department of Statistics and Secretariat of the Pacific Community, 'Tonga 2011 Census of Population and Housing, Volume 2: Analytical Report' (January 2014) 54.

<sup>102</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>103</sup> *Ibid.*

### 3.4 Landless people/squatters

**(a) Do landless people/squatters have rights to land and/or housing (eg, adverse possession)? If so, are those rights respected?**

The principle of adverse possession is not recognised in Tongan law. However, it is lawful for a person to occupy land until or unless the legal owner takes steps to evict them.<sup>104</sup> Until this point, the person is *not* a squatter or trespasser.<sup>105</sup>

An example of the application of this principle is the 2015 case of *Manu v 'Aholelei*.<sup>106</sup> In that case, an allotment holder gave his daughter (Fine), her husband and their children permission to live on his allotment. When he died, Fine and her family continued to live on the land. Given there was no heir, the allotment reverted to the Crown.

The Court held that Fine remained in lawful possession of the land after the death of her father, even though the land had reverted to the Crown.<sup>107</sup> The Court explained that Fine's possession of the land would not become unlawful until and unless the Crown asserted its rights of ownership by taking steps to evict her and her family.<sup>108</sup>

The Court further held that the Minister's decision to grant a lease over the land was unlawful because he had failed to inspect the land and give consideration to Fine's interests prior to making the grant.<sup>109</sup> Thus, it appears that a landholder (or at least the Minister in the case of Crown land) is required to give some consideration to the interests of landless people living on the land.

### 3.5 General questions

**(a) Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

Aside from women and immigrants, there are no other groups that face legal barriers to property ownership. However, there is a shortage of land in Tonga. Internal and external migration has caused demand for land to increase dramatically, particularly in urban areas.<sup>110</sup> To accommodate demand, tax allotments on the urban periphery are increasingly being subdivided into town allotments.<sup>111</sup>

## 4 Eviction, Expropriation and Relocation

### 4.1 Eviction

**(a) Are there laws or regulations prohibiting forced evictions?**

**(b) In practice, are those laws adhered to?**

<sup>104</sup> *Manu v 'Aholelei* (Land Court of Tonga, 17 April 2015) LA 13/2014 [45]-[47]. See also *Tata v Viau* [2006] Tonga Law Reports. 287 [35]-[39]; *Ma'ake v Lataimu'a* [2007] Tonga Law Reports 15 [49].

<sup>105</sup> *Ibid.*

<sup>106</sup> *Manu v 'Aholelei* (Land Court of Tonga, 17 April 2015) LA 13/2014 [45]-[47].

<sup>107</sup> *Ibid* [48].

<sup>108</sup> *Ibid* [48].

<sup>109</sup> *Ibid* [28].

<sup>110</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

<sup>111</sup> *Ibid.*

There are no laws or regulations that expressly prohibit forced evictions. However, as discussed in section 2.1(c) above, the *Land Act* and the Forms referred to therein prescribe the circumstances in which: an estate or allotment holder may lose their land; or a lessor may retake possession of leased land.<sup>112</sup> By implication, it would be unlawful for the Crown or a lessor to dispossess a landholder of their interest in a manner inconsistent with these provisions.

In addition to the foregoing, case law indicates that:

- section 170 of the *Land Act* may protect squatters against forced eviction; and
- the doctrine of estoppel may protect licensees against forced eviction.

Section 170 of the *Land Act* establishes a 10 year limitation period for claims before the Land Court. This limitation period operates to preclude a landowner from evicting persons who have unlawfully resided on or used their land for a period of 10 years or more.<sup>113</sup> Although, such persons do not have any interest in, or title to, the land.<sup>114</sup>

Separately, the Land Court has held that a landholder is estopped (ie, precluded) from evicting a person in circumstances where:

- they have granted someone (normally a family member) permission to occupy their land; and
- they have promised, or otherwise induced that person to believe, that they would not revoke the permission.<sup>115</sup>

## 4.2 Expropriation

### (a) Are there laws or regulations permitting the government to expropriate land?

Section 141(1) of the *Land Act* entitles the Crown to compulsorily acquire land, provided that the Privy Council is satisfied the land is required for a public purpose, and has consented to the resumption.<sup>116</sup> The term 'public purpose' is defined to mean roads, public ways, commons, cemeteries, school sites, playgrounds, for use by Government Departments or for other public purposes.<sup>117</sup> If the Crown wishes to resume land, it must give the landholder 30 days' notice in writing.<sup>118</sup> The notice must be in the form in Schedule XIII to the *Land Act*.

### (b) If so, are those laws or regulations applicable in the context of a disaster?

The laws governing compulsory resumption of land are impracticable in the context of a natural disaster because they establish a lengthy process. As stated above, the Crown must provide a landholder 30 days' notice of resumption. Further, upon receiving a notice, a landholder has a right of appeal, which may be a lengthy process.<sup>119</sup>

<sup>112</sup> *Land Act*, Schedule IX, 'Form of Lease'.

<sup>113</sup> See *Payne v Fakahau and others* (Land Court of Tonga, 10 March 2017) LA 23/2014 [88]–[91], [112].

<sup>114</sup> *Ibid.*

<sup>115</sup> See, eg, *Fakatava v Koloamatanga i* (1974-1980) Tonga Law Reports 15; *Motuliki v Namoa* (1990) Tonga Law Reports 61.

<sup>116</sup> *Land Act* s 141(1).

<sup>117</sup> *Ibid* s 138.

<sup>118</sup> *Ibid* s 142.

<sup>119</sup> Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017).

### 4.3 Relocation

**(a) Are there laws or regulations governing relocations?**

There are no laws or regulations governing relocations. The principles governing relocations are developed on a case-by-case basis in conjunction with donor/funding agencies.

For example, in response to Tropical Cyclone Ian in January 2014, the Tongan Government developed a 'Resettlement Policy Framework' (*RPF*) in accordance with the World Bank's principles on involuntary settlement.<sup>120</sup>

The RPF contained numerous 'Key Principles' including that:

- involuntary resettlement should be avoided where feasible, or minimised;
- displaced persons are provided prompt and effective compensation for loss; and
- the previous level of community services and access to resources should be maintained or improved.

**(b) Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?**

There are no laws and regulations applicable to relocations.

### 4.4 Compensation

**(a) Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?**

In the event of compulsory resumption of land, section 141(2) of the *Land Act* requires the Minister of Lands to either grant the landholder other land, or compensation for the land resumed. Further, the Minister is required to pay the landholder compensation for crops and/or buildings on the land. There are, however, no laws or regulations providing compensation for people who are forcibly evicted from their land.

**(b) In practice, are these laws or regulations adhered to?**

In practice, the laws governing compensation for compulsory resumption of land are adhered to.

### 4.5 Shelter cluster

**(a) Is there an active shelter cluster in Tonga?**

**(b) If not, has the shelter cluster been activated during any previous disasters?**

The names and contact details of the members of Coordination Team are listed below.<sup>121</sup>

**Kelela Tonga / Fotu Veikune**

Reconstruction Cluster, Ministry of Infrastructure (MOI)

[ktonga@infrastructure.gov.to](mailto:ktonga@infrastructure.gov.to) / [mfotuvei@gmail.com](mailto:mfotuvei@gmail.com)

<sup>120</sup> Ministry of Infrastructure, Kingdom of Tonga, 'Resettlement Policy Framework: Tonga Cyclone Ian Reconstruction and Climate Resilience Project' (14 April 2014) 7. The World Bank's principles, objectives, procedures and rules concerning involuntary resettlement are set out in: World Bank, 'Operational Policy OP 4.12 – Involuntary Resettlement' (April 2013).

<sup>121</sup> This information has been obtained from the following website: Shelter Cluster, 'Tonga' <<https://www.sheltercluster.org/pacific/tonga>>.



**Leveni Aho**

Shelter Cluster Lead, National Emergency Management Office  
(NEMO)

+676 8752500 [levenih5@gmail.com](mailto:levenih5@gmail.com)

**Carrie Vaea**

Shelter Cluster Coordinator, National Emergency Management  
Office (NEMO)

+676 8869070 [carreylvaea@gmail.com](mailto:carreylvaea@gmail.com)

**Robert Dodds / Subesh Prasad**

Shelter Cluster support team, International Federation of Red  
Cross and Red Crescent Societies (IFRC)

+679 9980173 / +679 9990185 [coord.pacific@sheltercluster.org](mailto:coord.pacific@sheltercluster.org)

## 5 Bibliography

### 5.1 Legislation

*Act of Constitution of Tonga 1875*

*Land Act 1903*

*Nationality Act 1915*

*Nationality Amendment Act 2007*

### 5.2 Case law

*Fakatava v Koloamatangai* (1974-1980) Tonga Law Reports 15

*Ma'ake v Lataimu'a* (2007) Tonga Law Reports 15

*Manu v 'Aholelei* (Land Court of Tonga, 17 April 2015) LA 13/2014

*Motuliki v Namoa* (1990) Tonga Law Reports 61

*Payne v Fakahau and others* (Land Court of Tonga, 10 March 2017) LA 23/2014

*Tata v Viau* (2006) Tonga Law Reports 287

*Yang v Manoa* (Court of Appeal of Tonga, 8 April 2016) AC 22/2015

### 5.3 Secondary Sources

Central Intelligence Agency, *Tonga* <<https://www.cia.gov/library/publications/the-world-factbook/geos/tn.html>>

Ministry of Infrastructure, Kingdom of Tonga, 'Resettlement Policy Framework: Tonga Cyclone Ian Reconstruction and Climate Resilience Project' (14 April 2014).

The Commonwealth, *Tonga: Constitution and Politics* <<http://thecommonwealth.org/our-member-countries/tonga/constitution-politics>>

Tonga Department of Statistics, '2011 Census Key Indicators Vol. 2' <<http://tonga.prism.spc.int/component/advlisting/?view=download&fileId=304&Itemid=301>>

Tonga Department of Statistics, '2011 Census Key Indicators Vol. 3' <<http://tonga.prism.spc.int/census-population>>

Tonga Department of Statistics and Secretariat of the Pacific Community, 'Tonga 2011 Census of Population and Housing, Volume 2: Analytical Report' (January 2014)

Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 3 February 2017)

Rachel Macleod, Interview with Rosamond Bing, Legal Counsel, Ministry of Lands and Natural Resources, Tonga (Telephone, 12 March 2017)

Secretariat of the Pacific Community, *Tonga* (7 October, 2007) <[http://www.spc.int/Pacific/Country\\_profiles/Tonga.htm](http://www.spc.int/Pacific/Country_profiles/Tonga.htm)>

World Bank, 'Operational Policy OP 4.12 – Involuntary Resettlement' (April 2013)