

SECTION

F. 1.1.1 VOICE OF THE PEOPLE

1.1.2 Tonga has been fortunate to obtain a low population increase rate of 7% between the period 1976 to 1984. This level of increase was obtainable as a result of emigration losses and perhaps through proper family planning. Tonga has a large overseas population concentrated in the countries mentioned below and in the following order :

United States of America  
New Zealand  
Australia  
Others.

1.1.3 There is a continual outward flow of Tongans to be reunited with their families overseas. In New Zealand alone the following patterns occurred due to the following :

- (i) 1974 Amnesty : 2000 - 3000 spread over the years 1974 - 75.
- (ii) 1976 Stay of Proceedings : 3000 - 4000 over 1976 - 1978.
- (iii) 1978 High Court Decision in the Ngata Case: 1600 spread over 1979 - 1980.
- (iv) 1982 Court of Appeal Decision in Latailakepa Case : 2000 spread over 1983 to present time.

1.1.4 During the same period Australia has twice allowed large numbers of Tongans to apply for and obtain permanent residence. With regards to the United States of America there is a steady admissions of Tongan for family reunification and residence. If it had not been for the significant and continual outflow the population increase rate could have easily reached 16% which would be more than double the present rate.

Section F 1.1.5 The preceding section on land distribution, illustrates the problem facing Tonga today and in the future. It was resolved at the outset by the Commission that our ever increasing population and land problems were matters of public concern and should be made the subject of public understanding and appreciation. Simultaneously, in performing that aspect of its work it would set out to engage a new partnership between Government, nobility and the people - joined in a common purpose, to search and find solutions for peace, stability and the well-being of Tonga in the future. This exercise is reflected in its findings and figures in the next succeeding paragraph.

1.1.6 A total of 470 people attended and expressed their views on the subject matters or issues listed as well as other matters outside the term of reference of the Commission. Some of those matters were personal case problems and although recorded in the transcript of the hearings are not recorded here. It is to be noted that the figures below do not correspond with the number of persons who gave oral submission. The reason for this was due to the fact that no systematic questionings were carried out to ensure that every person were asked the same questions and also not all the Commissioners were present at every hearing. The Chairman, Baron Tuita, Commissioners D. Tupou and T. Finau were able to attend every public hearing whilst the other Commissioners missed certain hearings and attended others.

1.1.7 We set out below the views expressed by the people on some of the issues listed, the venue of the hearings and numbers for and against, viz :

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1.1.8

I. FREEHOLDING (Tentative Proposal)

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohomua & Futu: Family	31	9
- Niuafou'ou & Niuatoputapu:		
(a) Niuafou'ou: Family	7	-
(b) Niuatoputapu: Family	7	-
Others	4	-
- Neiafu Magistrate Court: Family	29	6
- Tongoleleka, Ha'apai	31	0
- <u>Tongatapu</u> :		
(a) Nuku'alofa: Family	35	2
Others	-	0
(b) Vahe Loto: Family	32	2
Others	-	-
(c) Vahe Hahake: Family	44	5
Others	4	-
(d) Vahe Hihifo: Family	39	5
Others	-	-
	—	—
	TOTAL	263
		29
	—	—

NOTE:

- (i) Where the words "family" and "others" appear above, they refer to freeholding within the family circle and limiting it thereto. "Others" refer to outside the family circle as well.
- (ii) "For" represent those who support the tentative freehold proposal.
- (iii) "Against" represent those who are against it and prefer the present law.

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1.1.9

II. LAW OF INHERITANCE

(a) Present: Change

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	7	9
- Niuafo'ou & Niutatoputapu:		
(a) Niuafo'ou	1	-
(b) Niuatoputapu	2	-
- Neiafu Magistrate Court	4	1
- Tongoleleka, Ha'apai	23	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	11	-
(b) Vahe Loto	18	-
(c) Vahe Hahake	33	-
(d) Vahe Hihifo	17	2
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TOTAL	116	12
	<hr/>	<hr/>

NOTE

- (i) The words "present" above refers to the present Law of Succession as defined in Section 76 of the Land Act.
- (ii) The number of persons listed as "for" represented those who were against changing the present law.
- (iii) The number listed as "against" represented those who wanted the present law changed.
- (iv) Compare support for present law of succession above and support for tentative freehold proposal under paragraph           hereof.

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1.1.10 (b) Daughters

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	23	-
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	6	1
(b) Niuatoputapu	9	1
- Neiafu Magistration Court	17	1
- Tongoleleka, Ha'apai	22	1
- <u>Tongatapu:</u>		
(a) Nuku'alofa	15	1
(b) Vahe Loto	14	3
(c) Vahe Hahake	36	4
(d) Vahe Hihifo	16	3
	<hr/>	<hr/>
TOTAL	158	15
	<hr/>	<hr/>

NOTE

Daughters

- (i) In the preceeding subsection it was noted that 127 people were against any change to the law.
- (ii) Under this section where it is suggested that daughters be included in the law of succession 173 people agreed that this be done. This implied a change to the law of succession and if implemented will require the law to be changed. There were 16 people against daughters having right to succeed or inherit.
- (iii) Under Section 76 of the Land Act unmarried daughters have a life interest so long as they are unmarried. The proposal above is to remove the termination of their interest on marriage and place them on equal rights with sons. On this point also please refer to paragraph F1.1.10 hereof.

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1.1.11

(c) Illegitimate Children

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	22	3
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	1	-
(b) Niuatoputapu	5	-
- Neiafu Magistrate Court	7	1
- Tongoleleka, Ha'apai	10	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	12	-
(b) Vahe Loto	9	2
(c) Vahe Hahake	30	2
(d) Vahe Hihifo	13	4
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TOTAL	109	12
	<hr/>	<hr/>

NOTE

- (i) Refer to comments under daughters and paragraph 9.6 hereof.
- (ii) Illegitimate children are different from daughters who have a life interest if unmarried but illegitimate children have no rights at all. If this proposal is considered and given effect to a humane consideration will be imported into our laws which have not hitherto given them any recognition.
- (iii) "For" represent those who supported illegitimate children succession rights after natural children.
- (iv) "Against" represent those who do not support any proposal for any succession rights to illegitimate children.

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1.1.12

(d) "Adopted" Children

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	7	-
- Niuafo'ou & Niuaotoputapu:		
(a) Niuafo'ou	1	-
(b) Niuaotoputapu	-	-
- Neiafu Magistrate Court	1	-
- Tongoleleka, Ha'apai	3	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	2	-
(b) Vahe Loto	4	1
(c) Vahe Hahake	10	1
(d) Vahe Nihifo	2	-
	—	—
TOTAL	30	2
	—	—

NOTE

(i) Reference should also be made to comments under the paragraph dealing with daughters relating to changes to the law of succession also comments under paragraph F1.1.10 hereof. There is a limited area where this concept can be incorporated and in the order expressed in some of the comments stated in paragraph F1.1.10 hereof. In the case histories outlined to the Commission it was clear that those persons would have claims under the Family Protection Act in New Zealand and similar legislation in other Commonwealth countries, where they have advanced social legislations. A note of caution should be made that problems as to whether there was an adoption will be raised. There is a legal adoption pursuant to Part III of the Maintenance of

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Illegitimate Children Act (Cap. 19) and a "fakatonga adoption" pursuant to customary practice. The difference should be noted. The Commission understood these submissions to include both adoptions.

- (ii) "For" represent those who favoured giving adopted children limited succession rights.
- (iii) "Against" represent those who are not in favour of giving adopted children any succession rights.

1.1.13

III. LIFE INTEREST

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	-	-
- Niuafu'ou & Niuatoputapu:		
(a) Niuafu'ou	-	-
(b) Niuatoputapu	4	-
- Neiafu Magistrate Court	-	-
- Tongoleleka, Ha'apai	-	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	-	-
(b) Vahe Loto	-	-
(c) Vahe Hahake	-	-
(d) Vahe Hihifo	-	-
	-	-
	4	-
TOTAL		

NOTE

- (i) There was some confusion in the way this issue was understood by the people and there were very few clear answers given.

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1.1.14 IV. WOMEN'S RIGHTS

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	23	3
- Niuafu'ou & Niuatoputapu:		
(a) Niuafu'ou	1	1
(b) Niuatoputapu	2	-
- Neiafu Magistrate Court	10	2
- Tongoleleka, Ha'apai	8	1
- <u>Tongatapu:</u>		
(a) Nuku'alofa	7	2
(b) Vahe Loto	4	1
(c) Vahe Hahake	34	7
(d) Vahe Hihifo	12	3
	—	—
TOTAL	101	20
	—	—

NOTE

- (i) The terms "Women's Rights" are strictly referable to land. It is an extension of the question relating to daughters which word has a strong emotive meaning so Women's Rights were used. Both terms are synonymous for the purpose of this exercise. ~~Equal-Rights for Women~~ were submitted by people other than those who supported concept of daughters having equal rights of ~~succession with sons.~~ ~~Notes on deserted~~ wife are applicable and reference should be made thereto.

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1.1.15

V. WIDOW'S RIGHTS

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	3	3
- Niuafou'ou & Niuatoputapu:		
(a) Niuafou'ou	-	1
(b) Niuatoputapu	-	-
- Neiafu Magistrate Court	-	1
- Tongoleleka, Ha'apai	2	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	9	-
(b) Vahe Loto	18	2
(c) Vahe Hahake	10	4
(d) Vahe Hihifo	7	2
	—	—
TOTAL	49	13
	—	—

NOTE

(1) "Widow's Rights" relates to her life interest in tax and town allotments after death of husband. This right is terminable on remarriage fornication or adultery. There are many instances of landholder marrying for the second and also third time to much young women. There are adult children in the first marriage and on death of holder, widow's life interest defeats the male heir's rights, and possibly prior death of the heir. Also reported instances of not making claim within statutory period of one year and thereby losing right to land enabling another person to apply and acquire ownership instead of lawful heir.

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1.1.16

VI. CHURCH & CHARITABLE LEASES

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	4	2
- Niuafu'ou & Niuatoputapu:		
(a) Niuafu'ou	6	-
(b) Niuatoputapu	12	-
- Neiafu Magistrate Court	6	14
- Tongoleleka, Ha'apai	10	2
- <u>Tongatapu:</u>		
(a) Nuku'alofa	19	8
(b) Vahe Loto	14	6
(c) Vahe Hahake	23	13
(d) Vahe Hihifo	31	17
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TOTAL	125	62
	<hr/>	<hr/>

NOTE

- (i) Under the Column "For" above it should not be taken that it means the 144 who were for Church and Charitable leases agreed that Churches pay no rental or peppercorn rental. It means reasonable rental, or "fair rental". Some suggested that the Government or Minister of Lands fix a Maximum and Minimum scale. Others suggested it be left to the parties to negotiate a fair rental. Few said Church should not pay rental at all.
- (ii) "Against" represent those who are against Church being treated differently from people or businesses. With regards to Church sites some submitted that a nominal rental be fixed. Those "against" wanted high rentals than private individuals.

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1.1.18

VIII. LEASES

(b) Tax Allotment

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Furu	2	1
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	2	-
(b) Niuatoputapu	6	6
- Neiafu Magistrate Court	1	-
- Tongoleleka, Ha'apai	1	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	9	-
(b) Vahe Loto	-	-
(c) Vahe Hahake	2	-
(d) Vahe Hihifo	1	-
	—	—
TOTAL	24	7
	—	—

NOTE

- (i) "For" represent views favouring leasing of tax allotments for the present term of 20 years.
- (ii) "Against" represent those who wish to extend term beyond 20 years to avoid having to resort to surrendering land so that a longer lease can be made by estate holder.

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1.1.19 IX. VILLAGE RESERVES/SPORTS GROUNDS

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Chonua & Futu	4	-
- Niuafou'ou & Niuatoputapu:		
(a) Niuafou'ou	2	-
(b) Niuatoputapu	6	-
- Neiafu Magistrate Court	-	-
- Tongoleleka, Ha'apai	-	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	4	1
(b) Vahe Loto	13	-
(c) Vahe Hahake	14	2
(d) Vahe Hihifo	18	1
	—	—
TOTAL	61	4
	—	—

NOTE

- (i) "For" represent the number of people who support the creation of reserves and sports ground in village.
- (ii) "Against" represent people against this proposal.

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1.1.20

X. UNLAWFUL DEALING WITH LAND

(a) Money

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	-	-
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	-	1
(b) Niuatoputapu	6	-
- Neiafu Magistrate Court	1	1
- Tongoleleka, Ha'apai	-	1
- Tongatapu:		
(a) Huku'alofo	23	4
(b) Vahe Loto	13	11
(c) Vahe Hahake	-	4
(d) Vahe Hihifo	3	1
	—	—
	TOTAL	
	45	23
	—	—

NOTE

- (i) "For" represent those who are in favour of the present law prohibiting dealing with the land.
- (ii) "Against" represent those who wish to see the law changed - liberalised. It should regulate and protect parties to such transactions because an aggrieved party cannot go to Court on an illegal contract for redress.

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1.1.21

X. UNLAWFUL DEALING WITH LAND

(b) Alienation

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	-	-
- Niuafou'ou & Niuatoputapu:		
(a) Niuafou'ou	1	9
(b) Niuatoputapu	2	-
- Neiafu Magistrate Court	-	-
- Tongoleleka, Ha'apai	-	1
- <u>Tongatapu:</u>		
(a) Nuku'alofa	-	-
(b) Vahe Loto	-	1
(c) Vahe Hahake	1	0
(d) Vahe Hihifo	-	-
	-	-
	<u>TOTAL</u>	<u>11</u>
	-	-

NOTE

- (i) Alienation or disposition of land privately or sale are strictly prohibited.
- (ii) "For" represent those who wish to have sale or disposition of land legally authorised.
- (iii) "Against" represent those who are against any change to the law.

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1.1.22

XI. DISPOSITION OF LAND

(a) Money

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	3	3
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	-	2
(b) Niuatoputapu	4	-
- Neiafu Magistrate Court	3	4
- Tongoleleka, Ha'apai	-	1
- <u>Tongatapu:</u>		
(a) Nuku'alofa	3	16
(b) Vahe Loto	4	14
(c) Vahe Hahake	11	18
(d) Vahe Hihifo	1	22
	<u>          </u>	<u>          </u>
	TOTAL	
	29	80
	<u>          </u>	<u>          </u>

NOTE

- (i) "For" represent those who supported disposition of land on payment of money, whether to the estate holder when applying for an allotment or privately from any land holder.
- (ii) "Against" represent those who are against the use or payment of money on the disposition of any land.

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1.1.23

XI. DISPOSITION OF LAND

(b) Tongan Customs

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	1	-
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	3	-
(b) Niuatoputapu	6	-
- Neiafu Magistrate Court	1	-
- Tongoleleka, Ha'apai	2	4
- <u>Tongatapu:</u>		
(a) Nuku'alofa	1	-
(b) Vahe Loto	-	-
(c) Vahe Hahake	1	-
(d) Vahe Hihifo	1	-
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TOTAL	15	4
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NOTE

- (i) "For" represent those who support the present customs observed between people and estate holders when applying for an allotment.
- (ii) "Against" represent those who are against this current practice.

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1.1.24

XII. HEREDITARY ESTATES

(b) 'Api Fakalofi'a

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	2	1
- Niuafou & Niuatoputapu:		
(a) Niuafou	3	3
(b) Niuatoputapu	6	5
- Neiafu Magistrate Court	1	-
- Tongoleleka, Ma'apai	-	-
- <u>Tongatapu:</u>		
(a) Huku'alofa	15	-
(b) Vahe Loto	29	-
(c) Vahe Mahake	1	-
(d) Vahe Mihifo	24	-
	<u>82</u>	<u>9</u>
TOTAL		

NOTE

- (i) People wanted provisions made in the law for land from hereditary estates determined and set aside for use of estate holders. The balance of hereditary estates to be completely distributed to the people.
- (ii) "For" represent those who supported (i) above.
- (iii) "Against" represent those who were against it.
- (iv) Please refer to Section 34(1) where proposal may be determined "by Regulation" under the Land Act.

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1.1.25

XII. HEREDITARY ESTATES

(c) Transfer to Government

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonuu & Futu	1	1
- Miuafu'ou & Niuatoputapu:		
(a) Miuafu'ou	3	-
(b) Niuatoputapu	-	-
- Neiafu Magistrate Court	1	4
- Tongoleleka, Ha'apai	-	-
- Tongatapu:		
(a) Nuku'alofa	1	-
(b) Vahe Loto	-	-
(c) Vahe Mahake	9	2
(d) Vahe Mihifo	1	10
	<u>16</u>	<u>17</u>
TOTAL		

NOTE

- (i) "For" represent those who submitted that hereditary estates should be transferred from Estate Holders to the Government to administer and distribute.
- (ii) "Against" represent those who prefer to leave it with Estate Holders.

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1.1.26

XIII. RENTAL OF TAX ALLOTMENT

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	4	-
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	4	6
(b) Niuatoputapu	6	7
- Nelafo Magistrate Court	5	1
- Tongoleleka, Ha'apai	10	10
- <u>Tongatapu:</u>		
(a) Huku'alofa	8	21
(b) Vahe Loto	17	36
(c) Vahe Hahake	14	17
(d) Vahe Iihifo	19	28
	—	—
TOTAL	87	126
	—	—

NOTE

- (i) Rental of tax allotments refer to questions of whether it should be increased from 80 seniti which is the present rate or no variation to be made.
- (ii) "For" represent those who favoured some form of increase.
- (iii) "Against" represent those who supported the rental remaining at 80 seniti.

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1.1.27

XIV. LAND TAX OR RATES

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Chonua & Futu	-	-
- Niuafo'ou & Niuatoputapu:		
(a) Niuafo'ou	-	-
(b) Niuatoputapu	-	-
- Nafafu Magistrate Court	-	-
- Tongoleleka, Ha'apai	1	-
- <u>Tongaatapu:</u>		
(a) Fuku'alofa	-	3
(b) Vaka Loto	1	1
(c) Vaka Mahaka	-	1
(d) Vaka Hihifo	1	6
	-	-
TOTAL	3	11
	-	-

NOTE

- (i) It was proposed in two of the written submissions that a form of land tax be imposed to help Government and to encourage people to utilise their land.
- (ii) "For" represent those who supported some form of taxation being imposed.
- (iii) "Against" represent those who opposed any form of taxation.

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1.1.28 XV. SUBDIVISION OF TOWN ALLOTMENTS

(b) Minimum Area

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	-	-
- Niuafu'ou & Niuatoputapu:		
(a) Niuafu'ou	-	0
(b) Niuatoputapu	6	6
- Nalafu Magistrate Court	0	6
- Tongoleleka, Ha'apai	-	-
- <u>Tongatapu:</u>		
(a) Nuku'alofa	5	14
(b) Vahe Loto	6	3
(c) Vahe Mahake	1	1
(d) Vahe Nihifo	-	-
	—	—
	TOTAL	
	18	35
	—	—

NOTE

- (i) The statutory minimum area for town allotments is 30 perches.
- (ii) "For" represent those who supported the statutory minimum area of 30 perches.
- (iii) "Against" represent those who favour a further reduction to 20 perches or 15 perches.

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1.1.29

XXIX. PROTECTION OF INNOCENT WIFE/CHILDREN

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	2	-
- Niuafu'ou & Niuatoputapu:		
(a) Niuafu'ou	1	-
(b) Niuatoputapu	10	-
- Neiafu Magistrate Court	-	-
- Tongoleleka, Ha'apai	5	-
- <u>Fongatapu:</u>		
(a) Nuku'alofa	3	-
(b) Vahe Loto	12	1
(c) Vahe Hahake	2	-
(d) Vahe Hihifo	15	-
	—	—
TOTAL	50	1
	—	—

NOTE

- (i) "Innocent Wife" refers to a wife (with children) who is deserted by the land holder to live with another woman or remarries and there is no matrimonial misconduct on the part of the wife. Question raised therefore was whether law should be extended and have land vested in wife for her and later for their children. This is in addition to the protection afforded to a deserted wife under the Maintenance of Deserted Wives Act (Cap. 20).
- (ii) "For" represent those who supported (i) above.
- (iii) "Against" represent those who are against (i) above.

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1.1.30

XXXI. ABSENTEE OWNERS

<u>Venue</u>	<u>For</u>	<u>Against</u>
- 'Ohonua & Futu	5	3
- Niuafu'ou & Niuatoputapu:		
(a) Niuafu'ou	4	-
(b) Niuatoputapu	3	-
- Neiafu Magistrate Court	-	-
- Tongoleleka, Ha'apai	1	2
- <u>Tongatapu:</u>		
(a) Nuku'alofa	2	-
(b) Vahe Loto	17	2
(c) Vahe Mahake	6	2
(d) Vahe Hihifo	14	1
	—	—
	TOTAL	
	59	10
	—	—

NOTE

(i) Because there is an unknown and possibly large number of land holders who are permanently residing overseas the question raised was whether after a continuous absence of 2 or 3 years they should automatically lose their rights to hold land in Tonga.

(ii) "For" represent those who supported absentee owners and the present law.

(iii) "Against" represent those who were against absentee landowners and want their rights taken away.

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1.1.31 Set out below in summary form are general issues raised by people at the public hearings and which had limited numbers for or against viz:

- (i) Naturalised Tongans be given same rights as natural born Tongan of Tongan parentage. At Nuku'alofa two advocated equal rights to lands with persons opposing it at the same hearing. At Vahe Loto, Tongatapu persons raised opposition to this being done when referring to freeholding of land. Final result 2 for and 4 against.
- (ii) Purpose of Allotments should have conditions attached for example before registration of town allotments. Minister should be satisfied that there is sufficient development and it will be used as residence. Seven persons raised this point and none against.
- (iii) Rights to all Minerals reserved exclusively to the Crown: Six persons opposed this provision of the law and submitted that holders of allotments should be entitled thereto if found on their allotments. One supported this provision. This provision of the law is not uncommon in other countries.
- (iv) Reclaimed areas by Government: In Niuafu'ou and Niuatoputapu 10 persons supported Government undertaking land reclamation for leasing. None against. Three in the Hihifo District supported concept of reclaiming land as there were not enough land

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there for the people of that district. Reclaimed land should be granted to people of Hihifo District. None against.

- (v) Leasing of Town Allotments: Four persons submitted and support concept of leasing of town allotments. None made any contrary submissions.
- (vi) Limitation of Actions: At present all claims or actions must be brought within 10 years after the time at which the right to bring such claim or action first accrued. Three persons made submissions and supported this time period. One person made contrary submission to extend the time.
- (vii) Heir must make claim within one year from date of death of holder: Six persons made submissions and supported the present law and four were against it. The latter groups desire time be extended further.
- (viii) Exchange of Allotments: Three persons appeared and made submissions to stop this practice.

1.1.32 The typed transcript of the oral submissions at the public hearings have been bounded into volumes totalling 1312 pages in all. These are to be used for future reference as to how people felt about their land, customs and what they perceived as necessary changes. The attitude towards

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particular problems varied from one locality to another. What was important to the people of Ha'apai was not important to the people of Vava'u as to land use and absentee land holders. Because the Ha'apai Group have a small land area and scattered over many small islands the opportunities for commercial cropping or farming are limited. This is further exacerbated by transport and communication problems. The holdings for tax allotments are mainly of 4 acre sizes or less and their concern is centered or focussed on their daily needs from their land and the sea. They expressed and reflected conservative attitudes towards land, customs and life generally and are not easily receptive to changes. What was observed in Ha'apai today reflected lifestyle and attitudes prevailing in Tongatapu and Vava'u some 40 years ago. Both the latter main islands have changed particularly Tongatapu where the impact of western influences and lifestyle are more noticeable. We record this observation because it did have some effects on the answers given to the issues raised at the hearings.

1.1.33 Summarised hereunder are additional comments or views expressed at the different localities where the public hearings were conducted viz:

Vava'u: 1. The general concept of freehold land was not fully supported there being some apprehension as to its long term effects and possibility of losing land. However there was strong support for the limited

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freeholding within the family circle.

(Note: This was the original and tentative proposal of the Commission with all the other restrictions provided in connection therewith.)

1.1.34 2. Law of Succession

- (a) There was support for the inclusion of adopted children (or pusiaki) on conditions. First, if there are legitimate children, an adopted child can claim if he or she cared for the holder and later the widow. Second, if there are no legitimate children then should have right to succeed.
- (b) Daughters should be included and have equal rights as sons. Some qualified the right to operate only if there are no sons.

NOTE

- (i) There are cases where an adopted child is left with the responsibilities of caring for adoptive parents without natural children. On death of adoptive parents the land on which the adopted child has lived all her or his life is taken away by the heir and the adopted child has nowhere to live. The heir to the land who had no connection with the development of the land require the adoptive daughter or son to vacate.

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- (ii) In a situation such as (i) above strong submissions for our laws to be amended to recognise this situation. A further situation was brought before the Commission related to cases where there were natural children of the adoptive parents but had left their parents and adopted persons took responsibility of caring and supporting and living with parents. It was submitted that adopted persons should also have prior succession rights to natural children.
  
- (iii) For (b) refer to Section F1.1.15 hereof under daughter's for statistics and comment.

1.1.35 3. Leases

- (a) Minister of Lands to set a maximum and minimum scale for all lease rentals.
  
- (b) Tax allotments should be leased out by holders and number of leases to be taken by any one proposed lessee should not be limited. Others submitted that a maximum of 2 leases per person be imposed.
  
- (c) Restriction of 5% on total holding of hereditary estates permitted for leasing be repealed.

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NOTE

- (i) There were many submissions similar or identical to (a). The Government has a form of scale used in Crown leases. The Commission after careful consideration taking into account opposing submissions under the freedom of the individual to place a value on his property resolved that the subject be left to private negotiation between the parties.
- (ii) There are no legal restrictions covering the point raised in submission (b) above.
- (iii) The Commission adopts the view that the restriction in (c) above should be tightened. Refer to section on Land Distribution.

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4. Hereditary Estate

- (a) These estates be surveyed and boundaries defined.
- (b) Period of 12 months from death of land holder within which the heir or widow must make claim and register interests be confirmed. Others submitted that period of time be reduced to 6 months.

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(Note: If limited freeholding of land is introduced as law the registration period of 12 months will not be necessary. It can be repealed.)

1.1.37 5. General

- (a) It was submitted and supported that this Commission or a similar Commission should sit annually and from place to place.
  
- (b) When land is distributed or granted to the people it should be made only to those who would utilise the land fully and that there should be no limit on the allotments to be held by such people.

NOTE

- (i) No comments will be made regarding (a) above as it covers questions of Government policy. In addition a "demonstrated need" must be just established because of the cost factor.
  
- (ii) The principle raised in (b) above would be difficult to apply in practice.

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- 1.1.38 Ha'apai:
1. The widows life interest after the death of the holder should be amended. Under the present law that life interest is terminated by remarriage or fornication or adultery. However submission in Ha'apai was that the interest should not be for life. It should be for a limited duration or male heir to succeed immediately.
  2. Church Site  
The site on which church building is situated should be rent free. It was also conceded that the submissions for rent free leases would not apply if site is used for dual purposes.
  3. At present the rental payment for tax allotment is 80 seniti per year irrespective of the area of the allotments. People of Ha'apai strongly submitted that it should be according to area. The Commission noted that the tax allotments in Ha'apai varied in areas from 2 to 8 $\frac{1}{4}$  acres. It was accepted by the people that there is room for the present rate of 80 seniti to be increased. - no actual figure was suggested or universally accepted.

NOTE

- (i) For 1 above refer to Section F1.1.15 hereof under Widow's rights and notes thereunder.

- (ii) For 2 above refer to Section F1.1.15 hereof under Church and Charitable leases and notes thereunder.
- (iii) For 3 above refer to Section F1.1.15 hereof under rental of tax allotment and notes thereunder.

1.1.39 'Eua:

1. Freehold

- (a) Supported the freehold concept with the restrictions proposed by Commission.  
One person supported absolute freehold - no restrictions.

2. Law of Succession

- (a) Daughters to succeed equally with sons.
- (b) Daughters inheritance to be limited to her body and her children - husband to have no rights thereto.
- (c) Adopted child who has looked after the holder and his wife during their life time to be included in the law of succession also to have a prior right over natural children who had done little or nothing for their natural parents.
- (d) There was also the same submission that daughters to inherit only if there are no sons.
- (e) Widow's right not to be a life interest.  
It should be limited to a fixed number

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- of years, then the heir should inherit. Widower however should have a life interest in land developed through wife if there are no children. On widower's death land to revert to wife's family.
- (f) On succession an illegitimate son to have priority over a legitimate daughter.
- (g) The widow from a second marriage should have her life interest and inheritance restricted to half of the tax and town allotments. The other half to be given to the heir from the first marriage.
- (h) Termination of widow's life interest on grounds of fornication or adultery be amended to include an alternative and additional method of proof i.e. mere production of both certificate of an illegitimate child of widow, conceived and born after death of husband to Minister of Lands without Court proceedings.

NOTE

For (a) to (h) above refer to Section F1.4.15 hereof under Law of Succession and notes thereunder. Also section under Land Act in this report.

2. Leases

- (a) Rentals to be determined according to purpose of lease and profit derived from land.
- (b) Government should fix a maximum and minimum scale for lease rentals.
- (c) All future leasing be stopped. Any leasehold land on expiry of lease should be distributed to people.
- (d) Leases of land be allowed only to Tongan subjects.
- (e) Tongans to have priority over foreigners as regards rights to lease land. No foreigner be allowed to lease tax allotments.

NOTE

These submissions are covered under Section F1.1.15 and the note thereunder and also under sections of this paragraph.

3. Sale of Land

- (a) Outright sale of land be made lawful.
- (b) The use or payment of money to the estate holder when applying for an allotment, town or tax be made lawful.

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NOTE

Refer to Section F1.1.15 hereof for statistics and notes under Unlawful Dealing with Land.

4. Adulterous Land Holder

Should be made to forfeit his land and vest the same in innocent wife and their children.

NOTE

Refer to "Innocent Wife" under Section F1.1.15 hereof and notes thereunder.

5. Hereditary Estates

(a) If Nobles were to be given a salary and land to be administered entirely by Government the terms "Nobles of a people" would no longer be applicable today. Under such a system their status would be redefined to read - "Nobles of Mammon".

(b) The land for the use of estate holders should be reduced and defined and balance of estates should be distributed to the people.

NOTE

Refer to this section in Section F1.1.15 hereof and notes thereunder.

6. Absentee Owners

Their land should be taken away only if they are not contributing to the village directly or indirectly.

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NOTE

Refer to "Absentee Owners" in Section F1.1.15 hereof and notes thereunder.

1.1.40 Tongatapu:  
Nuku'alofa  
Districts:

1. Freehold

Concept supported with differing views as to how disposition and any subdivision to be made. Some supported disposition and subdivision be made solely by holder and his family and others submitted that this be done only with consent of estate holder.

NOTE

The latter views would alter the concept of freehold.

2. Law of Succession

- (a) If there are no sons, a daughter then to succeed and hold land in trust for her heirs.
- (b) Illegitimate children to succeed if there are no legitimate children.
- (c) Life interest of a widow from a second marriage be restricted to one half of the land and the other half given to the heir. At death of widow balance of land to go to the heir.

NOTE

- (i) There are two main thrust with regards to daughters' succession rights. First in that they have equal rights with sons. Secondly where there are no sons and only then they have full succession without qualification such as not being married. Both or either submissions

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are well supported and worthy of implementation.

(ii) The position regarding illegitimate children is one of legal recognition after natural children. Most illegitimate children are conceived and born before father or mother marries. If given equal rights they would probably inherit before legitimate children.

(iii) Refer to Section F1.1.15 hereof for widow's rights and notes thereunder.

3. Leases

- (a) Only Christian Churches be allowed to lease land. No new church to be allowed into Tonga or to lease land.
- (b) Rent be reasonable to churches leases and subject to private negotiation between parties. If land used for other purposes as well then treat it as a business.
- (c) Leases should have automatic right of renewal.
- (d) The term for leases of tax allotments should be fixed at 20 years. Others submitted it should be beyond 20 years with a few advocating a maximum term of 10 years.

NOTE

(i) Submission (a) is a difficult one on question of freedom of worship. Could raise question of discrimination against certain religions.

(ii) Question for reasonable rents for Church leases is well supported. Refer

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- (iii) Automatic right of renewal in Church leases is an important submission.
- (iv) This is an important submission but need no legislative enforcement. It is a policy question and one which should be left for the decision of private landowners and estate holders.
- (v) Refer to Section F1.1.15 hereof and notes and the section in this report dealing with the Land Act.

4. Hereditary Estates

- (a) All leased land from hereditary estates to revert to Crown as Crown lands on expiry of leases.
- (b) That all hereditary estates be transferred to the King with land for use by estate holder and Minister of Lands and reserved for that purpose.
- (c) That the use or payment of money to the estate holder when applying for an allotment be made lawful but the amount of payment be limited to the value of the land.
- (d) Others submitted that estate holders be made to report annually to the King on the administration of their estates and what provisions made for their people and care shown towards them.

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NOTE

- (i) The submissions to transfer hereditary estates to the Government is referred to under Section F1.1.15 hereof and notes under hereditary estates in the section dealing with submissions from Tongatapu Eastern Districts (Vahe Hahake).
- (ii) Refer to unlawful dealings with land under Section F1.1.15 hereof and notes thereunder as well as notes under this paragraph.
- (iii) This is a novel and interesting submission for estate holders to report annually to the King. However it could be an imposition on His Majesty.

5. Allotments

- (a) Submission as to rental increase on tax allotments varied. Some supported increase generally on all tax allotment or Crown lands be increased. General agreement that rates should be related to size of allotments.
- (b) Minimum area of town allotments be reduced to 15 perches or 20 perches.
- (c) Holders to have the right to minerals found under his land.
- (d) An educational programme on the Land Act, usages and customs be provided and incorporated into school syllabus or education system.

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- (e) Abandonment of land to be punishable by imprisonment but not by forfeiture of land.
- (f) The present Land Act to be made applicable to town allotments only, all other land to be set aside and leased for a 3-5 year term to unemployed people to work the land.
- (g) A widow who has a similar life interest to other holders should be allowed the same rights of being able to lease the town or tax allotments.
- (h) The Bank officials submitted that the procedure for loan increases should be reviewed and that terms for leasing of tax allotments should be increased from 20 years to 30 years to correspond with the maximum terms for mortgages which is 30 years.

NOTE

- (i) Refer to Section F1.1.15 hereof and notes thereunder and notes under this paragraph as to rental increase on tax allotments.
- (ii) Recommendation is contained in this report for minimum area to be fixed at 20 perches.
- (iii) Under present law, mineral rights etc are reserved to the Crown. No amendment is proposed.
- (iv) Submission (d) is worthy of consideration by the education authorities and is supported.

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- (v) Submission (e) is not supported.
- (vi) Submission (f) is an impracticable suggestion.
- (vii) Submission (g) has logic in its favour when the trends on daughters rights, Women's rights are viewed as a complete package.
- (viii) Submission (h) require amendments to the approved forms of mortgages and will be implemented.

1.1.41 Tongatapu: (Vahe Hahake)

Eastern

Districts: 1. Freehold

Support concept of limited freehold and subdivision raised differences of opinions some wanted estate holders to be involved and their consent obtained, others wanted them excluded completely. Some wanted absolute freehold and Government to be consulted on sale or subdivision. Where there are no heirs land to revert to estate holder.

2. Law of Inheritance

Amendments to be made:

- (a) Include daughters if sons already have land or
- (b) If only child is a daughter she should inherit or succeed.
- (c) Illegitimate children to rank second in succession after legitimate children.
- (d) Adopted children to rank third after illegitimate children.

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- (e) Some submissions proposed that adopted children's rights be limited to chattels - no rights to succeed to land.
- (f) Women to have succession limited to town allotments. Tax allotments to be excluded.
- (g) Women's rights to land be by inheritance and not by application i.e. the entitlement to be granted an allotment from hereditary estates or Crown Lands continue as presently provided which is restricted to Tongan males.
- (h) Widow of second marriage to share the land with the children of the first marriage i.e. widow's life interest be limited to one half.

NOTE

- (i) Some of the comments under this sub-heading as to succession appear logical and worthy of consideration.
- (ii) The succession of adopted children will need careful treatment. Is it to be limited to adoption under Part III Maintenance of Illegitimate Children (Cap. 19) or is it to include the customary practice as well.
- (iii) Customary adoption will need definition.

3. Leases

- (a) Church leases to be rent free or low rent unless business or other activity is carried on the premises, in which case the rent should be high.

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- (b) Leased land to be granted to the lessee or lessees family on expiry of lease.
- (c) Limit the number of tax and town allotments to be made the subject of leases.
- (d) Commercial leases to have high rentals.

NOTE

- (1) These submissions need no further elaboration.

4. Hereditary Estates

- (a) Present provisions of the law relating to sale and payment of money for land or profits to be enforced very strictly.
- (b) The use or payment of money to estate holders be made lawful.
- (c) Sale of land to Tongans only be allowed.
- (d) Land reserved for use of estate holders to have a maximum limit of 200 acres.
- (e) All hereditary estates to be transferred to the Government to administer and estate holders to get a salary. The nobles have been abusing their position.

NOTE

- (i) The total number who made submissions that hereditary should be transferred to the Government came to 17. Those who were against this submissions totalled 18.
- (ii) Those who made written submissions in support of the transfer of hereditary estates came to 3. The result with those who made reference to this subject was evenly divided with 20 in favour and 18 against. No estate holder made

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made reference to this subject.

- (iii) Reference to the estate holder being allocated a set area of land from hereditary estates for his use and balance distributed were made regularly from venue to venue, how this was to be determined varied. Some submitted a fixed area others submitted that the Minister of Lands or estate holder should make the determination.
- (iv) Other submissions above are self explanatory.

5. Rental of Tax Allotments

- (a) Some submitted the rental should remain at 80 seniti. Others agreed that there is need for increase. Any increase should be determined according to size. Figures mentioned for increase were \$1, \$5 and \$8.
- (b) Provisions for heir or widow to claim and register interests within one year after death of holder should be repealed.
- (c) Provisions for exchange of allotments should be repealed.
- (d) Adulterous land holder to forfeit land favour of innocent wife and children.
- (e) Allotment holders should be allowed to have a cemetery on their land.
- (f) Land should not be forfeited for non-payment of rent but punishable by fines only. If forfeited than only in favour of heir.

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NOTE

The above submissions need no further comments and are self explanatory. Refer Section F1.1.15 hereof and notes thereunder and section of this report on Land Act.

1.1.41 Tongatapu: (Vahe Loto)

Central

Districts: 1. Freehold

- (a) Supported freehold concept with following suggestions:
  - (i) Only a holder with children to be entitled to restricted freehold.
  - (ii) Distribution or disposition be permitted with consent of estate holder, if no heirs absolute disposition.
- (b) Freeholding not supported - because freeholding mean different law for the King, Nobles and people.
- (c) If no heirs land to revert to estate holder.
- (d) Supported restricted freehold but that distribution of land be made according to the succession provisions under present Land Act.
- (e) Freehold be made legal but only as an option to the present system.

NOTE

Comments in (a) (i) above not workable proposition.

Comments in (a) (ii) would alter the concept of limited or restricted freeholding. If consent of estate holder is required then holder is not free. It is a retrograde step and conflicts with what is proposed.

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Comments in (b) raises question of separate laws and has some validity but in Western Samoa, Cook Islands, Fiji and other countries - they have separate provisions for separate type of land. In the context of the present proposal it is not strictly separate laws but classifications of types of land holding. Comments in (d) and (e) are both unworkable if incorporated.

2. Law of Succession

Should be amended to:

- (a) Allow a daughter or daughters to inherit if there are no sons.
- (b) Illegitimate children to be included in succession ranking second after legitimate children.
- (c) Widow of second marriage to have restricted life interest - have a half share each with heir from first marriage.

NOTE

- (i) These submissions are similar to others already made and with commentaries thereon.
- (ii) Refer to Section F1.1.15 hereof and notes thereunder.

3. Leases

- (a) That Government to fix the rent in cases of Church and charitable leases.
- (b) That Government to fix the maximum amount of land Church should hold under lease. The reason being that Churches own too much land under lease.

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- (c) Church leases to have low rentals but not if use outside normal purpose of church i.e. business.

NOTE

These submissions need no further comments as they are representative or similar to others already made.

4. Allotments

- (a) The use or payment of money in lieu of customary gifts of pigs, yams etc to estate holder when applying for an allotment (Tala'api) be made lawful - amounts payable according to official valuation of land.
- (b) That minimum area for town allotment be different for allotments in rural areas as opposed to urban areas.
- (c) Naturalised Tongan of part Tongan blood be allowed to hold allotments as opposed to lease.
- (d) Absentee Owners who have acquired foreign citizenship or not naturalised overseas but has lived continuously for period of 5 years overseas to lose their rights to any land they hold in Tonga.
- (e) Adulterous husband to forfeit land in favour of innocent wife.

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NOTE

- (i) Submission (a) above introduces money into the transaction (tala'api) between the estate holder and an applicant. The traditional procedure has involved gifts of produce, pigs and tapa cloth etc and it is now claimed that all these items have money value and are purchased by the applicant to present as gifts. Why not short circuit it and place the money in an envelope and present it to the estate holder. The contrary view is that once you start giving estate holder money he will expect and demand money and his expectation and limit may be above the price that can be afforded by the average Tongan.
- (ii) There is no real need for different minimum areas for town allotments in urban or rural districts. It is only a minimum area not a fixed area and the suggestion can be taken into consideration on rural subdivisions.
- (iii) Naturalised Tongans of mixed Tongan and non-Tongan blood are worthy of consideration. Some of these people have Tongan ancestors, also they were born here and are domiciled in Tonga. A distinction should be made with regards to other naturalised persons.
- (iv) Refer to Section F1.1.15 hereof for statistics and comment on absentee owners.
- (v) For adulterous husband refer to Section F1.1.15 under innocent wife.

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5. Village Reserve for sports grounds and use of people was supported.

NOTE

Refer to Section F1.1.15 hereof and notes thereunder on village reserves.

6. Hereditary Estates

- (a) The area of any hereditary estate for use of that holder should be limited and defined. There were two conflicting views on this.
- (b) Some took the view that it should be left entirely to estate holder to determine size of land to be reserved for his use.
- (c) Others submitted that the size of areas of land for use by estate holder should be no different from that provided under the law for the people namely maximum size - town allotments 1r. 2hp. tax allotments 8½ acres. That's all the land that should be reserved for their use.

NOTE

- (i) These submissions are self explanatory.
- (ii) Refer to earlier submissions and commentary thereon.

1.1.43 Niuafou'ou & Niuatoputapu:

- (a) Widow to be entitled to only half of the land, the other half to go to the heir.
- (b) That duration of lease for tax allotment be the same as duration of lease for town allotment.

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(c) A maximum limit be set by law for the size of 'api fakatofi'a.

(d) All land i.e. hereditary estates be transferred back to the King.

(e) Minimum area of town allotments be reduced to 20 perches.

(f) Rental of tax allotments to be increased.

NOTE

(i) For (a) above refer to widow's rights under Section F1.1.15 hereof

(ii) For (b) above refer to Section F1.1.15 hereof and comments under this paragraph.

(iii) For (c) above refer to submissions already made under this paragraph.

(iv) For (d) compare this with other submissions under this paragraph to have hereditary estates transferred to the Government.

(v) For (e) above refer to section in this report dealing with Land Act and recommendations thereunder.

(vi) For (f) refer to recommendations on this submission.

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1.1.43 The foregoing statistics on the voice of the people have been set out in full to indicate public thinking on issues which concerned the Commission. At the end of this exercise Commissioners were able to form their own conclusions as to the course and direction they should take. It helped to resolved any misgivings they may have had. The purpose of detailing these views will also assist the appropriate people in authority to make their own decisions therefrom. We have not made any specific recommendations at the end of this section. What we have done is to select ideas and build them into the amendments and recommendations when dealing with the Act and Constitution.

1.1.44 We draw attention to the fact that no concrete evidence emerged from this exercise to prove any breaches of the provision of the Act. No one came to the Commission with any specific evidence of illegal practice either in public or privately.