

APPENDIX 25

(FAKALAH I 25)

CONFIDENTIAL REPORT

THE VAVA'U LAND DEALINGS REPORT

18TH DECEMBER 2007

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Executive Summary

Schemes for the Unlawful 'Sale/Lease' of Lands in Vava'u

Evidence provided in this report strongly indicates a rapidly growing number of schemes that unlawfully 'sell/lease' Tongan lands to foreign purchasers.

These unlawful 'sales/leases' are occurring mainly in Vava'u, increasingly in Ha'apai and to a lesser extent in Tongatapu.

There has been a steady growth of such unlawful land 'sales/leases', since about 2004 particularly in Vava'u. The rate of growth appears to have increased over more recent years.

Foreign Land Dealers

These unlawful land transactions have been orchestrated by a small number of 'land dealers', most of whom are foreigners based in Vava'u.

These land transactions have been heavily focussed on the 'sales/leases' of Tongan lands held by Tongans, mainly of a lower income bracket to foreign purchasers/'tenants'.

The phrase 'sales/leases' is utilised throughout this report to highlight the meanings by which these land dealers promote Tongan Lands loosely using such terms as 'sale', 'purchase', 'lease' and 'tenancy'. Land dealers are well aware that foreigner purchasers (mainly European in origin) have similar Western understandings of land ownership (which are very different to those in Tonga) and play on these when promoting Tongan lands for 'sale' and 'lease'.

The conclusions reached in this report are supported by evidence provided from two aggrieved clients (foreign purchasers), Eric Stark and Richard Mortimer and their dealings with a particular land dealer of Vava'u, Robert Bryce.

Other evidence supporting these conclusions has also been provided from a full internal search of the Vava'u Lands Registry offices, with the direct authority and support of the Minister of Lands.

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Further supporting evidence has also been provided from a range of sources both disclosed and undisclosed.

The evidence referred to also supports the finding that there is a wider degree of involvement by a number of land dealers, based in Vava'u in a range of similar style unlawful land transactions. The full extent of involvement is yet to be ascertained.

Extent and Scale Unknown

The full extent and scale of this growing land 'sale/lease' problem is yet to be ascertained. A full enquiry is required to determine and clarify these factors.

Over recent years, land dealers appear to have established an almost 'complete land dealing system' totally outside the notice and approval of any government authority. The ease with which these land dealings have been conducted has provided a platform for the rapid growth of unlawful sales/leases of Tongan lands to foreign purchasers.

The Kingdom of Tonga, given its small population and very limited total area of land available, is very vulnerable to foreign intervention and control hence the existence of the protective provisions of the Land Act and the Tongan Constitution. If allowed to continue, these unlawful land 'sale/lease' schemes could threaten effective control of large portions Tongan lands for Tongans.

As an initial indicator, an increasing number of foreign purchasers have begun to contact counsel expressing concern over the legal standing of their land 'tenancy investments' in Tonga. Most of these concerns centre around variations of the unlawful tenancy agreements described herein.

Durations of Tenancy Agreements

Evidence provided herein confirms that these land dealers are creating 'tenancy agreements' whereby the duration of the leases are determined well outside notice and approval of the Minister of Lands and also the clearly prescribed land laws of Tonga. Durations of up to 99 years, appear to be agreed to and endorsed in a range of unlawful land transactions and agreements.

Orchestrated to Evade Government Detection

These unlawful land transactions have been carefully orchestrated to operate, well outside the protective provisions of the Land Act and the Tongan Constitution. They are therefore designed to minimise any involvement or control from the Government of Tonga in the 'sale/lease' of Tongan land to foreigner purchasers.

To date, these land 'sale/lease' schemes implemented have been successful in almost completely eluding the Tongan land law system, as it stands.

The Ministry of Lands has therefore been rendered almost totally unaware of the increasing number of unlawful land transactions that have involved large exchanges of monies and 'allocations' of Tongan parcels of land and have proceeded uncontrolled, unencumbered and unlawful over recent years.

Tongan lands are therefore being and have been unlawfully 'sold/leased' to foreigner purchasers;

- i) without any official notice or knowledge of the Lands Registry Offices.
- ii) without any approval from the Minister of Lands, Deputy Minister of Lands or Cabinet.
- iii) large amounts of monies have been exchanged between the land holders, land dealers and foreign purchasers.
- iv) parcels of Tongan land have been 'allocated' between the land holders, land dealers and foreign purchasers.
- v) Survey plans have been misrepresented to foreign purchasers as 'legitimate' and properly approved surveys that are in fact not so
- vi) more recently, 'sub-dividing' and 'on-selling' of already unlawfully gained lands to other foreign purchasers

Unlawful Tenancy agreements

To the foreign purchaser, a range of 'tenancy agreements' are drawn up that appear to be legitimate and are endorsed by the land dealer and at least a couple of local Tongan law practitioners.

In a nutshell, the form and content of these agreements wrongly exploits the notion that an interest in land can be indirectly acquired over a Tongan land holder's rights, if dwellings only are 'rented' on that land. The creation of a 'long term' tenancy of sorts amounts to a disguised acquisition of Tongan lands to a foreign purchaser.

These Agreements exploit the existing legal distinction between i) ownership of the land and ii) separate ownership of the property/dwellings upon the land, as a means of circumventing the provisions of the Land Act.

The clear intention of these land dealers is to create an 'interest' over Tongan owned lands for foreign purchasers by firstly establishing buildings and improvements on the land, thereby acquiring 'de facto' land holder rights by the foreign purchaser, over the Tongan landholders rights. This effectively compels the landholder into an eroded form of land holding.

This new hybrid of 'de facto' landholding is unlawful and directly contravenes and undermines the protective provisions of the Land Act.

These 'tenancy agreements' are not recognised by the Land Act and are unenforceable in a court of law. They are also clearly outside the specifically prescribed forms and transactions contained in the Land Act.

The 'tenancy agreements' have no legal standing in so far as it relates to land. They are illegal, invalid and breach in particular, section 13 of the Land Act in so far as it relates to security of tenure in land.

Only section 13 of the Land Act validates any agreement for the use and occupation of land. The wording of the 'tenancy agreements' attached herein expressly refers to 'land' and 'the enjoyment and use of the grounds...' and to that end, the tenancy agreement is unlawful.

These 'tenancy agreements' are also entered into without any notice to nor seeking of any approval from the Minister of Lands, Deputy Minister of Lands or Cabinet. This is also clearly outside the specific requirements contained in the Land Act.

Land Office - Internal Corruption

However, evidence herein also confirms internal and corrupt involvement by government land officers within the Vava'u Lands Registry Office in recent times.

These land officers have also provided an effective shield of sorts, in deflecting any information relating to these unlawful land dealings from coming to the attention of the Governor of Vava'u (Deputy Minister of Lands), in particular. To this end, their deceptive involvement has been successful and has also fully exploited the regular absence of the Governor of Vava'u in Vava'u.

Based on all the evidence and facts considered in this report, it is extremely unlikely that the actions of these land officers were of extreme negligence. Therefore, evidence provided herein of internal corruption by land officers, amounts to deception, misrepresentation, forgery and fraudulent activity.

New Development

Further evidence referred to in this report also confirms a further and new concerning development whereby foreigners have 'purchased/leased' Tongan land and then, have proceeded to 'sub-divide' and 'on-sell' again, to other foreigner purchasers.

This new development is again being conducted completely outside the official notice, knowledge and approval of the Minister of Lands, Deputy Minister of Lands and Cabinet. These on-selling land transactions are also unlawful and operate outside the provisions of the Land Act.

Websites

The main means of effecting these land 'sales/leases' has been by promoting and advertising Tongan land on internet websites. These websites include land descriptions, locations, photographs and other information that appear legitimate despite being unlawful, to the unsuspecting foreign purchaser.

Criminal Activity

Participation in these unlawful land transactions also very likely amounts to a range of criminal activity, the land dealers knowingly participating in land transactions well outside the provisions of the Land Act and also gaining pecuniary advantage based upon misrepresentations made to the foreign purchaser/'tenant'.

Evidence is also provided of Tongan landholders who have also knowingly participated in these unlawful land transactions by way of fraudulently representing information 'selling/leasing' Tongan lands.

Recent searches of the Vava'u land registry records have confirmed that the purported Tongan land holders were never in fact the lawful landholders. And, that corruption, from within the land registry office had assisted these landholders dishonest intentions in several ways. Participation by both parties very likely amounts to criminal activity – either fraudulent and/or forgery.

Recommendations

The following measures are important to the immediate and effective containment of a potentially harmful, domestic and international land crisis.

The extent of this growing problem is yet to be fully ascertained. However, taking into account all the evidence and information available, it is very likely that a relatively large number of unlawful land transactions have already taken place over recent years. The number of these unlawful land transactions continues to grow.

Freezing of Websites

1. Immediate freezing of all websites involved in these unlawful land 'sale/lease' transactions of Tongan lands to foreign purchasers, until otherwise expressly authorised the government of Tonga.
2. Immediate freezing of all other forms of land 'sale/lease' advertising of Tongan lands to foreign purchasers, until otherwise expressly authorised by the government of Tonga.
3. Immediate freezing of the above-named be properly justified, relating to each land dealer by sufficient supporting evidence.

Search & Seizure Warrants

4. Immediate seeking of search and seizure warrants for the business and home premises of specific land dealers, with sufficient supporting evidence to properly justify such actions.
5. The executing of the search and seizure warrants, so further evidence may be collected that supports the existence of unlawful land 'sale/lease' transactions and also other possible related unlawful and/or criminal activity.
6. The immediate search, seizure and freezing of all related land dealing bank accounts, computers, any land 'sale/lease' related processing documentation of any related activities whatsoever.
7. The subsequent identification of all land 'sales/lease' transactions from information gathered from the search and seizures, which can be properly investigated.
8. Follow up of all identified, existing and prospective;
 - i. foreign purchasers and
 - ii. landowners from information seizedwith a view to investigating and informing all Tongan land holders and foreign purchasers of the nature and extent of the enquiries.
9. Assessing and formalising the full extent and scale of the unlawful activities perpetrated.

Commission of Enquiry

10. A Commission of Enquiry is instigated to fully enquire into these international scam style land transactions aimed at foreign purchasers.
11. The extent and scale of the unlawful land 'sales/leases' will determine the extent and scale of the Commission of Enquiry.
12. The Terms of Reference of the Commission of Enquiry to include specific enquiry into the "unlawful 'sales/leases' of Tongan lands to foreigners by a specified list of land dealers."

Parliamentary Legislation

13. If required, Parliament to possibly consider legislation to;
 - (i) further restrict and regulate these scam style land transactions in the future; and
 - (ii) accommodate legitimate tenancy/rental agreements – an area of law that needs to be modernised given that many residents

of Tonga 'rent' accommodation in the modern Western meaning of the word but, do not want to enter into disguised, de facto 'tenancy agreements' as a means of unlawfully acquiring control over Tonga land.

INTRODUCTION

A letter dated 23rd October 2007 was sent to the Hon. Minister of Lands, Hon. Tuita, Deputy Minister of Lands, Hon. Tu'a Taumoepeau and the Hon. Governor of Ha'apai, Hon. Malupo. This letter outlined initial concerns relating to the unlawful land 'sale/lease' transactions and sought formal support to enable thorough internal enquiries to be conducted at the Vava'u Lands Registry Office.

As a result of these subsequent enquiries, the findings contained in this report are made – 'The Vava'u Land Dealings Report', for your consideration.

This report confirms the unlawful and unscrupulous land dealings that exist and continue to thrive, particularly in Vava'u. The report is a culmination of the gathering of government information, external 'business-sector' evidence, research, on-site visits and post-analysis.

Findings

The Report documents and records the following findings and conclusions.

The general findings are inferences drawn from all the evidence and information considered herein. These findings again focus on the scam style land 'sale/lease' schemes operating mainly in Vava'u.

It is also important to note at the outset, that these unlawful scam style land dealings operating mainly in Vava'u require urgent attention being a formal enquiry and investigation.

The Clients

I have been expressly authorised by my clients, two foreign purchasers/tenants' being - Eric Stark and Richard Mortimer who reside in Hong Kong (the Clients), to waiver privacy and disclose all relevant information regarding their plight in this report.

Key evidence supporting the findings of this report is provided by way of appendices. Much additional information exists and can be provided upon request.

For the purposes of this report, the plight of the Clients is considered representative of the plight of numerous other unsuspecting foreign purchasers, who have fallen prey to these unlawful scam style land transactions over recent times.

Legal Instructions

I was instructed by the Clients to provide a legal opinion and report on the status of tenancy agreements they had entered into in respect to the 'purchase/lease' of lands in Vava'u, Kingdom of Tonga.

The Client, Richard Mortimer signed a 'tenancy agreement' on 16th February 2006 with a party, whom he believed was the lawful landholder (and his wife and heir) for part of the land holder's tax allotment at Nuapapu Island, Vava'u – see attached a copy of the tenancy agreement marked Appendix 'A'.

Eric Stark signed a 'tenancy agreement' on 1st December 2006 with a party he also believed was the lawful landholder (and his wife and heir) for part of the landholder's

tax allotment at Nuapapu Island, Vava'u – see attached a copy of the Tenancy Agreement marked Appendix 'B'.

The tenancy agreements were in respect of adjoining parcels of the same tax allotment, facing the sea. The tenancy agreements were the outcome of several months of negotiation and correspondence with the land dealers, via Robert Bryce and Hans Schmeiser, who both reside in Vava'u. Most dealings were with Robert Bryce. The Clients had almost no direct contact nor dealings with the Tongan 'landholder'.

Upon signing these tenancy agreements, sizeable areas of land were 'allocated' and large amounts of monies were transferred from the Clients' bank accounts in Hong Kong to what was described to them, as an '*Escrow Account*' at the ANZ Bank, Vava'u branch. There had since, been ongoing payments made by my Clients for monthly 'rentals', costs for cleaning up of the bush land and construction of a water tank.

The land issues arising for both Clients are very similar in nature. The descriptions of either Clients' plight are therefore representative of both their interests.

Same Land 'Sold/Leased' twice

Earlier this year (2007), Richard Mortimer was informed by Robert Bryce that another land dealer in Vava'u, Neshia Rosic had negotiated and signed another separate agreement with the same landholder, for exactly the same parcel of land – see attached a copy of email dated 23rd September 2007 and marked Appendix 'C'.

The agreement brokered by land dealer, Neshia Rosic was signed in March 2007 – see attached a copy of Island Real Estate Ltd Lease Agreement made on 1st February 2007 marked Appendix 'D'. On the face of it, this lease agreement complied more with the Land Act requirements however, issues arose resulting in this land dealing also being unlawful (see later in report).

In September and October 2007, I was instructed as legal counsel by Eric Stark and Richard Mortimer.

On 25th September 2007, a Tongan law practitioner resident in Vava'u, Samiu Vaipulu contacted the Client, Richard Mortimer by email advising that he had breached the tenancy agreement for non-payment of rental to the landholders – see attached a copy of email dated 25th September 2007 from Samiu Vaipulu to Richard Mortimer and marked Appendix 'E'.

Events that unfolded from March 2007 onward were a combination of legal proceedings, damage to property of Richard Mortimer's, on the Nuapapu land (that he thought he had leased) and an ongoing dispute between the opposing land dealers Robert Bryce and Neshia Rosic.

The main issue in contention was *who* legitimately held the current land interest in the Nuapapu land – see attached a copies of emails dated 5th August and 16th May 2007 from Neshia Rosic to the Clients disputing the legality of their tenancy agreements and ownership of the land and marked Appendix 'F'.

Interestingly, the reasons put forward by land dealer, Neshia Rosic questioning the legality of the tenancy agreements supports parts of the legal opinion set out in this report that, the tenancy agreements are in fact unlawful (see later).

A chronology of events was compiled by land dealer, Robert Bryce in October 2007 in anticipation of legal proceedings – see attached a copy of an email dated 19th October 2007 from Robert Bryce to Richard Mortimer and marked Appendix 'G'.

A summary of the destruction of the water tank on the Nuapapu land was emailed from Robert Bryce to Richard Mortimer on 19th October 2007 – see attached and marked Appendix 'H'.

A summary of the events leading up to the dispute regarding the Clients' land interests was emailed from Robert Bryce to Richard Mortimer on 19th October 2007 – see attached and marked Appendix 'I'.

A copy of the report to the Vava'u Police by Robert Bryce relating to the destruction of the water tank was emailed from Robert Bryce to Richard Mortimer on 19th October 2007 – see attached and marked Appendix 'J'.

As a result of these initial indicators that unlawful land related activities existed, a preliminary research and enquiry was conducted that raised immediate issues of concern.

My advice to the Clients was to immediately withhold paying any further funds to the land dealers and also the Tongan landholder, until all the issues surrounding the legality of the tenancy agreements were carefully considered.

An analysis of the documentation provided to me revealed the complex nature of the issues and confirmed my initial observations that there were areas of strong concern regarding the legitimacy of the tenancy agreements. As a result there was now a decided need to fully investigate these unlawful land 'sales/leases'.

Minister of Lands Support

On Tuesday, 6th November 2007 counsel met with the Minister of Lands, Hon. Tuita and briefed him on the growing unlawful land 'sale/lease' transactions in Vava'u. I also related the direct information relating to the Clients and its support for strong concerns. I also indicated that, given all the evidence assessed to date that the issues arising were very likely to become representative of the plight of numerous other unsuspecting foreign purchasers.

I also formally requested that a senior and trusted land registration officer from Nuku'alofa accompany me to Vava'u with the sole purpose of fully investigating/searching the Vava'u Land Registry Office records regarding the Clients' land interests. After consulting with the Crown Law Department, Hon. Tuita confirmed Mr Fataua Halatanu to accompany me to Vava'u.

Vava'u Land Registry Office Search & On-Site Visit

On-Site Visit to Nuapapu

Early on Thursday 8th November 2007, Mr Halatanu and I flew to Vava'u and proceeded to conduct an internal investigative search of the Vava'u Land Registry Office in relation to the Clients.

Furthermore, on Friday 9th November 2007, Mr Halatanu and I travelled by chartered boat to visit the tax allotment in contention known as 'Houmatoka' on Nuapapu

Island, Vava'u. This is the name of the tax allotment which the Clients have interests in and being the subject of a tenancy agreement they had entered into with the direct guidance of land dealer, Robert Bryce.

At the Houmatoka land we both sighted and confirmed from conversations with the construction workers present, that a small two bedroom dwelling was being built on exactly the same land area that Richard Mortimer, had an interest in and thought he had 'purchased/leased'.

That, this dwelling was being built by another foreign purchaser and client of land dealer, Nesha Rosic. This other foreign purchaser also believed *he* had properly 'purchased/leased' the exact same parcel of land.

We also sighted and confirmed from conversations with the construction workers present, the location where the Client, Richard Mortimers' concrete water tank stood prior to being destroyed by land dealer, Nesha Rosics' client.

A series of photographs were also taken confirming the current dwelling construction and also the debris remains of the destroyed concrete water tank.

Land Registry Office Search

As a result of the internal investigative search of the Vava'u Land Registry Office on Thursday 8th November 2007, with the independent assistance of Mr Halatanu, the following are my findings.

These findings are the result of counsels separate analysis regarding the Nuapapu lands that the Clients have interests in and have been independent of the findings and separate report of Mr Halatanu to the Minister of Lands, Hon. Tuita and the Deputy Minister of Lands, Hon. Tu'a Taumoepeau.

The findings are:

1. The formal registered name of the land lot that both the Clients have interests in is the tax allotment known as 'Houmatoka' which is a 7 Acre, O Rood, 08 perches tax allotment – Lot 3, Block 213/151.
2. This is the land that is the subject of the 'tenancy agreements' that the Clients entered into via land dealer, Robert Bryce.
3. Houmatoka is located on Nuapapu Island, Vava'u which is part of His Majesty King George V's Royal Estate (current King of Tonga).
4. Mr Moleni Fe'aomoeata was the registered and lawful holder of 'Houmatoka' until he died on 11th October 1999.
5. Houmatoka was never legally (properly) transferred into any other persons name, since the deceased's death in October 1999.
6. In effect, Houmatoka was left 'intestate'. Therefore, Houmatoka had legally reverted to the estate-holder, His Majesty.

Basic Land Registration Steps

The basic Steps prescribed by statute for the lawful transfer and registration of a tax allotment under the succession rules of the Land Act are:

- i) Lodge a Claim within the 12 months of the death of the previous holder
- ii) Application for Grant of allotment to the Minister of Lands
- iii) Approval and Grant by the Minister of Lands
- iv) Registering of Grant in the Register of Town or Tax Allotment
- v) Issue of Deed of Grant (*supreme proof of land ownership*)

Unreliable Claim

7. Moleni Fonokalafi Fe'aomoeata [=Fonokalafi] was the son of the above named Moleni Fe'aomoeata.
8. Evidence exists at the land registry office that indicates Fonokalafi appeared to lodge a claim for grant by succession for Houmatoka.
9. Supporting evidence used to verify that some form of claim was made, at the Land Registry Office was the existence (at the Land Registry Office

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files) of a sworn Affidavit of Heir [= the Affidavit] sworn by Fonokalafi, dated 12th November 1999 – see attached and marked Appendix 'K'.

10. However, importantly there is no date recorded as to exactly when this claim was lodged, if properly at all. This claim therefore could have been lodged at *any time*.
11. There is also no record in the Vava'u Land Registration Office that Fonokalafi had properly lodged his Claim (Step 1 of Registration Process) and Application for Succession (Step 2), within the statutorily required 12 month period, from the death of Moleni Fe'aomoeata (11th October 1999), in respect of Houmatoka.
12. The importance of having a date clearly recorded is that the claim is statutorily bound by this time limitation under section 87 of the Land Act.
13. Section 87 requires a claim to be properly lodged within 12 months of the death of the previous land holder (Moleni Fe'aomoeata) or the land reverts to the Estate Holder, His Majesty.

Conclusion

14. The legal standing of this first step of the Registration Process, is that the Claim is rendered dubious and unreliable because of:
 - i) the absence of any specific confirmation at the Land Registry Office of the lodging of a claim
 - ii) the absence of specific reference to a date the Claim was lodged – especially in light of the above-named statutory time limitation.

Unreliable Application

15. Furthermore, an Application was also recorded on page 39 in the Vava'u Land Registry's 1999-2000 Register of Application for Grant of Allotments. This Register is an A4 text style book into which land registry information is hand written – see attached a copy thereof and marked Appendix 'L'.
16. This Application was also undated. Specific reference to the date of Application is again very important, in light of the above named statutory time limitation.
17. Despite the reasonable amount of information that has been recorded, in hand writing on page 39 regarding Houmatoka, the absence of an important date when the Application was made, is *glaringly absent*.
18. The only evidence that could be located at the Land Registry Office, supporting this undated Application was by way of the sworn Affidavit, of Fonokalafi dated 12th November 1999.

Affidavit - Anomaly

19. Upon examining the Affidavit a further anomaly was noted on the rear of the one paged affidavit. This was a hand-written note signed by a Vava'u land registration officer, Mr Makafilia Mafi on 30th March 2000 – see attached a copy thereof and marked Appendix 'K'.

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20. This hand written note stated that Fonokalafi elected to;
- i) take *his* father's town and tax allotments and
 - ii) for his son, Piea Fe'aomoeata to become heir and to take his legally registered tax allotment at the time 'Lolovi' (a tax allotment also on Nuapapu island).
21. This additional hand-written note by a third party (Mr Makafilia Mafi), on the rear page of the properly sworn Affidavit has no legal standing whatsoever and cannot by law, have any legal bearing on the contents of the Affidavit, sworn by Fonokalafi.
22. Under section 84 of the Land Act, Fonokalafi falls within a specific class of landholders who have the right, as a registered land holder to choose between his existing registered tax allotment and that of his deceased father or grandfather.
23. Fonokalafi, therefore had the right as registered land owner to inherit as heir, either his father or grand father's tax allotment. But, he cannot by law simultaneously hold both.
24. However, the legal standing of this Application (Step 2) is rendered dubious and unreliable because;
- i) the Application was not dated. Therefore, this application and its details could have been entered into the Register of Application for Grant of Allotment book *at any time*.
 - ii) a hand-written note by a third party (Mr Makafilia Mafi), on the rear page of a properly sworn affidavit has no legal standing whatsoever nor influence on the contents sworn by the owner of the affidavit, Fonokalafi.
 - iii) this entry by Mr Makafilia Mafi could have been made at any time at all and cannot be independently verified. The anomalies already above mentioned give rise to the credibility and reliability of Mr Makafilia Mafi's recording and the accuracy of his entries.
 - iv) the credibility of the land officer, Mr Makafilia Mafi who attended to this matter is currently under internal government scrutiny. Reasons will be provided at a later point regarding this credibility issue and also upon completion of the government's current investigations into his actions.

Conclusion

25. Furthermore, the flaws within the Application read together with the flaws within the Claim stage of the land succession process, indicate the legal standing and credibility of the Application by Fonokalafi are irregularities that render the land registration process unlawful.

No Approval from the Minister of Lands

26. There was no formal hand written, stamped and signed approval from the Governor of Vava'u, as Deputy Minister of Lands for this Claim and Application in the Register of Application for Grant of Allotment.

27. Without proper and lawful Claim, Application and Formal Approval, there can be no subsequent Registration and Issue of a Deed of Grant. The Deed of Grant being the supreme proof of ownership of Houmatoka.
28. There is no record in the Vava'u Land Registration Office of the Registration of Grant, for Houmatoka in the Register of Allotment records book [= Tax Allotment Register] - a requirement clearly prescribed under section 123 of the Land Act.

Conclusion

29. Notwithstanding the flaws in the Claim and Application stages of Registration, this Claim and Application were then, never formerly approved by the Governor of Vava'u or any other authorised party (Step 3 of Registration Process).
30. No approval renders any Claim to legitimate ownership invalid and unlawful.

Illegal Deed of Grant

31. Despite the unlawful Claim, Application, absence of Approval and absence of Registration in the Register of Allotments, Fonokalafi was somehow issued a Deed of Grant on 5th December 2005 for Houmatoka in the Land Registry Office – see attached and marked Appendix 'M'.

Conclusion

32. This Deed of Grant was clearly unlawful and hence, Fonokalafi never owned Houmatoka.

Fonokalafi – Unlawful Registration of Two Tax Allotments

33. Further to the unlawful nature of Fonokalafi's interest in Houmatoka, Fonokalafi was simultaneously the registered holder of another tax allotment called 'Lolovi' – Lot 9, Block 214/153 – see attached and marked Appendix 'N'.
34. Fonokalafi continued to be the lawful registered holder of Lolovi until his recent death in October 2007.
35. Under section 48 of the Land Act, Fonokalafi could not be the registered holder of two tax allotments.

Conclusion

36. Therefore, Fonokalafi remained the registered holder of Lolovi, and not Houmatoka until his death in October 2007.

Windows' Interest – No Application

37. There is also no record in the Vava'u Land Registration Office of any Application for an interest in life, from Fonokalafi's surviving widow, Mrs Tupou Fe'aomoeata.

38. Widows also have a statutory limitation of 12 months in which to lodge a claim to their deceased husband's land under section 87 of the Land Act.

Conclusion

39. Houmatoka therefore, reverted to the estate-holder, His Majesty King Taufa'ahau Tupou IV (Monarch at the time) on the expiration of the statutory limitation of 12 months upon Moleni Fe'aomoeata's death in October 1999.
40. Upon the death of His Majesty King Taufa'ahau IV, by succession His Majesty King George V has inherited this land as part of his Royal Estate. Houmatoka is therefore part of His Majesty King George V's Estates.

Heir – Piea Moleni

41. Fonokalafi had also made an Application to the Land Registry Office, on behalf of his son and heir, Piea Moleni to inherit his registered tax allotment, Lolovi.
42. Again, this was an undated Application recorded in the 1999-2000 Register of Application for Grant of Allotments book.
43. There is also no record that would support that Application on Piea Moleni's behalf.
44. Piea Moleni was never mentioned in his father, Fonokalafi's Affidavit of 12th November 1999.

Unlawful Registration – Extreme Negligence or Fraud/Forgery

45. Since November 1999, no further record of Applications or the like were found at the Vava'u Land Registration Office until 29th June 2007, some seven years later.
46. A hand written entry was suddenly recorded on the Register of Tax Allotments book, on 29th June 2007 indicating Piea Moleni was now the registered land holder of Houmatoka – see attached and marked Appendix 'N'.
47. This was in direct contravention to Fonokalafi's undated Application for grant by succession, which was recorded in the 1999-2000 Register of Application for Grant of Allotment.
48. This Application was for Piea Moleni to become the registered land holder of 'Lolovi'. Fonokalafi's Application was never intended for Houmatoka.
49. Further searches and re-checks at the Vava'u Land Registry Office confirmed this transfer of Houmatoka to Piea Moleni was never Approved and unlawful.
50. A search of the Register of Application for Grant of Allotment confirmed that there was also no formal written Application by Piea Moleni, for Houmatoka recorded at the Land Registry Office.

51. Also, Approval of this land transfer by the Governor of Vava'u or other authorised parties was never given and no record (in the appropriate registry records) of any such action exists.
52. There is no record of Fonokalafi properly surrendering his land (the proper prescribed step under the Land Act).
53. There is no record of any endorsement on the Houmatoka Deed of Grant declaring that Piea Moleni was the new land holder.
54. Piea Moleni therefore, had no registered legal rights in Houmatoka.
55. Piea's only registered interest lay in Fonokalafi's undated and unreliable Application in the 1999-2000 Register of Application for Grants for Piea to be the registered land holder of Lolovi.

Conclusion – Fraud/Misrepresentation

56. Taking into account, all the evidence considered in the Vava'u land office search and from other sources, counsel concludes that the registration of Piea Moleni as the land holder of Houmatoka on 29th June 2007 was either the result of extreme negligence or fraudulent activity and/or forgery.
57. Given the very basic training of any Land Registry Officer, it is extremely difficult to envisage how such a fundamental and blatant error - of knowingly entering a formal registration (ownership) of a land holding, without any notice or approval of any sort, from the Deputy Minister of Lands.
58. The transfer of land ownership is a very serious matter that must be strictly carried out according to the prescribed requirements of the Land Act.
59. The timing of this Registration entry strongly indicates that other dishonest interests were in play and that the Land Registry records were deliberately tampered with, in full knowledge of the fundamental breaches of important land law requirements and trust that were taking place.
60. These fraudulent actions were a serious breach of the sworn duties of an officer(s) of the Ministry of Lands. This serious breach of trust must be severely dealt with by the authorities and charges of a criminal nature be laid.

Coincidence & Misrepresentations

61. This fraudulent activity also happened to directly coincide, in time with the 'selling/leasing' of parts of the Houmatoka land, by land dealer Nesha Rosic and his foreign purchaser client.
62. As previously mentioned, Nesha Rosic represents the interests of other competing parties that understand *they* had also 'purchased/leased' land within exactly the same tax allotment known as 'Houmatoka'.

63. It is therefore, very likely that this fraudulent activity was directly connected to the recent 'selling/leasing' of land, with Piea Moleni misrepresenting to be the lawful registered owner with the sole aim of gaining pecuniary advantage from his deception.

64. Peia Moleni was clearly never the legitimate land holder of Houmatoka and by misrepresentation benefited from his and others misgivings.

Land Dealers – Unlawful Land Dealings

65. It is therefore, reasonably likely that both the land dealers, Robert Bryce and Nesha Rosic were involved in different natured but, both still unlawful dealings with Tongan lands.

66. It is also reasonably likely, taking into account all the evidence provided herein that both land dealers participated in misleading their foreign purchaser Clients.

67. Robert Bryce directly dealt with Fonokalafi and represented Fonokalafis' interests to the Clients. The Clients had very little contact at all with the purported landholder, Fonokalafi.

68. Having been a land dealer and dealing in the 'sale/lease' of Tongan lands to foreigners for some years now, there would be a very high chance that Robert Bryce had full knowledge of Fonokalafi's true standing regarding Houmatoka in law.

69. As a land dealer of at least several years experience and having engaged in advice regarding the proper lawful requirements under the Land Act, Robert Bryce would have been well aware of all the procedures and importance of the Vava'u land registry office records.

70. Robert Bryce would also have known how to request and conduct land title searches and of all the clearly required steps and the need for Approval from the Minister of Lands for any land transactions.

71. It is therefore also very likely that Robert Bryce would have become aware of Piea Moleni's 'registration' in the Vava'u lands office upon being confronted with Nesha Rosic's competing claims. Surely, a land dealer would at the very least, conduct a search to ascertain the basis for Nesha Rosic's claims because they threatened the viability of his Clients interests.

72. Nesha Rosic having directly dealt with his Client a foreign purchaser, should have also had full knowledge of Piea and Fonokalafi's true standing regarding Houmatoka in law. It would be a very standard procedure to conduct a land title search to ascertain the land registry 'record'.

73. Having been a land dealer, dealing in the 'sale/lease' of Tongan lands to foreigners for some years now, there would be a very high chance that Nesha Rosic had full knowledge of Piea Fe'aomoeata's true standing regarding Houmatoka in law.

74. As a land dealer of at least several years experience and having engaged in advice regarding the proper lawful requirements under the Land Act, Nesha Rosic would have been well aware of all the procedures and importance of the Vava'u land registry office records.
75. Nesha Rosic would also have known how to request and conduct land title searches and of all the clearly required steps and the need for Approval from the Minister of Lands for any land transactions.

Current Standing of the Clients Land Interests in Houmatoka

76. Moleni Fonokalafi Fe'aomoeata has never been registered as the holder of Houmatoka in the Register of Tax Allotments. This is the person the Clients were led to understand was the lawful Tongan landholder they had dealt with, through Robert Bryce.
77. Fonokalafi's Deed of Grant in respect of Houmatoka was not granted in accordance with the requirements of the Land Act.
78. Even despite his undated Application, Fonokalafi never completed formal transfer to become the registered land holder of Houmatoka.
79. The Application, not having any date like many of the documents relating to this case throw much suspicion on the integrity of any of the land transactions and registration processes being claimed by either Fonokalafi or Piea Moleni.
80. Fonokalafi's father, Moleni Fe'aomoeata was the only legally registered land holder of Houmatoka.
81. Moleni Fonokalafi's widow (Mrs Tupou Fe'aomoeata) and his heir (Piea Moleni Fe'aomoeata) had no legal rights at all to Houmatoka on the date(s) the tenancy agreements were signed by both of them, as interested parties. This is furthermore, to the already unlawful standing of the tenancy agreements.
82. Piea Moleni's recent registration in June 2007 of Houmatoka is not lawful and is most likely the result of criminal/fraudulent activity being also assisted from within the Vava'u lands office.

Tenancy Agreements – invalid and unlawful

83. The tenancy agreements signed by the Clients are at best informal agreements that are invalid, unlawful and are unenforceable under the Laws of Tonga.
84. The tenancy agreements are also not in a form clearly and specifically prescribed by the Land Act.
85. Any such agreement requires the approval of the Minister of Lands or Deputy Minister of Lands. This formal approval was never sought by Robert Bryce or any other party on behalf of the Clients and has never existed.

86. Section 13 of the Land Act clearly states that any **'Any landholder who enters or attempts to enter into an agreement for profit or benefit relating to the use or occupation of his holding or a part thereof other than in a manner prescribed by the Land Act or as approved by the Minister shall be liable on conviction to a fine not exceeding \$200 or to imprisonment for any period not exceeding 12 months or both'**.
87. Such unlawful land 'sale/lease' activity was clearly designed by the perpetrators, the land dealers and the unlawful 'landholders' to completely avoid any requirements under the protective land provisions of the Land Act and the Tongan Constitution.

Overview of the Land Dealings

It is apparent that there are key players, both land dealers and some landholders who are actively involved in a range of scam style land schemes/arrangements in Vava'u. These unlawful land dealings culminate in some form of written agreement being signed between Tongan landholders and the foreign purchasers/'tenants'.

These land schemes have been orchestrated and implemented by land dealers, resident mainly in Vava'u who are almost all foreigners.

These land dealers target foreign clientele, in an almost exclusively overseas market. It appears that all promoting, advertising, negotiating and advising are provided by these land dealers is carried out with the legal and illegal support of the local private and public sector through various means – banks, legal counsel, Ministry of Land's staff, surveyors and others.

The basic elements of these scam style land schemes include:

1. Approaches to Tongan landholders by land dealers to 'sell/lease' their land.
2. website promoting and advertising.
3. posting of Tongan land for 'sale/lease' on the internet without the knowledge of the landholder – if interest is expressed then, the landholder is approached with an offer.
4. negotiations by the land dealer between land holder and foreign purchaser.
5. payment of initial deposit funds – often large sums of money.
6. 'allocations' of sizeable parcels of Tongan land to foreigner purchasers.
7. signing of the unlawful tenancy style agreements.
8. further lump sum payments of deposits.
9. regular payment of periodic rentals.

Land Dealers & Control Over Foreign Purchaser

The primary means of promoting and advertising is through websites on the internet. Prospective purchasers are therefore, predominantly foreigners from all over the world.

Contact is almost solely between the land dealer and the potential foreign purchasers through emails and phone calls. There also appears to be occasional instances where the landholder meets face to face with the potential purchaser.

The land dealers therefore retain an unusually high-level of control and influence over any details relating to their land 'sale/lease' scheme, some of these details being:

1. the form and layout of the agreement document.
2. who they choose as legal counsel.
3. amount negotiated and paid.
4. payment schedule.
5. nomination of bank accounts for payment of funds.
6. determining and disbursement of funds to landholder.
7. payment of related expenses and costs.
8. arranging sub-contractors for land maintenance, building and improvements.

Tongan language being a barrier, also enables a large amount of control to be placed within the land dealers hands – English being the international language of business and most Tongans of lower income brackets do not speak very good English.

Furthermore, these transactions appear to be negotiated/carried out on behalf of the landholders without any clear, signed authority to do so. There also appears to be a lack of other forms of legitimate authority such as a power of attorney from the landholder to then authorise land dealers to deal with their land.

It is also noted that many foreign purchasers have rarely engaged independent legal advice outside the advice of the land dealers. From evidence herein, it appears that the land dealer(s) have 'guided' prospective foreign purchasers toward their own legal advice.

Where Unlawful Land Transactions Go Wrong – No Remedy

In instances where these land transaction schemes fail, such as that of the Clients in this case, the 'tenants' – the foreign purchasers are inevitably left with none or very little recourse given that they;

1. are not resident here in Tonga.
2. live great distances away overseas.
3. experience large international time differences.
4. lack local network support systems which seriously disadvantages the aggrieved party.
5. are further impeded in their communications because of the Tongan language being a barrier.
6. lack a sound appreciation of the legal issues under Tonga laws.
7. mistakenly base their perceptions of land ownership upon Western concepts thereby quickly assuming the validity in the appearance of the 'tenancy agreements'.
8. have expended large amounts of monies, often their life savings into these land schemes.
9. are left in possession of a 'tenancy agreement' that is not recognised in law and is unenforceable by the Laws of Tonga.

A key issue for these foreign purchaser/'tenants' is that there is no legal remedy available if the tenant wishes to assert/enforce their 'tenancy interests' or where a dispute regarding the land arises.

There is no other legislation governing tenancy or rental agreements apart from the Land Act. The Land Act is the only legislation that directly deals with any form of 'tenancy' and that is clearly prescribed.

The result is that the foreign purchaser/'tenant' cannot exercise any property rights in respect of the land subject of the unlawful tenancy agreements. For example, i) the Laws of Tonga will not recognise or enforce any rights under these unlawful tenancy agreements, ii) banks will not accept the agreement as security for a mortgage or loan and ii) caveats cannot be enforced as the land parcels are not recognised under the Laws of Tonga. Furthermore, the agreement cannot be sub-leased, transferred or assigned under the Land Act.

Websites

Below are websites and website pages promoting and advertising parcels of Tongan land for sale/lease to foreign purchasers. Note, those 19 parcels (at the time of writing this report) of Tongan land are advertised for 'sale/lease' are from only two websites sited being:

- 1) www.privateislandsonline.com/vavau-island.htm
- 2) www.picasaweb.google.com/investintonga

1. Fonua'one'one, Vava'u

www.privateislandsonline.com/vavau-island.htm

2. Lotuma, Vava'u

www.privateislandsonline.com/tonga-private-island.htm

3. Mu'omu'a, Vava'u

www.privateislandsonline.com/muomua-island.htm

4. Matatooa, Vava'u

www.privateislandsonline.com/little-vavau-island.htm

5. Sisia, Vava'u

www.privateislandsonline.com/sisia-island.htm

6. Lekeleka, Vava'u

www.privateislandsonline.com/leke-leka.htm

7. Nukupule, Ha'apai

www.privateislandsonline.com/nukupule-island.htm

8. Fonua'one'one:

http://picasaweb.google.com/investintonga/Picture_perfect_island

9. Oloua Island:

http://picasaweb.google.com/investintonga?Oloua_island

10. Nuapapu Island:

http://picasaweb.google.com/investintonga/nuapapu_island

- 11. Mu'omu'a Island:

http://picasaweb.google.com/investintonga/Muomua_island

12. Lape Island:

http://picasaweb.google.com/investintonga/Lape_island

13. Matatua, Vava'u:

http://picasaweb.google.com/investintonga/Island_vavau

14. Sisia, Vava'u:

http://picasaweb.google.com/investintonga/Private_island_vavau

15. Tahifehifa, Vava'u:

http://picasaweb.google.com/investintonga/Beachy_paradise_taihif_ahifa

16. Luaui, Vava'u:

http://picasaweb.google.com/investintonga/Lua_ui

17. Fonualai, Vava'u:

http://picasaweb.google.com/investintonga/Founa_lai

18. Unknown, Vava'u:

http://picasaweb.google.com/investintonga/Vavau_ife

19. Tauta, Vava'u:

http://picasaweb.google.com/investintonga/Tauta_island

Land Dealers

The Land Dealers operating mainly from Vava'u, that participate in a range of Tongan land 'sale/lease' transactions to foreign purchasers are listed below. It is important to note that the extent of involvement of some of these land dealers in any lawful or unlawful actions, is at this early stage of enquiries unquantified and should become the subject of an enquiry.

Some evidence connects, some land dealers to specific unlawful land dealings and other land dealers' activities need to be clarified to establish whether there is in fact compliance or non-compliance within the Laws of Tonga.

Therefore identification is on the basis that their partaking, in the unlawful 'sale/lease' of Tongan lands to foreign purchasers, mainly by promotions by internet needs to be enquired into. These land dealers in Tonga are identified as:

1. Hans Schmeiser – who also manages and controls 'Islands Escrow Account' held at the ANZ Bank, Vava'u.
2. Robert and Roxanna Bryce
3. Nesha Rosic
4. Gordon Allison
5. Trevor R Jefferson

Hans Schmeiser and Robert Bryce appear to work together. Hans Schmeiser is in partnership with Robert Bryce, with Robert more involved in the negotiation aspects and Hans more on the financial aspects.

The Island Escrow Account held at the ANZ Bank is owned and operated by Hans Schmeiser.

This account appears to be used for;

1. Deposit of non-refundable funds to 'hold' allotments on an exclusive basis whilst negotiations on the rentals, period etc are carried out; and
2. Deposit of lump sum payments upon signing of agreement (in Richard Mortimer's case a total of \$29,000 USD). Upon signing of the agreement and payment of the initial lump sum, then the monthly rentals is deposited into the landholder's account.

Hans Schmeiser is also involved in other Tongan land dealings on his own. Evidence herein verifies this land dealer's plain intention to exploit the legal rights of an existing land holder by drafting unlawful Tenancy agreements that lease/rent buildings *only*, and are clearly aimed at defeating the express intentions of the Land Act – see attached for copy of Laki Nius' full legal opinion dated 25 June 2007 forwarded by Richard Mortimer from Robert Bryce - marked Appendix 'O'.

Two issues were raised in this legal opinion by the Tongan law practitioner, Laki Niu being 1. the legality of a current Tenancy Agreement to which the legal opinion was

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aimed at addressing and 2. a proposed version of a legitimate 'tenancy agreement' that the legal practitioner attached, but we do not possess.

The legal opinion provides confirmation of conscious actions to circumvent the provisions of the Land Act and the clear intention of creating a de facto 'interest' in the land for the foreign purchaser/'tenant'.

These views thereby erode the Tongan landholders' fundamental land rights clearly prescribed under the Land Act and Constitution.

Robert Bryce and Roxanna Bryce

Robert Bryce and Roxanna Bryce advertise land for sale on the internet under two websites – www.tongaproperty.com and www.southpacificrealestate.to – see attached for technical IT details and marked Appendix 'P'.

Robert operates as International Holdings Ltd and also receives non-refundable deposits (in Richard Mortimer's case a total of \$5,000 USD) from potential buyers. Robert also receives funds for the improvements and/or construction of buildings on the land subject of agreement (in Richard Mortimer's case in excess of \$5,500 USD).

The extract below, from the www.southpacificrealestate.to website provides an insight into the method of promoting and advertising employed to attract prospective foreign purchasers;

I sat with my fingers poised on the keyboard for several minutes wondering what I was going to write here.

Our original website (www.tongaproperty.com) didn't have an "About Us" page. For years we never seemed to need one and didn't think anyone really cared. I had a few articles on the Internet and some articles written by others about us, which seemed to serve the purpose and probably more believable than anything any might find in their own "About Us" page. We have years of passing the tests of handling many hundreds of thousands of dollars of other people's money without incident. The President of the Tongan Law Society is our attorney whom we consult with on our activities. The governing people in Vava'u are our references. With that and with the recent onslaught of hostile and desperate new in the business competition, it occurred to us that it might be important to have an "About Us" page when we noted our competition had more to allude to about us in their "about us" than they had to say about themselves.

So about us:

We are the original licensed land and business broker here, small time as this small place could conjure up. We evolved into the business more by a fluke than by design. We were the first to use the Internet to sell our own small restaurant which had served its purpose to qualify us for our business/residency visa. (Since, a popular way to achieve this coveted visa). Soon others came to us for help in selling their businesses, houses and their land (land being leased not "sold"). We accommodated them until it made sense to charge for the service and make it a business, which didn't seem to deter anyone. Being the original broker here, we certainly had no one to learn from and had no experience in the business from our homeland; so from scratch we read all the laws and met with most of the lawyers and powers from the top down to learn about the business we were becoming assimilated into. We are the resource for information in that regard now.

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We are successful. That statement is not for bragging but important to know when doing business that you aren't dealing with desperation. I retired with enough to be independent of any need to provide anything but good service and good deals, turning down those bringing me over priced properties that I could not sell in good conscious. I send them to the competition. Everyone here knows where to bring a good deal for the market.

Coming from a line of educators, I take pride in not selling anyone, but rather educating them until they are smart enough to buy. Some, I advise not to buy, which does get me some funny looks. This business serves as a catalyst to bring some good people to Tonga that will invest here and normally wind up becoming friends. For any amount of new money I don't want or need unhappy people around. I have that with my competition and a couple of the old expats that had this place to themselves before I arrived. All's well. For not knowing what I was going to say a few minutes ago, I think I made some points that will help you to know "About Us."

*Humbly,
Robert*

Nesha Rosic

Nesha operates under the business name of 'Islands Real Estate' and runs the www.vavaurealestate.com website – see attached for technical IT details and marked Appendix 'Q'.

The extract below, from the www.vavaurealestate.com website provides an insight into the method of promoting and advertising employed to attract prospective foreign purchasers;

At Islands Real Estate Ltd. Neiafu, Vavau, Tonga, South Pacific we offer Vavau, Happaia and Tonga islands, Sandy beaches and Waterfront for Tourism related and Residential development like Resorts, Vacation homes (or a combination of both) and Golf courses.

With our local knowledge, our job is to provide you the most important aspect of it, very solid start, with truthfully assessed situation on the ground so you can make the best decision. We do not get into deals where the title is not fully searched and understanding made with the rightful owner as to the terms of the lease when they are presented to you. We only deal with the properties where the rightful owner is willing to grant you a lease or sub-lease, or what some people call "government lease". so you can get the Deed of Lease or Sub-lease in your name. The process takes time but we strongly recommend it as the only way of dealing with the land in Tonga. That is the only legal way and end result justifies the difficulties. Leasehold is the only land title allowed in Tonga and Deed of Lease or Sub-lease is issued in your name only. Once you are issued Deed of Lease or the Sub-lease, property is fully under your control for duration of the Agreement.

Foreign Investor Registration Certificate and Company formation are essential for you having to deal with investment property and lawyers fees for that service are included as a part of commission. You could make an arrangement for other licenses, permits or visas with the same lawyer or have a lawyer of your choice to follow up.

CURRENT UPDATE ——— *From day one we insisted and followed only agreements that are government enforceable for duration they are given. That meant normally 20+10 years on Tax allotments and that was not practical for any meaningful investment.*

Through our persistence and willingness of the government we worked out and set procedure in place for 30 to 99 year government approved and Deeded Sub-lease for Tax allotments and we are already in the process of implementing it through our new contracts. That means we offer GOVERNMENT RECORDED ENFORCABLE CONTRACTS for duration, given up to 99 years for government land or privately owned Tax allotments or Town allotments.

Gordon Allison

Gordon Allison advertises under the 'www.escapetonga.com' website, which introduces Tonga (and Nuapapu in particular) as:

*Escape to the Kingdom of Tonga..... your perfect getaway!
Welcome to the Escape Tonga website!*

We have been extremely excited by the enthusiasm with which our Nuapapu Island project has been met. Most villa sites are sold and with building commencing, things are really starting to come along! In 2008, six new developments will begin preparation, all with their own unique attributes and advantages. Please feel free to click on the Future Projects links so that you can get a taste of what is to come.

Have a great day,

The Escape Tonga Team.

The extract below, from the www.escapetonga.com website provides an insight into the method of promoting and advertising employed to attract prospective foreign purchasers;

"ESCAPE TONGA"

*Nuapapu Island Development
Nuapapu Island*

<http://homes.point2.com/AU/Queensland/Tonga/Vava-u-Islands/Nuapapu-Island/Escape-Tonga/1385311-Real-Estate.aspx>

3 Acres of beachfront land make up Nuapapu Island Escape. Located on the Eastern side of the Vava'u Island group, it is one of the most magnificent destinations Tonga

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and the South Pacific has to offer. With the ocean right before you and a coral reef that keeps the waves minimal, this truly is the Escape of a lifetime.

- 23 Villa sites to be constructed from only AUD \$70,000 to \$95,000
- Over 5000 m² of maintained gardens
- Over 120 metres of spectacular beachfront
- Bordering the spectacular Coral Gardens

A complete paradise is planned for future investors, from beachside bar/café for guests to beautiful villas set amongst the acres of lush gardens.

- Self contained & fully furnished 1, 2 and 3 bedrooms villas
- A\$50 per month maintenance/cleaning fee
- Rental Pool Management from May to November (whale season)

All gardens will be maintained by Escape Tonga. We want you to think about nothing except escape and relax!

HURRY selling fast!

ESCAPE TODAY TO YOUR VERY OWN PIECE OF THE SOUTH PACIFIC!

Contact Bob @ Yes Property Solutions Bargara Beach, Queensland for more details

Ph: 61 7 41590 888

M: 61 418 798 482

E: bobf@yesrealestate.com.au

Web: www.yesrealestate.com.au

Highlights

The Kingdom of Tonga (Tongan for "south") is an independent archipelago in the southern Pacific Ocean. It lies about a third of the way between New Zealand and Hawaii, south of Samoa and east of Fiji. Tonga is widely regarded as a 'fisherman's Kingdom' and it has the largest game fishing fleet in the South Pacific. Tonga is one of the only places in the world where you can actually swim with humpback whales. Breathtaking sunrises from the shores of Nuapapu. It is common to see whales playing in the deeper waters.

Escape Tonga Villa site is absolute beachfront development with the very back boundary only 120 metres to the beach. Estimated 7-8% net return on only a conservative 10% occupancy, with an expected 25-30% return in the 1st 12 months.

Villas will have a concrete base and will be built to high cyclone standards, underground septic, solar power lighting, gas fridges, back up generator, rain water tanks (Sand base). The land and Resort project is located on the island of Nuapapu, on the eastern side of the Vavau Islands, in the Kingdom of Tonga, South Pacific. All foreigners can invest into the project by securing a contract of sale by way of leasehold tenure over the land. The term will be 50 years with an option to renew for a further 49 years = 99 years. Our written Service Guarantee will be provided to help you set up your investment into Escape Tonga. From Contract, travel, inspections, construction, through to Management and set up of accounts.

We value your long term business with Yes Property Solutions. Therefore your opinions of our service and ultimately any referrals you may wish to send us, are important to us.

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Central Resort beachside Restaurant/Bar Completion planned for April 2008

Trevor R Jefferson

Trevor R Jefferson appears to be the main contact person for Tongan land advertised on 'www.britishestate.co.uk' and the 'www.investInTonga.com' website.

The extract below, from the 'www.investintonga.com' website provides an insight into the method of promoting and advertising employed to attract prospective foreign purchasers:

Welcome to InvestInTonga.Com

Your One Stop Website for Everything Tongan!

InvestInTonga.Com is the only Tongan owned and operated real estate company in all of Vava'u, Tonga This is certainly to your benefit, as who better to glean information from on property, pleasure and Tongan politics, then a Tongan himself? We also have a group of resident ex-pats functioning as volunteer advisors, who help us with such things as customer service, computers and catering to the individual needs of a largely American and European clientele.

InvestInTonga.Com has the only real estate MLS in the entire country of Tonga , with every single property available, listed right here for your convenience.

Many of the properties on this site are InvestInTonga.Com exclusives which we function as real estate agents for and would be happy to do our best to help you through the purchase process and see your dreams come true here in Tonga .

The remaining properties listed on this site are offered by other local "commissions agents" We would be happy to serve as your tenants agent for any of these fantastic properties, and will do our best to get you the absolute lowest price possible on these properties. Why pay \$95,000 for a property that we could help you get for \$85,000?

We also function as a trustworthy appraisal service and would be happy to be employed by you in this capacity. We know what a big commitment purchasing an overseas property is, and if hired, you can rest assured that we will give you a full appraisal report and do our absolute best to inform you of everything and anything that you would like to know concerning the property in question. Don't get stuck paying \$100,000 for a property that is only worth \$60,000 on the local market!

InvestInTonga.Com also has a fantastic on-line Tongan Store, where you can hire and pay for such services as property appraisals, and can order custom Tongan handicrafts and have them shipped to your door step!

Finally, we offer the only ex-pat geared e-book on Tonga, titled, "Retiring, Working and Doing Business in Tonga", which is a veritable compendium of knowledge that will give you all the information you need to not only retire, work and do business in Tonga quickly, easily and inexpensively, but will fill you in on the local culture, language, news and the like as well. You may purchase the e-book here.

We at InvestInTonga.Com would like to thank you for taking the time to visit and explore

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our website and wish you a happy present, better tomorrow and paradise filled future!

Feel free to contact us anytime about anything!

Extent and Scale of Land Dealing

Growth of Unlawful Land Transactions

The full extent and scale of this growing land 'sale/lease' problem is yet to be fully ascertained.

In addition to the two Clients, an increasing number of foreign purchasers have begun to approach counsel expressing concern over the legal standing of their land 'investments' and 'tenancies'. As a result of my request for further details to assist me in making an informed analysis of the land 'sale/lease' issues raised, further information uncovered strongly supports the contention that there appears to be a recent and sizeable increase and expansion of the land 'sale/lease' transactions, particularly in Vava'u. This now requires urgent attention.

The Growing Number of Disconcerted Foreign Purchasers

One recent illustration of how these land scams are manipulated and unfold is outlined in an email dated 1st December 2007 from Rebecca and Ty Goff of Hawaii summarising their land 'purchasing/leasing' experience in Vava'u – marked and attached Exhibit 'R'.

In extracts from this email, Ms. Goff describes her first contact with Vava'u being:

"After 2 or 3 years researching Vavau I contacted Robert Bryce via email to inquire about buying property and acquiring a whale swim license so I could do therapy in the water near whales... Robert had informed me it was a matter of a signature and a stamp that would be given if he (Robert) said to give it to him... Many emails, lots of paperwork on my side, all the documents needed for business license, visa etc sent to Robert.... My husband and I returned to Vava'u a few months later, Ty's first trip. First we found out we did not have a business license or a whale license then we went out and found Robert had sold us the property next door to the one he told me he was selling me. He did offer our money back..."

The consequences for Ms. Goff are that she and her husband have been reluctant and even fearful to attempt to recoup their losses as a result of such incidents:

".....Peter [Tongan land-holder] told me Robert had told him not to build the [water] catchment and keep my money so I would default on the property and Peter could sell it again.... When I told Robert I would get an attorney or a Tongan collection agency to deal with it as I had been threatened by them, Robert told me Peter was Tongan Mafia and I would end up dead if I did not just let it go..."

The outcome for Ms. Goff and her family is that her:

"...husband became seriously ill from the stress of discovering it had all been a scam and had to be flown back to Hawaii for treatment..."

Ms. Goffs' descriptions are disconcerting and further substantiate some of the allegations surrounding the Clients circumstances.

The events described therein obviously require verification and the extent of the alleged land activities need to be ascertained. However, the common thread of events, coupled with the increasing numbers of similar reports being received by

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counsel strongly points toward the pressing need to immediately contain and enquire into these unlawful land 'sales/lease' schemes.

Escrow Accounts

One of the key elements utilised in these land transactions in Vava'u, relating to the Clients and land dealer, Robert Bryce is the exploitation of 'escrow accounts' for the deposit of funds by potential purchasers/tenants – see attached a copy of an email dated 08 May 2007 from Hans Schmeiser to Richard Mortimer assuring him that the escrow account is 'an official licensed operation' - marked Appendix 'S'.

Evidence exists of one such account at the ANZ Bank in Vava'u, which Hans Schmeiser exploits for these land dealing purposes.

Escrow, in law is defined as:

"...the conditional delivery of money or property, or documents evidencing or transferring rights therein, to a third person to be kept by that person until certain conditions are satisfied and then to be delivered over to the obligee or grantee. The property or documents thus conditionally held are also called the escrow, and the contract defining the conditions of the second delivery is called the escrow agreement.

Escrow is a device most frequently applied in property transactions. A deed, for example, delivered in escrow does not operate as an obligation or conveyance so long as it remains in the hands of the third person. When the prescribed conditions are fulfilled, the deed generally takes effect from the second delivery. Although the term escrow was originally applied only to such conditional delivery of instruments for the conveyance of land, it is now applied to any kind of written instrument or form of property that may be deposited for later delivery on fulfilment of prescribed conditions. Examples are shares of stock, assignments for the benefit of creditors, and oil leases."

The use of the title 'Escrow Accounts' on an international basis draws the potential foreign purchaser into assuming the legitimacy of their land transactions. The common international usage of the concept of a valid, fully verified 'escrow account' is played upon and it is not that case at all.

Simply put – the land dealers use of the title 'escrow account' is nothing more than a name of their bank account.

Using the name 'escrow account' is misleading and is deliberately designed to lure the prospective customer into assuming they are entering into a legitimate and safe transaction by way of misleadingly exploiting the reputation of the internationally renowned financial institution known as the 'Escrow account'.

Details of the Clients 'Tenancy Agreement'

Richard Mortimer's tenancy agreement purported to grant him a three acre beach-front property for a period of 60 years. In consideration, Richard Mortimer would pay:

- ii) \$28,965.00 USD (less \$5,000 USD non-refundable deposit) upon signing of the 'Tenancy Agreement'; and
- iii) \$ 70.00 USD per month thereafter

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The bank account details provided under the tenancy agreement were:

Moleni Feaomoeata – see attached bank transfer details and marked Appendix 'T'.
ANZ Bank, Neiafu, Vava'u, Tonga.
Account No: 1523112
Branch: 0931
Swift code: ANZBTONN

However, on separate occasions Richard Mortimer deposited funds into three different bank accounts in Tonga:

1. Moleni Feaomoeata
ANZ Bank, Neiafu, Vava'u, Tonga.
Account No: 1523112
Branch: 0931
Swift code: ANZBTONN

2. Island Escrow – see bank transfer details and marked Appendix 'U'.
ANZ Bank, Nuku'alofa Branch
Beneficiary: Hans Schmeiser
Account No: 1454748
Swift Code: ANZBTONN
Branch: 0930

3. ANZ Bank, Vava'u – see bank transfer details and marked Appendix 'V'.
Account No: 1514696
US Dollar Account
Account Name: International Holdings, Ltd.
Attn: Robert Bryce
Branch: 0931
Swift Code: ANZBTONN

The disbursement of these funds amongst the landholders and the land dealers are not known, and therefore caused considerable angst to Richard Mortimer when he was informed by the landholder's legal counsel, Samiu Vaipulu that he was now in breach for non-payment of the monthly rental and that the landholder would exercise his 'right' to terminate the tenancy agreement for default.

The landholder had also claimed that the amount he was initially advised by the 'land dealer' that he would receive from the tenancy agreement was *not* what he received in his bank account, and that the landholder became suspicious of the Clients. The Clients instruct that there was always a single and clear figure agreed to and that no alterations had occurred from their side.

It is also possible, given the circumstances that the monetary amounts 'handwritten' into the tenancy agreements may have been inserted *after* the landholder had signed the tenancy agreement.

Mention in the tenancy agreement of monies being deposited into an 'escrow' account amounts to a misrepresentation of the true nature of the bank account – it is a basic bank account and nothing more.

Also of concern, is that a resident Tongan law practitioner of Vava'u had been advising and supporting the 'enforcement' of these unlawful tenancy agreements,

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despite the Land Act and Tongan Constitution being very clear on the prescribed requirements to deal with any land in Tonga.

Endorsement of Variations of the 'Tenancy Agreement' since 2004

Evidence is provided herein of a local Tongan legal counsel endorsing the 'legitimacy' of these 'tenancy agreements' since at least 2004 – see attached copy of signed letter from Tongan law practitioner, Laki Niu dated 22nd November 2004 and marked Appendix 'W'.

A template format is also attached confirming the extent to which these unlawful tenancy agreements are intended to be utilised by the land dealers – see attached copy of template form of tenancy agreement, which is also signed as an endorsement of its contents from Tongan law practitioner on each page by Laki Niu and marked Appendix 'X'.

Examples of Recent Unlawful Land Dealings

Evidence is also provided herein of ten copies of documents that illustrate the range of land related transactions that continue to be utilised in Vava'u well outside the auspices of the Land Act and without any knowledge and Approval of the government of Tonga and namely the Minister of Lands, Hon. Tuita or the Deputy Minister of Lands, Hon. Tu'a Taumoepeau.

The variation of land agreements illustrated are indicative of the recent and active participation in these unlawful land transactions, well outside the requirements of the Land Act.

The following attachments illustrate a range of recent unlawful land arrangements in Vava'u;

1. Offer to enter into tenancy agreement – marked Appendix 'Y'.
2. Agreement for exclusive use of beachfront land and facilities – marked Appendix 'Z'.
3. Agreement for services and participation in land development project – marked Appendix 'A1'.
4. Agreement between landholder and investor/plot holder – marked Appendix 'A2'.
5. Lease agreement – marked Appendix 'A3'.
6. Assignment of agreement – marked Appendix 'A4'.
7. Tenancy Agreement for the exclusive use and occupation of premises and grounds - marked Appendix 'A5'.
8. Tenancy Agreement for the rental of premises and quiet enjoyment of grounds - marked Appendix 'A6'.
9. Tenancy Agreement for the rental of buildings and use of grounds - marked Appendix 'A7'.
10. Offer for Acquisition of Property through Robert Bryce - marked Appendix 'A8'.

A scoping of these above attachments indicates an escalation in such unlawful land dealings since about 2004.

LEGAL ISSUES

Of primary concern is the legality of these land 'sale/lease' schemes under the Land Act.

Unlawful Agreement

Section 13 of the Land Act states:

"Any landholder who enters or attempts to enter into any agreement for profit or benefit relating to the use or occupation of his holding or a part thereof other than in the manner prescribed by this Act or as approved in writing by the Minister shall be liable on conviction to a fine not exceeding \$200 or to imprisonment for any period not exceeding 12 months or both."

The only forms clearly prescribed by the Land Act include:

1. lease
2. sub-lease
3. mortgage
4. power of attorney
5. permit for foreigners to reside
6. easement
7. permit to erect jetties and stores on the foreshore
8. permit to cut stone from the foreshore.

All other forms of agreement are unlawful unless approved in writing by the Minister of Lands.

The form of the tenancy agreements, especially presented by the Clients does not comply with any of the clearly prescribed forms listed above under the Land Act and therefore falls well outside its provisions. The tenancy agreement is therefore unlawful.

The tenancy agreements have no legal standing in so far as they relate to land. They are illegal, invalid and breach section 13, in particular of the Land Act in so far as they relate to security of tenure in land.

Only section 13 of the Land Act validates any agreement for the use and occupation of land. The wording of the Clients tenancy agreements attached herein (as well as much of the examples attached as illustrations) expressly refers to 'land' and 'the enjoyment and use of the grounds...' and to that end, the tenancy agreement(s) are unlawful.

Case Law

Fakatava and Fakatava v Koloamatangi and Minister of Lands TLR 1974-1980
LA09/1974, 16 at 17:

"The agreement between 2nd Plaintiff and 1st Defendant is illegal being contrary to Section 13 of the Act. The 1st Plaintiff, although he objected to the concrete building, took no legal steps to prevent it. It follows from this that 2nd Plaintiff and 1st Defendant both took part directly in an illegal transaction and 1st Plaintiff by consent.

The principal relating to such contract according to Law is that when the purpose of the contract is illegal, immoral or contrary to public policy and that purpose is shared by both parties, it is settled law that neither can sue upon it. It would be wrong therefore, for the Court to give an eviction order or any other order to the detriment of the 1st defendant without some contribution from the plaintiffs."

Of primary concern is the exploitation of these 'tenancy agreements' to deliberately evade the strict provisions of the Land Act.

The terms and conditions of the tenancy agreements are inconsistent with the key requirements of the Land Act such as:

1. Ministerial, Cabinet and Privy Council endorsement/approval of land transactions
2. registration of all land dealings
3. period for the possession, use and occupation of land
4. surrender by the widow and heir to their future rights of succession
5. no rights of a widow to enter into a lease or mortgage
6. permits for non-Tongans to reside and occupy Tongan land
7. payment of funds outside the specific financial requirements in the Land Act.

The emphasis of these key requirements is that there are very restricted legal recourses for the foreign purchaser/'tenants' under the Land Act. These are found only under the Land Act and if the tenancy agreements are illegal and invalid then, they are unenforceable.

Estoppel

Part of the misrepresentations exploited by the land dealer, Robert Bryce was to misinform the foreign purchasers/'tenants' in the myriad of correspondence that there was recourse under the law of estoppel in Tonga, and that there was no need for concern – see copy of email from Robert Bryce dated 12 July 2007 to the Clients marked Appendix 'A9'.

Section 103 of the Evidence Act states:

(1) If a person by his words or conduct wilfully endeavours to cause another to believe in a state of things which the first knows to be false, and if the second believes in that state of things and acts upon his belief, he who knowingly made the first statement is estopped from averring afterwards that such a state of things did not in fact exist.

(2) If a person, either in express terms or by conduct, makes a representation to another of the existence of a certain state of facts which he intends to be acted upon in a certain way, and it is acted upon in that way in the belief of the existence of such a state of facts to the damage of him who so believes and acts, the first is estopped from denying the existence of such a state of facts.

(3) If a person, whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation of facts, and that it was a true representation, and that the latter was intended to act upon it in a particular way, and he with such belief does act in that way to

his damage, the first is estopped from denying that the facts were as represented.

(4) If during the course of a transaction which has resulted in litigation, one person has led another to believe in a certain state of facts by conduct of culpable negligence calculated to have that result, and that culpable negligence has been the real cause of leading and has led the other to act in the transaction by mistake founded on that belief and to his prejudice, the first person cannot be allowed in the litigation as against the second to show that the state of facts referred to did not exist.

Estoppel is a principle covered both in statute, as above stated and also in case law as follows;

The case of *Fakatava v Koloamatangi and Fakatava* TLR 1974-1980 Civil Case 425/1973 15 (17 March 1974) states:

"That the plaintiff having acquiesced in the building of the house on his land by the first defendant, was estopped from asserting his right to possession of the land occupied by the house...ie. he took no legal action in the way of injunction, he allowed by implication the house to be built.."

The most recent case of *Kinetisys Inc v Mafi and Ors*¹ upheld the Land Court's judgement in *OG Sanft & Sons v Tonga Tourist and Development Co Ltd*² that:

"...the Land Court has jurisdiction to apply principles of equity where they were not in conflict with the Constitution and the Land Act...under principles of equity, if an owner of land allows another person to expend money in the development of that land on the basis of a grant of an interest in that land by the owner, the owner will not be allowed later to say that the grant was invalid and that no good title was given to that person to undertake that work, and an appropriate remedy will be provided by the court for that person...In respect of Tongan land, the Land Act is a complete code which, subject to the Constitution, rigidly controls by its express terms all titles and claims to any interest once they have been created in accordance with the provisions already referred to. With that exception there is no room for the application of any rule of equity – all claims and titles must be dealt with strictly under the Act. No estate right, title or interest can be created in accordance with the provisions of the Act..."

On the basis that, no equitable titles are recognised by the Land Act and the Tongan Constitution, a party relying on estoppel acquires no rights under the Land Act by virtue of the estoppel.³ His Honour stated that "estoppel is a shield only and can never be used as a sword."

Kinetisys Inc v Mafi and Ors confirmed that the resort buildings were legally separate from the land. *Mangisi v Koloamatangi*⁴ was quoted:

"It is essential to keep in mind that the contract conferred an interest in land. It conferred on the appellant a licence to use the building. In Tonga, a building

¹ [2007] TOLC 1; LA5/2005 (3 January 2007)

² [1981-1988] Tonga LR 26 (PC)

³ *Kinetisys Inc v Mafi and Ors* [2007] TOLC 1; LA5/2005 (3 January 2007)

⁴ [1999] TOCA 9 (CA)

may be severed from the land on which it stands so as not to constitute a fixture."

Reference was made to the Court of Appeal case *Kolo v Bank of Tonga*⁵ where it was stated that buildings in Tonga have been regarded as items of personal property rather than forming part of the land/realty:

"Because of the Constitution of Tonga, and because Tonga's traditions, the intricate law of fixtures and of accretions to land which applies elsewhere is not wholly appropriate to Tonga. Although the implications have not yet been worked out, and their working out should be left to the process of development of the law in Tonga case by case, we think that the broad proposition stated by Ward CJ should be accepted. That means that it was open to Mr Kolo to pledge his house to the bank as an item separate from the land on which it is stood."

Therefore, an enforceable contractual licence can be granted in respect of a building built by a person at his own expense by agreement with the landholder upon his land. The precise limits of a licensee's rights have yet to be ascertained by Tongan case law.

In the case of *Kinetisys Inc v Mafi*, Webster CJ stated;

"where no leases have been formally granted by reason of the absence of Cabinet approval, the Resort buildings are thus separate from the land, so do not belong to the landholders automatically simply because there are no formal leases. But in fairness and equity Mala Island should therefore pay the landholders, 2nd & 3rd Defendants, for the use of the land, although no formal order is made as the 2nd & 3rd Defendants dropped their prayers for recompense. However, Mala Island cannot be evicted because the landholders allowed the Resort to be built in its name, even although it was not a corporate entity. Again the situation might be different if Mala Island fails to pay the landholders any rent or recompense... the fact that the leases of Mala Island were not granted to the business of Mala Island Resort does not mean that the resort and its buildings become the property of the landholders."

In *Fie'eiki v Ilavalu & Ors (No.2)*⁶ Hampton CJ held that estoppel, applied as a defence, estopped the plaintiffs by their conduct towards a third party, from denying the third party's right to lease land.

However, estoppel will only apply if one comes to the law 'with clean hands'. Where the basis of the agreement is unlawful, then a foreign purchaser/tenant will not be able to seek the protection of the law in this regard.

Tonga law practitioners advising

The above judgments appear to be case law upon which some Tongan law practitioners are wrongly acting and advising that the tenancy agreements are somehow lawful and in accordance with the Laws of Tonga.

⁵ [1997] Tonga LR 181 (CA)

⁶ 1995 TLR 190.

The clear intention of these tenancy agreements is to create a new de facto legal 'interest' by a foreign purchaser over a Tonga landholders ownership rights, thereby eroding the Tongan landholders ownership rights.

The tenancy agreements are drafted giving the foreign purchaser 'rights' to build dwellings and occupy land. This is clearly in contravention of section 13 of the Land Act and this was never the intention of the Land Act or any of the Laws of Tonga.

These unlawful land arrangements clearly fall within the ambit of the 'use and/or occupation of land' provisions of the Land Act. Reference in these tenancy agreements to 'access to the premises and surrounding grounds for gardening and recreation purposes' amounts to 'use and/or occupation' of the land under section 13 of the Land Act.

The Minister of Lands or Deputy Minister of Lands approval is clearly required under section 13 of the Land Act and none of the tenancy agreements has sought to provide any form of notice or seek the required Approvals.

To allow so, is to enable a gradual encroachment upon the fundamental land ownership rights of all Tongan landholders, as clearly intended and protected by the Land Act and the Tongan Constitution.

Misrepresentations by Land Dealers

In addition to the misrepresentations contained in the tenancy agreement purporting to be a legal document for the transfer of land title and interests, there are numerous examples, also supported by evidence of misleading representations by the land dealers. Some of these are that:

1. "English land law applies in Tonga and English judges form the Tongan judiciary" – see attached a copy of an email dated 27 October 2005 from Robert Bryce to Richard Mortimer and marked Appendix 'A10'.
2. Informing the foreign purchaser/'tenant' that legal applications have been made to protect the 'tenant's' interest without fully informing clients of Tongan land law requirements. For example, an application was recently lodged for a caveat, which cannot be done because a caveat can only be lodged in respect of leased land. The land subject of the tenancy agreements are registered, hereditary land – see attached a copy of an email dated 10 May 2007 from Robert Bryce to Richard Mortimer and marked Appendix 'A11'.
3. Misrepresenting land office documentation - hand written notes and markings on Deed of Grant and Survey Plans without the prior notice and/or Approval of the Deputy Minister of Lands – see attached copies of Deed of Grant and marked Appendix 'A12' and Appendix 'A13'.
4. Misinforming clients that the land agent business and escrow accounts are "officially licenced operations" in Tonga – see attached copy of an email dated 08 May 2007 from Hans Schmeiser to Richard Mortimer and marked Appendix 'S'.

RECOMMENDATIONS

The following measures are important to the immediate and effective containment of a potentially harmful, domestic and international land crisis.

The extent of this growing problem is yet to be fully ascertained. However, taking into account all the evidence and information available, it is very likely that a relatively large number of unlawful land transactions have already taken place over recent years. The number of these unlawful land transactions continues to grow.

Freezing of Websites

1. Immediate freezing of all websites involved in these unlawful land 'sale/lease' transactions of Tongan lands to foreign purchasers, until otherwise expressly authorised by the government of Tonga.
2. Immediate freezing of all other forms of land 'sale/lease' advertising of Tongan lands to foreign purchasers, until otherwise expressly authorised by the government of Tonga.
3. Immediate freezing of the above-named be properly justified, relating to each land dealer by sufficient supporting evidence.

Search & Seizure Warrants

4. Immediate seeking of search and seizure warrants for the business and home premises of specific land dealers, with sufficient supporting evidence to properly justify such actions.
5. The executing of the search and seizure warrants, so further evidence may be collected that supports the existence of unlawful land 'sale/lease' transactions and also other possible related unlawful and/or criminal activity.
6. The immediate search, seizure and freezing of all related land dealing bank accounts, computers, any land 'sale/lease' related processing documentation of any related activities whatsoever.
7. The subsequent identification of all land 'sales/lease' transactions from information gathered from the search and seizures, which can be properly investigated.
8. Follow up of all identified, existing and prospective;
 - i. foreign purchasers and
 - ii. landowners from information seizedwith a view to investigating and informing all Tongan land holder and foreign purchasers of the nature and extent of the enquiries.
9. Assessing and formalising the full extent and scale of the unlawful activities perpetrated.

Commission of Enquiry

10. A Commission of Enquiry is instigated to fully enquire into these international scam style land transactions aimed at foreign purchasers.
11. The extent and scale of the unlawful land 'sales/leases' will determine the extent and scale of the Commission of Enquiry.
12. The Terms of Reference of the Commission of Enquiry to include specific enquiry into the "unlawful 'sales/leases' of Tongan lands to foreigners by a specified list of land dealers."

Parliamentary Legislation

13. If required, Parliament to possibly consider legislation to;
- (i) further restrict and regulate these scam style **land transactions** in the future; and
 - (ii) **accommodate** legitimate tenancy/rental agreements – an area of law that needs to be modernised given that many residents of Tonga **rent** accommodation in the modern Western meaning of the word but, do not want to enter into disguised, de facto 'tenancy agreements' as a means of unlawfully acquiring control over Tonga land.

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