

Understanding why the Land Titles Registration Act 2008 is unlawful, unconstitutional and in breach of the Human Rights of Aiga as families and Individuals

An official investigation found that the ADB and HRPP government failed to consult the Samoan public before pushing harmful land reforms. The Asian Development Bank Compliance Review Panel found that ADB recommended piecemeal changes to customary land laws leading to uncertainty and an abridgement of some customary land rights. The diminution of the bundle of rights associated with customary land ownership, which resulted from ADB's advice, the Panel found, was likely to cause direct and material harm to the complainants and project affected people.

Traditional landowners' rights have already been damaged and this has harmed the Aiga of Samoa. This damage is caused by S.32 of the Land Titles Registration Act 2008.

The HRPP government halted further ADB Investigation by promising to introduce law by June 2017 to correct the damage already done.

Guess what? Nothing was done! Just like those outstanding audits required yearly by S.40 of the Audit Act 2013. The HRPP intended a result harmful to the interests of the people of Samoa and is not about to do the right thing.

The Land Titles Registration Act 2008 (LTRA 2008) is unfair and unlawful because it bundles up the rights of individual family members to land and takes them away passing absolute ownership and control to the HRPP government and gives a secondary or slave title called freehold to the person named on the certificate of title, who must pay taxes, if asked and follow any orders from the government.

It destroys the Samoan Aiga concept of land ownership by a family with the Matai as a guardian protecting and preserving the Aiga rights for current and future Aiga members and replaces it with a foreign European concept of complete ownership by the government with a slave title granted to the person named on the certificate of title.

The LTRA 2008 is a Torrens System Law, of land registration, in which a register of land holdings maintained by the state guarantees an indefeasible title to those included in the register.

Indefeasible means upon registration of his interest and subsequent recording on Title of his interest, the registered owner's claim to his interest in that land is superior to all other interests in the land.

The Native Land Court of New Zealand, created on 30 October 1865, in the words of Former Attorney-General Henry Sewell was using a Torrens System of individual title,

"designed to destroy if possible, the principle of communism which ran through the whole of their [Maori] institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Native race into our own social and political system."

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fsmtaua@gmail.com

Though the following description of the fate of the Maori people after individual title was forced upon them is lengthy, it teaches us what to expect, as our own race is destroyed by the Land titles Registration Act 2008, just as the Maori race was dispossessed and destroyed.

The Maori Situation by I L G Sutherland 1935

‘In 1873 an Act established the principle of individual title to land, in the face of the communal nature of Maori land tenure and in spite of the fact that the Maori people had been given a guarantee that that title would be determined according to their own usages. An account of what followed down to 1892, when pre-emption was definitely resumed, is contained in the words of a Royal Commission which reported in the previous year. Rehearsing the evils which followed upon the Act of 1873 the Commissioners said:

“The tendency in the Act to individualize Native tenure was too strong to admit of any prudential check. The desire to purchase Native estates overruled all other considerations. The alienation of Native land under this law took its very worst form and its most disastrous tendency. It was obtained from a helpless people. The crowd of owners in a memorial of ownership were like a flock of sheep without a shepherd, a watch-dog or a leader. Mostly ignorant barbarians, they became suddenly possessed of a title to land which was a marketable commodity. The right to occupy and cultivate possessed by their fathers became in their hands an estate which could be sold. The strength which lies in union was taken from them. The authority of their natural leaders was destroyed.

“They were surrounded by temptations. Eager for money wherewith to buy food, clothes and rum, they welcomed the paid agents, who plied them always with cash, and often with spirits. Such alienations were generally against the public interest, so far as regards settlement of the people on the lands. In most of the leases and purchases effected the land was obtained in large areas by capitalists. The possession of wealth, or that credit which obtained it from financial institutions, was absolutely necessary to provide for Native agents, interpreters and lawyers, as well as to distribute money broadcast among the Native proprietary. Not only was this contrary to public policy, it was often done in defiance of the law.

“Of all the purchase-money paid for the millions of acres sold by the Maoris not one sixpence is left. Their remaining lands are rapidly passing away. A few more years of the Native Land Court under the present system and a few amended laws for free trade in Native lands, and the Maoris will be a landless people.

“But it was not only in the alienation of their lands that the Maoris suffered. In its occupation also they found themselves in a galling and anomalous position. As every single person in a list of owners comprising perhaps over a hundred names had as much right to occupy as any one else, personal occupation for improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. The apprehension of results which paralyses industry cast its shadow over the whole Maori people. In the old days the influence of chiefs and the common customs of the tribe afforded a sufficient guarantee to the thrifty and provident; but when our law enforced upon them a new state of things, then the lazy, the careless, and prodigal not only

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wasted their own substance, but fed upon the labours of their own industrious kinsmen.” Great numbers of the Maori people lived on, and were assisted to spend, the moneys they received from the sale of their lands in ways which certainly did not tend to their welfare. The wave of alcoholism which swept over the Maori people at this time was made possible by the money they received in this way, was encouraged by the unscrupulous means adopted to persuade them to sell, was intensified in its effects by the poisonous nature of the liquor supplied to them, but was really motivated by a deeper cause, namely by the mood of despair which so many factors had contributed to create. It is little wonder that in these years the Maoris should have acquired a poor reputation in the mind of the average white New Zealander, especially among the new settlers who did not know and understand and respect them as the earlier settlers had done. Characteristics resulting from the destruction of the forms of Maori life and from their bitter and disillusioning experiences were assumed to be inherent in the people and the white man blamed the Maoris for becoming what he had made them. Nothing was more common than to have the Maoris described as lazy, improvident, incapable of sustained industry. The more sympathetic and philosophically inclined said: “The Maori is going to his doom, dying of a broken heart.” The extent to which the Government of the day could still misunderstand the Maoris and the stupidly apprehensive way in which it could act towards them was made clear in the treatment of Te Whiti, the Taranaki Maori prophet. He was most determinedly pacific and gathered his followers into his village of Parihaka to await the day of miraculous deliverance from the pakeha. But the Government took alarm and poured an overwhelming armed force into the village. The Riot Act was read to an unarmed and orderly crowd of men, women and children, wholesale arrests were made, the villagers were evicted and the village and the natives' cultivations were destroyed. Some people were openly disappointed that there was no war, the only casualty being a soldier who shot his own foot.

An extract from a newspaper letter by Mr. Robert Stout, as he then was, is interesting as showing the racial situation at the time.

“I suppose, amidst the general rejoicings at the prospect of a Maori war, it is useless for anyone to raise his voice against the present native policy. I do so more as a protest than with any hope that any one colonist can ever aid in preventing the murder of the Maoris, on which it seems we, as a colony, are bent. I call it murder, for we know that the Maoris are, as compared with us, helpless, and I am not aware of anything they have done to make us commence hostilities. The race is dying, and if we were at all affected with the love of humanity we should strive to preserve it, or to make its dying moments as happy as possible... We are powerful, they are weak, and that is the only explanation that the future historian will give of our conduct.”

After this affair, certain Maori grievances were righted and before the end of the nineteenth century the worst phase of the Maori attitude of defeatism, depression and resentment at injustice had passed, while a new adjustment to life, aided by several welfare measures promoted by the State and by a more conciliatory attitude on its part, had begun in some tribes at any rate.’

It was used to destroy family land ownership in New Zealand of Maori tribes, so the land could be broken up and bought by settlers offering all sorts of treats and money including

alcohol, blankets, matches and muskets and is being used in Samoa to unlawfully alienate and destroy the customary land rights of all Samoans to any piece of land which is registered.

Once the land is registered in the name of individual persons the same shameless tactics including taxes will be used to trick Samoans off their land.

The Torrens system works on three principles:

1. Mirror principle – the register reflects (mirrors) accurately and completely the current facts about title to each registered lot. This means that each dealing affecting a lot (such as a transfer of title, a mortgage or discharge of same, a lease, an easement or a covenant) must be entered on the register and so be viewable by cheap online search.
2. Curtain principle – one does not need to go behind the Certificate of Title as it contains all the information about the title. All of the necessary information regarding ownership is on the Certificate of Title.
3. Indemnity principle – provides for compensation of loss caused by private fraud or by errors made by the Registrar of Titles.

If there has been fraud, the registration can be undone but *Frazer v Walker* (1967) is a landmark New Zealand court case that went to the Privy Council on appeal. The case upheld the concept that an owner of interest in land which was originally obtained from the rightful owner through fraud, still obtains an indefeasible interest in that title if they were unaware of the fraud.

In Samoa, fraud followed by a quick sale to an innocent purchaser means a rightful owner may be forced to chase the fraudster through the courts with no certainty of success and only by spending much money, which may never be recovered, especially if the fraudster files in bankruptcy. Samoan courts are bound to follow this *Frazer v Walker* (1967) case.

How many Samoans have enough money to pay independent lawyers to pursue fraud claims against local fraudsters, who have friends and family in official positions willing to obstruct and diminish their attempts. If successful, the monies obtained may be less than those spent, because the judge may be related by blood or social ties to the fraudster.

This is contrary to our traditional land ownership system where ownership lies with all family members. Matai do not have the authority to permanently take away the family land rights of their Aiga to profit themselves. Matai are guardians for their entire Aiga.

The Constitution in Article 102 states:

No alienation of customary land – It shall not be lawful or competent for any person to make any alienation or disposition of customary land or of any interest in customary land, whether by way of sale, mortgage or otherwise howsoever, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of any person on his decease or insolvency:

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provided that an Act of Parliament may authorize-

the granting of a lease or license of any customary land or of any interest therein; the taking of any customary land or any interest therein for public purposes. No lease or license may alienate the customary land interest of any Aiga member.

If Samoans wished to allow a law to alienate or give up their customary land rights, they may under:

Article 109. Amendment of Constitution –

(1) Any of the provisions of this Constitution may be amended or repealed by Act, and new provisions may be inserted in this Constitution by Act, if a bill for any such purpose is supported at its third reading by the votes of not less than two-thirds of the total number of Members of Parliament (including vacancies) and if not fewer than 90 days elapse between the second and third readings of that bill:

PROVIDED THAT no bill amending, repealing or adding to the provisions of Article 102 or the provisions of this proviso shall be submitted to the Head of State for assent until it has been submitted to a poll of the electors on the rolls for the territorial constituencies established under the provisions of Article 44 and unless it has been supported by two-thirds of the valid votes cast in such a poll. (2) A certificate under the hand of the Speaker that a bill has been passed under the provisions of clause (1) shall be conclusive and shall not be questioned in any Court.

In order to pass a law that changes the status of customary land so as to alienate it or takes away the rights of customary land owners:

it [must be] submitted to a poll of the electors on the rolls for the territorial constituencies established under the provisions of Article 44 and [be] supported by two-thirds of the valid votes cast in such a poll.

IF THERE IS NO REFERENDUM THERE CAN BE NO TAKING AWAY OF CUSTOMARY LAND RIGHTS OR CONVERTING IT INTO FREEHOLD LAND.

The Land Titles Registration Act 2008 is unlawful and unconstitutional because it was never sent to the people of Samoa in a referendum for their approval as required by Article 109.

It will always be a mark of shame that the former Head of State, Tupua Tamasese Tupuola Tufuga Efi, also known as Tuiatua Tupua Tamasese Efi, signed the bill, when expressly forbidden to do so by Article 109 of the Constitution.

Faced with the need to hold a National Referendum in order to mobilize and securitize (break up and use in the credit -debt process) Samoa's Customary Land, the HRPP decided that it would likely lose the confidence of the majority of citizens leading to its defeat in an election.

A decision was made to look for a way to take control of all Customary Land without alarming the people. The process would have to be achieved through law changes and a

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propaganda campaign due to the fact that there exist Samoans well aware of the use of laws to steal land from native peoples worldwide. This theft has a formal name: Internal Colonization.

The tool used to break up Customary Land would be the registration of land or a lease using the Torrens System introduced in the form of the Land Titles Registration Act 2008 and precisely through registration under S.32 of the Land Titles Registration Act 2008.

There were two mechanisms to bring lands under the registration system.

The first one was the conversion of the previous register to the new register. Upon the commencement of the LTRA 2008, all lands registered in the Land Register under the LRA 1992/1993 were deemed to be registered under the LTRA 2008 as qualified title land.

Section 9 directs the Registrar after 1 March 2009 to register public land, freehold land or customary land leased or licensed or customary land where judgment has been made in the Land and Titles Court in the Register.

The second mechanism was the registration of new transactions after the commencement of the LTRA 2008. Section 9(1) of the LTRA 2008 states that the Registrar must register any land that "becomes public land, freehold land, or customary land leased or licensed under the provisions of the Alienation of the Customary Land Act 1965" after the commencement of the Act.

Section 9(2) states that the Registrar may also register "customary land in respect of which judgment has been made by the Land and Titles Court", for which the Land and Titles Act 1981 requires registration.

Compared to the LRA 1992/1993, the LTRA 2008 makes the registration of customary land leases and licences compulsory, and expressly includes the registration of adjudicated customary land.

The government emphasises that the LTRA 2008 "continues present law allowing the registration of customary land [where leases or judgments are concerned]".

However, the transfer of absolute ownership or sovereignty of any land registered under the Land Titles Registration Act 2008 to the HRPP government has never been agreed to by Samoa's Aiga, so it is a theft from the people hidden with lies.

Subsection 4 of Section 9 states that no provision of the Act may be construed or applied to permit or imply the alienation of customary land in a way prohibited by Article 102 of the Constitution; or permit or deem ownership in any customary land to vest in a person otherwise than as determined under any law dealing with the determination of title to customary land.

This combination is nonsensical as the registration of any customary land under the Land Titles Registration Act 2008 is not permitted by the Constitution without a referendum

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because it alienates customary land firstly by destroying the lands customary status and creating a lesser estate or right in law called a freehold title with state sovereignty which is subject to tax and seizure by the State and it takes away all rights of Aiga to the registered land by operation of law which is not permitted by Article 14 of the Constitution because it is a device to alienate customary land rights. Further the registered ex-customary land can be mortgaged and sold if debts secured against it are not paid.

Section 20 of the Act permits the disposition or transfer of land by operation of law. This breaches Article 14 of the Constitution which forbids the compulsory taking of property by operation of law so as to infringe Article 102 of the Constitution. All those Aiga with an interest in any piece of customary land lose out when it is registered under the Act.

This secretive alienation of the customary land rights of thousands or millions of Samoans is completely unlawful.

Samoans living overseas, who have been sending hundreds of millions of tala for fifty years, lose their customary land rights because only Samoans, who are resident continuously in Samoa for not less than 2½ years during the period of three (3) years immediately preceding the date of presentation of an instrument for registration can claim title to land, whether it be freehold or customary. The illegal registration and alienation destroys the customary land title transferring absolute ownership and control, sovereignty, to the HRPP State.

It creates a land race breaching Article 15 of the Constitution, which requires freedom from discrimination.

Even though foreigners can form companies and buy Samoan land, with the consent of the Head of State, overseas Samoans cannot form a company and buy Samoan land if their shareholding or voting power is more than 25% within a company.

Article 15 of the Constitution headed– Freedom from discriminatory legislation states that all persons are equal before the law and entitled to equal protection under the law. No law and no executive or administrative action of the State shall either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them. The State is directed to progressively remove any disability or restriction imposed on any of the above grounds.

Under Section 31 registration under the Land Titles Registration Act 2008 permits the land to be used to secure debt. This is in direct disobedience to Article 102 of the Constitution.

Under Section 32 of the Land Titles Registration Act 2008 even though there may be superior estates or interests in land to that of the person who registers title, such as Aiga rights, the registered title holder can deal with the land as his or her own, as long as he follows HRPP government orders.

The State may under Section 32 of the Land Titles Registration Act 2008:

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Where any land is registered under the Act:

- (i) enter, go across or do things on land for the purpose specified in the Act,
- (ii) recover taxes, duties, charges, rates or assessments by proceedings in respect of land;
- (iii) expropriate land (take from its owner for public use or benefit); or
- (iv) restrict the use of land;

Under Section 44 land registered under the Land Titles Registration Act 2008 may be mortgaged in spite of the prohibition of mortgages against customary land contained in article 102 of the Constitution.

Under S.47 the mortgagor of land is to be recorded as the owner of the land.

Sections 59, 60 and 70 of the Land Titles Registration Act 2008 enable land under the Act to be taken to satisfy debt or transferred upon the death of the owner. It has no protected status as customary land because the unlawful registration converts it to a slave title called freehold.

Customary land is tax free and the State has few rights in relation to it but if you register any of your customary land as a lease or license it out or register it in your name as Sa'o then the State has complete control and you become a slave, who must follow all orders.

Did our ancestors protect and keep our lands so we could be tricked out of our birth right to our Aiga land or become slaves to pay taxes to other Samoans just to live on our own land?

Even now the HRPP government continues to lie to the people, while this foreign legal bomb destroys and alienates customary land rights of Aiga and individuals in breach of Articles 2 & 102 of our Constitution.

Article 2 states clearly that the Land Titles Registration Act 2008 is void or of no effect because it has never complied with Article 109 by being submitted to all voters of Samoa in a National Referendum for approval.

No court action is needed, as it is of no effect legally but with a dishonest government and a legal system under the thumb and either turning a blind eye to this illegal government activity or actively co-operating in order to profit, unless the people of Samoa rise up and take to the streets then these thieves in government will force their evil and unlawful will upon our people and in the process destroy the human rights and lives of our people as all land is unlawfully transferred to the HRPP State ruled by a merciless dictator.

All of this evil deceit motivated by the love of money of corrupt politicians.

My land theft profit formula shows that at zero cost foreigners can loan corrupt politicians vast amounts of money all repaid by the citizens of a state through taxes, even as they are being robbed of their land rights. The lure is infinite profit.

$$P = (A + NEA + EP) - / + UM \times N (1, 2, 3)$$

P= Profit to Foreigners and Corrupt Elite

A = Assets (Land, Seas and natural resources)

NEA = Nurture and Enjoyment of the Assets

EP = Exponential Profit from Economic Activity

UM = Upfront Money loaned to Corrupt Elites to seize land from the People and ongoing Blood Money to act as puppets for foreign interests, including loan monies and aid - initially a liability, then repaid by taxes on the people. (- / +)

N = Number of years from one to Infinity.

Aiga members lose all of their land, assets and resources. They suffer as a result of this loss. They suffer at the hands of those who grow more wealthy from the economic activity. They pay ongoing tax to repay the loan and aid monies for which they received no benefit. They wonder how they went from land owners to wage slaves and feel shame. The traditional culture completely collapses as they must work to eat all the days of their lives.

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fsmtaua@gmail.com