



**Tuvalu**

# **TUVALU LANDS CODE**

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Tuvalu

## TUVALU LANDS CODE

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## TUVALU LANDS CODE

### MADE UNDER SECTION 28 OF THE NATIVE LANDS ACT<sup>1</sup>

Commencement [1 July 1962]

Under the provisions of section 28 of the Native Lands Act the following Code was declared to be the Code of Laws governing native land rights from 1st July 1962 in each of the following islands —

NANUMEA

NUKUFETAU

VAITUPU

NANUMANGA

FUNAFUTI

NIUTAO

NUKULAELAE

and from 25th July 1962 in the Island of NUI.

#### **1 Authority of owner over his property**

- (i) An owner controls the use of his property except that if it is proved to the satisfaction of the lands court that an owner is preventing his issue from obtaining a livelihood from his land, the lands court may order that some of his property be set aside for the maintenance of his issue. The lands court may also direct that the owner shall not make use of such property himself. The ownership of property set aside in this way is not transferred.
- (ii)
  - (a) An absentee owner is free to leave his property to be cared for as he wishes. (This is applicable only to his own land and his share of joint lands.)

*Funafuti*

At Funafuti an absentee owner of Kaitasi land may not nominate a caretaker to care for his share or receive the fruits if another member of the Kaitasi group remains on Funafuti. Only if no member of the Kaitasi group remains on Funafuti may owners nominate caretakers.

- (b) If an absentee landowner has not appointed a caretaker to look after his property then the lands court may choose a caretaker to take charge of his property for him.
- (c) If an owner wishes to appoint someone to look after his property it will only be allowed by the lands court if the property is to be properly cleaned and maintained by the caretaker.

**2 Neglect**

If any next-of-kin of an owner deliberately neglects that owner (and not on account of his own sickness, or because the owner refuses his help, or for any other reason) the owner may direct that that next-of-kin is to receive no share of his property; provided that during the owner's lifetime the neglectful next-of-kin has been successfully prosecuted for his neglect.

**3 Disposal of lands**

- (i) If the next-of-kin of an owner are over 18 years of age, and a majority of them permit him to dispose of his property in any manner he wishes, then the lands court may permit such a distribution.
- (ii) The distribution of the whole of an estate of an owner to someone other than his next-of-kin will only be allowed —
  - (a) if the next-of-kin have deliberately neglected an owner (and not because the owner has refused their help or for any other reason); or
  - (b) if a majority of the next-of-kin agree.
- (iii) An owner has complete authority over the disposal of any lands he has received as a reward for his work, or which he has bought, or which he has received in exchange for a canoe or anything else or which he has received as an unreturnable gift land. He may dispose of them just as he wishes, but if he dies issueless and he has no brothers and sisters and is intestate then the lands will be distributed to his paternal next-of-kin.
- (iv) If an owner has received a gift which must revert to the donor's family if he, the recipient, or his issue dies issueless, then he may not give away such property.

#### 4 Distribution of an estate and gifts *inter vivos*

- (i) An owner's order disposing of his property during his lifetime may be allowed by the lands court if it complies with this Lands Code. The owner's order will only be altered or overruled —
  - (a) if any of his issue or next-of-kin who are not guilty of neglect would thereby be left in hardship, but if they have been guilty of neglect then the order will not be stopped because of any resulting hardship (see section 2); or
  - (b) if the shares of his next-of-kin are thereby grossly unfair.
- (ii) The lands court shall first enquire into the opinion of the other children or next-of-kin of the owner before approving such a distribution or gift.

*Nanumea, Nui, Vaitupu, Funafuti, Nukulaelae.*
- (iii) If a testator stipulates that his estate may not be divided, this provision must be upheld during the lifetime of his natural children. The estate may be divided after all his natural children are dead.

*Funafuti*
- (iv) At Funafuti an owner may not distribute or give away his lands held kaitasi without the consent of the other members of the Kaitasi group.

#### 5 A gift for nursing

- (i) A gift for nursing may only be given by a will which has been confirmed by the lands court or at the discretion of the lands court if it is satisfied that the deceased made no will because he was prevented from so doing, or he was incapable of making one.
- (ii) If the members of the owner's family refuse to nurse him then a stranger may be rewarded for nursing him. An owner may not choose a nurse from outside his family unless he has successfully prosecuted them in the island court.
- (iii) A gift for nursing shall not exceed 1 land and 1 pit if the donor's family nurse him, but if a stranger nurses him, or only 1 of his family and the others refuse to do so, then the gift may be increased.
- (iv) A gift for nursing shall not be allowed when the donor is in a hospital which has full facilities.
- (v) A man may also give his wife 1 land or 1 pit, or 1 land and 1 pit, and a woman may do so to her husband as a gift for nursing if they are not nursed by their children if they have any, or by their other next-of-kin if they have no issue.

*Vaitupu*

Section 5 (v) above does not apply to Vaitupu and the following takes its place —

A man may also give his wife 1 land or 1 pit, or 1 land and 1 pit, and a woman may do so to her husband as a gift for nursing and such a gift shall return to the donor's family upon the recipient's death or remarriage.

*Nanumanga, Niutao*

(vi)

(a) Gifts for nursing are given away and do not return to the donor's family if the recipient is issueless.

*Nukulaelae, Nukufetau, Nui, Nunumea, Vaitupu*

(b) A gift for nursing shall return to the donor's family if the recipient is issueless, but if the recipient has children the gift will not return.

*Funafuti*

(c) At Funafuti a gift for nursing is a gift during the lifetime of the recipient only and reverts to the donor or his family on the death of the recipient.

*Funafuti*

(vii) At Funafuti an owner may not distribute or give away his lands held kaitasi without the consent of the other members of the Kaitasi group.

## 6 A gift for kindness

(i) An owner is free to give a gift for kindness and it is immaterial if he is neglected or not and the gift may be approved by the lands court. If there is no neglect then the gift will not be approved if it is large and it will result in his next-of-kin being left in hardship.

*Nui*

At Nui a gift for kindness shall not exceed 1 land and 1 pit.

*Nui, Nui tao, Nanumanga, Nanumea*

(ii) A gift for kindness will never revert to the donor's family if the recipient is issueless.

*Nukulaelae*

(iii) A gift for kindness will revert to the donor's family if the recipient is issueless, but if he has children the gift will not return.

*Vaitupu*

(iv) The person making a gift can decide if the gift will be held by the recipient and his issue in perpetuity or be returned to himself or his family after a

period of time or on the death of the recipient. The conditions on which the gift is made must be registered in front of the lands court.

*Funafuti*

- (v) At Funafuti an owner may not distribute or give away his lands held kaitasi without the consent of the other members of the Kaitasi group.

*Funafuti*

- (vi) At Funafuti a gift for kindness is a gift during the lifetime of the recipient only and reverts to the donor's family on the death of the recipient.

## **7 Adoption as a son or daughter**

- (i) A gift to an adopted child may only be given if the adoptive parent has registered the adoption before the lands court. An adoption of a child shall only be allowed by the lands court if it is satisfied that the adoptive parent's real issue, or his family if he is issueless, will not thereby be left in hardship, but if his real issue, or his family if he is issueless, are guilty of neglect then the lands court may approve the adoption and it is immaterial if there are not enough lands left for his real issue or his family. Such an adoption may be annulled by the lands court if it is proved that the adopted child is not dutiful.
- (ii) An adopted child will receive his inheritance from his real father and mother in the same way as his brothers and sisters.
- (iii) Gifts to an adopted child will revert to the donor's family if the recipient dies issueless. But if the recipient has children the donor loses his reversionary right and it is immaterial if his issue are later issueless.

*Funafuti*

- (iv) At Funafuti an owner may not distribute or give away his lands held kaitasi without the consent of the other members of the Kaitasi group.

*Nui*

- (v) At Nui Gifts of Adoption will revert to the donor or his issue upon the issueless death of the recipient or his issue irrespective of the number of generations after the gift. However the land shall revert to not more than 2 members of the donor's issue in order to prevent undue fragmentation.

## **8 Distribution of an estate decided by will**

- (i) An owner's will disposing of his property may be allowed by the lands court if it is in accordance with this Lands Code.

- (ii) If any owner wishes to direct the distribution of his estate after his death then he should make a will. This may be written on any kind of paper, but it is better if he will use the will forms kept by the registrar of the lands court. When he has written the terms of his will then he must sign it in the presence of 2 witnesses who must also sign it. The will must be witnessed by 2 persons who are not members of the testator's family and who are not beneficiaries under the will. A new will may be substituted or a new condition may be written changing the terms of the first will, but such new wills or terms must both also be signed and witnessed. A written will, correctly witnessed, may not be changed by a verbal one but if there be no written will then a properly witnessed verbal bequest may be considered by the lands court.

## 9 A distribution of an estate where there is no will

The estate of an intestate owner or of an owner whose will has been stopped will only be settled when his next-of-kin or their representatives are present. If the next-of-kin can agree upon a distribution then this may be approved by the lands court. If no agreement can be reached then the estate will be divided as shown below —

### *Shares of children when property owner has more than one spouse*

- (i) If an owner has more than 1 spouse then the eldest son of the first spouse will be the administrator, or if there is no son by the first spouse but only daughters then the eldest daughter will be the administrator. A female administrator may if she wishes allow a son by a subsequent spouse to be the administrator. The issue of the first spouse will receive more lands than the issue of the second or subsequent spouses. However if some of the children of the owner will suffer hardship by such a distribution then the lands court may distribute the lands amongst the children irrespective of which spouse they are from.

### *Relative shares of children of an owner*

- (ii) In the distribution of an estate between the sons and daughters of an owner, the share of the eldest son shall exceed that of his brothers and the shares of share of sons shall exceed the shares of daughters. If there are no sons then the share of the eldest daughter will exceed that of her sisters.

### *Vaitupu*

At Vaitupu a landowner may distribute his estate between his sons and daughters in whatever proportions he wishes, provided the lands court is satisfied that all children are adequately provided for.

### *Distribution of joint estate of owner and wife*

- (iii) A father and a mother may jointly distribute their estate and a child may not claim against such a distribution just because he has received a share from his father only and not from his mother, or perhaps from his mother only and not

from his father. If the child has received a fair share from the joint estate the distribution may be approved by the lands court.

*Distribution of estate of issueless owner*

(iv)

- (a) If an issueless owner is intestate or his will does not conform with this Lands Code, the distribution of the estate will be made by the lands court in such a manner that the lands will not be fragmented or subdivided and if there are insufficient lands for distribution to all his next-of-kin, then only those whose shares are small from previous distributions will receive shares. Men and women will share equally in the distribution of an issueless estate.
- (b) The near family or next-of-kin of an issueless owner are firstly his real brothers and sisters if any, and secondly if he has no full brothers and sisters then his half brothers and sisters for the properties of their common parent and for gifts for kindness. If there are no other issue of his father or mother then the property which he has received from his father will be inherited by the brothers and sisters of his father or their issue and the property received from his mother will be inherited by the brothers and sisters of his mother or their issue.
- (c) An owner has complete authority over the disposal of any lands he has received as a reward for his work, or which he has bought, or which he has received in exchange for a canoe or anything else or which he has received as an unreturnable gift land. He may dispose of them just as he wishes, but if he dies issueless and he has no brothers and sisters and is intestate then the lands will be distributed to his paternal next-of-kin.

*Distribution of estate of an issueless bastard*

- (v) If a bastard dies issueless then his estate will be divided in the same way as any other issueless estate.

*Subdivision of lands*

- (vi) The lands court should, if possible, refuse to cut up a land plot when distributing an estate, so that each land plot in a distribution will not be cut into several pieces and then shared out to all the next-of-kin, but land plots will be distributed undivided so that one next-of-kin will be given 1 or more whole plots and the lands will be distributed according to their size; in this way a next-of-kin who receives small lands will receive a larger number.

## **10 Distribution of property of absentee owner**

- (i) If an owner is absent from his island for 15 years the lands court should enquire as to the intention of the owner or his issue to return. If the lands court is satisfied that neither the owner nor his issue will return then the estate may

be distributed to his next-of-kin who live on the island as though the owner had died issueless or as decided by the court.

*Funafuti*

- (ii) Section 10(i) above does not apply to Funafuti.

## **11 Exchanges of property**

Landowners may exchange their lands, but they must do so in the lands court. The lands court will stop an exchange only if there is a great difference in value in the properties to be exchanged. It is immaterial if the properties are both on one island or if one is on a different island. Exchanges of pits may be made similarly. The line of inheritance of a land received in an exchange will be that of the land which has been given away.

## **12 Sale of property**

An owner may sell a land or a pit if his next-of-kin agree and if the lands court, having considered the matter, approve. Before reaching its decision the lands court should first consider if the lands remaining to the owner after the sale are sufficient for himself and his children.

*Nanumea, Nukufetau, Funafuti*

On these 3 islands the above section is not applicable and the following takes its place —

The sale of lands or pits for cash or other consideration is forbidden; but they may be exchanged or leased.

## **13 Natural accretions**

- (i) If a land accretes naturally towards the sea from an owner's land then the accretion belongs to the landowner upon whose land it accretes.
- (ii) Any accretion which does not adjoin an existing land shall belong to the Government of the island and the lands court may give it to any indigent person. If the person awarded the land plants it properly then he will be confirmed in ownership, but if he neglects the land the lands court may take it from him and give it to another person.

## **14 Provision for wife**

A husband whose wife has lived continuously with him for not less than 3 years immediately preceding his decease, and by whom he has no children, must make adequate provision for the said wife during her lifetime. On the death or the

remarriage of the said wife the lands and pits given for her support must revert to the husband's family.

## **15 Village land: Nanumanga, Nui, Vaitupu, Nukufetau**

- (a) The land on which the village now stands shall be used for the village in the same way as though it were communal land. If and when the village is moved elsewhere the lands shall revert to their owners.

*Nanumea, Niutao, Nukulaelae*

- (b) The above is applicable to these 3 islands with the following additions —

But if any landowner suffers because he has not got sufficient lands elsewhere for the maintenance of his family, he can go before the lands court with the householders whose houses are on his land in the village and enter into an agreement with them for exchanging parts of their land outside the village for the house sites on his land in the village.

*Funafuti village*

- (c)
- (i) If a landowner not having land of his own in the village area (that is the area west of the airfield between the Council office and the New Zealand Meteorological houses but excluding leased land and acquired land) wishes to build a house or other building on that land he must obtain the agreement of the Council before building the house or other building.
  - (ii) If the owner of Kaitasi lands in the village area or other member of the Kaitasi group wishes to build a house or other building on those lands he must obtain the permission of the head of the Kaitasi group to confirm that the Kaitasi group have agreed and must also obtain the agreement of the Council before building the house or other building.
  - (iii) If a landowner not having land of his own in the village area wishes to build a house or other building in the village area and a person owning a suitable plot in the village area is willing to exchange that suitable plot for land elsewhere of that person, then if the lands court agrees to the exchange and the council agrees to the building of the house or other building, the 2 persons may enter into an agreement exchanging lands and the house or other building may be built.
  - (iv) If a person not having lands of his own in the village area wishes to build a house or other building in the village area and a person owning a suitable plot in the village area consents in writing to

him doing so on that plot, then if the lands court and the council both agree, the house or other building may be built.

## **16 Communal lands**

Communal lands either in village areas or other areas will be controlled by the council. The produce collected from communal lands outside village areas will be divided equally amongst the people present on the island unless the produce is used for communal feasts or any other project benefiting all the people on the island. If any person entitled to a share of produce from communal lands wishes to elect out of communal feasts or communal projects of any nature then he may do so and may receive his share of the communal lands for his own use.

## **17 Kaitasi**

Kaitasi means those people who are living or eating together on one estate as joint-owners, e.g. brothers and sisters or the issue of some deceased brothers or sisters who were joint-owners. [Joint-owners in a Kaitasi estate may be more distantly related than brother and sister.] Whenever an estate is Vaevae and each individual joint-owner has taken his share from that estate then Kaitasi does not apply. It usually happens that Kaitasi property is listed under the name of one person who is the head of a family group and under his name or against pieces of land or garden pits on which they are Kaitasi are listed the names of the joint-owners. Those persons shown as Kaitasi are the only ones entitled to eat off the property shown against their names as Kaitasi property.

## **ENDNOTES**

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<sup>1</sup> LN 27/1962, LN 12/1988