

The roles and responsibilities of absentee land owners in the Pacific – A Niue case study



The International Association for the Study of Common Property Second Pacific Regional Meeting Brisbane, 7 – 9 September 2003

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Keywords: *Common property, indigenous tenure, absenteeism, Niue.*

Abstract: This paper investigates the conflict created by absentee land owners, who in many cases have become permanent residents in New Zealand, Australia, the US or Canada. From 1900 onwards, New Zealand administered the Pacific Islands of Niue, the Cooks and Tokelau. People within these islands were accorded the status of British nationality and New Zealand citizenship. As a result, many indigenous landowners migrated, in common with islanders from Samoa and Tuvalu. Such migrants retain certain land rights in their absentee capacity, which can be a major impediment to development.

Niue is the smallest self-governing microstate to have emerged from the United Nations promulgated decolonisation programme of the 1950s (current population 1460). It decided to become self-governing in free-association with New Zealand in 1974. Colonisation had brought the western approach to freehold title, but under the Niue Land Ordinance (1969) land ownership reverted to native title, on the basis that individualised freehold title was something foreign to Polynesian society.

In Niue, the acquisition of communal rights to land is through custom and traditional practice, largely handed down by birthright from generation to generation. One's obligation to one's family originates from the land and its *mana*. However, indefinite periods of continuous absence as a member of the *magafaoa* without contributing to its welfare have caused difficulties to those remaining on the land. Using grounded data from a qualitative survey of five percent of the resident population, this paper addresses if silence and non-contribution is acceptable to satisfying traditional obligation.

“Holding rights back home can increase the psychological security of those away, but it is likely to increase the insecurity of those on the land, and constrain agricultural development.”
(Crocombe, 1983)

Globally, urbanisation and concentration on commercial centres is on the increase – even in nations with extensive rural areas. The world's urban population is set to overtake the rural population by 2007 (Satterthwaite, 2002). This trend affects land rights, both of absentee ‘customary’ land owners, as well as frustrating those who are left behind in semi-subsistence lifestyles on Pacific islands, reliant on income from their urbanised overseas kin. As Crocombe identifies, there exists current legislation to cancel the rights of absentee land owners in some Pacific islands (Crocombe, 2001). For example, Fiji law allows the clan to delete from joint ownership any person who has been absent for two or more years, yet this has never been invoked... indeed many men will have been absent for at least that long. A similar law in Kiribati, albeit no longer applied, assumes that any man who has been absent for seven years is assumed to have been ‘lost at sea’, and his lands reallocated.

However, nowhere is the issue of absentee landowners so clearly demonstrated than in the Polynesian raised atoll of Niue, with 93% of Niueans residing overseas. Niue, known as ‘the Rock of Polynesia’, is an example of a *makatea*, or raised atoll island, formed when coral reef was hoisted above sea level by a primeval upheaval of reef-moving proportions. At 259 sq km (100 square miles), Niue is one of the largest coral atolls in the world. The island's limestone outcrops rise sheer out of the surrounding ocean to two-tiered heights of 20m (65ft) and 65m (213ft) above sea level. Niue is thought to have been inhabited for about 1,000 years, with the first settlers coming from Samoa (660km to northwest), Tonga (480 km west) and the Cook Islands (930km east), with a more recent Melanesian influence in the southern part of the island (see Figure 1). Niue's remoteness, as well as cultural and linguistic differences between its Polynesian inhabitants and those of the rest of the Cook Islands, have caused it to be separately administered. The population of the island continues to drop (from a peak of 5,200 in 1966 to 1460 in 2002).

The economy suffers from the typical Pacific island problems of geographic isolation, few resources, and a small population. Government expenditures regularly exceed revenues, and the shortfall is made up by critically needed grants from New Zealand that are used to pay wages to public employees. Niue has cut government expenditures by reducing the public service by almost half. The agricultural sector consists mainly of subsistence gardening, although some cash crops (taro, vanilla and nonu) are grown for export (to New Zealand). Efforts to increase GDP include the promotion of tourism and a financial services industry, although Premier Lakatani announced in February 2002 that Niue will shut down the offshore banking industry. Economic aid from New Zealand in 2002 was about \$2.6 million. Most work on family plantations; paid work exists only in government service and small industry. Industry consists primarily of small factories established two years ago to process passion fruit, lime oil, honey, and coconut cream (CIA, 2003). Niue has an Exclusive Economic Zone (EEZ) of 390,000 square kilometres.

In recent years the island has suffered a serious loss of population because of migration of Niueans to New Zealand. Available data on the current population varies from 1,460 (Registrar of Lands) to 2,145 (July 2003 estimate, CIA), with consensus that around 20,000 Niueans, or Polynesians of Niuean descent are currently residing in New Zealand (UNDP, 2002).

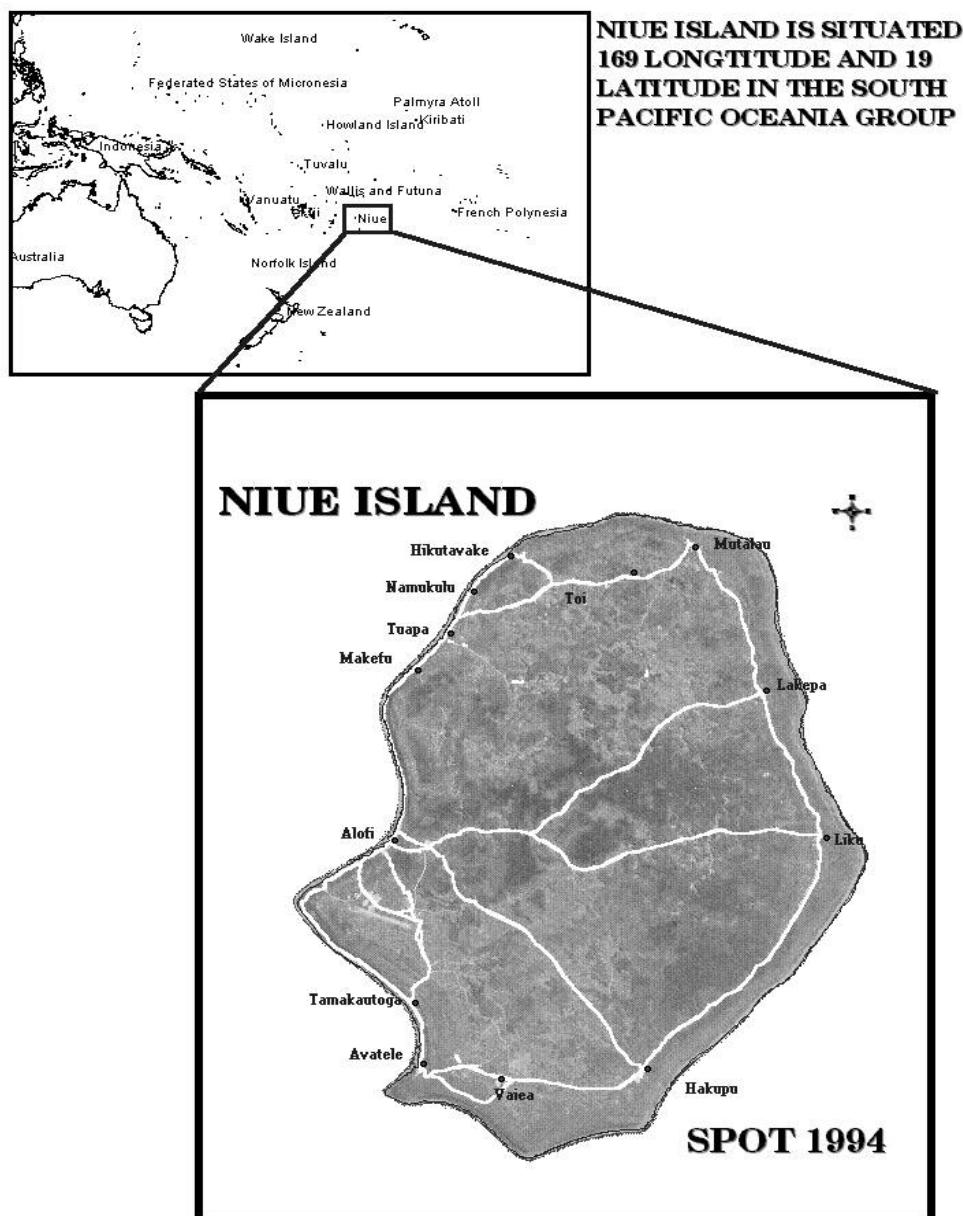


Figure 1: Niue – regional context and country map
Source: Government of Niue

The Samoans colonized Niue in the 9th or 10th century A.D., but the Tongans invaded the island in the 16th century. Later, in 1774, Captain Cook visited the island three times, but he got a hostile reception from Niuean warriors. In 1864, a Niuean who had been trained by the Samoans managed to convert some Niueans to Christianity, but only in 1849 a group of Samoan pastors managed to really implement the faith on the island. The first British resident was British missionary George Lawes, who arrived in 1861.

Niue is a cohesive and highly structured society, grounded in the concept of family. The *Aga fakamotu Niue* sets values, beliefs, and behaviours that guide protocol and gives direction to life. The three central factors are the family and family roles, the sharing of resources, and the importance of land. These principles reinforce sustainable human development strategies, particularly the strong subsistence systems (UNDP, 2002). Niue has a unique egalitarian leadership that does not follow monarchies or chiefly aristocratic systems like its neighbours –

instead, identity and status is grounded in the family name, and what Loeb describes as the ‘high court of popular opinion’ (Loeb, 1926/1978).

There are two land categories in Niue – *Niuean Land* (comprising 95% by area) and *Crown Land* (of which 1% is Government Land and 4% is held under lease in perpetuity by the Crown). For all land in Niue vested in the Crown, custom prevails. Land cannot be bought or sold, except by the government for public purposes, and then only subject to the consent of the titleholders. Whilst there is provision for compulsory acquisition of land for public purposes, it is rarely invoked because *fakalilifu* (respect for the people) prevents its use. Tongatule suggests that the problem of acquiring land for public purposes stems from: multiple ownership, fragmentation, restrictive attitudes of absentee owners, and customary land rights (Tongatule, 1981).

Multiple ownership is derived through the principle of *magafaoa* descent group, derived from a *tupuna* (known ancestor) or the original source of the land.¹ All relatives and family branches have a claim, therefore any piece of land might be ‘owned’ by up to hundreds of people representing one or more descent groups. Adoption is also recognised in the *magafaoa*, as are illegitimate children raised by grandparents or other relatives. The Land Ordinance 1969 requires consultation with all ‘owners’ before any transfer can take place. However, with some 1,500 Niueans resident on the island and some 20,000 resident in New Zealand and elsewhere, the consultation requirement is impossible to adhere to and this becomes an impediment to land negotiations.

Fragmentation of land titles is caused by the customary subsistence agriculture approach to leaving land fallow every seven years, which has resulted in descent groups owning scattered tracts of land around the island. Kalauni suggests that it is most unlikely that any land transactions based on the open market concept of ‘willing buyer – willing seller’ will ever receive favourable consideration by Niue’s Legislative Assembly, even though there is a political argument that this could check fragmented intra-Niuean land sales (Kalauni, 1977). The older Assembly members blocked such an approach back in the 1970s, fearing, in the best interests of custodianship of the land, the impact on Niue’s unborn generation. In their view, a liberalisation of customary controls on land sales would result in a loss of egalitarianism, whereby Niueans with power, status and resources would undoubtedly buy others out. They overlooked the restricted nature of the well-meaning proposal to minimize fragmentation, and the monitoring of all land dealings by the Land Court which would minimize the potential for ‘empire building’ on the Rock.

Restrictive attitudes of absentee owners (irrespective of their length of absence) are an impediment to land development projects. Absent Niueans often refuse, or are reluctant, to enter into negotiations, collectively or individually and attempting to negotiate with them is a consuming and frustrating process (Tongatule, 1981). Kalauni describes land negotiations on Niue as ‘fiddling with feelings rather than reality’ (Kalauni, 1977). As customary land titles represent 95% of land area, it is difficult to precisely define the rights of a descent group in any land. The claim of equal land rights for absentee Niueans to those who remain resident on the land is grounded in the ‘descent group concept’, ignoring criteria for use and residence.

¹ The term *magafaoa* (also written variously as *mangafaoa*, *manafaoa* and *magefaoa*) has many connotations, including co-resident descent group as well as that of common descendants (irrespective of where they reside) of an important ancestor (*tupuna*). A *magafaoa* evolves over time, dividing and forking into expanding genealogical trees with ‘splinter’ *magafaoa* – a case of the ‘*tupuna* keeping up with the *magafaoa* and not being left too far behind’ (Crocombe, 1977; Richmond-Rex, 1995).

Customary land rights are recognised by s.23 of Niue Amendment Act, No.2, 1968. Niueans continue to have rights to unregistered titles, albeit not guaranteed by the Crown unless registered. Traditional cropping for subsistence living creates no real problem for land use – problems only arise when an economic paradigm is added into the equation, whereby improved cultivation methods on customary land lead to problems even between members of the same descent group.

According to Sisikefu, the Niuean system of Land Registration, when applied, is simple and relatively inexpensive to administer (Sisikefu, 1984). It is a hybrid of the Torrens, Deeds and New Zealand Land Transfer systems. There is no need for the State to guarantee title to customary land, as ownership evolves from the Land Court, whose role is to settle title and ownership disputes. The land court prioritises both occupation and genealogy in settling disputes. A benefit afforded by registration is that land can be used as security for loans. The Niue Development Bank only accepts applications to grant loan on the premise of the Land Court giving an ‘Occupation Order’, hence a charging order is registered in the Certificate of Title as an encumbrance until the loan is fully paid and discharged. Moreover, as only the name of the *magafaoa* and *leveki* (trustee) is recorded on the Land Register, the fragmentation of title that would occur in recording names of individual successors (as occurs in the Cook Islands) is eliminated.

Currently (2003) only 12½% of all land (by area) in Niue is formally registered.² Whilst lack of registration is not an impediment to the productivity of subsistence cropping, it seems to be a necessary part of the framework for productive commercial agriculture. Today, economic aspirations of Niue focus on modest forestry and tourism potential. Yet without access to land, neither tourism nor forestry can develop.

Interestingly, Acquaye suggests that registration, with adjudication and consolidation, may rather help to perpetuate the problems of absentee landlords (or customary land owners in Niue’s case) and associated unsatisfactory patterns of land use and land holding (Acquaye, 1984). Thus, registration itself could be a real obstacle to development, especially where the existing pattern of land use and land ownership is in conflict with the most efficient (from an economic perspective) land use pattern.

The perception of efficiency is worthy of further discussion. Crocombe has identified that the cultural constraints of the land ownership structure results in the people of Niue (residents and absentees), the Solomon Islands and others who do not effectively use their own lands, being reluctant to make them available to others who would (Crocombe, 1984). He goes on to suggest four possible policies that are in accord with *actual* traditional practices of island societies, as opposed to the present system which is quite incorrectly *thought* to be traditional, viz.:

- Fear of loss – provide restrictions on the size, value and retention by original landowners;
- Reduce the number of persons in a landholding group (in essence, this could be achieved by determining ‘abandonment’ of the absentee owners after a given number of years);
- Re-establish a more effective organisational structure for joint landholders; and,

² Source: Registrar of Lands, Government of Niue, August 2003.

- Ensure access to land on the basis of productivity potential rather than accident of birth.

Twenty years later, there is still evidence to support that the greatest current land problem is to overcome the legacy of colonial tenures and, as Hann would call it, the *embeddedness* of property (Hann, 1998). This is emphasised by Kalauni, acknowledging the interdependence between the land tenure system and productivity, citing multiple ownership, fragmentation and attitudes of absentee owners as minimising output potential of the land on Niue (Kalauni, 1977). Reform does not necessarily mean new legislation but rather different attitudes. What must change is the attitude of the people.

In explaining the situation in pre-contact times, Turner noted that people who drifted in to Niue from other islands, and Niueans who tried to return after having left, were killed upon landing (Turner, 1884). This was possibly from fear of disease, or possibly because disputes would arise from their admittance. In pre-contact times, it is possible that only Niueans who went away voluntarily were those in fear of punishment from wrongdoing. Involuntary emigration would result from banishment or drifting in a storm.

Contact with the outside world was not firmly established until the arrival of Christianity to Niue in 1846. Niue was declared a British Protectorate in 1900 and was formally annexed to New Zealand in 1901, to be administered on behalf of Britain. Niue was subsequently administered under the Cook Island Act 1916. With the advance of both Christianity and government rule, Niueans came to realise the importance of claiming ownership to land. The concept meant that ownership had to be formally lodged to authorities at the time. Current records available at the Lands department indicated that Court cases involving land disputes and settling of these disputes commenced in the early 1940s. The process of laying formal claims to land parcels may have been introduced earlier, however the first minute book recoding formal decisions by the judge was in 1942, which included formal plans showing boundaries using the compass system of surveying.

The introduction of formally lodging claim to land saw the adoption of the “freehold” concept of ownership. Freehold orders by the Court, after hearing the evidence presented by the claimants or the disputing parties and upon satisfaction, were ordered to people who were actually living at the time. The rights and interest to the lot or parcel of land were defined, giving definite shares with certainty. Subsequently, those laying claims after the death of the person or persons named in the freehold order to succeed to the title were required to file application to Court to become successors.

The current land tenure was promulgated and legally sanctioned in 1968 by way of the Niue Land Ordinance (1969), under the auspices of the New Zealand Parliament, since Niue was still colony of New Zealand. The transformation was grounded on the premise that customary and traditional practices should be seen as being the pivot or the basis of landownership in Niue. Moreover, it was believed at the time that the freehold concept of individualised titles adopted and used in western societies, was something entirely foreign to Polynesian society (Hanan, 1968). Polynesian customary land tenure was diametrically opposed to supplanted western freehold tenure and the two could not mix.

The transformation was carried out introducing the system of Registered Titles with the requirements of certainty, authority, and simplicity. Certainty in terms of identity and ownership; authority by way of registered title being sufficiently authoritative to guarantee possession to the registered occupier; and, the system must be simple and workable. It should

be designed to enable land to be used and not merely to be the subject of litigation, family pride and the whims of elders. It must be easy and cheap to administer.

Crocombe (Crocombe, 1977) emphasised a phenomenon that Loeb had identified as far back as 1923, and has become increasingly common since then. This was that the sense and reality of continued residency was formerly a vital criterion to membership of the landholding group, yet over time (and indeed exacerbated by recent emigration and second generation families based overseas) the vital criterion has increasingly become a matter of genealogical connection through *magafaoa* links. Now, absenteeism does not seemingly impact on landholding rights, and the situation has been compounded more recently by another trend that Loeb identified (Loeb, 1926/1978), which he described as out-marrying, i.e. women marrying not only beyond the village but more importantly off the island.

In 1964, the Niue Assembly determined that absences of more than twenty years would result in forfeiture of land, given that absentee landholding was an impediment to economic development. However, absentee Niueans residing in New Zealand were vigorously opposed to this, fearing the psychological loss of landholding and associated economic security. This point is reinforced by Richmond-Rex, who identifies that even if land in Niue could be sold in a western context, the financial benefits would be fleeting and short lived – once spent, gone forever (Richmond-Rex, 1995). But land itself is seen as enduring forever, and customarily is there to be handed down to future generations as it was by the *tupunas* (ancestors) as a link between past and future. The view is that a Polynesian only has wealth if they have land.

As with other Pacific Islanders, Niueans have a strong affiliation and affinity to the land. Niueans view land not as a commodity, but as where life begins and ends. It provides *mana*, identity, and heritage. The acquisition of rights to land is through customs and traditional practices, handed down or inherited by birth and articulated through word of mouth from generation to generation. By custom and oral tradition, one is obligated to accept, and duty bound to actively participate in, the family affairs and communal welfare. One's obligation to one's family originates from the land. Where one resides, so also resides the *mana* of and from the land. As such, one is traditionally bound to return, and contribute to the welfare of one's origin and family, thus ensuring maintenance of the traditional *mana*, identity, and heritage. From this understanding, entrenched through family kinship, one attains responsibility to the family, whether occupying the land or not.

However, an important source of income on Niue is remittances from absent relatives in New Zealand (Crocombe, 1977). There is a two-way expectation, with residents needing the money for economic survival and absentees paying for ongoing maintenance of cultural, spiritual and family ties through active participation in one's *magafaoa* 'back home'. Land rights are a critical function of that continued membership. An indefinite period of continuous absence as a member of the *magafaoa* without contributing to its welfare, raises difficulties for those remaining on the land. Questions are raised whether affinity to land is sufficient in terms of one's silence and non-contribution, or enough to maintain one's traditional obligation. It is interesting that the many Niueans who migrated to Samoa, who have been absent longer, or who have limited income and don't send remittances back to Niue, raised no objections to the 1964 (and subsequent) proposals to sever land rights through absenteeism. Whilst Niueans resident in New Zealand have no direct political rights in Niue (instead, they have voting rights and tax liabilities in New Zealand from arrival), they continue to carry political influence.

Tuhega, as a sometime twenty year absentee himself, identified a desire by the absentee's to leave things as they remembered them, in a romanticized time-lock, rather than accepting evolution (Tuhega, 1977). By 1974, when Niue became self-governing and Niueans faced economic pressures in New Zealand, a prevailing uncertainty of continued acceptance in New Zealand made absentees want to retain their land rights 'back home'. This was especially so amongst first generation absentees. With self-government, the Niue government positively encouraged its absentees to return home. Whilst comparatively few did return, their *magafaoa* land rights afforded them a feeling of confidence and security from afar.

A growing animosity prevails between the majority expatriate Niueans and the remaining residents of the island. Accusations of absentee's land being stolen are commonplace. According to Richmond-Rex, "resident Niueans maintain that those who migrated chose to do so, leaving behind their lands which are of no practical value to them" (Richmond-Rex, 1995). Yet, in saying this, she seems to miss the point elaborated above, that to a Polynesian land is wealth in true sustainable development terms – to varying degrees of economic, environmental and social value.

As absence potentially results in forfeiture, some New Zealand Niueans return seeking individual, as opposed to *magafaoa*, title, causing yet more problems. Richmond-Rex elaborates on other challenges of absentees as:

- Ignorance of land titling projects;
- Assuming or expecting land to achieve western values (with their bias towards economic value);
- Failure to observe and respect traditional protocol amongst younger second generation offshore Niueans, who adopt western ways in representing their parents land interests;
- Misunderstanding the role of the *leveki* as trustee, with expensive, time consuming and communication problems.

She also identified the need to translate laws into Niuean from the 'second' language of English, but thus far this has been cost prohibitive. The need for legislation to be in the native tongue of parties to the law, as well as in English, was reinforced by the South Pacific Land Tenure Conflict Symposium in 2002 (Boydell, Small, Holzkecht, & Naidu, 2002).

Niue is the smallest self-governing microstate to have emerged out of the United Nations promulgated decolonisation programme of the 1950s. Niue's decision in 1974 to accept the option of self-governance in free association with New Zealand was an exercise that nearly took a decade to resolve. Before formalisation and acceptance of a government under a constitution, the island had developed to what appeared at the time to be a very respectable economic base with a population of about 4500. Acceptance of independent political status was adopted based on Niue's preference for the 1962 New Zealand proposal that it be economically independent ahead of political independence.

The constitution entrenched what had already been implemented, that Niueans are New Zealand citizens, and as such, restrictions imposed upon non-citizens to enter and reside in New Zealand do not apply. The impact on this constitutional right of citizenship is such that the population outflow since independence has created a demographic catastrophe without an apparent cure. The current population level of 1460 renders Niue as uneconomical to sustain any economic development proposals. The customer base is too small to generate trade income, whilst support services are becoming expensive to maintain and sustain. On the other hand, with the current population level, crime is very low and productive land is potentially available, subject to formalising access. However, the communal basis of land ownership is

one of the major difficulties facing those remaining in Niue who desire access to land for economic and development purposes.

Research Methodology

In late 2002, the authors undertook an extensive survey to gauge the sentiment of those who remain resident on Niue. In order to facilitate data collection and involve as many people as possible, given the comprehensive and sensitivity of the topic, three complementary grounded theory approaches of personal interview, talk back radio and Internet were adopted to achieve both qualitative and quantitative data.

Personal interviews were conducted on a one to one basis, without compunction i.e. with each interviewee given the opportunity to decline the interview request. Assurance was given that the purpose was for academic research and all personal information and identification will remain confidential. The research team, given the size and nature of Niue society, knew individuals selected for interview. Likewise, there was already knowledge of their family and village connections. Interviews were conducted in both Niuean and English languages, the choice of language being based on the researchers knowledge of the educational, employment background and circumstances of each interviewee.

Interviews were conducted at work places, homes, village show days, shopping centres, after church services, and during traditional hair cutting and ear piercing ceremonies. Sometimes it was necessary to make contact with the interviewee for a second time to clarify certain of the issues discussed. Whilst an 'open ended' interview format was adopted, sometimes it was necessary to prompt the interviewee with a leading question, or a probing question, to ensure that research focus was clearly understood and not ambiguous.

Respondents included those who are:

- Just beginning to be economically active, 15-19 age group.
- Economically active, 20-49 age group.
- Getting towards the end of their economically active age, 50-59.
- Regarded as *matua*, i.e. those respected as wise elders, age 60-80+.

Those chosen in the 60+age cluster included ex-politicians, retired public servants, and farmers.

The second method adopted was to pose questions on sentiment regarding absenteeism on the Niue Broadcasting Commission weekly *Talk Back* show. The research topic, including a brief written background and selected questions, were given to the General Manager (who conducted the show) one week in advance. For clarification, the paper resources were supported with verbal discussions with the Manager to stress the comprehensive and sensitive nature of the topic, given the fact that all absentees have families remaining on Niue.

The topic was given air coverage promotion, drawing peoples attention to be available and to participate in the show, one week before the scheduled date, which was Monday morning the 15th October 2002. The talk back ran for three hours, from 09:00 – 12:00. The weeks lead time provided the manager ample time to do his own research on the topic to enable him to lead the show effectively. It is also understood that almost all families have been involved in land disputes within the family and as well as with other families. Given the sensitivity of the topic, the traditional affinity, and values attached to the land, those interested were given ample opportunity to express their views.

The third data collection tool was under the Internet auspices of *Niue Global Village*. The same outline provided to the Broadcasting Commission was also posted on the Niue Global Village Internet site, through the site Moderator. The Moderator invited and encouraged all web users and members to respond, emphasising on the importance of the topic in respect of Niue’s economic development, cultural heritage and identity - especially the views of absentee landowners. The topic was posted under an anonymous author.

Currently the regular members of Niue Global Village have increased since its inception about a year ago to 158 today, living around the globe and having access to the site on a membership qualification. The qualification being one does not have to be a Niuean by descendant, but includes those with past association with Niue. However, the majority of the members are Niuean descendants, recruited through friends and families. Members are living in Canada, USA, Italy, and the UK, with a predictably high number from New Zealand and Australia.

Data Analysis

Group 1: Youth 15-19 age group

<i>Gender</i>	
<i>Male</i>	6
<i>Female</i>	6
<i>Total</i>	12

Life for the youth of Niue is dictated by options, and whether these options are available in Niue. Their future in Niue is subject to these options, how they see their roles and responsibilities to family, village, and Niue as a nation are subject to individual desires in life.

The opportunity for a good education is available and free. It is conceivable that the youth in Niue see that a good education is the pivot for a white-collar job and a career in the public service would lead to a stable future. On the other hand, they also identify the risk of not gaining a job in the public service after completing tertiary education.

All those interviewed in this age group affirmed that they have families residing indefinitely outside Niue. The majority acknowledge that the land is owned by the *magafaoa*, and the *magafaoa* is composed of the members of the extended family. However, most of these absentee members are just names to them since most of the members left before the respondents were born. They learned about them from their parents.

When asked about the constitutional obligation, three responded as unsure whilst the majority understood that during election times those living outside Niue are not required to vote, therefore they should not have a say on the political matters that happen in Niue. Niue government should not ask for absentees for their opinion, or even consult them, until they return and take up residence.

One girl in this group expressed that the longer the duration of absences, the stronger the capitalist influence.

Two interviewed mentioned that most of the families only make contact at funeral times to share words of condolence, otherwise there is no regular contact. Other contact is in terms of communication and perhaps money or food contribution and financial assistance.

When asked about the role and responsibility of Niueans whilst absent, the majority expressed view that the role and responsibility is subject to each individual’s understanding, and commitment to respective families, as it would be difficult to impose what the residential Niueans thought to be appropriate.

Group 2: 20-49 age group

<i>Gender</i>	<i>Pub.Servt</i>	<i>Business</i>	<i>Domestic /planter</i>	<i>Return permanent</i>	<i>Niuean visitor</i>
<i>Male</i>	10	2	4	2	3
<i>Female</i>	10	2	4	2	1
<i>Total</i>	20	4	8	4	4

The majority of those interviewed in this group have resided in Niue most of their lives, and have families living outside Niue. They too left for a brief period in New Zealand, for education, government business etc. Those who returned to live permanently after more than 20 years absence in New Zealand were also included. The Niuean visitors are those returning for the annual Constitution celebrations and the opportunity was taken to seek their views.

This is also the core group active in economic, social, sports, and church activities including participation in Non-Governmental Organisations (NGOs). This group also have some understanding of Constitution obligations as well as knowledge on land matters, the traditional practices and culture. Therefore, the questions raised required only a brief preamble.

Twenty (20) of those interviewed in this group responded that because absentee landowners left deliberately for an indefinite duration, and enjoy the life offered in New Zealand, they should not participate in any issues regarding Niue. They vote with their feet; therefore, they took with them their respective rights, both constitutional and traditional obligations. This is also evident as all past initiatives to consult and dialogue on various matters to do with Niue, were initiated from Niue. The reasons behind these initiatives are windows of opportunities, to keep the connections and obligations active and alive. These initiatives provided absentees with the perception that their views were sought because the majority of Niueans are now residing in New Zealand hence, the number to them means authority, and Niueans residing on the land cannot survive without them.

Three public servants in this group referred specifically to the workshop held in Niue 2 years ago, when a group from the Niuean community in both New Zealand and Australia were invited, under UNESCO sponsorship, to discuss aspects of our environment. They did not contribute by presenting papers, other than to comment briefly on the quality of the respective discussions. The visiting group were not sincerely committed to the discussions. Some in the group, especially those returning for the first time or born overseas, utilised the opportunity for sight seeing.

The traditional obligation in relation to land should not be viewed by those absentees when consulted, as this gives an indication that the decision-making is transferred to them. The

definition as to the composition of the *magafaoa*, according to the legislation is not confined to those residing in Niue. However, it must be emphasised and should be articulated to the communities of absentees, that the actual physical occupation, and the degree of such occupation speaks louder and must be given due respect. Three in the group felt that the longer the period of absence is, so is the endorsement to gradually lose their traditional rights to land. The respondents went on to qualify this view by referring to the traditional practice, for those married outside the village and living in the land owned by his/her spouse, gradually lost their rights the longer they stayed away from their village of birth.

However, six of those interviewed responded that to terminate the ties and obligations, both constitutional and traditional, is like cutting off ones foot. Although, according to the six, the *mana* is on the land and with those occupying the land, both identity and heritage, as blood is thicker than water. Those occupying the land are *levakis* (trustees, gate keepers and protectors) for the *magafaoa* whether living on Niue or elsewhere, whether they actively contribute or not.

Two of those returning permanently after spending nearly 20 years, stressed that whilst they were living in New Zealand they felt that being absent is a manifestation in itself that one should not have any say on what happens in Niue. Although they kept their traditional obligations alive through contributing to their respective families' welfare, they prefer to leave the decision making to those living on the land. Therefore, they felt that absentees should contribute by returning and occupying the land, hence activating their heritage and actively identifying themselves as Niueans living in Niue.

The three visitors interviewed reluctantly responded that whilst they are living outside Niue they preferred to maintain their traditional connections with their families, they do contribute to the welfare of their families in Niue indirectly through payment of taxes in New Zealand. They felt that being absent is insufficient to terminate their heritage and identity as a Niuean. They respect that the issue is rather sensitive and were concerned that they may inadvertently make a comment that may be misinterpreted.

However, one of the visitors added that having worked here, and now residing in Auckland, he strongly felt that being able to work here and Auckland gives him the background in the area of his profession in the tourist industry to provide a positive contribution to Niue. He intends to set up a Travel Agent office to promote Niue, including ticketing. These days, with the existing technology one can run a business anywhere in the world. He sees his role and responsibility in both the social and business.

Absent Niueans should be encouraged to invest here in Niue through joint ventures. There are absentee Niueans who would like to contribute to the economy but are reluctant to do so unless invited. However, he agreed that the *mana* that goes with the identity is always on the land of birth and absentees should consider taking time off to return and replenish the *mana* lost after period of absence.

Group 3: 50-59 age group

<i>Gender</i>	<i>Public servant</i>	<i>Retired public servant</i>	<i>Retired politician</i>
<i>Male</i>	4	4	3
<i>Female</i>	4	4	1
<i>Total</i>	8	8	4

All interviewees in this group mentioned that they have been involved with land disputes within the *magafaoa*, and with other *magafaoa*, including absentees. They all have relatives and families living outside Niue. They also are current *levekis* (trustees) of lands for their respective *magafaoa*.

The majority of this group expressed respect for the absentees, however their duration of absence and exposure to capitalist principles perhaps have somehow influenced their traditional mentality of the family as a unit based on consultation, sharing and obligation to contribute to ones family.

The group, expressed the same vein of thought that constitutional obligation is a foreign concept, albeit it is an important component of people as a guiding star through life, it must be balanced with the traditional knowledge practices to allow promulgation of workable solutions. Loss of ones inherent obligations and heritage should not be taken lightly. Absentee landowners must come to the party in order to facilitate development in Niue, if not for them, but then in consideration of their future generations. Land is life, where life begins and ends.

Group 4: 60+ age group

<i>Gender</i>	
<i>Male</i>	5
<i>Female</i>	65
<i>Total</i>	10

Three interviewed in this group are retired politicians who were involved with the promulgation of the current land system. One expressed that he was adamant in opposing the proposal to limit the duration of absence to 20 years and after that, those absent loose their rights to land in Niue. He based his view at the time on the premise that those leaving, for various reasons, would continue with their traditional obligations and contribute to the welfare of the families remaining. This contribution provides an active indication that wherever you are your linkages to ones land remain continuously active. Likewise, access to land by those remaining on the island should not be difficult.

However, his disappointment came from personal experience whereby a member of the family, claiming through genealogy, who does not speak the language and has never contributed to the *magafaoa*, arrived on the island went to the Registry office, found a parcel of land already titled and registered, subsequently filed a caveat, to stop all developments on the land. He felt for the sake of the family remaining in Niue a time limit should be imposed to avoid such move by absentees claiming interest through genealogy alone. Understandably, absentees when returning should come to the residential *magafaoa* to seek support, given the

fact that the characteristics on natural land marks, where land is located may have damaged or change over time.

Another politician interviewed in this group supported the view of time limitation. Those who left, if they do not return within the specific duration, should lose all rights to claim land here.

Although all in this group acknowledge that blood is thicker than water, they have now seen the difficulties in accessing land for economic and development purposes including the fragmentation of ownership and undefined rights and interest. The system needs to be re-examined to facilitate development, but excluding outright selling.

Niue Broadcasting Talk Back Programme

Only four (4) listeners responded and called to express their views on the matter. The low response, although expected, was disappointing. The General Manager who facilitated and hosted the discussions encouraged respondents to be open minded and to debate freely without fear of being victimised.

One male respondent expressed view that a time limit should be given for those absentees to return. He suggested a 10-year period. He further expressed that on vacant uncultivated lands, farmers interested to plant crops with potential for export should develop these lands with the support of government, by taking over control. He referred to the traditional practice that whoever has a sharp bush knife should access to those lands as opposed to leaving them idle, generating no financial or economic gains. Alternatively, it is timely that the present system should be re-examined. The present system, he said, has so many weaknesses and is not suitable to the present age of progress and development. Absentee landowners should have no role on land matters until they return to use and occupy the land.

The other three respondents shared the same view that land belongs to the *magafaoa*, hence consent from *magafaoa* should be sought whether resident or absent. Land, they said, is sacred, therefore is to be treated with respect.

The questions of ‘role and responsibility’ stemmed from traditional practices and are paramount linkages to ones heritage. The absentees should be well aware of this should they continue to be part of the *magafaoa*.

Niue Global Community

The number of responses was less than expected given the underlying understanding that the issue would be debated freely and with open mind. In addition, it was a thought provoking issue, testing ones allegiance and sense of obligation. There were only three (3) respondents, all females and known to the researcher. Two were born on Niue, one is a university student, and the other is a nurse. The third one was born overseas to a Niuean mother.

The overseas born respondent questioned that the constitutional obligation as mentioned in the web article is not a legal interpretation but only a personal opinion of the researchers. However, on the traditional obligation she expressed disappointment that recently she had contributed to Niue’s welfare in providing second hand hospital equipment. She had served overseas at the UN and identified herself as a Niuean, if that is the understanding of those

who afford to reside on the island then she would come to Niue and return all the equipment including denouncing her identity as a Niuean. She further mentioned that her mother has continuously returned regularly to her *magafaoa* and the land of her birth. She felt that she has satisfied her traditional obligation. In fact, her mother has returned and registered title to some of the family lands with members of family remaining in Niue. She felt that through her mother's continuous maintenance of contact with family served her purpose as well.

The other two responded that ones identity remains alive regardless of where one is living. However, to protect ones right to the land, there should be some contribution to the family who remains behind.

Summary of Findings

It is obvious from the reactions of those participated in the three research approaches adopted that ownership to land is a sensitive matter and especially involving families absent from the land. It is important to know that the perspective of those interviewed using a one to one approach is widely representative, being grounded on direct responses from approximately 5% of the total population of 1,460.

Group 1: Youth 15-19 age group

- Continuous occupation of land or definitely remaining in Niue, is subject to job opportunities;
- Regular contact with absentees is lacking, knowing by name would be insufficient to have concrete support for absentees upon return;
- Absentee perspective on responsibility to the *magafaoa* is influenced by duration of absence and the ideology of the capitalist community where they are residing.

Group 2: 20-49 age group

- Absentees vote with their feet therefore should not have any say on matters relating to Niue;
- Absentees' perception that their number means authority is incorrect, the past consultations initiated from Niue do not mean that authority is being transferred to those living outside. The actual physical presence or occupation and the degree of that occupation should be given due acceptance and respect. The indefinite period of absence should be limited on the basis of traditional practices that the proprietary rights to land gradually diminish the longer the period of absence;
- Absentees do not have a sincere commitment to Niue;
- Absentees' skills should be used to compliment development in Niue, which would eventually create business and investment partnership with residential Niueans; this arrangement would entice absentees to return.

Group 3: 50-59 age group

- The indefinite duration of absence and exposure to capitalist principles influenced ones commitments to traditional obligation;
- Absentee landowners should contribute to the development on Niue. The contribution would be in many ways, capacity building, businesses through investing in income generating ventures etc.

Group 4: 60+ age group

- Traditional obligation should be active through participation to family welfare to strengthen ones social and traditional linkages to land;
- The current system should be reviewed to take into account defining rights, whilst maintaining provisions prohibiting selling.

The prevailing sentiment the resident community interviewed was understandably for primacy in land matters for those who reside on the island. The response of the Global Community on the internet was disappointing, with only 3 members being moved to express their view out of membership of 158, with most members being absentees, indicated that they are content with the status quo. The silence and low participation is representative of a lack of commitment and a failure to understand the customary and traditional obligations to their respective families.

The reluctance to participate in the radio talk back show (4 respondents out of a pool of 1,460) stemmed from listener misinterpretation that the purpose of the show is for Government to promulgate legislation for absentees to pay levy, or deny people from their lands, which is untrue. Explanations were presented at the outset outlining the purpose and intention of the discussion. Silence may also indicate that absentees be given preferential treatment; that in spite of an indefinite duration of absence, upon return they may be given rights automatically without consultation or consent of those occupying the land.

If such a thought is to be entertained, it would create instability within the *magafaoa*; absentees will view it as power for them to choose which land to use or even to the extend of pulling houses already build on *magafaoa* land. Upon return land could be given, at the consent of *magafaoa*, suitable for the intended purpose but with clear guidelines.

For the sake of development and economic progress in Niue, the duration of absence would be limited with timeframe legalised by statute. The proprietary rights should diminish over time in accordance with customary practices whereby those married and continuously resided outside the village of birth were deemed to have forsaken hereditary land rights.

Conclusion

It is evident that today absentees maintain claims to land rights at a distance that would have been impossible 100 years ago.

The resident community of Niue respect and acknowledge the continued need for absentees to maintain a spiritual and social connection with their customary roots and heritage. Unfortunately, continued absentee claims and rights to land through the *magafaoa* system will constrain economic growth and development for those who remain on the island. Clearly, the status quo cannot endure. To reiterate the point made by Kalauni twenty-five years ago, reform does not necessarily mean formulating new legislation (Kalauni, 1977). The research reinforces that the critical catalyst required is a change in the attitude of the people, notably the absentees. Accepting their economic independence, absentees need to release their ties to the land that constrain those who remain on the island.

It is appropriate to revisit the proposal to formalise the time limitation on absentee members of the *magafaoa* to return before their rights to the land are waived. Absentees should accept

responsibility, not only for themselves, but also for future generations. Only if this time limitation can be accepted and implemented can the “certainty” of ownership promoted in 1968 become a reality.

Education and understanding are critical to the process, in order to avoid ill feeling between residents and members of their extended absentee family. One way forward to facilitate transition is the widespread dissemination and mutual acceptance of a set of proposed ‘Roles and Responsibilities of Absentee Landowners’ appropriate to maintain *magafaoa* rights to land, such as:

- Absentees to strengthen social and traditional ties and linkages with resident families;
- Recognising the role and responsibilities played by residential Niueans as occupiers of the land;
- Encourage investment in Niue through private sector development ventures;
- Frequent visits to families;
- Offer consultancy services by those who have attained relevant professional skills,
- Develop networking amongst absentees and those remaining on Niue to facilitate filling of jobs, such as teaching, where skill support is needed;
- Initiate family trusts covering both absentees and residential families.

When the Hon. Mary Hobs, Associate Minister from the New Zealand government, attended the 2002 constitution celebration in Niue, she lamented that Government of Niue must entice absentees to return. ‘Enticing’ has been an ongoing issue for the last 28 years, with supportive repatriation schemes being provided. Unfortunately, experience has proven that many of those who took up the scheme either failed to establish and opted to return to New Zealand, or left because they found customary social obligations too much for them.

The alternative to the proactive mutual acceptance of diminishing rights by absentees suggested above (i.e. change of attitude) is for the Government to ‘bite the bullet’ and promulgate legislation setting a time limit for all absentees to return or accept the waiving of rights to land. There is also scope to consider relaxing migration laws to allow other races to come in and lease land for development purposes, thus ensuring an economically effective consumer base; however, such a development policy would inevitably lead to a dilution, or loss, over time of the customary island ways that some absentees continue to romanticize.

Evidently, inaction is unacceptable. Much as it may suit them, absentees cannot have it all ways. It is time for absentees to change their attitudes and take responsibility for their embeddedness. Clearly, if they do not accept change the customary way, the constitutional solution must prevail and the Government of Niue will have no alternative but to introduce legislation to formalise time limits to ensure the survival of the residential population of Niue.

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