

Land rights and empowerment of urban women, fa'afafine and fakaleitī in Samoa and Tonga

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Table of Contents

List of Tables and Graphs	i
Attestation of Authorship	ix
Acknowledgements.....	x
Abstract.....	xii
 Chapter I: Rationale and Significance of the Study	 1
1.0 Introduction	1
2.0 Background	3
2.1 Why is land important to Pacific Peoples?	3
2.2 Effect of Urbanisation and Land Needs	5
2.3 Vulnerabilities of Urban Women and Female Headed Households	6
2.4 Land Ownership and Women's Empowerment	8
3.0 Study Design	9
3.1 Samoa - Have rights to customary land been identified as a concern for women or <i>fa'afafine</i> in Samoa?	10
3.2 Tonga - Have rights to land been identified as a concern for women or <i>fakaleiti</i> in Tonga?	12
3.3 Out of Scope	13
3.5 Methodology	14
3.6 Methods.....	15
4.0 Research Contribution.....	16
5.0 Chapters Overview	16
6.0 Clarifications and Commonly Used Terms.....	18
7.0 Summary	19
 Chapter II: Literature Review	 21
1.0 Introduction	21
2.0 Land Rights	21
2.1 Bundle of Rights	21
2.2 John Locke	23
2.3 Terra Nullius	24
3.0 Land Grabs and Development in the Pacific.....	25
4.0 Global Picture on Urban Women's Land Rights	28
5.0 Land Reforms to Support Urban Women's Land Access	31
6.0 Urbanisation	32

7.0 Land Ownership and Women's Empowerment Against Male Violence	34
8.0 Sexuality and Land Rights	38
9.0 Religious Institutions and Land Tenure	41
10.0 Summary	42
Chapter III: Customary Land Tenure in the Pacific.....	44
1.0 Introduction	44
2.0 Concept of Customary Ownership	44
3.0 What is the Meaning of Customary Land to Pacific Women?.....	46
4.0 Development Imperatives and Challenges in Pacific Urban Towns.....	49
4.1 Land Registration.....	49
4.2 Land Availability	51
4.3 Land Leasing.....	52
5.0 Processes to Access Land Under Custom	53
5.1 Succession and Inheritance	54
5.2 Chiefly Authority	54
5.3 Speaking Rights and Representation.....	55
5.4 Residence and Service	56
5.5 Statutory Mechanisms.....	57
6.0 Leading Models of Customary Tenure	58
7.0 Summary	60
Chapter IV: Research Design	61
1.0 Introduction	61
2.0 Methodology	62
2.1 Gender.....	62
2.1.1 Critical Feminist Methodology	63
2.1.2 Queer Theory - considered.....	65
2.2 Pacific Indigenous Methodologies.....	66
2.2.1 Talanoa – considered	68
2.2.2 Teu le va - considered	70
2.2.3 Comparisons and Commonalities Between Indigenous Methodologies.....	71
3.0 Preparation for Engagement.....	75
3.1 Insider Preparation for Samoa.....	76
3.2 Outsider Preparation for Tonga.....	77
3.3 Preparation for <i>Fa'afafine</i> and <i>Fakaleiti</i>	78
3.4 Preparation for Women.....	78

3.5 Participant Recruitment	79
4.0 Participant Profile.....	80
5.0 Methods.....	81
5.1 Face to Face Semi Structured Interview	82
5.2 Focus Groups	84
5.3 Observations	86
5.4 Secondary Data	87
5.5 Other Methods Considered	87
6.0 Ethics.....	88
6.1 Ethics from Va-Critical Feminist Perspective.....	88
6.2 Consent	88
6.3 Gender Identity	88
6.4 Confidentiality	89
6.5 Participant Safety	90
6.6 Acknowledgement	91
6.7 Care of Participants.....	92
6.8 Researcher Accountability	92
7.0 Data Processing and Analysis	93
7.1 Questioning Framework.....	93
7.2 Transcribing	94
7.3 Thematic Analysis	94
7.4 Moments for Pause	95
8.0 Summary	96
 Chapter V: Samoa Context	 97
1.0 Introduction	97
2.0 Country Profile.....	98
3.0 Urban Households.....	99
4.0 Socio-economic Status	100
5.0 Household Hardship and Poverty	101
6.0 Human Rights	102
6.1 Women.....	104
6.2 Women's Empowerment.....	104
6.3 <i>Fa'afafine</i>	105
7.0 Gender-based Violence and Family Violence	108
7.1 Women.....	108
7.2 <i>Fa'afafine</i>	110
7.3 Protection from Abusive <i>Matai</i>	111

8.0 Leadership	111
8.1 Traditional	111
8.2 National	114
9.0 Constitutional Protections of Customary Land	117
9.1 Management of Customary Land	118
9.2 Evolving Tenure and Leasing of Customary Land	119
10.0 Summary	122
 Chapter VI: Tonga Context	124
1.0 Introduction	124
2.0 Country Profile	125
3.0 Urban Households	125
4.0 Socio-economic	128
5.0 Hardship and Poverty	128
6.0 Human Rights	130
6.1 Women	132
6.2 Convention on the Elimination of Discrimination Against Women	133
6.3 <i>Fakaleitī</i>	135
6.4 <i>Fakaleitī</i> as Parents and Caregivers	137
7.0 Gender-based Violence and Family Violence	138
7.1 Violence Against Women	138
7.2 Violence Against <i>Fakaleitī</i>	139
8.0 Land Tenure	139
8.1 Historical Background	140
8.2 Traditional Land Allocation	141
8.3 Levels of Tenure Distribution by Class	142
8.4 Land Act and Royal Land Commissions	143
8.5 Land Availability	144
9.0 Legal Pathways to Land	147
9.1 Succession	147
9.2 Widows and Unmarried Daughters – Fornication	151
9.3 Informal Permission	151
10.0 Summary	152
 Chapter VII: Samoa Findings and Discussion	154
1.0 Introduction	154
2.0 What is the significance of customary land to women and <i>fa'afafine</i> ?	154

2.1 <i>Faasinomaga</i>	155
2.2 <i>Measina</i> - Sacred Heritage.....	156
2.3 <i>Aiga</i> Unity and Empowerment.....	157
2.4 Food Security, Housing, Household Wealth.....	158
2.5 Dignity	159
2.6 Difference Between Customary Land and Freehold.....	161
3.0 How do you access customary land?	162
3.1 Difference between those in resident and those on freehold parcels	162
3.2 <i>Aiā tatau</i> (right), <i>aiā tutusa</i> (equal right and entitlement)	162
3.3 Through Family <i>Matai</i>	164
3.4 <i>Tautua</i> - Currency for Land Access	165
4.0 What is the effect of being an urban women or <i>fa'afafine</i> , on access and rights to customary land?	167
4.1 Access is gender neutral - really?	167
4.2 <i>Nofo tane</i>	167
4.3 <i>Feagaiga</i>	168
4.4 Prejudice Against <i>Fa'afafine</i>	169
5.0 What is happening to improve access and rights to <i>fanua Samoa</i> for urban women and <i>fa'afafine</i> ?.....	171
5.1 Be Visible, Plan Ahead	171
5.2 Bestow Chiefly Titles on <i>Tamaita'i</i> and <i>Fa'afafine</i>	172
5.3 Challenge Denial of Rights	173
5.4 Humility Does Not Always Pay	174
6.0 Discussion	175
6.1 Gender.....	175
6.2 Need for <i>Fanua Samoa</i>	175
6.3 Availability of <i>Fanua Samoa</i>	176
6.4 Leadership.....	176
6.5 Perceptions About Leasing Customary Land.....	177
6.6 Views on Surveying Customary Land	178
6.7 Strengthen <i>Soālaupule</i>	179
6.8 Post Fieldwork	181
7.0 Summary	183
Chapter VIII: Tonga Findings and Discussion	185
1.0 Introduction	185
2.0 What is the significance of land to women and <i>fakaleiti</i> ?	185
2.1 Individual Asset	185

2.2 Dignity	186
2.3 Food Security, Safety, Home	187
2.4 Inheritance and Stability for Victims of Family Violence	189
2.5 <i>Fakaleitī</i> – home, asset, economic wellbeing	190
2.6 Conflict and Unfairness	190
3.0 How do you access land?	191
3.1 Land Availability	191
3.2 Informal Access	193
3.3 Succession.....	195
3.3.1 Legal Heir	195
3.3.2 Wives	196
3.4 Leasing.....	196
3.5 Gifting	197
3.6 Formal Permits.....	198
3.7 Reverted Land.....	199
3.8 Surrendered Land.....	199
3.9 Tax and Town Allotments - Subdividing.....	200
3.10 Adverse Possession.....	200
4.0 What is the effect of being an urban woman or <i>fakaleitī</i> on access and rights to land?	201
4.1 Constitutional Prejudice Against Women	201
4.2 Social Prejudice Against <i>Fakaleitī</i>	202
4.3 Belief in the Natural Order.....	203
4.4 Do <i>Fahu</i> and <i>Veitapu</i> Privileges Extend to Land?.....	204
4.5 Unmarried Daughters.....	205
4.6 Widows	206
4.7 Land for Sons.....	206
4.8 Common Perceptions About the Relationship of Land and Women	209
5.0 What is happening to improve land access and rights for urban women and <i>fakaleitī</i> ?.....	210
5.1 Royal Land Commission 2010.....	210
5.2 Challenging Attitudes About “Women’s Place”	211
5.3 Working Across Class Borders	212
6.0 Discussion	213
6.1 Gender.....	213
6.2 Violence Against Women and Male Ownership of Land	214
6.3 Raising Women’s Understanding of Land Rights	215
6.4 Political Opportunities and Women’s Activism	216
6.5 Class.....	218

6.6 Post Fieldwork	220
7.0 Summary	221
Chapter IX: Comparison Between Samoa and Tonga	223
1.0 Introduction	223
2.0 Gender	223
2.1 Leadership and Deference of Entitlements	223
2.2 Legal Avenues	224
3.0 Significance.....	224
3.1 Material and Physical.....	224
3.2 Spirituality.....	225
3.3 Confidence and Assured Place.....	226
3.4 Sense of Permanence	226
4.0 <i>Va</i> – Relationships to Access Land.....	227
4.1 People and the State	227
4.2 <i>Fahu</i> , <i>Veitapui</i> versus <i>Feagaiga</i> : brother-sister relationship	227
4.3 <i>Tauhi vā</i> versus <i>Tausi le va</i>	228
4.4 How relevant are traditional beliefs and practices to urban land needs?	229
5.0 Summary	230
Chapter X: Conclusions.....	231
1.0 Introduction	231
2.0 Significance of Land	231
3.0 Gender and Access to Land.....	232
4.0 Strategies to Improve Access and Rights to Land	235
5.0 Domestic Violence, Land, Empowerment	236
6.0 Limitations of the Study.....	237
7.0 Topics for Further Research.....	238
8.0 Reflections on Methodology	240
8.1 Epistemology	240
8.2 Ontology	241
8.3 Axiology	243
9.0 Reflections on Va-Critical Feminist Methodological Approach	244
9.1 Diversity and Commonalities.....	244
9.2 Adequacy of the Va-Critical Feminist Combination	245
10.0 Summary	245

References	247
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Appendices

Appendix A: AUT Ethics Approval.....	270
Appendix B: Approval Letter from the Tongan Government.....	272
Appendix C: Participant Information Sheet.....	273
Appendix D: Indicative Questions	276

List of Tables and Graphs

Table 1: Land Tenure by Pacific Country or Territory, 2008	4
Table 2: Pacific Island Countries, Estimate Population Size and Population Density, 2014.....	51
Table 3: Comparisons Between Indigenous Methodological Theories.....	72
Table 4: Participant Characteristics.....	80
Table 5: Economically Active Population 15+ by Main Activity, 2011	100
Table 6: Wealth Quintile by Region in Samoa, 2014	101
Table 7: Matai Titles Held, by Gender and by Region, 2011	113
Table 8: Household Tenure by Urban and Rural Areas, 2011	126
Table 9: Main Source of Household Income by Urban and Rural Area, 2011	127
Table 10: Qualification Achieved (15 years +) by Women by Urban and Rural Areas, 2011.....	128
Table 11: Household Poverty Incidence by Location, 2001 and 2009	129
Table 12: Tenure Type and Administrative Head or Occupant	142
Table 13: Vulnerability to Being Landless by Gender Cohort	233
Graph 1: Prevalence (%) and Patterns of Violence Against Women (15-49 years) in Pacific Island Countries	35

Attestation of Authorship

I hereby declare that this submission is my own work, and that, to the best of my knowledge and belief, it contains no material previously published or written by another person (except where specifically defined in the acknowledgements), nor material which, to a substantial extent, has been submitted for the award of any other degree or diploma of a university or other institution of higher learning.

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Abstract

The thesis addresses significant gaps in the existing knowledge on land rights in the Pacific, which are the voices of urban women, *fa'afafine*, and *fakaleitī*¹. The lands concerned are customary land in Samoa, and Crown owned land in Tonga. The knowledge in the thesis relates to human rights, dignity, gender equality, urban planning, empowerment, and land tenure.

The study used a methodological approach that is a combination of Critical Feminist Theory and a relational Pacific approach called Va. The Va-Critical Feminist combination holds concepts of diversity, multiple truths, dignity, and the pursuit of visibility for outsiders at its core. A feminist style enquiry was used during the face to face interviews and focus groups that were the main methods of enquiry for the study. Participants were recruited by referral from Auckland New Zealand, urban villages surrounding Apia, Samoa, and Nuku'alofa, Tonga.

The thematic analysis of the research data found that in urban Samoa and Tonga, living expenses regularly exceeded income. Consequently, secure rights to land were far more urgent than is recognised by local planners and governments. Secure land access was fundamental to individual empowerment and dignity in Pacific urban contexts, in the absence of finance, employment opportunities, cultural status, and class power. The landless victims of family violence and gender-based violence were more at risk of hardship and poverty than other groups. The urgency for secure land access was more pressing for Tongan women compared to *fakaleitī*, Samoan women, and *fa'afafine*. *Fa'afafine* and *fakaleitī* were also more likely to have secure access to land, not based on need, but because tradition favoured men for leadership roles and the control of land.

¹ *Fa'afafine* (Samoa); *Fakaleitī* (Tonga) – these are gender identity terms that will be used in this thesis to refer to the 'male to female' (MtF) gender identity (United Nations Population Fund, 2013). The terms include transsexual (male in the process of medically transitioning into or has transitioned into female) (NZ Human Rights Commission, 2011).

Chapter I: Rationale and Significance of the Study

1.0 Introduction

My interest in researching land was rooted in my position as a Samoan, and a daughter of a mother who was given responsibility for legal guardianship of our family land in Vailima, Upolu. I am what is commonly referred to as an ‘absentee owner’; I do not live on my land but I hold the expectation that my rights will not be affected by my absence. My interest was also based on my role as a mother of Samoan/Irish/New Zealand children who may never live in Samoa. My love for my slice of paradise has taken my children ‘home’ on many occasions, so that they know and feel part of their *aiga potopoto* (extended family), despite their absence from the land.

This thesis looks at the relationship between land rights and empowerment from the perspectives of urban based women, *fa’afafine*, and *fakaleitī*.

Samoa and Tonga were selected due to the differences between their land tenure systems, and positions at a government level on gender equality.

The research for this thesis focused on four core questions.

- What is the significance of customary land (Samoa) / land (Tonga) to women, *fa’afafine*, and *fakaleitī* in urban areas?
- How do you access customary land (Samoa) / land (Tonga)?
- What is the effect of being an urban woman, *fa’afafine*, or *fakaleitī* on rights and access to customary land (Samoa) / land (Tonga)?
- What strategies are there to improve rights to customary land (Samoa) / land (Tonga) in urban areas for women, *fa’afafine* and *fakaleitī*?

Guided by the core questions above, the thesis explores the significance of rights to land to women, *fa’afafine*, and *fakaleitī* in relation to their empowerment. Are there any differences in the significance of land between original owners of land and settlers from other places? Are there any differences in rights to land among and between women, *fa’afafine*, and *fakaleitī*?

How do Pacific participants define rights to land? What are the pathways to access and securing such land rights? Does holding a land right guarantee access to it? What does having or not having land rights mean to people's sense of empowerment?

My professional background is in child protection, family violence, and human rights. I have a personal interest in land rights in relation to empowerment, and the elimination of family violence. The international literature signals important lessons about the relationship between land ownership or control, and the reduction of vulnerability to VAW. Chapters II, IV, and V, will look more in depth into the relationship between land rights and experience of empowerment for women, *fa'afafine* and *fakaleiti*.

Women's rights and access to land have been a long recognised need, and have been a priority at the international level for women's empowerment. The World Women's Conference Beijing 1995: Strategic Goals and Measures included support of women's empowerment through access land, to be able to inherit it and have other rights to it (UNWOMEN, 2014). The review of progress of the Beijing goals in the Pacific identified land as a key resource for basic needs, including food security and stability; but also as an avenue for self-empowerment through business development. The review also identified that the lack of land, especially for urban dwellers, added to women's plight during the global financial crisis (Secretariat of the Pacific Community, 2010, p. 33).

The literature from the Pacific shows that land access in most places is facilitated through family or kinship relations, that men generally dominated decision making over land, and that women were more vulnerable to losing land entitlements compared with men. Are all women disadvantaged, or equally disadvantaged? Are the land rights of *fa'afafine* and *fakaleiti* affected by their gender and if so, how? Are women, *fa'afafine* and *fakaleiti* equally disadvantaged? What differences are there in the experiences of gender groups? What roles do culture and class play in pathways to obtain land rights in urban areas? Are traditional pathways to access land relevant and operating in urban environments? What is the situation where there is an urban land shortage? These are all issues that will be discussed in this thesis.

This thesis acknowledges the important place of *fa'afafine* and *fakaleiti* in Pacific families, their dignity, and gives visibility to their views on land and in relation to their

sense of empowerment. Throughout this research journey I was unable to find any literature on the voices of *fa'afafine* and *fakaleitī* in the land discourse or in urban planning in the Pacific. In a region where International Conventions regarding gender equality and human rights have been ratified, *fa'afafine* and *fakaleitī* appear to be relatively invisible.

Continuing this chapter, I will briefly discuss the significance of land to Pacific peoples. I will then discuss the effect of urbanisation on the land interests of women, *fa'afafine* and *fakaleitī*; and the connection between land rights and gender equality imperatives in the Pacific region. All these issues will be expanded in the literature review, country chapters, and in the findings. The final part of Chapter I will provide an overview of the thesis chapters.

2.0 Background

2.1 Why is land important to Pacific Peoples?

Land is regarded as sacred both in an indigenous spiritual sense and in biblical terms. Many customary land owners in the Pacific compare land to a mother because she supports life (Tor, 2012; Australian Agency for International Development (AusAID), 2008; Tui Atua, 2004; Trask, 1993; Bolabola, 1986). Some consider land a gift from God or gods. Every piece of land has a history that is intertwined with its people, those who have passed, those living, and generations to come. The spiritual bond between indigenous peoples and their lands is strong because, in most places, they share a history of belonging.

Land has social and economic significance. It incentivises the coming together of people who share rights to it; to nurture, maintain, and protect the land. Families or groups of people co-own rights and responsibilities for it, it is a basic means of empowerment, status, and survival. The majority of Pacific people still live semi-subsistence lifestyles and there are limited employment opportunities in Pacific island economies (The World Bank, 2014). Secured access to fertile and adequate land is essential for food security, residence stability, and as a buffer from hardship during tough economic times (Asian Development Bank (ADB), 2012; Feeney, 2012; Monson, 2011; AusAID 2008). I will discuss the social and economic significance of land throughout the thesis.

Land is also significant politically. The following data is somewhat dated but provides a useful snapshot of the social, cultural, economic and political significance of land ownership, particularly over customary land, to indigenous Pacific people.

Table 1: *Distribution of land by system of tenure in the Pacific region, 2008*²

Country	Public	Freehold	Customary
Cook Islands	Some	Little	95%
East Timor	Some	Some	Most
Fiji	4%	8%	88%
Federated States Micronesia	35%	<1%	65%
Kiribati	50%	<5%	>45%
Marshall Islands	<1%	0%	>99%
Nauru	<10%	0%	>90%
Niue	1.5%	0%	98.5%
Palau	Most	Some	Some
Papua New Guinea	2.5%	0.5%	97%
Samoa	15%	4%	81%
Solomon Islands	8%	5%	87%
Tokelau	1%	1%	98%
Tonga	100%	0%	0%
Tuvalu	5%	<0.1%	95%
Vanuatu	2%	0%	98%

(AusAID, 2008)

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As Table 1 indicates, the most common land tenure arrangement is customary, with the exception of Tonga and Palau. The collective ownership of land connects families and wider collectives in relationships. It also suggests a worldview that values self-empowerment and reciprocity. Land is so fundamentally important to Pacific nations that many constitutions forbid the alienation of customary land (Farran, 2003). In Tonga where all land is owned by the King, there is no customary land and the sale of land is still forbidden by the Constitution 1988 (Rev).

Despite the importance of land to Pacific people's identity, cultures, and empowerment; it is well documented in the literature that rights (formal or informal, including access) to land are not equally allocated within families or within societies generally. Males continue to dominate decision making over land and often assume authority over the land interests of women (Monson, 2011; Anderson & Lee; 2010; Stege, Matala, Naupa,

² Public - Includes Crown land and land owned by provincial and local governments. Freehold - Includes land that is not strictly freehold, but similar in characteristics, such as the 'perpetual estates' found in Solomon Islands. (AusAID, 2008, p. 4)

Simo & Huffer, 2008; Aggarwal, 2006; Paterson, 2001; Farran, 2005; University of the South Pacific (USP), 1986).

Challenging traditions of land management and ownership, is not easy in environments where legal pluralism exists. The limited amount of land that governments have direct control over necessitates their collaboration with land owning collectives, in order to respond to issues such as urbanisation, poverty, human rights, and local and national security.

2.2 Effect of Urbanisation and Land Needs

The inequities faced by women are exacerbated in urban areas where there is high demand for limited land (customary, freehold, lease), increased poverty and hardship, and where local customary owners are under pressure to open up lands to meet wider societal needs (ADB, 2012). The urban setting was chosen for this study because it is where the highest population growth is occurring in the Pacific, and where demand for land is high.

For Oceania, around 20% of the population live in areas defined by the individual countries as urban. If Papua New Guinea (approximately 80% of the total Pacific population) was excluded, the urban estimate would be higher at around 34% (ADB, 2012). The discrepancy in the estimates is partially due to the absence of a uniform definition across the Pacific islands for what constitutes an urban area. For example, in PNG it is measured by population density; in Tonga it is based on a specific number of residents.

The ADB estimates that Samoa's urban population could be in the range of 35% - 40% (ADB, 2012). Samoa's statistics data shows that the regions Apia Urban Apia (AUA) and North West Upolu (NWU, urban and semi-urban) together make up 36% of Samoa's population (Samoa Bureau of Statistics (SBS), 2011b). The NWU district contains Upolu's other industrial hubs and market, where the population grew between 2001 and 2011 censuses, mainly due to freehold land becoming available there, flowing mainly from AUA and the island of Savai'i. Only 30% of urban households in AUA have access to customary land (SBS, 2012).

For Tonga, the Department of Statistics describes the 'urban' population as that of Nuku'alofa, and approximately 23.5% of Tonga's population is in Nuku'alofa (2011

Household Survey). The ADB estimated Tonga's urban population to be higher at around 30%, of which 77% live in Nuku'alofa (ADB, 2012). There is no estimate of the number of households without access to agricultural land.

As previously noted, a significant portion of the Pacific region's population is semi-subsistence due to ready access to natural resources and limited opportunities in the formal sector. Most households still rely on land, sea, and inter-household support for goods and services (The World Bank, 2014). People in urban areas who become separated from lands and social supports in their original communities tend to be more vulnerable to hardship and poverty (Naupo & Simo, 2008; The World Bank, 2014).

...one of the most vulnerable groups in society were those identified as having only limited access to land. This group might include those who have moved into a village from elsewhere or those who have migrated to an urban centre where they might only have access to a very small plot of land. The corollary of this is that those who do have access to traditional land are in many ways more protected against vulnerability, especially as regards to their food security and their potential to grow and sell produce for cash. (United Nations Development Programme, 2014, p. 41)

2.3 Vulnerabilities of Urban Women and Female Headed Households

Internationally, hardship and vulnerability occur as consequences of increasing urbanisation, the monetised economy, a decrease in remittances, damage by climate change, rising fuel prices, costs to get goods to markets, and the deterioration of traditional support systems (UNICEF Pacific, 2011).

..hardship is about having low current well-being, while vulnerability is about expectations of reductions in future well-being. People can be said to experience hardship based on many different measures, such as lacking access to services or living in low-quality housing. A common measure of hardship around the world, which this report applies to the Pacific, is the inability to meet the basic needs of life as measured by consumption. On the other hand, vulnerability is based on expectations about the future. Specifically, vulnerable people face high risk, or a high probability of a reduction in their well-being in the future, possibly to the point of experiencing hardship or deepening existing hardship. (The World Bank, 2014, p. 11)

Urban households without access to land are particularly vulnerable during economic downturns. This may be due to lack or loss of income, and higher food prices as urban households purchase a greater proportion of their food compared to rural households (ADB, 2013).

Women's access to customary lands tends to cease or weaken once they leave their natal lands (Food and Agriculture Organisation (FAO), n.d). Divorced, widowed or deserted women are particularly vulnerable if their original access to land and property was through a husband or partner (Tacoli, 2012; FAO, 2010). A woman who has invested in a family home built on her husband's customary land cannot claim the land and would certainly struggle to get a return for her input if the relationship ends acrimoniously (Aggarwal, 2006). Vulnerability to eviction and homelessness increase when women do not have secure title to land or affordable accommodation (Rakodi, 2014). Secure and stable settlement translates to less disruption to education, employment, friendships, and other connections for women, but also for their dependents (Tacoli, 2012; Rakodi, 2014).

Another group of vulnerable urban women is the elderly (Rakodi, 2014). Globally, the number of older women in urban areas is increasing more rapidly than older men, partly due to gendered patterns of migration and because women live longer than men. These women become vulnerable to hardship if they have no access to income, a pension, family support, or rights to family property (Varley, 2013 in Rakodi, 2014; p. 19).

For women in the Pacific, land is the workplace, refuge, and the means of self-empowerment. Empowerment includes the ability to independently meet individual needs and those of their dependents, secure a good quality of life, and contribute more widely to their communities (AusAID, 2008; Secretariat of the Pacific Community (SPC), 2010). For example, in Madang Province in Papua New Guinea, the average earning of a road seller was three times higher than the national minimum wage for a woman in the formal sector, and higher than the wage of a woman working for a Palm Oil company (Anderson & Lee, 2010). Land is used to source wealth items that have high cultural value, such as pigs, yams, mats and kava (Vanuatu National Statistics Office, 2012). In some places in Melanesia, cultural wealth items are the main form of currency instead of fiat money (Journeyman.tv, 2012).

Globally, female headed households (FHHs) are more prominent in urban areas than in rural; it is estimated that about 30-40% of urban households are headed by women (FAO, n.d). In the Pacific region, the portion of FHHs is generally lower than the global rate, although there is huge variety. For example, the Solomon Islands 5.4 percent, Tuvalu 18.7% (The World Bank, 2014), Tonga 22% (Tonga Department of Statistics, 2014), and Samoa 21% (SBS, 2011a).

The international literature shows that in urban areas, FHHs can sometimes be more vulnerable to poverty and hardship than other types of households, depending on the environment. Vulnerability is due to a number of factors that include high child–adult ratios, few workers in a household, women’s lower earnings compared to men; gender discrimination in workplaces, and lack of access to family property, assets, productive resources and micro-credit facilities (Oginni, Ahonsi, and Ukwuije, 2013). The most common determinant of poverty in FHHs according to Oginni et al, is the dependency ratio. For example, young families with children are more likely to be poor if they have one income earner; the situation is worse for those without support from their natal families.

There is insufficient research in the Pacific on the situations of FHHs in urban or rural areas, but we do know that a significant number are living in hardship (The World Bank, 2014; SBS, 2011a). The needs of urban women and those of their households are often supplemented through their informal sector activities, access to traditional support systems, and semi-subsistence living (The World Bank, 2014, p. 4). Access to land and resources in urban areas, however, is not always possible, so vulnerability to hardship increases. Hardship for urban FHHs is mitigated by traditional supports based on reciprocal relationships like the brother-sister protocol *feagaiga* (Stewart-Withers, 2011).

Knowledge about urban households headed by *fa’afafine* and *fakaleiti* emerged as a gap in the Pacific literature. This thesis offers insights towards this gap in knowledge.

2.4 Land Ownership and Women’s Empowerment

One of my personal motivators for conducting this study was to look more deeply at the connection between land ownership and women’s empowerment. This is important because violence against women (VAW) is one of the biggest hindrances to social and economic growth in Pacific communities and economies, and has been a priority for State intervention in the region (Pacific Islands Forum Secretariat (PIF), 2009; SPC, 2010). Amnesty International estimated that sexual and gender-based violence (GBV) affected, on average, about two out of three women in the Pacific (Amnesty International Aotearoa New Zealand, 2012).

Studies from India and South America show a direct relationship between women's land ownership and reduced vulnerability to intimate partner violence. These studies found an association between men's dominance as property owners, and men's perceived right to hit women. The victimisation of women was interrupted when they owned land, as men recognised asset ownership as a strength. Property ownership thus directly influenced interpersonal power relations and reduced VAW in households (Grabe, Grose and Dutt, 2015).

I was unable to locate any published studies in the Pacific that specifically looked at the relationship between land ownership and partner violence or GBV. The studies from the international arena provide a strong incentive to conduct similar studies in the Pacific. In 2012, the Pacific Forum endorsed a Pacific Leaders Gender Equality Declaration (LGED). The Forum was concerned about the slow pace of progress on gender equality in the region and VAW. Access to land was not mentioned in any of the regional gender equality initiatives, but was mentioned in relation to supporting women entrepreneurs (PIF, 2012). Victimised women who are trapped in abusive relationships are likely to need land far more urgently than women entrepreneurs.

The international literature shows that empowered women were more likely to participate in community development (Mishra and Sam, 2015). As at 1st June 2016, the Pacific region had the lowest number of women in national parliaments in the world (Inter-Parliamentary Union, 2016). Pacwip is a Pacific Women group that is supported by UNDP, and its figures showed national representation by women across the Pacific region was 6.3 percent (excluding Australia and New Zealand) as at March 2016. This percentage equates to 35 women out of 559 seats; Samoa had five and Tonga had one (Pacwip, 2016), despite the Pacific Forum's interventions to support women's empowerment. What loss is that to the wellbeing and guardianship of Pacific nations?

3.0 Study Design

Due to my limited student resources, I was unable to conduct a Pacific wide study. I therefore considered countries that the literature showed to have very different land tenure arrangements, and focused on Polynesia and Melanesia. While Micronesian contexts with matrilineal customary land transfers were also considered, they were not included due to limited resources.

Pacific territories and independent nations where the local indigenous populations are not self-governing and live under laws of another nation. For the purposes of this thesis, this excludes New Zealand, Australia, Hawaii, French Polynesia and others under similar arrangements.

I initially chose to conduct the research in Samoa, Vanuatu, and Tonga. After I presented my PhD proposal to the Post Graduate Academic Board, it was accepted, but I was advised to consider doing two countries instead of three. I consequently chose Samoa and Vanuatu to look specifically at customary land under matrilineal, patrilineal, and bilateral traditions of land transfer.

My ethics application was approved on 11 July 2013 (refer to Appendix A). Unfortunately, during preparations for Vanuatu, I was informed by my Vanuatu based informant that a temporary moratorium had been placed on all foreign research in the country. The end date of the moratorium would have significantly extended my research timeframe, so Vanuatu was replaced with Tonga. This extended the research exercise from customary land to include non-customary land, but maintaining the urban dweller focus.

An important consideration for my country selection was whether land rights had been identified as a concern for the urban contexts and gender groups that I had selected.

3.1 Samoa - Have rights to customary land been identified as a concern for women or *fa'afafine* in Samoa?

Concerns about women's rights to customary land were identified in the 2005 UN CEDAW Committee response to Samoa's first periodic report on CEDAW, and in the Samoa NGO Shadow Report to the United Nations CEDAW Periodic Review in 2012 (UN CEDAW Committee, 2005; Samoa NGO Shadow Report, 2012). The 2012 NGO report argued that customary rights of men and male lines had been exploited to stop women from holding chiefly (*matai*) titles and having authority over customary land. The report recommended that the "Government consider the inclusion of CEDAW in the Land and Titles Act 1981 to consolidate and reinforce the protection of customary rights of women to Land and Titles" (Samoa NGO Shadow Report, 2012, p. 4).

In response to Samoa's 2012 CEDAW periodic report, the UN CEDAW Committee (2012) made specific reference to the need to counter discrimination in customs and

traditional practices that prevent women from acquiring land and other property. The Committee called for Samoa:

- (b) To eliminate all forms of discrimination with regard to ownership, co-sharing and inheritance of land;
- (c) To address negative customs and traditional practices, especially in rural areas, which affect full enjoyment by women of the right to property. (UN CEDAW Committee, 2012, p. 10)

There was no specific attention to urban women's rights to land and property. The relative invisibility of concern from urban women compared to rural women was suggested by Jones to be due to a traditional perception that the majority of people in the Pacific still lived in rural areas (Jones, 2012). Jones also suggested that it was easier for Pacific governments to keep the focus on rural areas, because it eased the pressure to face the challenges from urbanisation, over customary lands, and poverty.

The reality of landlessness for Samoan women indicates a weakening of traditional securities provided for women by the *feagaiga*. The *feagaiga* is an unwritten traditional cultural covenant between brother and sister that ensures complementary involvement supporting well-being and protection (Stewart-Withers, 2011). The *feagaiga* gave social esteem to Samoan women, respected their sacredness, moral authority in relation to their brothers, and political status within their natal families and villages (Latai 2015; Fairbairn-Dunlop, 1996). A woman's rights and entitlements in her family and natal village include rights to customary land (Fana'afi, 1986). Fana'afi believed that Samoan women, with or without a *matai* title, could always return to her natal village "secure in the knowledge that she has ready access to her aiga land in order to build a house and order some cultivation for her sustenance" (Fana'afi, 1986, p. 104).

Only one study has investigated landlessness in urban Samoa (Thornton, Binns & Talaitupu Kerslake, 2013). The study found that those most vulnerable to landlessness were people without a *matai* title, but it did not provide a gender analysis of this conclusion. The view of Thornton et al, conflicts with that of Fana'afi, although, to be fair, Samoa changed between 1986 and 2013, the years of the publications. Fana'afi did not discuss the possible effect of increased population on the future of women's access to customary land.

Gender discrimination in rights to customary land was not mentioned in Samoa's National Plan of Action for Women, yet it noted women's marginalisation from *matai*

titles (Ministry of Women, Community and Social Development (MWCSD), 2010) which are associated with customary lands (Samoa NGO Shadow Report, 2012). The National Plan contained objectives to support women into business, and to participate in sustainable development such as tourism where women are often managers of family owned operations and vendors of goods and crafts (Participant Roger).

Insecure access to land in Apia (urban area) has also emerged as a problem in meeting Millennium Development Goals (MDGs), specifically Target 7D, which is about improving the lives of slum dwellers (PIFS, 2015, p. 84).

As previously noted, I could not locate any literature about the land rights of *fa'afafine*.

3.2 Tonga - Have rights to land been identified as a concern for women or *fakaleitī* in Tonga?

Women's lack of rights to land in Tongan is well published, almost as a Pacific benchmark for prejudice against women in property law. The barriers are rooted in *Ko e Konisitutone 'o Tonga 1988 (Rev)*, the Tongan Constitution (Royal Land Commission (RLC), 2011; Moengangongo, 1986). Tonga has not ratified CEDAW. In terms of urban women, Tonga struggled to meet Target 7D of the MDGs due to informal settlements in Nuku'alofa as a result of insecure land tenure, urbanisation, and lack of employment (PIFS, 2015, p. 91).

Tonga's Constitution 1988 (Rev) and land laws are explicitly prejudiced against females, and impose a class structure that fundamentally sanctions inequality⁴. For example, s41(d) of the Land Act 1988 (Rev) states: "the male issue shall be preferred to female issue of the same degree". During the rule of Queen Salote Mafileo Pilolevu Tupou III, women gained the right to lease land (James, 1995), but not to own land as a life estate. Widows could hold land as a life estate but only as long as they did not commit fornication or remarried. Such prejudices in land laws made it difficult for women to gain or use land as an asset for investment or to develop a business (Moengangongo, 1986).

⁴ For the purposes of this thesis, the 1988 revised editions of the Tongan Constitution and the Land Act are referenced, unless otherwise indicated.

I could not locate any literature about the land interests of *fakaleitī*. However, *fakaleitī* are also legally disadvantaged, not because of their sex or gender, but due to birth order. Section 41(e) of the Land Act 1988 (Rev) specifies the eldest son as the sole heir.

The Royal Land Commissions's report (2012) showed that existing land laws allowed a land owner to subdivide his land to accommodate male and female children. While this possibility implied equal access, the fact remained that females could only lease land with no automatic right of renewal. In comparison, a male could inherit and hold land for life, and could only lose that land back to the State under special circumstances such as the absence of a successor (s83 Land Act 1988(Rev)). A widow who succeeds to land of a deceased husband loses her land title if she remarries or is convicted of fornication (s80 and s81 of Land Act 1988 (Rev); no such conditions are placed on men who inherit. I will talk more about the Land Act 1988 (Rev) in Chapter V.

The class structure and land shortage are two other factors that contribute to landlessness for women and the general population in Tonga. The leasing practices of the elite (Royal Family and Nobles) have long caused controversy and unhappiness among the general population who lose access to land as a result (RLC, 2012; Brown-Pulu, 2014; Moala, 2014). The land shortage in urban areas has been well recognised (ADB, 2012; Harter Kennedy, 2012). Locals who want land cannot access or afford it. Many absentee owners live overseas, but there has been a historical reluctance at government level to threaten their entitlements in case it affected remittances that the economy depends on (Bertram, 2013).

3.3 Out of Scope

The following populations and matters are outside the scope of the research:

- Non-indigenous women, *fa'afafine* and *fakaleitī*
- Rural dwellers
- Customary rights to water, minerals, gas, oil, marine resources, air space and airwaves, that may be associated with a person's land rights (Crocombe, 1999, p. 215).

3.4 Participants

Participants were recruited using a referral method (Faugier and Sargeant, 1997). This meant that potential participants were recommended to me by referrers, and I undertook to engage and, where appropriate, invite people to participate.

From Tonga, there were 6 *fakaleitī* (self-identified), 17 women, and 2 men (*not fakaleitī*) participants. From Samoa, there were 7 *fa'afafine* (self-identified), 10 women, and 2 men (*not fa'afafine*) participants. In New Zealand, there were 3 *fa'afafine* and a male (*not fa'afafine*) participants. Nineteen of the 48 participants were between the ages of 21-35 years; the rest were older. More detail will be provided in Chapter IV on participants.

The findings showed that while there were some similarities between the views of *fakaleitī* and *fa'afafine* in relation to land, there were also significant differences rooted in cultural protocols and traditional gender based roles. There were also differences between women in Samoa and Tonga in terms of their views about women's authority over land and gender equality. These and other key findings will be discussed in full in chapters VII, VIII, and IX.

3.5 Methodology

The design of my research was influenced by my personal principles about human dignity, respect for women, *fa'afafine* and *fakaleitī*; and love for Pacific people.

Critical Feminist methodology emphasises the importance of research with women by women. I extended this view to mean research with Pacific women by Pacific women. Critical feminist methodology can be accompanied by feminist enquiry, which is characterised by the questioning of taken for granted truths and traditions in society (Hawkesworthy, 2006). As a Pacific woman growing up in Aotearoa New Zealand, I grew up knowing multiple truths. The dominant truths do not make the others less valid especially if they are oppressed or marginalised voices. The alignments between Critical Feminist methodology and my knowledge of the Pacific world provided a good basis upon which to experiment with the merging of Critical Feminist methodology and Pacific methodologies.

I believe that the incorporation of Pacific methodology adds authenticity and validity to my conclusions in the eyes of Pacific readers and others (Tuafuti, 2011; Smith, 2012;

Gegeo and Watson-Gegeo, 2001; Vaioleti, 2006). My review of Pacific methodologies led me to a developing research philosophy called *Teu le va*. *Teu le va* (meaning ‘to maintain or take care of relationships’) was introduced by Anae for research aimed at significantly improving educational outcomes for Pacific learners in New Zealand (Anae, 2010a). The approach’s central consideration is relationships (*va*), valuing the “physical, spiritual, cultural, social, psychological, and tapu⁵ "spaces" in research” (Anae, 2010b). The spaces where multiple and diverse power relationships exist in knowledge creation, selection, validation, use, and protection. Community empowerment is the ultimate goal of the *teu le va* approach (Anae, 2010a), which aligns with the purpose of feminist research (Hesse-Biber & Leavy, 2007).

For the purposes of this thesis, I combined *teu le va* with its opposite concept *solu le va* (‘violation of relationships’) to make up an experimental Pacific indigenous approach I call *Va*. *Va* is combined with Critical Feminist methodology to make up the methodological approach for this research. A full discussion of the *Va*-Critical Feminist methodology is provided in Chapter IV, with final reflections on it in Chapter X.

3.6 Methods

The two key methods I used were semi structured face to face interviews with individuals, and focus groups. I needed to see the land and the participants, so being in Samoa and Tonga was essential to ensuring authenticity, quality data, and connection with my topic. Being present enabled me to observe the environment to see how people used land and related to it. While on location, I was able to take into account the silences. I had flexible time to accommodate Pacific oral traditions of storytelling and small talk/*talanoa* that is a normal part of Pacific etiquette.

On a practical level, these methods guaranteed responses, and made it possible for me to conduct my overseas fieldwork within my limited resources. A full discussion of methods and how they were applied in the field is provided in Chapter IV on the research design.

⁵ *Tapu* – sacred

4.0 Research Contribution

My research topic is an issue that matters to me as an indigenous Pacific person, a mother, and a believer in social justice. I wanted to produce a thesis that could be useful to civil society efforts towards gender equality, communal prosperity, elimination of gender-based violence, and to gaps in the existing body of literature on the land interests of urban women, *fa'afafine* and *fakaleitī*. Accordingly, this thesis contributes knowledge in three areas.

i. *Voices of urban women on their land interests.*

There is very limited published knowledge about urban women's land interest in Samoa and Tonga, as individuals and as heads of households. The thesis contributes knowledge from the voices of urban women to the land discourse.

ii. *Voices of urban fa'afafine and fakaleitī on their land interests.*

The decision to include *fa'afafine* and *fakaleitī* was based on my personal perceptions of members of this gender group as part of the feminine gender. Upon a further literature review I found that the only place where research that involved the interests of *fa'afafine* and *fakaleitī* were regarding identity, HIV and AIDS. The absence of research of their land interests and the effect of their gender identity on those interests, meant that this thesis would provide one vehicle to make their land interests and aspirations more visible.

Not all *fa'afafine* and *fakaleitī* are male to female (MtF). Only self-identified MtF *fa'afafine* and *fakaleitī* were invited to participate.

iii. *Indigenous Pacific-Feminist Methodology*

The thesis contributes learning from the combined methodologies that enabled me to engage naturally and appropriately, considering the cultures and countries of my participants and my own personal beliefs. The feminist lens kept the questioning of accepted truths/norms constant throughout the thesis journey.

5.0 Chapters Overview

Chapter II discusses the relevant body of literature from the international arena about land rights, drivers of land tenure reform to facilitate women's empowerment through

ownership and control of land, and a global snapshot of land holdings by women. The chapter discusses the importance of land ownership in urban settings, especially for the empowerment of victims of gender-based violence and family violence. The review also considers influences from religion and sexuality in the pursuit of gender equality in land rights.

Chapter III looks specifically at customary land tenure in the Pacific because this is the main type of land ownership across the region. The chapter discusses concepts of customary ownership, common pathways to access land and transfer it in different cultural settings, and examples of leading models of customary tenure for women.

Chapter IV provides a discussion on methodology, methods, ethics, and my responses to learning and opportunities that occurred during the fieldwork. I revisit methodology in Chapter X.

Chapters V and VI provide a more focused look at the context of the two countries of the study, Samoa and Tonga. Key issues discussed include characteristics of urban households, human rights, a review of the existing literature related to land, and the most relevant pieces of legislation.

Chapters VII and VIII present discussions of findings from the two countries. Samoa is presented first, followed by Tonga. For each country, the key themes identified from the thematic analysis are organised under the core questions of this study.

Chapter IX provides a comparative analysis of the findings from the two countries. The chapter discusses high level similarities and differences between the two countries, between and within gender groups within a country, and between gender groups across the two countries.

Chapter X provides my final conclusions about the limitations of the study, areas for future research, methodology, and thoughts on the future of Pacific indigenous methodologies.

6.0 Clarifications and Commonly Used Terms

- Custom - refers to traditional values, beliefs, and practices (Unasa, 2009, p. 238). For the purposes of this thesis, custom will also include protocols, lores, and expectations of engagement and reciprocity that are particular to a specific indigenous community, village, or a nation as part of their unique identity. For example, it may be a custom to pass land through the matrilineal line in one community, while in another it patrilineal or bilateral.
- Customary land - Customary tenure means that land is managed by collectives connected by blood, tribes, or traditional cultural authorities according to custom (Paterson, 2012). Based on this definition, Tonga does not have customary land because all land is owned by the King according to the Constitution 1988 (Rev), and rights to it are distributed and secured according to the law. While informal arrangements between kin, or between private individuals and nobles continue to occur according to tradition or custom, only the Minister of Lands has the power to legally grant land.
- Custom owner – an indigenous person who holds customary rights to land.
- Empowerment – In this thesis, I will use the definition from the United Nations which is “sense of self-worth; their right to have and to determine choices; their right to have access to opportunities and resources; their right to have the power to control their own lives, both within and outside the home; and their ability to influence the direction of social change to create a more just social and economic order, nationally and internationally” (UNPF, n.d).
- *Fa’afafine* (Samoan), *fakaleiti* (Tongan) – for the purposes of this thesis, these terms refer to a person born a male but whose gender identity is ‘male to female’ (MtF). The term ‘trans woman’ is used in the global literature for someone who is born male and identifies as female. A trans woman may describe herself as ‘MtF’, or ‘M2F’ or simply female (UNPF, 2013). Participants in this study self-identified as MtF *fa’afafine* or *fakaleiti*.
- Gender is used in the literature reviewed as an umbrella term to refer to male, female, and other gender definitions such a third gender (UNPF, 2013).
- Gender equity is defined as the process of being fair to all gender groups. Fairness is ensured through specific measures that are put in place to

compensate for historical and social disadvantages that prevent people of different genders from operating on a level playing field (UN-Habitat, 2015, p. 3).

- Gender equality is a state where people of different genders enjoy human rights, have equal opportunity to goods, resources, and benefit from developments. Equality implies that the interests, needs, and priorities of people of all genders and all their diversity, are taken into consideration (UN-Habitat, 2015, p. 3).
- Land rights – ability of the holder through legal titles or permit, or through customary rights, to do some or all of the following – to access, use, lease, rent, pass on, inherit, permit another person certain rights to one's land, or to sell the land concerned. For example, informal permission to access or occupy land does not give the user ownership rights. Rights will be discussed further in the literature review.
- Pacific - refers to the island nations, indigenous peoples, and cultures of Oceania. The term indigenous Pacific in this thesis refers to anyone who identifies as a person with blood links to the indigenous peoples and cultures of the Pacific.
- Urban – There is no standard definition for urban across the Pacific. For the purposes of this thesis, urban includes peri-urban settlements which are described as 'often unplanned, under-serviced settlement(s) that lie outside the boundaries of urban local level government jurisdiction' (ADB, 2012, p. x).
- Use of Samoan language – all Samoan words in this thesis are spelled according to their contemporary use. Accordingly, the use of diacritics is applied only where necessary to ensure a word's meaning is interpreted correctly by the reader (Tualelei, Mayer and Hunkin, 2015).
- Tongan language – all Tongan words in this thesis are spelt according to specifications by Tongan advisers.

7.0 Summary

My purpose for doing the research on land in the Pacific context is rooted in my love for Samoa, my family, and the Pacific.

Access to land is a basic necessity in the Pacific, but authority over land has been held predominantly by men. The core questions used to research my topic are about the significance of land, the effect of gender on pathways and rights to land, and strategies to improve rights to land from perspectives of urban women, *fa'afafine*, and *fakaleitī*. The significance of land to Pacific people, particularly customary land, encompasses concepts of identity, heritage, spirituality, well being, and empowerment. For some, land is also associated with experiences of conflict, trauma, and loss.

Vulnerability for women in urban areas is exacerbated by the lack of assured access to land, especially those in violent relationships. People who have left their lands to seek opportunities in urban areas can become vulnerable to social-economic hardship due to insecure land tenure, or when they become disconnected from their original resources. Pacific governments and local land owning communities are under pressure as a result. The urban areas of Samoa and Tonga have shown signs of increasing poverty and landlessness. The thesis will identify pathways and opportunities for urban women, *fa'afafine* and *fakaleitī* to secure land rights.

In Chapter II, I will discuss the global literature on land reforms to improve women's rights to land, in a context of urbanisation and gender equality initiatives.

Chapter II: Literature Review

1.0 Introduction

Research on land rights of Pacific women is a developing field of knowledge (UNDP, 2008). For the purposes of this thesis, the majority of the sources used are from 1990 to 2016, as it is within this period that most of the Pacific works on women's land rights were published. Due to the lack of literature on the land rights of *fa'afafine* or *fakaleitī*, this review is primarily about the situation for women.

The review is structured into two parts. The first part looks at global developments for improving women's land rights. Collective and communal land ownership models were common outside the Pacific, in Africa, Latin America, Asia, and parts of Europe. The second part of the literature review is more focused on developments in the Pacific. The chapter summary will include a reflection on which rights along the informal-formal spectrum the literature indicates, may be more important for urban women. I begin this chapter with a discussion of concepts of land rights as used in this thesis.

2.0 Land Rights

2.1 Bundle of Rights

The right to property comprises a bundle of rights. Rights vary in degree of freedom for the holder, from control (ability to include and exclude), use, lease, rent, pass on, to the ability to alienate (Curtin and Lea, 2006). Rights differ between lands that are referred to as common (owned by the State), and private, communally, and customarily owned. Rights may be written (registered title), or unwritten but based on established customs.

Land tenure and land rights that come via custom or informal practices are validated by social legitimacy (Rakodi, 2014, p. 10). Fitzpatrick's view of the exercise of land rights in the 'Third World' was that they tended to be fluid:

Economic models tend to ignore what anthropologists have long asserted: that property rights are both a result and a cause of resource conflicts. As such they are not so much authoritative entitlement chosen by market participants and guaranteed by the state as they are processes and products of constant negotiation, contestation, and compromise. (Fitzpatrick, 2006, p. 115)

In this thesis, I will focus on the following rights:

- **Ownership** of land may be individual, joint title, or communal - with or without registered title.

Land that is registered in a government register has an identified holder or holders of rights. Land that is not registered can still have owners, but these people and their associated rights cannot be verified by the State register.

- **Customary ownership:** Where customary land is concerned, ownership is held by kin. The land is managed, distributed, transferred, according to the often unwritten rules of custom, whatever customs exist in the community where the land is located. Customary ownership may or may not be further endorsed by a registered land title (Corrin Care, 1999).

For example, customary land in Samoa cannot be willed or alienated, but the children themselves are heirs by birth according to custom. It is common therefore for families that have settled a piece of their family's customary land to pass this on informally to their children (Ministry of Natural Resources and the Environment, 2006, p. 29). The freedom to do this is important otherwise families would be displaced every time a parent who is a custom owner of that land dies.

Customary ownership differs from a fee simple holding which can be subject to taxation and other statutory obligations (Boydell, Holzknicht, Paterson, Small & Sheehan, 2007).

- **Access:** to access, use and occupy land. Access may be granted informally or formally by the land holders; if informal, then it may not be enforceable in court (Bruce, Giovanelli, Rolfes Jr, Bledsoe, & Mitchell, 2006, p. 80). Access may be given for a specific purpose and timeframe to grow, harvest, collect crops, gather water, to pass through to another property.

Access can be open to 'common' property (that owned by the State or community) such as access to rivers, water holes, forests, roads, public schools and hospitals.

- **Management:** Customary management of land may be the role of an individual or number of leaders within the family. Chiefly management consults with the collective before making decisions. Management determines land allocation, the use, long term leases, and potential sale or elimination of land. The role of manager does not necessarily equate to a right to own. In the Pacific, Fiji is the only Pacific nation where the State manages land on behalf of custom owners, but ownership remains with the owners (Paterson, 2012).

2.2 John Locke

Perceptions of land ownership in western societies was strongly influenced by the ideas of John Locke (1634–1704), documented in his *Two Treatises of Government*. Locke’s main ideas about property ownership became highly influential across Europe, Britain, and North America during colonisation (Bishop, 1997). Locke’s ideas were highly likely to have influenced the way Pacific land tenure was perceived by foreign explorers during that period.

As a Christian, Locke believed that God provided land as a common good for people to use. Locke believed that a person was entitled to private ownership of some of this common asset, through personal labour, without having to deprive another person. He believed that the input of labour determined the value of the land.

That labour put a distinction between them and common. That added something to them more than Nature, the common mother of all, had done, and so they became his private right.....As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. (Hay, 1823, p. 118)

Locke’s idea of the value of land differs from that of indigenous Pacific peoples who recognise land’s inherent spiritual, environmental and social value, independent of human intervention. The idea of land as a possession of the labourer also differs from Pacific peoples’ traditional perception of land as a defined place where one belonged, and where land is the provider while the human is the receiver and guardian.

Some of Locke’s critics wrote that his ideas justified the seizure of indigenous lands in the America continent during colonisation “on the grounds that since the indigenes did not cultivate the land in any permanent manner, the land remained unowned and open

for appropriation” (Braun, 2014, p. 69). Locke did not recognise customary land ownership of native peoples that did not always show in active use of land, affirming perceived entitlements of Europeans and English to claim as much land as possible for their empires (Tully, 1993 in Buckle, 2001). In the Tongan chapters, some parallels are seen between Locke’s theory of property ownership and Tonga’s Constitution 1875 which was established during the colonisation period in the Pacific.

2.3 Terra Nullius

The colonisation history of the Pacific Islands identifies the principle of *terra nullius*. This is a historical term that was used to refer to land with no owner. The principle of *terra nullius* was associated with global land grabs during colonisation in the Pacific and elsewhere in the world (Banner, 2007). The recognition of ‘ownership’ was judged through the eyes of the colonisers, and their land interests influenced the degree to which they chose to recognise the ownership of indigenous peoples over their lands.

The nature of land grabs by Europeans and the British during colonisation seemed to be associated with Locke’s perception of ownership through visible evidence of cultivation (Banner, 2007; Human Rights Council of Australia, 2008). Where explorers saw signs of cultivation, occupation and societal organisation, as in New Zealand, Tonga, Fiji and Hawaii; they were more inclined to recognise land as owned. Where they did not see these signs, they applied the principle of *terra nullius* (Banner, 2007).

Terra nullius was applied in different parts of the world during colonisation. In the Pacific, it was applied in Australia (Banner, 2007) and led to the genocide of Aboriginal peoples. Indigenous Australians now only make up around three percent of Australia’s population (Australian Bureau of Statistics, 2013). On 3rd June 1992, an Australian High Court decision in *Mabo v The State of Queensland (1992)* challenged the application of *terra nullius* during colonisation. The decision that resulted was that sovereignty claimed over the Australian land mass did not automatically remove the ownership that indigenous peoples had of their lands. This decision was finally a recognition of the land rights of Aboriginal peoples (Human Rights Council of Australia, 2008; (Australia) Department of Statistics, 2012).

In 1996, another significant decision was delivered, this time by the Queensland High Court in *Wik and Thayorre Peoples v Queensland Government (1996)*, regarding pastoral leases on native lands. The Court found that these leases did not confer on the

leaseholder exclusive possession over the native lands concerned, “unless the lease itself, or the statute under which it had been granted, conferred exclusive possession” (Human Rights Council of Australia, 2008), which was not the case with the leases concerned, hence native title co-existed with leasehold rights. The ruling potentially opened 78% of the Australian land mass to native title claims, which led to widespread panic among farmers, miners, associated sectors and communities (Human Rights Council of Australia, 2008). Another source wrote that in 1997, about 42% of the Australian land mass was under pastoral lease, with the percentage in some states being between 70% and 80% (Stevens, 1997, p. 1).

The Wik and Mabo outcomes were fundamental to the development of the Native Titles Act 1998, and the establishment of the National Native Title Tribunal to deal with matters affecting native title in Australia. Since these developments, various legal caveats have been put in place which essentially mean that Aboriginal Australians will continue to struggle through the legal process to regain any land rights.

3.0 Land Grabs and Development in the Pacific

Land acquisition becomes a land grab when it involves one or more of the following:

- violate human rights, particularly the equal rights of women;
- flout the principle of free, prior and informed consent (FPIC) – under which affected communities are informed about and are able to give or refuse consent to a project;
- are not based on a thorough assessment of, or disregard, social, economic and environmental effects, including the way they are gendered;
- avoid transparent contracts with clear and binding commitments on employment and benefit-sharing;
- eschew democratic planning, independent oversight and meaningful participation. (Oxfam, 2012, p. 5)

When land is taken by force from its indigenous guardians, regardless of who does this, it causes spiritual, social, environmental, physical and cultural deprivation akin to a form of group and generational trauma. The resulting effect of this deprivation on spirituality, dignity, physical wellbeing and so forth is then manifest over generations in

different parts of indigenous peoples' lives (Trask, 1993; Mohatta, Thompson, Thaib, & Tebesa, 2014).

Land grabs that occurred during colonisation were facilitated by treaties between visitors and local indigenous peoples; although the two parties often held different perceptions of the value of land and the concept of ownership (Ward and Kingdon, 1995). Treaties later provided avenues for indigenous peoples to begin the journey of reclaiming their lands and dignity, but the damage to identity, spiritual, social, cultural, and political esteem, sovereignty, and dignity are possibly irreversible. This suffering continues on for many indigenous peoples in the Pacific. For example, Hawaii lost much of its customary lands due to engineered alienation of customary land via individualised ownership, and the coerced take-over of the Polynesian nation by the United States (Banner, 2007; Trask, 1993).

In New Zealand after the signing of the Tiriti o Waitangi 1840, Maori gradually lost ownership of most of their land. Land sales between Maori and settlers were not well documented, so some parcels sold several times over. As a result, by 1840, land claimed by Europeans totalled more than the country's actual land mass (McAloon, 2012). As at June 2016, Maori (excluding Crown land and reserves, freehold, and all other holdings) only held 756 hectares in titled customary holdings, or less than one percent of New Zealand land (Ministry of Justice, 2016).

In relation to land grabs, "the main link between countries with the most large-scale land deals is poor protection of rural land rights" (Oxfam, 2012 p. 6). 21st Century Land grabs are conducted by foreign occupying nations, powerful corporations, local elites, and often occur during civil conflict. Despite the portrayal of the majority of land in the Pacific as being held by 'the people' (refer to Table 1), the approval of governments of leases of large land masses lead one to question who really controls land. In the Pacific, land grabs have caused dispossession, violent conflict, ethnic assault, environmental degradation, food insecurity, and poverty. Promises by investors and governments of jobs, services, infrastructure and other benefits for land owning collectives often fall short (Human Rights Watch, 2013; Oxfam, 2012; Anderson and Lee, 2010).

Examples of traumatic land grabs are prevalent in Melanesia where the Pacific's large land masses exist. For example, in West Papua, the genocide of indigenous peoples continues with a battle over their natural resources (Politics of Papua Project, 2016;

International Parliamentarians for West Papua, 2016). In 2013 the Porgera mine in Papua New Guinea, owned by Barrick Gold, was reported to have dumped 16,000 tons of liquid waste into the Porgera River daily, harming communities of people and species that are reliant on the river. Sexual assaults of local women by Barrick Gold employees led to court action against the multinational. Despite all this, the mining operation continues and is known to account for approximately 11% of the country's GDP (Human Rights Watch, 2013). In Vanuatu, there was a dispute between the Mangaliliu and Lelema people and the Government because a Minister had approved a lease of a piece of their land without their approval (Vanuatu Daily Post, 2012).

The eagerness of governments to attract investment through leasing large masses of customary land has left indigenous groups exploited, while large scale investors and elites reap benefits. Farran wrote of the purposeful marginalisation of victims and long-term consequences by those in power in favour of short-term gain. "Moreover inequalities of wealth combined with inequalities of political power can result in a self-perpetuating system of human rights denial, especially where those who most benefit seek to preserve the unequal status quo." (Farran, 2009, p. 402).

When reflecting on the effect of land reforms in developing countries, Fitzpatrick stated:

The unfortunate experience of many Third World countries in both colonial and postcolonial times is that state law has either overridden nonstate governance mechanisms or failed to facilitate adaptation to new circumstances of urbanization, migration, and commodification of rights to land. In the former case, numerous attempts to replace nonstate systems with unitary state law have succeeded only in creating a polynormative system of official law, semi-legal practice, and widespread illegality. This is a natural consequence of the fact that many nonstate systems in Third World societies are kinship-based, resistant to replacement by formal state property regimes, and quite efficient on their own terms. (Fitzpatrick, 2006, p. 1012)

Fitzpatrick suggested that conflict was more likely to occur when the transfer or change of a right to land is done in a way that contravenes peoples' concepts of social identity and place. The establishment and enforcement of property rights were thus connected with social order (Fitzpatrick, 2006, p. 115). It is, therefore, predictable that disruption, reform, and violation of land rights would result in conflict and civil unrest.

There are other gender specific effects associated with 'development' involving land in the Pacific, such as the growth of trafficking and sexual exploitation of women and

children at mining and logging sites and bars. While governments acknowledge that such activities occur, there seem to be little if any legal consequences for perpetrators (US Department of State, 2010).

Land law reforms continue to be promoted and supported by international donors, such as the Mama Graon Vanuatu Land Program 2011-2015 that is supported by USAID and NZAid (Tor, 2012; Vanuatu Ministry of Lands & Natural Resources, 2009). The Samoan programme is supported by the ADB. Understandably, there is distrust in the Pacific about the intentions, processes, and the equitable of distribution of benefits related to land law reforms (Anderson & Lee, 2010; Daley, 2010; Human Rights Watch, 2013).

4.0 Global Picture on Urban Women's Land Rights

Significant literature covers women's land rights and there is much material on rural women's land interests and national situations, as previously indicated. In comparison, there is very little literature specifically on urban women's land interests (Rakodi, 2014).

As indicated in the previous section on rights, women and men have rights to land under customary tenure, albeit often unsecured by registered title.

If Locke's theory was accepted as valid for all people, then women could expect to acquire ownership of land through their labour. However, the literature indicates that on a global scale, women's labour on land is not reflected in their ownership status, in comparison to men's level of ownership. Women's bundle of rights to land often depends on their relationships with kin, primarily male kin (fathers, brothers, son, chiefs). For married women in many societies, their rights are derived from a male spouse if he has land (Bruce et al, 2006; AusAID, 2008). Stories of gender inequities in land access litter the global literature.

The Beijing Platform for Action 1995 identified that:

legal and customary barriers to ownership of or access to land, natural resources, capital, credit, technology and other means of production, as well as wage differentials, contribute to impeding the economic progress of women. Women contribute to development not only through remunerated work but also through a great deal of unremunerated work....women participate in the production of

goods and services for the market and household consumption, in agriculture, food production or family enterprises. (UN Women, 2014, p. 103)

The United Nations Food and Agriculture Organisation (FAO) collates global gender segregated data on different types of land ownership from countries around the world, sourced from agricultural census data. At the time of writing, the only Oceania nations and territories that were in the FAO database were American Samoa, Fiji, Niue, and Samoa. The FAO data needs to be viewed with caution as census data is often dated, definitions differ between countries, and many countries are yet to provide gender segregated data.

When the Beijing Platform for Action 1995 was developed, it was estimated that women held only 1-2 percent of the world's land. The estimate was later reported to be incorrect and unsupported by data (Doss, Kovarik, Peterman, Quisumbing, and van den Bold, 2013). However, existing land holding data shows that gender inequality does exist in agricultural land holdings worldwide, and less than 20% of landholders are women (FAO, 2010).

The FAO defines agricultural 'holder' as "the civil or juridical person who makes the major decisions regarding resource use and exercises management control over the agricultural holding. The agricultural holder has technical and economic responsibility for the holding." (FAO, 2016)

The FAO definition of 'holder' does not include the manager of the land unless she/he is the identified holder. For example, married women often manage parts of the total holding, but husbands are typically identified as the single holder. It is common within families for a group of people to manage different plots but only one person is the identified holder. Some countries specify a minimum size for a holding in order to be counted in their census, so any holdings smaller than the minimum will not be counted (FAO, 2016).

The rates of agricultural holdings by women (according to country's census) vary within and across regions. For example, in Europe, the two lowest levels were in the Netherlands (6.1 percent, 2010) and Switzerland (6.5 percent, 2010), while the highest (over 45%) were in Latvia (2010) and Lithuania (2010). In Latin America, the lowest level was in Guatemala (7.8 percent, 2003), while the two highest were in Peru (30.8%, 2012) and Chile (29.9%, 2007). Across the African continent, Mali had the lowest

(3.1%, 2003-2004) followed by Morocco (1996) and Algeria (2001) both around four percent, while the highest was in Botswana (34.7%, 2004). For Oceania, Fiji had the lowest (3.6 percent, 2009), American Samoa was midway (19.4%, 2008), and Samoa (22.9%, 2009) and Niue (23.2%, 2008) were at the higher end. The Middle East region had some of the lowest rates, as seen in Saudi Arabia (0.8 percent, 1999), Jordan (3.0 percent, 1997), and Egypt (5.2 percent, 1999) (FAO, 2016).

There is even less data on land ownership (sole or joint) for women. Joint ownership (with a husband or other person/people) is more common than sole ownership. The FAO definition for agricultural ‘landowner’ is:

..the legal owner of the agricultural land; however, definitions of ownership vary across countries and surveys. The indicator may not necessarily reflect documented ownership certified by a legal document. Especially in places where much of the land is not formally titled or documented...it may also include proxies, such as the right to use, sell or bequeath the land, or the right to use it as collateral....households may have multiple landowners. In addition, households may own multiple plots of land with different owners identified for each plot. (FAO, 2016)

The FAO provides a useful ‘incidence of ownership’ measure which is based on the number of women who said they owned agricultural land, divided by the total number of women in that country; this indicates the prevalence of ownership among the female population for a country. Using the joint ownership rate to calculate incidence, we see that among the African countries, Rwanda (2010), Burundi (2010) and Ethiopia (2011) had the highest rates with at least 50% each, while the lowest levels were in Senegal (2010-2011, 10%) and Ghana (2010, eight percent). In Asia, Cambodia (2010) was at the higher end (51%) while Bangladesh (2011-2012, nine percent) was at the lower. In Latin America, only Ecuador had a measure which was seven percent (2010). There were no measures for most of the world.

Men’s ‘incidence of ownership’ rates were generally significantly higher than women’s, for example in Ghana 62% vs eight percent for women, Ecuador 49.0% vs seven percent for women, and Bangladesh 77% vs 9 percent for women (FAO, 2010).

These landholding and ownership situations exist in many countries where constitutions include equality provisions, while other laws, customs and religious traditions justify discrimination against women in inheritance and land ownership (Farran, 2011; FAO, 2010; Corrin Care, 1999). The differences between countries (and probably within

them) and within regions emphasise the importance of understanding the cultural, social, political, economic and legal context of a country in order to address gender equity and gender equality on land rights (Doss, Kovarik, Peterman, Quisumbing, & van den Bold, 2013).

5.0 Land Reforms to Support Urban Women's Land Access

Land reforms to improve women's rights have been under way in different parts of the world as part of the Millennium Development Goals, and the Beijing Platform for Action 1995.

Urban women's access to land with secure tenure is influenced by the legal framework, social and familial relations and the opportunities available through various channels of land administration...The main areas of law that govern the access to and control over urban land and property include international treaties and national constitutions, land and property law, and family and personal laws....These laws may be derived from statute, customary law (which can be codified or not) and religious law. (Rakodi, 2014, p. 15)

The major push was to improve land rights in rural areas based on an assumption that most of the world's populations lived there, including in the Pacific islands nations, with limited attention to the huge urban populations and the effect on land use and needs there (Jones, 2012). Gender equality may not necessarily be a common priority (Pilcher & Wheelahan, 2004) but urban women may have other issues that have more direct or indirect links to land such as safety from violence, food security, education, or access to finance.

The thrust of land tenure reforms around the world in places where land was communally owned was to privatise it to create land markets (Jacob, 2014; Banner, 2007; Ward and Kingdon, 1995; Trask 1993). Land reforms have been underway in Africa since the 1990s in association with development initiatives funded by international financial institutions, particularly the World Bank and International Monetary Fund (Federici, 2011). In the Pacific, reforms are sponsored and co-designed by AusAID (AusAID, 2008) and the Asian Development Bank (ADB, 2010). Legal provisions to recognise gender equality in land rights have been in place in Latin America for over 30 years (FAO, 2010). Reforms have also been advanced in parts of Asia and Europe (Bruce et al, 2006). The literature shows that globally, legislative intervention to support women's ownership of land were more likely to work where women had existing cultural and societal rights to own land. "Laws legitimize the

possibility of change. While legislation does not itself change custom, it allows those who are brave enough or desperate enough or organized enough to use the law to work to effect change.” (Bruce et al, 2006, p. 68).

Land titling was identified as an important mechanism to securing women’s land rights, whatever type of tenure was involved, but there were problems. The World Bank studies found that leasing was less threatening to men in patriarchal settings. Men with excess land were likely to lease it to women when secure in the knowledge that women would never own it (Bruce et al, 2009, p. 143). Joint titles in India and Uganda was found to help prevent husbands from selling land without their wives’ involvement. A key barrier to women’s uptake of titling around the world was their lack of ‘legal land literacy’ (Bruce et al, 2009, p. 101). In places where awareness programmes were delivered, the number of joint titles increased.

While land titling secured rights, even if for a limited time like leases, it was also found to work against women if not legislated well and accompanied by relevant supports. In some places, the privatisation of land led to further deprivation of poor women because they could not afford to go through the legal procedures to have their names on titles, let alone buy or lease land (Bruce et al, 2009). At the same time, the privatisation and titling of land that was customary meant that women who could not afford land lost what use rights they did have under traditional arrangements (Sweetman, 2008).

6.0 Urbanisation

Urbanisation is the movement of people into cities, often in search of jobs, markets, educational opportunities, and other needs. There are now more people living in cities globally than in rural areas, which consequently increases demand for land. In developing countries, the urban population is estimated to grow from 1.9 billion in 2000 to 3.9 billion in 2030 (Urban Institute, 2011).

In the Pacific, urban cities are significant producers of GDP. For example, in Vanuatu, around 65% of GDP is generated in Port Vila and 15% from Luganville (2010); for the Cook Islands, 60% came from Rarotonga and Aitutaki; and for Samoa around 70% was generated from Apia (ADB, 2012, p. 33).

In general, urbanization accompanies economic development and allows for scale economies, thicker markets, and increased specialization. However,

urbanization that occurs as a result of poor services in rural areas, food insecurity, or land shortages offers few economic benefits, and places people at increased risk of hardship in congested urban slums. (World Bank, 2014, p. 32).

The World Bank has criticised the lack of progress in GDP growth, productivity, and exports value in Pacific Islands economies, when compared to the larger countries of East Asia. The World Bank noted that export markets played a significant role in lifting employment, productivity and GDP growth in East Asia, but not in the Pacific. (The World Bank, 2014). The Pacific has much smaller markets and populations, and is distanced from global markets. Another reason for the lack of economic progress has also been linked to Pacific people not registering their customary lands and using them as collateral for investment (Larmour, 2002).

Formal employment in Pacific Island nations is limited; most of it is in cities and in the public sector. Customary land is thus important as a means for semi-subsistence living, and a buffer against poverty and hunger (Samoa Bureau of Statistics, 2012; Vanuatu National Statistics Office, 2012; Oxfam, 2012). Most workers in the Pacific

...engage in some combination of agriculture, subsistence activities and cash or barter exchange, and informal small-business activity, either as part-time employees or as business owners. In cities, many individuals are employed on a part-time or casual basis by small businesses operating informally, while many others generate income through a range of informal and part-time own-business trading opportunities, such as operating a temporary retail stall or selling products in the town market. (The World Bank, 2014, p.3).

Rapid urbanisation has led to huge demand for services that Pacific island nations are struggling to cater for, such as housing, employment, social services, infrastructure, food security, and land (Urban Institute, 2011).

What all urban people need for wellbeing is a secure place to live, in a healthy environment and within reach of work opportunities and essential services. With respect to land and housing, this implies both affordability and protection against arbitrary eviction, whether by agents of the state, private owners or people's own relatives. Gaining access to land and real property involves choices, which are shaped by

- the legal framework, including both land and personal law
- social norms and expectations, especially concerning marriage and the family
- the channels through which land and housing are supplied, the types of tenure on offer and the cost of alternative sources of accommodation. (Rakodi, 2014, p. 8)

Pacific island cities have grown beyond the boundaries of government land into customary lands of local owners, particularly in Melanesia (ADB, 2012). The growth of squatter or informal settlements is now a major problem in Melanesia where up to 50% of the regional urban population live in such settlements. Homes and communities are built alongside rivers and flood prone areas (ADB, 2012).

Landlessness has resulted in people taking resources from public and customary lands of others (ADB, 2012). The Vanuatu 2010-2011 Wellbeing Survey found that in urban centres, only around 41% of dwellers had access to customary land compared to 92% for rural dwellers; the falling amount of customary land coincided with large sections of land being leased off in central locations (41% of rural Efate and 45% of Epi) (Vanuatu National Statistics Office, 2012).

The extent of urban hardship varies across the Pacific countries.

In Papua New Guinea, the incidence of hardship in urban areas is 35% lower than the national average, and in Fiji's urban areas it is 26% lower than the national average. A very different picture of rural-urban differences emerges for other countries: in Kiribati, Vanuatu and the Solomon Islands, the incidence of hardship in urban areas is substantially higher than in rural areas. For example, in Vanuatu, the incidence of hardship in urban areas is 62% higher than the national average. (The World Bank, 2014, p. 30).

Land disputes have led to indigenous peoples being evicted from customary lands that they believed were theirs through historical agreements with previous custom owners. For the newly displaced group, eviction meant the loss of collective assets that they maintained and developed for their future generations (ADB, 2012). Such disputes over rights to customary land are exacerbated by rapid urbanisation, lack of appropriate planning and response by local governments (Jones, 2012; ADB, 2012).

7.0 Land Ownership and Women's Empowerment Against Male Violence

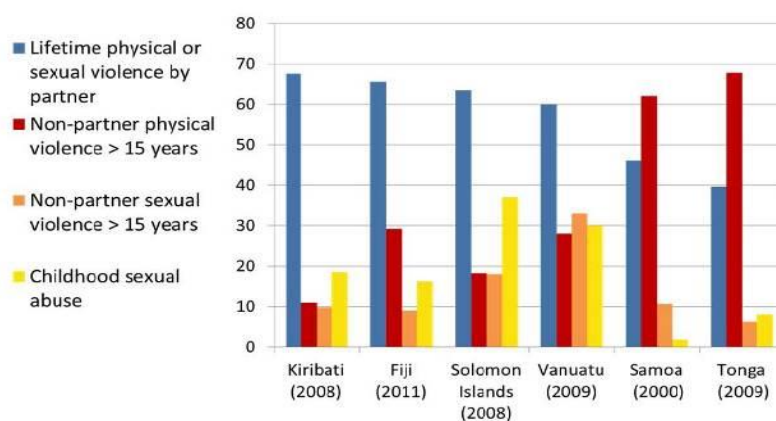
Violence against women is at epidemic proportions in PNG where rape, robbery and beating of women in markets are a daily occurrence. Around 80% of vendors at PNG's markets are women (UNWOMEN, 2012) so VAW affects individuals and the economy. Bride price remains a factor in the perpetuation and tolerance of VAW in Melanesia (UNIFEM, 2010). Children are harmed both as witnesses and victims including children in-utero with significant numbers of pregnant women victimised. Violence against girls

includes sexual exploitation (to make amends between families, forced marriage, marriage before legal age) (UNIFEM, 2010).

Third gender persons suffer harassment, abuse, rejection, sexual and physical violence in ways different from heterosexual women within families, schools, community, and by police. Fundamentalist Christian churches perpetuate stigma and hostility towards third gender (Pacific Sexual Diversity Network, 2009). Beatings of effeminate boys in Tonga has been known to occur as an attempt by abusers to make them more masculine. In addition, effeminate boys have been sexually abused by males (James, 1994). Any links social prejudice has on third gender peoples' access to land in the Pacific is not visible in the published literature. This is an important question that this thesis addresses.

The Pacific Islands Forum continues to invest annually in the region to counter VAW but little progress has been made (PIFS, 2012). Samoa and Tonga have different patterns for the different types of abuse compared to other parts of the Pacific. The following graph shows these diverse patterns (UNFPA Pacific Sub-regional Office, 2013).

Graph 1: *Prevalence (%) and Patterns of Violence Against Women (15 -49 years) in Pacific Island Countries*



Note: Retrieved from UNFPA Pacific Regional Office. Copyright by UNFPA Pacific 2013. Reprinted with permission.

Women in urban settings experience the highest levels of sexual threat and violence (Urban Institute, 2011; Asia Pacific Forum on Women, Law and Development, 2012). Poverty has led to girls and women in Fiji entering the sex industry (Naidu, 2009).

Women in irregular, low-paid or casual employment experience domestic violence more than those in better-paid jobs because the latter group have more resources to leave abusive relationships (Kabeer, 2008). Dependence on men who are abusive traps women and their dependents (Open Society Foundation, 2014). Victims find it hard to leave abusive households because of the need for an alternative secure and adequate place to resettle, especially if they have children (Housing and Land Rights Network, 2006). Poverty and lack of economic means exacerbate risks to women from sexual violence (UNIFEM, 2010, p. 11).

Studies conducted in India, Uganda and Kyrgyzstan Republic showed that women with legal title to land were less vulnerable to divorce, abandonment, and violence from husbands (Bruce et al, 2006). A study in Nepal that looked at the link between women's land ownership and empowerment, found that land ownership countered gender discrimination because it enhanced women's bargaining power within households, and further in their communities (Mishra and Sam, 2015).

The study by Panda and Agarwal in 2001 looked at the relationship between women's ownership of land and property and rates of victimisation from family violence in India (Panda and Agarwal, 2005). The study used a household survey that included interviews with women and male heads of households, with just over 500 participants. Around 43% of households were of matrilineal castes, 78% of women were in arranged marriages, and around half of the women's marriages involved a dowry payment (Panda and Agarwal, 2005, p. 826).

The study found that of women who did not own a house or land, 49% experienced physical violence and 84% experienced psychological violence. In contrast, of women who owned both land and house, 7% experienced physical violence and 16% experienced psychological violence; much reduced rates of victimisation. Land ownership was found to enhance a woman's sense of empowerment and reduced her tolerance for violence. Land provided a more certain fall-back option for victims of abuse, compared to employment because the latter was dependent on forces beyond the woman's control. Land ownership was recognised by men as strength, and deterred their use of violence against women (Panda and Agarwal, 2005).

Another important finding was that, while women's property ownership was linked to lowered incidence of victimisation in both matrilineal and non-matrilineal castes, those

in matrilineal castes did not necessarily fare better beyond property ownership. The study suggested that this may be due to a degradation of matrilineal traditions in some communities. For example, some women in matrilineal communities may not have had land given to them by their families, or not everyone in those communities practised matrilineal traditions. The research also had a finding in relation to dowry related abuse. It found that 44% of women without property faced dowry-related beatings by husbands or in-laws, compared with three percent of women with property that faced dowry-related beatings (Panda and Agarwal, 2005).

Two other relevant studies were conducted in Tanzania and Nicaragua to test the hypothesis that ‘because ownership of land among women can substantially enhance their social status in regions where owning land is associated with dominance, it should be related to an increase in women’s power and control within their marital relationships and with reduced levels of violence against women regardless of varying cultural contexts’ (Grabe, Grose, & Dutt, 2015, p. 9). The studies were conducted with an organisation in each country, 492 participants, and used quantitative and qualitative methods (Grabe et al, 2015). This study is relevant to the Pacific because both countries took on land tenure reforms that shifted tenure from predominantly customary, to private ownership. The reforms were supported by international financial institutions (Broegaard, 2009 & Manji, 1998 in Grabe et al, 2015).

The above study found an association between men’s dominance as property owners, and men’s perceived right to hit women. This dominance and sense of entitlement became interrupted when women owned land. Property ownership thus directly influenced interpersonal power relations and gender-based violence within the household (Grabe et al, 2015).

I was unable to locate any published studies in the Pacific that specifically looked at the relationship between land ownership and family violence or gender-based violence (GBV), but the studies just discussed provide a strong rationale to look at improving women’s land ownership in communities where VAW, GBV and family violence are national priorities, such as the Pacific.

In 2012, the Pacific Forum endorsed a Pacific Leaders Gender Equality Declaration (LGED). There was concern about the slow pace of progress on gender equality, VAW,

and the creation of economic opportunities for women. Access to land was not mentioned in any of the regional gender initiatives which were:

45. Leaders endorsed the Pacific Leaders Gender Equality Declaration which is attached as Annex 1. Leaders committed to supporting women's political representation, including by: strengthening consultative mechanisms with civil society groups on key budget and policy issues; advocating for increased representation of women in the private sector and local level governance boards and committees; and considering specific legislative changes to allow temporary special measures such as reserved seats. Leaders committed to ensure that gender analysis is factored into sustainable development discussions, country programming, and policy decisions.

46. Leaders commended Australia on its Pacific Gender Equality Initiative and thanked Australia for its commitment of A\$320m in new funding over ten years, with the objective of increasing the proportion of women in leadership and political roles, improved economic opportunities for women through better access to finance and markets; and improved safety for women through prevention of violence and access to justice.

47. Leaders agreed to adopt measures that eliminate all barriers preventing women from participating fully in the economic sphere, consistent with the decisions made by Forum Economic Ministers in July 2012. Leaders pledged to act to end violence against women by progressively implementing a set of essential services to women and girls who are survivors of violence, and enacting and implementing domestic violence legislation to protect women from violence and impose appropriate penalties for perpetrators of violence (PIFS, 2012, p. 8)

It is possible that these efforts will fall short of their goal because they do not aim to shift the core root of men's power over women, which is in their control of land as indicated by the international research. This is akin to Tonga tweaking its parliamentary structure without changing the fundamental causes of societal inequality which is linked to land tenure (Harter Kennedy, 2012).

8.0 Sexuality and Land Rights

Jacobs suggested that resistance to land rights for women was much more widespread than opposition to their entry into paid employment (Jacobs, 2014). Jacobs held the view that peoples' anxieties about women gaining more rights were related to fears about changes to the world they know, to family, community, and the domain (land and agriculture) that in many societies defines male status and identity. Jacobs wrote that "one aspect of the strong resistance to equity in land rights concerns fears, from both

heterosexual men and women, about women's independent actions and the implications for sexuality that may follow." (Jacobs, 2014, p. 174).

Studies in other parts of the world gave examples of this resistance. One study looked at the way agrarian reforms in Chile included attempts to include women, but efforts were hindered by male jealousy. The study found that over 90% of men discouraged their wives from participating, and an opposition group was formed to warn the government that its insistence on involving women in the agrarian reform would cost votes (Garrett (1982) and Tinsman (2002) quoted in Jacobs, 2014). In Nicaragua, law changes to encourage women into co-operatives also faced opposition from men. Many men considered their own membership enough without their wives having their own independent membership. Some men accused women of neglecting their household duties in being active members, or accused women of attending collectives to seek other men; some beat their wives to discourage them from joining (Montoya 2003).

This use of sexuality to counter gender equality in land rights was seen in Tonga when the government announced in 2015 that it intended to ratify the Convention on the Elimination of all Discrimination Against Women (CEDAW). Compliance with CEDAW would have required Tonga to amend its Constitution 1988 (Rev) and land laws, opening opportunities for women's empowerment in households, churches, and communities at large, which would have threatened traditions of female subservience.

Tension has been brewing for months - earlier this year at a CEDAW roundtable discussion involving community groups one church minister was reported by Matangi Tonga online as shouting at the group "You women should know your place". (One News, 28/5/2015)

The church minister who made the above statement was accompanied by a group of women supporters.

Opposing parties to CEDAW ratification capitalised on patriarchal and heterosexual prejudices, and proposed that CEDAW would legitimise abortion and encourage same-sex marriage. These highly taboo subjects in the very conservative Christian nation, shifted public opinion away from women's empowerment, wellbeing, social justice, and gender equality, to abortion and homophobia.

Among those marching in the streets in May - alongside placards reading "CEDAW is a Secret Agent of Satan" and "CEDAW = 666! Evil!" – was Lady 'Ainise Sevele, the wife of the country's former prime minister. "We know our

place in our society," she tells Fairfax Media. "Women have a big voice in the running of the family, but the man has to make the final decision. In any other country they will challenge that, but in Tonga we don't. We were born into it and we know the benefits of just having one master in the household." Sevele, who is deputy president of the Tongan Catholic Women's League, opposes the convention for fear it will allow same-sex marriage and abortion rights in this conservative constitutional monarchy. (Munro, 11/7/2015)

Several petitions and protests followed the announcement with opponents in the staunchly religious kingdom expressing concern that it will allow same sex marriage and abortion. (Radio New Zealand, 22/9/2015)

Tongan supporters of CEDAW did their best to engage public opinion:

The misconception around abortion and same-sex marriage is just a cover-up for attacks against CEDAW. We need to start talking about the real fears in people, particularly men who are in high positions of power and use these powers to control the masses - the real fear is about women and women's rights overall. The real fear is about giving up male privileges. If we want to talk open and honestly let's get down to business and stop using CEDAW as an excuse. - 'Ofa-Ki-Levuka Guttenbeil-Likiliki. (Matangi Tonga, 8/5/2015)

Those who think that equality for all including women, can be accomplished without ratification of CEDAW, are deluded. ... People should march to the Palace to assure that the Constitution is solid against abortion and same-sex marriage ... not against CEDAW." Sione Lousiale Kava. (Matangi Tonga, 29/5/2015)

The combination of social elites and churches gave the opposition status, sacredness, and possibly intimidated the newly appointed government led by the first ever elected People's Representatives in Tonga. Public opposition was so strong that in September 2015, the government publicised that it had withdrawn its intention to ratify CEDAW. The nature of public reaction in Tonga to CEDAW is therefore not new, but it is especially in these contexts that laws, regulations, and constitutional amendments must be strengthened to promote and secure women's land rights (Jacobs, 2014).

The denial of land can be equated to the denial of a cultural heritage. In the absence of land, Tongan women appear to hold tight to their gender identity and roles as part of their cultural heritage.

Third gender people in different parts of the world also value their identity as a form of cultural heritage (Blake, 2015). Societal elements that support a dignified gender identity, such as customary rights to land and gender roles in households, should, therefore, be protected and supported to thrive. In Samoa and Tonga, beauty pageants

for *fa'afafine* and *fakaleitī* are exciting events for public expression of identity and gender roles. The pageants are often supported by the families of the contestants, and are fundraising activities for community causes (Pacific Diversity Network, 2009). The events claim space in mainstream society for *fa'afafine* and *fakaleitī*, promote their identity and human rights, and celebrate their gender heritage (Tan, 2016).

9.0 Religious Institutions and Land Tenure

Churches have their own interest in land tenure. The enmeshment of churches in land tenure in Samoa, Tonga, and other countries of the Pacific, raises a question about their role as asset holders in urban areas. Land holding of Pacific churches is not well published in the Pacific land literature; in fact, I could not locate any research data about it. I learnt from personal communication during the fieldwork with gender and land experts that a lot of land had been gifted to churches across the Pacific during and after colonisation. One estimate was that the majority of the freehold land in Apia, which was about 2/3 of the area, belonged to the Catholic church (Thornton, 2016)⁶.

Churches are very prominent in urban areas where their schools and properties are prominent. A few countries in the Pacific have explicit provisions for churches to lease customary land for church use. In American Samoa, land may be leased to build churches and houses for pastors and registered as church land. In the Cook Islands, native freehold land may be leased by churches for up to 60 years with a perpetual right of renewal. Tonga also allows leases by churches for religious purposes (Paterson, 2012). There is evidence though that not all church lands are used for religious purposes. In Samoa for example, church lands can be leased or sold (Thornton et al, 2013). In Fiji in 2014, the Trust Board of the Diocese of Polynesia (part of the Anglican church) was reported to have sold 2210 hectares of land to the Kiribati government for A\$9.3 million (NZ\$10 million). A Kiribati government official disclosed that the land was for resettlement for their people who had been affected by climate change (Field, 2014).

Exactly how much of indigenous lands in the Pacific is owned or leased by religious organisations is not known, but it is clearly significant. If churches own freehold lands and lands on perpetual leases, they should be considered as key players in addressing

⁶ Thornton, A. (10/6/2016). The University of New South Wales-Australia, personal communication.

land access for disadvantaged members of communities, who would not automatically qualify under custom or who experienced other structural exclusions and social biases. If churches hold such lands in perpetual leases, this raises problems for local people in places where there is a land shortage or affordability challenges, and for future generations of custom owners to the lands concerned.

Christian churches have been influential in the degradation of women's status and authority in relation to customary land. This has occurred through the manipulation of cultural traditions in favour of male authority, as if it were a natural order in the family, community, and land management, while ignoring traditions that gave women their rightful place in decision making (Griffen, 2006; Monson, 2010). Monson wrote that Christianity and custom were sometimes juxtaposed in ways that affected land tenure. Religious concepts, metaphors and symbols are regularly used during land discussions before chiefs and courts, and church pastors have even been involved in resolving land disputes (Monson, 2011).

In Tonga, churches are also competitors with local people for land in urban areas. Women who are already disadvantaged by local land laws would have not only male kin to compete with, but also the relatively better resourced religious institutions. The case of *Latu v Blake* (2014) in the Tonga Land Court provides an example of this.

So what is the effect of church interest in land on the land needs of urban based women, *fa'afafine* and *fakaleiti*? Should governments look to acquire land from churches as they can from other communities, or are churches too sacred? What positions do church leaders have in the gender equity land rights discourse, considering their immense influence on evolving cultures and customs? These questions are beyond this thesis but are recommended as a research possibility in future in Chapter IX.

10.0 Summary

The global literature indicates that rights can range from absolute authority to own and alienate land, time limited entitlement such as leases, to unwritten rights entitlement determined by custom depending on the society. John Locke was an influential thinker during the period of colonisation in the Pacific, and his ideas about individual land ownership were said to have influenced the response of foreign explorers in the Pacific.

The collective ownership of land was common across the world where there were customary lands. In a global movement to individualise customary land ownership, land tenure reforms created mechanisms to enable women to hold title, with mixed results. One of the key lessons learnt from these reforms was that law changes were more likely to be accepted, and women were more likely to take the opportunity to own land, where local culture was accepting of women owning property.

Rapid population growth and high demand for secure land rights in urban areas means that informal arrangements between kin, between clans, and between parties generally for access, usage, or longterm occupation have become less secure. Women with no natal entitlement to customary land in urban areas, widows, divorcees, separated and abused women with no land secure land access for food, fuel and shelter are highly vulnerable, along with their dependents.

Land ownership by women represents strength and power, and has been linked to reduced likelihood of victimisation by men in households. Resistance to women owning land thus linked to societal expectations of woman's place in the home and society. Faith based institutions and the state are powerful stakeholders in shaping social values, as well as competitors for land globally and in Pacific urban settings.

The discussion will now move in Chapter II to the Pacific and to customary land. As illustrated in Table 1, customary land is the biggest tenure type in the Pacific, hence the focus on it.

Chapter III: Customary Land Tenure in the Pacific

1.0 Introduction

This chapter looks more closely at customary land (also referred to in the literature as native or indigenous land) in the Pacific. There will be a discussion of the concept of ownership, rationale for customary land registration, and drivers and pitfalls of leasing. The chapter will also discuss women's positions within customary tenure, what customary lands means to them, traditional pathways to access land and barriers faced by women.

2.0 Concept of Customary Ownership

Customary land is usually owned collectively by families connected by blood, and there is usually an identifiable representative or representatives of the owning collective (AusAID, 2008). Individual ownership of customary land is legally recognised in only American Samoa and Nauru (Paterson, 2012). There are only a few places in the Pacific where there is no customary land: Tonga, Norfolk Island, and Pitcairn Island. Norfolk Island and Pitcairn Island were apparently unoccupied by indigenous people when Europeans arrived (Paterson, 2001). It is not always obvious to whom a parcel of customary land belongs (Fitzpatrick, 2006).

Customary land is inalienable under the constitutions of many Pacific island nations, and the governance role of traditional (chiefly) authorities over them is respected in legislation (Farran, 2003; Corrin Care, 1999). The protection of customary lands is intimately tied to the preservation of Pacific customs (O'Meara, 1995), which has positive and negative aspects. Customs related to land tenure are very diverse and are not coded in legislation in most Pacific nations, aside from Fiji (Corrin Care, 1999). The Fiji case shows advantages of codifying people's entitlements to land. On the other hand, it is not good to legislate customs that perpetuate inequities and inequality regarding land access. Codifying customs in a multi-cultural context or in a culturally homogenous country inevitably leads to some people and customs being privileged at the expense of others (Banner, 2007). Tonga is an example of where this occurred when it developed its original Constitution 1875.

In regards to customary land, there is a constant struggle between customary authorities and the State, where both act as authoritative validators of custom. On one hand, this does not aid transparency and challenges to social injustices that occur. Farran wrote that legal pluralism in respect of land “offers opportunities to ‘pick and mix’ legal responses or develop new hybrid legal forms, and presents potential obstacles to those seeking to use land in new ways or harness its resources for development.” (Farran, 2011, p. 65).

Legal pluralism exists in the Pacific, where rules of custom and statutory law are navigated to determine and protect land rights (Farran, 2003). Over time, the State has become the decider of who holds customary ownership of land among disputing parties, yet it is not the prescriber of custom or the owner of the land itself (King and Langdon, 1995). As a result, the enforcement of law is affected by political and economic interest, some of which are new to certain communities such as gender equality. The inconsistencies that occur in the pluralistic legal context is not unique to the Pacific, but occur elsewhere in the world where there is customary land (Rakodi, 2014; Lamour, 2002).

Notions of common good and shared benefits are expressed in association with the uses of customary land (Bishop, 1997; Tui Atua, 2008; Nelson, 2008; Trask, 1993). This was certainly the case when the global financial crisis hit in 2008, and access to customary land became crucial to peoples’ livelihoods and resilience (Feeney, 2010). However, indigenous Pacific societies are stratified, hence rights, benefits, and control of land are not spread equitably across gender or rank. Historically, some rulers and land owning elites were quite oppressive. In Hawaii, Fiji, Tahiti and Tonga, the common people were often reliant on the goodwill of rulers for land, in return for labour and other obligatory services. Land tenure reforms in Hawaii and Tonga that began in the 1800s were partly driven by efforts by the governing parties to weaken the powers of indigenous elites, and distribute land ownership to the lower classes (Banner, 2007). Land reforms, however, did not always improve the situations of those already marginalised. In 21st Century Pacific, there are still inequities in land tenure that are justified, upheld, or tolerated because they are claimed as identifiers of a particular society or culture (Crocombe, 2008).

3.0 What is the Meaning of Customary Land to Pacific Women?

The literature shows that views on the significance of customary/native land, and positions of women in relation to it vary, are diverse, and change over time. They have been and are influenced by key factors such as custom, colonisation, trade commodification, and urbanisation. The following are examples from the Pacific to illustrate these varying perceptions of the significance of land.

(i) Fiji

Fijians saw the lands of its people as components of a *vanua* and believed that the gods lived in the depth of the land and the sea. Any breach of norms was interpreted as a breach against the *vanua* and offenders were punished....Fijian customs and traditions were linked to the land, and religious ceremonies and rituals were for the gods of the land. Because only men performed leading roles in such functions, their status and, consequently, their rights to land, were confirmed. (Bolabola, 1986, p. 2)

The traditional low status of women regarding native land changed with the introduction of laws related to property ownership and native land, under which women became registered owners of native land, based on birthright usually through their father's line, and as members of their *mataqali*⁸. Some women also became owners of freehold land or Crown land in urban areas (Bolabola, 1986).

(ii) Vanuatu

Land holds symbolic significance as a refuge, provider, and spiritual resting place. A women's representative Leisara Kalotiti of the Mangaliliu and Lelema people referred to the land as 'mama graon'. She said that mama graon was where people slept, got fed, died and were buried (Vanuatu Daily Post, 2012).

In the old days, land was acquired and defended through fighting, in which women did not take an active part in, and it is only since European settlement and the end of fighting, plus recent changes in education, that women have been considered eligible for a wider range of responsibilities....Land is integral to the life of every ni-Vanuatu. It is a most valued resource since, through it, a person derives not only sustenance but also social prestige and a measure of control, or power. (Kenneth and Silas, 1986, p. 69)

⁸ "native owners" means the *mataqali* or other division or subdivision of the natives having the customary right to occupy and use any native lands; (Fiji Native Land Act, Cap 133; retrieved 26/6/2016 from http://www.paclii.org/fj/legis/consol_act_OK/nla131/)

A woman in a matrilineal community may inherit land through her mother. In a patrilineal society, it is through her father. A single woman in a patrilineal culture may have freedom to use her father's land but may lose these rights once she is married and expected to source land through her husband. Any ongoing rights to her parents' lands will depend on customs and good relationships (Kenneth & Silas, 1986).

(iii) Cook Islands

Colonisation significantly affected women's status and their perceptions of land. Customary land rights were historically patriarchal with a few exceptions. This began to change when missionaries from the London Missionary Society converted Cook Islanders to Christianity, and intervened specifically to place women, who were their main converts, in positions of status in the church and as *ariki* (paramount chief) within the cultural hierarchy. For example, missionaries became established in Rarotonga in 1823. By 1887, five of the six *ariki* were held by women. During those times, the land was held under chiefly rule with *ariki* holding the paramount authority over land (James, 1986).

This was not, however, the case in all of the islands. In Mangaia, patriarchal traditions still operate. Land continues to be passed on or inherited through the male line. If a family line dies or they leave the island, the *kavana* (district chief) can reallocate the land the family occupied to other residents who need it (James, 1986, p. 113-114).

As land became valuable economically due to trading and cash cropping, *ariki* and others recognised benefits of land beyond subsistence, and began to hold and accumulate lands for themselves, as opposed to managing it for communal use according to tradition.

When the Land Court was established in the Cook Islands, the associated land laws legitimated the new practice of women inheriting customary land equally with men and not the historical custom of patrilineal inheritance (James, 1986). Over time, women became dominant in land dealings, "they are not only present but they do most of the talking. In many cases also the chairman is a woman...A wife may even attend a meeting of her husband's groups, voice her opinion and vote, as long as she has been granted power of attorney." (James, 1986, p. 121-122). In addition, more women became *tumu korero* (holder of oral traditions and genealogical knowledge in a tribe), a

specialist role that was traditionally held by men. Land ownership became important to lifting women's status, and conversely removed the priority position men held. Consequently, men turned more to paid employment and business success for alternative avenues for status.

(iv) Samoa

The significance of land to Samoan women differs depending on where they are positioned in relation to the land owning unit - as blood kin or non-kin, as a child/heir/sister to the natal family. According to Fana'afi, the daughter of the *aiga* with land was not traditionally expected to cultivate the land but was involved in planting medicinal and other plants for weaving and craft making. If this daughter married and left her natal lands, her rights remained and thus provided a backup for her should she return as a widow or divorcee (Fana'afi, 1986, p. 104). The Samoan woman who is the in-law, by comparison, has a very different status. She only has rights through her husband during their relationship. If her husband is not a family *matai*, her role is to help him in the plantation to weed, harvest, cook and serve food, and support him in other duties. Unlike her husband's sister, the in-law is expected to work the land with him (Fana'afi, 1986, p. 105).

(v) Marshall Islands

In the Marshall Islands where matrilineal inheritance has been the predominant succession pathway, urbanisation has contributed to a shift from traditions of land distribution for communal good, to preservation of self-interest. On Manjuro, the main urban centre of Marshall Islands:

Crowding has also meant increased competition for land and resulting spikes in land values. Those sitting in the titleholder positions of *iroojlaplap*, *iroojedik*, *alap* and senior *ri jermal* can derive significant benefits from their property, including rental incomes from commercial leases and roof tax payments (*barwoj*) from private individuals and families. Chiefs receive, in addition, annual tributes of food and good (*ejek* or *ekkan*). In modern Majuro's principally cash-based economy, money has become a driving force in the way that titleholders reap and redistribute benefits associated with the land, with many people taking a more individualistic, ownership approach to land management. As one Majuro landowner so baldly put it, "There are no more *alaps* of the land, only *alaps* of money. (Stege, 2008, p. 20)

Disputes between landowners and non-kin tenants, the extended kin network, nuclear families, chiefs and commoners keep the courts busy, and reflect the weakening of customary dispute mechanisms for land disputes (Stege, 2008).

4.0 Development Imperatives and Challenges in Pacific Urban Towns

4.1 Land Registration

Land registration was thus a policy that extended the reach of the State into customary assets (Lamour, 2002). Banner suggested that governments encouraged land registration during colonisation to eradicate complex indigenous property systems and bring customary land into the real estate market to be sold as freehold parcels. Freehold land could then be purchased by foreign settlers and investors (Banner, 2007). In the case of Melanesia, officials for the British Colonial Office, and foreign consultants from Britain, Australia, and the United States contracted to shape land legislation were mostly white men (Lamour, 2002, p. 159). Land registration in the Pacific is thus associated with a history of exploitation of indigenous peoples, and foreign property ownership concepts.

Larmour talked about the evolutionary theory of land tenure that underpinned land titling schemes in Africa, Asia and parts of the Pacific (Lamour, 2002). The evolution is essentially the transition of customary or indigenous land from being an unregistered collectively owned asset with associated rights for owners; to formalised rights and individualised titling of land. The evolution was a response to population pressure and commercialization. Governments hoped that titling would provide certainty of ownership and reduce disputes. Titling would also enable other economic activity and benefits as people become more willing to invest in land, or sell their interest in land to others who may wish to use it. Governments, in turn, would be able to tax land transactions and earnings from other economic activities that follow (Lamour, 2002, p. 154).

Compulsory registration was pursued in some British colonies and protectorates during colonisation (e.g Fiji, Kiribati, Tuvalu), but not in all of them (Paterson, 2012). Early attempts by the British Colonial Office to develop customary land registration in PNG, Solomon Islands, and Vanuatu prior to their independence, were engineered by the same group of non-indigenous officials who worked in Sudan and Kenya to get customary land registered (Larmour, 2002). Attempts to transpose elements of the registration

system applied in Kenya to PNG, Solomon Islands, and Vanuatu, received much local opposition and were rejected. In Melanesia, help to oppose the transposition of frameworks from Africa came from local NGOs, students, communities, and influential non-indigenous advocates from academia. The academic advocates engaged indigenous people in research, training, and together produced publications and alternative advice (Larmour, 2002).

Land titling posed problems for women because it requires resources, knowledge and influence, hence “registration tended to favour the rich, well educated, well connected and male.” (Lamour, 2002, p. 154). When land titling and registration was promoted in Africa, it legalised existing gender biased tenure practices, such as registering ownership only to the head of the family which was usually a man. For example, in Zimbabwe, titling effort resulted in 98% of titles for farming and grazing land being held by men. Women’s customary use or any subsidiary rights were not specified in the titles (International Housing Coalition, 2011).

Fiji leads in customary land registration because it was systematically done from the early 1900s (Fingleton, 2008). The Cook Islands follows behind Fiji (Pascht, 2011). Voluntary registration exists in American Samoa. Elsewhere in the Pacific, the majority of customary land is not yet surveyed or registered (Paterson, 2012; Farran, 2011). State efforts to require registration have almost been abandoned, as in Niue (about 10% of customary land is registered), PNG, and Solomon Islands (about five percent is registered) (Paterson, 2012).

Some of the reasons for peoples’ reluctance to register customary land are anxiety around alienation, government acquisition, and taxation (Paterson, 2012; Farran 2011; Larmour, 2002). The lack of registration means ownership and boundaries become common areas of conflict (Sapolu, 2011; Paterson, 2001). In the absence of formal records, Pacific people recite oral histories that include genealogy and physical landmarks, to substantiate their relationship with the land and associated rights (Farran, 2010). There are often multiple claims and different versions of the truth (Sapolu, 2011). The strength of oral histories without corroborative evidence in 21st Century Pacific is weak and those with the undocumented knowledge have already or will soon have died.

One of the reasons why big countries in Melanesia allowed sporadic registration was a lack of State capacity and resource (Larmour, 2002). Paterson wrote that across Melanesia, the limited number of government authorities established to handle land disputes at localities were sparsely resourced, only at limited centres, and some eventually closed due to inadequate funding. There are also issues with conflicts of interest for people who are authorised to determine land disputes, not only in small countries like Tuvalu and Kiribati, but also in larger countries like Solomon Islands (Paterson, 2001).

The evolutionary theory involves many assumptions that did not always occur, such as the willingness of people to use land to borrow, willingness of banks to lend, and the existence of worthy investment opportunities. Consequently, the economic benefits expected of land titling have not delivered for governments in the Pacific compared with other parts of the world (Larmour, 2002).

4.2 Land Availability

Land availability and fertility are affected by climate change. Volcanic eruptions led to whole island populations being resettled in other islands in their country, as in Tonga and Northern Marianas. In other places, people have moved inland to safer locations from the sea, or to seek alternative space as the sea encroaches into living and planting space (Connell, 2012).

Land availability is also affected by population increase. Aside from the Melanesia group, most Pacific nations have small land masses, with numerous scattered islands. As communities grow beyond the capacity of their land, as in Kiribati, Tuvalu, and Tokelau; people have been moved by and resettled in other Pacific countries (Connell, 2012). The following table indicates the population density comparison for a number of Pacific Island countries (PIC).

Table 2: *Pacific Island Countries Estimate Population Size and Population Density, 2014*

Country	Population Size ('000)	Land Area (sqkm)	Population Density (per/sqkm)
PNG	7,587.2	462,840	16
Fiji	847.6	18,273	46
Solomon Islands	611.5	30,407	20
Vanuatu	271.1	12,281	22
Samoa	190.7	2,935	65
Kiribati	111.2	811	137
Tonga	104.2	650	160

FSM	102.8	701	147
Marshall Islands	53.8	181	297
Palau	17.7	444	40
Cook Islands	15.0	237	63
Tuvalu	11.0	26	424
Nauru	10.6	21	504
Niue	1.6	259	6
Tokelau	1.2	12	100

(United Nations Population Fund Pacific Sub-Regional Office, 2014, p. 4)

Populations are more concentrated in urban settings, so density would be significantly higher than the figures in the above table. Rakodi wrote about the importance of urban women having secure access to arable land, especially for food security and cropping (Rakodi, 2014). Access to arable land is clearly urgent in small land masses like Tuvalu and Nauru, where there is very high population density and little arable land. Large masses of land in the Pacific are forest and bush, as in PNG and Solomon Islands, so are not classified in the above table as arable and permanently used for cropping (PIFS, 2001).

The lack of available land has caused challenges to the rights and entitlements of absentee owners who have permanently settled overseas (Harter Kennedy, 2012; Fingleton, 2008; Levi & Boydell, 2003; Paterson, 2001).

4.3 Land Leasing

In the Pacific, leases vary in duration from 20 + 20 years for residential leases, 30 + 30 for tourism, and 50, 75, and 99 year leases (Boydell et al, 2007, p. 39). Long-term leases are possible in Tonga subject to Cabinet approval. The length of leases matters if people wish to invest in the land to develop businesses, grow wealth, and move beyond subsistence living (USP, 1986). Long-term and perpetual leases can be controversial as they deprive custom owners of the use of their natural resource. Some have argued that leases of more than fifty years equate to land alienation (Tagata Pasifika, 2009).

Most of the Pacific island nations are dependent on foreign aid, and loans from financial institutions. International finance institutions including the Asian Development Bank, The World Bank, and countries like China, Japan, Australia, New Zealand, and the European Union, are involved in funding and engineering development programmes. Financial support comes with expectations that must be met in order for the nations to continue to receive support (McMurdo and Gardner, 2011). A historical example was the requirement by The World Bank for PNG in the late 1990s to develop a legislative

framework for registering customary land (Larmour, 2002). The development of legal and administrative frameworks to enable the leasing of customary land to support the development of the private sector may be another (ADB, 2013; ADB, 2009; AusAID, 2008). For example, Vanuatu has been engaged in implementing the Land Sector Framework 2009-2018 with support by AusAID and NZAID (Vanuatu Ministry of Lands & Natural Resources, 2009).

An important lesson from the global arena about registering customary land is that it took away what informal access and rights women had (Grabe et al, 2015). Developing countries have become exploited by powerful stakeholders due to both weak land laws and poor monitoring of compliance (Oxfam, 2012). Development programmes that involve the leasing of large masses of lands, funded by The World Bank, resulted in multiple complaints to the institution due to the alienation of people from their life source, poverty, corruption, human rights abuses, and environmental destruction (Oxfam, 2012).

The leases of natural resources extend to ocean areas where local communities have rights or claim to have customary rights. These developments are linked to The World Bank's investments in the Pacific (The World Bank, n.d). For example, in 2011 the Canadian mining company Nautilus Mineral obtained the PNG government's permission to explore the sea about 30 kilometers from land for gold, copper and other minerals. The project was opposed by the local community because of the potential risks to food security and general livelihood. The project was later put on hold for financial and other contractual reasons but not because of community concerns (World News Australia, 2012). In 2015, the PNG government granted approval for the mining to proceed, which set a precedent for under-sea mining in the Pacific (Radio Australia, 2015). Other countries (Fiji, Solomon Islands, Tonga and Vanuatu) have granted exploration permits for deep sea mining (The World Bank, n.d).

5.0 Processes to Access Land Under Custom

As Farran suggested, "the way in which land holding is governed influences rights of ownership, management, use and benefit" (2005, p.133). The literature indicates key areas that affect access and rights to land which I will now discuss.

5.1 Succession and Inheritance

A Pacific person could have multiple entitlements to customary land if genealogy is traced beyond grandparents to great grandparents, and so on (Tiffany, 1975).

Succession is via birth right and determined by custom through patrilineal, matrilineal lines, or in some cases through both. In Melanesia, rights usually come through the patrilineal line, although there are communities where it is through matrilineal lines in PNG, Solomon Islands, and Vanuatu (Steger et al, 2008; Koian, n.d). In Micronesia, rights can also be transferred through matrilineal and patrilineal lines although there are areas where it is solely patrilineal (Paterson, 2012). In the Marshall Islands, the authority of women over land is strong compared to many other places where matrilineal transfer of land is practised (Jalal, 2010). The term matrilineal does not necessarily identify who controls the land, only the pathway of transfer of rights. The power that women exercise over land in matrilineal areas can therefore vary between families.

In 21st Century Pacific, women's land rights have been eroded due to the exploitation of customs. In some other matrilineal societies, women only have the right to access and use land, but have no direct role in the management of it (Naupo & Simo, 2008; Nelson, 2008). The literature shows examples of land dealings between custom owner and government and multinationals, where women have been excluded in Vanuatu, Solomon Islands (Steger et al, 2008) and PNG (Anderson & Lee, 2010). These acts of exploitation then affect the inheritance of future generations.

5.2 Chiefly Authority

The biggest hurdle for women in the Pacific and elsewhere in the world, is that decision making regarding land access and control have traditionally been the role of men according to custom through chiefly positions (Oxfam, 2012; Monson, 2011; Steger et al, 2008). Aside from Nauru, all other nations and territories with customary lands have chiefs and advisers whose roles include the determining of rights for their people to land (Paterson, 2012). The lack of chiefly status for women directly limits their ability to influence strategic decisions concerning their customary lands.

Women are less likely than men to have formal land titles and often have no say in major decisions taken by the head of household. Not only are they in a weaker position to bargain with government authorities or investors, but they are less likely to be invited to participate in negotiations. (Oxfam, 2012, p. 6).

There are many different chiefly systems through the Pacific. For the purposes of this thesis, I will focus on women's positions in the chiefly *matai* system in Samoa, and the connection of *matai* authority to land.

5.3 Speaking Rights and Representation

There are inherent inequities in speaking rights traditions as these clash with principles of freedom of expression, political participation, and various civil rights guaranteed in different Pacific countries. However, gendered speaking rights and protocols of representation per se are not unique to Pacific customs, and operate in political forums in western democratic societies like New Zealand.

In the political forums of the Samoan village council, only a *matai* of the village can sit in the village's *matai fono*, a *matai* from another village does not have automatic membership in that *fono*. Observers can be permitted on special occasions (Tiffany, 1975), and the meetings are often conducted in relatively public village property so the process is relatively transparent. Samoa has the added benefit of being a small enough country with fewer and easily accessed islands. If public forums are held in Samoa, it is reasonably convenient to get there. This is not the case in other Pacific countries with larger land masses and far located islands elsewhere, making distance a barrier to political engagement and transparency.

Elsewhere, the lack of speaking rights for women has meant total exclusion from participation in land matters. Monson provided an example from Vanuatu where male leaders represented their landowning tribes. Speaking rights or 'ability to talk' were allocated to these men according to custom in their symbolic roles as protectors. The ability to talk became more exclusive to men who had the ability to read, speak and write English. Because women were often less educated than men, it was men who negotiated and managed land transactions. Some customs go as far as dictating women's exclusion from such discussions. These practices have been adopted by the State legal system as 'custom', thereby preserving male privilege over the control of customary land (Monson, 2010).

One of the lessons regarding women's interest being represented by a person on the title, is that some of these title holders then assumed authority and made decisions that were not solely theirs to make, and reaped more of the benefits from land leases and

sales than the rest of the custom owners including women (Monson, 2011; Stege et al, 2008).

5.4 Residence and Service

Urbanisation often means that people move away from their original lands and villages (Crocombe, 2008). The migrant's land rights and those of their future generations to lands left behind become affected. Landlessness for these migrant settlers is growing as a result (ADB, 2012);

...one of the most vulnerable groups in society were those identified as having only limited access to land. This group might include those who have moved into a village from elsewhere or those who have migrated to an urban centre where they might only have access to a very small plot of land.

The corollary of this is that those who do have access to traditional land are in many ways more protected against vulnerability, especially as regards to their food security and their potential to grow and sell produce for cash. (United Nations Development Programme, 2014, p. 41)

Widows, abandoned wives/partners, victims of family violence, and urban women who have lost connections with home lands, as well as access and other rights to their husband or partner's lands, are also vulnerable (Farran, 2005).

Being an heir to customary land does not guarantee perpetual access or other rights, particularly in light of increased population. Heirs including holders of chiefly titles, who live away from their home lands ensure their presence is felt through remittances and other in-kind contributions to family (So'o & Fraenkel, 2005). "Some do so with the explicit purpose of keeping open their rights to land in case they should wish to return, and in some situations because of the increased monetary value of land." (Ward and Kingdon, 1995, p. 52).

The risks of losing customary land rights is worse for people who live overseas. The populations of Niueans, Cook Islands Māori, and Tokelauans who live overseas far exceed the populations of the island nations themselves (NZ Department of Statistics, 2013). It is estimated that over 90% of Niuean (Levi & Boydell, 2003) and Cook Islanders actually live overseas (Crocombe, 2008; Fingleton, 2008). The high number indicates a permanent absence from the islands, and generations of overseas born and raised kin.

In Samoa, kinship was traditionally the basis of access to land, family support, and other resources (Meleisea 1987). In return, individuals were expected to serve the *matai* of the family through the provision of goods, labour and other services, that the *matai* could then distribute to others or use on behalf of the *aiga*/family (Macpherson, 1999). The study by Thornton and colleagues found a link between urban landlessness, and disconnection from original villages and churches due to financial demands (Thornton, et al, 2010). Once re-settled in urban centres, migrants ceased contributions back to their family chief/*matai*, churches and villages; this ultimately weakened ties to customary lands in the original villages. Some of these people consequently leased lands from churches to settle on and or grow crops (Thornton et al, 2010).

Over time, weak connections back to kin and lands develop into a division between kin who are insiders and those who are outsiders to the land. “While it would be impolite to cancel legal rights of absent clan members, most realize that there is competition for land at home and do not try to exercise such rights. Many who do are made so unwelcome that they move out again.” (Crocombe, 2008, p. 287).

Absentee owners who live overseas can at times be seen to obstruct development aimed to better the lives of kin and communities in the islands. For example, Cook Islands laws require that all land owners (hence including overseas based) are to be consulted about decision concerning their lands. The challenges this raises and the opposition from overseas kin to their lands being leased off has resulted in a lot of idle land and stifled economic programmes in the country (Fingleton, 2008). Niuean locals have also experienced frustration with overseas based kin, who are seen to impede local development aspirations (Levi & Boydell, 2003).

5.5 Statutory Mechanisms

Different State mechanisms exist in the Pacific for addressing customary land disputes. These include special courts (Kiribati, Tuvalu, Samoa); ordinary courts (American Samoa; Cook Islands; Niue); ministerially appointed commissioners (Fiji); tribunals appointed by chiefs (Vanuatu); and Cabinet appointed committees as in Nauru (Paterson, 2012).

The Samoa Land and Titles Court deals with disputes over customary land and chiefly titles, and an heir to specific land and titles can file a complaint or petition to the Court.

Appeals against decisions made at the Land and Titles Court can only be addressed at the Samoa Supreme Court.

Historically, the number of disputes over lands and titles that went to the Court were significant (Tiffany, 1975; Meleisea, 1987). Concerns arose that the Court was overtaking traditional authority/*pule* of *matai* within families to resolve disputes over these customary assets (Ward and Kingdon, 1995). On the other hand, Samoa's Constitution 2009 (Rev) guarantees equal rights to all citizens, and the State has a duty to uphold rights where these have been violated or denied in the application of custom.

The Land and Titles Court is the busiest court in Samoa, but the majority (around 72%) of all customary land disputes filed at the Land and Titles Court are resolved by mediation and not through hearings (Sapolu, 2011). The Land and Titles Court encourages *aiga* to apply Samoan conciliation under s34 of the Land and Titles Act 1981. Samoan conciliation is commonly known as *soālaupule*. Samoan conciliation is defined in the Land and Titles Act 1981 to mean

the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement and in which the Registrar may make suggestions for terms of settlement and may actively encourage the participants to reach an agreement which accords with Samoan custom and usage and the requirements of this Act. (Land and Titles Act 1981)

Most complaints and petitions are referred by the Registrar to mediation, unless it is apparent that proceeding to hearing was the only way forward. Section 34C(1) of the Land and Titles Act 1981 states that “The Court shall refuse to hear a matter if the parties to that matter have not undertaken Samoan conciliation”. Considering traditional decision making is dominated by *matai* who are mostly men, it remains to be seen if the push back from the Court is better or worse for women in land disputes.

6.0 Leading Models of Customary Tenure

Unlike other parts of the world, women's rights in the Pacific to customary land are not automatically relinquished when they leave their natal lands, but absence and relational detachment with lands can affect future access. While countries around the world are considering the merits of equal land ownership between men and women, examples

already exist in the Pacific. The challenge for women is how to secure their benefits and rights (Monson, 2011; Bruce et al, 2006; Farran, 2011). Good examples of how this can be done are found in Fiji, the Cook Islands, Vanuatu, and Samoa.

Fiji is the only Pacific country where the State manages the leases of customary lands according to the Native Land Trust Act 1940, by the Native Land Trust Board (NLTB). All customary land in the country is registered, and so are the associated custom owners. The owner register is regularly updated from the official birth and death register. The NLTB negotiates the land deals (leases) and addresses any post-deal concerns with landowners and leaseholders, as opposed to the two parties dealing directly with each other. The NLTB manages but does not own the lands. The lands leased are those that are unoccupied by custom owners (Fingleton, 2008). This approach freed up unused land for economic and social development. The distribution schedule for rents previously privileged the customary chiefs. The law was later amended to direct that lease proceeds (minus NLTB costs) be distributed to "all the living members of the proprietary unit, in equal proportion" in the Native Land Trust (Leases and Licences) (Amendment) Regulations 2010 (Fiji Islands Government, 2010). The change in policy was far more equitable, especially for women.

The Cook Islands also has legislation that attempts to shift power over land to the people, away from the traditional dominance of chiefly authority as is common elsewhere. The Land (Facilitation of Dealing) Act 1970 prescribes a number of key requirements, such as notice to owners, what substitutes a quorum, keeping of meeting records, proxy appointments, annual meetings, keeping of audited accounts, and reporting to owners. This type of legislation strengthens peoples' bargaining power at decision making, especially women, beyond the rhetoric of equality. The downside is that it takes longer to reach agreement on land issues, and associated costs for consultation must be significant considering far more Cook Islands people live overseas. Nevertheless, the Cook Islands legislation is a leading model (Paterson, 2001).

In Vanuatu, the historical injustices done to women over land dealings has been recognised by the State, customary authorities, and influential donors. Women's customary rights and roles over customary land have thus been reaffirmed in the National Land Sector Framework 2009 – 2018 (LSF), a comprehensive programme of action co-designed and funded by AusAID. The four guiding principles of this framework refer to equity, the protection of disadvantaged and vulnerable groups, and

gender responsiveness. One of the key activities of the LSF is to “Ensure access and tenure security for all groups” (LSF, p.26) which is crucial for urban women and others living in insecure situations. The related activity for the 2014 – 2018 block is to ‘Secure land rights of informal settlers through stabilisation and regulatory measures’, and “Continue initiative to protect the rights of vulnerable groups’ (Vanuatu Ministry of Land & Natural Resources, 2009; p.26).

7.0 Summary

Customary land is a private asset that serves the common good of its owners. Most constitutions in the Pacific do not permit the sale of customary land, even between people of the same ethnicity. The majority of customary land is unregistered, and attempts by governments to encourage registration have failed.

Women’s customary authority over land varies between matrilineal, patrilineal, and patrilocal communities. Indigenous women have a deep connection with customary land as guardians, heirs, and beneficiaries of its wealth. Traditional pathways to access and secure rights to customary land are dominated by cultural authorities that are male dominated in terms of speaking rights and participation. Women’s traditional entitlements to land have also been eroded by the selective promotion of Biblical teachings that marginalise the political status of women in families and communities, which consequently eroded influence in land management.

Urban based women do not necessarily live on their customary lands, and absence from natal lands may weaken claims to it in future. Women who do not live on their natal lands face challenges with lease affordability and land availability. Despite these challenges, women are active in different parts of the Pacific to reclaim their traditional leadership status over land, and influence policy development to secure their interests.

I will now discuss the research design in Chapter IV.

Chapter IV: Research Design

1.0 Introduction

In this chapter, I consider the concept of reflexivity and make explicit my thinking about and application of methodology, methods, ethics and analysis.

Gibbs said that reflexivity flows through methodological considerations, methods, analysis, to the dissemination of research. He described reflexive research as one that involves “the recognition that the product of research inevitably reflects some of the background, milieu and predilections of the researcher... The qualitative researcher, like all other researchers cannot claim to be an objective, authoritative, politically neutral observer standing outside and above the text of their research report.” (Gibbs, 2007, p. 92).

Denzin’s views on reflexive research led on notions of researcher accountability and exercise of reciprocity to communities (Denzin, 2001). Accountability and reciprocity to the researched are core relational principles that are also emphasised in feminist research, and by Pacific indigenous scholars (Gibbs, 2007; Smith, 2012; Vaioleti, 2006). Vaioleti talked about community expectations that arise when they are engaged in research:

The effect of reciprocity is such that when people give koloa (in this case, time and knowledge) they will expect it to be respected and honoured, and to be used well. Developments will be followed with interest. Because of the relationship that has been developed, quality will be added to the research. The researcher will not want to let down participants with whom he or she has developed a relationship. (Vaioleti, 2006, p.26)

The design of my research was thus influenced by my personal principles about human relationships, and a wish to produce a thesis that could be of useful on a topic that matters greatly to Pacific people, that of land. Based on my beliefs in social justice, the product of my reflexive research would also illuminate on views and issues that may be confronting to different sections of my communities of interest. While thinking this, I had to keep my aspirations in check in light of Hawkesworthy’s caution about researchers pursuing a ‘missionary fantasy’ (Wolf, 1996, p. 26 in Hawkesworthy, 2006, p. 77), which is that my thesis would actually empower anyone.

2.0 Methodology

A number of research methodologies initially appeared relevant. I chose methodologies that best fit my values, the gendered aspects of my research, and Pacific people's ways of being.

Needs from a methodology:

- To provide a research foundation for meaningful engagement with Pacific people, women, *fa'afafine* and *fakaleitī*
- To take account of the cultural contexts of urban Samoa, Tonga, and Auckland New Zealand
- To incorporate diversity - cultural, gender, class, sexuality, economic, political diversity within gender groups
- To critique oppression, dominant perspectives, customs, ask 'why' and 'what else'.
- To help to understand situations at individual, community, and system levels
- To be a researcher-participant, not just a collector of data and observations.

The word 'meaningful' includes the use of appropriate language, small talk, and conduct that aligns with Pacific world view and etiquette based on:

- respect – *fa'aaloalo* (Samoa), *faka'apa'apa* (Tongan)
- humility – *loto mauilalo* (Samoa), *lototō* (Tongan); and
- reciprocity – *tausi le va* (Samoa), *tauhi vā* (Tongan)

I will now discuss this methodological exploration with attention to gender and Pacific indigenous methodologies. The final part of this chapter discusses the methodological approach made up of a combination of these methodological worlds.

2.1 Gender

In my ignorance, I initially used the term 'women' to include anyone who identified as a woman, such as *fa'afafine* and *fakaleitī*, who might offer to participate in the study. I submitted my PhD proposal and ethics application to the relevant AUT committees with that wide perception of women in mind. I was humbled in my first interview by a *fa'afafine* who emphasised to me the importance and dignity to *fa'afafine* and *fakaleitī* of being identified in terms that they use to identify themselves. While outwardly

presenting as feminine, not all MtF *fa'afafine* and *fakaleiti* wanted to be described strictly as 'women'. This was one of many 'light bulb' moments in my learning journey.

2.1.1 Critical Feminist Methodology

Feminist methodology developed in the 1960s and 1970s, triggered by the feminist movement. The feminist movement put women's individual experiences, oppression, thoughts, and feelings in the realm of wider social and political constructs. These elevated individual situations to collective social problems that then required political solutions (Ackerly & True, 2010). Feminist methodology lifted the visibility of women's engagement and causes, and challenged research traditions that assumed men's voices reflected women's or simply took it as representative of women (Ramazanoğlu and Holland, 2002; Ackerly and True, 2010). Feminist methodology altered perceptions and purpose of scholarship to the advantage of women, and challenged power structures within them.

Since the first wave of feminist methodology achieved its initial goal of making visible women's voices, oppression, and establishing a place for women's voices in research, this field of knowledge has since diversified. Women's engagement and 'ownership' of research as scholars, participants, and researchers are now common in western contexts. Feminist theories now challenge each other's theoretical positions, including epistemological standpoints. Black feminists criticised early feminist research for focussing on the experiences of white, middle class women while neglecting those of black working class women, and developed new theoretical positions (Bopal, 2010). Age, sexuality, and social class became debated within feminist theory and women's studies (Robinson, 1997 in Archer, 2004). Post Modern Feminist Methodology (PMFM) arose to query the validity of one single standpoint or representation of women, arguing the existence of diversity between women (Leavy, 2007; Hawkesworthy, 2006; Hesse-Biber & Leavy, 2007). The PMFM goes as far as questioning *how* feminist knowledge claims become constituted and established, and abandons the idea that direct connections between experience, knowledge and reality can be achieved through a single feminist standpoint (Ramazanoğlu and Holland, 2002).

Post-colonial feminists also arose to develop feminist theories that better engage the voices and experiences of indigenous women, in the many layers of oppression that they exist in as a result of colonisation. These theories also increase the general visibility of indigenous women in those colonised nations in dominant research discourses (Darrich

and Giles, 2015; Chilisa, 2012). Post-colonial feminist theory has also been applied to address issues that concern migrant women in a particular context (O'Mahony & Donnelly, 2010). There are obvious commonalities between post-colonial feminist theories and the views of Pacific indigenous scholars in regards to (i) the invisibility of Pacific voices in the dominant discourse and, (ii) the need to more critically see and critique power and the status quo in society, and to more specifically address the situation for Pacific people's interests. I will revisit Chilisa's post-colonial feminist methodology and compare it with Pacific indigenous methodologies later in this chapter.

Critical feminist methodology challenges taken for granted norms in society that oppresses women, for the ultimate purpose of empowerment (Gibbs, 2007; Ackerly & True, 2010, Hesse-Biber & Leavy, 2007, Ramazanoğlu and Holland, 2002). Critical feminist epistemology is interested in the relationship between power, gender, and truth, and looks for systemic societal practices that oppress certain groups while privileging others (O'Mahony & Donnelly, 2010). It is a methodology that rejects traditional scientific notions of objectivity, validity, and value free research.

Critical feminist methodology emphasises the importance of research for women by women, and uses a style of feminist enquiry that is characterised by the questioning of commonly accepted beliefs, attitudes, regulations, protocols, or taken for granted truths in society (Hawkesworthy, 2006). "Critical inquiry looks at how the production and presentation of knowledge within a certain ideological foundation sustains existing power relations, and inequities that perpetuate marginalisation" (O'Mahony & Donnelly, 2010).

Hawkesworthy talked about the 'politics of representation' in knowledge creation, and how being represented did not necessarily equate to being counted or achieving social change. Smith talked about the importance of indigenous peoples representing their own voices in research, taking ownership of their knowledge and using it to counter negative views held by the commentators about their lifestyles and belief systems (2012). Otherwise, indigenous women may encounter what Hawkesworthy calls 'evidence blindness', where knowledge of their disadvantage or oppression becomes manipulated by more dominant groups through forms of victim blaming and scapegoating to maintain status quo. This reality is also a reflection of the different levels where women are found in hierarchies of power and influence in society. In the Pacific as elsewhere,

there are women who do not consider themselves oppressed or disadvantaged due to their gender, and some even object to feminism and feminist thought (Griffen, 1989).

Critical feminist methodology and feminist enquiry are very relevant to my study, especially in light of post-colonial feminist methodology. What was missing was a specifically Pacific cultural lens. I wanted this element to methodology because I believed that it would help me get to the truth of matters with Pacific women, *fa'afafine*, and *fakaleiti*. I also believed that the incorporation of Pacific methodology would add authenticity and validity to my conclusions in the eyes of Pacific readers and others (Tuafuti, 2011; Tuhiwai Smith, 2012; Gegeo and Watson-Gegeo, 2001; Vaiioleti, 2006). This provided a good basis upon which to experiment with the merging of critical feminist methodology and Pacific methodologies.

2.1.2 Queer Theory - considered

While I was convinced of the relevance of critical feminist theory to my topic, the inclusion of *fa'afafine* and *fakaleiti* prompted me to look at Queer Theory. I would not consider conducting research with Pacific women without exploring the fit of feminist and Pacific theories, so the same principle applied to my thinking about other participants. I wanted to explore the potential value of Queer Theory to my thesis.

What is 'queer'? The literature showed that this was an umbrella term used to refer to non-heterosexual identities which are homosexual, lesbian, bisexual, transgender and intersex. It indicates affinity and solidarity based on sexual identity so sexual identity is the focus of analysis (Marcus, 2005).

The development of Queer Theory was spurred by the feminist movement in the 1960s and 1970s, and the work of philosophers like Michael Foucault (Callis, 2012). It arose in response to the absent and silenced voices of homosexuals (Marcus, 2005) similar to those of women. Initially, Queer Theory catered only to the voices of homosexuals and did not include other sexual identities such as bisexual and transgender (Namaste, 1994), but this is no longer the case. Other Queer theories have developed such as Queer of Colour (Fergusson, 2004). Queer Theory is said to have later influenced feminist research to shift its focus from women to gender more broadly (Marcus, 2005, p. 195).

Queer research has built a body of knowledge about the relationship between sexual identity and kinship, social reproduction, transmission of property, construction of race and nationality, and other issues (Marcus, 2005, p. 205). This has made more visible the voices, experiences, human rights concerns, and positions of non-heterosexuals in society. For example, a study on kinship found that lesbians and gay men encountered rejection by their parents and siblings who perceived their partnerships as ‘non procreative’ (Weston, 1991, p. 35). Another study found that homosexuality was perceived as a threat to the traditional family structure, and there was a belief that good parenting could prevent children from becoming homosexual (Terry, 1999). Literature from the Pacific region previously reviewed showed that similar perceptions and prejudices also exist there. The profile of same sex marriage and non-heterosexuals raising children has challenged these public prejudices and reiterated calls for equal rights (Marcus, 2005).

The focus on sexuality as the dominant element of identity has resulted in challenges against Queer Theory, by critics who say that it does not adequately recognise other elements such as race and class which may be more central, or as important as sexuality to identity (Callis, 2012). This was a useful critique considering the demarcation of *fakaleiti* due to class in Tonga. From a Pacific indigenous perspective, it also fails to recognise the importance of cultural hierarchy as in Samoa, where *matai* status for a *fa’afafine* or any other queer individual may be more significant to identity than sexuality. In addition to these gaps, I did not find any literature from the Pacific that suggested that sexuality affected peoples’ access and rights to land, but biological sex did. This did not mean that sexuality was not a factor in real life. In light of these insights, I did not see any additional value from Queer Theory for my research, because gender was the primary methodological lens that I needed, not sexuality.

2.2 Pacific Indigenous Methodologies

The history of western style research on Pacific peoples’ epistemologies, ontologies and axiologies, is not positive according to Pacific indigenous scholars (Tuhiwai Smith, 2012; Vaiolleti, 2006; Nabobo-Baba, 2004; Helu Thaman, 2003; Gegeo and Watson-Gegeo, 2001), but is something that is common among colonised populations around the world (Chilisa, 2012). Attempts by Pacific indigenous scholars to achieve respect within the research and academic communities for Pacific methodologies has not been

easy, reflected by the silencing of Pacific knowledge by publishers (Nabobo-Baba, 2004).

Despite this historical resistance, there is a growing visibility of Pacific indigenous paradigms in research publications. While Pacific indigenous methodologies are new in comparison to feminist methodology, phenomenology, grounded theory, and so forth, I became very excited that Pacific epistemology and ways of research were in the pool of respected research knowledge. As a Pacific student I felt encouraged, and academia became an attractive space to be in.

What is Pacific indigenous knowledge? My review of material by Pacific scholars and researchers found that there was no agreed or universal definition of Pacific knowledge or Pacific methodology. There was instead commonality concerning spirituality, connection with to land/place, identity, environment, and relational concepts that include reciprocity, responsibility, and common good in association with methodological frameworks. Fairbairn-Dunlop and Du Plessis describe Pacific indigenous knowledge systems as one that incorporates "technical insights and detailed observations of natural, social and spiritual phenomena, which in turn are used to validate what is important in life – what sustains people and what connects them to particular places and spaces, and is crucial to their identity." (Fairbairn-Dunlop and Du Plessis, 2009, p. 111).

Gegeo and Watson Gegeo provided a definition of Pacific indigenous epistemology as "a cultural group's ways of thinking, creating and reformulating knowledge, using traditional discourses, media of communication, and anchoring the truth of the discourse in culture" (Gegeo and Watson-Gegeo, 2001, p. 493). Fairbairn-Dunlop and Du Plessis held similar views about Pacific knowledge being communally made, sanctioned, shared and used, but added the purpose of common good (2009). Customs, relational protocols, and traditional systems of social justice can be argued to have derived from these epistemological processes.

Tonga and Samoa are independent Polynesian nations where indigenous populations are dominant culturally, politically, socially and economically. My methodology had to be relevant to this context and participants, and I could not assume that existing Pacific indigenous methodologies would automatically fit.

2.2.1 Talanoa – considered

Talanoa is a process, a Pacific concept of verbal face to face engagement. *Talanoa* can be a casual conversation or a formal meeting over more serious matters. While the word *talanoa* is of Polynesian origin, the process exists in different version throughout the Pacific (Vaiotei, 2006; Farrelly and Nabobo-Baba, 2014; Halapua, n.d).

Talanoa was introduced as a Pacific methodological approach by Tongan scholar Timote Vaiotei and a Fijian scholar Sitiveni Halapua around the early 2000s. Halapua described *tala* to mean talking or telling stories, and *noa* to mean “zero or without concealment”. *Talanoa* is a conversation where people engage in frank expression without concealment (Halapua, n.d). Vaiotei provided an explanation for *talanoa* which translates to mean ‘talk about nothing’, but he talks about casual conversations being important to relationship building. The relationship affects the quality of the *talanoa*, and the truthfulness of knowledge developed from it (Vaiotei, 2006).

Talanoa was introduced at a time when Pacific indigenous scholars were developing ways to decolonise western research methodologies. This wave of work was in response to the detrimental effects of western research on Pacific communities, and the limited usefulness of such works on improving the situations of Pacific peoples (Farrelly and Nabobo-Baba, 2014). *Talanoa* is a qualitative approach and was placed by Vaiotei in the phenomenological methodology space. As a methodology, *talanoa*’s point of uniqueness is attributed to the incorporation of emotion, empathetic engagement, and purpose built relationships between the researcher and participants in the research process (Farrelly and Nabobo-Baba, 2014; Suaalii-Sauni and Fulu-Aiolupotea, 2014). Accordingly, it rejects traditional scientific notions of validity, objectivity, and value free research, as Critical Feminist methodology does.

As a research method, *talanoa* is rooted in oral traditions of Pacific peoples and the importance of relationships, so fits well with interviews and focus groups. Information gathering through *talanoa* occurs over a series of engagements (casual, accidental, incidental, formal) as opposed to one or two interviews.

Halapua described the process of *talanoa* as a one that is fundamentally concerned with strengthening relationships that then enable the development of mutual respect and reciprocal learning, reduce tension, and foster stability (Halapua, n.d). Most meaningful relationships do not deepen overnight so an investment in time is needed to build this.

Farrelly and Nabobo-Baba argued that only by having established relatively close connections with participants through residence, prolonged participant observations, trust and mutual understanding, can the researcher hope to work alongside them to produce knowledge that is true (Farrelly and Nabobo-Baba, 2014).

The validity of *talanoa* according to Vaiioleti, begins at the forum as participants talk openly, share emotions, stories, challenge, or legitimate each other's knowledge (2006). Because the structure of *talanoa* is often informal, participants have opportunities to probe, clarify, even change their perspectives as the conversation evolves (Vaiioleti, 2006; Halapua, n.d). *Talanoa* includes silence, hence the importance of presence and understanding of relational protocols. *Talanoa* is not solely reliant on narratives (Farrelly and Nabobo-Baba, 2014).

Halapua has since revised his thoughts on *talanoa* and refers more specifically to *noa* “Both in a theoretical and in a practical sense, storytelling without concealment stresses the paramount importance of *noa*, a narrative condition in which there is a demand that storytellers/listeners detach from any predetermined commitments and preconceived ideas of who (s)he is. It enables the participants to come and develop a sense of belonging together in *noa* without a predetermined agenda. This is the beginning of *talanoa*.” (Halapua, 2013).

Halapua claims that leaving the agenda to the people who are meeting decreases tensions, builds a sense of belonging and joint ownership of the agenda, decisions, and actions that result from *noa* (2013).

While aspects of *talanoa* and *noa* appeal to the way I naturally engaged with Pacific people, methodologically, it had no gender lens. There was also an absence of a detailed critique of power relations within *talanoa* processes, and the relevance of trust produced from it to different people, not just those who were party to the process. Halapua provided examples of the different ways *talanoa* and *noa* were used in leadership forums, conflict resolution, and discussions about democracy, but it is generally known that Pacific governments lag behind the rest of the world in the number of female parliamentarians. Cultural authorities are also dominated by men. In the absence of a gender lens, one could argue that at a strategic level, *talanoa* and *noa* are unquestioned domains for male discourse. This then resembles the situation that spurred feminist

methodology in order to make visible women's voices and causes in western settings, politics, and research.

On a practical level, *talanoa* requires an investment of time and finance that I could not accommodate with my limited resources. While I did not doubt my ability to collect data in both settings using a diluted version of *talanoa*, it would not have been true to the methodology and method as written about by Vaiotele and Halapua. My inability to speak Tongan affected my level of 'knowing' when in conversation with Tongan participants.

2.2.2 Teu le va - considered

From the literature on Pacific indigenous methodologies, I came across an approach called *teu le va* which is derived from Samoan culture. To the ordinary Samoan, the word *teu* encompasses the meanings of prepare, maintain, put in order, amend; *le* (the), *va* – relationship, space. The *va* includes the active relationships between the living and the deceased, between human and the heavens, and the environment; these are all relationships that matter to Pacific people (Tui Atua, 2004). The phrase also encompasses the notion of restoration. *Teu le va* has been developed as a client service concept for Pacific consumers in the New Zealand health sector (Lua, Kapa-Vivian & Elisara, u.n).

Teu le va was proposed by Melani Anae as a Pacific philosophical methodology for use in educational research in New Zealand (2010a). Anae described *teu le va* to mean – 'to cherish, nurse, and take care of' the *va* which means relationship (2010a). The notion of caring relationships is appealing, and Anae certainly advocated that *teu le va* has win-win potential (Anae, 2010b) but in reality this is not quite accurate. For example, *teu* in terms of preparing for a relationship is different from *teu* in terms of repairing or restoring a damaged one.

The concept focuses on the idea of reciprocal relationships within a particular context. It is in the discussion of context that Anae specifically refers to power relations involved in the creation, development and use of knowledge. Anae reflected on the work of Michael Foucault which made visible the domains of power and unequal power relations within institutions, which affected the way individuals in those institutions saw themselves and their identities. Anae drew parallels between Foucault's work on power

in institutions and the context of educational research, where researcher, funder, and policy mixed.

Teu le va was a strategy that Anae advocated to build, maintain and, where necessary, mend relationships between key players in research. This would then raise the possibility that quality and relevant research would be funded, produced, and consequently incorporated into policy to ultimately yield significantly improved educational and social outcomes for Pacific peoples in New Zealand (Anae, 2010a).

Anae argued that *teu le va* was a philosophical research framework that was relevant to different Pacific cultures, because it took account of the relational nature of social relationships in Pacific societies. Anae cited examples from Tongan and Fijian cultures (2010a). While there was no detailed gender or class lens to Anae's in the development of *teu le va*, the relational nature of the approach makes it broadly inclusive.

The value of *teu le va* to my research is the recognition that there are layers of reciprocal relationships and power imbalances in knowledge creation, validation, use, and protection. This is a marked difference between *teu le va*, *talanoa*, *noa* and other previously discussed descriptions of Pacific epistemology and methodology, which indicates the emergence of the next level of critical analysis of Pacific indigenous methodologies by Pacific scholars, as has been seen with feminist methodologies.

Anae's writings on *teu le va* did not, however, extend to a discussion on the opposing concept of *solu le va*, which is the violation of relationships. However, she recognises the element of sacredness and the need to restore this when violated in the research journey. This underlying belief in social justice brings *teu le va* to closer relevance for my research topic.

2.2.3 Comparisons and Commonalities Between Indigenous Methodologies

The exploration of methodologies showed commonalities in motivation and goals between Pacific indigenous methodologies and post-colonial indigenous feminist methodologies. This includes the place of spirituality in ontological, epistemological and axiological considerations.

The following table shows examples of two philosophical perspectives on key elements of indigenous methodology, from Bagele Chilisa (Botswana native, post-colonial indigenous feminist methodologies) and Kabini Sanga (Solomon Islands native, Pacific indigenous methodologies). I critique these perspectives using lenses of other Pacific scholars and the *teu/soli le va* concept.

Table 3: *Comparisons Between Indigenous Methodological Theories*

	Ontology
Sanga	Ontology is based on the assumption that the social world is intangible and internal to people's cognition. Consequently, Pacific people use names, labels, and concepts to describe their reality, experiences and meaning. These expressions are subjective, value laden, time, and context specific. People's explanations would alter as reality and context change. Their descriptions of their reality would vary and become diverse, but continue to hold credibility and mana (Sanga, 2004, p. 44).
Chilisa	Ontology is defined in terms of relational ontology - where the social reality that is being investigated can be understood in relation to connections that humans have with the living and the dead. Among indigenous people in colonized and formerly colonized societies, there are many relations and connections (2012, p. 20). Communalism, collectivity, social justice, human unity, and pluralism are implicit in the principle of relational ontology.
<i>Critique</i>	<p>Chilisa's definition of ontology holds similarities with the concepts of <i>teu le va</i> and <i>soli le va</i>. The relationships between people, land, environment, and the spirit world directly affect perception of social reality.</p> <p>Fairbairn-Dunlop and Du Plessis argued that spirituality was fundamental to Pacific indigenous knowledge systems, and people were connected through responsibility for their environment and to other living things (2009). Samoan indigenous religious beliefs say that land is given by God to <i>matai</i> for the benefit of all family members, present and future, an arrangement that is sacred (Tui Atua, 2008). This belief is accompanied by another about divine justice where violations could result in dire consequences including death.</p> <p>In Samoan culture, the terms <i>tofā</i> (sleep) and <i>moe manatunatu</i> describe the type of sleep during which a <i>matai</i> (family chief) and the spirits are consulting on a matter. This consultation then influences the <i>matai</i>'s contribution to a discussion with those who are alive (Tui Atua, 2004, p. 6).</p> <p><i>Teu le va</i> and <i>soli le va</i> seem implicit in indigenous ontology related to social justice, collectivity, and community harmony. Social reality in the Pacific is now affected by other relationships beyond people and spirits, such as globalisation, the internet, western education, and international human rights conventions that Pacific nations have ratified. The underpinning epistemologies and ontology for these are not indigenous</p>

	Pacific. A description of Pacific ontology may thus need to be reviewed over time as context, stakeholders and cultures evolve.
	Epistemology
Sanga	For Pacific, this is about how people know their reality and communicate it to others. Knowledge is relative and context specific. It may be constructed and communicated through the use of concepts, metaphors and world views. Knowledge is protected and guarded by assigned members of the community who will then disseminate it discreetly to appropriate others. Knowledge is owned and truth is validated by those who construct it (Sanga, 2004, p. 45).
Chilisa	Indigenous epistemology is a <i>relational concept</i> – it is built on relationships among people, with the environment and other living organisms. The stance on the collective construction and ownership of knowledge differs from that under a western research paradigm, where the seeker of knowledge, and or their funder or institution later claims ownership of indigenous knowledge.
<i>Critique</i>	<p>Sanga and Chilisa hold the view that indigenous knowledge is collectively determined, validated and owned, a process of community engagement; a view written about by other Pacific scholars (Gegeo and Watson-Gegeo, 2001). It matters, however, who is involved in the knowledge creation because it often determines who claims ownership of that knowledge. It is important to remember the original holders of indigenous knowledge (Tuhivai Smith, 2012; Gegeo and Watson Gegeo, 2002).</p> <p>Where patriarchy is extreme, where participant selection is unethical, and where elites, including academics, are the ones in charge of determining truth, there must be space for other voices, such as marginalised women and the transgendered. It also matters what knowledge is validated. For example, statistics may carry more weight than people's stories of their experiences or views of what is important or their truth.</p> <p>Fulfilling the definition of indigenous epistemology is aspirational for academic research such as this PhD. For example, while the methods used to collect knowledge with indigenous people support inclusiveness and genuine engagement of participants, it is the researcher's name that ideas and references are attributed to, not the participants or their communities i.e. the source of the ideas.</p> <p>The unstated assumption that research on indigenous people by indigenous people would result in better research outcomes is also guaranteed. As Helu Thaman (2003), Vaiolleti (2006) and other scholars have cautioned, Pacific academics have all been trained with western epistemologies and research methodologies (2003) so are likely to research through those lenses.</p> <p>Careful use of consent, privacy, and confidentiality may lessen the silencing of oppressed voices. The assumption that participants should be protected may not be their perspective should they be striving to be heard, understood, counted and have ideas and knowledge they have contributed</p>

	<p>attributed to them – this way, there can be a degree of ownership by participants of their knowledge. In small communities of the Pacific, it is best not to pretend that people will not know who is involved in research. In fact, the declaration of networks can sometimes indicate the researcher’s influence and suggest significance.</p>
	<p>Axiology</p>
Sanga	<p>Research is value bound – values of the researcher, participants, and the methodology applied. Consequently, its findings may hold multiple truths, are contestable, affected by time and context (Sanga, 2004, p. 46-47).</p>
Chilisa	<p>Is a relational axiology that is built on the concept made up of the four Rs.</p> <p>Relational accountability - all parts of the research process are related and the researcher is accountable to all relations.</p> <p>Respectful representation - how the researcher conducts herself/himself during engagement with participants and their knowledge systems</p> <p>Reciprocal appropriation - all research is appropriation. The researcher and the researched or their communities should benefit.</p> <p>Rights and regulations – the need to adhere to ethical protocols that accord the colonised and the marginalized, ownership of the research process and the knowledge produced (Chilisa, 2012, p. 20-22).</p>
<i>Critique</i>	<p>Relational axiology parallels the notions of peace and harmony. The principle of harmony is reiterated in the Pacific Plan’s Vision statement which states “Leaders believe the Pacific region can, should and will be a region of peace, harmony, security and economic prosperity...” (Pacific Island Forum Secretariat, 2007, p.2). Acts through research that cause disharmony, including publishing material that may be harmful to participants after the research has been conducted, must be addressed.</p> <p>Relationships are highly valued in Pacific research. The quality of relationships affects the whole study, including approval from communities of interest, access to participants, safety of people, research integrity, quality of information, and the usefulness of the work for potential users.</p> <p>A violation of human dignity, rights, or personal assets caused by the researcher to the participant, even if unintentional, must be acknowledged and addressed by the researcher or the university. The researcher must find ways to ensure that participants or participating countries continue to be valued and respected after the research is completed and findings and disseminated. The ethical use of the knowledge created is one way of maintaining relational accountability, representation, and appropriation. The process of <i>teu le va</i> continues post the research, in whatever forms are meaningful. If there is no redress for a breach of values, unresolved feelings of exploitation and grief by participants may well affect future research with their communities.</p>

This feminist-indigenous-*va* critique provided a good foundation for my thinking about a methodological approach. I decided to experiment with a combined *Va-Critical Feminist* methodology.

For the purposes of this thesis, the *Va-Critical Feminist* methodology will address these things:

Goal – empowerment of women, fa’afafine and fakaleitī

The history of marginalisation is part of the baggage that *Va* (*teu le va* and *solī le va*) brings to the surface. The *va* directs researchers not only to understand, to see, but to do something about the injustices it brings to the surface. *Va* implicitly incorporates notions of restoration and social justice.

Critical analysis of the va or connections between power, gender, culture, and epistemology within important relationships from a social justice perspective

Within any *va* there are positions, responsibilities, obligations, as well as status and power. All of these are important in Tongan and Samoan cultures in relation to land according to literature discussed in chapters IV and V. In Tonga, important *va* are: father-eldest son, husband-wife, widows-children, Noble estate owner-individual, individual-government, King-Noble. In Samoa, important *va* are: *suli* (heir)-*aiga*, *matai-aiga*, *matai-village*, village-government, individual-government, and land-God.

Critical analysis of processes of custom and benefits from a gender perspective

The validation of custom and customary authority in the constitutions of Samoa and Vanuatu is a demonstration of *teu le va*; it respects the reciprocal contributions, limitations and shared responsibilities of government and customary authorities for people and land. On the other hand, the preservation of customs knowing that some customs have been and continue to be manipulated to trivialise or shut out the interests of women is a perpetuation of *solī le va* (violation of relationship) at a system level.

I will revisit the methodological approach in Chapter X on Conclusions.

3.0 Preparation for Engagement

I will now talk about the preparation for the research, outlining my position in relation to the two countries, and the manner of engagement used. This will demonstrate aspects of *Va-Critical Feminist* methodology.

3.1 Insider Preparation for Samoa

My approach to Samoa was strongly influenced by my identity, language ability, and upbringing. Born in Samoa, I am fluent in the Samoan language, familiar with the different levels of language, and understand local relational protocols. While I had not lived in Samoa since I was child, most my siblings still do. I was not a total outsider from a researcher perspective.

I grew up in an extended family environment in my village Vailima, approximately ten minutes by car from Apia. My grandparents part owned a parcel of freehold land where I was raised until the age of ten. The land provided materials and plots for our homes, plantation grounds to feed everyone, recreational space, and a burial place for our *aiga*/family. The teenager boys helped the adults to work the plantation and cook, we all took care of the animals, took care of each other, and respected the authority of elders. There is a stream on our land where we used to wash when the water supply was temporarily switched off by the local authority; it was another essential resource accessible through land. The stream now only trickles because the government dammed the source upstream.

As a child I often accompanied my grandparents to extended family gatherings, church and village meetings. My grandmother also belonged to the Samoan national mother's forum the Fono a Tinā that used to meet in Apia. My mother held Power of Attorney over our land before she died. I watched her navigate competing interests from family members as she exercised guardianship over the land and family harmony; she was not a *matai* but was our guardian. Because we lived close to Apia we often had extended family members stay with us to attend school, including kin of in-laws. Our land resembled a refuge for kin who needed a place to resettle. When I went to Samoa to conduct the fieldwork I was going home.

The research in Samoa was approved by the National Research Institute – National University of Samoa, in accordance with the government's approval protocol. The process took some weeks before I received notification from Samoa to proceed. The fieldwork in Samoa was carried out over 14 days.

3.2 Outsider Preparation for Tonga

I had never been to Tonga before the research. Prior to travelling there, I researched as much as I could about its culture and its land laws, had email discussions with an NGO contact in Nuku'alofa, and spoke with Tongan relatives in New Zealand. I had Tonga relatives who lived in my childhood home in Vailima when I was young, as well as family in Kolofo'ou in Nuku'alofa. A few of my Samoan relatives also spoke Tongan including my late mother, and an uncle.

The study was approved to be conducted in Tonga by the Prime Minister's Office in accordance with their protocol, on 9 October 2013. The process occurred by email communication and a phone call to the Prime Minister's office to follow up. This process took some weeks from drafting the request letter for my dean of faculty, to obtaining the letter of final notice of approval (Appendix B). I conducted the fieldwork in Tonga over 14 days.

As I could not speak the Tongan language, I anticipated barriers to participant recruitment, rapport setting, interpretation issues, and risk to keeping to my fieldwork schedule. I was aware that English was an official language in Tonga, so I planned to mitigate the risks by only engaging participants who could speak English. While this immediately limited my participant pool, it was an appropriate response to the circumstances. I also anticipated that, as the research was to be conducted in urban Nuku'alofa, the likelihood of potential participants speaking English was probably higher than in the rural areas where I was not going. Upon arrival in Nuku'alofa, I did indeed discover that almost everyone I engaged with spoke reasonable to excellent English, although the exchanges would have undoubtedly flowed better and in more depth if they were in Tongan.

My thinking about approach became sharpened immediately after I landed in Tonga. While standing in line to clear Customs I noticed a separate lane for the nobility. I looked at the people in that line and could not tell the difference between them and the rest of us in dress or behaviour. We had all waited in one room at Auckland airport only a few hours before, and travelled on the same plane. I had never looked at Pacific people through a class lens before, nor had I ever considered myself or my family non-noble.

The next day, I contacted my Tongan cousin and asked her to bring me a *ta'ovala* (traditional Tongan mat worn around the waist). I had read in a book that it was respectful to wear a *ta'ovala* to important meetings, especially with officials. I soon discovered that doing so led people to speak to me in Tongan because they thought I was Tongan. I began to feel like I was trying too hard. I then consulted one of my supervisors who advised that it was alright to be non-Tongan. I stopped wearing the *ta'ovala*.

3.3 Preparation for *Fa'afafine* and *Fakaleitī*

A few years after arriving in New Zealand with my grandparents, my grandfather died. My *fa'afafine* uncle who lived independently moved in to help take care of me, my sister, and my grandmother. Uncle used to take us to *fa'afafine* netball games and beauty pageants, the men in miniskirts and high heels were uncle's friends or kin. *Fa'afafine* beauty pageants continue today in Samoa and some of the proceeds go to charity. My engagements with *fa'afafine* and *fakaleitī* were and remain rooted in familiarity and respect.

Preparation for the research involved reading media reports from the Pacific, publications from the NZ Aids Foundation, the NZ Human Rights Commission, and the Sexual Diversity Network which the Samoa *Fa'afafine* Association and the Tonga *Fakaleitī* Association had relationships with. I did not find any material on asset ownership and very little on human rights of *fa'afafine* and *fakaleitī* in comparison to women. The literature review reflects some of this material.

In practice, *fa'afafine* and *fakaleitī* participants seemed very at ease during our interviews. The discussions often went off track due to constant teasing between the members, often over love, relationships, lifestyle, other *fa'afafine/fakaleitī*, or as a way to talk through discrimination and prejudice against them. I found myself much less formal when talking with *fa'afafine* and *fakaleitī* than I was with women.

3.4 Preparation for Women

My preparation was similar to that for *fa'afafine* and *fakaleitī*. I became aware that Samoa was in the midst of drafting a constitutional amendment to include a minimum level of representation for women in Parliament. I also became aware that the Tonga Royal Land Commission had identified women's rights and access to land as a

significant matter that needed to be addressed, and that that country was reluctant to ratify CEDAW.

In practice, I recognised the way participants showed respect for each other and to me. While there was a lot of laughter in the discussions, there was a sharing of the talking space, and respect by younger of the older. There were times when I got excited and found myself jumping in while someone was talking, forgetting etiquette, but they simply waited. I felt humbled by the women's generosity. Every woman I spoke with was tertiary educated, employed, and secure about her access to land – both freehold and customary.

My study of Tongan land laws and family violence helped build my rapport with the women. The gender and class demarcations still blinded me. Only a minority of my sample had independent secure rights to land and wanted a fairer system. Additionally, while Samoan women with chiefly rank (*matai, sa'o*) or senior positions in government departments were observed to engage in a camaraderie manner with other colleagues, the sense of rank seemed more obvious in Tonga.

3.5 Participant Recruitment

Three arbitrary categories were used for participant recruitment which were: gender, as previously described, urban based, and minimum age of 21 years (to exclude children). The scope for participants included private citizens, NGOs, and public servants in relevant government departments. I was aware that the nature of the participant would influence the nature of engagement as well as the content of the responses, so my data, findings and conclusions would have limitations.

In the development phase of the thesis proposal I sought advice from agencies and individuals about the best way to recruit participants. These supporters included the New Zealand Human Rights Commission, Pasifika LGBTI Community (NZ Women's Refuge), my supervisors, and NGO contacts in Samoa and Tonga.

On location in Apia and Nuku'alofa, I used the referral method as described by Faugier and Sargeant (1997) to locate participants. This is where a known contact recommends another as a potential participant. This enabled me to select people depending on their potential contribution to the research topic, and eliminated the need to scope randomly, particularly in Tonga where I was not familiar with the social and professional

networks. Understanding the importance of reciprocity and relational connections in Polynesian cultures, I was keenly aware that a number of participants agreed to speak to me because of their relationship with my referrers. It was my responsibility to ensure that no harm came to the referred participants, so that no harm came to their relations with those who referred them.

The recruitment of women in Samoa and *fa'afafine* were triggered by the New Zealand interviews. Following preliminary engagements in Samoa, participants were identified. Recruitment in Tonga was also relatively easy. When I arrived at my accommodation I found that one of my hosts was *fakaleitī*, he became my first *fakaleitī* participant. Thereafter, my contact became my go-between with other *fakaleitī*, in fact the very next day we attended a netball tournament of *fakaleitī* and women's teams. My main referrers for Tongan women were kin and NGO contacts.

4.0 Participant Profile

An overall snapshot of participant characteristics is helpful when considering the knowledge and findings in this thesis. The disclosure of personal information was voluntary so most, but not all, participants provided their details, and a few people are missing. Some participants provided partial disclosure only. The following table provides an indicator of the diversity of the research sample.

Table 4: *Participant Characteristics*

	Fakaleitī	Fa'afafine	Women Tonga	Women Samoa	Men Tonga	Men Samoa
Age: 21-35years	4	3	6	5	0	1
Age: 36+ years	2	5	8	3	2	2
Income <15k (Paanga, Tala, NZ\$)	3 (P)	2 (T)	3(P)		1	
Income: 15 – 25K	1 (P)	1 (NZ\$)	1 (T)	4 (T)		
Income: 26 – 35k			1			
Income: 36-50k		2	3	1	1	1 (S)
Income: 51+		2 (NZ\$)		1		1 (NZ\$)
Income unstated	1	3	3	2		1
Secure access to own or customary land	5	All except 2 (NZ)	4	All	2	1
Living on own, customary, or leasehold land	5 *Title holder	3 *C/land 4 *F/hold	2 *Title holder	2 *C/land 7 *F/hold	2 *Title holder	1 *C/land

Living with Dependents	All bar 1	All	2	All		
Parent (legal or customary)	2	3	7	5		
Living with partner/married	1	0	7	3	1	
Single	All bar 1	All	4	3		
Tertiary Educated	4	4	8	6	2	1

The table shows that the sample had a significant number of tertiary-educated participants, which includes vocational training, sub-degree, degree, and post-graduate level education. Education level was not a selection criterion so the sample reflects the associations of my research mediators who identified potential participants.

5.0 Methods

In this section, I will discuss my primary methods of engagement, why they were chosen, and reflections on how they were used and adapted in response to learning during the fieldwork. I will also talk about the role of secondary sources of information. Through this discussion will be elements of *va* and critical feminist methodology.

I needed methods that enabled me to be present to my participants and to my topic, physically, emotionally, intellectually and spiritually. I needed to see the land, the participants, and observe how the people relate to land – the *va* that indigenous scholars talked about. My experience with Pacific people is that face to face dialogue builds trust that results in being privileged with protected knowledge and extends social networks and spheres of influence. My main methods were face to face interviews with individuals and groups.

Denzin associated interviews in reflexive style research with notions of freedom and justice. Denzin described such interviews as exchanges that occurred by grant and not by right. Reflexive interviews connected the researcher to the larger “moral community” of participants, and transformed information into shared experience (2001). Denzin compared interviews to land;

The reflexive interview is not an information gathering tool per se. It is not a commodity that you hire someone to collect for you, or that you pay someone to give you. It belongs to a moral community.We do not own the land, the land is a community to which we belong. Substitute the words ‘interview’ and ‘research’ for the word ‘land’. As researchers we belong to a moral community. (Denzin, 2001, p. 24)

Another factor that influenced my method selection was Pacific ways of communicating. My professional involvement with Pacific people in New Zealand over the previous 20 years, and my being Samoan, taught me that Pacific elders and Pacific island raised people often communicated in conceptual terms, used storytelling, and other indirect ways of conveying messages. I suspected that people in Samoa and Tonga still communicated this way.

Finally, I needed methods that guaranteed responses because I had limited time and resources for my overseas fieldwork. Face to face engagement was the most suitable.

5.1 Face to Face Semi Structured Interview

Until the PhD, I always viewed interviews as the tool for producing the ‘purest’ view of the world for a participant. Denzin’s view of the reflexive interview, however challenged this; he said that reflexive interviews “entice us into believing that we are seeing the real world being staged. This is not so....There are only interpretations..” (Denzin, 2001, p. 30). Denzin added that participants’ interpretations were always surrounded by a bigger world of human interactions that complemented their picture.

Denzin’s view of reflexive interviews as a contextual happening resonated with consideration of power relationships in the *va* where knowledge is collected, constructed, validated, and protected.

I used the interviews in Auckland, New Zealand for different reasons from those conducted in Samoa and Tonga. The interviews in New Zealand were conducted to formulate a basic understanding of the topic, starting from the perspective of *fa’afafine*, the gender group that I had less knowledge of compared with women. These initial interviews were also my opportunity to pilot my questions and approach to ensure fit for purpose and audience. For example, I also learnt that people had different understanding of the term ‘empowerment’, and discussions became easier when I asked ‘Do you have plans for your future?’ or ‘Do you have any plans for your land’.

These Auckland interviews provided valuable learning that were integrated into the research approach. For example, I learnt to refrain from using the term ‘third gender’ when talking with *fa’afafine* and *fakaleiti* because it was a term that was seen to describe other gender identities, but not theirs. Dignity, recognition, and respect were

fundamental to gender identity. I realised some of my own unconscious stereotyping of *fa'afafine* and *fakaleiti* lifestyles.

Other learning from the Auckland pilot related to the emotional and spiritual significance of land to participants who had left their homelands in the Pacific a long time ago. I developed an appreciation of the responsibilities of a *sa'o* (chief that holds responsibilities for overseeing a Samoan family's customary lands and other roles), the leadership, personal compromises, and the challenges for a *sa'o* who did not live on the land. The Auckland interviews also yielded important leads to potential participants in Samoa and Tonga. The pilot was absolutely valuable.

The semi-structured interviews targeted individuals, some for a gender centric perspective and others for a system level view, e.g. land and custom experts, gender activists, policy writers, human rights advocates. When I arrived in Samoa and Tonga, I discovered that a few of the people I had pre-arranged interviews with were out of the country, so used key contacts to arrange alternatives. I also found that some of the people referred to me were not women or *fa'afafine*, but held important system level information, so I followed these leads.

All interviews and focus groups in Samoa took place at public venues – usually at an eatery where there was sufficient privacy and low noise for the audio recording. Those who were employed preferred to meet away from their workplaces for privacy and to minimise constant interruptions. I offered to meet with people after hours, but this proved challenging for the women who had children or other community commitments to attend to after work.

During individual interviews, the privacy, flexible time and sole attention paid to participants yielded more frank discussion about life, family history, and political views in comparison to focus groups. In the Samoan groups, respect of older participants by the younger ones resulted in more of the dialogue being cloaked in expressions of respect, so it took more time to get to details. It was during one of the Tongan interviews that a participant told me that his land had no value to him. This was the first time such an admission had been made during the fieldwork. This participant explained he had dreams to pursue artistic and educational aspirations. He also dreamt of love and being able to live openly with a partner, which was not something he believed could

happen in Tonga. The individual interviews were so insightful that I increased the number beyond what I had originally proposed in my ethics application.

5.2 Focus Groups

I planned the number of focus groups depending on the anticipated need for knowledge (see Ethics Application, p.10). These semi structured discussions targeted participants regardless of cultural rank or professional position. The intended group size was 5 or 6 to maximise the opportunity for meaningful dialogue. In the field, the utilisation of the focus group and the number of groups held differed from my original plan in response to context and learning gains. On location, the groups took time to set up as I was reliant on local go-betweens after my arrival.

Because focus groups took place after a number of individual interviews and other local enquiries, I had already learnt quite a bit in relation to my research question. For example, it quickly became evident in the Tongan interviews that most women participants had no secure birth right to land, which was the opposite to women in Samoa. The same was for *fakaleitī* compared to *fa'afafine*. In Samoa, there appeared to be a common perception of the 'significance' of land accompanied by perceptions of equal entitlement and access, but the real situation actually became more evident through individual stories and examples, as custom was not uniform across villages. As I intended focus groups to seek commonly shared experiences and perspectives, there were already patterns of this from the individual interviews. I decided therefore that holding more focus groups beyond one or two per gender groups would probably not yield much more. I felt I had reached saturation point in terms of new information (Richards, 2009).

My go-between for the *fa'afafine* group had been interviewed by me prior. Five *fa'afafine* participated, and it took place after hours at a venue that they had chosen. The go-betweens for my women's focus groups were my sisters, but they were not part of the discussions. The first group took place in the late afternoon; it was supposed to have five people but only three turned up as two had to go home unexpectedly. The next group was also supposed to have five but only four turned up; the fifth got held back at the office as the interview took place during their lunch time. The discussions took about 1.5 hours each.

My go-between for the *fakaleitī* group set up a group of five but only four arrived. As we were setting up a young female colleague of one of the *fakaleitī* asked to be part of the group. I remember thinking about making allowance if a *fakaleitī* wanted to be of the woman's group, but had not considered that a woman may feel just as comfortable being part of a *fakaleitī* group. While I pondered this the four *fakaleitī* simply shuffled chairs and made space for her. During this group discussion, the young woman talked about her anxieties about not having a place to live in future if her relatives, on whose land she and her nuclear family were living, asked for it back. She also said that her young brother would get any land over her, and while he has assured her he would always share the land with her, he may marry and another woman would take priority. This disclosure affected the *fakaleitī* participants, all of whom had relatively secure long-term access to land by title or in a caretaker role for kin who lived overseas permanently.

My go-between for the Tongan women's focus group was a key informant who had not been part of the pool of individual interviews. We ended up with ten participants, one of which was a male colleague of the women who asked to be part of the discussion and to whom the women gave permission. He spoke sparingly in the discussion.

In general, the groups provided a helicopter impression of practises and beliefs that were perceived by participants to be how life was, how things used to be, and their anxieties about proposed changes to land tenure. For example, in both countries there was very much an acceptance of culture and traditions almost as if they could not be changed in case cultural identity and uniqueness were degraded (e.g. land tenure arrangements in Tonga; male take *matai* titles rather than women), or it interfered with God's order regarding gender identity, birth order, and male authority over society.

The focus group discussion also exposed limited levels of understanding on matters pertaining to land, and perceptions of its significance. For example, a number of young female participants in Samoa, *fa'afafine*, and *fakaleitī* said they had never been asked about their views on land, nor had they questioned the inequities that existed until this research. A number of young Samoan participants had been born and raised in the urban setting and did not know where their customary lands were, even though they knew their parents' villages. Many young participants were unclear how to access their rights to customary land if they wanted to; a few appeared unconcerned about it.

Focus groups for Samoa seemed less effective in getting a picture of what actually happened on the ground regarding access and customs. I found in the two women's groups in Samoa that participants were more diplomatic with their comments. At times I had to be a bit provocative to get past the rhetoric to what really occurred. For example, when participants talked about *aiā tutusa* (equal rights) to land, I had to probe further to find that it was not always the case. Using humour worked well during probing. *Fa'afafine* were more critical of traditions, notions of gender equality, and people's self-interest over land.

5.3 Observations

As I stated earlier, I needed to see the land, the participants, and how people related to the land. For example, the public burial grounds in Tonga prompted me to ask why people were not buried on 'family' lands as in Samoa. This question led to me to understand that the land really was controlled by the State, and less so by Tongan people.

In Samoa, I interviewed *fa'afafine* in the public service, in glamorous feminine dress with absolute confidence in their belonging as *fa'afafine*, and contribution as a gender group to families and wider society. In Tonga, I saw relative fewer sightings of *fakaleiti* in feminine dress, and I was not sure of their sense of belonging and contribution as a gender group to wider society.

In Tonga, I was privileged to have been invited to various government sponsored functions as a result of my interaction with officials regarding the research. These invitations took me to peri-urban and rural locations in Tongatapu where I was able to observe the general state of housing and use of land. I was already familiar with urban Apia and its neighbouring areas. I could not tell which urban villages in Samoa were traditional, i.e. on customary land and under the rule of *saofa'iga a matai (fono)* just by looking.

In both countries, there was a noted prevalence of foreign businesses in urban settings, particularly Chinese. In Samoa, these businesses appeared to be the large stores. In Tonga, Asian businesses included large stores, small local shops, and vegetable stalls at the Nuku'alofa city market. This was an important observation that then linked to State motivations to encourage the leasing out of land to attract foreign investment, as part of economic development. It also linked to participants' anxieties about the State-investor

relationship overtaking the State-people one, affecting their longterm relationship with and access to land. I will talk more about this in the Findings chapters (VII and VIII).

5.4 Secondary Data

Secondary data was important to my understanding of the issues at the system level, in addition to interviews and observations. I did not always know what the gaps were in my knowledge or where I could locate new information, so I relied on interviews and other contacts for pointers.

Published reports, draft legislation, songs, and legends are examples of material reviewed during the fieldwork. A review of court case records in Tonga gave me the impression that there was a significant gap between what the land laws prescribed and what people commonly practiced. They also showed the gradual weakening of honour in terms of verbal agreements, a practice that once provided certainty and committed people to each other.

I knew before the fieldwork from my work with Pacific communities that the use of the web by Pacific countries varied and paper based records were still the norm. This affected the State's ability to use the web in the same routine and sophisticated way as, say New Zealand; it limited transparency and access for outsiders to important information. When I arrived in Samoa I was advised by a government official of plans to computerise court records from the Land and Titles Court, but it might be some years before this was completed. In Tonga, land registration records were still solely paper based. One of the officials I spoke with expressed nervousness about what could happen in if a tsunami or flood hit Nuku'alofa.

5.5 Other Methods Considered

I indicated in my ethics proposal an intention to collect personal stories as another method to collect data, separately from the group discussions if they wished. This did not occur. However, in the field, personal stories came out naturally during the group interviews so did not have to be sourced separately.

6.0 Ethics

6.1 Ethics from Va-Critical Feminist Perspective

When I prepared my Ethics proposal, my initial thought of the process being a compliance exercise was quickly stripped away with a realisation that it was about the *va*, the network of relationships involved in research on so many levels. These levels include researcher-participant, researcher-university, researcher-university-government agencies in my participant countries, and researcher-supervisor. These are some of the types of relationships Anae talked about in relation to *Teu le va* (2010b).

From a *va* perspective, therefore, ethics applies at all times to all engagements, not only during the fieldwork. The emphasis on the *va* directs that where there is potential for harm or *solu*/violation of dignity and rights, intended or not, preparations must be made to *teu* in order to work toward restoration if not healing. With the importance of *va* in perspective, the preparation of my ethics proposal was easy because it prompted me to think of participant safety on different levels. The ethics proposal reminded me to ensure my conduct was appropriate, and to protect the integrity of my research.

6.2 Consent

The importance of informed and voluntary consent was explained verbally, face to face to each potential participant. This included consent to be audio recorded, and for the researcher to have their personal details. For most scheduled interviews the participants signed the consent form. There was one verbal consent by a participant because she was referred to me ‘on the hop’; I had no more consent forms on hand and it was not possible to arrange another meeting. This participant headed an NGO and was very familiar with research. I was confident that the consent provided was informed and voluntary.

When I first met focus groups members, I talked them through the topic to see if they were engaged. Once they indicated their interest, I went through the Consent form, Information Sheet, and encouraged them to ask questions and consider potential uses of the thesis.

6.3 Gender Identity

It was during the consent discussions that I was asked what the difference was between ‘sex’ and ‘gender’ on the form, usually by *fa’afafine* or *fakaleiti*, but also by women.

Julu (F): vaai I le mea lea...e sau le gender koe sau le sex?

Translation: look at this thing (referring to the tick boxes for ‘Gender’ and ‘Sex’ in the Consent form)...it asks for gender and also asks for sex?

This was not a question I had anticipated. It had never occurred to me that people may have only been asked to define either their sex or their gender on documents, but never both. In response to the question, I explained the concept of self-definition and that it was voluntary. Consequently, most *fa’afafine* and *fakaleiti* wrote those terms to define their gender, while ticking ‘male’ for the sex. My explanation of self-definition appeared to give a type of permission to some to note their gender identity. I learnt too that traditional relational roles remain important to *fa’afafine* and *fakaleiti*, and that traditional tick boxes did not always reflect a true count of diverse identities, as Julu explained:

Julu (F): I dress as a woman when I got out...o a’u a ia, I consider myself o a’u ou ke keige a ia I a’u mea... but when I go out I check myself as a ‘male’ e le kaikai a ka laku fua kusi le mea...o laka ika a mea, I guess it was instilled in me o kaika le kama ou ke respect a oka sisters a...but aka alu a kaika e fai loka life, o kaika a o le keige ...

Translation: I dress as a woman when I got out...me, I consider myself a woman in all that I do... but when I go out I check myself as a ‘male’ I never write otherwise...my thing is I guess it was instilled in me that I am a boy and to respect my sisters a...but when I go do my own thing/life, I am a woman...

I realised my ignorance about gender identity very early on in the research. I had assumed that every *fa’afafine/fakaleiti* who dressed and acted like a lady wanted to be one. Instead, I was taught gently by my first *fa’afafine* participant that this was not always the case. Some prefer to be defined as their own gender, not as a ‘wannabe’ version of a woman.

6.4 Confidentiality

While I did my best to assure participants of confidentiality of the interview content, I was not confident that their participation would be in such small communities. The referral methods to recruitment meant that people aside from myself knew of the study and its potential participants. I was particularly concerned for the *fa’afafine* and *fakaleiti* groups, although most of them were not at all worried about their pseudo identities being known. Participants held strong views about the research topic and wanted them known. This passion was similar to participants from civil society organisations. In light of this, pseudo identities and real names have been used as permitted by participants.

Confidentiality was very important to public servants who were concerned that their views might appear to counter government policy or laws. Accordingly, pseudonyms have been used in the thesis when quoting them. At times an individual held a different perspective on an issue when she/he spoke as a public servant and when they spoke as a private individual.

6.5 Participant Safety

Many participants used life stories to elaborate or explain their particular stand on an issue and I was conscious of the need to keep the participant and discussion safe. Individual interviews were the better environment for personal stories because they were emotional recollections of violations of dignity and perceived entitlements, desperation, and experiences of violence. It was not possible from an individual's interview to get an idea of how common an issue was, such as a *fa'afafine* or *fakaleiti* being denied land due to his gender identity, nor was it my role as the researcher to judge the validity of such information.

When disclosures of denial of rights occurred in the focus group setting, the reaction of the others in the group was always protective. This suggested to me that the experience described was generally perceived as unjust, but also not isolated. My research methodology and ethics allowed me to apply *teu le va* in response to these painful disclosures of *solu le va*. I did so by weaving into the conversation elements of local legislation that I knew of.

I stressed the importance of third gender in the study and in families, to minimise the occurrence of any derogatory remarks from participants about them, a form of *teu le va* – paving a safe path for all participants and the discussion. Tonga and Samoa are both very religious countries, and being *fa'afafine* or *fakaleiti* according to participants is often associated with homosexuality and same sex marriage which are not legal in both nations.

Phylesia (F): My family don't look at my gender first and foremost. They look at how I think and how I speak and how I present myself when it comes to that sort of stuff in the family. So I think my leadership is more valuable than opposed to my gender...some family members like to put my gender first and try to use it as something to bring me down....but that's purely their weakness not mine.

Cultural safety was taken into account based on the *va*, using knowledge of relational concepts. As a Samoan woman, I was always aware that sex and third gender identity were sensitive issues in both cultures. There are traditional taboos and protocols in Samoan and Tongan culture associated with sexual matters, including non-discussion between sisters and brothers. Concepts of ‘sister’ and ‘brother’ are so wide in both cultures that it can encompass the most distant kin associations. The somewhat low key but respectful manner in which I spoke about these matters with *fa’afafine* and *fakaleitī*, was certainly different from how I would discuss similar matters with other males.

I also had to ensure the integrity of my research. There were a few instances in the field when I felt I was being told inaccurate information or being deliberately deceived. During such times, I rephrased my question to indicate my knowledge of an issue. Sometimes it did not feel appropriate or useful to do so. Undoubtedly there were times when I did not fully appreciate some of the nuances, especially in relation to culture.

6.6 Acknowledgement

My Pacific methodology lens emphasises respect and reciprocity in return for knowledge, time and trust (Tuafuti, 2011; Smith, 2012). Throughout the fieldwork, I became keenly aware that I was learning things that I had not come across in the literature.

Much cultural and legal jargon would have been beyond my comprehension without the guidance and support from participants. Many participants travelled to the nominated venue to meet me, taking time away from personal commitments. For those who were employed, some interviews were conducted during work time while others were conducted after hours. A few of those employed in both countries were in management positions.

Many of my participants were appreciative of the opportunity to talk about the issues discussed. Many said that they had never been party to discussions on their nation’s lands; several Samoan participants said they had never really paid attention to the legislative changes to land laws that had occurred although they had been aware of some controversy about them. Tongan women participants seemed much more aware of the controversy over land tenure than Samoan women.

6.7 Care of Participants

I expressed my appreciation by offering refreshments, a taxi fare home (one group discussion occurred in the evening after the buses stopped running), or a discussion over a meal when this felt appropriate. Hospitality is a common way to show respect and acknowledgement in Samoan culture. Not all participants accepted my gestures of reciprocity, saying they were simply happy to support the research.

6.8 Researcher Accountability

Participant communities

I wanted to keep as close to the ‘voice’ of each participant and group as I could, being fully aware that it was me that selected what themes to write about and which voices received page space in the thesis. While my research questions kept the discussion centred on the thesis topic, participants talked about a diversity of issues in relation to land, some of which were beyond the scope of the thesis and identified research gaps. In respect of these voices, a list of key gaps for future research is provided in the Conclusion chapter.

Funders

There are many parts of the Pacific that I have never been to, hence my ideals, views and expectations of other Pacific peoples and cultures are based on my own life experience, personal and professional associations with other Pacific people most of whom were Polynesian, literature, and other secondary sources. Financial assistance from sponsors funded travel, accommodation, and fieldwork in Tonga and Samoa. I did not have the finances for these.

While at a conference in Fiji, extra funds enable me to travel to different parts where I observed informal and squatter settlements that I had only read about but never seen. There I learnt about different ways that customary lands were appropriated, managed, protected, and became aware of legislation regarding the distribution of financial benefits from leases of customary land. Fiji was particularly important because, unlike Samoa and Tonga where indigenous populations are dominant, the Fijian-Indian settler group was also highly influential, and customary land was a key issue of contention between iTaukei (original settlers of Fiji) and Fijian-Indian groups. While in Fiji I stayed at the University of South Pacific, where most my siblings studied. It dawned on me how interconnected the small independent Pacific countries were, and how

important control of customary land was to indigenous populations and developing economies. I simply would not have been able to gain all this learning without the assistance of my funders.

I was under no pressure to shape my thesis to accommodate sponsor demands in return for their support. The thesis will be accessible electronically to my funders and in hard copy through the AUT library.

7.0 Data Processing and Analysis

7.1 Questioning Framework

When I designed my enquiry framework I used the four core enquiry questions that were then asked at every interview and focus group, around the significance of land, processes to access it, the effect of gender or sex on access and rights to land, and strategies to improve access and rights.

These core questions focussed interview discussions and other periphery enquiries on the research topic. During engagements, issues arose that I had not anticipated, for example, the resistance to change laws and customs due to a belief in the sacredness of whatever was perceived as what I have termed in this thesis the ‘natural order’. This prompted me to ask further questions in order to assess the importance and relevance of such issues. I was thankful for the face to face engagement because I did not think that some of this information would have come out without having earned the trust of participants. An environment of safety and shared understanding between myself and participants seemed to have helped this.

After each day of interviews and information seeking, I went back to my home base and made notes of the main learnings from the day, and what I could do differently. This routine helped me to remember not only the information but my feelings during certain moments. Recurring themes began to emerge as well as important questions I had not thought of.

The semi-structured nature of the interviews provided space for participants to talk more broadly about other matters that affected their rights, access, and needs for land such as land shortage, lack of understanding of laws and rights, freedom from violence, and spiritual beliefs.

7.2 Transcribing

All the interviews and focus groups that were conducted were semi structured, and audio recorded with participant consent. Unlike the Pacific of my childhood, when I arrived in Samoa ipads and mobile phones were well integrated into urban lifestyles, so my small audio recorder was no longer a tool that indicated sophistication or privilege.

I transcribed all the interviews over a period of about three months from when the fieldwork was completed. The delay was due to family and work demands. A few of the interviews were transcribed in Samoa and Tonga while I was there, but most were transcribed after I returned to Auckland. Now and then I would hear potential lines of questioning that I missed during the live interview. Key themes also came through to be ingrained in my memory, which I wrote down in case they faded. I remembered people's expressions as I listened to their stories. These would have been missed if I had given the interviews to someone else to transcribe.

I emailed drafts of the transcribed scripts to participants who provided an e-mail address and who wanted to see them. I gave the proviso that if I did not hear from them in a month, I would assume they were satisfied with the script, and I would then submit it for analysis. I received a response from only one participant, who confirmed he was happy with it.

7.3 Thematic Analysis

I used a thematic analysis to interpret my findings from the interview transcripts, content analysis of relevant documents collected in the field, and my own observations. Themes were decided based on prevalence of recurrence from common experiences and frequently identified issues (Howard & Cramer, 2007).

The analysis software I used to analyse the transcripts and pull out themes was NVivo. I analysed all the transcripts by country, separating women, *fa'afafine* and *fakaleitī* as appropriate. In line with my core questions, I started out with four general nodes in line with my research questions, the significance of land, processes to access land, the effect of gender, and strategies to improve access and rights. These were what Gibbs described as parent nodes in my coding hierarchy (Gibbs, 2007, p. 75).

There were themes that were more specific to one more than the other, such as land for sons in Tonga, and *tautua*/service for Samoans. There were also themes that seemed

common among the different gender groups in both locations, these were coded not under gender but separately as common themes. These included themes like food security, anxieties about foreign stakeholders controlling land, distrust of government intentions, manipulation of cultural authority and privilege. Not all the themes identified related to my core questions but they provided valuable insights about context. These insights were therefore included in the Tonga and Samoa context chapters in the thesis. The coding of issues centred on responses to the key research questions provided a basic structure to the writing of the research findings.

7.4 Moments for Pause

The analysis confirmed a realisation I had while in the field. Prior to conducting the research, I held assumptions about commonalities between Samoan and Tongan cultures about collective good, the brother-sister (*feagaiga*/Samoa, *veitapui*/Tonga) relationship, family, and dominance of customs. These assumptions were certainly challenged by the findings of the study, something I did not anticipate. Once I got over the initial ‘Am I looking at this right?’ stage, I came to understand that, from gender and cultural perspectives, I was looking at two different ontological and epistemological spaces between Tonga and Samoa. The discovery that I was wrong was humbling and exciting.

During my analysis, my license to use NVivo ran out and I could not access my data. It was some time before I could re-enter NVivo to review my data mainly because I was working full time and took some time to obtain the new access details. Unfortunately, I was unable to retrieve my previous coding, so I had to re-code all the transcripts. This time around, the coding was much quicker due to my familiarity with the tool and the material, but I also found myself rethinking the definitions of some of my nodes, occasionally blurring the lines between a few that I then had to revisit to ensure they were placed according to the original rationale for that node.

8.0 Summary

The research design took into consideration the genders of the participants, language implications, ethical considerations, context as previously described in chapters IV and V, resources, my aspirations about methodological exploration, and personal limitations. The design also described the thematic analysis applied, assisted by the NVivo software tool.

I explored a range of feminist methodological approaches, Queer Theory, Pacific indigenous methodologies, *teu le va*, *talanoa*, and relationship centred indigenous methodical approach from Botswana. From this array of theory and research philosophies, I devised the Va-Critical Feminist approach that I used for the research.

I described moments when my plans encountered barriers I had not anticipated such as the Vanuatu government's moratorium on foreign research as I was arranging to travel there. There were many lightbulb moments such as those with the Divas about their gender identity. A comment from an academic colleague about the pressure some individuals feel to 'look' a certain way to affirm their gender affiliation, and my own realisation of my biases that shifted my interpretation of and portrayal of a piece of information.

Having discussed methods, methodology, and my research during and after the fieldwork, I will now provide the context for the fieldwork in the countries selected for the study. Chapter V will be on Samoa. Chapter VI will be on Tonga.

Chapter V: Samoa Context

1.0 Introduction

This chapter will provide a description of the urban setting for Samoa. The context is informed by a combination of government reports, legislation, other published information, and perceptions of fieldwork participants about their environment.

The land of focus is customary land. The literature review indicated important societal and legal factors that directly affect urban women's rights and access to customary land. The contextual factors that this chapter will discuss are demographics, socio-economic position, households, human rights, gender-based violence, leadership, and customs related to customary land tenure.

Commonly used phrases in this chapter.

Aiga – family (nuclear and extended); also used to refer to a household.

Aiga potopoto - refers specifically to the extended family beyond the household unit.

Aiā tatau - right (customary or legal)

Fanua – land; also referred to as *ele'ele* which means soil or earth.

Fanua fa'asamoa, fanua Samoa, fanua fa'aleaganuu – refer to customary land

Fanua palagi, fanua faatau – commonly used terms to refer to freehold land

Feagaiga – brother and sister covenant of mutual care, protection and respect.

matai - the person appointed by the *aiga potopoto* with certain cultural authority to lead and represent the *aiga's* interests. The name is specific to a village, family, and customary lands of the *aiga potopoto* within that village.

A *matai* title (also referred to as *suafa*) is defined in the Samoan Electoral Act 1963 to mean the title which is entered in the Register of Matai established and held pursuant to the Land and Titles Act 1981, other than a title held as a complimentary honour only.

Pule - authority

Sa'o – *matai* with the responsibility for guardianship of family customary land.

Saofa'iga a matai, fono a matai (fono) – council of *matai* of a village

Suli – heir

Tautua – concept of regular service given by someone to their family *matai*, and the *matai* to the members of the *aiga potopoto* (Tui Atua Tupua Tamasese Taisi Efi, 2009). *Tautua* can also be extended to village, church, government, and other forms of association.

Va – relationship (with another person alive or deceased; with God; with the environment)

Va fealoa'i – harmonious relationship with other people

2.0 Country Profile

Samoa consists of eight islands covering approximately 285,000 hectares; over 171,000 of this is in forest. Four of the eight islands are inhabited: Upolu, Savaii, Manono and Apolima.

The capital Apia is on Upolu. The distance between areas that are officially defined as 'urban' and rural in Upolu is minimal by global standards, one could drive comfortably around Upolu in a day.

Approximately 80% of land in Samoa is under customary ownership, 4% is freehold, 11% is government land, and the remaining is owned by Samoan Trust Estates and Samoa Land Corporation (Ministry of Natural Resource and Environment (MNRE), 2006). Samoa is an ethnically homogenous country that is populated predominantly by the indigenous people. The two official languages are Samoan and English.

The 2013/14 Household Income and Expenditure Survey (HIES) recorded an estimated population of 191,703, and 27,865 households. The male population outnumbered female by 52% (99,154), compared to 48% (92,550) respectively. There is no statistics category for *fa'afafine* so their number is unknown.

The majority (76%) of the population reside in Upolu, Manono and Apolima islands, and the remaining 24% live in Savaii (SBS, 2016, P.7). Life expectancy estimates in 2013 were 77 years for female, and 70 years for males (World Health Organisation, 2016).

Samoa has four regions: Apia Urban Area (AUA), North West Upolu (NWU), Rest of Upolu (ROU), and Savaii. The population spread by regions in 2013/14 was AUA

19.1% (36,708), NWU 34.1% (65,345), ROU 23.2% (44,778, includes Apolima and Manono) and Savaii 23.4% (44,872) (SBS, 2016).

Samoa is a very religious country. The majority are Christian, but there are also other small congregations of non-Christian religions. The major religious groups according to the Census 2011 are Congregational Christian 32%, Roman Catholic 19%, The Church of Jesus Christ of Latter-day Saints 15%, Methodist 14%, Assemblies of God 8%, Seventh-day Adventist 4%; and the remainder are affiliated with numerous other denominations (US Department of State, 2012).

3.0 Urban Households

The average household in Samoa contains seven persons. The number of private households in 2013/2014 was 27,865. By region, the proportion of women headed households was 24% in AUA, 20.5% in NWU, 20.2% in ROU, and 18.2% in Savaii; so higher in urban and peri-urban settings (Census 2011).

In 2014, 98% of urban households had running water. The majority (95%) have toilet facilities that are unshared with other households, with 87% using septic tanks and seven percent using pit latrines. Most of the population (98%) has access to electricity for lighting including those in rural areas. Many (46%) urban households cook using gas fuels, and fewer using wood (26% compared to 73% of rural households), kerosene (15%), and electricity (12%) (SBS, 2014).

According to the 2011 Census, approximately 94% of households own their home. The lowest regional ownership level is in AUA at 89.3% (SBS, n.d).

The household land ownership rates vary greatly between Upolu's two urban (including semi-urban) regions of AUA and NWU. In AUA the land ownership distribution is 29.2% customary, 58.0% freehold, 12.5% leased, and the remainder in other tenure arrangements. In NWU, the distribution is 57.3% customary, 34.1%, freehold, 12.5% leased, and the remainder in other arrangements. These areas are in stark difference to Samoa's other two regions, Savaii and ROU, where over 94% of households are on their customary land (SBS, 2012).

4.0 Socio-economic Status

The 2015 employment report shows that 58.3% of the employed were male and 41.7% were female. In terms of annual wages, females earned \$22,170 compared to males \$20,120 (SBS, 2015, p. 2).

Economic data for 2011 indicates the importance of land as 33.6% of the economically active population were engaged in 'Produce subsistence for use/sale' activities (see Table below). The ROU and Savaii regions had far more of their economically active population engaged in 'Produce subsistence for use/sale' sector, at 52% and 64% respectively, than AUA and NWU which were more engaged in paid employment.

Table 5: *Economically Active Population 15+ by Main Activity, 2011*

Type	Number	Male	Female	AUA	NWU	ROU	Savaii
Total	47,881	34,763	13,118				
Employer	582 (1.2%)	66.3%	33.7%	2.4%	1.3%	0.5%	0.6%
Employee	23,410 (48.9%)	61%	39%	73.4%	60.2%	32.9%	23.7%
Self-employed	3,984 (8.3%)	65.1%	34.9%	12.3%	9.5%	5.8%	5.0%
Make/manufacture for sale	1,040 (2.2 %)	47.2%	52.8%	1.6%	2.0%	2.9%	2.3%
Street vendor	60 (0.1%)	61.7%	38.3%	0.2%	0.2%	0.1%	0.0%
Produce subsistence for use/sale	16,085 (33.6%)	94.2%	5.8%	4.4%	20.2%	52.0%	64.2%
Looking for job	2,720 (5.7%)	67.1%	32.9%	5.7%	6.7%	5.9%	4.1%

An important difference between AUA and NWU is that the majority of NWU households live on their customary lands while the majority of AUA households live on freehold land, which may partially explain the difference in income generation activities. Customary lands tend to be large parcels while many freehold lots are smaller in acreage size so have commercial cropping capacity.

The 2013/2014 HIES stated that of the \$19 million Tala of weekly income in Samoa, about 64 % was earned by households in the AUA and NWU regions (SBS, 2016:9).

The following table shows that more urban households are in the upper percentiles of wealth compared to rural households (SBS, 2015).

Table 6: *Wealth Quintile by Region in Samoa, 2014*

Percent distribution of population by wealth quintiles according to residence and region, Samoa 2014

Residence/region	Wealth quintile					Total	Number of population
	Lowest	Second	Middle	Fourth	Highest		
Residence							
Urban	4.9	8.9	13.6	29.0	43.6	100.0	4,803
Rural	23.5	22.7	21.6	17.9	14.3	100.0	20,172
Region							
Apia Urban Area	4.9	8.9	13.6	29.0	43.6	100.0	4,803
North West Upolu	21.7	18.8	19.9	17.9	21.8	100.0	8,493
Rest Of Upolu	24.3	26.3	22.4	17.9	9.1	100.0	6,039
Savaii	25.5	24.7	23.2	17.8	8.8	100.0	5,641
Total	20.0	20.0	20.0	20.0	20.0	100.0	24,975

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The table shows significantly higher wealth measure for urban people compared to rural residents.

5.0 Household Hardship and Poverty

The Pacific literature makes a direct link between lack of access to land and people's experiences of poverty or hardship. The Samoa government measures 'hardship' instead of poverty (SBS, 2010). 'Hardship' is defined as:

An inadequate level of sustainable human development, manifested by:

- a lack of access to basic services such as health care, education and clean water;
- a lack of opportunities to participate fully in the socio-economic life of the community;
- and a lack of access to productive resources and income generation support systems (rural credit, capital, markets, skill) to meet the basic needs of the household, and/or customary obligations to the extended family, village community and/or the church.

(SBS, 2010, p. 12-13)

The 2008 HIES concluded that the gender of the head of household made no significant difference to the likelihood of a household being in hardship. However, more females (37.4%) lived in households that experienced hardship, than those that lived in the most well-off households (12.9%). In NWU where the rate of household hardship was highest, almost 40% of females lived in households that experienced hardship. Of the 15,080 children (20.7%) that lived in FHH, 5,567 were living in the poorest households (SBS, 2010).

The 2008 HIES shows that a significant number of households were in hardship. Among the four regions, AUA had the least share of households in hardship at 18.7%, while NWU had the most at 30.5%; each of RoU and Savaii had about 25% of households in hardship (SBS, 2010, p. 35). For AUA, the average income from all sources (including paid work and remittances) was \$807 per week, which compared to the expenditure of \$989 per week. For NWU, the comparative amounts were \$724 income vs \$877 expenditure. Income in urban and peri-urban areas generally fell short of expenditure; around 37% of household expenditure went on food (SBS, 2010).

The 2008 HIES report listed the causes of hardship in Upolu (urban and rural) as unemployment, increased school fees, school drop-out rates, increased drug use (marijuana), alcohol, robberies, increased domestic violence, child abuse, teenage pregnancies, suicides, lack or limited access to basic services and infrastructure (e.g. school facilities, transportation), erosion of respect for village authorities/parents, and increased number of people in families (SBS, 2010). For women, hardship was characterised by a lack of employment, cash, and lack of or limited access to education (SBS, 2010). Neither lack of land nor access to it were identified as a contributor to hardship for women or the general population. This lack of recognition of the link between access to land and reduction of hardship appears contradictory to the employment and economic activity data previously discussed.

The 2013/1014 HIES found “no significant change from 2008 HIES. The three regions, AUA, NWU and ROU all recorded increases in weekly expenditure with only the ROU region showing a significant increase of 12 percent. In contrast, Savaii recorded a decrease of 10 percent” (SBS, 2016, p. 9). Hardship may have increased for some households.

6.0 Human Rights

Fundamental rights for all Samoans are provided through law and custom. Universal suffrage is from the age of 21.

Citizenship for indigenous Samoans can be acquired either by birth or by descent, provided that at least one of the birth parents is a Samoan citizen (s6 and s7 of the Samoa Citizenship Act 2004). In 2016, an amendment to s7 was passed to extend the descent criteria to grandparent:

For section 7 of the principal Act in subsection (1) for “at least 1 parent of the person is a Samoan citizen” substitute “at least 1 parent or grandparent of the person is or was a Samoan citizen” (Citizen Amendment Bill 2016)

Section 15 of the Constitution of the Independent State of Samoa 2009 (Rev) guarantees all people the fundamental right to equality before the law.

S.15. Freedom from discriminatory legislation

(1) All persons are equal before the law and entitled to equal protection under the law.

(2) Except as expressly authorised under the provisions of this Constitution, 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.

(3) Nothing in this Article shall-

(a) Prevent the prescription of qualifications for the service of Western Samoa or the service of a body corporate directly established under the law; or

(b) Prevent the making of any provision for the protection or advancement of women or children or of any socially or educationally retarded class of persons.

Section 15(3) recognises that inequality exists, and allows for provisions for the protection and advancement of women, children, and other disadvantaged people. The gap in the provision is for other genders like *fa'afafine* who are not ‘retarded’, but may be in need of ‘protection or advancement’.

Rights to customary, freehold or lease land are not determined by sex, gender, class, or birth order. This is a key difference between Samoa and Tonga.

Samoan law also protects custom and preserves the authority of *matai* councils to manage village affairs, including customary lands within the village territory (Village Fono Act 1990). Like most other indigenous Pacific nations that have ratified international human rights agreements, balancing the protection of customs and traditions that enable families and communities to manage their land resources, and the duty of the State to overrule practices that deny or violate an individual’s constitutional rights, is an ongoing challenge (Farran, 2011).

6.1 Women

Samoa custom provides the right for every woman or man to *matai* titles and customary lands in connection with their lineage (Meleisea, 1987; Fana'afi Le Tagaloa, 1997). It is not surprising therefore that human rights principles related to dignity and gender equality in international conventions are supported by the Pacific nation. Samoa has ratified a number of international human rights conventions. It ratified CEDAW on 25 September 1992, and the International Covenant on Civil and Political Rights in 2008 (United Nations Office of the High Commissioner for Human Rights, 2009).

Prior to universal suffrage in 1990 only *matai* could vote; this limitation led to the multiplication of *matai* titles for voting purposes (*matai palota*) (Corrin, 2008; Meleisea, 1987). The proliferation of titles also led to more women being appointed *matai* and becoming involved in governing the use of customary land and local politics (Fana'afi, 1986).

The traditional privilege of granting men the titles ahead of women perpetuated an assumption that leadership was the role of men. Universal suffrage did not remove the requirement under s5 of the Electoral Act 1963 for a person who wanted to run in the elections to be a *matai*. This legal hurdle continued to disadvantage women's political engagement beyond being advisors to *matai* within families, villages, regions, and nationally. While the traditional complementary roles between men (leaders) and women (advisors) may work well in some settings, there is no published research on the effectiveness of this combination in serving the interests of urban women and families.

The United Nations Committee on CEDAW raised concerns about the underrepresentation of women at all levels of political and public life in response to Samoa's 2012 periodic report (UN Committee on the Convention on the Elimination of Discrimination Against Women, 2012a).

6.2 Women's Empowerment

Reflecting on economic and hardship data discussed earlier, it is not hard to see the importance of secure access and rights to land, and women's social, political, cultural and economic empowerment. Samoa's National Plan of Action for Women 2010 contained objectives to support their engagement in economic development beyond employment (Ministry of Women, Community and Social Development (MWCSD), 2010). Nowhere in the plan was women's access to land identified as important, which

is interesting considering this is potentially the largest economic asset a Samoan woman has access to.

The MWCSO's Strategic Plan 2013 – 2017 is approximately 40 pages long, but women's access and rights to land are not mentioned in association with any of its strategic priorities or pursued outcomes, which include:

- Improved community safety; reduced rates of violence against women and children, reduced youth crime;
- Increased income generating initiatives, small business outreach mentoring, access to credit finance for women, youth and persons with disabilities.
- Increase traditional knowledge and best practices towards food security, resiliency and resource sustainability;
- Access to quality basic services and infrastructure (Ministry of Women Community and Social Development, 2014, p.16)

According to an official interviewed for this thesis, despite the introduction of programmes over the years, MWCSO was still finding significant amounts of confusion in communities, the public sector and in the NGO sector about what gender equality meant. Some groups who were delivering programmes that served gender equality aims did not recognise that they were doing so. The Ministry was still relied on to provide the 'gender lens' to project design and other opportunities to progress gender equality in the private and public sectors.

6.3 *Fa'afafine*

Gender identity is a human rights consideration because rights are commonly assigned by gender. *Fa'afafine* is not a term used in Samoan law but is one that is used in daily conversation. As Samoa's gender equality work primarily targets men and women generally, there is no explicit focus on other gender identities including *fa'afafine*. Consequently, there is limited literature from Samoa about the human rights concerns or environment of *fa'afafine*, let alone in the urban context. To fill this gap, I have used relevant learning from the fieldwork to provide context.

There was uncertainty among the *fa'afafine* participants in New Zealand and Samoa about the usefulness of the term 'third gender', and resistance to being labelled with it. It became very clear that Samoa *fa'afafine* wanted to be referred to as *fa'afafine* and not labelled under some umbrella category of non-heterosexuals ('queer' and 'third gender' for example). Participant V asked me,

Participant V (F): A faapea e third gender fa'afafine, o le a le tala mo tomboys/nai teine – is it fourth gender? I've seen e toatele a nai teine ua come out, we work together.

Translation: If fa'afafine is third gender, what is the word for tomboys/girls – is it fourth gender? I've seen a lot of women who have come out, we work together.

None of the fa'afafine that I interviewed in New Zealand and Samoa lived independently of their aiga. These fa'afafine regarded their care or tautua of their aiga as an essential part of their life purpose. The fa'afafine believed strongly that everyone had a faasinomaga, and tautua of their families, villages and religious communities was part of their identity, purpose and cultural heritage. This claiming of heritage strengthened fa'afafine's sense of belonging and dignity.

Blondie (F): Oi, e malosi tele lo'u leo I totonu o le matou aiga I le matou extended family...A e faia mea e te iloa e inosia ai oe latou te turn down fo'i oe. Don't try to please them and make them believe in you. No! e te lē try hard foi I na mea. It's your performance, your immediate family your brothers and sisters, you're aiga no matter what!

Translation: Oh my voice is strong inside our extended family. If you do things you know will make them dislike you they will turn you down. Don't try to please them and make them believe in you. No! you don't try hard for that. It's your performance, your immediate family, your brothers and sisters, you're family no matter what!

Among the 10 fa'afafine I interviewed, four were primary caregivers and financial supporters for their elderly parents, two had legally adopted children, all financially supported children of siblings, some living with them.

In the Samoan context, sex between fa'afafine and heterosexual men is similarly viewed as a non-homosexual engagement; fa'afafine do not see themselves as engaging in sex as 'men' nor are they seen as such by their heterosexual sex partners (Schmidt, 2001). The fa'afafine interviews illustrated differing views among them regarding their human rights and strategies to pursue them. Participant V felt that it was hard enough promoting children's and women's rights in Samoa that to add fa'afafine would just overwhelm the population. Participant said that some urban raised fa'afafine were impatient for the realisation of their constitutional rights, and they saw Samoan culture and religious beliefs as barriers to this. Participant V said that his perspective differed from urban raised fa'afafine, because he grew up in a rural village where there was deep prejudice against non-heterosexuals. Unlike his urban counterparts who saw culture and

religion as barriers to public acceptance and equality, V believed there were ways to use these value bases to counter prejudice with dignity.

So how are *fa'afafine* treated in the public service?

Participant V (F): Oh my goodness, well respected! well respected, well taken care. Ou fai atu ia (YY) i nei manuia ua tatou maua e ui lava ina leai se ulagia. You know nai fa'afafinei la aso na ulagia, na tatou faalogo ai a na tau'ai i ma'a, atini fanu, ae ā nei aso? Ou te faafetai a'u ia I le Alii for this privilege ua tatou maua.

Translation: Oh my goodness, well respected! well respected, well taken care. I told (YY) about these blessings we have received to the point where we are no longer mocked. You know *fa'afafine* in those days were mocked, we heard that stones and broken bottles were thrown at them, but what about today? I thank the Lord for this privilege we have received.

When I met separately with two *fa'afafine* officials, I felt somewhat under-prepared next to the glamour and dignity of their physical presence. If there was any prejudice from their colleagues it was not visible. The two *fa'afafine* held senior roles in their ministries.

The Prime Minister Tuilaepa Lupesoliai Neioti Aiono Sailele Malielegaoi was the patron of the Samoa Fa'afafine Association at the time of the thesis fieldwork. He supported the Association's request to remove clause 58(n) from the old Crimes Ordinance 1961 (now renamed the Crimes Act 2013) that criminalised men for "Personating a female". This legal clause had never been applied so it was removed from the revised Act 2013 (Participant V; Human Dignity Trust, 2015i).

Intimate partnerships between men in Samoa continue to be stigmatised. Schmidt argued that sexual exchanges between *fa'afafine* and heterosexual males are not often considered homosexual engagement because the *fa'afafine* was not regarded as a 'man' during the encounter by the heterosexual male, nor did the *fa'afafine* consider himself as a 'man' (Schmidt, 2001). Attempts by the LTGB groups to remove the sodomy clause in the Crimes Ordinance 1961 in 2010 failed due to opposition from local churches, and a view that it was inappropriate for such a law change inside the pro-Christian nation. While sodomy remains illegal in Samoa, this provision of the law has never been applied in cases of consensual sex (HDT, 2015i).

Gay marriage has been opposed in Samoa despite support for the rights and dignity of *fa'afafine* across the community and from the Prime Minister (Tavita, August 15, 2012). The Fa'afafine Association echoed the PM's position at the time.

Participant V (F): O tatou tagata e ese a, faapea a oe e ata mai faapea o la ua alolofa? You know...there is still discrimination, it still exists – but o tatou a i le tatou loto tetele, tatou put up with it, tatou taumafai, tatou galulue cos we're also hardworking.

Translation: Our people are peculiar eh, you think when they smile at you they love you? You know...there is still discrimination, it still exists – but we must be courageous, we put up with it, we try, we continue to work cos we're also hardworking.

A *fa'afafine* interviewed for this research felt that it was hard enough promoting children's and women's rights in Samoa, that to add *fa'afafine* to the mix would be overwhelming for the nation. There was a fear that pushing for *fa'afafine* rights could backfire and reverse the gains recently made to improving public acceptance of *fa'afafine* identity.

7.0 Gender-based Violence and Family Violence

Samoa has run national awareness and prevention programmes within the public service and in communities, and made legislative changes to reduce GBV and FV. Examples of progress include the Divorce and Matrimonial Causes Act 2010 that made domestic violence a ground for divorce. The number of FV reports to NGOs and Police has increased (Roguski and Kingi, 2011). The increase in reports is positive, considering the Samoa Family Health and Safety Study (FHSS) conducted in 2000 had a 2% reporting rate. The increased reporting might also suggest that violence has increased.

7.1 Women

Gender-based violence includes all forms of violence including physical, sexual, psychological and economic, so hardship for women is exacerbated by GBV and FV. The FHSS conducted in 2000 is dated, but in the absence of any more recent studies, provides a useful snapshot of the prevalence of GBH and FV in Samoan families (WHO, 2006). Some of the key findings from FHSS for women are:

Intimate partner physical and sexual violence since the age of 15 years

- Violence was less common for women living in **urban** areas and for women with higher income levels.
- 41% of ever-partnered women had experienced physical violence at the hands of an intimate partner and 20% had experienced sexual violence in their lifetime.

- The combined prevalence of physical or sexual violence by a partner for ever-partnered women was 54% for those with primary education, 45% for those with secondary education, and 35% for those with higher education.

Help-seeking by women experiencing physical violence by a partner

- 54% of physically abused women – particularly rural women – had not disclosed their experience to anyone; 25% confided in their parents, 12% in friends, seven percent in siblings, and five percent in neighbours. Less than two percent told medical staff or police.
- 85% of women physically abused by their partner had never asked any formal agency for help.
- The main reasons given for seeking formal help were: that they could no longer endure the violence (mentioned by 65% who sought help), significant injuries (27%), partner had threatened to kill them (seven percent), or the children were suffering (seven percent).
- 86% of physically abused women who did not seek help explained it was because they thought such abuse “normal” or not serious enough to seek help.

Non-partner physical and sexual violence since the age of 15 years

- 65% of all respondents reported violence by someone other than a partner since the age of 15 years. Sixty two percent reported being physically abused, while 11% reported sexual abuse.
- The main perpetrators of physical violence were female family members (reported by 63% of all interviewees), fathers (58%) and teachers (30%).

Amongst the most vulnerable women to family violence is the *nofo tane* (female who lives on her partner’s family property) (Samoa NGO Shadow Report, 2012). The risk to *nofo tane* was also noted in a New Zealand Police review of prevention programmes for domestic violence in Samoa which reported:

- participants raised concern over domestic violence directed towards *nofo tane*
- ‘she who lives in her husband’s home’ meaning ‘in the village of her husband’. Specifically, ‘*nofo tane*’ were identified as an especially at-risk group as the young woman’s in-laws may engage in physical or emotional abuse or, at the least, there is a risk that the in-laws may not intervene when the young woman’s husband abuses her. Participants suggested that programmes be developed to raise awareness and educate families that domestic violence includes poor treatment of *nofo tane*. (Roguski & Kingi, 2011. p. 32)

The New Zealand Police report commented on the role of the *matai fono* in villages, and the insecurity that some victims felt about their ability to address domestic violence justly:

Despite the rapid urbanisation taking place today, most Samoan families still live in extended family units under the leadership of their family *matai* (chief) who is responsible for ensuring the family good....Disputes which cannot be solved within the family are usually placed before the village council. All village families are represented on the councils by their family *matai* – who is usually a

male. The role village councils play in maintaining peace in the villages cannot be disputed. At the same time, there were reports that domestic violence victims were reluctant to report cases to the councils and instances were also reported where cases had not received a fair hearing due to the fact that ‘some of these matai sitting there do this (domestic violence)’ and ‘they aren’t going to judge another matai’. (Roguski & Kingi, 2011, p. vi)

The Samoa NGO Shadow report 2012 recommended that the government provide national educational programmes to raise awareness of issues for *nofo tane*, and their right to live free of discrimination and abuse within their husband’s family and village (Samoa NGO Shadow Report on 4th & 5th periodic reports compiled, 2012, p. 8). Another way to influence change is for more women to take up the role of *matai* and sit in the *fono*.

The UN response to Samoa’s CEDAW 2012 periodic report signalled concerns about the prevalence of VAW:

The Committee is deeply concerned that violence against women appears to be socially legitimized and accompanied by a culture of silence and impunity and that cases of violence are therefore underreported, it being considered a private issue that should remain within the family. (United Nations Committee on the Elimination of Discrimination against Women, 2012b, p. 5)

The international literature on gender-based violence makes a link between women’s ownership of land and property and decreased victimisation in intimate partner relationships. Considering that over 90% of Samoan households own their land, one would expect low levels of victimisation for women, but this is not the case. If we look more closely at the FHSS data, it shows that there was very little difference between land ownership levels of victimised women and those who had never been abused, but that over 90% of the women were in joint ownership of land or property with their partners (SPC, 2006). This means that women did not have independent ownership of the asset to be able to act independently of their male partner.

7.2 *Fa’afafine*

Fa’afafine also suffer from GBV and FV (Pacific Sexual Diversity Network, 2009). To date, there has been no research into the prevalence of victimisation of *fa’afafine* from GBV or FV.

7.3 Protection from Abusive *Matai*

Customary authority is influential in Samoa, but it does not exist autonomously of the State, especially where fundamental rights are violated. The *aiga potopoto* has the power to grant and remove a *matai* title (Meleisea, 1987), but the State only has grounds to remove. Samoan law provides an avenue for any *suli* to a *matai* title, to petition the Court to remove that title from a holder who abuses his/her cultural authority under s20B of the Land and Titles Act 1981:

S.20B. Removal of matai title – The Court on petition by a Sa’o or a Suli may remove a matai title where the holder of that title:

(a) has acted in a manner that brings disrepute to the family, village or community of the matai; or

(b) otherwise has failed to properly perform the duties of a matai; or

(c) has been convicted of a serious crime that is punishable by imprisonment for life.

I wondered if crimes against women and children had ever been considered ‘serious’ enough to strip anyone of a title under this provision, or if those who decided on this provision ever considered that such crimes could be relevant to s20B. When I raised this provision with a few participants, the initial response was surprise followed by a question as to the right of the State to remove something that is the prerogative of the *aiga*.

8.0 Leadership

8.1 Traditional

Today’s male dominated *matai* system is very different from earlier times when a woman, warrior Princess Nafanua, was the first to unite the four royal titles (Papa) of Samoa around the 1600s. Samoans do not speak of Nafanua’s achievement as folklore but as a factual occurrence, although there are different versions.

Princess Nafanua gained the titles of Tui-Atua, Tui-A’ana, Gatoaitete, and Vaetamasoali’i in return for support in battle to various *matai* from different parts of Samoa. Nafanua then sought to bestow the titles upon a female relative from her mother’s family by the name of So’oa’emalelagi Levalasi. When So’oa’emalelagi was told by Nafanua’s warriors that Nafanua wanted to her to carry the titles, she asked instead if her daughter Salamasina (niece by birth) could do this instead as she (So’oa’emalilagi) was old. Nafanua heard and granted this request, and Salamasina became the first person to be referred to as Tupu Tafa’ifa o Samoa or Queen

Salamasina. The titles have since been passed down through this line. The holders of these titles were highly influential in the political movement that led to Samoa's independence from New Zealand, and remain respected and influential in Samoa's political life (Meleisea, 1987; Pula, Tuiteleapaga, Henry, n.d).

A *matai* is usually chosen by adult members of their extended family. The title is associated with the *aiga potopoto* and a specific village. The prospect *matai* then goes through a customary ceremony where their title is bestowed, accepted and celebrated by the village from where the title originates. The law prescribes the criteria for a *matai* and a prescribed process and timeframe for opposition to the bestowal of a title. Opposition may be on the grounds of blood links or other customary avenue of entitlement. Heirs (*suli*) to a title can oppose a bestowal of it under the Land and Title Act, and registration can be justifiably declined. Registration reflects the endorsement of the bestowal by the village and the person's family.

The NGO Shadow Report to the UN CEDAW Committee in 2012 indicated that "Many villages in Samoa still currently prohibit women from holding matai titles, thus, political representation remains securely in the hands of men. In fact, the ratio of female to male "matai" title holders is 1:3. This, essentially, affects the participation of women in politics at local through to the national level." (Samoa NGO Shadow Report, 2012, p. 10). The rights of women to enter politics are violated by such village by-laws which directly discriminate against them and breach Article 15 of the Constitution 2009 (Rev). There are villages in Samoa that continue to forbid chiefly titles being bestowed upon women, "we understand seven villages" (Participant L).

The Samoa NGO report (2012) went on to claim that in some villages, women can be bestowed a *matai* title but are banned by the village *matai fono* from participating in their meetings. "The Land and Titles Court have received at least two petitions in which women have challenged village by laws or restrictions imposed by her own family. The challenge was successful" (Samoa NGO Shadow Report, 2012, p. 10). During the field work in Samoa, I asked different people about this phenomenon, and they confirmed that it did occur, even when the titles held by women were prestigious ones.

The Population and Housing Census 2011 found that 8.9 percent of Samoa's resident population held *matai* titles. Of these, 89.5% (15,021) were men, and 10.5% (1,766) were women (SBS, 2012, p. II). The National Plan for women claims a higher number

of around a third of *matai* being female. When I queried this figure with an official who was a participant, he advised that it was possible that the unofficial number of women *matai* was higher because not all titles were registered (in accordance with the Land and Titles Act 1981), especially those held by people who lived overseas. This explanation, however, also affects male *matai* who live overseas. The following table shows the official count at the time of the fieldwork.

Table 7: *Matai Titles Held, by Gender and by Region, 2011*

Regions	Matai in village of residence	Matai in a different village	Matai in village of residence & other	No Matai Status
AUA	511 M	1940 M	64 M	15,968 M
	100 F	316 F	13 F	17,821 F
NWU	2,306 M	1,869 M	113 M	27,908 M
	257 F	199 F	12 F	29,723 F
ROU	2,753 M	539 M	180 M	19,779 M
	310 F	54 F	7 F	20,670 F
Savaaii	4,023 M	470 M	253 M	18,307 M
	403 F	79 F	16 F	20,848 F

M – male; F – female

The table shows that urban (AUA) and peri-urban (NWU) regions had the highest number of female (and male) *matai* that did not reside in the village where their titles originated. The pattern is the opposite for women *matai* in rural regions (ROU, Savaaii). The influence of a *matai* is stronger where their title is respected, where they are a member of the *matai* council, and when directly engaged in decision making compared with *matai* who live elsewhere.

Village councils still operate in urban and semi urban areas where the village lands are customary. Where the villages are non traditional, people more readily turn to the State for help. As a 2011 New Zealand Police report on family violence states:

“Reports were that there had been a weakening of the family support systems in these rapidly changing times and, in turn, an increasing reliance on the Police and legal systems. Urbanisation was associated with unemployment, extreme overcrowding and poverty, new forms of recreation (such as alcohol and drugs) and increasing crime and disorder. The opening up of government lands for sale had seen the growth of quarter acre freehold settlements, where families lived ‘outside’ the extended family support systems for much of the time. Beliefs were that this group were tending to rely more and more on the Police to resolve disputes.” (New Zealand Police, 2011, p. vi)

8.2 National

Women and *fa'afafine* take leadership on many levels, as individuals, in families, villages, faith based communities, civil society movements, businesses, and in local politics. The most significant gap in leadership is at the national political level, as discussed in the introductory chapter.

To lift women's awareness and strengthen their engagement with national initiatives, the Ministry of Women Community and Social Development (MWCSD) engages with villages through women's committees. Villages are also asked to send representatives to forums, held in Apia or at other central meeting points, for dialogue. No such strategy existed for the *fa'afafine* community, but participants from this community appeared confident that they were aware of national concerns that were significant for them as *fa'afafine*, particularly around human rights (Participant R (F), Participant V (F)).

Despite local efforts to support women into leadership roles, the United Nation's response to Samoa's CEDAW 2012 report signalled concerns about discrimination that were perpetuated through customs and traditions, and the lack of commitment from the government to address known barriers.

20. The Committee expresses its serious concern, however, about the persistence of harmful norms, practices, traditions, patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, in addition to the State party's limited efforts to tackle such discriminatory practices. These include, in particular, women's limited access to family chiefly titles (*matai*), discrimination against women married to untitled men and the practice of banishing families from the village by village councils. The Committee is concerned that such customs and practices perpetuate discrimination against women and girls and that they are reflected in women's disadvantaged and unequal status in many areas, including education, public life and decision-making, and in the persistence of violence against women, and that, to date, the State party has not taken sustained measures to modify or eliminate stereotypes and negative traditional values and practices (UN CEDAW Committee, 2012, p. 5).

There is still resistance in communities at leadership level within private organisations, village *matai fono*, and the public service to the genuine involvement of women. The tokenistic gestures are reflected by the absence of integration of women's interests and views in programme design, and outcome planning.

Participant V: *...they're missing the point. Auai is like just sitting there ae lē o addressing what e tatau na address I totonu o project design/development mo*

atina'e. Even fo'i i totonu o nuu. I le tele lava o nuu, I see the missing element a o le malamalama'aga o council, because the final say i totonu o soo se atina'e, the final say is the council (matai fono).

Translation: ..they're missing the point. Participation is like just sitting there but it is not incorporating or addressing what should be done inside the project's design for future development. Even inside villages. In most villages, I see the main missing element is council (council of village chiefs) understanding/appreciation, because the final say on any programme of development is that of the council.

Under 2 percent of *Pulenu'u* (village representatives on the *Fono a Pulenu'u*/Council of Pulenu'u) are women. This is the body that advises government on cultural matters (MWCSD, 2010).

In 2012, the Samoan CEDAW report stated the government's intention to increase the number of women in Parliament to 10% (UN Committee on CEDAW, 2012). In 2013, the Constitution Amendment Act 2013 came into force with required a minimum of 10% of the Legislative Assembly to be women, starting from the 2015 elections. If women did not win electorates, the new provision was to be triggered.

This is a step forward for Samoa but it requires more families to bestow titles on their women. As more women become *matai*, more become involved in decision making on health, education, tourism, housing, business development, public infrastructure, and other key areas of national interest that inevitably affect policies concerning Samoa's customary lands.

When I raised the matter of the 10% minimum representation for women in parliament, I found that female participants' previously relaxed attitude about gender equality over *matai* titles quickly changed. The women were not aware of such an amendment or of any public discussion on the issue but were clearly affronted by the 10%.

Agalelei (W): E ō a nai fafine finau I le mea lea o le 'ina'ilau a tamaita'i' ae lae tā motu a e tamaloloa – na o le 5 percent?? O mea faapolotiki! Tatau na faatutusa lelei seats e afa tama'ita'i afa tamaloloa.

Translation: The poor women continue to argue for the rights of women but they continue to get cut off by the men – just 5 percent?? damn politics! They should make the seats equal half for women half for men.

Masefili (W): Aisea le mea e lē fai ai le 49% o fafine? O la ua toatele CEO a le Malō o fafine.

Translation: Why not make it 49% for women? There are many CEOs in government now who are women.

I asked an official who was involved in community projects what responses were like from women to the parliamentary amendment. The official's response was that women had to support each other more in order for the gender distribution to change in the long term. Women's perceptions of leaders, leadership, and dragging other women down were said to be major hurdles.

Participant V (F): La e iai le belief na sau a'i tatou - ituaiga talitonuga a na faatama'ita'i. Ia manatua o tatou tamaita'i ma alii Samoa, na tupuna mai a – this is the role o tama'ita'i....this is the role of men... E fou nei le mea lea...e iai a tuaoi o le va ai alii ma tamaita'i Samoa, lea la ua taumafai e overlap i le addressing ina o gender issues ma mea na.

Translation: There are old beliefs that still remain – the type held by women. Remember, we women and men of Samoa, when we grew up – this is the role of girl....this is the role of men...This (gender equality) this is new...but there exist boundaries in the relationship between the Samoan man and woman, we are now trying to overlap these to address gender issues and those types of things.

Jealousy, unhealthy competition, and mocking by women of other women who try to rise to positions of leadership were said to be prevalent. I was informed by an official that there were instances when women's committees would be asked to send a representative to government forums. In some villages, the women's committee asked the *matai fono* to choose a representative, defeating the purpose of women making and owning decisions.

9.0 Customary Land Tenure

A person's rights to customary land is sacred, and in just proportion because others share the same rights.

Land in the Samoan language is *fanua*. *Fanua* is also the word for placenta. *Fanua* meaning land and *fanua* meaning placenta frame and define Samoan rights and access to land. Honorifics mark the *tua'oi* between land and people. Historically, the land *tua'oi* or land connections and inheritance (*tofi*) of Samoa are recognized in national, district and village honorifics. Land boundaries define the *tofi*, i.e. the proportional inheritance of a people. The lands of Samoa are believed to be the lands designated by God for the people of Samoa. As a designation from God each person has a right to their portion. (Tui Atua Tupua Tamasese Taisi Efi, 2007, p. 6)

A family's customary lands were in a specific place/village, and connected to *matai* titles from that family, village, and region. The titles that have land attached to them are the principal ones referred to as *matai faavae*; these give the holder more clout in the

village *matai fono*. Not all *matai* titles hold direct roles over the aiga's customary lands, such as titles described in the literature as 'junior titles' (*matai pitovao* and *matai faa va i pou*) (Soo and Fraenkel, 2005).

9.1 Constitutional Protections of Customary Land

The Constitution of the Independent State of Samoa 2009 (Rev), Article 101(2) describes customary land as land held in accordance with Samoan custom and usage. It does not codify custom. Under Article 102, it is illegal to alienate or dispose of an interest in customary land. This is the only article in the Constitution that requires a referendum to change.

Article 103 of the Constitution 2009 (Rev) enshrines the role of the Land and Titles Court as the final authority that decides on matters of customary land and *matai* titles. Legal disputes concerning freehold or alienated land are dealt with by other courts.

Customary land cannot be alienated although it can be acquired by the government under the Alienation of Customary Land Act 1965 s4 which states:

Nothing in this Act may be construed or implied:

(a) to permit the alienation or disposition of customary land in a manner prohibited by Article 102 of the Constitution; or

(b) to permit or deem ownership in any customary land to vest in a person otherwise than as determined under any law dealing with the title to customary land.

There are no gender specific provisions in either the Constitution 2009 (Rev), Land and Titles Court legislation, Village Fono Act 1990, or inheritance laws in Samoa in relation to customary land.

While the State does not generally interfere with how people use their customary lands, it has the ability to do so where related human rights and customary rights are violated through the Land and Title Court. The law does allow customary land to be transferred by will as personal property:

Wills Act 1965, S2: "real estate" includes any interest in land, except that with respect to customary land it shall extend only to interests in leases or licences granted under the authority of the Alienation of Customary Land Act 1965.

All matters pertaining to customary land are addressed at the Land and Titles Court. The core pieces of legislation are the Constitution, Land and Titles Act 1981, Land Titles

Registration Act 2008, Alienation of Customary Land Act 1965, Village Fono Act 1990, Taking of Lands Act 1964, and Land Titles Investigation Act 1966. Appeals to the Land and Titles Court decision can only be addressed by the Supreme Court.

9.2 Management of Customary Land

At the village level, customary lands are in village settings which are mostly governed by the families that live there through a *saofaiga a matai (matai fono)*, or council of chiefs. The authority of *matai* is said to be stronger in rural areas than in more urbanised areas where new settlers are not necessarily under the rule of the *fono* (Roger, Participant V). The *matai* council's functions are specified in the Village Fono Act 1990. Each village then has a representative called a *faipule* on a national council of *faipule* that advises the Government. As the majority of Samoa's land assets is in the hands of families and overseen by the village council, the body of *faipule* is politically important and significant to Samoa. All these levels of responsibility may be involved in a dispute over customary land.

Dr. Telei'ai Sapa Saifaleupolu, matai of Samatau and Upolu, said: "Our customary systems of consensus building may be slow and frustrating in the eyes of the financial market, but they safeguard our rights and help ensure the equitable distribution of land and its benefits. It is these systems that have ensured our survival as a people into the 21st century. (Inclusive Development International, 28/2/2014)

At the system level, the Land and Titles Court is the dominant authority regarding customary land and *matai* titles, and was originally set up to protect both (Meleisea, 1987, p. 205). The Court or the State is the final decider, "*E pule le faamasinoga*" (O'Meara, 1996, p. 121).

The original Land and Titles Act 1981 recognised a particular authority held by *matai* called *pulefaamau*. The holder of *pulefaamau* was responsible for ensuring the land was used appropriately and allocated fairly to kin who needed it, to protect the land and uphold the esteem of the family title (Fana'afi, 1986). The *pulefaamau* held authority over a family's customary lands and, under the original Land and Titles Act 1981, could be held by an individual, which contradicted collective authority over such lands. Over the years, *pulefaamau* authority became abused by a number of *matai*. In 2009, the Samoa Minister for Courts was quoted in a Samoa newspaper talking about complaints from members of extended families who had found themselves cut off from their

customary land, as the person holding *pulefaamau* had used it for his own interests (Autagavaia, 2009). The term *pulefaamau* has since been removed in 2013 and is absent from the amended Land and Titles Act 1981.

Matai titles can be removed by a family independent of State involvement, but it can also be done under s20B of the Land and Titles Act 1981. *Matai* titles have been deregistered prior to universal suffrage to prevent the proliferations of titles for voting purposes; the activity demeaned the dignity of the *matai* role and further complicated authority over customary land (Meleisea, 1987).

A government official who was consulted about the removal of *pulefaamau* from legislation said that there was still unhappiness about it among the general population, but it was often from those who had benefitted from *pulefaamau* and wanted to maintain their privileges. This response suggested that a cultural elite existed in Samoa, and there was an unequal distribution of rights to land within an *aiga potopoto* to its own assets. In terms of protecting women's customary land interests, the Samoan NGO Shadow report to the CEDAW (2012) recommended the government "consider the inclusion of CEDAW in the Land and Titles Act 1981 to consolidate and reinforce the protection of customary rights of women to Land and Titles." (Samoan NGO Shadow Report, 2012, p. 4).

The risk of deprivation of entitlements to one's customary lands was more from within the *aiga* than from outside interests. Many Samoans who live overseas have rights to customary lands in Samoa. A significant number of Samoan residents hold citizenship in Australia, New Zealand, and the United States (Census 2011). The combined population of Samoans outside Samoa exceed that inside, with New Zealand alone having 144,000 (Statistics New Zealand, Census 2013).

As mentioned in the literature review, Samoa has made progress in digitising its Land Court records to ensure their preservation and enable easy access for the public in future (Samoa Law and Justice Sector, 2013).

9.3 Evolving Tenure and Leasing of Customary Land

Land distribution and tenure practices are affected by population growth. The first official count of the Samoan population was conducted in 1902 by the German

administration, which estimated the population at 32,612. The 2011 Census population was 187,820 (SBSa, 2011). Land availability and fair distribution are challenges of 21st Century Samoa, even more so in highly populated urban areas.

Increasingly it is becoming acceptable that a piece of customary land can be used by any person or nuclear family of the extended family who first develops it. The same piece of land is then passed down through that line, and not via consultation with the *matai* of the *aiga potopoto* that holds responsibility for all of the *aiga*'s lands (MNRE, 2006; O'Meara, 1995). This informal form of land transfer is common under Samoan custom but is out of alignment with the Wills Act 1975 as previously discussed. O'Meara wrote about the individual unit assumption of rights over a piece of customary land as a sign that the nuclear unit was overtaking the *aiga potopoto* as the main land owning unit.

The Samoan government has been working with the Asian Development Bank on the 'Promoting the Use of Customary Land' project, a project that had been in development for many years prior to the development of the Plan of Action in 2009 (ADB, 2009). This work appeared to have been the precursor to the amendments to the Land Registration Act 2008 that caused much anxiety among the Samoan public about customary land being eventually alienated. The ADB (2009) project paper suggested that the Land Registration Act 2008 propose the use of the Torrens system to register land, which would require the registration of public land, freehold land and customary land leases and licences. Interestingly, the 'Promoting the Use of Customary Land' project is led by the Ministry of Finance, possibly indicating the primacy of economic imperatives over other interests.

One of the key objectives of the Promoting the Use of Customary Land project is to strengthen the private sector as the driver of economic growth. Streamlining the leasing of customary land is a key part of this project. If successful, land leases would be usable as collateral for loans to support growth of the private sector (ADB, n.d). This may have potential benefits for women in business or interested in developing business. It may also open the door to banks seizing land and selling it off to cover loans that go bad.

The Land Titles Registration (LTRA) Act 2008 came into force in March 2009. The Act adopts the Torrens registration of title system where a single person can hold title over

land, and requires the registration of public land, freehold land and customary land leases and licences. The Act allows the registration of customary land in respect of which judgment has been made by the Land and Titles Court (Ye, p. 827-828). There was much media coverage of public concern about this legislation but the government had the numbers to pass it. There were no records of submissions from *fa'afafine* and women's groups according to participants (who were officials) that were interviewed.

The LTRA is part of a bundle of legislative changes that the government has been working on as part of the 'Promoting the Use of Customary Land' project, funded by the Asian Development Bank. Phase I of the TA was approved by ADB on 5 December 2005, Phase II on 23 November 2009, and Phase III TA was approved on 10 October 2013. The purpose of the Project is "to assist the Government's efforts to encourage growth and jobs in Samoa by supporting greater investment through the use of leased customary land as collateral for financing." (ADB, 2015, p. 1). The Ministry of Finance holds overall responsibility for the project, while the MNRE and the Ministry of Justice and Courts Administration are the implementers (ADB, 2015).

An ADB (2009) project paper suggested that the Land Registration Act 2008 propose the use of the Torrens system to register land, which would require the registration of public land, freehold land and customary land leases and licences. Streamlining the leasing of customary land is a key part of this project. If successful, land leases would be used as collateral for loans (ADB, n.d). This is foreseen to bring benefits for women already in business or interested in developing a business. Two officials who were interviewed advised that the project was meant to give people options for the use of their lands, but it was not compulsory.

Under the Alienation of Customary Land Act 1965, the government acts as trustee on behalf of customary land owners, is the negotiator of land leases, and the collector of land rents. Customary land leases can be for 20 or 30 years duration depending on the intended land use, and may be renewed for a further period. While the legislation is not explicitly discriminatory by gender, it only permits leases of customary land to *matai*, the majority of whom are men.

Section 3. Prohibiting some leases and licences – It shall not be lawful to lease or licence any customary land for any agricultural or pastoral purpose to any Samoan who is not a holder of a Matai title.

The Land Titles Registration (LTRA) Act 2008 resulted in an amendment to s4 of the Alienation of Customary Land Act 1965 to include:

- (2) For the avoidance of doubt, an interest in the lease or licence of customary land that the Minister can grant by subsection (1) includes a mortgage of the interest of the lessee or licensee.
- (3) The process of registration and discharge of mortgages in the Land Titles Registration Act 2008 applies to the registration and discharge of such mortgages.

The government has since developed new legislation to support the project called the Customary Land Advisory Commission Act 2013. The functions and powers of the Commission are:

- (a) to recommend to Cabinet suggested measures for the facilitation, encouragement and promotion of the economic use of customary land in Samoa;
- (b) in accordance with references made to it by Cabinet, to conduct public consultations on areas of law affecting customary land considered to be in need of reform and report its recommendations for reform to Cabinet;
- (c) to consult with and advise the public and any specific sectors of the community about its work;
- (d) to review all laws affecting customary land in Samoa and make recommendations to Cabinet for changes to such laws where such are necessary for the facilitation, encouragement and promotion of the economic use of customary land;

The Commission is comprised of three commissioners appointed by the Head of State acting on the advice of Cabinet. Two key requirements of a Commissioner under the Customary Land Advisory Committee Act 2013 are that they must be a *matai*, and must have “a significant understanding of Samoan culture”.

10.0 Summary

Men and women are guaranteed the same fundamental human rights under Samoa’s Constitution 2009 (Rev), but this is not reality. While there is a provision in the Constitution 2009 (Rev) for the advancement of women, there is no provision for the advancement of other marginalised gender groups that would include *fa’afafine*.

Samoa has ratified CEDAW and the government is amending relevant laws and promoting gender equality programmes in communities and the public service, all in relation to its commitment to CEDAW. Pre-existing cultural concepts like *feagaiga*, and

the principle of gender neutral right to customary land may have facilitated Samoa's ratification of CEDAW.

Social stigma remains for *fa'afafine*, and they have received less support for their basic human rights compared to women. Despite the barriers, public support from political leaders, public acceptance of *fa'afafine* identity, and the removal of laws that forbid them from dressing as *fa'afafine*, have all contributed to a sense of optimism about a future when law and custom would enable and protect full equality of the genders.

The vast majority (94%) of households in Samoa own their own homes. The main difference between households in AUA (urban) and NWU (urban and semi-urban) is that the majority (58%) of AUA households (58%) are on freehold land, while the majority (57%) of the NWU are on customary land. Only 29% of AUA households are on customary land. There is an equal proportion (12.5%) of households in both AUA and NWU which are on leased land (Census, 2011).

The majority of Samoa's urban households have access to basic amenities, but a significant proportion face hardship. AUA had the least share of households in hardship at 18.7%, while NWU had the most at 30.5% (Census, 2011). Hardship is mitigated or alleviated by access to land, supportive reciprocal social relationships with kin and others, and religious faith.

Samoan women and NGOs have used avenues in the Constitution 2009 (Rev), local system, and at the United Nations to protest against gender prejudices in custom, and law. There are gender inequities affecting women's access to customary land within families, rooted in *matai* authority being bestowed more readily on men than women. The deference of leadership roles (*matai*) to men ultimately affects women's participation in decision making forums on important issues such as changes to tenure laws, and urban planning. Violence against women continues to be a problem, and women and their children are in refuges as a result of having no safe alternative home to resettle in. Many of these issues will resurface in the findings for Samoa in Chapter VII.

I will now look at the urban context for Tonga in Chapter VI.

Chapter VI: Tonga Context

1.0 Introduction

This chapter will provide a description of the urban setting for Tonga. The context is informed by a combination of government reports, legislation, other published information, and perceptions of fieldwork participants about their environment.

The literature review indicated important societal and legal factors that directly affect urban women's rights and access to land. The contextual factors will include sex, class, demographics, land shortage, socio-economic position, human rights, and gender relations.

Some commonly used terms in this chapter:

Estate holder(s) – refers to the noble who acts as steward of the King's land.

Fahu – highest ranking paternal aunt

Act of Constitution of Tonga 1988 (Rev) and *Land Act 1988 (Rev)* are used here, unless otherwise stated.

Life estate – means the owner can hold the land until he/she dies, although there are certain conditions that could lead to the removal of holding rights (s37 Land Act 1988 (Rev)). Under s4 of the Act 1988 (Rev), a holder's interest in any hereditary estate, tax allotment or town allotment is a life interest, subject to s37 of the Act 1988 (Rev). The s48 of the Act 1988 (Rev) allows a person to only own one town and one tax allotment.

Mehikitanga – paternal aunts

Town allotment – a hereditary holding (subject to s37 of the Land Act 1988 (Rev)). The land parcel is 7000 square metres under s43 of the Act 1988 (Rev). A town allotment can be leased from someone else for up to 99 years with Cabinet approval.

Tax allotment – a hereditary holding (subject to s37 of the Land Act 1988 (Rev)). The land of usually 3.3387 hectares, but can be up to 5 hectares under the Act 1988 (Rev). The registered owner pays an annual rent to the State. The parcel is commonly used for agricultural purposes. An allotment can be leased from someone else for up to 20 years.

Surrender (land) – refers to the action of voluntary return of land to the original holder (Crown or estate holder) in the absence of an heir (s54 of the Land Act 1988 (Rev)).

Revert (land) – when a piece of land goes back automatically to the original holder be it Crown or estate holder, in the absence of an heir (s83 of the Land Act 1988 (Rev)).

2.0 Country Profile

Tonga has a land mass of 747 square kilometres spread over 176 islands, of which 34 are inhabited. The main inhabited islands are Tongatapu, Vava'u, Ha'apai, 'Eua, and 'Ongo Niua.

In 2011, Tonga had a population of 103,252. Approximately 73% of the population live on Tongatapu, which also holds the capital Nuku'alofa. Males slightly outnumbered females, at 51,979 compared to 51,273. There is no statistical category for *fakaleitī*, so their population is unknown. The median age was 21.3 years. Life expectancy was 73.1 years for females, and 69.3 years for males (Department of Statistics (DoS), 2013).

The two official languages are Tongan and English. "Literacy was measured by a respondent's ability to read and write a simple sentence. The literacy rate for those aged five years and older in the usually resident population was 98.2% in 2011. Of those who are literate, 86% were literate in both Tongan and English or other languages, while 11% were literate in Tongan only" (DoS, 2013, p. xii).

3.0 Urban Households

Tonga's DoS classifies a village as urban based on a population size of at least 5,000 people (DoS, 2013, p. viii). Three villages fall into the urban area also referred to as Nuku'alofa: Kolofo'ou, Ma'ufanga, and Kolomotu'a. Nuku'alofa holds 23.5% of Tonga's population, with a population density of 2,123 persons per square kilometre. In comparison, the population density for Tongatapu is 290 persons per square kilometres, and Tonga overall is 159 persons per square kilometres (DoS, 2013, p. ix). One effect of heavy density in Nuku'alofa is the construction of homes on reclaimed swampland (ADB, 2012).

In 2011 there were 18,033 private households⁹ in Tonga. The average household size was six people. Approximately 78% (13,982) of households were headed by men, and 22% (4,051) were headed by women. The urban area had 23% (4,221) of all households, 74% of which were headed by men, and 26% were headed by women (DoS, 2013).

Household amenities data is not provided specifically for urban households, so I will use data for Tongatapu as an indicator of access. In 2011, 92% of Tongatapu households had piped water supply, and the rest provided their own. Most (93%) had electricity from the mains supply for lighting, and smaller proportions used kerosene, benzene, solar, or some other lighting supply. Gas was used by 60% of Tongatapu households for cooking, and wood fuel was significant for 36% of households. Sanitation data shows that 92% of urban households had flushing toilets (DoS, 2011).

The following table indicates patterns of household (private) tenure (DoS, 2013). The term ‘owned’ in the official table below will be taken to mean that someone in the household had title to the land, since all land is legally owned by the King.

Table 8: *Household Tenure by Urban and Rural Areas, 2011*

District	Total	Owned	Rented	Rent Free	Other
Urban	4,221	2,608 (61.7%)	575 (13.6%)	1,001 (23.7%)	37 (0.9%)
Rural	13,812	9,922 (71.8%)	416 (3.0%)	3,318 (24.0%)	156 (1.1%)
Total	18,033	12,530	991	4,319	193

The data shows a significant portion of the urban population live in rented (paid and rent free) accommodation. There are obvious risks to households that live ‘rent free’ should the legal owners of the property decide to charge.

Private households support themselves with a combination of sources. Some sources are more significant than others, depending on the location and size of the household, and the gender of the head of the household (DoS, 2013).

⁹ Household definition: “Consists of persons who usually eat together and share the work of preparing the food and/or the cost of work of providing it. Generally, household members live and sleep in the same building although this is not always the case. Hence, the definition is based on eating together rather than on living or sleeping in the same building or dwelling”. (Tonga 2011 Census of Population and Housing, p.vii)

Table 9: *Main Source of Household Income by Urban and Rural Area, 2011*

	Urban District	Rural District	Urban, Tongan Male Head	Urban, Tongan Female Head	Urban, Part Tongan Female Head
Wages & Salaries	2,265 (54%)	5,241 (38%)	1,844 (66%)	574 (56%)	4 (36%)
Own Business	424 (10%)	708 (5%)	241 (9%)	61 (6%)	1 (9%)
Sale of Own Products	315 (8%)	4,308 (31%)	239 (9%)	68 (7%)	2 (18%)
Land Lease	9 (0%)	23 (0%)	6 (0%)	3 (0%)	0
House Rent	55 (1%)	47 (0%)	33 (1%)	18 (2%)	1 (9%)
Remittances	500 (12%)	2,205 (16%)	264 (9%)	219 (22%)	3 (27%)
Pension Allowance	88 (2%)	112 (1%)	54 (2%)	20 (2%)	0
No Strong Income	175 (4%)	1,095 (8%)	112 (4%)	48 (5%)	0
Other Source	30 (1%)	73 (1%)	14 (1%)	9 (1%)	0
Total	4,221	13,812	2,807	1,020	11

*(Decimals rounded to nearest percent)

A high number of urban households obtain income from wages, salaries, and own businesses, compared with rural households and remittances. Rural households are significantly higher than urban in the 'Sale of Own Products' and remittances, while relatively less from wages and salaries. Income from remittances appears to be more significant for urban households headed by women, compared to urban households headed by men, and rural households generally.

It is interesting to note that very few men and women earn income from land leases. However, Table 6 did indicate that it was not unusual for Tongans to not charge others for the use of their property, so more land may be used informally in various arrangements but cannot be formally counted.

The Part-Tongan urban FHH figures, while small, signal differences from the full Tongan urban woman headed household. The numbers are too small but it appears that wages, salaries, and remittances are important to the part-Tongan women headed households. I wondered why Tonga would specifically survey the circumstances of part-Tongans, considering their minute number.

4.0 Socio-economic

The majority (97.5%) of the population in 2011 was of Tongan ethnicity and speak Tongan, so the indigenous culture is the most dominant (DoS, 2014).

Tongan society is religious, and most of its faith based communities are Christian. The Free Wesleyan Church has the highest affiliation (36%) among the population, followed by Church of Latter Day Saints (18%), Roman Catholic Church (15%), Free Church of Tonga (12%), Church of Tonga (7 percent), then many smaller denominations (DoS, 2013). Churches are one of the major recipients of remittances received by households (International Monetary Fund (IMF), 2011, p. 3). The biggest expense is the *misinale* which is the annual fundraiser for each church denomination in Tonga. “The annual church contribution ‘misinale’ is an event that many people will contribute any savings they have. The older people in particular will save money in-between ‘misinale’ just for the event.” (FAO, 2011, p. 17). The *misinale* is also practised by Tongans overseas (Addo, 2012).

Urban women’s education levels are significantly higher than rural women (DoS, 2013).

Table 10: *Qualification Achieved (15 years +) by Women by Urban and Rural Areas, 2011*

Highest Education Qualification	Urban Females 5%yrs +	Rural Females 5%yrs +
No Qualification	3,549 (45%)	14,198 (56%)
Secondary School Certificate	2,848 (36%)	7,934 (32%)
Technical Vocational and Professional Qualification	1,183 (15%)	2,030 (8%)
Undergraduate Degree	284 (4%)	386 (2%)
Post Graduate Diploma, BA, MA, PhD	97 (1%)	104 (0.4%)
Other Qualification^^	8 (0%)	19 (0%)
Total	7,969	24,671

* Decimals rounded

5.0 Hardship and Poverty

The Tongan government does not believe there is absolute poverty in the kingdom but recognise that there is hardship (Government of Tonga, 2005). Hardship includes “poor access to transportation to remote outer island communities, lack of access to essential services, good quality and regular water supply, primary health care and poor

education...inability to find secure employment to ensure regular income from which to meet school expenses and other family commitments“ (Government of Tonga, 2005). The groups of people who are considered in hardship in Tonga include widows and single mothers without regular income, large families without regular income and/or access to land, unmarried individuals, and jobless migrants to urban areas (UNICEF Pacific, 2011).

Some parts of urban Nuku’alofa have squatter settlements where people from outer islands live because they cannot access land. Some of these settlements are on unallocated lands. Households often share facilities for washing and toilets. There are issues around sanitation and environmental damage. Some areas are susceptible to flooding during the rainy season or at high tide. (UNICEF Pacific, 2011).

The following table shows an increase in the incidence of poverty between 2001 and 2009 (ADB, 2013, p. 24).

Table 11: *Household Poverty Incidence by Location, 2001 and 2009*

Location	Households		Population	
	2001	2009	2001	2009
Nuku’alofa	13.7%	14.7%	18.0%	21.4%
Rest of Tongatapu	14.4%	17.5%	18.8%	23.5%
Other Islands	9.0%	17.0%	11.8%	22.9%
National Average	12.2%	16.4%	16.2%	22.5%

Food security is a major concern. “Tonga is highly vulnerable to periodic food shortfalls because of its high dependence on imported food items (25% of all imports), and the high proportion of household expenditure (51%) on food in both rural and urban areas’’. (ADB, 2012, p. 26).

Tongan households and economy have a long-standing reliance on remittances from overseas. Between 2001 and 2008, remittances varied between 30% and 55% of GDP. The foreign exchange inflows had been around twice as much from remittances compared to exports (IMF, 2011, p. 3). The possibility of losing remittances and other goods from absentee land owners influenced the Government’s refusal to impose penalty taxes on those who left land idle in Tonga (James, 1993, p. 221).

Reports are that remittances are normally sent to mothers or female relatives who then allocate it, but there is no sign that women’s control of remittances improves their

access to land (FAO, 2011, p. 18). The same FAO report suggests that this may be due to prevailing beliefs that farming is a male responsibility, and because the tenure system excludes women from owning land. Remittances to households are primarily used for consumption rather than investment purposes, with around 13% of remittances going into expenses directly for agriculture (FAO, 2011).

6.0 Human Rights

Tongan society is ranked by class:

- (1) Monarch
- (2) *Hou'eiki*/Nobles
- (3) *Kau tu'a (kainangaefonua)*/Commoners (Le Va, 2011).

Prior to the colonisation period, Tongan society was ruled by chiefs who were highly revered and considered sacred (Salomon, 2009). The demarcation between chiefs and commoners was further reinforced by different levels of language for the aristocracy (*hou'eiki*), chiefs (*mu'a eiki*) and commoners (*tu'a*). Chiefs controlled land and people who rendered services and goods to them. "Submissiveness and humility of the commoners became a source of identity and pride" (Salomon, 2009, p. 375).

The traditional chiefly organisation prevailed until civil wars broke out between 1777 and 1820 between chiefs (Salomon, 2009). Around the same period, British and European explorers and Christian missionaries were in the Pacific. One of Tonga's leaders at the time was chief Tāufa'āhau from the Tu'i Kanokupolu line.

Tāufa'āhau became close with the Methodist missionaries and he subsequently converted to Christianity in 1831. In 1845, Tāufa'āhau changed his name to Siaosi (George) after King George of England. In return for his help with embedding Christianity inside Tonga, the missionaries supported Tāufa'āhau to become King. In 1845, Tāufa'āhau became King George Tupou I, thus founding the existing monarchy (Fischer, 2002).

In 1873, King George Tupou I proclaimed the motto '*Ko e 'Otua mo Tonga ko hoku Tofi 'a*' - 'God and Tonga are my Inheritance', which bounded land and Christianity as foundations of Tongan identity. With the help of his advisor, friend, and ex-missionary Shirley Baker, Christianity and the British style of government became embedded in the Tonga Constitution (Marcus, 1978).

The Tongan Constitution 1875 is the oldest constitution in the Pacific, and it shows from a human rights perspective. This is not to say that Pacific nations with constitutions that were formulated in the 20th Century have realised fundamental rights, but their constitutions provide a foundation that Tonga's citizens do not have. The Constitution 1988 (Rev) remains written in the male subject. For example:

15. Court to be unbiased

It shall not be lawful for any judge or magistrate to adjudicate or for any juryman to sit in any case in which one of his relations is concerned either as a plaintiff defendant or witness: Nor shall any judge or magistrate sit in any case which concerns himself: Nor shall any judge or magistrate or juryman on any pretence receive any present or money or anything else from anyone who is about to be tried nor from any of the defendant's friends but all judges magistrates and jurymen shall be entirely free and shall in no case whatever be interested or biased on the discharge of their duties.

The Constitution 1988 (Rev) has provisions that appear contrary to daily reality. For example,

17. Government to be impartial

The King shall govern on behalf of all his people and not so as to enrich or benefit any one man or any one family or any one class but without partiality for the good of all the people of his Kingdom.

104. Land vested in crown

All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or matapules one or more estates to become their hereditary estates. It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration shall become a covenant binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever.

The land market is very active in Tonga, as I will discuss further in the findings chapters.

The original Constitution 1875 did not provide voting rights for women. The law was later amended during Queen Salote Mafileo Pilolevu Tupou III's reign to give women the right to vote, and to run as elected candidates in 1951 (Guttenbeil-Likiliki, n.d).

Tonga ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1972 and the Convention on the Rights of the Child in 1995. Tonga signed the Disability Treaty in 2007 but did not ratify it (United Nations Office of the High Commissioner for Human Rights, 2009).

6.1 Women

The Tongan *kāinga* (family) is ranked by sex and age, from the most respected (‘*eiki*) to the least (*tu’a*). The hierarchy indicates a high status for women.

Aunt’s (paternal aunts – *Mehekitanga/fahu*)
Father (*Tamai* – paternal uncles included)
Mother (*Fa’e* – maternal aunts included)
Oldest Daughter
Other Daughters
Oldest Son
Other Sons (Niumeitolo, 1993)

Equality is not in Tongan custom, either between gender groups or within a gender group. Informal privileges or ‘silent rights’ within cultural hierarchies favour some over others (Moengangongo, 1986). Bleakely wrote:

Tongan society is strongly rank-conscious. Within the social hierarchy, no two members of a *kāinga* (extended family) share the same rank (Kaeppler 1971; Bott 1981). Descent through a sister or through a brother of a sibling pair, for example, is particularly important in determining social rank and interpersonal behavior within the extended family. Thus, issues of women’s equity and development in Tonga must be situated in socially and culturally gendered particulars if only because people are situated in kinship relations that connote different kinds of attitudes and behavior, such as command and respect, avoidance, deference, and obedience. Specific kinship duties and roles have implications for the efficacy of women’s voices within family structures. In addition, family loyalty is generally likely to be stronger than a sense of shared female solidarity. (Bleakely, 2002, p. 134)

Respect towards *fahu* and *mehekitanga* gives women in those roles certain rights, such as naming a brother’s child, and rights to goods owned by a brother and his children. The position of *fahu* lies on the paternal side and the highest ranking aunt, so not all women in a paternal family can occupy this position simultaneously. A brother traditionally demonstrated respect for his sister by giving her the first crops from his harvest (Participant O). Over time, traditions have weakened. “In culturally important occasions such as funerals, roles which are traditionally supposed to be played by an elder woman are now taken on by a more affluent woman or in some cases by a man.” (Japan International Cooperation Agency (JICA), 2010, p. 7).

Women’s legal access to land is crucial in the Tongan context to protect against hardship and social alienation. For example, a woman traditionally left her home to live with her husband following marriage. If she returned to the land of her childhood, her

ability to live there would require the permission of her parent(s), a brother (if he had inherited their father's land), or a sister (unmarried, inherited their father's land in the absence of a male heir).

Participant C (W): Some of the women are coming here they are single mothers, but they are staying together with their brothers and families living there. But when they come here they really need a place to stay, but when they go back they have a fight with the brothers e. The brother chase them away because he want the place e, no matter it's their parents' place and their parents are home, their brother's gonna chase them out cos no right for the land.

Participant D (W): It is an extra burden for him and his family if the sister is there because in most cases if the brother is not working, he himself has to feed his own family first before you know, with the sister and her kids coming, that's another load. It's hard it's so sad.

Ironically, one of the most progressive leaders in Tonga's history was Queen Salote Mafile'o Pilolevu Tupou III. Queen Salote ruled from 1918 to 1965 when she died. The social, economic and political progress made during her reign, opened opportunities for individuals and the nation that were not previously available. As an artist, poet, and song writer, the Queen set up the Tongan Traditions Committee in 1952 to take care of Tongan myths, legends and genealogies. Queen Salote worked to improve women's living conditions and encouraged them to produce crafts for market. Tongan women gained the right to vote in 1960 (Ring, Salkin, La Boda, Shellinger and Salking, 1996). Education became compulsory. The Land Court was established, as well as a Teacher Training College, a bank, and overseas study scholarships. Queen Salote also promoted diversification of exports goods, and introduced telephones to the country (Ring et al, 1996, p. 830).

6.2 Convention on the Elimination of Discrimination Against Women

Despite the giant leaps during Queen Salote's reign, there is no national consensus on the need for gender equality in Tonga, even among women. Participants from NGOs for this study expressed frustration about external consultants, researchers, and aid agencies that came to Tonga to look at social issues, who tended to only talk to groups or individuals that were easily accessible. The people consulted were often in decision making positions and privileged, while the women that were most disadvantaged and disempowered were not engaged.

In 2001, Tonga launched the national gender and development policy but did not have funding or policy support from the government or donor agencies (ADB, 2012, p. 36).

This was based on a prevailing attitude among dominant voices in society and in the public service, that gender inequality was not a national concern, and that women were generally respected and not impoverished. These optimistic perceptions were reflected in some of the interviews I conducted for this research.

Participant S (W): Where women have the education, the support of whoever is around them their family – and that's where they are. They have crops at the market they are part of that. So for those, human rights is not a priority, it may be 4 or 5 on the list.

Researcher: Cos they're ok?

Participant S (W): They're ok. They are working, there nothing to stop them from doing that. The other extreme are the women who don't have the economic means, they rely on their husbands, they're being beaten everyday...they don't have the educational background, their family support...their social network is very weak. Those are the lot that we are talking women's rights.

When the National Strategic Planning Framework was released in 2009, it did not include gender equality (JICA, 2010, p. 8). In September 2009 Tonga's Legislative Assembly chose not to ratify CEDAW. The reason given was that CEDAW went against the Tongan way of life (Shore, 2009). Another reason was that it would require amendments to the land ownership system (JICA, 2010).

In 2012, the government signalled a shift in position when the Solicitor General announced on 8/3/2012 that a committee would be set up to review the land laws to address women's rights to land, and reconsider ratifying CEDAW (Matangi Tonga Magazine, 2012). During the fieldwork, I asked official about progress on these issues.

Researcher: Do you think there's much support in the current Parliament for increasing access to land? You know, which basically changes succession, sorry amending succession provisions.

Participant P (W): 'Do you think' - my opinion – mmm probably not.

Researcher: mmm

Participant P (W): With CEDAW – you have to base it on CEDAW. With all that with all the defensiveness (facial expression of dismay and tiredness), you know of course the male has the upper hand in this, and who would want to lose that? But there are some MPs who certainly want to share who aren't so defensive and want to give the same opportunities for their daughters and sisters and stuff.

The response made me wonder if the apparent lack of urgency to make progress was a form of passive resistance. Bleakely wrote that *anga fakatonga* (Tongan traditions, Tongan ways) “that confine women to subordinate positions are portrayed as key, almost sacred, factors integral to Tongan identity and, therefore, non-negotiable” (2002,

p. 134). NGOs who see the most vulnerable women continue to work against the tide of denial and tolerance of inequality.

Participant S (W): We say you can't just leave them here, they have rights... if we don't ... push for their rights, their children will grow up and just be the same.

In 2014, Tonga launched its Revised Gender and Development Policy 2014 – 2018. Two of the priorities of the policy were; to address unequal access to employment and productive assets, and an increased focus on addressing the additional vulnerability of female headed households. The effect of the policy is yet to be evaluated.

6.3 *Fakaleitī*

Fakaleitī, *fakafāfine* and *leitī* are all terms that have been used to refer to this gender (James, 1994). *Leitī* was the term more frequently used by my participants. *Leitī* is a term used by these individuals to indicate a more sophisticated identity from the traditional *fakaleitī* (Besnia, 1997, p. 18).

Fakafāfine were traditionally defined primarily by their preference for women's work and company, and secondarily by typical female attire and mannerisms. *Fakafāfine* commonly engaged in cooking, sewing, and helping female relatives make mats and tapa cloth. Some studies found that *fakaleitī* from higher social ranked families were protected, often by female relatives. In comparison, *fakaleitī* from lower ranked and poor families were at higher risk of being exploited and abused by heterosexual men (James, 1994, p. 53-54).

Fakaleitī move freely in networks of both sexes, and associate closer with women than is considered acceptable for heterosexual males in Tongan society (Besnia, 1997; James 1994). Nuku'alofa is described as a chosen destination for *fakaleitī*, where there was more tolerance especially among the urban young and cosmopolitan elite, of their identity and activities compared to more traditional contexts (James, 1994). *Fakaleitī* are seen in occupations in the service industry, tourism, public service, and art (James 1994; Besnia, 1997). The way their rights are respected in these industries is not documented.

Personal dignity and the ability to engage in loving relationships with a same sex partner are difficult in Tonga (Farran & Su'a, 2005; Besnia, 1997). "Male effeminacy is

neither welcomed nor morally condemned in Tonga, but promiscuous homosexuality on the part of effeminate men almost always is” (James, 1994, p. 45). Homophobic attitudes in Tonga were associated with a belief that homosexual partnerships upset the social order and were biologically unproductive. These relationships were not perceived to be able to produce children, or benefit families the way heterosexual relations could (James, 1994; Besnia, 1997, p. 20). There is a level of social acceptance for heterosexual men to engage sexually with *fakaleitī*, but it is not explicit (Farran & Su’a, 2005).

Religious groups continue to oppose same sex relationships between men (Human Dignity Trust, 2015ii).

Felicia (F): The religion is very strong here and the culture too. Over here, we are shy to make mmmm ‘friends’

Brooke (F): Some gang here they really want to get married, but some they are not....as soon they allow in Tonga, and you can tell they gonna kill them and throw them somewhere else and chop their neck

Felicia (F): It’s hard, we only do partner in night time but not in daytime. Only the *fakaleitī* they come from overseas

Brooke (F): Those gang (*society*) they gonna hate us

Felicia (F): Treat us like a animal... I think we better...enough, it’s enough, the thing that we do now.

Heterosexual men who engage with a *fakaleitī* for sex may later threaten or physically abuse the *fakaleitī* (James, 1994). No research has been done on the victimisation of *fakaleitī*, but intimate partner violence is suspected to be underreported because of the stigma (Human Dignity Trust, 2015ii).

I visited the Fakaleitī Association in Nuku’alofa, based on the private property of one its members. The land owner inherited the land from his father. Before setting up the base, the *fakaleitī* met with his family to discuss the use of the land. The family advised the *fakaleitī* that it was his land and he was free to use it as he pleased; they did not oppose the establishment of the association there.

The Association fundraises and receives donor funding to deliver support services, tertiary education guidance, and a safe drop-in facility for *fakaleitī*. A participant for this study from the Association advised that none of their programmes or objectives relate to land. He advised that land access had never been a concern for *fakaleitī* he knew or for the Association, and suspected that they all had assured access to it.

6.4 *Fakaleitī* as Parents and Caregivers

This research found that the role of parent or carer to family members was important to a *fakaleitī*'s sense of being loved, belonging, purpose, and dignity. Community prejudice is not reflective of the respect, love and protection that *fakaleitī* said they experienced in their own homes from those they care for.

The research showed that while society refused *fakaleitī* the right to engage in loving partnerships, it readily accepted if not expected *fakaleitī* to be caregivers for others. Of the seven *fakaleitī* participants in this study, one (Felicia) was a fulltime parent to four children of a sibling who lives overseas, one (Christina) was the solo parent to an adopted child, and another (Brooke) was the primary income provider for his surviving parent.

Brooke (F): Yeah we're staying together but I came here and work, because it's close and I can send money fast quickly e. But when he gonna die then I shift to another country and work for my own, that's my (*plan*)

Felicia talked about how he cared for his dying father after his mother passed away.

Felicia (F): He was sick for 8 months and then he passed away, stroke like 5-6 times then he passed away. A very big work...you know the old man, change the diaper, feed him...I had to do that. And one of my sisters who from (*overseas*) helped, she come back and stay together with us. And the children too, they're old enough to help.

Christina hoped to pass his land to his adopted son in future; whether this was legally possible was another matter.

Felicia had dreams that were put on hold until 'his' children finished school and became independent.

Researcher: Where do you see yourself in the future? Do you have hopes for yourself?

Felicia (F): I want...you know. I will say for sure I want to move overseas, but I can't it's because of the children and my sister.

Researcher: Do u feel responsible for them?

Felicia (F): Yeah, if no them, right now I'll be overseas.

Researcher: It's a hard one eh?

Felicia (F): It's hard. Even one of my brothers after my dad passed away, he want to take me to Australia. He asked me if I want to come....I tell him no...it's because of the face, those face (*children and sister*), if he take me no one can look after them. (*Felicia to his brother*) 'If you gonna send money every week here you gonna take me, if not then no, I stay here and look after them'.

7.0 Gender-based Violence and Family Violence

The global literature showed a connection between land ownership and decreased victimisation for victims of family violence. In considering these findings, I will provide a brief commentary on the family violence literature for Tonga.

7.1 Violence Against Women

The first study on family violence was conducted in Tonga in 2009. The findings were released as the National Domestic Violence Report 2012, and made visible for the first time the extent of violence against females in Tongan society. Some of the key findings are:

- 79% of Tongan women and girls had experienced physical or sexual violence in their lifetime
- 68% of Tongan women and girls had suffered physical violence. Fathers and teachers featured frequently as perpetrators.
- 33% of married or ever partnered women had been victims of physical violence
- 17% of married or ever partnered women had been victims of sexual violence
- 24% of married or ever partnered women had been victims of emotional violence
- Perpetrators of violence were just as likely to be well respected and educated Tongan men, as male perpetrators that were not. (Ma`a Fafine mo e Famili, 2012).

The Prime Minister called on action to reduce VAW, and for society to revisit core values of *faka`apa`apa* (respect), *feveitokai`aki* (reciprocity); *`ofa* (love) and *loto fakatokilalo* (humility) (Ma`a Fafine mo e Famili, 2012, p. XVI).

In the following year, Tonga passed the Family Protection Act 2013 which gave Police powers to remove an abuser from his property in situations of family violence. The disassociation of violent men from their perceived moral/cultural authority over women and property as a consequence of violence, sent a powerful message.

The Tonga Police has a Domestic Violence Unit in Nuku`alofa that handles all domestic violence complaints. The Police also has a 'no drop' policy which means that all complaints of FV are processed, compared to previously when individual officers had more discretion.

A Police officer that was interviewed for the research for this thesis said that removing a man from his land was a big psychological shift for officers used to leaving the man

with his property while removing/disrupting the victimised women and children. The Family Protection Act 2013 prioritised the protection of victims, not the perpetrators.

The National Centre for Women and Children is an NGO in Nuku'alofa, that provides support for victims of family violence and intimate partner violence. The agency is a respected advocate for women and children. I asked participants from NCWC if there was a difference in the prevalence of FV or IPV between urban and rural settings. Their responses advised that rural women seemed more vulnerable, due to lower levels of education, lack of independent income, and no land of her own to go to. Urban women had an advantage over rural if they were employed, able to pay rent for accommodation away from their partner, and an alternative safe home to go to. Urban women were more visible at NCWC than rural women but mainly because the NCWC was in Nuku'alofa.

7.2 Violence Against *Fakaleitī*

Only one of my *fakaleitī* participants talked about being in an active intimate relationship, but comments from others suggested that they had also been in relationships. There has been no in depth study on intimate partner violence among *fakaleitī*, so this is another gap in knowledge.

According to my participants, physical violence was not an issue, nor was land ever at risk of being lost in a partnership. The more common abuses from male partners were economic and emotional.

Brooke (F): Partner not interfere in the land but interfere....on...wages! Pay, pay, straight away give to the man e, the man eat, eat ice cream, dream and enjoy, then run away!

I also got the impression from the *fakaleitī* group that it was not uncommon for male partners to later move on to permanent relationships with women. James found in his work that some *fakaleitī* eventually married and had children (James, 1994, p. 40).

8.0 Land Tenure

Tonga's Constitution 1876 sets the foundation for land rights. The Constitution reflects the language and ideals of European missionaries, explorers, and ideas of John Locke about property ownership. The very first clause of the Constitution is about property ownership, to be more specific, male property ownership.

1. Declaration of freedom

1. Since it appears to be the will of God that man should be free as He has made all men of one blood therefore shall the people of Tonga and all who sojourn or may sojourn in this Kingdom be free for ever. And all men may use their lives and persons and time to acquire and possess property and to dispose of their labour and the fruit of their hands and to use their own property as they will.

In 20th Century Tonga, land remains sacred ground. The uprising in 2006 was part of a pro-democracy movement that was fuelled by unhappiness among a large part of the Tongan population, about the government structure and the system of land tenure (Harter Kennedy, 2012). The destruction of the central business district in Nuku'alofa was devastating for Tonga, and was followed by a 'No Confidence' vote in the government. Political compromises resulted which included an increase in representation of Commoners in Parliament. The government also approved 99 year land leases (existing provision in the Land Act 1988 (Rev)) to investors to support the rebuilding of its economy (ADB, 2013, p. 63). Land tenure in general, however, was not altered.

8.1 Historical Background

After Tahiti was taken by the French in 1842 as a protectorate, King George Tupou I became very nervous and requested protection from Britain (Erskine, 1853). As the British had limited economic and strategic interest in Tonga (Marcus, 1978), King Tupou's request was denied (Banner, 2007). The King then had to find other ways to protect his sovereignty. King George noticed that land sales to foreigners elsewhere in the Pacific led to annexation, so he banned land sales in 1850. This strategy made Tonga less attractive to foreign land seekers, which meant that foreigners were too few to make demands on the local government, or their original nations to call for assistance as occurred in Fiji, Hawaii, Samoa, and Tahiti (Banner, 2007). The other key reason why the King forbade land sales was his visit to Australia in 1853 where he witnessed Australian Aborigines living in poverty as a result of losing their land. The King did not want Tongans to suffer the same fate (RLC Final Report, 2012, p. 2).

When King Tupou I enacted the 1850 Code of Law for all Tongans, he set limits to chiefly power and created one law for all. This was a purposeful attempt to diminish the power of the ruling elite over the common people. In 1862, a further code of law was proclaimed that included the Emancipation Edict which abolished all chiefly authority over the people, including their previous rights over property occupied by Commoners (Salomon, 2009). The Constitution 1875 further weakened the control of chiefs by

creating a pathway for Commoners (men actually) to own land without fear of eviction by the chiefs as before (James, 1995).

8.2 Traditional Land Allocation¹⁰

Land ownership signals power and empowerment. In Tonga's history, King Tupou I selected a group of chiefs to become nobles in his new kingdom and allocated lands to them. The nobles were also guaranteed dominance in the proposed government structure. The power given to nobles obtained buy-in for the new societal structure established by King Tupou I. Chiefs who were not appointed to noble status had technically been dispossessed of their lands and status (Marcus, 1978). In reality, the lands of the un-nobled chiefs continued to be passed down, and were eventually registered to their heirs (James, 1995).

Traditional land tenure enabled owners of registered land to informally share it with siblings including sisters, cousins (who were considered brothers), formally adopted, and customarily adopted children. Women's informal access to land, therefore, came from her father, brother, other male kin, or husband (Nagarajan, 2009; Moengangono, 1986). It was common for a man to registered land plots, and there was a benefit to not registering land due to the limit on the number of allotments a man could legally hold (James, 1995). Access to additional land enabled people to give access to kin, generate more income, build wealth and influence.

When the Constitution was enacted, it did not codify the traditional land tenure practices and negatively affected women's access to land.

The Constitution and the statutes do not recognise the legitimacy of unwritten customary Tongan law. Most customary law has been transformed into legislation and only rarely does custom play a role, most notably with respect to kinship relations, mitigation of sentence or local land matters. (Pacific Judicial Education Programme, 2004, p.28)

The loss of land access for Tongan women was similar to what occurred for women elsewhere in the world when new constitutions were designed. "English legal norms of ownership did not take into account that male community members were obliged to provide women with temporary usufruct and that formal registration of only ownership rights would deprive women of this access" (Bruce et al, 2006, p. 78).

¹⁰ The word 'tradition' is used instead of 'customary' when talking about informal land distribution and access among kin, and similarly through an estate holder.

Over time, traditional access to land via kin weakened. The scarcity of land made holders more reluctant to provide to younger, or lower-ranking kin than before (James, 1993, p. 221). People's land interests became more individualistic as a result of commercial cropping, population growth, and monetisation of the economy (James, 1995, p. 167).

8.3 Levels of Tenure Distribution by Class

All land belongs to the Crown according to s104 of the Constitution 1988 (Rev) and the s3 of the Land Act 1988 (Rev). The words 'King' and 'Crown' are used interchangeably in these two pieces of legislation. Under s48 of the Constitution 1988 (Rev), the King's lands and property are excluded from any State interference.

There are three main types of land arrangements: Royal Family Estates (approximately 15%), Government land (approximately 15%), and noble estates (approximately 66%) (Paterson, 2012). Traditional arrangements over land is illustrated below.

Table 12: *Tenure Type and Administrative Head or Occupant*

Geographical Division	Administrative Head or Occupant	Category of Tenure	Basis of Tenure
<i>Fonua</i> (all land)	<i>Tu'i</i> (King)	Allodium	Conquest
<i>Tofia</i> (estates)	<i>Hou'eiki</i> (Nobles)	Royal grant of occupancy	Military claims on King and annual tributes
<i>Ngoue'anga</i> (plantations)	<i>Matapule</i> (Chiefs)	Chiefly grant of occupancy	Administrative duties to King and nobles
<i>'Api</i> (Allotment)	<i>Tu'a</i> (Commoners)	Tenant at will	<i>Polopolo</i> (First fruits and other) feudal dues

(Fotu, 2012)

The Land Act 1988 (Rev) lists 38 titles under which the hereditary estates are held, in addition to Royal Estates (Schedule 1 of Land Act 1988 (Rev)).

The '*api* or allotments are in two types: the 'town' allotment which is tax free; and the 'tax' allotment which the owner pays an annual rent for to the State. The town allotments are usually in urban areas.

Any person may apply to an estate holder (Nobles) for an allotment (*api*) from an estate (*tofia*). Land can also be sought from Government or the Crown. An estate holder can informally allocate a piece of land in response to a request, but the power to legally

grant that land is held solely by the Minister for Lands as the representative of the Crown (Land Act 1988 (Rev) s19).

For a land title to be granted by the Minister for Lands in Court, the estate holder had to support a person's application. Gaining support from estate holders was known to require the applicant to provide 'gifts' and services to him until it was obtained (James, 1995). As a result, nobles continued to gain from lease payments or 'gifts' from tenants on estates they held (McCoy & Havea, 2005). Crocombe wrote about a Minister for Lands withholding his signature on leases until large amounts of money was paid to him, along with others goods and services. People desperate for land did whatever was demanded (Crocombe, 2008). Such practices continue (RLC, 2011), signalling the stronghold nobles still have over land.

8.4 Land Act and Royal Land Commissions

As previously discussed in the literature review, Tonga's land is controlled by the State through the Land Court and the Land Act 1988 (Rev). The original Land Act 1927 was amended after it was introduced, in order to enable Commoners to use land allocated to them undisturbed by nobles, yet it also protected certain land privileges for the Royal Family and the Noble class (Harter Kennedy, 2012).

For women's land rights, important amendments were made to the Constitution 1875 and the Land Act 1927 during the reign of Queen Salote. Tonga has had three Land Commissions since its Constitution 1875 was established. The first Land Commission was established in 1918 during Queen Salote's reign to hear and adjudicate land disputes. This Commission led to the establishment of the Land Court (RLC, 2012, p. 25), but did not look into land law reform. The changes that resulted included provision for women to lease land (Taumoepeau, 1984), although they remained marginalised as the succession rules were not changed.

The first Royal Land Commission to look into land law reform was order by King Taufa'ahau Tupou IV in 1983 to align land laws with the way things worked. The Commission was prompted by a recognition that the population had increased four fold since the original Constitution 1875, the land shortage, and a noted shift away from subsistence living. The 1983 Commission was the first time that Commoners were allowed a voice on land laws, a practice that was not permitted under the Constitution (Taumoepeau, 1984). The Constitution states:

Section 67: It shall be lawful for only the nobles of the Legislative Assembly to discuss or vote upon laws relating to the King or the Royal Family or the titles and inheritances of the nobles and after any such bill has been passed three times by a majority of the nobles of the Legislative Assembly it shall be submitted to the King for his sanction.

This provision remains a significant hurdle to any proposed changes to land law reform.

The uprising in Nuku'alofa in 2006 that led to the No Confidence vote, was part of a Pro-Democracy movement that signalled to the monarchy and nobles that the people wanted change (Harter Kennedy, 2012). The unrest led to changes in parliamentary structure that increased representation for Commoners, and changed some of the King's executive powers in relation to parliament appointments. Inequities in land tenure laws, however, were not touched but could have had more chance of progressing democracy than tweaks to the parliamentary structure (Harter Kennedy, 2012).

In 2008, the second Royal Land Commission (RLC) was ordered by the late King George Tupou V. The Commission was "to enquire (without changing the basic land tenure of our Kingdom) into all matters whatsoever concerning the land laws and practices in our Kingdom, with a view to providing more efficient and effective practices....and to report to the Privy Council with recommendations including legislation to give effect to those recommendations" (RLC, 2012, p. 19). The reports of the RLC identified discrimination against women in land laws.

King Tupou V unfortunately passed away before responding to the RLC report. The King was believed to be have been open to improving land rights for women. A previous Minister for Lands who was also supportive of the RLC's work also passed away (Participant L) which marked another loss to progress. The RLC's recommendations remain inactive, and Parliament awaits Royal direction in order to progress further.

8.5 Land Availability

There is an ongoing debate regarding a land shortage in Tonga, keeping in mind that ownership and use/occupation are two different things.

Land availability may be affected by the amount of land that an estate holder reserves for self interest. Section 33(2) of the Land Act 1988 (Rev) permits an estate holder to

only have 5% (excluding leases to religious institutions and charitable bodies) of the land under his stewardship for personal use. The rest of the land must be made available for allocation. Historically, this has occurred. The 1971 government report on land holdings showed that while 41% of the land had been granted as tax and town allotments, around 50% remained in the control of the Crown and the nobility. The nobility held approximately 30% of land as their estates. The revelation resulted in complaints from churches and other parties. The controversy led the nobility dominated government to reclassify three quarters of land previously categorised as noble estates to ‘allocated’ but not ‘registered’, which reduced the nobles’ personal holdings to about seven percent (James, 1995). This meant that land had been informally allocated by the estate holder, but had not been granted by the Minister of Land to the new owner and registered accordingly.

Harter-Kennedy wrote that “In 1984, allotted, unregistered land made up 19.28% of the total area of Tonga, with 43.28% held as registered allotments, 8.07% under leasehold, and only 6.94% remaining to be allotted..” (Harter-Kennedy, 2012, p. 339). When I asked a government official how much land had already been allocated by estate holders or how much remained for allocation, I was advised that these figures were not known.

Participant L: We had asked the Ministry to provide us with records for each estate on how much of the land has been leased, how much is...so we can determine how much of the land has been released out and so we can determine how many have exceeded the 5 percent, but unfortunately the Ministry of Lands don’t have that information. So the first part of our work – was to/we looked at the Ministry (lands) - what information did they have, and we concluded that they don’t have the information needed to make decisions on land in Tonga, and they don’t maintain information they don’t update it, and they usually end up making mistakes when they grant or re-grant.

This gap in data was also noted in the Royal Land Commission report (RLC, 2012).

Harter-Kennedy suggested there was a black market in Tongan land (Harter-Kennedy, 2012).

Demand for land in urban areas was exacerbated by the inflow of people from outer areas and outer islands (PIFS, 2015). A *fakaleitī* participant for this study talked about frequent approaches from extended family members from outer islands for land.

Another *fakaleitī* collected rent from people who built homes and businesses on his land in Nuku’alofa.

Participant P: There's not enough land for everyone, especially migration from the outer islands, they come to Nuku'alofa for work and education, not so much maybe for tertiary and or course secondary.

Construction in protected areas is threatening the environment (ADB, 2013).

Participant A: There have been people, the ones who have the resources; but we have a legislation that actually protects that whole area as a protected area for primitive fish...and we've enforced it, we've told them 'you can't...it's a protected area'; there's a reason why - because if we build on that there's an outflow then it will cause health problems.

Inadequate land supply has led to other problems such as fragmented titles. Some urban plots are so small there is only room for the building but not enough to plant food (Participant N).

Researcher: I see some plots are quite small like not quarter acre – how is that?

Participant A (M): by remnants of people just splitting it up and maybe just the roll of the dice it's a left over allotments from another allotment – then some people to 'at least I can fit a house' here...put a little shelter there.

Researcher: some have more than one building on it, it's quite cramped

Participant A (M): you know how you're entitled to a quarter acre, sometimes the only available land is about half of that, then they say oh we'll give you that left over, that left over half as well so you'll have two allotments, but they'll register just one allotment...the logic of having your living room here and bathroom there

Land shortage also affects burial grounds. Cemeteries are publicly owned in Tonga and there is demand for more space. An official who was interviewed advised that the government could no longer guarantee that family members could be buried in the same cemetery. The thought of separating deceased kin upset families but there is no choice (Participant M).

One suggestion to address land shortage was to re-allocate unoccupied or unused allotments that belong to absentee/overseas owners, for use by those living in Tonga (Harter Kennedy, 2012). It was not unusual for a person who lived overseas to become an heir, while kin in Tonga who occupy and maintain the land miss out.

Walking around Nuku'alofa I noticed a number of large properties occupied by churches and church schools. I wondered how much of urban land was owned by churches. Section 108 of the Constitution suggests that churches are significant stakeholders, if not shareholders in the land market in urban areas, and that the law aimed to restrict their land dealings.

Section 108: Church lands not to be sub-let without permission

No leases of any town site shall in future be granted to any religious body for any purpose unless there are thirty adults, male and female, of such church in that town, and it shall not be lawful for any religious body to use such leased lands for other than religious purposes or to sub-let to any person without the prior consent of Cabinet, and upon satisfactory proof before a Court that any such land has been sub-let without consent, such land shall revert to the person from whom the land was leased, or to his successor in title as the case may be.

An exploration of land holdings of churches is beyond the scope of this thesis, and is proposed as a topic for future research in Chapter X.

9.0 Legal Pathways to Land

There are a number of avenues for women and *fakaleiti* to secure rights to land. In order to gain some understanding of how the complex land laws worked, I conducted a desk review of Land Court records that were publicly available. I will discuss a few of these in relation to the determination of legitimate heirs, fornication, and risks with informal arrangements.

The Constitution 1988 (Rev) stresses the importance of the independence of the judicial branch from Parliament. Independence cannot be guaranteed in a small country like Tonga where Parliament and the Land Court are literally next door to each other. The judges for the Land Court are appointed by the Monarch. Appeals against a Land Court decision are heard at the Court of Appeal, aside from matters relating to the determination of hereditary estates and noble's titles which are heard at the Privy Council.

9.1 Succession

As signalled in the Introductory chapter, the Constitution specifies the succession hierarchy, and gives priority rights to males.

Section 111: Children lawfully born in wedlock only may inherit and the eldest male child shall succeed and the heirs of his body but if he have no descendants then the second male child and the heirs of his body and so on until all the male line is ended. Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no descendants the second female child and the heirs of her body and so on until the female line is ended. And failing direct heirs the property shall revert to the eldest brother of the owner of the property beginning with the eldest and his heirs in succession to the youngest and their heirs in accordance with the law of inheritance. And if the

brothers have no descendants it shall descend to the eldest sister and the female line as provided in the case of the male line. And if these should have no descendants and there should be no legitimate heir it shall revert to the Crown in accordance with the one hundred and twelfth clause. But should a female be next in succession to the title of a noble or of an hereditary chief the next male heir shall inherit the title and estates. But should such female afterwards have a legitimate male issue the title and estates shall revert to the male issue of the female upon the death of the male in possession of the estate:

Provided that the female that is the heir shall occupy the town allotment and the plantation lands appertaining to such title but the hereditary estates that is the lands occupied by the people shall be held by the inheritor of the title.

Male priority right is echoed and reinforced throughout the Land Act 1988 (Rev).

Section 7: Right to allotment.

Every male Tongan subject by birth upon making application in the prescribed form to the Minister of Lands shall be entitled to receive subject to the provisions of this Act a grant of land not exceeding 3.3387 hectares as a tax allotment and where any such grant is less than 3.3387 hectares the Minister may from time to time as land becomes available and as he deems expedient make further grants to such holder until the area granted to him as a tax allotment has a total area of 3.3387 hectares. He shall also be entitled to receive on making application as aforesaid and subject to the provisions of this Act a grant of an area not exceeding 1618.7 square metres in a town as a town allotment. (Substituted by Act 8 of 1955 and Amended by Acts 11 of 1980 and 21 of 1984.)

Section 7 (above) may have been feasible for a small population when the original Constitution 1987 was developed. By the 1840's the Tongan population was estimated to be between 18,500 and 50,000 (Urbanowicz, 1973). By 1962 however, there were more eligible male claimants than there was land available (James, 1995).

The relationship between men and land is thus deeply embedded in Tongan society, and reflected in modern day economic statistics. In 2011, the labour force participation rates by gender was 42.3% for females, and 62.7% for males. The gender segregated data on subsistence labour, however, showed that while males dominated (5,612; 59%), females were also highly involved (3,937; 41%). The 2011 figure for women was actually a drop from the 2006 Census where the male:female ratio was almost 50:50. If 'subsistence labour' is compared with 'Home responsible or domestic duties', females were much more prominent (10,247 (74%)) in the latter category of work, compared with males (3,554; 26%) (DoS, 2013).

The determination of succession is complex, as the following extract from rules of succession under s41 of the Land Act 1988 (Rev) illustrates:

Section 41. Upon the death of a holder of an hereditary estate the succession to the estate shall be as follows-

(d) the male issue shall be preferred to female issue of the same degree;

Examples

1. On the death of a holder leaving a son and a daughter, the son is entitled to succeed.
2. On the death of a holder leaving a grand-daughter, and grand-son, children of the same parents, the grand-son will succeed.
3. A, a holder dies leaving a daughter B and two grand-children viz C the daughter of A's eldest son and D a son of A's youngest son. In this case although A's eldest son if alive would have succeeded before B or D, C the daughter of the eldest son will not so succeed as representing her father because she is a female descendant of the deceased holder and there is a male heir of the body of the holder still living namely D, D will therefore succeed. In the case last mentioned had C predeceased A leaving a son surviving her, D would still succeed in preference to such son, for D is an heir male of the body of the deceased holder while C's son although also a descendant of the deceased holder, claims through a female, viz. his mother C.

The transfer of land to an heir does not occur automatically. An heir must file a claim with the Ministry of Lands within one year of the death of the previous registered owner (s87 of the Land Act 1988 (Rev)). If the claim is not made in time, then the land is automatically reverted back to the Crown or to the estate holder, depending on where it came from, for reallocation. The reallocation can be to a person unconnected to the previous owner.

Determining the legitimate heir is not as simple as it sounds. The Legitimacy Act 1988 is specific about the meaning of a 'legitimate' child. A child is legitimate if she/he is born while the parents are married. The Legitimacy Act 1988 provides a pathway for children born before their parents married to be 'legitimised', and then entitled as heirs. I will use the case of Seini Paepae Finau (Plaintiff) vs Minister of Lands (First Defendant) and Sione Mapumeihengalu Heimuli (Second Defendant) to illustrate some of the complexities involved.

Seini was the daughter of her father 'Olive from his second marriage, but she was born before her parents legally married. As a result, Seini was illegitimate and excluded from the line of heirs for her father's land. Seini married and raised a family while remaining on the land. The land passed to Seini's mother as a widow's estate after 'Olive died. After Seini's mother passed away, Seini and her family continued to

occupy the land. ‘Olive, however, had another daughter from his first marriage. This daughter had married and had a son (‘Olive’s grandson).
The case went to the Land Court because the grandson successfully claimed ‘Olives land, as the legitimate heir. The grandson wanted Seini and her family to vacate the land. Seini refused to vacate, and accused the Minister of Lands of making a wrong decision. Seini disputed the grandson’s legitimacy, and alleged that the boy’s mother was not a real daughter of ‘Olive. The complexity of the case was exacerbated by the fact that key people who could qualify Seini’s accusation were deceased.
When Seini’s mother died, there was no legitimate heir, so the land reverted back to the State to be re-granted by the Minister of Lands, at his discretion. Following the reversion, submissions were made by various members of this extended family network for the land. Case records states one of the reasons why Seini was not given the land to lease: “the Minister had no power to make a grant of the allotment to the Plaintiff (<i>Seine, daughter of previous title holder, who had lived all her life on the land along with her children</i>) because of her gender.”
The Minister’s decision to re-grant the land to the grandson, also seemed to have been influenced by new evidence that indicated that the young man’s mother was legally legitimised by ‘Olive and his first wife during their marriage. This legitimisation therefore meant that the grandson was a legitimate heir.

The Legitimacy Act 1988 laws also affects those who are part-Tongan. Prior to 2007, any Tongan woman who married a foreigner in Tonga had no right to Tongan citizenship along with their children. The said children consequently had no rights to land in Tonga. On the other hand, a Tongan man who married a foreigner in Tonga did not lose his citizenship or his land entitlements, securing land rights for his potential heirs.

In August 2007, the Nationality (Amendment) Act 2007 was passed. The Act 2007 established better provisions for part Tongans to be ‘naturalised’ to become citizens.

Person deemed to be Tongan subjects 2:

The following persons shall be deemed to be Tongan subjects —

- (a) any person born in Tonga to a Tongan Parent;
- (b) any person born abroad of a Tongan father;
- (c) any person born abroad of a Tongan mother;
- (d) any non-Tongan who marries a Tongan provided that he — (i) lodges a written declaration with the Minister of Foreign Affairs that he wishes to assume Tongan nationality; and (ii) takes the oath of allegiance prescribed by this Act;
- and (e) any person naturalized under this Act.

A number of participants for the research for this thesis were not aware of the law change. Felicia (F) who cared for nieces and nephews of European/Tongan decent, still

believed the children were not entitled to any land in Tonga because of their mixed ethnicity.

9.2 Widows and Unmarried Daughters – Fornication

Under s81 and s82(d) of the Land Act 1988 (Rev), a widow or an unmarried daughter (where there are no male heirs) can inherit land as a life estate, but only as long as the woman does not commit fornication, marries (daughter), or remarries (widow). The law does not impose the same conditions on a man.

The Royal Land Commission wrote of appeals from men and women, “that wives should be given residential rights over land of a husband who had committed adultery or neglected marital duties to his wife and children” (RLC, 2012, p. 34).

The case of Kama vs Kama 2012 is an example of alleged fornication. Mrs Kama (defendant) did not live in Tonga when the case was filed against her by her deceased husband’s brother (Mr Kama).

The plaintiff (Mr Kama) alleged that his brother’s widow (Mrs Kama) had committed fornication, so her rights to the life estate left by his brother should be terminated. The land at issue was a town allotment in Ma’ufanga in urban Nuku’alofa.

The judge that presided over the case found no strong evidence of fornication. The judge specified that a high level of evidence beyond hearsay, was needed in order to enact the fornication clause.

9.3 Informal Permission

Informal tenancy of land is common in Tonga (FAO, 2011). Court records show, however, that these arrangements can cause distress when challenged because they are not legally binding.

The case of Shaumkel (plaintiff) vs 'Aholelei and Minister for Lands (defendants), determined at the Tonga Land Court in August 2012, is one example.

The land in dispute was located in Nuku’alofa. The land had been passed down through the ‘Aholelei family, whose daughter Siosi’ana married Mr Shaumkel (plaintiff). Prior to Siosi’ana’s marriage, her brother (defendant) permitted Siosi’ana and Mr Shaumkel to use the land as their own to raise their family. When Siosi’ana passed away, her brother gave Mr Shaumkel assurance that Siosi’ana’s eldest son would be given the land to inherit. Mr Shaumkel kept his brother-in-law’s words to heart and invested in the land and properties on it. Mr Shaumkel later remarried and took his new wife into their home, on the same piece of land. The new relationship

eventually contributed to the ‘Aholelei family taking legal action to take back the land from Mr Shaumkel (and his children with Siosi’ana).

The case took several years to proceed through the justice system. In the end, the Court concluded that while the Shaumkel’s occupation of the land was permitted, it was based on Siosi’ana’s family’s *wish* “to provide a place of abode for Siosi’ana and then only secondly, for her husband and family. When Siosi’ana died....the purpose of the licence to occupy which had been granted”, ceased.

The Court invalidated the verbal understanding between Mr Shaumkel and ‘Aholelei about Siosi’ana’s eldest son inheriting the land, without the agreement of the legal heir to the plot who was Mr ‘Aholelei’s eldest son. According to the law, Mr ‘Aholelei’s son had to agree to the arrangement.

Court records indicate that this case was not an isolated one where verbal agreements have fallen through. These cases emphasise the importance of legally securing rights to land, even among kin.

The loss of validity of informal arrangements is not unique to Tonga. There are examples from Sub-Saharan Africa of women who lost control over land to husbands or male kin after investing and improving the value of the lands concerned (Bruce et al, 2006, p. 79). Insecure tenure is thus a major disincentive for people to invest in land and any associated property.

10.0 Summary

Men and women are not guaranteed the same fundamental human rights in Tonga’s Constitution, either by sex or by class. Tongan people do not have the constitutional base to argue for equality. Tonga is yet to ratify CEDAW, and calls for ratification from some NGOs are strongly opposed, especially by church communities and privileged elites.

All land in Tonga belongs to the Crown but is distributed for use by Tongans through the class hierarchy. Informal arrangements have very weak validity once contested in the Land Court, as the laws strictly prescribe pathways and limitations to land rights. Men are explicitly prioritised in the law regarding succession. Men also hold permanency of land rights such as a life estate without conditions that widows and unmarried daughters must abide by or lose the land. There are many publications that discuss legal prejudices in Tongan land law against women, and the loss of liberal and apparently secure access that women had to land before the 1875 Constitution.

While official statistics showed that the majority of urban households had access to basic amenities such as water supply, electricity and sanitation amenities, around one in five urban households was in poverty. Additionally, only 62% owned their own land, while the rest lived in rented (paid or 'free' rent) and other arrangements. The household ownership figures are significantly lower compared with the Samoa households.

Violence against women continues to be a problem in Tonga. The passing of the Family Protection Act 2013 directly confronted traditional beliefs about male property rights taking priority over the protection of his victims/household members.

I will now discuss the findings from the study, starting with Samoa in Chapter VII, followed by Tonga in Chapter VIII.

Chapter VII: Samoa Findings and Discussion

1.0 Introduction

This chapter discusses important findings from the Samoa element of the study. A summary of key learnings is provided at the end of the chapter.

The findings are structured under each of the four core research questions:

1. What is the significance of land to women and *fa'afafine*?
2. How do you access customary land?
3. What is the effect of being an urban woman or *fa'afafine* on rights to customary land?
4. What is happening to improve access and rights to customary land in urban areas for women and *fa'afafine*?

The gender of each participant that is quoted will be signalled by:

- “W” - woman
- “M” - male other than *fa'afafine*
- “F” - *fa'afafine*. While *fa'afafine* participants often referred to each other in female gender expressions ('girl', 'suga', 'lady', 'tama'ita'i'), for the purposes of this thesis, I will refer to them in the male sex through the use of male pronouns.

When quoting participants, I have not altered their words. The translations are not word for word as it would not make sense in English, but the meanings are kept very tight to the participants statements. The conversations were focused but relaxed, as will be revealed in the quotes.

2.0 What is the significance of customary land to women and *fa'afafine*?

Participants referred to customary land as *fanua Samoa* (Samoa's land, or land of Samoa) or *fanua fa'aleaganuu* (customary land). Overall, women and *fa'afafine* held almost identical views on the spiritual, physical, cultural and political significance of customary land. I will now discuss the main themes.

2.1 *Faasinomaga*

All participants considered *fanua Samoa* as part of their *faasinomaga*. *Faasinomaga* is a concept that encompasses identification with a specific place, kinship ties, belonging, genealogy, family legacy, and identity. Participants perceived *fanua Samoa* as an asset that was earned through the labour of ancestors.

Participants explained that usually, an *aiga* would have divided (*vaevae*) their *fanua Samoa* among its different branches. The branches would understand the history, genealogy, boundaries, connections with other branches of the *aiga* sharing the land, and their genealogical links to the land. The allocation was done by elders who had passed. New generations are expected to respect land boundaries and live harmoniously.

Participant L (W): Whether it's urban or rural, customary land is customary land. What it means for me? It's your *faasinomaga*, your...*aiā tatau* as an heir to a *suafa* in which all the customary lands belong. It basically means those two things – family, who you are, who we are.

Maka (F): *E avaga loa le mafaufau a le matai I le mea lea e mana'o iai le Malo, ia o le a lē lelei le aiga. Aua faapele loa kakou a le Malo faapea e ka'i fia, ka'i fia...the \$ might just flush and that's it. Ao le mea lakou I le mea kumau o le eleele a le aiga o eleele mai le Akua, o mea e kumau mai I kua'a.*

Translation: Once the *matai* entertains what the government wants, it will be detrimental to the wellbeing of the *aiga*. Because the government can seduce us and say here's your bit, your bit...but the money might just flush away and that's it. But the truth remains that a family's land/earth is an asset from God, passed down from ancestors.

The strong sense of attachment to a place and people was why Samoans who die are returned to be buried on *fanua Samoa*.

Masefili (W): *E telē a le ese'esega o le tanu o oe I ele'ele ese, ma lou oe a ta'atia I lou lava fanua ma ou ele'ele. Pei a tatou ō foi I nei mea o maliu ave mea e faamagalo ai le ele'ele o aiga ese pe a tanu ai nisi tagata a, o le tāua na ma pele I tagata o latou faasinomaga. Lana o le matou aiga e osi aiga a, o lea na ala ai na ave I o ma teu, o lona a loto. Pei la ma faata'ita'iga a tatou a ia o Samoa, poo fea tatou te o iai e pele a tatou aiga*

Translation: There is a big difference between being buried on someone else's soil and lying in your own earth. For example, when we go to funerals we take things to seek forgiveness from the lands of others when someone from elsewhere is to be buried there; that is the importance of a person's *faasinomaga*. My husband was dedicated to his family, that's why he was taken there to be buried, it was his wish. That is typical of us Samoans, no matter where we go our *aiga* always remains precious.

Masefili (W): *E iai le ese'esega o le teu iinei ma le teu i o. E mo'i a pei o freehold land ae te'i ua toe fai seisi o'u toalua ae la e teu ai lo'u toalua...*

Translation: There is a difference between being buried here and being buried there (referring to her husband's family lands). While it's true this is freehold land but what if I have a new husband and my ex-husband is buried here...

Participant V (F) talked about his sense of *faasinomaga* despite having moved residence three times in his life. V was initially raised in his father's natal village, then shifted to his mother's village, then finally moved to live close to Apia to live on freehold land in Vaitele. V felt very strong attachment to his parents' villages even though he had been living in town for many years.

Participant V (F): I would NEVER ever say I am from Vaitele, oh my gosh!!

Participant V sometimes felt that kin back in his parents' villages thought he had stopped caring about them, but it was not true. V said he was trying to convince one of his siblings to return to his father's village to look after their father's land. V could not foresee returning to live in his parents' villages, but felt a strong sense of responsibility to protect their *fanua Samoa* there. V wanted their land as heritage for future generations of their line.

Participant V (F): There's a time *poo ai lava e toe fo'i a faapea e lē o a'u, e leai sa'u fanau*, but I have brothers and sisters *e iai latou fanau* and that's where they belong, and I also belong to that land because *o a'u e owniga*. Because *o le fanua fo'i lea na fai le vaevaega a o'u g/parents matua a lo'u tamā, o le fanua lea a lou tamā*.

Translation: There's a time for whoever returns if not me. I have no children, but I have brothers and sisters who have children and that's where they belong, and I also belong to that land because I own it, because that is the land that my father's parents allocated, that is my father's land.

2.2 Measina - Sacred Heritage

Fanua Samoa was described by participants as a sacred asset (*measina*), a gift from God because it supported life.

Soo (W): *O lo'u malamalama'aga na i customary lands...o measina a Samoa...o le mea fo'i lea e fai ai faamasinoga i le Land and Titles Court e saili le pule, ona ua iai le mea lena ua taumafai foi tagata e umia le pule a o le mea e aia tutusa uma, it's a Samoan birth right a!*

Translation: That's my understanding of customary lands....they are sacred assets of Samoa...this is why cases are held at the Land and Titles Court to determine who holds authority because there is that thing about people trying to hold sole authority but everyone has equal right, it's a Samoan birth right eh!

Merenaite (W): Freehold land can be sold but customary lands were owned by our ancestors and is family heritage that's been passed on to the next generation

Participants who grew up on their natal lands but lived on freehold were very protective of their *fanua Samoa*.

Participant V (F): This is me thinking very traditional, afai ua leai seisi e nofo e vaai mea a le aiga taatia pea; cos to me this is really measina - your title and your land, e lua a mea.

Translation: This is me thinking very traditionally, that if there is no one left to stay and take care of the family's assets, it doesn't matter, because to me, these are really *measina* - your (*matai*) title and your land: these two things.

2.3 Aiga Unity and Empowerment

A number of *fa'afafine* and women spoke about *fanua Samoa* in connection with the unity, dignity, and empowerment of their *aiga potopoto*. Soo (W) captured this eloquently.

Soo (W): Ou te iloa e pei o customary land-faamatai are the social political e mafai na put together le maopoopo o aiga. ...Once loa e ave'ese loa, ua tatou ō ai loa faigaluega i le tagata lea na faataua freehold lands, ua fai loa tatou ma - we are slaves, economic slaves mo nei tagata; but definitely e lē o le mea lena sa tataua na iai becos I tatou uma I Samoa we all have customary land.

Translation: It seems to me that the customary land-*matai* system are the social political frameworks that unify families...Once that is taken away then we will end up working for the person who bought it as freehold land, then we become - we are slaves, economic slaves for these people; but that is definitely not how things should be because we all have customary land.

Loyalty to land partitions made by ancestors was important, although at times it seemed pointless when kin left permanently and those on the land could do with the space.

Naomi (W): O le mea la e iai le matou fale e potopoto uma ai le aiga, e tasi le fanua ae surrounded. E iai le matou aiga ua leva na ō i Niu Sila ae tanu le latou tamā i luma atu a o le area la e iai le matou fale. Ae talu na ō i Niu Sila e le'i toe omai. E leai ā ma seisi o matou ua move, e le'i fai se fale i luma i le mea la e iai le fanuaoti ma le mea na ta'ua na iai le latou fale i aso la. Na matou faalogo e iai ā le intention e toe omai e leai a la o alu seisi...sopoia le latou piece it's still there.

Translation: Where our house stands is where our family (extended) gather, it's all one land but surrounded. We have family who moved to New Zealand a long time ago, but their father is buried in front of where our house is. Since they left for New Zealand they have not returned. None of us have made a move on it; no house has been built where the grave is or where their house was said to have stood. We heard they intend to return so no one has ever gone to...intrude on their piece it's still there.

The range of participant views on unity indicated that in some *aiga*, self interest was emerging, especially over who should hold authority over the land.

Official V: Tau feololo tauga a matai I tauga brother-sister, first cousins, uncle-nephew, fanau against parents... Why?... mana'o a ia pule a....not emerging trend ua leva. Ua lē tasi aiga pei o le mea sa iai...tuli a le interest a le tagata ia. Translation: Disputes between matai are not as bad as those between brother-sister, first cousins, children against parents....Why?...everyone wants to have sole authority..it's not an emerging trend its been like this for ages. Families are not as unified as in the past...each individual is pursuing their own interest.

A matai may hold responsibilities of the aiga's *fanua Samoa* long enough that his/her children may perceive the land as solely their parent's. A few participants used phrases such as 'my dad's land' and 'our land' to refer to *fanua Samoa*. The 'dad' was often a *sa'o* or someone appointed by the *aiga potopoto* to address expressions of interest from *suli* for land.

Francis (W): tele a e fai to'alua ma nonofo i o, pe fai to'alua ae o nonofo I aiga o latou taito'alua but they still have a right, e lē faapea e kipi ai le latou aiā i fanua iinei...ao le mea lena, e o'o mai ā le faavavau e lē toe fō'i mai ā le to'atele.

Translation: Many have partners and live over there (overseas), or have partners and live with their partner's family, but they still have a right, that does not mean their right to these lands is cut off... but that's the thing, forever will come and the majority will never return.

2.4 Food Security, Housing, Household Wealth

Participants talked about the importance of access to *fanua Samoa* for food security and other household needs, even if they had paid jobs. Participant R talked of increasing levels of property crime and theft in the NWU region, because people needed goods to sell for food and basic needs. Participants who lived on freehold land talked about growing crops for food on *fanua* (freehold or customary) elsewhere, or were given produce by kin who used the land to help them through.

Selling *fanua Samoa* was simply unthinkable.

Maka (F): I totonu o aiga ma I totonu o nu'u, a ou faataua se fanua I tua mai o matou ua matua'i ou faavalevatea lava...e le mafai ona alatu se palagi ou tago faatau atu iai se fanua, ae fai ni lisi e mafai ga manuia ai tagata la i totonu o le aiga, ao se upu e faatau se fanua...NO!!

Translation: Inside families and inside villages, if I sold land to an outsider (the family), I would be very stupid...I cannot just sell land to a palagi¹² who expresses an interest but I can enter into a lease that would benefit family members. But the thought of selling a piece of land – NO!!

¹² *Palagi* – Samoan word to refer generally to a person of European descent.

As illustrated in Chapter IV on the Samoa context, a much smaller proportion of AUA households lived on their *fanua Samoa* compared to households in NWU. I observed during the fieldwork that families on customary land seemed to have space to plant crops, though perhaps not enough for commercial cropping. Land provided an alternative means for *aiga* to sustain themselves when times got tough.

Soo (W): Tusa o le tamāoaiga a tatou aiga Samoa is our customary lands. Tusa pe leai ni tatou galuega...o lea e propose may fō'i na le e le Malo faalaua'itele, ae faapea e leai se tatou malamalama'aga e mafai ai na tatou apply ai i galuega faapena, we have our customary lands e totō le talo whatever we can plant, so we prepare the fruits for tomorrow, tusa at the same time o lea e tatou faigaluega.

Translation: It's like the wealth of our families is our customary lands. Even if we have no jobs...the government advertises widely but if we do not have the knowledge /know how to be able to apply for any of those jobs, we have our customary lands to plant taro and whatever we can plant, so we prepare the fruits for tomorrow even while we are employed.

Most participants that lived on their *fanua Samoa* felt secure regarding a permanent home, safety, and adequate access to services and markets for their daily needs. They often knew of their customary lands in other parts of the country, but preferred to leave those lands to others in their *aiga potopoto* who needed it more.

Kelly (F): One reason why I don't have any intention of processing a project using those...*fanua*...it's because we have one at XXX that's now been planted with a resource that could be used for our family and everything....I prefer that we have something at XXX and it's useful, rather than the one we have at XXX used by our relatives so might as well let them use it for the time being.

Tafu (F): we have a freehold land so we don't....interfere foi nisi I fanua foi nale a matou, a le side a lo'u tama ma side a lo'u tinā. Matou te le o tou bother i na mea.

Translation: we have freehold land so we don't...interfere with any of our other lands, on my father side or my mother side. We no longer bother with those things.

I wondered how people who lived in houses in small plots, in low lying flood prone areas felt about their food security and residential stability.

2.5 Dignity

Participant V is a *fa'afafine*. He conveyed his story from the perspective of a child of a widow. His story was about feeling disempowered, unwanted and treated like an outsider by kin, and restoration of dignity through land ownership.

Participant V's story

V's mother left her village of birth to go with her husband to his village after they got married. Both villages were in Savaii. Just over 20 years later V's father died. V's mother was in her early 40s with eight children. The children were all young and V was just a toddler when this occurred. According to tradition of *momoli* that was once widely practiced, V's mother and her children returned to her family of origin.

When they arrived to settle with their mother's *aiga*, V's mother was given very limited options for land. Although V's mother was the eldest among her siblings, she been gone over twenty years serving her husband's family. V believed that because of these factors, his mother '*had no right, no option, no nothing*'. V said they (children) did not know their new village, and felt they had no *faasinomaga* (markers of identity, belonging) there.

V's mother was not in paid employment so had to do her best. Over time V's aunty who also lived in the house had children and raised her family there too. The house became crowded, resources were stretched, and arguments between V's mother and her siblings began to occur daily. A couple of V's siblings later finished school and entered paid employment. V's mother then asked her parents if they could have a piece of the *fanua Samoa* land to build their own home. In response, the *aiga* pointed out a small area far into the bush where there was no electricity and no running water. The small family moved away from the main house and built their own *faleo'o* (traditional Samoan house). The *faleo'o* took almost all the land space that was allocated to them. V's mother had to ask for more space to build a toilet, and some more to plant crops to feed themselves but they eventually had to plant very close to the house. They were not given any of the land that had coconuts so they could feed their pigs. It seemed that each request was countered by someone who overruled it or objected to it.

Participant V: *E leai se matou filemu, no freedom, nothing, pei lae matou te nofo i lalo o se puleaga...and this is the real sisters real brothers! but think selfish cos its (land) only for their child, tamaiti.*

Translation: We had no peace, no freedom, nothing, it was like we were living under some ruling authority...and these were her real sisters and real brothers! but they were selfish cos they just wanted the land for their children.

V and his siblings had to collect water from a distant source, and collected *lopa* (edible nut) to sell for money. V's siblings went overseas and sent money home. They dreamt of one day owning their own piece of land. In 1997-1998 the Government advertised subdivisions in Vaitele Fou on the main island of Upolu. V's family applied, paid a deposit of \$1000.00 tala, and were granted a lot. They were not hungry, but they wanted freedom from the demeaning life under their extended family's rule. V became emotional as he recalled these memories.

Participant V: *Te iloa, na ona maua atu a o le matou piece in 98 then we moved!*

No wait!

Translation: You know, as soon as we were granted a piece we moved! No wait!

V said he did not blame his mother for assuming she would still have status when she returned to her family, '*she left the family because of her marriage thinking you still have your right, and when you come back you'll still exist*'. Times had changed and *aiga potopoto* could not be relied on anymore to respect one's rights.

2.6 Difference Between Customary Land and Freehold

Participants explained without any prompting, about the difference between *fanua Samoa* and freehold land or *fanua palagi* (white person's land) or *fanua faatau* (saleable land). This difference was around spiritual and cultural significance. According to them, freehold land did not have the aura of sacredness that *fanua Samoa* had because it was not associated with the labours of ancestors and the rule of the collective.

I detected what I will call here a 'roots differential' between those who grew up on their customary lands and those who did not. The literature suggests that such dissociation occurred for some urban dwellers who left their traditional villages because duties and obligations to *aiga*, church, and village became too overwhelming (Thornton et al, 2010). Absence led some people to become socially disassociated from their natal lands and traditional support networks. This dissociation also came across from a few research participants who were first generation settlers (children of the original 'migrants').

Participants felt that with *fanua palagi* or *fanua faatau*, there was no long-term security of tenure so the notion of permanency was not the same. They explained that if someone fell behind on their mortgage payments for the freehold land the bank could take possession of it. In comparison, *fanua Samoa* would always be there and was free.

Participants of both genders seemed to assign a low practical value to *fanua Samoa* when their physical needs (food, home) were adequately met using freehold land. Only a few of those who lived on freehold plots saw any future need for customary land. Most participants had professional aspirations that were unrelated to land, such as careers in agriculture, or tourism. Some were seeking opportunities to migrate overseas.

3.0 How do you access customary land?

3.1 Difference between those in resident and those on freehold parcels

This question of pathways to access was perceived by urban participants from two main positions – those who lived on their *fanua Samoa*, and those who lived on freehold land but had rights to *fanua Samoa* elsewhere. Overall, those who lived on their *fanua Samoa* had a clearer understanding of processes to access land, compared with those who had always lived on freehold parcels.

Those resident on their own *fanua Samoa* seemed to have a stronger understanding of their genealogical connection to their lands, land boundaries, who the power holders were in the *aiga*, were clearer about their own or familial investments in the land, and were involved in village activities and decision making forums. These participants had clear advantage due to visibility in *aiga* and village activities, and knowledge.

3.2 *Aiā tatau* (right), *aiā tutusa* (equal right and entitlement)

All participants talked about birthright to land being the same for all *suli*/heirs, they used the phrase ‘equal right’ often. I queried if birthright meant automatic right, to which participants were unanimous in saying ‘No’. Participants explained, however, that no one could deny your *aiā tatau* because it was custom. Custom was the qualifier.

Agalelei (W): E taua tele (customary land). O le freehold e I lalo o le tulafono, e tasi a le tagata e iai lana aiā I le freehold. Ao le customary land e I lalo o le tatou aganuu, ei lalo fo'i I le pulega e lē na o le tasi se tagata e ownina le fanua faasamoa, e i lalo o le aiga potopoto poo le suafa a le aiga lea. Ia ae a ta'u le suafa I Samoa e lē tasi se tagata e to'atele. O tagata uma a e au I le suafa lea e iai rights I fanua faasamoa ia a le aiga. Pe te laititi pe matai e iai a lou aiā lana o oe a na tupu mai I totonu o le suafa lea e ona le fanua lea.
Translation: It's (customary land) very important. Freehold land is under the law and only one person has rights. But customary land is under our customs, it's also under collective authority not just one person who owns *fanua Samoa*, it is under the *aiga potopoto* or the *suafa* of the *aiga*. But if you talk about ‘*suafa*’ in Samoa, it's not one person it's many. Everyone who is an heir to the *suafa* has rights to *fanua Samoa* in a family. Whether you're young or a *matai* you have rights because you were from within the *suafa* that own the land.

Participants explained that *aiā tatau* meant that *matai* who were responsible for overseeing the family's lands, did not have sole authority to allocate land. The rights were shared by members of the *aiga potopoto* who must be consulted.

Merina (W): A e mafaufau foi, when we talk customary land e lē mafai na e fai iai se decision, it's a shared decision o tagata uma o le aiga, pei o tulaga na.

Translation: When you think about it, when we talk customary land you alone cannot make a decision about it, it's a shared decision for people in the family, those are the conditions.

Masefili (W): A o fanua faasamoa pei na saunoa fō'i le vaega lea, o le mea lena o le matai a le aiga e fai o le vaai o fanua a le aiga auā o fanua ma suafo o measina na a aiga....nā o le vaai ā e ia ae lē pule ai, e lē pule se matai I fanua. O fanua nei faaleaganuu e aiā tutusa ūma iai suli – o suli a i soo se suafo e aiā uma a I fanua a latou aiga.

Translation: As to fanua fa'asamoa, as the others have said, that is the job of the matai of the aiga to look after the family's land because land and titles are the measina of families....just look after but not own it, a matai does not hold sole authority over the land. All heirs have equal right to these customary lands – heirs to any suafo have rights to their family's land.

Respect for aiā tatau was strong in some families, unaffected by absence from the fanua.

Merenaite (W): O lea fātō'a ou nofo nei I fanua o aiga a lo'u tinā, its customary land. O o'u matua e faifeau – they've been faifeau for more than 30 years. E le'i nonofo a la I totonu....a matou ō atu a matou ia ask for a piece of land e fai ai le matou fale e leai se faafitāuli

Translation: I have just recently come to live on my mother's family's customary land. My parents are church ministers, they've been church ministers for more than 30 years, they've never lived inside...we just asked for a piece of land to build our house, there was no problem.

Researcher: So o le experience lena a oe

Translation: So that is your experience

Merenaite (W): So, ou te lē iloa po le ā le a'afiaga...

Translation: So, I don't know why it matters (absence from the land)

Other participants talked of families where longterm absence cut people off despite their aiā tatau. Suli most at risk of losing their rights were absentee owners who lived away in urban settings and overseas. As culturally controversial as this was, some participants felt that under certain circumstances, this would probably be fair.

Soo (W): To be honest o tagata ia e nonofo I fafo, pei o latou nei ua pito i sili na omai fia su'e le pule i aiā i fanua nei ae leai ma se latou...no seed na plant i totonu o fanua nei. Ae a fika atu iai they have a right becos o latou matua ma matua o latou matua e have rights, everybody – e iai a uma aiā tatau a tagata.

Translation: To be honest, it is the people who live overseas that are the most eager to fight for the authority over land, but they have never...planted a seed on these lands. But if you think about it, they have rights because of their parents and grandparents. It's everyone's birthright.

Access to fanua Samoa could thus be a source of conflict. The freehold land dwellers talked about the ease with which they could get on with their lives without fear of challenge from others' suli, or having to consult and seek agreement of the aiga

potopoto if they wanted to do something with the land (recall Participant V's story). One *fa'afafine* who was already a joint owner of a freehold plot with his parents, was saving to buy a separate piece of freehold land for him and his adopted daughter. Assured title would enable him to protect his daughter from needing to call on *fanua Samoa*.

3.3 Through Family *Matai*

Two participants held the role of *sa'o* in their respective *aiga*. Both were absolutely clear that nothing in Samoan custom gave any single person, including the *sa'o*, sole authority over a family's *fanua Samoa*. There was a previous practice in some families where one *matai* held the authority of *pulefaamau*, but the term has been discarded and a new term *pule faamalumalu* has been introduced. *Pule faamalumalu* is a concept similar to guardianship, but it is still not equivalent to ownership. A few participants shared experiences of *matai* who became selfish (*manatu faapito*) and hogged more land for themselves instead of managing it fairly for all the relatives.

Sa'o participants (women and *fa'afafine*) spoke about the weight they carried for ensuring fair access to *fanua Samoa* for their families. To them, denying a family member's rights was a last resort. They had to consider requests from kin they did not know, or who had moved away for at least a generation. The two *sa'o* said they had to make decisions that would affect the land interests of kin yet to be born, or affected family who were already occupying the plot of interest.

Both *sa'o* had strong loyalty to land distribution made by their forbears, and worked hard to honour them during disputes between kin.

Participant S (W): A uma atu la a'u, o ai fo'i leisi tagata e sosoo mai, o ia foi laa u'ua le suafa, o ia foi e iai le faatagana e nonofo ai. Ia ae afai a o le mea ua uma na fai e leisi matai, ia e leai se mea laa toe faapea atu ai le matai fou lea...sui.

Translation: When I am gone, the next person will come and will hold the title and the permission for people to live/occupy. If something has been laid down by the previous *matai*, there is no reason why the next *matai* should change it.

Conflict often led to fragmentation of relationships. To keep the peace (*tausi le filemu*) and ensure longterm security, some people choose to buy freehold land instead.

During the field work I asked a couple of public service participants about the Samoa NGO Shadow Report 2012 that suggested that women's lack of *matai* titles affected their access to *fanua Samoa* (refer to Chapter I section 3.1). The officials disputed the

NGOs view. One of the officials said that it was misleading to think that women's access to customary land was dependent on their holding a *matai* title, because customary land rights were a birthright (Participant L).

3.4 *Tautua* - Currency for Land Access

None of the Samoan participants mentioned having to pay for access to their *fanua Samoa* in the form of a rent. Instead, reciprocity for this privilege occurred in the form of *tautua*, which was service to the *aiga* through practical service and provision of goods in times of need (example a funeral, wedding, church initiatives) (Maka, Participant S). The practice of *tautua* is thus resource intensive. According to participants, it was *tautua* and not *aiā tatau* or holding a *matai* title that earned access to *fanua Samoa*.

Participant S (W): Ia ona o le malosī o le power foi lele, i mean a faapea a lē tautua mai le tagata i le matai a tasi lena mea, faapea o la e nofonofo ae lē tautua mai, aua manatua o customary land ...e tatau a na fai mai le mea lena aua o la ua nonofo I totonu o nuu a, e tatau la na faatino le tautua.

Translation: Yes, because of the strength of that power, I mean it says if a person does not *tautua*/don't serve the *matai* eh that's one thing, it's like they are just living their lives but not exercising service but remember it is customary land...they must do that because they are living in the village, it's imperative to exercise *tautua*.

As previously noted, some of the urban participants did not live on their natal lands, including those who held the lead *suafa* for their families. It became apparent during the interviews that some of the participants that had only lived on freehold land in town, had very little understanding of how they would go about accessing their *fanua Samoa* through their parents' natal villages. All of them gave money frequently to their parents and elders as part of their *tautua*, but not all had close relationships with family in their parents' villages. These participants did not *tautua* in anticipation of land access, but expressed that they did so out of duty, and to maintain relationships with their *aiga potopoto*.

Participants joked that sometimes *tautua* necessitated debt, but it was part of being a Samoan. Most knew of relatives who gradually ceased to *tautua* their *aiga* and customary villages, who lived relatively free of those traditional obligations.

Participant L (W): Lē toe tautua, they don't feel they don't have a right to come back because ua leva e lei toe fai se latou tautua; which could also be different from those who have moved on and have never come back because o la ua iai mea e tu iai. So why should we go back to fight for a piece of land o la e to'a 10

tagata that are fighting for?...o lea ua mau tu matou e leai se mea e ala ai ona toe sau....

Translation: No longer serving, they don't feel they don't have a right to come back because it's been a long time since they exercised *tautua*; which could also be different from those who have moved on and have never come back because they have means to fall back on. 'So why should we go back to fight for a piece of land that ten people are fighting for?'...we are settled ourselves there's no reason for them to return....

There is a formal definition of *tautua* for *matai* in s20A of the Land and Titles Act 1981;

20A. Qualifications of a *matai*—(1) A person is not qualified to hold a *matai* title or be registered as a *matai* unless: (a) the person is at least 25 years of age; and (b) the person is prepared to carry out the obligations of his or her *matai* title including properly serving his or her family, village and community according to Samoan custom and usage.

The obligations and services' required of a *matai* are called *monotaga*. In 2015, Parliament debated amendments to the Electoral Act, led by the sole female Minister the Honorable Fiamē Mata'afa. Sections debated include a redefinition of 'village service' to refer to *monotaga* rendered to villages in respect of territorial constituencies and service rendered to communities within urban constituencies' (Sioa, 2015). *Monotaga* includes money, goods, and other materials as required by the *matai* council.

The provision of *monotaga* was especially important for absentee heirs and *matai*. Participants said that some overseas based *matai* did not provide *monotaga* but mistakenly thought that all they needed to do to be recognised by *aiga* and villages upon return was their title and genealogical knowledge, but without *tautua* these were not enough.

Blondie (F): Ia manutua o latou la e nonofo mai I fafo. O isi a tagata la e omai e serve latou aiga pe a ta'u atu maluu ma mea faapena. Ao isi na o ese atu a...20 - 30yrs ago, matou kasegi, omai nei oka, vaai oe iai i gafa, gafa o matou aiga ma mea...

Translation: Well remember they are the ones that are living overseas. Some come to serve their families when they are informed of a funeral and things like that. But others moved away...20 - 30 years ago. Our cousins, when they come oh my gosh, you should hear them reciting our genealogy and those things...

4.0 What is the effect of being an urban women or *fa'afafine*, on access and rights to customary land?

4.1 Access is gender neutral - really?

There was uniform view across the majority of participants that sex or gender did not in their experience, affect people's rights to customary land in urban or rural villages.

EVERYONE was certain of this. Could Samoa be unique in the world? As I re-read people's stories during the data analysis, I realised that the gender-urban question could have been channelled differently as it was mainly through the exploration of dispute resolution that I got a better understanding about the effect of gender and disconnection for land on the realisation of land rights. Disputes were addressed by *matai*, who were mostly men. The abuses of *matai* authority that participants talked about were male *matai*. I therefore concluded that despite denials from most participants, the analysis revealed that gender did affect rights to land.

I will now use scenarios from participants to illustrate the effect of gender on land rights, including access.

4.2 *Nofo tane*

The *nofo tane* is particularly vulnerable. Because the *nofo tane* lives with her husband on his family's land, her *tautua* is primarily to her husband, his family, their church, and the husband's village. While living with her husband, the *nofo tane* has access to his lands, not only for her household needs but as part of her *tautua* to his *aiga*. If the husband dies, it is tradition for a Samoan woman to return to her family of birth along with her children. Depending on the nature of her relationship with the husband's family, her *tautua*, and because of the children, the *nofo tane* may still be granted use of her husband's lands by his family. If the children were of adult age, then the *nofo tane's* access may continue because the children are heirs to the land.

The vulnerability of the *nofo tane* arises if she is abused by her husband or/and in-laws, or when she is widowed. The Samoa Victim Support Group in Apia informed of situations when *nofo tane* who were victims of family violence had come to seek refuge. *Nofo tane* sometimes found themselves unable to return to their families of birth for whatever reason. The most common reason for this was that the *nofo tane* had not exercised *tautua* to her birth family during her absence, so had not earned the right to be

granted land. I learnt that Samoa had three refuges, plus temporary on-call accommodation for victims of violence (women and children) and child abuse.

4.3 *Feagaiga*

The participants all gave examples of the application of *feagaiga* in ensuring access for women. This led me to understand that this relational protocol was still very relevant to the management and resolution of conflicts over *fanua Samoa* including in urban villages, and to *matai* who lived in urban areas or overseas but held guardianship roles over their aiga's *fanua Samoa* wherever the lands are located.

Participant M's story

Participant M talked about her paternal aunty who had lived with her husband in his village for many years. While the aunty lived away her birth family saw little of her. Years later the aunty requested some land to build a home as she wanted to come back. The *matai* holding responsibility for overseeing the family's lands was Participant M's father. Many in the family wanted to deny the aunty's request because she had not exercised *tautua* to the family during her absence; the aunty had ignored the needs of the family but now wanted the benefits of being part it. Participant M's father was in a difficult situation because he could not make a decision about the land on his own as it belonged to the collective. On the other hand, he would be failing in his customary brotherly duty to his sister by denying her land to which she is an heir. Participant M's father advocated hard and eventually convinced the others to grant his sister land to return to and build her home.

Participant S's story

A *sa'o* participant told of a dispute that occurred between a brother and sister of her *aiga potopoto* over land that involved the village council. The siblings had previously approached *Sa'o* for land to build their homes. The siblings had been raised elsewhere by their parents who had since passed on, and they returned to the village of one of their parent to re-establish. The siblings' nuclear family had given minimum service to the *aiga potopoto* of the *sa'o*, which is usually the way to make visible your family connection and eventual position as heir to lands of your parentage. Despite this, the *sa'o* consulted with other branches of the *aiga potopoto* and decided that the request from the siblings would be accepted. Land was allocated to the two in due course.

Years later the brother decided he needed some of his sister's piece and started moving in. This displeased the sister and a dispute began. The sister eventually took her case to the village *matai* council looking for help due to the brother's violation. The village council had a legal mandate to manage village affairs including the economic use of its land according to its customs (Village Fono Act 1990). The council considered the dispute and understood that the ultimate authority over the land concerned lay with holder of the associated *sa'o* title and family. The *fono* then contacted the *sa'o* responsible, who was Participant S.

Participant S lived on freehold land in an urban village because of her employment, not at the village of the disputed land. This is not unusual due to urbanisation and overseas migration, but a *sa'o* often appointed another *matai* from the family rank who lives on the land in the village to oversee matters in their absence. Participant S then summoned the rivalling siblings to a meeting. Participant S described how she used the *feagaiga* to base her approach to the conflict. She reminded the brother of his duty under the *feagaiga* to ensure the wellbeing of his sister. Participant S reminded the rivals of her duty to them both and that they were given a piece each, enough to develop families and live harmoniously. Participant S asked the brother where would his sister go if he took her land. The brother withdrew his interest in his sister's plot.

4.4 Prejudice Against *Fa'afafine*

Only one participant out of 15 said that gender directly affected his access and right to customary land in his family, the rest believed that gender did not have a role. Sera, the *fa'afafine* who was discriminated explained her story.

Sera's father was the *matai* in his family and they lived in the father family's main house. After Sera's father died, the *matai* title and associated responsibilities were passed on to the father's brother, Sera's uncle. Sometime after the uncle became *matai*, he moved his family into the house that Sera and her family occupied with their widowed mother, resulting in Sera's family shifting to the rear of the property to accommodate them. Gradually hints were dropped that Sera's family were not welcome in the main house. Eventually the uncle told Sera's mother to move with the children out of the main house to another dwelling on the family land. This decision was supported by others in the family.

Sera believed that his uncle had always had a problem with him being *fa'afafine* but never targeted him while his father was alive because his father protected him. Sera felt that his uncle's prejudice against him contributed to the treatment of his family. As Sera's mother was the in-law she was not in a position to deny the wishes of her husband's family who owned the premises and the land. Sera's family eventually left their father's family to return to her own.

Researcher: E leai se puipuiga I le tatou aganu'u I ituaiga mea na faapena? I mean, tusa na ua pule to 'atasi mai lava lo'u uncle. E leai se puipuiga I le aganuu faasamoa, se tiute a le aiga potopoto e protect ai outou?

Translation: Is there no protection in our culture against those situations? I mean, its like your uncle has exercised sole authority there. Is there no protection in the Samoan culture, a duty of the extended family to protect you (fa'afafine plural)

Sera (F): I think e iai, tusa ta'i fia afe e ave I luma o le nuu. Fai mai lou tinā e leai se aoga, tuu ai pea ma latou aua e tau'i a e le Atua latou mea ia e fai.

Translation: I think there is, but you have to take many thousands to the village. My mother said it would be pointless, leave them (the family) be God will judge them for their actions

Blondie (F): E iai le puipuiga a le nu'u.

Translation: The village has a duty to protect.

Sera's mother later migrated overseas in search of better life for herself and her children. Once settled she began the process of getting the children to join her. Sera and a sibling returned to their father's family in the interim. At the time of the interview, Sera was making preparations to fly out of Samoa to join his family in their new home. Sera had no intention of ever returning to his paternal family's land in Samoa.

Sera believed that customary land was commonly allocated by *matai* to people to start their families, however, this was not readily done for *fa'afafine*.

Sera (F): Tusa o lo'u vaai atu I fanua na, na o matai a e iai le pule, ia tailo iai, o latou a lea e iai le pule latou te mafai ai na faasino le fasi mea e nofo ai lea ma lea ma lea. Ae o tusa la o matou la nei tuu ifo la I fa'afafine....e faigata na latou aumaia ni mea matou te nonofo ai, matou te nonofo pe fai ai sota ia a fale, tusa o le mea lena tate mana'o iai aua le lumanai a, ta te lē iloaina pe faiga ni ata fanau a.

Translation: That is my view on those lands, only matai have authority over them. I don't know, it is them who hold the authority to point out where so and so can live. But when it comes to us fa'afafine...it's hard for them to give us (individually) somewhere to live or build a house, that is what I want for the future eh, I don't know if I will have any children.

Initially I thought Sera's story was a lone one as no one else shared a similar experience. Then I remembered that I was not doing a quantitative study, and that through the feminists lens, Sera's experience is as valid as one shared by ten participants. I also figured that one *fa'afafine* out of ten extrapolated across a population meant that there was a likelihood that Sera's experience was not isolated.

5.0 What is happening to improve access and rights to *fanua Samoa* for urban women and *fa'afafine*?

The responses to this question seemed to relate to the fact that the majority of my Samoa based participants (7 out of 10 women, 4 out of 7 *fa'afafine*) lived on freehold land.

5.1 Be Visible, Plan Ahead

Most participants advised that women and *fa'afafine* must be realistic because their customary land rights are no longer guaranteed. People need to think ahead and keep their interests in the land visible to their *aiga potopoto*.

Participant S (W): Leave a mark of your *tautua* and presence.

Participant L (W): Sometimes we assume 'o la e tele fanua'. 'toe foi atu o la e tele fanua', but the reality is ua tutupu tagata o aiga, ua tele foi na feoa'i tagata, so we have to look at ways...I'm just thinking ia a'u a ia ma le example o lo'u aiga...you know, e te alu i o i le mea e nofo au lou toalua, but you want to make sure, o la foi e galueina se mea e ta'u ai oe ia....you have a piece or plot of plantation or whatever, you come back e vaai, ina ia mautinoua ai ma guarantee this is your place and it will be here waiting for you. It's really...being mata'ala, ensuring we do have a plan B...options.

Translation: Sometimes we assume there's a lot of land...when I return there'll still be a lot of land, but the reality is families have multiplied and people travel back and forth so we have to look at ways...I'm just thinking about myself as an example from my family...you know, you go to where your husband lives but you want to make sure you are building something for yourself....you have a piece or plot of plantation or whatever, you come back and check to make sure and guarantee this is your place and it will be here waiting for you. It's really...being aware, ensuring we do have a plan B.

5.2 Bestow Chiefly Titles on *Tamaita'i* and *Fa'afafine*

Participants considered bestowing *matai* on women as one way to increase women's influence in decisions regarding *fanua Samoa*, as suggested by the NGO Shadow Report in 2012.

Participant S (W): Laga o lea ua mafai nei na matai tamaita'i. Ia pei la o le mea lea ua gautua ai lena authority, e pule ai ia i le suafa, faapea foi ma fanua ma eleele, aua o le suafa matai, e pule, tusa o ia na e umia le suafa.

Translation: Because now women can be matai, this is the height of that authority. she has authority over the matai title and lands, because the matai title holds authority, meaning she will hold it.

It became apparent however, that *fa'afafine* were more likely to be asked by aiga to be *matai*, than their sisters. Women talked of deferring titles to brothers (including *fa'afafine*) not because they felt unable to lead, but because they expected their brothers to *tautua* their *aiga* through leadership. Maka (F) on the other hand was keen to bestow *matai* on female relatives in return for their *tautua*.

Maka (F): ata iloa ua ta vaivai ma lē mafaia le galuega, fa'aaoga le tamafafine...ia te a'u a ia ma lou agaga, e leai se mea e argue ai le tamatane ae la e mucking around e leai se aogā, e lē o sau e galue I totonu o le aiga I le mea lea e fai.

Translation: If I know I (a male) am weak and I cannot do the job, use the female offspring. To me, the male child has no reason to argue about that if he is mucking around being useless, he isn't here involved in family matters

In exceptional cases, *matai* titles were bestowed upon the husbands (*faiavā*) of the daughters of the village, as a recognition of their *tautua* to their spouse's family (Roger, Maka, Masefili). But there were no stories about a man's family bestowing a *matai* title on a *nofo tane*.

Women and *fa'afafine* felt that sometimes they were offered *matai* titles because they had good jobs so were seen as a good for the *aiga*'s status, but they may not be permitted to take part in *matai* council sittings and village decision making. They did not want to be exploited financially through a pretence of respect. Women and *fa'afafine* have also turned down titles due to the financial demands of being *matai* (recall the previous discussion on *monotaga*).

Participant S (W): Aua e lē gata fo'i i le aiga ao le lotu; o le nuu, o le Ekalesia latou...e tatau foi na portray se image lelei a le matai i le lotu ma le Ekalesis. E le faapea na'o le fai na'o mea a le nuu aua o le nuu o le ekalesia fo'i lena.

Translation: It's not just the family but the church, the village, the Church national body. It's essential for the matai to portray a good image to the church, we don't just do things for the village because the village is also the church.

Women and *fa'afafine* who were *matai* said they never asked for their titles but accepted them, and will accept future offers along with the financial costs if the roles are respected.

A couple of female participants did not believe that the lack of *matai* title hindered women's access *fanua Samoa*. These participants believed that access was based on the maintenance of *va* with other family members; good relationships were key.

5.3 Challenge Denial of Rights

A number of women and *fakaleiti* participants talked about *matai* abusing their cultural authority and assuming control over family lands, ignoring principles of collective responsibility and collective ownership.

Blondie (F): A o le mea lea ua tupu I le taimi nei, once ete matai loa ua e pule I le fanua atoa, and you're forgetting lou kasegi lae nofo mai i o, lou kasegi lae nofo mai I o. Na maua loa le mea na, ua e selfish ua e mana'o e fau leisi ou fale I o, fau leisi ou fale I i, ae eu'eu isi tagata ia. Ae mai le amataga na tausi feagaiga uma a tagata nei, I le amataga na tautua.

Translation: The thing that's happening now, once you are a *matai* you rule over all the land, and you forget your cousin who lives over there, cousin living over there. Once you got the title you become selfish and want to build another house there, build another one here, gradually pushing others aside. But from the beginning everyone respected relationship covenants, in the beginning people served (the collective).

Women participants were concerned that *matai* were banishing people from their lands without sound cause.

Merenaite (W): It's very important because nowadays e ese'ese a manatu I mea ia o customary lands. For some families e pei a na'o matai that have the right to the land, a faapea la e lē mana'o le matai e nofo ai oe I luga I I, even if you're family a mana'o le matai e faate'a oe ma le fanua...in most villages it's like that – they have the right to tell you to leave the land.

Translation: It's very important because nowadays there are different perspectives on customary lands. For some families its as if only *matai* have the right to the land, so if a *matai* does not want you to live here, even if you're family, if the *matai* wants to banish you from the land...in most villages its like that – they have the right to tell you to leave the land.

It was clear from the stories that despite the ideals about *aiā tatau* and *aiā tutusa*, there were no more guarantees based on blood link.

Blondie (F): Na manaia a le aganuu in those days na honor uma, ae ua o 'o mai loa le malamalama ma le su'esu'e I mea, ua iloa loa e tagata faavasega le fair and not fair...ae maise a I fanua tausamoa. Ae a lelei a le tagata na te fai se, le tagata lea e tula'i mai I le suafo, na te faia se mea e filemu faapea 'ok, o le piece lea a outou' ma tusitusia loa I lalo - 'outou I o le tou tuaoi lea, nonofo ai outou...a tuputupu ae tupulaga su'e le mea i outou mea e tuu ai na tupulaga...becos you can't overlap I mea o iai isi kou kasegi.

Translation: Culture was good in those days when it was honoured, but due to education and people enquiring more, people now know how to judge what is fair and not fair...especially with regards to customary land. But if the person holding the *suafo* (*matai* title) is good, she/he can do things that bring peace/harmony. For example, say 'ok this is your (family unit) piece' then document it – 'that's your piece and this is your boundary, you live there...if future generations come you are responsible for finding land for them'...Because you can't overlap/encroach on your cousin's lands.

5.4 Humility Exploited

Participants' stories revealed a pattern of conflict avoidance by women when there was a land dispute even when she and her children were likely to lose land as a result.

Women often wanted to show dignified behaviour through humility and silence to avoid being seen to bring disharmony to the *aiga potopoto*. An example was seen in Sera's case when his mother asked him not to complain to the village *fono* about his uncle's treatment of them.

Elderly women were seen to be the worst at silencing the complaints from their lineage. An elder's *fa'aaloalo* (respect) and *alofa* (love, compassion, sympathy) for a distant relative seeking land has led to being exploited and conflict over lands and *matai* titles given.

Blondie (F): Ona o tatou matua e humble ia e lē manana'o I le vevesi, at the same time o lea laa sesē ai mea a le aiga...(loomatua to Blondie) 'vaai outotu, alolofa I le aiga'...of course tatou te alolofa!...(Blondie to matua) 'vaai outou e fai atu outou ao tagata la ia e ola mai latou fanau faasasaga mai

Transcript: Because our elders are humble they don't want to cause conflict, but at the same time it will put the family's interest at risk...(elder to Blondie) 'listen, have sympathy for the family'...of course we love them!...(Blondie to elder) 'look, when you pass on these people will have children who will come to challenge us'.

Fa'afafine participants talked of instances when elders had been seduced by money.

Token gestures of familiarity (outings, meals, money) from an investor can seem like a lot to an elder. Local investors knew well how to show respect when dealing with elders, but they also knew the market value of land while most elders did not.

Participant V told of a time when one of his paternal uncle's allowed an investor to use land that had been allocated by V's great grandparents to his father. V's father had passed away when he was child, so V as an adult, became the one responsible for ensuring that his family's rights to the land were protected. Because V and his family did not live on the land, the uncle assumed authority over it and negotiated with the land seeking investor, without V's knowledge or consent. V's mother and siblings begged him not to cause conflict and let uncle have the land, but V refused.

Participant V (F): O'u alu a talanoa i lo'u tina o'u fai atu iai, 'o le mea lea la'a ou tago e fai'...even my older brothers matutua matuā fefefe ia te a'u.. 'fefē V e te toe alu fai fua na mea poo le a?' ou fai atu 'that's not the point, the point is I need to correct le mea lea. Vaai outou in the next 50 yrs ua own e le fanau a le tamaloa lea le tatou fanua na freely hand over e tatou ancestors ia tatou, so o le ā la le mea o le a tatou tuulafoa'i atu ai?' O le mea tonu a lea o le tuulafoa'i.
Translation: I went and talked with my mother and said 'this is what I am going to do'...even my older brothers they were scared of me...'gosh V why do you want to go do that for?' I told them 'that's not the point, the point is I need to correct this. Look in 50 years time, that man's children will own our land that was handed down freely by our ancestors, so why would we neglect it? That is what you call true neglect!

Participant V took his uncle to Court. The Court upheld V's family's entitlement to the land, and was unopposed by the uncle. The uncle withdrew his dealings with the investor.

6.0 Discussion

6.1 Gender

The study found that overall, there were many similarities between the views of *fa'afafine* and women on the significance of customary land. The difference between the two gender groups became more visible when looking at cultural pathways to access *fanua Samoa*. The cultural pathways show the importance of *matai* status and authority, and the predicament of *nofo tane* who leave their natal lands and discontinue *tautua* to their *aiga* (participants, NGOs and government reports commonly agree). Access to land was also influenced by the *feagaiga*, and degree to which *aiga* leaders exercised collective responsibility for heirs and respected allocations by forebears.

6.2 Need for *Fanua Samoa*

Participants were united in the 'need' for customary land for spiritual, cultural and emotional purposes. In terms of the practical significance of land, participants of both

genders seemed to see this as less significant when their needs for food security, place to settle, proximity to markets and services, were met by living elsewhere. Only a few of those who lived on freehold plots saw any future need for customary land. Most participants, whether they lived on *fanua Samoa* or freehold, had professional aspirations that were unrelated to agriculture, tourism or anything that required land, some were also seeking opportunities to migrate overseas. The SBS statistic showed that only 30% of urban households had access to agricultural land (Census 2011). The research findings suggest that this may be due partially to people choosing not to access their *fanua Samoa*.

6.3 Availability of *Fanua Samoa*

There is very little literature about the land needs of urban households in Samoa (Thornton, et al, 2013), but there are signs of people without adequate access (PIFS, 2015). Government reports state that there has been a flow of population from AUA to NWU in recent years because of the availability of freehold land in NWU.

When I set out to do the research, my assumption was that urban dwellers would look to land in urban locations for their needs. The findings indicate that this was not necessarily the case, depending on the need. The hurdles with accessing land inside urban areas made it more important to ensure rights remained active for *fanua Samoa* outside town. The geographical smallness of Samoa makes accessing customary lands outside urban areas easier compared to other Pacific nations where lands take many hours if not days to reach by road/or sea.

People are seeking independent ownership of land from the collectively controlled *fanua Samoa*. As some participants explained, the *aiga* politics, distrust of leaders, and involvement in accessing *fanua Samoa* can be demeaning. The freedom and dignity obtained from owning your own land was therefore well worth the separation from the collective rule. Participants who owned freehold land were often joint owners with others in their *aiga*. Participants talked about the many benefits of freehold land but the costs were astronomical in relation to local incomes, and not all plots had basic utilities and roads to them, and some were too far from town.

6.4 Leadership

It became apparent during the interview that using custom as a guide for land allocations became problematic when those seeking land did not have in-depth

understanding of custom, genealogy, family history, visible *tautua*, and good relationships with influential *matai*. Then lack of uniformity of customs made it more difficult for participants who were raised on freehold lands, or had little contact with their natal villages. These findings are consistent with literature on the consequence of pluralism in other parts of the Pacific and the world (Rakodi, 2014).

Samoa has proven itself able to remove harmful leaders and adjust governing structures to empower citizens. Examples are the removal of *pulefaamau* from the Land and Titles Act, s20B of the same Act 1981 that can remove a *matai* title, and the constitutional amendment to include a minimum quota for female representation in Parliament. The s20B provision was pointed out to me by an official from the Justice Department and a member of the Samoa Victims Support Group, but was unfamiliar to my participants.

6.5 Perceptions About Leasing Customary Land

The Census 2011 stats showed that 12.5% of households in AUA and NWU lived on leased land. There is one piece of literature on landlessness in urban Samoa that identified leasing church lands as one way that families new into town access land. None of the research participants who were new or were first or second generation urban, talked about living on leased land.

Participants talked more about leasing *fanua Samoa* to outsiders, an arrangement they perceived with some anxiety. Many participants were uncertain about the benefits of customary land leases. While most understood the need for social and economic development and prosperity for Samoan, there was nervousness about using customary land as collateral for borrowing, the effect of foreigners and foreign ownership of land on culture, and the loss of heritage for future generations.

Soo (W): A faapea ua faatau'ese loa se fanua, ua leai se aiā tatau a – o na ua iloa ai ua leai se so'otaga faamatai ma customary lands...we lease out...something we inherited - but its gone! So the unity in our family is torn apart.

Translation: If we sell off land then there will be no more rights – that's when you'll know there is no more connection between the *matai* system and customary lands...we lease out something we inherited – but it's gone. So the unit of our family is torn apart.

Julu (F): at the end of the day la e magagao e keep le culture and that, at the same time you want the investors to come in and invest and change the whole format... and that will probably foi gale e diminish the culture ma mea uma aua lea ua avaku I igivesi mai fafo

Translation: at the end of the day they want to keep the culture and that, at the same time you want the investors to come in and invest and change the whole format...and that will probably diminish the culture and everything because it's been given to outside investors

Leases of *fanua Samoa* to foreigners was perceived as a road to landlessness and alienation of Samoans from their *measina*.

Kelly (F): and believe me, ituaiga fanua na (*referring to customary land*) like the ones I said before at Falealili and Lemafa, you know ones like me I don't rely on it, but sooner or later Samoa will be full of tourists that you know, my great people....and then who knows...like my sister's children, great g/children, g/g/g/children - there'll be no place around here for them to build, even a little.

Several participants also perceived risks with using *fanua Samoa* as collateral for borrowing. These participant suspected that this would open doors to banks seizing land and selling it off to cover borrowers' unpaid loans (Maka, Diva's group, both women's focus groups).

6.6 Views on Surveying Customary Land

Participants held mixed views about the benefits of surveying customary land from emotional, social and political perspectives. I got the impression that most still believed in the accuracy and validity of oral records despite the different recall about boundaries, genealogy, and so forth. It occurred to me therefore that the resistance was more about not wanting 'our ways' to be demeaned, and not about the rationale of the usefulness of surveying land. A few participants said that increasingly, families were documenting their meetings about their land and titles.

The territorial preservation of family history, genealogy and land transactions within some *aiga* placed urban participants at risk of losing connection with their lands when they were not privileged with the knowledge. This was also the case for participants in New Zealand who did not have ready access or close relationships with key *matai* and relatives in Samoa.

None of the participants knew if any of their *fanua Samoa* had been surveyed, but a few felt that surveying might decrease conflict between members of *aiga potopoto* over land boundaries between each other's pieces, as well as with other neighbouring *aiga*.

Tafu (F): O le mea lea ua iai nei Samoa, poo le a le e iai le fanua, your own land ma matua a, e omai a isi uncles ma ota aunties faamai oi e iai fo'i le latou aia I le fanua, ia ma tele ai a...ma ave ai lea I luma o le court fai ai le court

case. Ia but that's a good idea o le o faapepaworks le fanua...e finau mai latou avatu pepa o le fanua o la e alu I luga o matua, alatu ai I lalo ma igoa o fanau...
Translation: The way Samoa is now, even if you have your own land with your parents, aunties and uncles will come and say they too have rights to the land and it (conflict) just increases...get taken to court and ends up in a court case. But that's a good idea to have documentation of the land ...if they argue we can provide the land documents to show it's under the parents' names, followed by the children's names...

Maka (F): So pau a le mea e solve ai le problem lea, court, aumai loa ma le land survey e faamau le mea lea, vaelua loa....e sili atu la ia te au, e fofo ai le mea lea aua o lea ua ou sau e tele atu le mea lea....ua feoti ai tagata. It's not very good to me, ou faapea oi ua le sa'o le faaiuga lea, pei o le mea na.
Translation: So the only way to solve this problem is court, then bring the land surveyor to document boundaries, then divide it...to me, that's the best way to address this because it's a big issue....people have died over it. It's not very good to me, I think oh that outcome was not just! that's what I mean.

Despite the potential benefit of surveying *fanua Samoa*, there was still a sense of distrust in the Government.

6.7 Strengthen *Soālaupule*

Participants who worked in the public service felt that too often families were bypassing traditional processes of conflict resolution (*soālaupule* within *aiga potopoto* or within a *matai* council) and choosing to use the State process. Calling on the Court to mediate customary land disputes was meant to be a final resort, but it has been the ready response that has made the State essentially the validator of custom (Ward & Kingdon, 1995). Some participants believed that individuals, families, and village councils had yet to realise that by running to the Court, they were handing over their power and traditional responsibility for families, villages and assets.

Participant L (M): ua pule'esea a measina a aiga
Translation: external bodies are exercising authority over a family's sacred assets

The process of *soālaupule* is the traditional manner in which disputes are addressed outside the State. *Soālaupule* in the context of decision making is made up of three words: *soa* means a minimum of two parties involved; *lau* means to announce, read out, or open up an issues; and *pule* means the authority to make a decision (Fana'afi Le Tagaloa, 1997).

When I asked participants (generally) why people seemed to be turning to the Court instead of using the traditional process, they proposed a number of reasons. There was the loss of faith and confidence in leadership within the *aiga potopoto* due to *matai* self-

interest, as has been previously discussed. The influence of the cash economy on individual aspirations was another significant influence. There was also another economic driver for going to court on a communal level. Participants talked about a practice of *tapua 'iga*, where the village wait outside the court in support of the families in conflict. The disputing parties reciprocate the *tapu 'iga* with food and money (Participant S, Official V). While moral support via *tapua 'iga* was appreciated, a few participants (officials and private persons) described it as an added financial burden to the parties in conflict. One official described the *tapua 'iga* as a money making exercise that benefitted supporters and villages. A participant who had been to Court on several occasions said sometimes she did not even recognise the people who had come to *tapua 'i* her cause, but she felt obligated to give them money for their effort.

At the time of the research (2013), appeals to the Land and Titles Court were taking years to resolve. A few participants talked of relatives who had passed away while awaiting a final resolution to their dispute. The emotional and economic toll to parties were significant. A New Zealand based participant who held a *sa 'o* role said he typically made three to four trips to Samoa each year to attend court cases, or to mediate family land disputes outside court. There was also only one judge for the Land and Titles Court at the time of the research.

An official interviewed advised that one of the most common grounds for an appeal against a Court outcome is that of ‘conflict of interest’ against a panel member at the court. I asked the official if it was possible to avoid this in such a small country, as panel members were Samoan who could theoretically be linked genealogically to several families. The participant said that impartiality was possible and that professional training could help, but at the end of the day panel members had to be honest or suffer the spiritual consequences that many Samoans believe fell upon those who do wrong, which was severe illness or death.

The Samoan government introduced mediation into the legislation to try to hold back the tide of court cases by encouraging the use of *soālaupule*, thereby leaving the Court to be used as it was originally intended – the last resort. In 2013, local media released an article on a graduation of the first class of court mediators, trained with assistance from the University of Otago in New Zealand. The article said that the course “aimed to equip mediators who dealt specifically with matters concerning the land and titles court.

Objectives were to develop different components and ground rules of ‘Soalaupule’ - Samoan Customary Mediation - in order to inform determination of principles, processes and procedures” (Samoa Observer, 2013). A review of the effectiveness of the mediation avenue had not been done prior to the completion of this thesis.

6.8 Post Fieldwork

In 2014, a group of *matai* in Samoa submitted a complaint to the ADB about the way the government had proceeded with the land tenure law reforms project. The *matai* group expressed concern about potential civil unrest due to public concern about possible outcomes of the project (Samoa Observer, 29/9/2014). According to ADB documents, the complainants “raised concerns about lack of meaningful consultation, individualisation, and alienation of customary land” (ADB, 2015). The complainants were also concerned that the project was encouraging the government to lease arable customary land to investors, without appropriate mechanisms to ensure benefits flow equitably to land owners.

The ADB accepted the complaint from the group of *matai*. The ADB conducted a review and assessment in Samoa from 17 November to 1 December 2014 that included a documentation review, one-on-one and group interviews, workshops, and a roundtable discussion. Workshops were held with village communities from Upolu and Savaii.

A summary of ADB’s key recommendations that resulted include:

- Meaningful consultation with communities and stakeholders to occur. “This strategy must be based on the principle that the consultation process is an opportunity to provide information about key issues and their implications to foster better understanding and to allow those affected by the decision to have meaningful and substantive opportunities to influence the final decisions”.
- Community. MNRE is assisting landowners and investors in the development of customary land, including the drafting of customary land leases. Current practice has the matais signing off as trustees or custodians on behalf of the people. To safeguard community interests, MNRE should explore a consultative process to ensure participation of the wider community in the preparation of leases. This should be required before a lease is agreed upon, signed, and recorded. Advertising in the Savali¹³, as required by the ACLA, may be further reviewed and strengthened to ensure approval and endorsement by the customary landowners (not only matais as trustees). These steps will ensure broader agreement on the details of the lease, and transparency regarding the flow of rents and benefits to the people.

¹³ Savali is a government newspaper. The Samoan edition comes out once a month while the English paper is published once a fortnight.

- A launch of the Project is planned but it will be made clear that it will not include any leases of customary land at the start.

In August 2016, the ADB Compliance Review Panel (CRP) released its conclusions and recommendations for the Compliance Review Committee (CRC), which are:

42. The CRP recognizes that at present, efforts are underway to prepare legislation, which if enacted by the Samoan Parliament, would likely address much of the likely harm referred to *inside the report (my emphasis)*. However, in the absence of evidence at present that this legislation has passed into law, the likely harm identified by the CRP persists.

43. The CRP finds prima facie evidence of noncompliance with ADB's operational policies and procedures described in this report and prima facie evidence that this noncompliance with ADB's operational policies and procedures will likely cause direct and material harm to the complainants and to other affected people. Given the prima facie evidence of noncompliance discussed in section V(A) above and the seriousness and widespread nature of the resulting harm discussed in section V(B) above, the CRP concludes that the prima facie evidence of noncompliance is serious enough to warrant a full compliance review.

44. Pursuant to para. 179 of the AMP, the CRP determines the complaint eligible. As such, the CRP recommends that the Board authorize a compliance review of the Samoa TA Phase II (TA 7387) and TA Phase III (TA 8481) projects. (ADB, 2016).

Minutes from the ADB's Board CRC meeting in response to the CRP recommendations show:

- Agreement with the CRP that there is evidence that ADB was not in compliance with its Public Communications Policy and did not ensure all affected sections of the community were fully consulted; and
- The CRC was unable to reach an agreed conclusion on whether ADB's noncompliance has caused or is likely to cause direct and material harm.
- Agreement that the Government of Samoa will propose legislative changes that would substantially remove material harm to the complainants
- The Committee did not agree to proceed with the review recommended by the CRP (paragraph 44 above), but may reconsider this in future should it become clear that a risk of material harm directly attributable to ADB's non compliance with its Public communications policy remained. (ADB, 2016).

The ADB's decision not to proceed with a compliance review disappointed the original complainants (Samoan Observer, 7/9/2016), but it created an avenue for further intervention if the Samoan government did not engage in accordance with the Bank's requirements.

7.0 Summary

The findings provide insight into the significance of *fanua Samoa* to urban participants, the different ways that gender affected land access, and ways that urban participants could improve their access to *fanua Samoa* in future. Broad themes are summarised here.

The findings showed that for all participants, *fanua Samoa* was a sacred asset (*measina*) because it was earned through the labour of ancestors, and a life source from God. The thought of selling *fanua Samoa* was almost blasphemous to participants. Participants strongly believed in *aiā tatau* (right) and *aiā tutusa* (equal right) of all heirs to *fanua Samoa*, regardless of gender. Participants believed there were adequate safeguards for women's land rights in the traditional way that *matai* managed *fanua Samoa*, taking into account the *feagaiga*, loyalty to forebears, good of the *aiga*, and duty to heirs.

The analysis showed, however, that *aiā tatau* on its own did not guarantee land access, nor did it guarantee *aiā tutusa* for women and *fa'afafine* compared with men. *Matai*, who are mostly men, dominate decision making regarding land allocation and some have abused their authority. Homophobia within the *aiga* affected land access for *fa'afafine*. Bestowing *matai* titles and responsibility for land upon women and *fa'afafine* was a key avenue to getting more of them directly involved in decision making over *fanua Samoa*. Land disputes between brother and sister suggested that the traditional respect of the *feagaiga* had weakened.

The study found signs that these traditional principles, loyalties and values associated with *fanua Samoa* had weakened at *aiga potopoto*, village, and national levels. The violation and denial of land rights to heirs by *matai* are acts of *solī le va*, and have led to the legislative amendments to prevent *matai* exercising individual ownership over *fanua Samoa*. The huge demand on the Land and Titles Court has led not only to the Court/State ruling over a *aiga's measina*, and the gradual loss of faith by *aiga* in their own ability to safeguard their treasures, and loss of confidence in the ability of the *matai fono* to fairly mediate *fanua Samoa* disputes.

The concept of *tautua* was found to be the key to realising rights to *fanua Samoa* for urban participants. The absence of *tautua* risked losing land access, and an appeal for land depended on the discretion of the *sa'o*. The *nofo tane* who leaves her natal lands, is the most vulnerable to losing out if she ceases to *tautua* her *aiga potopoto* and natal

villages during her absence. The same goes for urban participants who cease to maintain *tautua* in those relationships.

The study found that a number of urban participants did not require *fanua Samoa* as they lived on freehold land which met their needs. A number of participants lived on or had purchased freehold land, to avoid the competition for land and the ongoing *tautua* associated with living on *fanua Samoa*. Freehold land dwellers still, however, valued *fanua Samoa* for identity, heritage, empowerment, and cultural significance. All participants wanted to ensure that rights to *fanua Samoa* were secured for kin who needed it, and for future generations.

The Samoan government has amended land laws to facilitate the leasing of *fanua Samoa* to attract investment to develop the economy and the private sector. There was much anxiety among participants about the potential alienation of *aiga potopoto* from their *fanua Samoa* as a result, whether the land was leased to other Samoans or foreign investors.

I will now move the discussion to the findings from Tonga, in Chapter VIII.

Chapter VIII: Tonga Findings and Discussion

1.0 Introduction

This chapter discusses important findings from the Tongan part of the study. A summary of key learnings is provided at the end of the chapter.

The findings from Tonga will be structured under the four core research questions:

1. What is the significance of land to women and *fakaleitī*?
2. How do you access land?
3. What is the effect of being an urban woman or *fakaleitī* on access and rights to land?
4. What is happening to improve access and rights to land in urban areas for women and *fakaleitī*?

The gender of each participant that is quoted will be signalled by:

- “W” - woman
- “M” - male other than *fakaleitī*
- “F” - *fakaleitī*. While *fakaleitī* participants often referred to each other as *leitī*, for the purposes of this thesis I will code their voices as “F” for *fakaleitī*, to keep it consistent with the coding “F” used for *fa’afafine*. I will also refer to *fakaleitī* using male pronouns.

As with the Samoa findings in the previous chapter, when quoting participants I have not altered their words. The conversations were focused but relaxed, as will be revealed in the quotes. There were times when participants spoke in Tongan. I was unable to interpret those moments.

2.0 What is the significance of land to women and *fakaleitī*?

2.1 Individual Asset

Land was generally seen as a means for empowerment, a symbol of status, and a privilege of the ruling elite. Most *fakaleitī* saw land as a personal asset, referring to it as ‘my land’, ‘my brother’s land’, ‘my father’s land’, and so forth. Women participants tended to view land as an asset for their husband, son, and at times more broadly for

their household or nuclear family. Very few participants talked about land as a shared asset for their extended families, and there was no village responsibility for any form of management for land within its boundaries (Women's focus group). Unallocated land in villages was the responsibility of the relevant estate holder, if it is not land leased from the Crown or Government.

2.2 Dignity

Sela was a solo mother when we met. Sela conveyed her experience of being a child of a landless mother, the effect of being landless on their mother's dignity, and her mother's efforts to restore and maintain the dignity of her children in times of hardship.

Sela's story

Sela was 28 years old. She was a solo parent, caring for her two primary school age children. Sela was one of five children, all but one of her siblings lived overseas. Sela previously lived with her in-laws after she got married. When her marriage ended, Sela's brother went and brought her and her children back to their family home. At the time of our interview, Sela and the children lived on land purchased by one of her brothers, in their family home.

Sela's parents came from different islands of Tonga to settle in Tongatapu after they married. They lived on the land of a relative of the father's as he was not the eldest son in his family and had no land of his own. When Sela was about eight years old, her father went overseas with the understanding that he would find work then send money home with the goal of buying their own plot of land. Sela's father later found a new partner overseas and moved on with his life, abandoning his wife and children unsupported in Tonga. After some years, problems began to arise between the father's family and Sela's mother - all had lived on the father's 'family' land for about seven years. Sela's family eventually had to leave, and moved between relatives and friends until they eventually settled with a church friend. Sela recalled this period as being very difficult as their mother tried to find them stability and work for their education and daily needs.

Sela said that her mother did not have a high level of schooling, so the only job she could get was cleaning. Sela said her mother walked rain or shine to her job which was a considerable distance from home and saved all she could, "we grew up struggle like that". Sela's mother picked up any extra work available as her routine pay was insufficient to meet all their needs. Sela remembered her mother eating very little during meal times, sometimes she pretended she was not hungry. Over time Sela and her siblings realised that their mother was saving the food for them. "When we eat my Mum washing the dishes, and my brother tells her 'did you have something to eat' and my Mum say 'yeah'....but the truth, no. She look after us, make sure we eat and we're not hungry....stuff like that". Sometimes their mother brought food home that others had given her so there would be something to eat.

Sela talked of her mother's strength and determination. "My mum was a strong woman, she didn't want to go find someone to look after us after my dad leave her.

She want us....she wanted to stay with us cos she knew if she go get another man he might not like us or love us.”

As soon as the eldest child Sione finished school he looked for a job to help their mother. Sela said Sione made a decision not to marry a Tongan so his prospective wife could help him take care of his family. Sione later met a foreigner in Tonga whom he married. The couple moved overseas with the understanding that Sione would send money home to support his mother and siblings. As before, the family hoped that in time they would be able to buy their own land in Tonga. After about two years, Sione purchased land in a village close to Nuku’alofa. The family then moved from their mother’s church friend’s property where they had been living for two years. Sione then financed the building of the family home on the land where Sela and her children were living at the time I interviewed her.

Soon after their new home was built, Sela’s mother was diagnosed with a terminal illness. Sione took their mother overseas for treatment but it was unsuccessful. Their mother returned to Tonga where she passed away; she was in her 50’s. Sela and her siblings suspected that their mother died from exposure to chemicals at her cleaning job, and from not eating enough in order to save the food for them.

Sela’s other siblings all eventually left Tonga. Sela said she was unable to leave because her mother’s memory surrounded her – “I see that corner...I remember what she always do...my house is full of memories ...it seems for us that she just passed away”. The brothers have asked Sela to go to them overseas but she could not leave.

Sela said that Sione had offered to put the land under her name to ensure that she would always have her home if she entered into a relationship that did not work out. Their mother’s struggle and their journey of being landless had permanently ingrained the importance of this in all of them. Sela did not think that her brothers would ever return to Tonga to live.

2.3 Food Security, Safety, Home

Land represents a place to settle, food security, and stability for women, *fakaleitī*, and their children.

Tina (F) who is the primary caregiver to four children and the sole income earner in his household, works full time in hospitality. He said that his wage was inadequate to meet his family’s needs, so he constantly borrowed money from friends, kin, and associates to buy food, pay the children’s school needs, and to meet other household expenses. Fortunately, the family lives on Tina’s father’s land which is soon to go to one of the brothers who has no urgent need for it. Tina’s father had land elsewhere that other people used, these people often brought Tina produce in return for the use of the land which they do not pay rent for. This produce helped feed Tina’s household.

For participants who worked with victims of family violence, secured access to land was urgent and a basic essential for victims. The staff at the Women and Children Crisis Centre in Nuku'alofa talked of many cases when abused women and children returned to a violent home because there was no alternative.

'Ofa (W): The Crisis Centre, over the years, has anecdotal evidence of more than 80 percent of its domestic violence clients, and we are talking about women, who return to the violent environment because there is no other option.

Betty (W): there's nowhere else to go because they don't have land!! Unless they have enough money to lease, that's the only advantage for our women, they can lease land but it depends on your financial...otherwise a woman has to go back to family parents if they're still alive. However, if they go back home they have a brother and a wife and a family, and not for long they will have to leave to find somewhere else to go...so the woman is....if she works she can rent a house, if she doesn't work she has to find a refuge with some family - some people who will give them a home...it's so difficult for women in Tonga you know, because they have to depend on relatives...

A participant from an NGO provided a comparison of a sense of empowerment between women who had access to land, and those who did not.

Siale (W): Because the women in Tonga as I said, we have a lot of....you have the extreme. Where women have the education, the support of whoever is around them their family – and that's where they are. They have crops at the market they are part of that. So for those, human rights in not a priority, it may be four or five on the list.

Researcher: Cos they're ok?

Siale (W): They're ok. They are working, there's nothing to stop them from doing that. The other extreme are the women who don't have the economic means, they rely on their husbands, they're being beaten everyday...they don't have the educational background, their family support...their social network is very weak. Those are the lot that we are talking women's rights. Because without that women's rights for us to support them and say 'that's their basic right we are talking about – then there is no way we could recognise to move them from this spectrum forward.

It was not unusual for victims of family violence to end up living in precarious circumstances, as one victim conveyed the circumstances of another family during her interview.

Participant S (W): Another lady working through this, her husband leave her, then he stay with another lady in New Zealand. He told her with nine children to leave their family home. So she came back to her parents' home, her brother already marry have kids, now she living now in a container with her nine children...if you go see them now, how poor they – she had beautiful children.

2.4 Inheritance and Stability for Victims of Family Violence

Most of the women interviewed had children so it was inevitable that children's interests arose during our conversations. The effect of landlessness on children is often assumed but not emphasised when the focus is on relationships between adults and the inadequacies of the State response to family violence. Participant S was a victim of intimate partner violence for many years from her children's father. She talked about landlessness in relation to her children's lives.

Participant S (W): If Tonga grant single mothers a piece of land they would be able to get by, we can grow vegetable crops and sell it. Then we not moving from house to house, moving from land cos it's really really hard for the children. Only because I put my kids in one school wherever we're move they still go. I don't want the kids to move from school to school. But I know that most here in Tonga they move from school because of this situation that they been through. I hope you understand this situation I'm talking about.

The vulnerability of abandoned wives or partners becomes even more exacerbated when they have no paid work, no relevant education and skills for employment, and children who are dependent on them.

Participant S (W): Now I extremely swear man, I want a land, anywhere, but at least I have land for my children. We can build something small to start, as long as I can plant taro, breadfruit, and cassava, and I know that's mine. (*previous victim*)

Victims of family violence endure the suffering in order to protect benefits for their children, a factor not always understood by those who try to help victims, and a predicament that land laws exacerbate.

Participant L (W): it's for their children and their children's future, and the land system contributes to that.

It is possible that women with children are not aware that an abusive land owner husband does not have discretion over who his land goes to upon his death as the succession rules prescribe this, whether or not a first marriage remains intact. The rightful heir, however, will not be able to access his/her inheritance until the father's widow (at the time of his death) dies. An unmarried female partner may be under more stress to endure victimisation than a married partner because legal avenues to the male partner's land come via marriage.

2.5 *Fakaleitī* – home, asset, economic wellbeing

For participants who owned it in urban settings, land represented a means to achieve economic security. The base for the *Fakaleitī* Association sits on land and the surrounding properties are owned by a *fakaleitī*. Other *fakaleitī* who lived on their family plots in the city's suburb talked of frequent requests from relatives and others to purchase their land.

Most *fakaleitī* participants had thought little about what to do with their lands aside from the security of knowing they had an asset to fall back on. This may have something to do with the fact that they were under 40.

Angelique (F) did not see his land as positively as others, in fact, it held thoughts of family division and conflict. His dream was to eventually leave the land behind and migrate overseas to fulfil his dream of being a designer.

Researcher: If you go and the land....can you just leave it or can other people use it while you're away?

Angelique (F): Yes but only if they have permission. But I'm never gonna give away the land cos what my Mum told me, I'm never gonna give away the land. I'm gonna save it for all the family, if someone have nowhere to build a house they can come. If my brother and sister broke with their partner, something like that, they can come back home, that's why my mother give it...

Fakaleitī had options of whether to lease out their land, charge 'rent' to users or sell it. Both *fakaleitī* and women talked of family members who had sold land as they needed money. The selling of land was ultimately the choice of an individual who held the title, regardless of any perceptions held by the family of the parcel being a 'family' interest.

2.6 Conflict and Unfairness

It became apparent during the interviews that people's thoughts of land were often associated with conflict, especially within families. This was different to the initial reactions of the Samoans.

Angelique (F): sometimes some people have trouble with the land, they disagree – but it start from home...they disagree about where (to who) the land goes...but for me, my family, if we disagree I can fight for my land...but I don't want to fight for land. For me, I don't care about the land. It's good to have a land but....

There were stories of brothers and sisters who accepted their lot over land and left Tonga. An uncle was said to have tried to claim land when there was a legitimate heir

alive. Claims of fornication were said to be emerging more than they did before as people use the law to seek land (Participant R (W)).

The legal definition of legitimate heir caused controversy. The Legitimacy Act 1988 requires that a legitimate heir is a person born in wedlock. This means that children born outside a marriage were excluded from succession unless they were legitimised according to legislation. Angelique (F) talked about his eldest brother who was in this situation. This meant that the brother was not the legitimate heir despite being the eldest son by birth.

Angelique (F): Both my Mum and my dad marry up when I was born; cos I'm number (XXX) in the family....my old brother he live (XXX country) now, but he always come claim the land e, but ...me and the rest - my Mum and my Dad marry then...the land go with my name.

Angelique said that this caused friction in his relationship with his eldest brother.

The Legitimacy Act 1988 also disadvantages people who were adopted according to custom, unless the adoption was formalised by a Court order.

Participant A (M): Legally adopted or a legitimate child....can have access to land, cos the effect of the letters of adoption is you are deemed a child of the marriage. But not the ones who are customarily adopted or raised as guardians ...because the understanding is they can still have access to their biological parent's land.

3.0 How do you access land?

This question was posed with existing knowledge of the legal restrictions for women based on the literature reviewed. I did not have any knowledge of how this felt and worked in daily life.

3.1 Land Availability

It became clear very early that land availability played a big factor in whether anyone could access land. A number of government officials consulted for the research advised that all land on Tongatapu had already been allocated but not all was being used, giving the impression there was available land.

Two of the main reasons for non-utilisation of land were because people did not have resources to use/develop the land, and because of a lot of absent land owners

(Participant M (M), Participant R (W), Participant G (W)). There were several examples provided by participants of heirs who lived overseas who issue permission for people in Tonga to use their plots. This has already been identified as one barrier to providing access for local people to land in Tonga.

Participant L (W): Those living overseas they feel that they should still keep their land cos they contribute through remittance to their families in Tonga. Because of that, they feel that although they're living overseas contribute to the economy, so they think they should still regain their right to the land in Tonga. But the Tongans living here in Tonga think that their families...living overseas get the benefits and privileges whatever they get from living in those countries as citizens of those countries, they should let go of the land here in Tonga cos they (resident Tongans) are without land and a place to live etc.

Participant A (M): Cos there's land out there that's been left unused ...(possibly) half or $\frac{3}{4}$ land of Tongatapu hasn't been developed....but unfortunately legally they've already been allocated to people, but unfortunately people don't have the resources to develop it or have migrated overseas

Inadequate land supply has led to problems with fragmented titles.

Participant A (M): Tongatapu has 70,000 out of 100,000...within Nuku'alofa alone about 20-30,000 live in 1 square mile around here.

Researcher: I see some plots are quite small like not quarter acre – how is that?

Participant A: by remnants of people just splitting it up and maybe just the role of the dice it's a left over allotments from another allotment, then some people think 'at least I can fit a house here...put a little shelter there'.

Researcher: Some have more than one building on it, it's quite cramped.

Participant A: You know how you're entitled to a quarter acre? Sometimes the only available land is about half of that, then they say oh we'll give you that left over, that left over half as well so you'll have two allotments, but they'll register just one allotment...the logic of having your living room here and bathroom there

Inadequate supply also contributed to people leaving Tonga;

Participant A (M): the only thing dealing with the overflow is migration so people just migrate....we're thankful for a lot of these immigration lotteries with NZ, Australia, and America, that's the way people go up, go through that or get a contract or get a job offer and you just migrate overseas....

So how much land is available for allocation?

The Land Act 1988 (Rev) under s33(2) specifies that hereditary estate owners are allowed to use 5 percent of the estates (excluding leases to religious bodies and charitable institutions) under their stewardship. The rest of the land must be made available for allocation to other Tongans. When I enquired with an official from the Ministry of Lands if this legal provision was complied with, I was told that the Ministry

actually had no record of how much land was individually held by estate holders, how much had been allocated (not all allocated land had been officially registered so there is no accurate record), or how much land remained for allocation.

Participant L (W): it depends on the estate holder....that was why they had the 5% limit that they will only keep five percent and the rest they give to the people. But then they don't do that because they want to make money from it, so they sell it, issue large leases for example to companies. Like the airport – multimillion dollar leases to three estate holders to extend the airport.

Researcher: But the financial gain goes to the estate holders?

Participant L (W): It goes to the estate holder, and it's usually outside/paid outside of the Land Act because the Land Act says - if it's a lease form, the lease/rent has to be stated because you have to tax it and stuff e! But usually they do the payment outside, it's just between them the e/holder and whoever wants the land, and when they have the lease it's just a small amount rental of \$500 per year. But they have an upfront payment usually, they have an upfront payment...and then they have the rent which is quite small.

The lack of accurate land records was identified by the second Royal Land Commission, but recommendations to rectify the situation are yet to be progressed. The absence of records raises many uncertainties including about land availability, and records of land being informally allocated multiple times to different users simultaneously.

3.2 Informal Access

Informal access through family members seemed to be the most common way to access land according to participants. Participants spoke of 'my father's land' or 'my' land, or 'my mothers' land, or 'my grandmother's' land and so forth. Following further discussion about titles, it was often found that these claims of ownership were often based on the speaker's impression of who the land was connected to, not necessarily the person who held legal title to the relevant plot of land. Legal title was often held by someone who lived overseas such as an uncle, father, brother - who had granted permission to his sister (participant's mother), the participants, or other family members to use the land.

Researcher: So at the moment you're living on...

Lisa (F): My Mum's land, Mum's side.

Researcher: Is her name on the land?

Lisa (F): No

Researcher: So whose name is on the land?

Lisa (F): It's her brother.

Informal access is not always free although the statistics from Tonga showed that a significant proportion of households live rent free.

Researcher: Whose land are you living on right now?

Brooke (F): Here in town? It's all my grandmother from here, and my grandfather from (XXX island). That's where I'm run the (business), that's their land there.

Brooke (F): I came and rent there because they make use of their house; because some people they rent there but they can't pay the rent, and they shift to another place then I come but I pay for them, like pay the rent for those gang, nevermind are my family but nowadays the blood is not close but the money is more than the blood now, you have to pay every – like that, that's it.

The tax allotment is important for growing crops for consumption and to grow produce for market.

Participant M (W): The rationale behind the tax allotment is to provide subsistence for the family e, the whole family, extended, so the law was quite strict. A registered land holder, individual land holder, cannot lease his tax allotment for more than 20 years. And then there is no automatic right of renewal but if there is renewal it can only be for a further 10 years.

Findings from the research indicate that some of these tax parcels are being rented out to other families or interested parties including investors. Those who hold ownership or lease over the land can benefit from it even if they do not work the land themselves. One *fakaleiti* talked of extended family who grew crops for export from his father's land after gaining permission from his older brother. In return, the family that uses Felicia's brother's property provides crops from their plantations to Felicia's and his household; all of this is by word contract, none of it is formalised. This was a useful arrangement for Felicia who was the only employed member of his household and had to cater for four children, and two siblings who were unable to find employment.

Despite the affordability of informal access through kin networks, according to Participant L (W), there is also insecurity that can, in the end become costly, financially and emotionally. Court records previously discussed (Schaumkel v 'Aholelei) also showed that sometimes, relatives who have lived on the land of other kin with permission (oral or through court), get to a point where they consider the land theirs. Families develop a sense of permanence to places where they raised families, erected

buildings, and even built businesses, only to be ordered by the Court to vacate when the titled owners demanded the land back¹⁴.

Participant L (W) said that the frequent disruptions caused by kin who return to demand their lands back against agreements made with the occupiers had led to some people preferring to go seek land independently, if they can afford it, and securing rights through the Court.

3.3 Succession

Participant A (M): So the underlining policy for the Land Act is that Tonga's land will never be alienated to non-Tongans, so even though if you give up using your land or you die without any heirs it still comes back to the Crown. So you can use it in accords to the Land Act for your life, but it will still come back to the Crown to be given to other Tongans, but not foreigners.

3.3.1 Legal Heir

The primary legal heir is an eldest legitimate son of land owner. Participant G (W) jokingly suggested that the best way for a female to access land was to marry an eldest son, who was not a *fakaleiti*, and whose father has land.

An heir must file a claim for the land within 12 months of the deceased holder's death; the land does not transfer to an heir automatically. Failing a claim, the land will automatically revert to the original authority that granted it such as an estate owner, State, or the Crown (s87 of Land Act 1988 (Rev)). Once reverted, the relevant authority may re-allocate the land to others who make a claim for it.

A participant from the legal profession said that there have been instances when a widow of a man's subsequent marriage had kept the date of the husband's passing vague to make it difficult for children of his first marriage who are the first line of heirs after the widow, to succeed to the land. Meanwhile, the widow can exploit the legal loophole to get her child to make a claim for the land when it reverts to the Crown.

Daughters are last in line in the succession when there is no male heir (legitimate brother, or legitimate son of a deceased legitimate brother). I learnt during the interviews that many women simply assumed they had no succession rights, even

¹⁴ *Schaumkel v 'Aholelei* [2012] TOLC 2; LA 18 of 2007 (17 August 2012). Land Court of Tonga. Retrieved 24/4/2015 from <http://www.paclii.org/to/cases/TOLC/2012/2.html>

though their chances are slim under the succession rules (Women's focus group). This was echoed in an individual interview with a civil society leader who said that women who participated in awareness programmes were surprised when they knew that they had an avenue to inherit as they had grown up believing that land was a man's property.

3.3.2 Wives

A wife acquires a legal interest in her husband's land once he dies. In an unmarried partnership, she has no rights. Prior to the husband's death, the wife or parent has access at his discretion. The wife/partner has no legal route to place a claim on the land should the husband or partner commit adultery or abandon her. The RLC 2012 report showed that men and women wanted the law to be changed to that a wife could make a residential claim on her husband's land if he committed adultery or neglected his duties to his wife and children (RLC, 2012, p. 34)

3.4 Leasing

A few participants said there was plenty of opportunity for women to 'own' land through leasing, and that the process was made to sound easy and cheap.

Official A (W): Women can lease land

Official B (W): But not to own.

Official A (W): But not to register it. A high percentage of leasehold land are women. That's was the 2009 stats. I think you can hold up to 11 pieces so that's a lot to lease.

Researcher: You've got to have money to lease.

Official A (W): It's really quite minimum if the land is pledged to you by a relative. You just have to pay the lease and the lease is only about \$200 a year or even less.

Leasing has the prescribed cost stated in the Land Act 1988 (Rev) but also other hidden and ongoing costs, and participants generally considered this an expensive undertaking. Section 57(1) of the Land Act 1988 (Rev) specifies an annual rental payment of \$10.00 per acre, but s57(2) enables the amount of rental to be agreed between the parties involved. One female participant said she paid around \$6000 for her land lease, plus other services in kind to the estate holder.

Some women who can afford to lease and understand the law do however take on leases but do it with caution. One participant explained how she obtained land through leasing for her sons.

Participant L: I leased my land from the estate holder for 20 years and we've agreed that once my son is 16, I can cancel the lease and then register the land in his name. But there's a risk with that, that you agree with the current estate holder and if he dies before my son becomes 16, his successor may not necessarily agree to the same thing that we agreed on.

Researcher: so it's not a binding agreement

Participant L: not necessarily, so for us women it's quite a risk that we have to take.

When this participant's son reaches 16 years of age, the land can be changed through legal process, from a lease under Participant L's name to a hereditary estate in her son's name. If there is more than one son, then the costs for land and loyalty will multiply.

I asked an official from the Ministry of Lands what percentage of leases were held by women, and was given a verbal estimate of around 40% of which some were jointly held with a male title holder/husband/a business partner. I asked about an alternative figure of 60% that was quoted in an international report.

Participant M (W): yeah that's very unlikely 60% is a bit too much....cos most of the leases that are held are commercial leases and...farming leases

So while the opportunity to secure rights to land is available through leasing it is simply out of reach for many women. Due to the lack of up to date data on land holdings and a lack of gender segregated figures, I was unable to estimate the proportion of leases held by women in urban Tonga. When I enquired with two participants associated with the Lands Registry, I was informed that most of the leases were held by investors and only a few were women. The 2011 Household Census shows that the number of leases held nationally was only 32 across the country, 24 of which were on Tongatapu (DoS, 2011 Census tables).

3.5 Gifting

While selling land is illegal in Tonga, the words 'sell', 'buy', and 'gifts' were frequently used by participants when referring to land acquisition. Participants informed me that monetary exchange for land is commonly termed a 'gift'. Officials informed me that the exchange is not a land sale, is not illegal, and there is also no legal requirement to disclose the financial value of the 'gift'.

Researcher: I've heard of people buying land and I know it's illegal, how would you describe that exchange if it's not purchasing land?

Participant A (M): it's not what the Court of Appeal has described as 'out and out' sale...not like going out to a shop and buy land. You're still allowed to

purchase the use of the land, for the person who is surrendering/selling the land, there's a whole other process that they need to go through...(surrendering the land, 12 months, Minister's discretion)...so it's not a clear cut 'buying and selling' it depends on other legal procedures and other persons to decide whether to give the land...so that's been acceptable under the Constitution and according to the Court because of those 2-3 other steps that they could still screen the whole sale process.

The land remains the property of the Crown, and the lease holder gains time limited rights to the land. The benefactor of the financial gift is not the Crown who owns the land, but the registered holder of the land. This 'gift' amount is not the annual lease payment that is afterwards paid by the new rights holder to the government for the use of the land if it is a lease or a tax allotment.

3.6 Formal Permits

These informal arrangements for the use of land either between kin or unrelated parties were not always secure for the informal renter. The case Shaumkel (plaintiff) vs 'Aholelei and Minister for Lands (defendants) in the literature review demonstrated this, and it was clear from the judge's final ruling that this was not an isolated case.

One female participant said that relatives could retract an agreement anytime, especially the ones who live overseas that come home and suddenly want their land back. This was also the case regarding land arrangements with an estate holder because he may also change his mind, or his offspring may not honour an old agreement made by his predecessor. The insecurity and heartache from informal arrangements led some people to prefer government land and formalisation through the court process. The court process costs money which disadvantaged those with limited resources (RLC, 2011).

The intention for tax allotments has changed over time. Heavy outward migration was probably not envisioned when the original laws were developed. Perhaps it was not envisaged that Tongan men would choose to leave their land in search of other opportunities elsewhere. Financial remuneration for rented land use goes to an individual who holds the land title, not to a collective. There is no requirement by law for that title holder to disburse those funds to a 'family' even though the allotment was originally intended to benefit the family, not just the individual title holder. There is no law requiring the documentation of financial payment for the use of land outside a formal lease, so it is unlikely that all monies collected as rents are taxed.

3.7 Reverted Land

Reverted land is land that has been legally returned to the Crown, Government, or estate from where it was sourced. This can occur when there is no identified heir, or after 12 months after the death of the registered holder and no heir has claimed it. Reverted land was said to be one of the few opportunities when ‘new’ land became or could be made available, that women could then seek access to (Participant R)

It appears that women who wish to lease land must understand their competition which includes churches, local business interests, and foreign investors. The case of churches leasing land off a title holder means that any potential heirs of that parcel, including wives and unmarried daughters, may miss out on the use of the land (Participant B (W)). Women must also understand the unwritten but not illegal expectations of estate holders over a period of time until an estate holder supports her application for a lease to Court.

Participant L (W): Because they can just withhold consent, for example, if you put in a lease application or if a man wants to register a land, there’s no certain period of time they must give/make a decision on that application – so they can hold it up for years you know. I mean most estate holders expect monetary payment before they give their consent. Some people usually pay up and then they want more, I mean they don’t say they want more but...you can read between the lines and know they expect more.

3.8 Surrendered Land

Plots can be surrendered back to the Court by the registered holder, with the permission of the rightful heir, with a request for it to be reallocated to others specifically, being subdivided to accommodate demand from family members such as daughters. These requests require the support of the estate holder under whose domain the land falls.

Participant M (W): There still different interpretations of the way succession laws operate, and different judges have made different judgments depending of course on the case, and they’ve always found ways to make the distinction. But there are rules for succession in place. So upon death the rules of succession kicks in, or if the land holder chooses to surrender his allotment, especially the tax allotment, what he would usually do is surrender it so he can chop it up to make town allotments to make way for residential allotments for the family members, so that’s how we have subdivisions.

Researcher: So he can do that?

Participant M (W): He has a right to surrender, and then that goes through the whole process, the same process as the...same statutory period applies. So if the l/holder wants to chop up the whole eight acres or two acres, Cabinet has to approve it, he has to have a one year public notice - whoever thinks he has a claim makes a claim, but in the absence of that, the land reverts back to the

Crown or the estate, and the new applicants will come and make the new application. And it's done most often to make way for residential plots. That's from the land use policy...and one of the consequences of this subdivision is that it allows access for women's rights. Cos the land holder can make sure his sisters are covered e; they can get a 50 year lease, his nieces, and his daughters. So that's where the opportunity has come up for women, that is what's expanded the access for women to land, is the subdivision.

The requests that accompany surrendered land are not binding on the Court, but they are not often denied as long as other legal requirements are met, namely land availability and support from the estate holder whose estate the parcel is from (RLC, 2012).

Participant A (M): the Minister requires of the estate holders to say...'yes the land is available, I'll agree to it' ...it's usually understood by the people that estates holder's decision is more important than the Ministers.

A review of Land Court records found cases where the Minister's decision to grant a parcel had been challenged when applicants proved that the land had actually been occupied and unavailable to be re-granted.

3.9 Tax and Town Allotments - Subdividing

Town allotments could also be subdivided but the law specifies availability only to males, hence it is more beneficial for *fakaleiti* than women. Town allotments can be subdivided under s51(1) of the Land Act 1988 (Rev) which states:

Where a town allotment is not less than 1618.7 square metres in area the holder thereof may apply to the Minister requesting him to subdivide the allotment between such sons, grandsons, brothers or nephews, of the applicant, being more than 16 years of age, as the applicant shall appoint, but the Minister shall not grant an allotment less than 752 square metres in area.

3.10 Adverse Possession

This is defined as the acquisition of title to land by continuous, lengthy occupation, without force, without secrecy, without permission of the owner, and can occur when the time ("limitation" period) to recover the land is exceeded (Farran and Paterson, 2012, p. 55). This provision is especially important to urban dwellers who have been squatting on the land. Adverse Possession is enabled in Tonga under s170 of the Land Act 1988 (Rev) which states:

Limitation of Action

Section 170. No person shall bring in the Court any action but within 10 years after the time at which the right to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to

any person through whom he claims then within 10 years next after the time at which the right to bring such action shall have first accrued to the person bringing the same.

The issue of adverse possession was raised by two participants. At a social function, I met a woman whose family was squatting on land close to the Nuku'alofa market, and she informed me that she was counting on the 10 year limitation to pass so they could apply for the land area they were living on.

4.0 What is the effect of being an urban woman or *fakaleitī* on access and rights to land?

4.1 Constitutional Prejudice Against Women

The prejudices against women in the Constitution and land laws were ingrained in the way many participants talked of land. Almost all accepted it as their lot in the natural order, but there was a clear difference between women and *fakaleitī* regarding assured access to land. The Royal Land Commission report states that calls to have equal rights to land came from women and men, especially from families where there were no sons. These voices pressed for government commitment to legislative changes to succession laws (RLC, 2012, p. 34).

Of the 17 women (officials, community workers, others) who took part in the study, none had inherited land, two held title to land leases, and the rest were living with permission on land that belonged to either a brother, husband, uncle, father, another relative, or in the case of those in refuge, a community entity. Of the six *fakaleitī* who took part, three held legal title to land, one was awaiting the formalisation of his legal title, one was soon to inherit as his father's eldest son, and one lived on a brother's land but was expected by the brother to take care of the land longterm. Unlike the women, more *fakaleitī* were secured a land asset so were less dependent on the good relationships with other male kin or male spouses for future security and wellbeing.

Participants explained why giving land to women and daughters was not a pressing issue. The main reason was the traditional belief that a woman's husband would have land and therefore give her access. This belief was strong despite the fact that this was not reality in many cases, and that access for the women is only for the duration of a marriage. Some marriages do not last, leaving divorced or abandoned women and any

children vulnerable. The other belief was that once a daughter with land marries, her husband would inevitably assume authority and ownership over the land.

One of the yet to be explored gender areas regarding land rights is that of same sex partnerships, considering the lack of specificity in the law on definitions of adultery and fornication. This research identified *fakaleitī* who are in same sex intimate partner relationships, with no legal threat of losing their land rights. This being the case, could an unmarried daughter keep her inherited land if she were in a same sex relationship, with an unmarried woman, if these are not defined as ‘adultery’ or ‘fornication’ under Tongan law? One could argue that there is no law against same sex relationships between consenting women in Tonga.

4.2 Social Prejudice Against *Fakaleitī*

A few participants talked about the importance of a son to succession, and while in some families a son that was a *fakaleitī* did not matter, in others it did. One *fakaleitī* was talked out of his entitlement as heir to his father’s land due to prejudice within his family against his gender identity. The *fakaleitī*’s father wanted to surrender the land back to the Minister with a request to have it reallocated to someone else in the family, something that can only be done with the legal heir’s permission under the law.

Section 54 of the Land Act 1988 (Rev):

Surrender of allotments.

Whenever the holder of a tax or town allotment desires to surrender such allotment or any part thereof, it shall be lawful for such holder with the consent of the Cabinet to surrender the said allotment or any part thereof as aforesaid, and any allotment or any part thereof so surrendered shall, subject to the provision of this Act, immediately devolve upon the person who would be the heir of the holder if such holder had died; and if there be no person on whom the allotment or any part thereof can so devolve the allotment or any part thereof if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof.

Participant L (W): The reason why the *fakaleitī* came to me was he wanted to know his legal position. I said in order for the father to surrender the land and for the second son to apply for it, you have to contend as the heir because it’s a surrender. If it’s a lease, the heir is not required to consent because it’s only for the term of the lease that the land will be leased out.

I told him legally he had a right to the land, although he is *fakaleitī*...legally he’s male and is the eldest son. Surrendering the land to the second brother cannot be done without his consent unless they were fraudulent or...

When I asked Participant L if any *fakaleiti* has taken his family to court in such a situation, the response was no. It was suggested that taking one's family to court was probably unthinkable for most *fakaleiti*, even if they knew the law was on their side.

How common was this? Participant L suggested it was "one of those things we don't talk about", which suggested that it was not an isolated case. It also suggested that it was possible that other *fakaleiti* had given up their inheritances to prevent shame and exposure for themselves and their families.

4.3 Belief in the Natural Order

Something that came up over and over again from a number of female participants in relation to women's rights to land was the belief it was determined by God's natural order, which they believed was in the Tongan law. The natural order included men's authority over women (and children), parent over child, biological sex, and birth order. Land was said to be from God, and to be passed on according to his order. One female participant described her rationale:

Participant I (W): It's by from God who is the eldest in the line so then you can go, so it's a straight forward case. Like for example in my family: I know my brother is the eldest, and the second one is another brother, then me and then my sister. I mean that's how you were taught when you grow up. My sister can't just jump over me, and the youngest brother can't just e, but it shows how well you were brought up, so you don't have to argue. The eldest remain the eldest, and the second remain, and us the two sisters...

Participant I (W): My brother's in (overseas) and the second one, and he knew when we ask the noble for the piece of land and the noble asked me cos I was the one who was going to do the house loan, and he was saying 'Do you want to lease the land or you want to register it under your father?' because it will go back e.

If you were greedy Karanina I'd say 'lease it' cos it's mine cos I was the one who do the, but because you know what your position and how you were brought up, I say 'No, register it under my father', you know so the land can go. You know there is a saying in Tonga, Karanina, when you are doing wrongfully on land, it always comes back, you know...there's always something happen, you know. And we go confirm it.

The belief is so strong that advocates for change must be patient.

Participant B (W, NGO): Cos the heart of the people they think land is sacred – it's very sacred so we must go by the law what does it say? it goes to the male, by tradition

Researcher: It's very strong that

Participant B (W, NGO): It's VERY VERY strong...they even say when land is not going in the right direction there is a....curse in the family

The 'natural' order includes heterosexual relationships. Same sex couples who are primary parents of a child cannot therefore pass any land to their child. The Tonga Legitimacy Act 1988 is specific about the meaning of a 'legitimate' child, which is a child of a married couple. The child can be born or legally adopted into a marriage, which also included same sex relationships in Tonga.

4.4 Do *Fahu* and *Veitapu* Privileges Extend to Land?

When I asked the women's focus groups if *fahu* privileges extended to land access for women in Tongan society they roared with laughter; it was not the response I had expected based on the literature I had reviewed.

Researcher: With the tradition of *fahu*, could you explain that to me? Would that have provided some protection in the past for women?

Participants O, C, D (all W): in the past (almost simultaneously).

Women participants informed me that the privileges of a *fahu* did not include rights and access to land held by brothers or any other kin. It appeared to me that none of the women had ever thought of land as part of the privilege a *fahu* could claim from her kin. I posed the same question in an individual interview with Participant L (W) who said;

Participant L (W): You only get the benefits of the *fahu* if you have a funeral or a wedding, but it's not something that you benefit daily from like a piece of land...You can't guarantee a loan with your *fahu*.

The concept of *veitapui* (sister-brother) reciprocity did not seem to extend to land provision either.

Participant C (W): Some of the women are coming here they are single mothers, but they are staying together with their brothers and families living there. But when they come here they really need a place to stay but when they go back they have a fight with the brothers etc. The brother chase them away because he won the place etc, no matter it's their parents' place and their parents are home, their brother's gonna chase them out cos no right for the land.

Participant D (W, NGO): It is an extra burden for him and his family if the sister is there because in most cases if the brother is not working, he himself has to feed his own family first before you know, with the sister and her kids coming that's another load. It's hard it's so sad

The women explained that traditionally a brother would give his sister the first fruits from his garden as a demonstration of his respect for her higher position. Tonga has

since changed and poverty has affected these customs. The women suggested that perhaps outside Tonga, traditions such as *fahu* may be still strong but inside Tonga itself, some families maintain the practices while others do not or cannot afford to.

Participant C (W): Like she (*Participant D*) was talking about, brother and sister staying together in the house. Maybe it was good at the past but now it's not happen anymore, that's why it's creating a lot of violence in the family and things like that.

Researcher: What's changed? What happened?

Participant O (W): It's a monetary economy now.

Before the agriculture was done to feed your family and feed your village, now it's done to earn money, to make a living and to help your family live and survive. So it was a reciprocal relationship where the brother would provide for his sister and her children as in food crops, the best of the food crops; and the sister in return would provide blankets ...oils in order for her brother's children to keep warm etcetera. Now it's almost a one way relationship where it is practiced. So there some families where the sister is abusing her rank and she's not doing the reciprocal part. On the other hand, there are brothers who are refusing flat out – why should I provide for my sister and her children she can find her own...food, etc. So it is changing.

A member of the women's focus group asked the rest if any were in the role of *fahu*, and no one was. I learnt that not every Tongan woman held this status, and it was located on the paternal lines. It was, therefore, incorrect to think *fahu* was some sort of gender equaliser or a claim to equal status for all women because it was not reality.

4.5 Unmarried Daughters

Going into the field, I was already aware of the prejudices in the land laws against daughters, but I had no knowledge of their daily experiences as a result of these limitations.

One unmarried female participant was uncertain if she had any claim to her father's land because her father remarried and had a son to his second wife. This participant was the eldest of a string of girls with no brothers. I posed this scenario to a participant who was a lawyer, who clarified that according to the law, once the male land owner dies, his widow (second wife) will have automatic entitlement to the land. Upon the death of the widow, the children of the first marriage (including my unmarried female participant) become the rightful heirs, but only if a daughter is unmarried and has not been convicted of fornication. My female participant, would therefore get the first opportunity to inherit once her father's widow dies. If an unmarried daughter inherited land and wanted to hold it as a life estate, she would have to remain single.

The question I was unable to explore because I did not have any lesbian participants, or none declared this sexuality, was whether the land could be taken from an unmarried daughter who was in an intimate partnership with a woman. The Adultery and Fornication Act 1993 does not refer specifically to intimate same sex relationships between women as adultery or fornication. One of the *fakaleitī* group said that there were lesbians living together in Tonga, but he did not know about their land situation.

4.6 Widows

A widow's land title gives her limited use of her life estate and she pays rent for it (s66 Land Act 1988 (Rev). Section 89 of the Land Act 1988 (Rev) does not permit a widow to lease her so called life estate, because it is still referred to in the law as belonging to her deceased husband.

Section 89. No lease shall be granted except with the consent of the Cabinet, but consent shall not be granted to a lease by a widow of the land of her deceased husband.

This is a barrier to women's ability to support themselves and their dependents, to earn and build wealth.

Participant R (W): And one of the comments made to me by a very prominent Tongan woman who said to me listen... 'In most circumstances a widow is already elderly by the time when her husband passes away, I don't have the means as a woman to go plant the land, I can't mortgage it I can't lease it, however I've got an eight acre piece of land or $\frac{3}{4}$ acre to be able to do what I want to do, but I just don't have any means, and if my son isn't productive there's no way I'm gonna be able to make productive use of the land. I either leave it there idle, or I enter into some agreement with a kava club/s or any sort of co-operative society – they can go farm my land, then they'll give me surplus'.

Participant R (W) said that despite this legal hurdle, some widows go ahead anyway and give presumably informal permission for people to use their land. This impediment was heard by the RLC along with peoples' suggestion that widows should be allowed to lease their land with the consent of the heir (RLC, 2012, p. 34).

4.7 Land for Sons

There appeared to be a very close connection between land ownership and male status. The land tenure laws disadvantage women and any man who is not a first born male.

Researcher: So were your brothers and sisters ok with you taking over dad's land?

Participant A (M): Well, they accept it cos I am the eldest. That's why you see a lot of migration cos the younger brothers...all my three brothers live in the States now. That's one of the missions for my mother and father, trying to find land for them just in case they want to come back. Because I'll take over my father's land then my mother's land will become vacant so we've decided to give that to number two. So there's two more we need to find land for, just in case they want to come back...it's very unlikely. That's the struggle in Tonga as people try to find all their sons land so they can still have affiliation to Tonga

Researcher: and the children?

Participant A (M): the children when they come back...but again with the migration, there's very little likelihood that those people will come back. Sometimes people are becoming unrealistic, demanding to get land for their sons who'll never come back.

Securing land for sons demonstrated how *fakaleiti* were advantaged over women due to their biological sex. Brooke (F) had land in a rural location given to him by his paternal uncle at the appeal of his father. Brooke's father felt it was important for his son to have land.

Researcher: Your father lives with you?

Brooke (F): Yeah we're staying together but I came here and work because it's close and I can send money fast quickly e. But when he gonna die then I shift to another country and work for my own.

Lola (F) talked about how his mother called him and his siblings together to make a decision about who her land would go to. Lola's mother and uncle had obtained a parcel of land years prior from an estate holder. Lola's mother leased a parcel as a result in her name. Lola's mother conveyed to her children her wish for the land to go to Lola because she feared that he would have no wife or children to look after him later in life. Lola was the youngest among his siblings that included sisters.

Lola (F): I'm the only single one...my mother asks my brothers from the oldest to the youngest...my mother said to them that the land is gonna....belong to me my brothers and sisters they agree cos they see I'm alone....they see when the future came, they all marriage they go and live with their own family they can (waving hands to say moving on with their lives) but for me, cos the situation I am...that's why.

Brooke (F) talked about how his father who was not the eldest male negotiated with a male relative to obtain land for Brooke.

Brooke (F): The land it belongs to my father's eldest brother, he is the heir for the land.

Researcher: hmmm

Brooke (F): And he gave me one but like one acre....where they gave it to me that land, it's like a rocks eh... And it's up to me if I want to sell it to someone. Cos someone came and beat the side of the land and he saw the piece of the rocks, and he came down to Tongatapu and ask the heir but the heir already give it to me.that's how I - they give me one acre
Researcher: That's quite big. This is your uncle?
Brooke (F): Yes. They paper everything when I was Form five, because my father ask him to give a land for me.

The female participant from the all female sibling group talked about her efforts to secure land for her sons. As she was married she could not legally inherit her father's land (Land Act 1988 (Rev) s81). Instead, she approached her local estate holder (noble) for a plot, and she was given land to lease with a verbal understanding that when her eldest son reached 16 years, the land would be transferred to his name and become his inheritance. This arrangement cost several thousand dollars, plus annual lease payments. The participant was also aware of situations where nobles and leaseholders had made agreements such as the one she had agreed to, only to be ignored by the heir of the estate holder who had passed on. The estate holder may also have a change of heart at any time, as can and does happen for whatever reason. This female lease holder worked consciously to ensure that she maintained good relations with the estate holder so as not to lose her son's potential inheritance. The next task was to find land for any subsequent sons.

For a land owner who had no son by birth, adopting a male child appeared to be one strategy to pass on land if there was no son by birth, according to participants. Lisa (F) who had inherited his father's land as the eldest and only son, legally adopted a nephew with the full intention of passing the land to him. Lisa was not the only *fakaleiti* who looked to adoption to pass on land. I was anxious that none of them would be able to pass on land as they had hoped.

Researcher: Is there any pressure on you as *fakaleiti* to have children if you have land, is that's how land is passed through the family?
Brooke (F): Yeah. But all the grandparents they want those kind of people to get married so the land go to the next generation, to the eldest son. To marry six kids each.
Lucy (W): Otherwise the man will die and the land go...
Linda (F): If I know the time I die then I sell the land before I...(joking)
Researcher: So there's still a bit of pressure to marry.
Linda (F): Io, otherwise I go take to my adopted son.
Researcher: So under law, your adopted son – is he entitled?
Linda (F): Io
Researcher: Ok

Linda (F): There's no need for me to have a girlfriend...

In comparison to efforts to find land for *fakaleitī* or husbands, only one participant talked about parents seeking land for a daughter.

4.8 Common Perceptions About the Relationship of Land and Women

Several participants in the fieldwork spoke of situations where land had been 'given' by a family member to a sister upon marriage, only to be 'taken' by her husband when the marriage broke up or when the sister died. The presumed entitlement of male over female to land is so strong and unquestioned in Tongan culture, that the fear of losing family land to a daughter's spouse is said to be one of the reasons why girls are not given land by their birth families.

Many women had internalised the 'land for men' culture, deferring control of land to their spouses when they are given rights to land. Participant M spoke of a case when a noble wanted to gift a parcel of land to a young female who had performed well in her educational career. The noble was surprised when the woman asked for the land to be registered under her husband's name and not leased to her. Despite the noble outlining the advantages and security if the land was in her name, the young woman insisted that it be registered under her husband.

One of the reasons given by participants as to why women who had been gifted land insisted on registering it under their husband, was the need to secure land for their children. Leases are only time limited and there was no guarantee of renewal. Arguably, people enter into marriage expecting it to last forever so the idea of having land that can be passed on is far more attractive than leased land. As a consequence, the woman carries the risk of losing the land altogether should the partnership fall apart.

When *fakaleitī* were asked in individual and focus group discussions if they thought the current laws and provisions for women were adequate, all of them said yes. Until they were interviewed for this research, most had never thought about providing land for their sisters or female relatives. According to *fakaleitī* participants, there were no cultural expectations for brothers to share or provide land for their sisters although there may be an informal expectation within individual families. There was a clear acceptance among all participants that non-inheriting siblings simply miss out, and people sought other avenues for land (recall 4.3 and 4.7 this chapter). None of the *fakaleitī* had ever been asked the question before or involved in any social movement to improve

women's land rights, while the issues seemed to occupy the minds of women participants often.

5.0 What is happening to improve land access and rights for urban women and *fakaleiti*?

5.1 Royal Land Commission 2010

The Commission was instigated by the late King Tupou V in 2010. His death in 2012 was unexpected and he left behind people's hopes for themselves and Tonga that were triggered by his Commission.

Participant L: He was the one who initiated the reform in Tonga and he also wanted reform of the land system especially for women's rights because he felt that because he has no children and no daughters, he felt that he would be the one to make changes for the women of Tonga....He was concerned about women's rights and he was also concerned with the businesses...Because it was a Royal Commission it's a report to the King, if the King wants something done I'm sure it's up to him to direct govt.

Economic development was seen by another participant as the major driver of the late King's appointment of the commissions.

Participant A (M): As you may know the purpose of the Royal Commission was basically to look at our Tongan land tenure, and modernising it...making it more user friendly, particularly to business people and foreign investors...there's been a lot of complaints.. Business people find that a big obstacle to investing in Tonga or carry out longterm successful business is the land tenure system....you're quite limited in your rights to land access particularly foreigners....A 20 year lease is nothing or 50 year lease is nothing if you want to build a multimillion dollar hotel

Researcher: Ok, so that was one of the main drivers for the Land Commission work

Participant A (M): that's right...and there are minor things to assist the business side that can be a quick fix but there are bigger things such as length of leaseholds and access to more security of the land

There appeared to be a disassociation between women's interests in land and economic development, as the emphasis was on responding to the land needs of investors ahead of locals.

'Ofa: That is one thing we are looking forward to with this new Government. The crisis centre was the only non-government organisation which put in a submission in terms of recommendations for women owning land. Out of that, one of the recommendations was that women were allowed to legally register and own town allotments so not hereditary plots but town allotments so that was

a huge step forward for us. However, those recommendations have been shelved.

We did mention that none of the recommendations of the Royal Commission into the land inquiry have yet been actioned in our UPR report, the Universal Periodic Review report for Tonga, and the Government did accept the recommendations that were given by state members to consider implementing those recommendations. So with this new Government in place, we hope to follow up on the UPR recommendations and the recommendations coming out of the commission report. So that is one step further (Radio NZ, 2015).

A cynical view may be that it would be unlikely for the elite classes to give away their privileges, hence the ongoing delays in progressing the RLC's recommendations. On the other hand, the Tongan Government suffered a No Confidence Vote in 2012, so it needed to restore the public's confidence in them, hence the delay in attending to the RLC's recommendations.

Participant A (M): In 2012 a lot of the Parliament's work was just taken over by a first-ever vote of no confidence, and that took up 80% of the Government sitting time after the budget was passed, basically from July to October, it was all on votes of no confidence. So the legislation wasn't really passed, and Government was preoccupied trying to defend itself against the motion.

5.2 Challenging Attitudes About “Women’s Place”

As I listened to the women talking about their uses of land, I wanted to understand the rationale for the resistance to calls for equal ownership and succession rights for men and women.

Researcher: What do they think are the negative things about women gaining land and equality? What's the negative thing for Tonga?

Betty (W): The negative thing is the woman will have to get married and leave the family, and she will go to the husband's family, take the husband's surname, and that piece of land that the woman is taking it will go under a different name not under the family name, that is a big loss as how they look at it. Cos we women supposed to go out marry and follow the man and take the husbands name...and if me (*Betty_ YY*) then marry a Mr. X, there's no more 'YY' on that piece of land, it's taken up by the 'X'...that is the biggest issue that they have.

Researcher: So what if they just put a provision in there that the land stays with the woman...like us back home, its freehold the land but the spouse has no automatic entitlement...

Betty (W, NGO): that's a good thing you're bringing up cos in our law when I marry I can keep my maiden name...that is something we could look at that because no one was looking at that issue.

I asked one participant about peoples' perception of women selling produce and crafts at the market. The participant felt that there was a common minimisation by men and in society, of women's relationship with land and the value of it.

Siale (W): For some of our male leaders they don't see that as something, they see it as a normal duty of being a mother

Researcher: Like it's your normal duty to? it's not recognised for its economic value?

Siale (W): It's not recognised AT ALL because they just look at it just like you doing your washing or your cooking.

Researcher: That's your job

Siale (W): That's your job! And even when these women are sitting there selling...crafts and things...that's your job!

The argument seemed to be that when men do such work it is expected and tied to status, but women's efforts are simply 'women's work'.

A number of women participants expressed frustration about the unfairness of their brothers or men generally having an automatic entitlement to the land of their father, whether or not they cared (physically or emotionally) for their parents. Meanwhile, daughters were expected to carry these responsibilities but receive nothing because of the law.

Interestingly, both women and *fakaleiti* talked about land that was not used because people either did not have the resources to invest in it, or the men were 'too lazy'. One participant said that too many men were sitting around drinking kava instead of being useful.

5.3 Working Across Class Borders

I did not appreciate the divide between the nobility and the Commoner classes in such a small country until participants talked about their work. Collaborating with the nobility class was identified as essential to progress for women's land rights.

Siale (W): But I also think for the security, as much as I wanted people to take hold of leadership, I also recognise mmmm the transition, as you say the time needed to change the framework of thinking and all of that...so I think we still need our nobility, we still need our nobility because that's what we're used to. The problem with that is how do we actually equip our nobles when they are in there. Cos a lot of them whether we like it or not will still be in those positions. So rather than try to get them out, how do we strengthen them cos it will take a while for Tonga to change that.

Civil society participants talked of sending newsletters of community events to their nobles. One group said they ran a leadership programme for young nobles because this was the generation that they thought was likely support change.

6.0 Discussion

6.1 Gender

Overall, women were divided in their views about the need for women to have more ownership rights to land. Some women participants felt that the ability to lease land was enough. Participants who worked with victims of family violence, however, were united in their view that land tenure reform was overdue. Meanwhile, women who owned land by lease or had access through husbands felt that the current succession laws and lease provisions were sufficient, and ‘there was plenty of land’. Some of the female participants who supported the status quo on land access and rights were tertiary educated, knowledgeable, were either part of the noble class or were closely affiliated with people in power. The privileged women believed that the proportion of women that was calling for land tenure reform was very small; a view that conflicted with the Royal Land Commission’s findings (2012 report) that showed widespread dissatisfaction from women as well as men, about the existing provisions.

Participant A (M): I think there is a growing movement of people who want to change, particularly to move away from the patrilineal system, and only having the eldest son...There is a growing situation of families with only female children they’re feeling hard done by. And the women want part of their father’s inheritance. There is a growing sympathy for those situations.

The difference between *fakaleitī* and women participants was that while the *fakaleitī* participants had title over land even when they were not the eldest sons, this was the complete opposite for most of the women participants. *Fakaleitī* participants seemed to have more understanding of how to access and own land than some of the female participants. It is possible that this was because almost all of the *fakaleitī* had been approached by land holding kin to inherit or be an informal guardian of land, while most the women talked about having to take it upon themselves to secure access or title to land for themselves, a son, or a brother.

The association of male status with property ownership was very strong among research participants, a notion supported by religious teachings about the man being the head of the household, and respect for the natural order. The literature showed that a similar state of male dominance existed historically in the Cook Islands, except that missionaries supported women in return for their support to the mission’s interests. When the distribution of power and influence included women, Cook Islands Māori

men turned to business and national politics for other avenues of status and recognition (James, 1986).

The findings of this study suggest that for Tongan women and *fakaleitī* who cannot access land, overseas migration became the alternative for seeking means for empowerment and liberation. For those who remained, education and skills were key to improving one's opportunities and sense of empowerment.

6.2 Violence Against Women and Male Ownership of Land

The study found that men's rights to land protected them from roaming transiently and feeling insecure. The exact opposite was the experience of women, and participants who did not have assured access to land long-term or who worked with landless victims conveyed a sense of urgency for change.

The study found some association between the priority rights of males to land and Police response to situations of family violence. A participant who worked with victims of family violence said that sometimes police officers were reluctant to remove an abusive man from his property because it belonged to him, so the alternative was to remove the woman and children (Participant P (W)).

The Family Protection Act 2013 gave police precise authority to override an abuser's property rights to protect victims of family violence. The absence of gender specific language means that the Act can be applied to heterosexual and same sex partnerships.

Section 17: Conditions relating to property and accommodation

A Court may include any or all of the following conditions in a protection order
(a) prohibit the respondent from taking, damaging, destroying, burning, selling
or

giving away any property of the complainant or other person at risk;

(b) direct the respondent —

(i) to return through a third party any specific personal property of the complainant or other person at risk; or

(ii) to allow the complainant or other person at risk to recover, have access

to, or make use of any specified personal property;

(c) grant the complainant or other person at risk temporary occupancy to a residence or specified part of it whether or not the residence is solely owned or leased by the respondent.

Police are given the power of discretion and may override opposition from others present in the home.

Section 23 (2): Duty of police regarding Police Safety Orders

A Police Safety Order may be issued without the consent of a person at risk for whose safety the Order is proposed to be issued.

The s24 of the Act 2013 recognises the importance of security and stability for victims during times of victimisation, and gives police power to remove an abuser from the home regardless of his rights over the property.

Section 24: Effect of Police Safety Order

(1) A person against whom a Police Safety Order is issued shall —

(b) vacate any land or building occupied by a person at risk, whether or not he has a legal or equitable interest in the land or building.

Interviews with workers at the WCCC found a sense of optimism about the new provisions.

Participant S (W): It doesn't have anything on the land specifically, but it does allow the woman that protection – even if she does not own the land, the house and the property. The Act allows them - in a sense in terms of ownership – in a sense the law tells us women that we have that ownership well not the full ownership, there are times when we can say to the partner, with the support of the Police and the Court

Importantly, the new powers include protection for women and *fakaleiti* who may be living in unmarried partnerships.

Participant S (W): It has a bit of our cultural stuff that has been very controversial, in a sense that it also recognises unmarried situation, where you're not. If there's a partner, if you were being a victim of domestic violence but you are not married, it will recognise it.

6.3 Raising Women's Understanding of Land Rights

Among civil society participants, there was no doubt that land was a national concern for women. The land laws were so complex that many women throughout Tonga lacked understanding of them, worsening the silencing and disempowerment.

Betty (W): I tell you, this is a HOT issue with women, because why? – cos women are explained, the lawyer, even myself, we tell, we explain what the legislation say...when that is understood, then they start asking questions. It is a BIG issue, it's not that easy – otherwise, women...they wouldn't know, they would just take it as it is, they just accept what the law says. Once we raise the issue, women start to think, then they start to understand, cos we also talk about gender equality during our workshop. If you're equal by birth to any man, why is it different? God made us equal. At what point did God say, now men you're the highest women you're the lowest, subservient?

More awareness about relevant laws, rights, and processes was needed in order to help women rise above their differences and lone struggles to achieve change.

Siale (W): You have to have a good job and understand the legal stuff to get there. For professional women, we still manage to develop despite the restrictions, but for the average woman, it would be quite difficult. Education just brings a new line of thinking.

Following awareness, participants say that women must have the personal and material resources to pursue their rights through the courts and maintain important relationships.

Participant L (W): So if you want your daughters to have land you can lease it directly to them but it's only valid for the term of the lease. In Tonga leases are limited for 20 years for town allotments and up to 99 yrs for tax allotments... once the lease runs out it reverts back to the estate holder.

Researcher: So there's no long-term security or certainty?

Participant L (W): Yes.

Many of the women that were interviewed believed that lifting the status of women in Tonga starts with shifts in attitudes away from accepting a position of gender inferiority to recognising their contributions and capabilities.

Siale (W): Io, it's the attitude. So that's the work we're are doing here at the Civil Society – working with local government, councils – we say we should have rep of women and rep of youth. Cos although you come to a women's group, when we form up their governance committee - we say ok nominate your chairperson – who comes to their mind? A man! Automatically - cos that's how things have always been.

Researcher: Cos that's their definition of leadership? a man?

Siale (W): Yes! And when you say to them you know to the role of this chairperson is this and this – and you ask 'who has been doing that kind of role before?' – it's one of the women! You ask them those questions and they realise they can do it and they are doing it anyway! Those are the things we are working on at the ground level.

6.4 Political Opportunities and Women's Activism

Women's political activism and membership at decision making levels were seen by female participants as associated with advancing women's land rights.

Betty (W): For land, I think there needs for a coalition for whole networking. Right now we're networking on Temporary Special Measures for women's special seat in parliament. We believe if we can get more women at least two or three women in, we may work through them...anything to go like land, peoples voice to be heard we need to have that, because we believe in training or upskilling or helping our women.

Having strong female leadership role models at national political levels was important, but at the time of the research there was only one female MP. Participant B said that prior to the MP entering parliament she was very active in the community and had strong connections with women's causes; these close connections weakened after some time as the MP became busier and less present among her colleagues of women leaders in communities. Participant S held the view that women running for posts in the local districts were more likely to influence other women's aspirations to leadership than women at the national level.

Siale (W): A lot of our women's groups they are actual advocating for Temporary Measures for women's participation in parliament- to have a representative (*pause*) of course it's gonna be put forward and it's men who are gonna make those decisions!! so of course it's gonna be challenging. So while we put that forward, we're exploring how we encourage women at the community level to be engaged/involve in their village councils. Cos I think until we convince the women voters to vote for women to be in those leadership positions, it's very hard to work at this national level

Breaking the tradition of women voting for kin as opposed to voting for important policies like land was said to be hard.

Siale (W): If we don't see action to influence our thinking and decisions, we will always go back to our family where we'll still be voting for our relatives. The change from voting for uncles etc is someone who is action orientated, that's the only thing that will change voting practices – talk is not enough cos our RELATIONSHIPS with our families is very strong.

Participants from civil society held the view that despite the lack of financial support from the Tongan Government, Tonga was becoming more democratic, but not everyone recognised the opportunities that were arising or how to maximise them.

Siale (W): But I think that's the role of us civil society, we just wanted to encourage people to realise there are far more opportunity now to voice out. And just to make sure that we explain to the people how the processes go, e. Because a lot of times we've always been voicing out our concerns about this and that, and not realising that we should not be wasting your time and energy on those things but if you want to see some actions, you just have to explore other opportunities out there - put in a position paper, go to your MP and talk to them so those issues could be part of their work in parliament. Just explore those things cos now I think the political environment is allowing us a say, and if we want things done then we have to be more strategic. I think our role, is to show them how to challenge their situation.

6.5 Class

While my research looked at the effect of gender on access and rights to land, I did not appreciate the strong effect of class. The significance of class was reiterated by my observations and engagements throughout the fieldwork. The fact remains that despite the two Royal Land Commissions, the Constitution still protects the elite classes.

Participant A: What's also sometimes misunderstood in the Tonga tenure system is that estate holders are 'owners' of the land; they are stewards, they just look after it because all land belongs to the King. The King just allocating these lands for people to look after...so the estate holders they just look after the land, look after the people, everything's orderly, keep obligations to the people, whatever to the country, organise people, speak at social functions...doesn't own the land, can't chase people off the land, can't evict them, can't banish them...it all comes down to the Minister.

The findings showed a real disconnect between the original intention of the land laws, the existing law (as reiterated by the above participant), and what actually happens in the land market. As mentioned in the literature review and as found in the Tonga Royal Commission reports, it is not news that those wanting access to land have to 'pay' estate holders financially and in kind to gain and ensure continued access, to gain formal support to become a registered owner of land (if applicant is male) or lease land (if applicant is female).

The 'gifting' of money for leases was well known and accepted... "no one knows of the money transaction but yes there is money – it's a bit like turn a blind eye" (Participant O, (W)). There is no provision in the Land Act 1988 (Rev) for these monetary gifts to be paid to the Crown who is the owner of the land.

Participant M (W): Lease arrangements are purely between the land holder and the leasee...The lease has to be approved by Cabinet and has to be endorsed in the deed of lease as well...

Researcher: And who collects the rent?

Participant M (W): The rent comes here and we take cover tax plus the admin fee. And we issue a voucher to the land holder to go to the Ministry of Finance and collect the money from there. It's still strictly managed through the financial system.

These self-serving practices deprive the public of revenue. Other Tongans who are calling for fair land access (Pulu, 2014). For example, in 2013 Sione Taione, a member of the People's Representative party in Parliament, asked the Tongan Supreme Court to make a ruling on the legality of lease payments of \$1.7 million US, authorised by the government to two members of the Royal Family and one noble for land around the

international airport. Mr. Taione's appeal was unsuccessful (Radio New Zealand, 2013). The Royal Land Commission 2012 report listed suggestions from the public to curb these practices, which included abolishing an estate owner's ability to lease parts of his estate and give this authority instead to the Minister for Lands (RLC, 2012, p. 37).

The final report of the Royal Land Commission released in 2012 identified discrimination against women in land laws as a major area of disadvantage (RLC, 2012). I reflected on the initial intention of King George I to protect Tonga's land for its people and to protect the common people from exploitation by the privileged class, poverty, and wondered how close the present situation is to his original intentions. I reflected on Queen Salote's actions to enable women to lease land, to encourage their engagement in the wider economy outside the home, and wondered about the depths of challenge for Tongan women who want empowerment and aspire for food security, dignity, economic independence, shelter, and an asset for their children in their current environment.

Poverty was not intentionally explored as part of the study but it arose readily in interviews with participants. Participants said that hardship and poverty motivated some people to leave or 'sell' their lands in rural or urban areas. Nuku'alofa itself held limited opportunities and people planned to migrate overseas, especially among the *fakaleiti* group.

In conclusion, the Constitution and Land Laws are so historic that prejudices against women are deeply ingrained and hard to shift. Gender equality appears to be something that cannot be achieved without fundamental shifts in Tongan culture and law.

Literature previously reviewed showed that in other parts of the world, changing land laws to increase women's access and ownership rights over land were more likely to occur where there were existing traditions of women having rights to land (Bruce, et al; 2006). The findings of this thesis strongly suggest that the Kingdom has a long way to go, and the journey to change will continue to encounter more strategic delays. As one official advised, despite two Royal Land Commissions and much public expense,

Participant A: it's also a very daunting object to amend giving access to women, so we need to do a public consultation for people to provide input.

6.6 Post Fieldwork

Since the fieldwork was conducted in 2013, none of the legislative changes or amendments recommended by the RLC in 2011 have been enacted.

On the national political front, female representation in the Tongan parliament is minimal. When the research was conducted, the only female MP was not voted in but appointed by the Prime Minister. On 24 December 2014, Tonga appointed its first Prime Minister from the Commoner class, the Honourable ‘Akilisi Pohiva. These developments are positive signs for local democracy.

In March 2015, the Tongan Cabinet declared its intention at the United Nations to ratify CEDAW (Government of Tonga, 2015). In April 2015, the government released a list of reservations to the convention (Moala, 2015). The reservations were to ensure that the Convention did not conflict with provisions of the Constitution 1988 (Rev) and the Land Act 1988 (Rev), regarding succession to the throne, nobility titles, and a stance against abortion and same sex marriage.

- Reservation against Article 2 is significant as this is the article about the immediate elimination of ALL forms of discrimination against women including constitutional, legislative, procedural and customary. This reservation was to prevent conflict between CEDAW and the provisions of the Constitution and the Land Act 1927 regarding the succession to the throne and nobility.
- Reservations against Articles 10 (h) and Article 12 (1) were to prevent abortion.
- Reservation was made against Article 14 (2)(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes. The reservation prevents conflict between CEDAW and the provisions of the Constitution and the Land Act 1927 regarding the succession to the throne and nobility.
- Reservation against Article 16 was to prevent same sex marriage and abortion.

Protests took place in Tonga and from Tongans living abroad against the Government’s intention to ratify CEDAW. These voices rally against those of an NGOs who “work with women who are not your average privileged Tongan women who have access to all her social, economic, political and cultural rights” (Pacific Media Centre, 25 May 2015). Public outcry was so strong that the Government has made no further progress with CEDAW.

7.0 Summary

The findings provide insight into the significance of land to participants, the different ways that gender affects land rights, and pathways to improve land rights for women and *fakaleitī*. Broad themes are summarised here.

The findings confirmed social, economic, and political disadvantages for women as a result of the land laws, signalled by the literature. Those most vulnerable to being landless are women and children who are trapped in abusive relationships with no alternative property and land to re-establish themselves. The experiences of victims of family violence contributed to the development of the Family Protection Act 2013 which enables police to remove an abusive man temporarily from his land in favour of victims. This Family Protection Act 2013 is, however, unlikely to prevent abusive men from re-victimising their families, as long as victims have no independent land of their own. *Fakaleitī* participants did not have any fear of losing their land holdings to an abusive partner.

The findings show that while gender and class influenced land access, biological sex remained the primary legal determinant. The association of male status with property ownership was very strong, hence *fakaleitī* who did not inherit land were more likely to still have land sought for them by kin because they were male.

Women tend to be more reliant on kin for access to land, often through informal access arrangements. Women are vulnerable, however, because traditional privileges as *fahu* or *mehekitanga* do not include access to land of kin. Informal land arrangements also have weak standing in the Land Court if challenged. Women with resources, influence, and who understood the land laws, were more able to use legal avenues and meet the costs of informal rules of access with estate holders in order to secure rights to land.

Land availability is a major hurdle in urban Nuku'alofa due to high population density and an apparent land shortage. Due to an absence of accurate land records from estate holders, the extent of the land shortage is unclear. The continuing lack of transparency continues to be an area of tension between Commoners and the elite classes. Resulting inequities therefore prevail, including the ability of estate holders to 'sell' rights to land and not report or pass on profits to the Crown which legally owns the land. The class structure is a key impediment to equal access to land and therefore individual empowerment.

It became clear during the research, that there were provisions in the Land Act 1988 (Rev) that men could use to secure land rights for daughters and sisters, when land was reverted, or surrendered, and through subdividing. The fear of an unmarried daughter or sister losing land when she married or committed fornication, was proposed by participants as key reasons why land was not given so readily to women, despite the existing avenues. The law directly hinders women's secure access to land as a means for self-empowerment, attached or not to a male spouse.

Finally, the Royal Commission of Land provided clear evidence that, in order to address the gender inequality in land legislation, constitutional amendments were necessary in order to remove privileges of men and elite classes embedded and protected in it. The ratification of CEDAW would have provided a gender framework to facilitate a review of the Constitution 1988 (Rev), but due to strong public opposition to ratification, this platform is no longer available.

I will now proceed to discuss key similarities and differences between Tonga and Samoa in Chapter IX. The comparison will be made between countries, genders, and within gender groups.

Chapter IX: Comparison Between Samoa and Tonga

1.0 Introduction

The decision to use Samoa and Tonga for this research enabled me to look at differences in land tenure systems and commitments to gender equality. I will begin Chapter IX with a discussion of key overriding similarities and differences between the two countries, and between gender groups. This will be followed by a reflection on significant gaps in the findings, which lead in to the final section on areas for further research.

2.0 Gender

2.1 Leadership and Deference of Entitlements

The study engaged a few strong women leaders, who stressed the absolute importance of women taking the lead for their empowerment. A key hindrance to land access for women in both countries was the lack of women's critical mass of influence in decision making over land. To the women leaders engaged, it mattered who led because it often determined who would benefit. As Charlotte Brunch, an internationally recognised leader in the women's rights movement said, "It does sometimes matter who gets the credit - because the ones who get the credit get the power and resources and opportunities to go on and do other things." (Trigg & Soderling, 2016, p. 155).

In both countries, although more so among the Tongan cohort compared with the Samoan, there was a deep rooted belief that leadership was the responsibility of men, be it over land, households, communities or nations. Self-doubt and self-defeating behaviours among women within households and communities, discouraged other women who strived to lead or were actively challenging oppressive traditions and societal norms. Participants talked of unhealthy competition among women in both Samoa and Tonga, especially at the village level. Samoan participants (women, *fa'afafine*) talked about incidents when a women's village committee asked the male dominated *matai fonono* to decide who the women's representative should be for government meetings. Tongan participants (women, men) talked about the lack of support women voters gave to the few female candidates who ran in national elections or for candidates who advocated for women's rights, continuing to vote instead for men and male relatives.

Societal order and the promotion of subservience, be it women to men, or Commoner to Noble, affected people's perception of their ability and responsibility to lead in communities. In Tonga, change leadership was seen by a number of participants (women, men) as the responsibility of nobles and the Royal Family. As women cannot be nobles under the Tongan Constitution 1875, only *fakaleiti* could be in such positions. Nobles were 'bred to lead' (Participant A), and young nobles were advised accordingly to better understand the people they would lead in future (Siale). A couple of Tongan participants talked of occasions when Commoners were given opportunities to lead a community events, but they called on the nobles instead to lead because that was the style of leadership they had been conditioned for and people respected.

2.2 Legal Avenues

In Samoa, the legal recognition of customary authority in Samoa creates a last resort avenue via the Land and Titles Court to counter any denials of access by one heir against another. In Tonga, however, there is no legal validity given to informal access arrangements, despite any investment a land occupier owner may have made with the estate holder for eventual formalisation.

An official from Tonga advised that an appeal against a Land Court decision usually take around two years to resolve, although there are exceptions. In comparison, cases in Samoa are said to take many more years and are a significant financial cost to parties before a court resolution.

3.0 Significance

3.1 Material and Physical

Views about significance were often connected to people's understanding of concepts of empowerment and dignity, for individuals, families, and nations. Perceptions also affected how individuals felt about changes or proposed changes to land laws, associated matters of customs, human rights, and gender equality in relation to land. The research findings align with existing knowledge from the Pacific and internationally about the significance of land to food security, stability, and safety, not only for individuals but also their households. In urban settings of Samoa and Tonga, this seems more so.

As perceptions of significance affected people's individual intentions, if any, for land use, it revealed hopes and aspirations, especially for those with children and/or who were in some sort of leadership role.

3.2 Spirituality

While participants in both countries talked about the spiritual significance of land, the foundations were quite different between them. For the Samoans, the belief that land was from God and/or ancestors held strong symbolic value (including the New Zealand participants).

Among the Tongan cohort, none of the *fakaleiti* and only a few women talked about land as being sacred or from God. The Tongan cohort more readily associated the acquisition of land with their own efforts, or that of parents, grandparents, nobles, or the Royal Family. There was no sense of outrage about selling land or severing ties with it like the Samoans felt about *fanua Samoa*. Participants from the Commoner class appeared to have a more fluid connection with a specific piece of land, as was seen in court cases discussed in Chapter V. I did not have many members of the nobility and no one from the Royal Family in my sample for a fair comparison.

All of the Samoans talked of their roots to customary lands as connected with ancestors going back at least four generations, depending on whether they lived on their *fanua Samoa* and their involvement in their extended family affairs. Interestingly, they talked of their lands as if it had been theirs since time immemorial. No one talked of land that may have been seized by their ancestors during wars (Meleisea, 1987, p. 27). I wondered if responses would have been different if I had spoken to more elders, historians and judges at the Land and Titles Court.

The desire in the Samoan group to return their dead to their natal lands was the clearest demonstration of their spiritual connection with land. Under the Tongan Land Act 1988 (Rev) s139(2),

s.139(2): It shall be an offence punishable by imprisonment not exceeding 6 months or a fine of up to \$100 or both to conceal or bury the body of any deceased person in any place other than a cemetery save for the body of an executed criminal which shall be buried in accordance with the Criminal Offences Act and the Court may order the removal of such body to a cemetery.

The first time a Tongan participant raised the matter of burial place was during a conversation about land shortage. Only the nobility and the Royal Family have some choice as to their burial place. This suggests that there may be a difference in the sense of belonging to a specific place between the classes. The sense of permanence to place can also vary between those who are guaranteed heirs, including the Royal Family, and those who know that they must find alternative places to resettle, including outside Tonga.

3.3 Confidence and Assured Place

I noticed that perceptions of significance influenced an individual's sense of confidence about their identity as a Samoan or Tongan, their place in their household, extended family, community, and country. Tongan women and *fakaleiti* who had secure primary or secondary access to land disagreed that there was a need for land law reform. For example, a couple of senior female officials simply did not see women's land rights as a national concern.

Researcher: Will the land be an election issue, or do you think any of the parties would...

Participant P (W): An issue for who?

Researcher: Do you think someone would take it up as an issue to promote? Is it likely that someone would take up women's rights to land?

Participant P (W): You know; it could be....

3.4 Sense of Permanence

Perhaps the biggest difference between the two countries is the fact that in Samoa 80% belongs to the people, while in Tonga all land belongs to the King. The sense of permanency, connection with a specific particular place was thus clearer for the Samoan cohort compared with the Tongans.

For the Samoan cohort, land of any kind (freehold or *fanua Samoa*) was associated with a sense of permanence, even for those who had no intention of ever calling on their rights to *fanua Samoa*. *Fa'afafine* participants all lived on lands that belonged to their parents, *aiga potopoto* so there was no pressure to seek alternatives. This sense of permanence is reflected in Samoa's statistics which showed that around 90% of urban households lived on land they owned, compared to around 62% of urban households in Tonga.

4.0 Va – Relationships to Access Land

4.1 People and the State

The first *Va* that influences people's land rights, is between the people and the State. One of the biggest differences between Samoa and Tonga is the close individual relationship that heirs in Tonga have with the State as the grantor of the land, compared with close individual relationship that a *suli* in Samoa must have with their *aiga potopoto* for land. In Tonga, the State chooses and validates the heir, while in Samoa it is the *aiga*.

In Tonga, a land owner's rights are individualised. For *fanua Samoa*, a person's rights exist in an environment of shared rights with members of the *aiga potopoto*, and exercised alongside the rules of conduct and protocols within a village. While a village does not own the *aiga's fanua Samoa*, its duty to all its villagers means that it has the customary authority to order a person off their lands until it considers it appropriate to allow their return.

The State alone, prescribes the rules for rights over land in Tonga. In Samoa, there are three levels – the *aiga potopoto*, the village, and finally the State as arbitrator of last resort. The Samoa *aiga potopoto* and custom prescribe rules for the provision of rights to land.

4.2 Fahu, Veitapui versus Feagaiga: brother-sister relationship

In Tonga's history, the nobility was seen to have spiritual powers (Marcus, 1978); while in Samoan history, sisters were seen to have this. This may be the basis for the difference in where loyalties are regarding land between the two countries.

For the Tongan cohort, access to land necessitated loyalty and service to the nobility and the Crown. *Fahu*, *mehekitanga*, and *veitapui* privileges do not include access to a brother's land as the land is the brother's sole right. *Fakaleiti* seemed oblivious of the land interests of their sisters and other female relatives; all seemed to take it for granted that a sister would have no entitlement.

According to this study, an urban based Tongan woman with a brother who has inherited their father's land, knows during her upbringing that she is likely to have to live elsewhere in future with her own family, as the brother's wife and children have legal priority over the land. The same uncertainty, but to a lesser degree, faces a

fakaleiti brother who is not the eldest son, but by virtue of being male is more likely to gain secure rights to land through tradition and alternative legal arrangements; the children he cares for are also more likely to have more stable access to land accordingly.

In comparison, the *feagaiga* seemed all encompassing of relationships between a Samoan *fa'afafine* and his sisters that extended to access to land. The *feagaiga* also extended beyond siblings to include other kin in the contract. Participants that were *matai*, whether *fa'afafine* or woman, talked about their active role in ensuring a sister was not bullied off her land by a brother. If the sister felt that her rights were violated, she could exercise various provisions of the Land and Titles Act 1981 to call on the State to rule.

While other participants interpreted sibling conflict over land as a sign that the *feagaiga* was decreasing in relevance, to *matai* participants, it remained a fundamental platform of cultural rights that guided their guardianship of *aiga potopoto* and *fanua Samoa*. There was no equivalent practice in relation to *fahu*, *mehekitanga*, and *veitapui* from the interviews with the Tongan cohort.

4.3 *Tauhi vā* versus *Tausi le va*

While informal or customary arrangements were less secure than a legal permit or lease, these were still the fastest way to access land in both settings. This relied on people's ability to develop and maintain good relations – *tauhi vā* or *tausi le va* - with kin, estate holders, and others who hold authority over land. For those that lived in hardship, this cost free and quick process enable crucial access to support food security, residence stability, and means to produce income.

For the Samoan participants, access to *fanua Samoa* loyalty and service was to one's family. There seemed no desperation for land. The Samoan participants that lived on freehold land parcels were quite happy for kin in natal villages to use their share of *fanua Samoa*. While they were unified against the sale of *fanua Samoa*, several were supportive of dividing it equitably among family branches and then letting those units ensure the interests of future generations. The traditional situation of centralising authority to *matai* on behalf of families had become too complex with bigger and disperse populations, and too many disputes. Some felt that this justified splitting of titles to share the responsibility and privileges across the different branches of the *aiga potopoto*.

4.4 How relevant are traditional beliefs and practices to urban land needs?

The findings align with the literature that population growth and urbanisation have challenged traditional ways that land (urban and rural) is managed and allocated, by kin and state. The changes, however, did not necessarily result in more equal or fair distribution, or honouring understood traditional entitlements.

The Tonga findings show that the State does not secure informal access or usufruct rights for anyone. Similarly, despite Samoa's strong customs, the findings regarding the situation of the *nofo tane* and the high number of women in refuges in Samoa shows the reality that customary assurances are also breaking down for women. Similarly, the *feagaiga* is beginning to lose its influence. Samoa has also amended its laws as a result of *matai* who abused their cultural authority and deprived others of their land entitlements.

Another tradition that has long been challenged and has been reaffirmed in this study, is loyalty to the land entitlements of absentee land owners and heirs. There was a strong view among participants in Samoa and Tonga that those who have left their country permanently, who sporadically return, and those who never *tautua* their villages or *aiga potopoto* (in the case of Samoans); should leave the land to kin who are occupying it. Participants with children felt strongly about using the land to build their own lives and a good future for their children, rather than leaving land idle for kin who just want a sense of entitlement it but do little else to earn it.

Samoa and Tonga were both pursuing MDGs, but neither of their strategies addressed access to land for urban women. This is despite the fact that the data about urban households from both countries showed significant hardship. The MDGs ended in 2015, and have been replaced by Sustainable Development Goals (SDGs) (UNDP, 2006). While a number of SDGs are linked to land including Goal 1 (No poverty), the most explicit references to equal access to land are in Goal 2 (Zero hunger) and Goal 5 (Gender equality). Interestingly, Goal 11 (Sustainable cities and communities) does not identify equal access to land as a key factor in achieving the goal.

Samoa participants told many stories of land conflict among *aiga* members and between villages over customary land. Despite the financial implications, people were looking to

the State to settle disputes that used to be the private business of *aiga*. Will Samoa one day be like Tonga where land tenure is prescribed by the State?

5.0 Summary

I entered the fieldwork with the knowledge of the different legal and human rights frameworks that Samoa and Tonga had in relation to land tenure. I did not anticipate the degree of difference between the two countries that I later learned. Similarly, the difference between *fa'afafine* and *fakaleiti* in terms of duty towards sisters, households, extended families, and villages were significant.

Going into the research, the notion of land as a common good within a Pacific family was a taken for granted truth. I learned instead that fair distribution of land rights among collectives was not easy to ensure in urban Samoa.

I also found that in Tonga, land was not a common good, perhaps as King George Tupou I had envisioned. Instead, land was an asset preserved for the exercise of individual agency, predominantly men. Land was also not necessarily earned by a person's labour as John Locke and the Tongan Constitution suggested, but by sheer luck of birth. There were evident polarities between Tongan participants on issues of gender equality and improved land rights for women that I did not see among the Samoan participants. Land as a symbol of unity, connection, and permanence for Samoan women and *fa'afafine* differed greatly to the relatively less secure position of women in Tonga because land was prioritised for men.

I will now present my conclusions from the study in Chapter X.

Chapter X: Conclusions

1.0 Introduction

This final chapter will discuss key conclusions from the study in relation to the four core research questions. I will also discuss the study's limitations, areas for future research, and final reflections on methodology.

2.0 Significance of Land

The findings show that all urban participants identified significance with spiritual, physical, emotional, cultural, and political empowerment. Women, *fa'afafine* and *fakaleitī* who were parents or primary caregivers, the ability to maintain important relationships and secure rights to land for their children and future generations was a common aspiration. The aspiration for self-empowerment extended beyond self, and seemed urgent in areas where access to limited land was expensive.

Traditional ideas about the significance of land were, however, weakening in urban contexts of both Samoa and Tonga. High urban population, land shortage, income (including remittances) levels, family support, number of dependents, religious beliefs, experience of hardship, class, strive for status, all affected people's changing perceptions of the value of customary land in Samoa, and land generally in Tonga.

Some people's aspirations and sense of empowerment did not always relate to land, nor was land able to fulfil them. The combination of living in urban hardship, limited income earning opportunities, and future life goals (education, careers, relationships, freedom from prejudice or various expectations) that people could only see being realised outside Tonga, drove some who legally owned or were in direct line to inherit land, to want to leave it, sell or lease it.

Traditional expectations in both cultures that kin would provide other kin with land, even informal access, was no longer guaranteed or the safest option for women, *fa'afafine* or *fakaleitī* in urban areas. The study found that for the Tongan women and *fakaleitī* with dependents, formalising rights (access, lease) was the most secure though a costly way to attain land for personal needs and means for empowerment. The reality that Samoans can and continue to be alienated (even if temporarily) from their

customary lands due to family disputes, by corrupt *matai*, or the village's *matai fonu*; is one reason why some urban participants preferred freehold land that only they then controlled.

3.0 Gender and Access to Land

The different levels of advantage or disadvantage between *fakaleitī* did not dilute the fact that in terms of land access and rights, they were still privileged as males and sons above women and sisters. There were many layers of inequality in Samoa and Tonga, among and within gender groups, which affected an individual's access to land.

Class and birth order posed additional challenges or privileges for Tongans, depending on where the participant was located in class, cultural, political, family, and economic hierarchies. Continued resistance within Tonga to CEDAW goes against the type of forward vision that Queen Salote Mafileo Pilolevu Tupou III for women and the country.

There were differences between *fa'afafine* and *fakaleitī* in terms of perceptions of responsibility towards sisters with regards to land access. *Fa'afafine* were more frequently concerned about securing or upholding land access and rights for their sisters than *fakaleitī*, as noted in interviews with *fa'afafine* who lived outside Samoa, whether or not they were *matai* and whether or not their sister lived in Samoa. *Fakaleitī* who had access and rights to land on the other hand, did not generally seem to have their sisters on the top of their mind. It is possible that *fa'afafine* thought more of their sisters and extended family because the land in question was customary. For *fakaleitī*, the land in question was often individually owned and there was still the prevailing belief that a sister would marry a man who would presumably have or be able to access land. A number of *fakaleitī* talked of sisters who lived overseas who were not expected to ever return to live in Tonga, and this may have contributed to the lack of consideration for them regarding land.

The claim by a number of Tongan participants (male and female) that men were just as disadvantaged as women under the land laws was not supported by the findings. Similarly, while women of the noble class, *fahu* and *mehekitanga* were clearly above others in status, they were all equally discriminated against under the land laws for being female.

Most of the Samoan participants (New Zealand and Samoa) felt that women and *fa'afafine* had gender neutral access to customary land. However, participants also discussed situations when heirs including urban settlers, had been alienated from customary lands when they did not *tautua*, or lacked the means and evidence to defend their genealogical ties to the chiefly titles tied to the associated lands. Absence from natal villages contributes to the lack of urban dwellers' knowledges of their *aiga potopoto* land deliberations. Non *matai* women in a village are further disadvantaged compared to untitled men during *matai fono* deliberation, because it is the men's group (*aumaga*) that is present to serve the needs of the gathering, and even though they do not have speaking rights, they hear and learn from the discussions.

The inequalities between women were multiple, partially explaining the lack of consensus among them in both countries on the importance of gender equality, be it regarding land access, political representation, or leadership roles generally. In relation to land, Tongan women's ability to access land varied depending on the law, class, marital status, widowhood, income level, education, resourcefulness, and kin support. In comparison, the Samoan woman's access to *fanua Samoa* varied too but was not prescribed by law, sex, nor dependent on male kindness. Access was influenced more by her *tautua* and residence on the land itself.

The Samoan and Tongan findings showed that much more work is needed to shift women's own beliefs about 'a woman's place' or role in society, and build their confidence in their ability, right, and responsibility to lead, including in land matters. The study showed that it was not enough to get more women into positions of local or national power, because there needs to be a critical mass of women who believe in and would champion the land interests of others who are disadvantaged. The case of Tonga proved the importance of this.

Fa'afafine had access to their customary land regardless of birth order, even though like everyone, access was earned through the exercise of *tautua*. In comparison, *fakaleiti* did not have equal or automatic rights to land in their context. Both groups, were however, subjected to social prejudice in families because of their gender which affected their access to land. This avenue of exclusion cannot be overlooked even if only a couple of people talked about it.

In summary, the findings showed different levels of vulnerability to being denied access (informal or customary) to land, between and within gender groups:

Table 13: *Vulnerability to Being Landless by Gender Cohort*

Most Vulnerable	Participant Cohort
1	<ul style="list-style-type: none"> • Tongan Commoner women (abandoned, landless widows, sisters without a land inheritance, no income, customarily adopted, unmarried partner) living in hardship. • <i>Nofo tane</i> (married or unmarried) who returns from living elsewhere and had not <i>tautua</i> her family <i>matai</i> or <i>aiga</i> living on natal land in urban villages. • Most vulnerable are female victims of family violence with dependents.
2	<ul style="list-style-type: none"> • <i>Fa'afafine</i> denied access to land due to homophobia or gender prejudice within the <i>aiga potopoto</i>. • <i>Fakaleiti</i> (not the legitimate eldest son, those living with gender prejudice that dis-incentivises kin from making available land for him). • Tongan women across all classes whose access is through informal arrangements - with kin or associates. • Samoan women and <i>fa'afafine</i> who were unable to evidence or defend their claims as heir to chiefly titles (<i>suafa</i>) that connect to the land.
3	<ul style="list-style-type: none"> • Samoan women and <i>fa'afafine</i> living on freehold land who do not <i>tautua matai</i> and <i>aiga</i> in natal villages. • Tongan women across all classes whose land access is based on a time limited lease.
4	<ul style="list-style-type: none"> • Samoan <i>nofo tane</i> from families that strongly adhere to traditions of <i>feagaiga</i>, <i>aiā tatau</i>, <i>aiā tutusa</i>, and unified <i>aiga potopoto</i>.
Least Vulnerable	<ul style="list-style-type: none"> • Urban women and <i>fa'afafine</i> who live on their <i>fanua Samoa</i> • An urban <i>matai</i> who performs <i>tautua</i> to his/her <i>aiga</i> and natal villages. • Tongan widows with title to land from deceased husband. • <i>Fakaleiti</i> who can inherit as the eldest son. • <i>Fakaleiti</i> who can gain land through the 'land for sons' tradition. • Tongan women in secure safe marriages with male spouses who own land in urban areas.

4.0 Strategies to Improve Access and Rights to Land

The motivation to improve individual access and rights to land was related to personal circumstances, aspirations, and limitations to those due to limited or lack of secure access to land.

The study found no evidence of developed government strategies in either country to improve access to urban land for women, *fa'afafine* and *fakaleitī*, although hope remains for Tongans via the Royal Land Commission's recommendations.

Economic data from both countries indicate that significant proportions of urban households live in hardship, especially in Tonga. In light of limited employment opportunities, limited income earning sources, the high costs (by local wage standards) to lease land (Tonga) or buy freehold land (Samoa), was an impediment to empowerment. The importance of secure access to land (especially fertile land) to grow crops for daily sustenance, income, self-determination and social standing, was visible not only in the big markets in Apia and Nuku'alofa but all along the roads in and out of the main centres.

The research concludes that as long as Pacific women's relationship with land is not recognised as intimately connected to their safety and empowerment, investment in gender equality programmes like those through the Pacific Forum's GLED strategy will likely fail. "Unless land issues are addressed and seen as being integral to concerns about human rights, then all other rights may be at risk" (Farran, 2009, p. 402).

A way forward for Tongan women and *fakaleitī* would be the enactment of the recommendations of the Royal Land Commission. The RLC's recommendations would provide legal avenues for women to inherit and own land like men as a fundamental right, and gradually progress to a point where women's ownership of land becomes an accepted part of modern day Tongan society. For Samoa, legislating women's equal customary entitlements to their natal lands and associated chiefly titles as recommended by NGOs would better protect women's land means for empowerment, and uplift their status.

The research findings suggest that women's sense of entitlement to control land cannot be dissociated with their perceptions of their roles and place in relation to men, and for

some - a reluctance to oppose God's natural order. State and religious communities must take action to stop the protection of customs related to land that continue to protect male privilege to land access and control, and perpetuate disadvantages for women.

5.0 Domestic Violence, Land, Empowerment

Consideration of domestic violence in this research was confirmed to be valuable. The study found that the disempowerment of women who suffered from domestic violence was exacerbated when they were then alienated from lands they perceived or customs suggested, they had entitlements to (refer to Table 11). For victims of family violence, experience of being dependent on others for land was associated with high vulnerability, indignity, and disempowerment.

It was not until the interviews in Samoa shifted to access to and for victims of domestic violence, and the *nofo tane* that the weaknesses of rhetoric about *aiā tatau* (customary right), *aiā tutusa* (equal rights) and family unity were seen. The residence of women and children at the Samoa Victim Support refuges evidence reality. Interviews with the Women and Children's Crisis Centre, a victim of domestic violence, and child of an abandoned wife also revealed a reality that conflicted with the view of other participants that women had easy and affordable access to land.

Even if a woman was in paid employment, regardless of her wage packet, the loss of secure access to land and home means an escalation of costs to provide an alternative. A woman with customary land in an urban village in Samoa may have an alternative to resettle if she does not already live on her land, but her Tongan counterpart is unlikely to have this option. On the other hand, the Samoan may have to leave town and return to one of her natal villages (with her dependents), affecting employment, schooling, and ties to supportive networks in the process.

In the absence of an alternative place to settle and means to support herself, her dependents, and maintain certain illusions of esteem and status, victims of family violence were trapped in a cycle of repeatedly abuse, enduring indignity and degradation of sense of self-worth.

The literature and findings from the Tongan participants, showed the strong association of land ownership and control with male right, power, status, and dominance. What if

women's identity, status, leadership, and influence was also associated with land ownership and control? What if the Tonga land laws were re-written with 'women' or 'female' exchanged with 'men' and 'male' in the succession provisions?

6.0 Limitations of the Study

There are a number of limitations that influenced the research journey, learning gains, and conclusions. The most significant are:

- My preparation for the fieldwork was largely informed by the literature. The selection of the urban context led me to discover that there was a very limited amount of published material from the Pacific about the land needs of urban women, *fa'afafine*, and *fakaleitī*. There was also little literature on their aspirations. The lack of gender segregated data on land ownership in Samoa and Tonga meant that my only insight into ownership by gender was through the participants' stories.
- I had to learn new terminology on the run, and there were lines of conversations that I could have interpreted differently or pursued more if I had that knowledge beforehand. This limitation was particularly significant to the Tongan data where words like 'surrender', 'revert', 'interest', 'naturalisation', 'legitimation' 'registration', were used frequently in some interviews.
- The fieldwork looked specifically at urban and semi-urban areas, so the findings are not necessarily relevant to the situations of women, *fa'afafine* and *fakaleitī* in rural areas in Samoa and Tonga. Urban Samoa and Tonga are also very different from urban cities in Melanesia and Micronesia.
- The sample size was kept small for the purposes of the PhD, and due to limited resources and cultural expertise.
- The findings are from two self-governing Polynesian nations, so may not be relevant to Polynesian communities that are not self-governing, like the Hawaiians, French Polynesians, and the Maori of New Zealand.
- My inability to speak Tongan, the lack of familiarity with cultural nuances, and the limited time I had to spend in Nuku'alofa meant that the Tonga leg of the

research was at a disadvantage compared with Samoa. My engagements in Tonga and interpretations of the context and the data were that of a non-Tongan.

- Time – as discussed in the methodology chapter, time affected the depth of engagement, participation selection and access to information at the locality. It is highly possible that if I had time to engage over a number of conversations with participants instead of a single interview, people may have allowed me to see more of their experiences and thoughts related to the topic. Extended time and living with a Tongan family instead of in a motel, would have undoubtedly benefitted my understanding of urban life, culture, relational concepts, and actualisation of land tenure practices.

7.0 Topics for Further Research

The research journey led me to discover a number of important gaps in the study, that I did not foresee during the design and preparation phases. The following are research possibilities that could yield deeper insight into this topic.

1. What are the potential benefits to citizens and the State of legalising cultural pathways in Tonga and Samoa to ensure and secure access to land for women, *fa'afafine* and *fakaleitī*?

The Samoa NGO Shadow Report 2012 made a recommendation to secure women's access to customary land through legislation but it has not been progressed. Women and *fa'afafine* in urban areas that live on freehold land could also have the option of legally apportioning their access rights to *fanua Samoa* to other kin to secure access for their relatives. The 'silent rights' for Tongan women could be legislated.

2. What is the link between secure and independent land ownership, and the victimisation of landless women, *fa'afafine* and *fakaleitī* via family violence?

The international literature has indicated that independent property ownership by women can minimise victimisation of them in intimate relationships. This study's findings support this conclusion. Affordable leases and titling processes could provide victims who have no land, a buffer from hardship and re-victimisation.

3. What is the effect of landlessness on children?

There is a gap in the Pacific land discourse on children's land interests and empowerment. Participants talked about their experiences as children of landless mothers, who spoke of helplessness, displacement, compromises of dignity, and the effect on their mothers. One of the Tongan participants felt that the only reason why Parliament passed the Family Protection Act 2013 was because the arguments put before them were about the benefits for children. The focus on children shifted the dialogue away from thoughts about power and authority between men and women.

4. What is the relationship between secure access to land, quality of life and aspirations in households headed by women, *fa'afafine*, and *fakaleitī* in urban areas?

The findings of this study showed a glimpse of life for urban households. All were extended family households, living on their own land or land of other kin. What would happen if the land was no longer accessible through kin or they started charging for it? More needs to be understood about the factors that strengthen urban household resilience. Are there any differences in household characteristics depending on the gender of the leader of the household?

5. Repeat the study with women, *fa'afafine* and *fakaleitī* business owners and entrepreneurs as participants.

Most of the study's participants had never used land as an asset to develop businesses or grow wealth; a number in Tonga were not land owners. Their anxieties about the potential risk of losing land if used as collateral blocked thinking about this as an important means for personal, communal, and national empowerment. There were participants (women, *fa'afafine*, and *fakaleitī*) in both countries who talked about the commercial uses of their land; some to grow produce for market, run tourism ventures, or generate income from land rents. These people understood the value of land as a wealth generator for individuals and communities.

6. Analysis of the way land court processes in both countries respond to women, *fa'afafine* and *fakaleitī* as complainants and defendants, and the effect of court outcomes on their empowerment, using sexual identity as the lens of enquiry.

The literature shows that attitudes of State administrators to gender equality and land control affected the nature of service they give to women (Bruce et al, 2006). In the case of Samoa, it would be useful to review outcomes for women and *fa'afafine* from formal mediation (*soālaupule*) and court processes.

7. A study into land holdings of churches in urban villages and townships, attitudes and land tenure practices by churches in response to women's need for land in urban settings.

For women, *fa'afafine* and *fakaleiti* with limited resources, churches may be an important gateway into accessing urban land. The study found indicators that churches were investors in urban land. Exploratory efforts to locate sources for details were unsuccessful. I wrote in the Tongan chapter about how strongly opposed some of the Christian denominations (Methodist, Catholics, Wesley) were to people (men, women, daughters, sons) having equal rights to land. How much of this institutional opposition was rooted in self-protection? Could original owners of gifted land reclaim some to meet the needs of the urban landless?

8.0 Reflections on Methodology

I will now reflect on definitions of Pacific epistemology, ontology and axiology, and learning from the application of the Va-Critical Feminist methodological approach used in this thesis.

8.1 Epistemology

The research findings raised an opportunity to reflect on definitions of Pacific epistemology discussed in Chapter IV. In Tonga, one's request for land (beyond kin) usually went to a noble who is always male, or to the Crown through the Minister of Land. Both levels of authority are male dominated. In Samoa, participants indicated that if one wanted to access customary land which they did not live on, chiefly representation of one's request was the way to seek permission of the responsible chief (*sa'o*), and most chiefs were men. As customs and laws set the guidelines for the allocation, use, and protection of land and heritage, then these are areas of epistemological significance.

If I apply a feminist critique of Gegeo & Watson-Gegeo's description of Pacific epistemology as "a cultural group's ways of thinking, creating and reformulating knowledge, using traditional discourses, media of communication, and anchoring the truth of the discourse in culture" (Gegeo, 2001, p. 493), it would seem that chiefs/men, dominate this epistemological space and women's input is much less determining of knowledge. In addition, Sanga's view of Pacific epistemology as knowledge that is protected and guarded by assigned members of the community who will then disseminate it discreetly to appropriate others, essentially confirms the elitist and male dominated nature of Pacific epistemology. Both these perspectives appear to take for granted the validity of processes and structures that affect Pacific epistemology, and the validity of the knowledge that resulted. From a feminist perspective, the lack of critique about who is entitled to have access to and be guardians of knowledge raises questions about these definitions. These are the very traditional discourses/practices/customs that have prevented women from sitting in decision making forums and formal negotiations about their lands, despite the history of such processes having left women at the losing end, as discussed in the literature review.

Legislation and the machinery of government could also be regarded as another epistemological site and should be critiqued also from a gender perspective, for inclusive Pacific-ness. This study found barriers that hindered woman, *fa'afafine*, and *fakaleiti* from actively engaging in the 'thinking, creating and reformulating of knowledge' in that arena, such as awareness of rights, understanding of processes and which work best to influence decision makers, and financial resources. When the element of class is added for Tongan society, it can be argued that definitions of Pacific epistemology have elements of elitism, are context/class/gender limited, and uncritical of the structures and processes that determine what is truth, and whose 'truth' counts, and what is validated as part of culture.

Accordingly, future thinking about Pacific epistemology should investigate any gender bias in existing processes to create space for 'ways of thinking, creating and reformulating knowledge' by those not ranked to be at that table, so that the different truths can also be anchored in culture which is, after all, an evolving social construction.

8.2 Ontology

Participants' sense of reality confirmed the important Va between the people, environment, and the spirit worlds as described by Sanga, Chilisa, and Tui Atua. For

some participants in Tonga, these relationships were so real that they hesitated to pursue change in case they violated historical loyalties, or dared to challenge what they believed to be God's allocation of land through natural order. This commitment or fear manifested in the tangible world by aggression towards those who challenged the authority of men over land and dominance over women, those who challenged the law, particularly women who dare to seek ownership or a share of Tonga's land against tradition.

In Samoa, there was a prevailing belief that theft of land or manipulation of laws to deprive rightful owners, would lead to illness or death of culprits. Such beliefs were voiced by participants who were private citizens as well as officials in senior positions in government departments. Participants connected land rights, spirituality, and social justice. In this 'reality' where not all of reality was tangible, as Sanga and indigenous researchers have described, divine intervention would right violations caused by individuals. Samoan participants' beliefs in the spiritual presence of ancestors and loved ones who had passed on go some way to explaining this significance. For participants who were born and raised on their customary lands, their *va* with the land and surrounding environment seemed more spiritual than their connection to their freehold lands. As one *fa'afafine* said, no matter how long he lived on his freehold land, he would always identify with his *fanua Samoa* and natal villages.

In my eyes and as a researcher, there seemed to be a contradiction between wanting to honour relationships with ancestors and God; and the obvious disadvantages to members of society who were without land and needed it. I thought about Hawkesworthy's (2006) point about evidence blindness, and research findings that showed how one group's values were exploited and justified, even when it deprives or oppresses others. I wondered about the resistance from some parts of Samoa and Tonga to legislative efforts to empower women and remove barriers established in custom, as if doing so might expose the fallacy of harmony and contentment that is otherwise portrayed.

These contradictions are likely to continue in both Samoa and Tonga into the future, and suggest that definitions of Pacific ontology could shift as social realities evolve. These definitions will be influenced by context, and possibly differ between generations of the Pacific diaspora across the globe.

8.3 Axiology

When I began my search for an appropriate research methodology, I outlined core values that I wanted to carry through the research journey because they were important to my participant communities, and the Va-Critical Feminist methodology. The values were about the many *va* in research that included:

- respect - of people, stories, privacy, alternative or opposing views, diversity;
- humility – to be ok with not knowing, to recognise limitations, to trust the advice of others, to not overwhelm others with my interests, to be patient, to make amends when harm has been done or offence has been caused
- reciprocity – to find ways to give something back, service.

The application of *Va* is the clearest demonstration of my values of relationships, social justice, and Pacific knowledge.

Could I have asked my research questions via skype, telephone interviews, questionnaires, or just by interviewing people in New Zealand instead of travelling to Samoa and Tonga? Yes. But I would not have appreciated the implications of the information because I would not have seen the land and how it was being used or left idle. I would not have seen settlements in Tonga where residents hoped that if they stayed long enough they might have a legal claim to the land. I also would not have had the opportunity to earn the trust of key informants to refer me on to appropriate participants. In terms of research questions, my original list did not ask about poverty or land shortage, but on location, these issues were stark and made me realise just how important access to land was for urban dwellers. I concluded that any genuine research on social justice issues must be done where the afflicted people are, and through face to face relationships.

My final point is about reciprocity to my participant communities. The thesis was to be my vehicle for reciprocity with participant communities and financial supporters. A firm belief in accountability and reciprocity to participants made it easy for me to accept the terms of agreement from both approval authorities of Samoa and Tonga, to provide them with copies of the completed thesis. Unfortunately, the full thesis will only be in English which may restrict its usefulness for non-English speakers.

During the PhD journey, I presented at symposiums, to small groups, and conferences as ways of giving back for the support I had received.

9.0 Reflections on Va-Critical Feminist Methodological Approach

The study has shown that not all *va* in relation to land are reciprocal where there is a power difference. Benefits from relationships are not always equal. I concluded therefore, that a methodological approach more suitable on an issue where *va* has been violated, was to take *va* in its complementary state of *teu* and *solī* (take care of, maintain vs violate). The overt inclusion of *solī* makes transparent ethical considerations upon which to conduct social justice research.

The absence of a gender lens and a critique of power relationships in Pacific indigenous methodologies, suggests that this body of work is at the stage feminist theories arrived at after the consciousness raising phase. Pacific voices are now in academia, and Pacific people are researchers, producers, and owners of intellectual property from research. The next stage would be to critique what there is, from perspectives of class, gender, and so forth. In other words, it is time for Pacific indigenous scholarship to critically analyse taken for granted traditions about Pacific indigenous epistemology, ontology, and axiology.

9.1 Differences and Commonalities within *Va*

The study found that while *fa'afafine* and *fakaleitī* may be perceived to have common interests as a gender group, and indeed were clear about how they wanted to be known; there was definitely no one way of being *fa'afafine* or *fakaleitī*. Some thought of themselves as women, others wanted to be women-like but did not want to be called women, and some ticked the box of 'male' in official documents but lived as women in every other part of their lives. One's sense of ownership of their gender identity could also change over time. The *fakaleitī* group talked of a fellow *fakaleitī* who underwent hormone treatment to become more feminine, then later changed his mind while in transition. Another *fakaleitī* said he 'used' to be *fakaleitī* but now wanted to give his life to God - I was unsure what this meant or what had changed because his physical appearance and mannerisms resembled my perceptions of a *fakaleitī*.

Interrogating the issue of representation and power dynamics involved between individual and groups of people of the same gender was an important part of the Va-Critical Feminist methodology. Some privileged women denied there was any major concern about the lack of rights for women to land, other privileged women who had secured access to land strongly disagreed. Women in civil society organisations in both

countries saw daily the consequences of lack of access and rights to land in family violence, abandoned wives, children, and food security. Media is another voice of representation and is very influential, but it chooses which voices and cause are given visibility. Religious groups, *matai fono*, women's committees and associations are representative voices – but all need to be critiqued for the degree to which they represent the diversity of interests among members in hierarchical organisations and cultural contexts.

The politics of representation made me reflect on my earlier decision (see Chapter IV) not to use Queer Theory because of lack of evidence from the literature about the role of sexuality in determining land rights. My decision was challenged by the findings of the research which suggested that in some Pacific families, sexuality did matter.

9.2 Adequacy of the Va-Critical Feminist Combination

Would the critical feminist lens have been enough for this research without the *Va*? No.

The application of *va* prompted me to learn about and take into account, relational protocols in Tongan and Samoan cultures. I referred in the ethics section (Chapter IV section 6) to sensitivities about discussing sexual matters in gender-mixed forums, the sister-brother relationship. Failure to engage accordingly may have caused offence to participants and key informants which would have absolutely affected the study. I was able to do this easily for the Samoa interviews because I was Samoan. While in Tonga, I did my best to prepare for the *va* with participants in other ways as described in Chapter IV section 3.2.

10.0 Summary

This final chapter has presented the study's limitations from literature, research scope, personal knowledge and skills, resources, methodology, and methods. The key knowledge gaps that resulted were learning in themselves. Some of the gaps have provided pointers for future research, such as legalising cultural pathways in Tonga and Samoa to ensure and secure access to land for women, *fa'afafine*, and *fakaleitī*. Another topic could be an analysis of the way land court processes serve the interests of women, *fa'afafine*, and *fakaleitī* as complainants and defendants, using sexual identity as a point of enquiry.

The Va-Critical feminist combination triggered me to listen out for the voices at different layers of society from women, *fa'afafine*, and *fakaleitī* and not just the 'official' voices. I used the same approach when looking at the interpretation of customs. I listened for the layers of power, inequality, thinking about who was present, who was represented, who were not, and why.

There is a Samoan saying '*O le la'au e tele ona a'a – a tree has many roots*', which refers to a person and all the relationships connected to her/him. Roots are multiple and go in different directions, symbolising genealogies, histories, endeavours, influences. Some roots are more visible (physical) than others less so (spiritual). Some are stronger than others. Each researcher or participant is a tree with roots that a research will benefit from. The care and protection of roots is, therefore, crucial because they anchor the tree to its ultimate life source – the earth, the land.

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References

- Ackerly, B. & True, J. (2010). Back to the future: Feminist theory, activism, and doing feminist research in an age of globalization. *Women's Studies International Forum*, 33(5), 464–472. DOI: 10.1016/j.wsif.2010.06.004
- Addo, P. (2012). Teaching culture with a modern valuable: lessons about money for and from Tongan youth in New Zealand. *Pacific Studies*, 35(112). 11-43.
- Aggarwal, A. (2006). *Proceedings of the Pacific regional consultation on “women’s rights to adequate housing and land”*. Retrieved from http://www2.ohchr.org/english/issues/housing/docs/fiji_report.pdf
- Amnesty International Aotearoa New Zealand. (2012). *Briefing on sexual and gender based violence in the Pacific*. Auckland. New Zealand: Amnesty International Aotearoa New Zealand.
- Anae, M. (2010a). *Research for better Pacific schooling in New Zealand: Teu le va – a Samoan perspective*. Retrieved on 18/5/2014 from <http://www.review.mai.ac.nz/index.php/MR/article/view/298/395>
- Anae, M. (2010b). Teu le va: Towards a native anthropology. University of Auckland. *Pacific Studies*, 33(2/3), 222-240. file:///C:/Users/OEM/Downloads/30784-34208-1-PB.pdf
- Anderson, T. & Lee, G. (Eds). (2010). *In defence of Melanesian customary land*. Retrieved from <http://www.aidwatch.org.au/wp-content/uploads/2014/06/In-Defence-of-Melanesian-Customary-Land.pdf>
- Archer, L. (2004). Re/theorizing “difference” in feminist research. *Women's Studies International Forum*, 27(5 & 6), 459–473. DOI:10.1016/j.wsif.2004.09.003
- Asia Pacific Forum on Women, Law and Development. (2012, August). The Paga Hill story: Fighting for customary land rights in Papua New Guinea. 5(1), 17-18. Retrieved from <http://apwld.org/wp-content/uploads/2013/09/Forum-News-Vol-25-No1-August-2012.pdf>
- Asian Development Bank, (2016). *Chair’s summary of the Board Compliance Review Committee and Compliance Review Panel’s report on eligibility of the compliance review request for TA 4712, 7387, and 8481: Promoting Economic Use of Customary Land and Grant 0392: Samoa Agribusiness Support Project (Samoa)*. Retrieved from [http://compliance.adb.org/dir0035p.nsf/attachments/SAM-EligibilityReport-18Aug_Web.pdf/\\$FILE/SAM-EligibilityReport-18Aug_Web.pdf](http://compliance.adb.org/dir0035p.nsf/attachments/SAM-EligibilityReport-18Aug_Web.pdf/$FILE/SAM-EligibilityReport-18Aug_Web.pdf)
- Asian Development Bank. (23 March 2015). *Summary review and assessment report of the special project facilitator on TA 7387 (41173-012)-SAM: Promoting economic use of customary Land, Phase II TA 8481 (46512-001)-SAM: Promoting economic use of customary land, phase III grant 0392 (46436-002)-SAM: Samoa agriBusiness support project*. Retrieved from

<http://www.adb.org/sites/default/files/page/42458/sam-final-rar-summary-23-march-2015.pdf>

- Asian Development Bank. (2013). *Tonga: Economic update and outlook 2012*. Retrieved from <https://www.adb.org/sites/default/files/publication/30264/tonga-economic-update-outlook-2012.pdf>
- Asian Development Bank. (2012). *The state of Pacific towns and cities. Urbanisation in ADB's Pacific developing member countries*. Retrieved from <https://www.adb.org/sites/default/files/publication/29765/state-pacific-towns-cities.pdf>
- Asian Development Bank. (2009). *Independent State of Samoa: Promoting economic use of customary land, Phase II*. Retrieved from <https://www.adb.org/sites/default/files/project-document/64634/41173-sam-tar.pdf>
- Asian Development Bank. (n.d). *Development effectiveness brief – Samoa - Building a more resilient economy*. Retrieved from <https://www.adb.org/sites/default/files/publication/28286/decb-sam.pdf>
- Australian Agency for International Development. (2008). *Making land work: Reconciling customary land and development in the Pacific. Volume One*. Retrieved from http://www2.kobe-u.ac.jp/~alexroni/TR2014%20readings/2014_7/MakingLandWork_VolumeOne_Bookmarkmarked.pdf
- Australian Agency for International Development. (2008). *Distribution of land by system of tenure in the Pacific region, 2008*. (Table). Retrieved from Making land work: Reconciling customary land and development in the Pacific by AusAID.
- Autagavaia, T.A. (2009, September 26). *Agavaa e umia sua fa matai pe a 25 tausaga*. Retrieved from <http://www.samoatimes.co.nz/agavaa-e-umia-sua-fa-matai-pe-a-25-tausaga/>
- Banner, S. (2007). *Possessing the Pacific*. Cambridge, Massachusetts, London, England: Harvard University Press.
- Bertram, G. (2013). Pacific Islands economies. In Rapaport, M. (Ed.) *The Pacific Islands: Environment and society*. Honolulu. US: University of Hawaii Press.
- Besnier, N. (1997). Sluts and superwomen: the politics of gender liminality in urban Tonga. *Ethnos* 62(1-2), 5-31. Retrieved from http://pacific.socsci.uva.nl/besnier/pub/Sluts_Superwomen.pdf
- Bishop, J.D. (1997). Locke's theory of original appropriation and the right of settlement in Iroquois territory. *Canadian Journal of Philosophy* 27(3). (311-337). Retrieved 10/10/2016 from <http://www.jstor.org/stable/40231987>
- Blake, J. (2015). Human rights dimension of gender and intangible cultural heritage. *Human Rights Defender*, 24(2). 5-7. Retrieved from <http://heinonline.org>
- Bleakely, C. (2002). Women of the new millennium: Tongan women determine their

- development direction. *The Contemporary Pacific*, 14(1). Spring 2002. 133–184. Retrieved from <https://scholarspace.manoa.hawaii.edu>
- Bolabola, C. (1986). Fiji: Customary constraints and legal progress. In University of the South Pacific. *Land rights of Pacific women*. (pp.1-66). Suva. Fiji: USP
- Bhopal, K. (2010). Gender, identity and experience: Researching marginalised groups. *Women's Studies International Forum* 33(3), (188–195). doi:10.1016/j.wsif.2009.12.005
- Brook, A. & Hesse-Biber, S. N. (2007). An invitation to feminist research. In Hesse-Biber, S.N. & Leavy, P.L. *Feminist research practice*. (pp.1-24). Thousand Oaks. London. New Delhi: Sage Publications.
- Brown Pulu, T. (2014). Who owns Tonga? Dialogues with Sefita Hao'uli, Kalafi Moala, and Melino Maka. *Te Kaharoa*, Vol. 7, 113-162. Retrieved from <http://www.tekaharoa.com>
- Browne, K. & Nash, C.T. (Eds). (2010). *Queer methods and methodologies: Intersecting Queer theories and social science research*. Burlington. CT: Ashgate
- Bruce, J.W., Giovanelli, R., Rolfes Jr, L., Bledsoe, D., & Mitchell, R. (2006). *Land law reform. Achieving development policy objectives*. Washington. DC: The World Bank.
- Buckle, S. (2001). Tully, Locke and America. *British Journal for the History of Philosophy*, 9:2, 245-281, DOI: 10.1080/09608780110045281
- Callas, S. (2010). *Women's land rights and women's empowerment: one and the same?* Retrieved from http://graduateinstitute.ch/files/live/sites/iheid/files/sites/genre/shared/Genre_docs/Actes_2010/Actes_2010_Pallas.pdf
- Callis, A. (2012). *Playing with Butler and Foucault: Bisexuality and Queer Theory*. West Lafayette, IN, US: Purdue University. DOI: 10.1080/15299710903316513
- Chilisa, B. (2012). *Indigenous research methodologies*. Los Angeles, London, New Delhi, Singapore, Washington: Sage Publications.
- Connell, J. (2012). Population resettlement in the Pacific: lessons from a hazardous history? *Australian Geographer*, 43(2). 127-142. DOI: 10.1080/00049182.2012.682292
- Connell, J., & Rapaport, M. (2013). Mobility to migration. In Rapaport, M. *The Pacific Islands: environment and society*. Revised Edition. (pp.275-286). Honolulu. US: University of Hawaii.
- Corrin, J. (2008). Resolving land disputes in Samoa. In, AusAID. *Making land work. Case studies on customary land and development in the Pacific. Volume Two*. (pp. 199-222). Canberra. Australia: Australian Agency for International Development.
- Corrin Care, J. (1999). *Conflict between customary law and human rights in the South*

- Pacific*. First presented at the 12th Commonwealth Law Conference in Kuala Lumpur in September 1999. Retrieved from http://www.vanuatu.usp.ac.fj/library/online/Pacific_law/Corrin.htm
- Crocombe, R. (2008). *The South Pacific*. (7th ed). Suva, Fiji: University of the South Pacific.
- Crocombe, R. (1999). Tenure. In Rapaport, M. (Ed.). *The Pacific Islands: Environment & society*. (pp.208-2200). Honolulu, US: The Best Press Inc.
- Curtin, T. & Lea, D. (2006). Land titling issues: Land titling and socioeconomic development in the South Pacific. *Pacific Economic Bulletin Volume 21 Number 1*. Retrieved from http://timcurtin.com/images/land_titling.pdf
- Daley, L. (2010). Hijacking development futures: “Land development” and reform in Vanuatu. In, Anderson, T. & Lee, G. (Eds). *In defence of Melanesian customary land*. (pp. 34-39). Sydney, Australia: AIDWATCH.
- Darroch, F.E. & Giles, A.R. (2015). A postcolonial feminist discourse analysis of urban Aboriginal women’s description of pregnancy-related weight gain and physical activity. *Women and Birth* 454. DOI: 10.1016/j.wombi.2015.08.003
- Denzin, N.K. (2001). *The reflexive interview and a performative social science: Qualitative Research, 1(1)*. (23-46). London, Thousand Oaks, and New Delhi: Sage Publications.
- Department of Statistics. (2013). *Tonga 2011 Census of population and housing statistics. Volume 1. Basic table and administrative report*. Retrieved from <http://tonga.prism.spc.int>
- Doss, C., Kovarik, C., Peterman, A., Quisumbing, A.R., & van den Bold, M. (2013). *Gender inequalities in ownership and control of land in Africa, myths versus reality*. IFPRI Discussion Paper 01308 December 2013. Retrieved from <file:///C:/Users/OEM/Downloads/128168.pdf>
- Du Plessis, R. & Fairbairn-Dunlop, P. (2009). *The ethics of knowledge production – Pacific challenges*. Retrieved from http://www.ipp.aut.ac.nz/__data/assets/pdf_file/0007/169774/ISSJ.pdf
- Erkshire, J.E. (1853). *Journal of a cruise among the islands of the western Pacific*. London: John Murray, pp.133-134. Retrieved from <https://archive.org/details/journalacruisea00erskgoog>
- Fairbairn-Dunlop, P. & Lievore, D. (2007). *Pacific prevention of domestic violence programme. Samoa report*. Retrived from <http://www.ppdvp.org.nz/wp-content/media/2011/03/PPDVP-Summary-Report-25-February-2011.pdf>
- Fairbairn-Dunlop, P. (1996). *Tamaitai Samoa*. Suva, Fiji: University of the South Pacific.
- Fana’afi, A. (1986). Western Samoa. The sacred covenant. In, Bolabola, C., Kenneth, D.,

Silas, H., Moengangongo, M., Fana'afi, A., & James, M. *Land rights of Pacific women*. (p. 103-110). Suva, Fiji: University of the South Pacific.

Fana'afi Le Tagaloa, A. (1997). *O le faasinomaga*. Alafua. Samoa: Lamepa Press.

Farran, S. (2011). Navigating between traditional land tenure and introduced land laws in Pacific Island States. *The Journal of Legal Pluralism and Unofficial Law*. 64. Retrieved from <http://commission-on-legal-pluralism.com/volumes/64/farran-art.pdf>

Farran, S. (2010). Law, land, development and narrative: A case-study from the South Pacific. *International Journal of Law in Context*. 6(1). 1-21. doi: 10.1017/S1744552309990279

Farran, S. (2009). Land as a fundamental right: A cautionary tale. *Victoria University of Wellington Law Review*, 40(1). 387-402. Retrieved from <http://www.heinonline.org>

Farran, S. (2006). Is legal pluralism an obstacle to human rights? Considerations from the South Pacific. *The Journal of Legal Pluralism and Unofficial Law*, 38(52). 77-105. <http://dx.doi.org/10.1080/07329113.2006.10756592>

Farran, S. (2005). Land rights and gender equality in the Pacific region. *Australian Property Law Journal*. p.131-140: Retrieved from http://www.vanuatu.usp.ac.fj/sol_adobe_documents/usp%20only/Pacific%20law/Farran7.pdf

Farran, S. (2004). *Transsexuals, fa'afāfine, fakaleitī and marriage law in the Pacific: considerations for the future*. Retrieved from http://www.jps.auckland.ac.nz/docs/Volume113/jps_v113_no2_2004/1%20Transsexuals.pdf

Farran, S. (2003). *Alienation of customary land*. Retrieved 28/10/2015 from http://www.vanuatu.usp.ac.fj/courses/LA301_Law_2/LA301_topic6.html

Farran, S. & Su'a, A. (2005). Discriminating on the grounds of status: Criminal law and fa'afafine and fakaleitī in the South Pacific. *Journal of South Pacific Law*. Volume 9. Retrieved from <http://www.pacii.org/journals/fJSPL/vol09no1/5.shtml>

Farran S, & Paterson, D. (2004). *South Pacific property law*. London, United Kingdom. Portland, US. Australia: Cavendish Publishing

Farrelly, T. & Nabobo-Baba, U. (2014). 'Talanoa' as empathic apprenticeship. http://www.devnet.org.nz/sites/default/files/Farrelly,%20Trisia%20&%20Nabobo-Baba,%20Unaisi%20Talanoa%20as%20Empathic%20Research%20%5Bpaper%20%5D_0.pdf.

Faugier, J. & Sargeant, M. (1997). Sampling hard to reach populations. *Journal of Advanced Nursing*, 26(4), 790–797. DOI: 10.1046/j.1365-2648.1997.00371.x

Feeney, S. (2012). *The impact of the global economic crisis on the Pacific region*. Melbourne, Australia: Oxfam Australia

- Fergusson, R.A. (2004). *Aberrations in black: Toward a Queer of Color Critique*. Minneapolis, London: University of Minnesota Press.
- Field, M. (2014, April 22). *Church denies land sale*. Retrieved 26/1/2016 from <http://www.stuff.co.nz/world/asia/9961224/Church-denies-land-sale>
- Fiji Islands Government. (2010). Native Land Trust (Leases and Licences) (Amendment) Regulations 2010. *Fiji Islands Gazette Supplement*. p.447. Retrived from <http://faolex.fao.org/docs/pdf/fij110390.pdf>
- Fischer, S. R. (2002). *A history of the Pacific Islands*. London. England. New York. US: Palgrave McMillan.
- Fitzpatrick, D. (2006). Evolution and chaos in property rights systems: The third world tragedy of contested access. *The Yale Law Journal*. 115(5). 996 – 1048. DOI: 10.2307/20455644
- Food and Agriculture Organization of the United Nations. (2016). *Gender and land rights database. Distribution of land agricultural holders by ses – female*. Retrieved 10/10/2016 from <http://www.fao.org>
- Food and Agriculture Organization of the United Nations. (2011). *Migration, remittance and development. Tonga*. Retrieved from <http://www.fao.org/3/a-an477e.pdf>
- Food and Agriculture Organization of the United Nations. (2010). *Gender and land rights. economic and social perspectives. Policy Brief 8*. Retrieved from <http://www.fao.org/docrep/012/al059e/al059e00.pdf>
- Food and Agriculture Organisation. (2010). *Gender and Land Rights*. Retrieved from <http://www.fao.org/docrep/012/al059e/al059e00.pdf>
- Forster, C. (2011). Ending domestic violence in Pacific Island countries: The critical role of law. *Asian-Pacific Law & Policy Journal*, 12(2). 123 – 144. Retrieved from http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_12-2_Forster_Final.pdf
- Fotu, J. (2012). Land, the state and identity: A Tongan perspective. *Journal of South Pacific Law 2012 Issue No 1*. Retrieved from <http://www.lawfoundation.org.nz/wp-content/uploads/2014/03/Pacific-Law-Conference-2012-Proceedings-Vol-Issue-1-JSPL-Uni-of-South-Pacific.pdf>
- Gegeo, D.W. (2001). Cultural rupture and indigeneity: The Challenge of (re) visioning “place” in the Pacific. *In The Contemporary Pacific*, 13(2), 491–507. Retrieved from <https://www.uhawaiiipress.com/rnd-pdf/cp132p491.pdf>
- Gegeo, D. & Watson-Gegeo, K. (2001). “How we know”: Kwara’ae rural villagers doing indigenous epistemology. *The Contemporary Pacific*, 3(1). 55-88. Fall 2001. Retrieved from <https://www.uhawaiiipress.com/rnd-pdf/cp132p491.pdf>
- Gegeo, D.W. & Watson-Gegeo, K. (2002). Whose knowledge? Epistemological

- collisions in Solomon Islands community development. *The Contemporary Pacific*, 14(2). 377-409. Retrieved from <http://hdl.handle.net/10125/13653>
- Gibbs, G. (2007). *Analyzing qualitative data*. London. UK: Sage Publications.
- Government of Samoa. *Alienation of Customary Land Act 1965*. Apia. Samoa
- Government of Samoa. *Citizenship Act 2004*. Apia. Samoa
- Government of Samoa. *Citizen Amendment Bill 2016*. Retrieved from <http://www.palemene.ws/new/wp-content/uploads/Bills/2016/02.June/21/Citizenship-Amendment-Bill-2016-Eng.pdf>
- Government of Samoa. *Constitution Amendment Act 2013*. Retrieved from http://www.palemene.ws/new/wp-content/uploads/01.Acts/Acts%202013/Constitution_Amendment_Act_2013_-_Eng.pdf
- Government of Samoa. *Constitution of the Independent State of Samoa 1960 (2008 Edition)*. Retrieved from http://www.wipo.int/wipolex/en/text.jsp?file_id=198468
- Government of Samoa. *Crimes Ordinance 1961*. Retrieved from http://www.vertic.org/media/National%20Legislation/Samoa/WS_Crimes_Ordinance_2009.pdf
- Government of Samoa. *Customary Land Advisory Committee Act 2013*. (Official version as at 31 December 2014). Retrieved from <http://faolex.fao.org/docs/pdf/sam142142.pdf>
- Government of Samoa. *Electoral Act 1963*. Apia. Samoa
- Government of Samoa. *Land and Titles Act 1981*. Apia. Samoa
- Government of Samoa. *Wills Act 1975*. Apia. Samoa
- Government of Tonga. (2015). *Tonga Announces the Ratification of CEDAW at CSW 59th Sessions*. Retrieved from <http://www.mic.gov.to/news-today/press-releases/5260-tonga-announces-the-ratification-of-cedaw-at-csw-59th-sessions?format=pdf>
- Government of Tonga. (2005). *Tongan 1st national status report. Millennium Development Goals today and tomorrow*. Retrieved from http://planipolis.iiep.unesco.org/upload/Tonga/Tonga_MDG_Report_2005.pdf
- Grabe, S., Grose, R.G., & Dutt, A. (2015). Women's land ownership and relationship power: A mixed methods approach to understanding structural inequities and violence against women. *Psychology of Women Quarterly*, 39(1). 7-19. DOI: 10.1177/0361684314533485
- Griffen, V. (2006, October). *Gender relations in Pacific cultures and their impact on the growth and development of children*. Paper prepared for a seminar on "Children's Rights and Culture in the Pacific". UNICEF.

- Griffen, V. (1989). *Women, development and empowerment: A Pacific feminist perspective*. Asian and Pacific Development Centre (Organisation). Retrieved 6/1/2016 from <http://nzetc.victoria.ac.nz/tm/scholarly/tei-GriWom2-c1-2.html>
- Guttenbeil-Likiliki, O. (n.d). *Advancing women's representation in Tonga*. Retrieved from http://www.forumsec.org/resources/uploads/attachments/documents/Report_4_-_Advancing_Women_s_Representation_in_Tonga_143_-_208.pdf
- Halapua, S. (n.d)). *Talanoa process: The case of Fiji*. Retrieved 12/1/2016 from <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan022610.pdf>.
- Halapua, S. (2013, February). *Talanoa in building democracy and governance*. A paper prepared for the Conference of "Future Leaders of the Pacific". Pago Pago, American Samoa. Retrieved 12/1/2016 from http://talanoa.org/Home_files/Talanoa%20in%20Building%20Democracy%20and%20Governance.pdf.
- Harter Kennedy, K. (2012). Why land tenure reform is the key to political stability in Tonga. *Pacific Rim Law & Policy Journal Association*. 21(2). 327-362. Retrieved from <https://digital.law.washington.edu>
- Hawkesworthy, M. (2006). *Feminist enquiry. From political conviction to methodological innovation*. New Brunswick, New Jersey, London: Rutgers University Press.
- Hay, R. (1823). *Two treatises of government in the former, the false principles and foundation of Sir Robert Filmer, and his followers, are detected and overthrown: The latter, is an essay concerning the original, extent, and end, of civil government*. John Locke. Retrieved from <http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/locke/government.pdf>
- Hedditch, S., & Manuel, C. (2010). *Gender and investment climate reform Assessment Tonga*. Retrieved from <http://www.ifc.org>
- Helu Thaman, K. (2003). Decolonising Pacific studies: Indigenous perspectives on knowledge and wisdom in higher education. *The Contemporary Pacific*, 14(1). 1-17. DOI: 10.1353/cp.2003.0032.
- Hesse-Biber, S,N. & Leavy, P,L. (2007). *Feminist research practice*. Thousand Oaks, London, New Delhi: Sage Publications.
- Howard, D. & Cramer, D. (2007). *Introduction to research methods in psychology*. (2nd ed). Pearson Higher Education. Online. Retrieved from <http://wps.pearsoned.co.uk>
- Human Dignity Trust. (2015i). *Criminalisation of homosexuality. Samoa*. Retrieved from http://www.humandignitytrust.org/uploaded/Map/Country_Reports/Samoa.pdf
- Human Dignity Trust. (2015ii). *Criminalisation of homosexuality. Tonga*. Retrieved

- from
http://www.humandignitytrust.org/uploaded/Map/Country_Reports/Tonga.pdf
- Human Rights Commission. (2011). *To be who I am*. Auckland, New Zealand: Human Rights Commission.
- Human Rights Watch. (2013). *World report 2013*. Retrieved from
https://www.hrw.org/sites/default/files/wr2013_web.pdf
- International Fund for Agricultural Development (2013). *Gender and rural development*. Retrieved from http://www.ifad.org/gender/pub/gender_apr.pdf
- International Labour Office. (2011). *Social protection floor: For a fair and inclusive globalisation*. “Women in national parliaments, as at 1 August 2015”. Retrieved from
<http://www.ipu.org/wmn-e/world.htm>
- International Parliamentarians for West Papua. (2016). *Human rights in West Papua*. Retrieved from <https://www.ipwp.org/human-rights-in-west-papua/>
- International Parliamentary Union. (2016). *Women in national parliaments*. Retrieved 30/7/2016 from <http://www.ipu.org/wmn-e/world.htm>
- Issac, W.W. (n/d). *Māori land today*. Retrieved from
<http://www.justice.govt.nz/courts/maori-land-court/judges-corner-1/judges-corner-previous-articles/documents/judges-corner/Maori%20Land%20Today.pdf>
- Jacobs, S. (2014). Gender, land and sexuality: Exploring connections. *International Journal of Politics, Culture, and Society*. 27 (2). 173-190. DOI:10.1007/s10767-013-9156-5
- Jalal, I. (2010). *Gender equity in justice systems of the Pacific Island countries and territories*. Retrieved from http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/human_development/aphdr-2010-tbp/RBAP-HDR-APHDR-TBP-2010-14.pdf
- James, M. (1986). Cook Islands: Approaching equality. In University of South Pacific. *Land rights of Pacific women*. (pp. 110-124). Suva, Fiji: USP.
- James, K. (1995). Right and privilege in Tongan land tenure. In Gerard Ward, R and Kingdon, E, (Eds.). *Land, custom, and practice in the South Pacific*. (pp.157 – 197). Cambridge: Cambridge University Press.
- James, K.E. (1994). Effeminate males and changes in the construction of gender in Tonga. *Pacific Studies* 17(2). 39-69. Retrieved from [file:///C:/Users/OEM/Downloads/9885-9957-1-PB.txt%20\(2\).pdf](file:///C:/Users/OEM/Downloads/9885-9957-1-PB.txt%20(2).pdf)
- James, K. (1993). Cutting the ground from under them? Commercialization, cultivation, and conservation in Tonga. *The Contemporary Pacific* 5(2). 215-242. Retrieved from [file:///C:/Users/OEM/Downloads/v5n2-215-242%20\(1\).pdf](file:///C:/Users/OEM/Downloads/v5n2-215-242%20(1).pdf)
- Japan International Cooperation Agency. (2010). *Country gender profile: The Kingdom of*

- Tonga. Retrieved from http://www.jica.go.jp/english/our_work/thematic_issues/gender/background/pdf/e10ton.pdf
- Jones, P. (2012). The challenges of implementing Millenium Development Goals target 7D in Pacific Island towns and cities. *Asia-Pacific Development Journal*, 19(1). 139-162. Retrieved from <http://hdl.handle.net/10765/87469>
- Journeyman.tv. (2012, May 8). *The real piggy bank*. Retrieved from <http://www.youtube.com/watch?v=--Ogr1J7hLs>.
- Kabeer, N. (2008). Paid work, women's empowerment and gender justice: Critical pathways of social Change. *Pathways Working Paper 3*. Retrieved from <http://www.lse.ac.uk/genderInstitute/about/resourcesNailaKabeer/kabeerPaidWorkWomensEmpowermentAndGenderJustice.pdf>
- Kenneth, D., and Silas, H. (1986). Vanuatu: Traditional diversity and modern uniformity. In University of the South Pacific. *Land rights of Pacific women*. (pp. 68-85). Suva. Fiji: USP
- Kingdom of Tonga. *Act of Constitution of Tonga (1988 Revised Edition)*. Attorney General's Office. Crownlaw.gov.to. Tongan Government on-line legislation. Retrieved from http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1988/1988-0002/ActofConstitutionofTonga_1.pdf
- Kingdom of Tonga. *Family Protection Act 2013*. Attorney General's Office. Crownlaw.gov.to. Tongan Government on-line legislation. Retrieved from http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/2013/2013-0018/FamilyProtectionAct2013_1.pdf
- Kingdom of Tonga. *Land Act (1988 Revised Edition)*. Attorney General's Office. Crownlaw.gov.to. Tongan Government on-line legislation. Retrieved from http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1903/1903-0020/LandAct_1.pdf
- Kingdom of Tonga. *Legitimacy Act (1988 Revised Edition)*. Attorney General's Office. Crownlaw.gov.to. Tongan Government on-line legislation. Retrieved from http://crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1930/1930-0018/LegitimacyAct_1.pdf
- Kingdom of Tonga. *Nationality (Amendment) Act 2007*. Attorney General's Office. Crownlaw.gov.to. Tongan Government on-line legislation. Retrieved from <http://crownlaw.gov.to/cms/images/LEGISLATION/AMENDING/2007/2007-0003/NationalityAmendmentAct2007.pdf>
- Koian, R. (n.d). *Women in patrilineal and matrilineal societies in Melanesia*. Retrieved from <http://milda.aidwatch.org.au/sites/default/files/Rosa%20Koian.%20Women%20in%20Patrilineal%20and%20matrilineal%20societies%20in%20Melanesia.pdf>
- Larmour, P. (2002). Policy transfer and reversal: Customary land registration from Africa to Melanesia. *Public Administration and Development*. 22. 151-161. DOI: 10.1002/pad.210.

- Latai, L. (2015). Changing covenants in Samoa? From brothers and sisters to husbands and wives? *Oceania*, Vol. 85, Issue 1. P: 92–104.
DOI:10.1002/ocea.5076
- Leavy, P.L. (2007). The practice of feminist oral history and focus groups interviews. In, Hesse-Biber, S.N. & Leavy, P.L. *Feminist research practice*. (pp. 149-186). Thousand Oaks, London, New Delhi; Sage Publications.
- Le Va. (2011). *Real skills plus Seitapu engaging Pasifika training programme 2011*. Retrieved from <http://www.tepou.co.nz/uploads/files/resource-assets/Lets-Get-Real-Real-Skills-Plus-Seitapu-Working-with-Pacific-Peoples.pdf>
- Levi, A., & Boydell, S. (2003, September). *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. Retrieved from <https://dlc.dlib.indiana.edu>
- Lin, H.H. (2011). *Determinants of remittances: Evidence from Tonga*. Retrieved from <https://www.imf.org/external/pubs/ft/wp/2011/wp1118.pdf>
- Lua, M., Kapa-Vivian, R., & Elisara, M. (n.d). *Pacific people and western systems: Nurturing the space between us*. Retrieved from <http://www.cmnz.co.nz/assets/sm/7499/61/NZAOTpresentationwithoutvideos.pdf>
- Ma`a Fafine mo e Famili. (2012). *National study on domestic violence against women in Tonga 2009*. Retrieved from <http://www.pacificwomen.org/wp-content/uploads/National-Study-on-Domestic-Violence-on-Women-in-Tonga-2009.pdf>
- Marcus, S. (2005). Queer Theory for everyone: A review essay. *Signs*, 31(1). 191-218. Retrieved from <http://www.jstor.org/stable/10.1086/432743>.
- Marcus, G.G. (1978). Land tenure and elite formation in the neotraditional monarchies of Tonga and Buganda. *American Ethnologist*, 5(3), 509-534. Political Economy, <http://www.jstor.org/stable/643755>
- Mataeliga, P.S. (2015, August 25). “More changes to Electoral Act coming up”. Retrieved from <http://www.newslinesamoa.com/?p=2218>
- Matangi Tonga. (2015, May 8). *Ngaahi fehu'i ne 'ohake / fakatupu mei he tali 'a e kau taki lotu ki he CEDAW*. Retrieved from <http://matangitonga.to/2015/05/08/ngaahi-fehui-ne-ohake-fakatupu-mei-he-tali-e-kau-taki-lotu-ki-he-cedaw>
- Matangi Tonga. (2015, May 29). *Results for CEDAW*. Retrieved 8/2/2016 from <http://matangitonga.to/tag/cedaw?page=1>
- McAloon, J. (2012). *Land ownership - Māori and land ownership*. Te Ara - the Encyclopedia of New Zealand. Retrieved from <http://www.TeAra.govt.nz>
- McCoy, M. & Havea, D. (2005). *Making sense of Tonga: a visitor's guide to the Kingdom's rich, Polynesian culture*. Nuku'alofa. Tonga: Training Group of the Pacific

- McMurdo, M. & Gardner, J. (2011). *Traditional Pacific land rights and international law: Tensions and evolution*. Retrieved from http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_12.1_mcmurdogardner.pdf
- McPherson, C. (1999). Changing contours of kingship: The impacts of social and economic development on kinship organization in the South Pacific. *Pacific Studies*, 22(2). 71-95. ISSN: 0275-3596
- Meleisea, M. (1987). *The making of modern Samoa*. Suva, Fiji: USP
- Ministry of Justice. (2016). *Maori land update. Ngā Ahuatanga o te whenua*. Retrieved from <http://www.maorilandcourt.govt.nz/assets/Documents/Publications/MLC-2016-06-Maori-Land-Update.pdf>
- Ministry of Lands & Natural Resources. (2009). *Land sector framework 2009-2018*. Port Villa. Vanuatu: Vanuatu Ministry of Lands & Natural Resources.
- Ministry of Natural Resources and Environment. (2006). *State of the environment report 2006*. Apia. Samoa: Government of Samoa.
- Ministry of Women, Community and Social Development. (2010). *National policy for women of Samoa 2010-2015*. Apia. Samoa: Government of Samoa.
- Ministry of Women Community and Social Development. (2014). *Strategic plan 2013 – 2017*. Retrieved from <http://www.mwcsd.gov.ws/images/stories/PUBLICATIONS%20WEBSITE/2014/Strategic%20Plan%202013%20-%202017.pdf>
- Mishra, K., & Sam, A.G. (2016). Does women's land ownership promote their empowerment? Empirical Evidence from Nepal. *World Development Vol. 78*, 360–371. Retrieved from <http://dx.doi.org/10.1016/j.worlddev.2015.10.003>
- Moala, K. (21 April, 2015). *How CEDAW impacts some Pacific cultures*. Retrieved from <http://pacificpolicy.org/2015/04/how-cedaw-impacts-some-pacific-cultures/>
- Moala, K. (17 March, 2014). *Inappropriate land-grabs in Tonga*. Retrieved from <http://pacificpolicy.org>
- Moengangongo, M. (1986). Tonga: Legal constraints and social potentials. In, Bolabola, C., Kenneth, D., Silas, H., Moengangongo, M., Fana'afi, A., and James, M. *Land rights of Pacific women*. (pp. 87-102). Suva, Fiji: USP
- Mohatta, N.V., Thompsona, A.B., Thaib, N.D., & Tebesa, J.K. (2014). Historical trauma as public narrative: A conceptual review of how history impacts present-day health. *Social Science & Medicine. Volume 106*, 128–136. DOI: 10.1016/j.socscimed.2014.01.043
- Monson, R. (2011). *Negotiating land tenure: Women, men and the transformation of land tenure in Solomon Islands*. Traditional justice: practitioners' perspectives' working paper series. Rome, Italy: International Development Law Organization

- Monson, R. (2010). Women, state law and land in peri-urban settlements on Guadalcanal, Solomon Islands. *Justice for the Poor*, 4(3). Retrieved from <https://openknowledge.worldbank.org>
- Montoya, R. (2003). House, street, collective: revolutionary geographies and gender transformation in Nicaragua, 1979–99. *Latin American Research Review*, 38(2), 61–93. Retrieved from <http://www.jstor.org>
- Munro, P. (2015, July 11). *The friendly islands are no friend to women*. Retrieved 8/2/2015 from <http://www.smh.com.au/nsw/the-friendly-islands-are-no-friend-to-women-20150709-gi8ora.html>
- Nabobo-Baba, (2004). Pacific and indigenous research: Beyond bondage and patronage. In Baba, T. L., Mahina, O., Williams, N., & Nabobo-Baba, U. *Researching Pacific and indigenous peoples: Issues and perspectives*. (pp. 95–104). Auckland. New Zealand: Centre for Pacific Studies, The University of Auckland.
- Nagarajan, V. (2009). Obstacles to growth: gender, discrimination and development in Tonga. *Pacific Economic Bulletin Volume 24*(3). 132-139. The Australian National University. Retrieved from <http://eds.b.ebscohost.com>
- Namaste, K. (1994). The politics of inside/out: Queer theory, poststructuralism, and a Sociological Approach to Sexuality. *Sociological Theory*, 12(2), 220-231. American Sociological Association. Retrieved from <http://links.jstor.org>
- Naupo, A. & Simo, J. (2008). Matrilineal land tenure in Vanuatu. In, Stege, K.E., Matala, R. & Naupa, A., Simo, J., & Huffer, E. (Eds). *Land and women the matrilineal factor*. (pp. 73-123). Suva, Fiji: PIFS
- Naidu, V (2009). *Draft report: Fiji Islands country profile on excluded groups*. Suva, Fiji: UNESCAP.
- Nelson, G. (2008). *Review of the gender dimensions of land-based conflict in the Pacific*. Retrieved from http://www.forumsec.org/resources/uploads/attachments/documents/LMCM%202_6%20COMPLETE.pdf
- New Zealand Human Rights Commission. (2011). *To be who I am*. Auckland, N.Z; Human Rights Commission.
- Numeitolo, O. (1993). Tongan health: A personal view. In G.McCall and J.Connell (Eds). *A world perspective on Pacific Islander migration: Australia, New Zealand and the USA*. New South Wales. Australia: Centre for South Pacific Studies, the University of New South Wales.
- Oginni, A., Ahonsi, B., & Ukwuije, F. (2013). Are female-headed households typically poorer than male-headed households in Nigeria? *The Journal of Socio-Economics* 45. P. 132–137. Retrieved from <http://dx.doi.org.ezproxy.aut.ac.nz/10.1016/j.socec.2013.04.010>
- O'Meara, J.T. (1995). From corporate to individual land tenure in Western Samoa. In Gerard

Ward, R., Kingdon, E. (Eds.). *Land, custom and practice in the South Pacific*. Pp. 109-156. New York. US: Cambridge University Press.

One News. (2015, May 28). *Tension in Tonga as women's rights divides kingdom*. Retrieved from <https://www.tvnz.co.nz>

Open Society Foundation. (2014). *Securing women's land and property rights*. Retrieved from <http://www.opensocietyfoundations.org>

Oxfam. (October 2012). *Oxfam briefing note. 'Our land, our lives'. Time out on the global land rush*. Retrieved from https://www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en_1.pdf

Pacific Islands Forum Secretariat. (2015). *2015 Pacific regional MDGs tracking report*. Suva, Fiji: PIFS

Pacific Islands Forum Secretariat. (2012). *Forty-third Pacific Islands forum, Rarotonga, Cook Islands, 28 – 30 August 2012. Forum Communiqué. PIFS (12)10*. Retrieved from <http://www.forumsec.org/resources/uploads/attachments/documents/2012%20Forum%20Communique,%20Rarotonga,%20Cook%20Islands%2028-30%20Aug1.pdf>

Pacific Islands Forum Secretariat. (2009, August). *Final communiqué of 40th Pacific Islands Forum, Cairns, Fortieth Pacific Islands Forum, PIFS (09)12. Cairns, Australia*. Retrieved from <http://www.daghammarskjold.se/wp-content/uploads/2014/12/40th-PIFS-Cairns-Outcome.pdf>

Pacific Island Forum Secretariat. (2007). *The Pacific Plan for strengthening regional cooperation: An integration*. Retrieved from http://www.forumsec.org/resources/uploads/attachments/documents/Pacific_Plan_Nov_2007_version.pdf

Pacific Island Forum Secretariat. (2001). Forum Economic Ministers meeting, Rarotonga, Cook Islands, 19-20 June 2001. *Session 1 Paper: Land issues in the Pacific*. Pg.1. Retrieved from <http://www.forumsec.org/resources/uploads/attachments/documents/FEMM%202001%20Land%20Issues.pdf>

Pacific Media Centre. (2015, May 2). *TONGA: Church leaders take petition opposing CEDAW to palace*. Retrieved from http://www.pmc.aut.ac.nz/pacific-media-watch/tonga-church-leaders-take-petition-opposing-cedaw-palace-9283_

Pacific Islands Legal Information Institute

- Legitimacy Act via http://www.crownlaw.gov.to/cms/images/LEGISLATION/PRINCIPAL/1930/1930-0018/LegitimacyAct_1.pdf
- *Finau v Minister of Lands* (2012) TOLC 1; LA 25 of 2010 (22 June 2012). Land Court of Tonga. Retrieved 24/4/2015 from <http://www.pacii.org/to/cases/TOLC/2012/1.html>

- *Latu v Blake* (2014) TOLC 5; LA 12 of 2013 (3 July 2014). Land Court of Tonga. Retrieved 24/4/2015 from <http://www.pacii.org/to/cases/TOLC/2014/5.html>
- *Kama v Kama* (2012) TOLC 4; LA 3 of 2012 (29 June 2012). Land Court of Tonga. Retrieved 24/4/2015 from <http://www.pacii.org/to/cases/TOLC/2012/4.html>
- *Schaumkel v 'Aholelei* (2012) TOLC 2; LA 18 of 2007 (17 August 2012). Land Court of Tonga. Retrieved 24/4/2015 from <http://www.pacii.org/to/cases/TOLC/2012/2.html>

Pacific Judicial Education Programme. (2004). *The Tonga magistrates bench book*. Retrieved from <http://www.pacii.org/to/other/tonga-magistrates-court-bench-book-2004.pdf>

Pacific Sexual Diversity Network. (2009). *HIV/AIDS. Men who have sex with men and transgender people in the Pacific: recommendations for an improved response*. Darlinghurst NSW. Australia: ACON

Pacwip. (2016). *Pacific women in politics*. Retrieved 24/7/2016 from <http://www.pacwip.org/women-mps/national-women-mps/>

Panda, P., & Agarwal, B. (2005). Marital violence, human development and women's property status in India. *World Development*, 33(5). 823–850. doi:10.1016/j.worlddev.2005.01.009

Pascht, A. (2011). Land rights in Rarotonga (Cook Islands): Traditions and transformations. *Pacific Studies*, 34(2). 195-222. Retrieved from <https://ojs.lib.byu.edu>

Paterson, D.E. (2001, July). Some thoughts about customary land. Paper given at the Australasian Law teachers' Association Conference in Port Vila. *Journal of South Pacific Law*, Volume 5. Retrieved from <https://www.usp.ac.fj/index.php?id=13180>

Paterson, D. (n.d). *Overview of land systems in English-speaking Island countries of the South Pacific*. University of the South Pacific, Emalus Campus, Port Vila, Vanuatu (not dated but likely to be 2012 +). Powerpoint presentation. Retrieved from http://www.pacii.org/law-and-culture/An%20overview%20of%20Land%20Systems%20in%20English%20speaking%20Island%20countries%20of%20the%20South%20Pacific_Power%20Point.pdf

Pilcher, J. & Wheelehan, I. (2004). *50 key concepts in gender studies*. London, New Delhi, Thousand Oaks: Sage Publications.

Politics of Papua Project. (2016). *Conflict in the West Papua region of Indonesia. Assessment report on West Papua*. Politics of Papua Project. Coventry. UK: University of Warwic.

Powles, G. (2007). Testing tradition in Tonga: approaches to constitutional change. *13 Revue Juridique Polynésienne*. p. 111-141.

Radio Australia. (2015, April 21). *Nautilus moves into top gear to start PNG seafloor mining in 2018*. Retrieved from <http://www.radioaustralia.net.au>

- Radio New Zealand International. (2013, June 5). *Tonga court to clarify payout to nobles*. Retrieved from <http://www.radionz.co.nz>
- Radio New Zealand International. (2012, June 6). *Proposed changes to Tonga land laws don't give women equal rights*. Retrieved from <http://www.rnzi.com>
- Radio New Zealand. (2015, September 2). *Tonga government steps away from CEDAW ratification*. Retrieved from <http://www.radionz.co.nz>
- Rakodi, C. (2014). Gender Equality & Development. Expanding women's access to land and housing in urban areas. *Women's Voice and Agency Research Series 2014, No.8*. Retrieved from <http://www.worldbank.org/content/dam/Worldbank/document/Gender/Rakodi%202014.%20Expanding%20women's%20access%20to%20land%20and%20housing%20in%20urban%20areas.pdf>
- Ramazanoglu, C., & Holland, J. (2002). *Feminist methodology: Challenges and choices*. London, UK: Sage Publications.
- Richards, L. (2009). *Handling qualitative data: A practical guide.*, London. UK: Sage Publications.
- Ring, T., Salkin, R.M., & La Boda, S. (Eds) Shellinger, P.E., & Salking, R.M. (1996). *International dictionary of historic places*. Volume 5 Asia and Oceania. Pg.827 – 831. Chicago. Illinois US: Fitzroy-Dearborn Publishers.
- Roguski, M., & Kingi, V. (2011). *Pacific Prevention of domestic violence programme. Update of Baseline In-Country Review Samoa Report*. Retrieved from <http://www.ppdvp.org.nz/wp-content/media/2011/03/Final-Samoa-PPVP-Baseline-Update-February-2011.pdf>
- Royal Land Commission. (2012). *Royal Land Commission Final report*. Retrieved from http://www.paclii.org/to/Royal_Land_Commission_Report/E1.pdf
- Royal Land Commission. (2011). *Proposal for change received by the Royal Land Commission from the public*. Retrieved from http://www.paclii.org/to/Royal_Land_Commission_Report/E21-1.pdf
- Salomon, T.R. (2009). A Balancing Act – Modern Equality vs. Traditional Nobility in Tonga. *Victoria University Wellington Law Review, Special Edition – Human Rights in the Pacific*, 40(1), 369-386
- Samoa Bureau of Statistics. (2016). *Employment statistics January - December 2015*. Retrieved from <http://www.sbs.gov.ws/index.php/new-document-library?view=download&fileId=1784>
- Samoa Bureau of Statistics. (2015). *Demographic and Health Survey 2014*. Retrieved from <http://www.sbs.gov.ws/index.php/new-document-library?view=download&fileId=1648>
- Samoa Bureau of Statistics. (2015). *Percent Distribution of population by wealth quintiles*

- according to residence and region, Samoa 2014.* (Table). Retrieved from Demographic and Health Survey 2014.
- Samoa Bureau of Statistics. (2012). *Population and Housing Census, 2011, Analytical Report*. Retrieved from <http://www.sbs.gov.ws>
- Samoa Bureau of Statistics. (n.d). Household Income and Expenditure Survey 2008 Tabulation report v1. Retrieved from <http://www.sbs.gov.ws>
- Samoa Bureau of Statistics. (2011a). *Population and housing census 2011 Analytical report*. Retrieved from <http://www.sbs.gov.ws>
- Samoa Bureau of Statistics (2011b). *Samoa socio economic atlas 2011*. Retrieved from <http://www.sbs.gov.ws>
- Samoa Bureau of Statistics. (2010). *A report on the estimation of Basic needs poverty lines, and the incidence and characteristics of hardship and poverty. An analysis of the Samoa Household and Income Expenditure Survey 2008*. Retrieved from <http://www.sbs.gov.ws>
- Samoa Law and Justice Sector. (2013). *Digitisation of Land and Titles Court Records*. Retrieved from <http://www.samoaljs.ws>
- Samoa NGO Shadow Report on 4th & 5th periodic reports of State Parties 2005 – 2009. (2012). *NGO Shadow Report of the status of women in Samoa*. Retrieved from http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOsSubmission_for_the_session_Samoa_CEDAW52.pdf
- Samoa Observer. (2016, September 7). *A.D.B. failed to consult Samoan public*. Retrieved from http://www.samoaoobserver.ws/en/07_09_2016/local/10953/ADB-failed-to-consult-Samoan-public.htm
- Samoa Observer. (2014, September 29). “*Samoa chiefs warn A.D.B. about ‘social unrest, conflict and violence’*”. Retrieved from <http://www.samoaoobserver.ws>
- Samoa Observer. (2013, September 5). *Land and Titles mediators ready to serve*. Retrieved from <http://www.samoaoobserver.ws>
- Samoa Observer. (2013, July 5). *Land and Titles Court goes digital*. Retrieved from <http://www.samoaoobserver.ws>
- Samoa Observer. (2012, November 1). *Why the govt is leasing customary land – Tautua*. Retrieved on from <http://www.samoaoobserver.ws>
- Sanga, K.F. (2004). Making philosophical sense of indigenous Pacific research. In, Baba, T., Mahina, O., Williams, N., & Nabobo-Baba, U. (Eds.) *Researching the Pacific and Indigenous Peoples – Issues and Perspectives*. Auckland, New Zealand: University of Auckland
- Sapolu (Chief Justice). (2011). Is there a better way to solve land disputes in the Pacific? (The matai system and the courts). *Hors Série Vol XII*, 2011 - Droit Foncier et Gouvernance Judiciaire dans le Pacifique Sud: Essais Comparatistes/Land Law and

Judicial Governance in the South Pacific: Comparative Studies. Retrieved from <http://www.victoria.ac.nz/law/nzaci/PDFS/SPECIAL%20ISSUES/HORS%20SERIE%20VOL%20XII/09%20Sapolu.pdf>

Schmidt, J. (2001). Redefining fa'afafine: Western discourses and the construction of Transgenderism in Samoa. *Intersections: Gender, History and Culture in the Asian Context Issue 6*. Retrieved from <http://intersections.anu.edu.au/issue6/schmidt.html>

Secretariat of the Pacific Community. (2010). *Beijing + 15: Review of progress in implementing the Beijing Platform for Action in Pacific Island countries and territories*. Suva, Fiji: SPC.

Secretariat of the Pacific Community. (2012). *Stocktake of the gender mainstreaming capacity of Pacific Island governments – Tonga*. Manila, Philippines: SPC.

Secretariat of the Pacific Community. (2010). *Telling Pacific human rights stories to the world*. Suva, Fiji: SPC.

Shore, J. (2009, October 21). *Tongan parliament rejects CEDAW ratification, women's groups react*. Retrieved from <http://hrbrief.org>

Sioa, M.P. (2015, August 25). *More changes to Electoral Act coming up*. Retrieved 29/8/2015 from <http://www.newslinesamoa.com>

Soo, A., & Fraenkel, J. (2005). The role of ballot chiefs (matai palota) and the role of political parties in Samoas shift to universal suffrage. *Commonwealth and Comparative Politics*, 43(3). 333-361. DOI: 10.1080/14662040500304973.

Stege, K.E., Matala, R., Naupa, A., Simo, J., & Huffer, E. (Ed). (2008). *Land and women: The matrilineal factor*. Suva, Fiji: PIFS

Stege, K.E. (2008). An Kōrā Aelōn Kein (These Islands belong to the women): A study of women and land in the Republic of the Marshall Islands. In Stege, K.E., Matala, R. & Naupa, A., Simo, J., & Huffer, E. (Ed). *Land and women: The matrilineal factor*. (pp. 1-34), Suva, Fiji: PIFS.

Stevenson, B. (1996). *The Wik decision and after*. Research Bulletin No 4/97 Brisbane, Australia: Queensland Parliamentary Library. Retrieved from <https://www.parliament.qld.gov.au/documents/explore/ResearchPublications/researchBulletins/rb0497bs.pdf>

Stewart Braun, S. (2014). Rescuing indigenous land ownership revising Locke's account of original appropriation through cultivation. *Theoria, Issue 139, 61(2)*. 68-89. DOI:10.3167/th.2014.6113904.

Stewart-Withers, R. (2011). Contesting a third world development category: Female headed households in Samoa. *Women's Studies International Forum*. 34. 171-184. doi:10.1016/j.wsif.2010.11.003

Suaalii-Sauni, T., & Fulu-Aiolupotea, S. (2014). Decolonising Pacific research, building

Pacific research communities and developing Pacific research tools: The case of the talanoa and the faafaletui in Samoa. *Asia Pacific Viewpoint*. 55(3). 331–344. DOI: 10.1111/apv.12061

- Sweetman, C. (2008). *How title deeds make sex safer: women's property rights in an era of HIV*. Retrieved from http://www.iiav.nl/epublications/2006/how_title_deeds_make_sex_safer.pdf
- Tacoli, C. (2012). *Urbanization and emerging population issues. Working Paper 7: Urbanization, gender and urban poverty: paid work and unpaid care work in the city*. Retrieved from <http://www.unfpa.org/sites/default/files/resource-pdf/UEPI%207%20Tacoli%20Mar%202012.pdf>.
- Tagata Pasifika. (30 Nov 2009). *Samoa land rights and concerns over customary land rights*. (Video) Retrieved from https://www.youtube.com/watch?v=dGU41_byR6k
- Tan, Y. (1/9/2016). *Miss Fa'afafine: Behind Samoa's 'third gender' beauty pageant*. BBC News. Retrieved 13/9/2016 from <http://www.bbc.com/news/world-asia-37227803>.
- Taumoepeau, A, N. (1984). Tonga's Royal Land Commission. *Commonwealth Law Bulletin*, 10:4, 1892-1896. DOI: 10.1080/03050718.1984.9985788
- Tavita, T.T. (15/8/2012). *Gay marriage? Never in Samoa*. Retrieved from <http://www.savalinews.com>
- Teaiwa, T. (1994). bikinis and other s/pacific n/oceans. *The contemporary Pacific*, 6(1), 87-109. Retrieved from <http://www.english.hku.hk/courses/WorldingPacificHKU2011/BikiniPacific.pdf>
- Terry, J. (1999). *An American obsession: Science, medicine, and homosexuality*. Chicago. US: University of Chicago Press.
- The World Bank. (2014). *Hardship and vulnerability in the Pacific Island countries*. Retrieved from <http://www.cid.org.nz/assets/2015-Hardship-and-vulnerability-in-Pacific-Island-countries-2014.pdf>
- The World Bank. (2011). *World development report 2012: Gender equality and development*. Washington DC: The World Bank.
- The World Bank. (n.d). *The Pacific possible: Precautionary management of deep sea mining potential in Pacific Island countries*. Retrieved from <http://pubdocs.worldbank.org/en/757371467005477523/PACIFIC-POSSIBLE-Deep-Sea-Mining-Summary-paper.pdf>
- Thornton, A., Binns, T., & Talaitupu Kerslake, M. (2013). Hard times in Apia? Urban landlessness and the church in Samoa. *Singapore Journal of Tropical Geography* 34, 357-372. DOI: 10.1111/sjtg.12040
- Tiffany, S. (1975). *Lands and Titles Court and the regulation of customary title successions*

and removals in Western Samoa. Retrieved from http://www.vanuatu.usp.ac.fj/sol_adobe_documents/usp%20only/Pacific%20law/Tiffany.pdf

Tonga Department of Statistics. (2014). *Tonga 2011 Census of Population and Housing, Volume 2: Analytical Report*. Noumea, New Caledonia: SPC

Tonga Department of Statistics. *2011 Census Household Tables*. Retrieved from <http://www.spc.int/prism>

Tonga Department of Statistics. *2009 Household Income and Expenditure Survey*. Nuku'alofa. Tonga: Government of Tonga.

Tonga Department of Statistics. *Tonga statistics at a glance*. Retrieved from <http://www.spc.int/prism/tonga>

Tor, R. Q. (2012). *A history of the Malvatumauri National Council of Chiefs*. Port Villa, Vanuatu: Malvatumauri National Council of Chiefs.

Trask, H.K. (1999). *From a native daughter: Colonialism and sovereignty in Hawaii* (Revised edition). Hawaii. US: University of Hawaii.

Trigg, M.K., & Soderling, S. (2016). Charlotte Bunch: Leading from the margins as a global activists for women's rights. In Butterfield, J.E., Cook, B. W., Gurtler, B., Ndubizu, R., Trigg, M. K., Alonso Bejarano, C., LeMoon, K., Tola, M., & Bernstein, A. R. *Junctures in women's leadership: social movements*. (pp.139-160). New Brunswick. New Jersey: Rutgers University Press.

Tuafuti, P. (2011). Multiple challenges in research within the faasamoa context. *Pacific-Asian Education*. 23(2). 33-42.

Tualalelei, E.M, Mayer, F.L.J, & Hunkin, G.A. (2015). Diacritical Marks and the Samoan Language. *The Contemporary Pacific*, 27(1), pp. 183–207. University of Hawai'i Press.

Tuhiwai Smith, L. (2012). *Decolonizing methodologies. Research and indigenous peoples*. Second edition. London, New York: Zed Books.

Tui Atua Tupua Tamasese Ta'isi. (2009). *Su'esu'e manogi: In search of fragrance*. Suaalii-Sauni, T., Tuagalu, I., Kirifi-Alai, T.N., & Fuamatu, N. (Eds). Lepapaigalagala. Samoa: National University of Samoa.

Tui Atua Tupua Tamasese Taisi Tupuola Tufuga Efi. (2004). *Resident, residence, residency in Samoan custom*. Address provided for the Symposium on Concepts in Polynesian Customary Law, Te Matahauariki Institute, University of Waikato, New Zealand. Retrieved from <http://lianz.waikato.ac.nz/PAPERS/symposium/Customary%20Law%20conference%20paper%20Oct%2004.pdf>

Tui Atua Tupua Tamasese Taisi Efi. (2003). In search of meaning, nuance and metaphor in social policy. *Social Policy Journal of New Zealand, Issue 20*. 49-63. Retrieved from <https://www.msd.govt.nz/documents/about-msd-and-our->

work/publications-resources/journals-and-magazines/social-policy-journal/spj20/20-pages49-63.pdf.

- UNFPA Pacific Sub-regional Office. (2013). *Violence against women (VAW) in the Pacific*. Retrieved from http://countryoffice.unfpa.org/pacific/2013/07/7502/violence_against_women_vaw_in_the_pacific/
- UNFPA Pacific Regional Office. (2013). *Prevalence (%) and patterns of violence against women (15-49) in Pacific Island countries*. (Graph). Retrieved from http://countryoffice.unfpa.org/pacific/2013/07/31/7502/violence_against_women_vaw_in_the_pacific/
- UN-Habitat. (2015). *Gender issue guide: Gender responsive urban legislation, land and governance*. Nairobi GPO, Kenya: UN-Habitat
- UNICEF Pacific. (2011). *Sentinel monitoring: Monitoring resilience in Tonga*. Suva, Fiji: UNICEF Pacific.
- UNIFEM. (2010). *Ending violence against women and girls. Evidence, data and knowledge in the Pacific Island countries. Literature review and annotated bibliography*. Suva, Fiji: UNIFEM.
- United Nations Committee on the Convention on the Elimination of Discrimination Against Women. (2012, February 8). *Responses to the list of issues and questions with regard to the consideration of the combined fourth and fifth periodic reports. Samoa*. Retrieved from http://www.bayefsky.com/issuesresp/samoa_cedaw_2012.pdf
- United Nations Committee on the Convention on the Elimination of Discrimination Against Women. (2005). *Committee on the Elimination of Discrimination against Women Thirty-second session 10-28 January 2005*. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Samoa/CEDAW-CC-WSM-0523820e.pdf>.
- United Nations Committee on the Convention on the Elimination of Discrimination Against Women. (2012b, July 27) *Concluding observations of the Committee on the Elimination of Discrimination against Women. Samoa*. Retrieved from <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-WSM-CO-4-5.pdf>
- United Nations Development Programme. (2016). *Sustainable development goals*. Retrieved from <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html>
- United Nations Development Programme. (2014). *The state of human development in the Pacific: A report on vulnerability and exclusion in a time of rapid change*. Suva, Fiji: UNDP.
- United Nations Development Programme. (2013). *Discussion paper: Transgender health and human rights December 2013*. UNDP. Retrieved from <http://www.undp.org/content/dam/undp/library/HIV-AIDS/Governance%20of%20HIV%20Responses/Trans%20Health%20&%20Human%20Rights.pdf>

- United Nations Development Programme. (2008). *Asia Pacific regional human development report on gender. Report of the Pacific stakeholders consultation*. Suva, Fiji: UNDP.
- United Nations Development Programme. (2008). *Asia Pacific regional human development report on gender. Report of the Pacific stakeholders consultation*. Suva, Fiji: UNDP.
- United Nations Office of the High Commissioner for Human Rights. (2009). *Ratification of international human rights treaties: Added value for the Pacific region*. Suva, Fiji: Regional Office for the Pacific.
- United Nations Population Fund Pacific Sub-Regional Office. (2014). *Population and development profiles: Pacific Island countries*. Retrieved from http://countryoffice.unfpa.org/pacific/drive/web__140414_UNFPAPopulationandDevelopmentProfiles-PacificSub-RegionExtendedv1LRv2.pdf
- United Nations Population Fund. (n.d). *Guidelines on women's empowerment*. United Nations Population Information Network (POPIN), UN Population Division, Department of Economic and Social Affairs, with support from the UN Population Fund (UNFPA). Retrieved from <http://www.un.org/popin/unfpa/taskforce/guide/iatfwemp.gdl.html>
- United States Department of State. (2012). *International Religious Freedom Report for 2012*. United States Department of State. Bureau of Democracy, Human Rights and Labor. <http://www.state.gov/documents/organization/208474.pdf>
- United States Department of State. (2011). *Country reports on human rights practices for 2011. Fiji*.
- United States Department of State. (2010). *Trafficking in persons report*. 10th Edition. Retrieved from <http://www.state.gov/documents/organization/142979.pdf>
- UNWOMEN. (2014). *Beijing Declaration and Platform for Action Beijing+5 Political Declaration and Outcome*. Retrieved from http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf
- UNWOMEN. (2012, August 23). *Safe Cities: Port Moresby, Papua New Guinea*. Retrieved from <http://www.youtube.com/watch?v=NRrGDERE3CI>.
- Urban Institute. (2011). *Gender and property rights: A critical issue in urban economic development*. Retrieved from <http://intlhc.org/wp-content/uploads/2011/09/IHC-UI-Gender-and-Property-Rights.pdf>
- Urbanowicz, C.F. (1973). Tongan adoption before the Constitution of 1875. *Ethnohistory*, 20(2). Retrieved from <http://www.csuchico.edu/~curbanowicz/TonganAdoption.pdf>
- Vaiioleti, T.M. (2006). Talanoa research methodology: A developing position on Pacific research. *Waikato Journal of Education* 12. 21-34.

- Vanuatu Daily Post. (2012, September 24). *Minister urged to revoke lease*. Retrieved from <http://mildamelanesia.org/news/minister-urged-revoke-lease>.
- Vanuatu Ministry of Lands & Natural Resources. (2009). *Land sector framework 2009-2018*. Retrieved from <http://www.ausaid.gov.au/countries/pacific/vanuatu/Documents/land-sector-framework.pdf>.
- Vanuatu National Statistics Office. (2012). *Alternative indicators of well-being for Melanesia. Vanuatu pilot study report 2012*. Port Villa, Vanuatu: Malvatumauri National Council of Chiefs
- Ward, G.R. & Kingdon, E. (Eds.) (1995). Land tenure in the Pacific Islands. In *Land, custom and practice in the South Pacific*. (p:36-64). Hong Kong. Cambridge: Cambridge University Press.
- Weston, K. (1991). *Families we choose: Lesbians, gays, kinship*. New York: Columbia University Press.
- Willig, C. (2005). *Introducing qualitative research in psychology*. (2nd edition). Berkshire. UK: Open University Press.
- World Health Organisation. (2016). *Countries, Samoa*. Retrieved from <http://www.who.int/countries/wsm/en/>
- World Health Organisation. (2005). *WHO multi-country study on women's health and domestic violence against women. Samoa*. Retrieved from www.who.int/gender/violence/who_multicountry_study/fact_sheets/Samoa2.pdf
- World News Australia. (2012, August 29). *PNG locals fight sea mining project*. Retrieved from <http://www.youtube.com/watch?v=44X-xMrdNw0>.
- Ye, R. (2009). Torrens and customary land tenure: A case study of the land and Titles Registration Act 2008 of Samoa. *Victoria University of Wellington Law Review*. 40(4). 827-861. Retrieved from <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-40-2009/issue-4/torrens-ye.pdf>

Appendix A: AUT Ethics Approval



11 July 2013

Marilyn Waring
Faculty of Culture and Society

Dear Marilyn

Re Ethics Application: **13/181 Uses of customary land and women's empowerment in urban communities of Samoa and Vanuatu.**

Thank you for submitting your application for ethical review. I am pleased to confirm that the Auckland University of Technology Ethics Committee (AUTE C) has approved your ethics application for three years until 8 July 2016.

AUTE C wishes to commend the researcher and yourself on a well written application.

Please can you ensure that your Information Sheet contains the current Executive Secretary's contact details as given in the exemplar on the website.

As part of the ethics approval process, you are required to submit the following to AUTE C:

- A brief annual progress report using form EA2, which is available online through <http://www.aut.ac.nz/researchethics>. When necessary this form may also be used to request an extension of the approval at least one month prior to its expiry on 8 July 2016;
- A brief report on the status of the project using form EA3, which is available online through <http://www.aut.ac.nz/researchethics>. This report is to be submitted either when the approval expires on 8 July 2016 or on completion of the project;

It is a condition of approval that AUTE C is notified of any adverse events or if the research does not commence. AUTE C approval needs to be sought for any alteration to the research, including any alteration of or addition to any documents that are provided to participants. You are responsible for ensuring that research undertaken under this approval occurs within the parameters outlined in the approved application.

AUTE C grants ethical approval only. If you require management approval from an institution or organisation for your research, then you will need to obtain this. If your research is undertaken within a jurisdiction outside New Zealand, you will need to make the arrangements necessary to meet the legal and ethical requirements that apply within their.

To enable us to provide you with efficient service, we ask that you use the application number and study title in all correspondence with us. If you have any enquiries about this application, or anything else, please do contact us at ethics@aut.ac.nz.

All the very best with your research,

A handwritten signature in black ink, which appears to read 'H. A. Pinner'.

Kate O'Connor
Executive Secretary
Auckland University of Technology Ethics Committee

Cc: Karanina SumeoKaranina Sumeo tgb4242@aut.ac.nz

Appendix B: Approval Letter from the Tongan Government



PRIME MINISTER'S OFFICE
NUKU'ALOFA, TONGA

9th October, 2013

Professor Nigel Hemmington
Dean of Faculty
Faculty of Culture & Society
AUT
Auckland
New Zealand

Dear Professor Hemmington,

Re: Endorsement Granted for Karanina Sumeo's Research Proposal on "Uses of Land under Traditional Tenure and the Empowerment of Women in Urban Communities" to be Conducted here in Tonga from September to November 2013

The Tongan Prime Minister's Office would like to endorse Karanina Sumeo's research proposal. We are confident in the Hon. Minister of Education's authorization of Karanina Sumeo's proposal after the applicant fulfilled all the necessary requirements outlined in the Cabinet Decision No. 410.

We wish Karanina Sumeo all the success on her research endeavour.

Sincerely,

Hon. Fatafehi Tuita

For Acting Chief Secretary & Secretary to Cabinet



Appendix C: Participant Information Sheet

Information Sheet

Interview



Date Information Sheet Produced: 11 July 2013

Malo e lelei, Talofa lava, Greetings.

I am Karanina Sumeo. I was born in Samoa and was raised by my mother Vaaifetu Sumeo and her parents, Fa'aitamai Siaosi Sumeo and Taulauniu Sumeo (nee Saalea) in the village of Vailima, Upolu. Fa'aitamai was born in Samusu where his parents ministered for the London Missionary Society (LMS). Siaosi's parents were from Lalomanu (father, mother), Lufilufi (mother) and Vaiala (father); all from the island of Upolu. Taulauniu was from Fusi Safata, Upolu. Siaosi and Taulauniu bought freehold land in Vailima where I was raised and lived, until we left for New Zealand. I have three children aged 11, 13 and 15, and we live in Auckland, NZ.

I am conducting this study as part of my PhD degree at the Auckland University of Technology (AUT). This study has been approved by the AUT Ethics Committee, and the Kingdom of Tonga's Prime Minister's Office. The research is being conducted in Auckland, and urban settlements in Samoa and Tonga.

The study topic:

Uses of land under traditional tenure and women's empowerment in urban communities of Samoa and Tonga.

The study aims to produce a body of knowledge about the experiences, needs and aspirations of women including third gender persons that relate to land. This final report/thesis from the study will be made available to communities, groups and individuals in the Pacific who are working to improve living standards, advance gender equity, and secure or improve indigenous women's rights to land.

I respectfully invite you to participate in this study. You have been nominated by a person who considers your professional and/or personal background to be valuable to this research. Your details were obtained from your referrer with the understanding that you are not obligated to participate. Your participation is completely voluntary. You may withdraw at any time prior to the completion of the data collection as well as your interview information. Others have also been recommended but have not been invited as the research focuses on urban women including third gender, and excludes men (self-identified), children, and women in rural locations.

How will women of Samoa and Tonga benefit from the study and how?

The successful completion of the study will enable me to meet the requirements of AUT for my PhD.

Upon completion of the study and following approval from relevant authorities including those in Samoa and Tonga, it will become possible for key information from the study to be presented to interested you, communities, women and third gender groups, organisations, conferences, other relevant forums, and in publications to help raise awareness of the challenges faced by some women and third gender regarding land under traditional tenure, particularly in Samoa and Tonga. These avenues of exposure will help channel the information to audiences involved in planning and implementing land programmes to improve the living standards of women, third gender, and their families in the Pacific.

The thesis will also be available through the web and may therefore be viewed and used by others.

What is needed of me in this research?

You are asked to be interviewed on issues related to land. The interview will take approximately one hour.

You will need to travel to the venue where you will be interviewed. If travel cost is a barrier for you, we can make arrangements to assist.

If you prefer to be interviewed in your local language rather than English, please indicate this to me at least 3 working days before your interview date so appropriate assistance can be arranged.

Your interview will be recorded with an audio device on the day then transcribed. The transcribed notes may be sent to you (if you wish) to review for accuracy. When you have finished reviewing, you may send feedback by phone, e-mail or other means available to you. You will have two weeks to respond with any comments. If I do not receive any feedback then I will assume that you are satisfied with the transcript content. Appropriate changes will be made and the amended transcript of your interview will then be submitted for analysis. The amended version may be sent to you also if you wish, but you will not be required to return it.

What are the discomforts and risks for participants?

There are no risks to your physical safety or to any property belonging to you as a result of your participation. You have the right to decline to answer any question or part of a question if you do not wish to.

Your right to privacy and confidentiality is respected. Your identity will not be disclosed in the final report without your permission. Other participants who may know of your participation will be asked to maintain your privacy, as you are asked to respect theirs. Your personal details will not be provided to a third party without your consent.

Your Consent form and transcript will be stored in a secured facility at AUT in Auckland, New Zealand. Access to these will be limited to me and my two supervisors.

How long do I have to consider this invitation?

You have a week to provide a response to me (details below). I may also contact you by phone or other means if I have not heard from you after this time.

If you agree to participate, then please sign the Consent form accompanying this Information Sheet and give it to me.

Will I receive feedback on the results of this research?

Yes. I will inform you by letter or email about when and where the final report/thesis will be available, and how to access it. If resources permit, I will call a meeting at a local venue for those interested in hearing about the findings of the study once the thesis has been completed and approved by relevant authorities for public dissemination.

It is not possible to provide individual copies due to limited resources. However, a hard copy of the final thesis will be provided to organisations that play a key role in the study, such as the National Research Institute – National University of Samoa, Kingdom of Tonga's Ministry of Education, Women's Affairs and Culture; Pacific Sexual Diversity Network, and the NZ Human Rights Commission. You may view the document at these premises. The thesis will also be accessible electronically and in hard copy through the AUT library facilities in New Zealand.

What can I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the Research Supervisor:

Professor Marilyn Waring

Email: marilynwarling@aut.co.nz

Telephone: +64 9 921 9661 or +64 21717507

Concerns regarding the conduct of the research should be notified to the Acting Executive Secretary of AUTC:

Madeline Banda
Email: ethics@aut.ac.nz
Telephone: +64 9 921 9999 ext 8316.

Whom do I contact for further information about this research?

Researcher Contact Details:

Karanina Sumeo
Email: tgb4242@aut.co.nz or mgf.sumeo@gmail.com
Telephone: +64 22 314 3981 (022 314 3981 within NZ)

Project Supervisor Contact Details:

Professor Marilyn Waring
Email: marilynwarling@aut.co.nz
Telephone: +64 9 921 9661 or +64 21717507

Approved by the Auckland University of Technology Ethics Committee on 11/7/2013 AUTC Reference number 13/181.

Appendix D: Indicative Questions

Indicative Questions - Focus Group

Research Title: *Uses of customary land and women's empowerment in urban communities of Samoa and Tonga*

Core questions are open and follow up questions are prompts. Responses may or may not require the use of follow-up prompts.

Questions

Core: What is the significance of customary land to you?

Core: Do you have access to your family's customary land?

Core: Do you have rights/entitlements to customary land?

- **If 'Yes':** What are those rights?
 - How do you access your entitlements/rights under custom?
 - How do you access your entitlements/rights under law?
 - What have you used your entitlements/rights for?
 - What would you like to use them for?
- **If 'No':** Why?
 - What outcomes has the lack of access to customary land had on your life?
 - What outcomes does your lack of rights/entitlements have on the lives of your dependents (if any)?
 - How can that be changed under custom?
 - How can that be changed under law?
 - If you had access and entitlements, what would you like to use them for?

Core: How does your sex/gender (*depending on participant interpretation*) affect your access and entitlement to customary land?

(Repeat questions from above depending if positive or negative)

Core: How do you describe your place in your family/clan?

What is your role in your family in relation to your customary land?

Core: How does living in urban town affect your access to your customary land? (settler)

If there are negative effects:

- How does not having access to customary land affect your life here?
- How does not having access to customary land affect the lives of your dependents (if any) where you are living?

Core: What do financial proceeds from leases of customary land mean to you?

- What was your involvement in determining any leases of your customary land?
- What outcomes has leasing your land had on your life?
- What outcomes this had on the lives of your dependents?

Core: Tell me about your experience of government use of your customary land? (if appropriate)

What was your involvement in determining any aspect of that?

- How has your life been affected by this?
- What outcomes this had on the lives of your dependents?

Indicative Questions - Individual Interviews

Core: What does customary land mean to you?

Core: How is customary land viewed by the group/agency/you work for?

Core: How well do you think *custom* is catering to women's needs through land in urban areas?

Core: How well do you think land *laws* are catering to urban women's needs in urban areas?

Core: What are the strategic drivers of tenure land reforms here?

Core: Who is driving these reforms?

Core: How are women's voices being incorporated in these reforms?

Core: How do these reforms secure women's rights access to customary land in urban areas?

Core: How do these reforms improve women's rights to customary land in urban areas?

Core: What evidence is there that these reforms have improved women lives *on their own customary land* in urban areas?

Core: What evidence is there that such interventions have improved the lives of women's dependents in urban areas?

Core: What are the negative outcomes from women from these reforms?

Core: What avenues do women have to appeal any injustices caused by these legal reforms?

Individual Story

Story about the meaning of customary and to you and your dependents. You can talk about any challenges due to custom or law, and positives. Talk about the past, present and how your rights may have changed including if they were taken from you - if so how. What do you hoped for the future regarding your rights to this land?