

## TONGAN LAND RIGHTS: INHERITANCE AND INEQUALITY

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Land is significant to Tongans and Tongan society for economic, social, cultural, and political development. The largest sector in Tonga is agriculture. Land is one of the most significant assets that Tongans enjoy and use to provide income to their families. All land in Tonga belongs to the king of Tonga. One hundred forty-five years ago, King George Tupou I enacted the Constitution on November 4, 1875, whereby Tongan land cannot be bought or sold. Inheritance of land is passed through male heirs. Every boy reaching sixteen years of age is eligible for the *'api 'uta* (tax allotment) of eight and a quarter acres of agricultural land to grow food. This same boy is also eligible for the *'api kolo* (town allotment) of a quarter acre of land to build a house. The aim of this research is to examine the struggles that Tongan and foreign women confront without landownership. In Tonga's quasi-feudal society, land allotments by the king of Tonga provide the mainstay of economic and social support to commoners. The push of Tongan out-migration is the lack of capital assets like land to make loans to create new businesses or diversify existing businesses. Tongans must have access and land allotments to survive. Magnified by COVID-19 and in the past twenty years, population growth and out-migration have outpaced land availability, leaving Tongan women without economic stability or social security to survive. This research shows that there are landless Tongan commoners living in Tonga today without security or prospects for a high quality of life that Tongan commoner women suffer disproportionately in Tongan society. This legal mode of disenfranchisement against Tongan women has directly contributed to Tongan out-migration and demographic imbalances

in Tongan society, negatively impacting all arenas of life and furthering the cyclical nature of poverty in the country.

### Introduction

As a Tongan female scholar, I often consider whether I can afford to return to Tonga to live when I know that land allotments are gifted only to my brothers. Would I be able to afford to live without having land or any inheritance of land to my children once I am married? The Kingdom of Tonga is a beautiful island nation in the Pacific Ocean that does not allow women or foreign women to own land.

In Oceania, Tonga is the only Pacific Island nation that enacted legislation that expressly discriminates against Tongan and foreign women. The Constitution of Tonga is supreme law under which the government of Tonga operates. Under the Constitution and the Land Act, all land belongs to the king of Tonga. Tongan land allotments are inherited by the eldest legitimate son. Christian morality is intertwined with qualifications of land inheritance based on legitimate heirs only through Christian marriage. Tongan female widows must also exercise public morality by not remarrying or engaging in sexual relations.

As Tongans, we understand and value the importance of our land to our culture, society, and traditions. The land, people, ancestors, and deity are all connected to one another. It is our *Tuku Fonua* that has probably had the greatest impact on our land. We refer to *Tuku Fonua* as the titular historic event when King George Tupou I gave all land and everything in Tonga to God. It was important to him that Tongan land and people were in unison with Christianity.

After more than a century of rule by constitutional monarchy, it is time for the king and government to amend the Constitution to provide Tongan women with rights to own land. This research will examine the Tongan cosmogony of land, land in Tonga after the arrival of Christianity, land law, and how land rights impede equitable sustainability to Tongan and foreign women living in Tonga.

### Tongan Cosmogony to Land

#### *Fonua*

The Tongan word for land is *fonua*. Although *fonua* has different meanings, in this article, I am employing *fonua* to mean “placenta” in English. In the Tongan tradition, after a mother gives birth to a baby, the placenta of the mother is buried back into the *kelekele* (land/soil) of a special place that can be remembered as a symbol of link and connection of the baby to the land. This tradition was done to my siblings and me. All of our placenta is buried in our *’api kolo* in the village of *Ha’ateiho, Tongatapu*. This reminds us that no matter where we go in

life, we are always rooted in Tonga. The placenta, which comes from mothers or females, is also feminine. And since it is feminine, women should have the rights, based on Tongan culture, to hold lands.

Just like how a placenta gives us life, the land also serves the same purpose. It is the source of survival for food, water, dwelling, and shelter. Dr. 'Okusitino Māhina, a Tongan scholar, has defined *fonua* as “lands and its people.” He has also written about *fonua* as the nourishing environment. The land also represents other aspects of human existence, such as a connection to place and history, a place for learning and playing, *fonua*-based behaviors, spiritual places, and anchoring memory. *Fonua* has now become a national identity.

### *Land Wars in Tonga*

Growing up in Tonga, we embrace traditional events that have happened in *ono'aho* (distant past) through storytelling of our grandparents. Most of the events were not documented, and people will hear most of it only through a *talanoa* (story) that has passed down through generations by word of mouth and *talatupu'a* (creation myth) of the ancestors. Tongans have pursued this important indigenous knowledge in academe by studying more of the history of Tonga and documenting the *talanoa* of ancestors.

A retired Tongan language teacher in Tonga, Hopo Teumohenga, who also worked in the Ministry of Education, argues that

people at *ono'aho*, lived within their *Ha'a* (tribe). The *tu'a* (commoners) with the *Hou'eiki* (chiefs) in their villages. The commoners were enslaved by the *Ho'ueiki* of the land, which means that people must do as the *Ho'ueiki* pleased in order to be offered a *konga kelekele* (piece of land) in the village to stay. The *Tu'i Tonga* owned all the land in Tonga and people would present their best food, crops, and all the items they have to the *Tu'i Tonga*. (Heimuli Paletu'a interview with Teumohenga, Hopo [Ministry of Education], October 21, 2022)

There was a period of land wars in the Kingdom of Tonga beginning in late 1799 and lasting approximately fifty years. When *Tu'i Tonga* lost their status as *Tu'i Tonga*, peace was disrupted. As a result, all the *Hou'eiki* fought among themselves to control pieces of land. Tupou I fought alongside his father *Tupouto'a* in land wars in *Ha'apai* and *Vava'u*. *Tupou I* defeated chief *Laufilitonga*, the last *Tu'i Tonga*, and became *Tu'i Ha'apai* and *Tu'i Vava'u*. He then assumed the other two kings' dynasties, *Tu'i Tonga* and *Tu'i Ha'atakalaua*. He was later appointed as the nineteenth *Tu'i Kanokupolu* and had the title *Tu'i Siaosi Tupou I* and continued the *Tu'i Kanokupolu* dynasty.

The *talanoa* of the history of land wars has impacted the land distribution in the Kingdom of Tonga. Women were not part of the land wars, nor were they mentioned as part of them. During the land wars, women are not told to be active participants; only men fought in the wars. Is Tongan land inheritance only for male heirs because of their bloodshed?

### Land in Tonga

#### *Tuku Fonua*

The *Tuku Fonua* that happened at Pouono, Vava'u, in 1839 after the land wars and when Siaosi Tupou I won is an act that united the people of the land under Taufa'āhau leadership. During the *Tuku Fonua* prayer, Siaosi Taufa'āhau Tupou I gave the land of Tonga to God:

*E Otua koe Tamai. 'Oku ou tukuatu 'a hoku fonua mo hoku kakai, mo kinautolu e muimui mai 'i hoku tu'a, ke malu'i mai mei langi.*

O God our Father, I give unto you my land and my people, and all generations of people who follow after me. I offer them all to be protected from Heaven.

<Original text in the Tongan language translated into the English language.>

This prayer is significant to every Tongan as a constant reminder that Tonga is a "Land given to God." It is not just the land but also the people of the land. The *Tuku Fonua* changed Tongan society and Tonga. Everything changed in 1839: Tongans were freed from slavery (serving another against their free will), and a declaration of freedom and freedoms for individuals were introduced. What is truly significant is that the laws that were created applied to the Hou'eiki equally as commoners. The introduction of laws that apply equally to all Tongans is significant to relational spaces of roles in families and societies.

#### *Christianity*

In 1839, Tonga founded itself on Christianity and reverence to the singular act of Siaosi Taufa'āhau Tupou I, uniting Tongans as Tongans and Christians. Unity in obedience to Christian principles is magnified in public and private spheres on Sundays: no commercial activity, no loud music, no parties, and no conducting of business. The only permitted noises heard on Sundays are church bells and church hymns. Smoke on the Sabbath is about all the noise to be heard

throughout the villages from the *'umu* (underground oven) for family dinner. Christian principles go hand in hand with church, public, and private spaces; the Christian institution is embedded in the role of genders.

Men are the heads of churches and congregations. Men are also the heads of families and children in Tongan homes. When Tonga became a constitutional monarchy, the nobles who lead Parliament, the church hierarchy, and rights to land are men. Land laws are gendered to privileged men made by privileged men. Everything changed in Tonga in 1839; does this also mean that in Christian Tonga, women must be under the care and stewardship of men in all spaces?

*'E 'Otua Mafimafi,  
Ko ho mau 'Eiki Koe,  
Ko Koe ko e falala 'anga,  
Mo e 'ofa ki Tonga:  
'Afio hifo 'eamu lotu,  
'A ia 'oku mau fai ni,  
Mo ke tali homau loto,  
'O malu 'i a Tupou.*

Oh, almighty God!  
You are our Lord,  
It is You, the pillar  
And the love of Tonga.  
Look down on our prayer  
That is what we do now  
And may You answer our wish  
To protect Tupou.

<Original text in the Tongan language translated into the English language.>

The words to the Tonga national anthem are as stated in Act 25 of the Tonga legislation of 1973. It is a prayer to God asking for protection on the king, the people, and the land of the Kingdom of Tonga. These words of prayer are sung every morning during a school assembly at a function where a member of the royal family is present and at every government function. This act signifies how important Christianity is in the Kingdom of Tonga.

Does equality in Tonga truly exist, or is it only equal in its inequality that legally upholds men as caretakers and women as cared for by fathers and brothers? Only boys inherit land, and once a woman marries, her right to ownership of land is extinguished. Do laws uphold Christian-based beliefs that women are to be cared for by men?

## Land Law

### *Constitutional Monarchy and Constitution*

Land in Tonga is administered by the laws defined by the Land Act of Tonga. The Kingdom of Tonga has a unique system of landownership and management; all land is the property of the Crown. There is a representative of the Crown, the minister of lands, who handles all the matters of land and can approve all the paperwork contingent on Cabinet approval.

As part of the land law, Alaric Maude wrote, “It shall not be lawful for any Chief or people in Tonga, Ha‘apai or Vava‘u to sell a portion of land to strangers (foreigners)” (Maude 1965). This law is still enforced today in the Kingdom of Tonga whereby foreigners, both male and female, cannot own land in Tonga. The same law applies to Tongan women.

Land is automatically owned by the oldest son. Kerry James argues that “every male Tongan who is over sixteen years of age is entitled to a ‘*api tuku*hau (tax allotment) and a ‘*api kolo* (town allotment)” (James 1995). This can be considered inequality in land distribution (Salomon 2009). My father has an ‘*api kolo* and ‘*api ‘uta* where we are from. And even though my sisters and I helped with taking care of both pieces of land, our brother has the right to it. I do not know what might happen in the future when he has a family of his own, but I have sometimes wished my sisters and I had the same rights to these lands as my brother.

Additionally, according to Tongan customs and traditions, sisters are given the titles of *fahu* and *mehekitanga* (paternal aunts), while men are given ownership rights to the property. During ceremonies like birthdays, weddings, and funerals, they are recognized and honored. Throughout these rituals, they receive *koloa* (mats, tapas). Most people could argue that these rights are balanced and apply to Tongan men and women equally, but I disagree. The value of the *koloa* being given to the sisters is not equivalent to the value of a piece of land in Tonga. The oldest sister, or *fahu*, will be the only one with the claim to the *koloa* if there are other sisters.

### *Village Dominion (Hou ‘eiki)*

During Siaosi Taufa‘āhau Tupou I’s reign, he chose some of the most powerful chiefly titles to become land nobility in Tonga. Since all land is ultimately the property of the Crown, some of the areas in Tonga were granted to these nobilities as a *tofi ‘a* (hereditary estate) from the royal family to the nobles and to a few of the *matāpule* (talking chief/leaders of lower rank).

The remainder of the land is under the direct control of the minister of lands on behalf of the government (Maude 1965). Today in Tonga, there are two ‘*Eiki*

(nobles) who own the most land, Lord Tu‘ivakano and Lord Lavaka. In 2022, Lord Tu‘ivakano and Lord Lavaka have a higher rank in the nobilities in Tonga. Each village in Tonga has a *Hou ‘eiki* and *matāpule* that looks after the land and the well-being of the people. They are one of the most highly respected people in the village. The *Hou ‘eiki* and the *matāpule* help keep the peace in the community and the land agreement in their villages.

### *Land Law and Impacts on Women*

Land laws leave Tongan women vulnerable and could be considered dispossessed from native land due to their gender. Structurally, men lead the country, churches, ministries, and homes, so how do women sustain their families without the reliance on a man? Are the laws not amended so that women remain dependent on men in all private and public spaces? The current land acts and laws mandate that women lean and rely on men for survival, as they have more power and authority to own land, decide on final family matters, and rule on church and parliamentary acts. The *Matangi Tonga News* discussed how Tongan women are more successful in foreign countries because husband and wife are treated unequally in Tonga.

### **Conclusions**

Land rights in Tonga have brought attention to people in the business industry in Tonga, especially to Tongan women and foreigners living in Tonga, as they cannot own land. The Tongan cosmogony of land has helped us understand why Tongan people are so connected to their land. Since Tonga is a Christian country, land laws are based on Christian principles.

It is time for the Tongan Parliament and Constitution to grant women in Tonga the right to own land. This act will help spread equality in Tonga for both men and women. It is time for land reformation that can benefit both men and women and contribute to the equitable development to the success of all Tongans, not just men.

The failure to take effective action to reform the land tenure system could undoubtedly make it difficult to maintain harmonious relationships among the various social classes in Tongan society. I believe that this might be a tough movement for the government and the people in leadership, but this might be the actions needed by most Tongan women. It will empower women in Tonga knowing that they have an equal right to the land of their birth.

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