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Human Rights Treaties in the Pacific: A Case Study of the Non-Ratification of CEDAW in Tonga

A thesis
submitted in fulfilment
of the requirements for the degree
of
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Suliana Alouaivaha Mone



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ABSTRACT

This research aims to investigate the reasons for the Tongan government's failure to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2015 and, in doing so, uncover the obstacles to formal and substantive equality for women living in Tonga. The researcher determined that empirical research was necessary to properly achieve these objectives and conducted a qualitative case study employing the Kakala Research Framework and Grounded Theory. The literature on this subject is scarce; therefore, this approach was best suited as a literature review was of limited use, and theories and explanations rose from the data.

The research findings highlighted three thematic barriers to CEDAW ratification; there were constitutional, cultural and political impediments to formal and substantive equality for women in Tonga. The theory of patriarchy, or the suppression of women by men and which now extends to include suppression of particular groups by others, offers the best explanation for the status quo in Tonga.

Patriarchy in Tonga comprises men's subjugation of women and the subjugation of the *tu'a* or commoner class by the traditional ruling classes. This was consolidated by the promulgation of Tonga's 1875 constitution. Despite the reforms of 2010, the patriarchal constitution does not permit a sitting government the power to ratify treaties such as CEDAW; this remains a constitutional prerogative of the monarch. Hon Akilisi Pohiva's government lacked the constitutional authority to ratify CEDAW, despite their intentions to do so. The constitution also contains provisions that explicitly discriminate against women.

The patriarchal constitution birthed a patriarchal Christian culture, thus conflicting with the values underpinning women's equality. Tongan women, significantly poorer uneducated women of the commoner class, articulated experiences in Tongan culture and society characterised by poverty, violence, crime, loss of autonomy, a lack of a voice, shame and suffering. The powerful patriarchal

institutions of the male-dominated church leadership and nobility were the major opponents to CEDAW, characterising the Convention as demonic and advocating for same-sex marriage, misdirecting the discourse and misinforming the general public. Tongan women could not support CEDAW because they did not understand the Convention and were fearful of it. Women were effectively robbed of the opportunity to decide for themselves whether to integrate into their matrix of cultural values the principles of equality contained in CEDAW or to remain attached to a patriarchal Christian culture under which they remain suppressed.

The political reasons for non-ratification are an extension of Tonga's patriarchal Christian culture, wherein the norm is that leadership roles and politics are reserved for men. The restriction of women from Tonga's political sphere has resulted in women's political and legal issues being historically sidelined. The political opposition to CEDAW was not an outcome of thorough and open discussions of the merits or disadvantages of the Convention; this was wholly sidelined and, in its place, was political opposition to Hon Akilisi Pohiva and his PTOA party's agenda for further democratic reform.

The research posits that feminist legal theory applies in Tonga, that the law is the source of women's suppression, the foundation of Tonga's patriarchal structures and is, therefore, the means for women's liberation. Constitutional and legislative amendments are critical to dismantling Tonga's patriarchal state, society and culture. The researcher suggests seventy-six possibilities for legislative reform that would enable formal and substantive equality for women and initiate the destruction of patriarchy in Tonga. The researcher hopes that legal provisions that mandate equality for women are also incorporated into the Tongan cultural fabric and society.

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DEDICATION

FOR MY SONS, ALEX 'OFA KI TOLOA AND LÉON SIVIVATU

And in loving memory of my beloved father,

REV DR FISIIHOI FINAU KAVAEFIAFI MONE.

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Figure 2:Map of the Pacific (Public Domain, www.wikipedia.org) 6

GLOSSARY OF TERMS

<i>Angalelei</i>	being generous, kind, and dignified.
<i>‘Api</i>	extended family unit headed by the father.
<i>‘Eiki, Mu‘a, Matapule</i>	chiefs.
<i>Fa‘ahinga</i>	grouping of multiple extended family units (‘api).
<i>Fahu</i>	sacred sister who had the authority to act above the law/prohibitions or tapu.
<i>Faikava</i>	informal kava drinking normally for commoner men.
<i>Faikava ‘eva</i>	kava drinking at an unmarried woman’s home in order to court her.
<i>Faka‘apa‘apa</i>	Respect.
<i>Fono</i>	compulsory meeting male members of a kainga must attend to hear chief’s commands.
<i>Ha‘a</i>	largest social grouping in Tonga, comprising of multiple kainga, over whom the most senior chief title led.
<i>Hikule‘o</i>	one of three of Tonga’s most powerful gods, believed to be female and sister to Tangaloa, thus fahu to the Tu‘i Tonga.
<i>‘Ilo Kava or Taumafa Kava</i>	ceremonial kava drinking reserved for Kings and chiefs
<i>‘Inasi</i>	presentations made to chiefs and/or Tu‘i Tonga.
<i>Kainanga ‘oe Fonua</i>	dirt eaters/eaters of the soil. Used to refer to tu‘a or commoners.
<i>Kainga</i>	community of people comprised of multiple fa‘ahinga living within a particular area over which a chief governed.
<i>Kakala</i>	garland.
<i>Kalapu kava Tonga or the faikava clubs</i>	informal kava drinking where men would gather to talk and socialise as well as donate to local fundraising initiatives.
<i>Kava</i>	plant; Piper methysticum.
<i>Kava fakasiasi</i>	drinking of kava at church, usually on Sundays.

<i>Luva</i>	to give a gift from the heart with sincerity, humility and honour.
<i>Mafana</i>	audiences are so touched by the performance they feel compelled to participate.
<i>Malie</i>	a well-executed performance.
<i>Matalafo Laukai</i>	is a Tongan proverb referring to criticism or commentary emanating from spectators not participating in the ancient game of Lafo in Tonga.
<i>Mateuteu</i>	being culturally versed, prepared and responsive.
<i>Mehikitanga</i>	father's eldest sister.
<i>Ofa fe'unga</i>	to act with sufficient affection/consideration (ensuring that the research did not negatively impact participants' lives).
<i>Pelepelengesi</i>	of a sensitive nature.
<i>Popula</i>	prisoners of war, slaves. Also subject to the King and chief class.
<i>Poto he anga</i>	knowing what to do in the cultural context.
<i>PTOA (Paati Temokalati Out Motu Anga'ofa)</i>	Friendly Islands Democratic Party.
<i>Tamaha</i>	title given to the Tui Tonga Fefine's daughter.
<i>Tangaloa, Maui, Hikule'o</i>	three primary gods worshipped by ancient Tongans.
<i>Tapu</i>	divine essence, sacred, possessing mana.
<i>Tapu</i>	forbidden.
<i>Tau fakalokua</i>	early form of kava drinking carried out by farmers and fishermen after the day's work.
<i>Teu</i>	to prepare.
<i>Tofi'a</i>	hereditary estate.
<i>Toli</i>	to pick.

<i>Tu'a</i>	commoners, class of people that were ruled or governed by the kings and chiefs.
<i>Tui</i>	to string flowers together.
<i>Tu'i Tonga Fefine</i>	title held by the sister of the Tu'i Tonga.
<i>Tu'i Tonga, Tu'i Ha'atakalaua, Tu'i Kanokupolu</i>	three lines of kings/dynasties.
<i>Ulumotu'a</i>	head of the fa'ahinga.

LIST OF ABBREVIATIONS

AusAID	Australian Agency for International Development.
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
CEC	Constitutional and Electoral Commission.
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women.
CPPED	International Convention for the Protection of All Persons from Enforced Disappearance.
CRC	Convention on the Rights of the Child.
CRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
CROP	Council of Regional Organisations of the Pacific.
CRPD	Convention on the Rights of Persons with Disabilities.
FCT	Free Church of Tonga.
FFA	Pacific Islands Forum Fisheries Agency.
FIHRDM	Friendly Islands Human Rights and Democracy Movement.
FWC	Free Wesleyan Church.
HRC	Human Rights Council.
HRDMT	Human Rights and Democracy Movement Tonga.
ICCPR	International Covenant on Civil and Political Rights.
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination.

ICESCR	International Covenant on Economic, Social and Cultural Rights.
IMF	International Monetary Fund.
JADP	Judicial Appointments and Discipline Panel.
LDS	Latter Day Saints.
MDGs	Millennium Development Goals.
NCPR	National Committee on Political Reform.
NR	Noble’s Representatives.
PACER	Pacific Agreement on Closer Economic Relations.
Pacific Women	Pacific Women Shaping Pacific Development.
PASO	Pacific Aviation Safety Office.
PDP	People’s Democratic Party.
PIDP	Pacific Islands Development Programme.
PIF	Pacific Island Forum.
PIFS	Pacific Islands Forum Secretariat.
PLGED	Pacific Island Forum’s Pacific Leader’s Gender Equality Declaration 2012.
PPA	Pacific Power Association.
PR	People’s Representatives.
PTOA	Democratic Party of the Friendly Islands (formerly the FIHRDM).
RLC	Royal Land Commission.
RNPGAD	Revised National Policy on Gender and Development 2014-2018.
RPPA	Revised Pacific Platform for Action on the Advancement of Women and Gender Equality 2005-2015.

SAMOA Pathway	Small Island Developing States Accelerated Modalities of Action.
SDGs	Sustainable Development Goals.
SPC	Pacific Community.
SPREP	Secretariat of the Pacific Regional Environment Programme.
SPTO	South Pacific Tourism Organisation.
TLA	Tongan Leiti Association.
TNFCL	The Tonga National Forum of Church Leaders.
TSDF II	Tonga’s Strategic Development Framework 2015–2025.
TSM	Temporary Special Measure.
TSM Coalition	Women’s Coalition on Temporary Special Measures.
UN	United Nations.
UNDHR	Universal Declaration of Human Rights.
UNDP	United Nations Development Programme.
UNIFEM	United Nations Development Fund for Women.
UPR	Universal Periodic Review.
USP	The University of the South Pacific.
WAD	Women’s Affairs Division.
WCCC	Women’s and Children’s Crisis Centre.
WEGET	National Women’s Empowerment And Gender Equality Tonga Policy And Strategic Plan Of Action 2019–2025.

INTRODUCTION

This research is very personal to the researcher and comprises a journey that was both mental and spiritual in nature. The researcher was raised in different villages throughout Tonga, owing to her father and grandfather's service as ministers in the Free Wesleyan Church of Tonga. The one stable home the researcher had over the years was her grandfather's home in the village of Fua'amotu in Tongatapu. The researcher's mother and her siblings contributed to the building of the family home, a home where many happy hours as an extended family were spent. With the passing of the researcher's grandfather and the researcher's eldest maternal uncle's inheritance of the home, the researcher, like the rest of the family, lost access to a home, a sanctuary and a place that featured in the happiest of childhood memories. All because her mother had no legal rights to their father's land.

The researcher has since questioned discriminatory laws and practices in the nation she was raised and embraced the notion of equality as contained in human rights documents. The guilt in conceptualising the rejection of what was perceived as an element of one's culture ignited a desire to examine the perceived tension between women's human rights and Tongan cultural values. Tonga's controversial and much-publicized rejection of CEDAW in 2015 provided the perfect opportunity for the researcher to do so. Therefore, this research aims to uncover and explore the impediments to the ratification of CEDAW in Tonga and the implementation of formal and substantive equality for Tonga's women.

The literature on the rejection of CEDAW in Tonga is scarce. This thesis, therefore, provides a contextual background in Chapter One. Tonga is situated in the broader context of the Pacific region, resistance to human rights treaties and CEDAW are explored, as well as the proliferate human rights issues in the Pacific and Tonga, of which women's rights feature prominently. The benefits of human rights and CEDAW are discussed, as are the reasons for non-compliance. As articulated in official Universal Periodic Review reports, Tonga's reasons for the non-ratification

of CEDAW are traversed. However, the researcher considered these reasons incomplete truths and believed empirical research and descriptions that arise from people on the ground would offer a more detailed and more accurate explanation.

Chapter Two prescribes the methodology employed. An empirical qualitative case study was conducted utilising the Kakala Research Framework and Grounded Theory. One hundred and four interviews were carried out over four different phases, with ninety-nine participants. Coding responses revealed three major categories; barriers to CEDAW ratification and women's equality were thematically constitutional, cultural and political.

Chapter Three explores the constitutional impediments to CEDAW and women's rights. The Tongan constitution contains patriarchal provisions that did not permit a sitting government the executive authority to ratify international treaties.

Chapter Four underscored the cultural opposition to CEDAW and women's rights. In essence, Tonga maintains a patriarchal Christian culture, a culture that is threatened by women's rights norms and equality contained in CEDAW. Cultural leaders were unsurprisingly unwilling to implement laws that would dismantle a structure that privileged and placed them in positions of power.

Chapter Five probes the political reasons for the non-ratification of CEDAW. To summarise, Tonga's patriarchal Christian culture has historically excluded women from the political sphere and sidelined women's issues. The political opposition to CEDAW was directed at the political proponents of CEDAW, Hon Akilisi Pohiva, who was Prime Minister and his pro-democratic PTOA (Paati Temokalati Otumotu Anaga'ofa/Friendly Islands Democratic Party) political party. Women's rights and issues were not the focus of the political discourse pertaining to the ratification of CEDAW.

Chapter Six posits legal feminist theory and legislative reform as the appropriate means to dismantle Tonga's patriarchal state, culture and society. A set of 113

CEDAW compliance indicators were applied to Tongan legislation, and seventy-six recommendations for legislative reform were provided to align Tongan legislation with the mandates of CEDAW and the objectives of national gender policies. Women's liberation from patriarchy's oppression in Tonga requires legislative reform.

CHAPTER ONE: BACKGROUND AND CONTEXT

This first chapter provides the backdrop to the research that follows. Tonga is situated in the broader Pacific region, to highlight that reasons for low levels of human right treaty ratification in Tonga mirror the reasons for the low level ratification and implementation of human rights within the wider region. Tonga is unique in the way that the nation was never formally colonised, whilst the rest of the Pacific region wrestles with human rights and the resurgence of customary laws and traditional practises, the tension in Tonga lies between a human right to democratic governance and the current form government which is viewed as 'traditional'. The benefits of human rights implementation are discussed and the chapter suggests regional efforts and mechanisms which may assist in the ratification and domestication of human rights treaties. The chapter also explores human rights issues and women's rights issues in the region. Human rights issues and women's rights issues in Tonga are discussed through the lens of reports submitted as part of the nation's Universal Periodic Review processes. Tonga, similar to the region it belongs to, features various human rights issues of which the failure to recognise women's rights are the most concerning. The chapter ends by outlining the Tongan government's articulated reasons for failing to ratify CEDAW. This provides the platform for the research that follows, to determine if the stated reasons for non-ratification as articulated in official reports is what the reality is on the ground.

TONGA

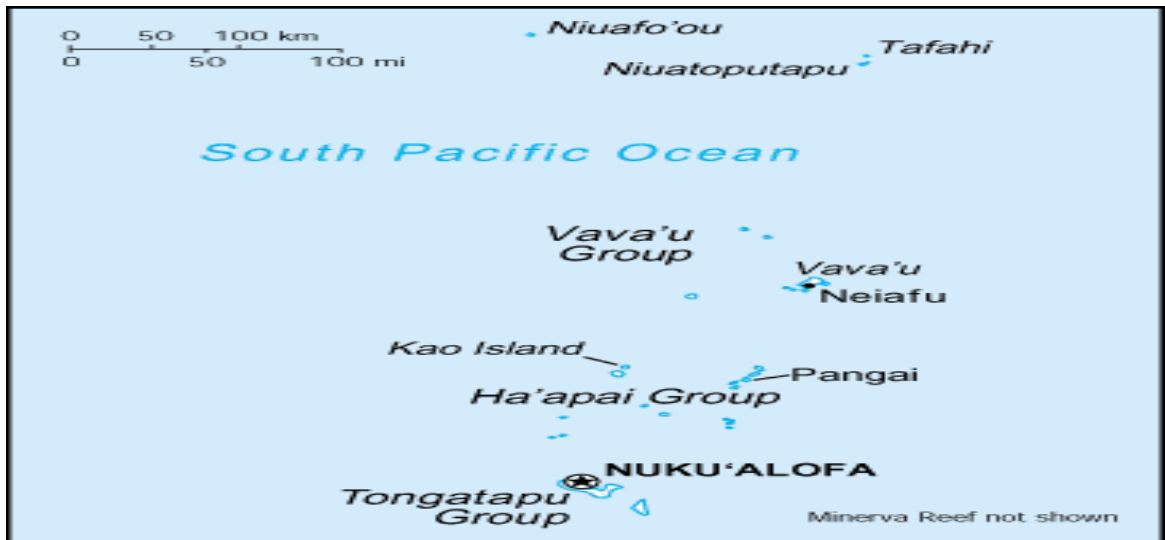
The Kingdom of Tonga lies between Fiji and Samoa in the Pacific Ocean and belongs to the group of islands identified as Polynesia. Consisting of 169 islands spread across 800 kilometres, with a total land area of 749 sq. kilometres,¹ Tonga has a total population of 99,283 (2022).² The archipelago is divided into five island

¹"Tonga" (2022) Pacific Community: Statistics for Development Division <<https://sdd.spc.int/to>>.

²"Population Projections" (2022) Pacific Data Hub <<https://pacificdata.org>>.

groups: Tongatapu, Vava'u, Ha'apai, 'Eua and Niua. Almost 75 percent of the population live on the main island of Tongatapu,³ with over 60 percent of the population living in rural villages of less than 5,000 people across all five island groups.⁴

Figure 1: Map of Tonga (Public Domain, www.wikipedia.org).



THE PACIFIC REGION

Tonga is located within the Pacific region, a region consisting of the hundreds of islands scattered across the vast Pacific Ocean, a body of water covering an estimated one third of the earth's surface.⁵ The total population of the region was estimated in 2022 to be 12,770,000.⁶ The size and population of individual Pacific island countries and territories range from Papua New Guinea's almost nine million population and 462,840 square kilometres⁷ land area to Nauru's 11,690 population and 21 square kilometres land area.⁸ Over the years, the term 'Pacific region' has been used to refer to a varying list of islands. While in this thesis, the totality of the region is considered to be the members of the Pacific Community, the focus of

³ Tonga Statistics Department Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Reports Second Edition (2016) at 16.

⁴ Tonga Statistics Department, above n 3, at 16.

⁵ Ian Christopher Campbell *A History of the Pacific Islands* (Canterbury University Press, Christchurch, 1992) at 11.

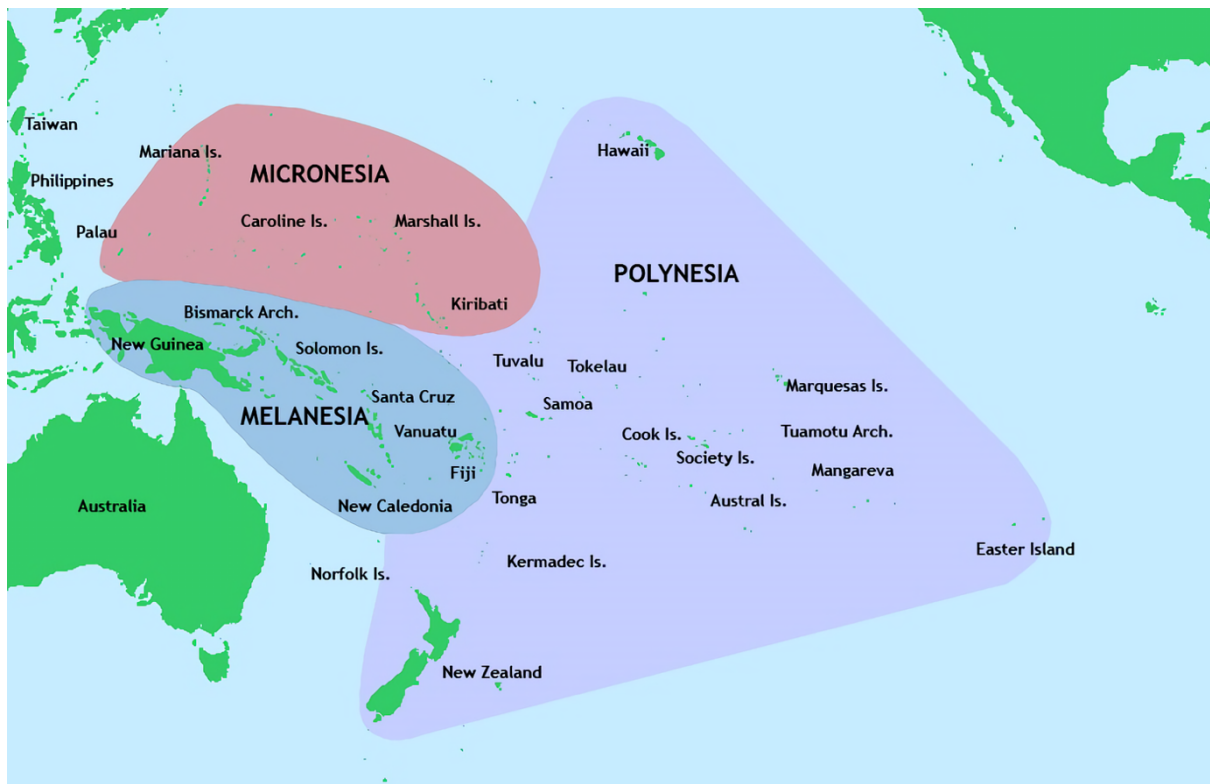
⁶ "Population Projections" (2022) Pacific Data Hub < <https://pacificdata.org> >.

⁷ "Papua New Guinea" Pacific Community: Statistics for Development Division < <https://sdd.spc.int/pg> >.

⁸ "Nauru" Pacific Community: Statistics for Development Division < <https://sdd.spc.int/nr> >.

much of this work is limited to the independent member countries of the Pacific Island Forum (PIF), the membership of which includes: Tonga, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tuvalu and Vanuatu. Although both are members of the Pacific Community and the Pacific Island Forum, New Zealand and Australia are not considered.

Figure 2: Map of the Pacific (Public Domain, www.wikipedia.org)



The people of the Pacific region are classified into three distinct groups; Polynesia, Melanesia and Micronesia.⁹ French navigator Dumont D’Urville devised these three groupings in the 1830s, the groupings have been criticised as inaccurate and racist;¹⁰ however, the classifications remain in everyday use. Tonga is part of Polynesia (many islands), the group of islands to the east, including Cook Islands, Samoa, Tuvalu, Niue, French Polynesia, and Tokelau. Melanesia (dark islands) are

⁹ See Generally, Campbell, above n 5.

¹⁰ Serge Tcherkézoff “A Long and Unfortunate Voyage towards the “Invention” of the Melanesia/Polynesia Distinction 1595-1832.” (2003) 38 *The Journal of Pacific History* 175 at 175-178.

western and central islands, including Papua New Guinea, Fiji, Solomon Islands, New Caledonia, and Vanuatu. Micronesia (small islands) are islands to the north and include Palau, Guam, Northern Mariana Islands, Marshall Islands, Kiribati and the Federated States of Micronesia.

Settlement of the Pacific region is believed to have occurred over two defining phases.¹¹ The first wave of settlers arrived in New Guinea at around 40,000 B.P. they settled the Bismarck archipelago by 33,000 BP and the Solomon Islands by 29,000 B.P.¹² Descendants of these first settlers in the region today speak Papuan languages.¹³ The second wave of settlers are believed to have arrived in the region from South China and Taiwan between 5,000 and 6,000 B.P.¹⁴ These settlers were remarkable navigators and, with their canoes, crossed vast expanses of ocean to settle Vanuatu, New Caledonia, Fiji and all of Polynesia to the furthest reaches of New Zealand, Hawaii and Easter Islands.¹⁵ These seafaring settlers are often referred to as Lapita People; their descendants are the Austronesian language speakers in the Pacific today.¹⁶ Modern understanding of the settlement of the Pacific is summed up very broadly as the first wave of people settling parts of Melanesia and a subsequent second wave of navigator settlers who populated the remainder of Melanesia, Polynesia and Micronesia.¹⁷ Tonga's first settlers are believed to have crossed the vast Pacific Ocean from South East Asia and settled the islands around 3,000 years ago.¹⁸ As referred to above, Tonga's first settlers were the Lapita people, and, as such, the Tongan language belongs to the Austronesian family group.

¹¹ E. Matisoo-Smith and J. H. Robins "Robins Origins and dispersals of Pacific peoples: Evidence from mtDNA phylogenies of the Pacific rat" (2004) 101 PNAS 9167 at 9167.

¹² Matisoo-Smith and Robins, above n 11, at 9167.

¹³ Margaret Jolly "Imagining Oceania: Indigenous and Foreign Representations of a Sea of Islands" (2007) 12The Contemporary Pacific 508 at 514.

¹⁴ Jolly, above n 13, at 514.

¹⁵ Matisoo-Smith and Robins, above n 11, at 9167.

¹⁶ Matisoo-Smith and Robins, above n 11, at 9167.

¹⁷ J. Koji Lum, Rebecca L. Cann "mtDNA and language support a common origin of Micronesians and Polynesians in Island Southeast Asia"(1998) 105 American Journal of Physical Anthropology 109 at 109.

¹⁸ See Generally, Ian Christopher Campbell *Tonga Ancient and Modern* (Canterbury University Press, Christchurch, 1992).

Separate from scientific findings, the people of the Pacific region all have their own stories of creation, arrival and settlement. The origin stories of Tonga tell of the first women coming from Pulotu (the afterlife, paradise)¹⁹ and of the first men growing out of a worm.²⁰ According to Samoan mythology, in wondering the expanse, the god Tangaloa grew tired and willed into existence a rock to rest upon, out of which he called forth earth, sea, sky, fresh water and man.²¹ The origin stories of Niue, as told to the first Christian missionary on the island, recounts two men, Huanaki and Fao, who swam to Niue from Tonga and, seeing upon arrival that the island was covered in seawater, stomped on the land with their feet causing the water to run off revealing dry land.²² The second time the two men stomped on the ground, grass, trees and other plants appeared. The Māori of New Zealand narrate how the separation of the sky father Ranginui from the earth mother Papatuanuku separated the world of light from the world of darkness.²³ The Māori then tell of the arrival of several great canoes from Hawaiki in different places across the islands of Aotearoa, which began the history of each iwi (people, bones) in those particular places.²⁴

The bond between Pacific-island countries transcends geographical proximity. The common ancestry among people spread throughout the region manifests in likenesses between languages, cultures and physical appearance. The common beauty of Pacific people, places and their rich cultures belies significant shared struggles. Tonga is, in many ways, similar to other nations in the Pacific region. Tonga's issues are often characteristic of the issues present in other Pacific nations.

¹⁹Okusitino Mahina "Myths and History: Some Aspects of History in the Tui Tonga Myths" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds), *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990) at 44.

²⁰ Patricia Ledyard *The Tongan Past* (Vava'u Press Ltd, Vava'u, 1999) at 11.

²¹ "The Samoan Story Of Creation—A 'Tala'." (1892) *The Journal of Polynesian Society* 164 at 166-169.

²² Patrick D Nunn "Myths and the Formation of Niue Island, Central South Pacific" (2004) 39 (1) *The Journal of Pacific History* 99 at 101.

²³ Jolly, above n 13, at 515.

²⁴ At 515.

Save for a few exceptions (PNG, Fiji and Solomon Islands, who make up 90 percent of the population of the region), Pacific island countries are often widely dispersed and geographically isolated with relatively small rural-based population sizes and struggling economies based on fishing, agriculture, tourism, foreign aid and remittances.²⁵ Economic growth is low across the region.²⁶ Small economies and a lack of employment opportunities have resulted in mass emigration to New Zealand, Australia and other countries in search of better work opportunities.²⁷ Tonga has a small economy dependent on foreign aid and remittances; remittances from Tongans living abroad are the largest source of currency earnings in Tonga, second to which is Tourism.²⁸ Tonga primarily exports agricultural products, including fish, as well as crops such as yam, vanilla and squash; the country's imports continue to exceed its exports.²⁹ Migration to neighbouring countries Australia, New Zealand and the United States began in the 1950s as a direct result of land shortages in Tonga and the desire for better wages and educational opportunities, remittances from these migrants prevent economic collapse.³⁰ It is estimated that the population of Tongans living within Tonga is equal to the number of Tongans living outside Tonga's borders, with the majority taking up residence in Australia, New Zealand and the US (United States).³¹

As well as stagnant economic growth and development, Tonga is vulnerable to the same environmental and climate concerns as the rest of the region.³² The negative impacts of climate change are understood to be the premier threat to Tonga in

²⁵ Law Commission *Converging Currents Custom And Human Rights in the Pacific* (NZLC SP17, 2006) at 32-33.

²⁶ Asian Development Bank *Pacific Approach 2016–2020: Inclusive and Sustainable Growth Assessment* at 2.

²⁷ Wawan Juswanto Zulfiqar Ali, *Economic Growth and Sustainable Development in the Pacific Island Countries* (ADBI, Policy Brief No. 2016-6, December 2016) at 6.

²⁸ "Tonga-Economic Indicators" (2021) Moody's Analytics
<<https://www.economy.com/tonga/indicators>>

²⁹ "Tonga-Economic Indicators" above n 28.

³⁰ Cathy A Small and David L Dixon "Tonga: Migration and the Homeland" (4 April 2004) Migration Policy Institute <<https://www.migrationpolicy.org/article/tonga-migration-and-homeland>>

³¹ Ministry of Finance and National Planning *Tonga Strategic Development Framework 2015–2025* (May 2015) at 37.

³² Government of the Kingdom of Tonga *Kingdom of Tonga Voluntary National Review 2019* (2019) at 47-51.

years to come.³³ Tonga is ranked globally as the third “most-at-risk” country to the effects of climate change.³⁴

Countries in the region are vulnerable to the destructive impacts of natural disasters; in some countries, climate change has caused a significant loss of land area due to sea level rising and an increase in the frequency of cyclones, storms, floods, droughts and heatwaves throughout the region.³⁵ The area has also been exposed to nuclear weapon testing by colonial rulers (France and Britain).³⁶

1.1.1 Colonisation And Customary Law

Of all the commonalities shared by Pacific countries, perhaps the most impactful one is a shared history of colonisation. Every Pacific country, except for Tonga, endured foreign control through a colonial ruler at some point during the previous two centuries.³⁷

Prior to European contact and colonisation in the Pacific region, social control was maintained over communities in the region through custom law, verbal orders of traditional leaders and traditional practices.³⁸ The concept of a singular ruler and centralised government was largely foreign to the region; small communities were ruled by chiefs, with some paramount chiefs, at times, ruling multiple communities and islands.³⁹

³³ Department of Climate Change, Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications *Tonga Climate Change Policy: A Resilient Tonga by 2035* (February 2016) at 7.

³⁴ “Tonga Climate Change Trust Fund-Tonga” United Nations Climate Change <<https://unfccc.int/climate-action/momentum-for-change/activity-database/tonga-climate-change-trust-fund>>

³⁵ “Fact Sheet: Pacific Climate Change”(August 2008) Secretariat of the Pacific Regional Environment Programme <<https://www.sprep.org/attachments/Publications/FactSheet/pacificclimate.pdf>>

³⁶ Ministry for Culture and Heritage “Nuclear-free New Zealand-Nuclear testing in the Pacific”(2 October 2014) New Zealand History <<https://nzhistory.govt.nz/politics/nuclear-free-new-zealand/testing-in-the-pacific>>

³⁷ Law Commission, above n 25, at 33.

³⁸ Jennifer Corrin and Don Patterson *Introduction to South Pacific Law* (4th ed, Intersentia Ltd, Cambridge, 2017) at 2.

³⁹ At 2.

With the onset of colonisation, traditional leaders and customary laws were superseded by colonial laws and institutions. Colonial governments established the structures of government in Pacific countries.⁴⁰ Finding that social control in small, and often remote, communities was more effectively executed through traditional leaders and the application of customary law, colonial rulers made allowances for such but failed to integrate or recognise customary leadership and laws in the formal legal system or the courts, except in cases determining title to customary land.⁴¹ The written laws imposed on Pacific colonies established parliamentary systems with varying forms of popular representation that remain to the present day.⁴² Legal systems in the region operate either under the English common law system or the French civil law systems, also introduced during the period of colonisation.⁴³

Distinguished from the rest of the Pacific region by the fact that Tonga was never formally colonised, the rule of three lines of paramount chiefs and lesser chiefs ended with King George's formation of the modern Tongan state in 1845 and the promulgation of the Constitution in 1875.⁴⁴ Whereas traditional leaders and customary laws and practices were set aside by colonial administrators throughout the region, Tonga's Constitution consolidated the traditional rule of a paramount King and chiefly nobility.⁴⁵ The constitution provided a western-style government structure wherein traditional leaders wielded their traditional powers within the boundaries of, and were legitimised by, formal laws and institutions. Tonga's 1875 Constitution established a government wherein the monarch retained overriding powers over the executive, judiciary and legislature. Tonga's unicameral parliament remains partially representative, with nine seats reserved for representatives of the nobles elected by 33 nobles.

⁴⁰ Corrin and Patterson, above n 38, at 3.

⁴¹ At 4.

⁴² Law Commission, above n 25, at 33.

⁴³ At 34.

⁴⁴ See Generally, Sione Latukefu, *Church and State in Tonga* (Australia National University Press, Canberra, 1974).

⁴⁵ See Generally Corrin and Patterson, above n 38.

Customary law in Tonga consisted of the dictates of chiefs; by and large, this remains to the present day as no laws may be passed without the consent of the King, with the nine nobles in the legislature often holding the deciding vote with regard to what laws are enacted. Customary practices conflicting with Christian values were prohibited through early written law codes.⁴⁶ Ninety-eight percent of Tonga's population identifies as Christian.⁴⁷

The understanding of customary law in other countries of the Pacific does not apply to Tonga; Tonga's laws were locally enacted or adopted as opposed to having been imposed by colonising nations. Tonga has only one formal legal system based on the English common law system as established by the Constitution and without a parallel customary law system.

1.1.2 Post Colonisation, Customary Law And Democracy

Many Pacific countries have since gained full independence (Tuvalu, Solomon Islands, Papua New Guinea, Fiji, Nauru, Samoa, Kiribati, Vanuatu), some Pacific countries remain colonised to the present day (French Polynesia (France), New Caledonia (France) American Samoa, Guam, (USA) Tokelau (New Zealand) and Pitcairn Islands (U.K.)⁴⁸ Other countries maintain formal ties with their former colonial rulers, these countries include Wallis and Futuna (France) Northern Mariana Islands, Marshall Islands, Palau, Federated States of Micronesia (USA) Niue and Cook Islands (New Zealand).⁴⁹

At the end of colonisation, independent Pacific countries formally recognised customary laws and leadership relegated during the colonial period. None of the former colonies reverted entirely to customary administration and customary laws. However, traditional structures of government have become recognised at law and incorporated into national constitutions; for example, the Cook Islands have the

⁴⁶ Sione Latukefu *The Tongan Constitution: A brief history to celebrate its Centenary* (Tongan Traditions Committee, Nuku'alofa, 1975) at 20.

⁴⁷ Tonga Statistics Department, above n 3, at 50.

⁴⁸ "SPC Members" Pacific Community <<https://www.spc.int/our-members/>>

⁴⁹ "SPC Members" Pacific Community, above n 48.

House of Ariki,⁵⁰ Marshall Islands have the Council of Iroiji,⁵¹ and Vanuatu, the National Council of Chiefs;⁵² the roles of these traditional structures are limited to that of an advisory body to the legislature or the executive.⁵³

Unlike traditional leadership, incorporating customary law into the formal legal systems of newly independent Pacific countries was not straightforward. Every country made provisions for the recognition of customary law.⁵⁴ Some countries made provisions in their constitutions declaring customary law as part of the law of the land, such as Solomon Islands (1978)⁵⁵ and Vanuatu (1980).⁵⁶ Other countries such as Nauru (1971)⁵⁷ and Kiribati (1987)⁵⁸ enacted legislation, making provision for the application of customary law by the courts in specific matters.⁵⁹ The application of customary law in Pacific countries has not been without challenges; the lack of a coherent defined body of customary law and conflicting customary laws between different communities has posed some challenges in the Solomon Islands.⁶⁰ In Vanuatu, lawyers trained in the common law tradition are unfamiliar with the content and application of customary law, compounded by difficulties in providing evidentiary proof delineating between customary practices and customary laws.⁶¹ The most contentious area for customary law concerns its conflict with fundamental human rights. A vertical application of constitutional rights limits claiming such rights against traditional leaders who wield power but

⁵⁰ Constitution of the Cook Islands, s 8.

⁵¹ Constitution of the Republic of the Marshall Islands, Article III.

⁵² Constitution of the Republic of Vanuatu, ss 29-32.

⁵³ Sue Farran *Human Rights in the South Pacific Challenges and Changes* (Routledge-Cavendish, New York, 2009) at 25.

⁵⁴ Corrin and Patterson, above n 38, at 5-6.

⁵⁵ The Constitution of Solomon Islands, schedule 3.

(sets out matters referred to in s 76 (3) of the Constitution whereby customary law is incorporated as part of the laws of Solomon Islands but shall not apply when inconsistent with an Act of Parliament or the Constitution).

⁵⁶ Constitution of the Republic of Vanuatu, s 95(3).

⁵⁷ **Custom And Adopted Laws Act 1971, s 3.**

⁵⁸ Laws of Kiribati Act 1989, s 5.

⁵⁹ Corrin and Patterson, above n 38, at 5-6.

⁶⁰ Jennifer Corrin Care, "Customary Law in Conflict: The Status of Customary Law and Introduced Law in Post-Colonial Solomon Islands" (2001) 21 University of Queensland Law Journal 167 at 174.

⁶¹ Miranda Forsyth "Beyond Case Law: Kastom and Courts in Vanuatu" (2004) 35 Victoria University of Wellington Law Review 427 at 440-442.

are not formally defined as a part of the state.⁶² A horizontal application of rights contained in the constitutions allows claims to be made against customary law and practices as carried out by individuals, which has resulted in some Pacific countries elevating custom above fundamental rights stipulated in the constitution (Tuvalu, Marshall Islands, Samoa, Federated States of Micronesia and Papua New Guinea).⁶³

While the challenge for its Pacific neighbours during the post colonisation period focuses on recognising customary laws and customary leadership, Tonga's challenges concern its democratisation process and a movement from traditional leadership and customary laws enshrined in its 1875 constitution to a system of government reflective of equality and respecting of human rights.

The legacy of colonisation has left behind forms of democratic governance that former colonies have accepted and chosen to maintain.⁶⁴ As Tonga was never colonised, popular representation in parliament was not introduced, and democracy in Tonga remains a controversial and contested topic.

HUMAN RIGHTS TREATIES

Human rights have been defined in the most simplest terms as the rights one possesses because one is human.⁶⁵ Human rights came to international prominence with the formation of the United Nations on 24 October 1945;⁶⁶ with the Charter of the United Nations affirming the dignity and worth of the human person and rights equally possessed by men, women and nations big and small.⁶⁷

⁶² Jennifer Corrin "From Horizontal and Vertical to Lateral: Extending the Effect of Human Rights in Post-Colonial Legal Systems of the South Pacific" (2009) 58 *International and Comparative Law Quarterly* 31 at 56.

⁶³ Grant Follet "Defining the Formless Customary law in the Pacific" (2014) 39(2) *Alternative Law Journal* 125 at 125.

⁶⁴ See Corrin and Patterson, above n 38.

no independent island country has reverted to customary law or forms of government since independence.

⁶⁵ Jack Donnelly *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press, Ithaca, 2013) at 10.

⁶⁶ "History of the United Nations" United Nations <<https://www.un.org/en/about-us/history-of-the-un/>>.

⁶⁷ Charter of the United Nations, Preamble.

While human rights were recognised in international law previously, the UN Charter was the foundation on which international human rights law was built.⁶⁸ The United Nations was mandated with the international protection of human rights after the human rights violations of the holocaust and the Second World War. Many believed that the horrors inflicted by Hitler could have been averted had there been a strong international human rights organisation in operation at the time.⁶⁹

The Charter of the United Nations seeded international and regional human rights laws and the institutions established to monitor their implementation.⁷⁰ One of the stated purposes of the United Nations as set out in the Charter in Article 1 is “To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”⁷¹ Article 55 of the Charter mandates that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”⁷² The Charter initiated the codification of human rights.⁷³

The Universal Declaration of Human Rights (UNDHR), proclaimed by the United Nations General Assembly on 10 December 1948,⁷⁴ set out rights each human possessed owing to each human’s inherent dignity. As contained in the UNDHR, human rights are characterised as indivisible, interrelated, interdependent, and of equal importance.⁷⁵

⁶⁸ Thomas Buergenthal “The Normative and Institutional Evolution of International Human Rights.” (1997) 19 (4) Human Rights Quarterly 703 at 703.

⁶⁹ Buergenthal, above n 68, at 706.

⁷⁰At 704.

⁷¹ Charter of the United Nations, art 1.

⁷² Charter of the United Nations, art 55.

⁷³ Helen Keller and Geir Ulfstein (eds) *UN Human Rights Treaty Bodies : Law And Legitimacy* (Cambridge University Press, 2012) at 1.

⁷⁴ The Universal Declaration of Human Rights GA Resolution 217A (1948), Preamble.

⁷⁵ United Nations Human Rights Office of the High Commissioner *The United Nations Human Rights Treaty System* UN Fact Sheet No 30/Rev.1 (2012) at 2.

The rights set out in the UNDHR are realised through the ratification and implementation of nine core international human rights treaties: The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), The International Covenant on Economic, Social and Cultural Rights ICESCR), The International Covenant on Civil and Political Rights (ICCPR), The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), The Convention on the Rights of the Child (CRC), The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW), The Convention on the Rights of Persons with Disabilities (CRPD), The International Convention for the Protection of All Persons from Enforced Disappearance(CPPED).⁷⁶ Human rights treaties (also referred to as conventions, covenants or protocols) are multi-lateral, state parties that consent to be bound by the standards set out in the relevant documents.⁷⁷

1.1.3 Human Rights Treaty Bodies

Ten human rights treaty bodies, established under the core treaties, function to monitor the implementation of the treaties in nations that are party to them.⁷⁸ These ten human rights treaty bodies have come to be known as the UN human rights treaty system.⁷⁹ The human rights treaty system is central to the overall human rights infrastructure.⁸⁰ The treaty bodies monitor the implementation of treaty standards in state parties through state reports submitted periodically by states, and later discussed in “constructive dialogue” between the treaty body and state representatives.⁸¹ Other mechanisms for monitoring compliance, such as the

⁷⁶ United Nations Human Rights Office of the High Commissioner, above n 75, at 1.

⁷⁷ Anne Bayefsky “Introduction to the UN human rights treaty system (Special Report on International Law)” (2003) 28 (2) Law Now 28 at 28-30.

⁷⁸United Nations Human Rights Office of the High Commissioner, above n 75, at 2.

⁷⁹ Suzanne Egan “Transforming the UN Human Rights Treaty System: A Realistic Appraisal” (2020) 42 Human Rights Quarterly 762 at 763.

⁸⁰ Egan, above n 79, at 763.

⁸¹ Egan, above n 79, at 764.

Special Procedures and Universal Periodic Review, have increased in use over the years and become more effective.⁸² The Human Rights Council (HRC) conducts the Universal Periodic Review (UPR) to monitor state compliance with human rights standards; however, monitoring state implementation of standards set out in human rights treaties is mainly carried out by respective human rights treaty bodies composed of independent experts.⁸³ The Universal Periodic Review is a process by which the Human Rights Council reviews the human rights records of the 193 United Nations (UN) member states.⁸⁴ The UPR occurs every four and a half years and is based on three reports; a national report, stakeholders report prepared by the OHCHR based on submissions from NGOs and a compilation report based on UN information about the state.⁸⁵ Nations under review participate in interactive dialogue where any UN member can question, comment or make recommendations, which the nation under review may or may not support.⁸⁶

The Human Rights Council also utilises Rapporteurs and working groups to investigate and respond to human rights violations.⁸⁷ As a response to complaints, treaty bodies have published Views and General Comments to clarify human rights questions and issues⁸⁸ while Concluding Observations address ways the state in question could better implement relevant human rights treaties; however, these documents are not legally binding.⁸⁹ Human rights have evolved in the last 30 years to address emergent issues of those with disabilities, indigenous people, LGBTBI, and the number of states ratifying core conventions has markedly increased.⁹⁰

⁸²Frédéric Mégret and Philip Alston (eds) *The United Nations and Human Rights: A Critical Appraisal (2nd Edition)* (2nd ed, Oxford University Press, 2020) at 2.

⁸³ Keller and Ulfstein, above n 73, at 2.

⁸⁴“Universal Periodic Review” United Nations Human Rights Council <<https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>>

⁸⁵ Regional Rights Resource Team *Pacific Island States and the Universal Periodic Review* (Secretariat of the Pacific Community, 2012) at 4.

⁸⁶ Regional Rights Resource Team, above n 84, at 5.

⁸⁷ Keller and Ulfstein, above n 73, at 2.

⁸⁸ At 4.

⁸⁹ At 4-5.

⁹⁰ Mégret and Alston, above n 82, at 2.

1.1.4 Positive Impacts Of Human Rights Treaties

It is accepted that it is an international obligation to ensure that governments promote and protect the human rights of their citizens.⁹¹ While the international community cannot force states to comply with international law standards and, as such, human rights violations persist worldwide, exposing human rights violations to the international community has led to improved domestic human rights standards.⁹²

An empirical study has shown that human rights treaties have positive effects.⁹³ Human rights treaties introduce issues into national politics that would not have existed had it not been for the question of ratification and implementation of a particular treaty; treaties also provide an avenue and resource for litigation once domesticated. Treaties are an effective tool for individuals and organisations to force government compliance and a resource for activists to improve the rights they are fighting for.⁹⁴ Human rights treaties have positive effects, most significantly, in countries that are neither stable democracies nor stable autocracies, through domestic groups with the motives and the means to demand that their rights, as set out in ratified treaties, are effectively implemented and realised.⁹⁵

1.1.5 Reservations

The Vienna Convention on the Law of Treaties defines reservations as a statement made by a state when signing, acceding or ratifying a treaty to “exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”⁹⁶ Reservations are permitted as long as the treaty does not prohibit such

⁹¹ Buerghenthal, above n 68, at 704.

⁹² At 704.

⁹³ Beth A. Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, Cambridge, 2009) at 20.

⁹⁴ Simmons, above n 93, at 14-15.

⁹⁵ At 15-16.

⁹⁶ Vienna Convention on the Law of Treaties 1969 (opened for signature 23 May 1969, entered into force 27 January 1980), art 2.

reservations and the reservations are not “incompatible with the object and purpose of the treaty.”⁹⁷

Refusing to ratify treaties indicates an unwillingness to accept international human rights norms.⁹⁸ Reservations are used by states to avoid being compelled by domestic courts to comply with standards set out in the international treaties they have ratified.⁹⁹ They are entered for the purpose of minimising the effects of international human rights law on domestic law.¹⁰⁰ Reservations, understandings or declarations are a means for a state to partially commit to a treaty by communicating that it would be exempt from specific provisions of the treaty in question.¹⁰¹ They are a means for states to avoid condemnation or scrutiny for non-ratification while, at the same time, avoiding any domestic legal consequences as a result of ratification,¹⁰² and most likely when these legal constraints apply to the state.¹⁰³

HUMAN RIGHTS TREATIES IN THE PACIFIC

Historically, the Pacific region has a poor record of ratification and implementation of the core international human rights treaties. The Pacific region has the lowest rate of treaty ratifications globally, and countries of the region consistently fail to meet their reporting obligations.¹⁰⁴ This is even though Pacific countries have signified their acceptance of human rights norms through membership in international and regional organisations that have made a clear commitment to human rights.

⁹⁷Vienna Convention on the Law of Treaties 1969, art 19.

⁹⁸Daniel W. Hill “Avoiding Obligation: Reservations to Human Rights Treaties”(2016) 60 (6) The Journal of conflict resolution 1129 at 1130.

⁹⁹Hill, above n 98, at 1150.

¹⁰⁰At 1131.

¹⁰¹At 1130.

¹⁰²At 1130.

¹⁰³At 1131.

¹⁰⁴Scott Walker “Human Rights and the South Pacific: A New Voice in the Global Dialogue” (2011) 10(2) Journal of Human Rights 214 at 214.

1.1.6 International Organisations

Tonga, and ten other Pacific Island nations, are members of the United Nations, indicating their commitment to the human rights set out in the UNDHR.¹⁰⁵ These countries include Fiji, Marshall Islands, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Kiribati, Tuvalu and Vanuatu. (New Caledonia, French Polynesia, Wallis and Futuna are parties to UN treaties ratified by France, Guam, American Samoa, Northern Mariana Islands through America, The Cook Islands, Tokelau and Niue through New Zealand).

Tonga and eight other Pacific Island countries are members of the Commonwealth. The commonwealth's roots go back to the British empire,¹⁰⁶ and the organisation now has a membership of 54 independent states.¹⁰⁷ Members of the Commonwealth from the Pacific region include Fiji, Nauru, Papua New Guinea, Solomon Islands, Samoa, Tonga, Kiribati, Tuvalu, and Vanuatu.¹⁰⁸ The Commonwealth Charter declares their commitment to the Universal Declaration of Human Rights, the two Covenants and international human rights instruments; the Charter states these rights to be universal, indivisible, interdependent, and interrelated and therefore cannot be implemented selectively.¹⁰⁹ The Commonwealth Charter recognises the inalienable right of individuals to participate in the democratic process through free and fair elections.¹¹⁰

1.1.7 Regional Organisations

The two largest regional organisations in the Pacific region are the Pacific Island Forum (PIF) and the Pacific Community (SPC). The Framework for Pacific Regionalism guides the operation of both organisations. The Framework was endorsed by Pacific Island Forum Leaders in July 2014 and replaced its predecessor,

¹⁰⁵ "Member States" United Nations <<https://www.un.org/en/about-us/member-states>>

¹⁰⁶ "Our History" The Commonwealth < <https://thecommonwealth.org/about-us/history>>.

¹⁰⁷ "About us" The Commonwealth <<https://thecommonwealth.org/about-us>>.

¹⁰⁸ "Member Countries" The Commonwealth <<https://thecommonwealth.org/regions/pan-commonwealth>>.

¹⁰⁹ Commonwealth Charter, Human Rights.

¹¹⁰ Commonwealth Charter, Democracy.

the Pacific Plan.¹¹¹ The Framework makes a regional commitment to human rights as one of its values; “We embrace good governance, the full observance of democratic values, the rule of law, the defence and promotion of all human rights, gender equality, and commitment to just societies.”¹¹² However, the principal objectives of the Framework for Pacific Regionalism are sustainable development, economic growth, strengthened governance and security. Incorporating the promotion and protection of human rights as an objective of the Framework for Pacific Regionalism and in its forthcoming replacement, the 2050 Strategy for the Blue Pacific Continent,¹¹³ would be beneficial for the ratification of human rights treaties and the realisation of human rights in the region.

1.1.7.1 Pacific Islands Forum

The Pacific Island Forum was established in 1971 and is touted as the Pacific region’s premier political and economic policy organisation.¹¹⁴ Tonga and 15 other Pacific Island countries are members of PIF: the Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tuvalu and Vanuatu.¹¹⁵ The Forum vision is for a “region of peace, harmony, security, social inclusion and prosperity so that all Pacific people can lead free, healthy and productive lives.”¹¹⁶ The work of the Forum is guided by the Framework for Pacific Regionalism.¹¹⁷ The vision and values set out in the Framework are identical to the vision and values set out for PIF.¹¹⁸ As such, six regional Pacific values are set out as PIF values, with one declaring the region’s embrace of human rights: “We embrace good governance, the full observance of democratic values, the rule

¹¹¹ “The Pacific Islands Forum” Pacific Islands Forum <<https://www.forumsec.org/who-we-arepacific-islands-forum/>>.

¹¹² The Framework for Pacific Regionalism (endorsed by Pacific Islands Forum Leaders in July 2014), at 3.

¹¹³ “The 2050 Strategy for the Blue Pacific Continent” Pacific Islands Forum <<https://www.forumsec.org/2050strategy/>>.

¹¹⁴ Pacific Islands Forum, above n111.

¹¹⁵ Pacific Islands Forum, above n111.

¹¹⁶ Pacific Islands Forum, above n111.

¹¹⁷ Pacific Islands Forum, above n111.

¹¹⁸ The Framework for Pacific Regionalism above n 112, at 3; Pacific Islands Forum, above n111.

of law, the defence and promotion of all human rights, gender equality and commitment to just societies.”¹¹⁹

1.1.7.2 The Pacific Community

The Pacific Community is the region’s principal scientific and technical organisation and is purposed with supporting development throughout the Pacific region.¹²⁰ Established in 1947, its founding membership consisted of nations with interest (colonies, territories) in the Pacific.¹²¹ Its current membership consists of Tonga and 21 other Pacific Island countries and territories (the Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, American Samoa, Guam, Northern Mariana Islands, Pitcairn Islands, Tokelau, Wallis and Futuna) and the USA, France, Australia and New Zealand.¹²² The work of SPC is guided by the Framework for Pacific Regionalism, the priorities set out in the SAMOA Pathway (Small Island Developing States Accelerated Modalities of Action) and the Sustainable Development Goals (SDGs).¹²³ As discussed above, the Framework embraces human rights. The SAMOA Pathway was adopted at the Third International Conference on Small Island Developing States held from 1-4 September 2014 in Apia Samoa.¹²⁴ The document reaffirms the respect for human rights, the importance of the UDHR and other international human rights instruments. The 17 Sustainable Development Goals (SDGs) are outlined in The 2030 Agenda for Sustainable Development adopted by the United Nations member states in 2015.¹²⁵ The SDGs concern areas very relevant to developmental issues in the Pacific region such as poverty (goal 1), hunger (goal 2), good health and well-

¹¹⁹ Pacific Islands Forum, above n111.

¹²⁰ “Our Work” Pacific Community < <https://www.spc.int/about-us/our-work>>.

¹²¹ “History” Pacific Community < <https://www.spc.int/about-us/history>>.

¹²² “SPC Members” Pacific Community < <https://www.spc.int/our-members/>>.

¹²³ Pacific Community, above n 120.

¹²⁴ Small Island Developing States Accelerated Modalities of Action (SAMOA) Pathway A/RES/69/15 (2014).

¹²⁵ “The 17 Goals” United Nations Department of Economic and Social Affairs Sustainable Development < <https://sdgs.un.org/goals>>

being (goal 3). Goal 11, 12, 13, 14 and 15 involve climate and environmental issues.¹²⁶

As discussed above, on an international level, several Pacific countries are members of the United Nations and the Commonwealth and, therefore, have a commitment to promoting and protecting human rights. In terms of regionalism, all work in the Pacific region is guided by the Framework for Pacific Regionalism and, although respect for and promotion of human rights is a value embraced in the region, the objectives of the Framework do not include ratifying or implementing human rights treaties; the focus lies heavily with promoting development in the region. Accordingly, the PIF envisions a region of “prosperity”,¹²⁷ and SPC, the Pacific region’s most significant organisation, has as its primary mandate, the promotion of development in the region. It is evident that development is the priority in the Pacific region and although acknowledged, the promotion of human rights is a subset of, and subsidiary to, the region’s development agenda. Membership in international organisations committed to human rights does not equate to increased compliance; regional organisations do not emphasise human rights as a priority.

1.1.7.3 Regional Human Rights Document: Denarau 2015 Declaration On Human Rights And Good Governance

The Denarau 2015 Declaration on Human Rights and Good Governance is the first of its kind to focus on human rights in the region.¹²⁸ The Denarau Declaration was the outcome of the Pacific Members of Parliament Consultation on Human Rights for Good Governance, organised by the Secretariat of the Pacific Community (SPC)¹²⁹ and endorsed by MPs from Tonga and ten other states across the Pacific

¹²⁶ United Nations Department of Economic and Social Affairs Sustainable Development, above n 125.

¹²⁷ “The Pacific Islands Forum” Pacific Islands Forum <<https://www.forumsec.org/who-we-arepacific-islands-forum>>.

¹²⁸ “First Ever Pacific MPs Declaration on Human Rights for Good Governance” (29 January 2015) Pacific Community <<https://www.spc.int/updates/news/2015/01/first-ever-pacific-mps-declaration-human-rights-good-governance>>

¹²⁹ Pacific Community, above n 128.

Region.¹³⁰ (Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Samoa, Solomon Islands, Tuvalu and Vanuatu). The focal point of the declaration is the desire for the promotion of human rights in order to facilitate good governance, which would ultimately enhance much-desired development. “We recognise the bold steps that Pacific states have taken to safeguard, fulfil and promote human rights as essential cornerstones of good governance and the social, economic and cultural development of Pacific Island nations.”¹³¹ The Declaration stating, “We uphold our Pacific culture and traditions, noting that human rights and good governance can be achieved when we embrace our culture, engage its evolution and its many values that are linked to principles, treaties and conventions of human rights”,¹³² signals a new approach to human rights from regional leaders; cultures are not only embraced but are evolved through the perpetuation of cultural values that are linked to human rights as contained in human rights treaties, thus simultaneously ensuring the survival of Pacific cultures and the successful implementation of human rights which would provide the necessary pathway to good governance and development. The Declaration underscores human rights issues in the region related to women, children and people with disabilities and acknowledges efforts to ratify and domesticate CEDAW, CRC and CRPD. The Declaration acknowledges climate change and non-communicable diseases as emerging human rights issues for the Pacific region. The Declaration reaffirms the importance of human rights treaties and their implementation: “We acknowledge and assent to our roles as MPs to champion and guide domestication of ratified treaties, and submit treaty reports in compliance with our State reporting obligations”¹³³ and of making human rights a “reality on the ground”.¹³⁴ The Declaration emphasises the importance of engaging in the UPR processes and implementing recommendations.

¹³⁰ “First Ever Pacific MPs Declaration on Human Rights for Good Governance” Pacific Community <<https://www.spc.int/updates/news/2015/01/first-ever-pacific-mps-declaration-human-rights-good-governance>>

¹³¹ Denarau 2015 Declaration On Human Rights And Good Governance (endorsed by members of parliament from 11 Pacific states 30 January 2015).

¹³² Denarau 2015 Declaration On Human Rights And Good Governance.

¹³³ Denarau 2015 Declaration on Human Rights and Good Governance

¹³⁴ At 133.

While the declaration promotes the merging of human rights and culture, providing a channel through which human rights, good governance and development may be realised in the region, and, to that end, emphasises the importance of ratifying and implementing human rights treaties, the document is non-binding. Tonga and Palau are each signatory to it, but each nation has only ratified two core human rights conventions, and neither has ratified CEDAW.

The recognition and acceptance of human rights, that is suggested by countries in the region bearing membership in international and regional organisations committed to human rights consolidated by widespread support for the region's Denarau 2015 Declaration on Human Rights and Good Governance, does not translate to ratification or domestication of human rights conventions and engagement with treaty reporting bodies. Pointedly, of the countries that are signatories to the Declaration and members of PIF, SPC, UN and the Commonwealth, only Fiji has ratified all nine core conventions, and Samoa six. The remaining countries, which include Kiribati(4), Nauru (4), Solomon Islands(4) and Tuvalu (3), have ratified less than half of the nine core conventions. The ICESCR has only been ratified by Fiji and Marshall Islands. Some countries have ratified as few as two out of the nine core treaties; Palau has only ratified the CRC, the CRPD, and Tonga has only ratified the CERD and the CRC.¹³⁵

There have been suggestions of focusing on alternative avenues of implementing human rights in the region,¹³⁶ however, as discussed above, ratification is crucial to realising human rights, as it indicates national willingness to enact or amend legislation to comply with standards set out in international conventions, facilitates international scrutiny of local governments, laws and practices, and is a tool for

¹³⁵ Status of Ratification Interactive Dashboard: Ratification of 18 International Human Rights Treaties" United Nations Human Rights Office of the High Commissioner
<<https://indicators.ohchr.org/>>

¹³⁶ Natalie Baird "To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific " (2011) 12(2) Melbourne Journal of International Law 249 at 251.

citizens and activists to enforce government compliance with international human rights norms.

1.1.8 Why Human Rights In The Pacific: Development And Democracy

The most urgent priority in the Pacific, as determined by reviewing the objectives and values of major regional organisations, includes development and good governance; these are thematic in regional discussions. The Vienna Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights, stipulate that “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”¹³⁷ The Declaration affirms development as a fundamental human right. Democracy is defined as “based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”¹³⁸ Others have more simplistically defined democracy as popular political participation and development as sustained economic growth.¹³⁹ Further to the interdependent and mutually reinforcing nature of the dynamic between human rights, development and democracy, it has been argued that forms of democracy and development that are desirable must be built on a foundation of established human rights.¹⁴⁰

Economic growth and development in the Pacific region are persistently slow. Most countries in the region are classified as developing countries, with five classified as among the world’s least developing countries.¹⁴¹ The region’s protracted economic growth has been attributed in reports issued by the Asian Development Bank and the United Nations Development Programme (UNDP) to the lack of good

¹³⁷ Vienna Declaration and Programme of Action (Adopted by the World Conference on Human Rights in Vienna 25 June 1993), art 8.

¹³⁸ Art 8.

¹³⁹ Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press, Ithaca, 2013) at 217.

¹⁴⁰ At 247.

¹⁴¹ Law Commission, above n 25, at 67. (Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu)

governance, among other factors.¹⁴² Strong arguments have been made that, for Pacific countries to have a better chance of achieving development goals, the core human rights conventions must be ratified and implemented.¹⁴³

Tonga's Millennium Development Goals (MDGs) reports reveal that people living below the Basic Needs Poverty Line increased from 16.2 percent in 2001 to 22.1 percent in 2015.¹⁴⁴ According to Tonga's third and final MDGs report in 2015, Tonga was below the target for eradicating poverty,¹⁴⁵ with none of the targets, to halve the proportion of people whose income is less than a dollar a day, being achieved. The ability of the economy to produce decent work for all was shown to be low.¹⁴⁶ The likelihood of achieving full and productive employment for all was low.¹⁴⁷ Tonga's final MDGs report called attention to the fact that there was no improvement in the last 25 years to the low percentages of women in wage employment in the non-agricultural sector.¹⁴⁸ The report also highlighted that women's inability to own land was a significant barrier to accessing finance; this, in turn, severely limited women's ability to enter the small business sector or engage in the economy.¹⁴⁹ Women make up just over half the Tongan population; their inability to gain employment, generate income and engage in the economy restricts economic growth for Tonga.

Tonga submitted its first voluntary report on its progress towards its SDGs in 2019. The report highlighted that, between 2016-2019, the percentage of people living in extreme poverty (USD1.90 per day) increased from one percent to three

¹⁴² Pacific Islands Forum Secretariat and United Nations Office of the High Commissioner for Human Rights Regional Office for the Pacific *Ratification of international Human Rights Treaties: Added Value for the Pacific Region* (Suva, July 2009) at 1.

¹⁴³ At 12.

¹⁴⁴ "Fact Sheet on Current MDG Progress of Tonga (Asia Pacific)" (9 June 2016) MDG Monitor Tracking The Millennium Development Goals <<https://www.mdgmonitor.org/mdg-progress-tonga-asia-pacific/>>.

¹⁴⁵ Ministry of Finance and National Planning *Tonga Millennium Development Goals Final Report* (September 2015) at 30.

¹⁴⁶ At 33.

¹⁴⁷ At 33.

¹⁴⁸ At 63.

¹⁴⁹ At 72.

percent.¹⁵⁰ Tonga has developed a robust poverty measure that shows 27 percent of the population are poor, while one in five adults are poor compared to one in three children.¹⁵¹ Poverty is an increasing problem for Tonga, as economic growth remains stunted over the years. Underscored here is that human rights conventions must be ratified and implemented to assist Tonga's progress towards sustainable development. Tonga's constitutional reforms in 2010 were for the purpose of constructing a more democratic form of government. The reforms were not built on a foundation of human rights; unsurprisingly, Tonga's current system of government can only be defined as a partial democracy.

1.1.9 Reasons For Non-Ratification In The Pacific

The reasons set out by Pacific countries for their failure to ratify human rights conventions are well documented. The lack of necessary technical, economic, human and institutional capacity required for ratification and compliance is often cited¹⁵² and may be related to financial limitations and Pacific nations having other priorities.¹⁵³ Human rights are often not a national priority within the region, due to governments' failure to recognise the benefits of ratification, compounded by an unwillingness to expose domestic practices to international scrutiny.¹⁵⁴ Limited resources may also contribute to the widespread failure of many Pacific countries to submit timely reports to the relevant human rights treaty bodies; the lack of understanding of the benefits of ratification and implementation may also relate to the failure of Pacific countries to implement or reflect upon recommendations and observations addressed to them by relevant treaty bodies.¹⁵⁵ There are also claims made by Pacific countries that human rights set out in core conventions are already

¹⁵⁰ Government of the Kingdom of Tonga *Kingdom of Tonga Voluntary National Review 2019* (2019) at 29.

¹⁵¹ At 30.

¹⁵² Law Commission, above n 25, at 68.

¹⁵³ Dejo Olowu "The United Nations human rights treaty system and the challenges of commitment and compliance in the South Pacific" (2006) 7(1) *Melbourne Journal of International Law* 155 at 159-160.

¹⁵⁴ Law Commission, above n 25, at 68.

¹⁵⁵ Olowu, above n 153, at 177-178.

entrenched in their national constitutions, implying that ratification is unnecessary.¹⁵⁶

1.1.9.1 Western Origins Of Human Rights

The most significant impediment to the ratification and implementation of human rights is rooted in its western origins. The western origins of human rights have two important implications: first, claims that human rights do not address the specific human rights issues of the Pacific region and, secondly, claims that human rights conflict with values and practices rooted in Pacific cultures.

1.1.9.2 Failure To Address Pacific Human Rights Issues

The ratification of instruments that are perceived to have no benefit for the region and, which may serve to destroy Pacific cultures, has tainted the campaign for human rights as proliferating a history of foreign intervention and domination,¹⁵⁷ that has understandably led to many in the region being suspicious and disdainful of the human rights agenda. As previously discussed, eradicating poverty and hastening development is a priority throughout the region; Pacific nations opine that human rights do not prioritise economic rights, health care and education standards.¹⁵⁸ Issues relating to the environment are a priority; the region is concerned for destruction of the environment through contamination and pollution directly linked to climate change and global warming, which has led to an increase in the intensity and frequency of natural disasters and weather patterns, as well as sea-level rise in the region threatening the very existence of some low-lying islands.¹⁵⁹ There is a concern for the depletion of natural resources in the region through overfishing.¹⁶⁰ These threats to the natural environment are consequences of actions of larger, more developed countries that are not sufficiently addressed through human rights treaties.¹⁶¹

¹⁵⁶At 161-162.

¹⁵⁷ Valmaine Toki and Natalie Baird "An Indigenous Pacific Human Rights Framework: Some Building Blocks" (2009) 40 Victoria University of Wellington Law Review 214 at 222.

¹⁵⁸ Law Commission, above n 25, at 66.

¹⁵⁹ Law Commission, above n 25, at 66.

¹⁶⁰ At 66.

¹⁶¹At 66.

The other concern is the lack of protections human rights treaties offer for the rights of indigenous groups to self-determination, the rights of people to languages, cultural practices and protection for cultural heritage and expression.¹⁶² The right to development, health and education, safe and sustainable environment, self-determination and preservation of language, cultural practices, cultural heritages and expression are viewed as rights held by Pacific nations and communities collectively.¹⁶³ These collective rights have been equated to and understood to be cultural rights.¹⁶⁴ Some have argued that the perceived failure of the human rights treaty system to promote and protect the cultural rights of the people of the Pacific constitutes the entirety of human rights challenges in the region.¹⁶⁵

1.1.9.3 Cultural Relativism: Collective Cultural Rights Vs. Individual Human Rights

The posited clash between cultural rights and human rights in the Pacific region is founded on their respective origins. Human rights arise from individualistic western European culture while cultural rights are rooted in collective indigenous cultures.¹⁶⁶ The opposition is based on the view that individual rights fail to recognise collective rights and are harmful to traditional collective values, practices, and structures. While human rights have been touted as universal, the tensions between collective cultural rights and individual human rights in the Pacific are what has been described as cultural relativism; substantive cultural relativism is a doctrine mandating that practices are legitimised by local cultures, as such human rights norms that diverge from cultural (collective) practices are not valid.¹⁶⁷ Many Pacific nations have cited cultural relativism and the “alien nature” of human rights to justify their non-compliance.¹⁶⁸

¹⁶²Walker, above n 104, at 223.

¹⁶³ Margaret Wilson “Cultural Rights: Definitions and Contexts” in Margaret Wilson and Paul hunt (eds) *Culture, Rights and Cultural Rights* (Huia Publishers, Wellington, 2000) 13 at 21.

¹⁶⁴ At 21.

¹⁶⁵ Konai Helu Thaman “ Cultural Rights a Personal Perspective” in Margaret Wilson and Paul hunt (eds) *Culture, Rights and Cultural Rights* (Huia Publishers, Wellington, 2000) 1 at 8.

¹⁶⁶ Wilson, above n 163, at 61.

¹⁶⁷ Jack Donnelly, above n 139, at 110.

¹⁶⁸ Olowu, above n 153, at 166.

Claims have been made that the concept of individuals possessing rights is foreign to Pacific cultures who understand rights as held collectively; therefore, non-existent individual rights cannot be breached.¹⁶⁹ In the Solomon Islands, it was found that people did not understand individual human rights, whether as contained in the constitution or international law, and were only familiar with traditional values.¹⁷⁰ Some in the Pacific believe individual rights are less central to personality than membership in a family, village or tribal collective; maintaining harmony within these collective structures is more important than individual freedom.¹⁷¹ Arguments have been put forward that human rights are detrimental to individuals in the Pacific whose rights derive from consensus and culture; as such, slow implementation, as opposed to ratification, is preferable;¹⁷² this is understood as a relative approach to implementing universal human rights in the Pacific region.¹⁷³

At times, the differences between cultural values and human rights have been exaggerated.¹⁷⁴ Cultural practices and human rights are not always at odds,¹⁷⁵ with the possibility of harmonising cultural values and human rights viewed as the way forward.¹⁷⁶ Margaret Wilson expounds that the polarised position between human rights and collective cultural rights is often not rooted in reality, and that some individual rights and collective interests are simultaneously advanced; implementing collective rights also serves to enforce individual rights.¹⁷⁷ Wilson argues for the universality of the spirit or principles of human rights premised upon the individual's inherent dignity, a dignity that all Pacific cultures profess to value

¹⁶⁹Thaman, above n 165, at 8.

¹⁷⁰ Jennifer Corrin "Cultural Relativism vs. Universalism: The South Pacific Reality" in Rainer Arnold (ed) *The Universalism of Human Rights* (Springer Netherlands, 2012) 103 at 121.

¹⁷¹ Walker, above n 104, at 225.

¹⁷² Farran, above n 53, at 67.

¹⁷³ At 67.

¹⁷⁴Olowu, above n 153, at 167.

¹⁷⁵ Pacific Islands Forum Secretariat and United Nations Office of the High Commissioner for Human Rights Regional Office for the Pacific *Discussion Paper: Ratification of international Human Rights Treaties: Added Value for the Pacific Region* (Suva, July 2009) at 9.

¹⁷⁶ Law Commission, above n 25, at 78-82.

¹⁷⁷ Wilson, above n 163, at 19.

and uphold. The dignity and worth of the individual is a fundamental truth espoused by both Pacific cultures and human rights norms.¹⁷⁸

THE WAY FORWARD: A PACIFIC REGIONAL INSTITUTION

The apparent lack of significance for human rights in the Pacific region undoubtedly correlates to its status as the only region in the world without a regional human rights organisation. Regional human rights organisations exist in Africa, Europe, the Americas, South East Asia and the Arab States.¹⁷⁹

However, in recent years, ratification of human rights treaties has gained momentum for some Pacific countries. Fiji ratified the CPPED and CRMW in 2019, the ICESCR and ICCPR in 2018 and CRPD in 2017.¹⁸⁰ Marshall Islands ratified the ICESCR and ICCPR in 2018 and CERD in 2019.¹⁸¹ Both Samoa and Kiribati ratified CAT in 2019.¹⁸²

Fiji, Papua New Guinea, Samoa and the Marshall Islands have ratified the highest number of conventions in the region. Recent ratifications have coincided with the beginning of the UPR cycles in 2008. Since the first UPR cycle in 2008, Fiji and Papua New Guinea have ratified six further conventions. Samoa has ratified four conventions since 2008 and is now party to six core conventions. Marshall Islands has ratified five conventions since 2008 and is now party to a total of seven core conventions. Furthermore, in 2020, Fiji and the Marshall Islands secured seats on the United Nations HRC.¹⁸³ While challenges persist in implementing commitments,

¹⁷⁸ Wilson, above n 163, at 21.

¹⁷⁹ Pacific Community and United Nations Human Rights Office of the Commissioner for Human Rights *Human Rights in the Pacific: A Situational Analysis* (Quality Print, Suva, 2016) at 11.

¹⁸⁰ “Status of Ratification Interactive Dashboard: Ratification of 18 International Human Rights Treaties” above n 135.

¹⁸¹ “Status of Ratification Interactive Dashboard: Ratification of 18 International Human Rights Treaties” above n 135.

¹⁸² “Status of Ratification Interactive Dashboard: Ratification of 18 International Human Rights Treaties” above n 135.

¹⁸³ Pacific Islands Forum Secretariat and Pacific Community Joint Pacific Islands Forum Secretariat And Pacific Community (SPC) Australian Parliamentary Inquiry Into The Human Rights Of Women And Girls In The Pacific (PIFS File No: EP/10/3, SPC File No: SPC/17/7/2020, July 2020) at [4].

the increased number of ratifications is positive and appears consequential to engaging in the UPR processes. A regional human rights organisation, if established, can play a pivotal role in promoting human rights in the region if it were to assist Pacific countries in their ratification and domestication of human rights conventions, in drafting reports for treaty bodies, and monitoring progress in the implementation of obligations under the conventions. Currently, this function is carried out by national bodies, namely the National Mechanisms for Implementation, Reporting and Follow Up (NMIRF) and National Human Rights Institutions (NHRI).¹⁸⁴ Supporting these national bodies is the task of the Regional Rights Resource Team (RRRT), an organisation under the SPC.¹⁸⁵ Only three countries in the region have established NHRIs, and only six have NMIRFs. In 2010, the Secretariat of the Pacific Community noted that most governments could not finance an NHRI and, therefore, a regional human rights mechanism was necessary.¹⁸⁶ Resources are directed towards national priority issues such as sustainable development, fisheries, global warming, security and anti-terrorism.¹⁸⁷ A regional human rights organisation could also support and assist in establishing and running NHRIs as a priority. A human rights institution should assist countries in educating their citizens on human rights.

A Pacific regional human rights institution has been the topic of much discussion in previous decades.¹⁸⁸ The prospect of national and regional human rights commissions has been promoted by the United Nations (the Office of the High Commissioner and UNDP) through numerous regional workshops held since 2003.¹⁸⁹ It has been put forward that a regional human rights mechanism would

¹⁸⁴ Regional Rights Resource Team “Human Rights Coordination and Monitoring” Pacific Community <<https://rrrt.spc.int/human-rights-and-good-governance>>

¹⁸⁵ Regional Rights Resource Team, above n 184.

¹⁸⁶ Baird, above n 136, at 282.

¹⁸⁷ Pacific Islands Forum Secretariat and United Nations Office of the High Commissioner for Human Rights Regional Office for the Pacific, above n 175, at 9.

¹⁸⁸ Kathryn Hay, “A Pacific Human Rights Mechanism: Specific Challenges And Requirements” (2009) 40 VUWLR 195 at 197.

¹⁸⁹ Catherine Renshaw, Andrew Byrnes and Andrea Durbach “Human Rights Protection in the Pacific: The Emerging Role of National Human Rights Institutions in the Region” (2010) 8 New Zealand Journal of Public and International Law 117 at 144.

comprise a charter, a commission and a judicial body or court.¹⁹⁰ The Law Association of Asia and the Pacific (LAWASIA) drafted a Pacific human rights charter in the 1980s, closely modelled on the African Charter of Human and Peoples' Rights; it was rejected because it did not address improving living conditions or economic opportunities, which remains the priority for the Pacific¹⁹¹ and because it was driven by outsiders; for a human rights institution to succeed in the region, Pacific islanders must drive it.¹⁹²

A regional human rights mechanism would recognise both customary cultural rights and rights from evolving human rights norms.¹⁹³ For a regional human rights mechanism, international human rights norms would be the minimum observed while also reflecting the wisdom of custom; this is necessary if the mechanism is to remain viable in the long term.¹⁹⁴ A human rights charter should reaffirm rights contained in the core human rights conventions and expand on those with emerging human rights issues specific to the region. The challenge faced in establishing such an institution lies in defining human rights for the region, the diverse cultures of the region make it difficult to define human rights in a way that would encompass and reflect all cultural values within the region.¹⁹⁵ For human rights to be better realised in the region requires a regional human rights commission; in order for such a commission to be established and effective, it must be a product of the thoughts, efforts, cultural values, and operated by Pacific people.

HUMAN RIGHTS TREATIES IN TONGA

While Tonga is a member of the United Nations, the Commonwealth, Pacific Islands Forum, Pacific Community and signatory to the Denarau 2015 Declaration on Human Rights and Good Governance, thus subscribing to the standards set out in

¹⁹⁰ Baird, above n 136, at 282.

¹⁹¹ Renshaw, Byrnes and Durbach, above n 189, at 140.

¹⁹² At 141.

¹⁹³ Hay, above n 188, 200-201.

¹⁹⁴ Valmaine Toki and Natalie Baird, "An Indigenous Pacific Human Rights Framework: Some Building Blocks" (2009) 40 (1)VUWLR 215 at 216.

¹⁹⁵ Hay, above n 188, at 199-200.

the Universal Declaration of Human Rights and human rights treaties, Tonga's engagement with international human rights treaty bodies and instruments can only be described as minimal.

Tonga has ratified only two of the nine core human rights treaties: the International Convention on the Elimination of Racial Discrimination (1972) and the Convention on the Rights of the Child (1995). Tonga has ratified the least amount of core human rights conventions in a region with the lowest rates of ratification. Tonga has failed to ratify any human rights core conventions in the first two decades of the twenty-first century.

1.1.10 Tonga And The CRC & CERD

A review of Tonga's compliance with the two treaties, to which it is party, highlights that, despite ratification, Tonga has neglected to submit national reports and failed to implement standards set out in the treaties through enacting or amending domestic laws to comply with relevant treaty standards.

1.1.10.1 Convention On The Rights Of The Child

Despite Tonga having ratified the CRC in 1995, Tonga only submitted its initial report to the Committee on the Rights of the Child on 5 April 2018.¹⁹⁶ Tonga's national report declared the nation's commitment to children's rights, despite the nation's failure to harmonise national legislation with the standards set out in the Convention.¹⁹⁷

Various areas of concern for children and youth in Tonga were highlighted; this included the Criminal Offences Act permitting children as young as 15 to be sentenced to death,¹⁹⁸ and to be whipped¹⁹⁹ (corporal punishment is a lawful sentence for crimes under section 24 of the Criminal Offences Act). The Deaths

¹⁹⁶Initial report submitted by Tonga under article 44 of the Convention, due in 1997 UN Doc CRC/C/TON/1 (5 April 2018).

¹⁹⁷ At 8.

¹⁹⁸ Concluding observations on the initial report of Tonga UN Doc CRC/C/TON/CO/1 (2 July 2019) at 4.

¹⁹⁹ At 6.

and Marriages Registration Act allows children as young as 15 to marry,²⁰⁰ the Magistrate Court Act permits corporal punishment for children as young as seven years old, if convicted,²⁰¹ and corporal punishment in the home and day-care settings are not criminalised.²⁰²The Land Act directly discriminates against girls,²⁰³ the Constitution contains discriminatory provisions against children born out of wedlock.²⁰⁴ Attempted suicide is a crime under the Criminal Offences Act, however, suicide rates for young men remain high.²⁰⁵Abortion is a crime even in instances where a girl conceived through rape or incest.²⁰⁶ Child labour is not prohibited by law and neither is the abduction, sale and trafficking of children.²⁰⁷High levels of child abuse, incest and domestic violence remain a pressing issue for children in Tonga,²⁰⁸ compounded by high rates of teenage pregnancy, teenage suicide,²⁰⁹ commercial sexual exploitation of teenage girls, and child labour (child street vendors).²¹⁰

The committee noted that the interests of the family and the community trumped the interest of the child (in accordance with Tongan culture and traditions) and, as such, it was essential that primacy be transferred to the interests of the child.²¹¹ The Tongan delegation expressed willingness to promote reform, legislative and otherwise, to protect children's rights.²¹² A review of current Tongan legislation shows that none of the recommended reforms to address the issues listed above has been enacted.

²⁰⁰ At 2.

²⁰¹ Initial report submitted by Tonga under article 44 of the Convention, due in 1997, above n 196, at 35.

²⁰² Concluding observations on the initial report of Tonga, above n 198, at 6.

²⁰³ Initial report submitted by Tonga under article 44 of the Convention, due in 1997, above n 196, at 24.

²⁰⁴ At 25.

²⁰⁵ At 28.

²⁰⁶ Concluding observations on the initial report of Tonga, above n 198, at 11.

²⁰⁷ At 12-13.

²⁰⁸ At 6.

²⁰⁹ Initial report submitted by Tonga under article 44 of the Convention, due in 1997, above n 196, at 28.

²¹⁰ Concluding observations on the initial report of Tonga, above n 198, at 13.

²¹¹ At 4.

²¹² Statement Delivered by The Government of the Kingdom of Tonga at the Constructive Dialogue with the Committee on the Rights of the Child (14th May 2019).

1.1.10.2 International Convention On The Elimination Of Racial
Discrimination

The Committee on the Elimination of Racial Discrimination considered Tonga's fourteenth periodic report at its 1384th meeting on 14 March 2000. The Committee, in its concluding observations, noted that the Convention had not been incorporated into domestic law.²¹³ Consequently, the provisions of the Convention could not be invoked in the courts.²¹⁴ Tonga repeatedly asserted that there was no racial discrimination in Tonga as defined in Article 1 of the Convention (and, therefore, enacting legislation unnecessary).²¹⁵ However, the Committee was of the opinion that legislation should be passed to protect against existing violations and to prevent future violations; that the absence of complaints by victims of racial discrimination could be accounted for by the lack of legal remedy and relevant specific legislation.²¹⁶ Among other concerns, the Committee found section 10(2)(c) of the Immigration Act to breach Article 5 paragraph (d) of the Convention.²¹⁷ The relevant provision of the Immigration Act prescribes that a marriage between a Tongan and non-Tongan can only commence with the written consent of the Principal Immigration Officer.²¹⁸ Tonga's subsequent periodic report was due on 17 March 2001.²¹⁹ Tonga has yet to submit this report or any other such report to the Committee on the Elimination of Racial Discrimination. The relevant section of the Immigration Act referred to above remains unamended.

²¹³ Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination Tonga UN Doc CERD/C/304/Add.96 (19 April 2000) at 2.

²¹⁴ Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination Tonga, above n 213, at 2.

²¹⁵ At 2.

²¹⁶ At 2.

²¹⁷ At 2.

²¹⁸ At 2.

²¹⁹ At 3.

1.1.11 Tonga's History Of Non-Ratification

As discussed above, Tonga has only ratified two UN human rights treaties. Tonga has participated in the first, second and third UPR cycles (2008, 2013 and 2018).²²⁰ Tonga's reluctance and refusal to ratify any other conventions are highlighted in its UPR documents.

1.1.11.1 Tonga's 2008 UPR Cycle

The bulk of recommendations from Tonga's first UPR cycle, which Tonga supported, was for Tonga to ratify the two Covenants (ICCPR and ICESCR), CEDAW and all the remaining core human rights treaties,²²¹ and to regularly submit its reports to the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination.²²² Tonga also accepted recommendations to "continue the democratisation process on which it has embarked so courageously."²²³ Tonga did not support recommendations to ratify the Rome Statute of the International Criminal Court, abolish the death penalty, decriminalise sexual activity between consenting adults of the same sex, and amend legislation discriminating against women.²²⁴

1.1.11.2 Tonga's 2013 UPR Cycle

During Tonga's second UPR cycle, it was revealed that Tonga had failed to ratify the ICCPR, ICESCR, CEDAW and all other core human rights treaties as agreed to in its first UPR cycle. Lord Vaea from the Tongan Delegation reported that Tonga "continued to be active in supporting and developing human rights aspirations through legislation, policies, training, awareness programmes, and supporting national, regional and international activities and initiatives."²²⁵ Tonga stated that, despite non-ratification, the courts had applied the ICCPR in *R v Vola* [2005] Tonga LR 404 and that the principles of ICESCR were already incorporated in Tongan

²²⁰"Universal Periodic Review-Tonga" United Nations Human Rights Council
<<https://www.ohchr.org/EN/HRBodies/UPR/Pages/toindex.aspx>>

²²¹ Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/8/48 (5 June 2008) at 15-16.

²²² At 16-17.

²²³ At 15.

²²⁴ At 18.

²²⁵ Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/23/4 (21 March 2013) at 4.

law.²²⁶ In terms of CAT, the Tongan delegation stated ratification was unnecessary as torture and other cruel, inhuman or degrading treatment or punishments were already prohibited under Tonga's criminal law and that the court has applied the Convention in *Fangupo v R* [2010] Tonga LR 124²²⁷ and in *Tavake v Kingdom of Tonga* [2008] Tonga LR 304.²²⁸ Despite the provision permitting whipping in its Criminal Offences Act, the Court of Appeal held that whipping could be considered unlawful in Tonga.²²⁹ In spite of efforts to control and curb police brutality, in September 2012, five police officers were charged for the manslaughter of a Tongan-born New Zealand Police officer.²³⁰

With regards to CEDAW, the Tongan delegation stated that Tonga had made commitments on a national, regional and international level to promote gender equality, and emphasised the number of women in high-level decision-making positions in government, public enterprises, private businesses and churches²³¹ and, that in 2011, Tongan government had conducted nationwide consultations on CEDAW and were in the process of drafting reservations.²³²

At the conclusion of Tonga's second UPR cycle, Tonga supported recommendations to ratify the Rome Statute of the International Criminal Court, the ICCPR, ICESCR, CEDAW, and all of the outstanding core human rights conventions.²³³ Tonga agreed to take into consideration establishing a national human rights institution, implementing laws prohibiting discrimination based on gender, decriminalising sexual relations between consenting same-sex adults, abolishing the death penalty, raising the age of criminal responsibility to 12 years, banning corporal punishment and granting children of unmarried parents the same rights afforded to children

²²⁶ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/15/TON/1 (9 January 2013) at 20.

²²⁷ At 20.

²²⁸ At 7.

²²⁹ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga, above n 226, at 20.

²³⁰ At 7.

²³¹ At 11-12.

²³² At 16.

²³³ Report of the Working Group on the Universal Periodic Review Tonga, above n 225, at 12-13.

born to married parents.²³⁴ Tonga did not support recommendations to swiftly ratify CEDAW as a matter of priority and without reservations.²³⁵ Lord Vaea also communicated that Tonga's democratisation process was complete.²³⁶

1.1.11.3 Tonga's 2018 UPR Cycle

Tonga proceeded to its third and most recent UPR cycle in 2018. Tonga had yet to ratify the Rome Statute of the International Criminal Court, the ICCPR, ICESCR or any other human rights Conventions as agreed to at the conclusion of its second UPR cycle.²³⁷ Tonga had yet to establish a national human rights institution. There were no changes to discriminatory laws towards women, there continued to be low levels of women in Tongan legislature, sexual acts between same-sex consenting adults was still an offence, corporal punishment was not prohibited, the death penalty had not been abolished, there was still no universal legal age of majority, the age of criminal responsibility was still seven years and children as young as 15 could still marry and be sentenced to death or life imprisonment.²³⁸ Royal assent was withheld for an amendment to the Anti-Corruption Commissioner Act 2007 passed by the legislative assembly in 2016, which would have allowed for the Ombudsman to become the temporary Anti-Corruption Commissioner. The government had yet to pass Freedom of Information legislation. In May 2017, government proposed a bill to vest the power to appoint the Attorney General, Police Commissioner and Anti-Corruption Commission in the Prime Minister as opposed to the King and approved the ratification of CEDAW; in response, the King dissolved Parliament in August 2017.²³⁹

²³⁴ At 16-17.

²³⁵ At 17.

²³⁶ At 3.

²³⁷ *Summary of Stakeholders' submissions on Tonga* UN Doc A/HRC/WG.6/29/TON/3 (25 October 2017) at 1-2.

²³⁸ See generally *Summary of Stakeholders' submissions on Tonga* A/HRC/WG.6/29/TON/3 (25 October 2017); National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/29/TON/1 (3 November 2017); *Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights* UN Doc A/HRC/WG.6/29/TON/2 (31 October 2017).

²³⁹ *Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights* UN Doc A/HRC/WG.6/29/TON/2 (31 October 2017) at 2.

At the conclusion of its third UPR cycle, Tonga supported recommendations to continue its democratisation process, establish a national human rights institution and a national mechanism tasked with combating violence and discrimination against women and promote women's participation in political life.²⁴⁰ Tonga only noted recommendations to ratify all the core human rights treaties and the Rome Statute of the International Criminal Court.²⁴¹ Tonga only agreed to consider recommendations to introduce comprehensive anti-discrimination legislation, decriminalise same-sex relations between consenting adults, abolish the death penalty, carry out legal reform providing for women the ability to perform contraceptive medical interventions and amend the Land Act to allow women to inherit the land.²⁴² At present, the legal reform necessary for advancing the democratisation process has halted; there is no national human rights institution nor a national women's institution tasked with combating violence or discrimination against women. The issues highlighted previously in the reports for Tonga's third UPR cycle remain to this day.

The above paragraphs highlight that Tonga consistently refuses to address domestic human rights issues through legislative reform. In the 13 years since its initial UPR cycle, Tonga has not ratified any of the outstanding seven core human rights Conventions, despite making commitments to do so. In its most recent UPR process, held in 2018, Tonga has taken a step backwards from earlier commitments to ratify any further human rights treaties. The two Conventions Tonga has ratified, CERD and CRC, have yet to be domesticated.

1.1.12 Tonga's Reasons For Non-Ratification

With regards to the failure to ratify and implement any further Conventions, Tonga has stated that:

²⁴⁰ Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/38/5 (16 April 2018) at 11-14.

²⁴¹ At 14-17.

²⁴² Report of the Working Group on the Universal Periodic Review Tonga, above n 240, at 14-17.

1. Its 1875 Constitution enshrines fundamental human rights reflecting the customary values of respect and dignity (freedom and the right to work and own property in clause 1), the prohibition of slavery (clause 2), equality before the law (clause 4), freedom of worship (clause 5), freedom of speech (clause 7) and rights of a fair trial (clause 10-15) and, in addition, the state's legislative provisions, orders and best practices support a wide range of human rights that can be addressed in the courts if breached.²⁴³
2. Tonga has cited in its UPR reports engagement with, and commitment to, national, regional and international bodies, documents, policies and activities that address human rights issues set out in the Conventions.
3. Throughout its UPR cycles, Tonga has cited financial, technical and capacity constraints to providing reports to CRC and CERD, establishing a National Human Rights Institution and legal reform and compliance with international human rights conventions. Tonga espouses limited resources as a significant restraint on ratifying and implementing human rights norms.
4. Tonga has also made clear that, in ratifying human rights conventions (which are based on liberal ideologies), they would have to take into account their Christian beliefs and cultural values. Tonga's initial national UPR report delineates that, while human rights norms are focused on individual rights, the "Tongan way of life emphasises the rights, responsibilities, freedoms and obligations to the extended family and whole community ... Tonga's strength lies in collective group values and individual obligations"²⁴⁴ and, therefore, consideration must not only be given to individual rights but to the rights of the extended family and whole community. The report falls short of explicating what the rights of the family and the community entail and what specific obligations the individual has.

²⁴³ National Report Submitted In Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1 Tonga UN Doc A/HRC/WG.6/2/TON/1 (10 April 2008) at 7.

²⁴⁴ National Report Submitted In Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1 Tonga, above n 243, at 2-3.

1.1.12.1 Tongan Collective Cultural Rights & Universal Human Rights

Tonga's initial national report expounds that the Tongan traditional values of *fe'ofa'aki* (mutual love and caring, generosity), *faka'apa'apa'aki* (mutual respect), *feveitokai'aki* (reciprocity, cooperation, consensus, maintenance of good relationships), *mamahi'i me'a* (loyalty, commitment), *lototoo* (humility, generosity), *fetokoni'aki* (sharing, cooperation, fulfilment of mutual obligations) are simultaneously imbued within Tonga's constitution and in the international human rights documents.²⁴⁵ The Tongan constitution, unlike other contemporary documents in the Pacific, has always reflected Tongan cultural values.

Tonga's first National Report sets out that "Respect for the dignity of all persons is the value most emphasised in Tongan custom"²⁴⁶ which parallels the foundation of human rights: respect for the inherent dignity of humans. Based on this assertion, human rights and Tongan cultural values jointly promote the dignity of the individual, hence, harmonising customary practices and human rights standards should not be difficult. However, Tonga also states that "The challenge for Tonga is to find the appropriate balance between the basic rights and fundamental freedoms of the individual and those of the extended family and whole community".²⁴⁷ Tonga exemplifies, through its persistent non-ratification of core human rights conventions, that the cultural collective rights of the family and community are directly oppositional to individual human rights norms, arguably, in this way, making a statement that human rights do not serve to promote the dignity of the Tongan individual. Alternatively, the statement made that the dignity of the individual is the most emphasised Tongan cultural value may be false; Tonga prioritises collective cultural rights even to the point of detriment to the individual. Tonga alludes that primacy is given to collective cultural rights, which clash with individual human rights.

²⁴⁵ At 2.

²⁴⁶ At 2.

²⁴⁷ At 2-3.

HUMAN RIGHTS ISSUES IN THE PACIFIC

The low level of human rights treaty ratification in the Pacific is unsurprising when considering the persistent human rights issues of the region. Records from two decades ago set out that human rights issues in the Pacific region included:²⁴⁸

- governments' use of police and military power to violate civilian rights
- violation of the rights of prisoners
- violence and abuse against women, children and young people
- discrimination based on gender, disability, age and against minorities and immigrants, migrant workers and indigenous people
- limits on freedom of speech, media freedom, and the right to development
- environmental degradation, nuclear testing and overfishing.

Critical issues in human rights for Pacific island countries as highlighted in the first UPR cycle centred on:²⁴⁹

- gender equality (violence against women, discrimination based on gender in legislation, policy and practice, low members of females in parliament and critical decision-making positions, ratification and implementation of CEDAW)
- discrimination, children's rights, environmental and development issues
- lack of treaty ratification and overdue reports to treaty bodies
- absence of national/regional human rights institutions and lack of, or ineffective, ombudspersons' commissions across the region
- lack of promotion, education and public awareness of human rights. Human rights are not incorporated into school curriculums and training programmes.

More recent writings have identified human rights issues in the region to include reports that governments frequently violate their citizens' civil and political rights.²⁵⁰ The New Zealand Law Commission identified emergent human rights issues in the Pacific to be a right to a healthy environment, right to development,

²⁴⁸See Caren Wickliffe "Human Rights Education in the Pacific" (1999) 3 *Journal of South Pacific Law* 11 at 12.

²⁴⁹Regional Rights Resource Team *Pacific Island States and the Universal Periodic Review* (Secretariat of the Pacific Community, 2012) at 9-11.

²⁵⁰Walker, above n 104, at 217.

rights of indigenous people and rights of people with disabilities.²⁵¹ The Denarau Declaration in 2015 underscored issues pertaining to women’s rights, children’s rights and the rights of people with disabilities, as well as the emergent concerns for the environment, climate and the high rates of non-communicable diseases in the region.

HUMAN RIGHTS ISSUES TONGA

As discussed earlier, Tonga has participated in the first, second and third UPR cycles (2008, 2013 and 2018). The paucity of literature on human rights in Tonga leaves Tonga’s UPR reports the most reliable and up to date documentation of human rights issues in Tonga. As highlighted in reports submitted for its first, second and third UPR cycles, with the exclusion of women’s human rights issues, some of the human rights issues in Tonga include:

- concern that Tonga had not ratified or taken any positive steps towards ratifying any further human rights treaties. Tongan government is urged to immediately ratify CEDAW, CAT and CRPD and fulfil its reporting commitments for CRC and CERD.²⁵²
- recommendations that the government prioritise a national human rights institution to monitor and document human rights violations and monitor UPR recommendations.²⁵³
- the retention of nine noble seats in parliament was “undemocratic and facilitated the manipulation of power”²⁵⁴ and further concern was that nobles received an annual payment from taxpayer funds without any clear job description. Suggestions were made that the general public should elect the nine nobles’ seats and the yearly payment be abolished.
- recommendations were made that Tonga “continue the reform and amendment of the Constitution to widen the country’s democratic space and respect for human rights.”²⁵⁵

²⁵¹ Law Commission, above n 25, 65-68.

²⁵² Summary of Stakeholders’ submissions on Tonga, above n 237, at 1-2.

²⁵³ At 2.

²⁵⁴ At 2.

²⁵⁵ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 2.

- Tonga strengthen mechanisms to allow civil society organisations, churches, registered interest groups and other constituents to fully participate in the law-making, oversight, national planning, and budgeting processes.²⁵⁶
- lack of legal aid in Tonga; it is recommended that government revive legal aid support for those who lack the financial means to access legal advice.²⁵⁷
- increased bullying of LGBT students; it was recommended that Tonga enforce anti-bullying measures to protect LGBT students.²⁵⁸ The UN compilation based on country team reports in the third cycle also highlighted the lack of legal protections from discrimination based on gender identity and sexual orientation.²⁵⁹ The Criminal Offences Act still criminalises consensual same-sex relations with a penalty of ten years imprisonment.²⁶⁰ Section 81 (5) of the Act also criminalises cross-dressing.²⁶¹ The UN country team report recommended repealing provisions that criminalised consensual same-sex relations and raising public awareness of the situation of lesbian, gay, bisexual, transgender and intersex persons to help combat violence and discrimination against them.²⁶²
- concern that the Criminal Offences Act allowed children under 18 to be sentenced to capital punishment, life imprisonment and whipping. The report recommended that capital punishment, life imprisonment and whipping be prohibited as a sentence for all under 18.²⁶³ It was suggested that Tonga review and amend all legislation that permitted corporal punishment of children, which was allowed at home, in alternative care and non-educational day-care settings and as a sentence for a crime.²⁶⁴ The stakeholders outlined that there was no juvenile justice law in Tonga and the minimum age of criminal responsibility was seven.²⁶⁵ Children between the ages of 15-17 were allowed to marry under the Births, Deaths and marriages Registration Act 1962; it was recommended that the age for marriage be raised to 18 years. Children as young as six were selling peanuts or handicrafts on the streets of the capital every night; police did not

²⁵⁶ At 5.

²⁵⁷ Summary of Stakeholders' submissions on Tonga, above n 237, at 5.

²⁵⁸ At 3.

²⁵⁹ At 3.

²⁶⁰ At 3.

²⁶¹ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Right, above n 239, at 3.

²⁶² Summary of Stakeholders' submissions on Tonga, above n 237, at 3.

²⁶³ Summary of Stakeholders' submissions on Tonga, above n 237, at 4

²⁶⁴ At 5.

²⁶⁵ At 5

address this as it was not a crime. It was recommended that legislation be enacted to protect children from child labour.²⁶⁶

- reports that the legal age of majority for the King was 18 and for nobles 21 but that there was no legal age of majority for the general public; it was recommended that the age of majority for all Tongans be set at 18.²⁶⁷
- recommendations that Tonga periodically assess the impact of climate change and natural disasters, particularly on the poor and lower-income and assist these vulnerable groups in becoming more resilient in the face of such disasters.²⁶⁸
- increasing poverty in rural areas.²⁶⁹
- amending laws to address the legal rights of persons with disabilities to facilitate their access to health, education and employment.²⁷⁰
- recommending Tonga revises the Transnational Crimes Act to protect victims of human trafficking.²⁷¹
- there is no minimum wage law, an employment relations bill had been discussed in the past 30 years; it is recommended that Tonga enact the Employment Relations Bill.²⁷²
- there was concern for the lack of discussion in Tonga's reviews of the sinking of the government-owned MV Princess Ashika ferry in 2009, which killed 74 passengers, including all women and children on board.²⁷³ Previous submissions outlined that the Royal Commission of Inquiry report condemned senior government officials and ministers for purchasing the ferry and allowing it to sail.²⁷⁴ Despite this, the government ensured that no ministers would be held accountable. The Attorney-General, at the time, resigned after the government would not support the appointment of foreign prosecutors to investigate criminal matters arising from the inquiry.²⁷⁵ The Attorney-General stated that authorities were attempting to

²⁶⁶ At 7.

²⁶⁷ At 3.

²⁶⁸ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 3.

²⁶⁹ At 6.

²⁷⁰ At 8.

²⁷¹ Summary of Stakeholders' submissions on Tonga, above n 237, at 5-6.

²⁷² At 6.

²⁷³ At 5.

²⁷⁴ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/15/TON/3 (29 October 2012) at 7.

²⁷⁵ At 7.

control the prosecution to ensure members of the cabinet and other friends and cronies were not prosecuted.²⁷⁶ It was recommended that the recommendations of the Commission be implemented and for government to ensure all victims access legal remedy.²⁷⁷

- the Anti-Corruption Commissioner Act established the office of the Anti-Corruption Commissioner (whose function would be to deal with corruption in government); this is yet to be implemented, it was recommended that the Anti-Corruption Commissioner be established and the office remain independent of government.²⁷⁸
- recommendation that the Freedom of Information Policy be developed into a Freedom of Information Act and that the Tonga Broadcasting Commission be independent of government.²⁷⁹ There are concerns for freedom of expression; section 96 of the Communications Act (2015), bestowed on the Minister of Information and Communications the power to censor a licensee if the licensed media supplied a particular type of content, and that the Prime Minister had recently threatened a public broadcaster, fired the Chair of the board and general manager of the Tonga Broadcasting Commission.²⁸⁰ It was also recommended that defamation be decriminalised (it is currently punishable by fine and imprisonment) and incorporated in the civil code in accordance with international standards.²⁸¹
- reiteration that UNESCO encouraged Tonga to fully implement the relevant provisions under the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of the Intangible Cultural Heritage that promoted access to, and participation in, cultural heritage, and as such were conducive to implementing the right to take part in cultural life.
- concern for the lack of human rights education and training for public officials. It was recommended that government provide state officials and church leaders with human rights training.²⁸²
- the Ministry of Education to incorporate human rights and gender into the school syllabus at all levels.²⁸³

²⁷⁶ At 7.

²⁷⁷ Summary of Stakeholders' submissions on Tonga, above n 237, at 5.

²⁷⁸ At 3

²⁷⁹ Summary of Stakeholders' submissions on Tonga, above n 237, at 5.

²⁸⁰ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 4-5.

²⁸¹ At 5.

²⁸² Summary of Stakeholders' submissions on Tonga, above n 237, at 3.

²⁸³ At 6.

WOMEN'S ISSUES AND CEDAW IN THE PACIFIC REGION

Whilst narratives of gender equality vary across the region and amongst cultures, women in the Pacific region are subject to a plethora of issues as a consequence of gender discrimination. The prodigious suffering of women led to the Australian government donating AU\$320 million to assist in offering solutions to women's issues in the region. A report prepared for the Australian government in August 2020 by the Feminist WERISE Pacific Coalition²⁸⁴ outlined four areas of concern for women in the Pacific region: gender-based violence, leadership, economic empowerment, and climate change.²⁸⁵ In July 2020, a joint report to the Australian government prepared by the Pacific Island Forum Secretariat and the Pacific Community outlined the increasing prevalence of violence against women in the Pacific.²⁸⁶ The issues women face in the region are also underscored in regional instruments promoting gender equality and involve efforts of both the Pacific Islands Forum and the Pacific Community. Two instruments address gender equality in the region, the Pacific Community's Pacific Platform for Action on the Advancement of Women and Gender Equality (PPA 2018-2030) and the Pacific Island Forum's Pacific Leader's Gender Equality Declaration 2012 (PLGED). Both documents declare a commitment of Pacific countries to implementing the articles of CEDAW.

1.1.13 The Pacific Platform For Action On The Advancement Of Women And Gender Equality (PPA 2018-2030)

The Pacific Platform for Action on the Advancement of Women and Gender Equality (PPA 1994-2004) was the first regional instrument to promote gender equality in the Pacific. The PPA came into being as part of efforts by the Pacific region in preparation for the Fourth World Conference for Women held in Beijing in 1995.²⁸⁷ The PPA was revised in 2004 and replaced by the Revised Pacific Platform for

²⁸⁴ We Rise Coalition "Australian Parliamentary Inquiry Into The Human Rights Of Women And Girls In The Pacific Submission 33" (24 August 2020).

²⁸⁵ At 7-12.

²⁸⁶ Pacific Islands Forum Secretariat and Pacific Community "Australian Parliamentary Inquiry Into The Human Rights Of Women And Girls In The Pacific Submission 16" (17 July 2020) at [6].

²⁸⁷ Pacific Community Pacific Platform For Action On Gender Equality And Women's Human Rights 2018–2030 Part I, at 3.

Action on the Advancement of Women and Gender Equality (RPPA) 2005-2015. The RPPA outlined in 2005 that the advancement of women required addressing issues of violence against women, women in political leadership and justice, access to services, particularly health and education, and the economic empowerment of women.²⁸⁸ The issues outlined in 2005 do not vary much from the documented issues women face outlined in the 2020 reports. For almost 20 years now, women in the region continue to be subjected to the same issues without any significant improvement. The current manifestation of the PPA and the RPPA is the Platform for Action for Gender Equality and Women’s Human Rights 2018–2030 (PPA 2018-2030).²⁸⁹ Drafted as an extension of its predecessor, areas of concern for women in the PPA 2018-2030 are identical to those outlined in the RPPA.²⁹⁰ The first of five expected outcomes of the PPA 2018–2030 is that policies and legislation promoting gender equality are strengthened; the others address full participation in leadership and decision-making positions for women, equal rights to economic resources, the elimination of violence against women and universal access to sexual and reproductive health rights.²⁹¹ The PPA 2018-2030 emphasises the implementation of commitments to other gender equality instruments, including the RPPA, CEDAW, Beijing Platform for Action 1995, Pacific Leader’s Gender Equality Declaration 2012 and Sustainable Development Goal 5 2015.²⁹²

1.1.14 Pacific Leader’s Gender Equality Declaration 2012 (PLGED)

The Pacific Leader’s Gender Equality Declaration 2012 (PLGED) was the outcome of Pacific Islands Forum leaders’ renewing their commitment to gender equality in acknowledgement of the fact that women’s participation in the legislature for the Pacific region is the lowest in the world, the unacceptably high rates of violence against Pacific women and the limited economic opportunities for women in the

²⁸⁸ Pacific Islands Forum Secretariat and Pacific Community, above n 286, at 3.

²⁸⁹ Pacific Community, above n 287, at 3.

²⁹⁰ At 3.

²⁹¹ Pacific Community, Pacific Platform For Action On Gender Equality And Women’s Human Rights 2018–2030 Part II, at 5-6.

²⁹² At 5.

region.²⁹³ Forum leaders expressed an understanding that gender equality is necessary for a stable, prosperous and secure Pacific region. PLGED addresses four areas for women: government policies and programmes (law and policy), decision making (politics and leadership), economic empowerment (access to resources and employment), ending violence against women, and health and education.²⁹⁴ Under government policies and programmes, forum leaders made a commitment to implement the articles of CEDAW through legislative and policy reforms.

Pacific Women Shaping Pacific Development (Pacific Women) received AU\$320 million in funding (2012) to support Pacific Island Forum countries in meeting their commitments under the 2012 Pacific Leaders' Gender Equality Declaration (PLGED).²⁹⁵ PLGED commits countries to implement the articles of CEDAW into national legislation and policy. A report summarising the Pacific Women Country Plan for Tonga addresses four areas of concern: increasing women's leadership and decision making, increasing economic opportunities for women, reducing violence against women, and enhancing women's agency.²⁹⁶ Legislative review and reform was not part of the strategies utilised for addressing these areas of concern for women in Tonga by Pacific Women. The review of Tongan legislation in Chapter 2 outlines that, despite considerable funding, Pacific Women has failed to assist Tonga in realising the commitments set out in PLGED, specifically, that the provisions of CEDAW are yet to be incorporated into Tongan legislation. Tongan legislation remains non-compliant with CEDAW across almost all areas of law.

The situation of Pacific women at present is this: throughout two decades of documentation, and very likely for much longer, women have suffered from gender-based violence, from their absence in political and leadership positions, from lack of employment and access to financial resources and from little control

²⁹³Pacific Leaders Gender Equality Declaration (Declared by Pacific Islands Forum Leaders in Rarotonga on 30 August 2012)

²⁹⁴Pacific Leaders Gender Equality Declaration, above n 293.

²⁹⁵Pacific Women Shaping Pacific Development Pacific Women Shaping Pacific Development Annual Progress Report 2017-2018: Supporting the Pacific Leaders' Gender Equality Declaration (August 2019) at 3.

²⁹⁶ Pacific Women Shaping Pacific Development *Tonga Country Plan Summary* (September 2020).

over their health, education and reproductive rights. Regional efforts to promote the rights and welfare of women in the region have taken many forms; current efforts focus on implementing national-level commitments to international gender equality instruments. The PPA 2018-2030 is charged with assisting countries to implement the PLGED 2012. The PLGED requires Pacific countries to domesticate the articles of CEDAW. A considerable amount of funding was invested for the purpose of realising the mandates of PLGED on a national level. However, in Tonga, implementing PLGED did not include any efforts to review and align legislation with CEDAW. As such, any efforts to adequately address women's issues in Tonga are likely to fail. The review of Tonga's compliance with CEDAW and relating this to the more extensive Pacific context highlights that if any real improvements to women's lives in the region are to occur, national laws and policies must not discriminate against women. The benefits of all other mechanisms for alleviating the suffering of women in the region are optimised if laws are enacted for that exact purpose. Efforts to improve women's lives are futile, as showcased in the Tongan context, if national laws and policies continue to discriminate against and subvert women's rights overtly.

1.1.15 An Organisation To Implement The Regional Gender Equality Documents & CEDAW

While the commitment to gender equality is articulated in many regional documents, the Pacific Islands Forum set of values includes the embrace of gender equality. The Pacific Islands Forum Secretariat Strategic Framework 2017-2021 includes gender equality as a component of one of its strategic outcomes.²⁹⁷ The Framework for Pacific Regionalism, which guides all regional work, does not address human rights or gender equality as an objective.

The Council of Regional Organisations of the Pacific (CROP) is an intergovernmental body offering advice and support for countries in the region. CROP includes in its membership: the Pacific Aviation Safety Office (PASO), Pacific Community (SPC),

²⁹⁷ Pacific Islands Forum Secretariat *Strategic Framework 2017-2021* (Approved by the Forum Officials Committee 10 August 2017) at 8.

Pacific Islands Forum Fisheries Agency (FFA), Pacific Islands Development Programme (PIDP), Pacific Islands Forum Secretariat (PIFS), Pacific Power Association (PPA), Secretariat of the Pacific Regional Environment Programme (SPREP), South Pacific Tourism Organisation (SPTO), and The University of the South Pacific (USP).²⁹⁸ There is no intergovernmental organisation within CROP, or elsewhere, that addresses women's issues despite it being a major concern in the region.

Because national governments lack the resources and political will to overcome gender equality barriers,²⁹⁹ it becomes crucial that human rights and gender equality are emphasised as part of the Framework for Pacific Regionalism and that a body monitoring and promoting human rights and women's rights is established in the region. Presently, progress in implementing the regional gender instruments are reviewed every three years through national reports presented at the Triennial Conferences of Pacific Women and Pacific Women's Ministerial Meetings.³⁰⁰ Recommendations made during these reviews are expected to be implemented by governments with the assistance of the Pacific Island Forum Secretariat and the Pacific Community. A human rights commission that encapsulates a women's rights regional body could function to assist and monitor the implementation of PLGED and PPA in the Pacific and explicitly the domestication of CEDAW in Pacific countries.

Women suffer from similar issues across Pacific island countries and face similar barriers to gender equality; a united regional effort, with a vital research component into how legislative reform can be achieved and change women's lives in the region, is worthy of funding.

²⁹⁸ Council of Regional Organisations of the Pacific (CROP) <<https://www.forumsec.org/council-of-regional-organisations-of-the-pacific/>>

²⁹⁹ Pacific Community, above n 291, at 3.

³⁰⁰ Pacific Community, above n 287, at 5.

WOMEN'S ISSUES IN TONGA

The most significant human rights issue of concern, regarding Tonga, is women's rights. The most consistent recommendation throughout Tonga's UPR history is to ratify CEDAW. The highest portion of recommendations for Tonga in its third UPR cycle was related to gender equality, which made up 36 percent of the total of 110 recommendations received.³⁰¹

The first lines under the heading "Women" in Tonga's initial UPR national report set out that, "In the Tongan social structure, women outrank their male relatives. Women are respected and cherished."³⁰² This statement suggests that women in Tonga do not suffer any human rights violations. However, reports submitted as part of UPR cycles highlight various human rights issues women are exposed to in Tonga.

- Submissions noted that the constitution prohibited discrimination based on class, race and religion but did not prohibit discrimination based on gender.³⁰³
- Sexual and gender-based violence (domestic violence, rape) in Tonga is virulent and widespread.³⁰⁴
- Forced sex and religious disapproval of condoms exposed women to the risk of unwanted pregnancies, HIV and other STDs, with 30 percent of women under 25 having contracted a sexually transmitted infection.³⁰⁵
- Child marriage is a critical concern in Tonga; girls as young as 15 are forced into marriage for reasons as trivial as being seen together with a boy.³⁰⁶
- Reports highlighted that the high number of maternal deaths in Tonga was an urgent concern.³⁰⁷ Maternal morbidity was also a concern as it left many women ill or disabled.³⁰⁸ It is also common practice for women to obtain

³⁰¹ "Tonga" United Nations Human Rights Office of the High Commissioner

<https://lib.ohchr.org/HRBodies/UPR/Documents/Session29/TO/TONGA_Infographic_29th.pdf>

³⁰² National Report Submitted In Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1 Tonga, above n 243, at 10.

³⁰³ Summary of Stakeholders' submissions on Tonga, above n 237, at 3.

³⁰⁴ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Right, above n 239, at 4.

³⁰⁵ At 6.

³⁰⁶ At 7.

³⁰⁷ Summary of Stakeholders' submissions on Tonga, above n 237, at 6.

³⁰⁸ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Right, above n 239, at 6.

consent from their husbands before undergoing tubal ligation and other medical contraceptive measures.³⁰⁹

- Reports recommended that Tonga should introduce programmes targeted towards the specific needs of women in marginalised groups such as rural women and women with disabilities who were often most vulnerable to hardship and poverty.³¹⁰ Women with disabilities face many difficulties in Tonga; they are susceptible to poverty, are less educated, more likely to be unemployed, three times more likely to be victims of sexual and physical abuse and more likely to be socially and culturally excluded than men or women without disabilities.³¹¹
- Tongan women continued to be economically disadvantaged and disempowered by provisions of the Constitution and Land Act that prohibited women from owning and inheriting land.³¹² The 2018 UN compilation from Tonga stressed that owning land was extremely difficult for women, which then greatly limited their ability to access financial services and, as control and management of land fell to men, women seldom benefitted from the development of land.³¹³
- A report outlined that the number of women in formal employment had increased fourfold over the last three decades. Still, most women remained employed in unskilled menial work or subordinate positions and were paid accordingly at lower levels.³¹⁴ In the private sector, women were almost entirely unrepresented on company boards, and in the public sector, women usually occupied lower-level positions.³¹⁵ Men in paid employment outside the agricultural sector outnumbered women and were paid 20-50 percent more than women.³¹⁶ An employment relations bill has been discussed over the last thirty years but has not yet passed. There was no maternity leave framework for private-sector employees.³¹⁷ Higher rates of unemployed women lived in rural areas. Contributing to these employment issues for women were gender barriers in labour markets, gender stereotypes determining what jobs were suitable for women and traditional

³⁰⁹ Summary of Stakeholders' submissions on Tonga, above n 237, at 6.

³¹⁰ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 7.

³¹¹ At 8.

³¹² Summary of Stakeholders' submissions on Tonga, above n 237, at 7.

³¹³ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 7.

³¹⁴ At 5.

³¹⁵ At 5.

³¹⁶ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 5.

³¹⁷ Summary of Stakeholders' submissions on Tonga, above n 237, at 6.

expectations for women to provide unpaid domestic labour and care for the family.³¹⁸

- Another report underscored the historically low level of women’s participation in parliament and in key decision-making positions.³¹⁹ The division of Tonga into 17 electoral constituencies, introduced under the Electoral Boundaries Commission Act 2010, made it more difficult for women to be elected into parliament, snowballed by the lack of support from political parties for women candidates.³²⁰ Recommendations were made that Tonga should expedite the adoption of laws providing for temporary measures required to increase the representation of women in the legislature and other decision-making bodies.³²¹ While there was an increase in female appointed Chief Executive Officers to government ministries, the participation of women in the highest decision-making positions remained low.³²² No women were appointed as judges since the last review, with no female cabinet members and only one female in parliament.³²³ (Tonga has since appointed one female judge, however, there are no females in the legislature and only one woman appointed as a cabinet minister).

CEDAW

The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women on 18 December 1979; it entered into force as an international treaty after receiving the 20 required ratifications on 3 September 1981.³²⁴ Touted as an International Bill of Rights for Women,³²⁵ CEDAW enjoyed its 40th anniversary in 2019.

³¹⁸ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 5.

³¹⁹ Summary of Stakeholders’ submissions on Tonga, above n 237, at 7.

³²⁰ At 7.

³²¹ Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights, above n 239, at 7.

³²² Summary of Stakeholders’ submissions on Tonga, above n 237, at 7.

³²³ At 7.

³²⁴ United Nations Office of the High Commissioner of Human Rights “Convention on the Elimination of All Forms of Discrimination Against Women”

<<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>>.

³²⁵ UN Women < <https://www.un.org/womenwatch/daw/cedaw/>>.

Women's rights were historically absent in the discourses that fuelled the development of human rights.³²⁶ The Commission on the Status of Women was established in 1947 as a subsidiary of the UN Economic and Social Council.³²⁷ From 1947 to the mid-1960s, the Commission on the Status of Women drafted various conventions to promote and protect the rights of women (Convention on the Political Rights of Women, Conventions on the Nationality of Married Women, Convention on the Consent of Marriage, Minimum Age for Marriage, and Registration of Marriages).³²⁸ These separate instruments gave way to one document comprehensively defining discrimination against women, namely, the Declaration on the Elimination of Discrimination against Women, adopted by the General Assembly in November 1976.³²⁹ Membership of the Commission during this period consisted of representatives of member governments in the UN, which was dominated by countries of the West and supported by Latin America and Asian countries.³³⁰ The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was drafted by the UN with the assistance of, and based on, earlier work of the Commission³³¹ and, after lengthy debate and discussion, was adopted by the General Assembly in 1979, and entered into force in 1981.³³² Fiji became a member of the UN in 1970, the first Pacific nation to gain membership; as such, no Pacific representation was part of the Commission and, therefore, of the drafting of CEDAW.

CEDAW consists of a preamble and 30 articles divided into six parts. The preamble situates the convention's foundations in the Charter of the United Nations and in the "dignity and worth of the human person and in the equal rights of men and

³²⁶ Marsha A. Freeman and Arvonne S. Fraser "Women's Human Rights: Making the Theory a Reality" (1994) 26 *Studies in Transnational Legal Policy* 103 at 104.

³²⁷ Margaret E. Galey "Promoting Nondiscrimination against Women: The UN Commission on the Status of Women" (1979) 23 (2) *International Studies Quarterly* 273 at 275.

³²⁸ Galey, above n 327, at 276-279.

³²⁹ At 279.

³³⁰ At 282.

³³¹ Stuart Kaye and Ryszard Piotrowicz *Human Rights in International and Australian Law* (Butterworths, Sydney, 2000) at 50.

³³² Felipe Gomez Isa, "The Optional Protocol for the Convention on the Elimination of all Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women's Human Rights" (2003) 20(2) *Arizona Journal of International and Comparative Law* 291 at 300.

women”³³³ as also expounded in the Universal Declaration of Human Rights and the International Covenants on human rights. Dignity and equality have been described as the foundational values underpinning human rights and to mean “not subjugation but participation, not dependency but autonomy, not slavery but freedom ... neither destiny nor fate, neither cultural inheritance nor religious prescriptions, but the autonomy and capacity of each human being to make one’s own life plan come true.”³³⁴

The Preamble of the Convention states that “extensive discrimination against women continues to exist”³³⁵ and emphasises the commitment of states “to adopt the measures required for the elimination of such discrimination in all its forms and manifestations”.³³⁶ Part I (Articles 1-6) defines discrimination and demands that states ensure national constitutions and legislative frameworks embody principles of equality between men and women to ensure the “practical realisation” of equality.³³⁷ CEDAW provides a comprehensive definition of discrimination in Article 1 as “any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”³³⁸

The Convention’s approach to addressing gender equality has thus been described as multi-dimensional, a formal approach where laws are to be non-discriminatory and gender-neutral, a substantial approach to equality, where women live free from discrimination, where states are responsible for their discriminatory actions

³³³ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), Preamble.

³³⁴ Rikki Holtmaat “The CEDAW: a holistic approach to women’s equality and freedom” in *Women’s Human Rights* (Cambridge University Press, 2013) 95 at 98.

³³⁵ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), Preamble.

³³⁶ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), Preamble.

³³⁷ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), art 2.

³³⁸ Art 1.

and those of private individuals and organisations and to end discrimination in both the private and public sphere.³³⁹ The aims of CEDAW have been surmised as to ensure women's equality at law and in practice and to "modify gender-based stereotypes." CEDAW also serves to guarantee women's individual rights, provide social support for women and facilitate social and cultural change.³⁴⁰

Historically, human rights have been critiqued by female writers as androcentric, and of excluding the needs and experiences of women.³⁴¹ Human rights focused on the public sphere, human rights law protected citizens from state abuse, it failed to address human rights violations in the home and family or private sphere, where women are primarily victimised.³⁴² The Convention most significantly aimed to prevent discrimination against women in the private sphere, requiring governments to regulate life within the family in order to protect women and children.³⁴³ Parties to the convention are required to "adopt appropriate legislative and other measures, including sanctions, where appropriate, prohibiting all discrimination against women"³⁴⁴ and for these measures to apply to "any person, organisation or enterprise"³⁴⁵ and for states to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."³⁴⁶ Further to that, for states to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either

³³⁹Neil A. Englehart And Melissa K. Miller "The CEDAW Effect: International Law's Impact on Women's Rights" (2014) 13 (1) *Journal of Human Rights* 22 at 23.

³⁴⁰Holtmaat, above n 334, at 95.

³⁴¹ Isa, above n 332, at 293.

³⁴² At 293-294.

³⁴³ Donna J. Sullivan "The Public/Private Distinction in International Human Rights Law" in *Women's rights, human Rights: international feminist perspectives* (Routledge, New York, 1995) 126 at 129.

³⁴⁴ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), Art 2.

³⁴⁵ Art 2.

³⁴⁶ Art 2.

of the sexes or on stereotyped roles for men and women.”³⁴⁷ The Convention also required states to accelerate “de facto equality between men and women.”³⁴⁸

CEDAW mandates for both a formal and a substantive or de facto approach to equality.³⁴⁹ Formal or de jure equality demands that the content of the law prescribes equality for women.³⁵⁰ It is “a purely formal legal obligation of equal treatment of women with men.”³⁵¹ Formal equality is crucial but insufficient for the full implementation of the provisions of CEDAW.³⁵² Substantive or de facto equality between men and women requires addressing the differences between men and women (biological, social, culturally constructed) to ensure equality of opportunity and equality of results.³⁵³ The third type of equality, transformative equality, is embedded in the convention.³⁵⁴ As a subset of substantive equality, transformative equality requires transformation to institutions and systems perpetuating inequality and to harmful norms, stereotypes and prejudices held against women.³⁵⁵ CEDAW obligates states to address the underlying structures on which discrimination is rooted and, in doing so, transforms the distribution of power and resources among men and women and transform stereotypes, prejudices and norms that are harmful to women.³⁵⁶ To the end of eliminating discrimination and promoting women's advancement, CEDAW obligates states to “ensure equality of opportunity, equality of access to those opportunities, sometimes in the form of affirmative action measures and, crucially, equality of results.”³⁵⁷

³⁴⁷ Art 5.

³⁴⁸ Art 4.

³⁴⁹ Vedna Jivan and Christine Forster “What Would Gandhi Say? Reconciling Universalism, Cultural Relativism And Feminism Through Women’s Use Of CEDAW” (2005) 9 *The Singapore Year Book of International Law* 103 at 105

³⁵⁰ Andrew Byrnes “Article 1” in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds) *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012) 51 at 52.

³⁵¹ Committee On The Elimination Of Discrimination Against Women *General Recommendation No.25, XXX* (2004) at [6].

³⁵² Simone Cusack and Lisa Pusey “CEDAW and The Rights to Non-Discrimination and Equality” (2013) 14 (1) *Melbourne Journal of International Law* 54 at 63.

³⁵³ Cusack and Pusey, above n 352, at 64.

³⁵⁴ At 64.

³⁵⁵ At 64.

³⁵⁶ At 64.

³⁵⁷ Jivan and Forster, above n 349, at 105.

Part II (Articles 7-9) seeks to address discrimination against women in the public sphere and advance women's civil and political rights. Part III (Articles 10-14) deals with women's social and economic status and addresses the advancement of women's rights in education, employment, healthcare, family benefits, and the needs of women living in rural areas. Part IV (Article 15 -16) sets out standards for non-discrimination in civil and family matters. Part V (Articles 17-22) establishes a Committee on the Elimination of Discrimination Against Women of 23 experts elected from a list of nominees generated by state parties for a term of four years. Parties are expected to submit a report to the CEDAW committee once every four years or upon request to detail the "legislative, judicial, administrative or other measures, which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect."³⁵⁸ The submitted country reports are part of a review process that entails a constructive dialogue between the Committee and state parties to monitor their progress in implementing CEDAW.³⁵⁹ The Committee is empowered to make General Recommendations after examining submitted reports.³⁶⁰ General Recommendations and concluding observations, individual communications and Committee reports offer clarification³⁶¹ and authoritative interpretations and definitions on women's rights and state obligations.³⁶² The Committee has provided a broad and dynamic interpretation of the provisions of CEDAW and the definition of discrimination.³⁶³ There is no Committee member from any Pacific island nation; of the 151 experts

³⁵⁸ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), art 18.

³⁵⁹ Debra J. Liebowitz and Susanne Zwingel "Gender Equality Oversimplified: Using CEDAW to Counter the Measurement Obsession" (2014) 16 (3) *International Studies Review* 362 at 379.

³⁶⁰ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), art 21.

³⁶¹ Cusack and Pusey, above n 352, at 58.

³⁶² Christine Chinkin and Marsha A Freeman "Introduction" in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012) 120 at 132.

³⁶³ Liebowitz and Zwingel, above n 359, at 379.

who have served on the Committee since 1982, none have been from the island nations in the Pacific region.³⁶⁴

The United Nations General Assembly adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women on 6 October 1999; it entered into force on 22 December 2000 after receiving the required ten ratifications.³⁶⁵ The Optional Protocol provides procedures by which the Committee can hear complaints from an individual or group of individuals from a state party.³⁶⁶ The Committee can carry out an inquiry within states where there is a concern for serious or systematic violations of the Convention.³⁶⁷ Only three Pacific countries have ratified the Optional Protocol: the Cook Islands, Marshall Islands and the Solomon Islands.³⁶⁸

States are permitted to enter reservations that do not conflict with the “object and purpose of the present Convention.”³⁶⁹ Despite this, many countries have entered reservations to substantive provisions of the Convention, while some states have withdrawn their reservations as a result of pressure from the Committee and civil society; others have not withdrawn nor modified any reservations.³⁷⁰ Reservations to CEDAW are broad in scope, often incompatible, and relate to core provisions of the Convention.³⁷¹ States often accept reservations that are incompatible with the

³⁶⁴ “Committee on the Elimination of Discrimination Against Women: Membership” United Nations Human Rights Office of the High Commissioner

<<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx>>

³⁶⁵ Andrew Byrnes and Marsha Freeman *The Impact Of The CEDAW Convention: Paths To Equality* (World Development Report 2012) at 7.

³⁶⁶ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women UN Doc A/RES/54/4 (15 October 1999), art 2.

³⁶⁷ Byrnes and Freeman, above n 365, at 7; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women UN Doc A/RES/54/4 (15 October 1999), at 8.

³⁶⁸ “Status of Ratification Interactive Dashboard: Ratification of 18 International Human Rights Treaties” United Nations Office of the High Commissioner for Human Rights <<https://indicators.ohchr.org>>.

³⁶⁹ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), art 20.

³⁷⁰ Byrnes and Freeman, above n 365, at 12.

³⁷¹ Marijke De Pauw “Women’s rights: from bad to worse? Assessing the evolution of incompatible reservations to the CEDAW Convention” (2013) 29 (77) *Utrecht Journal Of International And European Law* 51 at 52.

treaty; suggestions have been made that deciding whether or not reservations are accepted should be something left to treaty bodies to decide.³⁷² States usually do not object to reservations due to lack of interest or capacity and political motives.³⁷³

The Human Rights Committee set out the severability doctrine in its General Comment No 24, where a reservation is considered severable, meaning that the treaty applies to the state without the benefit of the severed reservation.³⁷⁴ While the number of objections by state parties to reservations has increased over the years, not all states have objected, the meaning of what reservations states deem incompatible has been inconsistently interpreted, and very few states have modified or withdrawn their reservations to core provisions of the convention.³⁷⁵ Despite the Committee playing a more active role and stating that reservations to Article 2 and 16 are not allowed,³⁷⁶ reservations to core provisions have increased significantly in the 21st century, and although very few states submit objections to reservations, more are now declaring that the Convention applies in its entirety thus severing reservations.³⁷⁷

Part VI of the Convention (Articles 23-30) deals with monitoring mechanisms, administrative and procedural matters related to the Convention.

Like other human rights treaties, CEDAW has no effective means of enforcing compliance;³⁷⁸ however, CEDAW is shown to have a positive impact on human rights and improve women's rights, particularly regarding women's political and social rights.³⁷⁹ An empirical study has shown that the ratification of CEDAW has

³⁷² At 54.

³⁷³ At 56.

³⁷⁴ ³⁷⁴ UN Human Rights Committee *General Comment No 24*, LII (4 November 1994) at [18].

³⁷⁵ De Pauw, above n 371, at 62.

³⁷⁶ Committee on the Elimination of Discrimination Against Women *General Recommendation No. 28* UN Doc CEDAW/C/GC/28 (16 December 2010) at [41]; Committee on the Elimination of Discrimination Against Women *General Recommendation No. 29* UN Doc CEDAW/C/GC/29 (30 October 2013) at [3].

³⁷⁷ De Pauw, above n 371, at 64-65.

³⁷⁸ Daniel W. Hill "Estimating the effects of human rights treaties on state behavior." (2010) 72(4) *The Journal of Politics* 1161 at 1172

³⁷⁹ Englehart and Miller, above n 338, at 23

improved women's access to education, modern forms of family planning, and employment opportunities.³⁸⁰ The study also found that CEDAW is a crucial tool for women demanding recognition of their rights.³⁸¹

1.1.16 CEDAW In The Pacific

All Pacific nations have ratified CEDAW except for Tonga and Palau. Ratification in the region began with Samoa in 1992, then other countries followed: Fiji (1995), Papua New Guinea (1995), Vanuatu (1995), Tuvalu (1999), Solomon Islands (2002), Kiribati (2004), Cook Islands (2006) Marshall Islands (2006) Federated States of Micronesia (2004), with the last being Nauru in 2011. Ratification does not guarantee compliance; however, member states compliance is now open to international scrutiny.³⁸² While de jure/formal or legislative compliance is not a sufficient measure of implementation of the Convention, it is a necessary step towards achieving de facto or substantive compliance.³⁸³

A study found that despite ratification, legislative compliance with CEDAW was low for countries in the Pacific region.³⁸⁴ The reasons set out for non-compliance include:³⁸⁵

- outdated legislative frameworks that remain unchanged since their introduction by former colonial governments; these laws do not reflect local values or international standards.
- discriminatory customs and traditional practices embedded in national constitutions.
- lack of political will to address gender inequality due to the absence of women from both formal and traditional political institutions and legislative bodies.

³⁸⁰ Simmons, above n 93, at 203.

³⁸¹ At 204.

³⁸² Liebowitz and Zwingel, above n 359, at 379.

³⁸³ Vedna Jivan and Christine Forster "Challenging conventions : in pursuit of greater legislative compliance with CEDAW in the Pacific." (2009) 10(2) Melbourne Journal of International Law 655 at 661.

³⁸⁴ At 656.

³⁸⁵ At 656-657.

- the lack of engagement by Pacific nations in the Committee’s review process is due to the Committee’s incapacity to compel states to submit reports.

However, Pacific countries have made positive changes to legislation since ratification; to illustrate, Fiji decriminalised consensual same-sex relationships in 2010,³⁸⁶ Samoa implemented legislative reform which included legal provisions for the registration of sex offenders (Sex Offenders Registration Act), a community law centre (Community Law Centre Act), a family court (Family Court Act), a quota for women in parliament (Constitutional Amendment Act 2013), increasing penalties for sex offenders and criminalising marital rape (Crimes Act), protection for victims of domestic violence (Family Safety Act), introducing maternity leave in the private sector (Labour and Employment Relations Act), a national human rights institution (Ombudsman (Komesina o Sulufaiga) Act) and the recognition of women’s rights to own and use property in commercial transactions (Personal Property Securities Act).³⁸⁷

CEDAW IN TONGA

In its initial UPR cycle, Tonga had accepted recommendations to ratify CEDAW.³⁸⁸ During its second UPR cycle, Tonga highlighted its commitment to gender equality on a national, regional and international level and that it had carried out activities to promote gender equality.³⁸⁹ The Tongan delegation communicated that, in December 2011, Tonga had decided to ratify CEDAW and was carrying out national consultations to determine what reservations would be entered.³⁹⁰ The reservations were expected to cover succession rights, abortion, land ownership and same-sex marriage.³⁹¹ Lord Vaea explained the privileges women enjoy as part of Tongan social life and that any legal amendments would have to be managed to

³⁸⁶Committee on the Elimination of Discrimination against Women *Concluding observations on the fifth periodic report of Fiji* UN Doc CEDAW/C/FJI/CO/5 (14 March 2018) at [4].

³⁸⁷ Committee on the Elimination of Discrimination against Women *Concluding observations on the sixth periodic report of Samoa* UN Doc CEDAW/C/WSM/CO/6 (14 November 2018) at [4].

³⁸⁸ Report of the Working Group on the Universal Periodic Review Tonga, above n 221, at 16.

³⁸⁹ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/15/TON/1 (9 January 2013) at 11-16.

³⁹⁰ Report of the Working Group on the Universal Periodic Review Tonga, above n 225, at 6.

³⁹¹ At 6.

minimise change to Tongan culture and avoid disharmony.³⁹² According to Lord Vaea, the privileged position of women in Tonga rendered CEDAW redundant, leaving the convention's impact to be cultural change and conflict.

In its third UPR cycle, Tonga communicated that on 6 March 2015, cabinet had approved the decision to ratify CEDAW and was, at the time, in the process of revising reservations before proceeding to ratification.³⁹³ The report stated that the issue of women's rights was being addressed through projects linked to Tonga's commitments to the 2030 Agenda for Sustainable Development, Tonga's Strategic Development Framework 2015-2025 and through the enactment of legislation such as the Family Protection Act 2013.³⁹⁴ Another report cited the ratification of CEDAW as an ongoing process and "represented a generational change."³⁹⁵

The UN country team stated that the ratification of CEDAW was stalled due to public protests, particularly by women religious leaders associated with the church.³⁹⁶ Another report referred to the King dissolving the Legislative Assembly in August 2017 and ordering new elections to be held in November 2017.³⁹⁷ The dissolution was stated to be the result of the government's proposed constitutional amendments to vest in the Prime Minister the authority to appoint the Attorney General, the Police Commissioner and the Anti-corruption Commissioner, and the government's intention to ratify CEDAW and a regional agreement (PACER).³⁹⁸ All the above was claimed to be unconstitutional as the powers to appoint the above offices and sign international treaties remained with the King and Privy Council.

A report submitted as part of Tonga's third UPR cycle outlined that the government had stated in 2015, at the 59th session of the Commission on the Status of Women

³⁹² At 6.

³⁹³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/29/TON/1 (3 November 2017) at 13-14.

³⁹⁴ At 13-14, 7-10.

³⁹⁵ Report of the Working Group on the Universal Periodic Review Tonga, above n 240, at 3.

³⁹⁶ *Compilation on Tonga*, above n 239, at 1.

³⁹⁷ At 2.

³⁹⁸ At 2.

in New York, that it was initiating the process to ratify CEDAW. The ratification of CEDAW was halted by a decision made by the King in Privy Council.³⁹⁹ The King in Privy Council declared that the government's decision to ratify CEDAW breached clause 39 of the Constitution, which prescribed that only the King could ratify CEDAW on behalf of the nation.⁴⁰⁰ The report posited that a judicial review was required to clarify who between the King and the government possessed the authority to ratify treaties.

1.1.17 Reasons For Non-Ratification Of CEDAW

1. CEDAW is unnecessary because the privileged status of women in the Tongan social structure means that all women in Tonga are respected and cherished.⁴⁰¹ Ratifying and implementing CEDAW may drastically alter Tongan culture, its current land tenure system is considered as part of Tongan culture.⁴⁰²
2. Ratification of CEDAW is unnecessary as Tonga has made significant commitments at the national, regional and international levels to promote gender equality and has also carried out activities to maintain gender equality.
3. Opposition from King in Privy Council and cabinet did not have authority to ratify treaties on behalf of the nation.
4. Marches and opposition from religious groups, particularly women.

Summarily, the reasons Tonga has refused to ratify CEDAW, according to its UPR reports, are claims that it is not required for the Tongan context as Tongan culture already privileges and protects women, that CEDAW would only serve as a destructive force on this culture and that Tonga promotes gender equality through commitments to that end on a national, regional and international level. Tongan culture and Christian values prohibit same-sex marriage, abortion, and maintain a patrilineal and patriarchal land tenure system, which clashes with women's human

³⁹⁹ Summary of Stakeholders' submissions on Tonga, above n 237, at 2.

⁴⁰⁰ At 2.

⁴⁰¹ National Report Submitted In Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1 Tonga, above n 243, at 10.

⁴⁰² Report of the Working Group on the Universal Periodic Review Tonga, above n 225, at 6.

rights norms set out in CEDAW. Implementing these provisions as set out in CEDAW would cause disharmony.

CONCLUSION

This introductory chapter provides background information on Tonga and the broader context of the Pacific region. Besides geographical proximity, Tonga has cultural ties to the rest of the region's nations and faces similar issues due to geographical isolation, small economies, slow economic growth and development, mass emigration, dependence on remittances, environmental and climate concerns and natural disasters. However, Tonga is unique in the Pacific as the only nation to have avoided being colonised by a foreign superpower. This has implications for current legal systems in terms of customary law and leadership. While the rest of the region has recently recognised customary law and leadership formerly relegated during colonisation, Tonga's customary laws and leadership were incorporated into the constitution and laws that remain to the present day. The clash between customary laws and fundamental human rights has become a defining issue in the region, while for Tonga, the issue at hand are changes to current laws to reflect democratic leadership.

Human rights are realised through the ratification and implementation of core human rights treaties. While human rights bodies have no means of enforcing compliance and states continue to enter reservations that often nullify the objective of the treaty in question, ratification has been shown to initiate positive change through international and domestic pressure and activism, particularly in unstable democracies and autocracies.

The Pacific region continues to have the lowest ratification rates of human rights treaties; Tonga and Palau have ratified the least number of treaties. A review of the objectives of the two major regional organisations reveals that human rights are not a priority and the recent Denarau 2015 Declaration on Human Rights is ineffective as it is non-binding. Development remains the regional priority, as with

the rest of the region, Tonga's development is stunted and economic growth sluggish. Arguments have been made that implementation of human rights would boost development in the region and Tonga, as would good governance and democratic governance.

Other reasons for the low levels of compliance include technical and financial constraints, failure to grasp the benefits of ratification and compliance, and the unwillingness to expose domestic practices to international scrutiny. The most significant reasons for non-ratification are located in the foreign nature of human rights, claims that human rights treaties do not address human rights issues particular to the Pacific and that human rights threaten Pacific collective cultural rights. This highlights the pressing need for a regional human rights commission that would work to harmonise cultural rights and human rights norms, prioritise human rights in the region and assist nations with human rights education, ratification and compliance.

As a nation with customary law incorporated into its constitution and domestic laws and one that suffers from sluggish economic growth, Tonga is also the region's nation most resistant to human rights. A review of its UPR documents highlights that Tonga has not domesticated the provisions of the two human rights treaties it has ratified and, since 2008, Tonga has refused to heed international urging to ratify any further human rights treaties.

Throughout the UPR processes, Tonga has justified its refusal to ratify human rights treaties with claims that this is unnecessary as the Tongan constitution and laws already promote human rights, as does the nation's commitment to international and regional bodies that protect human rights. As with other Pacific countries, Tonga also highlights financial and technical constraints and the desire to maintain cultural rights incompatible with rights contained in human rights treaties.

The low ratification of human treaties in the region, the lack of a regional human rights mechanism correlates to the broad range of human rights issues prevalent in

the region. The review of Tonga's UPR documents highlights a vast range of human rights issues in the nation. The most significant human rights concern in Tonga is the violation of women's human rights. This is also an area of concern for the Pacific generally. Women face many human rights issues in the Pacific, and Tonga is no exception. CEDAW is the human rights convention dedicated to promoting women's human rights; as with other conventions the convention lacks a means of enforcing compliance. The Pacific region has two instruments dedicated to protecting women's rights: the PPA (2018-2030) and PLGED. Pacific Women was granted considerable funding to implement PLGED, which includes ensuring the provisions of CEDAW are incorporated into domestic legislation. Pacific Women could not initiate any legislative reform to bring Tongan laws in compliance with CEDAW. A review of CROP and regional intergovernmental organisations highlights the lack of an intergovernmental organisation dedicated to women.

While all but two countries have ratified CEDAW in the Pacific, there is low compliance across the region; this is attributed to outdated legislative frameworks, lack of political will to amend the relevant legislation, the incapacity of the CEDAW committee to compel compliance and discriminatory customs and practices now embedded in legislation.

Tonga has consistently refused to ratify CEDAW; according to UPR documents, this was because it was claimed redundant. As Tongan culture, the constitution and commitments to international and regional bodies already sufficiently protected women's rights in Tonga, the government did not have the requisite power to ratify treaties and marches and opposition led by church leaders opposed to CEDAW, same-sex marriage and abortion.

In terms of women's rights and human rights generally, commitments to international and Pacific regional bodies have not ensured compliance with international norms; this and the lack of finances and technical expertise could be addressed by establishing a regional human rights commission within which a regional women's mechanism would operate.

The following research aims to determine the reasons for the non-ratification of CEDAW in Tonga. Cultural constraints are a frequently cited and primary stated impediment to the implementation of human rights and women's rights in the Pacific and in Tonga. The following empirical research aims to uncover the true nature of the opposition to CEDAW in Tonga.

CHAPTER TWO: METHODOLOGY

RESEARCH QUESTION

The previous chapter underscores that the ratification of core international human rights treaties is low in the Pacific region, whilst human rights issues are prevalent. Women's rights violations are a critical concern. Tonga has ratified the least number of core human rights treaties (2) in the region and, with Palau, are the only Pacific nations that have not ratified CEDAW. Tonga is one of only six member states of the United Nations that have not ratified the convention. The application of an instrument measuring compliance with CEDAW shows that Tonga is non-compliant with all but one of the articles of CEDAW. A review of Tonga's national women's policies highlights many issues for women in Tonga that remain unaddressed. Later chapters emphasise the utility of implementing CEDAW in Tonga, in terms of addressing women's issues and needs. In spite of this, Tonga is unique in the Pacific region as the only nation whose citizens protested CEDAW.

Tonga's attempts to ratify CEDAW harks began in the early 2000s. From 2005 onwards, the Women's Affairs Division of the Government of Tonga carried out public consultations with the expectation that government would ratify the convention.¹ In August 2008, Akilisi Pohiva and Isileli Pulu moved a motion in Parliament for the government to ratify CEDAW.² The Legislative Assembly passed the motion in October 2008.³ However, cabinet did not approve of the motion to ratify CEDAW and sent a letter to the Legislative Assembly outlining their objections to CEDAW.⁴ In September 2009, following a speech in opposition to CEDAW from Prime Minister Sevele, the Legislative Assembly voted 18-1 against the ratification of CEDAW⁵ with the Prime Minister's office affirming the government's refusal to ratify CEDAW.⁶

¹ Aileen Thomson "Tongan Parliament Rejects CEDAW Ratification, Women's Groups React"

² **Legislative Assembly of Tonga**, *Hansard Record No.30/2008* (13 October 2008) at 6, 8.

³ Legislative Assembly of Tonga, *Hansard Record No. 37/2008* (28 October 2008) at 6.

⁴ Legislative Assembly of Tonga, *Hansard Record No. 31/2009* (17 September 2009) at 23.

⁵ Legislative Assembly of Tonga, above n 4..

⁶ "Tongan Parliament decides not to ratify CEDAW" *Matangi Tonga Online* (18 September 2009).

In March 2015, Prime Minister Akilisi Pohiva announced in the Legislative Assembly his government's intention to ratify CEDAW,⁷ while debate continued in the House over the issue, on 19 May 2015, churches marched in protest of ratification and presented three petitions to the Legislative Assembly against the ratification of CEDAW.⁸ On 22 May, protest marches were again held, petitions against CEDAW were presented to His Majesty.⁹ Women were seen publicly protesting women's rights in Tonga. In June 2015, a memorandum from His Majesty declared that his Ministers were instructed to annul Tonga's ratification of CEDAW.¹⁰ In September 2015, the Minister responsible for ratification announced in the House that CEDAW required further public consultation.¹¹

This research aims to look in-depth into the reasons why CEDAW failed for a second time to be ratified in Tonga in 2015. In a culture where women are claimed to be elevated, it is extraordinary that the same society should repeatedly reject the notion of formal, substantive and transformative equality for its women, as set out in CEDAW.

METHODOLOGY

Descriptions abound as to the meaning of methodology. A methodology has been defined as a theorized approach to how we come to investigate the world.¹² A methodology has also been defined as a worldview influenced lens through which research is understood, designed and conducted.¹³ Alternatively, a methodology

⁷ Legislative Assembly of Tonga, *Hansard Record No. 03/2015* (16 March 2015).

⁸ Matangi Tonga Online "Catholic Women's League marches against CEDAW" (May 19 2015).

⁹ "Tongans seek royal intervention to stop CEDAW" Radio New Zealand (22 May 2015)
<<http://www.radionz.co.nz/international/pacific-news/274357/tongans-seek-royal-intervention-to-stop-cedaw>>

¹⁰ Bruce Hill "King of Tonga annuls CEDAW" ABC Radio Australia (30 June 2015)
<<http://www.abc.net.au/news/2015-06-30/king-of-tonga-annuls-cedaw/6584744>>

¹¹ Legislative Assembly of Tonga, *Hansard Record No.38/2015* (3 September 2015) at 12.

¹² Nathan Durdella *Qualitative Dissertation Methodology: A Guide for Research Design and Methods* (SAGE Publications, California, 2019) at 90.

¹³ Maggie Walter "The Nature of Social Science Research" in Maggie Walter (ed) *Social Research Methods* (3rd ed, Oxford University Press, Melbourne, 2013) 3 at 10.

has also been described as a bundle of skills, assumptions and practises that researchers employ as they move from their paradigm to the empirical world.¹⁴

Just as there are many varying understandings of methodology, there are also many different beliefs about what constitutes one. In this research, the methodology is comprised of the chosen research paradigms, stages of the Kakala Research Framework and the social position of the researcher.

2.1.1 Research Paradigm:

Research paradigms are the foundations of scholarly investigations.¹⁵ The word paradigm is most commonly used in a metaphysical sense to describe a coherent worldview.¹⁶ Alternatively, paradigms have been defined as a set of beliefs and feelings about the research and how it should be understood and studied.¹⁷ The choice of research paradigm, also known as the theoretical framework, sets down the research's intent, motivation, and expectations.¹⁸ A research paradigm consists of a unique combination of particular ontology with particular yet related epistemologies.¹⁹ Ontology relates to the nature of reality, epistemology to how we come to know reality.²⁰ Some significant research paradigms include positivist, post-positivist, constructive-interpretivist, critical and feminist-structural.²¹ This research combines two paradigms, the Interpretivist and Pacific paradigms.

¹⁴ Durdella, above n 12, at 90.

¹⁵ At 91.

¹⁶ Pat Bazely *Qualitative Data Analysis: Practical Strategies* (SAGE, London, 2013) at 19.

¹⁷ Durdella, above n 12 at 90.

¹⁸ Noella Mackenzie and Sally Knipe "Research dilemmas: methods and methodology" (2006) 16 (2) *Issues in Educational Research* 1 at 2.

¹⁹ Johnny Saldaña and Matt Omasta *Qualitative Research: Analyzing Life* (SAGE Publications, California, 2018) at 143.

²⁰ Durdella, above n 12 at 90.

²¹ At 90.

2.1.1.1 Interpretivist Paradigm:

The interpretivist paradigm understands the world as socially constructed with multiple realities.²² The ontological position of interpretivism is relativism.²³ Relativism is the view that reality is subjective and differs from person to person; reality is individually constructed; therefore, there are as many realities as individuals.²⁴ The epistemological position of the interpretive paradigm is subjectivism, which is based on real-world phenomena.²⁵ The interpretivist paradigm understands meaning as not discovered but as constructed through the interaction between consciousness and the world.²⁶ Therefore the social world can only be understood from the standpoint of individuals participating in it.²⁷ Within the interpretive paradigm, knowledge is accepted as culturally derived and historically situated.²⁸

A researcher utilizing the interpretivist paradigm explores phenomena in their natural setting and inductively arrives at an understanding of what is going on.²⁹ Interpretive theory is usually generated from the data, not preceding it, with broad research questions a typical characteristic of the research.³⁰ Interpretivism aims to bring into consciousness hidden social forces and structures through rich, thickly described events and phenomena, allowing for interpretations that are not simplistic.³¹

²² Durdella, above n 12 91.

²³ James Scotland "Exploring the Philosophical Underpinnings of Research: Relating Ontology and Epistemology to the Methodology and Methods of the Scientific, Interpretive, and Critical Research Paradigms" (2012) 5(9) English Language Teaching 9 at 11.

²⁴ Scotland, above n 23.

²⁵ Scotland, above n 23.

²⁶ Scotland, above n 23.

²⁷ At 12.

²⁸ At 12.

²⁹ Durdella, above n 12, at 91.

³⁰ Scotland, above n 23, at 12.

³¹ At 12.

2.1.1.2 Pacific Paradigm:

The Pacific paradigm acknowledges that Pacific knowledge and ways of knowledge-making have always accompanied the existence of Pacific people.³² Pacific paradigms allow for an understanding of the Pacific from a Pacific lens.³³ Moreover, it validates the equal value of Pacific knowledge in ways that were not in the colonial past. Pacific paradigms encourage research that is respectful and meaningful to Pacific people.³⁴ As this research takes place in the Pacific context and involves Pacific people, a Pacific paradigm is necessary; however, the Interpretivist paradigm acknowledges the varied dimensions within Pacific knowledge and requires that different perspectives from within the Pacific paradigm are taken into account. A number of established Pacific research methodologies include the Vanua research framework of Fiji, the Fa'afaletui framework of Samoa,³⁵ Tivaevae from the Cook Islands and Lakalaka from Tonga.³⁶ As this research concerns Tongans and Tonga, a Tongan research framework, namely the Kakala Research Framework, is employed.

KAKALA RESEARCH FRAMEWORK

The Kakala framework was the brainchild of Professor Konai Helu Thaman; the framework marked a milestone in education as it allowed research and thinking to be conducted from a Pacific worldview informed by Pacific philosophies, values, customs and for theories to be interpreted and articulated from a Pacific perspective.³⁷ The defining characteristic of the Kakala framework is that it facilitates Tongan researchers to access, study, and disseminate Tongan knowledge

³² Eseta Tualalelei and Judy McFall-McCaffery "The Pacific research paradigm: opportunities and challenges" (2019) 8 (2) MAI Journal 188 at 199.

³³ Sereana Naepi "Pacific Research Methodologies" ResearchGate (January 2019) <https://www.researchgate.net/publication/339032278_Pacific_Research_Methodologies> at 3.

³⁴ Tualalelei and McFall-McCaffery, above n 32, at 197.

³⁵ Naepi, above n 33, at 6

³⁶ Seu'Ula Johansson Fua "Kakala Research Framework: A Garland in Celebration of a Decade of Rethinking Education" ResearchGate (January 2014) <https://www.researchgate.net/publication/312532893_Kakala_Research_Framework_A_Garland_in_Celebration_of_a_Decade_of_Rethinking_Education> at 50.

³⁷ Fua, above n 36, at 50.

through culturally appropriate methods and thus produce authentic results.³⁸ Thaman introduced the Kakala framework in 1997 as having three stages, *toli*, *tui* and *luva*.³⁹ Over the years, the original Kakala framework evolved into the contemporary Kakala Research Framework, the product of a collaboration between Professor Konai Helu Thaman, Dr Ana Taufeulungaki, Dr Seu'ula Johansson Fua and Dr Linita Manu'atu.⁴⁰ The word Kakala is Tongan for garland, and the Kakala Research Framework is modelled on the different stages Tongan women go through in the process of stringing a beautiful, fragrant kakala or garland together. The Kakala Research Framework comprises six stages: *Teu*, *Toli*, *Tui*, *Luva*, *Malie* and *Mafana*.⁴¹

2.1.2 Teu: Research Design

The word *teu* means to prepare and is the first stage of the Kakala Research Framework. In kakala or garland making, preparation or *teu* comprises determining the occasion the garland is to be worn, who will wear it and what flowers or leaves are required.⁴² In the research framework, *Teu* or the preparation stages involve deciding why the research is being conducted, who it is for and what is needed to begin.⁴³ It is time to consider the design of the study.⁴⁴ The *Teu* stage in this study involved research into the ratification of Pacific treaties in the Pacific and Tonga through examining UN documents and official government reports. The *Teu* stage also encompassed an overview of human rights issues in the Pacific and Tonga, highlighting that women's issues constituted an integral part of human rights violations in the region and in Tonga. The *Teu* stage explored women's issues in the Pacific and in Tonga, for the Pacific reasons for non-compliance and in Tonga

³⁸Fua, above n 36, at 52.

³⁹ Konai Helu-Thaman "Kakala: A Pacific concept of teaching and learning." (Keynote address, Australian College of Education National Conference, 1997).

⁴⁰ Fua, above n 36, at 50..

⁴¹ At 54-55.

⁴² Naepi, above n 33, at 7.

⁴³ At 7.

⁴⁴ Laie Hawaii Vatuvei "Using the 'Kakala Research Framework' to research the ways in which gambling and problem gambling have been studied among Pacific families and communities in Auckland, New Zealand" (Masters of Arts Dissertation, Auckland University of Technology, 2017) at 17.

reasons for non-ratification. The Teu stage reveals low treaty ratifications, a plethora of human rights issues, the most concerning of which is women's rights in the Pacific and Tonga, related to cultural, technical and structural constraints such as the lack of regional structures in the region dedicated to human rights and women's rights. An instrument for measuring CEDAW compliance in the Pacific was applied to Tongan legislation and compared to women's issues as set out in Tonga's national gender policies, highlighting that legislative compliance with CEDAW would significantly assist in addressing women's issues as outlined in national reports published by the Women's Affairs Division of government. This led to the question of the study, with all the positive impacts CEDAW could have for women in Tonga, why wasn't CEDAW ratified? What are the barriers to the realization of formal, substantive and transformative equality for women in Tonga?

The research thus concerns Tonga as a nation, with a focus on Tongan women. The overarching purpose of the research is to contribute to a scarce body of literature dedicated to achieving equality for women in Tonga, which would permit women in Tonga to thrive and flourish and, through this, positively impact Tongan society. The knowledge required to address the research question lies with the Tongan people. To determine the impediments to women's rights in Tonga required conducting a qualitative case study on the failure to ratify CEDAW in Tonga. This research is conducted for the benefit of the researcher and other Tongan women.

2.1.2.1 Qualitative Research

Qualitative and Quantitative methods are now understood as two different but equally important components of social science research.⁴⁵ While quantitative methods rely heavily on measurements, statistical analysis⁴⁶ and are likely to use statistics from large populations in surveys and experiments to validate and generalize their findings,⁴⁷ the qualitative mode focuses on the qualities of things

⁴⁵ Walter, above n 13, at 21.

⁴⁶ Robert E Stake *Qualitative Research: Studying How Things Work* (The Guildford Press, New York, 2010) at 11.

⁴⁷ Adrian Holliday *Doing and Writing 3e Qualitative Research* (3rd ed, SAGE Publications, London, 2016) at 7.

more than their quantity,⁴⁸ and relies heavily on human perception and understanding.⁴⁹ In qualitative research, the researcher seeks to understand experiences through the eyes of the people being studied and consequently make interpretations.⁵⁰

Qualitative methods are used when the research requires the understanding of people in their natural settings.⁵¹ Qualitative research looks deep into a particular setting; to explore, illuminate and then interpret reality.⁵² Qualitative research thus produces well-grounded, rich descriptions and explanations of processes in a particular setting.⁵³

Qualitative research is interpretive; it is in tune with the view that reality is a human construction, and therefore much of it is empirical or field orientated.⁵⁴ Qualitative research is situational or orientated to objects and activities within a unique set of contexts, and despite each place and time having a uniqueness that works against generalization, contexts are described in detail.⁵⁵ Qualitative research is personalistic; it works to understand individual perceptions, seeking uniqueness more than commonality and honouring diversity.⁵⁶

Qualitative research has moved social research from an emphasis on cause and effect toward personal interpretation.⁵⁷ Qualitative inquiry is therefore distinguished by its emphasis on the holistic treatment of phenomena.⁵⁸ The

⁴⁸ Bazely, above n 16, at 3.

⁴⁹ Stake, above n 46, at 11.

⁵⁰ Walter, above n 13, at 20.

⁵¹ Robert K Yin *Qualitative Research from Start to Finish* (2nd ed, The Guilford Press, New York, 2016) at 3.

⁵² Holliday, above n 47, at 7.

⁵³ Bazely, above n 16, at 4.

⁵⁴ Stake, above n 46, at 15.

⁵⁵ At 15.

⁵⁶ At 15.

⁵⁷ At 31.

⁵⁸ At 31.

holistic nature of qualitative work means it is not focused on prediction or control but looks to understand the social context or setting as a whole.⁵⁹

Researchers build an understanding of the social context based on their personal experience or from others' recollections, artifacts, and personal experiences.⁶⁰ Researchers then make detailed descriptions to offer readers an experiential understanding of action and context.⁶¹ Researchers aim to incorporate their experience into the readers' understanding. This is what a rich description is.⁶² A rich description provides abundant interconnected details; a thick description provides a direct connection to cultural theory and scientific knowledge.⁶³

Because qualitative research is interpretive, flaws in observation, assertion and interpretation are minimized by triangulating data; triangulation improves research by increasing confidence that we have correctly interpreted how things work.⁶⁴

The feminist approach is suited to qualitative research as it is an exploration and understanding of women's lives as it is lived.⁶⁵ Feminists commit themselves to take sides in challenging unequal and exploitative gender relations and consciously facilitating social change through the adoption of emancipatory goals.⁶⁶ The goal of feminist research is the production of practical knowledge that can serve the interests of dominated, exploited and oppressed groups, particularly women.⁶⁷

The interpretivist paradigm is well suited to qualitative research. Qualitative research is essentially interpretive in nature.⁶⁸ An interpretivist paradigm is an

⁵⁹ Valerie J Janesick *"Stretching" Exercises for Qualitative Researchers* (2nd ed, SAGE Publications, California, 2004) at 7.

⁶⁰ Stake, above n 46, at 40-49.

⁶¹ At 48-49.

⁶² At 48-49.

⁶³ At 49.

⁶⁴ At 37.

⁶⁵ Matt Henn, Mark Weinstein and Nick Foard *A Critical Introduction to Social Research* (2nd ed, SAGE Publications, London, 2009) at 31.

⁶⁶ Henn, Weinstein and Foard, above n 65, at 35.

⁶⁷ At 35.

⁶⁸ Saladaña and Omasta, above n 19, at 143.

analytic-inductive approach,⁶⁹ that explains human behaviour by meanings that people have of the world.⁷⁰ Meanings and interpretations and how they inform people's actions are best understood and explained using qualitative methods.⁷¹ Qualitative research is adaptable to a broad range of methods and data sources⁷² and in this case, is adapted to the Kakala Research Framework. The Pacific paradigm and the Kakala Research Framework are also well suited to qualitative research; they seek to understand issues in the Pacific from the viewpoint, understanding, and experiences of people living within the Pacific context. The Kakala Framework facilitates an approach that is culturally sensitive in exploring Tongan issues from the perspective of Tongan people. This research emphasizes the views and experiences of Tongan women. It is an attempt to explore the phenomenon of the rejection of equality for women in Tonga through rich descriptions of the Tongan legal, political and social context and to provide thick descriptions or connections to theory. Triangulation is the understanding that viewing from several points is better than viewing from one.⁷³ The data is triangulated by ensuring that participants involved a wide scope of Tongan people, across political factions, gender, age, social and economic standing, and cultural ranking.

2.1.2.2 Case Study

Interpretive qualitative inquiry and case studies naturally go hand in hand as both calls for rich, intensive understanding.⁷⁴ Case studies are also frequently employed within the Kakala Research Framework.⁷⁵

A case study is defined as an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution or system in a

⁶⁹ Henn, Weinstein and Foard, above n 65, at 16.

⁷⁰ At 16.

⁷¹ At 16.

⁷² Walter above n 13 at 20.

⁷³ Gary Thomas *How to Do Your Case Study* (2nd ed, SAGE Publications, London, 2016) at 67.

⁷⁴ Thomas, above n 73, at 148.

⁷⁵ For example, Peaua Heimuli "Examining the Potential of Open Schooling to Support Second-chance Education in Tonga" USP Electronic Research Repository (2020) <<https://repository.usp.ac.fj/12291/>>

real-life context.⁷⁶ What sets case studies apart from other qualitative research designs is the focus on the unit of analysis,⁷⁷ a case is a bounded unit of analysis.⁷⁸ The case is the basis of a thorough and holistic study.⁷⁹ The case can be a particular event, instance or happening and the set of circumstances that surround such.⁸⁰ The bounded unit under study or the case in this research is the event of the failure to ratify CEDAW in Tonga in 2015.

Case studies are, in essence, about singleness; the focus is not so much on the generalisability of findings but on understanding why and how something happened in that singular instance.⁸¹ Case studies are best utilized for extensively exploring and understanding phenomena rather than confirming or quantifying; there is a focus on an understanding of interactional dynamics within the case study, and as such, generalizations cannot be made beyond that of other similar cases.⁸² Case studies are helpful for exploring an area where little is known, or a holistic understanding is required of a phenomenon.⁸³ There has not been any research into the resistance to women's equality in the Tongan context; there is very little known about this phenomenon. The purpose of this case study is to extensively explore this resistance and the interactions of the dynamics involved.

An instrumental case study is carried out with the purpose being to gain understanding in order to make things better.⁸⁴ An explanatory case study provides potential explanations based on the depth of understanding. Explanations may be tentative or context-specific.⁸⁵ A case study is the most potent engine of potential explanations.⁸⁶ A theory-building case study aims to develop from the ground up a

⁷⁶Thomas, above n 73, at 10.

⁷⁷ Durdella, above n 12, at 114.

⁷⁸ At 114.

⁷⁹ Ranjit Kumar *Research Methodology: A Step by Step Guide for Beginners* (4 th ed, SAGE Publications, London, 2014) at 155.

⁸⁰ Thomas, above n 73, at 13.

⁸¹ At 4.

⁸² Kumar, above n 79, at 155.

⁸³ At 155.

⁸⁴ Thomas, above n 73, at 120.

⁸⁵ Thomas, above n 73, at 120.

⁸⁶ At 123.

framework of ideas, a model, that explains the subject that is researched.⁸⁷ This case study seeks to develop explanations for the strong opposition to equality for women in Tonga, to tentatively build theory in order to improve the quality of life for Tongan women through an understanding of the barriers to gender equality, necessary in order for such barriers to be removed. The theory that arises from the ground or context in this research is a Tongan Patriarchy.

Case study research involves developing a “polyhedron of intelligibility”⁸⁸ this is done by looking at the case not from one dimension but from many varied angles.⁸⁹ This allows an in-depth understanding of a specific topic which is the primary purpose of a case study.⁹⁰ Knowledge generated from a case study may be used to inform policy development, professional practice and civil or community action.⁹¹ This case study looked at women's equality from a national perspective, examining the highest law of the land, the culture and the political landscape to gain an in-depth understanding of the issues involved. The findings of this case study can be used to inform policy development, law reform and shift social and cultural perspectives of women in Tonga.

A case study is not defined by methods used but by a bounded unit; as such, no method is ruled out in researching a case.⁹² A case study is not usually associated with specific procedural steps for data collection or data analysis.⁹³ Components of other research traditions are borrowed, and investigations are then framed in dual terms, for example, a grounded theory case study.⁹⁴ Grounded theory may be used as a case studies approach if a specific system is explored.⁹⁵ An interpretive case study is often used to build a theory out of naked raw data that is available.⁹⁶ The

⁸⁷ At 135.

⁸⁸ At 4.

⁸⁹ At 9.

⁹⁰ At 10.

⁹¹ At 13.

⁹² At 16.

⁹³ Durdella, above n 12, at 114.

⁹⁴ Durdella, above n 12, at 115.

⁹⁵ At 115.

⁹⁶ Thomas, above n 73, at 149.

kind of theory uncovered this way is a more temporary “conceptual framework” or thinking tool; grand theory is mainly unattainable, and it is not helpful to try and establish it this way or any other.⁹⁷ In this research, the Kakala Research Framework is qualitative in its approach and entails a case study that employs grounded theory as a method of data collection and analysis. The Kakala Research Framework has been successfully integrated with the Constructionist Grounded Theory in earlier research.⁹⁸ The conceptual framework, Tongan patriarchy, is uncovered and built from the data.

2.1.3 Toli: Data Collection

Toli means to pick; in garland making, Toli is when the flowers and leaves to be used in the garland are picked. In the making of the kakala, young girls traverse various village gardens and carefully choose which flowers are to be picked for the Kakala.⁹⁹ In terms of the research framework, Toli refers to the data collection stage and emphasizes ways in which researchers approach participants and seek information in order that the data collected is authentic and accurate.¹⁰⁰

2.1.3.1 Grounded Theory

Grounded theory is social research that systematically discovers theory from the data.¹⁰¹ In grounded theory, the theory is the outcome of the research,¹⁰² an explanatory or theoretical model is developed from the data.¹⁰³ Grounded theory has been described as both a methodology and a method,¹⁰⁴ it is used to generate relations between constructs,¹⁰⁵ to develop concepts and their relationships that

⁹⁷ At 150.

⁹⁸ Melvena Malungahu, Samuela ‘Ofanoa, Peter Huggard, Malakai ‘Ofanoa and Stephen Buetow “Lalanga: Weaving the Kakala with Constructionist Grounded Theory” (2017) 5(4) International Journal of Health Sciences 48.

⁹⁹ Fua, above n 36, at 53.

¹⁰⁰ At 53.

¹⁰¹ Durdella, above n 12, at 102.

¹⁰² Vincent A Anfara and Norma T Mertz *Theoretical Frameworks in Qualitative Research* (SAGE Publications, California, 2006) at xxii.

¹⁰³ Durdella, above n 12, at 101.

¹⁰⁴ At 101.

¹⁰⁵ Cathy Urquhart *Grounded Theory for Qualitative Research: A Practical Guide* (SAGE Publications, London, 2013) at 6.

explain the behaviour under study.¹⁰⁶ Its procedures are more often used to analyse data than generate theory.¹⁰⁷

Theory in terms of this research is not an end in itself but a tool to help explain findings.¹⁰⁸ Theory in this work refers to meaningful explanations about the findings.¹⁰⁹ Relationships between constructs are not usually causal in theory generated from grounded theory methods, and neither are relations between constructs in this work.¹¹⁰ Theory discovered by grounded theory methods are often represented by a narrative framework, a diagram or set of hypotheses,¹¹¹ this research utilized diagrammatic mapping to help illustrate the theory.

Grounded theory methods prescribe for little need to review the literature in the substantive area under study¹¹² as data collection is based on emerging concepts.¹¹³ The concepts in this study emerged entirely from the data.

This study involved the use of techniques characteristic of grounded theory methods: concurrent data collection and analysis, theoretical sampling, and constant comparative analysis. Concurrent data collection and analysis is where data collection and data analysis co-occur; codes from preliminary analysis direct what is done next in data collection.¹¹⁴ Theoretical sampling is the purposeful sampling strategy whereby additional participants for interviews are decided based on emerging patterns from coded data.¹¹⁵ Theoretical sampling seeks participants whom the researcher hopes will be able to confirm or disconfirm patterns that

¹⁰⁶ Barney G Glaser *Basics of Grounded Theory Analysis* (Sociology Press, California, 1992) at 19.

¹⁰⁷ Urquhart, above n 105, at 5.

¹⁰⁸ Thomas, above n 73, at 220.

¹⁰⁹ At 221.

¹¹⁰ Urquhart, above n 105, at 6.

¹¹¹ At 6.

¹¹² Glaser, above n 106, at 31.

¹¹³ Urquhart, above n 105, at 5.

¹¹⁴ Durdella, above n 12, at 103.

¹¹⁵ At 103.

have emerged from the data to date¹¹⁶ in order to develop theory as it emerges.¹¹⁷ Grounded theory also utilizes constant comparative analysis, which is the process of developing an overall theory or, in this instance, an explanation of what is happening.¹¹⁸ Constant comparative analysis draws themes from interpretive data.¹¹⁹

A significant advantage of the grounded theory approach that this researcher took full advantage of is its flexible guidelines for collecting data,¹²⁰ with regards to issues concerning data access and permission, participant recruitment and selection, the approach is adaptable to the unique circumstances of a study.¹²¹

The researcher employed methods outlined in the grounded theory approach to guide data collection and analysis whenever possible. However, the context called for necessary deviations to be made, such as the fact that interviews were not voice recorded; therefore, in place of transcribed verbatim transcripts, notes of participant answers are used for the purposes of data analysis. Social science research now advocates for appropriateness, pragmatism and mutual respect.¹²² in place of a slavish attachment and devotion to method¹²³ to the detriment and exclusion of the story being told.¹²⁴ It has been recommended that methods and methodologies are used as a guide to inform rather than a set of rules to follow unquestioningly.¹²⁵ The researcher, throughout this research, has attempted to follow established methodological steps, but when a choice between established methods and ways that suited the specific context which would produce more accurate and more elaborate findings arose, the researcher chose the latter.

¹¹⁶ Saladaña and Omasta, above n 19, at 97.

¹¹⁷ Barney G Glaser and Anselm L Strauss *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine de Gruyter, New York, 1999) at 45.

¹¹⁸ Durdella, above n 12, 104.

¹¹⁹ Thomas, above n 73, at 211.

¹²⁰ Durdella, above n 12, at 102.

¹²¹ At 102.

¹²² Bazely, above n 16, at 10.

¹²³ At 9.

¹²⁴ Holliday, above n 47, at 21.

¹²⁵ Bazely, above n 16, at 10.

The researcher has stayed true to the essence of the grounded theory approach, that being that explanations emerge from the data and that the data exclusively reflects the thoughts and voices of the participants.

2.1.3.2 Interviews

The purpose of interviews, in general, is to obtain unique information or an interpretation held by the person interviewed and to find out about a thing that the researchers were unable to observe themselves.¹²⁶ The interviews in this study were conducted for these same purposes, to obtain unique information and interpretations, and find out as much about the events surrounding the non-ratification of CEDAW in 2015 in Tonga. Interviews have been previously utilized as a method of data collection within the Kakala Research Framework.¹²⁷

The researcher travelled to Tonga on four different occasions between 2017-2019 to conduct 4 phases of interviews. A total of 99 participants took part in 104 interviews conducted in the 4 phases by the researcher. Sixty-one of the 99 participants were female, and 38 were male. Sixty-two of the 104 interviews were with female participants, 42 were with males. All efforts were made to engage participants from all segments of Tongan society; however, the majority of participants were from the commoner class. The first phase of interviews was held in July 2017. The second phase of interviews was in November 2017. The third phase of interviews was held in June 2018, and the fourth and final phase of interviews were held in June 2019.

Sampling for the interviews involved a purposive element. That is, participants were chosen purposefully based on what information they could provide that would help attain the goals of the research.¹²⁸ Participants were also sampled using a snowball sampling method,¹²⁹ that is, participants were asked to suggest other appropriate

¹²⁶ Stake, above n 46, at 95.

¹²⁷ Malungahu, 'Ofanoa, Huggard, 'Ofanoa and Buetow, above n 98.

¹²⁸ Saladaña and Omasta, above n 19, at 96.

¹²⁹ At 96.

participants. The interview schedule for Phase 1 is attached. Theoretical sampling or the selection of participants being directed by emerging codes, themes or patterns in the accumulated data¹³⁰ was used throughout this research. The latter 3 phases of interviews were held with the intent to further the development of emerging categories in the data,¹³¹ to generate to the fullest extent properties of these categories and to help in relating these categories to each other.¹³²

The researcher attempted to conduct interviews from all various components of the Tongan political and social landscape. The aim was to build a holistic understanding of the events surrounding the non-ratification of CEDAW in 2015 through rich, thick descriptions from participants within the natural context and to triangulate data or to view this case from as many angles and perspectives as possible for increasing accuracy in interpretations and findings.

The interviews conducted were one on one semi-structured interviews. The interviews are conversational in tone, albeit guided by a predetermined interview schedule or list of issues to be discussed. The participants were told of the issues at the beginning of the interviews. The issues were covered during the interview in an order that the participant was comfortable with. The participants were left to share as much as possible with little direction from the researcher. The researcher would interject to remind the participant of issues to discuss or to probe further or clarify an issue. At times this meant an interview was specifically tailored to a participant who held special knowledge relevant to the study.

The subject of CEDAW is a controversial and sensitive one for Tongans, and Tongan society and culture is complex. Therefore, the researcher decided it best to proceed by contacting potential participants in person. The first five people approached for interviews were known to the researcher and because of the established relationships used as pilot interviews. Despite repeated reassurances of anonymity

¹³⁰ At 97.

¹³¹ Glaser and Strauss, above n 117, at 49.

¹³² At 49.

and confidentiality, one person outright refused to be interviewed regarding CEDAW, and two refused to be recorded. At this early point, although understanding the importance of voice recorded interviews for the purpose of producing verbatim transcriptions, the researcher felt that due to the political and social climate of the day, many may likely refuse to be interviewed regarding CEDAW, and most would be made uncomfortable by voice recording, damaging the relationship before the interview even began.¹³³ The researcher believed if any meaningful interviews were to be conducted, where the participants were at ease and therefore honest and forthcoming in their responses, the researcher would have to type answers whilst interviewing in place of recording. Responses were typed until towards the end of Phase 1 when one participant told the researcher her typing was distracting, at which point the researcher noted by hand all responses going forward.

Participants were contacted by phone, email or in-person asking for a time to speak to them about the possibility of conducting an interview. The researcher in person then met participants; the researcher would introduce herself as a PhD candidate from Waikato University in Tonga to conduct interviews regarding a thesis concerning CEDAW in Tonga. If the participant agreed, the interview's time and place would be organized according to their preferences. At the commencement of the interview, the researcher would briefly go over the participant sheet verbally outlining the topic, that it would be a short informal interview for the purposes of writing a thesis, that any interviews responses quoted in the thesis would be anonymous and the interview notes would be confidential, only the researcher and her supervisors would see participant responses. Participants were also reassured that they would be free to refuse to answer any questions or withdraw from the interview or contact the researcher for any other matters. If the participants verbally consented, then a written consent form was signed. The interview then

¹³³ Max Travers "Qualitative Interviewing Methods" in Maggie Walter (ed) *Social Research Methods* (3 rd ed, Oxford University Press, Melbourne, 2013) 227 at 243. see for recounting a similar experience.

began with an outline of the schedule or list of things to be discussed over the interviews. Each of the 4 phases have a separate schedule.

2.1.3.2.1 Phase I

As a part of previous doctoral research with the University of Leicester, interviews were conducted by the researcher on the same topic in Tonga in July 2016. Due to personal difficulties, the researcher had to leave Europe, withdraw from the PhD program at the University of Leicester and at the end of November 2016, enrol at the University of Waikato law PhD program. The Faculty of Law Ethics Committee required the researcher to return to Tonga and gain consent from participants to use these earlier interviews as part of doctoral research with the University of Waikato. The researcher returned to Tonga in July 2017; the researcher approached participants from the July 2016 interviews and requested verbal and written consent to use their interviews as part of doctoral research with the University of Waikato. In the duration of two weeks spent in Tonga, the researcher was able to secure 18 consenting participants from 2016 and conducted a further 11 interviews to bring the number of participants for Phase 1 to a total of 29.

Participants were selected for special knowledge they had regarding the non-ratification of CEDAW. Participants included heads of major Churches in Tonga and Church Leaders, members of royalty and nobility, women's rights activists, NGO coordinators, members of civil society and employees of the UN in Tonga. Holders of traditional knowledge and customs were also interviewed, as were high-level civil servants, lawyers and cabinet members. An academic, business owner and banker were also interviewed. The interviews in Phase 1 focused on the participants' perspectives as to why CEDAW was not ratified, their views of gender equality in Tonga and whether CEDAW was necessary and likely ever to be ratified in Tonga.

2.1.3.2.2 Phase 2

Phase 2 interviews were held in the two weeks leading up to the historical snap elections of 16 November 2017. These were conducted to further develop the

emerging theme of politics in the data. Twenty participants were interviewed, of whom 13 were election candidates. Four of the candidates interviewed were members of the PTOA (Paati Temokalati Out Motu Anga'ofa) pro-democracy informal political party, and nine were independent candidates. Six of the election candidates interviewed were female. The remaining seven participants were senior legal officers from government, a former female member of Parliament, a member of cabinet, political advisors, and members of the general electorate. Phase two interviews were carried out with the purpose of determining whether CEDAW or women's rights played a part in the dissolution of government and political upheaval, whether candidates understood and supported CEDAW and to explore reasons as to why there is an ongoing lack of women in Tongan politics. The interview schedule for Phase 2 is attached.

2.1.3.2.3 Phase 3

Phase 3 of the interviews were held in June 2018. These were conducted with the purpose of developing the emerging constitutional theme from the data. During this time period, there were struggles between the democratic leaning PTOA government and the monarchy over who rightfully held the constitutional powers to make laws in Tonga, the powers to assent to domestic and international legislation. The researcher found this an opportune time to conduct interviews regarding the constitution and refine the part played by constitutional arrangements in Tonga's failure to ratify CEDAW. A total of 15 interviews were conducted over a period of two weeks. Participants were all male and were selected for their unique and intimate knowledge of events leading up to the constitutional reforms of 2010 and the document's current interpretations. Participants included early pro-democracy advocates, senior political advisors to the government, senior legal officers from the government, members of the Privy Council, current and former members of Parliament and members of the cabinet, which included two Prime Ministers. The interviews focused on the participants' views of the 2010 constitutional and political reforms, their views on the success of the reforms or the need for further change and who held the authority to ratify international

treaties like CEDAW and assent to the law. The interview schedule for phase 3 is attached.

2.1.3.2.4 Phase 4

Phase 4 interviews were conducted over a period of 2 weeks in June 2019. The purpose of these interviews was to develop the emerging theme that in the national discourse pertaining to women's rights and CEDAW, the perspectives and needs of women in Tonga, most specifically the more vulnerable women of the commoner class, were not understood and taken into account as their voices and stories were not heard. The researcher conducted 40 interviews with 40 female participants. The ages of participants ranged from 19 to 66 years old. All participants reached some level of secondary (high school) education, with 21 having attended tertiary institutions of education (university graduate and post postgraduate level). All participants were from the commoner class. Participants were from various villages in Tongatapu. The interviews focused on the participants' experiences as women in Tongan society, what they desired in terms of assistance and their understanding of CEDAW. The interview schedule for Phase 4 is attached.

2.1.4 Ethics

Knowledge in Tonga has been described as either communal knowledge or specialist tapu knowledge.¹³⁴The knowledge the researcher required has characteristics of both. Some of the knowledge was held by a specialist few, some knowledge was held communally by all; however, the nature of the knowledge cannot be described as tapu or forbidden. The knowledge sought in this research can more accurately be described as pelepelengesi or sensitive. That is, while there is nothing inherently forbidden about sharing this knowledge, doing so had the potential to expose participants to harm if they were identified as having ownership of particular words and thoughts. For illustration, women who supported CEDAW were aggressively cursed and ridiculed on radio and television platforms. Other

¹³⁴ Konai Helu-Thaman "Learning to be: A perspective from the Pacific Islands." (Keynote address, UNESCO Conference, 1998) at 7.

participants were fearful of repercussions from their employers and customers. The ethical approach to collecting data and particularly sensitive data from Tongans is an approach rooted in Tongan culture.¹³⁵ Such an approach would feature aspects of Tongan culture that is faka'apa'apa, anga lelei, mateuteu, poto he anga and 'ofa fe'unga.¹³⁶

2.1.4.1 Faka'apa'apa

Faka'apa'apa or respect requires the researcher to approach interviewing by engaging face-to-face as the first point of contact, displaying an appropriate dress code, body language, and an awareness of who is present.¹³⁷ The researcher was raised in a family that highly valued faka'apa'apa. Therefore, this formed a core element of the researcher's engagement with participants during interviews.

Contact with participants was initiated face-to-face. While some first meetings were organized by family members and friends, introductions always happened in person. The researcher's access to a wide range of participants was facilitated by a matrix of relationships that were both of the present and remnants of past legacies. Relationships established by members of the researcher's immediate and extended family in their service to the Tongan government, villages and churches instilled participant trust in the researcher and is the reason why research into this controversial issue was possible. The researcher depended on relationships formed in her childhood years, a network of friends whose own relationships facilitated access to other participants. Also crucial was the professional reputation of the researcher's Chief Supervisor, Emeritus Professor Margaret Wilson, whose name and integrity are unquestioned amongst many professionals in Tonga.

The researcher greeted all participants in Tongan and, as previously described, obtained written and verbal consent for the interview. Interspersed throughout this process would be short or long friendly exchanges about unrelated matters to the interviews. Discussions unrelated to the questions were not recorded by the researcher. The researcher allowed the participant the freedom to set the

¹³⁵ Timote Vaoleti "Talanoa Research Methodology: A Developing Position on Pacific Research" (2006) 12 Waikato Journal of Education 21 at 29.

¹³⁶ At 29.

¹³⁷ At 29.

interview's tone, dominate the discussion, and control what was noted. The researcher made efforts to confirm what was recorded by repeating answers back to participants for clarification and affirmation. Some participants wished to view noted answers; others would instruct which parts of their answers they desired to be recorded and which they desired to be left out. The decision not to record interviews came about out of necessity and respect for participants. Necessity because it was unlikely that participants would engage or respond truthfully if they were to be recorded and with respect for long-established relationships that would be damaged or strained if the researcher required participants to consent to be recorded. CEDAW is a highly contested topic in Tonga. As such, some people approached for interviews refused to participate, and many would not have participated if they were to be voice recorded, despite reassurances of their anonymity and their responses being kept confidential. Female activists in Tonga had been publicly ridiculed, and cursed on television and radio platforms by religious leaders for their public support of CEDAW. This led to their being ostracised by a significant portion of Tongan society. Supporters of particular political factions would also publicly attack proponents of CEDAW. A resulting reluctance and sometimes fear to speak about CEDAW was notable in some participants. The researcher was forthright at all times that the interviews were with regard to the non-ratification of CEDAW.

Throughout the interviews, the researcher was careful of the participant's comfort levels. Some participants were hesitant to speak on particular issues, which the researcher would then avoid. As described above, all participants were provided with phone and email contact for the researcher for the purposes of changing their responses or withdrawing from the research. The researcher was contacted post interviews over concern for anonymity.

Modest dress constitutes part of respect in Tonga. Therefore throughout the four phases spent in Tonga, the researcher was always dressed in skirts or dresses past knee-length and shirts and tops that covered her arms and cleavage. The researcher carried a kiekie or traditional waist garment with her and would make

sure it was worn whenever entering public offices, churches, in the presence of church leaders, nobility and government officials. There are three dialects in the Tongan language, the dialect the researcher chose to converse in was in accordance with the social ranking or the class of the participant. For commoners, respectful Tongan words were used. For members of the nobility, royalty and high-ranking government and church officials, the researcher used the dialect reserved for nobility and kings.

Some participants allowed the researcher to conduct interviews in their homes. The researcher would only enter through the front door if invited to do so. Otherwise, the researcher would enter through the back entrance. Once inside the home, unless explicitly invited to sit on a chair, the researcher would sit on the floor with legs folded. Some participants chose to conduct interviews in a cafe setting, and the researcher always offered to pay for food and beverage.

2.1.4.2 Angalelei

Angalelei or being generous, kind, and dignified¹³⁸ is also prescribed as part of the ethics of data collection or interviewing with Tongan participants. Owing perhaps to the contentious topic of the research, the ongoing social and political flux, the researcher's age and gender, not all experiences with participants were pleasant or even culturally appropriate. Tongan culture is described as reciprocal; however, although all efforts were made by the researcher to show respect, it was not always reciprocated. Some male participants were dismissive of the researcher and members of her gender in the opinions they voiced, others directed inappropriate comments at the researcher, and some scolded the researcher. In all this, the researcher remained angalelei or dignified and polite in her demeanour and responses. The researcher emphasizes that the majority of participants were considerate, generous and respectful but acknowledges that not all were.

¹³⁸ Vaiioleti, above n 135, at 30.

2.1.4.3 *Mateuteu*

Another aspect of Tongan research ethics is mateuteu, described as being culturally versed, prepared and responsive.¹³⁹ The researcher was aware of the social standings of participants, whether commoner, noble or royalty and of their professional backgrounds.

2.1.4.4 *Poto He Anga*

Poto he Anga is described as knowing what to do in the cultural context¹⁴⁰ and is prescribed as refraining from flaunting knowledge that would make participants uncomfortable, maintaining good relations with participants and protecting their interests. The researcher made all efforts to ensure participants were comfortable, the most important of which was to avoid recording and allow participants control over what was noted during interviews. To avoid harm to participants, the names of participants were known only to the researcher and supervisors. All notebooks with collected data were stored in a cupboard in the researchers' home or in password-protected files. Only the researcher had access to these records. The researcher has ensured that all participant responses are kept confidential, and any answers quoted in reporting the research is kept anonymous to avoid causing any harm to participants. Although there were, of course, participants who had been vocal in the media with regards to their position concerning CEDAW, these participants expressed no need for anonymity. Some even requested that they be quoted in the research findings.

In gratitude for people's participation in the interviews, the researcher tried her best to keep them at ease. This meant allowing questions to remain unanswered, moving the conversation forward from any topics that the participant showed discomfort with, and keeping interviews short, conversational and informal.

¹³⁹ Vaiioleti, above n 135, at 30.

¹⁴⁰ At 30.

2.1.4.5 'Ofa Fe'unga

The last component of research ethics is 'ofa fe'unga, defined as ensuring that the research did not negatively impact participants' lives.¹⁴¹ The researcher was careful to leave it to participants to decide where and when interviews would take place and to withdraw from the research at any point to avoid unnecessarily disrupting participants' lives. The overall objective of the research is to positively impact the lives of women in Tongan and, in doing so, benefit Tonga on a national level. The researcher will continue this work as an academic at the University of Waikato Faculty of Law.

The researcher notes that it was not until May 2019 that she was made aware that any research conducted in Tonga required a government research permit. Up to this point, the researcher had conducted interviews with top-level government officials and legal officers, and none had mentioned the requirement of a research permit nor asked for one to be shown to them. The researcher could have completed the research without acquiring such a permit. However, in the spirit of faka'apa'apa (respect), a core value of Tonga culture, the researcher requested a government research permit from the Chief Secretary and Secretary to Cabinet of the Prime Minister's Office. The researcher understood she risked losing the right to use data accumulated up to this point in the study if the Tongan government refused to approve a permit.

A copy of the research proposal, university ethics approval and evidence of scholarship funding were required of the researcher. These documents were submitted to the Prime Minister's office via email and subsequently vetted by the Ministry of Education, Ministry of Internal Affairs and Ministry of Justice before a Government Research Permit for the researcher was granted in retrospect, covering the time period 2017-2019.

¹⁴¹ Vaiioleti, above n 135, at 31.

The purpose of research permits appears to be to avoid harmful research in Tonga. What constitutes harm is unclear to the researcher. The researcher feels fortunate that this government saw no harm to Tonga in her study.

2.1.5 Reliability And Validity

It has been argued that the benefit of having Pacific researchers conduct research on Pacific people is that Pacific researchers comprehend the Pacific context and, therefore, can navigate it skillfully and yield accurate results.¹⁴² The researcher's understanding of Tongan culture and the Tongan social and political context played a significant part in this research, and enhances its accuracy. As with other qualitative research, reliability and validity are difficult to gauge. In this instance, participant responses may change over time and perhaps even with a different researcher. Therefore, the researcher took participant responses given at the time of the interviews as the most valid ones. A study had shown that requiring participants to review transcripts of qualitative interviews did not add to the accuracy of the transcripts and potentially disadvantages the research through loss of data when participants chose to delete, edit or alter responses.¹⁴³ The researcher did not wish for any data to be lost or altered and believed it best for the accuracy of the research that noted answers should not be reviewed by participants.

¹⁴² Vaioleti, above n 135, at 32.

¹⁴³ Victoria Hagens, Mark J Dobrow and Roger Chafe "Interviewee Transcript Review: assessing the impact on qualitative research" (2009) BMC Medical Research Methodology 9.

2.1.6 Tui: Data Analysis

Tui is the stage in the kakala making where the flowers are strung together. In the Kakala Research Framework, tui is the data analysis stage of the research process.¹⁴⁴ Data analysis in the Kakala Research Framework focuses on finding patterns in the data, which may involve having further to pick different types of flowers (data) and readjusting research plans.¹⁴⁵ In the tui stage, emphasis is put on exploring and understanding the context from which the data is taken in order to make sense of information accurately.¹⁴⁶

Interview responses were typed out into word documents. Interviews were conducted in Tongan, English or a mixture of both languages in accordance with the preferences and understanding of the participant. All data was translated into English by the researcher. Tongan is the researcher's first language. The researcher has a firm grasp of both English and Tongan languages and is able to translate with ease between both, whether verbally or in written form.

The next step in data analysis was to initiate coding. Coding is the process of classifying all data sets according to themes, issues or topics important to the study.¹⁴⁷ Grounded theory aims to discover theory from the data obtained through social research,¹⁴⁸ grounded theory, therefore, involves bottom-up coding; that is, the data, not the literature, suggest codes.¹⁴⁹

Data analysis began with the process of open coding. This required the researcher to go through the data line by line, paragraph by paragraph, assigning codes to the data.¹⁵⁰ The purpose of open coding was to discover categories and their properties.¹⁵¹ In re-typing, translating and re-reading interview notes, the

¹⁴⁴ Fua, above n 36, at 53-54.

¹⁴⁵ At 53-54.

¹⁴⁶ At 54.

¹⁴⁷ Stake, above n 46, at 151.

¹⁴⁸ Glaser and Strauss, above n 117, at 2.

¹⁴⁹ Urquhart, above n 105, at 38.

¹⁵⁰ Glaser, above n 106, at 39.

¹⁵¹ At 39.

researcher was able to identify emerging themes and categories in the study. At the end of this manual process, the volume of data meant data analysis would require assistance from a software package.

The researcher decided on N Vivo 12 after attending tutorials on data analysis software provided by the University Library. N Vivo 12 is software developed by QSR International to assist in the analysis of qualitative data.¹⁵² The choice to use N Vivo 12 was primarily made on the basis that the university provided the software for the researcher to use during this study at no cost and offered continued support and assistance from Library staff during its use. N Vivo 12 also does not require the use of verbatim transcriptions, and notes may be adequately used for data analysis.¹⁵³ Qualitative analysis software like N Vivo 12 uses a grounded theory approach allowing the data to speak for itself rather than approaching it with existing theoretical frameworks.¹⁵⁴

In the second step of data analysis interview, word files were then transferred to the N Vivo 12 project. The researcher reviewed the data a second time, using N Vivo 12 to create nodes, nodes store related codes that constitute a category, theme or topic.¹⁵⁵ The researcher also used the memo function of the program to note memos throughout the data that aided in building explanations for the findings. The creation of nodes required the researcher to go through the data line by line in a labour-intensive exercise. The advantage of N Vivo 12 software was that it allowed the researcher to see all text under a particular node, therefore, helping uncover themes and trends in the data for the development of categories and subcategories.

¹⁵² Pat Bazely and Kristi Jackson *Qualitative Data Analysis with NVivo* (2 nd ed, SAGE Publications, London, 2013) at 2.

¹⁵³ Bazely and Jackson, above n 152, at 58.

¹⁵⁴ Elaine Welsh "Dealing With Data: Using NVivo in the Qualitative Data Analysis Process" 2002 (3) Forum: Qualitative Social Research Sozialforschung 3.

¹⁵⁵ Pat Bazely and Lyn Richards *The NVivo Qualitative Research Book* (SAGE Publications, London, 2000) at 24.

The next step in data analysis was axial coding. Axial coding has been defined as the process of relating categories to subcategories along the lines of their properties and dimensions.¹⁵⁶ The first part of axial coding entailed the researcher reviewing categories and subcategories to confirm that these and their properties accurately reflected interview responses. The second element of axial coding concerned the researcher exploring relations and connections between categories.¹⁵⁷ Relating separate categories to one another required considerations and creating hypotheses regarding the context, conditions, interactions, strategies and consequences.¹⁵⁸

Whilst still in the process of coding, the researcher's father suddenly passed away from a heart attack. Doctoral research was suspended to allow the researcher time to grieve and to finalize a difficult divorce. After nine months away, the researcher returned to the doctoral research; however, having been away from the research for a significant period of time, the researcher decided it necessary to refamiliarise herself with the data and to begin the coding process over, this time manually without the assistance of N Vivo 12 and through the use of word files. Open and axial coding stages were therefore repeated.

The last stage of coding was selective coding. Selective coding concerns linking all categories developed in axial coding to an umbrella category; this category is the core category and central to the existence of all other categories.¹⁵⁹ Selective coding is thus the process of developing an overarching theory to explain the phenomena under study.¹⁶⁰

¹⁵⁶ Urquhart, above n 105, at 25.

¹⁵⁷ Judy Kendall "Axial Coding and the Grounded Theory Controversy" (1999) 21 *Western Journal of Nursing Research* 743 at 747.

¹⁵⁸ Urquhart, above n 105, at 25.

¹⁵⁹ Maïke Vollstedt and Sebastian Rezat "An Introduction to Grounded Theory with a Special Focus on Axial Coding and the Coding Paradigm" in Gabriele Kaiser and Norma Presmeg (eds) *Compendium for Early Career Researchers in Mathematics Education* (Springer, 2019) 81 at 89.

¹⁶⁰ Vollstedt and Rezat, above n 159, at 89.

Diagrams are often used as a powerful tool to aid in data analysis.¹⁶¹ Data was put into flow charts and mind maps to get an overview of categories and their relations to each other and the core category.

2.1.7 Luva: Reporting

Luva means to give a gift from the heart with sincerity, humility and honour.¹⁶² This is the reporting and dissemination stage of the research process, understood as the gifting of knowledge to the people from whom the knowledge was acquired. It is the understanding that the research must benefit those who have participated in the study and that reports must be an outlet for Pacific voices and serve Pacific people.¹⁶³ The knowledge acquired from this research came from participants from a wide variety of sectors in Tongan society, and particularly from Tongan women living in Tonga, who constituted the bulk of participants. The thoughts and opinions of Tongan participants form the basis of the theory constructed from the research, and the voices of participants, with a priority to women's voices, are given a platform in the reporting of the research. Utmost care was taken in reporting findings in the spirit of gratitude and respect for participants. Although, in order to honour the truth and to promote positive change, critical writing was at times necessary, this was carried out with humility.

This research is foundational work on which the researcher plans to continue work in the area of women's rights in Tonga. The researcher plans to publish several chapters from this thesis as journal articles, both in Tongan and English, so that the knowledge contained herein is accessible to Tongan speaking women. The researcher plans to present the findings of this research at conferences in Tonga and abroad, the objective being that the knowledge derived from the research becomes a tool for progress for all who were involved.

¹⁶¹ Charles A Buckley and Michael J Waring "Using Diagrams to support the research process: examples from grounded theory" (2013) 13 *Qualitative Research* 148 at 149.

¹⁶² Fua, above n 36, at 54.

¹⁶³ Fua, above n 36, at 54.

2.1.8 Malie: Evaluation

Malie is described as when an audience shows appreciation for a well-executed performance,¹⁶⁴ a performance where the kakala or garland is worn. Malie is the stage where the research is evaluated, and the research's utility, applicability, and relevancy is scrutinized.¹⁶⁵ The relevance, utility and applicability of this study is something that can only become apparent in the future. However, the researcher is confident that this study is relevant, applicable and valuable for all women in Tonga and for Tonga as a nation if the findings and recommendations are taken into consideration and implemented.

2.1.9 Mafana: Transformation

Mafana refers to the point in the performance where members of the audience are so touched that they are compelled to join the performers and participate in the performance.¹⁶⁶ In the Kakala Research Framework, it is when participants take solutions offered by the research and use them to transform their lives. The researcher's sincerest hope is that Tongan women take for themselves the knowledge produced by this research and use it to transform their lives.

POSITIONALITY

A researcher's world view, positionality and views regarding the social and political context of the research¹⁶⁷ is identified by defining a researcher's relation to the subject under investigation, the research participants and the research context and process.¹⁶⁸

2.1.10 Research Subject

The subject of the research was the rejection of CEDAW or equality for women in Tonga. The researcher is a female of Tongan nationality and heritage in her late 30s.

¹⁶⁴ At 54.

¹⁶⁵ At 55.

¹⁶⁶ Fua, above n 36, at 55.

¹⁶⁷ Andrew Gary Darwin Holmes "Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide" (2020) 8 (4) Shanlax International Journal of Education 1 at 1

¹⁶⁸ Holmes, above n 167, at 2.

The researcher was raised in Tonga by her grandfather Rev Vaingalo Ikavuka of the Free Wesleyan Church of Tonga, and her father, Rev Dr Fisiihoi Finau Mone, also a minister of the Free Wesleyan Church of Tonga. The researcher spent her primary and secondary schooling years in Tonga. She attended Queen Salote College, an institution three years shy of its centennial anniversary and the nation's only all-female secondary school. The researcher spent her childhood in many different villages throughout Tonga, in the places and communities where her grandfather and father were called to serve. The researcher immigrated to New Zealand at 18 years of age in order to attain a university-level education. The researcher has since married, lived in Europe, divorced and is a single mother to two young sons. The researcher has a vested interest in equality for women in Tonga, as she is a Tongan woman and plans to return to Tonga to live in future. Further to this, the researcher has a multitude of female family members and friends still residing in Tonga. In terms of the subject of the study, the researcher is both an insider and an outsider. An insider in the respect that the researcher is a Tongan woman, having been raised in Tonga, with solid ties to Tonga but an outsider in terms of the fact that she no longer lives in Tonga.

2.1.11 Research Participants

The participants were all fellow Tongans, the majority of whom were Tongan women from the commoner class. The researcher is herself a Tongan woman of the commoner class. Most participants were known to the researcher or to a family member or friend of the researcher.

2.1.12 Research Context And Process

In terms of the research context, the researcher has an in-depth understanding of Tongan society and culture as she was raised in Tonga in a traditional Tongan Christian family. The researcher's family ties to Christianity in Tonga stretch back to the time of the first missionaries. The researcher was raised with the viewpoint that all are equal in the eyes of God and of equal worth, and of the value of a life purposed with service and the pursuit of fairness and justice for all.

The researcher's extended family has always taken pride in performing services for and providing customary obligations to the monarchy, titleholders, chiefs and

church leadership. The researcher was raised observing the traditional respect for the fahu, duties to her extended family members and the many customs associated with weddings, deaths and other Tongan celebrations. The researcher is also very fortunate to have been honoured by her fa'etangata, her mother's brothers and their children throughout her life.

The researcher, therefore, has a deep appreciation for Tongan culture, secured in place by an overriding Christian belief in equality. The researcher is privileged to have had the opportunity to further her education outside of Tonga, an opportunity others in Tonga would have liked to have had but did not have access to. The researcher has therefore broadened her worldview through education and the experiences of having lived abroad in foreign societies and cultures amongst non-Tongans.

The researcher is an outsider in the respect that she had spent two decades residing outside of Tonga. The researcher is an insider in that she has known many Tongan women in her lifetime and has experienced and been directly exposed to the joys and struggles of commoner women in Tonga whilst living and studying with women in the various communities her father and grandfather were called to serve in. Although now an outsider, her years as an insider have informed her understanding of the reality of life in Tonga and have prevented her from romanticizing the culture and life there. The researcher has the most profound respect for Tonga's royal family and nobility; she knows a number of them on a personal level and carries out this research without any disrespect, bias or prejudice towards them. Many of the church leaders, government officials and other participants are old family friends and acquaintances or are connected to those that are.

Tongan politics has always fascinated the researcher as it was a subject often discussed by the male members of her family. Although harboring deep respect for Tongan tradition, these males believed it fair for commoners to participate in politics and play some part in governing the nation. The researcher has often wondered herself why a culture that emphasized unity, respect and love would

reserve political power for the few born to particular positions whilst many others are excluded. The researcher spent much of her childhood in the company of her maternal uncle, Sione Ikavuka, who passed on to her precious Tongan knowledge and wisdom, which the researcher has a profound respect for. The researcher was also raised by her father, who was a staunch believer in Christian equality and in the necessity for change, for evolving practices and adapting to the dictates of modern knowledge.

The researcher's maternal uncle, who in the Tongan culture was responsible for tending to all her needs, was a strong supporter of the democratic movement. The researcher grew up listening to his stories of political development in Tonga. The researcher shares some common beliefs with the PTOA political party, a belief in democratic governance; however, the researcher does not necessarily condone all PTOA party activities, and the researcher does not exclusively associate democracy or the democratic movement in Tonga with PTOA and their supporters. There are many Tongans, such as the researcher, who independently support democracy. As such, the researcher finds herself a Tongan woman deeply respectful of Tongan traditions and, at the same time, a fervent believer in equality for all God's children and democratic governance.

The researcher was raised by strong women, whilst we were all treated with care, the researcher struggled with the many cultural restrictions shackled over her as a young Tongan woman and the pressures to live up to traditional standards. The researcher struggled with understanding why women could not own land in Tonga, why her mother could not inherit some of her father's property, the property they grew up on and helped build. The researcher would also question how it was possible to be both elevated in Tongan culture and yet feel so constrained as a woman within Tongan families and society. The researcher believes that Tongan culture can evolve in order to accommodate the modern needs of Tongan women and to allow for more equitable laws and systems in Tonga.

In terms of the law in Tonga, whilst having never practised law in Tonga, the researcher has, throughout her years in law school, always been interested in researching ways in which Tongan law can be improved and brought in line with international standards and practices.

In terms of the research process, being an insider has been beneficial to the researcher. The particular approach and ethics of the Kakala Research Framework is something she instinctively understood. The years she spent in Tonga and with Tongans in the diaspora have sharpened her skills and awareness of appropriate Tongan behaviour. The researcher was raised to observe cultural protocols and have respect for those of higher standing than herself, whether it be for her teachers, church leaders, community or government leaders. The researcher was raised to understand that the same respect was to be shown to members of society who were not of higher or equal standing to herself. The researcher was raised to understand that women were expected to be submissive, modest and chaste. Understanding these expectations guided the researcher's approach in conducting the research process and as far as possible to avoid causing offence or insult to participants. The researcher was also raised to have confidence in her ability to achieve. Although there were many obstacles faced during the research process, the researcher made all the necessary adjustments and persevered.

The researcher was raised by men who believed in the importance of learning and education, and in serving the nation through educating the youth. The researcher's grandfather taught primary school students wearing torn shirts as he could not afford to buy any new ones. The researcher's father taught secondary school students in labs without the necessary scientific equipment, where many times, he would describe and draw the expected lab results to his students. The researcher comes from very humble roots but a rich legacy of service to the grassroots community in Tonga. It was instilled in the researcher from a young age the potential transformational impact that education had on themselves as individuals, as families and as a nation, and the importance of contributing to Tongan education. Thus, as stated above, during her years at university, her research has

always focused on Pacific issues and, in particular, on Tonga. In the humble hope that this would, in some small way, add to progressing Tonga and Tongan people. It is with this mindset that the researcher approached the research process, in the spirit of continuing a legacy of service and in the hopes that developing and disseminating knowledge through education would help shift things in Tonga and Tongans for the better.

The researcher approaches the research process with this awareness and respect and the understanding that the researcher must be truthful in her analysis because to criticize is not to condemn but to highlight ways in which a beloved culture and nation can find ways to become even better.

CHAPTER THREE: CONSTITUTIONAL IMPEDIMENTS TO RATIFICATION

This chapter explores constitutional impediments to the 2015 attempted ratification of CEDAW. This necessitates an exploration of the evolution of the Tongan constitution and its provisions over time. The chapter begins by exploring Tongan society and customary law before European contact and the place of women as prescribed by customary law in pre-Constitution Tonga. This is to highlight the fact that the Constitution consolidated patriarchy in Tonga, the dominance of elite classes and men, through laws that perpetuated the administrative, judicial and legislative control of the elite, which was justified by their *tapu* or divinity. Men's dominance was established by significantly curbing or extinguishing women's customary rights through the failure to codify customary laws and practices that privileged women in ancient Tonga. The chapter explores the implications of the reforms, underscoring that the government's inability to ratify CEDAW emphasises that the constitutional reforms left in place a patriarchal state featuring the domination of elite classes and males. Participant views on the reforms focused on the allocation of powers between the classes; little reference was made to the reform's failure to address the Constitution's provisions that explicitly discriminate against women, an integral feature of the Tongan patriarchy. In terms of the Constitution's discriminatory land provisions, some participants believed they should be amended and yet others were satisfied with the status quo.

PRE-CONTACT TONGA

Ancient Tonga has been described as a society where the elite were hegemonic.¹ Early Tongan society was divided into the elite ruling classes and their subjects. The privileged classes were composed of three lines of Kings (*Tui Tonga, Tui Ha'atalaia, Tui Kanokupolu*) and chiefs (*'Eiki, Mu'a, Matapule*); those they ruled or governed were a class of *tu'a* (commoners) which would also include any

¹ Phyllis Herda, "Hierarchy and Prerogatives of History Making in Tonga" in Judith Huntsman (ed) *Tonga and Samoa: Images of Gender and Polity* (MacMillan Brown Centre for Pacific Studies, Christchurch, 1995) at 37.

captives or prisoners of war known as *popula*.² The key difference between the elite rulers and the commoners was a divine essence or *tapu*. Kings and chiefs were *tapu* (sacred, possessing mana) because of their blood ties to the divine; this divinity granted them the right to govern³ and dominate the commoner class whose membership lacked divine blood or essence.

3.1.1 Three Royal Lines

Over time Tonga was ruled by three royal dynasties; the *TuiTonga*, *Tui Ha'atakalaua* and *Tui Kanokupolu* lines. The *Tui Tonga* was established as Tonga's first royal lineage. The first *Tui Tonga*, 'Aho'eitu, was believed to be the son of the god *Tangaloa Eitumatupu'a*.⁴ *Tangaloa* was one of three primary gods worshipped by ancient Tongans; the other two were Maui of the underworld and *Hikule'o* in *Pulotu*.⁵ 'Aho'eitu was considered *tapu* or scared due to the divine blood passed to him from his divine father, he, in turn, passed this divine quality on to his successors.⁶ This sacred essence was the basis of 'Aho'eitu's authority to govern and his ownership of all the land in Tonga.⁷ The *Tui Tonga's* sister held the title of *Tui Tonga Fefine*, the *Tui Tonga Fefine's* daughter held the title of *Tamaha*; the measure of an individual's *tapu* depended on their ability to account for ties to these three supreme titles.⁸

'Aho'eitu is thought to have ruled around 950 AD.⁹ The *Tui Tonga* empire stretched out to include Niue, Samoa, Tokelau, Uvea, Futuna, Rotuma and Lau in Fiji by the 12th early 13th centuries.¹⁰ Subsequently, two new royal lines descended from the *Tui Tonga* line and were created to govern whilst the *Tui Tonga* remained sacred

² Sione Latukefu, *Church and State in Tonga* (Australia National University Press, Canberra, 1974) at 4.

³ Christine Ward Gailey, *Kinship to Kingship Gender Hierarchy and State Formation in the Tonga Islands* (University of Texas Press, Austin, 1987) at 64.

⁴ IC Campbell *Tonga Ancient and Modern* (Canterbury University Press, Christchurch, 2001) at 27.

⁵ Latukefu, above n 2, at 4.

⁶ Campbell, above n 4, at 52.

⁷ Latukefu, above n 2, at 3

⁸ Kerry James "Rank Overrules Everything: Hierarchy, Social Stratification And Gender In Tonga" in Judith Huntsmen (ed) *Tonga and Samoa Images of Gender and Polity* (Macmillan Brown Centre for Pacific Studies, Christchurch, 1995) 59 at 63.

⁹ Sione Latukefu, *The Tongan Constitution: A Brief History to Celebrate its Centenary* (Tonga Traditions Committee, Nuku'alofa, 1975) at 2.

¹⁰ At 2.

ruler; the *Tui Haatakalaua* dynasty in 1470 and the *Tui Kanokupolu* dynasty in the seventeenth century.¹¹ These two new lines of Kings derived their *tapu* or sacredness from blood ties to the *Tui Tonga*.

3.1.2 Chiefs

Relatives of the *Tui Tonga* were sent out to govern various areas throughout Tonga; by the 17th century, these chiefs had firmly established power and control over these areas and the people inhabiting these sites (known as a chief's *kainga*); they supplanted the three monarchical lines whose powers had become ceremonial.¹² The chiefs' dominance over the archipelago is evidenced in their rule of the *ha'a* and *kainga*, two of the largest socio-political groupings of Tongan society. The *kainga* comprised the smaller *fa'ahinga* and *'api* units.¹³ The *'api* was headed by the father; multiple *'api* (extended families) formed a *fa'ahinga* over whom the *'ulumotu'a* led.¹⁴ Multiple *fa'ahinga* formed a *kainga* over whom a chief ruled. Multiple *kainga* constituted a *ha'a* over whom the most senior chief title led.¹⁵

3.1.3 Commoners

The *tu'a*, or ordinary people, were believed to have descended from worms; they had no blood ties to the gods and therefore lacked divinity.¹⁶ Perhaps in reference to their ancestry, commoners were labelled as *kainanga oe fonua* (dirt eaters/eaters of the soil).¹⁷ Only the divine were believed to possess a soul or spirit form; commoners who lacked divinity also lacked a soul or spirit and, as such, could not exist in any form beyond death.¹⁸ Commoners were bound to their physical bodies and ceased to exist once their bodies perished. Commoners had the right to use their chief's land and fish in surrounding waters in return for *'inasi* (presentations to chiefs and *Tui Tonga*).¹⁹ Anything the commoner women produced belonged to the women of the chief class that governed them.²⁰

¹¹ At 2.

¹² At 2-3.

¹³ Latukefu, above n 9, at 2-3.

¹⁴ At 2-3.

¹⁵ At at 2-3.

¹⁶ Campbell, above n 4, at 27.

¹⁷ Gailey, above n 3, at 85.

¹⁸ Latukefu, above n 9, at 12.

¹⁹ Gailey, above n 3 at 95.

²⁰ Gailey, above n 3, at 98.

Commoners were bound to the land and could not move or change residence without the chief's permission.²¹

3.1.4 Customary Law

In pre-contact Tonga, the class one belonged to determined one's rights, privileges and powers. The word *tapu* did not just refer to divinity; it also meant forbidden. Something that was *tapu* was forbidden.²² Customary Tongan law revolved around a set of *tapu* or rules that, if violated, were sanctioned by the gods through natural phenomena (storms, drought, famine, disease) or physical punishment as determined by the chief; this could involve having body parts removed, beatings or even death to the perpetrator.²³ Essentially, the more *tapu* (sacredness) one possessed, the fewer the things that were *tapu* (forbidden) to them and thus the more privileges they possessed.

As discussed previously, the *tapu* or sacredness of the kings translated to absolute authority, ownership of all the land and the right to be paid tribute.²⁴ Within a *kainga*, a chief held paramount *tapu*; therefore, the chief's word was law.²⁵ Chiefs wielded absolute power over the *kainga*; they exercised administrative, judiciary and military power.²⁶ Complete obedience was demanded, whilst in other Polynesian societies, decision making could at times be arrived at through dialogue and consensus; in early Tonga, decisions were made by the chief, and his commands were passed down to his *kainga* in a compulsory meeting attended by males called a *fono*.²⁷

The chiefs had *tapu* of varying elevation to one another; rank, power and privilege varied between individuals within the ruling classes, but more critical was the fact that the *tu'a* had no *tapu* being descendants of worms;²⁸ the direct consequence of this was that there was no *tapu* or rules applicable to the treatment of the *tu'a*

²¹ Gailey, above n 3, at 86.

²² Gailey, above n 3, at 93.

²³ Gailey, above n 3, at 96.

²⁴ Latukefu, above n 9, at 8.

²⁵ Latukefu, above n 9, at 1.

²⁶ Latukefu, above n 9, at 12.

²⁷ Latukefu, above n 9, at 12.

²⁸ Campbell, above n 4, at 27.

or commoners by members of the ruling chiefs and kings classes; the chiefs had the right to take the commoners' produce, belongings, to beat, kill, and to rape their women without any sanction.²⁹ Chiefs also possessed special privileges and rights exempt from commoners; for example, the first fruits of yams and crops, particular foods such as turtles, certain shellfish, and types of pigs could only be consumed by the chiefs and were *tapu* or forbidden to commoners.³⁰

A chief or king's *tapu* vested in them the power to decide what was *tapu* or customary law whilst concurrently elevating them above those same laws. The law completely bound commoners; however, the higher one's rank, the more freedom one had to violate *tapu*; murder, theft, and adultery were not offences if committed against someone of lower rank or class.³¹

3.1.5 Women

The direct correlation between divinity, power and privilege also played a crucial role in the status and treatment of women in early Tonga. Women were associated with the gods and considered sacred.³² This sacredness was expressed in the *fahu* (sacred sister) practice. The *fahu* practice is rooted in the belief that a sister always possessed more *tapu* than her brothers; as such, a sister or *fahu* and her children had the right to behave without any of the customary limits or laws (above the *tapu*) over her brother and his descendants.³³ *Hikule'o*, one of three of Tonga's most powerful gods, was believed to be female and sister to *Tangaloa*; thus, she was *fahu* to the Tu'i Tonga, from whom she received an annual tribute.³⁴

Power in ancient Polynesia and Tonga was not based on a consideration of sex but was utterly dependent on rank and class; therefore, women from the ruling classes in Tonga wielded economic and political powers rooted in the *tapu* possessed by members of their class in conjunction with the powers they held as sacred sister

²⁹ Latukefu, above n 9, at 13.

³⁰ Gailey, above n 3, at 93

³¹ Latukefu, above n 9, at 13.

³² Caroline Ralston "Gender Relations in Tonga at the time of Contact" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds), *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990) at 117.

³³ James, above n 8, at 64.

³⁴ At 65.

and *fahu*.³⁵In ancient Tonga, a chief or king was believed to rule in partnership, as a duality, with his sister.³⁶ The brother and sister ruling pair, the most powerful of which was the Tui Tonga and his sister, the *Tui Tonga Fefine*, was assumed to be a dynamic wherein the female of the pair was politically inactive. However, records of European visitors from the late 1700s state that the pair ruled jointly, and in the absence of her brother, the *Tui Tonga Fefine* actively ruled in his place.³⁷

Power was exercised by chiefs, who were frequently men, whilst chiefly women wielded power over lower-ranking women.³⁸ The primary wife of a paramount chief had the right to command the labour of her fellow co-wives, her brother's concubines and attendants, wives and daughters of lower-ranking chiefs and all commoner women of her family and her marital home.³⁹ The primary wife of a chief likely chose his other wives and concubines.⁴⁰

Women held chief and king titles, for example, the *Tui Lakepa Fefine* and *Tui Tonga Fefine*.⁴¹ The titles of *Fotofili Fefine*, *Taufa Tofua Fefine* and *Tui Afitu Fefine* were female titles who likely ruled as regent whilst male heirs were too young to succeed.⁴² Tupou Moheofo and Tongotea were notable female politicians and warriors.⁴³Tupou Moheofo was *Tui Kanokupolu*, and Toe'umu became ruler of Vava'u; women of the chief class thus had the capacity to hold a female counterpart title of the male title; they also had the power (illustrated in the cases of Toeumu and Tupou Moheofo) to take for themselves male titles and engage in politics.⁴⁴

The practice of *fahu* and the rights of the *mehikitanga* (father's eldest sister) derive from the mystical powers of women rooted in the Tongan religion; these powers allowed women to veto and balance the authority of the frequently male

³⁵ Ralston, above n 32, at 117

³⁶ James, above n 8, at 70.

³⁷ Phyllis Herda "Gender, rank and power in 18th Century Tonga: The case of Tupoumoheofo" (1987) 22 (4) *The Journal of Pacific History* 195 at 198.

³⁸ Gailey, above n 3, at 60.

³⁹ Gailey, above n 3, at 96.

⁴⁰ Gailey, above n 3, at 128.

⁴¹ Elizabeth Bott: *Tongan Society at the time of Captain Cook's visits: Discussions with her Majesty Queen Salote Tupou*. (The Polynesian Society Incorporated, Wellington, 1982) at 76.

⁴² Bott, above n 41, at 76.

⁴³ At 76.

⁴⁴ Latukefu, above n 9, at 6.

titleholders and decision-makers.⁴⁵ A *fahu* or sacred sister exercised rights to take as she wished from her brothers and their descendants and were entitled to live off their lands and be materially provided for by them.⁴⁶ A Chief and his *kainga* were obligated by customary law to support his sister and her children.⁴⁷ The power of the chief's sister is described as her having control over "title succession, land allocation, first fruits and the wrath of their brothers."⁴⁸ In terms of controlling the division of her brother's land, a chief's sister had to approve of how he allocated and distributed his land.⁴⁹ This included the sister having the final say or decisive opinion over land disputes.⁵⁰ A chief's sister also had the right to be consulted over who would succeed to her brother's title.⁵¹ Succession to titles was not always patrilineal; titles would sometimes pass through the female line.⁵² Female heirs were rare but not prohibited.⁵³ Titles were often held by women if there were no suitable males.⁵⁴

As all commoners lacked any *tapu*, their women lacked a sacred female essence necessary to be *fahu*; the practices of *fahu* were therefore forbidden to commoner women; the practice of *fahu* was reserved for the women of the chief classes; however, even commoner women were shown respect and deference by their brothers.⁵⁵ In the same vein, the level of respect shown to a woman was directly proportional to her rank. A man from the ruling class would have much less respect for a woman from the commoner class than he would for a woman of his rank.⁵⁶ Customary law in Tonga dictated that murder and adultery were unacceptable

⁴⁵ Garth Rogers "The Father's Sister is Black: A Consideration of Female Rank and Power in Tonga" (1977) 86 (2) *Journal of Polynesian Society* 157 at 170-171

⁴⁶ Campbell, above n 4, at 50.

⁴⁷ Bott, above n 41, at 59

⁴⁸ Phyllis Herda "Gender, rank and power in 18th Century Tonga: The case of Tupoumohefo" (1987) 22 (4) *The Journal of Pacific History* 195 at 197.

⁴⁹ Kerry James "Gender Relations in Tonga 1780 to 1984" (1983) 92 (2) *Journal of the Polynesian Society* 233 at 237.

⁵⁰ James, above n 8, at 70.

⁵¹ Bott, above n 41, at 58.

⁵² Bott, above n 41, at 73.

⁵³ K E. James "Gender Relations in Tonga in Tonga: A Paradigm Shift" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds), *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990) at 99.

⁵⁴ James, above n 8, at 67.

⁵⁵ James, above n 8, at 74.

⁵⁶ Gailey, above n 3, at 124

when carried out with a woman of the chief class but were permitted when the victimised woman was of lower rank,⁵⁷ as was rape; a man of the chief class raping a lesser ranked commoner woman was not forbidden or sanctionable (although it was often discouraged), whether something was a violation of the *tapu* or customary laws was determined by status, a person of higher status could violate all rights of a person of lower rank.⁵⁸

However, generally speaking, women in pre-contact Tonga enjoyed more rights under customary law than their European counterparts of the time; incidents of domestic violence were rare, wife beaters were as abhorred as cannibals, and marital life was described as tranquil and affectionate.⁵⁹ Women in Tonga drank kava with men,⁶⁰ two-thirds of women divorced⁶¹ as divorce was common and not stigmatised. Child support was unnecessary as sisters had the right to take their brothers' food and belongings to support themselves and their children.⁶² In pre-contact Tonga, women were expected to defer to their husbands but were not dependent on them.⁶³

KING GEORGE TUPOU I AND THE MISSIONARIES

The first missionaries were sent by the London Missionary Society and arrived in Tonga in 1797; however, they were unsuccessful in establishing themselves in Tonga until 1826.⁶⁴ In 1799, civil war broke out in Tonga after *Tui Kanokupolu* Tuku'aho was assassinated.⁶⁵ The chiefs of the time hesitated to convert to Christianity as their right to govern, and their privileges were based on *tapu* derived from the Tongan gods and customary laws.⁶⁶ Early Christian converts were often

⁵⁷ Gailey, above n 3, at 131

⁵⁸ Gailey, above n 3, at 138-139.

⁵⁹ Gailey, above n 3, at 127-138.

⁶⁰ At 162.

⁶¹ At 13.

⁶² At 134.

⁶³ At 208.

⁶⁴ Latukefu, above n 9, at 16.

⁶⁵ Campbell, above n 4, at 66.

⁶⁶ At 77.

persecuted, with Tongan priests and priestesses encouraging chiefs to punish converts.⁶⁷

Taufa'ahau was the son of Tupouto'a, ruler of Ha'apai. Taufa'ahau himself became ruler of Ha'apai when he defeated Laufilitonga (son of a former *Tui Tonga*) at the battle of *Velata* in 1826.⁶⁸ The Wesleyan missionaries saw in Taufa'ahau (who would later become King George Tupou 1) the potential to unite and rule over all of Tonga. Taufa'ahau had hereditary rights to the *Tui Kanokupolu* title, was highly intelligent, and a remarkable warrior leader.⁶⁹ The missionaries sent Tongan Christian convert Pita Vi to Taufa'ahau in Haapai in 1828.⁷⁰ In 1828, Wesleyan missionary John Thomas also moved to Haapai, and in 1831 he baptised Taufa'ahau.⁷¹ Taufa'ahau, now a Christian convert, became ruler of Vava'u when the incumbent, Finau Ulukalala, died.⁷² Taufa'ahau and the Christian missionaries and converts supported each other's work and ambitions.⁷³ The missionaries desired Tonga to emulate England and pushed for a monarchical kingdom and constitutional rule.⁷⁴ From 1829 to 1831, Taufa'ahau destroyed all the god houses in the island groups of Ha'apai and Vava'u; he then converted these two island groups to Christianity.⁷⁵ The chiefs on Tongatapu resisted Christianity, understanding that Christianity would end their arbitrary powers and privileges and cement the dominance of Taufa'ahau over Tonga.⁷⁶ Many chiefs still opposed Christianity, and from 1835 to 1840, Taufa'ahau continued to wage war in the name of religion with the support of the missionaries against the chiefs who refused to give up the Tongan religion.⁷⁷ In 1837, Taufa'ahau brought his holy Christian war to Tongatapu, burning down all the god houses on the island and defeating the

⁶⁷ Latukefu, above n 2, at 31.

⁶⁸ Campbell, above n 4, at 72.

⁶⁹ Latukefu, above n 9, at 18.

⁷⁰ Latukefu, above n 2, at 63.

⁷¹ Campbell, above n 4, at 78.

⁷² At 78.

⁷³ Latukefu, above n 2, at 95.

⁷⁴ At 83.

⁷⁵ At 101.

⁷⁶ At 108.

⁷⁷ Teeruro Ieuti, Jione Langi, Charles W Forman *Island churches : challenge and change*. (Institute of Pacific Studies of the University of the South Pacific, 1992)149

chiefs there.⁷⁸ In 1845, the missionaries influenced the electoral college (traditional group tasked with appointing the next titleholder) to name Taufa'ahau *Tu'i Kanokupolu*.⁷⁹ Taufa'ahau, now known as King George Tupou I, ruled all of united Tonga.

3.1.6 Written Law

The rise of King George Tupou I, with the support of Christian missionaries, initiated relations between the parties that were to last for the remainder of the former's life. Tonga's very first written laws, named the Vava'u code of 1839, and its revision in the codes of 1850, the emancipation edict of 1862 and the constitution of 1875 were drafted by and heavily influenced by missionaries.⁸⁰

3.1.6.1 Vava'u Codes 1839

Tonga's first written laws were known as the Vava'u Codes. Missionaries drafted the Vava'u codes with King George approving and sometimes altering the drafts before they were proclaimed as law in Vava'u and Ha'apai in 1839 and applied to all of Tonga in 1845.⁸¹ The codes were a means of integrating Christian normative behaviour into Tongan society and expunging Tongan customs, beliefs and practices that were considered by the missionaries as heathen and uncivilised.⁸² Customary practices such as circumcision, tattooing and other religious ceremonies were prohibited.⁸³ Divorce was made difficult, the sabbath was declared forever holy, fornication and adultery were forbidden, and the chiefs were urged to show love to the people they governed.⁸⁴

The missionaries believed in equality between all people, and the first codes reveal the earliest attempts to remove the sacred privileges of the chief class by extinguishing their customary right to take by force the belongings and produce of the commoners and by establishing courts, removing the right of chiefs to adjudicate disputes and punish commoners by clubbing and killing.⁸⁵ The

⁷⁸ Latukefu, above n 2, at 112.

⁷⁹ At 85.

⁸⁰ Latukefu, above n 9, at 16.

⁸¹ Campbell, above n 4, at 86.

⁸² Latukefu, above n 9, at 23.

⁸³ At 23.

⁸⁴ At 22.

⁸⁵ At 23.

missionaries removed, to some extent, the *tapu* of the chiefs and began to instil a small measure of sacred *tapu* in the commoner population. For the first time, the commoners were recognised as also having rights and privileges that were not to be violated, based on the Christian belief that all were children of God and all were sacred.

3.1.6.2 1850 Codes

The second set of laws was known as the 1850 codes and was a revision of the 1839 codes; as with the Vava'u Codes, these were also drafted by missionaries, but the final form was what was approved by King George Tupou I and the chiefs.⁸⁶ These codes continued to ban customary practices the missionaries didn't approve of and included the prohibition of night dancing and other "heathen customs" the code also commanded that everyone be clothed.⁸⁷ Polygamy was outlawed, and marriage was declared a covenant that bound a spouse for a lifetime.⁸⁸

The *fahu* practice was effectively banned by Article XXXVII, which stipulated that women must work and not be assisted or fed if they didn't.⁸⁹ The sacred right of women to take from their brothers and their offspring was ended. Clause XXIX prohibited the sale of land to foreigners.⁹⁰

The sacred rights of chiefs continued to be diminished with the code allowing commoners to keep for themselves particular foods that were once only the privilege of chiefs to consume (tortoise and large fish); the 1839 codes prohibited chiefs from forcefully taking from commoners; however, the practice of presenting food or produce that was reserved for chiefs continued, the 1850 laws allowed commoners to keep some of these things for themselves.⁹¹

The codes declared the King as the source of government and possessing the right to appoint who would govern; his majesty was now the chief judge and ultimate judicial authority and had the power to impose taxes.⁹²The 1839 and 1850 codes

⁸⁶ At 24.

⁸⁷Latukefu, above n 9, at 26.

⁸⁸ At 25.

⁸⁹ At 25.

⁹⁰ At 26.

⁹¹ At 26.

⁹² At 27.

continued to chip at the power of the chiefs, raised the status of the commoner population and consolidated political power in the King.⁹³ The commoners continued to be granted some measure of the sacred rights of the chiefs whilst the King took for himself the absolute right to govern, adjudicate and make laws.

In retaliation to the 1850 codes, the *Ha'a Havea* chiefs of Tongatapu, aligned with the French Catholic priests, waged a civil war against King George in 1852; the *Ha'a Havea* chiefs were defeated, and Tongatapu united under the rule of King George Tupou 1.⁹⁴

3.1.6.3 1862 Codes

The 1862 codes were drafted with the assistance of a missionary by the name of Shirley Baker but contained very little difference from the 1850 codes.⁹⁵ The 1862 codes are best remembered for what is now known as the emancipation edict or Section XXXIV of the code, wherein the ancient power of the chiefs was abolished, and commoners were freed from “serfdom” or the rights of chiefs to order commoners to labour for them.⁹⁶ Chiefs were prohibited from taking anything from anyone by force or begging authoritatively.⁹⁷

The 1862 codes prohibited land sale to foreigners, and provisions were made for individual land ownership; chiefs were to distribute land to commoners in return for a rent.⁹⁸ The 1862 codes continued to recognise the Christian *tapu* of commoners, emancipating commoners from the dominance and exploitation of the chiefs and granting them full rights over their labour and property. The King retained for himself sole rights to control governing, adjudication and to make laws.

3.1.7 1875 Constitution

By 1872 Shirley Baker was no longer a missionary and had become King George Tupou I's secretary; Baker drafted for the king a constitution based on the laws of

⁹³ At 27.

⁹⁴ Latukefu, above n 9, at 28.

⁹⁵ At 32-33.

⁹⁶ At 34.

⁹⁷ At 34.

⁹⁸ At 35.

New South Wales, the 1852 constitution of Hawaii and all the earlier codes.⁹⁹ Amendments from parliament and the King were added before King George approved its final form.¹⁰⁰ The constitution was passed by a parliament comprising of chiefs on the 4th of November 1875 and published.¹⁰¹ Baker described the Constitution as a book of freedom that prescribed how Tonga was to be governed, comparable to how the bible granted spiritual freedom and defined the way in which the church should be governed.¹⁰²

The 1875 Constitution contained 132 sections divided into three parts: Part I Declaration of Rights, Part II Form of Government and Part III The Lands. The rights prescribed in Part I of the Constitution affirmed the rights afforded to commoners in the earlier codes. The first section of the Constitution declared that God created all in one blood, and thus all were free, affirming that under the Christian religion, all had the same blood, therefore the same *tapu* and the same rights.

However, the constitution's provisions introduced a foreign structure of government over which, once again, the king, chiefs and commoners had rights, privileges and powers according to their rank or class. The ancient sacred right of kings and chiefs to govern, adjudicate, determine laws and own land is once again reaffirmed in the founding document of the modern Tongan state.

3.1.7.1 The King

The position of the King as sacred and secular ruler in the fashion of traditional kings of Tonga was made clear in the Constitution, the only difference being that the source of divinity was the Christian god and source of law, the Constitution. Power over the newly formed kingdom was centred solely on the monarch; the powers of the competing monarchical lines and the chiefs were abolished and displaced by the King. Section 34 declared the form of government as a Constitutional

⁹⁹Noel Rutherford *Shirley Baker and the King of Tonga* (University of Hawaii Press, 1996) at 55.

¹⁰⁰ Latukefu, above n 9, at 116.

¹⁰¹ Guy Powles "The Early Accommodation of Traditional and English Law in Tonga" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds) *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990) at 156.

¹⁰² Latukefu, above n 9, at 41.

Government under His Majesty King George Tupou, his heirs and successors.¹⁰³

Section 47 proclaimed that the King was sovereign of all the chiefs and people and that the Kingdom was his.

3.1.7.1.1 Prerogatives

The constitution conferred on the King prerogative powers or personal rights set out in Part I of the Constitution. Some of these prerogatives included:

- The King is commander in chief of the land forces and appoints all officers.¹⁰⁴
- The King is to make treaties with foreign nations and appoint his representatives to other countries.¹⁰⁵
- The power to grant titles of honour.¹⁰⁶
- The Right to determine what is legal tender.¹⁰⁷
- The Right to proclaim martial law in times of war.¹⁰⁸

Section 44 stipulated that “the person of the King is sacred. He governs the land, but his ministers are responsible”. Therefore, the King was head of all three prescribed branches of government and governed through the ministers he appointed.

3.1.7.1.2 Executive

The executive consisted of the King, Privy Council and Cabinet.¹⁰⁹ The executive vowed to be “truly obedient to His Majesty King George Tupou, the rightful King of Tonga.”¹¹⁰ The Privy Council consisted of the Cabinet, governors and the Chief Justice.¹¹¹ The King appointed a Cabinet comprising of the Prime Minister and Ministers and dismissed them at will.¹¹² The King also appointed all the governors.¹¹³ The Constitution prescribed that the entire executive, the Privy

¹⁰³ Constitution of Tonga (1875), s 34.

¹⁰⁴ At s 39.

¹⁰⁵ At s 42.

¹⁰⁶ At s 48.

¹⁰⁷ At s 49.

¹⁰⁸ At s 50.

¹⁰⁹ Constitution of Tonga (1875), s 33.

¹¹⁰ At s 64.

¹¹¹ At s 54.

¹¹² At s 55.

¹¹³ At s 58.

Council, Cabinet and Governors were appointed and dismissed by the King at his pleasure and were to be obedient to him.

3.1.7.1.3 Legislature

The King also held overriding powers over the law-making body prescribed by the Constitution as the Legislative Assembly:

- The King may at any time convene and dissolve the legislative assembly and command new elections.¹¹⁴
- No laws could be passed without the King's signature.¹¹⁵
- The King must approve of all laws by affixing his signature.¹¹⁶
- The legislative Assembly consisted of his appointed Cabinet, all the new nobles who were granted titles and elected people's representatives.¹¹⁷
- The King appoints the Chair of the Assembly from one of the chiefs.¹¹⁸
- The exclusive right of the chiefs in parliament to vote on laws in connection to the King, Royal Family and Nobles, which only became law if the King approved.¹¹⁹
- The King had the right to veto a law he did not support, and such a law could not be discussed again in the same session.¹²⁰

3.1.7.1.4 Judiciary

The King also held overarching powers over the Judiciary:

- The King appoints the Justices of the Supreme Court.¹²¹
- The Justices of the Supreme Court were responsible for the lower courts: the Circuit Court and Police Court.¹²²
- The Chief Justice reports annually to the King regarding the administration of justice and state morals.¹²³

¹¹⁴ At s 41.

¹¹⁵ At s 44.

¹¹⁶ At s 60.

¹¹⁷ Constitution of Tonga (1875), s 63.

¹¹⁸ At s 65.

¹¹⁹ At s 70.

¹²⁰ At s 71.

¹²¹ At s 88.

¹²² At s 89.

¹²³ At s 105.

3.1.7.1.5 The Land

Regarding Part III, The Land, the sale of land was prohibited,¹²⁴ the King decided which chiefs would be made nobles and be granted hereditary estates known as *tofi'a*.¹²⁵ Commoners were permitted to lease land from nobles' estate or *tofi'a*¹²⁶, the prices for which would be set by the Legislative Assembly.¹²⁷

3.1.7.2 Nobles

The constitution created a new class referred to as the nobility as per the will of King George Tupou I. Chiefs whom the King decided to confer a noble title and accompanying hereditary estate upon were to be nobles forever, with the title being inherited from father to son.¹²⁸ These nobles were granted immediate membership in the Legislative Assembly,¹²⁹ had the privilege of voting on laws that applied to themselves, the royal family and the King,¹³⁰ and one of them was designated to Chair the Legislative Assembly.¹³¹

3.1.7.3 Commoner Men:

The 1875 constitution permitted commoner men to lease a parcel of land for themselves from nobles' estates for an amount directed by the Cabinet.¹³² For the first time in Tonga's history, commoner men were granted the right to participate in politics, to stand as election candidates, and elect 20 People's Representatives (PR) to parliament every five years.¹³³

The constitution was promulgated with the objective being to maintain stability in Tonga, and achieve recognition by foreign powers as a modern state, therefore, avoiding colonisation and 'civilising' the country by integrating Christian values into Tongan culture.¹³⁴

¹²⁴ At s 109.

¹²⁵ Constitution of Tonga (1875), s 124.

¹²⁶ At s 128.

¹²⁷ At s 129.

¹²⁸ At s 124.

¹²⁹ At s 63.

¹³⁰ At s 70.

¹³¹ At s 70.

¹³² At s 128.

¹³³ At ss 24, 67.

¹³⁴ Latukefu, above n 9, at 43.

THE 1975 CONSTITUTION:

A hundred years later, the constitution had not been significantly altered. However, a notable change is that the very first section no longer refers to the equality of all people as contained in the 1875 constitution. Section 1 of the 1975 Constitution speaks to the freedom of *men*:¹³⁵

“ Since it appears to be the will of God that all men may be free as he has made all men of one blood ...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...”

Discrimination against women by 1975 had become accepted and entrenched in the Tongan Constitution.

3.1.8 The King

The form of government remained a Constitutional Government under the King and his heirs. The King remained the sacred sovereign of all chiefs and people and governed through the appointed ministers. The monarch's powers were expanded in the 1975 form of the Constitution.

3.1.8.1.1 Prerogatives

The King retained all the rights conferred on him in the 1875 Constitution, and others were added:

- King is Commander in Chief of the forces of the land and sea.¹³⁶
- The right to pardon convicts.¹³⁷
- The authority to make treaties with foreign states and appoint representatives to other nations.¹³⁸
- The right to grant titles of honour.¹³⁹
- The power to decree legal tender.¹⁴⁰
- The power to proclaim martial law in times of war.¹⁴¹

¹³⁵ Constitution of Tonga (1975), s 1.

¹³⁶ Constitution of Tonga (1975), s 36.

¹³⁷ At s 37.

¹³⁸ At s 39.

¹³⁹ At s 44.

¹⁴⁰ At s 45.

¹⁴¹ At s 46.

- The authority to consent to Naturalization¹⁴²

3.1.8.1.2 Government

The three branches of government remained; 1. King Privy Council and Cabinet 2. Legislative Assembly 3. Judiciary and had not changed.¹⁴³ The King retained control over all three branches.

3.1.8.1.3 Executive

Privy Council, consisting of Cabinet, Governors and anyone else the King desired, were appointed and dismissed by the King at his pleasure.¹⁴⁴ The King determined who the executive was and how long they would serve. The executive branch was entirely accountable to the monarch.

3.1.8.1.4 Legislature

The King continued to wield control over the legislative branch of the Tongan government. The King retained the power to convoke and dissolve the Legislative Assembly anytime he wished; all laws had to be approved and signed by the King.¹⁴⁵ The legislative assembly consisted of the Privy Council and an equal number of Noble's Representatives (NR) and People's Representatives (PR).¹⁴⁶ The King appointed the Speaker of the Legislative Assembly.¹⁴⁷ The King could veto any law he did not approve of,¹⁴⁸ and although elections were to be held every three years, the King could dismiss Parliament and command new elections any time.¹⁴⁹ The King retained overriding powers over the Legislative Assembly; the Privy Councillors and Nobles he appointed outnumbered the People's Representatives.

3.1.8.1.5 Judiciary:

The King remained in control of the Judicial branch of government. The King appointed the Chief Justice of the Court of Appeal and any other judge.¹⁵⁰

¹⁴² At s 29.

¹⁴³ At s 30.

¹⁴⁴ At ss 50, 51 & 54.

¹⁴⁵ Constitution of Tonga (1975), ss 40, 56.

¹⁴⁶ At s 59.

¹⁴⁷ At s 61.

¹⁴⁸ At s 68.

¹⁴⁹ At s 77.

¹⁵⁰ At ss 85, 86 & 87.

3.1.8.1.6 *Land*

The 1975 constitution now explicitly stipulated that all Tongan land was the property of the King.¹⁵¹

3.1.9 Nobles

The nobles retained the privilege of reserved seats for their representatives in the Legislative Assembly¹⁵² and their hereditary titles and estates.¹⁵³ The nobles had the exclusive right to decide whether a noble should be deprived of his seat¹⁵⁴ and to discuss laws that touched upon the King, royal family and nobility;¹⁵⁵ voting in these two matters was reserved for the noble representatives and excluded the people's representatives.

3.1.10 Commoner Men

The commoner population continued to have the right to engage in politics through seats reserved for People's Representatives,¹⁵⁶ every Tongan subject over 21 was entitled to stand as a candidate¹⁵⁷ and vote in an election.¹⁵⁸ Section 64 of the constitution was amended in 1951 to permit women to vote and stand as candidates.¹⁵⁹ Section 113 of the constitution was amended in 1927 to grant male subjects 16 years and over the right to apply for a piece of land classified as tax and town allotments.¹⁶⁰ The same amendment permitted widows to inherit a life interest in her deceased husband's land.

PATRIARCHY

The word patriarchy has its roots in the Greek word patriarkhēs, meaning the rule of the father.¹⁶¹ The earliest discussions of a patriarchal system occurred at the

¹⁵¹ At s 104.

¹⁵² Constitution of Tonga (1975), s 60.

¹⁵³ At s 104.

¹⁵⁴ At s 71.

¹⁵⁵ At s 67.

¹⁵⁶ At s 60.

¹⁵⁷ At s 65.

¹⁵⁸ At s 64.

¹⁵⁹ Act No. 15 of 1951.

¹⁶⁰ Act No.19 of 1927.

¹⁶¹ Fiona J Green (2010). "Patriarchal Ideology of Motherhood" in Andrea O'Reilly *Encyclopedia of Motherhood, Volume 1*. (SAGE, 2010) at 969.

onset of the English revolution¹⁶² Robert Filmer argued that the political powers of the King, which were absolute, were derived from the authority of Adam as a father over his children,¹⁶³ and that all patriarchs, Kings and fathers alike had a duty to care for their children or subjects.¹⁶⁴

In modern times the word patriarchy has become more than the basis for the absolute authority of kings and fathers; patriarchy has become the ideology that men are superior to women.¹⁶⁵ The concept that men are inherently superior to women has caused untold harm for women. Sylvia Walby defined patriarchy as “a system of social structures and practices in which men dominate, oppress and exploit women.”¹⁶⁶ In patriarchal societies, women are marginalised, objectified and oppressed; politically, socially, economically and psychologically.¹⁶⁷ Women are not without rights in patriarchal systems; however, men predominate positions of power,¹⁶⁸ and males dominate females both within the family setting and out in society.¹⁶⁹ An unfortunate characteristic of patriarchal systems is that women often support and reinforce the power and domination of men, attributable primarily to the teachings of institutions such as the church that justify women’s suppression.¹⁷⁰ The ideology of patriarchy or the dominance of men over women is so deeply entrenched and embedded that women are responsible for perpetuating patriarchal beliefs, affirming their inferiority and disempowerment from one generation to the next.¹⁷¹ The concept of patriarchy has further developed and is now understood to go beyond oppression based on gender to the domination and

¹⁶² Kaku Sechiyama *Patriarchy in East Asia: A Comparative Sociology of Gender* (BRILL, 2013) at 8.

¹⁶³ Robert Filmer *Patriarcha: Or the Natural Power of Kings* (Printed, and are to be sold by Walter Davis, book-binder, in Amen-Corner, near Pater-noster-row, 1680) at 12

¹⁶⁴ At 24.

¹⁶⁵ Emi Frances Oh “A Dream as Metaphor for a New Vision of Church in the Pacific” in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 141 at 146.

¹⁶⁶ Sylvia Walby “Theorising Patriarchy” (1989)23(2) *Sociology* 213 at 214.

¹⁶⁷ Pavla Miller “Patriarchy” in Peter Hamilton (ed) *Key Ideas* (Routledge, New York, 2017) at 98.

¹⁶⁸ Walby, above n 166, at 214.

¹⁶⁹ G Lerner *The Creation of Patriarchy* (Oxford University Press, New York, 1989) as cited in Abeda Sultana “Patriarchy and Women’s Subordination: A Theoretical Analysis” (2010-2011) 4 *Arts Faculty Journal* 1 at 3.

¹⁷⁰ K Millett *Sexual Politics* (London, Virago, 1977) as cited in Abeda Sultana “Patriarchy and Women’s Subordination: A Theoretical Analysis” (2010-2011) 4 *Arts Faculty Journal* at 3.

¹⁷¹ Chantelle Khan “Looking for God with New Eyes” in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 186 at 188.

power of both males and females of the social and economic elite,¹⁷² patriarchy is a hierarchy of power where men are also dominated by more powerful men.¹⁷³ Some widespread patriarchal practices include the patriarchal control of land, finances and domestic violence.¹⁷⁴

3.1.11 Patriarchy's Consolidation In Tonga

Patriarchy found its way into various indigenous societies through colonisation, a process that saw gender balance in the Americas destroyed and where the colonials treated the colonised as children under their fatherly care.¹⁷⁵ The introduction and consolidation of patriarchy in Tonga was achieved through King George Tupou I's first written laws and 1875 constitution, the contents of which were significantly influenced by Christian missionaries of the time. Walby outlined six structures within the patriarchal system which she described as "a patriarchal mode of production in which women's labour is expropriated by their husbands; patriarchal relations within waged labour; the patriarchal state; male violence; patriarchal relations in sexuality; and patriarchal culture."¹⁷⁶ The modern Tongan state is patriarchal in nature.

Law has long been an institution under the control of men, and consequently, "law contains, produces and reproduces patriarchy."¹⁷⁷ Men were exclusively responsible for drafting early codes and the constitution in Tonga, and through these laws, patriarchy was produced and continues to be reproduced in Tonga. The introduction and perpetuation of patriarchy through the law is not unique to Tonga in the Pacific, with the perspective of a female expert Pacific legal writer being that the law has been used to preserve and reinforce the power of men over women and that the law serves the interests of the powerful in society, with women from

¹⁷² Robert Bahlieda "The Legacy Of Patriarchy" (2015) 488 *Counterpoints* 15 at 17.

¹⁷³ At 40.

¹⁷⁴ Frances Raday "Gender and democratic citizenship: the impact of CEDAW" (2012) 10 (2) *International Journal of Constitutional Law* 512 at 519.

¹⁷⁵ Paula Gunn Allen "Kochinnenako in Academe: Three Approaches to Interpreting a Keres Indian Tale." in *The Sacred Hoop: Recovering the Feminine in American Indian Traditions* (Boston, Beacon, 1992) as cited in Vrushali Patil "From Patriarchy to Intersectionality: A Transnational Feminist Assessment of How Far We've Really Come" (2013) 38 (4) *Signs: Journal Of Women in Culture and Society* 847 at 857.

¹⁷⁶ Walby, above n 166, at 220.

¹⁷⁷ Lynne Henderson, "Review of Law's Patriarchy by Zillah R Einstein, Catharine A MacKinnon and Carol Smart" (1991) 25 (2) *Law and Society Review* 411 at 412.

the elite ruling classes and financially able backgrounds and women from chiefly backgrounds also benefiting from patriarchy.¹⁷⁸ The law often is a tool for the powerful in Pacific societies to serve their interests, the powerful in the Pacific are often wealthy and land-owning men.¹⁷⁹

3.1.12 Implications Of The Written Codes And Constitution

The Constitution is described as a marriage of traditional polity and Christian teachings;¹⁸⁰ the traditional polity, as discussed earlier, was based on class inequality; the Christian teachings introduced inequality between the sexes and the dominance of men over women. The two elements of Tongan patriarchy are thus the dominance of the ruling classes (king and nobility) over the commoner class and the dominance of men over women.

The elite governing class continued to possess the authority to govern, adjudicate and determine laws. The constitution constructed three new classes: the King, the nobility and the commoners. King George Tupou I conferred noble titles on those of the traditional chief class who supported him whilst the rest of the population were designated commoners. Rights were apportioned once again according to class, with the King at the apex and holding the bulk of powers and rights; the nobility had special rights and privileges, and the commoners, although now recognised as having the capacity to be of the divine and encapsulate rights in their being, held the least amount of rights and remained the dominated class. The government remained a domain of the traditional governing classes, with the Prime Minister being a close relative of the monarch and ministers ordinarily being nobles.¹⁸¹

As discussed above, all in Tonga possessed rights prescribed in the declaration of rights. The King chose who would govern, usually from the nobility. The nobles were allowed special privileges in parliament and the same number of seats to represent

¹⁷⁸ P Imrana Jalal, *Law for pacific women: a legal rights handbook* (Fiji Women's Rights Movement, 1998) at 14.

¹⁷⁹ At 14.

¹⁸⁰ George E Marcus, *The Nobility and the Chiefly Tradition in the Modern Kingdom of Tonga* (Polynesian Society Incorporated, Wellington, 1980) at 8.

¹⁸¹ Marcus, above n 180, at 76.

their interest as the entire commoner population. The people's representatives were often chiefs who weren't conferred noble titles.¹⁸² The judiciary was appointed entirely by the King.

The Land tenure system is perhaps the best illustration of the Tongan patriarchy. The King at the apex of the Tongan patriarchal system owns all land, male noble titleholders have a hereditary life interest in estates or *tofi'a*, and male commoners have the right to apply for smaller hereditary allotments of land taken from *tofi'a* or government-owned land, transforming Tonga from a collective to an individual society.¹⁸³ Women of the nobility and commoner class have no such comparable rights to land. Women of the nobility cannot hold noble titles or own *tofi'a*, and women of the commoner class cannot be granted a land allotment.

Commoners were meant to be freed from the dominance of the chiefs through individual land ownership; however, it is a costly and challenging process for commoners to access land. The nobles retained the right to decide whom to allow to register a land allotment from their *tofi'a*. A commoner male was required to be a registered taxpayer, to consult with the estate holder for the right to be granted and register an allotment, the decision which often depended on the commoner having to provide additional money, food or other tributes to the estate holder.¹⁸⁴ Some usually paid rent for an allotment that wasn't officially registered as theirs whilst the rent was in significant cash and produce amounts.¹⁸⁵

Noble estate holders would often reserve large amounts of land for themselves and refuse to grant allotments; they would also refuse to allow tenants to register an allotment and eject tenants from allotments, which would revert to themselves.¹⁸⁶ In addition to annual rent, nobles would demand traditional tribute far above the nominal rent.¹⁸⁷

¹⁸² At 74.

¹⁸³ At 13.

¹⁸⁴ Gailey, above n 3, at 201.

¹⁸⁵ At 201.

¹⁸⁶ Marcus, above n 180, at 78.

¹⁸⁷ Marcus, above n 180, at 86.

The Royal Land Commission Report published in 2012 offered recommendations to help address these ongoing issues, some recommendations from that report included that a noble hold a monthly meeting with the public interested in his estate,¹⁸⁸ that a decision with regards to an application for an allotment be made by the Noble or Minister of Lands within 12 months after receipt of the application,¹⁸⁹ that people be allowed to register an allotment after a year of living on the land with the approval of the noble,¹⁹⁰ and that the Noble or Ministers of Land's demand of money for a grant of land be prohibited.¹⁹¹

WOMEN

The missionaries implemented gender and familial roles appropriate to Christianity.¹⁹² The missionaries implemented patriarchal family relations and diminished women's political and economic rights in customary law.¹⁹³ The influence of the missionaries is apparent in their emphasis on strengthening the family unit through removing a woman's independence that was founded on their *fahu* status. Women's *fahu* rights recognised in customary law were not codified in Tonga.

The prohibition of *fahu* practices in the early codes and of divorce rendered a wife completely dependent on her husband; a woman could no longer compel her mother's brother or her brother to provide for herself and her children under customary law. The law prohibited the authority of the *fahu* over marriages and the redistribution of gifts which customarily the *fahu* would receive a large portion of.¹⁹⁴

The magic and mana of sisters were not recognised in European countries of the time; succession by male primogeniture was coded but was not customary practice in Tonga; it may have been allowed because it was assumed that brothers would

¹⁸⁸ Royal Land Commission *Royal Land Commission Final Report* (2012) at 266.

¹⁸⁹ At 266.

¹⁹⁰ At 267.

¹⁹¹ At 267.

¹⁹² Gailey, above n 3, at 192

¹⁹³ Gailey, above n 3, at 186

¹⁹⁴ Gailey, above n 3, at 209

always provide for their sisters as was the custom of the time.¹⁹⁵ Inheritance of titles from father to son removed the rights of *fahu* to influence who the successor should be and of her son's right to contend for inheritance; a sister or *fahu* could no longer act as regent for a titleholder and lost control over the fertility of her brother's wives.¹⁹⁶ The current land laws render women dependent on men for land and is an effective control of the sexuality of women, causing their ability to access and use land to be dependent on their ability to remain faithful to their husbands even in death or to forgo sexual relations. The land laws restrict women's ability to live economically independent of men. As the missionaries intended, the family unit was strengthened as access to land and financial resources depended on a woman remaining within the family unit as a wife or daughter.

The Constitution did not recognise any female titles or political powers. As discussed earlier, women of the chief class wielded power over other women of lower rank in her husband's *kainga*, as well as her brother's wives and concubines and women of lower rank in her own family. Women of the chief class held titles in their own right as well as parallel titles to their brothers. Brother and sister ruled as a duality; whilst women may not have had the same political powers as men, their powers existed in a different form.¹⁹⁷ None of the women of the new noble class were conferred these political rights; in fact, it was not until the mid-twentieth century that women were permitted to vote or be elected as People's Representatives.

The Constitution did not recognise women's sacred essence, whether of the chief or commoner class; the *tapu* of Tongan women and rights associated with that *tapu* was not codified. Whilst individual rights were granted to all Tongans, the founding document of Tonga directly discriminates against women and effectively subjugates them to men. The hierarchy of rights accorded by the constitution positions the King at the apex, then noble men, commoner men, royal and noble women, with commoner women at the base.

¹⁹⁵ James, above n 8, 59 at 73

¹⁹⁶ Gailey, above n 3, at 211.

¹⁹⁷ James, above n 8, 59 at 70.

DISSATISFACTION WITH THE CONSTITUTION

Dissatisfaction with the governing structures established by the constitution began in the 1960s and 1970s over complaints of widespread government corruption and the inability of commoners to access land; this was led by prominent commoner male church leaders and academics.¹⁹⁸ Tonga's foremost political activist, Akilisi Pohiva, was initially elected as a People's Representative in 1987; he was responsible, alongside other like-minded men, for forming the pro-democracy movement in Tonga; this group hosted a convention on the Tongan Constitution and Democracy in 1992.¹⁹⁹ What was clear from the convention was that there was still firm support for the monarchy but as a ceremonial head of state figure as in Britain and other modern democratic countries.²⁰⁰ The views of Akilisi Pohiva expressed at the Convention were for a fully elected parliament, with the cabinet ministers elected and responsible to parliament in the Westminster style.²⁰¹ The pro-democracy movement hosted the Human Rights and Democracy Movement Convention in 1999.²⁰² The Human Rights and Democracy Movement Convention in 1999 called for 30 elected People's Representatives and government ownership of all lands.²⁰³

Between 1998 and 2004, the Pro-Democracy movement put forward several proposals for a specific constitutional change, but the government accepted none.²⁰⁴ The first move towards reform was when the monarch appointed a PR and first commoner to the Cabinet in 2005 and then to Prime Minister in 2006.²⁰⁵ Political developments during this time are discussed in depth in Chapter Six. However, the sequence of events began with civil servant strikes and then riots.

¹⁹⁸ Sione Latukefu "The Pro-Democracy Movement in Tonga" (1993) 28 (3) *The Journal of Pacific History* 52 at 53, 54.

¹⁹⁹ At 69.

²⁰⁰ At 69.

²⁰¹ Campbell, above n 4, 246.

²⁰² At 251.

²⁰³ At 251.

²⁰⁴ Guy Powles *The Tongan Monarchy and the Constitution: Political Reform in a Traditional Context* (ANU Dept of Pacific Affairs, 2014) at 10.

²⁰⁵ Guy Powles and Alisi Taumoepeau *Constitutional Change in Tonga* (Australasian Law Reform Agencies Conference, Vanuatu, 2008) at 10.

3.1.13 Public Sector Strikes:

Two thousand of Tonga's 5000 public servants went on strike in July 2005, calling for pay rises to include all public servants and not just senior public servants; by August, teachers had joined the strike bringing the total number of people on strike to 5000.²⁰⁶ Strikers called for the Cabinet's resignation and a democratically elected government.²⁰⁷ On September 3rd government granted all their demands and established a royal commission to review the constitution and explore democratic reform.²⁰⁸ The National Committee on Political Reform (NCPR) was thus established in 2005 and tasked to collect the Tongan public's views in Tonga and abroad on political reform; the NCPR presented their report to parliament in October 2006.²⁰⁹ King Tupou V made clear his intentions to pass executive powers to a government elected by the people and Nobles' Representatives.²¹⁰ In March 2006, commoner Feleti Sevele was appointed Prime Minister by the King, who consulted with him regarding particular ministerial appointments.²¹¹

3.1.14 Riots

The NCPR had presented its report to parliament and suggested that a Tripartite Committee be established to carry out their recommendations.²¹² On 16 November 2006, tensions finally came to a head; the People's Representatives, frustrated with the slow pace of democratic reform, demanded that the parliament session not be closed until their proposal for increasing the number of People's Representatives in the Legislative Assembly be addressed.²¹³ The Prime Minister eventually agreed to these demands; however, it was too late as rioting, burning and looting of Nuku'alofa had already begun.²¹⁴

²⁰⁶ Hannah Jones "Tongan public servants strike for higher wages, 2005" (11 April 2010) Global Nonviolent Action Database <<https://nvdatabase.swarthmore.edu/content/tongan-public-servants-strike-higher-wages-2005>>

²⁰⁷ Jones, above n 206.

²⁰⁸ Jones, above n 206.

²⁰⁹ Guy Powles Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy (Faculty of Law, Monash University, Research Paper No 2011/27, 2012) at 7.

²¹⁰ At 7.

²¹¹ At 7.

²¹² Powles and Taumoepeau, above n 205, at 7.

²¹³ "State of emergency after Tongan riots" (17 November 2006) The Guardian <<https://www.theguardian.com/world/2006/nov/17/1>>

²¹⁴ Powles and Taumoepeau, above n 205, at 7.

3.1.15 Recommendations For Reform

In 2007 a Tripartite committee composed of PRs, NRs and government officials discussed proposals for the composition of the Legislative Assembly and Cabinet but could not come to any conclusion.²¹⁵ A Constitutional and Electoral Commission (CEC) was established by the Constitutional and Electoral Commission Act in 2008, and tasked with providing recommendations for constitutional and electoral reform to the Privy Council and Legislative Assembly.

The reforms of 2010 were based on the reports of the Constitutional and Electoral Commission, which was established in July 2008, submitted a final report in 2009, amendments to the constitution were approved in April 2010 and enacted by September 2010.²¹⁶ Establishing the CEC was in accordance with the will of the reigning monarch (King Tupou V) as reflected in the voting for the Constitutional and Electoral Act of July 2008, with 11 of the 17 votes in favour of the bill coming from members of the monarch's appointed Cabinet; the Noble's Representatives alongside Pohiva and two other pro-democratic people's representatives abstained.²¹⁷ The CEC was expected to submit a report in November 2009 with recommendations and draft legislation.²¹⁸ The mandate of the CEC included the executive, the legislature, the electorate and the relationship between the executive and legislature.²¹⁹ Their terms of reference did not touch on any specific women's rights but included the following:²²⁰

1. The roles, functions, powers and duties of the monarch, the privy council, the prime minister and the Cabinet, and the relationships between them.
2. The size and composition of the Cabinet.
3. Delegation of specific authority by the king to the prime minister.
4. The principle of collective responsibility of the Cabinet.
5. The composition and method of selection of members of the legislative assembly.

²¹⁵ Powles and Taumoepeau, above n 205, at 7.

²¹⁶ Commonwealth Observer Group Kingdom of Tonga National Parliamentary Election 16 November 2017 at 4-5.

²¹⁷ I C Campbell "The Nettle Grasped: Tonga's New Democracy" (2012) 47 (2) *The Journal of Pacific History* 211 at 216.

²¹⁸ At 216.

²¹⁹ Powles, above n 209, at 9-10.

²²⁰ Campbell, above n 217, at 216.

6. The term of the legislative assembly.
7. The appointment of the prime minister from the assembly.
8. The appointment of ministers to the Cabinet and the consequences.
9. The term of office of Cabinet ministers.
10. Motions of 'no confidence'.
11. Definition of constituencies and the distribution of seats.

The CEC membership included two nominations of the Judicial Services Commission; Dr Ana Taufeulungaki (formerly a member of the NCPR and the only female commissioner) and Sione Fonua (lawyer and founder of the Paati Langafonua Tu'uloa), one Cabinet nominee; Justice Gordon Ward (former Chief Justice and Chair of the Commission), and a nominee each the People's and Nobles' representatives; Dr Sitiveni Halapua (former chair of NCPR) and Tuivanuavou Vaea (now Lord Vaea) respectively.²²¹

The CEC held consultations that were open to the public and received 27 written submissions; the CEC submitted an initial report in June 2009 stating that whilst the public desired a more representative government, they had a minimal understanding of politics and government structure.²²² The CEC reports were very much aligned to previously discussed recommendations for reform, focusing on the Tongan context without any reference to political theory or the experiences and political structures of similar small island states.²²³

The CEC produced its final report in November 2009; during the 2010 discussion of the CEC recommendations in the Assembly, the wishes of His Majesty and Sevele's Cabinet were determinative.²²⁴ The recommendations of CEC were presented to

²²¹ Campbell, above n 217, at 216-217.

²²² Constitutional and Electoral Commission Kingdom of Tonga *Final Report* (5 November 2009) at [35], [36] and [349].

²²³ Campbell, above n 217, at 217.

²²⁴ Powles, above n 209, at 8.

the Cabinet; those approved were presented to the legislative assembly as bills²²⁵ to amend the constitution between May and September 2010.²²⁶

The government had made steps to increase the Cabinet by five people; therefore, Cabinet outnumbered the rest of parliament and had a decisive vote on the reform and legislation.²²⁷ In the Legislative Assembly, the Privy Council, with the support of the NRs, clearly outnumbered and outvoted the people's representatives. (Laws were handed down by Cabinet and introduced into a Legislative Assembly where usually 12 Privy Councillors, 9 NRs and PRs sat).²²⁸ Of the 82 recommendations, 18 were accepted, 45 with amendments and 19 rejected.²²⁹ There was an election scheduled for November 2010, by which time the Sevele Cabinet determined the reforms to have been passed and in place; such a short time frame could not have been adequate to consider the bills and their implications properly.²³⁰ The PM and Cabinet, with the support of the King, controlled the reform process leaving the pro-democracy People's Representatives powerless to contribute to the reform in any significant way.²³¹ The PRs appeared as uninvolved in the reform process, with the reform bills in April 2010 passed by the Cabinet and NRs in deference to the monarch's wishes.²³²

Modern processes of decolonisation centre around discussions of the transfer of power from male colonisers to an indigenous adult male brotherhood.²³³ The reform process for the constitution centred on breaking down class barriers and transferring power from ruling class men to commoner men but did not focus on the other dimension of the patriarchal nature of the constitution, the liberation of women from the dominion of men.

²²⁵ Guy Powles *The Tongan Monarchy and the Constitution: Political Reform in a Traditional Context* (ANU Dept of Pacific Affairs, 2014) at 11.

²²⁶ Powles, above n 204, at 11

²²⁷ Campbell, above n 217, at 217

²²⁸ Powles, above n 204, at 19.

²²⁹ Campbell, above n 217, at 218.

²³⁰ Powles, above n 204, at 11.

²³¹ Powles, above n 204, at 10.

²³² Campbell, above n 217, 219.

²³³ Vrushali Patil "From Patriarchy to Intersectionality: A Transnational Feminist Assessment of How Far We've Really Come" (2013) 38 (4) *Signs: Journal Of Women in Culture and Society* 847 at 861

THE CONSTITUTION POST-REFORM

The version of the Constitution that is relevant to the subject of this research is the current post-reform version. The non-ratification of CEDAW brought to light conflicting understandings over the objectives of the reform and the contents of the newly reformed Constitution. As to the King's prerogatives, not much had changed; the monarch retained the rights to:

- Make treaties with foreign states and appoint his representatives to other nations.²³⁴
- Appoint Commander in Chief of armed forces and appoint all officers.²³⁵
- Grant pardons to convicts.²³⁶
- Consent to Naturalisation.²³⁷
- Confer titles.²³⁸
- Declare martial law. In the event of civil war or war with a foreign state; the King retains the power to proclaim martial law over any part or the whole of the country.²³⁹

3.1.15.1 Legislature

The reformed constitution excludes the King and his appointed Privy Council from the legislative branch of government; however, there was minimal change to the King's authority in the legislature, the monarch retains the power to:

- Convoke and dissolve the legislative assembly and command new elections without restriction.²⁴⁰
- Assent to law.²⁴¹
- Veto laws by withholding his sanction.²⁴²
- Make amendments to the Constitution require the unanimous support of the King and Cabinet.²⁴³

²³⁴ Constitution of Tonga, s 39.

²³⁵ At s 36.

²³⁶ At s 37.

²³⁷ At s 29.

²³⁸ At s 44.

²³⁹ At s 46.

²⁴⁰ Constitution of Tonga, s 38.

²⁴¹ At s 56.

²⁴² At s 68.

²⁴³ At s 79.

3.1.15.2 Judiciary

The King and Privy Council are also excluded from the judicial arm of government²⁴⁴ however; the monarch retains complete control of the judiciary. Section 83C establishes a Judicial Appointments and Discipline Panel (JADP), a committee of the Privy Council (appointed by the King). The JADP have the power to recommend to the King the appointment of the entire Judiciary and Lord Chancellor (administrator of the judiciary). The King appoints a Privy Council to advise him; however, appeals over hereditary titles and estates are to be heard by the Privy Council.²⁴⁵

3.1.15.3 Executive

The most significant changes were made with regard to the form of government. The reformed constitution of 2010 stipulates the Tongan government as a 'constitutional monarchy' and no longer a 'constitutional government'.²⁴⁶ The primary recommendation of the CEC was that the King and Privy Council should no longer be part of the executive government of Tonga, that Cabinet is the sole executive branch of government²⁴⁷ which is answerable to the Legislative Assembly.²⁴⁸ Consequently, the King and Privy Council are no longer part of the executive branch of government.²⁴⁹ Another notable change in the constitutional reform of 2010 was that the monarch "reigned" and no longer "governed" while his ministers remained responsible.²⁵⁰ The implications of these reforms were that King no longer had the power to appoint a Cabinet or the Prime Minister. The King must now appoint a Prime Minister recommended by the majority of the Legislative Assembly.²⁵¹ The King must appoint and revoke Cabinet ministers as recommended by the Prime Minister.²⁵² The King must also appoint governors to Ha'apai and Vava'u as recommended by the Prime Minister.²⁵³ Although no longer part of the executive branch of government, the King and Privy Council retain all executive

²⁴⁴ At s 31.

²⁴⁵ At s 50.

²⁴⁶ At, s 30.

²⁴⁷ Constitution of Tonga, s 31.

²⁴⁸ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 29.

²⁴⁹ Constitution of Tonga, s 31.

²⁵⁰ At s 41.

²⁵¹ At s 50A.

²⁵² At s 51.

²⁵³ At s 54.

powers that were not transferred to Cabinet.²⁵⁴ The King gained a new executive power to appoint an Attorney General after receiving advice from the Judicial Appointments and Discipline Panel.²⁵⁵

3.1.16 Nobles:

Little changed with regards to the rights of the nobility. Nobles retained nine seats in parliament,²⁵⁶ the privilege of one of them to be voted Speaker of Parliament,²⁵⁷ and the exclusive right to vote on laws relating to the King, royal family, nobility, hereditary estates and titles.²⁵⁸ The new rights afforded to NRs were the right to vote for and be elected Prime Minister,²⁵⁹ and be appointed as a minister in the Cabinet.²⁶⁰

3.1.17 Commoners:

Regarding the legislature, the most significant change for commoners was that the number of People's Representatives increased from 9 to 17, while the number of Noble's Representatives remained at nine.²⁶¹ The other significant change was that elected People's Representatives could now be voted Prime Minister²⁶² or appointed to Cabinet.²⁶³

3.1.18 Land

The land tenure system remains unchanged, with the King retaining ownership of all Tongan land and the Nobles and *matapule* (chiefs) holding hereditary estates.²⁶⁴ Tongan males over 16 possess the right to apply for a tax or town allotment.²⁶⁵ Although women of the noble class cannot hold a title or estates, both

²⁵⁴ At s 51.

²⁵⁵ At s 31A.

²⁵⁶ At s 60.

²⁵⁷ At s 61.

²⁵⁸ Constitution of Tonga, s 67.

²⁵⁹ At s 50(A)(1).

²⁶⁰ At s 51(2).

²⁶¹ At s 60.

²⁶² At s 50(A)(1).

²⁶³ At s 51(2).

²⁶⁴ At s 104.

²⁶⁵ At s 113.

can be inherited through them.²⁶⁶ Women of the commoner class are not entitled to any land, nor can any land devolve through them.²⁶⁷

THE AUTHORITY TO RATIFY CEDAW

In January of 2015, Hon. Akilisi Pohiva, long-time advocate for human rights and democracy, became Tonga's first Prime Minister elected from the commoner class.²⁶⁸ On 16th March 2015, Pohiva announced in Parliament that his Cabinet had approved for Tonga to ratify CEDAW.²⁶⁹ The Hon Fe'ao Vakata, Tonga's Minister for Internal Affairs, announced on March 9 2015, at the 59th UN Commission on the Status of Women at the UN General Assembly Hall, that Tonga had decided to ratify CEDAW with reservations.²⁷⁰ A delegation from Tonga travelled to New York with the Minister for the announcement, which included women's rights activist Ofa Likiliki (director of Women's and Children's Crisis Centre in Tonga) and Tupou Fakakovikaetau (Principal Officer Womens' Affairs, Ministry of Internal Affairs).²⁷¹ Likiliki expressed extreme happiness at Tonga's commitment to CEDAW, and fellow Pacific Island representatives at the UN congratulated the Minister on Tonga's decision to ratify CEDAW.²⁷²

In June 2015, a memorandum from His Majesty declared that his Cabinet ministers were instructed to annul Tonga's ratification of CEDAW.²⁷³ The implication was that the Cabinet did not have the legal authority to ratify CEDAW; this was a prerogative of the King. Even if Pohiva's Cabinet had ratified the Convention, the monarch considered this unconstitutional. The relevant provision of the Constitution is section 39:

²⁶⁶ At s 111.

²⁶⁷ Land Act, s 82.

²⁶⁸ Steven Ratuva "Triumph of living Tongan martyr likely to ignite fresh Tongan reform Hopes" (14 January 2015) Pacific Media Centre Te Amokura <<http://pacific.scoop.co.nz/tag/akilisi-pohiva/>>

²⁶⁹ Legislative Assembly of Tonga, *Hansard Record No.1/2015* (16 March 2015) at 40.

²⁷⁰ Matangi Tonga Online "Tonga's Decision Welcomed at the UN" (March 10, 2015) <<https://matangitonga.to/2015/03/10/tongas-decision-welcomed-un>>

²⁷¹ Above n 270.

²⁷² Matangi Tonga Online, above n 270.

²⁷³ Bruce Hill "King of Tonga annuls CEDAW" ABC Radio Australia (30 June 2015) <<http://www.abc.net.au/news/2015-06-30/king-of-tonga-annuls-cedaw/6584744>>

It shall be lawful for the King to make treaties with Foreign States provided that such treaties shall be in accordance with the laws of the Kingdom. The King may appoint his representatives to other nations according to the custom of nations.

Interviews revealed two contrasting views on the matter of who between the King and Cabinet had the authority to ratify CEDAW.

3.1.19 The King Has The Constitutional Power To Ratify Treaties.

Interview participants who believed that Pohiva's Cabinet did not have the power to ratify CEDAW stated that s 39 of the Constitution confers this right on the King,²⁷⁴ that even though there was doubt over whether CEDAW qualified as a treaty as per s 39, "all international treaties or conventions are to be signed off by the King, in practice a treaty is the same as a convention."²⁷⁵ Participants also expressed that as s 39 was not amended as part of the 2010 reforms "then it was not meant to change... This power was preserved."²⁷⁶ Another participant summed up the general gist of these views as:²⁷⁷

"It is up to his majesty to decide whether or not to ratify. It is the reserved prerogative of the King to sign international treaties on behalf of Tonga as per section 51 (7) of the constitution."

Section 51 (7) states:

The term "executive authority" in sub-clause (1) excludes all powers vested in the King or the King in Council, whether by this Constitution, or any Act of the Legislative Assembly, any subordinate legislation, and Royal Prerogatives.

Section 51 (7) stipulates that executive powers possessed by the King, as set out in the Constitution, are not considered devolved to the executive or Cabinet. Section 39 remains unchanged in the current version of the constitution; therefore ratifying conventions like CEDAW is an executive power that only the King has the authority to exercise.

²⁷⁴ Phase 1 Interview 27.

²⁷⁵ Phase 1 Interview 21.

²⁷⁶ Phase 2 Interview 5.

²⁷⁷ Phase 1 Interview 8.

3.1.20 Cabinet Has The Constitutional Power To Ratify Treaties

Before 2010, the practice was for Cabinet to ratify international treaties; this was a Cabinet appointed and dismissed by the monarch at will. Following the reforms, where Cabinet is now accountable to the Legislative Assembly, Privy Council has insisted that it is for them to decide what treaties Tonga should ratify. Pohiva's government acted on the belief that Cabinet continues to have the power to ratify treaties, challenging Privy Council's claim; however, they have since gone silent on the matter, allowing Privy Council to continue ratifying treaties for Tonga. One participant stated that they should not:²⁷⁸

“It seems the government has given up on Cabinet possessing the right to ratify international treaties and have allowed the King power to do so. They should take this issue to court to clarify who has the right to ratify international treaties....”

POST-2010 REFORMS: IMPLICATIONS

The contrasting views on the allocation of executive powers post reforms and specifically the inability of the Cabinet to ratify treaties on behalf of the nation necessitated an examination of the reform itself. Established earlier is that the 1875 constitution founded a patriarchal state; the following highlights that in effect, the reforms left in place that patriarchal state with the King and nobility retaining the bulk of rights and commoners with less, whilst the domination of women by men, another aspect of the Tongan patriarchal state, was not addressed in the constitutional reforms.

It was clear from participant responses that there are two contrasting views of the 2010 Constitutional reform in Tonga, those satisfied with the outcomes of the constitutional and legal amendments who label the form of government in Tonga at present a “Tongan version of democracy”²⁷⁹ a political system unique to Tonga and befitting the Tongan context. Apparent from interviews is that the Tongan version of democracy maintains a patriarchal state: the traditional dominance of

²⁷⁸ Phase 1 Interview 4.

²⁷⁹ Phase 3 Interview 10.

the ruling classes (monarch, nobles) over the commoner class general population. Those unsatisfied with the reforms express the need for further changes to the Constitution and legal framework, insisting that democratic reform for Tonga continues to be an ongoing process. Those dissatisfied with the reforms desire democracy, which the researcher believes to mean that the Tongan patriarchy should be destroyed, recognising that people from all classes possess an equal measure of *tapu* and thus equal rights and powers to govern the nation.

3.1.21 Satisfied With Reforms

3.1.21.1 Never Intention To Completely Break Down The Patriarchy And King's Dominance.

Those satisfied with the reforms express that it was never the intention to remove all the King's executive powers. One participant stated:²⁸⁰

“The aim of the reforms was to divest some of his majesty's prerogative powers, not all, to the executive. It was not the aim to remove all the prerogatives, a substantial amount yes, but not all.”

Others in support of the King retaining some executive powers justified this position by claiming the King's remaining powers were minor²⁸¹ supported by other participants whose opinion was that the reforms were “to shift the balance of power ensuring the commoners had the capacity to elect most of the Parliament and thus the executive.”²⁸² The objective appears to be understood as not a complete removal of the King's powers to be shared amongst the People's Representatives, but only some of that power, the significance of those remaining powers to be determined in later paragraphs. The final CEC report recommended that the King and Privy Council no longer be part of the executive branch of the Tongan government;²⁸³ however, the report is silent as to whether the King should retain executive powers customarily exercised by the executive branch.

²⁸⁰Phase 3 Interview 10.

²⁸¹ Phase 3 Interview 12.

²⁸² Phase 3 Interview 8.

²⁸³ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 29.

3.1.21.2 Constitutional Reforms Have Allowed The People The Political Power Necessary To Govern

Participants that supported the status quo, the Tongan patriarchal state, argued that the increase of the number of People's Representatives from nine to 17 guarantees that the People's Representatives have sufficient numbers to form a government and wield political power. One participant expressed, "the aim of the 2010 reform was to give political power to the people by increasing People's Representatives from 9 to 17"²⁸⁴ another stated that:²⁸⁵

"The aim of the 2010 reforms was for the people to have the power to make political decisions in the country... to be in the control of the Legislative Assembly and Cabinet"²⁸⁶

another summed up these views by saying:²⁸⁷

"The purpose of the 2010 reforms has been achieved. In 2010 power was given voluntarily by the King back to the people and their elected representatives. Normally it is taken by force."

Throughout discussions about what political reform should look like in Tonga, the focus has been on increasing the number of People's Representatives in the Legislative Assembly. This may be explained by the fact that historically the People's Representatives were rendered powerless in the Legislative Assembly as they were outnumbered by members of the Privy Council and Noble's Representatives, whose interests and votes were often aligned. Increasing the number of People's Representatives from nine to 17 was believed by many to have allowed the People's Representatives to form a government and wield political power. However, the nine Noble's Representatives (elected by 33 nobles) remain influential and their wishes determinative in Tongan politics. The People's Representatives require 14 seats to form a government; however, the experience has been that a minority of five elected People's Representatives could form a government with the nine Noble's Representatives.

²⁸⁴ Phase 3 Interview 5.

²⁸⁵ Phase 3 Interview 11.

²⁸⁶ Phase 3 Interview 6.

²⁸⁷ Phase 3 Interview 11.

In the first elections after the 2010 reforms, Akilisi Pohiva's PTOA party won 12 out of 17 People's Representatives seats elected by the general public; however, a Noble, Lord Tuivakano, was voted Prime Minister and formed government when a minority of five People's Representatives colluded with the nine Noble's Representatives to give him 14 votes over Pohiva's 12 votes.²⁸⁸ In terms of the following government, when Prime Minister Akilisi Pohiva died in September of 2019, a member of his government, Pohiva Tuionetoa, crossed the floor and formed a new party with five other People's Representatives and with the support of the nine Noble's Representatives was voted Prime Minister.²⁸⁹ The leader of the majority remaining eight PTOA People's Representatives, Acting Prime Minister Semisi Sika, lost the vote 8-15. In January of 2021, the nine remaining PTOA people's representatives initiated a vote of no confidence in Prime Minister Tuionetoa; the motion was defeated 9-13, with the 9 Noble's Representatives casting their votes in favour of Tuionetoa along with only four People's Representatives.²⁹⁰ The government cannot be accurately described as accountable to the people.

The increase in the number of People's Representatives does not guarantee that the majority of the People's Representatives will govern and wield political power. The NRs can oust a majority of the PRs and facilitate a minority of the PRs to govern in a coalition with members from their ranks. The traditional privilege of the chief class to govern remains intact within the nobility of today. The government of Lord Tuivakano and Pohiva Tuionetoa were not governments representative of the

²⁸⁸ "Lord Tu'ivakano becomes new Tongan prime minister" (21 December 2010) BBC News < <https://www.bbc.com/news/world-asia-pacific-12046936>> and Matangi Tonga Online "Tu'ivakano becomes Prime Minister Designate" (January 21, 2012) < <https://matangitonga.to/2012/01/21/tuivakano-becomes-prime-minister-designate>>

²⁸⁹ "Tonga MPs choose Tu'i'onetoa as new prime minister" (27 September 2019) RNZ < <https://www.rnz.co.nz/international/pacific-news/399761/tonga-mps-choose-tu-i-onetoa-as-new-prime-minister>>

²⁹⁰ "Tonga's PM Pohiva Tu'i'onetoa survives motion of no confidence" (13 January 2021) PMN News < <https://pacificmedianetwork.com/articles/tongas-pm-pohiva-tuionetoa-survives-motion-of-no-confidence>>

people. Tuionetoa's government boasted 3 NRs in Cabinet and none of the nine PTOA People's Representatives.²⁹¹

The CEC report recommended that there shall remain nine Noble's Representatives elected by the nobles in the Legislative Assembly.²⁹² No justification is given for the reserved noble seats apart from the reference for the need for an effective opposition as a check on government dictatorship.²⁹³ The nobles are thus viewed as an opposition to the government; however, Noble's Representatives represent the interests of the nobles and not that of any people opposed to the elected government. The nobles have, in fact, played crucial roles in forming a government as opposed to remaining as an opposition faction outside of Cabinet.

A Commonwealth expert on Constitutional law was commissioned twice by two different governments (Tuivakano Government 2010-2014 and Pohiva Government 2014-2019) to report on Tonga's Constitutional reforms. Recommendations made by the expert were for the Legislative Assembly to be a genuinely democratic chamber, s 60 of the constitution requires amending to establish that all electors of the Kingdom elect the nine NRs seats.²⁹⁴

The dictate that the Speaker of the Legislative Assembly is a Noble is justified in the CEC report as "appropriate with the Tongan context".²⁹⁵ This may be interpreted as a reference to the political privilege and rights traditionally accorded to the ruling chief classes. In Fiji, the Speaker of Parliament is not a member of Parliament but is elected by Parliament.²⁹⁶

The 2010 constitutional reforms aimed to vest executive power in Cabinet, whereas these executive powers were previously vested in the monarch and Privy Council.

²⁹¹ "Diverse Tonga Cabinet aims to end division" (30 September 2019) RNZ <<https://www.rnz.co.nz/international/pacific-news/399897/diverse-tonga-cabinet-aims-to-end-division>>

²⁹² Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 5.

²⁹³ At [183].

²⁹⁴ Peter Pursglove, Review of the Constitution of the Kingdom Tonga (2017) at 18.

²⁹⁵ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at [186].

²⁹⁶ Constitution of the Republic of Fiji, s 77.

The CEC recommended that the government of Tonga be renamed a “Constitutional Monarchy”²⁹⁷ to reflect the primary recommendation they made; that the executive government is a Cabinet that answers to the Legislative Assembly with the King and Privy Council no longer part of the Executive.²⁹⁸ Consequently, s 30 of the Constitution now defines the form of government in Tonga as a “Constitutional Monarchy” (previously a constitutional government). A constitutional monarchy is understood to embody principles of democratic government where the elected Prime Minister and Ministers govern on behalf of the sovereign.²⁹⁹ A constitutional monarchy is described as a “sovereign who reigns but does not rule” powers of a constitutional monarch are exercised according to constitutional provisions or conventions and not at the sovereign’s discretion.³⁰⁰ Section 51 of the Constitution devolves executive authority to Cabinet. However, s51 (7) preserves the executive powers of the King and Privy Council. In terms of the King’s executive powers, the CEC report stated that other powers of the monarch conferred by the constitution fall outside their terms of reference. As such, they did not make any recommendations regarding them.³⁰¹ The CEC recommended that the Privy Council shall no longer have any authority to pass ordinances or any other legislation, have no judicial function, no longer sit in the Legislative Assembly and is a body appointed by the King at his pleasure to advise him in the discharge of his functions.³⁰²

The constitutional reforms have not established a constitutional monarchy; the present reality is that the executive branch of government continues to feature the King and Privy Council at its apex, who oversee, approve or override the administrative decisions of the elected government. Tonga cannot be accurately described as a constitutional monarchy or be viewed as a system reflecting democratic governance. This is the reality of a patriarchal state; those in the dominant ruling classes continue to override the powers of the elected

²⁹⁷ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 29.

²⁹⁸ At 29.

²⁹⁹ Peter Purslove Review of the Constitutional Provisions Relating to the Judicial Structure of the Kingdom of Tonga (2014) at 23.

³⁰⁰ Purslove, above n 296, at 13.

³⁰¹ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 27.

³⁰² At 36.

representatives of the common people. A constitutional monarchy is the antithesis of the patriarchal state.

The common practice in other constitutional monarchies is for the Privy Council to comprise the monarch and the ministers of government, who would meet regularly for the monarch to exercise what political writers have determined to be his political right to be consulted, to encourage and to warn.³⁰³ Under the Westminster Model of constitutional monarchy, the Prime Minister decides the membership of the Privy Council.³⁰⁴ In Tonga, the sovereign appoints whomever he wishes to the Privy Council³⁰⁵ and the King and Privy Council exercise significant political powers. Samoa has an Executive Council consisting of the Head of State, the Prime Minister and Ministers.³⁰⁶ In Samoa, the Head of State is elected by the legislative assembly³⁰⁷ to always act on the advice of the Prime Minister, Cabinet or relevant Minister within seven days of receiving the advice.³⁰⁸ In Fiji, the President is the Head of state³⁰⁹ and exercises their powers only under the direction of the Cabinet, Minister or another body authorised by the Constitution.³¹⁰ The Head of State is elected by Parliament.³¹¹ In these neighbouring jurisdictions, the position of Head of State which is equivalent to the monarch in a constitutional monarchy, only ever exercises its powers according to the mandate of the elected government.

3.1.22 Dissatisfied With The Reforms

3.1.22.1 To Destroy The Hegemony Of The Elite And The Tongan Patriarchy, The Powers Of The King And Privy Council Must Be Vested In Cabinet.

Those dissatisfied with the structure of government established by the political reforms insist that all executive powers that remain with the King and Privy Council

³⁰³ Pursglove, above n 296, at 15.

³⁰⁴ Pursglove, above n 301, at 24.

³⁰⁵ Constitution of Tonga, s 50.

³⁰⁶ Constitution of the Independent State of Samoa, s 39.

³⁰⁷ At s 18.

³⁰⁸ Constitution of the Independent State of Samoa, s 26.

³⁰⁹ Constitution of the Republic of Fiji, s 81.

³¹⁰ At s 82.

³¹¹ At, s 84.

be transferred to Cabinet or that the Cabinet replaces the Privy Council. One participant expressed:³¹²

“At present, the King and the Privy Council’s powers to govern must be removed and vested in Cabinet in order for this government to function. The Privy Council ceased to be a body making decisions to govern the country in 2010; they are supposedly only a body appointed to advise the King”.

Another expanded on this by stating:³¹³

“The purposes of the 2010 reform were not achieved as representatives of the people are able to be elected as Prime Minister and into Cabinet but this does not mean that these representatives are able to really govern. The powers given to the elected government in the 2010 constitutional reforms didn’t achieve the purposes of the reform.”

Another participant stated the only possible remedy was new reforms:³¹⁴

“The solution to all these problems the government is having is new reform. To make true Tupou V intentions for the reform which was for the people to govern. This can only be done by removing the King’s remaining authority and powers in the constitution. The people now only have half the power. We need new bills to amend the constitution to allow the people to fully govern. Its not a removal of the King’s authority but a change of authority, to completely vest authority in the people.”

The paragraphs that follow discuss executive powers that should devolve to an elected government in order to destroy the patriarchal state and establish a government wherein the People’s Representatives can efficiently and effectively govern.

³¹² Phase 3 Interview 8.

³¹³ Phase 3 Interview 9.

³¹⁴ Phase 3 Interview 3.

3.1.22.2 The Power To Ratify Conventions :

The PTOA government's failure to ratify CEDAW has made it clear that the executive branch of government in Tonga currently holds no authority to ratify either treaty or convention. The legal capacity to ratify international law is an executive power retained by the monarch. On the advice of the Privy Council, the monarch can thwart any Cabinet decision to ratify international law and treaties. The current procedure for ratifying international treaties is that the final decision lies with the King in Privy Council. Should a Ministry desire a treaty to be signed or ratified, a proposal is submitted to Cabinet recommending the signing or ratification of the relevant treaty, should Cabinet approve the recommendation, it is remitted to the Lord Privy Seal to be put before Privy Council, should Privy Council approve the Ministry of Foreign affairs is instructed to process the signature or ratification.³¹⁵ The government of the day cannot perform this significant executive function and cannot question Privy Council's decision-making regarding international treaty-making. In Commonwealth parliamentary democracies, foreign relations are a fundamental function of the executive that is vested in the Prime Minister and Cabinet.³¹⁶ In Fiji, the authority to ratify treaties and conventions lies with the executive but must be approved by parliament to bind the state.³¹⁷ In practice, the Fijian Prime Minister ratifies international treaties that have been approved by parliament.³¹⁸ The Samoan Prime Minister ratifies international treaties on behalf of Samoa once approved by Cabinet.³¹⁹ The Head of State in Samoa and Fiji cannot act of their own accord to ratify treaties on behalf of their respective nations.

The report of the Commonwealth expert recommended that for Tonga's constitution to reflect democratic governance and constitutional monarchy, Clause

³¹⁵ Pursglove, above n 296, at 7.

³¹⁶ At 7.

³¹⁷ Constitution of the Republic of Fiji, s 51.

³¹⁸ See "Fiji ratifies UN nuclear weapon ban treaty" (7 July 2020) ICAN <https://www.icanw.org/fiji_ratifies_un_nuclear_weapon_ban_treaty>

³¹⁹ See Galumalemana Noumea L. Teueli Parliamentarians For Global Action Regional Pacific Island States Parliamentary Workshop On Mobilizing Parliamentarians To Advocate For Improved Compliance With The Un Programme Of Action Addressing The Illicit Trade In Small Arms And Light Weapons < https://www.pgaction.org/pdf/2018-04-27-SALW-Workshop/samoa_attorney-general-remarks.pdf>

39 of the Constitution should be amended to prescribe that the King acts on the advice of the Prime Minister and Cabinet in making foreign treaties.³²⁰ Had this been implemented as part of the constitutional reforms of 2010, CEDAW would have been successfully ratified by the PTOA government in 2015.

The report also recommended that the King appoint representatives to foreign nations on the advice of the Prime Minister and Cabinet, as in other democratic states where the Head of state, such as the monarch, makes diplomatic appointments on the advice of the Prime Minister and Cabinet.³²¹ Diplomats for Fiji are appointed by the Ministry of Foreign Affairs,³²² diplomatic appointments for Samoa must be approved by Cabinet.³²³

3.1.22.3 The Power To Appoint The Attorney General, Lord Chancellor And Police Commissioner

The government does not have the authority to appoint the Attorney General (AG), the Police Commissioner or the Lord Chancellor. With regards to the AG, Lord Chancellor and Police Commissioner, Prime Minister Pohiva had proposed individuals for the King to appoint to these positions which the King did not accept nor appoint.

3.1.22.3.1 Attorney General

The King appoints the Attorney General (AG) on the advice of the Judicial Appointments and Discipline Panel (JADP), a committee of the Privy Council.³²⁴ The current arrangement is problematic; the principal legal advisor for government is not a member of the legislature or Cabinet, and issues of conflict of interest and accountability arise when considering that the AG is a member of the JADP who recommends the AG appointment.³²⁵ The current AG is a Law Lord and member of

³²⁰ Pursglove, above n 296, at 10.

³²¹ Pursglove, above n 296, at 10.

³²² "Two former Fiji diplomats appointed for diplomatic postings"(13 March 2008) RNZ <<https://www.rnz.co.nz/international/pacific-news/175960/two-former-fiji-diplomats-appointed-for-diplomatic-postings>>

³²³ "Samoa government appoints former central bank governor as new NZ High Commissioner" (24 January 2012) RNZ <<https://www.rnz.co.nz/international/pacific-news/202110/samoa-government-appoints-former-central-bank-governor-as-new-nz-high-commissioner>>

³²⁴ Constitution of Tonga, s 31A.

³²⁵ Constitution of Tonga, s 83C.

the Privy Council and the JADP,³²⁶ the latter is the committee responsible for recommending herself to the position. The government has no say in the appointment of its principal legal advisor; the commonwealth expert recommends that the AG is a member of both the Legislative Assembly and Cabinet, and may be an elected representative or appointed to the position and concurrently hold the position of Minister of Justice.³²⁷ Powles³²⁸ has written that the position of the AG is unworkable in Tonga; he directs attention to the role of the AG in Vanuatu, whereby the AG is required by law to attend all Cabinet meetings despite not being a Cabinet member and not having any right to vote.³²⁹ In Fiji, the Attorney General is appointed by the Prime Minister and sits in Parliament and Cabinet; if there are no elected members with sufficient qualifications for the post, the Prime Minister may appoint a person who is not a member of Parliament, but this person shall not be entitled to vote.³³⁰ In Samoa, the Attorney General is appointed by the Head of State on the advice of the Prime Minister but is not a member of Parliament or Cabinet.³³¹

The CEC recommended that the King appoint the AG on the advice of the Judicial Services Commission.³³² However, the reforms vested the power to appoint the AG in the King in Privy Council after receiving advice from the JADP.³³³ In 2014, following Pursglove's recommendations, Bill 11 was submitted, which prescribed that the office of AG would now be appointed by a Judicial and Legal Services Commission as a Minister of the Crown and a member of Cabinet and the legislature; although passed by the Legislative Assembly, the Bill did not receive royal assent.³³⁴

³²⁶ Matangi Tonga Online "King appoints new Attorney General" (March 27 2019) <<https://matangitonga.to/2019/03/27/king-appoints-new-attorney-general>> and Matangi Tonga Online "King appoints three new Law Lords" (June 30 2017) <<https://matangitonga.to/2017/06/30/king-appoints-three-new-law-lords>>

³²⁷ Pursglove, above n 301, at 22.

³²⁸ Guy Powles Why So Complicated? The Role And Status Of The Attorney- General In Pacific Island States, And The Case Of Tonga (Pacific Law Students Law and Culture Conference, Wellington 2016)

³²⁹ State Law Office Act 1998 (Vanuatu).

³³⁰ Constitution of the Republic of Fiji, s 96.

³³¹ Constitution of the Independent State of Samoa, s 41.

³³² Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 44.

³³³ Constitution of Tonga, s 31A.

³³⁴ Pursglove, above n 296, at 4.

In 2019 a second bill³³⁵ was introduced by the PTOA government proposing that the King appoint the AG on the advice of the Judicial and Legal Service Commission. The Act of the Constitution (Amendment) (No.2) 2019 sought to establish the Office of the Director of Public Prosecutions, who would take on responsibility for criminal prosecutions, which are currently the responsibility of the AG.

3.1.22.3.2 Police Commissioner

The government also expressed frustrations with the Police Commissioner, stating that they could not address the problem of drugs³³⁶ in Tonga largely because the Police Commissioner was appointed on the recommendation of the JADP and accountable to the King in Privy Council.³³⁷ The government lacked the legal authority to direct the Police commissioner to investigate and make arrests. Mateni Tapueluelu, the Minister of Police at the time, had gone so far as to tender his resignation over frustrations with the control of the Ministry of Police, which lies with the Police Commissioner.³³⁸ The Tonga Police (Amendment) Bill 2014 sought to have Cabinet recommend the Police Commissioner for the monarch to appoint in place of the JADP. The bill did not receive royal assent.³³⁹ The Tonga Police (Amendment) Bill 2019 proposed to have the Police Commissioner appointed by Cabinet on the recommendation of the Public Service Commission.

In Samoa, the Head of State appoints the Commissioner of the Samoa Police Service under the advice of Cabinet.³⁴⁰ In Fiji the Commissioner of Police is appointed by the President on the advice of the Constitutional Offices Commission following consultation with the Minister responsible for the Fiji Police Force.³⁴¹

³³⁵ Act of the Constitution of Tonga (Amendment) Bill 2019.

³³⁶ Tonga has a growing drug issue, see recent reports, Matangi Tonga Online “14 kilos of cocaine seized in Vava’u operation” (August 11 2021) < <https://matangitonga.to/2021/08/11/14-kilos-cocaine-seized-vava-u-operation>>

³³⁷ Tonga Police Act, s 10.

³³⁸ Matangi Tonga Online “PM turns down Mateni Tapueluelu’s resignation over control of Police” (February 28 2018) < <https://matangitonga.to/2018/03/01/pm-turns-down-mateni-tapueluelu-s-resignation-over-control-police>>

³³⁹ Pursglove, above n 296, at 4.

³⁴⁰ Police Service Act 2009 (Samoa), s 12.

³⁴¹ Constitution of the Republic of Fiji, s 129.

3.1.22.3.3 Lord Chancellor

The Lord Chancellor has been described as an administrative position equivalent to that of a Minister performing the functions of the Ministry of Justice.³⁴² During negotiations for the reforms, King George Tupou V expressed his wishes that he should retain his judicial functions; as such, the office of the Lord Chancellor is appointed by the King in the Privy Council on the advice of the JADP,³⁴³ all judges of the Court of Appeal, Supreme Court and Land Court appointed and dismissed by the sovereign on the advice of the JADP. There were no public discussions with regard to reforming the judiciary, and the CEC recommended that the King should appoint judges to the Court of Appeal and Supreme Court on the advice of the Judicial Services Commission.³⁴⁴ Subsequent to the reforms, there have been various challenges and operational issues encountered with the new structure of the judiciary.³⁴⁵

Pursglove recommended that Section 83B (establishing the office of the Lord Chancellor) be repealed and the functions of the Lord Chancellor be returned to the Minister of Justice; that provisions be inserted into the constitution that would guarantee judicial independence (security of tenure for judges, immunity for the judiciary from legal action, protection of pensions and salary of judges) and the budget of the courts be included in the Ministry of Justice's total budget per relevant financial legislation.³⁴⁶

The Act of the Constitution of Tonga (Amendment) Bill 2014 abolishes the office of the Lord Chancellor but did not receive royal assent. The Act of the Constitution of Tonga (Amendment) Bill 2019 sought to remove the Office of the Lord Chancellor and the Judicial Appointments and Discipline Panel, establishing a Judicial and Legal Service Commission that, in place of the JADP, was to advise the sovereign on the appointment of judicial and legal officers. The Magistrates Court (Amendment) Bill 2019 sought to have magistrates' appointment, discipline, and dismissal on the

³⁴² Pursglove, above n 301, at 4.

³⁴³ Constitution of Tonga, s 83B.

³⁴⁴ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 29.

³⁴⁵ Act of the Constitution of Tonga (Amendment) Bill 2019, Explanatory notes.

³⁴⁶ Peter Pursglove, above n 301, at 15.

advice of the Legal Services Commission in place of the JADP. None of these bills have been enacted.

In Fiji, the Chief Justice and President of the Court of Appeal are appointed by the President on the advice of the Prime Minister following consultation with the Attorney General.³⁴⁷ The Judges of the Supreme Court, the Justices of Appeal and the Judges of the High Court are appointed by the President on the recommendation of the Judicial Services Commission following consultation with the AG.³⁴⁸ In Samoa, the Chief Justice of the Supreme Court are appointed by the Head of State on the advice of the Prime Minister.³⁴⁹ The Judicial Service Commission is responsible for recommending all other judicial officers appointed by the Head of State.³⁵⁰

3.1.22.4 Executive Powers Of The Prime Minister

Regarding the executive powers that were directly devolved to the Prime Minister, the PTOA government expressed difficulties in exercising these powers. In terms of recommending and revoking Ministerial appointments, the Constitution does not outline a timeframe for his majesty to carry out the recommendations from the Prime Minister.

The Prime Minister nominated Losaline Ma'asi as the new Minister for internal affairs after the Prime Minister revoked Akosita Lavulavu's recommendation to the position on April 11 2018, due to fraud charges against her. The Prime Minister had written to the King on April 24 recommending that Hon Ma'asi be appointed Minister of Internal Affairs. The Prime Minister had also previously written to the King informing his majesty of Lord Maafu's resignation from Minister of Lands on March 2 and recommended that Rev Dr Mohenoa Puloka be made Governor of Haapai.³⁵¹ Losaline Ma'asi's appointment received 'approval' by the King two

³⁴⁷ Constitution of the Republic of Fiji, s 106.

³⁴⁸ At s 106.

³⁴⁹ Constitution of the Independent State of Samoa, s 65.

³⁵⁰ At s 72.

³⁵¹ Matangi Tonga Online "Losaline Ma'asi up for Minister of Internal Affairs" (May 8 2018) <<https://matangitonga.to/2018/05/08/losaline-maasi-minister-internal-affairs>>

months later, in late June 2018, alongside the appointment of Puloka as governor of Ha'apai.³⁵²

The PTOA government expressed that the long periods between recommendation and the King carrying out the formal appointment impedes the government's ability to function as a Cabinet, and the relevant ministry is left in limbo without a minister. There is a development towards the King having to 'approve' of the recommendations made by the Prime Minister, which may lead to a situation where the King effectively vetos a ministerial recommendation by deferring the appointment, leaving the Prime Minister no choice but to recommend another for the position.

The King's right to appoint the offices of Prime Minister and Ministers is a formality and does not require the monarch's sanction; the constitution should prescribe a time frame mandating when the King is to formally make such appointments. For example, in Samoa, the Head of State has seven days to act on the recommendations of the Cabinet or Prime Minister. The Head of state appoints ministers at the recommendation of the Prime Minister as soon as possible if the office of any minister becomes vacant.³⁵³In Fiji, the Prime Minister, appoints and dismisses ministers by notice published in the gazette.³⁵⁴

3.1.23 Lawmaking

3.1.23.1 In The Tongan Patriarchy, The People Cannot Make Laws As The King Holds That Power

Participants expressed frustration over the fact that the People's Representatives and government could not pass laws in the Assembly despite having a majority because of the King's authority to block laws on the advice of the Privy Council. One participant articulated:³⁵⁵

³⁵² "New Cabinet Minister and Governor Appointed in Tonga" (June 26 2018) LOOP <
<https://www.looptonga.com/tonga-news/new-Cabinet-minister-and-governor-appointed-tonga-77713>>

³⁵³ Constitution of Tonga, s 32.

³⁵⁴ Constitution of the Republic of Fiji, s 92.

³⁵⁵ Phase 3 Interview 8.

“The current issue is the King’s powers to assent to laws. The executive dominated by commoners can pass legislation but the King has the right to override this. The King is not refusing assent to laws but deferring or declining assent. If Privy Council doesn’t like a proposed piece of legislation the King declines to assent. The King is able to block legislation this way. The King has the authority to prevent laws from being made. The power the King has to veto law is constrained by the constitutional reforms of 2010 where the King no longer governs but reigns. The King is only reigning, the power to refuse to assent or to veto laws is effectively the King still governing. Assenting should only be a formality.”

One participant stated that “The King still holds the power to make laws in Tonga. This should be a function of the people’s representatives.”³⁵⁶ Another participant stressed the importance of the people having the complete authority to determine laws warning that “Laws that govern the people should come from the people otherwise there will be conflict.”³⁵⁷ Another alluded that the power the people possess in the law making process is illusory, stating that:³⁵⁸

“People can make laws through their representatives in Parliament but the King has the overriding power to make laws in Tonga. It is all for show because the bottom line is the King is in charge.”

The Constitution stipulates that all acts must bear the King’s signature,³⁵⁹ but the King has the power to refuse or reserve his royal assent.³⁶⁰ There are no constitutional constraints on the King’s right to assent. The monarch does not need to justify his veto of a particular bill. There are no prescribed timeframes wherein the monarch must assent or veto when bills are submitted for his signature. The CEC recommended that the King’s power to withhold his assent to law and dissolve legislative assembly at his pleasure be retained as a safeguard against unconstitutional acts by the government.³⁶¹

³⁵⁶ Phase 3 Interview 7.

³⁵⁷ Phase 3 Interview 2.

³⁵⁸ Phase 3 Interview 9.

³⁵⁹ Constitution of Tonga, ss 41, 56.

³⁶⁰ At s 68.

³⁶¹ Constitutional and Electoral Commission Kingdom of Tonga, above n 222, at 30.

Currently, the exercise of reserving royal assent is under the advice of the unelected Privy Council. On the direction of the Privy Council, the monarch can frustrate the legislature's will to pass legislation by withholding or deferring assent. Pursglove recommends that the power of the King to veto a law can only be used twice and cannot be exercised a third time against a single bill.³⁶² It may be helpful to require that refusal to assent may only be based on the justification that the proposed legislation breaches provisions of the constitution. The constitution should also prescribe a timeframe by which the King's royal assent shall be granted. The limit on how many times a vetoed bill can be discussed within a particular session should be removed.

Tonga is the only Pacific nation where the Head of State possesses the right to veto law without justification.³⁶³ In Fiji, after Parliament has passed a bill, the President has seven days to assent to the Bill.³⁶⁴ In Samoa, a bill that has been passed by Parliament must be presented to the Head of State for his assent and on the advice of the Prime Minister must declare whether he assents or refuses to assent to the bill.³⁶⁵

LAND TENURE SYSTEM

From pre-contact times, rights, privileges, and the authority to govern, make laws, adjudicate, and land ownership was the exclusive domain of the elite ruling chief classes. The constitution and written law conveyed on the commoner class individual legal rights, land rights and representation in the law-making body. However, per customary law, rights and authorities were directly proportional to rank; that is, the rights of kings trumped the rights of nobles, and the rights of nobles trumped the rights of the commoners. This form of inequality between the classes harks back to ancient Tonga. The kings and chiefs had a sacred essence or *tapu* due to their sacred blood that elevated their worth, rank and rights beyond

³⁶² Pursglove, above n 296, at 16.

³⁶³ Guy Powles "The Head Of State And The Legislature: The Power Of Veto In Pacific Island States And The Case Of Tonga" (2016) 22 CLJP/JDCP at 9.

³⁶⁴ Constitution of the Republic of Fiji, s 48.

³⁶⁵ Constitution of the Independent State of Samoa, s 60.

those of the commoners who had no sacred nature or lineage descending from the gods.

The advent of Christianity added another dimension of inequality to the Tongan social and legal structure: inequality between the sexes. The constitution granted men of the commoner class some rights whilst ensuring that women were discriminated against and subordinate to men. The sacred nature of women of the traditional ruling classes was not recognised in the codified laws and constitution. The familial, social, political and economic powers of the ruling class women were removed through patrilineal inheritance laws and the non-recognition of the *fahu* customs, female titles and female political powers. The women of the commoner classes had no rights to inherit or devolve land, which made them, at this point in history, the group with the most minor rights and the group most discriminated against by law.

The focus of the reforms was on the transfer of powers from traditional male leaders to elected male representatives of the people. The reforms transferred only part of the monarch's powers to the elected representatives. The hope of reformers to break down class barriers was not realised. The reforms did not address issues of inequality between the sexes.

3.1.23.2 Satisfied With Land Tenure Provisions In Constitution

The Constitution's provisions in Part III dealing with land discriminate against women. Section 113 confers on men only the right to be granted land:

“Tongan male subjects by birth of or over the age of 16 years may be granted town allotments and tax allotments out of estates granted in pursuance of this Constitution with the consent of or upon consultation with the estate holder and out of the lands of the Crown, by the Minister of Lands. Such allotments shall be hereditary and shall be of such size and at an annual rent as may be determined by law. A widow shall have the right to succeed according to law, to her deceased husband's tax and town allotments.”

Some participants approved of these discriminatory provisions; one female participant claimed:³⁶⁶

“There isn’t much land in Tonga and I don’t mind that my brother inherits the land. Tax allotments are worked by men so it is right that they inherit. The current land tenure system is according to God’s order and we must abide by it to have peace in our families and stability in the land.”

3.1.23.3 Dissatisfied With Land Tenure Provisions In The Constitution: Women Should Have Equal Rights To Land

Many others passionately advocated for changes to the land tenure system. One argued that “women should have the same rights to own land as men do. God made us all equal so we should all have equal rights.”³⁶⁷ Another emphasised the necessity of constitutional amendment, “I believe women should own land and this should be set out in the constitution, the constitution should be clear about equality between men and women”.³⁶⁸ One female participant complained that “The Chinese can own land here but not Tongan women. I would’ve liked to own land.”³⁶⁹ The issue of land ownership has developed into one of practicality, with one female participant stating, “Women should be able to own and inherit land. Many women are now working women. Women build homes on land but these homes will go to the men in the family when they marry.”³⁷⁰

3.1.23.4 Dissatisfied With Land Tenure Provisions In The Constitution: Women Should Have Some Land Rights.

Others believed women should be granted some land rights but not equal to those men possess. One participant articulated the general nature of this view by saying, “We should amend the constitution to allow women some rights to land. If there are no brothers or heirs, women should be able to inherit land.”³⁷¹

³⁶⁶ Phase 2 Interview 20.

³⁶⁷ Phase 2 Interview 1.

³⁶⁸ Phase 1 Interview 20.

³⁶⁹ Phase 1 Interview 25.

³⁷⁰ Phase 2 Interview 11.

³⁷¹ Phase 2 Interview 14.

In March 2012, the Royal Land Commission (RLC), established in 2008 by the King in Privy Council, published its final report.³⁷² Women's rights to land were the central concern identified by the Commission during public meetings in Tonga and abroad.³⁷³ Regarding women's rights to land, the RLC recommended that a woman who is a Tongan subject at the age of 21 be granted the right to apply for a grant of a town allotment to be registered in her name which would devolve according to succession laws.³⁷⁴ That provisions terminating an unmarried daughter's rights to her father's land on proof of her committing adultery or fornication be repealed.³⁷⁵ That provisions ending a widow's life interests in her deceased husband's land upon evidence of her committing adultery or fornication is repealed.³⁷⁶ That a married daughter is permitted to inherit her father's land if there are no male heirs.³⁷⁷ That widows are allowed to lease or mortgage land with the heir's consent.³⁷⁸ A deserted wife has the right to remain on the family land and home with her children until she remarries or dies.³⁷⁹ These recommendations are yet to be implemented into Tonga's Constitution or Land Act and were not part of the CEC's mandate and not a matter of consideration during the reforms of 2010.

The constitution remains an expression of power for the elite and a means of subverting women's rights. Despite the Tuivakano and Pohiva governments attempting to legislate constitutional amendments and legal provisions to allow for a more democratic form of government in Tonga, the King and Privy Council decide what bills are passed, and no bills facilitating further democratic reforms have received royal assent. As the wishes of King Tupou 1 determined the content of the 1875 Constitution, the reforms of 2010 reflect the will of King Tupou V. Pressures from the public have led to reforms, but the monarch determined the content of the reform; any further changes will require the support of the reigning monarch.

³⁷² Royal Land Commission, above n 188, at 3.

³⁷³ Royal Land Commission, above n 188, at 7.

³⁷⁴ At at 264.

³⁷⁵ At 264.

³⁷⁶ At 264.

³⁷⁷ At 264.

³⁷⁸ At 265.

³⁷⁹ At 265.

CONCLUSION

This chapter has shown that the 1875 Constitution initiated a Tongan patriarchal state; Christian values displaced customary laws and practices; the resulting system was one featuring the dominance of the elite classes and men. The PTOA government's inability to ratify CEDAW revealed the failure of the 2010 reforms to break down this patriarchal system; the monarch retains significant executive powers, a clear illustration of the elite ruling classes maintaining dominance in politics and law-making in Tonga. Regarding land laws, discriminatory constitutional and legal provisions remain unchanged, and women remain subjugated and discriminated against. CEDAW was not ratified because of patriarchal provisions in the Tongan constitution; for CEDAW and women's equality to be realised in Tonga, the patriarchal constitution requires further amendment. A sitting government must have executive authority to ratify international conventions such as CEDAW. The essence of Tongan patriarchy is the unequal *tapu* between the classes and sexes. The *tapu* that was once only afforded to the elite ranks of Tongan society, and the appurtenant rights, must be availed equally to all Tongans regardless of social class or sex.

CHAPTER FOUR: CULTURAL IMPEDIMENTS TO CEDAW

RATIFICATION

The primary objection to CEDAW in Tonga is premised on cultural reasons. The previous chapter outlines the creation of a patriarchal state through patriarchal laws; this chapter will highlight that the resistance to CEDAW is based on the desire to preserve Tonga's patriarchal culture, a culture that normalises discrimination against women and conflicts with CEDAW. Constitutional provisions that discriminate against women are now considered part of the Tongan cultural fabric. The patriarchal Tongan culture is protected, preserved and perpetrated by those most empowered by patriarchal structures; church leaders and the nobility. The chapter underscores how contemporary *fahu* practices cannot offer Tongan women any meaningful protection. The experiences shared in interviews by Tongan women reveal the dire impacts of living in a patriarchal culture, with uneducated poor rural commoner women suffering the most. Unlike women in neighbouring Pacific islands, Tongan women do not have the option to choose for themselves the rights availed in CEDAW, with the patriarchal elite in Tonga confusing them as to the meaning of CEDAW and quelling interest and support for the Convention through intimidation tactics.

THE 2009 OPPOSITION TO CEDAW

From Tonga's very first refusal to ratify CEDAW in 2009, the reason for the resistance has been founded on cultural concerns. Akilisi Pohiva's motion for the government to ratify CEDAW was passed in the Legislative Assembly in October 2008.¹ However, the Cabinet of the time (all appointed by the monarch) did not approve the ratification and set out in a letter sent in September 2009 to the Legislative Assembly their reasons for refusing to approve of ratification that; ² (1) it would affect the laws prescribing succession to the throne and hereditary estates and land ownership, and that; (2) laws would have to be amended to permit abortion and laws governing family life would have to be changed in ways that would be inconsistent with the culture and religious beliefs of the nation.

¹ Legislative Assembly of Tonga, *Hansard Record* No. 37/2008 (28 October 2008) at 6.

² Legislative Assembly of Tonga, *Hansard Record* No. 31/2009 (17 September 2009) at 23.

Prime Minister Feleti Sevele stated in discussions:³

“... the government supports everything that is in line with our tradition and in accordance with our customs and family life, the government fully supports women’s rights.”

Sevele further added that ratification would require Tongans to “... discard of our customs and our practices or how we live in this country.”⁴ On 17th September 2009 legislative assembly voted once again on CEDAW and, this time decided not to ratify the convention.⁵

The tradition, customs and culture referred to in this first refusal to ratify CEDAW pertain to provisions of the Constitution that prescribe patrilineal primogeniture of titles and land. The Constitution is perceived as a part of Tongan tradition and culture. Reasons for the second rejection of CEDAW in 2015, as discussed in Chapter One, primarily feature claims that Tongan culture privileges Tongan women. Consequently, Tongan women are cherished in Tongan society, and the implementation of CEDAW would needlessly bring about the destruction of this culture.

The assertion that women’s rights are supported so far as they do not clash with this patriarchal culture is paradoxical; a constitution prescribing for the routing of women’s rights cannot concomitantly claim to support the same concept. Unsurprisingly, this opposition is proffered by members of a political power structure prescribed by the constitution to be patriarchal.

³Legislative Assembly of Tonga, above n 2, at 23.

⁴ At 23.

⁵At 23.

CULTURAL OPPOSITION

The most vocal opposition to this second attempt to ratify CEDAW came from Christian church leaders in Tonga, culminating in public protests against CEDAW and petitions to His Majesty to reject the Convention.

On 19th May 2015, the Catholics Women's League led by Lady 'Ainise Sevele marched through Nuku'alofa in protest of CEDAW to present to Parliament a petition demanding that government halt its impending ratification of the Convention.⁶ The march drew attention from neighbouring countries and international media as it was effectively Tongan women protesting women's rights in Tonga.⁷ Banners and placards displayed in the march declared CEDAW to be the secret agent of satan, characterised it as evil and demanded the United Nations convention be taken to hell. Banners also called for the Prime Minister and his Cabinet to immediately step down.⁸ The Catholic women's opposition to CEDAW was based on the belief that it was directly opposed to Christianity and family values in Tonga.⁹

A second march was held later that week on the 25th of May. Church Leaders organised and led a march of 500 people protesting CEDAW on their way to present a petition to the Royal Palace.¹⁰ Marchers included members of the Free Wesleyan Church (FWC), Catholic, Pentecostal, Tokaikolo Church, Mo'ui Fo'ou denominations and the Church of Tonga.¹¹ Members of the nobility also joined this march, including Nobles Representatives in Parliament; Lord Tu'i'afitu, Lord Nuku, Lord Tu'ilakepa and Lord Tu'iha'ateiho.¹² The petitions requested that His Majesty

⁶ "Tonga's Catholic Women's League protest against CEDAW" (May 22, 2015) CathNews New Zealand <<https://cathnews.co.nz/2015/05/22/tongas-catholic-womens-league-protest-against-cedaw/>>

⁷ "Tongans March Against Women's Equality" (May 26, 2015) Cook Island News <www.cookislandsnews.com/item/51956-tongans-march-against-women-s-equality/51956-tongans-march-against-women-s-equality>

⁸ Above n 7.

⁹ "Tonga's Catholic Women's League protest against CEDAW" above n 6.

¹¹ "TONGA: Church leaders take petition opposing CEDAW to palace" (May 25, 2015) Pacific Media Centre Te Amokura <<https://pmc.aut.ac.nz/pacific-media-watch/tonga-church-leaders-take-petition-opposing-cedaw-palace-9283>>

¹² Above n 11.

withhold consent to the Convention's ratification. One of the march organisers, Rev Dr Ma'afu Palu, claimed that CEDAW would take Tonga back to pre-Christian times.¹³

4.1.1 Patriarchal Religion

Religion is the most cited reason for reservations to CEDAW and is the fundamental basis for resistance to equality for women.¹⁴ In major monotheistic religions, including Christianity, women have been excluded from higher ranks of power and dominated by men in marriage.¹⁵ Although never formally colonised, patriarchy was consolidated in Tonga through Christian missionaries and is maintained by the powerful patriarchal institution of churches in Tonga. Female Pacific theologians provide various accounts of Christian patriarchy in the Pacific. These Pacific women explain that biblical patriarchy has its roots in Hebraic society where families were ruled by the father and men had authority over their women and children¹⁶ and that the dominance of males in families and societies is sanctified through the emphasis on interpretations of God as the father and as masculine.¹⁷ This emphasis on the masculinity of God has manifested in Pacific men believing that only men were created in God's image.¹⁸ In fact, most churches in the Pacific display elements of androcentrism, where women are not thought of as completely human in their own right.¹⁹ Churches in the Pacific are patriarchal in structure²⁰, with power being held by dominant males.²¹ Despite women making up 60% of the

¹³ Above n 11.

¹⁴ Frances Raday "Gender and democratic citizenship: the impact of CEDAW" (2012) 10 (2) *International Journal of Constitutional Law* 512 at 517.

¹⁵ Raday, above n 14, at 519.

¹⁶ Pavla Miller "Patriarchy" in Peter Hamilton (ed) *Key Ideas* (Routledge, New York, 2017) at 19, 20.

¹⁷ Asinate F Samate "A Challenge of a Call to Ministry: A Tongan Woman's Experience in a Patriarchal Setting" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 165 at 168.

¹⁸ Ilisapeci Meo "Asserting Women's Dignity in a Patriarchal World" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 150 at 150.

¹⁹ Emi Frances Oh "A Dream as Metaphor for a New Vision of Church in the Pacific" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 141 at 142.

²⁰ At 142.

²¹ At 142.

membership of churches in the Pacific²² women have minimal impact on decision making and leadership within churches.²³

This is in direct contrast to the Tongan religion where the most powerful God was *Hikule'o*, a female deity, women were considered sacred, women constituted a significant part of the religious hierarchy as priestesses and engaged in religious ceremonies. Elements of traditional religion and culture that conferred particular rights, freedoms and privileges on Tongan women and therefore balanced the power and domination of men were outlawed or not codified. The process of democratization through constitutional reform in Tonga can be likened to the decolonisation process of former colonies, wherein the process facilitates the transfer of powers between patriarchies and masculinities not of differing races but of different classes.

4.1.2 Churches As A Powerful Patriarchal Institution

Religion plays a significant role in the lives of ordinary Tongans. Since the arrival of the first Christian missionaries on her shores at the end of the 18th century, Tonga has become almost uniformly a Christian nation. According to most recent statistics, 98 percent of Tonga's total population of 100,266 identified as Christian.²⁴ Only 516 people identified as having no religion²⁵ with only 1,736 individuals belonging to non-Christian faiths (the Baha'i Faith, Buddhist, Islam and Hindu faith).

The largest Christian denomination in Tonga is the Free Wesleyan Church (FWC), which has a membership of 35,082, making up 35% of the population, the second largest being the Latter Day Saints (LDS) with 18,673 members, the Roman Catholic Church follows with 14,276 members and then the Free Church of Tonga (FCT) with

²² Marie Ropeti "A Biblical Basis for the Ordination of Women in the Pacific Churches Weaving" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 133 at 137.

²³ Meo, above n 18, at 153.

²⁴ Tonga Statistics Department Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Report Second Edition at 50.

²⁵ At 50.

11,896. Various smaller Christian denominations make up the rest of the numbers, with their congregations numbering less than 10,000 per church.²⁶

Church leaders from the Catholic Church, Free Wesleyan Church and Tokaikolo Church were loudest in their opposition against CEDAW. The current leaders of all three churches are male. The FWC has its roots in the early male Wesleyan missionaries arriving in 1826, the catholic church in 1851; both churches found success in Tonga due to the support of traditional male leaders, Tupou 1 with the Wesleyan church and the Tu'i Tonga for the Catholics.²⁷ The Tokaikolo Church is an offshoot of the FWC established in 1978 by a male leader, the Free Church of Tonga was established in 1885 by Tupou 1, and Baker²⁸ and the LDS established in 1916.²⁹ All these congregations were established by men and continue to be led by men; most have outrightly condemned CEDAW or have remained silent on the issue. None have shown official public support for CEDAW.

CEDAW WAS NOT RATIFIED BECAUSE CHURCH LEADERS OPPOSED IT

Interviews were clear that the opposition of church leaders was a critical factor in the non-ratification of CEDAW. A prominent church leader echoed the sentiments of his contemporaries, stating, "I am in agreement with other church leaders and I do not want Tonga to ratify CEDAW."³⁰ Leaders from two of the largest denominations expressed the official positions of their organisations, in terms of the Catholic church; "The official position of the Catholic church is against CEDAW. We don't believe in ratification."³¹ The FWC leadership was said to have "met and came to an agreement to stand against CEDAW. The official position now is the church doesn't support CEDAW."³² The stance the churches took against CEDAW is key to the opposition to it; one participant summed this up as³³

²⁶ Tonga Statistics Department, above n 24, at 50.

²⁷ Patrick Vakaoti "Tonga" in Manfred Ernest *Globalization and the Re-Shaping of Christianity in the Pacific Islands* (The Pacific Theological College, Suva, 2006) 611 at 624.

²⁸ At 621.

²⁹ At 626.

³⁰ Phase 1 Interview 16

³¹ Phase 1 Interview 5.

³² Phase 1 Interview 19.

³³ Phase 2 Interview 1.

“The church’s opinion is what the public base their opinions on. People have no other viewpoints given to them on which they can make the decisions of whether or not to support CEDAW.”

The significance of the church leaders’ influence is expressed by a woman’s rights activist, “If CEDAW is to be ratified, religious leaders and royal households have to be in support of it.”³⁴ There does not seem to be a possibility for CEDAW to be ratified so long as church leaders oppose it.

4.1.3 Church Leader’s Opposition On Paper: Divine Order In The Family And Nation

The organisation of churches in Tonga began with the Council of Churches, which consisted of the Anglican Church, Free Wesleyan Church (FWC) and the Catholic Church. The National Forum of Church Leaders (established in 2005) expanded this group membership and included leaders of all churches in Tonga. The National Forum of Church Leaders has a secretariat under the Ministry of Internal Affairs.

On the 4th of May 2015, as a result of consultations held with the government on the 9th of April 2015, The Tonga National Forum of Church Leaders (TNFCL) released a statement expressing their opposition to the ratification of CEDAW. Their concerns were summed up in their own words as follows:³⁵

“Ko e taha eni ‘o e ngaahi makatu’unga ‘oku ‘IKAI ke pou pou ai ‘a e kau Taki Lotu ‘o e Fonua ki he Talite ko eni, he ‘oku mahino ‘oku ‘ikai ko ha Talite lelei eni ki Tonga. Ko hono taumu’a ke tu’unga tatau ‘a e tangata mo e fefine.”

The basis of our refusal as Church Leaders to support CEDAW is because it is clear this is not a treaty that will benefit Tonga. We do not support the central aim of CEDAW, which is to implement equality between men and women.

“‘Oku fokotu’utu’u ‘e Paula ‘a e fāmili ‘o kamata mei he ‘ulu, pea ko e mafai ia ‘oku lahi ai hono fatongia ke ngāue fakasevāniti ki he toenga ‘o

³⁴ Phase 1 Interview 10.

³⁵ Tonga National Forum of Church Leaders “Ko e vakai ‘a e Fakataha’anga Fakafonua ‘a e kau Taki Lotu ‘o Tonga fekau’aki mo e Konivesio Ke Ta’ofi ‘a Hono Fakafaikehekehe’i ‘o Ha’a Fafine (Convention of the Elimination of All Forms of Discrimination Against Women – CEDAW)” (Press Release, 4 May 2015) at 4.

e fāmili. Ko ha’a fafine ‘i he lotofale ‘o e fāmili ‘oku ‘i ai pe honau fatongia ‘o fakatatau ki he ivi mo e mafai faka-‘Otua kuo fakakoloa’aki ‘e he ‘Otua.”³⁶

The apostle Paul teaches us in the bible that the man is the head of the family and holds authority over the family. The woman has her place in the family according to her abilities given to her by God.

“Ko e feinga ki he tu’unga tatau ‘o fakalao’i ‘e mole ai ‘a e ngeia lahi mo e faka’apa’apa’i ‘o ha’a fafine ‘o hangē ko ia kuo hoko ‘i he ngaahi fonua ‘o e Uesite. ‘Ikai ngata ai, ka ‘e toe lahi ange ‘a e maumau ‘o e nofo fakafāmili pea uesia ‘a e melino mo e ma’uma’uluta.”³⁷

Attempting to legislate for equality between men and women will cause the loss of dignity and respect for women in Tonga, as has happened in countries in the West. Beyond that, equality will cause destruction to families and to the overall peace and stability in the land.

“Oku mahino kiate kimautilu kau Taki Lotu ‘e ‘ikai lava ke ta’ofi faka’aufuli ‘a e pausi’i ‘o ha’a fafine mo e fānau he ‘oku tau kei ‘i māmani. Ko e ‘ulungaanga fakasōtoma ‘e hoko pe ia, ka ko e ‘ikai ke tau tali, ‘e ‘i ai ‘a e faka’ehi’ehi mei ai. Ko ia ‘oku lelei ‘a e fakangatangata ‘oku fokotu’u ‘e he Pule’anga ke ‘ai, ka ko e ava ‘a e matapā ‘i he CEDAW ‘e faingata’a hono ta’ofi pea ‘e ‘ikai tuku ‘a e teke ke faka’atā kotoa.”³⁸

Our understanding as church leaders is that it is not possible to completely eradicate violence against women and children as we do not live in a perfect world. We cannot stop the practice of homosexuality, but we should not accept it. We appreciate the government’s proposed reservations; however, we believe CEDAW will open Tonga to things we will eventually have to allow in future.

“Ko ia ‘oku mau fakahā ai ko e kau Taki Lotu ‘o Tonga, ‘a e ‘ikai ke mau tali pe pou pou ki he Talite ko eni, he ‘oku fehangahangai ia mo e lotu

³⁶ Tonga National Forum of Church Leaders, above n 35, at 4.

³⁷ Tonga National Forum of Church Leaders, above n 35, at 4.

³⁸ At 4.

faka-Kalisitiane ‘a e Tonga, pehē ki he nofo ‘a e fāmili Kalisitiane, pea mo e tukufakaholo ‘a e fonua lotu faka-Kalisitiane mo tui ‘Otua Mo’ui.”³⁹

Therefore we, the Church leaders of Tonga, do not accept or support CEDAW. CEDAW conflicts with Christianity as practised in Tonga and will negatively impact the Christian family and the traditions of a Christian nation.

The essence of the church leaders’ opposition to CEDAW is a vehement denial of equality for women founded on biblical teachings. The position of church leaders, as outlined in the above statements, is that CEDAW conflicts with the traditions of a Christian Tongan nation and Christian family. The statement asserts that the rule of the male monarch as father to the nation (patriarchal state) and the rule of men in the family (patriarchal family) are simultaneously Christian and Tongan culture. Ratifying CEDAW and legislating equality for women will destroy patriarchy in Tonga, which is conceptualised as Tongan culture. CEDAW and equality are purported to erode and undermine the status and respect held for women in Tongan society. The other concerns are statements against same-sex relationships and abortion. In response to the National Forum of Church leaders’ statement on CEDAW, the Minister of Foreign Affairs released a statement clarifying that the ratification will not immediately permit same-sex marriage or abortion.⁴⁰

GOVERNMENT RESERVATIONS

The elements of CEDAW inconsistent with Tongan culture were set out in the proposed reservations to the Convention drafted by the Attorney General’s office in anticipation of ratification. Five proposed reservations were drafted to articles 2, 10, 12, 14 and 16 of the convention.⁴¹

Reservations to article 2 were drafted because the Constitution and Land Act prescribed for the inheritance of hereditary titles and estates exclusively through

³⁹ At 5.

⁴⁰ Minister Of Internal Affairs Response to National Forum of Church Leaders Statement of Opposition To CEDAW (14 May 2015, Press Release).

⁴¹ Reservations communicated from AG Office Tonga.

males,⁴² and the right to a grant of land allotments⁴³ and the inheritance of such land allotments solely for males.⁴⁴ Tonga cannot prohibit discrimination on the basis of sex or gender as laws prescribing succession to the throne, noble titles, estates, and land allotments directly discriminate against women.

Reservations to article 10 were made based on Tonga being unwilling to allow for CEDAW to be a gateway to the legalisation of abortions. The Criminal Offences Act prohibits all forms of abortion.⁴⁵ As such, Tonga is unwilling to promote abortions as part of family planning efforts. Tonga also has practices inconsistent with article 10h of CEDAW; it is mandatory at Vaiola Hospital that a husband consents to a wife's request for a tubal ligation before the operation can be performed on her.

The reservation to Article 12 was based on similar grounds; Tonga is opposed to promoting and legalising abortion, which may be part of what is required in providing health care services and family planning.

The reservation to Article 14 concerns the requirement that rural women have equal treatment in land matters; however, the Land Act does not facilitate equality for any women in terms of land ownership.

Reservations to article 16 were drafted as provisions of the Divorce Act and the Maintenance of Deserted Wives Act was stated to be inconsistent with the article. The reservation to article 16 was also a response to the wording "the right to freely choose a spouse and enter into a marriage"⁴⁶ contained in the article which may be interpreted as permitting same-sex marriage; consensual same-sex sexual relationships are criminalised under the Criminal Offences Act.⁴⁷

The proposed reservations highlight resistance to equality at law for women in the Constitution, Land Act and pieces of family law legislation, as well as an extreme

⁴² Constitution of Tonga, s 111.

⁴³ Land Act, s 43.

⁴⁴ AT s 41.

⁴⁵ Criminal Offences Act, ss 103-105.

⁴⁶ Convention on the Elimination of All Forms of Discrimination Against Women GA Res 34/180 (1979), art 16 (b).

⁴⁷ Criminal Offences Act, ss 137, 138.

abhorrence for same-sex relationships and abortion. Discriminatory laws are considered the codification of patriarchal cultural norms in Tonga. A later chapter sets out in detail the wide ambit of non-compliance in Tongan legislation with CEDAW, the noted reservations above provide but a small glimpse into the extent of discriminatory laws in Tonga.

CEDAW AND THE ELEMENTS OF TONGAN CULTURE

4.1.4 Laws Reflect Tongan Culture: Tongan Culture Is Christianity

The interviews revealed that Tongan culture and Christianity were often conflated and legitimised laws in Tonga. One participant referenced the prohibition on Sunday trade in Tonga as not the protection of Christian beliefs but of cultural values; “It is important to maintain our cultural values. Buying and selling on Sundays are illegal in Tonga. When in Tonga, we do as we are culturally and legally obligated to do.”⁴⁸ Another offered an example of Christian practises that form part of the Tongan legal framework stating, “We don’t have civil marriages in Tonga. Marriage isn’t legal until the religious rites performed by a church minister are fulfilled.”⁴⁹ A high placed legal practitioner expressed explicitly the importance of enacting legislation to codify cultural and religious beliefs; “Culture should be legislated. We should legislate in accordance with our culture and religious beliefs.”⁵⁰ A prominent church leader went as far as to allude that Christian ideology trumped any conflicting legislation, “Sometimes the law isn’t the answer to women’s problems. Laws are man-made but there are laws that are God’s laws.”⁵¹

⁴⁸ Phase 1 Interview 24.

⁴⁹ Phase 1 Interview 8.

⁵⁰ Phase 1 Interview 20.

⁵¹ Phase 1 Interview 5.

4.1.5 Abortion And Same-Sex Marriage Are Not Christian And Therefore Not Cultural

Participant responses underscored that CEDAW was commiserate with same-sex marriage and abortion. One participant elaborated:⁵²

“CEDAW was first introduced through the Catholic Women’s League and since that time I think it was always misunderstood to be about same-sex marriage and abortion.”

One participant verbalised that the majority of the population mistakenly believed that ratifying CEDAW would permit same-sex marriage, “Everyone thought CEDAW would automatically cause the country to legalise same-sex marriage...” participants who were better informed understood that this would not occur but stated that if ratified the Convention would eventually permit same-sex marriage and abortion.⁵³

“Abortion and same-sex marriage will eventually be accepted because of CEDAW, the back door argument, where CEDAW will open the back door for abortion and same-sex marriage.”

The collective repugnance for same-sex marriage and abortion is rooted in Christian beliefs, one church leader articulated, “I don’t believe in ratification. I am concerned with abortion and same-sex marriage.”⁵⁴ Another church leader stated “I am against abortion for religious reasons. It is important to maintain our cultural values.”⁵⁵ This response once again reveals the conflation of religion and culture, and of abortion and same-sex marriage in discord with Tonga’s Christian culture. An interesting insight can be found in the response of a long time woman’s rights activist in Tonga, she states that contrary to the strong aversion for same-sex relationships in Tonga, “Women are living as lesbians in same-sex relationships and are not prosecuted.”⁵⁶

⁵² Phase 1 Interview 29.

⁵³ Phase 1 Interview 11.

⁵⁴ Phase 1 Interview 16.

⁵⁵ Phase 1 Interview 24.

⁵⁶ Phase 1 Interview 22.

4.1.6 Land Tenure System Is Culture

The land tenure system, as established in the Constitution and which deprives women of land rights, is currently understood as part of Tongan custom; one participant elaborates, “Anything in CEDAW which will change customs in Tonga like land ownership I don’t support.”⁵⁷ Another participant divulged that many feared any changes to Tongan customs, such as the land laws, and in favour of equality would irrevocably alter Tongan society:⁵⁸

“Women should be able to own land as men do. People here think that owning land is tied to other pieces of our culture, and that if everyone was equal with equal rights the structure of our Tongan society would disappear.”

One participant added another dimension to the discourse positing that land equated to power and CEDAW would threaten the power of the nobles and church leaders as its domestication would require more equitable distribution of land.⁵⁹

4.1.7 Inequality Is Christian And Cultural

The subjugation of women is accepted in Tongan society as inequality is believed to be biblically mandated. One participant expressed this with clarity:⁶⁰

“The measure of the treatment of women is different here. The bible says there is no equality between men and women, man is head and woman must submit. Because of the bible, Christians here don’t believe in equality. Church leaders stand with the bible. We can change laws but not the word of God.”

The subordination of women in accordance with biblical instruction is accepted by many women in Tongan society. A well-known female public figure argued:⁶¹

“Personally, I believe that biblically women should not be equal to men. The respect should be there, but men need to lead and there can’t be

⁵⁷ Phase 2 Interview 7.

⁵⁸ Phase 2 Interview 4.

⁵⁹ Phase 2 Interview 8.

⁶⁰ Phase 1 Interview 11.

⁶¹ Phase 1 Interview 15.

two leaders in a home. I see this in the workforce, there can't be two bosses. One has to be superior, so I feel men should be the leaders."

Other participants inferred that church leaders, who were predominantly male, did not want female parishioners to compete for leadership positions within their churches. One female participant stated, "The agenda of people against CEDAW is that they don't want women equal to men; for example in churches, they feel women threaten their positions as males."⁶² Some of Tonga's major denominations prohibit the ordination of female clergy; one participant expressed that this was a factor in their opposition to CEDAW, "Lavengamalie (Tokaikolo Church) are against CEDAW, they don't allow women to be ordained as clergy."⁶³ In other churches, women are ordained but not given the same respect. One participant lamented that:⁶⁴

"In the Seventh Day Adventist Church, my Church, being a female Pastor isn't promoted. My friend was a female Pastor but left after she wasn't given a church to look after. Women are not recognised in the church. When my friend applied for a job in the church they told her they only want men."

It is unsurprising then that because of such attitudes, some women are becoming critical of churches and their place in Tongan society; one woman explained, "I don't believe in churches in Tonga as it's all ritual and not meaningful. People should be excited to go to church, so they actually absorb the teachings there."⁶⁵

EXPERIENCES OF WOMEN THAT CONFIRM TONGA'S CULTURE IS PATRIARCHAL

Interviews highlighted the experiences of Tongan women that confirm the patriarchal nature of Tongan culture.

⁶² Phase 1 Interview 7.

⁶³ Phase 1 Interview 3.

⁶⁴ Phase 4 Interview 5.

⁶⁵ Phase 4 Interview 10.

4.1.8 Women Are Expected To Be Submissive

Women in Tonga are expected to be obedient and submissive. One participant stated that although some women are aware of their rights, they often do not exercise them. Women refrain from making such demands for themselves as this behaviour is contrary to submission. One female participant explained, “Some women know their rights but think that demanding them is rude. Most women don’t want to be viewed as rude.”⁶⁶

4.1.9 Hate For Feminist

The abhorrence for women who label themselves as feminists in Tongan society can perhaps be explained by the cultural dictate that women are to be submissive. A woman who will passionately advocate for women’s rights is not submissive. One female participant explained:⁶⁷

“the use of feminist is a really bad thing here but I don’t think they understand what feminist means. Feminist in Tonga means women who hate men and elevate women above men. Feminist for me means things like women who argue for maternity and paternity leave and that men should be allowed to be emotional.”

4.1.10 Women Can Not Be Independent

Tongan culture dictates that women are to live under the care of a male family member, usually a husband or father. Women living independently on their own is frowned upon in Tonga society; one female participant described:⁶⁸

“When I was 21, I moved downstairs to flat on my own and my dad didn’t agree to this. It’s not accepted here for women to live alone or be independent.”

Churches are instrumental in maintaining the dependence and submission of women to their families. Women’s reliance on males in Tonga is strongly advocated for by some churches, to the extent of opposing laws that offer protection for unmarried women living independently, preserving the integrity of the family unit by coercing women to remain within it. A women’s activist stated:

⁶⁶ Phase 4 Interview 11.

⁶⁷ Phase 4 Interview 1.

⁶⁸ Phase 4 Interview 18

“Churches are crazy for asking to repeal the Family Protection Act. This Law protects everyone equally, some church leaders don’t like that unmarried women are protected. They interpret this law as encouraging broken homes. Churches seem very anti-women.”

4.1.11 Women Are Overprotected

Perhaps to ensure that women remain submissive and dependent on men, women are raised differently from men; women are taught from a young age that there are limits to their abilities and things that are not for them to do. One female participant voiced:⁶⁹

“We are overprotected in Tonga. Girls are given limits as they grow up, this makes us think we can’t do anything. We need to push and encourage women, tell women that they have no limits. We are told we can’t do certain things but this is not true, women can do anything and women have no limits.”⁷⁰

Tongan society has prescribed women as fragile and requiring protection; this has meant that women in Tonga are made to feel incapable of dealing with life’s challenges without the aid of a man. One female participant describes this:⁷¹

“Women are very protected as young girls but boys have more freedom. The intention in this is good but this allows men to overcome challenges in life because they fend for themselves and they enjoy life, girls do not and are not as resilient. Girls only get this freedom in marriage. Girls face a lot of problems because they are not raised the same way as men are.”

4.1.12 Women Are Dominated By Men (Husbands And Fathers) In The Home

A common thread in the interviews was an adverse reaction to the cultural norm of men heading and dominating the family. One female participant stated, “Men think women should be submissive to their husbands.”⁷² Another female participant expanded on this by saying:⁷³

⁶⁹ Phase 4 Interview 23.

⁷⁰ Phase 4 Interview 23.

⁷¹ Phase 4 Interview 25.

⁷² Phase 4 Interview 18.

⁷³ Phase 4 Interview 25.

“In families, the head is the father, the wife and children are submissive but I think both parents should be equal leaders. Women play important parts in families.”

Another female participant expressed a similar sentiment, “Tongans believe fathers are head of the family, but women should also have a right to speak and have an opinion in the family.”⁷⁴ The place of women in the home is to submit to the wishes of their husbands and perform domestic duties. Domestic duties such as cooking and cleaning were viewed as exclusively tasks for women. One female participant explained:⁷⁵

“Gender roles in Tonga are that women are to cook and clean, there is no shared responsibility with men and husbands enforce this thinking at home.”

4.1.13 Women Have No Voice

In interviews, a standout theme was the dissatisfaction women had with their lack of a voice in the family. One woman expressed, “Tongans believe fathers are head of the family but women should also have a right to speak and have an opinion in the family.”⁷⁶ Women lacking a ‘voice’ in the family often refer to the complaint of some female participants that men are the sole decision-makers within Tongan families, with one participant complaining, “Women have no voice, men rule”⁷⁷ and that women should have “a voice in decision making in families”.⁷⁸ Many women had the same complaint that “The negative of being a Tongan woman is that women have no voice.”⁷⁹ This lack of a voice in the family unit extended to public spaces with the understanding being that it was not for women to voice their opinions in public gatherings with one woman explaining:⁸⁰

“When you leave your house you are not meant to speak. For example, in a Fono women are hushed when speaking, women’s views are not valued. Women in Tonga are not allowed to voice their opinions.”

⁷⁴ Phase 4 Interview 2.

⁷⁵ Phase 4 Interview 11.

⁷⁶ Phase 4 Interview 2.

⁷⁷ Phase 4 Interview 31.

⁷⁸ Phase 4 Interview 31.

⁷⁹ Phase 4 Interview 2.

⁸⁰ Phase 4 Interview 11.

Another woman argued that the norm should no longer be that women are not to voice their opinions publicly, saying, “Tongan women should be given the right to voice their opinions in public. Sometimes women have better thoughts than men.”⁸¹ Women could not publicly voice their needs as they are expected to remain silent, and therefore women’s issues and needs are not discussed or addressed.⁸²

4.1.14 Uneducated Women Have The Least Voice/Respect

Although it appears that the norm is for women’s voices not to be heard, some women participants explained that it was acceptable for particular groups of women, such as educated women, to speak out. One participant stated, “Women who are educated are allowed more of a voice”⁸³ another participant inferred that educated women were allowed to voice their opinions because they were respected, “women who are not educated are not respected by the communities and villages they are a part of and especially by the families they marry into.”⁸⁴ The less education a woman had, the less weight their opinions held in the families and communities they were a part of.⁸⁵

4.1.15 Women Are Victims Of Violence

Unsurprisingly, a number of female participants stated that the abuse of women in Tongan society is common. The expectations that Tongan women be quiet, submissive and dependent on men are undoubtedly contributing factors to the rise of violence against women in Tonga. Fathers’ opinions in the family are final; women are expected to abide by their decisions as wives or risk violence within the marriage. One female participant recounts her own experience “Women are beaten by their husbands. I used to be beaten by my husband but not anymore.”⁸⁶ Another confirmed that this was now accepted, saying, “women are being abused

⁸¹ Phase 4 Interview 22.

⁸² Phase 4 Interview 22.

⁸³ Phase 4 Interview 2.

⁸⁴ Phase 4 Interview 9.

⁸⁵ Phase 4 Interview 9, Phase 4 Interview 2.

⁸⁶ Phase 4 Interview 31.

in families; men see that as the norm.”⁸⁷ Violence against women was not just normal; it is widespread. Yet another female participant explained:⁸⁸

“There is a lot of abuse of women. Some men degrade their wives, fight with them and beat them. Men are the boss at home, and if a woman does a small thing wrong she is beaten and abused by him.”

Various female participants expressed that violence against women within families, both physical and verbal in nature, was common and expected. It is also acceptable for women to be publicly degraded by their husbands. The abuse women suffer is not limited to the physical form; one participant described verbal and emotional abuse by saying:⁸⁹

“Many husbands publicly degrade their wives, call them ugly or compare them to monkeys, this is tolerated and accepted. Wives are expected to endure bad treatment.”

4.1.16 Women Cannot Own Land

The inability to own land is an aggravating factor in domestic violence. A participant expressed that women would remain in violent marriages or comply with a husband's dictates because their inability to own land often means a woman has nowhere to build a home for herself. This is even more so pertinent for women without the financial means to lease a parcel of land for themselves. This female participant stated:⁹⁰

“Women should own land because not only do they think being treated badly by husbands is normal there, there is nowhere for them to go if they want to leave their marriages.”

4.1.17 Women’s Silent Suffering

Compounding the impact of their abuse, the norm in Tonga of silencing women’s voices extends to situations where women are victims of abuse. Some topics are taboo in the Tongan cultural setting and not talked about; it appears women’s suffering falls into this category; one female participant confirms this by saying,

⁸⁷ Phase 4 Interview 3.

⁸⁸ Phase 4 Interview 36.

⁸⁹ Phase 4 Interview 11.

⁹⁰ Phase 4 Interview 11.

“Part of the culture is not to talk about embarrassing things and domestic violence where women are vulnerable.”⁹¹ Another female participant added that although widespread, topics such as sexual abuse, rape and incest are taboo, not discussed nor reported. She stated:⁹²

“A lot of cases where women are victims of violence are not reported, especially cases concerning incest and rapes. At the women’s centre, I went to, I heard a lot of problems like child molestation happening here in Tonga, but it isn’t widely acknowledged or discussed. We only notice because women’s shelters speak about it otherwise there is just silence.”

This inevitably leads to many women having to “suffer in silence”.⁹³

4.1.18 Victim Blaming

Women in Tonga may also choose to suffer in silence as there is the norm or tendency to blame female victims when they are violated, particularly in a sexual manner. The focus of discussions falls not on the perpetrators but on the female victims. Female victims are apportioned blame for the actions of their abusers. This is illustrated in one male participant’s view wherein rape can be partially attributed to the victim’s choice of clothing:⁹⁴

“Women should promote their own rights, shouldn’t make problems for themselves tempting men with indecent clothing, this doesn’t justify things like rape but practically that’s what needs to happen.”

A female participant expressed her frustration with this saying:⁹⁵

“there’s a lot of victim-blaming, she was drunk, she was wearing revealing clothes, women who don’t go to church have bad things happen to them. It irritates me that we cannot stop teaching girls to fear, we must teach boys to respect instead.”

⁹¹ Phase 4 Interview 1.

⁹² Phase 4 Interview 2.

⁹³ Phase 4 Interview 2.

⁹⁴ Phase 1 Interview 11.

⁹⁵ Phase 4 Interview 1.

4.1.19 Women's Sexuality Is Controlled Through Shame

A woman's sexual history is a source of shame in Tongan society, women are expected not to engage in sexual relations outside the bonds of marriage; those who do become subject to malicious gossip and are often shunned by the community. One female participant detailed her experience of this:⁹⁶

"I struggled in Tonga, I had an affair with a married man. I felt like a piece of trash because everyone treated me badly. Everyone gossiped about me and told many lies about me."

Women's control over their bodies and sexuality is counterintuitive to Tongan culture, with one woman participant expressing women should not possess the autonomy over their bodies that would allow them to choose to have an abortion or engage in same-sex relationships. She expounded:⁹⁷

"What got my attention was in CEDAW discussions, women are given the right to do with their bodies as they will. I immediately disliked CEDAW because of that. I don't like this because it implies women can have abortions and be in same-sex relationships."

4.1.20 Stigma Around Contraceptives And Teenage Pregnancy

Perhaps owing to the cultural expectation that unmarried women are to abstain from sexual intercourse, there is a stigma associated with family planning and the use of contraceptives. Young women who are sexually active are fearful of being exposed, and as one participant explains, "I used to work in the Tonga Family Health Association; girls are afraid to go there and get treatment and contraceptives because of the stigma."⁹⁸This is a contributing factor to the rise in teenage pregnancy in Tonga, with one participant stating, "The biggest issue with Tongan women today is girls as young as 14 having babies."⁹⁹ Women shown through pregnancy to have exercised the freedom to engage in sexual relations contrary to Tongan cultural norms suffer social consequences; one female participant stated,

⁹⁶ Phase 4 Interview 10.

⁹⁷ Phase 1 Interview 9.

⁹⁸ Phase 4 Interview 18.

⁹⁹ Phase 4 Interview 39.

“women who have children at young ages, society rejects them and they’re abused by the families they live with.”¹⁰⁰

A study on adolescent unplanned pregnancy in Tonga found that young girls were exposed to gossip, exclusion and stigma as a direct result of their young pregnancies.¹⁰¹ Young girls do not receive any sex education from family members or at school, the advice is for girls to abstain from sex.¹⁰² Further young girls were reluctant to attend sex education programs and contraception offered by NGOs for fear that staff would not be able to keep their identities confidential.¹⁰³

4.1.21 Christian Women Are Good Women And Have Fewer Problems

Despite the patriarchal views of many Christian denominations in Tonga, women continue to allow churches significant influence over their lives. Women themselves hold the general belief that staying within church dictates produces an easier life for them. One participant recounts her belief in this:¹⁰⁴

“My experience is as a Mormon when I keep to the church doctrines my family and I have fewer issues, when we disobey church rules, we have many problems.”

Another woman argues that church attendance is necessary for women. She posits:¹⁰⁵

“Women would do better if they prayed more and there needs to be more programs involving women to keep them busy.”

4.1.22 More Women Discarding Tongan Culture And Christianity

However, the power of churches in Tongan society appears to be on the decline. A female participant whose father is a church minister stated, “People don’t care

¹⁰⁰ Phase 4 Interview 39.

¹⁰¹ Christine Linhart, Karen McMillan, Hilary Gorman, Catherine O’Connor, Michelle O’Connor, Avelina Rokoduru and Telusa Fotu Tu’i’onetoa *Adolescent Unplanned Pregnancy in the Pacific: Tonga* (Pacific Women Shaping Pacific Development Support Unit, 2020) at 24.

¹⁰² Linhart, McMillan, Gorman, O’Connor, O’Connor, Rokoduru and Tu’i’onetoa, above n 101, at 40.

¹⁰³ At 40.

¹⁰⁴ Phase 4 Interview 9.

¹⁰⁵ Phase 4 Interview 32.

about religion anymore. Many people and not just women don't go to church anymore."¹⁰⁶ The patriarchal Christian cultural norms in Tongan society are causing some women to live alternative lifestyles because, as one female participant expressed, "Women don't observe cultural or church dictates anymore".¹⁰⁷

RESISTANCE TO FOREIGN IDEAS/INFLUENCE: CULTURAL RELATIVISM

As stated in its second Universal Periodic Review cycle, Tonga's opposition to CEDAW is based on the claim that its implementation would drastically alter Tongan culture.¹⁰⁸ Interview answers reflected the same view, with many claiming that Tongan culture and Tongan Christian values were opposed to CEDAW. The western origin of CEDAW was a point of contention for many; one participant expressed was of the view that it was important we adapt foreign things that are aligned with Tongan culture:¹⁰⁹

"Not everything good came off the boat with Europeans. Not everything good came out of the 20th century... we should take only the things that add value and that do not devalue our Tonganess."

Objections to the Convention were founded on the assertion that Tonga had no input into the drafting of CEDAW and therefore, the Convention excludes Tongan Christian cultural values:¹¹⁰

We should take suggestions to the UN of things that can be changed and redraft CEDAW with input from Tonga; had we been part of drafting CEDAW we would likely ratify it. UN should've looked at input from Tonga, what about our cultural rights, Christian rights?

¹⁰⁶ Phase 4 Interview 35.

¹⁰⁷ Phase 4 Interview 28.

¹⁰⁸ See Report of the Working Group on the Universal Periodic Review* Tonga A/HRC/23/4 (21 March 2013).

¹⁰⁹ Phase 1 Interview 6.

¹¹⁰ Phase 1 Interview 11.

There is strong resistance to any international organisations such as the United Nations and the CEDAW Committee altering Tongan culture.¹¹¹

Culture is understood to be a system of values and beliefs held by a particular group of people.¹¹² Previous paragraphs have outlined the patriarchal nature of Tongan culture. Whilst human rights are put forward as a universal set of values and norms,¹¹³ cultural relativists argue that values and rights arise from the cultural context,¹¹⁴ that rules and moral values only gain validity through culture,¹¹⁵ and because cultures differ, what is considered right and wrong differs between cultures.¹¹⁶ Cultural relativism is the viewpoint that those looking in cannot fully understand the workings within a particular culture and that although different, all cultures are equally valid.¹¹⁷ Cultural relativists argue that human rights and feminism are western liberal concepts, and their implementation in non-western countries amounts to western cultural hegemony.¹¹⁸

CEDAW takes a universalist position with regards to women's rights, stating in its first article a definition of discrimination against women that applies universally to women of all cultures.¹¹⁹ Cultural relativists view CEDAW as having been drafted by western women and reflecting western norms and its implementation as imposing these norms on non-western women.¹²⁰ Feminists have been criticised as failing to

¹¹¹ Phase 1 Interview 16.

¹¹² Sally Engle Merry, "Changing Rights Changing Culture", in Jane K. Cowan, Marie-Bénédicte Dembour, Richard A. Wilson (eds) *Culture and Rights: Anthropological Perspectives* (Cambridge University Press, 2001) at 32. 2

¹¹³ Henry J Steiner, Philip Alston (eds) *International Human Rights In Context* (Oxford University Press, 1996) at 192.

¹¹⁴ At 192.

¹¹⁵ Jack Donnelly, "Cultural Relativism and Universal Human Rights" (1984) 6(4) *Human Rights Quarterly* 400 at 400

¹¹⁶ Steiner and Alston, above n 113, at 192.

¹¹⁷ See Jack Donnelly "Human Rights and Human Dignity: An Analytic Critique of Non Western Conceptions of Human Rights" (1982) 76 (2) *the American Political Science Review* 303.

¹¹⁸ Nancy Kim, "Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism " (1993) 25 (1) *Columbia Human Rights Law Review* 49 at 49.

¹¹⁹ Shefali Desai "Hearing Afghan women's voices: Feminist theory's re-conceptualization of women's human rights" (1999) 16(3) *Arizona Journal of International and Comparative Law* 805 at 809.

¹²⁰ Vedna Jivan & Christine Forster "What Would Gandhi Say? Reconciling Universalism, Cultural Relativism And Feminism Through Women's Use Of CEDAW" (2005) 9 *The Singapore Year Book of International Law* 103 at 11.

comprehend that what may be in their gaze inequality is, in actuality, egalitarian in another cultural context and their efforts to impose western standards upon non-western societies as oppressive.¹²¹ Related to this is another criticism of feminism as “gender essentialism”, focusing only on the voices and experiences of white, straight, privileged women.¹²²

However, others have pointed out that the oppression of women is cross-cultural and not just a phenomenon endemic to the west, and feminism is a cross-cultural response to gender oppression.¹²³ Feminism provides a means for women to fully participate in their culture rather than just being subject to it and provides a framework for women to challenge oppressive cultural practices.¹²⁴ Similarly, in the Pacific, feminism has been decried as foreign and unnecessary for Pacific women. However, liberation cannot be just for women of the west,¹²⁵ when the oppression and exploitation of women are evident in Pacific societies and Tonga particularly. The criticism of cultural imperialism is often put forward by non-western states who permit intracultural oppression.¹²⁶ Culture is often quoted by states to justify human rights breaches, but the state’s articulation of culture often essentialises culture, with their claims failing to reflect the totality and complexity of the culture and is often an exercise in selectively picking parts of the culture to justify oppressive practises.¹²⁷ Intercultural coercion is feared, but intracultural coercion is ignored.¹²⁸

As such, feminists urge that in instances where culture is used to justify oppression of women, it is crucial to question who’s culture is being invoked, in who’s name and who benefits from the stated culture.¹²⁹ It is crucial when culture is invoked to

¹²¹Kim, above n 118, at 62.

¹²² Angela P. Harris, “Race and Essentialism in Feminist Legal Theory” (1990) 42 (3) Stanford Law Review 581 at 585.

¹²³ Kim, above n 118, at 49.

¹²⁴ Kim, above n 118, at 50.

¹²⁵ P Imrana Jalal *Law for Pacific Women : a legal rights handbook* (Fiji Women’s Rights Movement, 1998) at 20-21.

¹²⁶ Tracy E. Higgins, "Anti-Essentialism, Relativism, and Human Rights," (1996) 19 Harvard Women's Law Journal 89 at 113

¹²⁷ Higgins, above n 126, at 113.

¹²⁸ At 113.

¹²⁹ Hilary Charlesworth “No Principled Reason” (1997) 7 (9) Eureka Street 24 at 30.

question who's power is preserved through cultural norms, if they are representative of the culture of the community or just a select few, and if culture is used to stifle a necessary debate.¹³⁰ Often, these dominant narratives articulate culture as rigid and unchanging, ignoring the fluid nature of culture and its multiplicity.¹³¹

4.1.23 Preservation Of The Powers Of Church Leaders And Nobles

One participant's view pertinent to the discussion of the rejection of CEDAW and women's equality in Tonga was that:¹³²

"The people in power would be most affected negatively by CEDAW, so they are most against it. Churches and nobles stand to lose power and land and therefore are most against CEDAW."

Previous paragraphs have established that church leaders were zealously opposed to CEDAW. What has not been underscored is that members of the nobility were as strongly opposed to the Convention and lent their support to church leaders; one participant reasoned it was because CEDAW threatened the power and dominance of male nobles rooted in land ownership, saying:¹³³

"Nobles are behind church leaders against CEDAW because of other political agendas such as not wanting Noble titles to be held by women."

A prominent women's rights advocate assigned blame for Tonga's failure to ratify CEDAW on two members of the noble class Lord Feleti Sevele and Lady Eseta Fusitu'a:¹³⁴

"Ratification didn't happen because of the opposition. There had been a campaign led by Feleti Sevele and his former government alongside Eseta Fusitua on TV saying all sorts of things about CEDAW. So then churches came aboard the opposition."

¹³⁰ Celestine I. Nyamu, "How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries," (2000) 41 (2) Harvard International Law Journal 381 at 404.

¹³¹ At 406.

¹³² Phase 2 Interview 8.

¹³³ Phase 1 Interview 2.

¹³⁴ Phase 1 Interview 22.

4.1.24 Unity Of Church Leaders And Traditional Leaders

In 1797 the first missionaries from the London Missionary Society arrived in Tonga; these missionaries were tradespeople with no formal education.¹³⁵ Walter Lawry was amongst the first Wesleyan missionaries to arrive in Tonga in 1820; his mission was not a success, the greatest of difficulties being that the priests of the old religion persuaded people to kill the missionaries.¹³⁶

The second wave of Wesleyan missionaries arrived in 1826; they struggled again due to opposition from priests and chiefs; the people felt it was their religious duty to respect their chiefs and would not convert to Christianity unless their chiefs did.¹³⁷ The Wesleyan missionaries quickly understood that their success depended on the support of the chiefs and kings.

The previous chapter has discussed the symbiotic relations between Tonga's first monarch and the missionaries of the time. King George Tupou I conquered for himself a united Tonga with the support of Christian missionaries and Christian converts; in return, he transformed the archipelago into a modern Christian nation. Following the founding of the Tongan state, the government (controlled by the King and run by an executive comprised of chiefs), the missionaries and later church leaders remained supportive of and dependent upon each other, with their status and functions often intertwining. An example of the strong ties between traditional patriarchal political institutions and patriarchal church structures is most evident in the history of Tonga's largest denomination, the FWC.

At present, the King must still approve of the person elected as President and Head of the FWC.¹³⁸ The President, by convention, seeks the monarch's approval in

¹³⁵ I.C. Campbell, *Island Kingdom: Tonga Ancient and Modern* (2nd ed, Canterbury University Press, Christchurch, 2001) at 63.

¹³⁶ Teeruro leuti, Jione Langi, Charles W Forman *Island churches : challenge and change*. (Institute of Pacific Studies of the University of the South Pacific, 1992) at 147.

¹³⁷ leuti, Langi and Forman , above n 136, at 148.

¹³⁸ Sione Lātūkefu *The Tongan Constitution : A Brief History To Celebrate Its Centenary* (1st ed, Tonga Traditions Committee Publication, Nuku'alofa, 1975) at 174.

stationing Faifekau (church ministers).¹³⁹ Chiefs and royalty are always acknowledged before every sermon,¹⁴⁰ and have special seating at the front of every church¹⁴¹ in every village. In return, chiefs (nobles and lesser chiefs) participate in church events and support the minister.¹⁴² The ministers are considered part of the elite with their presence acknowledged at social gatherings, special seating allocated to them at the front of churches and their wives and children given leadership roles within the church.¹⁴³ Like the chiefs, the ministers are presented a gift at every birthday, funeral, graduation, wedding, or any other cause for gathering.¹⁴⁴ The ministers are now considered chiefs, and the President of the FWC, a high chief; an elevation in social status which has come at the price of their silence and continued support of the traditional elite.¹⁴⁵ Church leaders are now perceived as traditional leaders.

The FWC has always supported the monarchy, nobility, the monarch's appointed government and remains non-supportive of democracy.¹⁴⁶ Whilst the pro-democratic government advocated for ratification, church leaders opposed CEDAW. The nobles and church leaders, effectively now perceived to comprise traditional leadership, were united in their opposition to CEDAW, with male titleholders opposed to the succession and inheritance of titles by women, whilst church leaders feared that ratification of CEDAW would interfere with how their churches are operated,¹⁴⁷ with all denominations in Tonga being headed by males. The first woman to be ordained a Minister in the FWC of Tonga was Sela Taufatofua in 1992; in 2007, only 5% of ministers in the FWC were female.¹⁴⁸ The traditional leadership who wield power in the Tongan patriarchy were most against CEDAW. The magnitude of the power of church leaders and ministers in Tonga is to the

¹³⁹ Lātūkefu, above n 138, at 182.

¹⁴⁰ Heneli T. Niumeitolu "The State and the Church, the State of the Church in Tonga" (PhD Thesis, The University of Edinburgh, 2007) at 193.

¹⁴¹ At 202.

¹⁴² At 187.

¹⁴³ At 216.

¹⁴⁴ At 216.

¹⁴⁵ At 123.

¹⁴⁶ Vakaoti, above n 27, at 620.

¹⁴⁷ Phase 1 Interview 18.

¹⁴⁸ Niumeitolu, above n 140, at 213.

extent that CEDAW's ratification is believed to be impossible without their agreement and support.¹⁴⁹

4.1.25 CHURCH LEADERS MADE CEDAW ABOUT SAME-SEX MARRIAGE AND ABORTION

Church leaders not only opposed CEDAW but redirected the focus and public discourse from equality for women to same-sex marriage and abortion. As one participant articulated:¹⁵⁰

“The opposition shifted the focus from women’s rights to same-sex marriage and abortion. This was very smart of them to do.”

The public misunderstood CEDAW as “Churches made it about same-sex marriage.”¹⁵¹ Another participant’s account was that as soon as church leaders got involved in the public discourse over CEDAW, it “derailed the movement into one about same-sex marriage and essentially fear-mongering.”¹⁵² Another participant conceptualised it as manipulation, stating, “There was emotional manipulation using same-sex marriage and abortion, church leaders are against any perceived threat to Christianity.”¹⁵³ As set out in the National Forum of Church Leaders’ statement, the core of church leaders’ opposition to CEDAW and gender equality is that both are contrary to biblical doctrine. However, the rallying cry behind the fervent rejection of CEDAW was not biblical patriarchal principles but abhorrence for same-sex marriage and abortion. Women’s equality was effectively sidelined as the “Churches made it about same-sex marriage.”¹⁵⁴ A comment from a member of Tonga’s LGTB community expressed surprise and concern over same-sex issues taking centre stage in discourse over women’s rights, stating:¹⁵⁵

“We were surprised that the treaty was pinned on us Leiti, the treaty is used to promote the rights of women, not same-sex marriage. The Tongan Leiti Association (TLA) is not concerned with same-sex

¹⁴⁹ Phase 1 Interview 13 and Phase 1 Interview 10.

¹⁵⁰ Phase 2 Interview 9.

¹⁵¹ Phase 1 Interview 12.

¹⁵² Phase 1 Interview 10.

¹⁵³ Phase 1 Interview 19.

¹⁵⁴ Phase 1 Interview 12.

¹⁵⁵ Phase 2 Interview 8.

marriages, we have more pressing matters to focus on like the decriminalisation of homosexuality.

The complete misunderstanding of CEDAW in Tonga can be attributed to the interpretations and opinions articulated by the church leaders. From interviews, it was clear that there was no fundamental understanding of gender equality or CEDAW. The public assumed that CEDAW would immediately allow for same-sex marriage and abortion. The focus was on gay rights as opposed to women's rights. As one participant explained:¹⁵⁶

“The discussion became about gay rights instead of women's rights, that's the stigma that needs to be addressed. Gay rights is the only thing you hear of when you hear about CEDAW. It will be hard to change this perception. Everything in Tonga is about populism, so CEDAW is connected to gay rights and as long as this is the case, there will be no ratification.”

4.1.26 CHURCH LEADERS AGAINST CEDAW ATTACKED SUPPORTERS, PEOPLE WERE SILENT IN FEAR OF THEM

Some Church leaders proclaimed all supporters of CEDAW were agents of the devil and CEDAW itself was demonic. One female proponent of CEDAW recounted, “I have been publicly called Satan Women, Women 666, and other such derogatory terms by some church leaders.”¹⁵⁷ another affirmed this, saying, “All CEDAW supporters were labelled 666 and satan.”¹⁵⁸ The vilification of female activists extended to members of their workplaces and their families, one activist stating that her and her workers and their families were “cursed for support of CEDAW and even my children are mocked for their mother's associations with CEDAW.”¹⁵⁹ The trepidation over being publicly abused and degraded by some male church leaders was so great that many female activists and supporters of CEDAW withdrew their public support and remained silent on the issue. One female activist recounted that several of her contemporaries:¹⁶⁰

¹⁵⁶ Phase 1 Interview 28.

¹⁵⁷ Phase 1 Interview 1.

¹⁵⁸ Phase 1 Interview 13.

¹⁵⁹ Phase 1 Interview 10.

¹⁶⁰ Phase 1 Interview 1.

“asked to take their names off of anything in support of CEDAW, they were scared of church leaders who were against CEDAW and they did not want to be part of it. A lot of women understand the value of CEDAW but don’t want to be associated with the movement because of notoriety and becoming public targets. People would not want to even speak to me after my public support of CEDAW, but I didn’t care at all.”

Whilst the view presented to the world was a united voice entirely in opposition to CEDAW; it is clear that there were members of the public who understood and supported CEDAW but remained silent out of fear of public condemnation and supernatural consequences that are believed to be the consequence of speaking out against the clergy.¹⁶¹ One women’s activist stated:¹⁶²

“The church leaders are the biggest influence in non-ratification; no one can speak against them naa nau malaia (bring bad luck on themselves). Preachers control the minds of people.”¹⁶³

Respect for a minister in Tongan society is to accept everything communicated from the “*pani e Otua*” or anointed of God; criticism and even disagreement with the minister were believed to cause bad fortune and even death for such individuals.¹⁶⁴

WOMEN DID NOT UNDERSTAND CEDAW AND THEREFORE DIDN'T SUPPORT IT

The primary reason for women not supporting CEDAW and particularly women from rural areas who would benefit the most from the Convention is because like the majority of Tonga, women believed that the sole purpose of CEDAW was to permit same-sex marriage and that it had no relevance for them. One woman stated:¹⁶⁵

“I heard parliament wanting to ratify CEDAW, but because it is about women in relationships with women and men in relationships with

¹⁶¹ Phase 1 Interview 19.

¹⁶² Phase 1 Interview 29.

¹⁶³ Phase 1 Interview 29.

¹⁶⁴ Niumeitolu, above n 140, at 123.

¹⁶⁵ Phase 4 Interview 7.

men, it was not ratified. I have no other knowledge of CEDAW, no one came to consult with us or explain the convention to us.”

Many women could not support CEDAW because of this misunderstanding with one woman explaining:¹⁶⁶

“I’m not interested in CEDAW and I don’t understand it. My partner explained CEDAW is to allow men and men and women and women to marry. I don’t want CEDAW ratified as we are a small Christian nation. I have nothing against gays but government has a lot of other issues that they need to resolve first. Why bring CEDAW to Tonga when we are a Christian nation. I don’t support it.”

Some women understood the convention had some relation to women’s rights; while uncertain about how the Convention would benefit themselves; women were certain CEDAW promoted same-sex marriage. One participant’s answer clearly illustrates this:¹⁶⁷

“I don’t understand CEDAW. I’ve heard it’s something about providing opportunities for women but I don’t understand it. It is mostly about same-sex marriage. I don’t understand how CEDAW will benefit women. No one explained to us so we can understand but I suspect CEDAW benefits women and their country.”

However, more than a quarter of women interviewed in Phase 4 understood CEDAW as permitting same-sex relationships or same-sex marriage; these women’s answers mirrored a female participant’s views who stated that:¹⁶⁸

“CEDAW is men marrying men and women marrying women. There was no consultation with us about it and I have no other understanding of the convention.”

Compounding their misunderstanding was a lack of interest in CEDAW triggered by the controversy surrounding the convention. Another woman expressed:¹⁶⁹

¹⁶⁶ Phase 4 Interview 38.

¹⁶⁷ Phase 4 Interview 24.

¹⁶⁸ Phase 4 Interview 12.

¹⁶⁹ Phase 4 Interview 37.

“I don’t understand CEDAW. It is about gay and lesbian stuff. I turn off my radio, tv and skip internet discussions about it because I hate the drama and fighting surrounding it. It is off-putting. I turn t.v and radio off when discussion about it comes on because it is annoying.”

4.1.27 Women Were Ignorant Of CEDAW And Did Not Want To Learn/Understand

Almost half of the women interviewed in Phase 4 were not aware of what CEDAW was. One of these women communicated, “I don’t know what CEDAW is”.¹⁷⁰ Many women had heard of CEDAW but did not understand it. One of such women expressed this by saying, “I have heard of CEDAW but I don’t understand what it is about.”¹⁷¹ Another added that she had “heard of CEDAW and that it has a connection to the laws but I am not sure exactly what it is and I don’t know the meaning of CEDAW.”¹⁷² A common thread throughout these women’s responses was no one offering them an explanation of what CEDAW was, as one woman put it, “I have no knowledge of CEDAW and no one explained it to me.”¹⁷³

Women’s general attitude towards CEDAW conveyed during interviews was that they did not think CEDAW was worth paying attention to; as one woman put it, “I don’t know anything about CEDAW. I don’t understand it and didn’t bother listening to tv or radio when it was discussed.”¹⁷⁴ It was clear from interview responses that CEDAW was a taboo topic for many women. Many immediately declared that despite their ignorance of the Convention, they had no desire to be educated about it; one woman’s response clearly illustrated this: “I don’t understand CEDAW. I didn’t ask about it and I am not interested in learning about it.”¹⁷⁵

It is apparent that women are hesitant to discuss and support CEDAW because of fear of being embroiled in the controversy surrounding the Convention and of being negatively labelled. One woman explained:¹⁷⁶

¹⁷⁰ Phase 4 Interview 5.

¹⁷¹ Phase 4 Interview 8.

¹⁷² Phase 4 Interview 9.

¹⁷³ Phase 4 Interview 15.

¹⁷⁴ Phase 4 Interview 39.

¹⁷⁵ Phase 4 Interview 33.

¹⁷⁶ Phase 4 Interview 11.

“I don’t want to hear about CEDAW because of all the fighting surrounding it. Women who promote CEDAW are labelled as gay or lesbian and many people don’t like these terms so refuse to learn about CEDAW.”

Women did not express an aversion to equality, but they did to CEDAW because of misunderstanding and fear. The researcher explained to one woman who expressed no interest in CEDAW what the Convention was. She thereafter voiced support for it, suggesting that CEDAW be translated into Tongan so women could understand the document for themselves.¹⁷⁷

4.1.28 Women Who Support CEDAW Understand It

Less than a quarter of women interviewed in Phase 4 had an accurate understanding of CEDAW, and these were educated, salaried women. One participant articulated, “I am aware of CEDAW and support its ratification. CEDAW is a convention used to ensure that women’s rights are fully exercised at different levels.”¹⁷⁸ These women who understood CEDAW supported its ratification; one woman stated, “I’m aware of CEDAW and it should be ratified. CEDAW would really help women in Tonga. The only reason CEDAW wasn’t ratified was people were not aware of what it was. There was no proper public consultation.”¹⁷⁹ The consensus amongst the opinions of women who understood and supported CEDAW was that if people and women understood what CEDAW was, it would be supported. One woman explained:¹⁸⁰

“CEDAW is about equal rights, many people think it is about gay people’s right to marry but it is about equal rights. I support CEDAW. Tongans don’t understand CEDAW. CEDAW should be ratified and all women should be vocal in their support of it.”

RESPECT FOR TONGAN WOMEN/FAHU IN TONGAN CULTURE

The elevated social status of women is often referred to as a point of difference for Tonga when viewed against the backdrop of her Pacific neighbours. The unique *fahu* status of women in Tonga has allowed claims to be made that the records of

¹⁷⁷ Phase 4 Interview 36.

¹⁷⁸ Phase 4 Interview 4.

¹⁷⁹ Phase 4 Interview 3.

¹⁸⁰ Phase 4 Interview 17.

abuse are inaccurate,¹⁸¹ that women are not disadvantaged in comparison to men in Tonga,¹⁸² and as reported in her first National UPR report, the privilege of Tongan women in Tongan culture provides Tongan women protections equivalent to those set out in CEDAW.¹⁸³

4.1.29 *Fahu* Is Respect And Status For Women

Women repeatedly referred to the benefit of living in Tonga because “Sisters are treated well, they hold a high status. Women are respected in their status as *fahu* and sisters.”¹⁸⁴ Some women claimed that women in Tonga were fortunate as they are “more valued and respected here than in other places”.¹⁸⁵ This was because Tonga had a unique culture wherein Tongan women were respected.¹⁸⁶ Another woman explained this in saying:¹⁸⁷

“There is an elevated rank of Tongan women in Tongan society, women are respected, in other islands women do the manual work but here men do the work. It is not acceptable to beat women.”

As discussed in the previous chapter, the term *fahu* refers to a sister and her children having the right to behave without any limits or laws (above the *tapu*) over her brother and his descendants.¹⁸⁸ A person’s *fahu* is usually the *mehikitanga*,¹⁸⁹ the father’s eldest sister. The *mehikitanga* had supernatural powers over the brother’s child.¹⁹⁰ Prior to Christianity, everyone in the family was obligated to defer to and provide materially for the *mehikitanga*.¹⁹¹

¹⁸¹ Phase 1 Interview 11.

¹⁸² Phase 1 Interview 9.

¹⁸³ See National Report Submitted In Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1* Tonga A/HRC/WG.6/2/TON/1 (10 April 2008).

¹⁸⁴ Phase 4 Interview 17.

¹⁸⁵ Phase 4 Interview 27.

¹⁸⁶ Phase 4 Interview 38.

¹⁸⁷ Phase 4 Interview 21.

¹⁸⁸ Kerry James “Rank Overrules Everything: Hierarchy, Social Stratification And Gender in Tonga” in Judith Huntsmen (ed) *Tonga and Samoa Images of Gender and Polity* (Macmillan Brown Centre for Pacific Studies, Christchurch, 1995) 59 at 63

¹⁸⁹ Garth Rogers “The Father’s Sister is Black: A Consideration of Female Rank and Power in Tonga”(1977)86 (2) *Journal of Polynesian Society* 157 at 167

¹⁹⁰ Elizabeth Bott: *Tongan Society at the time of Captain Cook’s visits: Discussions with her Majesty Queen Salote Tupou.* (The Polynesian Society Incorporated, Wellington, 1982) at 58

¹⁹¹ I.C. Campbell, above n 135, at 50.

In ancient times only women of chief classes were *fahu*, but all women were respected because of their sacred nature due to the first women coming from *Pulotu* (the Tongan spirit world/afterlife).¹⁹² Respect for the sister in pre-Christian Tonga entailed much more than the politeness for women that defines the *fahu* practices of today.¹⁹³ While some posit that sisters had higher rank but no authority over brothers and could ask for support but not demand it,¹⁹⁴ others assert that the supernatural powers of the Tongan sister did not amount to mere respect; the sister wielded secular authority and powers reinforced by her ability to curse and cause death; the understanding that a *fahu's* powers were limited to influence only is articulated as a European construct of pre-Christian Tonga.¹⁹⁵

The older powers of the *mehikitanga*, which were rooted in scared *tapu* of the Tongan religion, are no longer believed, with Christianity now both religion and culture. Before the advent of Christianity, a commoner could not be *fahu*, but now that commoners have adopted the practice, respect is only a courtesy and not law.¹⁹⁶

The prestige and powers of *fahu* have also eroded due to the demise of the *kainga* as the primary social structure and the prioritisation of the family unit in Tongan society; men are now focusing on providing for their own families; their wives, and children.¹⁹⁷ The family displacing the *kainga* has transformed the primary role of women from *fahu* to wife and mother.¹⁹⁸ The role of *fahu* now is limited to the ceremonial naming of a brother's children and a presence in their marriages,

¹⁹² S.S Farmer *Tonga and the Friendly Islands With a Sketch of their Mission History* (Hamilton, Adams & Co., London, 1855) as cited in Meredith Filihia "Men Are From Maama, Women Are From Pulotu: Female Status In Tongan Society" (2001) 110 (4) *The Journal Of Polynesian Society* 377 at 384

¹⁹³ K.E. James "The Female Presence in Heavenly Places: Myth and Sovereignty in Tonga" (1991) 61 (4) *Oceania* 287 at 295.

¹⁹⁴ Bott, above n 190, at 58.

¹⁹⁵ Phyllis Herda "Gender, rank and power in 18th Century Tonga: The case of Tupoumoheofo" (1987) 22 (4) *The Journal of Pacific History* 195 at 197.

¹⁹⁶ James, above n 188, at 74.

¹⁹⁷ 'Atu 'o Hakautapu Emberson-Bain Country Briefing Paper Women In Tonga (December 1998) at 38.

¹⁹⁸ Kerry James "Gender Relations in Tonga 1780 to 1984" (1983) 92 (2) *Journal of the Polynesian Society* 233 at 236.

funerals and other celebrations.¹⁹⁹ For illustration, the *fahu* or guest of honour at a funeral was the deceased's father's sister or father's sister's child.²⁰⁰ In modern Tonga, a woman, is not just *fahu*; as a mother, she has no authority over the children she bears; she is expected to defer to her husband and his sister.²⁰¹

4.1.30 *Fahu* Is Eroded By CEDAW And CEDAW Is Unnecessary Because We Have Cultural *Fahu*

An assertion was made that CEDAW would destroy the *fahu* status of women, as equality prescribed in the Convention would require that women's status be decreased. A male participant articulated this, "Culturally, women are of elevated rank. Do we take away the *fahu* status of women to be equal?"²⁰² This is an interesting proposition in light of the church leaders' strong resistance to any change to the status quo, which is the male domination of females and inequality between the sexes.

A woman from the chief classes expressed that CEDAW was not necessary for Tonga because they have the *fahu* system there and the two would conflict;²⁰³

"I feel CEDAW has no place here in Tonga. CEDAW is good for third world countries not Tonga because we have the *fahu* system. Papua New Guinean women breastfeed pigs so they need CEDAW."

Along the same vein, another woman expressed that the *fahu* system ensures that women are of a higher social status than men and consequently performs all that CEDAW claims to do;²⁰⁴

"I don't think CEDAW should be ratified, men have high status but in our culture women are of even higher status than men. For example the *fahu* system, sisters are of higher status than brothers. Our culture already does what CEDAW claims to do."

¹⁹⁹ At 236.

²⁰⁰ Bott, above n 190, at 58.

²⁰¹ Rogers, above n 189, at 160.

²⁰² Phase 1 Interview 11.

²⁰³ Phase 1 Interview 6.

²⁰⁴ Phase 1 Interview 15.

The *fahu* status of women is widely believed to guarantee sufficient rights and freedoms for women in Tonga.

4.1.31 Fahu Is No Longer Real, It Is Ceremonial

As described in earlier paragraphs, for various reasons the *fahu* practice is only a shell of what it originally was in pre-Christian Tonga, it was part of customary law that was not codified and it has become a polite performance peculiar to Tonga and strictly ceremonial. One female participant expounded on the decrease in respect for women and the ineffectiveness of the *fahu* system in the present day:²⁰⁵

“The status of women has decreased, when I was growing up I learnt from my grandmother and mother. Women didn’t work for money but were served by their brothers, uncles and their maternal male relatives. The first crop harvest goes to the sister and niece. Every year nobody could eat the harvest until the *fahu* does first. This was the traditional *fahu* system. Now in funerals, both men and women are *fahu*. So men are *fahu* now. The *fahu* is a male. Men keep saying women are *fahu* but this is not true, women are no longer on a pedestal. Sister in law now would rather sell harvest for money than give to *fahu*. Parents use to stop men from hitting women, now violence against women is an epidemic.”

Another female participant expressed the same sentiment succinctly, “I’ve seen huge changes in Tongan society in the last 55 years. The value of women in Tonga has decreased. Women are not as respected as they used to be.”²⁰⁶ A male participant had a similar viewpoint, “The status of women in Tonga is mixed, the *fahu* system where women are put on pedestals is not real, *fahu* is only ceremonial.”²⁰⁷ The high status of women is often only a reference to their role as *fahu* at funerals, birthdays and other Tongan ceremonies, one female participant explains this, “Women’s elevated rank over men is only shown in funerals, weddings, and other similar occasions. At home men have a higher rank.”²⁰⁸

²⁰⁵ Phase 1 Interview 22.

²⁰⁶ Phase 4 Interview 22.

²⁰⁷ Phase 1 Interview 28.

²⁰⁸ Phase 4 Interview 36.

Other women stated that *fahu* has no bearing on the welfare of women today; “Cultural *fahu* doesn’t mean anything. Women are suffering from physical or mental abuse. I am a victim of mental abuse.”²⁰⁹ Another woman made a very clear statement to the defunct nature of the *fahu* practice, “The *fahu* tradition is only surface, superficial and it is rubbish, it doesn’t impact the treatment of women, what is the use of the *fahu* system when women are being killed?”.²¹⁰

One participant expressed that the polite respect for women is no longer the reality in Tongan society; women of today live no differently than men do, with some women “now doing manual labour on the plantation, something we never saw before in the old times.”²¹¹

4.1.32 Fahu Is Only For Your Home In Your Family

The *fahu* ceremonial status is a practice reserved to the confines of the family a woman is born to and does not extend to the family a woman marries into. Women expressed being “queen of the home”²¹² and being treated like “princesses at home”²¹³ but once out of the home women were silenced, had no authority and were vulnerable to being degraded and humiliated even by their husbands in public.²¹⁴

4.1.33 Fahu Is Only For Educated, Employed Women. Fahu Is Not For The Poor

Female participants often referred to the rapid decline of respect for women in Tonga, in particular for poor women; “There is no respect for poor women. There is a lot less practise of the sister and brother respect. People are not bound by these cultural values now and are free to do what they want.”²¹⁵

Fahu status appears to be increasingly the reserve of elite women, a group that includes women of the chief classes, educated women and women of financial means. People now have the option of choosing their *fahu*, a *fahu* does not have to

²⁰⁹ Phase 4 Interview 18.

²¹⁰ Phase 2 Interview 11.

²¹¹ Phase 4 Interview 35.

²¹² Phase 4 Interview 23.

²¹³ Phase 4 Interview 11.

²¹⁴ Phase 4 Interview 11.

²¹⁵ Phase 1 Interview 22.

be the father's eldest sister and even men are now chosen as *fahu*. As the *fahu* is now a matter of choice, a poor woman who is the rightful *fahu* is often overlooked and the honor conferred on women of financial means and achievement. One woman stated:²¹⁶

“But now people choose who their *fahu* is. My mother was the eldest and *fahu* of her family but she is poor so when she goes overseas the extended family don't honor her as *fahu*, she is the rightful *fahu* but someone else is made *fahu*. The eldest of siblings doesn't have much say when younger siblings live overseas and have more money.”

The truth of *fahu* for poorer women is as expressed by a female participant:²¹⁷

“In Tongan culture women have an elevated rank. This culture does not exist at the grassroots level. At the grassroots level Tongan women are no different than women elsewhere, we are lesser, the elevated rank of women culturally is not apparent here. Women are abused, wives are abused. If women aren't educated her in-laws treat her very badly. Women being upheld in Tongan culture is a lie. Only privileged, educated and hard working women in Tonga can survive without being touched by suffering. Uneducated women are extremely abused. These women bear the worst of hardships in Tonga.”

Elite, educated and financially able women experience Tongan culture in ways that are distinct from the majority of commoner women who are often poor and vulnerable to abuse. It is the experiences and opinions of privileged women that are referenced as justification for the non-necessity of CEDAW for women in Tonga, ignoring the plight of underprivileged and grassroots women.²¹⁸ The voices of women that are heard are those of privileged women. The voices and concerns of poor women are often ignored.

4.1.34 Fahu Causes Problems

Far from benefiting women, *fahu* has caused strife within families and between women. As the appointing of a *fahu* comes down to personal choice, disagreements inevitably arise over who should be chosen as *fahu*. The practise of *fahu* has

²¹⁶ Phase 4 Interview 33.

²¹⁷ Phase 4 Interview 37.

²¹⁸ Phase 1 Interview 22.

become a divisive issue in many Tongan families.²¹⁹It also promotes unhealthy competition amongst women for the *fahu* position.

4.1.35 Fahu Is An Impediment To Women's Rights

The *fahu* status although shown to be ineffective in elevating women, is as stated by one female participant often used as “a method of silencing women”²²⁰ and to undermine efforts to implement equality and women's rights at law. This was borne out in the CEDAW experience, over and over again the traditional elevated status of women as *fahu* is proclaimed as sufficient protection for Tongan women; the reality is starkly different, and particularly for women who are uneducated, poor, live in rural areas and of the commoner class.

REALITY OF LIFE FOR WOMEN IN TONGAN SOCIETY/CULTURE

The protections furnished by the constitution and the *fahu* status of women are insufficient when the experiences of Tongan women are taken into account. The following paragraphs outline some of the real-life issues and experiences of women living in Tonga.

4.1.36 Women Of Different Classes Have Different Experiences

The experiences of educated, salaried women contrast greatly from those of poorer rural women, one such privileged woman expressed that there are no issues for women in Tonga:²²¹

“There is no suppression of women in Tonga, I don't have fewer rights because I am a woman. I am a woman here at work and I don't feel I am discriminated against here because I am a woman. I don't feel women in Tongan society are disadvantaged, women can speak and do what they want. I don't feel there are any real issues for women here.”

This view is explained by another woman, “Women are not treated as equals; the lower the social class the more suppressed and less equality there is for them.”²²² Women who are educated and employed have the means to leave abusive

²¹⁹ Phase 4 Interview 24.

²²⁰ Phase 1 Interview 14.

²²¹ Phase 4 Interview 16.

²²² Phase 4 Interview 17.

marriages.²²³ Women at the grassroots and in the villages often have little education, little means of earning an income, live in poverty²²⁴ and therefore do not have the same capacity to leave harmful situations.

4.1.37 Government/Ngo Ignorance Of Rural Women's Needs

Statistics from the most recent census show that poverty is higher in rural areas than in urban areas on Tongatapu.²²⁵ Women in rural areas are much more likely to be unemployed (46.1%) than women in urban areas (31.9%).²²⁶ Visits from government ministries to rural areas are often irregular due to budget constraints.²²⁷

The data is borne out in the expressed experiences of women participants. Women from rural areas felt their needs were often ignored, with no one from the government consulting with them. One woman explained, "No one comes to ask us about our concerns as women in the village, this interview asking about our well-being is the first time I've ever been asked about this."²²⁸ Another participant shared her concern that, "The focus now is on the women at the top levels but we need to reach women at the grassroots levels who desperately need the help."²²⁹ Government ministries are derelict in their duties in rural areas, one woman explained that their lack of education (ability to read and comprehend English) caused them to feed their children expired canned food which the responsible government ministry had failed to ensure were not sold.²³⁰

Women were also frustrated with what they explained to be an ongoing cycle of poverty, with their lack of employment due to a lack of education leading to their

²²³ Phase 4 Interview 33.

²²⁴ Phase 4 Interview 16.

²²⁵ Dr Viliami Konifelenisi Fifita Dr Alba Lanau Sánchez Dr Héctor Nájera Catalán Dr David Gordon *Assessing Progress towards the Eradication of Poverty in the Kingdom of Tonga* (Statistics Department of Tonga November 6, 2018) at 23.

²²⁶ Tonga Statistics Department Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Reports Second Edition (2016)

²²⁷ *Country Gender Assessment of Agriculture and the rural sector in Tonga* (Food and Agriculture Organization of the United Nations and the Pacific Community (Nuku'alofa, 2019) at 16.

²²⁸ Phase 4 Interview 12.

²²⁹ Phase 4 Interview 24.

²³⁰ Phase 4 Interview 12.

also not being able to provide their children with an education and perpetuating poverty intergenerationally because the government does not provide scholarships or financial assistance for them and their children. One participant expressed:²³¹

“What can be done to help women is that government and churches address the needs of women with no education and no jobs. Scholarships are given to women of higher social status who are already fine but none are given to women like us who need it most. We need scholarships for women like us and our children because we can’t afford to pay for higher education but this is necessary for us to advance in life.”

Women from the rural areas recounted how some women’s NGOs have exploited them for their own financial gains, with their assistance ending up costing and causing harm to the women.²³² There are no women’s shelters out in rural areas, services for victims of violence are centred around urban areas, village women want these services provided to them. One participant elaborated:²³³

“There should be shelters for women in rural districts and for women in the villages. The women’s shelter in town is too far. These shelters should make an effort to visit women who are victims of violence in the villages. There should be specific help for women in the villages, town is too far away and the concerns and issues of women in the villages are not addressed. A women’s centre in the districts could address these issues quickly and efficiently.”

Government assistance is often directed at privileged women whilst poorer rural women are often neglected.

4.1.38 Women Are The Leaders/Backbone Of Village/Communities

Despite the cultural norms that dictate women have to submit and depend on men, a common thread in women’s responses was that they were the backbone of the villages and communities they are part of. One participant explained, “Women have a lot of capacity or energy to accomplish great things if they are willing. For

²³¹ Phase 4 Interview 12.

²³² Phase 4 Interview 12.

²³³ Phase 4 Interview 21.

example, community building is mostly done by women”.²³⁴ In terms of communal work one participant articulated:²³⁵

“When something happens, a funeral, wedding or birthday it is mostly women who get up and help each other in these things. It is really good being a woman here in Tonga because we help each other out a lot.”

Another stated that, “In the villages, more work is done by women than men. There are jealousies amongst women but they still cooperate.”²³⁶

4.1.39 Women Are The Providers/Breadwinners/Carry The Family

The fragile Tongan woman that is placed on a pedestal according to Tongan culture is at odds with the experiences of women who are now often having to provide for their families. This has become more common when as one woman explained:²³⁷

“Husbands go fruit picking overseas and leave wives and children here. Men find new wives in Australia and New Zealand and stop sending money back here. Some men go overseas on vacation and never come back.”

The life of village women in Tonga is often one characterised by hard labour, tapa making is a gruelling job but is often the only means for rural women to generate an income. One woman explained:²³⁸

I have been working as a tapa maker since middle school to educate my children and pay for church obligations. One piece of tapa cloth is worth \$2,000 that’s a misinale (annual church donation). I am 66 years old and will continue to work as a tapa maker. As time goes by things become more and more expensive, the tutu (mulberry bark) is more expensive so it becomes harder to make money from tapa but I believe if we work hard enough we can overcome any obstacles and difficulties.

²³⁴ Phase 4 Interview 24.

²³⁵ Phase 4 Interview 19.

²³⁶ Phase 4 Interview 28.

²³⁷ Phase 4 Interview 20.

²³⁸ Phase 4 Interview 13.

Even for women who have the support of husbands, participants expressed that responsibility for the family fell to the wife:²³⁹

“Women are central to Tongan families. Women make money, manage the home and think for the family. There are so many problems women face here. In my marriage, I have to do everything myself. My husband’s thinking isn’t as good as mine. The well-being of a family depends on its women.”

4.1.40 Women Headed Households And Often Uneducated And Poor

Despite the emphasis on the integrity of the family unit in Tonga, the number of women living independent of men continues to rise, 11.5% of women of marriageable age were neither married nor single, that is they are divorced, separated, widowed or in a de facto relationship.²⁴⁰ One in 4 households are headed by women, these households are less likely to have income from wages than houses headed by men.²⁴¹ Ninety per cent of households headed by women are wholly reliant on remittances as their only form of income.²⁴² This renders many women vulnerable to financial stress as various participants explained that their husbands travelled abroad for work through the seasonal workers’ scheme and unfortunately remarried and started new lives resulting in their cutting off financial support for their families in Tonga.²⁴³ Divorce and separated families are much more common than ever before with women in the villages struggling to provide for a number of small children. One such woman shared that:²⁴⁴

“I and my husband are no longer together, we left each other to be with other people but I am the sole provider for our children and do so by making tapa cloth. Women in Tonga are often poor. I need money to help educate my children. My husband doesn’t support our children, we have 5 from ages 10 to 3 years old. I am overwhelmed being a single mother and provider but my family and my siblings support me and my children. There is extreme poverty, women need more money, money

²³⁹ Phase 4 Interview 30.

²⁴⁰ Tonga Statistics Department, above n 226.

²⁴¹ Above n 240.

²⁴² Above n 240.

²⁴³ Phase 4 Interview 12.

²⁴⁴ Phase 4 Interview 15.

is necessary to improve the quality of life for women. I am often exhausted but I work very hard to feed my children.”

Single mothers and their children are overlooked and receive little assistance from the government and this often means their children are not educated. One teacher voiced that:²⁴⁵

“Government should provide for single mothers and their children as they have more pressing needs than men. Mothers and children are often left behind and so the children’s education here in classrooms is negatively affected.”

Widows are also a vulnerable group of women who are often left with many children to provide for without the means to do so. Without government assistance, these women and their children suffer, with their elder sons turning to selling drugs to provide for the family. A woman participant recounted:²⁴⁶

“I know many women with dead husbands. The government supports the elderly 70 years + but the government doesn’t support widows that have 5 children to feed, all they have is tapa making to rely on for money. Nobody from the government comes to see how they live and their suffering. The elderly have grown children that take care of them. A widow’s eldest son turns to selling marijuana to support the family, this is very common.”

Young unmarried mothers also suffer the same fate.²⁴⁷

4.1.41 Women Suffer From Poverty

According to the 2016 census 27% of the population are poor (living on less than TOP\$970 per month (NZD\$615).²⁴⁸ One in 5 adults are poor, 1 in 10 live in extreme poverty, 33% (1 in 3) of children live in poverty, 15% live in extreme poverty.²⁴⁹ According to most recent statistics, 75% of the unemployed are women, and only

²⁴⁵ Phase 4 Interview 22.

²⁴⁶ Phase 4 Interview 21.

²⁴⁷Phase 4 Interview 39.

²⁴⁸ Fifita, Sánchez, Catalán and Gordon, above n 225, at 6.

²⁴⁹ At 8.

41% of people engaged in paid work were women.²⁵⁰ Only 35% of employees in the public service are women, and there are twice as many men as there are women employed in the private sector.²⁵¹

Poverty was a common concern for women interviewed. As one woman stated, “Women lack money, we need funding”²⁵² another along the same lines, “There is a real lack of money for women here.”²⁵³ They attributed their poverty to the “the lack of ways for women to make money”²⁵⁴ and this lack of funds, in turn, restricted their ability to “create a source of income while caring for the home.”²⁵⁵ In summary, women’s stories painted a picture of a sad cycle of poverty where lack of work and unemployment meant they had little income; this lack of income limited their ability to generate more funds. The majority of participants expressed that to address their poverty, they required funding,²⁵⁶

“There needs to be a special fund for women. There is a real lack of money for women here. Women need money to be able to make money from their skills and talents. Women need financial assistance.”

The source of funds was generally agreed to be from the government or churches, as stated succinctly by one participant, “The government should help, churches should help women out financially.”²⁵⁷ Interestingly, a significant portion of their family’s incomes were spent on the churches they attended; a case study of two rural villages found the church was the main expense for most households.²⁵⁸

The lack of access to funds and poverty for women is such that women can’t even afford divorces in the villages, which affects their social standing within their villages and communities. The wife of a church leader recounted:²⁵⁹

²⁵⁰ Tonga Statistics Department above n 226.

²⁵¹ Tonga Statistics Department.

²⁵² Phase 4 Interview 11.

²⁵³ Phase 4 Interview 27.

²⁵⁴ Phase 4 Interview 30.

²⁵⁵ Phase 4 Interview 31.

²⁵⁶ Phase 4 Interview 27.

²⁵⁷ Phase 4 Interview 20.

²⁵⁸ Country Gender Assessment of Agriculture and the rural sector in Tonga, above n 227, at 48.

²⁵⁹ Phase 4 Interview 33

“A former prostitute in church wants to remarry but can’t afford to pay for her divorce. There is a single mother living with a man in the congregation she can’t marry because she can’t afford \$1000 for her divorce. Living in the village and being part of the church is difficult for this woman but the church is considering giving money so she can pay for the divorce.”

To alleviate poverty, women were now frequently turning to prostitution, extramarital affairs with men, and stealing to meet their basic needs²⁶⁰.

4.1.42 Women Can Not Get Finance Because They Can't Own Land.

Women’s inability to access finance was tied to their inability to own land. As one woman elaborated:²⁶¹

“Banks give men loans easily and quickly whereas banks don’t give women loans, and this is because we lack security, we don’t own land, vehicles, goods like men do. The majority of women I know have no home or land for security so they can’t get loans. These women often feel neglected.”

Unlike men, women don’t have the option of using land as collateral on bank loans, their loan applications are denied, and they find themselves having to resort to high interest rates loans to pay for their daily needs, including things such as school fees for their children.²⁶² Women felt that the Tonga Development Bank should provide low interest loans specifically for village women, as commercial money lenders such as PINO provide loans for women at exorbitantly high interest rates, which often worsens the financial struggle for many women.²⁶³ PINO loans were also high risk because if one woman defaulted, all other women were responsible for repaying the loan. Therefore, loaning from commercial money lenders was undesirable, but “women are desperate and have no other options.”²⁶⁴

²⁶⁰ Phase 4 Interview 38

²⁶¹ Phase 4 Interview 12.

²⁶² Country Gender Assessment of Agriculture and the rural sector in Tonga, above n 227, at 50.

²⁶³Phase 4 Interview 20.

²⁶⁴ Phase 4 Interview 20.

4.1.43 Lack Of Government Assistance/Opportunities For Women

Women from the rural areas had a common complaint that the government prioritised and assisted men exclusively whilst ignoring women and women's groups. One woman expressed her dissatisfaction with the government's bias in favour of men, saying:²⁶⁵

“Women would do better if there are fair and shared opportunities between men and women, beginning from the top down. Men shouldn't be prioritised. Opportunities in work and further studies are targeted for men. The same training and workshops provided for men should be provided for women. Parents choose to educate men but women are the first teachers of humans so women's education should be prioritised.”

Women from rural areas repeatedly commented on their desire to be offered the same assistance as men, with one saying:²⁶⁶

“The government often provides only for men and fathers, for example, societies and markets are provided for men whereas women must do this for themselves and often have to work alone. Women working in groups don't have a market, they have no formal education or expertise to organise a permanent market. Men's groups are supported by the government, they are flown overseas to find markets. The government doesn't make an effort to find markets for women or create opportunities for them.”

Another simply stated that:²⁶⁷

“There is a lot of aid and help from the government for men. The government doesn't notice or help women's groups like ours. Uneducated single mothers like myself are not helped by the government.”

These women felt that the government could offer assistance in providing education for the children of poor single mothers, vocational training for women,

²⁶⁵ Phase 4 Interview 25.

²⁶⁶ Phase 4 Interview 12.

²⁶⁷ Phase 4 Interview 14.

and financial aid for their tapa-making groups.²⁶⁸ Women expressed that the government should establish a Ministry for women.²⁶⁹ Such a ministry could help address women's needs and carry out what one woman specified was needed in villages:²⁷⁰

“Government should educate women, once a month they should come to the villages. Radio programs aren't enough. Come and check women's health in the villages once every 3 months. Just come and see how the women are doing. Provide cooking lessons, teach women how to sew, this will help raise the quality of life for women.”

4.1.44 Prevalence Of Drugs, Alcohol, Violence And Broken Families

It was clear from many women's answers that the reality of the lived lives of Tongan women could not be described as elevated in Tonga. Themes of drug abuse, illegal drug sales, domestic violence and neglect of children came through the answers. Women suffered at the hands of drug abusers in their homes; a woman participant responsible for the pastoral care of women in her congregation stated:²⁷¹

“Problems for women here are caused by the use of ice (drugs). Husbands use ice and cause problems for their wives. Many negative changes in Tonga are caused by ice. A lot of violence against women is caused by ice. Children on ice don't listen to their parents.”

One woman participant explained that men on drugs abused women they were in relationships with:²⁷²

“Drug abuse is a huge problem in Tonga. Police told me men on ice are very violent and my female friends often complain to me of men being violent to them who are high on meth and ice. The government needs to stop the distribution of ice because it causes a lot of violence against women in relationships.”

One female participant shared her own experience of this:²⁷³

²⁶⁸ Phase 4 Interview 12.

²⁶⁹ Phase 4 Interview 2.

²⁷⁰ Phase 4 Interview 20.

²⁷¹ Phase 4 Interview 33.

²⁷² Phase 4 Interview 2.

²⁷³ Phase 4 Interview 18.

“My husband is addicted to meth and is mentally abusive towards me. Ice is a problem here in Tonga because people don’t realise how hard it is to get off it.”

Participants explained that many women were also abusing drugs in Tonga, which negatively impacted their ability to function in their families. One woman explained:²⁷⁴

“There are many women and mothers who abuse drugs. Women are not able to raise and teach children well, grandparents are now raising children. Parents have a lot of problems and this causes children to have problems at school. Many women have a lot of problems because they were raised in problematic families and had many issues at home.”

Incest, divorce, addiction and violence are described by over a quarter of women interviewed in Phase 4 as issues that are now considered standard in Tonga. When reporting these crimes to the police, one woman explained, “Police need a lot of work, lots of cases of violence against women and incest cases particularly from the eastern district are not reported.”²⁷⁵ Alluding that the police themselves were not helpful to female victims. Another explanation could be, as one woman complained, “The law should be tougher for the perpetrators of violence against women.”²⁷⁶ Women may be discouraged from reporting crimes if the punishment is trivial and ineffective.

Violence against women was another common theme in women’s answers; one woman set this out simply; “There is a lot of abuse and hurting of women in Tonga.”²⁷⁷ The enormity of the issue of domestic violence is illustrated when one woman expressed that there was not enough room for her in a women’s shelter:²⁷⁸

“There’s a lot of domestic violence against women. There’s not enough room in women’s shelters for victims of domestic violence to go to. I looked for a safe place because my husband was abusive. I went into a

²⁷⁴ Phase 4 Interview 29.

²⁷⁵ Phase 4 Interview 18.

²⁷⁶ Phase 4 Interview 2.

²⁷⁷ Phase 4 Interview 7.

²⁷⁸ Phase 4 Interview 2.

women’s centre, and they said the house was full. I didn’t want to burden my family or my husband to find me. I want more buildings to be provided for women to take refuge in and government should provide this.”

The interview responses align with data from a study on domestic violence against women in Tonga conducted by Ma’a Fafine mo e Famili (MFF).²⁷⁹ The study found that more than 3 out of 4 women (77%) experienced physical or sexual violence from a partner or non-partner.²⁸⁰ A third of women in relationships have experienced physical violence, and three-quarters of women did not seek help from formal services or people in authority.²⁸¹ The study found that women with lower education levels are more likely to report physical violence.²⁸²

4.1.45 Women Pass Suffering Onto Children

Children of women who suffered abuse often had irregular school attendance, with teachers expressing in interviews that children of abused mothers do not receive a proper education because of the lack of a stable home. One such story shared by a teacher was:²⁸³

“A new boy in my class moved here from Folaha because his father beat his mother, but soon they will go back to the father with their mother, so their lives are continually disrupted this way.”

Mothers were also known to force their children to miss school to help them make money. One participant explained:²⁸⁴

“Women who sell food and produce at markets are often ashamed to do so, their kids miss school because they are made to go and market their food and produce instead. Children often miss school to sit in stalls and sell food. People are now paid \$20 per cassava bin they peel. So

²⁷⁹ See Dr. Henrica Jansen, Dr. Seu’ula Johansson-Fua, Betty Hafoka-Blake, and Gabriella Renee ‘Ilolahia *National Study on Domestic Violence against Women in Tonga 2009 NOFO ‘A KAINGA* (Ma’a Fafine mo e Famili, June 2012).

²⁸⁰ Jansen, Johansson-Fua, Hafoka-Blake, and ‘Ilolahia, above n 279.

²⁸¹ Jansen, Johansson-Fua, Hafoka-Blake, and ‘Ilolahia, above n 279.

²⁸² Jansen, Johansson-Fua, Hafoka-Blake, and ‘Ilolahia, above n 279.

²⁸³ Phase 4 Interview 19.

²⁸⁴ Phase 4 Interview 19.

kids are told to miss school and go with their mothers to peel cassava for money.”

4.1.46 Women In The Workplace Are Not Seen As Equal To Men

A significantly lower number of women (56.7%) participated in the labour force than men (71.2%); low participation for women in the labour force, particularly in rural areas, was due to women performing domestic work in their homes.²⁸⁵ Similarly, a significantly lower percentage of women 15 years and older (30%) worked for pay or profit, making up only 39% of those working for pay, and only 1 in 3 employers were women.²⁸⁶

The low numbers of women in the workforce can be partially explained by the experiences of women in the workplace they detailed during interviews. While women have now achieved key and CEO positions in the workplace,²⁸⁷ reflected in 43% of CEOs and Deputy CEOs in the public service taken up by women.²⁸⁸ Views expressed in interviews were that men did not think women were their equal in the workplace. One participant shared:²⁸⁹

“men see women as not being able to do their job, women are not professional. Men don’t see women as equal, and men dominate in the workplace, for example, Cabinet Ministers are male-dominated.”

Another woman spoke of her personal experience of men thinking less of her in the workplace:²⁹⁰

“Tongan women hold more power traditionally than in Melanesian countries, but I don’t know if this transitions into professional workplaces or environments. Men who are exposed to European and modern ways, treat me as equal, but others will not...”

²⁸⁵ Tonga Statistics Department, above n 226.

²⁸⁶ Tonga Statistics Department, above n 226.

²⁸⁷ Phase 4 Interview 4.

²⁸⁸ PSC 2017 Report as cited in “Gender equality: Where do we stand? The Kingdom of Tonga” (Ministry of Internal Affairs, 2019) at 28.

²⁸⁹ Phase 4 Interview 3.

²⁹⁰ Phase 4 Interview 1.

The view that Tongan women cannot perform to the levels of Tongan men perhaps explains the disparity in salary between the sexes; according to one participant, “men and women are on the same levels at work, but men are paid more only because they are men and I’ve seen this happen.”²⁹¹

4.1.47 Lack Of Women In Parliament/Politics

At present, there is only one female member of Parliament.²⁹² Women expressed concern that as there are more men in Parliament, only men’s voices and concerns are heard.²⁹³ The minimal number of women in parliament is partly explained by the patriarchal social norm that the public sphere and political arena are reserved for men.²⁹⁴ One participant provided a helpful insight into this:²⁹⁵

“In Politics, there is a gap where women don’t have a voice. This is where the challenge is. A lot of people think it’s traditional that only men have a voice in the political sphere. There have been great women running in past elections but the biggest barrier to women in politics is that women don’t vote for other women. People are threatened by women leading politics. The public doesn’t vote for women, but maybe this is because the right women have not stepped up.”

4.1.48 Women Need To Be Educated

Over half of the female participants in Phase 4 explicitly referred to the lack of education as a cause of poverty and other related issues for women in Tonga. This is in line with statistics that show that 44% of those who live in a household headed by someone without qualifications are poor. In comparison, only 16% are poor in a household headed by a person with a degree or higher qualification.²⁹⁶ Those with the least education, with five or more children and fewer adults in the household, are most likely to be poor.²⁹⁷ Women expressed a desire for government, churches and NGOs to provide opportunities for formal education, free and accessible to

²⁹¹ Phase 4 Interview 3.

²⁹² No women candidates were successful in the 2021 elections. One woman was appointed by the Prime Minister to Cabinet.

²⁹³ Phase 4 Interview 2.

²⁹⁴ Phase 4 Interview 4.

²⁹⁵ Phase 4 Interview 4.

²⁹⁶ Fifita, Sánchez, Catalán and Gordon, above n 225, at 23

²⁹⁷ At 24.

women in the rural areas, in the form of scholarships for themselves and their children. The most recent census shows that 94.5% of children 5-14 years attended school, but between the ages of 15-19, 29% of children didn't attend school.²⁹⁸ Only 10.8% of the population received tertiary qualifications.²⁹⁹ This may be due to the financial constraints expressed by women in interviews.

Women expressed a need for the provision of vocational classes for sewing, painting, floral arrangement, and hairdressing to provide women alternate and multiple pathways to make an income. More men received vocational training (8.7%) than women (6.9%).³⁰⁰

Women required education on basic life skills such as budgeting, health and hygiene, ways of parenting and for men to understand that violence against women is unacceptable.³⁰¹ In terms of tapa cloth production, rural women require assistance in developing and improving tapa production methods and securing markets for their products. There was also concern for the lack of understanding of the law for women in villages and an expressed need for government to dispatch a lawyer to the villages and explain relevant laws to women.³⁰²

The inability to acquire an education is rooted in poverty, with one participant arguing that the "Government should help educate women who can't afford education."³⁰³ The lack of education significantly decreases their chances of gaining employment, further perpetuating their poverty. One participant says, "Most problems rise from lack of money, and this is because people have little education and therefore cannot be employed."³⁰⁴ This, in turn, holds women and their children hostage in poverty, rendering them vulnerable to abuse. Financial independence is often seen as the means to emancipate and elevate women, with a female participant stating that educated women are empowered and therefore

²⁹⁸ Tonga Statistics Department, above n 226.

²⁹⁹ Tonga Statistics Department, above n 226.

³⁰⁰ Tonga Statistics Department, above n 226.

³⁰¹ Phase 4 Interview 18.

³⁰² Phase 4 Interview 30.

³⁰³ Phase 4 Interview 2.

³⁰⁴ Phase 4 Interview 9.

less likely to be vulnerable to domestic abuse, a woman with a means to support herself and her children will leave abusive households, she shared:³⁰⁵

“The government and church should help educate women and their children and find them work. Women in unhappy or abusive marriages who have an education can leave and make a life for themselves and their children. There are some very smart girls here but they don’t further their education because they are too poor to.”

Another common theme in women’s interviews was that the government was not doing enough to help educate women. One participant had a completely different experience living in Fiji:³⁰⁶

“In Fiji, there are community learning projects for women: sports, handicrafts, cooking, sewing, singing and the like. I don’t see these kinds of training programs happening in the villages here. This would really help women who have no jobs or who are single mothers, it would provide them with a means of making money.”

What was clear from interviews is that women participants saw their education, in all manners and across a plethora of fields, as crucial to improving their quality of life. As one participant put it, “Educating women is the door to advancing the welfare of women.”³⁰⁷

CEDAW IS UNNECESSARY: OTHER MEANS TO ADDRESS WOMEN’S ISSUES

From interviews, it was clear that many in Tonga did not comprehend the connection between discriminatory laws and women’s suffering. Nor did they appreciate that legislating for equality could help address women’s issues such as domestic violence. One such participant reiterates, “I understand women are abused here in Tonga but I don’t think women being equal to men is the solution to stopping violence against women.”³⁰⁸ This confusion extends to the content of CEDAW; some believe that only certain parts of the Convention promote women’s

³⁰⁵ Phase 4 Interview 33.

³⁰⁶ Phase 4 Interview 35.

³⁰⁷ Phase 4 Interview 24.

³⁰⁸ Phase 1 Interview 15.

rights; a male church leader affirmed that he approves of “parts of CEDAW that protect and promote women’s rights.”³⁰⁹ There is also an assumption that the constitution brings Tonga into full compliance with CEDAW. A former cabinet member stated, “Our laws cover everything in CEDAW. We have the second oldest constitution in the world.”³¹⁰ However, Chapter Six outlines Tonga’s extensive constitutional and legislative non-compliance with CEDAW. Others believe that gender equality can be achieved in Tonga by implementing elements of CEDAW that align with Tongan culture. Tongan culture is essentially Christian patriarchy. There are very few elements of CEDAW that would align with a culture that suppresses women. The proposition that *fahu* elevated women beyond discrimination was again put forward, one man suggested that other nations should adopt the tradition saying, “in comparison to Islamic countries our women are well off and we should suggest fahu system for them all.”³¹¹ Still, others denied the existence of any discrimination against women in Tonga, and any solutions to address women’s issues cannot be focused on women alone. One woman argued:³¹²

“I don’t know that women are disadvantaged in comparison to men in Tonga. I don’t know if we can solve any problems by treating one sex in isolation. We should avoid exclusivity and we should aim to work in totality.”

Other participants underscored the government’s efforts to recognise women’s rights by enacting legislation such as the Family Protection Act. 6 The advocacy of NGOs and civil society was acknowledged as crucial for positive changes for women in recent times.³¹³ Other women from older generations expressed delight in the progression of women’s rights thus far; one such woman declared:³¹⁴

³⁰⁹ Phase 1 Interview 16.

³¹⁰ Phase 1 Interview 17.

³¹¹ Phase 1 Interview 11.

³¹² Phase 1 Interview 9.

³¹³ Phase 4 Interview 4.

³¹⁴ Phase 4 Interview 22.

“Things are getting better for women. Women are in Parliament now, women drive, women preach, women conduct choirs, women are rugby umpires. Tonga may eventually have a female Prime Minister.”

Furthermore, interviews highlighted the belief that the ratification of CEDAW was unnecessary as the implementation of a national gender policy has sufficiently served to address gender equality and women’s issues in Tonga. One participant emphasised this:³¹⁵

“We can achieve equality in Tonga without CEDAW. For example, we have the national gender policy, a working policy from the women’s affairs division. The policy has 6 priority outcomes. The primary role of the women’s affairs division is to implement this policy for the government.”

As discussed in-depth in Chapter Six, Tonga’s national gender policy, the National Women’s Empowerment And Gender Equality Tonga Policy And Strategic Plan Of Action 2019–2025 (WEGET),³¹⁶ does not adequately address women’s issues in large part because Tonga’s discriminatory legislative framework is only fully compliant with Article 9 of CEDAW, legal amendments are suggested to help achieve the gender policy’s six priority outcomes. The concerns of women discussed above can also be addressed through the aforementioned proposed law reform, with particular attention being given to the needs of poor, uneducated, rural commoner women.

CEDAW WOULD BE BENEFICIAL FOR WOMEN IN TONGA

A significant number of people argued that CEDAW should be ratified in Tonga. The most common reason given was that Tongans had discriminatory laws that would have to be amended to domesticate the provisions of CEDAW. One women’s rights advocate explained:³¹⁷

³¹⁵ Phase 1 Interview 18.

³¹⁶ National Women’s Empowerment And Gender Equality Tonga Policy And Strategic Plan Of Action 2019–2025 (Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga)

³¹⁷ Phase 1 Interview 7.

“There are gaps between men and women’s rights in Tonga and I believe CEDAW should be ratified. I believe ratifying CEDAW would be proof Tonga is serious about women’s rights and not just paying lip service.”

Another added that:³¹⁸

“Ratifying CEDAW would be useful as leverage for future legislative changes to right inequalities between men and women.”

Participants desired CEDAW to enact laws that would address Tonga’s domestic violence epidemic. One participant supported decriminalising abortion in pregnancies resulting from rape.³¹⁹ Another participant related the sad consequence of discriminatory criminal legislation in relation to a case of sexual assault of a child. She stated that:³²⁰

“The case did not have enough evidence to put the perpetrator in prison and nothing further was done. If CEDAW was ratified this rule of collaboration would be abolished and something would’ve been done about this case for the child.”

Others thought Tonga’s family laws needed upgrading, especially to allow women to access property located on an ex-husband’s land.³²¹ On the subject of land, one woman, supported CEDAW in anticipation that it would reform Tonga’s land laws; she communicated that:³²²

“women should be able to own land. The bible gives land to the son and if there is no son the land goes to his daughter. In Tonga instead of going to daughter, it goes to your father’s brother.”

Some felt CEDAW should be ratified to increase the number of women in politics. One woman felt that CEDAW “is key to development through allowing for more political participation of women.”³²³

³¹⁸ Phase 1 Interview 18.

³¹⁹ Phase 1 Interview 2.

³²⁰ Phase 1 Interview 29.

³²¹ Phase 4 Interview 4.

³²² Phase 1 Interview 13.

³²³ Phase 1 Interview 13.

CHRISTIANITY SUPPORTIVE OF EQUALITY

The fundamentalist interpretation of the bible that is used by TNFCL to justify the subjugation of women is not the only Christian interpretation of gender relations in Tonga. There are alternative interpretations of the bible with one man stating that the bible sets out equality between the sexes and that the majority of Tongans were not like the people who protested CEDAW:³²⁴

“Churches and faifekau were so against CEDAW. My personal and religious belief is that husband and wife are equal. I saw it in my home, my mother and father were equal. I teach my kids the same. Respect your sister and mother... The majority of Tongans aren’t like the people that protested, they belong to certain religious sects. I was sad this happened.”

The suppression of women in churches is noticeable throughout the Pacific region with a number of female theologians in the region acknowledging this fact and speaking out against it.³²⁵ These female theologians advance the position that patriarchy in Pacific churches is based on biblical interpretations of male scholars.³²⁶ It is important that Pacific female theologians read and interpret the bible from their perspective as small parts of the scripture should not be taken to justify injustices like racism, classism and sexism.³²⁷ The masculine and patriarchal image of God and his son Jesus Christ and his disciples has been used as the rationalisation for the marginalisation of women within the church hierarchy.³²⁸ These Pacific women identify themselves as feminist theologians. Feminist theology is an attempt to liberate women subjugated in patriarchy through restructuring religious and secular constructions that are oppressive to women.³²⁹ Pacific feminist theology seeks to employ the liberating power of Christ to transform our societies and allow for women to take their place as equals besides men.³³⁰ They put forth the argument that the Christian faith should be the stimulus

³²⁴Phase 1 Interview 26.

³²⁵ Chantelle Khan “Looking for God with New Eyes” in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 186 at 191.

³²⁶ Marie Ropeti, above n 22, at 133.

³²⁷ At 138.

³²⁸ Miller, above n 16, at 18,19.

³²⁹ Meo, above n 18, at 157.

³³⁰ Meo, above n 18, at 157.

for cultural change and the liberation of women from suppression within churches and in our Pacific societies.³³¹

CONCLUSION

This chapter has highlighted that the predominant culture in Tonga is Christian patriarchy, established through patriarchal laws and maintained by powerful patriarchal institutions of the male-dominated churches and traditional leadership. Discrimination against women is posited by members of the influential church leadership as biblical and posited as therefore Tongan culture. Powerful church leaders legitimise female suppression through fundamentalist interpretations of the bible and control of the public discourse and members of their congregations. Implementing formal and substantial equality for women in Tonga would initiate the erosion of this Christian patriarchal culture and is the basis for their resistance to the Convention and their claims of cultural relativism. Powerful church leaders inflamed the public with claims that CEDAW was the implementation of same-sex marriage and silenced CEDAW supporters through public attacks. It is in their interests that patriarchal society and culture is perpetuated in Tonga.

Patriarchal norms characterise Tongan culture and society, where women are expected to be submissive, silent, dependent on men, dominated by men in both the private and public sphere and are victims of violence, abuse and subject to sexual control through shame and stigma.

Fahu as a traditional practice has been put forward as an appropriate cultural mechanism that serves to protect women in Tonga; however, as discussed in this chapter, the suppression of women characteristic in patriarchal systems and societies is the lived reality for women in Tonga. *Fahu* has been weaponised against women's empowerment and used to maintain inequality at law in Tonga. The experiences of Tongan women vary according to their education levels and financial means; for the underprivileged, there is no *fahu* in terms of elevation in society and often in terms of the ceremonial practises that define the concept in contemporary times. The experiences of Tongan women in Tongan society do not commensurate

³³¹ At 151.

with claims of cultural elevation; many women live through poverty, violence, drug abuse, and suffer from a lack of education, lack of government assistance and access to employment.

The interviews highlight the fear and controversy surrounding CEDAW and the inability of women to understand CEDAW and what it has to offer them. Feminist theology advocates for the liberation of women. Implementing CEDAW could be viewed as a means to revive the now defunct and ineffectual *fahu* cultural practice and the recognition of the ancient sacred nature or *tapu* of women. CEDAW was not ratified because it would erode Tonga's Christian patriarchal culture.

CHAPTER FIVE: POLITICAL IMPEDIMENTS TO RATIFICATION

This chapter explores the theme of the political reasons for the non-ratification of CEDAW. The chapter sets out the historical-political context in Tonga, highlighting the absence of women from Tongan politics, which is characteristic of patriarchal states and cultures. The absence of women from the political sphere in Tonga has meant that women's issues are often ignored. As such, the democratic movement's developments in Tonga do not feature women's issues and rights. Regarding the ratification of CEDAW, the political reasons for non-ratification had little to do with women's issues but revolved around the differences between male political actors and other factors. The chapter highlights the necessity of implementing measures to reserve seats for women in parliament. This is to overcome significant barriers women candidates face in patriarchal Tongan society and culture.

HISTORICAL ABSENCE OF WOMEN FROM TONGAN POLITICS

Sylvia Walby outlined six structures within the patriarchal system.¹ In a patriarchal system, women are dominated both in the home or private sphere and in the workplace and state, known as the public sphere.² Patriarchal societies traditionally prescribe the place of women as bound to the private sphere and perceive the political sphere as a locality wherein there is no place for women.³ Subsequently, it has been argued that today's political structures are "... designed by men for men and based on the exclusion of women in different ways."⁴

The exclusion of women from politics within the patriarchal state manifests in women being ultimately denied access to political structures or having minimal powers within such; case in point, women have only relatively recently been granted the right to vote, and on a global scale, there are low numbers of women in national legislatures.⁵ The absence or the low number of women in legislatures

¹ Sylvia Walby "Theorising Patriarchy" (1989)23(2) Sociology (Oxford) 213 at 220.

² Hamoon Khelghat-Doost and Suzyrman Sibly "The Impact of Patriarchy on Women's Political Participation"(2020) 10 International Journal of Academic Research in Business and Social Sciences 396 at 400.

³ At 402.

⁴ Khelghat-Doost and Sibly above n 2, at 402.

⁵ Walby, above n 1, at 224.

has implications for enacting laws that directly impact women's lives, such as the laws governing domestic violence, marriage, divorce, abortion and wage discrimination.⁶

The 2015 attempt to ratify CEDAW came close on the heels of the constitutional and electoral reforms of 2010. Earlier chapters highlight the 1875 Constitution establishing a patriarchal state exemplified in its direct discrimination against women; these discriminatory aspects of the Constitution were not addressed or amended in the reforms of 2010. The following paragraphs highlight that patriarchal laws established a patriarchal culture; a culture that has perpetuated the absence of women from Tonga's political scene and the historical development of the pro-democratic movement, which has arguably led to a flawed democracy in Tonga.

5.1.1 The Tongan Political System

The formation of the patriarchal state through the 1875 Constitution occurred as a result of the influence of Christian missionaries and the integration of their patriarchal Christian views and as a reflection of western ideologies of that era; previous chapters have discussed the loss of women's political titles and political powers exercised in their capacity as members of the ruling class and as *fahu*; through the non-codification of these customary laws and practices. Women were effectively confined to the private domestic sphere, as were the *fahu* powers and practices.

Tonga's 1875 Constitution has been described as Westminster in style.⁷ The most prevalent political model in the Pacific is the Westminster system;⁸ whereas Tonga's political history is unique, other Pacific nations enacted their constitutions at the onset of independence and the end of colonisation beginning in the 1960s.⁹

⁶ At 224.

⁷ Peter Larmour *Foreign Flowers: Institutional Transfer And Good Governance In The Pacific Islands* (University of Hawaii Press, 2005) at 79-80.

⁸ Jack Corbett "Democracy in the Pacific Islands: Comparable Practices, Contested Meanings" (2015) 2 (2) *Democratic Theory* 22 at 32.

⁹ Peter Larmour "Westminster constitutions in the South Pacific: A "policy transfer" approach" (2002) 10 (1) *Asian Journal of Political Science* 39 at 41.

Westminster systems were established with the drafting of constitutions upon independence (or in countries in a compact of free association with New Zealand and the United States) from the 1960s to the 1980s.¹⁰

The Westminster system facilitated the transfer of power from the monarch to an elected parliament in Britain, in the Pacific the Westminster system facilitated the transfer of power from a Governor or High Commissioner to the executive comprised of an elected legislature; this occurred in Samoa in 1962, the Cook Islands in 1964, Nauru in 1968, Fiji, 1970, Niue (1974) PNG 1975, Solomon Islands 1978, Tuvalu 1978, Kiribati 1979, Vanuatu 1980.¹¹ All but Nauru and Kiribati in the Pacific Islands Forum are Westminster systems in the traditional sense;¹² however, accommodations have been made to allow for customary political practices.¹³ In Samoa the unicameral legislature called the Fono is comprised of 51 members elected through a first past the post system from two electoral rolls; the Matai register and the Individual Voters Roll, with the Head of State, appointed for a term of 5 years from one of the four paramount chiefly titles of Samoa known as Tama o Aiga, as per clause 19 of the constitution.¹⁴ To candidate from the Matai roll, a person must hold a Matai title; there are an estimated 18,500-25,000 matai titles in Samoa, with women holding 1 in every 20 titles.¹⁵

Tonga's political system, as established in 1875, cannot be accurately described as a Westminster system. The constitution defines it as a "Constitutional Government under his Majesty, King George Tupou, his heirs and successors"¹⁶ and that the "King is Sovereign of all the Chiefs and all the people. The Kingdom is his."¹⁷ The monarch was both the Head of State and the Head of Government and wielded extensive executive powers. Members of the executive branch of government were not chosen from elected legislature members; Cabinet ministers and governors

¹⁰ Richard Herr *Cultural Adaptation and the Westminster Model: Some Examples from Fiji and Samoa* (Australasian Study of Parliament Group, Annual Conference, 2 October 2014) at 4.

¹¹ Larmour, above n 9, at 41.

¹² Herr, above n 10, at 3.

¹³ At 3.

¹⁴ At 4.

¹⁵ At 4.

¹⁶ Constitution of Tonga (1875), s 84.

¹⁷ Constitution of Tonga (1875), s 47.

were appointed and dismissed by the monarch at will to serve and take office for however long the monarch wished.¹⁸ The Legislative Assembly, known as the Fale Alea, was a unicameral chamber comprised of the King's appointed Cabinet ministers, 20 elected representatives of the nobles and 20 representatives of the people.¹⁹ The judiciary consisted of the Supreme Court and lower Courts,²⁰ the King appointed the Chief Justice and other justices.²¹ The King governed through ministers that he selected and held overarching powers over all branches of government. Robert Filmer argued that the King's absolute political powers were derived from the authority of Adam as a father over his children;²² the 1875 constitution established a political system that closely resembles the political patriarchy described by Filmer.

Immediately before 2010, Tonga's political system had undergone very little change; the Kingdom remained a Constitutional Government under the reigning monarch²³ divided into the Privy Council and Cabinet, Legislative Assembly and the Judiciary.²⁴ The Fale Alea now consisted of nine nobles representatives, nine People's Representatives, two governors and 12 ministers of the crown, usually amounting to 33 members of parliament, with elections being held every three years.²⁵ The Chief justice of the Court of Appeals, Tonga's highest court and other justices are appointed by the King (with the consent of the Privy Council).²⁶ The Fale Alea consisted entirely of males until 1975, a hundred years after the promulgation of the Constitution, and Cabinet was entirely male until Tonga's first female member was appointed to Cabinet in 2006, 130 years since Cabinet was established in 1875. There was no opposition, no legal provisions to establish political parties or trade unions, and the nine People's Representatives were outnumbered by the Noble Representatives and often up to 14 members of the Privy Council in

¹⁸ Constitution of Tonga (1875), s 54, 55.

¹⁹ Constitution of Tonga (1875), s 63.

²⁰ Constitution of Tonga (1875), s 86.

²¹ Constitution of Tonga (1875), s 88.

²² Robert Filmer *Patriarcha: Or the Natural Power of Kings* (Printed, and are to be sold by Walter Davis, book-binder, in Amen-Corner, near Pater-noster-row., 1680) at 12

²³ Constitution of Tonga (1988), s 31.

²⁴ Constitution of Tonga (1988), s 30.

²⁵ Constitution of Tonga (1988), s 77

²⁶ Constitution of Tonga (1988), s 84, 85.

parliament; consequently, the People's Representatives had little impact on political decision making in Tonga.²⁷ Lawmaking originated with Privy Council, who passed down all bills for Fale Alea to pass or very rarely oppose; in voting for these laws, Noble's Representatives often voted with the Privy Council against the People's Representatives.²⁸ The People's Representatives had limited influence over what became law in Tonga. Political power remained in the hands of the monarch and the nobility, with representatives of the people or commoners having minimal impact on the nation's administrative, judicial and lawmaking bodies.

POLITICAL REFORM

5.1.2 Land

It took two decades after women were granted the right to vote and stand as parliamentary candidates for Tonga's first female to be elected. Princess Siuilikutapu Kalaniuvalu was elected in 1975, and prominent businesswoman Papiloa Foliaki was elected in 1978. The entry of women into the Tongan political sphere coincided with the earliest signs of dissatisfaction with Tonga's political system in the 1960s and 1970s. It rose out of disconcert with Tonga's land tenure system. The political upheaval over the land tenure system was an exclusively male issue, as only men had the right to own land in Tonga.

The chiefs who were granted noble titles under the 1875 Constitution lost their earlier political independence through the constitution's prescription that all land belonged to the King and from which the nobles would be granted a hereditary estate,²⁹ the noble's political influence over the commoners were also diminished by the Land Act 1882 which conferred on commoner men the right to receive a portion of his nobles' estate to build a house and to the garden (town and tax allotment). Upon registering the allotments for a small fee with the minister of lands, the allotments would forever devolve through male primogeniture on the

²⁷ Kerry E James "Tonga's Pro-Democracy Movement" (1994) 67(2) Pacific Affairs, University of British Columbia 242 at 263.

²⁸ At 255.

²⁹ At 243.

condition that all taxes on the land were paid.³⁰ The nobles regained significant power over commoners in 1915 when legal provisions stipulated that nobles be consulted and approve applications to register land within their estates; what ensued was that some nobles outright refused to allow commoners to register allotments in their estates or demanded exorbitant fees from commoners in exchange for approval of land registration.³¹

The democratic movement began with the 1862 emancipation edict and the grant of land rights to commoners in the 1875 Constitution, but this was only for men. These rights were diminished in 1915 when nobles had to be consulted over *tofi'a* grants.³² In 1975, two prominent commoner male church leaders of the Free Wesleyan Church, Rev Dr Amanaki Havea and Rev Siuplei Taliai, led a conference facilitated by the Council of Churches to discuss migration overcrowding and increasing landlessness in Tonga.³³ During the conference, Taliai passionately decried the abuse and exploitation of commoners; however, the government refused to reform land laws and advised the churches to abstain from involvement in social issues.³⁴ The early democratic movement maintained the support of church leaders such as these two men and Bishop Patelesio Finau of the Catholic Church; however, the leaders of the Council of Churches have since made efforts to declare themselves apolitical.³⁵ Finau and Havea remained critical figures in the democratic movement in the early 1980s; Taliai could no longer live in Tonga and left for Australia because of his views.³⁶

In the same year, Professor Futa Helu, first cousin to Taliai and a prominent male commoner academic, founded Atenisi, a private university on Tongatapu; within this institution, students who were predominantly the younger generation of

³⁰ Sione Latukefu, *Church and State in Tonga* (Australia National University Press, Canberra, 1974), at 211-212.

³¹ James, above n 27, at 250.

³² At 249-250.

³³ At 251.

³⁴ At 251.

³⁵ Malakai Koloamatangi "Democracy and Culture in Tonga" in A Davidson et al. (eds.) *Globalization and Citizenship in the Asia Pacific* (Macmillan Publishers, 1999) at 189-190.

³⁶ James, above n 27, at 251.

Tongans were encouraged to think and behave in ways contrary to Tongan culture and to question various aspects of Tongan life, society and leadership including the Tongan government.³⁷ Helu also assisted Tongan nurses in a nurses' strike in 1978, responding to the head nurse's nepotism.³⁸

The limited and often inequitable land access for commoners led Tongans who had been educated abroad to demand more of a voice in parliament in the 1980s.³⁹ The democratic movement continued to rely on academics such as Futa Helu for guidance and direction.⁴⁰ Tongan scholars from the diaspora have also been critical of the government, such as Nalesoni Tupou, Dr Litia Niumeitolu, Dr Sione Latukefu and Rev Siuplei Taliai.⁴¹

The earliest periods of dissatisfaction with the Tongan political system were a response to inequitable land rights between the nobility and the commoner classes, fueled by educated commoners and culminating in the earliest seeds planted for political reform. Despite the election of Tonga's first female parliamentarian in 1975 and a second in 1978, the political actors were commoner men; the issues were those of commoner men within that timeframe.

5.1.3 Corruption

Political reform discussions began in the *faikava* clubs as instigated by teachers and former teachers.⁴² The 1980s saw the emergence of Tonga's preeminent political activist Akilisi Pohiva, a teacher with a Bachelor of Education from the University of the South Pacific. He began his campaign for political reform in *faikava* clubs and then in a radio program titled *Matalafo Laukai*⁴³. *Matalafo Laukai* is a Tongan proverb referring to criticism or commentary emanating from spectators not participating in the ancient game of *Lafo* in Tonga, perhaps a metaphor for the

³⁷ James, above n 27, at 252.

³⁸ Georges Benguigui "Tonga in Turmoil" (2011) 120 (4) *The Journal of the Polynesian Society* 349 at 354-355.

³⁹ James, above n 27, at 253.

⁴⁰ Koloamatangi, above n 35, at 192.

⁴¹ At 193.

⁴² Benguigui, above n 38, at 355.

⁴³ Koloamatangi, above n 35, at 254.

commentary and criticism arising from commoners who were generally excluded from law making and politics in Tonga. The radio program was critical of the government's conduct and was censored in 1985.⁴⁴ In 1986, Pohiva began a newsletter called the Kele'a in place of his prohibited radio program, which focused on government officials' misuse of public funds and corruption.⁴⁵ Other media outlets were established and supportive of democratisation, the Matangi Tonga by Pesi Fonua in 1986 and Taimi o Tonga by Kalafi Moala in 1989; both were commoner men.⁴⁶ Pohiva was dismissed from his job at the Ministry of Education, for which he won a wrongful dismissal case in 1988.⁴⁷

Pohiva had gained popularity through his *faikava* club discussions, radio programs, newspaper publications and his wrongful dismissal case against the government; as such, in 1987, he was elected into parliament for the first time, and in 1988, he organised a 7,000 people march to the royal palace over concerns for unaccountability and corruption in government.⁴⁸

The government began selling passports in 1982 to non-Tongans, mainly Chinese; the funds collected (estimated to be in the millions) were not allocated to the state but to an opaque fund which eventually vanished when deposited with an American business person.⁴⁹ Anger over the loss of funds was compounded by amendments to s 29 of the Tongan constitution in 1991, which declared the sales of Tongan passports legal.⁵⁰ The amendments to the constitution allowed 426 people who had been sold passports to become legally naturalised Tongans.⁵¹

Since 1987, Akilisi Pohiva and several pro-democratic candidates have been the majority elected of the possible nine People's Representatives in parliament. However, they were permanently outnumbered by Cabinet and the noble

⁴⁴ Benguigui, above n 38 at 355, Koloamatangi, above n 35, at 185 and James, above n 27, at 254.

⁴⁵ Koloamatangi, above n 35, at 185.

⁴⁶ Benguigui, above n 38, at 355.

⁴⁷ Koloamatangi, above n 35, at 185 and James, above n 27, at 254.

⁴⁸ Koloamatangi, above n 35, at 186.

⁴⁹ Benguigui, above n 38, at 356.

⁵⁰ Koloamatangi, above n 35, at 186.

⁵¹ James, above n 27, at 256

representatives who consistently voted against them.⁵² As a response to government corruption, these representatives demanded that the Cabinet be accountable to the electorate as opposed to the monarch; the concept that government be responsible to commoners as opposed to the King was novel and controversial in customary politics, the modern Tongan state was premised on the political dominance of the elite ruling classes; the King and to a lesser extent the nobility.⁵³ The early democratic movement was also propelled by the desire of the commoner public for equal rights to land, resources and career opportunities.⁵⁴

5.1.4 Democratic Movement

The 1990 elections reflected Akisi Pohiva's burgeoning popularity alongside pro-democratic representatives Viliami Fukofuka and Laki Niu.⁵⁵ The Convention on the Constitution and Democracy in December 1992 was a triumph; it marked the beginning of the Human Rights and Democracy Movement (HRDMT), the convention focused on the constitution's shortcomings in providing democratic governance.⁵⁶ Prominent Tongan academics and intellectuals from Tonga and abroad attended, including illustrious names such as Dr Epeli Hau'ofa, Dr Ana Taufe'uiungaki, Futa Helu, Dr Sione Latukefu, Dr Amanaki Havea, and Reverend Siupeli Talai.⁵⁷ The conference advocated for the Tongan monarchy to exercise a ceremonial political role similar to that of the British monarchy.⁵⁸

While most villagers in the early 1990s had a tentative understanding of democracy,⁵⁹ they supported the pro-democratic movement because of their representative's willingness to question and criticise powerful government officials and the nobility,⁶⁰ it often appeared that anyone unhappy with the government supported the pro-democratic movement.⁶¹ This is unsurprising considering decades of dissatisfaction with the government. Democracy was opposed by the

⁵² Benguigui, above n 38, at 356.

⁵³ Benguigui, above n 38, at 356.

⁵⁴ James, above n 27, at 263.

⁵⁵ At 256.

⁵⁶ Koloamatangi, above n 35, at 187.

⁵⁷ James, above n 27, at 261.

⁵⁸ Benguigui, above n 38, at 357.

⁵⁹ James, above n 27 at 247.

⁶⁰ James, above n 27, at 260.

⁶¹ At 260.

elite, who rejected the idea of being led by commoners such as Pohiva.⁶² The nobles who remained dependent on the monarch for lands and titles did not criticise any of the monarch's appointed Cabinet's decisions.⁶³

Tonga's third female representative to parliament, Ofa Fusitu'a, was elected in 1993. A traditionalist, Fusitu'a was not a supporter of reform or democratisation.⁶⁴ As a direct result of the 1992 convention's popularity, the 1993 general elections saw the success of 6 pro-democracy candidates from Tongatapu, Vavau and Ha'apai.⁶⁵ Laki Niu split from Pohiva over his disagreement with the pro-democracy candidates forming a party and a united voting block, consequently losing his seat.⁶⁶ This signalled the beginning of fractures within supporters of the democratic movement. The pro-democracy parliamentarians lacked organisation and often did not vote in unity.⁶⁷ However, Pohiva commanded the support of the general public. Deputy secretary to Cabinet Eseta Fusitua did not believe that the 1993 elections were a win for the pro-democracy movement citing a voter turnout of only 50 per cent.⁶⁸ The popularity of pro-democracy candidates continued in the 1996 elections, with six of the nine People's Representatives actively in support of greater democratisation.⁶⁹ In 1998, the Human Rights and Democracy Movement (HRDM) formally registered; they held a Convention in January 1999 with the hopes of raising their number of successful candidates in the March 1999 elections, this second convention was titled "A search for a democratic model suitable for Tonga for the year 2000" at which Feleti Sevele spoke praising the business class but without reference to constitutional change or democracy.⁷⁰ The HRDM won five seats.

⁶² At 261.

⁶³ At 262.

⁶⁴ I C Campbell "Fakalēlēa Filo and Pēpētama in Tongan Politics." (1996) 31 (3) *The Journal of Pacific History* 44 at 45.

⁶⁵ Koloamatangi, above n 35, at 188.

⁶⁶ James, above n 27, at 261.

⁶⁷ At 257.

⁶⁸ At 259.

⁶⁹ Koloamatangi, above n 35, at 188.

⁷⁰ Benguigui, above n 38, at 357.

The March 2002 elections saw the HRDM winning seven of nine people representatives seats; the HRDM submitted a proposal for democratic reform, but in October 2003, constitutional amendments gave greater power to the King and increased state control over the media,⁷¹ despite a protest march of 3,000 and a petition signed by 10,000.⁷² Other controversies in 2003 involved the Cabinet's decision to endorse a one airline policy in Tonga championed by the then crown Prince (King Tupou V) and seen to facilitate a monopoly for Peau Vava'u, an airline he launched.⁷³

In March 2005, Tonga's fourth female representative, Lepolo Taunisila, was elected. Taunisila was reported to have said that despite receiving no support from women and not campaigning on women's issues, she would advocate for women's issues in parliament.⁷⁴ The HRDM won eight of nine seats (Feleti Sevele and Pohiva were among the successful HRDM candidates). For the first time in Tonga's modern history, two People's Representatives and two Noble's Representatives were appointed to Cabinet and PR, and businessman Feleti Sevele was appointed Tonga's first commoner Prime Minister in February 2006.⁷⁵

Feleti Sevele was first appointed to Cabinet in 2005; 2005 was the year the commoner public took their long-held frustrations to the streets, beginning with large public protests and demonstrations (10,000 people) over dissatisfaction with colossal national electricity prices charged by Shoreline Company, a company owned by the Crown Prince (later King Tupou V) and his partner Ramanlal.⁷⁶

Civil servant strikes began in June 2005 over increases in civil servants' salaries wherein high-level public servants were awarded raises of 50% to their salaries

⁷¹ Commonwealth Observer Group Kingdom of Tonga National Parliamentary Election 16 November 2017 at 3-4.

⁷² I C Campbell "Progress and Populism in Tongan Politics" (2006) 41 (1) *The Journal of Pacific History* 49 at 54

⁷³ At 55.

⁷⁴ "Tonga's only female MP sees role as advocate for women's issues" RNZ (6 May 2005) <<https://www.rnz.co.nz/international/Pacific-news/154923/tonga-s-only-female-mp-sees-role-as-advocate-for-women-s-issues>>

⁷⁵ Commonwealth Observer Group, above n 71, at 4.

⁷⁶ Benguigui, above n 38, at 358.

whilst those at lower levels received little or none.⁷⁷ Strikers included teachers, nurses and doctors who would go on to form the Public Servants Association and would gather at Pangai Sii in front of the palace every day and held a protest march on the 8th of August.⁷⁸ The strike was a success, with higher salaries granted to all levels of public servants. Per the Public Servants Association's demands, a National Committee for Political Reform (NCPR) was established and chaired by Prince Tuipelehake.⁷⁹ Prince Lavaka Ata (now King Tupou VI) was Prime Minister throughout the 2005 public demonstrations and strikes but subsequently resigned, and Fred Sevele was appointed Prime Minister in February 2006; he was the first non-noble and People's Representatives Prime Minister.⁸⁰ Sitiveni Halapua took over the NCPR after the tragic accidental death of Prince Tiplehake and presented a report in August 2006, the first recommendation of which was that the people would elect all members of parliament, that the King would appoint a Prime Minister from the elected legislature and the Prime Minister would appoint a Cabinet.⁸¹

The Prime Minister requested the formation of a tripartite committee made of three PRs, three NRs and three Cabinet members as the government were unhappy with the NCPR's recommendations stating that it amounted to the disenfranchisement of the King.⁸² The PRs opposed this, calling instead for the adoption of the recommendations of the NCPR report, further adding their amendments and calling for a vote.⁸³ The pro-democratic movement believed the government was trying to control the reform agenda by ignoring the recommendations of the NCPR report; at the end of the year's parliament session, Pohiva and the pro-democratic representatives demanded that the session's agenda be altered to make way for a vote on the NCPR recommendations.⁸⁴ On November 16 2006, appearing that Fale Alea would avoid enacting democratic

⁷⁷ At 359.

⁷⁸ At 359.

⁷⁹ Benguigui, above n 38, at 359.

⁸⁰ At 360.

⁸¹ At 360.

⁸² At 360.

⁸³ J C Campbell "The Nettle Grasped: Tonga's New Democracy" (2012) 47 (2) The Journal of Pacific History 211 at 213.

⁸⁴ Benguigui, above n 38, at 361.

reforms and go into recess, pro-democracy demonstrations turned into riots and looting, eight people died, and 80% of Nuku'alofa's central business district was destroyed.⁸⁵ In the aftermath, public blame for the riots fell on the pro-democracy parliamentarians and support for them waned.⁸⁶ The five pro-democratic PRs in the 2006 parliament were amongst those charged with sedition in relation to the riots.⁸⁷

The riots occurred, and the NCPR report had not been dealt with; as parliament was closed in 2007, a Parliamentary Committee for Political Reform was established (Tripartite Committee); their recommendations for reform were for a legislature with 17 PRs and nine noble's representatives, with the Prime Minister elected by parliament who would nominate a Cabinet.⁸⁸ The People's Representatives opposed this plan and called for implementing the NCPR recommendations; an online survey showed that most participants preferred the NCPR report recommendations.⁸⁹

In the 30 years wherein Tonga's first four female People's Representatives were elected (1975, 1978, 1993, 2005), Tonga's evolving movement for political reform revolved around what can be described as the commoner's wish to break down social class barriers, to end the dominance and corruption of the elite ruling classes, to attain equal political and legal rights and realise an equitable distribution of national resources and opportunities. The movement was spearheaded by prominent men, as was the opposition, creating a political sphere wholly dominated by men. Therefore, until 2008 no real or practical political discussions focused on women's issues and rights; political reform remained a struggle between men of different classes.

⁸⁵ At 349.

⁸⁶ Campbell, above n 83, at 212.

⁸⁷ At 212.

⁸⁸ Campbell, above n 83, at 213.

⁸⁹ At 214.

5.1.5 The Reforms

No women were elected into parliament in the 2008, 2010 and 2014 elections, the periods immediately preceding, during and after the implementation of constitutional reforms in Tonga. Despite the riots, sedition charges and blame levelled at the pro-democratic PRs,⁹⁰ the April 2008 elections saw six pro-democratic representatives voted into parliament, four from the Friendly Islands Human Rights and Democracy Movement (FIHRDM) and two from the People's Democratic Party (PDP).⁹¹ The reforms of 2010 were based on the reports of the Constitutional and Electoral Commission (CEC).⁹² It was against a parliamentary quota for women.⁹³

5.1.6 Exclusion Of Women And Women's Issues

The NCPR report of 2006 did not directly reference the lack of women's representation in parliament. Still, it stated that "women also wish for an additional way in which they are able to convey their voice and will to the Legislative Assembly of Tonga"⁹⁴ and suggested that government should clarify that "when Government protects and helps the lives and work of women, they are protecting and helping the lives of the country".⁹⁵

Tonga National Women's Congress made a submission to the CEC demanding that 30% of seats in parliament and Cabinet be reserved for women; Ma'a Fafine Moe Famili National Council of Women made similar submissions.⁹⁶ The commission's final report did not include a recommendation for reserved seats for women.⁹⁷ The articulated resistance to reserved seats in parliament for women echoed the

⁹⁰ Campbell, above n 83, at 215.

⁹¹ "Tonga Fale Alea (Legislative Assembly) Elections in 2010" (2011) Inter-Parliamentary Union <http://archive.ipu.org/parline-e/reports/arc/2317_10.htm>

⁹² Commonwealth Observer Group, above n 71, at 4-5.

⁹³ Campbell, above n 83, at 218.

⁹⁴ National Committee of the Kingdom of Tonga For Political and Constitutional Reform, TONGA: FOR THE ENRICHMENT OF THE COUNTRY Political and Constitutional Reform to Enrich the Unity of the Country which will Promote Social and Economic Development Of the People of Tonga (31 August 2006) at 86-87.

⁹⁵ At 87.

⁹⁶ "Women in Tonga Push for Political Representation" (24 February 2009) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/182187/women-in-tonga-push-for-political-representation>>

⁹⁷ Marilyn Waring *Women in politics and aid effectiveness: an aid to the evaluation of MDG3* (AusAID Office of Development Effectiveness, November 2011) at 14.

reason for the fact that in over half a century of being granted the right to candidate, only four women had been elected; the reason being the opposition from men. The CEC reported strong opposition in forums and submissions to the reserved seats for women in parliament;⁹⁸

“There was considerable opposition at the forums and in some submissions to special provisions for women’s seats, but they were rarely accompanied by the grounds for the objection. It is perfectly clear that one of the major reasons for the under-representation of women is the entrenched opposition of men, often for no better reason than outright prejudice”.

The CEC did not consider the social-cultural status of women and women’s worldview reasons to recommend reserved seats for women.⁹⁹ The Commission did not think women representatives would better represent women’s issues as sufficient justification for reserved seats.¹⁰⁰ The Commission believed the solution was effective campaigning and quality women candidates as “...we also believe that women in Tonga today are in all ways as well prepared as men to compete for the People’s Representatives seats”.¹⁰¹ Indicating that they believed the playing field was level for men and women in politics and that there were no other impediments to women being elected. The CEC stated, “We hope women will realise that the power effectively to correct their under-representation is in their hands,”¹⁰² leaving it to women to remedy amongst themselves and for themselves the issue of the lack of female representatives. The CEC also stated that the single transferable vote should increase the number of women elected,¹⁰³ however, that recommendation was not implemented; Tonga operates a first past the post system. The CEC refused to recommend reserved seats for women as part of Tonga’s political reform,¹⁰⁴ the report leaves the representation of women in the hands of women, despite their

⁹⁸ Constitutional and Electoral Commission Kingdom of Tonga *Final Report* (5 November 2009) at 97.

⁹⁹ At 97.

¹⁰⁰ At 97.

¹⁰¹ At 98.

¹⁰² At 98.

¹⁰³ At 98.

¹⁰⁴ Constitutional and Electoral Commission, above n 98, at 98.

clear statement to the effect that the opposition to women in Fale Alea emanated from men.

5.1.7 2010 And Democracy

Democracy as a foreign transplanted political system in the Pacific has meant different things for different countries.¹⁰⁵ Democracy in the Pacific is understood as government by the public's consensus and will, minimising a group's dominance over others; more recently, democracy in the Pacific has been defined as a “strong state capable of delivering development-oriented reform.”¹⁰⁶ Democracy has been described as a means to limit domination; however, women remain dominated in the Pacific region and Tonga; therefore, democracies of the Pacific are minimalist democracies¹⁰⁷ and can also be accurately labelled as patriarchal democracies. Democracy is described by Tongan political scientist Malakai Koloamatangi as the “people rule in accordance with majoritarianism, or at the very least their representatives make decisions by such a procedure or in their name.”¹⁰⁸

Members of the CEC were appointed by the Privy Council.¹⁰⁹ As discussed above, the amendments and laws passed affecting Tonga's political reform were those the monarch approved. The extent of Tonga's present-day democracy is per the royal will, molded and facilitated by King Tupou V. Tonga's reformed 'democratic' government increased the numbers of People's Representatives in parliament from 9 to 17 (elected from 17 single-member constituencies), and the Noble's Representatives remained at 9 (selected by 33 nobles). The most significant change was that Fale Alea elected the Prime Minister from amongst their members; in turn, the Prime Minister formed a Cabinet from members of parliament and a maximum of 4 appointed from outside Fale Alea. Members of parliament can now introduce private or government bills, elections are now held every four years, and the speaker would be a Noble's Representative elected by parliament. Cabinet could not be more than half of the parliament; four individuals could be appointed to

¹⁰⁵ Corbett, above n 8, at 23.

¹⁰⁶ At 23.

¹⁰⁷ At 33.

¹⁰⁸ Koloamatangi, above n 35, at 183.

¹⁰⁹ See Constitutional and Electoral Commission, above n 98.

Cabinet but could not vote in a vote of no confidence; a vote of no confidence in the Prime Minister was introduced.¹¹⁰ The King and Privy Council retained significant executive powers, including the ability to veto legislation, dissolve parliament and appoint the judiciary, the Attorney General, and the Police Commissioner.

The first elections post reforms were held on the 25 November 2010; 10 of the 147 registered candidates were women, with Tonga's first female Attorney General Alisi Taumopeau campaigning, amongst other things, for gender equality and land rights for women.¹¹¹ The Democratic Party of the Friendly Islands (formerly the FIHRDM and known in Tongan as PTOA) was newly established for the 2010 elections and won 12 of 17 seats, a clear majority of the representatives elected by the general electorate; however, the nine nobles votes for Lord Tuivakano allowed him to defeat Pohiva 14-12 votes for Prime Minister.¹¹² This was against the King's wishes that the nobles would not vote one of themselves as Prime Minister as this was not reflective of a democratic or people's government.¹¹³ Lord Lasike was elected Speaker.¹¹⁴ Tuivakano formed a Cabinet comprising two Nobles Representatives, two members of PTOA, the five independent People's Representatives that aligned their votes with the nobles to make him Prime Minister and two individuals from outside parliament, Clive Edwards and Ana Taufeulungaki.¹¹⁵ Pohiva was appointed to Cabinet; however, he was dissatisfied with PTOA only holding two seats in Cabinet, believing that PTOA deserved six seats, and rejecting the requirement that he vote in solidarity with the rest of Cabinet in parliament, Pohiva resigned from Cabinet.¹¹⁶

Tonga's first elections highlighted problems within its new democratic system. Firstly, the majority of People's Representatives were prevented from leading government and Cabinet through the Noble's Representatives votes. It has been

¹¹⁰Campbell, above n 83, at 219.

¹¹¹"Tonga Fale Alea (Legislative Assembly) Elections in 2010" above n 91.

¹¹² Tonga Fale Alea (Legislative Assembly) Elections in 2010" above n 91.

¹¹³Campbell, above n 83, at 222.

¹¹⁴ "Tonga Fale Alea (Legislative Assembly) Elections in 2010" above n 91.

¹¹⁵Campbell, above n 83, at 223.

¹¹⁶ At 223.

argued that the democratic reforms of 2010 resulted in a failed democracy because the constitutional and electoral reforms were unable to address the scarcity of women in parliament due predominantly to the failure of the CEC report and Commissioners to consider the place of women in Tongan politics.¹¹⁷ The number of women in the legislature is an essential indicator of democracy. Women make up half the electorate in Tonga; a legislature without women cannot be legitimately considered representative.¹¹⁸ Women are best equipped to advocate for women's issues in parliament; their absence leads to silence on issues that mainly affect women.¹¹⁹

5.1.8 Constitutional Monarchy

As part of the reforms, section 30 of the Constitution stipulated a change in the form of government from a "constitutional government" to a "constitutional monarchy." A constitutional monarchy is a system where the Head of State is a hereditary monarch (sovereign) whose powers are constrained by a constitution that situates political power in representatives of the people, elected and accountable to the people, as in New Zealand.¹²⁰ Other Constitutional monarchies in the Pacific that recognise Queen Elizabeth the II as Head of State include Australia, Papua New Guinea, Solomon Islands and Tuvalu.¹²¹

5.1.8.1 Tuvalu

In Tuvalu, Queen Elizabeth the II is Head of state and Queen of Tuvalu;¹²² she is represented by the Governor-General,¹²³ appointed by the Queen on the advice of the Prime Minister.¹²⁴ The Queen's representative exercises all powers on the direction of the Cabinet, the Prime Minister and any other persons with designated

¹¹⁷ See Ofa Guttenbeil-Likiliki "A Failed Democracy: Tonga's Watershed Legal Democratic Electoral Reforms Left Her Women Behind" (Masters of Law Thesis, University of the South Pacific, March 2020).

¹¹⁸ Kerryn Baker *Women's political representation in the Pacific Islands Region* (Human Rights Issues Confronting Women and Girls in the Indian Ocean-Asia Pacific Region Submission 93) at 1.

¹¹⁹ Jane Mansbridge "Quota problems: Combating the dangers of essentialism" (2005) 1(4) *Politics and Gender* 621 at 622.

¹²⁰ "Parliament Brief: What is Parliament" (January 2016) New Zealand Parliament <<https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/pbrief7/>>

¹²¹ "Pacific" (2022) Commonwealth Governance for Development <<https://www.commonwealthgovernance.org/countries/Pacific/>>

¹²² Constitution of Tuvalu, s 48.

¹²³ At ss 51, 52, 54.

¹²⁴ At s 55.

authority.¹²⁵ Members of parliament are elected under a universal citizen adult suffrage.¹²⁶ Candidates must be a citizen of Tuvalu over 21 years of age¹²⁷ and not be subject to disqualification under Clause 95 of the Constitution. Members of parliament elect a Prime Minister¹²⁸ and a speaker.¹²⁹ The Head of State appoints Cabinet on the advice of the Prime Minister;¹³⁰ the Attorney General sits in parliament but does not vote; his role is purely advisory.¹³¹ Parliament are directly elected.¹³² Parliament meets at times and places that the Head of State appoints on the advice of Cabinet.¹³³ Parliament has the right to make laws,¹³⁴ and the Head of State is to promptly assent to bills that have been presented to him after being passed by parliament.¹³⁵ The Head of State may prorogue parliament on a parliament resolution or the Prime Minister's advice.¹³⁶ Elections must be held after one month and not more than three months after a dissolution.¹³⁷ The Head of State appoints the Chief Justice on the advice of Cabinet.¹³⁸ The Head of State may appoint any high court judge acting on the advice of Cabinet after consulting with the chief justice.¹³⁹ Judges can only be removed if they are deemed incapable of carrying out their functions or parliament passes a resolution to remove a judge from office due to misbehaviour.¹⁴⁰ The Public Service Commission is appointed by the Head of State on the advice of Cabinet,¹⁴¹ whose primary function is to control and manage the public service.¹⁴² Magistrates are dealt with by the Public Service Commission subject to the approval of the Chief Justice. The Public Service Commission appoints 152 Secretaries or Head of Ministries with the concurrence

¹²⁵ Constitution of Tuvalu, s 52

¹²⁶ At s 87.

¹²⁷ At s 94.

¹²⁸ At s 63.

¹²⁹ At s 104.

¹³⁰ At s 67.

¹³¹ At s 79.

¹³² At s 82.

¹³³ At s 116.

¹³⁴ At s 84.

¹³⁵ At s 86.

¹³⁶ At s 117.

¹³⁷ At s 88.

¹³⁸ At s 122.

¹³⁹ At s 123.

¹⁴⁰ Constitution of Tuvalu, s 127.

¹⁴¹ At 145.

¹⁴² At 149.

of the Cabinet.¹⁴³ The Attorney General is appointed by the Head of State on the advice of Cabinet after consultation with the Public Services Commission.¹⁴⁴ The Police Commissioner is appointed by the Head of State on the recommendation of the Public Service Commission after consultation with Cabinet, as is the Auditor General and Secretary to Government.¹⁴⁵

As a constitutional monarchy, Tuvalu vests all political powers in representatives of the people who are universally elected under adult suffrage. The Governor-General, in the capacity of Head of State and representative of Queen Elizabeth, exercises all executive powers, as per constitutional provisions, according to decisions made by elected representatives.

5.1.8.2 Solomon Islands

The Solomon Islands is a parliamentary representative democratic constitutional monarchy described as a “sovereign democratic state.”¹⁴⁶ The Head of State of the Solomon Islands is Queen Elizabeth II,¹⁴⁷ represented by the Governor-General, elected by parliament.¹⁴⁸ Executive authority is vested in the Head of State.¹⁴⁹

The Governor-General appoints Cabinet per the advice of the Prime Minister.¹⁵⁰ The Cabinet is to advise the Governor-General in the government of the Solomon Islands and is collectively responsible to parliament.¹⁵¹ The Head of State acts on the advice of Cabinet or minister under the authority of Cabinet unless stipulated by the constitution to act on the advice of or after consultation with another person or authority.¹⁵² The Prime Minister is to keep the Governor-General informed of the general conduct of the government and any matter he may require information on concerning the government.¹⁵³

¹⁴³ At 158.

¹⁴⁴ At 159.

¹⁴⁵ At 159.

¹⁴⁶ Constitution of the Solomon Islands, s 1.

¹⁴⁷ Constitution of the Solomon Islands, s 1.

¹⁴⁸ At s 27.

¹⁴⁹ At s 30.

¹⁵⁰ At s 37.

¹⁵¹ At s 35.

¹⁵² At s 31.

¹⁵³ At s 32.

The legislature is a single chamber known as the National Parliament of the Solomon Islands¹⁵⁴ comprised of 50 members elected on four-year terms from one-member constituencies.¹⁵⁵ Suffrage is universal; electors are citizens of the Solomon Islands over 18 years of age.¹⁵⁶ Parliament elects a Prime Minister¹⁵⁷ who selects a Cabinet.¹⁵⁸ Parliament is responsible for enacting laws and bills that have been passed by parliament, which must be assented to by the Governor-General on behalf of the Head of State and become law.¹⁵⁹ Parliament elects a Speaker (from anyone eligible to stand as a candidate) and Deputy Speaker from amongst its members.¹⁶⁰ Parliament is to be dissolved or prorogued by the Governor-General only at times when parliament collectively decides to do so through a resolution supported by the votes of an absolute majority of the members of parliament.¹⁶¹ The Governor-General appoints the Chief Justice of the Supreme Court on the advice of the Judicial and Legal Services Commission,¹⁶² as are other judges.¹⁶³ Judges of the High Court hold office until they reach 60 years of age, unless removed from office by the Governor-General due to their inability to adequately discharge their functions or misbehaviour.¹⁶⁴ The President of the Court of Appeal is also appointed by the Governor-General, per the advice of the Judicial and Legal Service Commission.¹⁶⁵ The tenure of the President of the Court of Appeal and Court of Appeal Judges mirrors conditions for Judges of the High Court; tenure ends at 60, and removal is only possible for the inability to discharge their functions or misbehaviour.¹⁶⁶ The Director of Public Prosecutions is appointed by the Governor-General on the advice of the Judicial and Legal Services Commission.¹⁶⁷ The Attorney General is appointed by the Judicial and Legal Service Commission under the direction of the Prime Minister and is entitled to sit in parliament as a legal

¹⁵⁴ At s 46.

¹⁵⁵ At s 47.

¹⁵⁶ At s 55.

¹⁵⁷ At s 33.

¹⁵⁸ At s 33.

¹⁵⁹ Constitution of the Solomon Islands, s 59.

¹⁶⁰ At s 64.

¹⁶¹ At s 73.

¹⁶² At s 78.

¹⁶³ At s 79.

¹⁶⁴ At s 80.

¹⁶⁵ At s 86.

¹⁶⁶ At s 87.

¹⁶⁷ At s 91.

advisor but not to vote.¹⁶⁸ The Attorney General is also the legal advisor to Cabinet and is to attend Cabinet meetings unless directed otherwise by Cabinet.¹⁶⁹ The Police Commissioner is appointed by the Governor-General on the advice of the Prime Minister after consultation with the Police and Prison Service Commission.¹⁷⁰ The Governor-General may grant pardons under the direction of the Committee on the Prerogative of Mercy.¹⁷¹

As in Tuvalu, constitutional monarchy in the Solomon Islands is a system where the sovereign exercises executive powers per stipulations of the constitution that places political power with universally elected representatives of the people. When held up against neighbouring Tuvalu and Solomon Islands, the political system in Tonga falls short of the definition of “constitutional monarchy”.

5.1.9 Post Reform: 2014

Tonga’s next elections were held on 27 November 2014; 80% of the adult population voted, decreasing from 91% in the 2010 general elections.¹⁷² There were 105 candidates, of which only 16 were women.¹⁷³ None of the 16 women candidates were elected; however, the women’s candidates received 7 per cent of votes, an increase from 3 per cent of votes in 2010; the very low numbers of votes cast for women were stated to be the result of harmful cultural and social attitudes towards women in politics.¹⁷⁴

PTOA won eight seats of the 17 People’s Representatives, PTOA campaigned on the promise to “complete reforms” initiated in 2010.¹⁷⁵ Akilisi Pohiva, now 73 years old, won the vote for Prime Minister against Samiu Vaipulu, 15-11 votes, and Lord Tuivakano was elected Speaker of Parliament.¹⁷⁶ A Cabinet comprising five PTOA

¹⁶⁸ At s 42.

¹⁶⁹ Constitution of the Solomon Islands, s 35.

¹⁷⁰ At s 43.

¹⁷¹ At s 45.

¹⁷² International Institute for Democracy and Electoral Assistance *Tonga in a new political order – Analysing the 2014 general election results* (August 2015) at 2.

¹⁷³ At 2.

¹⁷⁴ International Institute for Democracy and Electoral Assistance, above n 172, at 6.

¹⁷⁵ “Tonga Fale Alea (Legislative Assembly) Elections in 2014” Inter-Parliamentary Union <http://archive.ipu.org/parline-e/reports/arc/2317_14.htm>

¹⁷⁶ Commonwealth Observer Group, above n 71, at 5.

members, one noble representative and six independent People's Representatives was formed.¹⁷⁷

Issues that came to the fore of discussions immediately after the elections were the absence of women, the high percentage of votes cast for unsuccessful candidates, the high turnover of elected representatives leading to inexperienced parliamentarians and the lack of any real policy choices as a direct result of there being no political parties.¹⁷⁸

True to their promise for further reform, in 2014, the government, with the support of a Commonwealth constitutional law expert, reviewed provisions of the constitution relating to the judiciary and recommended amendments to the Privy Council, Lord Chancellor, Attorney General, Law Lords and Director of Public Prosecutions and to the function of the Judicial Appointment and Discipline Panel; these amendments were duly passed by legislative assembly but have yet to receive royal assent.¹⁷⁹ Although now in power, as illustrated with the 2010 reforms, PTOA, as representatives of the people, could not effect any desired changes to Tonga's political system; the ability to make such changes remains a prerogative of the monarch.

2015 CEDAW: WHY WASN'T CEDAW RATIFIED?

5.1.10 Not About Women's Rights

The resistance to CEDAW was primarily founded on an opposition to Akilisi Pohiva, PTOA and their agenda for political reform. The historical exclusion of women from politics in Tonga's patriarchal state has led to the complete sidelining of women's issues in politics beginning in 1875 and culminating in the rejection of CEDAW in 2015. In the debates over CEDAW, the focal point was not on women's issues and rights but political differences between men. Land laws that blatantly discriminate against women were a non-issue, with one participant stating, "The whole discussion was taken away from CEDAW, issues of land ownership were not

¹⁷⁷ "Tonga Fale Alea (Legislative Assembly) Elections in 2014" above n 175.

¹⁷⁸ International Institute for Democracy and Electoral Assistance, above n 172, at 6.

¹⁷⁹ Commonwealth Observer Group,, above n 71, at 5.

discussed at all”¹⁸⁰ whilst another added another dimension to the same concern articulating, “No one in the debate over CEDAW mentioned land rights. Women should be able to register and inherit land in Tonga.”¹⁸¹ Other reasons for the failure to ratify CEDAW centred on issues that had little relevancy to equality at law for women, such as the government’s lack of political will to ratify, the influence of privileged women, the conduct of women’s activists and the perception that ratification was an exercise in appeasing donors.

5.1.10.1 Opposition to PATOA

The opposition to the ratification of CEDAW was perceived as not an opposition to women’s rights or to addressing women’s issues in Tonga but a politically motivated opposition to the PTOA government of the day and its mandate for further democratic reform. The previous government (2010-2014), headed by Lord Tuivakano, with Lord Vaea as Minister of Internal Affairs (responsible for the Women’s Affairs Division), had expressed intentions to ratify CEDAW and passed laws protecting women from domestic violence.

Whilst Lord Vaea was Minister of Internal Affairs; the Family Protection Bill was passed to address family violence; parliament voted unanimously to pass the bill (all 17 members present) on 4 September 2013.¹⁸² The bill was drafted with the assistance of the Secretariat of the Pacific Community Regional Rights Resource Team (RRRT) and funded by UN Women.¹⁸³ Lord Vaea reported in Tonga’s second UPR cycle that following nationwide consultations, the government led by Prime Minister Lord Tuivakano had decided in December 2011 to ratify CEDAW with reservations.¹⁸⁴

Women’s activists believed that had Lord Vaea continued as Minister of Internal Affairs, the churches would not be so publicly vocal in their opposition, and CEDAW

¹⁸⁰ Phase 1, Interview 4.

¹⁸¹ Phase 2, Interview 8.

¹⁸² “Law for women’s protection passes with unanimous support in Tonga” (September 19, 2013) UN WOMEN <<https://asiaPacific.unwomen.org/en/news-and-events/stories/2013/9/law-for-womens-protection-passes-with-unanimous-support-in-tonga>>

¹⁸³ “Law for women’s protection passes with unanimous support in Tonga” above n 182.

¹⁸⁴ Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/23/4 (21 March 2013) at 6.

would have been successfully ratified. The church leaders' opposition only became apparent and aggressive when Akilisi Pohiva's PTOA government took charge of ratification. According to one female activist:¹⁸⁵

"...if Vaea was still Minister for Internal Affairs, CEDAW would have been ratified by the new government. Everything flowed with CEDAW with Vaea because he is a Noble; people like church leaders didn't outright defy nobles. When this government took over, the 'democratic' one, there was a lot of opposition to government especially from members of the previous government who oppose everything this government pushes. I think opposition to CEDAW is politically motivated and they would not oppose Vaea in same manner."

5.1.10.2 *Struggle For Political Power Between Male-Dominated Ptoa And Traditional Male Power Structures*

The real issue of political contention was not equality for women but who between the government and the Privy Council possessed the executive power to ratify international treaties.¹⁸⁶ This was the wellspring of two major political events in 2017 during Pohiva's tenure as Prime Minister, a vote of no confidence and a historical dissolution of parliament. The political landscape of the time was characterised by a struggle to define the powers that were devolved in the 2010 elections. It was a struggle between the pro-democratic PTOA party and the traditional leadership.

5.1.10.2.1 *Vote Of No Confidence*

After the failure to ratify CEDAW in 2015, CEDAW was once again brought to public attention in early February 2017 when Pohiva announced in the legislative assembly that the government, Civil Society and local women's groups were to carry out public consultations to clarify CEDAW and to thus leave to the public the decision of whether or not to ratify the convention.¹⁸⁷ Lord Nuku, Lord Tuilakepa and Lord Tuiafitu continued to voice opposition to CEDAW in response.¹⁸⁸ Pohiva

¹⁸⁵ Phase 1 Interview 1.

¹⁸⁶ Phase 1 Interview 3.

¹⁸⁷ Legislative Assembly of Tonga, *Hansard Record No. 4* (Thursday 2 February 2017) at 25- 26, 28 (entire debate 24-37).

¹⁸⁸ At 25- 26, 28 (entire debate 24-37).

stated that the country was divided over CEDAW,¹⁸⁹ and comprehensive consultation was required. Although not made explicit, the Prime Minister was viewed as transparent in his intentions to ratify CEDAW, albeit with reservations. In the same month of that year, the Noble Representatives moved for a vote of no confidence¹⁹⁰ in Pohiva to have him effectively removed from the office of Prime Minister. The reasons proffered for the vote of no confidence were that Pohiva was an incompetent leader and unsuited to the role of Prime Minister. He damaged diplomatic relations in his vocal support of West Papua and abused government privileges, including the 2015 signing of CEDAW.¹⁹¹

The possibility of holding a vote of no confidence in the Prime Minister was introduced as part of the 2010 Constitutional reforms; before this, there was no mechanism for maintaining a Prime Minister accountable to parliament and the electorate. Before the 2010 reforms, the Prime Minister served at the pleasure of the monarch; the monarch held the power to dismiss the Prime Minister at will; in practice, the Prime Minister was solely accountable to the monarch. The only provision for the Monarch's appointing an interim government is as a result of a successful vote of no confidence in the Prime Minister (as per s 50B of the Constitution) and only if elected members of the Fale Alea fail to select one from amongst themselves as the new Prime Minister within 48 hours of the sitting Prime Minister losing the confidence of the house.

In the lead-up to the vote of no confidence, the Noble Representatives, with the exception of Lord Maafu, signed a memorandum agreeing that no one from their ranks would be elected Prime Minister should Pohiva lose the vote of no confidence and that the PRs would constitute Cabinet with the Noble's Representatives

¹⁸⁹ Joint Submission of the UN Country Team for Tonga for the UN Compilation Universal Periodic Review of Tonga 29th Session (Jan-Feb 2018) at 2.

¹⁹⁰ "Parliament Receives a Motion for a Vote of No Confidence" (22 February 2017) Parliament of Tonga <<http://www.parliament.gov.to/media-centre/latest-news/latest-news-in-english/556-parliament-receives-motion-for-a-vote-of-no-confidence>>; Legislative Assembly of Tonga, *Hansard Record* 15 (Monday 27 February 2017) at 47; *Joint Submission of the UN Country Team for Tonga for the UN Compilation Universal Periodic Review of Tonga 29th Session (Jan-Feb 2018)* at 3.

¹⁹¹ "Motion of No Confidence Against Tonga Prime Minister Tabled in Parliament" (20 February 2017) Pacific Islands Report <<http://www.pireport.org/articles/2017/02/20/motion-no-confidence-against-tonga-prime-minister-tabled-parliament>>

remaining an opposition faction to government.¹⁹² Perhaps as a means of justifying their numbers in parliament and neutralising accusations that the vote of no confidence was the Noble's Representatives attempting to take power for themselves.

On February 2nd, the Speaker of parliament received a motion for a vote of no confidence in the Prime Minister.¹⁹³ Ten members signed the motion; seven NRs and three PRs: Samiu Vaipulu, Vili Hingano and Fe'ao Vakata.¹⁹⁴ On Monday, 27 February 2017, Lord Tuilakepa proposed a vote of confidence in the Prime Minister; ten voted in favour, including eight of the nine Noble's Representatives.¹⁹⁵ Fourteen voted against the motion, 13 People's Representatives and one Noble Representative, Lord Ma'afu, who was Minister of Lands.¹⁹⁶ The solidarity of the nobles and their extreme opposition to Pohiva was evidenced when 32 of their members were reported to have signed an agreement to ostracise Lord Maafu due to his vote in support of the Prime Minister.¹⁹⁷ Whilst Pohiva had survived the vote of confidence, it was demonstrable that there was strong opposition from the Noble's Representatives to his leadership and his government's efforts to ratify CEDAW.

5.1.10.2.2 Dissolution

Akilisi Pohiva and his government were intent on further democratic reform, eventually leading to the historic 2017 parliamentary dissolution. On the 25th of August 2017, a one-page gazette,¹⁹⁸ announced that the King in Privy Council had exercised his constitutional right under clauses 38 and 77(2) of the constitution to

¹⁹² "Noble's Agreed – None Of Them Will Be Elected Prime Minister Or Minister If 'Akilisi Pohiva Loses In The Vote Of No Confidence" (27 February 2017) Tonga Broadcasting Commission <<http://www.tonga-broadcasting.net/?p=6018>>

¹⁹³ Matangi Tonga Online "Notice of a Motion for a Vote of No Confidence in PM Pohiva" (February 3 2017).

<<https://matangitonga.to/2017/02/03/notice-motion-vote-no-confidence-pm-pohiva>>

¹⁹⁴ "Parliament Receives Motion for a Vote of No Confidence" (22 February 2017) Parliament of Tonga <http://www.parliament.gov.to/media-centre/latest-news/latest-news-in-english/556-parliament-receives-motion-for-a-vote-of-no-confidence?switch_to_desktop_ui=1>

¹⁹⁵ Legislative Assembly of Tonga, Hansard Record No. 15 (Monday 27 February 2017) at 47.

¹⁹⁶ Legislative Assembly of Tonga, *Hansard Record No. 15* (27 February 2017) at 47.

¹⁹⁷ "Pacific News Minute: First Commoner Elected PM of Tonga Survives Vote of No Confidence (March 7 2017) Hawaii Public Record <<http://www.hawaiipublicradio.org/post/Pacific-news-minute-first-commoner-elected-pm-tonga-survives-no-confidence-vote>>

¹⁹⁸ Tonga Government Gazette Supplement Extraordinary No. 14 (25 August 2017).

dissolve parliament, effective from the 24th of August. His Majesty dissolved parliament in accordance with the advice of the Speaker, Lord Tuivakano; it was the first time a monarch had invoked the power to dissolve the Legislative Assembly, the reasons for which were set out in a press release by Lord Tuivakano,¹⁹⁹ which was summarily a response to the PTOA government's mandate to vest in government executive powers that were perceived to be the monarch's. Lord Tuivakano's statement referred to deliberations in the Legislative Assembly to abolish the monarch's power to assent to bills before they became law, which the statement claimed was a safeguard for the people against any bills that may be passed by parliament that would infringe on the rights and welfare of the public; and of bills that had been submitted days before in legislative assembly proposing to remove the monarch's executive power to appoint the Police Commissioner and Attorney General and vest this power in Cabinet.²⁰⁰ The press release further highlighted the government's attempt to ratify CEDAW in 2015 and the Pacific Agreement on Closer Economic Relations (PACER) Plus in 2017, which were in breach of s 39 of the constitution which prescribes the power to ratify treaties is vested in the monarch.²⁰¹

PACER Plus was signed on 14 June 2017 by ten countries, including Tonga, but by March 2018, Tonga had withdrawn. The Privy Council discredited 213 Pohiva's signing of the deal, and the Attorney General had advised that the Prime Minister had no right to sign on behalf of Tonga.²⁰² Tonga eventually ratified PACER Plus on 27 March 2020,²⁰³ as, according to Prime Minister Tuionetoa, the King was now supportive of the signing.²⁰⁴

¹⁹⁹ Press Statement from the Speaker of the Legislative Assembly of Tonga (28th August 2017).

²⁰⁰ Press Statement from the Speaker of the Legislative Assembly of Tonga, above n 199.

²⁰¹ Press Statement from the Speaker of the Legislative Assembly of Tonga, above n 199.

²⁰² Matangi Tonga Online "Prime Minister Wants More Constitutional Power" (April 8 2018) <<https://matangitonga.to/2018/04/08/prime-minister-wants-more-constitutional-power>>

²⁰³ "PACER PLUS Pacific Agreement on Closer Economic Relations Plus" Australian Government Department of Foreign Affairs and Trade < <https://www.dfat.gov.au/trade/agreements/in-force/pacer/news/pacer-news>>.

²⁰⁴ Radio New Zealand "Tonga Ready to Ratify PACER Plus" (23 December 2019) <<https://www.rnz.co.nz/international/Pacific-news/406088/tonga-ready-to-ratify-pacer-plus>>

Other reasons put forward by Lord Tuivakano for the dissolution included the government's decision in May 2017 to withdraw from hosting the 2019 Pacific Games, the Prime Minister's failure to carry out his promise to penalise one of his ministers after his Cabinet had voted against a motion to impeach said minister, the continued collection of a levy that was created to finance the now cancelled hosting of the 2019 Pacific Games and a 5% cost of living allowance for Cabinet approved in July 2017.²⁰⁵ The justifications, therefore, were primarily based on an opposition to democratisation through devolving powers of the monarch to Cabinet and resistance to the outcome of decisions made by Cabinet.

Interviews with Tongan political scientist Malakai Koloamatangi confirmed that critical reasons for the dissolution were proposals to remove the King's right to assent to bills, appoint the Attorney General and Police Commissioner and ratify treaties like CEDAW and PACER Plus.²⁰⁶ Koloamatangi's opinion was that these moves by PTOA to implement further democratic reform had come too quickly.²⁰⁷ Prime Minister Pohiva described the dissolution as a failed coup attempt and expressed deep disappointment that he had not been notified of His Majesty's decision before the announcement was made to the media.²⁰⁸

Interviews held leading up to the 2017 snap elections highlighted that the PTOA leadership were intent on further democratic reform, with one articulating their wish to:²⁰⁹

“take Tonga to full democracy by removing all the King's remaining prerogatives. We must stop holding on to the past. Tonga will not revert to monarchy; people demand justice, freedom and independence. Most people think this dissolution is the end, but I don't

²⁰⁵ Press Statement from the Speaker of the Legislative Assembly of Tonga, above n 199.

²⁰⁶ “In Tonga, a Government Bent on Reform May Have Pushed Too Hard” (30 August 2017) Radio New Zealand
<<https://www.rnz.co.nz/international/programmes/datelinePacific/audio/201856571/in-tonga-a-government-bent-on-reform-may-have-pushed-too-hard>>

²⁰⁷ “In Tonga, a Government Bent on Reform May Have Pushed Too Hard” above n 206.

²⁰⁸ “Tonga's Prime Minister blames ousting on a 'failed coup' (27 August 2017) Newshub
<<https://www.newshub.co.nz/home/world/2017/08/tonga-s-prime-minister-blames-ousting-on-a-failed-coup.html>>

²⁰⁹ Phase 2 Interview 14.

think so; if I am re-elected this dissolution will have been for nothing. The monarchy should be a ceremonial figure. The monarchy should retain the right to assent to laws, but there must be conditions to this. Executive power must shift from the Privy Council to Cabinet.”

Another expressed that the results of the 2017 elections would indicate the public’s views on democracy:²¹⁰

“Results of the election will show whether the dissolution was necessary. The voters will decide who between the PM and the opposition is right. The result of the election will show if people support democracy or the form of government prior to 2010. This is an actual political vote, not one where people vote for friends and family. People’s votes will show their true feelings for PATOA and democracy.”

5.1.10.2.3 Democracy

While some participants expressed that democracy was unsuited to the Tongan political landscape and had thus failed,²¹¹ the views of participants interviewed with regards to democratic reform in the weeks before the November 2017 general elections were generally divided into three schools of thought. The first that no further democratic reform was required, the current system sufficed as a Tongan form of democracy. Those of this opinion believed that the monarch should rightfully retain his remaining executive powers, assigning blame for any issues not on Tonga’s governance structure but on the officials occupying positions within the system.²¹² One participant explained:²¹³

“The current structure of governance now is fine. It’s all a matter now for the Ministers and Prime Minister to work out. The current form of government is fine it is a matter for those in government to perform in the best interest of the government.”

An independent female candidate in the 2017 elections expressed similar support for maintaining the status quo:²¹⁴

²¹⁰ Phase 2 Interview 9.

²¹¹ Phase 2 Interview 13 and Phase 2 Interview 4.

²¹² Phase 2 Interview 7 and Phase 2 Interview 8.

²¹³ Phase 2 Interview 7.

²¹⁴ Phase 2 Interview 10.

“Tonga is a constitutional monarchy we should retain this and within this work out a system unique to Tonga that can work. I don’t believe we should take away any of the King’s remaining powers. We don’t have to be like England; we are different. The problem at the moment is the struggle between the executive and the monarch. The King should still retain the right to ratify treaties, but there needs to be a closer working relationship between him and Cabinet.”

The second school of thought was that further democratic reform and the realisation of women’s rights at law were desirable for the future, in a time when the population and government had a more extensive understanding of democracy; one participant expressed: ²¹⁵

“In future, a new generation with more expertise and experience can run a more democratic government, but for now, it is best the King remains a check and balance on government. I support the present system of democratic government we have now in Tonga. Until we fully understand democracy, we shouldn’t try to just copy other nations. There will be a gradual transition towards full democracy in the long run and the realisation of women’s rights at law. I believe international law based on foreign ideas and values are useful to us, but we must understand them and learn how to use them, otherwise there will be instability.”

The last school of thought was that held by members of PTOA, who expressed their desire and intent to effect further democratic reform by rendering the monarch’s political role exclusively ceremonial through removing all of the monarch’s executive powers and replacing the Privy Council with Cabinet.²¹⁶ The monarch should retain the right to assent to laws, which should be exercised within specific limits. The Prime Minister should hold the executive power to ratify international treaties.²¹⁷ In their view, a ceremonial monarch who acted on the Cabinet’s advice would be protected from public criticism.²¹⁸ The PTOA leadership firmly believed that Tonga would not revert to the rule of the monarch, that the dissolution would

²¹⁵ Phase 2 Interview 16.

²¹⁶ Phase 2 Interview 14.

²¹⁷ Phase 2 Interview 14.

²¹⁸ Phase 2 Interview 9.

prove to be an unnecessary expenditure of time and resources²¹⁹ and the elections would serve only to reveal whether the electorate supported PTOA's mandate for on-going democratic reform or the return to the governance system before 2010.²²⁰ PTOA members were confident that further democratisation was inevitable and waited on the results to confirm whether the electorate would legitimate their mandate by voting them back into government.²²¹

There were 86 candidates in Tonga's November 2017 general elections, with 15 women (17%); for the first time in modern Tonga political history, two women were concurrently voted into parliament, Losaline Ma'asi and Akosita Lavulavu.²²² Only 67.14% of registered voters turned out to vote (39612 out of 59003), and 51% (30051) of registered voters were women. The two elected women constitute 11% of the PRs and 8% of the Legislative Assembly.²²³ A report of Commonwealth Observers recommended that Tonga should ratify CEDAW to allow for women's equal participation in politics as set out in article seven of the Convention and to look to other nations for strategies that serve to increase the representation of women in the legislature,²²⁴ some of the other recommendations included that a human rights commission should be established; tasked with implementing strategies targeted at increasing the number of women in politics, including civic education in the nation's secondary school curriculum, the provision of a legal framework to regulate political parties, lowering the voting age to 18, that election day be made a public holiday and the required presence of accredited scrutineers at vote-counting stations.²²⁵

PTOA won the 2017 elections convincingly, taking 14 seats of the People's Representatives out of a possible 17, up from 8 in the 2014 elections.²²⁶ On 18 December 2017, the legislative assembly restored Pohiva to power, re-electing him

²¹⁹ Phase 2 Interview 14.

²²⁰ Phase 2 Interview 9.

²²¹ Phase 2 Interview 9.

²²² Commonwealth Observer Group, above n 71, at 17.

²²³ At 17.

²²⁴ At 17.

²²⁵ Commonwealth Observer Group, above n 71, at Executive Summary.

²²⁶ "Tonga Fale Alea (Legislative Assembly) 2017 Elections" (January 2018) Inter-Parliamentary Union <http://archive.ipu.org/parline-e/reports/2317_e.htm>

as Prime Minister.²²⁷ All nine members of the dissolved Cabinet were also re-elected.²²⁸ The 2017 elections were aptly described as a “landslide victory for democrats.”²²⁹ The results of the 2017 elections indicate continued support for Pohiva and PTOA’s mandate for democratic reform.

The above paragraphs illustrate that the political opposition to CEDAW was part of the opposition toward PTOA’s agenda for further democratic reform. There was the little political discussion over women’s issues, such as the discrimination women face under Tonga’s constitution and land laws.²³⁰ The 2017 elections indicate support for democratic reform, but it is doubtful whether this extends to support for the PTOA leadership’s stated intentions to ratify CEDAW. One participant explained that CEDAW’s ratification came too soon after the political reforms of 2010;²³¹

“We carried the political system up until 2010 when constitutional reforms changed our government. There is fear of too much change and losing what we have had as a nation. There was too much change all at once, too much political change.”

What is highlighted here is that women’s rights and issues were not part of the political discussions that premised the reforms of 2010, democracy does not embody equality for women in Tonga, CEDAW and women’s rights are distinct from the democratic movement; however, PTOA’s efforts to ratify the Convention are laudable.

5.1.10.3 Personal Opposition To Akilisi Pohiva

Interviews highlighted that the opposition to CEDAW was also a part of personal opposition to Prime Minister Pohiva from his political opponents.²³² One member of Cabinet stated, “The opposition to CEDAW is more political than legal; it is an

²²⁷ “Tonga Fale Alea (Legislative Assembly) 2017 Elections” above n 226.

²²⁸ Matangi Tonga Online “Tonga 2017 General Election Results” (20 November 2017) <<https://matangitonga.to/2017/11/17/tonga-2017-general-election-results>>

²²⁹ New Zealand Herald “Landslide Victory for Democrats in Tongan Election” (16 November 2017)<<https://www.nzherald.co.nz/world/landslide-victory-for-democrats-in-tongan-election/MURENLDMCAK2AHGKY2ZID5YJ4/>>

²³⁰ Phase 1 Interview 4.

²³¹ Phase 1 Interview 19.

²³² Phase 1 Interview 20, Phase 2 Interview 9, Phase 1, Interview 10.

opposition against Akilisi Pohiva.”²³³ Another believed that, “The reason for the opposition was the political differences between the Prime Minister and the opposition.”²³⁴ For instance, the opposition to CEDAW was part of an ongoing rivalry between two of Tonga’s foremost male politicians, Tonga’s first appointed commoner Prime Minister Lord Feleti Sevele and Tonga’s first elected commoner Prime Minister Akilisi Pohiva,²³⁵ Lord Sevele was vocally opposed to the 2015 ratification attempt stating in a letter to the Editor of *Matangi Tonga* that it is a convention that Tonga should “keep well away.”²³⁶ His wife, Lady Sevele, played a leading role in a protest march against CEDAW organised by the Catholics Women’s League, of which she was Deputy President.²³⁷

Sevele’s businesses, alongside businesses owned by members of the royal family and the Chinese business community, were destroyed during the 2006 riots, over which Pohiva was charged with sedition, charges were dropped in 2009. The 2019 South Pacific Games hosting also highlighted hostilities between the two men. In May 2016, Akilisi Pohiva removed Lord Feleti Sevele from the CEO and Chair of the Organising Committee for the 2019 Pacific Games.²³⁸ The Committee contested this, stating that only the Pacific Games Council had the authority to terminate Sevele’s contract.²³⁹ Pohiva insisted that Lord Sevele was no longer a member of the Organising Committee. To the contrary, the Pacific Games Council stated that Lord Sevele maintained his position as Pohiva did not have the authority to terminate his contract.²⁴⁰ On 19 September 2016, Chief Justice Owen Paulsen

²³³ Phase 1 Interview 20.

²³⁴ Phase 2 Interview 9.

²³⁵ Phase 1 Interview 4.

²³⁶ *Matangi Tonga Online* “Concerns Over Tonga’s Ratification of CEDAW” (March 20 2015) <<https://matangitonga.to/2015/03/16/concerns-over-tongas-ratification-cedaw>>

²³⁷ Helen Lee “CEDAW Smokescreens: Gender Politics in Contemporary Tonga” (2017) 29 (1) *The Contemporary Pacific* 66 at 68.

²³⁸ “Tonga Claims Right to Make 2019 Games Decision” (30 May 2016) *Radio New Zealand* <<https://www.rnz.co.nz/international/Pacific-news/305182/tonga-claims-right-to-make-2019-games-decisions>>

²³⁹ “Tonga Claims Right to Make 2019 Games Decision” above n 238.

²⁴⁰ “Pac Games Council, Tells Tonga to Honour Contract” (1 June 2016) *Radio New Zealand* <<https://www.rnz.co.nz/international/Pacific-news/305323/pac-games-council-tells-tonga-to-honour-contract>>

reinstated Lord Sevele as CEO of Tonga’s Pacific Games Organising Committee.²⁴¹ However, this was not the end of the Pacific Games tussle between the two men. Former finance Minister Lisiate Akolo had advised the government of the financial precarity of continuing to host the Pacific Games when Tonga relied on \$33 million of donor money to support its national budget.²⁴² This advice, in conjunction with an analysis of the impact hosting the games would have on the economy,²⁴³ led to the government submitting in May 2017 documents to the Pacific Games Council effecting their withdrawal from hosting the 2019 Pacific Games.²⁴⁴ Lord Sevele contested the relevancy of the warnings set out in the International Monetary Fund (IMF) 2013 report on Tonga, claiming that Tonga could afford to host the games and calling for the Prime Minister to reverse his withdrawal of Tonga’s hosting rights.²⁴⁵ Soon after, Samoa secured the rights to host the 2019 Pacific Games in place of Tonga.

One independent candidate expressed that he was once a supporter of Pohiva but claimed, “Akilisi Pohiva is very corrupt, he is undemocratic, a dictator and building a monument for himself in Popua. He uses lies and misinformation to manipulate voters.”²⁴⁶ This participant’s strong views of Pohiva are indicative of the intense feelings of animosity borne for him by his political opponents.

5.1.11 Not A Priority For The Ptoa Government/Lack Of Political Will

Despite uncertainty over whether Cabinet possessed the constitutional authority to ratify CEDAW, many were aware that the government lacked the political will to proceed with ratification.²⁴⁷ One participant explained that after the initial

²⁴¹ “Tonga’s Chief Justice Re-instates Sevele” (19 September 2016) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/313713/tonga's-chief-justice-re-instates-sevele>>

²⁴² “Tonga Processes Withdrawal From Pacific Games Hosting” (15 May 2017) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/330779/tonga-processes-withdrawal-from-pacific-games-hosting>>

²⁴³ “Tonga Processes Withdrawal From Pacific Games Hosting” above n 242.

²⁴⁴ “Tonga Processes Withdrawal From Pacific Games Hosting” above n 242.

²⁴⁵ Matangi Tonga Online “Lord Sevele Says Tonga Can Afford to Host 2019 Pacific Games” (May 21 2017) <<https://matangitonga.to/2017/05/21/lord-sevele-says-tonga-can-afford-host-2019-pacific-games>>

²⁴⁶ Phase 2 Interview 1.

²⁴⁷ Phase 1 Interview 1.

upheaval over CEDAW in 2015, the government did not want to cause further social turmoil by pushing for ratification.²⁴⁸ Apprehension over the reaction of influential church leaders is a significant factor in the PTOA government's decision not to move forward with ratification.²⁴⁹ One former female People's Representatives stated:²⁵⁰

"I do see a possibility for CEDAW ratification. Not in the near future, as this government was ready to ratify but was afraid of the church's reaction. So government understands the need for CEDAW, but in order for it to be ratified, churches have to come on board."

Members of the PTOA government did not want to risk losing political support and votes from church leaders and, by extension, members of their congregations due to their public support for CEDAW.²⁵¹ One female activist voiced her frustrations:²⁵²

"I think CEDAW will be ratified if the People's Representatives and government take their silent support for CEDAW into public support, but government fear losing their votes... We need CEDAW; the Prime Minister is not a strong enough leader; why say let's have a referendum? Why not just make the decision to ratify."

The PTOA government losing the church leaders' support over the CEDAW issue was thought to be significant enough to warrant the government passing laws in an effort to appease the church leaders, one participant explained:²⁵³

"We need a new government with the political will and expertise to ratify CEDAW. Akilisi has two more years and other priorities. Sunday law that was passed was the government trying to appease the churches as CEDAW has weakened their position and Akilisi lost support from church leaders over CEDAW."

PTOA's lack of political will to ratify CEDAW was evident in the lead-up to the snap elections of 2017, wherein the topic of CEDAW was avoided by PTOA candidates,

²⁴⁸ Phase 1 Interview 18.

²⁴⁹ Phase 1 Interview 7, Phase 1 Interview 4.

²⁵⁰ Phase 1 Interview 7.

²⁵¹ Phase 1 Interview 1, Phase 1 Interview 4.

²⁵² Phase 1 Interview 1.

²⁵³ Phase 1 Interview 4.

with one PTOA candidate explaining, “There isn’t much mention of CEDAW in campaigns... Candidates do not want to touch CEDAW”.²⁵⁴

Participants stated that the public’s misunderstanding of CEDAW was also due to a lack of consultations held by the government.²⁵⁵ Strategic, comprehensive consultation is required if the public is to understand CEDAW correctly; ratification remains unlikely otherwise.²⁵⁶ The lack of political will to address women’s issues in Tongan politics is a definitive contributing factor to the scarcity of Tongan women in politics.²⁵⁷

5.1.12 PTOA Party Views On CEDAW And Women’s Rights

While the leadership expressed support for the ratification of CEDAW and women’s rights,²⁵⁸ views from members of the PTOA party reflected the opinions of the general population. They ranged from not believing in equality between men and women because it is not biblical²⁵⁹ that the Tongan culture sufficiently addresses women’s issues,²⁶⁰ that CEDAW permitted same-sex marriage,²⁶¹ to a complete ignorance and disinterest in the content of CEDAW.²⁶² A female activist stated that some members of PTOA had gone so far as to join the public marches against ratification.²⁶³ While PTOA candidates did not express direct opposition to CEDAW, neither did any express support for the convention apart from the leadership. Whilst Prime Minister Pohiva supported CEDAW and its ratification, Mateni Tapueluelu, PTOA member of parliament and son-in-law to Pohiva, was publicly opposed to CEDAW and requested that government should not ratify the convention.²⁶⁴ In a reported PTOA party meeting in June 2015, Tapueluelu pleaded

²⁵⁴ Phase 2 Interview 19.

²⁵⁵ Phase 1 Interview 29.

²⁵⁶ Phase 1 Interview 19.

²⁵⁷ Ofa Guttenbeil-Likiliki “Report 4: Advancing Women’s Representation in Tonga” in Elise Huffer et al *Women’s Place is in the House* (Pacific Islands Forum Secretariat, Fiji, 2006) at 147.

²⁵⁸ Phase 2, Interview 14.

²⁵⁹ Phase 1, Interview 20.

²⁶⁰ Phase 2, Interview 15.

²⁶¹ Phase 2, Interview 19.

²⁶² Phase 2, Interview 20.

²⁶³ Phase 2, Interview 18.

²⁶⁴ “Tonga Democratic MP pushes against CEDAW” (16 June 2015) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/276444/tonga-democratic-mp-pushes-against-cedaw>>

with the party to halt its move to ratify CEDAW.²⁶⁵ Individual members of PTOA were united in their support for democracy; these members did not conceptualise equality for women at law as an integral component of the democratic movement.

5.1.13 Privileged Women Did Not Support Cedaw

Prominent women from the nobility class, such as Lady Eseta Fusitu'a, were vocally against the ratification of CEDAW.²⁶⁶ Lady Fusitu'a was Tonga's first female university graduate and held some of the highest positions in the public service; she was Chief Secretary and Secretary to Cabinet and a former Cabinet member as Minister for Communication and Information. Commoner grassroots women often believe the opinions of female members of the elite ruling classes as a result of charity work and assistance offered to them by these women and because of their elevated social status. The late Queen Mata'aho Tuku'aho was famous for her charity work; for over 40 years, her majesty supported through financial donations and personal visits Tonga's Alonga Centre and was the patron of Tonga Red Cross Society.²⁶⁷ It is the opinion of leading female figures such as Lady Fusitua that are publicly voiced and inform the views of poor rural women, with one activist explaining:²⁶⁸

“Elite and educated women who work and make money have an elevated status, the majority commoner women, these women are abused and are vulnerable. The elite women don't need CEDAW, and then they feed the underprivileged women this, and so these commoner women believe them and go along with their views...The activist women tell the underprivileged women the benefits of CEDAW for them, the elite women then make the women activists look bad. I work with people in the grassroots and see the truth of these things.”

²⁶⁵ “Democratic Party meeting uproar as Pohiva's son-in-law asks government to withdraw CEDAW ratification” (15 June 2015) Kaniva Tonga
<<https://www.kanivatonga.nz/2015/06/democratic-party-meeting-uproar-as-pohivas-son-in-law-asks-government-to-withdraw-cedaw-ratification/>>

²⁶⁶ Phase 1 Interview 13.

²⁶⁷ Matangi Tonga Online “Charities remember Queen Mother's Legacy: We Will Deeply Miss Her” (February 20 2017) <<https://matangitonga.to/2017/02/20/charities-remember-queen-mothers-legacy-we-will-deeply-miss-her>>

²⁶⁸ Phase 1 Interview 22.

The support of elite women and men has been shown as necessary for gender quotas for women in parliament to be adopted; this is also true for the ratification of CEDAW in Tonga.

5.1.14 CEDAW Proponents And Women's Activists

Some interviews expressed that part of the opposition was due to the behaviour of the proponents of CEDAW. The Minister for Internal Affairs at the time, Feao Vakata, announced in the 9th UN Commission on the Status of Women at the UN General Assembly Hall on 9 March, 2015 that the Government of Tonga had decided it was now ready to ratify CEDAW, although with some reservations.²⁶⁹ Despite the protest marches, Vakata continued publicly supporting CEDAW and its ratification.²⁷⁰

Vakata was removed from Cabinet in September 2016 after throwing a glass of wine at a female senior civil servant.²⁷¹ In interviews, Prime Minister Pohiva explained the situation;²⁷²

“One of his senior officers attended a meeting, and something happened which made him upset, and it came to a point where he could no longer control his anger. Then he did something which physically harmed his officer.”

The King officially revoked Vakata's appointment as Minister of Internal Affairs on Tuesday, September 13, 2016. One participant expressed Vakata's behaviour as illustrative of the hypocrisy of proponents of CEDAW and as evidence that ratification was purely to secure female votes.²⁷³

²⁶⁹ “Tonga Lauded For Ratifying UN Women's Discrimination Convention” (3 November 2015) Pacific Islands Report <<http://www.pireport.org/articles/2015/03/11/tonga-lauded-ratifying-un-women's-discrimination-convention>>

²⁷⁰ “Tongan Minister Still Wants CEDAW Ratified” (2 September 2015) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/283104/tongan-minister-still-wants-CEDAW-ratified>>

²⁷¹ “Tongan Govt Says it Sacked Vakata” (15 September 2016) LOOP <<https://www.looptonga.com/content/tongan-govt-says-it-sacked-vakata>>

²⁷² “Tongan PM Says Misbehaving Minister Forced His Hand” (16 September 2016) Radio New Zealand <<https://www.rnz.co.nz/international/programmes/datelinePacific/audio/201816341/tongan-pm-says-misbehaving-minister-forced-his-hand>>

²⁷³ Phase 1 Interview 11.

There was criticism from male church leaders over what they perceived to be the patronising attitudes of female activists promoting CEDAW, with one male church leader stating:²⁷⁴

“I felt the women’s activists had a very patronising attitude; they thought that no one else but they understood CEDAW, but we can all read, we all can understand. Women’s rights activists all stood with the Prime Minister against the church leaders.”

In reference to female activists, one male participant stated, “They don’t live what they’re preaching. It is hard to listen to them. CEDAW has become ridiculed because of the supporters of CEDAW.”²⁷⁵ Another participant cited the negative attitudes of female activists as problematic.²⁷⁶

“Women’s rights activists aren’t doing their job; they’ve got to be better at campaigning. They get upset at anyone with an opposing view...She has a negative reaction to everything and is very unprofessional.”

Violence against women who speak publicly and defend human rights is reportedly pervasive in the Asia and Pacific region.²⁷⁷ Combined with the prevailing cultural attitude that women in Tonga are not to speak publicly; we can perhaps locate the rationale for the unsympathetic attitudes of church leaders toward activists who vocally advocate for women’s rights. Further, one participant stated that opponents of CEDAW publicly degraded women activists and women’s groups, attacking their credibility and reputations to render them and their message as not believable.²⁷⁸

The failure of women’s activists to engage the support of the churches and influential women in their campaign for ratification was cited as a strategic failure

²⁷⁴ Phase 1 Interview 16.

²⁷⁵ Phase 1 Interview 11.

²⁷⁶ Phase 1 Interview 11.

²⁷⁷ Jacqui True, Sara Niner, Swati Parashar, Nicole George *Women’s Political Participation in Asia and the Pacific* (Women’s Political Participation Report Asia-Pacific, 2012) at 2.

²⁷⁸ Phase 1 Interview 29.

on their behalf.²⁷⁹ Several leading female public figures also did not support CEDAW; one such explained her stance against CEDAW:²⁸⁰

“CEDAW is a UN treaty that targets the improvement of conditions for women and children. It was first introduced in the 90s when I was part of the Langafonua Committee. I was one of the dissenting voices primarily because I don’t view taking women out to be treated as victims from the family unit as the ideal way to deal with domestic violence.”

The divide between women, between activists and the people and between the government and NGOs were significant barriers to successful ratification; these factions that support CEDAW need to unite and coordinate their efforts.²⁸¹

²⁷⁹ Phase 1 Interview 4, Phase 1 Interview 21.

²⁸⁰ Phase 1 Interview 9.

²⁸¹ Phase 1 Interview 29.

5.1.15 The Aim Of Ratification Was For Donor Money

There is concern that Tonga is pressured to ratify particular treaties by donors, with Tonga complying to retain foreign aid.²⁸² Tonga's dependence on aid often means Tonga has very little control over what treaties are ratified.²⁸³ Participants opposed to CEDAW claimed that activists pushed for ratification to secure funding from donors for themselves and their organisations; others claimed that funds received from donors were ill-spent by women's activists and the lack of consultation was a direct result of this.²⁸⁴ A prominent women's rights activist and NGO director denied this claim.²⁸⁵ Whilst some of Tonga's women's NGOs are funded primarily through donor aid; the National Centre for Women and Children has received funding from the Australian government,²⁸⁶ the Women's and Children's Crisis Centre (WCCC) from Pacific Women Shaping Pacific Development,²⁸⁷ Talitha Project from UN Women, European Union and Australian Government,²⁸⁸ there is no information to validate the claim that women's activists and women's NGOs were paid to promote CEDAW or were promised funding upon ratification.

WOMEN ARE NOT ELECTED AND DO NOT PARTICIPATE IN POLITICS

As discussed in the preceding paragraphs, political discussion about CEDAW had little to do with women's issues and rights, arguably due to the historical exclusion of women from Tongan politics. The following paragraphs explore why so few women have been elected into Fale Alea.

²⁸² Phase 2 Interview 7.

²⁸³ Phase 2 Interview 13.

²⁸⁴ Phase 2 Interview 15, Phase 2 Interview 12.

²⁸⁵ Phase 1 Interview 1.

²⁸⁶ See K Winterford, K Ma'u and C Leahy Formative Evaluation of the Tonga National Centre for Women and Children Women's Economic Empowerment Project. (Pacific Women Shaping Pacific Development Support Unit, 2019).

²⁸⁷ Winterford, Ma'u and Leahy, above n 286.

²⁸⁸ "Tongan Youth-Led Solutions to Reduce Violence Against Women and Girls" (July 2 2019) UN WOMEN <<https://asiaPacific.unwomen.org/en/news-and-events/stories/2019/07/tongan-youth-led-solutions-to-reduce-violence-against-women-and-girls>>

5.1.16 Societal Norm That Men Are Leaders, Women's Place Is In The Home (Biblical Patriarchy)

As of September 2021, only ten countries in the world have a woman Head of State; only 13 have a woman Head of Government, only 21 per cent of government ministers are women, and only 14 countries have a Cabinet consisting of 50 per cent or more of women and only 25% of all national parliamentarians are women.²⁸⁹

Patriarchal cultures are cited as a limiting factor to women's political participation with women, through internalised patriarchy, excluding politics from what is perceived as appropriate or even possible for women to participate in.²⁹⁰ The level of women's participation in politics is significantly influenced by cultural values and traditions, patriarchal societies such as those existing in the middle eastern countries of Saudi Arabia and Qatar have meagre numbers of women in politics, as do small nations from the Pacific including Palau, Vanuatu and Tonga.²⁹¹ In India, it has been argued that the prevailing patriarchal mindset is the primary barrier to increased representation of women in parliament, the rationale behind these patriarchal attitudes is that female representation will inevitably lead to more gender-equitable laws and policies, which would, in turn, diminish the power and dominance of men over women in society, and that the prestige leadership affords men in their communities is threatened if women are also leaders.²⁹² The global political structures of today are therefore described as "... designed by men for men and based on the exclusion of women in different ways."²⁹³ Patriarchal values chain women to the confines of the home and thus make it difficult for women to enter the political sphere, despite there being no legal barriers for women to do so.²⁹⁴

²⁸⁹ "Facts and Figures: Women's Leadership and Political Participation" (15 January 2021) UN WOMEN <<https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>>

²⁹⁰ Uthara Soman "Patriarchy: Theoretical Postulates and Empirical Findings" (2009) 58 (2) Sociological Bulletin 253 at 262.

²⁹¹ Melanie M Hughes & Pamela Paxton "The Political Representation of Women over Time." in *the Palgrave Handbook of Women's Political* (Palgrave Macmillan, London, 2019) at 43-44.

²⁹² Ranjana Kumari "Patriarchal Politics: The Struggle for Genuine Democracy in Contemporary India"(The Green Political Foundation, 26 February 2014) <<https://www.boell.de/en/2014/02/26/patriarchal-politics-struggle-genuine-democracy-contemporary-india>>

²⁹³ Khelghat-Doost and Sibly, above n 2, at 402

²⁹⁴ Khelghat-Doost and Sibly, above n 2, at 405-406

Culture and customs are often used to justify the exclusion of women from politics in the Asia Pacific region.²⁹⁵ Cultural attitudes and bias against women are a significant barrier to women being elected into parliaments across the Pacific.²⁹⁶ As of May 2020, the regional average for women’s participation in parliament is 8.8%, compared to the global average of 25%.²⁹⁷ One Pacific nation; the Federated States of Micronesia, has never had a female member of Congress.²⁹⁸ One of the reasons cited for the paucity of female politicians in the region are social norms connected to culture, tradition and religion, upheld by both men and women, that prescribe the roles of women in the social, economic and political sphere.²⁹⁹

The colonial era either introduced or fortified the dichotomy of the private and public sphere in Pacific communities through enforcing gender roles in colonial and Christian administrations that served to exclude indigenous women from the public sphere to which they traditionally had access or in historically patriarchal cultures; these colonial Christian values replaced traditional patriarchal values.³⁰⁰ Pacific political cultures have been defined as “conservative” and as such, leading to the low numbers of women in parliament.³⁰¹ Conservative Pacific political cultures could more accurately be described as patriarchal political cultures.

A study in Tonga found that most people could not envisage or accept women as leaders in churches or parliament.³⁰² The same study also found that the majority (59%) of participants believed that leadership in the family was for men in their

²⁹⁵ True, Niner, Parashar and George, above n 277, at 2.

²⁹⁶ “Statistics October 2020” Pacific Women in Politics <<https://www.pacwip.org/women-mps/national-women-mps/>>

²⁹⁷ “Statistics October 2020 “ above n 296.

²⁹⁸ “Statistics October 2020 “ above n 296.

²⁹⁹ Australian Aid & Pacific Women Shaping Pacific Development Thematic Brief: Leadership And Decision Making For Women And Girls In The Pacific at 4.

³⁰⁰ Kerryn Baker “Explaining the outcome of gender quota campaigns in Samoa and Papua New Guinea” (2014) 66 (1) Political Science 63 at 77 and Elise Huffer, “Desk Review of the Factors Which Enable and Constrain the Advancement of Women’s Political Representation in Forum Island Countries” in *A Woman's Place is in the House - the House of Parliament: Research to Advance Women's Political Representation in Forum Island Countries* (Pacific Islands Forum Secretariat, Fiji, 2006) at 34.

³⁰¹ Baker, above n 300, at 77 and Huffer, above n 300.

³⁰² Guttenbeil-Likiliki, above n 117, at 119.

roles as husbands and fathers.³⁰³The majority believed that men were best suited to local government positions (district officers).³⁰⁴ Participants were most accepting of women in leadership in workplaces such as CEO positions; more than 50% of government CEO positions are held by women.³⁰⁵

As discussed in the previous chapter, leadership is viewed by many in Tonga as the exclusive domain of men, and the political sphere is reserved for men, as confirmed by a former female parliamentarian.³⁰⁶ The cultural norm in Tonga is that men are political leaders and decision-makers.³⁰⁷ Culture and religious beliefs define the political sphere as outside the realm of acceptance for a “good” Tongan woman.³⁰⁸ Women are expected to remain quiet, dignified and feminine and therefore unsuited for the loud, aggressive conduct expected of parliamentarians.³⁰⁹

As of 2017, women in Tonga currently make up 7% of the legislative assembly³¹⁰ which is less than the Pacific regional average. Unsuccessful female candidates secured an average of 10% of votes in their constituencies.³¹¹ Only two women were elected to the local government.³¹² As of November 2021, there are no women in the Tongan parliament.

Contemporary Tongan culture based upon biblical patriarchal values dictates that a woman’s place is in the home caring for their husband and children; one female candidate recounts her experiences of this;³¹³

³⁰³ At 119.

³⁰⁴ At 119-120.

³⁰⁵ At 120

³⁰⁶ Phase 2, Interview 13.

³⁰⁷ See Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga *Gender Equality: Where Do We Stand? The Kingdom Of Tonga* (2019).

³⁰⁸ Guttenbeil-Likiliki “Above n 117, at 55.

³⁰⁹ At 56.

³¹⁰ Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 307.

³¹¹ Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 307.

³¹² Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 307.

³¹³ Phase 2 Interview 10.

“I was shocked at one man saying publicly that all women should be at home rocking the cradle. Women should be at home looking after the home like the bible says. And that women should shut their mouths and not speak.”

Another female candidate experienced similar hostile attitudes from men stating that she “was told by men that I should stay with my husband in America, I was criticised for coming over to run in elections.”³¹⁴

5.1.17 Women Promote Patriarchal Views And Do Not Vote For Or Support Women In Politics

In the Pacific region, women voters are often blamed for female candidates losing elections; in Bougainville’s 2015 elections, one female candidate attributed her loss to women voters, and a female candidate in Tonga’s 2014 elections stated that the lack of support from female voters was why she was unsuccessful.³¹⁵ Female candidates from Papua New Guinea said that women voters did not support or vote for women candidates; one candidate from Tonga recounted how a high-profile women’s advocate publicly advocated for increased political participation for women but voted for a male candidate.³¹⁶ In Tonga, adverse social and cultural attitudes that impede women’s political participation are held not just by men but by women also; women’s patriarchal cultural attitudes are arguably the most significant deterrent to women attaining leadership and decision-making roles and engaging in the political sphere.³¹⁷ Tongan women have internalised patriarchy, resulting in women not voting for other women.³¹⁸ A study found that more than 71% of registered female voter participants believed that women were not suited to leadership roles and particularly those in parliament and politics, 58% of male voter respondents felt the same.³¹⁹ In Tongan society, there are “deeply entrenched social barriers to women being accepted as a leader in the home, community, workplace, church and country as a whole.”³²⁰ The same study found

³¹⁴ Phase 2 Interview 11.

³¹⁵ Kerryn Baker “Great Expectations: Gender and Political Representation in the Pacific Islands” (2018) 53 (3) *Government and Opposition* 542 at 548

³¹⁶ At 549.

³¹⁷ Guttenbeil-Likiliki, above n 117, at 145-147.

³¹⁸ At 4.

³¹⁹ At 126.

³²⁰ At 128.

that the main reason women did not vote for female candidates was that they did not believe the female candidates in 2010 and 2014 were suitable; the main reason for men not voting for women was that they thought female candidates were not tough enough for politics.³²¹

The violent nature of politics, wherein female politicians, have experienced the threat of physical harm, harassment and character assassinations, is a barrier to women engaging in politics.³²² Women in Tonga are very judgmental of female candidates; women often refuse to vote for female candidates based on their sexual history, divorce, alcohol consumption, and smoking.³²³ Most participants perceived divorce as the failure of the wife or woman.³²⁴ Private information is readily available in small communities and constituencies, and women's private lives are closely scrutinised, whereas male candidates are not to the same extent.³²⁵ Women are expected to remain sexually chaste and have only one male sexual partner; males are not held to the same standard.³²⁶

Unsupportive women who nurtured patriarchal beliefs was a theme that emerged from female participants' answers. Although women voters understand the need for women's issues to be voiced in parliament,³²⁷ women did not vote for women candidates. They did not support women in politics, similar to that men showed for other men in politics.³²⁸ One female candidate explained:³²⁹

“Tongan males have friends that will support them; Tongan women don't have these kinds of relationships with each other; they will not support and vote for each other as men do here.”

³²¹ Guttenbeil-Likiliki, above n 117, at 124.

³²² Ranjana Kumari, above n 292.

³²³ Guttenbeil-Likiliki, above n 117, at 121.

³²⁴ At 122.

³²⁵ At 122-123.

³²⁶ At 123.

³²⁷ Phase 2 Interview 11.

³²⁸ Phase 2 Interview 18.

³²⁹ Phase 2 Interview 18.

In Tonga, women were responsible for promoting patriarchal values of the patriarchal state; many women did not think women were fit for parliament.³³⁰ Another former female election candidate expressed:³³¹

“Women were against me and supported their male relatives in the elections. A few women’s activists would support me when donors were watching, but in reality, these women would vote for men. Women are also very jealous... Women are the greatest barrier to women being elected.”

Other reasons women did not vote for other women in elections were that they believed women lacked the right skills and experience, they were not ready to elect women into parliament, whilst men thought women did not have the time for politics because of their domestic responsibilities.³³²

5.1.18 Faikava: A Patriarchal “Cultural” Political Platform

Tongan mythology narrates that the kava plant (*Piper methysticum*) grew out of the remains of a young woman named Kava’onau who lived on the island of ‘Eueiki.³³³ While women of all ranks in ancient Tonga participated in kava practices and kava drinking, since the promulgation of the constitution, kava drinking has become an exclusively male cultural practice.³³⁴ Kava is the national drink of Pacific nations; Tonga, Fiji and Samoa, made from the pounded root and stem of the kava plant mixed with water.³³⁵ Kava drinking in Tonga is either ceremonial or informal. Ceremonial kava drinking, known as *Ilo Kava* or *Taumafa Kava*, is attended only by the King, chiefs, and their attendants, this type of kava drinking reflects ancient rituals and traditions.³³⁶ Informal kava drinking or the *faikava* was for commoner men.³³⁷ Over time, informal *faikava* has taken different forms and served other purposes; the tau *fakalokua* was an earlier kava drinking carried out by farmers and

³³⁰ Guttenbeil-Likiliki, above n 117, at 55.

³³¹ Phase 1 Interview 13.

³³² Guttenbeil-Likiliki, above n 117, at 125.

³³³ Arcia Tecun, Robert Reeves, Marlena Wolfgramm “The past before us: a brief history of Tongan kava” (2020) 129 (2) *Journal of Polynesian Society* 171 at 171.

³³⁴ At 177.

³³⁵ Futa Helu “Identity and change in Tongan society since European contact.” (1993) 97 (2) *Journal de la Société des Océanistes* 187 at 188-190.

³³⁶ See Arcia Tecun *Tongan Kava: Performance, Adaptation, And Identity In Diaspora* (2017).

³³⁷ Tecun, above n 336.

fishermen after the day's work.³³⁸ There was also the *faikava eva* or kava drinking at a girl's home to court her; there was kava *fakasiasi*, the drinking of kava at church on Sundays before and after church services.³³⁹ The most recent and most popular form of kava drinking is the *kalapu kava* Tonga or the *faikava* clubs; this was held every night except for Sunday in every village and town in Tonga; this was where men would gather to talk and socialise as well as donate to local fundraising initiatives.³⁴⁰ Men gathered at the kava clubs to relax by talking, singing, and playing card games and sometimes would have a *tou'a* or a female to serve the kava.³⁴¹ The *faikava* clubs began in the 1950s in Tonga. Under the influence of Futa Helu, the *faikava* clubs evolved into a forum that allowed conversation, debate and exchange between male members of different ranks, religions and ages.³⁴² The *faikava* club provided for the first time a platform for discussions amongst equals in Tonga's hierarchal society; men from varying backgrounds began to share ideas and information, and the *faikava* clubs became the means by which the democracy movement found momentum.³⁴³ Women, however, were excluded from this forum.

Kava has continued to develop in terms of its function, practices and meaning³⁴⁴ and terms of the *faikava* clubs; they have morphed into Tonga's premier place for political discussions, a place to which women are prohibited access. Tongan women in New Zealand are beginning to break tradition and participate in kava drinking.³⁴⁵ One Tongan woman spoke about her moving from the position of *tou'a* to kava drinker with friends and family, not in the kava clubs but in the privacy of her home;

³³⁸ Helu, above n 335, at 188-190.

³³⁹ At 188-190.

³⁴⁰ At 188-190.

³⁴¹ Harry Feldman "Informal kava drinking in Tonga. " (1980) 89 (1) The Journal of the Polynesian Society 101 at 101-103.

³⁴² Tecun, Reeves and Wolfgramm, above n 333, at 182.

³⁴³ Tecun, Reeves and Wolfgramm, above n 333, at 182-183.

³⁴⁴ Tecun, above n 336

³⁴⁵ "Drinking Kava Becoming Popular with Tongan Women" (10 May 2017) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/330400/drinking-kava-becoming-popular-with-tongan-women>>

she claims that in earlier times, Tongan women drank kava as part of their weaving and tapa making group work.³⁴⁶

Both male and female candidates in the 2017 elections expressed that a seemingly insurmountable barrier for Tongan female candidates was the *faikava* clubs.³⁴⁷ The *faikava* system of political campaigning is the predominant form of campaigning in Tonga and favours men.³⁴⁸ The *faikava* is the primary forum for political discussions and decision-making and a place where a candidate's voice is best heard and where one becomes familiar with the electorate.³⁴⁹ One female candidate expressed:³⁵⁰

“Being a woman disadvantaged me in my campaign. Decision-making is done in kava clubs...These men decide who members of their homes vote for. Male candidates can go sit at kava club until 3 am and talk to other men, whereas women can't.”

Women traditionally do not take part in the *faikava*, and the women candidates expressed being made to feel like they did not belong at the *faikava* they attended for campaigning, one expressed, “I felt discrimination during my campaign, I felt inferior to men, and there is not a proper place for me to go to campaign, as men make me feel it is not my place to be at a *faikava*.”³⁵¹ It is also quite difficult to attend with male relatives who are the closest supporters of female candidates. It is taboo in Tongan culture for male and female relatives to attend the same *faikava*.³⁵²

Ancient ceremonial kava drinking involved traditional male political actors of the chiefly classes; today, ceremonial kava drinking remains the preserve of the politically powerful ruling class. Informal *faikava* practised by commoner men rose in popularity synchronously with ideas of reform and democracy; that is, commoner

³⁴⁶ Ikanamoe Ma'u "My experience as a female Tongan kava drinker." Paper presented at the *Kava: A workshop for kava researchers and enthusiasts* (Anthropology and Pacific Studies Seminar Series, The University of Waikato, April 21 2017)

³⁴⁷ Phase 2 Interview 18, Phase 2 Interview 3, Phase 2 Interview 11, Phase 2 Interview 7.

³⁴⁸ Phase 1 Interview 4.

³⁴⁹ Phase 2 Interview 7.

³⁵⁰ Phase 2 Interview 18.

³⁵¹ Phase 2 Interview 11.

³⁵² Phase 2 Interview 18, Phase 2 Interview 3.

men should be involved in and wield political influence. Commoner men have thus penetrated the political sphere of the *faikava* circles, creating a political platform open to men of all classes. The fact that women remain outside *faikava* circles is the Tongan equivalent of excluding Tongan women from western political structures such as parliament. The kava circle has been put forward as a place for men from all levels of society to receive and debate information, to hear candidates speak and campaign; these men, in turn, return home and influence the voting of their family members.³⁵³ Women in Tonga and the diaspora are making efforts to include women in informal kava drinking.³⁵⁴ Arguably, the most effective form of campaigning is *faikava* which women can't access. This is a significant cultural barrier to Tongan women contesting elections.

5.1.19 Patriarchal Parties And Economies: Women Are Poor; Depend On Male Parties, Husbands

Patriarchy has been argued as the main deterrent to women participating in politics and is defined as three structural categories, "patriarchal structure of politics, patriarchal socio-economic structure and patriarchal cultural structure"³⁵⁵ which require addressing if we are to increase the level of women's participation in politics.³⁵⁶ The patriarchal culture present in Tonga has already been discussed. The patriarchal socio-economic system refers to women's lack of financial independence and vulnerability to poverty, creating formidable barriers to women penetrating the political sphere.³⁵⁷ Patriarchal political parties also play a decisive role in the success of female candidates.

Female candidates from Papua New Guinea stated that money was an effective campaign tool for men, and as women, they did not have money to disperse to the electorate and consequently lost out to men.³⁵⁸ Directly related to this, women candidates in the Pacific region commonly lament the financial burden of campaigning, with costs for posters, banners, t-shirts and other things being very

³⁵³Guttenbeil-Likiliki , above n 257, at 147.

³⁵⁴Tecun, Reeves and Wolfgramm, above n 333, at 177.

³⁵⁵Khelghat-Doost and Sibly, above n 2, at 406

³⁵⁶Khelghat-Doost and Sibly, above n 2, at 406

³⁵⁷Kumari, above n 292.

³⁵⁸ Kerry Baker above n 315, at 555

expensive.³⁵⁹ Studies have shown that in places where women engage in the labour force and are educated to higher levels see higher levels of political participation from women.³⁶⁰ Social-economic barriers constitute the primary constraint to women's political participation.³⁶¹

One female candidate expressed how challenging it is to campaign as a woman without the support of a political party, husband, or finances.³⁶² A particular difficulty women face in Tonga is the lack of financial resources to fund candidacy registration fees and run an election campaign.³⁶³ The Electoral Act requires candidates to pay TOP\$400 before their nomination as a candidate can be approved, with the maximum amount permitted to be spent on a campaign being TOP\$20,000.³⁶⁴ Women candidates articulated that they did not have the financial resources to fund a comprehensive campaign (provide food and entertainment at campaign meetings) as they were poor. In contrast, male opponents had a lot more financial resources.³⁶⁵ One female candidate stated that money was often used to bribe people for votes.³⁶⁶

All civil servants must resign before contesting a seat in parliament. The financial costs of campaigning for a female candidate in the 2014 election extended beyond the polls; her experience was that whilst unsuccessful male candidates were quickly able to return to their former employment, she remained unemployed for over a year, with donors and other women who supported her campaign failing to offer any assistance in her attempts to get her job back.³⁶⁷

³⁵⁹ Kerryn Baker *Women's political representation in the Pacific Islands Region* (Human Rights Issues Confronting Women and Girls in the Indian Ocean-Asia Pacific Region Submission 93).

³⁶⁰ Courage Mlambo & Forget Kapingura "Factors Influencing Women Political Participation: The case of the SADC Region." (2019)5 (1) *Cogent Social Sciences* at 13.

³⁶¹ Khelghat-Doost and Sibly, above n 2, at 404.

³⁶² Phase 2, Interview 18.

³⁶³ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 307.

³⁶⁴ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 307.

³⁶⁵ Phase 2 Interview 20, Phase 2 Interview 18.

³⁶⁶ Phase 2 Interview 20.

³⁶⁷ Phase 1 Interview 13.

Successful women candidates are often substitutes for male family members who are restricted from candidating.³⁶⁸ Women who successfully contest Pacific elections have strong male support, high-level education and belong to prominent families.³⁶⁹ In countries like India and Pakistan, the support or legacy of high-profile fathers and husbands was crucial to women's successful election to high office.³⁷⁰ The success of one female candidate in 2017 was viewed as the result of the support of her high profile (former People's Representatives) husband, who campaigned relentlessly on her behalf.³⁷¹

The success of a female candidate is often dependent on male-dominated parties, on the support of husband and male relatives, financial and otherwise, as campaigning in Tonga often requires costs for feeding people who attend and other such expenses.³⁷² In the Asia-Pacific region, the support of political parties is often reserved for elite women, while hindering the success of non-elite women in politics.³⁷³ A female participant in Tonga's 2014 elections commented that political ideology (parties formed based on ideology and not policy) greatly influenced voting patterns, which ultimately led to members of her constituency voting for the male competition.³⁷⁴ Both successful female candidates in the 2017 elections were members of PTOA. Another issue for Tongan women is the electoral system; women are disadvantaged in 'first past the post' systems,³⁷⁵ Tonga has such a system. Women's representation increases under proportional representation systems.³⁷⁶

³⁶⁸ Ranjana Kumari "Patriarchal Politics: The Struggle for Genuine Democracy in Contemporary India" (The Green Political Foundation, 26 February 2014)
< <https://www.boell.de/en/2014/02/26/patriarchal-politics-struggle-genuine-democracy-contemporary-india>>

³⁶⁹ Nicole Haley and Kerry Zubrinich *Women's political and administrative leadership in the Pacific* (State, Society and Governance in Melanesia, Australia National University, 2016)

³⁷⁰ Sonam Chuki & Mark Turner "Women and politics in democratic transitions: the case of Bhutan" (2017) 25 (2) *Contemporary South Asia* 136 at 138.

³⁷¹ Phase 1 Interview 29, Phase 2 Interview 18.

³⁷² Phase 2 Interview 18.

³⁷³ True, Niner, Parashar and George, above n 277, at 2.

³⁷⁴ Baker, above n 315, at 552.

³⁷⁵ Marilyn Waring *Women in politics and aid effectiveness: an aid to evaluation of MDG3* (AusAID Office of Development Effectiveness, November 2011) at 13

³⁷⁶ Richard E Matland (1998) "Women's representation in national legislatures: developed and developing countries" (1998) 23 (1) *Legislative Studies Quarterly* 109 at 112-113

WHY SHOULD WE SHOULD INCREASE THE NUMBER OF WOMEN IN PARLIAMENT

5.1.20 Candidates Who Supported Equality Or CEDAW

The importance of including women in political leadership cannot be overstated. Studies have shown that political processes inclusive of women's voices increase the quality of political decisions.³⁷⁷ Women's participation in decision-making reduces poverty and promotes economic growth, democracy and the well-being of families.³⁷⁸

Whilst women's backgrounds, experiences and interests may vary, there are gender-specific issues that only women can represent in the legislature.³⁷⁹ The presence of women in decision-making and leadership positions in the Pacific makes discussing the problems affecting women more likely to occur. The absence of women in such positions marginalises their issues.³⁸⁰ Increased representation of women in parliament can often lead to increased awareness of women's issues and a legal framework that is more gender-responsive.³⁸¹ Having reviewed the political developments in Tonga over the last 50 years, it is clear that there is a direct correlation between the lack of women in politics and the failure to address discriminatory laws and issues that directly impact women.

The argument has been put forward that the responsibility for voting women into parliament lies with the electorate as a whole and that to expect the one or two women elected into parliament to address a broad range of issues pertaining to women is to expect too much of them, often leading to their failure to be re-elected in follow up elections.³⁸² The ability to be re-elected is often only through the rare instance where a woman is a Cabinet minister and has access to constituency development funds, implementing development projects in the constituency.³⁸³ It

³⁷⁷"Facts and Figures: Women's Leadership and Political Participation" above n 289.

³⁷⁸ Thematic Brief | Leadership And Decision Making For Women And Girls In The Pacific (Australian Aid & Pacific Women Shaping Pacific Development) at 1.

³⁷⁹ Baker, above n 315, at 546.

³⁸⁰ World Bank World Development Report 2012: Gender Equality and Development at 177-178.

³⁸¹ Julie Ballington and Azza Karam *Women in Parliament: Beyond Numbers*. (International Institute for Democracy and Electoral Assistance, 2005) at 17.

³⁸² Baker, above n 315.

³⁸³ Baker, above n 315, at 559-560.

has been argued that for more female representation in the Pacific and for women to be re-elected, donors should focus on descriptive representation, that is, an increase in the number of women being elected into parliament, which would help alleviate the pressures on the few numbers of women in parliament.³⁸⁴

Only two of the 2017 candidates interviewed communicated that they would support the ratification of CEDAW in parliament if elected; both were women and independent candidates.³⁸⁵ Of these two women, one expressed, “I support the ratification of CEDAW. The government needs to sign CEDAW and show we take women’s issues seriously. The problem with CEDAW is that people misunderstand it.”³⁸⁶ Only one woman candidate interviewed emphasised women’s issues as part of her campaign. She stated convincingly, “If I am elected into Parliament, I would support the ratification of CEDAW.”³⁸⁷ Neither of these female candidates who supported CEDAW and emphasised women’s issues were elected. The CEC did not consider that women would advocate for women’s issues and argued that this was not a role explicitly designated for women representatives.³⁸⁸ However, of participants that were candidates, the only two promoting women’s rights were women. No women were elected in the 2021 general elections held on November 18. Only one candidate campaigned for women’s rights and promised to support the ratification of CEDAW in parliament in 2021; unfortunately, she was unsuccessful, and a male won the seat for her constituency.³⁸⁹

³⁸⁴ At 562

³⁸⁵ Phase 2 Interview 11, Phase 2 Interview 18.

³⁸⁶ Phase 2 Interview 11.

³⁸⁷ Phase 2 Interview 11.

³⁸⁸ Constitutional and Electoral Commission Kingdom of Tonga, above n 98, at 97.

³⁸⁹ “Ka ma’u faingamalie ‘a ‘Akanete ke lava ki Fale Alea, te ne teke ke memipa kakato ‘a Tonga he CEDAW” (If ‘Akanete is successfully elected into parliament she would push for CEDAW ratification) (October 26, 2021) Interview of Female Candidate Akanete Ta’ai <<https://www.youtube.com/watch?v=K5IS1g5Pq6o>>

WAYS TO INCREASE THE NUMBER OF WOMEN IN PARLIAMENT

5.1.21 Practise Parliament

In 2014, a practice parliament for women was held for the first time in Tonga from April 10-11, encouraging women to participate in the upcoming November 2014 general elections.³⁹⁰ The practice parliament included 30 female participants.³⁹¹ This was carried out to empower more women to engage in the nation's highest decision-making level.³⁹² One former Cabinet member expressed his belief in the utility of practice Parliaments in encouraging women to engage in politics:³⁹³

“There are more women than men in Tonga. There should be more women in Parliament. Tools were used to encourage political participation for women, such as the practice women's parliament. I believe women are good in parliament. The quota wasn't really embraced by women.”

However, these efforts were in vain, as no women were elected into parliament in the 2014 elections.³⁹⁴ A second practice parliament for women was held in Tonga over two days from 15 November 2021. The Women's Practice Parliament comprised 26 women who passionately argued for the necessity of reserved seats for women in parliament.³⁹⁵ The objective of the Women's Practice Parliament was to help women understand the workings of parliament and to promote their engagement in politics.³⁹⁶ The event was funded with the assistance of UNICEF, UNFPA, UNDP and UN Women.³⁹⁷ While criticism of foreign-funded training programs for women in the Pacific references programs and facilitators who are

³⁹⁰ Matangi Tonga Online “30 Women to Enter Practise Parliament” (April 2 2014) <<https://matangitonga.to/2014/04/02/30-women-enter-practise-parliament>>

³⁹¹ Matangi Tonga Online, above n 390.

³⁹² Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 307.

³⁹³ Phase 1 Interview 17.

³⁹⁴ Matangi Tonga Online “Full Results for Tonga's 2014 General Election” (November 28, 2014) <<https://matangitonga.to/2014/11/28/full-results-tongas-2014-general-election>>

³⁹⁵ “HRH Princess Latufiueka Officially Opened the Tonga Women's Parliament 2021” (15 November 2021) Parliament of Tonga <<https://parliament.gov.to/media-centre/latest-news/latest-news-in-english/872-hrh-princess-latufiueka-officially-opened-the-tonga-women-s-parliament-2021>>

³⁹⁶ “HRH Princess Latufiueka Officially Opened the Tonga Women's Parliament 2021” above n 395.

³⁹⁷ Above n 395.

foreign and unsuited to the Pacific context,³⁹⁸ the 2021 Women’s Practice Parliament was opened by Princess Latufiipeka Tukuaho and was led by speaker Alisi Taumopeau (former Attorney General and Minister of Justice) and Lepolo Taunisila (former People’s Representatives).³⁹⁹

On November 18 2021, Tonga elected an all-male parliament, 8 of 11 Cabinet ministers were returned, and PTOA, who had dominated the 2017 elections, was soundly defeated with party chair Semisi Sika and both Pohiva’s son and son-in-law (Siaosi Pohiva and Mateni Tapueluelu) losing their seats alongside female member Losaline Ma’asi.⁴⁰⁰ Only 3 PTOA candidates were successfully elected, the lowest number in the history of PTOA and the democratic movement in Tonga.

5.1.22 Quota

Temporary Special Measures are defined in article 4 of CEDAW as “aimed at accelerating de facto equality between men and women and shall not be considered discrimination as defined in the present Convention.” Many countries have used a quota for women to hasten the increase in numbers of women in the legislature, a temporary special measure that often becomes permanent. Two-thirds of the 23 countries in the world that have a makeup of legislature in which women exceed 40% have gender quotas.⁴⁰¹ Of the 39 parliaments that exceed 30% female membership, 32 have implemented a quota system for women.⁴⁰² Quotas mandate through constitutional or legal provisions that parties provide a specific number of women candidates; some parties have voluntarily adopted a quota for women; at other times, a quota is implemented through constitutional and legal provisions for a reserved number of seats in parliament designated for women.⁴⁰³

³⁹⁸ Baker, above n 315, at 553.

³⁹⁹ “HRH Princess Latufiipeka Officially Opened the Tonga Women’s Parliament 2021” above n 395.

⁴⁰⁰ Matangi Tonga Online “Tonga elects All Male Parliament with Nine New People’s Reps” (19 November 2021) <<https://matangitonga.to/2021/11/19/tonga-PR-results-elect-all-male-parliament>>

⁴⁰¹ “Facts and Figures: Women’s Leadership and Political Participation” above n 289.

⁴⁰² Khelghat-Doost and Sibly, above n 2, at 400.

⁴⁰³ Pippa Norris *Electoral Engineering: Voting Rules and Political Behaviour* (Cambridge University Press, 2004) at 191.

On a global level, the Pacific has the lowest rates of women in politics, a problem not just particular to politics but in all levels of decision-making in Pacific nations.⁴⁰⁴ The Pacific region only recently, in 2016, attained its first female President with the Republic of the Marshall Islands.⁴⁰⁵ A few Pacific countries have implemented a quota for women, most frequently through reserved seats.⁴⁰⁶ The representation of Pacific women in politics would significantly diminish without quotas and special measures.⁴⁰⁷ As with other parts of the world, such as Mongolia, Nepal, Timor-Leste and Afghanistan, quotas have increased the number of women in politics.⁴⁰⁸

The French territories best illustrate the success of quotas in the Pacific region. Since the introduction of the French Parity Act No. 2000-493 in 2000, which requires that party lists have 50% women and that men and women are alternated on party lists, in 2015, the New Caledonian Assembly were 44% women, and in French Polynesia, 52% were women,⁴⁰⁹ in 2019 44% of the legislature were women in New Caledonia and 53% in French Polynesia, this is an increase from 17 per cent and 12 per cent respectively before the parity laws.⁴¹⁰

The effect of the quota in New Caledonia has been to showcase the value of including women in decision-making and in instilling in women the belief in their abilities to lead; this has stimulated an increase in women stepping up to contest elections and has led to the rise of women in leadership positions even without the assistance of a quota, for instance, there is no quota for Cabinet, however, women make up 45% of the executive government and two females have since served as President of the government of New Caledonia.⁴¹¹ This substantiates the theory

⁴⁰⁴ Australian Aid & Pacific Women Shaping Pacific Development” above n 299, at 1.

⁴⁰⁵ Temporary Special Measures to Increase Women’s Political Participation in the Pacific: Case Studies of Implementation in the Region (2015 Pacific Conference on Temporary Special Measures to Increase Women’s Political Participation, Port Moresby 23-24 November 2015) at 3.

⁴⁰⁶ Kerryn Baker Improving Women’s Electoral Chances through an Evidence-Based Approach: Temporary Special Measures and Institutional Approaches (State, Society & Governance in Melanesia, The Australian National University, 2016).

⁴⁰⁷ Australian Aid & Pacific Women Shaping Pacific Development, above n 299, at 3.

⁴⁰⁸ True, Niner, Parashar and George, above n 277, at 2.

⁴⁰⁹ Temporary Special Measures to Increase Women’s Political Participation in the Pacific: Case Studies of Implementation in the Region, above n 405, at 2.

⁴¹⁰ Australian Aid & Pacific Women Shaping Pacific Development, above n 299, at 3.

⁴¹¹ Temporary Special Measures to Increase Women’s Political Participation in the Pacific: Case Studies of Implementation in the Region, above n 405, at 16.

that quotas or reserve seats help ensure women participate in politics and evolve societal perceptions and attitudes to one that is accepting of women in political and public roles.⁴¹² In the end, changing patriarchal cultural values is the most crucial objective.

The Samoan constitution (s 44), as amended in 2013, stipulates that 10% of the legislative assembly are women, no less than five members of the legislative assembly must be women; if there are less than five women successfully elected, the highest polling women are added to parliament make up the required percentage, this process has been hailed as more culturally appropriate than reserve seats or the mandate that parties field 50% candidates as women.⁴¹³ The 2004 Constitution of the Autonomous Region of Bougainville prescribes that three seats are reserved for women in the House of Representatives.⁴¹⁴ Notably, Samoa elected its first female Prime Minister in 2021.

The campaigns for female quotas in Samoa were supported by male political elites, which led to a successful parliamentary vote in its favor.⁴¹⁵ Quota bills failed to pass in Papua New Guinea and the Solomon Islands.⁴¹⁶ However, the Solomon Islands has passed legislation (Political Parties Integrity Act 2018 s 48) requiring that women make up no less than 10% of a party's candidate list.⁴¹⁷ Papua New Guinea, which currently has no women in parliament, is looking to legislate for five reserved seats for women in parliament for the 2022 elections.⁴¹⁸

⁴¹² "Women's Representation in Pacific Island Parliaments" (9 October 2014) New Zealand Parliament <<https://www.parliament.nz/en/pb/researchpapers/document/00PlibC51151/women-s-representation-in-Pacific-island-parliaments>>

⁴¹³ Kerryn Baker "Samoan Model Adapts Gender Quotas to Pacific Politics" (East Asia Forum, 14 August 2019) <<https://www.eastasiaforum.org/2019/08/14/the-samoan-model-adapts-gender-quotas-to-Pacific-politics/>>

⁴¹⁴ New Zealand Parliament, above n 412.

⁴¹⁵ Kerryn Baker "Explaining the outcome of gender quota campaigns in Samoa and Papua New Guinea" (2014) 66 (1) Political Science 63 at 79.

⁴¹⁶ Temporary Special Measures to Increase Women's Political Participation in the Pacific: Case Studies of Implementation in the Region, above n 405, at 2.

⁴¹⁷ New Zealand Parliament, above n 412.

⁴¹⁸ Michael Kabuni and Danny Eric Agon "Reserved Seats in PNG: Lessons Learnt" (May 25, 2021) DEVPOLICYBLOG, <<https://devpolicy.org/reserved-seats-in-png-lessons-learnt-20210525-2/>>

The opposition to ensuring women have access to the political sphere is again cultural; it may be the same as in Tonga, based on introduced Christian patriarchal values, which have sometimes merged with patriarchal elements of the indigenous culture. Campaigns for quotas in the Pacific have been labelled as driven by and thus imposed by outsiders, with claims that there is no local need for women in parliament, and this is an agenda of development partners and donors.⁴¹⁹ In Samoa and Papua New Guinea, opposition to implementing quotas for women centred on cultural justifications; reserving seats for women in parliament was viewed by some as beyond the bounds of what was culturally acceptable in Samoa.⁴²⁰ The United Nations provided funding and technical expertise during the discussion and passage of the constitutional amendment mandating a 10% quota for women in the legislative assembly.⁴²¹

The campaign for a quota for women in Papua New Guinea was estimated to have received US\$800,000 in funding from UN donors and AusAID (Australian Agency for International Development).⁴²² A campaign to legislate for a 50% quota for women in Vanuatu parliament in 2019 was widely opposed by prominent men and women alike and criticised as a “foreign-imposed agenda”, which amounted to political interference by Oxfam.⁴²³ Vanuatu illustrates another Pacific nation where the cultural and religious norms exclude women from the political arena and is the most significant barrier to women’s political participation; the assistance of foreign donors in campaigns for women quotas further adds to the argument that women in politics are alien to the Pacific and that compliance by nations such as Samoa is yielding to pressure from the United Nations and for women activists and NGO’s as acting on behalf of interests of donor countries like Australia.⁴²⁴

⁴¹⁹ Baker, above n 413.

⁴²⁰ Baker, above n 415, at 77.

⁴²¹ At 77.

⁴²² At 75.

⁴²³ Kerry Baker “Reserved Seats in Vanuatu: Gender Equality and “foreign interference”” (November 11 2019) DEVPOLICYBLOG < <https://devpolicy.org/reserved-seats-in-vanuatu-gender-equality-and-foreign-interference-20191112/>>

⁴²⁴ Baker, above n 423.

Proposals for reserved seats for women in Tongan parliament began in 2005, a proposal of six reserve seats for women across three terms of parliament (2008-2010, 2011-2013, 2014-2016) which would remain in place until the Tongan public viewed politics as not just a domain reserved for men; opposition to this plan did not believe this was fair and suggested that women simply needed to work harder to get into parliament.⁴²⁵ In 2009, the Tongan Women's National Congress submitted a proposal for a reserved number of seats for women in parliament to the Constitutional and Electoral Commission; the CEC did not support this proposal.⁴²⁶

A national women's roundtable held on 7-9 March 2017 to discuss increasing the number of women in parliament was chaired by Akosita Lavulavu and resulted in her increasing the number of seats for women in her private bill from two to four; however, she later retracted to two, saying two was the maximum number PTOA would permit.⁴²⁷ In 2016, the Women's Coalition on Temporary Special Measures (TSM Coalition) was established.⁴²⁸ The Women's Coalition on Temporary Special Measures presented a proposal for a draft bill to implement a Temporary Special Measure for women in parliament to Cabinet on 26 July 2017; however, Cabinet was not supportive, citing that women should be elected on merit and government was dissolved in August 2017 before the private bill could be submitted to parliament.⁴²⁹ A National Dialogue on Democracy was held in October 2017, immediately before the November snap elections, where the consensus was that the lack of women in parliament needed to be addressed.⁴³⁰

The 2021 practice parliament for women continued to call for legislating a reserve number of seats for women. There was resistance to a quota for women from women; one female public figure expressed:⁴³¹

⁴²⁵ Guttenbeil-Likiliki, above n 257, at 175.

⁴²⁶ Marilyn Waring *Women in politics and aid effectiveness: an aid to evaluation of MDG3* (AusAID Office of Development Effectiveness, November 2011) at 14.

⁴²⁷ Guttenbeil-Likiliki, above n 117, at 16.

⁴²⁸ At 14.

⁴²⁹ At 15.

⁴³⁰ At 17.

⁴³¹ Phase 1 Interview 15.

“I see women trying to get into Parliament, and I think it’s beautiful if women get into Parliament, but I see there were already women who got into Parliament on their own without special conditions in the past.”

One male member of Parliament expressed that this view was held by Tongans generally, “I drafted a bill for quota for women in parliament, no support because the general belief was women should succeed based on merit.”⁴³²

The opposition to the reserved seats for women was based on a solid belief that there were no barriers to women being elected. Women were not disadvantaged in any way and should, therefore, merit or earn their seats in parliament in the same way men did. Men, whether democratic leaning, independent, commoner or noble, expressed this view.⁴³³ A member of the PTOA leadership stated, “It will boost the economy if we have more women in Parliament. There is no need for a female quota in Parliament; we shouldn’t have to allocate special seats for women.”⁴³⁴ Another male Cabinet member expressed, “It is worth discussing a parliamentary quota for women, but I think there are no barriers to women being elected into parliament.”⁴³⁵

The above discussion highlights the patriarchal structures, values and practices that permeate Tongan society, which unsurprisingly has led to Tonga’s meager numbers of women in politics compared to corresponding numbers on both an international and regional scale. One male participant expressed support for a quota,⁴³⁶ and one former female People’s Representatives stated that a quota was the only way to increase the number of women in parliament.⁴³⁷ A study on Tonga found that a Temporary Special Measure (TSM) is necessary to increase the numbers of women in parliament.⁴³⁸ There needs to be a concentrated effort to educate the public on

⁴³² Phase 1 Interview 23.

⁴³³ Phase 1 Interview 3, Phase 2 Interview 9, Phase 1 Interview 20, Phase 1 Interview 12, Phase 1 Interview 23.

⁴³⁴ Phase 2 Interview 9.

⁴³⁵ Phase 1 Interview 12.

⁴³⁶ Phase 1 Interview 28.

⁴³⁷ Phase 1 Interview 13.

⁴³⁸ Guttenbeil-Likiliki, above n 117, at 4.

political leadership, the benefits of engaging women in politics and decision-making positions for accepting women into the political sphere.⁴³⁹

CONCLUSION

Since the inception of the modern state in 1875, women have been excluded from the political sphere in Tonga. This has led to the marginalisation of women's issues and the development of a democracy wherein women are excluded. The 2015 ratification of CEDAW failed because there was opposition to PTOA and its democratic reform agenda; the essence of CEDAW, women's rights and equality, were not the focal point of the political discourse, the struggle for executive power between two groups of dominant men was. CEDAW thus featured in a 2017 vote of no confidence and historical dissolution of parliament. Participants were divided over whether the reforms initiated a 'Tongan democracy' appropriate to the Tongan context or whether further reform was required. What is clear is the Tongan political system cannot be defined as Westminster in style nor a constitutional monarchy. Whilst there was personal opposition to Akilisi Pohiva and his mandate to ratify CEDAW there did not seem to be any real political will from his PTOA government to ratify the Convention, perhaps due to the fact that many within the prodemocratic movement did not conceptualise women's equality as a critical feature of democracy. Other factors included privileged women not supporting ratification, the negative public perception of women's rights activists and suspicion that proponents of CEDAW were motivated by the prospects of substantial donor funding. Interviews highlighted that apart from the PTOA leadership, it was exclusively female election candidates who articulated intentions to advocate for CEDAW and women's issues in Fale Alea. This indicates that the absence of women in parliament directly correlates to the disregard for women's issues in Tongan politics. The low numbers of women in Fale Alea is attributed to patriarchal cultural norms that dictate the political sphere as exclusively the domain of men, women internalizing patriarchal norms and not voting for or supporting female election candidates, political parties dominated by men, women's difficulty

⁴³⁹ Australian Aid & Pacific Women Shaping Pacific Development, above n at 6.

accessing funding due to patriarchal social-economic structures and traditional political platforms which exclude women, such as the *faikava*. The way forward is to implement a quota for women, preferably through a constitutional amendment reserving seats for women; however, the perception that women are not disadvantaged in Tonga politics due to their elevated status in society needs to be dispelled for this to happen. The patriarchal cultural norm that dictates women to be silent, submissive and excluded from the political sphere can be altered in Tonga by enacting legislation that enables and provides a mandatory platform for women in Tongan politics. In the hope that what is law in this instance also becomes embedded as an aspect of Tongan culture, and it becomes acceptable for women to participate in Tongan politics.

CHAPTER SIX: CEDAW COMPLIANCE IN TONGA AND RECOMMENDATIONS FOR REFORM

As discussed in Chapter One, discrimination against women constitutes a significant and persistent human rights violation issue in the Pacific region. In 2005, the United Nations Development Programme (UNDP) Pacific Centre and the United Nations Development Fund for Women (UNIFEM) commissioned a desk assessment of the legislative compliance to CEDAW in nine Pacific island countries. To assess legislative compliance, a set of 113 indicators was developed and applied to the constitution and national legislation of nine Pacific countries (Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu) and published in a book titled *Translating CEDAW Into Law*.¹

Tonga was not one of the nine Pacific island countries whose legislation was reviewed. Although the topic of CEDAW was controversial in Tonga, there has been no comprehensive review of Tongan legislation and its application to women, which goes to the heart of the Convention. The following chapter features a review of Tonga's legislative compliance to CEDAW by applying the 113 indicators developed by Vedna Jivan and Christine Forster to the Tongan Constitution and legislative framework. The indicators measure compliance from articles one to 16 of CEDAW and take the form of 113 questions. An Indicator Template was used to assess other Pacific nations' compliance. This Indicator Template was utilised in Tonga's review, and, where appropriate, reference was made to legislation in Fiji and Samoa and elsewhere in the Pacific. The Template and the review of Tonga's legislative compliance is attached in Appendix A.

Previous chapters underscore the widely held belief in Tonga that there are no discriminatory laws in the nation and that the exercise of ratification is one of futility. The review underscored the failure of the Tongan Constitution and

¹ Vedna Jivan and Christine Forster *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre; UNIFEM Pacific Regional Office, Suva, 2007).

legislation to protect women from discrimination and promote women’s interests across multiple areas of law. Tongan legislation is fully compliant with only one article of CEDAW. The review is limited to formal equality and therefore is not an exhaustive measure of CEDAW compliance; however, formal equality is necessary for non-discrimination.

The following paragraphs set out recommendations for legislative reform to bring Tongan legislation in line with the standards set out in CEDAW and in accordance with relevant indicators. The other significant and widely held belief is that implementing CEDAW would be of no benefit for women in Tonga. This chapter, therefore, ends with examining the Revised National Policy on Gender and Development (RNPGAD) 2014-2018, a publication reviewing the effectiveness of the RNPGAD titled, “Gender equality: Where do we stand? The Kingdom of Tonga”² and Tonga’s National Women’s Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019-2025³ to highlight how legislative reform to bring Tonga in compliance with CEDAW is necessary to achieve Tonga’s current national women’s policy goals and thus underscore the benefits of CEDAW implementation for women in Tonga.

² See Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga *Gender Equality: Where Do We Stand? The Kingdom Of Tonga* (2019).

³ Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 2.

FEMINISM AS LIBERATION FROM PATRIARCHY

There are various definitions of feminism, but “feminism is generally understood to be the study of women's experiences from a woman's perspective.”⁴ Feminism is the understanding that women are oppressed and exploited in the family, society and workplaces and encompass efforts to change this.⁵ Previous chapters outline women's legal, cultural and political subjugation in Tonga.

Feminist legal theory posits that law is an expression of power but refocuses that insight on women specifically and how the law has played a significant role in the historical subordination of women.⁶ Feminist legal theory focuses on law reform from women’s perspective,⁷ examining women’s position in a male-dominated society where women are subordinated with the goal to liberate women.⁸ Previous chapter have also featured the views and experiences of women within the patriarchal Tongan state and culture, facilitated by the enactment of patriarchal legislation.

In other parts of the world, feminist legal theory began with the struggle for formal equality in law that characterised the first wave of liberal feminism⁹ and extended to other ‘waves’ of feminism that included the fight for substantive equality described as cultural or difference feminism.¹⁰ Dominance theory is a strand of legal feminist theory introduced in 1979 by Catharine MacKinnon.¹¹ Dominance theory focuses on the differences in power between men and women.¹² Dominance

⁴ Nancy Kim, "Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism " (1993) 25 (1) Columbia Human Rights Law Review 49 at 51.

⁵ P Imrana Jalal, *Law for Pacific Women: a legal rights handbook* (Fiji Women’s Rights Movement, 1998) at 19.

⁶ Caroline Morris & Cian Murphy, *Getting a PhD in Law* (Hart Publishing Limited, Oxford, 2011) 32.

⁷ Kim, above n 4, at 51-52.

⁸ Kim, above n 4, at 55.

⁹ Nancy Levit and Robert R. M. Verchick *Feminist Legal Theory(Second Edition): A Primer* (NYU Press, 2016) at 12.

¹⁰ Lynne Henderson, "Review of Law's Patriarchy by Zillah R Einstein, Catharine A MacKinnon and Carol Smart" (1991) 25 (2) Law and Society Review 411 at 412.

¹⁰ Levit and Verchick, above n 9, at 15-16.

¹¹ Levit and Verchick, above n 9, at 20.

¹² Martha E. Chamallas *Aspen Treatise for Introduction to Feminist Legal Theory: Edition 3* (Wolters Kluwer Law & Business, 2012) at 54.

feminism asserts that inequality for women in the familial, economic and political domains results from male domination facilitated by patriarchal power structures¹³ and the law as one of the means utilised by men to exert dominion over women.¹⁴ Dominance theory has been criticised as essentialist, focusing on the experiences of white women.¹⁵ However, the findings of this research underscore that Tonga's patriarchal power structures continue to perpetuate the domination and suppression of women in multiple and inter-related spaces and the rejection of mechanism for their liberation, such as CEDAW.

Intersectionality was introduced by Kimberle Crenshaw¹⁶ and is posited as the understanding that women's experiences of oppression vary, with some women experiencing oppression due to multiple layers and intersections of gender, race and class. Intersectionality is an apt explanation for the experiences of Tongan women as shared with the researcher, women who are salaried, educated or from Tonga's traditional ruling classes experience gender oppression in a way that is different from poor, rural, and often uneducated women. Poverty, unemployment, and commoner status amplify the effects of oppression. Women at the intersection of these elements experience the most acute repercussions of gender discrimination.

Cultural relativists are concerned that CEDAW could erase cultural norms to the detriment of women whose identity and dignity are rooted in their culture. To avoid this, the change must be effected within the community by local women.¹⁷ Women of the Pacific have used CEDAW in courts to argue against cultural practices that encroach on their rights; these are women of the culture raising their voices to take

¹³ Henderson, above n 10, at 412.

¹³ Levit and Verchick, above n 9, at 20-21.

¹⁴ Henderson, above n 10, at 412.

¹⁴ Levit and Verchick, above n 9, at 21.

¹⁵ Levit and Verchick, above n 9, at 24.

¹⁶ Kimberle Crenshaw "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" in Karen Maschke (ed) *Feminist Legal Theories* (Routledge, New York, 1997) at 35-64.

¹⁷ Vedna Jivan & Christine Forster "What Would Gandhi Say? Reconciling Universalism, Cultural Relativism And Feminism Through Women's Use Of CEDAW" (2005) 9 *The Singapore Year Book of International Law* 103 at 112 .

for themselves 'western' rights, allaying the concerns of cultural or difference feminists and cultural relativists, these women are deciding for themselves what rights and parts of CEDAW are universally applicable to them.¹⁸ The findings in previous chapters reveal that Tongan women do not understand the provisions of CEDAW and are therefore unaware of the rights and benefits the document affords their gender. Tongan women who marched against ratification would likely have had no appreciation of the potential of the Convention to enrich their lives. Women in Tonga cannot be said to have made an informed decision to reject CEDAW, as it cannot be said that most of them understood the document. Tongan women are conceptualised as denying western rights contained in CEDAW when they are predominantly ignorant of the Convention or have an inaccurate perception of it. In contrast to women in other Pacific nations who have chosen to claim for themselves rights contained in CEDAW, Tongan women are not afforded this choice.

The following paragraphs posit the necessary law reforms required to align Tongan legislation with the provisions of CEDAW and facilitate the ratification of the Convention. Previous chapters underscore the consolidation of patriarchy through Tongan legislation. The following chapters will highlight reforms necessary to eradicate Tonga's patriarchal state, society and culture through amending patriarchal laws. The recommendations also consider the objectives of national gender policies and women's needs and issues as communicated to the researcher during interviews.

¹⁸ At 112-113.

RECOMMENDATIONS FOR LEGISLATIVE REFORM IN TONGA

6.1.1 Recommendations For Reform In Compliance With Articles 1 & 2 Of CEDAW

6.1.1.1 The Range Of Rights Embedded In The Tongan Constitution

The Constitution of Tonga is divided into three parts: Part I sets out the range of rights afforded to individuals within the Tongan jurisdiction. Part II sets out the form of government and the powers and functions of the branches of government. Part III sets out the land tenure system and outlines land rights.

The Constitution divides Tongan subjects into three classes: the King and his heirs,¹⁹ nobles and their heirs²⁰ and all other Tongan subjects often referred to as commoners. The bulk of political rights prescribed in Part II and land rights defined in Part III are allocated according to class and sex. Inequality is enshrined in Tonga's founding legal document. The monarch and his heirs retain the majority of rights across all three parts of the constitution; the noble class has privileges and rights not afforded to the commoner class. Within these three classes, the constitution preferences men; as such, women of the commoner class hold the least amount of rights and are the group most discriminated against by law in Tongan society.

6.1.1.1.1 Part II: Political Rights (Articles 30 -103A)

Part II of the Constitution sets down the form of government. The Monarch, who, per succession rules of the Constitution, is likely to be male, holds overarching powers over the three branches of government prescribed by the constitution to be the Cabinet, legislative assembly and judiciary.²¹

6.1.1.1.1.1 Executive

Section 51 of the Constitution vests executive authority in the Cabinet. As discussed previously, the appointment of the Judiciary is an executive function that is not vested in Cabinet but in the King and his chosen Privy Council and the JADP, a committee of the Privy Council. The King also exercises other rights that are considered functions of the executive, which include the right to appoint all officers

¹⁹ Constitution of Tonga, s 32.

²⁰ Constitution of Tonga, s 44.

²¹ Constitution of Tonga, s 31.

of the armed forces,²² the right to make treaties and appoint all representatives to other nations,²³ the right to decree what is legal tender in Tonga,²⁴ the right to proclaim martial law,²⁵ the right to be exempt from any legal proceedings for recovery of a debt,²⁶ the right to grant a royal pardon,²⁷ and the right to confer titles.²⁸ In other jurisdictions, the Head of State would perform these functions as a matter of convention on the advice of the Head of Government and an elected Cabinet; in Tonga, there are no constitutional conventions, and the powers and rights ascribed to the King include those that an elected Head of Government should exercise.

The researcher recommends that commoner women be granted an equal right to participate in the executive through their elected representatives. The Constitution should be amended to position the King as the Head of State. The monarch should exercise their executive powers (those mentioned above and, in particular, the ability to ratify international conventions such as CEDAW) as a matter of formality on the advice of the elected Head of Government (Prime Minister) and Cabinet.

6.1.1.1.2 Legislature

The King also possesses powers that override those the constitution vests in the legislature. The King has the right to convoke and dissolve parliament at will and call for new elections.²⁹ A bill passed by parliament can only become law with the King's signature.³⁰ Article 68 stipulates that the King may withhold his signature from a bill of which he does not approve without having to give any justification for doing so.³¹ Effectively, the King has the right to veto or block any laws passed by the legislature. There are no prescribed constitutional processes or time frames for the King's dissolving parliament and signing or vetoing laws; these are unfettered

²² Constitution of Tonga, s 36. This section also stipulates the King as Commander in Chief of the Armed Forces.

²³ Constitution of Tonga, s 39.

²⁴ Constitution of Tonga, s 45.

²⁵ Constitution of Tonga, s 46.

²⁶ Constitution of Tonga, s 49.

²⁷ Constitution of Tonga, s 37.

²⁸ Constitution of Tonga, s 44.

²⁹ Constitution of Tonga, s 38.

³⁰ Constitution of Tonga, s 41.

³¹ Constitution of Tonga, s 68.

powers. The King also effectively has the right to domesticate international law standards set out in conventions.³²

The nobles are reserved nine seats in the legislative assembly to represent a number of fewer than 40 nobles, while commoners are allocated 17 seats for a population of 100,000.³³ Within the legislature, the constitution confers privileges on the nobles' representatives that representatives of commoners do not enjoy. Only a member of the nine NRs may be elected Speaker of the Legislative Assembly.³⁴ The nobles of the Legislative Assembly possess the exclusive right to discuss and vote on laws relating to the King, Royal Family and the titles and inheritances of the nobles.³⁵ Candidates for the people representatives seats must not have any outstanding debts ordered by the courts to be paid³⁶ and must reside in Tonga for a minimum of three months in the six months before the election date.³⁷ Article 63 does not require that any noble be exempt from debt before he is entitled to vote for a candidate or be elected as a representative. Nobles are also not expected to reside in Tonga for a prescribed period before becoming a candidate or be present in Tonga to vote on election day.

The King and Nobles maintain the lion's share of rights and privileges in the legislature. Furthermore, as members of the legislative assembly elect the Prime Minister and Cabinet, the nine seats reserved for the nobles in the legislature discriminate against the commoner population and their 17 representatives.

The researcher recommends that the King exercise his prescribed powers in the legislature as a formality and that the monarch sanction and sign all laws passed by the legislative assembly and international laws and instruments recommended by Cabinet. The right to dissolve and convoke parliament should be exercised per the recommendations of the Prime Minister. Regarding the rights of nobles, the

³² Constitution of Tonga, s 39.

³³ Constitution of Tonga, s 60.

³⁴ Constitution of Tonga, s 61.

³⁵ Constitution of Tonga, s 67.

³⁶ Constitution of Tonga, s 65.

³⁷ Constitution of Tonga, s 65.

general public should elect all 26 seats in parliament. Nobles may decide to contest as candidates in electorates as commoners would, and, as such, the same criteria in terms of voting and standing as a candidate should apply to nobles and commoners alike. The right of nobles to discuss specific laws should be repealed, and the legislative assembly should discuss all laws as a whole house. The post of Speaker of Parliament should be open to any legislative body member. This will allow women of the commoner class more equitable rights in the law-making process. This would also empower women's representatives in Parliament and in Cabinet to ratify and domesticate the provisions of international law as contained in conventions such as CEDAW.

6.1.1.1.3 Judiciary

The Cabinet is the executive branch of government; however, the constitution grants to the King and his Privy Council, a group of advisors appointed by the King at his pleasure,³⁸ and a committee of the Privy Council named the Judicial Appointments and Disciplinary Committee (also all appointed by the King)³⁹ the right to select the Attorney General and all members of the Judiciary.⁴⁰ The King in Privy Council also has the sole right to hear appeals relating to the determination of hereditary titles and land.⁴¹

The King and Privy Council are not prescribed as part of any of the three branches of government and are not elected or accountable to the voting public. The appointment of the judiciary is the function of the executive arm of parliament in other jurisdictions; however, in Tonga, this right is vested in the King in Privy Council, a council he appoints and dismisses at will. This is despite s 51 of the Constitution vesting executive authority in the Cabinet.

³⁸ Constitution of Tonga, s 50.

³⁹ As per s 83C, The Judicial Appointment and Disciplinary Committee consists of the Law Lords, the Lord Chancellor, the Lord Chief Justice and the Attorney General. As per s 83C(d), the Law Lords are appointed by the King. As per s 83B, the Lord Chancellor is appointed by the King in Privy Council. As per s 86(1), The Lord Chief Justice is appointed by the King on the advice of the Judiciary Appointments and Disciplinary Panel. As per s 31A, the Attorney General is appointed by the King in Privy Council.

⁴⁰ As per s 85, Court of Appeal Judges are appointed by the King with Consent of Privy Council. As per s 86 all Supreme Court judges are appointed by the King in Privy Council. Land Court Judges are appointed by the King in Privy Council as per s 86A, acting judges as per Article 88.

⁴¹ Constitution of Tonga, s 50.

The researcher recommends constitutional amendments to render the judiciary accountable to the people. The King's right to appoint the judiciary should be reduced to a formality. For commoner women to influence the appointment of the membership of the courts, the researcher suggests repealing provisions that establish the Privy Council and the Judicial Appointments and Disciplinary Panel. The elected Cabinet should perform the functions of the Privy Council, and the Attorney-General should perform the functions of the Judicial Appointments and Disciplinary Committee on the advice of the Solicitor General and Chief Justice. The Attorney General should be an elected member of parliament and a member of Cabinet. Provisions establishing the office of the Lord Chancellor should be repealed, and the administration of the Judicial branch should be returned to the Minister and Ministry of Justice.

6.1.1.1.2 Part III: Rights to Land (Articles 104-115)

Regarding Part III and Tongan land, ownership and rights to all land, including beach frontage, are vested in the King.⁴² The Nobles hold hereditary estates granted to them in the form of a hereditary life interest by the King.⁴³ All other Tongan male subjects, upon reaching the age of 16, have the right to be granted land (tax and town allotments) in the form of a hereditary life interest (from land owned by the King with the consent of the Minister of Lands, or from the hereditary estates of the nobility with the permission of the estate holder).⁴⁴

Succession to the throne and ownership of crown land is through the eldest male son and his heirs; a daughter may succeed if there are no sons.⁴⁵ Succession to noble or chiefly titles and accompanying estates is through the eldest male son; women cannot inherit noble titles or estates; however, the eldest daughter's son may inherit after the death of the male who inherited the title in place of his

42 Constitution of Tonga, s 104; Beach Frontage ownership is set out in s 109.

43 Constitution of Tonga, s 104.

44 Constitution of Tonga, s 113.

45 Constitution of Tonga, s 32.

mother.⁴⁶ Succession to tax and town allotments is specified in the Land Act s 82. Succession to tax and town allotments is through the eldest male son; a daughter may only inherit a life interest that terminates upon her marriage or proof of her engaging in sexual relations. The life interest in her father's land cannot be inherited by any of her children.

Land for the commoner class can only be granted to and passed down through the male line; although women of the nobility and royalty cannot inherit titles and estates, they are entitled to occupy the town allotment and plantation land attached to the title and have the right to pass on titles and estates to their male heirs.⁴⁷ Women of the royal class may inherit the throne and crown lands in the absence of sons.⁴⁸ Commoner women are granted the least quantum land rights in Tonga. Women born to unmarried parents have no land rights, while men born to unmarried parents are barred from inheriting; they possess the right to apply for a land grant. The Constitution apportions rights according to class and sex, with the male monarch at the apex and commoner women at the lowest level. The land rights reflect the organisation of power structures in Tonga.

To curtail the discriminatory treatment of women and, most notably, women from the commoner class and to deconstruct Tonga's patriarchal power structures, the researcher recommends amending Part III of the Constitution to confer on women the right to be granted town and tax allotments and for such lands to devolve to their heirs. The Constitution should also be amended to provide equal rights to inheritance of land between sons and daughters irrespective of age and whether they are born to married parents or otherwise.

6.1.1.1.3 Part I (Articles 1-29A)

The rights prescribed to all individuals as set out in Part I are relatively limited compared to the range of constitutional rights afforded to individuals within the Fijian and Samoan jurisdictions. The Tongan constitution, for example, does not

⁴⁶Constitution of Tonga, s 111.

⁴⁷Constitution of Tonga, s 11.

⁴⁸Constitution of Tonga, s 32.

prescribe a right to freedom of movement and residence, freedom of association, freedom to assemble, to access information, a minimum wage, health and education, adequate food and water, economic participation, a minimum wage and employment rights, to privacy, to freedom from torture and degrading treatment or most significantly the right to be free from discrimination. The fundamental liberties guaranteed to individuals in the Tongan constitution are not broad enough to encompass modern economic, political, social, cultural and civil rights.

Section 27 sets out the age of majority for members of the royal family at 18 and members of the nobility at 21. There is no stated age of majority for the commoner class. The researcher recommends that to comply with CEDAW, the age of majority be prescribed in the constitution as 18 years and apply universally across all classes. This is also pertinent to the application of criminal laws that are discussed in later paragraphs.

Anti-Discrimination Clause

There is no anti-discriminatory clause in the Tongan constitution; thus, discrimination against women as contained in the Constitution and Tongan legislation persists. The Tongan patriarchal state, culture and politics arise out of patriarchal laws which discriminate against women. To unravel the matrix of the Tongan patriarchy is to abolish discriminatory legislation.

The researcher recommends inserting a non-discrimination clause in the Constitution, prohibiting discrimination based on sex/gender, marital status, sexual orientation, health status and disability. This anti-discrimination clause should encompass direct and indirect discrimination and bind public authorities, institutions, and persons carrying out public office functions. The Constitution should set out sanctions for the breach of this anti-discrimination clause. Non-discrimination in terms of sexual orientation would need to be a starting point for repealing provisions in the Criminal Offences Act that criminalise consensual same-sex relationships.⁴⁹

⁴⁹ Criminal Offences Act, s 136.

The researcher recommends inserting into the Constitution a provision that gives precedence to equality over customary law.

6.1.2 National Gender Policies; Women’s Needs And Issues

6.1.2.1 RNPGAD And WEGET

The Women’s Affairs Division (WAD), a department within the Ministry of Internal Affairs in Tonga, is responsible for the welfare of women. The relevant policy reports discussed in the following paragraphs authored by the WAD are the Revised National Policy on Gender and Development (RNPGAD) 2014-2018, a publication reviewing the effectiveness of the RNPGAD titled “Gender equality: Where do we stand? The Kingdom of Tonga”⁵⁰ and the current national gender policy for Tonga: National Women’s Empowerment And Gender Equality Tonga Policy And Strategic Plan Of Action 2019–2025 (WEGET).⁵¹

The gender policies are a subset of the nation’s pursuit of development. The government prioritises gender equality because it is understood that sustainable development cannot be achieved without it.⁵² The current gender policy exists for the purpose of attaining National Outcome 3 of Tonga’s Strategic Development Framework 2015–2025 (TSDF II).⁵³ National Outcome 3 is titled for “a more inclusive, sustainable and empowering human development with gender equality”.⁵⁴ Tonga’s Strategic Development Framework 2015–2025 (TSDF II) aligns with the United Nation’s Sustainable Development Goals. The pursuit of equality for women appears only to be a priority in Tonga so far as it assists in advancing economic prosperity; gender equality is not, of itself, understood as something of value and importance.

⁵⁰Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 2.

⁵¹ Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 3.

⁵² Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 2, at 1.

⁵³ Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga, above n 3, at 3.

⁵⁴ Ministry of Finance and National Planning, Government of the Kingdom of Tonga Tonga’s Strategic Development Framework 2015–2025 (TSDF II) (2015) at 18.

Tonga's RNPAGAD (2014-2018) was launched with the vision to achieve gender equity by 2025 and contained six priority outcomes to address women's issues in Tonga.⁵⁵ The issues addressed were:⁵⁶

1. The scarcity of women in leadership positions and politics.
2. The pressing needs of vulnerable women (female-headed households, women with disabilities, women in rural areas and in outer islands).
3. The limited capacity of women to respond to natural disasters and climate change.
4. Women's limited access to economic assets and employment.
5. Discrimination against women in the familial and social environment.
6. Discrimination against women in government policies, programmes and services.

Tonga's current gender policy (WEGET 2019 -2025) addresses the same concerns, signalling that there has not been any significant improvement in the six areas outlined in the RNPAGAD; the only difference being the objective of addressing the needs of vulnerable women is no longer a priority outcome in WEGET as it was in RNPAGAD. WEGET continues the RNPAGAD vision of gender equity in Tonga by 2025.

Female participant responses, in large part, echo the issues outlined in WEGET. However, participant responses underscored the extreme suffering of vulnerable women; single mothers, widows, women-headed households, rural women, women living in poverty and women without education and formal employment. Participant responses reflect intersectionality in women's experiences; women of different cultural classes and socioeconomic statuses experience the impacts of discrimination on different levels. The researcher posits that addressing the needs of vulnerable women needs to be reinstated as a priority outcome in the nation's next gender policy.

Tonga's gender policies do not advocate for any specific legislative reform in accordance with the articles of CEDAW. The failure of these policies to achieve their

⁵⁵ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 2.

⁵⁶ At 2.

articulated aim of establishing gender equity underscores the fact that gender equity or substantive equality cannot be realised in Tonga in the absence of formal equality or equality between men and women at law. The ineffective policies highlight that efforts to address the issues faced by women will have a minimal impact so long as the law permits and facilitates discrimination against women. The following analysis exemplifies how incorporating recommendations for legislative reforms in Tonga's gender policies could serve to address women's issues in Tonga better. The recommendations also take into account women's concerns as shared with the researcher and set out in Chapter Four.

6.1.2.2 The Scarcity Of Women In Politics And Leadership Positions

6.1.2.2.1 Politics

Despite practice parliaments for women and candidate training, the numbers of women in Tongan politics remain extremely low. In 2019, women constituted seven per cent of the legislative assembly (two women elected in the 2017 elections) and 1.1 per cent of local government.⁵⁷ (One out of 23 district officers is a woman, and one out of 156 town officers is a woman).⁵⁸ In the 2017 elections, only 17 per cent of candidates were women and women candidates only received 14 per cent of all votes cast.⁵⁹ In the 2021 elections, no women candidates were elected. The need for more women's political participation was a theme in women's responses. As discussed in Chapter Five, for women's issues to be of political significance and for women's issues to be adequately addressed requires the presence of women in parliament and engaging in Tongan politics.

The scarcity of women in politics could very easily be addressed through enacting a constitutional provision in accordance with Article 7 of CEDAW, reserving nine seats in the legislative assembly for women. Women representatives would take up the nine seats currently reserved for nobles. Repealing article 65 of the Constitution

⁵⁷ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 27.

⁵⁸ At 27.

⁵⁹ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 6.

in compliance with Article 7 of CEDAW would make the barriers women face in contesting a constituent seat less arduous.

The researcher recommends repealing s 60 of the Constitution and amending s 64 to allow all subjects the right to vote for all members of parliament. Nobles would be free to stand as candidates, but no special seats should be reserved for them. The nine seats reserved for nobles in the legislative assembly are discriminatory based on class and sex and reinforce the view that leadership in politics and government is reserved for men of the elite classes.

The researcher recommends inserting a constitutional provision establishing a quota of nine of the seats currently reserved for nobles in the legislative assembly to be abolished and reserved instead for women.

The researcher recommends enacting legislation to establish a politically independent women's NGO with the legal capacity to lobby, advocate and be involved in the nation's policy and law-making processes, aiming to promote women's welfare. The passing of the Act of the Constitution (Amendment) Bill 2020 (requiring judges to take into account custom and tradition) was controversial; women's NGOs publicly voiced opposition to the Bill;⁶⁰ however, they did not have any legal right to demand to be consulted or be engaged in the law-making process.

The researcher recommends repealing s 65 of the Constitution as conditions for standing as a candidate should be the same for all classes.

6.1.2.2.2 Leadership And Decision Making

Women are underrepresented in all decision-making bodies throughout all levels of government and society. Women are almost non-existent on State-Owned Enterprise (SOE) boards and national commissions.⁶¹ Decision-making bodies in the

60 "Tongan MPs Called to Explain Controversial Constitutional Move" (28 October 2020) The Fiji Times <<https://www.fijitimes.com/tongan-mps-called-on-to-explain-controversial-constitutional-move/>>

61 Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 28.

villages and communities are predominantly the domain of men.⁶² Decision-making in families is primarily shared; however, the level of education of a woman is directly correlated to her involvement in decision-making, with higher education leading to more participation in decisions with regard to a woman's work and income.⁶³ Younger women are more likely to be independent and decide for themselves how their earnings are spent.⁶⁴

Previous chapters underscore the patriarchal cultural attitudes that prescribe leadership, decision making and the political arena to be the purview of men. To overcome this barrier, the researcher recommends that the Constitution be amended to make provisions for temporary special measures for women and for making legislative provisions for the advancement and protection of women. Legislative amendments should be enacted to require all government bodies to constitute a minimum of 20 per cent female membership as part of their leadership. For illustration, in terms of government, 20 per cent minimum of all local government, CEO and Deputy CEO positions should be occupied by women. The makeup of government boards and Commissions should also have a membership of a minimum of 20 per cent women. This would be in compliance with Article 4 of CEDAW.

Women are not barred from representing the government on an international level; however, s 39 of the Constitution prescribes that the King appoints, at his pleasure, representatives to other nations, as such diplomatic positions of the government of Tonga are filled with people from the royal and nobility classes, which is unfair to qualified men and women from the commoner classes. The researcher recommends amending s 39 of the Constitution to confer on the Prime Minister the right to appoint representatives of the country based on merit.

62 At 30.

63 At 30.

64 At 30.

6.1.2.3 The Pressing Needs Of Vulnerable Women (Female-Headed Households, Women With Disabilities, Women In Rural Areas And In Outer Islands).

The number of houses headed by women in Tonga continues to increase. At present, one in four houses in Tonga are headed by women.⁶⁵ In Nukualofa or urban areas, 27 per cent are headed by women; in rural areas on Tongatapu, it is 23 per cent, and in the rest of Tonga and outer islands, it is 20 per cent.⁶⁶

Households headed by women differ from households headed by men in terms of access to assets and economic participation.⁶⁷ The financial precarity of women-headed households is evidenced by the fact that these households often do not have access to income from wages, salary or business profits; one in three houses headed by women is entirely reliant on foreign remittances as a source of cash income.⁶⁸ Women-headed households are also more likely to include an elderly member 70 years or older.⁶⁹ As to women with disabilities, according to the most recent census, five per cent of women over five years old live with a disability; this is slightly higher than the global estimate.⁷⁰ Participant responses highlight the struggles of single mothers, widows, and women living in poverty and in rural areas.

The issues faced by women-headed households, women with disabilities and women in rural areas are not addressed as a priority outcome in WEGET. However, the researcher posits that these issues need to be addressed. Female participant responses emphasised the struggles many women and their children face as single mothers and widows. The removal of all legal discrimination against women should directly assist these groups of vulnerable women. Further to that, as per Article 4 of CEDAW, a constitutional provision should be inserted to provide for the enactment of legislation for the benefit of these vulnerable groups.

⁶⁵ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 30.

⁶⁶ At 38.

⁶⁷ At 39.

⁶⁸ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 38.

⁶⁹ At 38.

⁷⁰ At 40.

The researcher recommends that the Constitution be amended to make provisions for temporary special measures for women and for making legislative provisions for the advancement and protection of women in rural areas; women with disabilities, widows, deserted wives and single mothers are categories that require targeted assistance in Tonga.

As per Article 13 of CEDAW, the researcher also recommends enacting legislation providing social security or some form of financial assistance from the government for particular groups of vulnerable women. (widows, deserted wives, single mothers, women with disability)

Tonga does not have a social security system but should consider providing financial support to widows and single mothers who are often vulnerable and economically disadvantaged. The researcher recommends enacting legislation to assist vulnerable groups of women.

6.1.2.4 The Limited Capacity Of Women To Respond To Natural Disasters, Environmental And Climate Change.

Tonga is exceptionally vulnerable to the negative impacts of climate change and natural disasters, with women bearing the brunt of these impacts.⁷¹ Widows, young single mothers, pregnant and breastfeeding women were among the groups of people most impacted by the 2018 Cyclone Gita.⁷² Women were found to disproportionately suffer from the aftermath of natural disasters because of the lack of information, lack of training on preparation and recovery and exclusion from government services.⁷³

The researcher recommends, as above, enacting legislation establishing a quota of 20 per cent women membership in government bodies to ensure that there are women representatives within groups mandated with the preparation for natural

⁷¹ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 6.

⁷² At 36.

⁷³ At 7.

disasters and recovery. This will ensure that women are engaged in these processes and kept informed.

The researcher recommends, as per Article 13 of CEDAW, enacting legislation to target government assistance towards vulnerable groups of women (widows, young single mothers, pregnant and breastfeeding women) during recovery periods from natural disasters.

6.1.2.5 Women's Limited Access To Economic Assets And Employment

In 2016, only 53 per cent of the population were engaged in paid or voluntary work.⁷⁴ Of this number, only 41 per cent were women, compared to 66 per cent of whom were men.⁷⁵ The level of unemployment for women in Tonga between the years 2011-2016 has markedly increased. While unemployment was shared evenly between women and men in 2011, in 2016, 75 per cent of the unemployed were women.⁷⁶ The private sector employs twice as many men as women; only 35 per cent of employees in the public service are women.⁷⁷

The agriculture and fisheries sector is vital to the Tongan economy; in 2015, 86 per cent of households were active in agriculture to provide food for themselves and for an income; women and girls constituted 51 per cent of the agricultural workforce.⁷⁸ As more women than men are engaged in one of the economy's largest sectors; programmes were implemented for women farmers to produce niche products for local sale and export. Goals were also not realised, owing to women's restricted access to land, and these programmes have since been abandoned.⁷⁹

⁷⁴ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 5.

⁷⁵ At 5.

⁷⁶ At 5.

⁷⁷ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 25.

⁷⁸ At 26.

⁷⁹ At 26.

Women's inability to access land is the defining factor in women's inability to engage in the Tongan economy. Land is required as the location of the business as well as a necessary resource; the cultivation of trees, crop-based products and other raw materials require land, and the production of handicrafts, another source of income for women, is a clear example of the necessity of land.⁸⁰

Participant responses underscored the women's unemployment and discriminatory treatment in the workplace. To address the dire state of employment for women in Tonga and, as per Article 11 of CEDAW, the researcher recommends enacting the Employment Relations Bill 2020, which would protect women from sexual harassment in the workplace, guarantee equal pay and pay equity for women and, for further amendments to this bill when passed, to include provisions to prohibit discrimination based on sexual orientation, for the protection of pregnant women in the workplace, for the provision of 14 weeks maternity leave, provision of childcare services to workers, and for reasonable nursing hours for workers.

There is no employment legislation in Tonga; the Employment Relations Bill 2020 was passed unanimously by parliament 18-0 on 8 September 2020⁸¹ but has not received royal assent and, as such, is yet to be enacted. Multiple employment relations bills have been introduced in past years; all failed to be enacted. However, the following recommendations are made in anticipation and support of the Bill becoming law.

The Public Service Act applies to the majority of public servants and does not contain an anti-discrimination provision. Section 69 of the Employment Relations Bill 2020 prohibits discrimination based on the grounds of gender, marital status and pregnancy. The researcher recommends amending s 69 of the Bill, once enacted, to include the prohibition of discrimination based on sexual orientation and, should the Bill fail to be enacted, that the Public Service Act is amended accordingly.

⁸⁰ At 27.

⁸¹ Legislative Assembly of Tonga, *Hansard Record No. 28* (8 September 2020) at 39.

There are no special measures for the advancement of women in the Public Service Act or the Employment Relations Bill 2020. The researcher recommends legislating quotas to increase the numbers of women in leadership positions in government (CEO, SOE Boards, Commissions).

There is currently no legal protection from sexual harassment in the workplace; however, s 71 of the Employment Relations Bill 2020 provides protection from sexual harassment. The researcher recommends enacting the Bill or amending the Public Service Act accordingly.

There is no definition of sexual harassment in Tongan legislation. However, the Employment Relations Bill does include a definition of sexual harassment that is compliant with CEDAW. The researcher recommends enacting the Bill or amending the Public Service Act accordingly.

There is no legislative provision for equal pay. However, s 26 of the Employment Relations Bill requires an employer to pay male and female employees equal rates of remuneration for work of equal value. The researcher recommends enacting the Bill or amending the Public Service Act accordingly.

The current legislation does not make any provision for pay equity; however, s 70 of the Employment Relations Bill 2020 prohibits paying a person of similar qualifications or circumstances less due to gender. The researcher recommends enacting the Bill or amending the Public Service Act accordingly.

There are provisions in s 10 of the Pension Act and s 25 of the Public Service Policy Manual for a retirement age of 60 for both male and female workers. There is no retirement age in the Employment Relations Bill. The researcher recommends that the Employment Relations Bill be enacted; it is amended to include a retirement age that is the same for both men and women.

There is no legislation providing for the protection of pregnant workers in the workplace. Section 74 of the Employment Relations Bill 2020 stipulates that the working environment must be safe and not risk workers' health; however, there is no specific provision for the protection of pregnant women. The researcher recommends that once enacted, this provision is amended to outline specific protections for pregnant workers, and should the Bill not be enacted, the Public Service Act is amended accordingly.

The Public Service Manual provides up to 12 weeks (3 months) of maternity leave. Section 67 of the Employment Relations Bill provides only 30 working days of maternity leave. The researcher recommends that once enacted, s 67 is amended to stipulate 14 weeks of maternity leave. Should the Bill fail to be enacted, the Public Service Manual is amended accordingly.

There is no current legislation prohibiting dismissal based on maternity leave and pregnancy. Section 68 of the Employment Relations Bill 2020 prohibits this. The researcher recommends enacting the Bill or amending the Public Service Act accordingly.

There is no legislation guaranteeing that childcare is provided by either the employer or the government. The Employment Relations Bill 2020 does not mandate the provision of childcare. The researcher recommends that once enacted, provisions requiring the government or employers to provide childcare services for workers are inserted, and should it fail to be enacted that the Public Service Act is amended accordingly.

The current legislation does not provide for reasonable nursing hours during work, nor does the Employment Relations Bill 2020. The researcher recommends that once enacted, the act is amended to provide reasonable nursing hours for mothers, and should it fail to be enacted that the Public Service Act is amended accordingly.

The researcher also recommends decriminalising solicitation and, including in amendments to the Employment Relations Bill, protections for sex workers.

The researcher recommends inserting into any future employment law provisions for the occupational health and safety of sex workers equal to that afforded to all other workers.

6.1.2.5.1 Access To Economic Assets

Women require access to microloans to be economically empowered; access to loans often requires land for security. Banks often grant loans to commercial farmers, as commercial farming requires large areas of land to which women have little access; as such loans are usually only available to male farmers.⁸² Male commercial farmers are often the exclusive recipients of the benefits of agricultural loan schemes offered by banks.⁸³ In terms of access to resources, land is the most critical resource in Tonga, and the limited rights women possess in terms of land ownership dramatically impact their ability to access financial resources.

Poverty was a theme in women's answers, undoubtedly tied to the lack of education, training, access to land and employment they articulated. To empower women economically, the researcher recommends inserting a non-discrimination clause in the Constitution and amending all constitutional and legislative provisions, particularly Part III of the Constitution (which deals with land) and the Land Act, to allow women to be granted tax and town allotments and to pass on and inherit such land within a system that apportions equal rights to men and women irrespective of age and the relationship between their parents.

Men of the royal, noble and commoner classes possess rights to land that women within the same ranks do not. Consequently, women have a much-diminished capacity to administer property. The researcher recommends amending the Constitution and Land Act to allow men and women equal land rights, irrespective of whether their parents were married.

⁸² Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 5.

⁸³ At 5.

There are no legal barriers to women receiving bank loans, mortgages and financial credit; however, women's limited land rights significantly reduce their chances of obtaining loans, mortgages or credit, which often requires land as security. The researcher recommends amending provisions of the Constitution and the Land Act to allow men and women to possess equal land rights regardless of whether their parents were married or not.

6.1.2.6 Discrimination Against Women In The Familial And Social Environment

6.1.2.6.1 SEXUAL HEALTH.

Statistics show that teen pregnancy is on the rise in Tonga, which disproportionately affects young mothers and their children as this leads to pregnant girls leaving school voluntarily or by force and consequently to a future of poverty for her and her children.⁸⁴ Only one in five women used contraception during a survey conducted in 2012, which also showed that only one in three women had used contraception during their lifetime.⁸⁵ On average, a woman in Tonga will bear 4-5 children, with women in the rural areas on average beginning to have children at 20 while women in urban areas began bearing children at 25.⁸⁶ Laws and policies do not allow women complete control over their bodies.⁸⁷ Participants articulated the struggles they experienced as young unwed mothers.

The researcher recommends to assist in addressing these issues that, the Education Act be amended to insert a provision mandating reproductive, sexual health, and family planning as a compulsory component of secondary school syllabi. These issues will also be mitigated if a prohibition for expulsion from school due to pregnancy is inserted into the same Act.

⁸⁴ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 5.

⁸⁵ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 14.

⁸⁶ At 15.

⁸⁷ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 5.

The researcher recommends inserting a provision to the Education Act stipulating human rights, reproductive and sexual health education as a compulsory component of school curriculums. The researcher recommends inserting a provision in the Education Act prohibiting expulsion from school as a consequence of pregnancy.

Another issue of contention for Tonga was the fear that ratifying CEDAW would effectively legalise abortion. The assumption that abortion would be decriminalised upon ratification is incorrect as it is the function of the legislative assembly to pass laws and the monarch to sanction. However, article 12 of CEDAW requires the provision of health care services and comprehensive family planning services to women, including safe and accessible facilities for abortion.⁸⁸

Studies have shown that the criminalisation of abortion and the failure to provide safe and accessible abortion facilities puts women who pursue illegal abortions and children born after failed abortions at risk.⁸⁹ As a society, Tonga struggles with the morality of abortions; however, as the goal of human rights and women's rights, in particular, is to protect women, more consideration needs to be given to the potential harm and suffering many women would avoid if abortion facilities are made available to them. Cases of children born out of incestuous relationships and of newborn babies being left to die by fearful mothers are not unknown in Tonga. A recent study showed that young Tongan women used many different methods to induce the miscarriage of unwanted pregnancies, dangerous methods which risked their health.⁹⁰

Further research is required into the fate of unwanted pregnancies and babies, while it seems unlikely that ss 103, 104 and 105 of the Criminal Offences Act will be repealed to decriminalise abortion in the foreseeable future or that s 9 of the Health Services Act be amended to stipulate that the Ministry of Health provide

⁸⁸ Jivan and Forster, above n 1, at 30.

⁸⁹ At 30.

⁹⁰ Christine Linhart, Karen McMillan, Hilary Gorman, Catherine O'Connor, Michelle O'Connor, Avelina Rokoduru and Telusa Fotu Tu'i'onetoa *Adolescent unplanned pregnancy in the Pacific: Tonga*. (School of Public Health and Community Medicine UNSW, Sydney, 2020) at 19-21.

accessible and safe abortion facilities; the Act should be immediately amended to permit abortion in instances of rape and incest. All Ministry of Health policies that prohibit a woman from undergoing a tubal ligation procedure without the prior consent of her husband or father should be abolished.

The researcher recommends further research into unwanted pregnancies and abortion in Tonga. Similar to solicitation, this is a culturally sensitive issue and, despite avoidance of the topic, is a reality for some women in Tonga. While the researcher recommends that the following amendments be made in compliance with the indicators and CEDAW, reform will not occur without a public that is aware, educated and empathetic, enabled by access to persuasive data and discourse on which to base their choice to allow for the following.

The researcher recommends repealing ss 103, 104 and 105 of the Criminal Offences Act, which criminalises the procuring and assisting of a miscarriage in a woman or girl. The researcher is aware that this may not be an option for the present time and recommends, as an alternative, immediately amending the Criminal Offences Act to permit abortions in instances where the pregnancy is a result of rape or incest.

There was outrage over concerns that ratifying CEDAW would lead to the decriminalisation of prostitution. Prostitution is very rarely openly discussed in Tonga; however, there is a growing number of female sex workers in Tonga⁹¹ due to lack of employment and poverty.⁹² Prostitution is, in fact, not a crime in Tonga, but soliciting, aiding and abetting a prostitute, operating brothels and living off the earnings of prostitution are.

The researcher recommends further research into sex work, sex tourism and sex trafficking in Tonga. This research needs to be disseminated to the general public

⁹¹ Cleo Paskal "Are There Chinese Hitmen in the Kingdom of Tonga? Remarks from Tonga's prime minister make public an open secret about crime in the Chinese community." (April 17, 2017) The Diplomat < <https://thediplomat.com/2017/04/are-there-chinese-hitmen-in-the-kingdom-of-tonga/> >

⁹² Asian Development Bank Priorities of the People: Hardship in Tonga (May 2004) at 8.

to encourage frank discussion on this culturally sensitive subject. The public needs to understand the reality of women's lived experiences before any of the following recommendations will ever be implemented.

The researcher recommends repealing s 81(4) of the Criminal Offences Act to decriminalise solicitation. The researcher recommends repealing s 80 of the Criminal Offences Act to decriminalise the operation of brothels and s 81 to decriminalise the aiding and abetting of prostitution. The researcher recommends amending the Counter-Terrorism and Transnational Organised Crime Act to prohibit all forms of trafficking. The researcher recommends inserting into the Criminal Offences Act a provision criminalising sex tourism.

6.1.2.7 Violence Against Women

Violence against women in Tonga continues to threaten the health, well-being and lives of women. Statistics are alarming; three in four women have experienced sexual or physical violence in their lives, two in three women experienced violence from people who were not their partners (fathers and teachers), and three out of four victims did not seek help from agencies or authorities.⁹³ A survey found that 33 per cent of women reported violence from a partner, 17 per cent reported experiencing sexual violence, and 24 per cent experienced emotional abuse in their lifetime.⁹⁴ Further, 47 per cent of female victims had never reported or told anyone of their experience of gender-based violence, and 75 per cent never sought any assistance from service providers.⁹⁵ Reasons given for this include that some accepted violence against women as a societal norm, some feared the stigma and repercussions, some were embarrassed, and some felt police and health workers would not take their complaints seriously or treat them with respect or dignity.⁹⁶ Survivors and perpetrators of gender-based violence had often witnessed the same as children or experienced it; gender-based violence was frequently inter-generational.⁹⁷

⁹³Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 20.

⁹⁴ At 20.

⁹⁵ At 20.

⁹⁶ At 20.

⁹⁷ At 20.

In 2019, the Ministry of Police established a domestic violence unit. From January to June 2018, 309 domestic violence complaints were filed to the police domestic violence unit, and 130 police safety orders were served.⁹⁸ The overwhelming victims of violence between January-June 2018 were women (women filed 89 per cent of domestic violence complaints to police, 90 per cent of police safety orders were issued to women, and 93 per cent of domestic violence protection orders were granted to women by the Ministry of Justice).⁹⁹

In terms of the work of NGOs, between June 2017-June 2018, the Women and Children Crisis Centre saw 1,287 clients, 99 per cent of whom were women. Tongan National Centre saw 167 clients in the same time period, of which eight per cent were women, and Ma'ae Fafine mo e Famili saw 82 clients who were all female.¹⁰⁰ Referrals to safehouses made between June 2017 to June 2018 were all women and children. Immediately prior to the volcanic eruptions and tsunami of January 2022 and the outbreak of Covid-19 in early February 2022, a women's shelter in Tonga reported a 54 per cent increase in the number of domestic violence cases presenting to them during the mandated lockdowns of 2020 and 2021. The women's shelter anticipates victims of domestic violence numbers burgeoning as the after-effects of the tsunami and Covid outbreak unfold. These recent statistics show that since the original study on domestic violence in 2009, there seems to be little improvement.

The CEDAW Committee in General Recommendation 19¹⁰¹ defines gender-based violence as discrimination against women. Two pieces of legislation deal with violent crimes in Tonga; the Family Protection Act and the Criminal Offences Act. The following legislative amendments are recommended to minimise discrimination against women through gender-based violence.

⁹⁸ At 18.

⁹⁹ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 2, at 18-19.

¹⁰⁰ At 19.

¹⁰¹ Committee on the Elimination of Discrimination Against Women *General Recommendation No.19* UN Doc A/47/38 (1992) at [1].

6.1.2.7.1 Family Protection Act

There are no specific domestic violence offences in Tonga's criminal legislation; however, the Family Protection Act¹⁰² s 28 sets out domestic violence offences. The penalties for domestic violence are set out in s 28 of the Family Protection Act; the researcher recommends that penalties for domestic violence should be harsher and commensurate with punishment for violent crimes in the Criminal Offences Act. A first-time conviction for a domestic violence offence, as per s 28 (2)(a) of the Family Protection Act, is punishable by a term of imprisonment not exceeding 12 months or a fine not exceeding \$2,000. The punishment for the offence of simple bodily harm is imprisonment not exceeding three years,¹⁰³ and the summary conviction of common assault is a fine of \$5000.¹⁰⁴

The researcher recommends amending s 26 of the Family Protection Act to stipulate mandatory prosecution of domestic violence offences. The police have a no-drop policy for domestic violence, but this should be a provision of the Act.

6.1.2.7.2 Criminal Offences Act

Protection orders are not available under the Act for victims of sexual violence who are not in a domestic relationship with the perpetrators. The researcher recommends inserting provisions in the Act for restraining orders for non-domestic victims of violence. Stalking is not a crime; the researcher recommends amending the Act to prescribe stalking as a criminal offence.

The corroboration rule still applies to sexual offences in ss 126 and 127 of the Criminal Offences Act. The researcher recommends amending ss 126 and 127 to remove the requirement for corroboration.

In terms of punishment for sexual offences, there are considerable variances between punishment for sexual crimes against children under 12 and children

¹⁰² Family Protection Act, s 28.

¹⁰³ Criminal Offences Act, s 107(5)(a).

¹⁰⁴ Criminal Offences Act, s 112.

under 15 years. As an illustration, s 121 of the Criminal Offences Act sets out the maximum sentence for carnal knowledge of a child under 12 as a life sentence. The maximum sentence for carnal knowledge of a child between 12-15 years is the much lesser sentence of imprisonment of five years. The researcher recommends that the age of consent be raised to 18, and the punishment for sexual offences against any child under 18 should be uniform; that is, the penalty for sexual crimes against a 12-year-old and a 15-year-old should be the same.

The definition of rape in s 118 of the Act does not include penetration of non-penile objects or any other part of the body into the vulva, vagina or anus. Rape is defined in the Act as carnal knowledge, which in *R v Lasike* [2006] TOLawRp 18; [2006] Tonga LR 191 (28 July 2006) is defined as the penis penetrating the vagina. The researcher recommends amending s 118 of the Act to include in the definition of rape the penetration of the vagina, vulva, anus and mouth by the penis and the penetration of the vagina, vulva and anus by non-penile objects and other parts of the body.

There is no definition of consent in the Act. The researcher recommends inserting a definition of consent in Tonga's Criminal Offences Act, a legislative prohibition on the use of prior sexual conduct to establish consent, and a legislative ban on the requirement to provide proof of resistance to establish whether or not there was consent.

The defence of consent is available for sexual offences against children over 15 years. The researcher recommends amending s 123 of the Act to allow for the defence of consent to apply only to victims over 18 years of age.

Section 123 of the Act provides a defence of honest and reasonable belief that the victim is of age for children between 12-15 years of age. The researcher recommends repealing this provision.

Section 133 of the Act criminalises incest by women over 18 years. As women are often long-time victims of men in situations of incest,¹⁰⁵ the researcher recommends repealing this provision. The researcher recommends amending the Act to remove the words indecency, carnal knowledge, defilement and insulting modesty to remove any connotations of shame for victims. The researcher recommends amending the Act to stipulate the prosecution of sexual offences to be mandatory and to prohibit granting bail for perpetrators of sexual violence if doing so puts the victim at risk.

The Act only prescribes maximum sentences for sexual offences. The researcher recommends amending the Act to stipulate minimum sentences for sexual crimes. The researcher recommends inserting a provision in the Act to stipulate that customary forgiveness practices shall not affect sentencing and prosecution. The researcher recommends that the Act be amended to make provisions for compensation to victims of sexual violence.

The researcher recommends that the definition of infanticide in the Criminal Offences Act s 99 should be amended to include environmental and social stresses. The same provision should also be amended to allow a charge of infanticide to replace a charge of both murder and manslaughter.

A woman's choice of residence is very much limited by her limited access to land. Women depend on husbands and fathers for a place to reside; as such, women may have to remain in situations of domestic violence or face homelessness. The researcher recommends amending the Constitution and Land Act to allow men and women equal land rights, irrespective of whether their parents were married.

In terms of family life and marriage, the researcher recommends a complete review and overhaul of the separate pieces of legislation that govern marriage, divorce and the maintenance and custody of children. A comprehensive and cohesive family law legislative framework (covering marriage, separation and divorce) must be enacted

¹⁰⁵ Jivan and Forster, above n 1, at 14.

in Tonga to protect women's interests better, make it possible for women to leave abusive marriages and access financial support in raising children of the marriage. Such a family law framework should encompass the rights of de facto couples and children born to unmarried parents. As a starting point, the recommendations offered previously in this chapter with regards to amending the Births, Deaths and Marriages Registration Act, Divorce Act, Maintenance of Illegitimate Children Act, Probate Act, and the land provisions of the Constitution and Land Act are helpful for drafting of a family law bill; failing that the researcher recommends amending the aforementioned pieces of legislation according to the stated recommendations. Tonga lacks a comprehensive family law legislative framework. The following recommendations are made with regards to four separate areas of family law that are dealt with through separate pieces of legislation. A thorough revision and overhaul of laws relating to family issues in Tonga are necessary.

6.1.2.7.3 Marriage

Marriage is governed by the Births, Deaths and Marriages Registration Act. The Act does not stipulate consent. The researcher recommends amending the Births, Deaths and Marriages Registration Act to guarantee that marriage is entered into with both parties' free and full consent and allow for marriages to be nullified if the marriage took place under force, duress or undue influence.

Section 6 of the Births, Deaths and Marriages Registration Act permits a child of 15 to marry with the written consent of a guardian. The researcher recommends amending this provision to stipulate that only persons 18 years and older may marry.

The researcher recommends amending provisions of the Constitution and the Land Act to allow women equal rights as their spouses to ownership, acquisition, management, administration, enjoyment and disposition of property.

6.1.2.7.4 Separation

There is no legislation addressing separation in Tonga. As there is no legislation addressing separation, there are no provisions for maintaining wives and children during periods of separation in a marriage. This is a significant gap in the law and impacts women's ability to leave abusive marriages as they may not have the financial means to support themselves and their children or access to a place of residence. The law only makes provisions for the maintenance of wives and children who have been proven in court to be victims of domestic violence, have been deserted by their husbands or are anticipating an impending divorce.¹⁰⁶

The researcher recommends enacting legislation to prescribe maintenance for wives and children during periods of separation based on need. The legislative provision should confer on women the right to occupy the marital home during periods of separation, domestic violence¹⁰⁷ and before a divorce is settled. These provisions shall not require providing justification for separation to apply, just the fact that the parties are separated.

6.1.2.7.5 Divorce

The researcher recommends repealing s 63 of the Divorce Act and inserting a provision that dictates the only requirement for the grant of a divorce to be the breakdown of the marriage and a minimum one-year period of separation.

The researcher recommends repealing s 5 of the Divorce Act¹⁰⁸ and inserting provisions for proof of having satisfied the one-year separation period.

¹⁰⁶ Section 18 of the Family Protection Act sets out that in situations of domestic violence, a protection order may make provisions for custody and maintenance of children. Section 2 of the Maintenance of Deserted Wives Act states that married women who have been deserted by their husbands may apply to the Magistrate Court to order the husband to provide her and her children with necessities and accommodation according to his means. These rights terminate upon proof that the wife has committed uncondoned adultery. This also is unavailable to wives who have willingly separated from their husbands. The Divorce Act s 17 provides that the court may make interim orders for payment of maintenance to any party or children of the family once a divorce petition has been made.

¹⁰⁷ Section 17 of the Family Protection Act states that a court may stipulate in a protection order that victims be allowed temporary residency in a residence solely owned or leased by the respondent but not specifically the marital home.

¹⁰⁸ Section 5 of the Divorce Act places a duty on the court to enquire as to the validity of the grounds for a petition for divorce to the extent that if the petitioner is found to have been an

The legislation does not make provisions for the division of matrimonial property upon the dissolution of a marriage. Section 15 of The Divorce Act stipulates that each of the parties to the marriage shall retain his own property. The researcher recommends amending the Act to allow for equal division of marital assets and recognition of non-financial contributions to the marriage, such as childcare and domestic duties.

In terms of maintaining children, the amount of maintenance to be paid is prescribed in s 19 of the Divorce Act to be determined by a judge according to what is considered “just”. The researcher recommends amending this provision for the court to base an order for maintenance of children on income, earning capacity, financial resources, assets and the needs of the child.

In terms of maintaining a party after divorce, s 18 of the Divorce Act stipulates that the court may order a lump or annual sums to be paid “as the court thinks reasonable with regard to his fortune, ability and conduct of the parties.” The researcher recommends amending this provision to base the sum of maintenance to be paid on income, earning capacity, financial resources and assets.

Section 19 of the Divorce Act states that in determining child custody, the court’s decision is based on what “appears just”. The researcher recommends amending this provision to determine custody orders according to the child’s best interest.

The researcher recommends repealing s 13 of the Divorce Act, which sets out that a petitioner for divorce may claim damages of up to \$1000 on the grounds of adultery. The researcher recommends enacting legislation to confer on parties to a de facto relationship the same rights as parties to a marriage.

accessory or condoned the grounds for divorce then the petition in question is to be denied by the courts.

6.1.2.7.6 Children Born to Unmarried Parents

There are no prescribed procedures for determining parentage in Tonga. The Maintenance of Illegitimate Children Act specifies that a magistrate decides whether or not a man is a child's father, and this must be based on the corroborated evidence of a mother that the man in question fathered her child.¹⁰⁹ Allowing a magistrate to decide parentage leaves a considerable margin for error and inaccurate decisions. Further, it is onerous to require a woman to provide corroborating evidence that a man fathered her child. The researcher recommends amending the relevant provisions to provide for scientific procedures in determining parentage.¹¹⁰

Section 2 (3) of the Maintenance of Illegitimate Children Act provides that a magistrate may order a father to contribute to birth expenses and pay child maintenance until the child is 16 years. The researcher recommends amending this provision to allow maintenance to be paid up until 18 years of age and to establish a set of criteria on which the judge determines the amount to be paid towards birth expenses and maintenance. The criteria would consider income, earning capacity, financial resources, assets and needs of the child.

In terms of inheritance, the schedule to the Probate Act outlines the division of property upon intestacy, which stipulates that a widow (wife) inherits only a third of her deceased husband's property, with the rest divided into equal shares among his children. Whereas, if a wife dies, all her property is inherited by her husband irrespective of whether or not there are children. The researcher recommends amending these provisions to allow the wife to inherit all of her husband's property upon intestacy. The researcher also recommends amending provisions in the Constitution and Land Act to allow women equal rights to inherit land and afford the same inheritance rights for children born to unmarried parents.

¹⁰⁹ Sections 2(2) and 3(2) of the Maintenance of Illegitimate Children Act set out that a Magistrate may make an order adjudicating a man as the father of a child. However, s 6 (2) states that a Magistrate cannot adjudicate a man as the father of a child unless the female complainant has her evidence for a man being the father of her child or unborn child corroborated.

¹¹⁰ This is only necessary if a man does not voluntarily claim a child as his own.

The researcher recommends enacting legislation to require the courts to apply the non-discrimination principles of CEDAW and the Convention on the Rights of the Child when interpreting legislation.

Financial dependence is a significant factor in women choosing to remain in family violence situations. Legislative provisions to increase employment and access to resources for women (discussed above) also serve to protect them.

6.1.2.8 Discrimination Against Women In Government Policies, Programmes And Services.

The WAD reports expose a lack of understanding of gender equality across the board in Tonga, apparent in the difficulties encountered during attempts to mainstream gender; this is compounded by financial constraints, which, amongst other consequences, results in WAD being understaffed and under-resourced.¹¹¹

To address this, the researcher recommends enacting legislation to provide for a national human rights commission, a national body promoting women's rights, and for women's NGOs to be legally empowered to engage in policy and law-making processes.

The researcher recommends enacting legislation to establish a national human rights commission that would function to promote and protect human rights and women's rights in Tonga.

The researcher recommends enacting legislation establishing a body to promote the advancement of women through reviewing and monitoring laws and national policy to ensure neither are discriminatory towards women.

Before there can be any successful efforts to mainstream gender, equality needs to be reflected in the nation's founding document. Therefore, the recommendations

¹¹¹ Ministry of Internal Affairs, Women's Affairs Division Government of the Kingdom of Tonga, above n 3, at 4.

to insert a non-discrimination clause in the constitution and repeal or amend discriminatory constitutional and legislative provisions are critical. Concentrated effort dedicated to reviewing and updating Tongan legislation for protecting and promoting women's interests must be carried out; the recommendations in this work may form a foundation for such.

CONCLUSION

Previous chapters underscore claims by the Tongan government that the Constitution is imbued with international human rights norms and Tonga's membership in global and regional bodies and mechanisms dedicated to women's rights a sufficient alternative to CEDAW and why women in Tonga did not necessarily require the protections availed to them through CEDAW. Participant responses reflected these claims, with interviewees claiming that gender discrimination did not exist at law in Tonga and that the provisions of CEDAW were consequently not required.

Applying 113 indicators developed by experts underscored the extent of discrimination against women at law in Tonga and the absence of formal equality. The chapter revealed that national gender policies in Tonga have failed to address women's issues adequately over many years and do not suggest legislative reform to alleviate women's suffering. The chapter highlighted how relevant recommendations for law reform, premised on the provisions of CEDAW, would assist in achieving national women's policy goals in Tonga. The proposals also address what is required for ratification to occur in terms of changes to constitutional power structures and the issues and needs articulated by women participants. The chapter highlights the relevance of feminist legal theory or the understanding that the law serves to subjugate women. In Tonga, the law is the source of the Patriarchy or the subjugation of women. As such, the law is also the means of undoing Tonga's patriarchal state, society and culture. Expressly, in Tonga, the Constitution must prohibit gender discrimination, rights and privileges contained therein must be apportioned equally to citizens irrespective of class and sex, and the document must prescribe for an executive government, legislature and judiciary accountable to the public and, most crucially to women.

Constitutional provisions pertaining to land must be amended, and a provision mandating a 9-seat quota for women in Fale Alea should be enacted.

The chapter has put an end to claims that there is no need for legislative reform in Tonga; indeed, it reveals the opposite, that women in Tonga urgently require the protections set out in CEDAW.

CONCLUSION

This research aimed to uncover and explore the reasons for the non-ratification of CEDAW in Tonga to determine barriers to equality for women within the Pacific nation.

Research and literature on implementing human rights treaties, including CEDAW in Tonga, is scarce. The thesis thus began with placing Tonga in the broader context of the Pacific region. The Pacific has the distinction of being the only region without a regional human rights body; unsurprisingly, uptake of human rights treaties is low, domestication is fraught with challenges, and human rights issues are prolific in the region. This is despite island nations' membership in various international organisations that uphold human rights and widespread support for the regional human rights document, the Denarau 2015 Declaration On Human Rights And Good Governance, and the positive impact of human rights on good governance, development and democracy in the region.

Chapter one underscored the reasons for the non-ratification of human rights treaties in nations within the region; lack of technical capacity, lack of finances tied to human rights not ranking as a priority for many governments, and desire to avoid subjecting domestic practices to international scrutiny. Many nations also expound that ratifying human rights treaties is unnecessary as human rights are already entrenched in their national constitutions.

The most significant barrier to ratifying human rights treaties and their implementation in Pacific jurisdictions is related to their foreign origin. Claims that firstly, human rights issues unique and critical to the Pacific region are not sufficiently addressed in international human rights treaties. The second and most widely cited reason is founded on cultural relativism, which claims that international human rights norms conflict with the collective cultural rights of the Pacific people. The way forward is to increase efforts to harmonise Pacific cultural values and international human rights norms and to establish a Pacific regional human rights institution.

Tongans take pride in their singular status as the only Pacific nation to have avoided colonisation, but otherwise, Tonga boasts many commonalities with other Pacific countries. In a region where human rights treaty ratification is the lowest in the world and implementation challenging, Tonga has ratified the least number of human rights treaties. Efforts to implement the two treaties the nation has ratified are minimal to non-existent. An examination of reports from Tonga's three Universal Periodic Review reports highlights this and sets out reasons for this unsatisfactory state of affairs, reasons that echo those given for the Region as a whole, that being technical and financial constraints, the redundancy of ratification attributed to claims of a Constitution sufficiently imbued with human rights norms and engagement in regional and international human rights bodies. As with the region broadly, the nation's primary justification for the lack of ratification and implementation of human rights treaties is the posited clash between Tongan collective cultural values and human rights norms.

Chapter One further explores the plethora of human rights issues prevalent in the region, of which the most concerning are women's rights issues. This is despite wide support of regional declarations and action plans to promote women's issues; the Pacific Platform for Action on the Advancement of Women and Gender Equality (PPA 2018-2030) and the Pacific Leader's Gender Equality Declaration 2012 (PLGED). The researcher posits the necessity of establishing a regional organisation mandated with the implementation of CEDAW and regional gender equality documents.

The pervasiveness of human rights and women's rights issues in the region is mirrored and amplified in Tonga. Examining Tonga's UPR reports illuminates a broad range of human rights issues in the nation, the most urgent being women's rights. Violations of women's rights as documented in a number of Tonga's UPR reports include constitutional provisions that directly discriminate against women, women's unemployment and restricted access to financial resources, deficient levels of women in Tongan politics, the increased suffering of vulnerable and marginalised groups of women, and issues related to women's sexual health, fertility, child marriage and domestic violence.

Tonga is only one of two Pacific nations that have yet to ratify CEDAW. For Pacific nations that have ratified the Convention, legislative compliance has been less than satisfactory; the reasons for such, as articulated in previous research, are the lack of engagement in the CEDAW Committees' review processes, outdated legislative frameworks, the lack of political will to address women's issues attributed to the absence of women from traditional and formal legislative bodies and discriminatory customs and traditions embedded in national constitutions.

Tonga has twice failed to ratify CEDAW. In 2009, attempts to ratify CEDAW were quickly quashed. By 2011, Tonga's UPR reports detail the nation's commitment to ratify CEDAW. The nation's second attempt to ratify CEDAW was carried out in early 2015; however, this too was unsuccessful. The government's intention to continue with ratification in 2017 was a primary reason for historical political events, one of which was the dissolution of parliament. According to the nation's UPR reports, justifications for their rejection of CEDAW include public protest marches in which women participated, the government's lack of constitutional authority to ratify human rights treaties such as CEDAW, and emphatically the futility of ratification as Tonga has made commitments to regional and international bodies dedicated to gender equality and foremost the destruction CEDAW would cause to a culture that already elevates women socially.

The researcher has always had a distinct interest in human rights treaties and their integration into Pacific legislative frameworks. In assessing the written UPR reports featured in Chapter One, the researcher could not help but question the veracity and comprehensiveness of official reasons for the failed ratification attempt of CEDAW in 2015. The researcher determined that empirical research that involved the relevant people from Tonga was necessary to construct a more accurate understanding of why Tonga is seemingly aggressively opposed to CEDAW and formal and substantive equality for the nation's women.

Chapter Two outlines the methodology utilised for the research. A qualitative grounded theory case study was undertaken, employing the Kakala Research Framework, to investigate the reasons for the Tongan government's failure to ratify

CEDAW in 2015. One hundred and four interviews were carried out with ninety-nine participants over four phases, with concurrent data collection and analysis directing the subject of each subsequent interview phase and theoretical sampling determining who the participants should be. For the purpose of triangulating data and validity, participants were sourced from a variety of social, economic and cultural statuses. The last phase was carried out exclusively with female participants to include women's views, experiences and voices, which were not often heard or taken into account in the discourse of women's rights in the nation. Three main areas were identified as hindering the ratification of CEDAW and curbing formal and substantive equality for women in Tonga. There were constitutional, cultural and political in nature.

Chapter Three discusses the Constitutional barriers to CEDAW ratification. Prime Minister Akilisi Pohiva and his government could not ratify CEDAW because section 39 of the Constitution vests that authority with the monarch. Interviews showcased diverging opinions in the nation over whether the King retained this right in light of the 2010 constitutional reforms. Two distinct points of view defined this debate; one group were satisfied with the 2010 constitutional reforms and the powers of the monarch and his appointed Privy Council that were preserved, such as that to ratify human rights treaties. The other group believed the constitutional reforms should have meant that all constitutional powers, such as the power to ratify international human rights treaties, should have been devolved from the monarch and vested in an elected government. The researcher situated these interviews within Tonga's legal, cultural and historical context. Prior to European contact, customary law, authority and powers were vested in Tonga's traditional ruling classes due to their sacredness or *tapu* derived from their blood-fueled proximity to the ancient gods. Women of the ruling classes also possessed a mystical sacred power over their male relatives and wielded familial and political powers and rights. The commoners or *tu'a*, who were the ruled and had no sacred essence or *tapu*.

King George Tupou I granted a united Tonga the nation's 1875 Constitution. The Constitution was patriarchal in nature and established a patriarchal state and society. The author posits that patriarchy in Tonga comprises two main

components, the dominance of the ruling classes over the *tu'a* or commoner class and the dominance of men over women. Tonga's 1875 Constitution vested in the ruling classes (*Tu'i, Hou'eiki*) the bulk of legislative, administrative and judicial rights and powers, proliferating the ancient belief that these sacred classes were entitled to rule over the *tu'a* and to enhanced rights and privileges. However, the sacred essence of women and the corresponding ancient powers and rights were not codified in the Constitution, likely owing to the influence of patriarchal Christian missionaries who were responsible for drafting the early codes and advising the King. Tonga's Constitution to date does not prohibit gender discrimination and continues to discriminate against women in its land tenure provisions blatantly.

The objective of the 2010 constitutional reforms remains hotly contested. The author posits that for CEDAW to be ratified, the patriarchal provisions of the constitution need to be further amended. The two strands comprising the Tongan patriarchy embedded in the Tongan constitution must be addressed. Firstly, administrative, legislative and judicial powers should be equally shared amongst all people and exercised through elected representatives, irrespective of class. Executive powers, which include the constitutional authority to ratify international conventions such as CEDAW, must be vested in an elected government. Had this been the case in 2015, Hon Pohiva's government would have successfully ratified CEDAW. Secondly, the constitution must explicitly prohibit any form of discrimination, especially poignant to research, gender discrimination. The constitutional land tenure provisions must allow women equal rights to land as those possessed by men.

The 2015 failure to ratify CEDAW underscores the robustness of the Tongan patriarchy today, as much as it was when first consolidated through the 1875 constitution. The 2010 constitutional reforms failed to eradicate the patriarchal elements of the Tongan constitution and thus were unable to dismantle Tonga's patriarchal state. The political dominance of the ruling classes over the *tu'a* and the dominance of men over women remains the status quo. It is the constitutionally based reason why the Tongan government failed to ratify CEDAW in 2015. The absence of women's rights at law is inextricably tied to the lack of equality for Tonga's *tu'a* or commoner class. While official reports claim that ratification of

human rights treaties would be obsolete as the Tongan Constitution is imbued with human rights norms, this chapter makes it explicit that the Tongan constitution lacks any provisions that promote women's human rights and equality.

Chapter Four explored the cultural reasons for the non-ratification of CEDAW. The most fervent opposition to CEDAW came from influential church leaders supported by members of the noble class. This is unsurprising as both groups occupy positions of privilege and power in the Tongan patriarchal structure and culture. As articulated in official statements from the Tonga National Forum of Church Leaders, the church leaders' opposition was founded on biblical patriarchy, the belief that inequality between the sexes and the subordination of women is God-ordained. A clear theme in participant responses was that church leaders would need to support CEDAW if the Convention is to be successfully ratified. Interviews also highlighted that Christian ideals are understood to comprise Tongan cultural values, with a significant proportion of participants conflating the terms 'religion' and 'culture' in their responses. This patriarchal Christian culture is understood as informing and legitimising the Tongan constitution and legislative provisions. Therefore, discriminatory land tenure provisions in the Constitution and laws prohibiting abortion and same-sex marriage are viewed as codifying Christian cultural values. Essentially, inequality and discrimination against women comprise a significant element of the contemporary Tongan patriarchal Christian culture. While reports claim that Tongan culture privileges Tongan women, the experiences of female participants expose a culture that features patriarchal values which enable the subjugation of women; such as the social norms that women are to be submissive, modest, dependent upon men and their bodies, finances and sexuality controlled by men, enforced by financial or physical violence and by institutions such as the church that instill fear and shame women who fall outside these patriarchal norms. When viewed in light of participant responses, the cultural opposition to CEDAW and the arguments of cultural relativism are based on the rejection of women's human rights and equality, which conflict with Tonga's patriarchal Christian cultural values. Cultural values that are embedded in and birthed by Tonga's patriarchal Constitution.

In other Pacific nations, women are availed the opportunity to choose for themselves whether or not to claim rights based on 'western' values entailed in CEDAW that may be viewed as conflicting with the cultures they are part of. A crucial factor for the non-ratification of CEDAW was that most women, as reflected in women participant responses, did not understand the content of CEDAW and the benefits afforded to them through domesticating the Convention. It would be fair to state that most women were not given the opportunity to decide for themselves whether or not CEDAW threatened any cultural values they subscribed to. Women's ignorance of the potential benefits of CEDAW is attributed by participants to the efforts of vocal church leaders who pushed a narrative that CEDAW was a convention that permitted same-sex marriage and abortion, which they labelled demonic, and by silencing dissenting voices through public verbal attacks and threats. Women activists and supporters of CEDAW were publicly shamed and ridiculed. Women were, therefore, fearful of even broaching the subject of CEDAW.

Chapter Four also explored the contemporary *fahu* practice in Tonga. A common theme in participant responses was that CEDAW was unnecessary in Tonga as the *fahu* practices elevated the status of Tongan women and provided a competent cultural alternative to CEDAW. However, participant responses also underscored that the *fahu* component of Tongan culture was, in most part, ceremonial, performative and had no substantive impact on women's daily lives. Further, within the ceremonial practices of *fahu*, where women are honoured on family occasions such as weddings, birthdays and funerals, women participants stated that only educated, salaried and respected women were given the honour. *Fahu* was rarely a role rarely prescribed for poor, uneducated and unemployed commoner women. Furthermore, conflict over who should be *fahu* caused families to fracture and destroyed relationships.

Ironically, the *fahu* traditions have been weaponised to justify the rejection of women's rights and equality. A justification that is proven false by women participants' responses that illuminate the profusion of issues women endure in Tongan society. Women's experiences included poverty, violence, crime, unemployment, workplace issues, and a lack of education and training. These

negative experiences were felt most intensely by women who were of the commoner class, poor, uneducated and lived in rural areas. A minimal number of participants understood the benefits of implementing CEDAW. A significant theme in participant responses underscored that many in Tonga do not understand the correlation between CEDAW, formal equality and the welfare of women in Tonga. The chapter highlights that feminist theology offers a biblically-based foundation for women's liberation.

Chapter Four elucidates the cultural reasons for the Tongan government's failure to ratify CEDAW. The patriarchal constitution and laws discussed in Chapter Three created a patriarchal society and culture. Attempts to amend the patriarchal elements of the Constitution met strong resistance from patriarchal power structures of male church leaders and nobles. In contrast to claims that Tongan culture elevates women, the patriarchal Tongan Christian culture demotes women. Stripped down, opposition to CEDAW based on cultural relativism is the rejection of women's liberation by a culture that subjugates women. The powerful patriarchal institutions will continue to suppress attempts to implement formal equality for women in Tonga; in the case of the subject at hand, this was achieved through fear, intimidation and widespread misinformation.

Chapter Five probed the political reasons for the failure to ratify CEDAW. An aspect of the patriarchal Christian culture is that women are expected to be silent, submissive, and excluded from the public or political sphere. The chapter highlights the historical exclusion of women from Tongan politics from the promulgation of the 1875 Constitution and the formation of the modern Tongan patriarchal state. The absence of Tongan women from Tongan politics has led to the sidelining of women's issues. The political barrier to CEDAW ratification was not based on women's issues but the political struggles between prominent male political actors from different classes and political ideologies. The focus of the political discourse relevant to CEDAW was not women's rights or issues. CEDAW was rejected due to political and personal opposition to Prime Minister Akilisi Pohiva and his PTOA government. Some members of the PTOA party did not encapsulate the democratic movement as comprising a women's rights component; support for CEDAW and

women's rights was tenuous even from within PTOA. The women who had the luxury of a public voice were often privileged and did not support CEDAW. Women's activists who pushed for ratification were accused of receiving monetary compensation for their activism, and male proponents of CEDAW were accused of supporting ratification to gain women's votes.

Chapter Five underscored the importance of women in Tongan politics; in interviews with participants who were candidates for the 2017 snap election, only two supported women's rights and stated that they would push for CEDAW ratification in Parliament should they be successfully elected. Both were independent women candidates. The chapter explored the reasons for the few numbers of women in Parliament. Participants expressed that barriers included the Tongan patriarchal Christian cultural norm that the place of women is the home and leadership the sole purview of men. Tongan women had internalised this patriarchal cultural norm and did not support or vote for women candidates.

The *faikava* has developed into the premier cultural-political platform in Tonga, to which women have highly restricted access. The few women who were successful candidates were financially able or had the support of a prominent political male relative or male-dominated party. Chapter Four highlights efforts to increase the number of women in Parliament, such as women's practice parliament, which has not served to increase the number of women in Parliament. What is necessary is that a constitutional provision is inserted mandating a parliamentary quota for women. An increase in the number of women in Parliament would ensure that women's views are taken into account and that women's issues are discussed in the nation's legislative body. The political reason for the non-ratification of CEDAW was that the political discourse and opposition were not centred on women's issues or rights but political opposition to Hon Pohiva and the PTOA party agenda for democratic reform. The historical absence of women from the political sphere in Tonga continues to license the marginalisation of women's issues in Tongan politics.

Chapter Six addressed claims in official reports and thematic in participant responses that ratification and implementation of CEDAW is inessential due to the Constitution and Tongan laws providing sufficient protection for women. The researcher applied a set of 113 indicators developed by experts to gauge Pacific nations' CEDAW compliance, after which it was found that the Tongan legislative framework was compliant with only one of CEDAW's articles. Tongan legislation offers minimal protections for women and is discriminatory across a broad range of areas of law. Feminist legal theory asserts that law serves to subordinate women; earlier chapters underscore that the Constitution and Tongan legislation established a patriarchal state, society and culture in Tonga. Implementing the provisions of CEDAW in Tongan legislation would therefore serve to dismantle Tonga's patriarchal state, culture and society.

Chapter Six featured an analysis of Tonga's national gender policy and women's needs and issues as contained in those documents and as expressed by women participants. These issues are a direct consequence of discriminatory legislation and Tongan patriarchy and are addressed through recommendations for legal reform premised on the provisions of CEDAW. Participant answers underscored that the Tongan public and Tongan women are unaware of the benefits of CEDAW. Chapter Six highlights how implementing CEDAW through legislative reform would serve to address persistent women's issues and benefit Tongan women and, in turn, Tongan society as a whole.

THESIS CONTRIBUTION

This research is the first to investigate a significant event in Tonga's history, the rejection of CEDAW and formal and substantive equality for women in 2015. The findings of this research explore in detail the matrix of constitutional, cultural and political reasons for the non-ratification of CEDAW in Tonga. The research offers an account of the impact of legal provisions on the status of women in Tongan society and culture, adding to a scarce body of literature a detailed description of the place of Tongan women in Tongan society, culture and law; ranging from the nineteenth century and the inception of the modern Tongan state to contemporary periods marked by political flux and upheaval. Unveiling from the points of view of

participants living in Tonga the truth of this position. Permitting a more accurate perception of the status of women in Tonga than what is often written and reported. A position that is inextricably intertwined with the Tongan Constitution and other legal provisions.

The research discussed human rights treaties and CEDAW in the Pacific. The research recommends changes to the objectives of existing regional structures and advocates for establishing a regional women's rights organisation. The research explored official reports from Tonga's Universal Periodic Review processes to uncover recorded reasons for the lowest rate of human rights treaty ratification in the region and the failure to ratify CEDAW in 2015. The research findings contradict claims that Tongan culture provides sufficient protection for Tongan women living in Tonga. The research findings also dispute claims that the Tongan Constitution and membership in regional and international organisations are an added layer of protection for Tongan women. For the first time, a set of 113 CEDAW compliance indicators were applied to Tongan legislation revealing discriminatory legal provisions extending across a wide range of public and private law areas. The research offers an inventory of discriminatory laws in Tonga and recommendations for reforming these provisions premised on the dictates for non-discrimination outlined in CEDAW and in line with women's needs and issues outlined in Tonga's national gender policies and echoed in women participants' responses.

The research is also the first on the subject of CEDAW and women's rights in Tonga to be carried out by a Tongan woman, utilising a Tongan methodological approach and involving a majority of Tongan women participants from within Tonga. It is the first time the Kakala Research Framework and grounded theory were employed and utilised in an empirical qualitative case study to investigate on a national level the impediments to implementing women's rights and equality at law for women in Tonga.

The research provides for the first time a theoretical explanation for the rejection of women's rights in Tonga, that being that patriarchal legal provisions established a patriarchal state, society and culture. Tonga's culture is best understood as a

patriarchal Christian culture, a culture established with the promulgation of the 1875 Constitution. Tonga's patriarchal system features two elements, the dominance of the *tu'a* or commoner class by the traditional ruling classes and the dominance of women by men. The 2010 reforms failed to fully extinguish either of these two elements. The constitutional provisions that vest the bulk of powers in the ruling elite classes and in men remain unchanged. The PTOA government's failure to ratify CEDAW underscored this.

Claims that Tonga's culture elevates women are only partial truth; the elevation of women as *fahu* in Tongan culture is performative. It is not possible for a culture that claims to elevate women to concomitantly claim that equality for women would be destructive to that very same culture. Tongan culture suppresses Tongan women and is a credible explanation for men at the apex of the patriarchal structure, church leaders and nobles, strongly opposing any legal changes threatening Tonga's patriarchal culture. The experiences of Tongan women in Tongan society do not commensurate with claims of cultural elevation through the *fahu* practice; the patriarchal Tongan culture features the dominance, suppression and silencing of women in a vast plethora of areas which include the domestic, public, social and economic realm. The *fahu* practice, now performative in nature, has been weaponised against women's equality. However, implementing the provisions of CEDAW would amount to the contemporary revival of ancient *fahu* practices and the recognition of the ancient belief in the sacred or *tapu* nature of women in Tonga.

The research confirms feminist legal theory and locates women's liberation in legal reform. However, Tongan women are largely unaware of the content and benefits of CEDAW and, therefore, claims that human rights treaties such as CEDAW are tantamount to cultural colonisation and the rejection of such prove cultural relativism, is flawed. Women must first be able to comprehensively understand the provisions and implications of CEDAW and be permitted to decide for themselves between human rights values contained in CEDAW and the patriarchal Christian cultural values of modern Tongan society.

Tonga's patriarchal culture continues to exclude women from Tongan politics. The absence of women in Fale Alea directly correlates to the disregard for women's issues in Tongan politics. The low numbers of women in Fale Alea is attributed to patriarchal cultural norms that dictate the political sphere as exclusively the domain of men, women internalising patriarchal norms and not voting for or supporting female election candidates, political parties dominated by men, women's difficulty accessing funding due to patriarchal social-economic structures and traditional political platforms which exclude women, such as the *faikava*. The solution is to enact legislation to deem the presence of women in Fale Alea an ongoing certainty. The research posits that the struggle for democratic governance in Tonga will never be achieved so long as this patriarchal system remains intact. Legal, social and political equality between Tonga's classes is inextricably tied to equality between the sexes. The liberation of members of the *tu'a* class is tied to women's liberation. Indeed, the failure to ratify CEDAW underscored Tonga's failed democratic system. The research findings posit that the ratification of CEDAW will be possible only within a governance system that is genuinely, in essence, a constitutional monarchy. The government's failure to ratify CEDAW in 2015 is symptomatic of the shortcomings of the constitutional and political reforms of 2010, in terms of establishing democratic governance in Tonga.

The research posits that dismantling the Tongan patriarchy requires extensive legislative reform. The research findings indicate that legal provisions determine the culture in Tongan society. Legal provisions that recognise women, men and people of all classes as equal may cause a shift in Tonga's patriarchal culture and society to one where women, men and people of all classes are viewed as of equal *tapu* and worth.

Whilst the solution to addressing Tonga's patriarchal society, culture and politics necessitate legislative reform, other changes are also required. Women, church leaders, the nobility and the general population must have a clear understanding of patriarchy in Tonga, and the detrimental impacts of patriarchal religion and cultural norms. All must be willing to initiate changes from within the institutions and communities they are part of, for the better.

The researcher posits that patriarchy could also provide an explanation for Tonga and the Pacific region's resistance to human rights treaties generally. Claims that collective cultural values and human rights norms are incompatible may be explained as an attempt by patriarchal power structures to maintain their dominance and avoid liberation for groups over which they wield power. Patriarchal cultures are cloaked in the protection of anything ascribed the labels of 'tradition' and 'culture' and are often viewed as beyond scrutiny and reproach; this permits the proliferation of harmful, discriminatory practices. Tongan and Pacific people must attain clarity in their understanding of the nature of our contemporary cultures and the values that underpin traditional practices. In order that we may make informed collective decisions as to what should comprise our cultures and traditions going forward.

LIMITATIONS AND RECOMMENDATIONS FOR FUTURE WORK

Identified weaknesses in this research include interviews only being conducted with participants from Tongatapu, the main island. However, the researcher anticipates that rural village life is no different among Tonga's island groups. Also, participants with relevant knowledge resided in Tongatapu.

The researcher found a shallow pool of literature to inform this work. This research provides a foundation for a wide range of future work centred on women's rights in Tonga. The researcher recommends in-depth research on controversial topics such as abortion, same-sex marriage and prostitution in Tonga. Such research should provide suggestions for specific legislative reforms and ways to implement such successfully. The researcher also suggests further research into Tonga's persistent refusal to ratify additional human rights treaties.

The researcher has set out seventy-six recommendations for legislative reform in Chapter Six, all of which can be further explored in future research. The researcher suggests that these recommendations would be helpful for the Women's Affairs Division and women's activists in Tonga.

BIBLIOGRAPHY

INTERNATIONAL INSTRUMENTS

Charter of the United Nations (adopted June 1945, entered into force October 1945)

Commonwealth Charter (adopted in 2012, entered into force in 2013)

The Universal Declaration of Human Rights (UNDHR) (adopted by the general assembly on 10 December 1948)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (adopted 1965, entered into force 1969)

International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted in 1966, entered into force in 1976)

International Covenant on Civil and Political Rights (ICCPR) (adopted in 1966, entered into force in 1976)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)(adopted 1979, entered into force 1981)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)(adopted in 1984, entered into force in 1987)

Convention on the Rights of the Child (CRC)(adopted 1989, entered into force in 1990)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW)(adopted 1990, entered into force in 2003)

Convention on the Rights of Persons with Disabilities (CRPD)(adopted in 2006, entered into force in 2008)

International Convention for the Protection of All Persons from Enforced Disappearance(CPPED)(adopted in 2006, entered into force in 2010)

Vienna Convention on the Law of Treaties 1969 VCLT (adopted 1969, entered into force 27 January 1980)

Vienna Declaration and Programme of Action (adopted by the World Conference on Human Rights in Vienna on 25 June 1993)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against *Women* (adopted 1999, entered into force 2000)

CEDAW 1979, General Recommendation No. 25

CEDAW 1979, General Recommendation No. 28

CEDAW 1979, General Recommendation No. 29

Human Rights Committee General Comment No 24

REGIONAL INSTRUMENTS

The Framework for Pacific Regionalism

Denarau 2015 Declaration On Human Rights And Good Governance (endorsed by members of parliament from 11 Pacific states on 30 January 2015).

Pacific Platform For Action On Gender Equality And Women’s Human Rights 2018–2030 Part I.

Pacific Platform For Action On Gender Equality And Women’s Human Rights 2018–2030 Part II.

Pacific Leaders Gender Equality Declaration (Declared by Pacific Islands Forum Leaders in Rarotonga on 30 August 2012)

Pacific Islands Forum Secretariat Strategic Framework 2017-2021 (Approved by the Forum Officials Committee 10 August 2017)

Small Island Developing States Accelerated Modalities of Action (SAMOA) Pathway (2014).

LEGISLATION

Pacific Region

Constitution of the Republic of the Marshall Islands

Constitution of Tuvalu

Custom And Adopted Laws Act 1971 (Republic of Nauru)

Laws of Kiribati Act 1989 (Republic of Kiribati)

The Constitution of the Cook Islands

Fiji

Constitution of the Republic of Fiji

Crimes Act 2009

Family Law Act (2003)

Marriage Act 1968

Samoa

Constitution of the Independent State of Samoa

Crimes Act 2013

Police Service Act 2009

Solomon Islands

The Constitution of the Solomon Islands

Tonga

Act No. 15 of 1951.

Act No.19 of 1927.

Act of the Constitution (Amendment) (No.2) 2019

Act of the Constitution of Tonga (Amendment) Bill 2014

Act of the Constitution of Tonga (Amendment) Bill 2019

Anti-Corruption Commissioner Act

Bail Act

Births, Deaths and marriages Registration Act

Births, Deaths and Marriages Registration Act

charitable trusts act 1993

Communications Act 2015

Constitution of Tonga (1875)

Constitution of Tonga (1975)

Constitution of Tonga (1988)

Cooperative Societies Act

Counter-Terrorism and Transnational Organised Crime Act

Criminal Offences Act

Criminal Offences Act

Divorce Act

Education Act

Electoral Boundaries Commission Act 2010

Employment Relations Bill 2020

Environment Management Act

Environmental Impact Assessment Act

Family Protection Act

Guardianship Act

Health Promotion Foundation Act

Health Services Act

Immigration Act

Immigration Act

Land Act

Land Act 1882

Maintenance of Illegitimate Children Act

Nationality Act

Passport Act

Passport Regulations

Pension Act

Probate Act

Public Service Act

Public Service Policy Manual

Public Service Policy Manual

The Act of the Constitution (Amendment) Bill 2020

The Maintenance of Deserted Wives Act

Tonga Police (Amendment) Bill 2014

Tonga Police Act

Vanuatu

Constitution of the Republic of Vanuatu

Constitution of Vanuatu 1980

State Law Office Act 1998

CASES

Tonga

Fangupo v R [2010] Tonga LR 124.

R v Lasike [2006] TOLawRp 18; [2006] Tonga LR 191 (28 July 2006).

R v Vola [2005] Tonga LR 404.

Tavake v Kingdom of Tonga [2008] Tonga LR 304.

BOOKS AND CHAPTERS IN BOOKS

Adrian Holliday *Doing and Writing 3e Qualitative Research* (3rd ed, SAGE Publications, London, 2016)

Andrew Byrnes "Article 1" in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds) *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012)

Asinate F Samate "A Challenge of a Call to Ministry: A Tongan Woman's Experience in a Patriarchal Setting" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003)

Barney G Glaser and Anselm L Strauss *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine de Gruyter, New York, 1999)

Barney G Glaser *Basics of Grounded Theory Analysis* (Sociology Press, California, 1992)

Beth A. Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, Cambridge, 2009)

Caroline Morris & Cian Murphy, *Getting a PhD in Law* (Hart Publishing Limited, Oxford, 2011)

Caroline Ralston *Gender Relations in Tonga at the time of Contact* in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds), *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990)

Cathy Urquhart *Grounded Theory for Qualitative Research: A Practical Guide* (SAGE Publications, London, 2013)

Chantelle Khan "Looking for God with New Eyes" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003)

Chantelle Khan "Looking for God with New Eyes" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003)

Christine Chinkin and Marsha A Freeman "Introduction" in Marsha A Freeman, Christine Chinkin and Beate Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012) 120

Christine Linhart, Karen McMillan, Hilary Gorman, Catherine O'Connor, Michelle O'Connor, Avelina Rokoduru and Telusa Fotu Tu'i'onetoa *Adolescent Unplanned Pregnancy in the Pacific: Tonga* (Pacific Women Shaping Pacific Development Support Unit, 2020).

Christine Ward Gailey, *Kinship to Kingship Gender Hierarchy and State Formation in the Tonga Islands* (University of Texas Press, Austin, 1987)

Donna J. Sullivan "The Public/Private Distinction in International Human Rights Law" in *Women's rights, human Rights: international feminist perspectives* (Routledge, New York, 1995)

Elise Huffer, "Desk Review of the Factors Which Enable and Constrain the Advancement of Women's Political Representation in Forum Island Countries" in *A Woman's Place is in the House - the House of Parliament: Research to Advance Women's Political Representation in Forum Island Countries* (Pacific Islands Forum Secretariat, Fiji, 2006)

Elizabeth Bott: *Tongan Society at the time of Captain Cook's visits: Discussions with her Majesty Queen Salote Tupou.* (The Polynesian Society Incorporated, Wellington, 1982)

Emi Frances Oh "A Dream as Metaphor for a New Vision of Church in the Pacific" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003)

Emi Frances Oh "A Dream as Metaphor for a New Vision of Church in the Pacific" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003)

Fiona J Green (2010). "Patriarchal Ideology of Motherhood" in Andrea O'Reilly *Encyclopedia of Motherhood, Volume 1.* (SAGE, 2010) at 969.

Frédéric Mégret and Philip Alston (eds) *The United Nations and Human Rights: A Critical Appraisal (2nd Edition)* (Oxford University Press, 2020)

G Lerner *The Creation of Patriarchy* (Oxford University Press, New York, 1989)

Gary Thomas *How to Do Your Case Study* (2nd ed, SAGE Publications, London, 2016)

George E Marcus, *The Nobility and the Chiefly Tradition in the Modern Kingdom of Tonga* (Polynesian Society Incorporated, Wellington, 1980)

Guy Powles "The Early Accommodation of Traditional and English Law in Tonga" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds) *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990)

Guy Powles *The Tongan Monarchy and the Constitution: Political Reform in a Traditional Context* (ANU Dept of Pacific Affairs, 2014)

Helen Keller and Geir Ulfstein (eds) *UN Human Rights Treaty Bodies : Law And Legitimacy* (Cambridge University Press, 2012)

Henry J Steiner, Philip Alston (eds) *International Human Rights In Context* (Oxford University Press, 1996)

I.C. Campbell, *Island Kingdom: Tonga Ancient and Modern* (2nd ed, Canterbury University Press, Christchurch, 2001)

Ian Christopher Campbell *A History of the Pacific Islands* (Canterbury University Press, Christchurch, 1992)

Ian Christopher Campbell *Tonga Ancient and Modern* (Canterbury University Press, Christchurch, 1992).

Ilisapeci Meo "Asserting Women's Dignity in a Patriarchal World" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003) 150

Jack Donnelly *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press, Ithaca, 2013)

Jennifer Corrin "Cultural Relativism vs. Universalism: The South Pacific Reality" in Rainer Arnold (ed) *The Universalism of Human Rights* (Springer Netherlands, 2012)

Johnny Saldaña and Matt Omasta *Qualitative Research: Analyzing Life* (SAGE Publications, California, 2018)

Julie Ballington and Azza Karam *Women in Parliament: Beyond Numbers*.(International Institute for Democracy and Electoral Assistance, 2005)

K E. James "Gender Relations in Tonga in Tonga: A Paradigm Shift" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds), *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990)

K Millet *Sexual Politics* (London, Virago, 1977)

Kaku Sechiyama *Patriarchy in East Asia: A Comparative Sociology of Gender* (BRILL, 2013)

Kerry James "Rank Overrides Everything: Hierarchy, Social Stratification And Gender In Tonga" in Judith Huntsmen (ed) *Tonga and Samoa Images of Gender and Polity* (Macmillan Brown Centre for Pacific Studies, Christchurch, 1995)

Kimberle Crenshaw "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" in Karen Maschke (ed) *Feminist Legal Theories* (Routledge, New York, 1997)

Konai Helu Thaman " Cultural Rights a Personal Perspective" in Margaret Wilson and Paul hunt (eds) *Culture, Rights and Cultural Rights* (Huia Publishers, Wellington, 2000) 1

Maggie Walter "The Nature of Social Science Research" in Maggie Walter (ed) *Social Research Methods* (3rd ed, Oxford University Press, Melbourne, 2013)

Maike Vollstedt and Sebastian Rezat " An Introduction to Grounded Theory with a Special Focus on Axial Coding and the Coding Paradigm" in Gabriele Kaiser and Norma Presmeg (eds) *Compendium for Early Career Researchers in Mathematics Education* (Springer, 2019) 81

Malakai Koloamatangi "Democracy and Culture in Tonga" in A Davidson et al. (eds.) *Globalization and Citizenship in the Asia Pacific* (Macmillan Publishers, 1999)

Margaret Wilson "Cultural Rights: Definitions and Contexts" in Margaret Wilson and Paul hunt (eds) *Culture, Rights and Cultural Rights* (Huia Publishers, Wellington, 2000)

Marie Ropeti "A Biblical Basis for the Ordination of Women in the Pacific Churches Weaving" in Lydia Johnson, Joan Tofaeono (eds) *Weavings: Women Doing Theology in Oceania* (Oceania Printers Limited, Suva, 2003)

Matt Henn, Mark Weinstein and Nick Foard *A Critical Introduction to Social Research* (2nd ed, SAGE Publications, London, 2009)

Max Travers "Qualitative Interviewing Methods" in Maggie Walter (ed) *Social Research Methods* (3rd ed, Oxford University Press, Melbourne, 2013)

Melanie M Hughes & Pamela Paxton "The Political Representation of Women over Time." in *the Palgrave Handbook of Women's Political* (Palgrave Macmillan, London, 2019)

Nancy Levit and Robert R. M. Verchick *Feminist Legal Theory (Second Edition): A Primer* (NYU Press, 2016)

Nathan Durdella *Qualitative Dissertation Methodology: A Guide for Research Design and Methods* (SAGE Publications, California, 2019)

Noel Rutherford *Shirley Baker and the King of Tonga* (University of Hawaii Press, 1996)

Ofa Guttenbeil-Likiliki "Report 4: Advancing Women's Representation in Tonga" in Elise Huffer et al *A Woman's Place is in the House - the House of Parliament: Research to Advance Women's Political Representation in Forum Island Countries* (Pacific Islands Forum Secretariat, Fiji, 2006)

Okusitino Mahina "Myths and History: Some Aspects of History in the Tui Tonga Myths" in Phyllis Herda, Jennifer Terrell, Niel Gunson (eds), *Tongan Culture And History* (The Department of Pacific and Southeast Asian History, Canberra, 1990)

P Imrana Jalal *Law for Pacific Women: a legal rights handbook* (Fiji Women's Rights Movement, 1998)

Pacific Community and United Nations Human Rights Office of the Commissioner for Human Rights *Human Rights in the Pacific: A Situational Analysis* (Quality Print, Suva, 2016)

Pat Bazely and Kristi Jackson *Qualitative Data Analysis with NVivo* (2 nd ed, SAGE Publications, London, 2013)

Pat Bazely and Lyn Richards *The NVivo Qualitative Research Book* (SAGE Publications, London, 2000)

Pat Bazely *Qualitative Data Analysis: Practical Strategies* (SAGE, London, 2013)

Patricia Ledyard *The Tongan Past* (Vava'u Press Ltd, Vava'u, 1999)

Patrick Vakaoti "Tonga" in Manfred Ernest *Globalization and the Re-Shaping of Christianity in the Pacific Islands* (The Pacific Theological College, Suva, 2006)

Paula Gunn Allen "Kochinnenako in Academe: Three Approaches to In- terpreting a Keres Indian Tale." in *The Sacred Hoop: Recovering the Feminine in American Indian Traditions* (Boston, Beacon, 1992)

Pavla Miller "Patriarchy" in Peter Hamilton (ed) *Key Ideas* (Routledge, New York, 2017)

Peter Larmour *Foreign Flowers: Institutional Transfer And Good Governance In The Pacific Islands* (University of Hawaii Press, 2005)

Phyllis Herda, "Hierarchy and Prerogatives of History Making in Tonga" in Judith Huntsman (ed) *Tonga and Samoa: Images of Gender and Polity* (MacMillan Brown Centre for Pacific Studies, Christchurch, 1995)

Pippa Norris *Electoral Engineering: Voting Rules and Political Behaviour* (Cambridge University Press, 2004)

Ranjit Kumar *Research Methodology: A Step by Step Guide for Beginners* (4th ed, SAGE Publications, London, 2014)

Regional Rights Resource Team *Pacific Island States and the Universal Periodic Review* (Secretariat of the Pacific Community, 2012)

Rikki Holtmaat "The CEDAW: a holistic approach to women's equality and freedom" in *Women's Human Rights* (Cambridge University Press, 2013)

Robert E Stake *Qualitative Research: Studying How Things Work* (The Guildford Press, New York, 2010)

Robert Filmer *Patriarcha: Or the Natural Power of Kings* (Printed, and are to be sold by Walter Davis, book-binder, in Amen-Corner, near Pater-noster-row., 1680)

Robert K Yin *Qualitative Research from Start to Finish* (2nd ed, The Guilford Press, New York, 2016)

Sally Engle Merry, "Changing Rights Changing Culture", in Jane K. Cowan, Marie-Bénédicte Dembour, Richard A. Wilson (eds) *Culture and Rights: Anthropological Perspectives* (Cambridge University Press, 2001)

Sione Lātūkefu *The Tongan Constitution : A Brief History To Celebrate Its Centenary* (1st ed, Tonga Traditions Committee Publication, Nuku'alofa, 1975)

Sione Latukefu, *Church and State in Tonga* (Australia National University Press, Canberra, 1974).

Stuart Kaye and Ryszard Piotrowicz *Human Rights in International and Australian Law* (Butterworths, Sydney, 2000)

Sue Farran *Human Rights in the South Pacific Challenges and Changes* (Routledge-Cavendish, New York, 2009)

Teeruro leuti, Jione Langi, Charles W Forman *Island churches : challenge and change*. (Institute of Pacific Studies of the University of the South Pacific, 1992)

Valerie J Janesick "Stretching" *Exercises for Qualitative Researchers* (2nd ed, SAGE Publications, California, 2004)

Vedna Jivan and Christine Forster *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* (UNDP Pacific Centre; UNIFEM Pacific Regional Office, Suva, 2007).

Vincent A Anfara and Norma T Mertz *Theoretical Frameworks in Qualitative Research* (SAGE Publications, California, 2006)

JOURNAL ARTICLES

Abeda Sultana "Patriarchy and Women's Subordination: A Theoretical Analysis" (2010-2011) 4 Arts Faculty Journal 1

Amanda Gouws and Azille Coetzee "Women's Movements and Feminist Activism"(2019) 33 (2) *Agenda* 1

Andrew Gary Darwin Holmes "Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide" (2020) 8 (4) *Shanlax International Journal of Education* 1

Angela P. Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 (3) Stanford Law Review 581

Anne Bayefsky "Introduction to the UN human rights treaty system (Special Report on International Law)" (2003) 28 (2) Law Now 28

Arcia Tecun "Tongan Kava: Performance, Adaptation, And Identity In Diaspora" (2017) 1 Performance of the Real

Arcia Tecun, Robert Reeves, Marlena Wolfgramm "The past before us: a brief history of Tongan kava" (2020) 129 (2) Journal of Polynesian Society 171

Caren Wickliffe "Human Rights Education in the Pacific" (1999) 3 Journal of South Pacific Law 11

Catherine Renshaw, Andrew Byrnes and Andrea Durbach "Human Rights Protection in the Pacific: The Emerging Role of National Human Rights Institutions in the Region" (2010) 8 New Zealand Journal of Public and International Law 117

Celestine I. Nyamu, "How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries," (2000) 41 (2) Harvard International Law Journal 381

Charles A Buckley and Michael J Waring "Using Diagrams to support the research process: examples from grounded theory" (2013) 13 Qualitative Research 148

Courage Mlambo & Forget Kapingura "Factors Influencing Women Political Participation: The case of the SADC Region." (2019)5 (1) Cogent Social Sciences

Daniel W. Hill "Avoiding Obligation: Reservations to Human Rights Treaties"(2016) 60 (6) The Journal of conflict resolution 1129

Daniel W. Hill "Estimating the effects of human rights treaties on state behavior." (2010) 72(4) The Journal of Politics 1161

Debra J. Liebowitz and Susanne Zwingel "Gender Equality Oversimplified: Using CEDAW to Counter the Measurement Obsession" (2014) 16 (3) International Studies Review 362

Dejo Olowu "The United Nations human rights treaty system and the challenges of commitment and compliance in the South Pacific" (2006) 7(1) Melbourne Journal of International Law 155

E. Matisoo-Smith and J. H. Robins "Robins Origins and dispersals of Pacific peoples: Evidence from mtDNA phylogenies of the Pacific rat" (2004) 101 (24) PNAS 9167

Elaine Welsh "Dealing With Data: Using NVivo in the Qualitative Data Analysis Process" 2002 (3) Forum: Qualitative Social Research Sozialforschung 3

Eseta Tualualelei and Judy McFall-McCaffery "The Pacific research paradigm: opportunities and challenges" (2019) 8 (2) MAI Journal 188

Felipe Gomez Isa, "The Optional Protocol for the Convention on the Elimination of all Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women's Human Rights" (2003) 20(2) *Arizona Journal of International and Comparative Law* 291

Frances Raday "Gender and democratic citizenship: the impact of CEDAW" (2012) 10 (2) *International Journal of Constitutional Law* 512

Futa Helu "Identity and change in Tongan society since European contact." (1993) 97 (2) *Journal de la Société des Océanistes* 187

Garth Rogers "The Father's Sister is Black: A Consideration of Female Rank and Power in Tonga"(1977)86 (2) *Journal of Polynesian Society* 157

Georges Benguigui "Tonga in Turmoil" (2011) 120 (4) *The Journal of the Polynesian Society* 349

Guy Powles "Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy" in *Comparative Law Journal of the Pacific* (City Print, Wellington, 2012)

Guy Powles "The Head Of State And The Legislature: The Power Of Veto In Pacific Island States And The Case Of Tonga" (2016) 22 *CLJP/JDCP*

Hamoon Khelghat-Doost and Suzyrman Sibly "The Impact of Patriarchy on Women's Political Participation"(2020) 10 *International Journal of Academic Research in Business and Social Sciences* 396

Harry Feldman "Informal kava drinking in Tonga. " (1980) 89 (1) *The Journal of the Polynesian Society* 101

Helen Lee "CEDAW Smokescreens: Gender Politics in Contemporary Tonga" (2017) 29 (1) *The Contemporary Pacific* 66

Hilary Charlesworth "No Principled Reason" (1997) 7 (9) *Eureka Street* 24

I C Campbell "Fakalēlēa Filo and Pēpētama in Tongan Politics." (1996) 31 (3) *The Journal of Pacific History* 44

I C Campbell "Progress and Populism in Tongan Politics" (2006) 41 (1) *The Journal of Pacific History* 49

I C Campbell "The Nettle Grasped: Tonga's New Democracy" (2012) 47 (2) *The Journal of Pacific History* 211

J. Koji Lum, Rebecca L. Cann "mtDNA and language support a common origin of Micronesians and Polyneisans in Island Southeast Asia"(1998) 105 *American Journal of Physical Anthropology* 109

Jack Corbett "Democracy in the Pacific Islands: Comparable Practices, Contested Meanings" (2015) 2 (2) *Democratic Theory* 22

Jack Donnelly "Human Rights and Human Dignity: An Analytic Critique of Non Western Conceptions of Human Rights" (1982) 76 (2) the American Political Science Review 303

Jack Donnelly, "Cultural Relativism and Universal Human Rights" (1984) 6(4) Human Rights Quarterly 400

Jane Mansbridge "Quota problems: Combating the dangers of essentialism" (2005) 1(4) Politics and Gender 621

James Scotland "Exploring the Philosophical Underpinnings of Research: Relating Ontology and Epistemology to the Methodology and Methods of the Scientific, Interpretive, and Critical Research Paradigms" (2012) 5(9) English Language Teaching 9

Jennifer Corrin "From Horizontal And Vertical To Lateral: Extending The Effect Of Human Rights In Post Colonial Legal Systems Of The South Pacific" (2009) 58(1) International and Comparative Law Quarterly 31

Jennifer Corrin Care, "Customary Law in Conflict: The Status of Customary Law and Introduced Law in Post-Colonial Solomon Islands" (2001) 21 University of Queensland Law Journal 167

Judy Kendall "Axial Coding and the Grounded Theory Controversy" (1999) 21 Western Journal of Nursing Research 743

K.E. James "The Female Presence in Heavenly Places: Myth and Sovereignty in Tonga" (1991) 61 (4) Oceania 287

Kathryn Hay, "A Pacific Human Rights Mechanism: Specific Challenges And Requirements" (2009) 40 (1) Victoria University of Wellington Law Review 195

Kerry E James "Tonga's Pro-Democracy Movement" (1994) 67(2) Pacific Affairs, University of British Columbia 242

Kerry James "Gender Relations in Tonga 1780 to 1984" (1983) 92 (2) Journal of the Polynesian Society 233

Kerryn Baker "Explaining the outcome of gender quota campaigns in Samoa and Papua New Guinea" (2014) 66 (1) Political Science 63.

Kerryn Baker "Great Expectations: Gender and Political Representation in the Pacific Islands" (2018) 53 (3) Government and Opposition 542

Lynne Henderson, "Review of Law's Patriarchy by Zillah R Einstein, Catharine A MacKinnon and Carol Smart" (1991) 25 (2) Law and Society Review 411

Margaret E. Galey "Promoting Nondiscrimination against Women: The UN Commission on the Status of Women" (1979) 23 (2) International Studies Quarterly 273

Margaret Jolly "Imagining Oceania: Indigenous and Foreign Representations of a Sea of Islands" (2007) 12(2) *The Contemporary Pacific* 508

Marijke De Pauw "Women's rights: from bad to worse? Assessing the evolution of incompatible reservations to the CEDAW Convention" (2013) 29 (77) *Utrecht Journal Of International And European Law* 51

Marsha A. Freeman and Arvonne S. Fraser "Women's Human Rights: Making the Theory a Reality" (1994) 26 *Studies in Transnational Legal Policy* 103

Melvena Malungahu, Samuela 'Ofanoa, Peter Huggard, Malakai 'Ofanoa and Stephen Buetow "Lalanga: Weaving the Kakala with Constructionist Grounded Theory" (2017) 5(4) *International Journal of Health Sciences* 48

Meredith Filihia "Men Are From Maama, Women Are From Pulutu: Female Status In Tongan Society" (2001) 110 (4) *The Journal Of Polynesian Society* 377

Miranda Forsyth "Beyond Case Law: Kastom and Courts in Vanuatu" (2004) 35 (2) *Victoria University of Wellington Law Review* 427

Nancy Kim, "Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism " (1993) 25 (1) *Columbia Human Rights Law Review* 49

Natalie Baird "To Ratify or Not to Ratify? An Assessment of the Case for Ratification of International Human Rights Treaties in the Pacific " (2011) 12(2) *Melbourne Journal of International Law* 249

Neil A. Englehart And Melissa K. Miller "The CEDAW Effect: International Law's Impact on Women's Rights" (2014) 13 (1) *Journal of Human Rights* 22

Noella Mackenzie and Sally Knipe "Research dilemmas: methods and methodology" (2006) 16 (2) *Issues in Educational Research* 1

P Imrana Jalal "Why Do We Need a Pacific Regional Human Rights Commission?" (2009) 40 (1) *Victoria University of Wellington Law Review* 177.

Patrick D Nunn "Myths and the Formation of Niue Island, Central South Pacific" (2004) 39 (1) *The Journal of Pacific History* 99

Peter Larmour "Westminster constitutions in the South Pacific: A "policy transfer" approach" (2002) 10 (1) *Asian Journal of Political Science* 39

Phyllis Herda "Gender, rank and power in 18th Century Tonga: The case of Tupoumohefo" (1987) 22 (4) *The Journal of Pacific History* 195

Richard E Matland (1998) "Women's representation in national legislatures: developed and developing countries" (1998) 23 (1) *Legislative Studies Quarterly* 109

Robert Bahlhieda "The Legacy Of Patriarchy" (2015) 488 *Counterpoints* 15

Scott Walker "Human Rights and the South Pacific: A New Voice in the Global Dialogue" (2011) 10(2) *Journal of Human Rights* 214

Serge Tcherkézoff "A Long and Unfortunate Voyage towards the "Invention" of the Melanesia/Polynesia Distinction 1595-1832." (2003) 38(2) *The Journal of Pacific History* 175

Shefali Desai "Hearing Afghan women's voices: Feminist theory's re-conceptualization of women's human rights" (1999) 16(3) *Arizona Journal of International and Comparative Law* 805

Simone Cusack and Lisa Pusey "CEDAW And The Rights To Non-Discrimination And Equality"(2013) 14 (1) *Melbourne Journal of International Law* 54

Sione Latukefu "The Pro-Democracy Movement in Tonga" (1993) 28 (3) *The Journal of Pacific History* 52

Sonam Chuki & Mark Turner "Women and politics in democratic transitions: the case of Bhutan" (2017) 25 (2) *Contemporary South Asia* 136

Sonam Chuki & Mark Turner "Women and politics in democratic transitions: the case of Bhutan" (2017) 25 (2) *Contemporary South Asia* 136

Suzanne Egan "Transforming the UN Human Rights Treaty System: A Realistic Appraisal" (2020) 42(4) *Human Rights Quarterly* 762

Sylvia Walby "Theorising Patriarchy" (1989)23(2) *Sociology (Oxford)* 213

The Samoan Story Of Creation—A 'Tala'." (1892) 1(3) *The Journal of Polynesian Society* 164

Thomas Buergenthal "The Normative and Institutional Evolution of International Human Rights." (1997) 19 (4) *Human Rights Quarterly* 703

Timote Vaioleti "Talanoa Research Methodology: A Developing Position on Pacific Research" (2006) 12 *Waikato Journal of Education* 21

Tracy E. Higgins, "Anti-Essentialism, Relativism, and Human Rights," (1996) 19 *Harvard Women's Law Journal* 89

Uthara Soman "Patriarchy: Theoretical Postulates and Empirical Findings" (2009) 58 (2) *Sociological Bulletin* 253

Valmaine Toki and Natalie Baird "An Indigenous Pacific Human Rights Framework: Some Building Blocks" (2009) 40 *Victoria University of Wellington Law Review* 214

Vedna Jivan & Christine Forster "What Would Gandhi Say? Reconciling Universalism, Cultural Relativism And Feminism Through Women's Use Of CEDAW" (2005) 9 *The Singapore Year Book of International Law* 103

Vedna Jivan and Christine Forster “Challenging conventions : in pursuit of greater legislative compliance with CEDAW in the Pacific.” (2009) 10(2) Melbourne Journal of International Law 655

Victoria Hagens, Mark J Dobrow and Roger Chafe “Interviewee Transcript Review: assessing the impact on qualitative research” (2009) BMC Medical Research Methodology 9.

Vrushali Patil “From Patriarchy to Intersectionality: A Transnational Feminist Assessment of How Far We’ve Really Come” (2013) 38 (4) Signs: Journal Of Women in Culture and Society 847

PARLIAMENTARY AND GOVERNMENT MATERIALS

Commonwealth Observer Group Kingdom of Tonga National Parliamentary Election 16 November 2017

Constitutional and Electoral Commission Kingdom of Tonga *Final Report* (5 November 2009)

Department of Climate Change, Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications *Tonga Climate Change Policy: A Resilient Tonga by 2035* (February 2016)

Government of the Kingdom of Tonga Kingdom of Tonga Voluntary National Review 2019 (2019)

Law Commission Converging Currents Custom And Human Rights in the Pacific (NZLC SP17, 2006)

Legislative Assembly of Tonga, *Hansard/Debates No.1/2015* (16 March 2015)

Legislative Assembly of Tonga, *Hansard Record No. 03/2015* (16 March 2015).

Legislative Assembly of Tonga, *Hansard Record No. 15/2017* (27 February 2017)

Legislative Assembly of Tonga, *Hansard Record No. 28/2020* (8 September 2020)

Legislative Assembly of Tonga, *Hansard Record No. 31/2009* (17 September 2009)

Legislative Assembly of Tonga, *Hansard Record No. 37/2008* (28 October 2008)

Legislative Assembly of Tonga, *Hansard Record No. 4/2017* (2 February 2017)

Legislative Assembly of Tonga, *Hansard Record No.30/2008* (13 October 2008)

Legislative Assembly of Tonga, *Hansard Record No.38/2015* (3 September 2015)

Ministry of Finance and National Planning *Tonga Millennium Development Goals Final Report* (September 2015)

Ministry of Finance and National Planning *Tonga Strategic Development Framework 2015–2025* (May 2015).

Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga *Gender Equality: Where Do We Stand? The Kingdom Of Tonga* (2019)

Ministry of Internal Affairs, Women’s Affairs Division Government of the Kingdom of Tonga *National Women’s Empowerment And Gender Equality Tonga Policy And Strategic Plan Of Action 2019–2025* (2019).

National Committee of the Kingdom of Tonga For Political and Constitutional Reform, *TONGA: FOR THE ENRICHMENT OF THE COUNTRY Political and Constitutional Reform to Enrich the Unity of the Country which will Promote Social and Economic Development Of the People of Tonga* (31 August 2006)

Pacific Islands Forum Secretariat and Pacific Community *Australian Parliamentary Inquiry Into The Human Rights Of Women And Girls In The Pacific Submission 16* (17 July 2020)

Peter Pursglove *Review of the Constitutional Provisions Relating to the Judicial Structure of the Kingdom of Tonga* (2014)

Peter Pursglove, *Review of the Constitution of Tonga* (2017)

Royal Land Commission *Royal Land Commission Final Report* (2012)

Tonga Government Gazette Supplement Extraordinary No. 14 (25 August 2017).

Tonga Statistics Department *Tonga 2016 Census of Population and Housing Volume 1: Basic Tables and Administrative Reports Second Edition* (2016)

We Rise Coalition *Australian Parliamentary Inquiry Into The Human Rights Of Women And Girls In The Pacific Submission 33* (24 August 2020).

REPORTS

Pacific Regional Reports

Asian Development Bank *Pacific Approach 2016–2020: Inclusive And Sustainable Growth Assessment*

Asian Development Bank *Priorities of the People: Hardship in Tonga* (May 2004)

Australian Aid & Pacific Women *Shaping Pacific Development Thematic Brief: Leadership And Decision Making For Women And Girls In The Pacific*

International Institute for Democracy and Electoral Assistance *Tonga in a new political order – Analysing the 2014 general election results* (August 2015)

Jacqui True, Sara Niner, Swati Parashar, Nicole George *Women’s Political Participation in Asia and the Pacific* (Women’s Political Participation Report Asia-Pacific, 2012)

K Winterford, K Ma'u and C Leahy Formative Evaluation of the *Tonga National Centre for Women and Children Women's Economic Empowerment Project*.(Pacific Women Shaping Pacific Development Support Unit, 2019)

Kerryn Baker *Women's political representation in the Pacific Islands Region* (Human Rights Issues Confronting Women and Girls in the Indian Ocean-Asia Pacific Region Submission 93)

Marilyn Waring *Women in politics and aid effectiveness: an aid to the evaluation of MDG3* (AusAID Office of Development Effectiveness, November 2011)

Pacific Islands Forum Secretariat and Pacific Community Joint Pacific Islands Forum Secretariat And Pacific Community (SPC) Australian Parliamentary Inquiry Into The Human Rights Of Women And Girls In The Pacific (PIFS File No: EP/10/3, SPC File No: SPC/17/7/2020, July 2020)

Pacific Women Shaping Pacific Development *Pacific Women Shaping Pacific Development Annual Progress Report 2017-2018: Supporting the Pacific Leaders' Gender Equality Declaration* (August 2019)

Pacific Women Shaping Pacific Development *Tonga Country Plan Summary* (September 2020).

Regional Rights Resource Team *Pacific Island States and the Universal Periodic Review* (Secretariat of the Pacific Community, 2012)

Wawan Juswanto Zulfiqar Ali, *Economic Growth and Sustainable Development in the Pacific Island Countries* (ADB, Policy Brief No. 2016-6, December 2016)

UN REPORTS

Committee on the Elimination of Discrimination against Women *Concluding observations on the fifth periodic report of Fiji* UN Doc CEDAW/C/FJI/CO/5 (14 March 2018)

Committee on the Elimination of Discrimination against Women *Concluding observations on the sixth periodic report of Samoa* UN Doc CEDAW/C/WSM/CO/6 (14 November 2018)

Committee on the Elimination of Discrimination Against Women *General Recommendation No. 29* UN Doc CEDAW/C/GC/29 (30 October 2013)

Committee on the Elimination of Discrimination Against Women *General Recommendation No. 28* UN Doc CEDAW/C/GC/28 (16 December 2010)

Committee on the Elimination of Discrimination Against Women *General Recommendation No.19* UN Doc A/47/38 (1992)

Committee on the Elimination of Discrimination Against Women *General Recommendation No.19* UN Doc A/47/38 (1992)

Compilation on Tonga: Report of the Office of the United Nations High Commissioner for Human Rights UN Doc A/HRC/WG.6/29/TON/2 (31 October 2017)

Concluding observations on the initial report of Tonga UN Doc CRC/C/TON/CO/1 (2 July 2019)

Consideration Of Reports Submitted By States Parties Under Article 9 Of The Convention: Concluding Observations Of The Committee On The Elimination Of Racial Discrimination Tonga UN Doc CERD/C/304/Add.96 (19 April 2000)

Joint Submission of the UN Country Team for Tonga for the UN Compilation Universal Periodic Review of Tonga 29th Session (Jan-Feb 2018)

National Report Submitted In Accordance With Paragraph 15(A) Of The Annex To Human Rights Council Resolution 5/1 Tonga UN Doc A/HRC/WG.6/2/TON/1 (10 April 2008)

National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/15/TON/1 (9 January 2013)

National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/29/TON/1 (3 November 2017)

Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/23/4 (21 March 2013)

Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/8/48 (5 June 2008)

Report of the Working Group on the Universal Periodic Review Tonga UN Doc A/HRC/38/5 (16 April 2018)

Statement Delivered by The Government Of The Kingdom Of Tonga At The Constructive Dialogue With The Committee On The Rights Of The Child (14th May 2019).

Summary of Stakeholders' submissions on Tonga UN Doc A/HRC/WG.6/29/TON/3 (25 October 2017) n 251

Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Tonga UN Doc A/HRC/WG.6/15/TON/3 (29 October 2012)

UN Human Rights Committee *General Comment No 24*, LII (4 November 1994)

UN Human Rights Committee *General Comment No 24*, VII (4 November 1994)

United Nations Human Rights Office of the High Commissioner *The United Nations Human Rights Treaty System UN Fact Sheet No 30/Rev.1 (2012)*

OTHER REPORTS

Andrew Byrnes and Marsha Freeman *The Impact Of The CEDAW Convention: Paths To Equality* (World Development Report 2012).

Atu `o Hakautapu Emberson-Bain Country Briefing Paper Women In Tonga

Country Gender Assessment of Agriculture and the rural sector in Tonga (Food and Agriculture Organization of the United Nations and the Pacific Community (Nuku'alofa, 2019)

K Winterford, K Ma'u and C Leahy *Formative Evaluation of the Tonga National Centre for Women and Children Women's Economic Empowerment Project*. (Pacific Women Shaping Pacific Development Support Unit, 2019).

Kerryn Baker *Women's political representation in the Pacific Islands Region* (Human Rights Issues Confronting Women and Girls in the Indian Ocean-Asia Pacific Region Submission 93)

Pacific Women Shaping Pacific Development *Tonga Country Plan Summary* (September 2020).

World Bank *World Development Report 2012: Gender Equality and Development*

SPEECHES

Konai Helu-Thaman "Kakala: A Pacific concept of teaching and learning." (Keynote address, Australian College of Education National Conference, 1997).

Konai Helu-Thaman "Learning to be: A perspective from the Pacific Islands." (Keynote address, UNESCO Conference, 1998)

THESES

Heneli T. Niumeitolu "The State and the Church, the State of the Church in Tonga" (PhD Thesis, The University of Edinburgh, 2007)

Laie Hawaii Vatuvei "Using the 'Kakala Research Framework' to research the ways in which gambling and problem gambling have been studied among Pacific families and communities in Auckland, New Zealand" (Masters of Arts Dissertation, Auckland University of Technology, 2017).

Ofa Guttenbeil-Likiliki "A Failed Democracy: Tonga's Watershed Legal Democratic Electoral Reforms Left Her Women Behind" (Masters of Law Thesis, University of the South Pacific, March 2020)

PAPERS

Guy Powles and Alisi Taumoepeau *Constitutional Change in Tonga* (Australasian Law Reform Agencies Conference, Vanuatu, 2008)

Guy Powles *Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy* (Faculty of Law, Monash University, Research Paper No 2011/27, 2012)

Guy Powles *The Tongan Monarchy and the Constitution: Political Reform in a Traditional Context* (ANU Dept of Pacific Affairs, 2014)

Guy Powles *Why So Complicated? The Role And Status Of The Attorney- General In Pacific Island States, And The Case Of Tonga* (Pacific Law Students Law and Culture Conference, Wellington 2016)

Ikanamoe Ma'u *My experience as a female Tongan kava drinker*. Paper presented at the *Kava: A workshop for kava researchers and enthusiasts* (Anthropology and Pacific Studies Seminar Series, The University of Waikato, April 21 2017)

International Institute for Democracy and Electoral Assistance *Tonga in a new political order – Analysing the 2014 general election results* (August 2015)

Kerryn Baker *Improving Women's Electoral Chances through an Evidence-Based Approach: Temporary Special Measures and Institutional Approaches* (State, Society & Governance in Melanesia, The Australian National University, 2016)

Kerryn Baker *Women's political representation in the Pacific Islands Region* (Human Rights Issues Confronting Women and Girls in the Indian Ocean-Asia Pacific Region Submission 93)

Marilyn Waring *Women in politics and aid effectiveness: an aid to evaluation of MDG3* (AusAID Office of Development Effectiveness, November 2011)

Nicole Haley and Kerry Zubrinich *Women's political and administrative leadership in the Pacific* (State, Society and Governance in Melanesia, Australia National University, 2016)

Richard Herr *Cultural Adaptation and the Westminster Model: Some Examples from Fiji and Samoa* (Australasian Study of Parliament Group, Annual Conference, 2 October 2014)

Temporary Special Measures to Increase Women's Political Participation in the Pacific: Case Studies of Implementation in the Region (2015 Pacific Conference on Temporary Special Measures to Increase Women's Political Participation, Port Moresby 23-24 November 2015)

Thematic Brief | Leadership And Decision Making For Women And Girls In The Pacific (Australian Aid & Pacific Women Shaping Pacific Development)

PRESS RELEASE

Minister Of Internal Affairs Response to National Forum of Church Leaders Statement of Opposition To CEDAW (14 May 2015, Press Release)

Press Statement from the Speaker of the Legislative Assembly of Tonga (Monday 28th August 2017).

Tonga National Forum of Church Leaders “Ko e vakai ‘a e Fakataha’anga Fakafonua ‘a e kau Taki Lotu ‘o Tonga fekau’aki mo e Konivesio Ke Ta’ofi ‘a Hono Fakafaikehekehe’i ‘o Ha’a Fafine (Convention of the Elimination of All Forms of Discrimination Against Women – CEDAW)” (Press Release, 4 May 2015)

ONLINE RESOURCES

“About us” The Commonwealth <<https://thecommonwealth.org/about-us>>.

Aileen Thomson “Tongan Parliament Rejects CEDAW Ratification, Women’s Groups React” (October 21 2009) Human Rights Brief Blog <<https://hrbriefblog.wordpress.com/international-legal-updates/sao/c2/t>>

Australian Government Department of Foreign Affairs and Trade “PACER PLUS Pacific Agreement on Closer Economic Relations Plus” <<https://www.dfat.gov.au/trade/agreements/in-force/pacer/news/pacer-news>>

Bruce Hill “King of Tonga annuls CEDAW” ABC Radio Australia (30 June 2015) <<http://www.abc.net.au/news/2015-06-30/king-of-tonga-annuls-cedaw/6584744>>

Bruce Hill “King of Tonga annuls CEDAW” ABC Radio Australia (30 June 2015) <<http://www.abc.net.au/news/2015-06-30/king-of-tonga-annuls-cedaw/6584744>>

Cathy A Small and David L Dixon “Tonga: Migration and the Homeland” (4 April 2004) Migration Policy Institute <<https://www.migrationpolicy.org/article/tonga-migration-and-homeland>>

Cleo Paskal “Are There Chinese Hitmen in the Kingdom of Tonga? Remarks from Tonga’s prime minister make public an open secret about crime in the Chinese community.” (April 17, 2017) The Diplomat <<https://thediplomat.com/2017/04/are-there-chinese-hitmen-in-the-kingdom-of-tonga/>>

“Committee on the Elimination of Discrimination Against Women: Membership” United Nations Office of the High Commissioner for Human Rights <<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx>>

Commonwealth Governance for Development “Pacific” <<https://www.commonwealthgovernance.org/countries/Pacific/>>

“Convention on the Elimination of All Forms of Discrimination Against Women” United Nations Office of the High Commissioner for Human Rights <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>>

Council of Regional Organisations of the Pacific (CROP) <<https://www.forumsec.org/council-of-regional-organisations-of-the-pacific/>>

“Democratic Party meeting uproar as Pohiva’s son-in-law asks government to withdraw CEDAW ratification” (15 June 2015) Kaniva Tonga

<<https://www.kanivatonga.nz/2015/06/democratic-party-meeting-uproar-as-pohivas-son-in-law-asks-government-to-withdraw-cedaw-ratification/>>

“Drinking Kava Becoming Popular with Tongan Women” (10 May 2017) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/330400/drinking-kava-becoming-popular-with-tongan-women>>

“Fact Sheet on Current MDG Progress of Tonga (Asia Pacific)” (9 June 2016) MDG Monitor Tracking The Millennium Development Goals <<https://www.mdgmonitor.org/mdg-progress-tonga-asia-pacific/>>

“Fact Sheet: Pacific Climate Change”(August 2008) Secretariat of the Pacific Regional Environment Programme <<https://www.sprep.org/attachments/Publications/FactSheet/pacificclimate.pdf>>

“Facts and Figures: Women’s Leadership and Political Participation” (15 January 2021) UN WOMEN <<https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>>

“Facts and Figures: Women’s Leadership and Political Participation” UN WOMEN <<https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>>

“Fiji ratifies UN nuclear weapon ban treaty” (7 July 2020) ICAN <https://www.icanw.org/fiji_ratifies_un_nuclear_weapon_ban_treaty>

“First Ever Pacific MPs Declaration on Human Rights for Good Governance” (29 January 2015) Pacific Community <<https://www.spc.int/updates/news/2015/01/first-ever-pacific-mps-declaration-human-rights-good-governance.>>

Galumalemana Noumea L. Teueli Parliamentarians For Global Action Regional Pacific Island States Parliamentary Workshop On Mobilizing Parliamentarians To Advocate For Improved Compliance With The Un Programme Of Action Addressing The Illicit Trade In Small Arms And Light Weapons <https://www.pgaction.org/pdf/2018-04-27-SALW-Workshop/samoa_attorney-general-remarks.pdf>

Hannah Jones “Tongan public servants strike for higher wages, 2005”(11 April 2010) Global Nonviolent Action Database <<https://nvdatabase.swarthmore.edu/content/tongan-public-servants-strike-higher-wages-2005>>

Hawaii Public Record “Pacific News Minute: First Commoner Elected PM of Tonga Survives Vote of No Confidence (March 7 2017) <<http://www.hawaiipublicradio.org/post/Pacific-news-minute-first-commoner-elected-pm-tonga-survives-no-confidence-vote>>

“History of the United Nations” United Nations <<https://www.un.org/en/about-us/history-of-the-unl>>

“History” Pacific Community < <https://www.spc.int/about-us/history>>.

“HRH Princess Latufuipeka Officially Opened the Tonga Women’s Parliament 2021” (15 November 2021) Parliament of Tonga <<https://parliament.gov.to/media-centre/latest-news/latest-news-in-english/872-hrh-princess-latufuipeka-officially-opened-the-tonga-women-s-parliament-2021>>

“HRH Princess Latufuipeka Officially Opened the Tonga Women’s Parliament 2021” (15 November 2021) Parliament of Tonga <<https://parliament.gov.to/media-centre/latest-news/latest-news-in-english/872-hrh-princess-latufuipeka-officially-opened-the-tonga-women-s-parliament-2021>>

<http://archive.ipu.org/parline-e/Modlist.asp>

“In Tonga, a Government Bent on Reform May Have Pushed Too Hard” (30 August 2017) Radio New Zealand <<https://www.rnz.co.nz/international/programmes/datelinePacific/audio/201856571/in-tonga-a-government-bent-on-reform-may-have-pushed-too-hard>>

Inter-Parliamentary Union “Tonga Fale Alea (Legislative Assembly Elections in 2010” (accessed 6 December 2021) <http://archive.ipu.org/parline-e/reports/arc/2317_10.htm>

Inter-Parliamentary Union “Tonga Fale Alea (Legislative Assembly) Elections in 2014 <http://archive.ipu.org/parline-e/reports/arc/2317_14.htm>

Inter-Parliamentary Union:Tonga Fale Alea (Legislative Assembly) 2017 Elections <http://archive.ipu.org/parline-e/reports/2317_e.htm>

“Ka ma’u faingamalie ‘a ‘Akanete ke lava ki Fale Alea, te ne teke ke memipa kakato ‘a Tonga he CEDAW” (If ‘Akanete is successfully elected into parliament she would push for CEDAW ratification) October 26, 2021 Interview of Female Candidate Akanete Ta’ai < <https://www.youtube.com/watch?v=K5IS1g5Pq6o>>

Kerryn Baker “Samoan Model Adapts Gender Quotas to Pacific Politics” (East Asia Forum, 14 August 2019) <<https://www.eastasiaforum.org/2019/08/14/the-samoan-model-adapts-gender-quotas-to-Pacific-politics/>>

Kerryn Baker “Reserved Seats in Vanuatu: Gender Equality and “foreign interference””(DEVPOLICYBLOG, November 11 2019) < <https://devpolicy.org/reserved-seats-in-vanuatu-gender-equality-and-foreign-interference-20191112/>>

“Law for women’s protection passes with unanimous support in Tonga” (September 19, 2013) UN WOMEN <<https://asiaPacific.unwomen.org/en/news-and-events/stories/2013/9/law-for-womens-protection-passes-with-unanimous-support-in-tonga>>

Law for women’s protection passes with unanimous support in Tonga” (September 19, 2013) UN WOMEN <<https://asiaPacific.unwomen.org/en/news-and>

events/stories/2013/9/law-for-womens-protection-passes-with-unanimous-support-in-tonga>

Lord Tu'ivakano becomes new Tongan prime minister” (21 December 2010) BBC News < <https://www.bbc.com/news/world-asia-pacific-12046936>>

“Member Countries” The Commonwealth <<https://thecommonwealth.org/regions/pan-commonwealth>>.

Michael Kabuni and Danny Eric Agon “Reserved Seats in PNG: Lessons Learnt” (DEVPOLICYBLOG, May 25, 2021) < <https://devpolicy.org/reserved-seats-in-png-lessons-learnt-20210525-2/>>

“Motion of No Confidence Against Tonga Prime Minister Tabled in Parliament” (20 February 2017) Pacific Islands Report < <http://www.pireport.org/articles/2017/02/20/motion-no-confidence-against-tonga-prime-minister-tabled-parliament>>

“Motion of No Confidence Against Tonga Prime Minister Tabled in Parliament” (20 February 2017) Pacific Islands Report < <http://www.pireport.org/articles/2017/02/20/motion-no-confidence-against-tonga-prime-minister-tabled-parliament>>

“Nauru” Pacific Community: Statistics for Development Division <<https://sdd.spc.int/nr>>.

“New Cabinet Minister and Governor Appointed in Tonga” (June 26 2018) LOOP < <https://www.looptonga.com/tonga-news/new-Cabinet-minister-and-governor-appointed-tonga-77713>>

“Noble’s Agreed – None Of Them Will Be Elected Prime Minister Or Minister If ‘Akilisi Pohiva Loses In The Vote Of No Confidence” (27 February 2017) Tonga Broadcasting Commission <<http://www.tonga-broadcasting.net/?p=6018>>

“Noble’s Agreed – None Of Them Will Be Elected Prime Minister Or Minister If ‘Akilisi Pohiva Loses In The Vote Of No Confidence” (27 February 2017) Tonga Broadcasting Commission <<http://www.tonga-broadcasting.net/?p=6018>>

“Nuclear-free New Zealand-Nuclear testing in the Pacific”(2 October 2014) New Zealand History <<https://nzhistory.govt.nz/politics/nuclear-free-new-zealand/testing-in-the-pacific>>

“Our History” The Commonwealth < <https://thecommonwealth.org/about-us/history>>

“Our Work” Pacific Community < <https://www.spc.int/about-us/our-work>>.

“Pac Games Council, Tells Tonga to Honour Contract” (1 June 2016) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/305323/pac-games-council-tells-tonga-to-honour-contract>>

“PACER PLUS Pacific Agreement on Closer Economic Relations Plus” Australian Government Department of Foreign Affairs and Trade <<https://www.dfat.gov.au/trade/agreements/in-force/pacer/news/pacer-news>>.

“Pacific News Minute: First Commoner Elected PM of Tonga Survives Vote of No Confidence (March 7 2017) Hawaii Public Record <<http://www.hawaiipublicradio.org/post/Pacific-news-minute-first-commoner-elected-pm-tonga-survives-no-confidence-vote>>

“Pacific” (2022) Commonwealth Governance for Development <<https://www.commonwealthgovernance.org/countries/Pacific/>>

“Papua New Guinea” Pacific Community: Statistics for Development Division <<https://sdd.spc.int/pg>>.

“Parliament Brief: What is Parliament” New Zealand Parliament <<https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/pbrief7/>>

“Parliament Brief: What is Parliament”(January 2016) New Zealand Parliament <<https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/pbrief7/>>

Parliament of Tonga “Parliament Receives Motion for a Vote of No Confidence” (22 February 2017) <http://www.parliament.gov.to/media-centre/latest-news/latest-news-in-english/556-parliament-receives-motion-for-a-vote-of-no-confidence?switch_to_desktop_ui=1>

“Parliament Receives a Motion for a Vote of No Confidence” (22 February 2017) Parliament of Tonga <<http://www.parliament.gov.to/media-centre/latest-news/latest-news-in-english/556-parliament-receives-motion-for-a-vote-of-no-confidence>>

Peaua Heimuli “Examining the Potential of Open Schooling to Support Second-chance Education in Tonga” USP Electronic Research Repository (2020) <<https://repository.usp.ac.fj/12291/>>

“Population Projections” Pacific Data Hub < <https://pacificdata.org> >

Ranjana Kumari “Patriarchal Politics: The Struggle for Genuine Democracy in Contemporary India” (The Green Political Foundation, 26 February 2014) <<https://www.boell.de/en/2014/02/26/patriarchal-politics-struggle-genuine-democracy-contemporary-india>>

Regional Rights Resource Team “UPR and Treaty Commitments” Pacific Community <<https://rrrt.spc.int/human-rights-and-good-governance>>

“Samoa government appoints former central bank governor as new NZ High Commissioner” (24 January 2012) RNZ <<https://www.rnz.co.nz/international/pacific-news/202110/samoa-government-appoints-former-central-bank-governor-as-new-nz-high-commissioner>>

Sereana Naepi “Pacific Research Methodologies” ResearchGate (January 2019)
<https://www.researchgate.net/publication/339032278_Pacific_Research_Methodologies>

Seu’Ula Johansson Fua “Kakala Research Framework: A Garland in Celebration of a Decade of Rethinking Education” ResearchGate (January 2014)
<https://www.researchgate.net/publication/312532893_Kakala_Research_Framework_A_Garland_in_Celebration_of_a_Decade_of_Rethinking_Education>

“SPC Members” Pacific Community <<https://www.spc.int/our-members/>>

“State of emergency after Tongan riots” (17 November 2006) The Guardian
<<https://www.theguardian.com/world/2006/nov/17/1>>

“Statistics October 2020” Pacific Women in Politics
<<https://www.pacwip.org/women-mps/national-women-mps/>>

“Statistics October 2020” Pacific Women in Politics
<<https://www.pacwip.org/women-mps/national-women-mps/>>

“Status of Ratification Interactive Dashboard: Ratification of 18 International Human Rights Treaties” United Nations Office of the High Commissioner for Human Rights <<https://indicators.ohchr.org/>>

Steven Ratuva “Triumph of living Tongan martyr likely to ignite fresh Tongan reform Hopes” (14 January 2015) Pacific Media Centre Te Amokura
<<http://pacific.scoop.co.nz/tag/akilisi-pohiva/>>

“Tension in Tonga as Women’s Rights Divides Kingdom” (May 28, 2015) One News
<<https://www.tvnz.co.nz/one-news/world/tension-in-tonga-as-women-s-rights-divides-kingdom-6324629>>

“The 17 Goals” United Nations Department of Economic and Social Affairs Sustainable Development <<https://sdgs.un.org/goals>>

“The 2050 Strategy for the Blue Pacific Continent” Pacific Islands Forum
<<https://www.forumsec.org/2050strategy/>>.

“The Pacific Islands Forum” Pacific Islands Forum
<<https://www.forumsec.org/who-we-are-pacific-islands-forum/>>

“Tonga Claims Right to Make 2019 Games Decision” (30 May 2016) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/305182/tonga-claims-right-to-make-2019-games-decisions>>

“Tonga Climate Change Trust Fund-Tonga” United Nations Climate Change <<https://unfccc.int/climate-action/momentum-for-change/activity-database/tonga-climate-change-trust-fund>>

“Tonga Democratic MP pushes against CEDAW” (16 June 2015) Radio New Zealand
<<https://www.rnz.co.nz/international/Pacific-news/276444/tonga-democratic-mp-pushes-against-cedaw>>

“Tonga Fale Alea (Legislative Assembly) 2017 Elections” (January 2018) Inter-Parliamentary Union <http://archive.ipu.org/parline-e/reports/2317_e.htm>

“Tonga Fale Alea (Legislative Assembly) Elections in 2010” (2011) Inter-Parliamentary Union http://archive.ipu.org/parline-e/reports/arc/2317_10.htm

“Tonga Fale Alea (Legislative Assembly) Elections in 2014” Inter-Parliamentary Union http://archive.ipu.org/parline-e/reports/arc/2317_14.htm

“Tonga Lauded For Ratifying UN Women’s Discrimination Convention” (3 November 2015) Pacific Islands Report <<http://www.pireport.org/articles/2015/03/11/tonga-lauded-ratifying-un-women’s-discrimination-convention>>

“Tonga Lauded For Ratifying UN Women’s Discrimination Convention” (3 November 2015) Pacific Islands Report <<http://www.pireport.org/articles/2015/03/11/tonga-lauded-ratifying-un-women’s-discrimination-convention>>

“Tonga MPs choose Tu’i’onetoa as new prime minister”(27 September 2019) RNZ < <https://www.rnz.co.nz/international/pacific-news/399761/tonga-mps-choose-tu-i-onetoa-as-new-prime-minister>>

“Tonga Processes Withdrawal From Pacific Games Hosting” (15 May 2017) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/330779/tonga-processes-withdrawal-from-Pacific-games-hosting>>

“Tonga Processes Withdrawal From Pacific Games Hosting” (15 May 2017) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/330779/tonga-processes-withdrawal-from-Pacific-games-hosting>>

“Tonga Ready to Ratify PACER Plus” (23 December 2019) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/406088/tonga-ready-to-ratify-pacer-plus>>

“TONGA: Church leaders take petition opposing CEDAW to palace”(May 25, 2015) Pacific Media Centre Te Amokura <<https://pmc.aut.ac.nz/pacific-media-watch/tonga-church-leaders-take-petition-opposing-cedaw-palace-9283>>

“Tonga’s Catholic Women’s League protest against CEDAW” (May 22, 2015) CathNews New Zealand <<https://cathnews.co.nz/2015/05/22/tongas-catholic-womens-league-protest-against-cedaw/>>

“Tonga’s Chief Justice Re-instates Sevele” (19 September 2016) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/313713/tonga-s-chief-justice-re-instates-sevele>>

“Tonga’s Prime Minister blames ousting on a ‘failed coup’ (27 August 2017) Newshub <<https://www.newshub.co.nz/home/world/2017/08/tonga-s-prime-minister-blames-ousting-on-a-failed-coup.html>>

“Tonga” Pacific Community: Statistics for Development Division
<<https://sdd.spc.int/to>>.

“Tonga” United Nations Office of the High Commissioner for Human Rights
<https://lib.ohchr.org/HRBodies/UPR/Documents/Session29/TO/TONGA_Infographic_29th.pdf>

“Tonga-Economic Indicators” Moody’s Analytics
<<https://www.economy.com/tonga/indicators>>

“Tongan Govt Says it Sacked Vakata” (15 September 2016) LOOP
<<https://www.looptonga.com/content/tongan-govt-says-it-sacked-vakata>>

“Tongan Govt Says it Sacked Vakata” (15 September 2016) LOOP
<<https://www.looptonga.com/content/tongan-govt-says-it-sacked-vakata>>

“Tongan Minister Still Wants CEDAW Ratified” (2 September 2015) Radio New Zealand
<<https://www.rnz.co.nz/international/Pacific-news/283104/tongan-minister-still-wants-CEDAW-ratified>>

“Tongan Minister Still Wants CEDAW Ratified” (2 September 2015) Radio New Zealand
<<https://www.rnz.co.nz/international/Pacific-news/283104/tongan-minister-still-wants-CEDAW-ratified>>

“Tongan MPs Called to Explain Controversial Constitutional Move”(28 October 2020) The Fiji Times
<<https://www.fijitimes.com/tongan-mps-called-on-to-explain-controversial-constitutional-move/>>

“Tongan MPs Called to Explain Controversial Constitutional Move”(28 October 2020) The Fiji Times
<<https://www.fijitimes.com/tongan-mps-called-on-to-explain-controversial-constitutional-move/>>

“Tongan PM Says Misbehaving Minister Forced His Hand” (16 September 2016) Radio New Zealand
<<https://www.rnz.co.nz/international/programmes/datelinePacific/audio/201816341/tongan-pm-says-misbehaving-minister-forced-his-hand>>

“Tongan PM Says Misbehaving Minister Forced His Hand” (16 September 2016) Radio New Zealand
<<https://www.rnz.co.nz/international/programmes/datelinePacific/audio/201816341/tongan-pm-says-misbehaving-minister-forced-his-hand>>

“Tongan Youth-Led Solutions to Reduce Violence Against Women and Girls” (July 2 2019) UN WOMEN
<<https://asiaPacific.unwomen.org/en/news-and-events/stories/2019/07/tongan-youth-led-solutions-to-reduce-violence-against-women-and-girls>>

“Tongan Youth-Led Solutions to Reduce Violence Against Women and Girls” (July 2 2019) UN WOMEN
<<https://asiaPacific.unwomen.org/en/news-and-events/stories/2019/07/tongan-youth-led-solutions-to-reduce-violence-against-women-and-girls>>

“Tongans March Against Women’s Equality” (May 26, 2015) Cook Island News <www.cookislandsnews.com/item/51956-tongans-march-against-women-s-equality/51956-tongans-march-against-women-s-equality>

“Tongans seek royal intervention to stop CEDAW” Radio New Zealand (22 May 2015) <<http://www.radionz.co.nz/international/pacific-news/274357/tongans-seek-royal-intervention-to-stop-cedaw>>

“Tonga's only female MP sees role as advocate for women's issues” RNZ (6 May 2005) <<https://www.rnz.co.nz/international/Pacific-news/154923/tonga-s-only-female-mp-sees-role-as-advocate-for-women-s-issues>>

“Tonga's only female MP sees role as advocate for women's issues” (6 May 2005) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/154923/tonga-s-only-female-mp-sees-role-as-advocate-for-women-s-issues>>

“Tonga's PM Pohiva Tu'i'onetoa survives motion of no confidence” (13 January 2021) PMN News <<https://pacificmedianetwork.com/articles/tongas-pm-pohiva-tuionetoa-survives-motion-of-no-confidence>>

“Two former Fiji diplomats appointed for diplomatic postings”(13 March 2008) RNZ <<https://www.rnz.co.nz/international/pacific-news/175960/two-former-fiji-diplomats-appointed-for-diplomatic-postings>>

“UN Women” <<https://www.un.org/womenwatch/daw/cedaw/>>.

“Universal Periodic Review” United Nations Human Rights Council <<https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>>

“Universal Periodic Review-Tonga” United Nations Human Rights Council <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/toindex.aspx>>

“Women in Tonga Push for Political Representation” (24 February 2009) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/182187/women-in-tonga-push-for-political-representation>>

“Women in Tonga Push for Political Representation” (24 February 2009) Radio New Zealand <<https://www.rnz.co.nz/international/Pacific-news/182187/women-in-tonga-push-for-political-representation>>

“Women’s Representation in Pacific Island Parliaments” (9 October 2014) New Zealand Parliament <<https://www.parliament.nz/en/pb/researchpapers/document/00PlibC51151/women-s-representation-in-Pacific-island-parliaments>>

“Women’s Representation in Pacific Island Parliaments” (9 October 2014) New Zealand Parliament <<https://www.parliament.nz/en/pb/researchpapers/document/00PlibC51151/women-s-representation-in-Pacific-island-parliaments>>

World Bank “World Development Report 2012: Gender Equality and Development” <<https://openknowledge.worldbank.org/handle/10986/4391> at 177-178>

“World Development Report 2012: Gender Equality and Development” World Bank <<https://openknowledge.worldbank.org/handle/10986/4391> at 177-178>

NEWSPAPERS

BBC News “Lord Tu’ivakano becomes new Tongan prime minister” (21 December 2010) <<https://www.bbc.com/news/world-asia-pacific-12046936>>

Matangi Tonga Online “14 kilos of cocaine seized in Vava’u operation” (August 11 2021) <<https://matangitonga.to/2021/08/11/14-kilos-cocaine-seized-vava-u-operation>>

Matangi Tonga Online “30 Women to Enter Practise Parliament” (April 2 2014) <<https://matangitonga.to/2014/04/02/30-women-enter-practice-parliament>>

Matangi Tonga Online “Catholic Women’s League marches against CEDAW” (May 19 2015) <<https://matangitonga.to/2015/05/19/catholic-womens-league-marches-against-cedaw>>

Matangi Tonga Online “Charities remember Queen Mother’s Legacy: We Will Deeply Miss Her” (February 20 2017) <<https://matangitonga.to/2017/02/20/charities-remember-queen-mothers-legacy-we-will-deeply-miss-her>>

Matangi Tonga Online “Concerns Over Tonga’s Ratification of CEDAW” (March 20 2015) <<https://matangitonga.to/2015/03/16/concerns-over-tongas-ratification-cedaw>>

Matangi Tonga Online “Full Results for Tonga’s 2014 General Election” (November 28, 2014) <<https://matangitonga.to/2014/11/28/full-results-tongas-2014-general-election>>

Matangi Tonga Online “King appoints new Attorney General” (March 27 2019) <<https://matangitonga.to/2019/03/27/king-appoints-new-attorney-general>>

Matangi Tonga Online “King appoints three new Law Lords” (June 30 2017) <<https://matangitonga.to/2017/06/30/king-appoints-three-new-law-lords>>

Matangi Tonga Online “Lord Sevele Says Tonga Can Afford to Host 2019 Pacific Games” (May 21 2017) <<https://matangitonga.to/2017/05/21/lord-sevele-says-tonga-can-afford-host-2019-Pacific-games>>

Matangi Tonga Online “Losaline Ma’asi up for Minister of Internal Affairs” (May 8 2018) <<https://matangitonga.to/2018/05/08/losaline-maasi-minister-internal-affairs>>

Matangi Tonga Online “Notice of a Motion for a Vote of No Confidence in PM Pohiva” (February 3 2017) <<https://matangitonga.to/2017/02/03/notice-motion-vote-no-confidence-pm-pohiva>>

Matangi Tonga Online “PM turns down Mateni Tapueluelu’s resignation over control of Police” (February 28 2018) <<https://matangitonga.to/2018/03/01/pm-turns-down-mateni-tapueluelu-s-resignation-over-control-police>>

Matangi Tonga Online “Prime Minister Wants More Constitutional Power” (April 8 2018) <<https://matangitonga.to/2018/04/08/prime-minister-wants-more-constitutional-power>>

Matangi Tonga Online “Tonga 2017 General Election Results” (20 November 2017) <https://matangitonga.to/2017/11/17/tonga-2017-general-election-results>

Matangi Tonga Online “Tonga elects All Male Parliament with Nine New People’s Reps” (19 November 2021) <<https://matangitonga.to/2021/11/19/tonga-PR-results-elect-all-male-parliament>>

Matangi Tonga Online “Tonga’s Decision Welcomed at the UN” (March 10, 2015) <<https://matangitonga.to/2015/03/10/tongas-decision-welcomed-un>>

Matangi Tonga Online “Tonga’s Decision Welcomed at the UN” (March 10, 2015) <<https://matangitonga.to/2015/03/10/tongas-decision-welcomed-un>>

Matangi Tonga Online “Tu’ivakano becomes Prime Minister Designate” (January 21, 2012) <<https://matangitonga.to/2012/01/21/tuivakano-becomes-prime-minister-designate>>

New Zealand Herald “Landslide Victory for Democrats in Tongan Election” (16 November 2017) <<https://www.nzherald.co.nz/world/landslide-victory-for-democrats-in-tongan-election/MURENLDGMCAK2AHGKY2ZID5YJ4/>>

“Tongan Parliament decides not to ratify CEDAW” *Matangi Tonga Online* (18 September 2009).

APPENDICES

Appendix A: Tonga's Legislative Compliance With CEDAW

Article 1: Definition Of Discrimination Against Women & Article 2: Obligations To

Eliminate Discrimination

Tonga's Legislative Compliance to CEDAW (Template Source Vedna Jivan and Christine Forster Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries (UNDP Pacific Centre; UNIFEM Pacific Regional Office, Suva, 2007)

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
<p>1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally, including in the political, economic, social, cultural, civil or any other field?</p>	<p>Non-Compliant</p>	<p>Part I of the Constitution of Tonga is titled the Declaration of Rights and sets out the right to personal liberty (s 1), freedom from forced labour (s 2), declares one law for all classes (s 4), freedom of worship (s 5), freedom of speech and freedom of the press (s 7), freedom to petition king or parliament (s 8), right to a fair trial (s 14 & 15), rights under criminal law (ss 9-16), right to duty government govern for the benefit of all (s 17), right to be compensated for property taken by the government (s 18), right to have government expenditure voted for by Legislative Assembly (s 19) and the right to become</p>	<p>The scope of rights set out in the Tongan constitution is relatively limited. The Bill of Rights in the Constitution of the Republic of Fiji includes a right to free association (s 19), right to assemble (s 18), freedom of movement and residence (s 21), political rights (s 23), right to privacy (cl 24), right to access information (s 25), right to education (s 31), right to economic participation (s 32), a minimum wage and employment rights (ss 20 & 33), right to transportation (s 34), housing and sanitation (s 35), to adequate food and water (s 36), social security schemes (s 37), right to health (s 38) and a provision</p>

		<p>a naturalised subject (s 29).</p> <p>Part III of the Constitution deals with Land. Section 113 grants men over the age of 16, a right to land (tax & town allotments). The constitution does not grant such a right to women. Section 111 sets out the rules to succession for hereditary estates and titles which is through male heirs; a female cannot inherit but may pass on land and title to her male heir, if there are no males in line to inherit.</p>	<p>for a human rights and anti-discrimination provision.</p> <p>The Constitution of the Independent State of Samoa also prescribes a right to assemble, associate, to movement and residence (s 13).</p>
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Non-Compliant	There is no constitutional guarantee of either formal or substantive equality between men and women in Tonga.	
1.3 Does the Constitution contain an anti-discrimination clause on the grounds of sex/gender?	Non-Compliant	<p>The Constitution of Tonga explicitly discriminates against women in its land, title & estates provisions. The Tongan Constitution does not contain an anti-discrimination clause.</p>	<p>Section 15 of the Constitution of the Independent State of Samoa and s 26 of the Constitution of the Republic of Fiji contain an equality and freedom from discrimination clause which prohibits discrimination based on sex (among other things) under the law or through administrative action. Tonga's constitution lacks</p>

			such an anti-discrimination clause.
1.4 Does the Constitution contain an anti-discrimination clause on the grounds of marital status?	Non-Compliant		Section 15 (2) of the Constitution of the Independent State of Samoa prohibits discrimination based on family status. Section 23 (3) of the Constitution of the Republic of Fiji prohibits discrimination based on marital status.
1.5 Does the Constitution contain an anti-discrimination clause on the grounds of sexual orientation?	Non-Compliant		Section 26 (3) of the Constitution of the Republic of Fiji prohibits discrimination based on sexual orientation.
1.6 Does the Constitution contain an anti-discrimination clause on the grounds of HIV status?	Non-Compliant		Section 26 (3) of the Constitution of the Republic of Fiji prohibits discrimination based on health status.
1.7 Does the Constitution contain an anti-discrimination clause on the grounds of disability?	Non-Compliant		Section 26 (3) of the Constitution of the Republic of Fiji prohibits discrimination based on disability.
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	Non-Compliant		Section 15 (2) of the Constitution of the Independent State of Samoa prohibits discrimination by law and executive or administrative action expressly, or in its practical application. Section 26 (3) of the Constitution of the Republic of Fiji prohibits discrimination that is

			either direct or indirect.
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1.9 Does the anti-discrimination clause bind public authorities and institutions?	Non-Compliant		Section 15(2) of the Constitution of the Independent State of Samoa binds all executive or administrative actions of the state. Section 6 (1) of the Constitution of the Republic of Fiji binds the legislative, executive and judicial branches of government at all levels, and every person performing the functions of any public office.
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1.10 Does the anti-discrimination clause bind any person, organisation Or enterprise?	Non-Compliant		Section 26 (5) of the Constitution of the Republic of Fiji prohibits discrimination in denying of access, membership or admission to shops, hotels, lodging-houses, public restaurants, places of public entertainment, clubs, education institutions, public transportation services, taxis and public places.
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1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Non-Compliant		Section 4 of the Constitution of the Independent State of Samoa confers on the Supreme Court the power to enforce a person's rights and secure a
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			person's enjoyment of their rights. Section 44 of the Constitution of the Republic of Fiji confers on the High Court the right to make orders and directions as it considers appropriate.
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	Non-Compliant	There is a Family Protection Act.	
1.13 Is stalking a criminal offence?	Non-Compliant		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Partial Compliance	Sections 12, 23, 24 and 15 of the Family Protection Act provides protection orders for victims of domestic violence. Domestic violence is defined in s 4 as including physical and sexual abuse within a domestic relationship. Section 5 includes relationships wherein the couple are not married in the definition of domestic relationship. The Criminal Offences Act does not make provisions for restraining orders in situations of sexual or physical violence set out in the Criminal Offences Act.	

<p>1.15 Is there mandatory prosecution for domestic violence offences?</p>	<p>Non-Compliant</p>	<p>Section 26 of the Family Protection Act stipulates that there must be sufficient evidence and either the complainant or the Attorney-General must support prosecution of the offence.</p>	<p>Interestingly, under the Family Protection Act, the punishment for first time domestic violence offenders as per s 28 (2)(a) is 12 months or a fine not exceeding \$2,000, or both. Sections 28 (6) sets the fine for making a misleading or false application for a protection order at \$4000, thus exceeding the punishment for first-time domestic violence offenders. Detering false claims appears to be of greater importance than deterring domestic violence.</p>
<p>1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?</p>	<p>Compliant</p>	<p>The Criminal Offences Act: Section 118 – Rape: imprisonment not exceeding 15 years. Section 120- Attempted rape: imprisonment not exceeding 10 years. Section 121- Carnal knowledge of child or young person: Carnal knowledge of a child under 12 years of age is punishable by up to a life sentence. Carnal knowledge of</p>	<p>The corroboration rule applies to the sexual offences set out in s 126 and s 127. There should be no lighter penalties for sexual offences committed against girls who are under 15 years as compared to penalties for sexual offences committed against girls who are under 12 years.</p>

		<p>a child under 15 years of age is up to five years imprisonment.</p> <p>Section 122 - Attempt to have carnal knowledge of a child or young person under 12 is 10 years maximum imprisonment. Under 15 years is three years maximum imprisonment.</p> <p>Section 124 - Indecent assault: serious indecent assault punishable by a term not exceeding five years imprisonment. simple indecent assault: imprisonment for a term not exceeding three years.</p> <p>Section 125 - Indecent assault on child: term of imprisonment not exceeding seven years.</p> <p>Section 126 - Procuring the defilement of females: imprisonment not exceeding five years.</p> <p>Section 127- Procuring defilement of females by threats: imprisonment for</p>	
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		<p>any term not exceeding seven years.</p> <p>Section 128 - Abduction of women; imprisonment not exceeding seven years.</p> <p>Section 129 - Abduction of girls; liable for term of imprisonment not exceeding five years.</p>	
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<p>1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?</p>	<p>Non-Compliant</p>	<p>Section 118 of the Criminal Offences Act deals with rape which is referred to as carnal knowledge and sexual intercourse; these terms are defined by case law as penile penetration of the vagina and does not include other forms of penetration of other organs such as the anus, vulva and mouth.</p>	<p>Fiji was not compliant with this indicator when the review of its legislation was carried out, Fiji has since amended its penal code and s 207 of the Crimes Act 2009 now defines the penetration of vulva, vagina, anus by a thing or part of the body that is not the penis as rape and the penetration of mouth with a penis without consent also as rape. Samoa remains non-compliant, s 480 of the Crimes Act 2013 defines rape as the penetration of female genitalia by the male penis.</p>
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<p>1.18 Is there an offence of incest for</p>	<p>Non-Compliant</p>	<p>Section 133 of the Criminal Offence Act</p>	<p>This also remains an offence in Fiji as per</p>
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girls and women? If there is no offence of incest, then there is full compliance with this indicator.		prescribes incest by a female over 18 years with her consent as an offence and punishable by imprisonment for a term not exceeding ten years.	section 223 of the Crimes Act 2009 and in Samoa as per section 55 of the Crimes Act 2013.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Non-Compliant	The terms indecency, carnal knowledge and defilement are used repeatedly throughout Tonga's Criminal Offences Act.	The criminal law in Fiji also still uses these terms, criminal law in Samoa only uses the term "indecent".
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Non-Compliant	The Criminal Offences Act does not specifically define consent.	In Samoa, s 51 of the Crimes Act 2013 and, in Fiji, s 206 of the Crimes Act 2009 define consent.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	Partial Compliance	Section 33 of the Evidence Act prohibits the use of previous sexual conduct to establish consent, however the act permits this if previous sexual conduct is with the defendant.	
1.22 Is there a legislative prohibition on requirement for corroboration?	Non-Compliant	Sections 126 and 127 of the Criminal Offences Act stipulate that corroboration is required for proof of the offences set out in the two sections.	
1.23 Is there a legislative	No-Compliant		

prohibition on a requirement to provide proof of resistance?			
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief, then there is full compliance with this indicator.	Non-Compliant	Section 123 of the Criminal Offences Act dictates that belief as to age is unavailable as a defence only if the victim is under 12 years old, belief as to age is available as a defence for carnal knowledge or attempted carnal knowledge of a child between the ages of 12-15.	
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Non-Compliant	Section 123 of the Criminal Offences Act sets out that the defence of consent is only unavailable if the victim is under 15 years old.	In Fiji, s 215 of the Crimes Act stipulates that the defence of consent is unavailable to victims under 16.
1.26 Is there an exemption from prosecution for marital rape? If there is no exemption in the legislation then there is full compliance with this indicator.	Compliant		There is no exemption for marital rape in Tonga, Fiji and Samoa.
1.27 Is there mandatory prosecution for sexual offences?	Non-Compliant		Prosecution is not mandatory for sexual offences in Tonga, Samoa or Fiji.
1.28 Is bail unavailable for sexual offences if risk to victim?	Non-Compliant	Section 4 of the Bail Act sets out instances where an arrested person must not be granted	

		bail. This does not include a risk to victims of sexual offences.	
1.29 Are there minimum sentences for sexual offences?	Non-Compliant	There are no minimum sentences for sexual offences, only maximum sentences.	Fiji and Samoa are the same.
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	Non-Compliant	The Act of the Constitution (Amendment) Bill 2020 proposes to integrate Tongan culture and customs into the court systems. This may mean that customary practices of forgiveness are utilised to minimise criminal prosecution and sentencing.	
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Partial Compliance	Section 30 of the Family Protection Act provides for compensation to victims of domestic violence; however, the Criminal Offences Act does not make such provisions for victims of sexual violence.	

1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	Partial Compliance	Section 99 of the Criminal Offences sets out that infanticide may only replace a charge of murder if the infant is under 12 months.	In Samoa, s 110 of the Crimes Act 2013 permits infanticide to replace both a charge of murder or manslaughter of an infant.
1.33 Does the definition of infanticide include environmental and social stresses?	Non-Compliant	Section 99 of the Criminal Offences Act does not include environmental and social stresses in the definition of infanticide.	

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOM

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights, including women's rights?	Non-Compliant	Tonga has no legislation establishing national human rights machinery.	Section 45 of the Constitution of the Republic of Fiji establishes a Human Rights and Anti-Discrimination Commission. Section 82 of the Constitution of the Independent State of Samoa establishes the Ombudsman who is also Samoa's National Human Rights Institution.
3.2 Is there legislation establishing a body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Non-Compliant	Tonga has a Women's Affairs Division within the Ministry of Internal Affairs, but it is not established by legislation, nor is the division mandated with reviewing and ensuring all national laws and policies are non-discriminatory.	

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	Non-Compliant		Section 15 of the Constitution of the Independent State of Samoa permits the enacting of legislative provisions for the advancement and protection of women. Section 44 sets out that women must make up a minimum of 10 percent of members of the Legislative Assembly.
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	Non-Compliant		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution that gives precedence to a constitutional guarantee of equality if there is a conflict between customary and equality law?	Non-Compliant	The Act of the Constitution (Amendment) Bill 2020 inserts customary practices into the court systems, the bill is not explicit as to whether equality laws should trump customary practices. However, observing that, at present, the constitution does not make any provisions for equality between	

		men and women; it would appear that customary practices that discriminate and are harmful towards women will be allowed by the courts.	
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ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Non-Compliant	Section 81(4) of the Criminal Offences Act criminalises soliciting.	In Fiji, s 231 of the Crimes Act 2009 criminalises solicitation. In Samoa, s 73 of the Crimes Act 2013 criminalises solicitation.

6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	Non-Compliant	Section 80 of the Criminal Offences Act criminalises managing or aiding in running a brothel (liable for imprisonment up to a year and a fine of up to \$5000), s 81(1) criminalises living off the earnings of prostitution (liable for up to two years imprisonment), s 81 (3) criminalises aiding and abetting in prostitution (liable for imprisonment up to two years and a fine of up to \$5000).	Aiding and abetting consensual acts of soliciting is a crime in both Samoa and Fiji.
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6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Compliant	Section 126 of the Criminal Offences Act criminalises the procurement of any girl or woman under 21.	
6.4 Does employment legislation, including occupational health and safety legislation, protect sex workers?	Non-Compliant	There is no employment legislation in Tonga, however, the Employment Legislation Bill 2020 does not offer any protections for sex workers.	
6.5 Is the trafficking of women prohibited?	Compliant	Sections 128 and 129 of the Criminal Offences Act criminalises the abduction of women and girls. Section 68 of the Counter-Terrorism and Transnational Organised Crime Act prohibits human trafficking.	In Fiji, s 226 and 227 of the Crimes Act 2009 criminalises the selling of women.
6.6 Is sex tourism prohibited?	Non-Compliant		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Non-Compliant	Section 64 of the Constitution of Tonga provides that all subjects of 21 years and over are entitled to vote for the people's representatives; however, as per section 60, the common people are excluded from voting for the nine	Men hold noble titles and only nobles may vote for noble representatives in parliament. This is discriminatory to women as these nine seats are held only by men and are elected by and representative of only men.

		representatives of the nobles.	This is also discriminatory based on class, as commoners make up an estimated 100,000 of the population but as per s 60 of the Constitution of Tonga, may only vote for 17 representatives in parliament, while nobles, who number under 40 of the total population have a nine-member representation in Tonga's legislative assembly.
7.2 Is there equal eligibility for political representation?	Non-Compliant	Section 60 of the Constitution of Tonga excludes commoners and women from standing for nine seats reserved for male nobles. Section 65 also prohibits any commoner (man or woman) standing as a candidate who has an outstanding amount of money ordered by the court to be paid. There is no such prohibition for noble candidates.	
7.3 Is there legislative provision for minimum quotas of women in parliament?	Non-Compliant		Section 44 of the Constitution of the Independent State of Samoa sets out that women must make up no less than 10 percent of

			the members of the legislative assembly.
7.4 Do women have an equal right to participate in NGOs?	Compliant	There is no legal barrier to women participating in NGOs.	

7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	Non-Compliant	The Co-operative Societies Act permits registration but the organisation's objective must be the promotion of economic interests.	
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ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial Compliance	Article 39 of the Constitution of Tonga prescribes that the King may appoint representatives to other nations. The representatives of Tonga to other countries are often chosen from members of the royal family and the nobility. As an illustration, Tonga's High Commissioner in Australia is Princess Mataaho Tukuaho, Tonga's High Commissioner in London is the King's niece Hon. Fanetupouvava'u Tu'ivakano.	

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Compliant	Section 2 of the Nationality Act.	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If marriage does not affect wife's nationality, then there is compliance with this indicator.	Compliant	Section 2 of the Nationality Act. Marriage does not alter the wife's nationality.	
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Compliant	Section 2 of the Nationality Act sets out either spouse (husband or wife), who is non-Tongan and married to a Tongan, is entitled to be deemed a Tongan subject.	
9.4 Do both spouses have an equal right to determine the nationality of children?	Compliant	Section 2 of the Nationality Act.	
9.5 Do women have an equal right to obtain a passport?	Compliant	Section 30 of the Passport Act sets out that any person (male or female) may be issued a Tongan National Passport. Section 4 of the Passport Regulations confers on all subjects and naturalised citizens the right to be	

		issued a Tongan national passport.	
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ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Compliant	Section 111 of the Education Act dictates that every child under 19 years of age has the right to access quality education in Tonga.	
10.2 Is there legislation that creates special measures for the advancement of women in education?	Non-Compliant		
10.3 Is there compulsory primary education for girls and boys?	Compliant	Section 98 of the Education Act prescribes every child living in Tonga between four and 19 years as of the compulsory school age.	
10.4 Is there compulsory secondary education for girls and boys?	Compliant	Section 98 of the Education Act stipulates every child living in Tonga between four and 19 years as of the compulsory school age.	
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	Non-Compliant		

10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	Non-Compliant		
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ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Non-Compliant	There is no Employment Legislation in Tonga. The Public Service Act, which applies to most public servants, does not include an anti-discrimination provision.	The Employment Relations Bill 2020 is not the first of its kind to have been drafted. There is no certainty that the bill will be enacted. Section 69 of the Employment Relations Bill 2020 prohibits discrimination on the grounds of gender, marital status and pregnancy.
11.2 Are there special measures provisions for the advancement of women in employment?	Non-Compliant	There are no provisions for special measures for the advancement of women in the Public Service Act or the Employment Relations Bill 2020.	

<p>11.3 Do women enjoy equal conditions of work, including leave, superannuation and Workers Compensation?</p>	<p>Partial Compliance</p>	<p>The Public Service Policy Manual provides for leave and maternity leave of three months for public servants. Section 6 of the Pension Act provides a pension for public servants over 50. However, these laws only apply to public servants and the majority of women are not employed by this sector.</p>	<p>Section 62 of the Employment Relations Bill 2020 contains provisions for annual leave; ss 65 & 66 provide for sick leave and casual leave. Section 67 provides for maternity leave of 30 consecutive working days.</p>
<p>11.4 Does the legislation provide sexual harassment protection from employers and co-workers?</p>	<p>Non-Compliant</p>	<p>The Public Service Act and the Public Service Policy Manual do not provide sexual harassment protection.</p>	<p>Section 71 of the Employment Relations Bill 2020 provides protection from sexual harassment.</p>
<p>11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?</p>	<p>Non-Compliant</p>		<p>The Employment Relations Bill 2020 does include the breadth of unwanted behaviours in its definition of sexual harassment.</p>
<p>11.6 Does the legislation contain an equal pay provision?</p>	<p>Non-Compliant</p>		<p>Section 26 of the Employment Relations Bill sets out that an employer must pay male and female employees equal rates of remuneration for work of equal value.</p>

11.7 Does the legislation contain pay equity provisions?	Non-Compliant		Section 70 of the Employment Relations Bill 2020 prescribes that an employer must not pay less to a person of similar qualifications or circumstances of work, due to the gender of that person.
11.8 Does the legislation provide for an equal retirement age?	Partial Compliance	Section 10 of the Pensions Act and s 25 of the Public Service Policy Manual sets out the retirement age at 60 years for public servants.	There is no retirement age in the Employment Relations Bill 2020.

11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full Compliance with this indicator.	Compliant	There are no restrictions on a woman's choice of employment.	
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11.10 Does the legislation provide for health protection during pregnancy?	Non-Compliant		Section 74 of the Employment Relations 2020 Bill dictates for a working environment that is safe and without health risk; however, there are no specific protections for pregnant women.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Non-Compliant	The Public Service Policy Manual provides for 3 months of maternity leave	Section 67 of the Employment Relations Bill 2020 provides for only 30 consecutive working

		which would amount to only 12 weeks of maternity leave and this only applies to public servants.	days of maternity leave.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Non-Compliant		Section 68 of the Employment Relations Bill 2020 prohibits termination based on pregnancy, childbirth or nursing of a child.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	Non-Compliant		
11.14 Does the legislation provide reasonable nursing time during work hours?	Non-Compliant		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Non-Compliant	Sections 103, 104 and 105 of the Criminal Offences Act criminalise the procuring and assisting of procuring a miscarriage in a woman or girl.	In Samoa, s 109 of the Crimes Act 2013 criminalises abortion. In Fiji, s 234 of the Crimes Act 2009 criminalises abortion except in cases of rape and incest.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits	Non-Compliant		Tonga does not have a social security system.

regardless of marital status?			
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13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Partial Compliance	There are no legal barriers to women receiving bank loans, mortgages and financial credit; however, the inability of women to own land significantly reduces their chances of obtaining loans, mortgages or credit as these often require land as security.	
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Compliant	There are no legal barriers to this.	

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	Non-Compliant		Section 5 (1)(k) of the Constitution of the Republic of Vanuatu deems as non-discriminatory any laws that provide special benefits, welfare, advancement and protection for groups that include women and those living in less developed areas.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
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15.1 Does the Constitution guarantee equality before the law?	Partial Compliance	Section 4 of the Constitution of Tonga sets out that there shall be one law for all classes; however, particular clauses of the constitution grant privileges and rights exclusively to members of the noble class and men.	
15.2 Do women have an equal capacity in civil matters? Can women sue?	Compliant	There is no legal barrier to this.	
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Compliant	There is no legal barrier to this. However, there is presently only one female magistrate and no female judge in the higher courts.	
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Partial Compliance	There is no legal barrier to women concluding contracts; however, women do not have equal rights to administer property as only men have the right to own and inherit land.	
15.5 Do women have an equal right to be executors or administrators of estates?	Compliant	There is no legal barrier to this.	
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	Non-Compliant		

15.7 Do women have an equal right to choose their residence and domicile?	Partial Compliance	There are no legal barriers to this; however, a woman's choice is very much limited in terms of residence and domicile as women cannot own or inherit land.	
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ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Non-Compliant	The Births, Deaths and Marriages Registration Act does not guarantee full and free consent to marriage.	In Fiji, s 32(2)(d)(i) of the Family Law Act (2003) declares a marriage void if consent was gained through duress.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Non-Compliant	The Births, Deaths and Marriages Registration Act does not permit this nor does the Family Protection Act.	In Fiji, s 32(2)(d) of the Family Law Act 2003 deems a marriage void if carried out under duress.
16.3 Is there an equal minimum age of 18 for marriage?	Non-Compliant	Section 6 of the Births, Deaths and Marriages Registration Act permits a person to marry with the written consent of a guardian at 15 years old.	In Fiji, s 29 of the Marriage Act 1968 criminalises the marriage of a minor under 18 years old.

16.4 Is there a legislative prohibition on child marriage?	Non-Compliant	Section 6 of the Births, Deaths and Marriages Registration Act only prohibits the marriage of anyone under 15 years of age.	
16.5 Does the legislation require registration of marriage in official registry?	Compliant	Section 15 of the Births, Deaths and Marriages Registration Act requires that marriage certificates must be kept in a register with both the Sub-Registrar and the Registrar of the Supreme Court.	
16.6 Does the legislation prohibit bigamy?	Compliant	Section 79 of the Criminal Offences Act criminalises bigamy.	
16.7 Do women have an equal right to choose a family name?	Compliant	There is no legal barrier to this.	
16.8 Is the consent of both parents equal in marriage of minors?	Non-Compliant	Section 6 of the Births, Deaths and Marriages Registration Act only requires the consent of one guardian.	
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and	Non-Compliant	Section 113 of the Constitution of Tonga confers on male subjects over the age of 16 the	Only men may be granted or inherit an unconditional life interest in land allotments.

<p>disposition of property?</p>		<p>right to a land grant (a tax and town allotment).</p> <p>Section 111 of the Constitution of Tonga sets out succession to hereditary estates through the male child and his male descendants.</p> <p>Section 3 of the Land Act confers on an owner of land a life interest in the land.</p> <p>Section 43 of the Land Act Confers only on a male subject the right to be granted a tax or town allotment.</p> <p>Section 56 of the Land Act stipulates that a holder of a tax or town allotment may lease their land, a widow may not lease the land of her deceased husband.</p> <p>Section 80 of the Land Act states that a widow is entitled to a life interest in her deceased husband's land which terminates on her remarriage or proof in legal</p>	<p>A woman of the noble class has more rights as her male heir may inherit title and estates. She is also entitled to live on and use the town allotments and plantations attached to the title she would have inherited had she been male.</p> <p>Women of the commoner class can only lease land for a maximum 50 years or hold a life interest in her deceased husband's land (or father's land if there are no male heirs), but such rights terminate upon marriage, remarriage or proof of adultery or fornication of a widow or daughter.</p> <p>Male owners of allotments may mortgage land.</p> <p>Women, therefore, are not equal with their spouses in the ownership, acquisition, management, administration, enjoyment and disposition of</p>
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		<p>proceedings of her having committed fornication or adultery.</p> <p>Section 82 of the Land Act sets out that land allotments are to be inherited through the male line. If there are no male heirs then a daughter is granted a life interest in her father's land which terminates on her marriage or proof in proceedings against her in the Land court that she has committed fornication or adultery.</p> <p>Section 90 of the Land Act provides that any person who does not hold a tax allotment may apply to lease a parcel of bushland.</p> <p>Section 92 of the Land Act provides that the term of a lease in s 90 shall not exceed 50 years.</p> <p>Section 98 of the Land Act prescribes acceptable mortgages.</p>	<p>property.</p>
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<p>16.10 Does the legislation provide for a maintenance and custody order during separation based on need?</p>	<p>Non-Compliant</p>	<p>There is no legislation providing for separation; however, in instances of domestic violence, s 18 of the Family Protection Act sets out that a protection order may include provisions for custody and maintenance of children.</p> <p>Section 2 of the Maintenance of Deserted Wives Act prescribes that married women, whose husbands have deserted them, may apply to the magistrate Court to order their husbands to provide them and their children with necessities and accommodation according to the husband's means. These rights terminate upon proof of the wife having committed uncondoned adultery.</p> <p>Section 17 of the Divorce Act provides that interim orders may be made by the court for payment of maintenance to any party or</p>	
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		children of the family, once a petition for divorce has been made.	
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	Non-Compliant	There is no specific legislation enabling a wife to occupy the marital home, where settlement is not possible or in situations of domestic violence. In situations of domestic violence, s 17 of the Family Protection Act sets out that a court may stipulate in a protection order that victims be allowed temporary residency in a residence solely owned or leased by the respondent. This residence is not specific to the marital home.	
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order in the legislation then there is full compliance with this indicator.	Compliant		

<p>16.13 Does the legislation provide for no-fault divorce?</p>	<p>Non-Compliant</p>	<p>Section 63 of the Divorce Act outlines grounds for divorce which includes adultery, imprisonment, polygamy, desertion, disease, unsound mind, non-consummation and a two-year period of separation.</p>	<p>In Fiji, s 30 of the Family Law Act 2003 provides for no-fault based divorce. The only grounds for a dissolution of marriage is the breakdown of the marriage and a minimum period of 12 months' separation.</p>
<p>16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.</p>	<p>Partial Compliance</p>	<p>While the court does not have a duty to promote reconciliation, s 5 of the Divorce Act places a duty on the court to enquire as to the validity of the grounds for a petition for divorce to the extent that if the petitioner is found to have been an accessory or condoned the grounds for divorce, the divorce petition is to be denied by the courts.</p>	
<p>16.15 Does the legislation provide for An equal division of property after divorce, including recognition of unpaid contribution; future needs and future earning capacity calculated?</p>	<p>Non-Compliance</p>	<p>Legislation does not make provisions for the division of matrimonial property upon the dissolution of a marriage.</p> <p>Section 15 of the Divorce Act stipulates that each of the parties</p>	

		to the dissolved marriage shall retain their own property.	
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial Compliance	Section 19 of the Divorce Act dictates that the Court may make an order with respect to the custody, maintenance and education of children as “appears just”.	
16.17 Does the legislation provide maintenance for women based on commitments, income, earning capacity assets?	Partial Compliance	Section 18 of the Divorce Act dictates that upon granting of a divorce or any time after, a court may order the payment from either party to the other, of a lump sum or annual sum as the court thinks reasonable with regard to the fortune, ability and conduct of the parties.	
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	Non-Compliant	Section 19 of the Divorce Act sets out that child custody, and maintenance of, is based on what “appears just”.	
16.19 Does the legislation provide damages for adultery? If the legislation does not provide damages for adultery then there is full compliance with this indicator.	Non-Compliant	Section 13 of the Divorce Act sets out that a petitioner for divorce may claim damages of up to \$1000 on the	

		grounds of adultery.	
16.20 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	Non-Compliant		
16.21 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Compliant	Sections 4, 6 and 8 of the Guardianship Act.	
16.22 Does the legislation provide an order for establishing parentage?	Non-Compliant	Sections 2(2) and 3 (2) of the Maintenance of Illegitimate Children Act declares that a magistrate may make an order adjudicating a man as the father of a child. However, s 6 (2) sets out that a magistrate cannot adjudicate a man as the father of a child unless the female complainant has her evidence for a man being the father of her child or unborn child corroborated.	Tonga needs to provide adequate parentage testing procedures such as that provided in s 138 of the Fiji's Family Law Act 2003 in Fiji. Allowing a magistrate to determine parentage opens the door to inaccuracies in decisions and further it is onerous to require a woman to provide corroborated evidence that a man fathered her child.

<p>16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?</p>	<p>Compliant</p>	<p>Section 2 (3) of the Maintenance of Illegitimate Children Act. A magistrate may order a father to pay a sum the magistrate considers fit towards birth expenses.</p>	<p>This contribution is dependent on a magistrate determining, based on a mother’s corroborated evidence, that a man is the father of her child if the man in question does not voluntarily claim the child as his own.</p> <p>In Fiji, s 101 of the Family Law Act 2003 sets out matters to be taken into account when deciding the amount a father should contribute in relation to the birth of a child and includes such things as income, earning capacity, property, financial resources and assets.</p>
<p>16.24 Does the legislation provide for the payment of child support for children born outside marriage?</p>	<p>Compliant</p>	<p>Section 2(3) of the Maintenance of Illegitimate Children Act prescribes that a magistrate may order a father to pay a “reasonable” amount of money as maintenance at times the magistrate deems fit, for up until the child is 16 years old.</p>	<p>Payment of child support is dependent on whether the mother can convince a magistrate based on corroborated evidence that a man is her child’s father, if that man does not voluntarily claim the child as his own.</p>

			In Fiji, ss 88, 90 and 91 of the Family Law Act outline what the court must have regarding making an order for maintenance of a child such as the age of the child, special needs of the child, the manner in which the child is educated and the income, earning capacity, property and financial resources of the parties.
16.25 Does the legislation provide for equal rules of inheritance?	Non-Compliant	The Constitution and Land Act establish discriminatory rules for the inheritance of land and estates. The Schedule to the Probate Act outlines the division of property upon intestacy and stipulates that a widow (wife) inherits only a third of her deceased husband's property with the rest being divided into equal shares among the children. Whereas, if a wife dies, all her property is inherited by her husband irrespective of	

		whether or not there are children.	
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*Appendix B: Convention On The Elimination Of All Forms Of
Discrimination Against Women*

Adopted and opened for signature, ratification and accession by General
Assembly resolution 34/180 of 18 December 1979
entry into force 3 September 1981, in accordance with article 27(1)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their

Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
 - (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
 - (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
 - (f) To participate in all community activities;
 - (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;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of

eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure. 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Appendix C: Semi Structured Interview Schedule

Interview Schedule Phase 1:

1. What is your understanding of CEDAW?
2. Why was CEDAW not ratified?
3. Should CEDAW be ratified? If so what would need to occur for this to happen?
4. Does Tonga have a gender inequality issue?
5. If there is a gender inequality issue in Tonga how can we address this?

Interview Schedule Phase 2:

1. What is your understanding of CEDAW?
2. Do you support the ratification of CEDAW (for candidates- would they advocate for the ratification of CEDAW if they are elected into parliament)?
3. Why was parliament dissolved?
4. What are your views on the current system of government in Tonga? (Do we have a sufficient form of democratic government)
5. Why are so few women elected into Tongan Parliament?
6. Female Candidates: Does your being a woman disadvantage you in these election campaigns?

Interview Schedule Phase 3:

1. What was the purpose of the 2010 constitutional reforms?
2. Have the constitutional reforms adequately realised their purposes to date?
3. Who has the authority to make law in Tonga? (assent to domestic laws and ratify international law such as CEDAW)
4. There is so much political upheaval in Tonga at the moment and apparent problems in this government being able to function efficiently. Are there any further changes that need to be made to Tonga's constitution in terms of the structure of government?

Interview Schedule Phase 4:

1. What is your view/experience of the treatment of women in Tonga? (positive/negative of being a woman in Tonga)
2. What can be done to advance women's rights and improve the quality of life for women in Tonga?
3. What do you know of CEDAW?

Appendix D: Ethics Approval

Te Piringa -
Faculty of Law
The University of Waikato
Private Bag 3105
Hamilton, New Zealand

Phone +64 7 838 4167
www.waikato.ac.nz/law



THE UNIVERSITY OF
WAIKATO
Te Whare Wānanga o Waikato

21st June 2017

Suliana Mone
c/- Te Piringa - Faculty of Law
University of Waikato
HAMILTON

Dear Suliana

I wish to advise that the Faculty of Law Ethics Committee has approved your ethics application for the project **“International Law in the South Pacific: Patterns of International Law Treaty Ratifications and CEDAW in Tonga”**.

Should any changes from the existing application be made, you must stop the research and apply to Te Piringa – Faculty of Law Ethics Committee for approval; and must not begin the research again until the necessary approval has been obtained.

We wish you well with your research project.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alberto Alvarez Jimenez'.

Alberto Alvarez Jimenez
Te Piringa – Faculty of Law Ethics Committee

Appendix E: Participant Information And Consent Form



PARTICIPANT INFORMATION SHEET

Project Title

International Law in the South Pacific: Patterns of International Law Treaty Ratification and CEDAW in Tonga.

Purpose

This research is conducted as a partial requirement for *PhD in Law*. This project requires the researcher to choose a topic and conduct research on the topic through using surveys or interviews or a combination of the two techniques.

What is this research project about?

This research is to investigate the reception of international law treaty standards in Tonga and very generally the South Pacific region, using Tonga's non-ratification of CEDAW as a case study.

What will you have to do and how long will it take?

In most cases, the researcher will want to either interview you or have you complete a survey questionnaire (or, in some cases, both). This should take no longer than *30 minutes*. The researcher may ask for relevant documents or sources accessible for this research. The interview may be recorded. You will be asked to give consent prior to the interview and maybe asked to also give consent at a later stage.

What will happen to the information collected?

The information collected will be used by the researcher to write a research report for the credit of a specific paper. It is possible that articles and presentations may be the outcome of the research. Only the researcher *and supervisor* will be privy to the notes, documents, recordings and the paper written. Afterwards, notes, documents will be destroyed and recordings erased. The researcher will keep transcriptions of the recordings and a copy of the paper but will treat them with the strictest confidentiality. No participants will be named in the publications and every effort will be made to disguise their identity.

Declaration to participants

If you take part in the study, you have the right to:

- Ask any further questions about the study that occurs to you during your participation;
 - Be given access to a summary of findings from the study when it is concluded;
- and

(Tick one or the other)

EITHER,

Refuse to answer any particular question, and to withdraw from the study before...../analysis has

commenced on the data;

OR,

Refuse to answer any particular question, and to withdraw from the study at any time

Who's responsible?

If you have any questions or concerns about the project, either now or in the future, please feel free to contact either: Researcher:

Suliana Mone, monesuliana@gmail.com

Supervisor: *Professor Margaret Wilson, margaret.wilson@waikato.ac.nz*

Consent Form for Participants

I have read the **Participant Information Sheet** for this study and have had the details of the study explained to me. My questions about the study have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I also understand that

Tick either option a) or option b)

a) I am free to withdraw from the study before....., or to decline to answer any particular questions in the study. I understand I can withdraw any information I have provided up until the researcher has commenced analysis on my data; or

b) I am free to withdraw from the study at any time, or to decline to answer any particular questions in the study. I understand I can withdraw any information I have provided up until the research being sent for publication

I agree to provide information to the researchers under the conditions of confidentiality set out on the **Participant Information Sheet**.

Signed: _____

Name: _____

Date: _____

Additional Consent as Required

Examples:

I agree/do not agree to my responses to be tape-recorded.

I agree/don't agree to my images being used

Signed: _____

Name: _____

Date: _____

Suliana Mone, monesuliana@gmail.com

Professor Margaret Wilson, margaret.wilson@waikato.ac.nz

