

Philosophical Perceptions of Pacific Property Women and Land Tenure

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Abstract:

In most of the Pacific customary rights to land have predominantly been a matter for men. Title to land traditionally passes from father to son. In Micronesia and parts of Central Melanesia rights are transmitted through women, but men still exercise the main powers over land.

In the Cook Islands, women take active part in land matters and are now holding chiefly titles. Such changes are moving to bilateral inheritance rights. Women own land rights in the matrilineal societies in Vanuatu. Tonga remains staunchly patriarchal.

This paper explores the background to the role of women in Pacific land tenure. It investigates how appropriate traditional systems that restrict ownership and inheritances of land on the grounds of gender are amidst island nations that wish to operate within contemporary society. The research questions the conflict between tradition, evolution and individual human rights in suggesting directions for the future of gender and land tenure issues in the Pacific



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Stand by me
Not over me
To guide
Support me
To stand upright
Not dominate
Or yoke me
To buckle under
The weight of obligation
Help me
To help myself
After all you
Are there because I am here

Source: (Jaquette, 1990)

Today, the quest for gender equality has become a vital part of human development. Based on the principles of equality and fairness, neither the male nor the female should be disclaimed of achievements obtained through their full potential (Jalal, 1998). Regardless of greater awareness, there has been and there still exists inequality in gender. In many parts of the world, women continue to be regarded inferior to men and are confined to housekeeping and looking after the children.

Many feminists have expressed their concern and have written on gender inequality and hardship of women. Although women have excelled in all aspects of life, one asks the question...how much more do women have to do to be accepted as equal to men? Although this question has been raised so many times it is still not answered.

When generalised, it is true that females in many instances are warmer, more sensitive, less aggressive and more caring for others than males. The niceness in women is connected to the women's primary role of mothering and nurturing (Seagal, 1986). Seagal goes further to elaborate that even though the virtues of maternal loving and caring are obvious, they are seldom acknowledged.

Seagal also argues that most of the times, these values are applauded with hypocrisy of cheap feelings. Man fails to understand the soft nature and the hormonal system of women and goes further to believe that women are weak, hence should be regarded inferior to men. To break away from male chauvinism, feminists were born and the concept of feminism was introduced. The Fontana Dictionary of Modern Thoughts defines feminism as "*broad meaning, advocacy of the rights of women*" (Bullock, 1997). This book states that feminism has no precise meaning. It is a set of ideas linked to a social movement where women are recognised to be equal to men. Hence, feminists are the followers of feminism. "*The call of feminist critiques of liberal humanism is for women to be recognised as equal subjects of that discourse, equally entitled to the rights which are claimed for all men*" (Soper, 1994).

The feminist movement of the 20th century has acknowledged women to the human category to which the principle of equality applies (Jaquette, 1990). Although women's equality has become an important issue in the last quarter of the 20th century, culture attitude and practices continue to be proven resistant to change. Throughout history, women never had the freedom to control their own bodies.

This right was challenged by men who were the lawmakers and determined that women were creatures of reproduction over whom they could exercise their masculinity (Hirsch, 1981). Due to increasing awareness of violence on women, many campaigns have been carried out to make women more aware of their fundamental human rights.

Human rights are those rights that every human being (male and female) possess and is entitled to enjoy as a human being (Thomas, 1997). These rights are the birthrights and regardless of sex, colour, race and religion, every human being is entitled to these rights. Any law that promotes and safeguards the rights of human beings is classed as human rights law. Thus human rights law can be found in various documents including national constitution, legislation, common law and in various human rights treaties.

Under the international human rights law, men and women alike are entitled fundamental freedom and human rights regardless of sex, colour, race and religion. More emphasis is placed on women's human rights for three main reasons. Firstly to inform women that they are also entitled to enjoy the same fundamental human rights as men. Secondly, to expose and combat the violation of rights that are based on gender and lastly to give shape to new human rights practice that addresses the human rights of women to a greater extent.

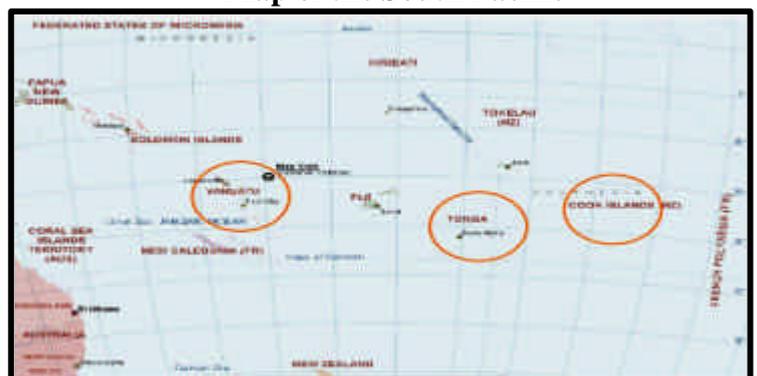
With the introduction of the human rights law, more awareness of gender equality, more development of women's organisations and more education, women in this era are becoming aware of their rights, hence are more rebellious to male dominated society. Many women have become feminists and are voicing their opinions about the injustice suffered by women because of men.

One of the most apparent areas of injustice suffered by women because of men is in land ownership. Land plays a vital role in everybody's life regardless of race, colour, religion and gender. As stated by John Bruce in his paper on '*Review of tenure terminology*' (Bruce, 1998) land/property is a bundle of rights whereby multiple ownership can exist. Hann states that liberals regard ownership as a matter of arbitrary dictate by power holders (Hann, 1998). He goes further to elaborate that most of the time, this authority of power holders is unjust. Godwin uses the example of bread to show political injustice in property. '*To whom does any article of property, suppose a loaf of bread, justly belong? To him who most wants it, or to whom the possession of it will be most beneficial*' (Godwin, 1980). From ancient times till the present, there has always been injustice in ownership of properties mostly based on the grounds of gender.

This paper investigates the rights of women and apparent injustice regarding land in three Pacific Island countries namely Tonga, Vanuatu and Cook Islands. The following map shows the respective location of these three countries in the South Pacific.

Map of the South Pacific

The reason for choosing these three countries is that they demonstrate a range of land tenure systems and contrasting status of women. After introducing the nature of land tenure and the place of women in the tenure system, the dilemma confronting Fiji will be discussed towards the end of this paper.



There are many questions that arise in this paper regarding women and the tenure systems. Some of them include: why land rights vary from men to women in the same country, how willingly women are accepting these variations in land rights, what provisions does the constitution have for women in terms of land rights, what land rights do *de facto* wives and single mothers have. At this juncture, this paper does not provide information regarding the customary practice of land rights of *de facto* wives and single mothers. Investigations in these areas are open for more research.

Before looking at women and land tenure in Tonga, Vanuatu and Cook Islands, it is important to understand the legal rights of women as a whole and then focusing on land rights of women. The general perception is that law is just and treats women and men equally. Many laws have been altered so that they are gender-neutral. However, the legislation may prejudice women because they are neither socially nor economically equal to men. It is evident that law can be self-serving advantaging people in the community who are powerful and affluent.

In many cases, these powerful and affluent members of the community are men, hence the legislation is biased against women. "If women were not economically, politically and socially disadvantaged, the law would not have such a severe impact on them especially on poor women" (Jalal, 1998). Jalal adds that these severe impacts caused by law discriminate against women.

Having introduced the concept of women rights as a whole, the issue of matrimonial rights of women in situations of divorce and *de facto* relationships can be considered.

Matrimonial properties refer to all the property that is acquired by both wife and husband after marriage. In divorce cases, matrimonial properties are divided according to the constructive trust principle which is based on the premise that the spouse who is the registered owner of the property (usually the husband) has bought and holds 'in trust' the share of the other spouse (usually the wife). In case of *de facto* wives and single mothers they do not have the same rights as the legal wives. *De facto* wives and single mothers have no right to obtain maintenance for themselves, to claim matrimonial property under matrimonial laws and to claim pensions unless they are able to prove that the *de facto* husband has a legal or customary obligation to do so. Turning specifically to land rights of women, Tonga, Vanuatu and Cook Islands are studied.

Tonga

The geography of Tonga is extremely fragmented totalling to 150 islands and amounting to 697 square kilometres of land. Out of 150 islands, only 36 are inhabited. The rest are uninhabited due to the fact that they are either too small or too infertile. Tonga lies between 15 degrees and 23 degrees south latitude and between 173 degrees and 177 degrees west longitude (Douglas, 1989). To the immediate northeast of Tonga, is Samoa and to the immediate east lies Niue. Majority of the population live on Tongatapu, the largest island (257 square kilometres) and in Tonga's capital, Nuku'alofa. Tonga has maintained its richness in culture and the ongoing pride of Tongans that Tonga was never anyone's colony.

Land tenure in Tonga

The land holding system is totally different in Tonga. All property belongs to the Crown. Looking back in history '*right to dispose of all land, the most important means of production*

in this predominantly agrarian society used to be vested in theory in the Tu'i Tonga, the sacred sovereign who personified the whole of Tongan society through his divine origin' (Grijp, 1993). Today, it is vested in George Tupou (ruler of Tonga). The Minister of Lands is the representative of Crown in all matters regarding land. Every male Tongan, 16 years and over not in possession of a tax allotment or town allotment is entitled to a grant from the Minister of Lands. Tax allotment comprises of 8 acres of land, which is used for cultivation, and town allotment is ¼ acre of land explicitly for dwelling.

All allotments as well as all leases must be registered in the Register of 'tofias' (Meek, 1968) which is kept in Minister of Lands office. Land registration provides security of tenure, which is essential to stimulate land development and productivity. Registration gives the landholder an indefeasible title to land. The farmers can also mortgage their tax allotment or their lease as security for credit. The tenure system has provided secured lifetime individual leasehold title to many Tongans which can be passed on their descendants. The areas of land are also not tied to a particular social group thus avoiding problems of fragmentation, subdivision and multiple ownership, as these are the common problems found elsewhere in the Pacific Island countries.

The disadvantage of the tenure system is the lack of its flexibility. Many complaints regarding the size of the tax and town allotment have been lodged with the Minister for Lands but because of shortage of land, it is difficult to provide large land parcels. With increasing population more pressure is put on the demand for land. *'While the more enterprising therefore tend to be hampered by the land tenure system, the lazy are protected, for at present the government makes no attempt to enforce the provisions in the Land Act requiring landholders to cultivate their allotments and plant coconuts'* (Maude, 1987). Social obligations also hamper the hard working people to increase their productivity, as they are obliged to share their extra produce with families and friends.

The Constitution of Tonga (Tonga, 1982) clearly states that only males aged 16 years and over are entitled to own land. The women can have access to their fathers or husband's land but not actually own land. The Constitution of Tonga has been developed by taking into account the culture and customary practices of the Tongans. This Constitution prejudices women as far as land rights are concerned.

Women and land tenure in Tonga

The Kingdom of Tonga is mainly a male dominated country where man has always been the breadwinner of the family and the woman is confined to the domestic tasks of raising children, and house chores. The women also help on the farm during times of planting and harvesting. The contribution and role of women in the Tongan society have rarely been acknowledged except in the case of *fahu*.

According to the Tongan culture, women who are first born are called *fahu* and have some specific rights and privileges. For instance, the *fahu* is entitled to receive the first tribute from her brother's farm and best mats and tapa from her brother's children's and maternal uncle's children's wedding or funerals. *Fahu* and all the other women, however, do not have any inheritance rights. Hence, they cannot inherit land and other properties. *"Land will go to the eldest legitimate male heir of the estate holder adinfinitum"* (Moengangongo, 1988). Throughout the process of acquiring and allocating land, only the males are involved. The women are neglected in land matters.

When a woman is married, she no longer has access to land in her *kainga* (extended family). The present land tenure in Tonga states that all land is the property of the Crown. The Minister for Lands is the representative of the Crown in all land matters. Section 41 of the Lands Act (1963) states that the male heir is entitled to succession of land and other properties. Section 43 elaborates further that every male Tongan, 16 years and over not in possession of a tax allotment or town allotment is entitled a grant from the Minister of Lands. This 8-¼ acre of land is for cultivation as well as for a dwelling. The legal rights of women are nowhere defined in the legislation, but there are provisions for widows and unmarried daughters. The 1963 Land Act of Tonga states that “*On the death of the male holder of any tax or town allotment, his widow shall be entitled to a life estate in such allotment*” (Moengangongo, 1988). This law ensures that the widow is able to make her livelihood and is not left destitute.

The widows are only the caretakers of the land and they can utilise the land to make their ends meet until they die. The widow can neither bequeath nor lease the land. However there are certain conditions on the rights of the widows. In the case of adultery, fornication or upon remarriage, the widow’s right to her former husband’s estate is terminated. When the widow remarries, she will acquire access to land of her present husband’s land.

Apart from widows, women can also inherit land under certain circumstances. For instance, if the estate owner dies without any male heir or son, the daughter can inherit the land for life, provided she is not married. If the daughter marries or is caught committing fornication or adultery, her land rights are forfeited and reverted to the Crown. Women can hold land legally through leasing.

Vanuatu

Vanuatu comprises of 80 islands that are strung out in an Y shape measuring 800 kilometres in length. Vanuatu lies between latitude 12 degrees and 21 degrees south and longitude 166 degrees and 171 degrees east (James, 1986). The nearest neighbours are Fiji (800km to east), Solomon Islands which is in a northeast direction from Vanuatu and New Caledonia (400km to the southwest).

Of the 80 islands, only 15 are considered significant in human and economic terms. The smallest island is Anima, only 7 square kilometres and the largest is Espiritu Santo (3947 square km). Other significant islands in Vanuatu include Efate, Tanna, Malakula, Ambrym, Pentecost, Epi, Erromango, Anatom and Aoba. Tanna, Ambrym and Lopevi usually experience volcanic activities.

Land tenure in Vanuatu

In Vanuatu, all land belongs to the *ni Vanuatu* (natives). Vanuatu means “*our land*” (Rodman, 1995) and with this nationalistic attitude of the Melanesians, the concept of alienated land was abolished in 1980 with all land being restored to the indigenous people. The land in Vanuatu is the most basic and most permanent aspect of Melanesian culture.

A *ni Vanuatu* without land is regarded as a person without status, power and in some cases denied social existence. This is the main reason that the people are still practising their traditional tenure system whereby land is communally owned. The land tenure in Vanuatu varies from place to place. The land rights of the individuals are either derived from the patrilineal group or the matrilineal group. In the patrilineal group, the land rights are passed on to the sons through their fathers. In the case of no male heir, land rights are passed on to

the daughters. In the matrilineal group, land rights are passed on to daughters through their mothers.

The Constitution of Vanuatu (Vanuatu, 1980) states that “*the rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu*”. The Constitution operates under the principle of customary practices where land rights differ from patrilineal to matrilineal societies.

Women and land tenure in Vanuatu

In the patrilineal societies, males hold major property rights. The women have the right while they are not married, to take and utilise produce from the parents’ land without permission. After marrying into another village, the extent to which the daughters can exercise these rights depends on the relationship between the two villages and the relationship between the daughter’s husband and the dominant male member of her patrilineage (Kenneth, 1986). Also in the patrilineal society, the land rights of women vary in various parts of Vanuatu.

Looking at the matrilineal society, land rights are owned by women but either their mother’s brothers or their own brothers are in charge of their rights. In matrilineal society, females continue to have rights on their mother’s land even after marriage. The husbands get access to land through their wives and have limited rights, comparable to the land rights of women in patrilineal societies. As far as the transference of land rights are concerned, in patrilineal societies where the female heir has acquired the land rights because there are no male heir, there are ways in which land could be transferred back to the male line. In some places in Vanuatu, a son is adopted from one of the brothers of the father who does not have any son.

The adopted son, together with the daughter, work on the land. Upon the death of the father, all land rights are transferred to the adopted son and the married daughter returns to her husband’s land. In other parts of Vanuatu, if the daughter inherits the land rights, she confers the land rights onto her eldest son who is sent away to live with the mother’s parents. He is given a new name and acquires all her mother’s land rights. Thereafter, the mother is excluded from the land.

A widow who does not have any children can either sell her land or transfer her land rights to her deceased husband’s brother’s eldest son. Little has been written on the transference of a childless widow’s land by will either a written one or a verbal one. The common practice is that if the childless widow dies intestate, the rights are transferred to the person who has invested the most in the funeral of the widow.

In the matrilineal societies, when there are no daughters to inherit the land rights from the mother, the rights are passed on to one of the mother’s sister’s daughter or some other close female relative. In some patrilineal societies, some women become landowners because of their dominant status in the society. Throughout their lifetime, the daughters and their husbands acquire the right to utilise land, which has been set aside by the daughter’s father. In some affluent families, daughters may receive land from their father as their wedding gift.

The normal tendency in Vanuatu in the patrilineal society is that upon marriage, the women usually have no choice but to live on the husband’s land. The wives have ‘use rights’ on their husband’s land for dwelling, gardening and plantation of copra but do not acquire proprietary rights to the land. Upon the death of the husband, the widow, with no male children does not inherit the land rights from the husband. Instead, the land rights are reverted to the husband’s nearest male kin. In some parts of Vanuatu, once the husband dies, the property is inherited

by the husband's family and the widow with her children return to her home village and resides either with her parents or with one of her brothers. In the matrilineal society, women continue to hold land rights even though they become widows.

Cook Islands

Comprising of 15 islands, the Cook Islands lie between 8 degrees and 23 degrees south latitude and 156 degrees and 167 degrees west longitude covering a land area of 240 square kilometres out of which $\frac{1}{4}$ is taken up by one island, Rarotonga (Cook, 1969). Almost exactly in the centre of the South Pacific, the Cook Islands are 2,614 kilometres northeast of New Zealand. The Cook Islands are divided into northern group and southern group.

The northern group consists of six atolls namely Pukapuka, Nassau, Suvarrow, Rakahanga, Manihiki and Penrhyn. Remaining nine islands form the southern group including Rarotonga, Aitutaki, Mangaia, Atiu, Mauke, Mitiaro, Manuae, Takutea and Palmeston. The population is mostly of Polynesian origin, majority of which reside in Rarotonga. European contact had a great impact on the people of Cook Islands whereby they adopted European ways in proportion to their contact with Europeans. Rarotonga is the most Europeanised island with remains of only a few traces of old culture.

Land tenure in Cook Islands

Looking at the Cook Island's tenure system, history tells that major reallocation of land were made by the chiefs; Ariki, Mataiapo and Rangatira. The head of each family made the internal allocation of land. This depended on tribal native custom, family discussions, previous usage of land or on the present needs of the family members (David, 1983). The advantage of Cook Island's present tenure in comparison with the traditional tenure is that the people have broken away from chiefly dictatorship and communal land ownership. With the establishment of the Lands Court, the people are given individual occupation right over land. This gives security to land tenure.

More or less, the people who are granted occupation rights over land own that piece of land. This individual ownership inspires the people to put in more effort on their piece of land because the monetary benefit derived from the land will belong to the people individually. In this way, the economy progresses and people get more involved in trade both locally and internationally. The idea initiated in this paragraph is that in this capitalist world, individual land ownership is favoured. However, the question that is raised at this juncture is 'how much capitalism is good'. One fails to draw the line as to how far it is acceptable for capitalism to over rule culture and customs because culture and custom also play a vital role in the lives of people.

The greatest disadvantage of Cook Islands tenure system is that of absentee ownership. Because Cook Islands is a protectorate of New Zealand, the Cook Islanders can easily get their permanent residence or working visas in New Zealand. More than half of the Cook Islanders live abroad. Some landowners who reside either in New Zealand or in other country continue to have occupation right over their land back at home. Some Cook Islanders come back home to get a legal right of occupation and once they are granted with one, they leave the country. Such land is always left unoccupied and uncultivated. It becomes very unfair on the resident owners who may want to obtain more land to build or extend their farm.

Some individuals, who are influential, succeed in getting more than one occupation right although the previous land on which they have occupation right may be lying idle. This is

also unfair in the sense that there may be other families who want to build on the land but are unable to get occupation right.

'Some grantees are surrendering their occupation right in place of leases, which are usually a term of 60 years. The purpose of leasing is to obtain security for a loan from a commercial lending bank such as the National Bank of New Zealand Limited (the only commercial bank), which generally refuses to accept occupation right as security (David, 1983).

There can be problems once the leases expire because the people who had agreed in the first place are most likely to be dead. If the lessee is also dead, what guarantee is there that the landowners will agree to revert the lease to occupation right?

The Constitution of the Cook Islands (Cook, 1982) is based on the perception of the western culture where women and men enjoy the same rights. As far as land rights are concerned, men and women alike, can own, sell, lease or transfer their land rights.

Women and land tenure in Cook Islands

The role of women in the traditional land tenure was very limited. They did not have any land rights. It was wholly dominated by the males. After the first missionaries were established, changes to land tenure started taking its form. The missionaries were the major forces in supporting women to own land. In 1845, when the *Makea Nui Ariki* land title became vacant, the missionaries influenced the people to appoint a woman for the title rather than a man. This incident set a precedent for other women to acquire land title. When the Land Court was established in the late nineteenth century, it was legislated that women could inherit land and properties equally with men. Only in Mangaia, the people still practise the traditional land tenure where women are not recognised as having any significant land rights (David, 1983).

Matters dealing with land are either discussed in the Land Court or at family meetings in which women take active part. As far as family meetings are concerned, they are usually dominated by women for the simple reason that at the time of the meeting, men are either working or committed elsewhere. Women openly voice their opinion and discuss their personal shares, their blood relatives shares and the their husband shares in land. The number of women attending Land Court for hearing is also greater than men for the same reason that at the time of the hearing, men are usually working. Because of this reason, land matters are left to women.

Another perception is that women have more time for such matters than men do. Also during land conflicts, it is less likely that the women would get physical. “ *The women appear to be more land conscious than the men which may also account for some of their increased participation*” (James, 1986). This is so because, women spend more time in land registry to trace evidence as to on which pieces of land, the family has an interest in. Hence, they are more aware of the land rights of their family.

The following table summarises the tenure systems in Tonga, Vanuatu and Cook Islands.

Country	Tenure System
Tonga	All land is property of Crown. The Minister for Lands is the representative of Crown in all land matters. Every Tongan male 16 years and over is entitled to 8 ¼ acre of land to build a house and do cultivation.
Vanuatu	Freehold land was abolished in 1980. It is purely customary land tenure and varies from northern island to southern and central island. Leases are also granted to foreigners.
Cook Islands	Have individual occupation right granted by Land Court. Judge is from New Zealand and bases decisions on both, foreign legislation and principles of native customs. Leases allow Europeans and Chinese to business and cultivate land.

Except for Cook Islands, Tonga and most parts of Vanuatu have a patriarch system. The women in Tonga can not own land. They can only have access to land use and produce on the land. Even a widow with no male heirs only has a life estate in her husband's land and if she remarries or is found committing fornication or adultery, she is dispossessed of her land rights.

In Vanuatu's patrilineal society, women do not own land but have rights to use their fathers, brothers and husband's land. However, in the matrilineal societies, daughters inherit land through their mothers. Upon marriage, their husbands have access to land through them. The status regarding land rights are more or less the same for women in the patrilineal society and men in the matrilineal society. The Cook Islands have a modern tenure system where men and women have equal land rights.

There is a need for further study. This paper not only elucidates the role of women in land tenure but also raises many anthropological and sociological questions in contemporary society. Why are women still serving meals at the table when they are working hand in hand with men to financially support the family? Why does the burden of raising children solely fall on the shoulders of mothers when fathers should be equally responsible?

Men have long been taking advantage of the niceness of women and their motherly nature. They have treated women as inferior to them and disregarded women's feelings and ideas. To enshroud their ruthlessness, men have used the term 'culture', a common excuse to explain why women are treated differently than men. Let us not forget that 'culture' was not bestowed onto us by god but is very much 'manmade'. Culture is the art, literature and music of a particular society that has been practised from generation to generation where men have been the most dominating members of the community. In light of this, culture is mostly biased towards men.

Fiji is not only confronted with *coup d'etat* but with many cultural clashes. Being a multi-racial country, cultures vary from Indigenous Fijians, to Indo Fijians, Chinese, Rotumans, Part Europeans, and others. The Indo Fijians are further categorised under Hindus, Muslims and Sikhs, all in their own sub cultures. In developing this research, there is a need to further investigate the role of women and land tenure in the respective cultures and identify the variations. As an Indo Fijian Hindu woman, I need to understand not only where I stand in the Hindu society and Fiji regarding land tenure, but also how my Fijian sisters of all cultures and religious persuasions fit in. During my research, I hope to find some answers to questions such as why land rights of women differ from men in the same culture, why is there

discrimination against women and why are women accepting the tenure system as it is. Women are not second class citizens. They are equal to men and should be treated equally in all aspects of life, including land.

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