

Land, Custom and History in Sāmoa

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Abstract

For more than a century Sāmoans have asserted that there are timeless norms in relation to customary land tenure, despite historical changes and introduced legal and religious principles. Since the early nineteenth century, Sāmoa has undergone a slow cultural revolution in which ancient political institutions have been completely reshaped. The German and New Zealand colonial administrations introduced a number of institutional changes affecting land tenure, and there has been a slow economic revolution from a subsistence and exchange-based economy to dependence on money. This has accelerated since the 1970s as a result of mass emigration and remittances. As a result the traditional system of property, which evolved historically to maximise the efficiency of a subsistence economy, is being adapted to a money-based economy with some associated issues and problems.

Keywords: Sāmoa, land, titles, *matai*, custom.

Introduction

This paper aims to contextualise contemporary land issues in Sāmoa. Customs have been evolving over time in response to changing circumstances and today it is not unusual for people to disagree about what is Sāmoan custom. In the nineteenth century the traditional hierarchy or rank began to be levelled, in keeping with the Christian principles promoted by the churches, and the modern *matai* system emerged. Customs have been evolving over time in response to changing circumstances. There has been a slow economic revolution toward dependence on money, which has accelerated rapidly since the 1970s as a result of mass emigration and subsequent remittances. The rank and status of *matai* titles are defined in the formal honorific salutations of villages (*fa'alupega*). These have only been slightly modified since the nineteenth century when the population was only a quarter of what it is today and when almost all Sāmoans lived in villages. But now the total population of Sāmoans at home and overseas is more than 300,000.

Only a small proportion of all Sāmoans live in villages, so few Sāmoans actually live under the customary laws of Sāmoa. However, most Sāmoans, wherever they are living, identify with one or more ancestral villages in Sāmoa and with an extended family. Many believe that they have rights to land if they returned to live with their kinsfolk in one of their ancestral village. This is one of the underlying reasons for *matai* title splitting—bestowing the same *matai* title on two or more, or many holders. In this paper we will provide an overview of the historical process and issues concerning land and custom in modern Sāmoa.

Land Alienation in the Nineteenth Century

In the nineteenth century (1800–1900), political conflicts in Sāmoa were greatly magnified by the arrival of relatively large numbers of foreigners (see Gilson 1976 for a detailed history of this period). The first Christian missions were established in the 1830s and 1840s and Christianity had a revolutionary impact on traditional religious beliefs and practices. Rival Christian sects (Congregationalists, Methodists and Roman Catholics) become entangled in the historic rivalries between the traditional political factions for supremacy over leadership. By the 1850s foreign settlers had begun to acquire land, and during the intermittent civil wars

over the next 40 years warring factions sold parcels of land in exchange for guns, cash and other goods. As Meleisea (1987) has argued elsewhere, most leaders in this period were unfamiliar with a market economy or with the concept of land as a tradable commodity. They very likely assumed that they would have continuing authority over the land they were 'selling', because they thought that they were transferring use-rights to land in the customary manner, not absolute and permanent authority over it, or the right to transfer it to another foreigner. Gifts of land to settlers, or to the churches were exchange transactions, but the 'payment' received was likely understood by Sāmoans.

By the late nineteenth century Sāmoan leaders had undoubtedly begun to realise that when land was sold, they had lost authority over it, but for most of the period when the major land acquisitions were taking place, the transactions were understood in terms of Sāmoan customs; that if use-rights to land were given, service to the giver was provided in return. A good example is presented by Sciusco and Martinsson-Wallin (this volume) drawing on documentation by Martinsson-Wallin (2011) on the acquisition of landholding in Savai'i. The land was sold in 1872 by a high ranking *ali'i*¹ of the sub-district where the land is located, and the documentation affirming the sale was witnessed by high ranking *tulafale* of the same polity. However, in 1894, the transaction was contested by another *matai* who claimed the land as his own, and the matter was settled with the return of a portion of the land. The land was used as a coconut plantation and cattle farm for over a century, but in 2003 and 2010, the village made further claims to the land. Although the courts found for the freehold owners, the village was not appeased by the decision. The whole saga indicates the continuing uncertainty about who had the customary right to sell the land in the first instance, or to accept compensatory allocations in the second and third instance, and that the alienation of this land was never fully accepted.

Before foreign settlement became extensive, it is clear that the highest ranking *ali'i*, those at the head of large lineages and districts, considered that they had the right to allocate land within their own lineages and to foreigners. As Gilson has explained, from the point of view of a Sāmoan individual:

His first interests in land convey to him no direct negotiable value, in the Western manner, unless the controlling parties decide to sell or lease which processes are alien to Sāmoan custom. Otherwise the principal economic value of land lies in its occupation and use for the purposes of residence, subsistence and ceremonial ... production. (1970:31)

Until the 1880s foreigners who believed they had bought land outright had limited legal means of proving their claims to it, however much they anticipated the establishment of a central monarchical government (when the warring Sāmoan factions came to an agreement) or perhaps the imperial annexation of Sāmoa. There were many land transactions in the 1860s, mainly of small parcels and Gilson (1970:271) cites an observation of the (then) US commercial agent, Jonas Coe that it was difficult for settlers aspiring to become commercial planters to acquire large enough sections, as suitable land was already subdivided into Sāmoan family holdings. However in the period 1870–1972 with a major resurgence of civil war, German interests managed to acquire 25,000 acres in north-west Upolu and there was also a massive burst of speculative land acquisition by US interests (Gilson 1970: 267–288).

By the 1880s land claims by foreigners amounted to about twice the area of the whole country, as Sāmoan leaders had sold the same areas of land to many foreign buyers. While this may have, in some cases, involved deliberate trickery, it might also have been the outcome of a continuing misunderstanding about what was being transferred—whether it was the right to occupy and use the land, or to own the land outright in the sense of having authority over it. It is also likely that some transactions were sales of land that had belonged to those who had been, at least temporarily, conquered in the wars of the period. Most of the civil wars of this period were conflicts for supremacy between the great paramount families of Sāmoa, their high chiefs and the districts that supported them. Among the settlers, different factions competed for influence among the Sāmoans, supporting different sides in successive outbreaks of warfare. The desire for legal recognition of land provided foreigners with a strong motivation to push for a national government with centralised authority, instead of the decentralised district-based system of the past. This would allow a land registration system to be established so that legal recognition of their property acquisitions could be sought.

Consular representatives of Britain, the United States of America (US) and Germany became involved to protect the interests of their nationals. The dubious nature of many of land transactions and the massive extent of land claimed by foreigners led to the establishment of a Land Commission under the *Berlin Act* 1889, comprising members nominated by each of the three powers with claims in Sāmoa (Germany, US, and Great Britain). It dismissed most of the land claims, but validated others, notably the claims by the German Plantation Company (*Goddefroy und Sohn*, which later became the *Deutch Handels und Plantagen-Gesellschaft der Sudsee*). By 1899 there was an impasse between the two main warring Sāmoan political factions. Interventions by the rival consuls and the powers they represented failed. Accordingly in 1900 a deal was made and sealed in Berlin between the US, Great Britain and Germany to reflect their colonial interests at the time and Sāmoa was divided into two—the western islands were acquired by Germany and the eastern islands by the US. Sāmoans were of course not part of the decision.

German Colonial Land Policy

Both major political factions among the Sāmoans were defeated by the partition and colonisation of Sāmoa, but it may well be that after nearly a century of conflict and instability, many were relieved by the prospect of peace. A few days after the German flag raising ceremony in (Western) Sāmoain March 1900, Mata'afa Iosefo, who was recognised by most of the Sāmoans as their highest ranking chief at that time, wrote a letter addressed to the Kaiser of Germany. He thanked Germany for taking over Sāmoa but asked for consideration, writing as follows:

All officials appointed to Sāmoa by the German government acted according to the law and customs of Sāmoa ... other Europeans don't act straightforwardly, they do crooked things whereby corruptions and wars are brought upon Sāmoa I therefore pray that Your Majesty be pleased to order that the laws of the Sāmoans be made in conformity to the rules and customs of the Sāmoans. (Meleisea 1987:47)

A month later the Governor of German Sāmoa, Dr Wilhelm Solf, called a meeting of all the senior ranking chiefs from throughout the country to outline the guiding principles for his administration. He emphasized that his government's intention was:

...to respect your old traditions as far as these are not against the laws of Christianity and against the welfare and security of the individual. The government has confidence in the Sāmoans, that they will be able to govern themselves, subject to its control and promises to make such laws, and issues such orders as shall be for the benefit of the country and in conformity ...with Sāmoan ideas. (Meleisea 1987:4,our emphasis).

Solf aimed to encourage individualism through his administrative policies, believing as did Robert Louis Stevenson (1892:8) who wrote of his observations of Sāmoan communalism a decade earlier, that "... the particular drawback of the Polynesian system is to depress and stagger industry."

The administrative structure that Governor Solf proposed was aimed to centralise political authority away from the traditional district centres of power, and was the beginning of a process of weakening the authority of the village councils and the traditional councils of orators and heads of high ranking lineages. All the major decisions were to be made by the Governor and the appointment of Sāmoans to the administration were to be approved by him. Shortly after annexation, Solf realised that the loyalties of the *matai* he appointed to carry out the wishes of his administration at the village and district levels could not be relied upon. These men had more loyalty to traditional political structures and protocols of their villages and districts than to the administration that appointed them. Accordingly, the Governor cultivated and rewarded the chiefs he favoured and who adhered to his rules, and he continued to review the imposed administrative structures to reflect the way he wanted Sāmoa to be governed. Solf intended no further land alienation; the large German Plantation Company was given economic primacy by his administration and the ambitions of small planter-settlers were strongly discouraged (Meleisea 1987).

Solf introduced several measures to weaken traditional village and district authority and his principal instrument was the Lands and Titles Commission (now the Land and Titles Court). The Land and Titles Commission was the first official move to take away the most important traditional functions and authority of the heads of families, leaders of paramount lineages and village councils who allocated use rights to land in the various polities and bestowed *matai* titles. As Tchekezzoff (2000: 151–190) explains in detail, the events of the preceding century and the new German policies were transforming the political system of Sāmoa, blurring the traditional distinctions of rank, power and authority and producing what Sāmoans now call the *fa'amatai* (*matai* system).

Solf aimed to centralise the power to adjudicate over family and inter-village disputes over land boundaries and land usage, and to approve—through a complicated system of principles and practices—the appointment and succession to *matai* titles. It was the beginning of the process to transfer these decision-making powers away from the village councils and traditional 'king-making' groups such as Tumua and Pule and 'Aiga Salevalasi to the authority of the central government.

A number of the Governor's interventions had already alerted Sāmoan leaders to the reality that peace had come at a price. Suspicions among the Sāmoans were confirmed when Solf changed the national honorific salutations which acknowledged the principal chiefs and districts of Sāmoa (*fa'alupega*), to one that elevated the Kaiser himself and the administration officials above the traditional Sāmoan hierarchy. Their suspicions soon hardened into overt opposition, and differences between Sāmoan leaders and the German administration came to a head in 1905 when the first Sāmoan-led rebellion, the *Mau of Pule*, agitated for a renewed recognition of Sāmoan political institutions, and for greater Sāmoan representation and authority in the administrative structure of government. *Pule* was the traditional group of 'king-makers' in Savai'i. When it looked as though an initially small rebel movement was gaining support from beyond Savai'i to the whole country, leaders who had voiced opposition and their supporters and families were eventually exiled to Saipan in the German-controlled Mariana Islands in 1909. Their leader Lauaki Namalau'ulu Mamoe died at sea on his return from exile before reaching his home country (Davidson 1970).

In Eastern Sāmoa, which was administered by the US Navy, the naval Commandant—B.F. Tilley—was carrying out similar reforms, giving reassurances to the Sāmoans there that their traditions would be respected. The major difference of course between the two administrations was that Tilley was quite clear from the beginning, that American laws and ideas of justice took precedence. The two colonial Sāmoas, with a common culture and political traditions, were undergoing the same pressures to their traditions but under different colonial rules.

After nearly a century of Christian and other foreign influence, the principle was established by the Land and Titles Commission that land was no longer under the authority of the highest chiefs of Sāmoa, as in the previous century, but that land belonged to families. The German Chief Justice wrote as follows in 1911:

A legal limitation of his [a matai's] power (pule) exists with respect to his authority over the land—fanua, lau'ele'ele—which belongs to the family. Some families still possess the whole of their land undivided; others have given up joint possession and have handed over a definite portion to each branch. In the first case, no one matai can alienate family land without the approval of the others, not even the matai sili, who has authority over the whole clan. In the latter case the approval of the others is not necessary for the matai who wishes to alienate. Land that anyone has received by inheritance, or as the gift of a third party, or has acquired with his own means—the payment consists in mats, pigs, etc., and lately also in money—is private property and subject to no family control. (E. Schultz-Ewerth 1911:44)

New Zealand Land Policy in Sāmoa

The German colonial administration lasted only fourteen years after they were ousted by the New Zealand soldiers at the beginning of World War I but they left behind a colonial structure which the subsequent New Zealand military administration (1914–1921) and the civil administration under a League of Nations mandate (1921–48), inherited. These were also integrated into the government structures at independence and still exist today—in some

cases being strengthened and reinforced. Under the military administration 1914–1921 ex-military officers were appointed as administrators. They were paternalistic in their approach and inexperienced and arrogant in their dealings, so their behavior aggravated Sāmoan grievances. Unlike the Germans, who knew the political culture of the Sāmoans and its courtesies, the New Zealand administration lacked understanding of the Sāmoan system and had no clear policies to re-shape it. The New Zealand colonial administration began in an environment where the Sāmoans were already very weary of foreign control. They were angry about the death of about one fifth of their population when the incompetent New Zealand military administration had failed to quarantine Sāmoa from the deadly Spanish influenza pandemic.

After New Zealand was awarded trusteeship of Sāmoa by the League of Nations, the *Sāmoa Act* of 1921 transferred all the freehold land held by German companies and individuals to the New Zealand administration. Most of the extensive holdings of the German Plantation Company became the New Zealand Reparation Estates and began their slow economic decline under the New Zealand's Trusteeship administration.

Keesing's research on land and economic issues in Sāmoa in the 1920 and early 1930s led him to comment:

A casual student of land matters in the modern Sāmoa might well think that little change has taken place. He would find, so far as he was able to penetrate behind the jealous veil of secrecy, that old land customs and ideas are still alive, and that the Sāmoans display little desire to take over those of the white man, Nevertheless, deeper study will show that in the last century the Sāmoan land system has been vastly modified; there have been factors at work that have tended on the one hand to stabilize and on the other to disorganize it. (1934:257–290)

Keesing notes that between 1903 and 1931 a total of 763 cases were brought before the Land and Titles Commission of which about two thirds were to do with land. He notes that some *matai* were astutely accumulating land in their own right by registering it (*pulefa'amau*), under an ordinance passed in 1925, the *Sāmoan Individual Property Ordinance*, which allowed owners to register their land so that they could bequeath it by a will (*mavaega*), just as if it were freehold land. There is, he commented, "a new type of land tenure coming into being in Sāmoa, 'individualized' native land free from traditional usages" (1934:278).

In 1924 the New Zealand authorities attempted to formulate and implement a policy to modify the use of all customary land, on the grounds that the Sāmoans had more land than they could put to economic use, and that land was unequally distributed. The administration sent a selected delegation of elected Sāmoan representatives (*faipule*) to Tonga to study the modified land tenure system there. The Tongan system, adopted in the 1880s, allocated a taxed allotment of plantation land and a house site to the eldest male in each family, which in turn was passed to the eldest son in the succeeding generation. According to Keesing, the *faipule* were impressed with the Tongan system and proposed that it be adopted for Sāmoa under the Native Regulations. All land was to be surveyed, and all that was uncultivated was to be divided into 5-acre blocks, to be allocated to untitled men, who could bequeath it to

their heirs. Another proposal considered by the *faipule* of the same period was that all *matai* titles should become hereditary, or be bestowed upon a successor by the current titleholder (Keesing 1934:280–281).

These plans were undoubtedly forestalled by the Mau rebellion, which was reactivated in 1926. As with its beginnings in 1905, the new Mau with its old motto ‘Sāmoa for the Sāmoans’ demanded that Sāmoan leaders be given a greater share in government policy and decision-making by the New Zealanders. Demands included recognition of the legitimate economic interests of the local business community—mainly people of mixed Sāmoan and European parentage. When the police opened fire on a peaceful procession organised to support the movement in Apia, the one of the *Tama’aiga*², Tupua Tamasese Lealofi III was killed and others were wounded. The administration declared the movement seditious and its leaders and some supporters were exiled to New Zealand.

When the sedition order against the Mau was revoked by the New Zealand Labour government in 1936, it marked the beginning of improvements in the relationships between the administration and the Sāmoans. More Sāmoans were included in decision making organs of government and some economic restrictions on villages and merchants were revoked. However, the proposed land reforms were not put in place, except in very few villages. In 1944 Sāmoa requested self-government which was eventually granted in 1948 after a combined visit by a team from the United Nations and New Zealand officials. After fourteen years of self-government, Sāmoa became a fully independent country in 1962.

Sāmoan Government Land Policy

Writing a constitution for Sāmoa at independence involved major cultural challenges. During the Constitutional Conventions Sāmoan members were advised by United Nations delegates, New Zealand government officials, legal experts and academic political scientists (see Davidson 1967). The Sāmoan leaders argued vociferously for recognition of the age old principles and practices of Sāmoan culture, traditions, values and protocols as well as Christian principles. However, as a United Nations Trust territory, they were also required to enshrine western legal principles based on notions of freedom, justice, equality and individual rights. The Constitution was eventually approved, after a sometimes very heated debate, with recognition of custom (Article 100), Christianity (Preamble to the Constitution and Article 15) and human rights (Article 15). The document was forward looking and open to potential future developments and changes, leaving many decisions to be made by Sāmoans after independence. Most significantly it provided for the inalienable rights of Sāmoans to their customary land under Article 101. However the sea beyond the high tideline was declared government property, whereas according to Sāmoan custom, villages owned lagoon areas as far as the outer reef. Article 103 provides for a Land and Titles Court (in effect, the old colonial Land and Titles Commission). The Constitution was approved by a majority after a UN-initiated national plebiscite on the eve of independence in 1961. The reparation estates acquired by New Zealand in 1921 were transferred to the new independent government 1962 as state property incorporated as the Western Sāmoa Trust Estates Corporation (now the Sāmoa Land Corporation).

Since independence electoral reforms have been initiated, and the most significant of these was for adult universal suffrage, which came into effect in 1991. Everyone over the age of twenty one was eligible to vote—a major change from the *matai*-only suffrage which was adopted at independence. Since then there have been reforms in the Electoral Acts to address issues such as the conferring of titles to increase electoral support, and electoral bribery, which rightly or wrongly may be justified as ‘Sāmoan customs’. The *Village Fono (Council) Act* of 1990, limits the powers of the village councils to making by-laws on related to economic development and public health matters. It is currently under amendments which will require, among other provisions, that villages formalise their by-laws in writing. The *Land and Titles Court Act* 1981 provided for the establishment of a ‘Court of Record’.

About 80 percent of the total land area of Sāmoa is under customary tenure. This means that most of the land and land boundaries are unregistered and authority over them and the rights to use land are decided by *matai*, families and villages. Disputes regarding customary land or land boundaries, as well as appointment of *matai* or succession to *matai* titles, are dealt with by the Land and Titles Court which remains fairly much as it was when it was first established by the German colonial administration.

According to a former Registrar of the Land and titles Court, Galumalemana Netina Schmidt:

The main features of the traditional land tenure system of Sāmoa are:

1. *Pule* (control) of land is vested in the *matai* who allocate land to each family member.
2. Land may be classified as:
 - (a) The residential site: *maota* or *laoa*,
 - (b) Land immediately behind a *maota* or *laoa*: *tuamaota* and *tua laoa*.
 - (c) Bushland which stretched to the mountain ridges.
3. The *pule faamalumalu* or overriding *pule* of all land allocated to a branch of the family rest with the principal *matai* (*sa’o*)
4. The *pule* of land allocated to an independent branch of the family is vested in the subsidiary or serving *matai* (*matai tautua*).
5. The beneficiary *pule* for occupation and usage is vested in the family members under the direction of the *matai*.
6. The *pule* of any new land cleared by a sub-branch after the split from the maximal extended family is vested in the *matai* of the branch.
7. Entitlement to land used by members of a family is contingent on the rendering of service to the *matai* and on continuing residence on family land.
8. Produce of the land was returned to the *matai* (*sa’o*) who saw to the welfare of each member while he kept the surplus for family social obligations.
9. Special arrangements for member use of certain sections of land were made by the title holder in his/her *mavaega* [testamentary will], which was substituted during the New Zealand administration by the *pulefa’amau* or registered ownership. (Schmidt 1994:170)

Schmidt elaborated her ninth point with regard to the *pulefa’amau* saying that;

Other than the fact that ownership has to be registered under the owner’s title, pulefa’amau is similar to the concept of individual ownership in so far as it legally

excluded occupation and usage of the land by any other owner or his heirs. Even after absence from the family or country, the owner can claim back his land (1994:174).

The right to claim *pulefa'amau* was only revoked in recent years as it became apparent that with a growing population and demands for rights to use land, *pulefa'amau* has enabled some *matai* to acquire estates for themselves and their heirs, excluding other heirs of the title to which the land was originally appurtenant. Keesing (previously cited) observed this was happening thirty years before Sāmoa became independent. Schmidt (1994:173) mentions that of cases before the Land and Titles Court in 1989, only a few (4.9 percent) were to confirm *pulefa'amau*. The majority of cases (73.8 percent) were disputes over *pule*; meaning disputed authority over land, while 11.5 percent were over land boundaries, and 9.8 percent were cases where a family had been banished from their land and residence for an offence, by decree of the village council.

Most *matai* titles now have at least two holders. As the population grows the practice continues to escalate. Families now have many branches claiming their rights to a *matai* title, they also have successful relatives that they wish to honour, and they have connections with families overseas that they want to maintain, so titles are divided and bestowed on people who live outside the village or overseas. Sāmoans also have the habit of bestowing *matai* titles on visiting dignitaries. *Matai* titles have become badges of status and identity, even—as is very common—if the holder of the title is not playing the role of a *matai* in his or her family or village. However, there are no clear principles that define the rights of the multiple holders of the same title, in relation to the particular land associated with that title, or the role defined for the title in the *fa'alupega* in the village hierarchy and governing council.

Civil law in Sāmoa has gently, and fairly successfully, nudged Sāmoa into the modern world; people in rural areas are nowadays much more likely to report offences to the police rather than leaving them to be settled by the village council as they did a generation ago. However, it is still assumed that each village will make its own by-laws that reflect their unique set of customs. With the *1990 Village Fono Amendment Bill* before parliament, it may now be time to start thinking about whether we are ready to define a core set of by-laws for every village in Sāmoa.

Contemporary Land Issues

Today most people live in houses made of modern materials, located along roadsides; some are even becoming like small towns. People no longer live in thatched houses around a central sacred place (*malae*) as they did as recently as forty years ago. When villages were nucleated settlements of houses close to one another, everyone knew each other's business and there was a great deal of communal cooperation that benefited every household, as well as tight social control. Village councils met every week, as did the associations for youth and women. Without telephones, electricity, machines such as grass cutters and often without piped water, people had to share and help each other to survive. Today people live much more independent lives and social pressure is no longer enough to ensure that a community is well governed.

The population of Sāmoans living in Sāmoa is now approximately 200,000 and there are just as many if not more Sāmoans living overseas. The influence of the Sāmoan diaspora on Sāmoa is very significant and remittances comprise a substantial proportion of Sāmoa's GDP. Urbanisation has also had several effects on the traditional village structures and functions. Generally the population of rural Sāmoa has not grown much, with the exception of the densely populated and increasingly urbanised villages of north-west Upolu. The population of villages and districts in some rural areas has declined or remained static in the last decade or so. People have either moved to Apia or migrated overseas. The traditional districts exist only in name and in their traditional *fa'alupega*. Electoral districts have taken over.

The foundations of Sāmoan customs are group interests and collective rights governed by a hierarchical system of rank and seniority, whereas modern Western laws are based on liberal principles of individual rights. These principles increasingly come into conflict in the Land and Titles Court and less frequently in the civil courts. However since 1962 most, if not all, Supreme Court judgments on cases involving conflict between custom and individual rights have favoured principles of individual rights. These principles are sometimes also applied in Land and Titles Court proceedings and reflected in some of its decisions.

Research by O'Meara (1995:109–156) demonstrates clearly that customary land tenure is no longer customary—that is to say it no longer conforms to the principles that prevailed in the nineteenth century, nor even those enunciated by Schmidt, outlined above. As we have explained previously, under the customs that prevailed in the pre-colonial period until the late nineteenth century, the highest ranking chiefs of large lineages allocated and re-allocated use rights to land and retained authority over it regardless of who was actually using it. This flexible system both upheld the importance of the high chiefs and made sure everyone had access to resources according to their needs. It was well suited to a subsistence economy.

Some villages still have tracts of common land under their traditional village council jurisdiction, such as inaccessible upland forests and uncultivable lava fields. But most accessible land is owned by families. O'Meara (1995, 1987, 1986) provides detailed research findings that most Sāmoans "... today describe as their customary land tenure a set of principles which closely match those reported by Europeans in the nineteenth century, those recorded in early Land and Titles records and those elicited by researchers throughout the 20th century." Put simply, these principles are that land is held on corporate basis by *matai* who have authority over it and utilised by the extended family of the *matai* according to their needs, who render service to him, or in rare instances her, in return. As O'Meara has shown and as we have also observed, people's actual beliefs and behaviour often do not match those principles. Most people believe that the customary land they occupy is the property of their immediate family, often nuclear families, and consider that rights to it will be inherited only by children of the present landholders.

The expression of claims to land by individuals and their immediate family is visibly demonstrated by the trend in villages for people to fence off not only agricultural land but residential areas of land with chain wire fences and gates, including land over which there is no *pulefa'amau*. Another device for the assertion of individual property rights is the location of graves. It is not unusual to see a grave or two located right in the middle of an area of unoccupied land. What does this signal? It tells everyone that "this land belongs exclusively to

the immediate descendants of the person or person buried here.” Until 1962, under colonial regulations no-one was allowed to be buried in front of a house. Everyone had to be buried in cemeteries, with the exception of those who had family graveyards, and very high ranking chiefs who could be buried only beside the residence-place associated with their title. Today most houses have graves in front; they may be graves of *matai* but may also be graves of other relatives of the house owners, including mothers and grandmothers. According to old customs no longer observed, when a married woman died she was returned to be buried in her own village, not on land within the village of her husband. There is clearly no consensus today about what the customary rules are, and the evidence is that each family does as it prefers to do. Practices are gradually becoming customs.

By constitutional guarantee, customary land cannot be sold and therefore cannot be mortgaged, but it has been possible to lease customary land since 1992. Non-citizens may not own freehold land or hold leases on customary land. Recently, with funding from the Asian Development Bank (ADB) for a technical assistance project ‘Promoting Economic Use of Customary Land’ (ADB2009), measures have been taken to alter the customary land-leasing framework and to set up a database of leased and leasable land, possibly with the aim of developing a registry of all customary land. These measures allow for the possibility of leasing land to non-citizens, and so have triggered concerns aired in local newspapers about defending customary land tenure system, and anxieties that foreigners are somehow being empowered to take it away from Sāmoans (see links to these articles, IDI 2015).

A group of concerned *matai* has protested to the ADB about the project, particularly about insufficient consultations on proposed changes to land laws. They are Leuluai Tasi Malifa, lawyer and *matai* of Afega village, Telei’ai Dr. Sapa Saifaleupolu, *matai* of Samatau, and Fiu Mata’ese Elisara, *matai* of Sili and Savai’i and Executive Director of Ole Siosiomaga Society Incorporated, and Lilomaiava Ken Lameta, *matai* of Vaimoso and Safotu. Journalist and newspaper editor Mata’afa Keni Lesa quotes from the concerns they raised: “Land in Sāmoan culture is regarded as an inheritance from God and connected intimately to the *matai* system. ... The fear is that if land is lost so will the *matai* system, hence also the culture of Sāmoa.” (PIDP2015). A California-based nongovernmental organisation, Inclusive Development International (IDI) has backed these concerns and assisted to direct the complaints to the ADB’s office for accountability and legal matters. IDI summarised the concerns of these *matai* on their website as follows:

The chiefs are gravely concerned that the reforms, which have been carried out without meaningful consultation of the Sāmoan people, could have the effect of individualizing control over land throughout the country, and ultimately placing large tracts of land in the hands of banks.

Under the ADB-driven reforms, Sāmoan law has already been changed to allow mortgages over leases of customary land that have been granted by the Minister of Lands, Surveys and Environment, without any consultation whatsoever with the ‘aiga. A number of concerned matai warn that as a result, Sāmoans are in danger of experiencing the same type of corrupt land deals as those recently exposed in Papua New Guinea, where local communities have been duped out of large swaths of their customary land. (IDI 2015)

There may be some substance to these concerns as there are undocumented rumours, difficult to verify, that a number of prime locations in Sāmoa have been leased to foreign developers with the agreement of a small number of present-day holders of *matai* titles, who assert ownership of the land, without consultation with the *'aiga* and with the land rental going only to the *matai* who signed the lease, excluding others with hereditary claims of rights in the land. Whether true or not, customary land is slowly and informally becoming individualised into small farms and residential compounds. It seems likely that in the future, people will eventually come to accept the registration of customary land in ways that confirm ownership of it. At present it is unlikely that most people would support registration of customary land. To do so would probably provoke competing claims from people living elsewhere, who may consider they also have hereditary rights to it. People are also likely to fear the uncertain outcome of cases taken before the Lands and Titles Court.

The Land and Titles Court was originally intended by the German administration to reshape and redefine Sāmoan customs. As previously explained, it was established in 1903 with that objective, but since the end of the German administration in 1914, the court has not developed any new policy objectives other than ruling on disputes and maintaining records. Under the New Zealand administration when non-Sāmoans held the positions of Chief Justice and President of the Land and Titles Court they were informed on the core principles of Sāmoan custom from procedural notes written by the Chief Justice Dr E. E. Schultz-Ewerth who was later Governor of German Sāmoa. In the New Zealand colonial period a book by F. J.H Gratton (1985[1948]), the Secretary of Sāmoan Affairs, carefully describes the customs and organising principles of Sāmoan Society, drawing on the writings of Schultz-Ewerth. Over the 51 years since independence there has been no attempt to record the principles by which decisions regarding disputes over customary land will be made. Assuming that all Sāmoans know their customs and culture, the Land and Titles Court makes its decision on the basis of undefined, possibly arbitrary, and often contrary principles, depending on the opinions of those on the bench. Accordingly, the Land and Titles Court has no principles to fall back on when it comes to making decisions on the relative rights of those living on and utilising land and others who assert rights to it through a split title, or a common ancestor, or the relative rights to land between those members of a land-owning family living in Sāmoa and those living overseas. Perhaps this is what was intended by the architects of Sāmoa's Constitution, that customs would evolve, that the Sāmoans would muddle through, and eventually a new consensus would emerge about what is customary.

Notes:

1. Sāmoa has two categories of *matai* (titled heads of families or lineages), *ali'i* (chiefs) and *tulafale* (orators).
2. The term *Tamaaiga* refers to four paramount titles associated with the struggles over the monarchy in the nineteenth century.

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