Housing, Land and Property Mapping Project

Cook Islands

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses, however these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by Allens lawyers, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

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**Housing, Land and Property Law in Cook Islands**

**1 Key laws and actors**

|  |  |
| --- | --- |
| [Laws](#Laws) | The main laws governing land, building, planning and housing are the [*Constitution*](http://www.mfem.gov.ck/images/documents/CEO_docs/Legislations/Constitution-of-the-Cook-Islands/Constitution%20of%20the%20Cook%20Islands%20as%20at%2017%20July%201997%20with%20amendments%20incorporated.pdf), [*Cook Islands Act 1915*](http://www.legislation.govt.nz/act/public/1915/0040/latest/whole.html), [*Property Law Act 1952*](http://www.legislation.govt.nz/act/public/1952/0051/latest/DLM267065.html), [*Land (Facilitation of Dealings) Act 1970*](http://extwprlegs1.fao.org/docs/pdf/cok4213.pdf)and [*Leases Restrictions Act 1976*](http://www.paclii.org/ck/legis/num_act/lra1976233.rtf). |
| [Key government actors](#Key_Govt_Actors) | The main government and judicial bodies responsible for administering land are the:   * Land Division of the High Court of the Cook Islands, which maintains the Register of Land Titles; * Leases Approval Tribunal, which approves every lease and/or assignment or mortgage of lease in the Cook Islands; * Land Trust Section of the Ministry of Justice, which manages a leases database created by the information provided by the Land Information Division and the High Court Land Division concerning the outcome of applications for leases, and the resolution of disputes over ownership; and * Land Information Division of the Ministry of Justice, which is responsible for maintaining the Register of Land Titles. |
| Shelter cluster | Research did not reveal an active shelter cluster in the country. |

**2 [Common types of tenure](#Common_types_of_tenure)**

All tenure in the Cook Islands is derived, ultimately, from the Crown. Land in the Cook Islands is then divided into two basic categories: customary land (or uninvestigated land) and native freehold land (or investigated land). While most readily accessible land on Rarotonga was investigated decades ago (and is thus mostly native freehold land), it is not unusual to encounter customary (uninvestigated) land in the outer islands. On Mitiaro, Mangaia and Pukapuka islands, all land is uninvestigated land.

The table below summarises the different types of tenure in the Cook Islands.

|  |  |  |  |
| --- | --- | --- | --- |
| **Tenure** | **Commonly Registered?** | **Key Features** | **Title document** |
| [Freehold](#FreeholdLand) | Yes | Freehold land is held by either:   * the Crown, where it needs land for its own purposes; * Native Cook Islands landowners, who have established their rights to an award of 'native freehold' title; and * the Cook Islands Christian Church. | Recorded with the Land Division of the High Court. |
| [Occupation Right](#Occupation_Right) | Yes | The Land Division of the High Court has a discretion to make an occupation order which specifies who is allowed to occupy the land, for how long they are allowed to occupy the land, what they can or must do with the land, and any other terms and conditions the court thinks fit to impose.  Occupation rights are now being granted in terms that they have a maximum life of 60 years. | Recorded with the Land Division of the High Court. |
| [Lease/Sub-Lease](#Lease) | Yes | All leases, subleases and assignments with a five-year term or more must be approved by the Leases Approval Tribunal. The maximum term for any lease is 60 years.  The Leases Approval Tribunal must approve every lease and/or assignment or mortgage of lease in the Cook Islands. | Recorded with the Leases Approval Tribunal |
| [Customary Land Rights](#CustomaryLand) | No | Customary land is held by natives or the descendants of natives of the Cook Islands. Customary land can also be held by virtue of a person’s title as a high chief (*Ariki*). Ariki title gives title over land to the Ariki, and his or her successors in office.  Customary land is absolutely incapable of alienation. This means that it cannot be sold/bought, leased or (subject to a statutory exception for the benefit of Bank of the Cook Islands) mortgaged.  The Land Division of the High Court has a discretion to make an occupation order that says who is allowed to occupy the land, for how long they are allowed to occupy the land, what they can or must do with the land, and any other terms and conditions the court thinks fit to impose. This is, in essence, deemed "customary title". | No title documents |

**3** [**Security of tenure of vulnerable groups**](#Security_of_tenure)

|  |  |
| --- | --- |
| [Women](#Women) | Women have formally equal rights to own, rent and inherit property under Cook Islands law, and are noted to play a particularly active part in land matters. |
| [Minority groups](#Minority_groups) | The Leases Approval Tribunal currently prevents the leasing of land to foreign persons and businesses, except for commercial purposes. As a result, minority groups can lease lands for no longer than the 'five years less one day' threshold (beyond which a tenancy is of no effect unless approved by the Tribunal).  The cumulative result of this is that foreigners do not legally own or rent land or housing in the Cook Islands. |
| [Informal settlements](#Informal_Settlements) | Informal settlements are not a feature of the Cook Islands. While a range of informal settlements arose during the 1970s as a result of outer islanders moving to Rarotonga, almost all remaining outer islanders have since taken title (usually leases) over the land they occupied. |
| [Landless people](#Landless_people) | With respect to landless people and squatters rights:   * in relation to freehold land, the limitations provisions provide that proceedings for recovery of land cannot be bought more than 12 years after the cause of action arose. As such, a right of action over an informal settlement shall accrue at the time when the owner has been dispossessed or has discontinued possession of the land; and * in relation to customary land, there is no recognition of squatters rights or adverse possession. |

**4** [**Eviction, expropriation and relocation**](#Eviction_Expropriation_and_Relocation)

|  |  |
| --- | --- |
| [Eviction](#Eviction) | The Constitution prohibits compulsorily taking possession of a right over or interest in any property, except with adequate compensation and where the High Court has determined the right of access to the person claiming the interest in the property. |
| [Expropriation](#Expropriation) | The High Commissioner can acquire land for public purposes. Any person with a right, title, estate or interest in that land shall be entitled to compensation from the Crown. It is likely that the High Commissioner would likely be permit to acquire land in response to a natural disaster. |
| [Relocation](#Relocation) | There are no specific laws governing relocations.  In 2002, the Cook Islands adopted the [*Cook Islands Red Cross Society Act 2002*](http://www.paclii.org/cgi-bin/sinodisp/ck/legis/num_act/rcsa2002203/rcsa2002203.html?stem=&synonyms=&query=cook%20islands%20red%20cross%20society%20act&nocontext=1)to establish the Cook Islands Red Cross Society. One of the primary functions of the Society is to organise emergency relief services for victims of disasters, however caused. This includes developing specific shelter strategies, which may include the relocation of vulnerable communities. |

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| **Disaster Law Housing, Land and**  **Property Mapping Project**  Cook Islands |
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**Disclaimer**

This report is the result of a desktop review of publically available information and discussions with a Cook Islands' lawyer. This report is not legal advice.

The information in this report is current as at 4 August 2017.

1. Introduction
   1. Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects of disasters are countered and the needs of the affected communities are met.

The Australian Red Cross (***ARC***) is a key Partner National Society, supporting  the International Federation of Red Cross and Red Crescent Societies (**IFRC**) in their responses to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

We have based this memorandum on a research template that the Australian Red Cross prepared with technical support and initial research from IFRC. This memorandum comprises three main sections.

* The first section, entitled ['Common tenure typologies'](#Common_types_of_tenure), provides an overview of the different types of housing and land tenure in the Cook Islands. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled '[Security of tenure of vulnerable groups](#Security_of_tenure)', considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing.
* The third section, entitled ['Eviction, expropriation and relocation'](#Eviction_Expropriation_and_Relocation), considers the Cook Islands' statutes and case law which govern, or are applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.
  1. Background information on the Cook Islands

The Cook Islands is an archipelago in the South Pacific Ocean comprising 15 islands and covering a land area of 240 square kilometres.[[1]](#footnote-1) The Cook Islands are divided into a northern group and a southern group. The northern group consists of six low-lying, sparsely populated, coral atolls, namely Pukapuka, Nassau, Suwarrow, Rakahanga, Manihiki and Penrhyn.[[2]](#footnote-2) The remaining nine islands form the southern group, namely Rarotonga, Aitutaki, Mangaia, Atiu, Mauke, Mitiaro, Manuae, Takutea and Palmeston. Rarotonga, the main island, takes up one quarter of the Cook Island's total land area. It is also home to the national capital, and only urban centre, Avarua.

Statistics from the December 2016 Census have not yet been published. According to the latest government data (from September 2016), the Cook Islands has a population of 19,400.[[3]](#footnote-3) However, this figure includes short term visitors to the islands, who are predominantly tourists and contract workers. When these numbers are removed, the resident population of the Cook Islands is estimated to be 11,700.[[4]](#footnote-4) As at May 2017, the density of population was 81.1 people per square kilometre.[[5]](#footnote-5)

The majority of this population live in the southern group of the Cook Islands. Approximately 10,572 residents and 2,523 visitors and short-term migrant workers live on the island of Rarotonga.[[6]](#footnote-6)

The population of the outer islands continues to decrease as a result of limited access to basic services such as health, education, transport and employment opportunities.[[7]](#footnote-7) However, rather than migrate to Rarotonga, most migrants from the outer islands leave for New Zealand or Australia. More than twice as many Cook Islanders live in New Zealand than in the Cook Islands themselves.

The Cook Islands has a relatively homogenous population, with 81.3% of the population identifying as Cook Island Maori (Polynesian), 6.7% identifying as part Cook Island Maori, and 11.9% identifying as 'other'. Those identifying as 'other' are most commonly of New Zealand European origin and almost all live on Rarotonga.[[8]](#footnote-8) Other than a small number of contract workers, primarily from Fiji, the Philippines and Indonesia, there are no documented minority groups in the Cook Islands.[[9]](#footnote-9)

Figure 1: (Map on the left from: CIA World Factbook, Cook Islands, 12 January 2017, <https://www.cia.gov/library/publications/the-world-factbook/geos/cw.html>)

The main legislative instruments governing land and housing in the Cook Islands are the [*Constitution*](http://www.mfem.gov.ck/images/documents/CEO_docs/Legislations/Constitution-of-the-Cook-Islands/Constitution%20of%20the%20Cook%20Islands%20as%20at%2017%20July%201997%20with%20amendments%20incorporated.pdf), [*Cook Islands Act 1915*](http://www.legislation.govt.nz/act/public/1915/0040/latest/whole.html), [*Property Law Act 1952*](http://www.legislation.govt.nz/act/public/1952/0051/latest/DLM267065.html), [*Land (Facilitation of Dealings) Act 1970*](http://extwprlegs1.fao.org/docs/pdf/cok4213.pdf)and [*Leases Restrictions Act 1976*](http://extwprlegs1.fao.org/docs/pdf/cok4225.pdf). The main government and judicial bodies responsible for administering land are the Land Division of the High Court of the Cook Islands (the ***Land Division of the High Court***), the Leases Approval Tribunal, the Land Trust Section of the Ministry of Justice, and the Land Information Division of the Ministry of Justice, which is responsible for maintaining the Register of Land Titles.

The Cook Islands is a self-governing parliamentary democracy in free association with New Zealand. While the Cook Islands is fully responsible for internal affairs, New Zealand retains responsibility for external affairs and defence, albeit in consultation with the Cook Islands. For most practical purposes, and in accordance with The Joint Centenary Declaration of the Principles of the Relationship between the Cook Islands and New Zealand,[[10]](#footnote-10) the Cook Islands conducts its own foreign affairs, and develops foreign policy to its particular needs.

Queen Elizabeth II is the Head of State of the Cook Islands. The Government of the Cook Islands is led by the Prime Minister of the Cook Islands.

Chiefs (***Ariki***) in the Cook Islands still enjoy certain privileges and responsibilities. Importantly, the title as an Ariki (***Ariki title***) carries with it corresponding title over land.

1. Common types of tenure
   1. Tenure typologies
      1. **What are the key pieces of legislation governing housing, land, building and planning?**

The key pieces of legislation governing housing, land, building and planning in the Cook Islands are as follows:

* The [*Constitution*](http://www.mfem.gov.ck/images/documents/CEO_docs/Legislations/Constitution-of-the-Cook-Islands/Constitution%20of%20the%20Cook%20Islands%20as%20at%2017%20July%201997%20with%20amendments%20incorporated.pdf), which took effect with the attainment of self-Government on 4 August 1964 and which, subsequently, established the Land Division of the High Court, recognises the legal status of customary law and sets out theprohibition regarding compulsorily taking possession of a right over or interest in any property.
* The [*Cook Islands Act 1915*](http://www.legislation.govt.nz/act/public/1915/0040/latest/whole.html), which deals with Crown land (Part X), what is now the Land Division of the High Court (Part IX), customary land (Part XII), the partition and exchange of Native land (Part XIII), Native succession (Part XIV) and the procedures for and restrictions on the alienation of native freehold land (Part XVI).[[11]](#footnote-11)
* The [*Property Law Act 1952*](http://www.legislation.govt.nz/act/public/1952/0051/latest/DLM267065.html), which deals with general rules affecting property, including covenants, mortgages, leases and tenancies, easements, and partitions, and which is of significance in this context as it modifies the common law relating to leasing and mortgaging.[[12]](#footnote-12)
* The [*Land (Facilitation of Dealings) Act 1970*](http://extwprlegs1.fao.org/docs/pdf/cok4213.pdf) (amended in 1973 and 1974), which facilitates dealings in land by providing for incorporation of owners of native land and, whether or not land is incorporated, for alienation of land to be approved by a court-called and court-chaired meeting process (thus avoiding the need for all registered owners to agree to the alienation).
* The [*Leases Restrictions Act 1976*](http://extwprlegs1.fao.org/docs/pdf/cok4225.pdf)(amended in 2002 and 2005), which restricts leases, assignment of leases or subleases.
* The [*Land Use Act 1969*](http://policy.mofcom.gov.cn/english/flaw!fetch.action?libcode=flaw&id=e7e758a8-60c2-49a4-9892-a74401d2dcf9&classcode=410), which provides for the designation of land use of the islands. This Act is divided into three parts: Zoning Orders; Land Use Board; and Administration. Although administered by the Ministry of Justice, this Act is said to 'lie dormant' as there is no specific department dealing with land use planning and there are no known national land use planning policies.[[13]](#footnote-13)
* The [*Unit Titles Act 2005*](http://www.paclii.org/cgi-bin/sinodisp/ck/legis/num_act/uta2005160/uta2005160.html?stem=&synonyms=&query=Unit%20Titles%20Act%202005) (amended in 2007), which concerns the subdivision of land into units, the establishment of rights in relation to units, and provides rules relative to unit titles.
* The [*Building Controls and Standards Act 1991*](http://www.paclii.org/cgi-bin/sinodisp/ck/legis/num_act/bcasa1991306/bcasa1991306.html?stem=&synonyms=&query=Building%20Controls%20and%20Standards%20Act%201991), whichwas introduced by the Cook Islands Government in an attempt to standardise building practices.
  + 1. **What types of tenure exist?**

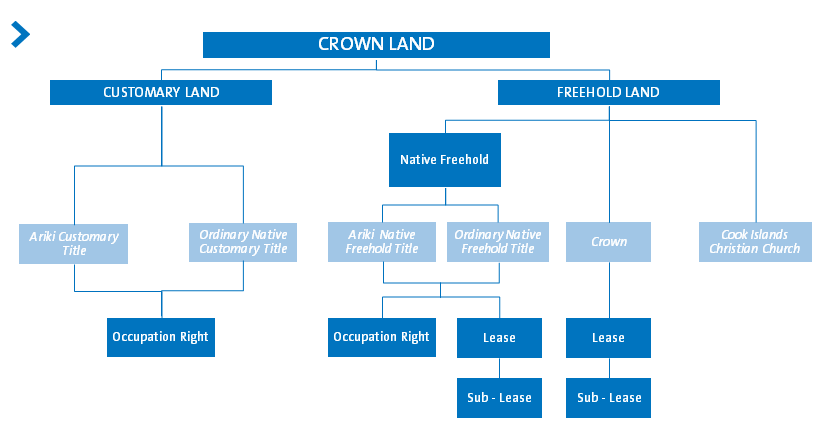
All tenure in the Cook Islands is derived, ultimately, from the Crown. Land in the Cook Islands is then divided into two basic categories:

* **customary land**, which is also referred to as **uninvestigated land**; and
* **native freehold land,** which is also referred to as **investigated land**.[[14]](#footnote-14)

Following from its predecessor legislation that took effect following annexation of the Cook Islands by New Zealand in 1901, the *Cook Islands Act 1915* provided the Land Court (now the Land Division of the High Court) with exclusive jurisdiction to investigate the title, to determine the relative interests of the owners, and to make a freehold title order defining the area dealt with.[[15]](#footnote-15)

While most readily accessible land on Rarotonga was investigated decades ago (and is thus mostly native freehold land), it is not unusual to encounter uninvestigated (customary) land in the outer islands. On Mitiaro, Mangaia and Pukapuka islands, all land is uninvestigated land.[[16]](#footnote-16)

Nassau and Palmerston islands each enjoy a special status. On these islands, land is effectively held and controlled as a matter of customary law by the owners on whom formal legal status was conferred under the *Cook Islands Act 1915.*

The diagram below depicts the categories of land, holders of land, and different types of tenure in the Cook Islands.

The several types of tenure in the Cook Islands are shown in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Tenure** | **Registrable?** | **Commonly Registered?\*** | **Section below** |
| **Customary** | No | –– | [(i)](#CustomaryLand) |
| **Freehold** | Yes | Yes | [(ii)](#FreeholdLand) |
| Occupation Right | Yes | Yes | [(i)(A)](#Occupation_Right) |
| Lease | Yes | Yes | [(ii)(B)(2)](#Lease) |
| Sub-Lease | Yes | Yes | [(ii)(B)(2)](#Lease) |

*\* See* [*sections 2.1(e)*](#Key_Govt_Actors) *discussing the inefficiency of the Cook Islands registration system and* [*2.2(a)*](#Tenure) *discussing the manner in which land tenure is registered.*

Each of these types of tenure are discussed in greater detail below.

* + - 1. **Customary Land**

The legal status of uninvestigated land is recognised by the *Cook Islands Act 1915* (***CIA***). Uninvestigated land is 'customary land'. The *CIA* defines 'customary land' as 'land which, being vested in the Crown, is held by Natives or the descendants of Natives under the Native customs and usages of the Cook Islands'.[[17]](#footnote-17)

Native is defined in the *CIA* as:

a person belonging to any of the Polynesian races (including the Maori race), and includes a half-caste and a person intermediate in blood between a half-caste and a person of pure descent from any such race.[[18]](#footnote-18)

Today there are many Cook Islanders who are not 'natives' within the strict meaning of the Act, as their bloodlines would exclude them and/or their descent as not 'pure'.[[19]](#footnote-19) The Court, however, does not draw a distinction between registered landowners who are 'natives' within the meaning of the Act and those who are not. The use of the term 'native' is avoided by most Cook Islanders given its obsolete and patronising connotations. In practice, the provision for succession according to native custom allows persons to succeed as landowners regardless of whether they are 'natives'.

Customary land can also be held by virtue of a person’s title as a high chief (*Ariki*). Ariki title gives title over land to the Ariki, and his or her successors in office. Both men and women are eligible to be invested with Ariki title, which is determined under custom. Custom varies from title to title, and from island to island, but is generally on the basis of bloodline and endorsement, of a customary nature, by the *kopu ariki* – those of the tribe who form the (extended) ruling family.

Ariki land may be either customary land or native freehold land (for discussion of Ariki freehold title, see below).[[20]](#footnote-20) In three of the outer islands*,* Pukapuka, Mitiaro and Mangaia, the Ariki hold the land according to native custom.

Customary land is absolutely incapable of alienation. This means that it cannot be sold/bought, leased or (subject to a statutory exception for the benefit of Bank of the Cook Islands) mortgaged.

However, in addition to their own use of the land, native owners can alternatively deal with customary land through the use of occupation rights.

* + - * 1. Occupation Right

Where the Land Division of the High Court is satisfied that the majority of the owners of any Native land (or any part thereof) would like the land to be occupied by any particular native(s) or descendant(s) of natives, the Court can grant rights of occupation of that land to that person or persons.[[21]](#footnote-21) 'Native land' is defined in the *CIA* to mean *either* customary land or Native freehold land.[[22]](#footnote-22)

The Land Division of the High Court has a discretion to make an occupation order that says who is allowed to occupy the land, for how long they are allowed to occupy the land, what they can or must do with the land, and any other terms and conditions the court thinks fit to impose.[[23]](#footnote-23) In making these determinations, 'the wishes of the owners as to the term and terms of the Order to be made must be given significant weight.'[[24]](#footnote-24) However, the Court will limit the desires of current owners to protect the interests of future generations. Savage J has explained that the Court

would not allow [the owners] to unreasonably fetter future generations… Those future owners must have some prospect of the land returning to them for them to exercise their decisions as to how it should be used.[[25]](#footnote-25)

Occupation rights can be granted to any Native(s) or descendant of Native(s). In law at least, there is no requirement that that person be one of the owners, and 'the fact that the applicant is not an owner does not at all count against her.'[[26]](#footnote-26) However, in practice, landowners are typically reluctant to grant occupation rights to others who are not owners of the land or connected in some way by blood, which means that occupation rights are most commonly granted to relatives who co-own the land.[[27]](#footnote-27) It is also current judicial policy that an occupation right will not be granted to a person under the age of twenty-one.[[28]](#footnote-28)

In terms of the type of tenure granted, any person occupying land under an occupation order 'shall be deemed to be the owner of the land under Native custom'.[[29]](#footnote-29) In essence, an occupation right is a deemed 'customary title'. This means that it gives the owner of that right exclusive possession of a parcel of land as against the owners of the freehold title. The individual has the right to occupy a section of land which can be used for the purpose of, for example, growing crops, building a home or operating a business. As Savage J has explained,

[n]o new title issues. There is simply a notation against the existing title. There is no change in ownership as a consequence of the [Occupation] Order. The holder of the occupation right has a right to exclusive possession as against the world and more particularly against his or her co-owners for the term of the Order.[[30]](#footnote-30)

Occupation rights have, in the past, been granted on terms that would allow them to be perpetual in effect, passing to descendants of the original holder under native custom and succession order. Since many occupation rights represent an over-occupation by a holder against others, there is doubt as to the enforceability of that approach, which has now fallen into disuse.

All occupation rights are subject to the continued occupation of the land. However, given that an occupation right is a deemed 'customary title', occupation rights cannot be leased, sold or (subject to a statutory exception for the benefit of Bank of the Cook Islands) mortgaged.[[31]](#footnote-31)

Cook Islanders planning to emigrate have often tried to obtain occupation rights beforehand so they have land to come back to (despite the fact that very few return).[[32]](#footnote-32) Occupation rights are now being granted in terms that they have a maximum life of 60 years. However, typically, if the rights holder has not built or developed that land in some way within a set period of time, usually between five and seven years, the relevant order is in terms either that owners can claim the land back or that the right automatically lapses.

Historically, little notice has been taken by holders, or owners of these 'relapsing rights', which explains why such a large number of absentee landowners retain occupation rights for long periods.[[33]](#footnote-33) However, it should be noted that on Rarotonga, at least, increasing demand for land, and the economic value now placed on it, means that applications to cancel occupation rights or reliance on automatic lapse are becoming more common.

Until recently, most Cook Islanders understood that an occupation right was a right to occupy a certain parcel of land, and that that right went on forever, passed down from parent to child. While most occupation orders have for decades contained a condition that the occupier must build a dwelling in a certain number of years, many land-owning families are said to have treated such conditions as mere ‘technicalities’.[[34]](#footnote-34) Demand for land and the increasingly sophisticated attitudes towards land – particularly by those returning from overseas – means attitudes are changing. As noted above, Court practice is also changing.[[35]](#footnote-35)

Certainly more recent reports have suggested that the automatic lapsing clause is 'now being applied more rigorously'.[[36]](#footnote-36) According to the justice secretary, Tingika Elikana, failure to comply with the conditions means that the occupation right will lapse 'automatically' where the order so states. Successful applicants for occupation rights to build residential homes must have started construction within five years of the approval date, and have completed building within seven years. However, landowners are allowed to apply for an extension of not more than three years.[[37]](#footnote-37)

Recent judicial determinations, in which occupation rights have been cancelled because conditions have not been complied with in a reasonable amount of time, have put occupation rights into a grey area and, according to one local media report, are 'at odds with what many people believe they mean.'[[38]](#footnote-38) As Tim Arnold has noted, '[i]t is important to be aware the terms of section 50 [which provides the basis for the provision of occupation rights]…simply reflect the current practice of the courts here – they do not necessarily reflect the future practice.'[[39]](#footnote-39)

* + - 1. **Freehold Land**

As noted above, the Land Division of the High Court has exclusive jurisdiction to investigate the title to land, to determine the relative interests of the owners, and to make a freehold title order defining the area dealt with.[[40]](#footnote-40) The effect of this freehold order is to vest the person or persons named in the order with a legal estate in fee simple,[[41]](#footnote-41) and to hold the land as tenants in common in the shares set out in the orders.[[42]](#footnote-42)

Almost all valuable land in the Cook Islands is registered as 'freehold title', including most of Rarotonga.[[43]](#footnote-43) For all practical purposes today, freehold is held by:

* the Crown, where it needs land for its own public purposes;
* Native Cook Islands landowners, who have established their rights to an award of 'native freehold' title; and
* the Cook Islands Christian Church.[[44]](#footnote-44)
  + - * 1. **Crown land**

Technically, the Crown is capable of alienating its land on whatever terms and for whatever purposes it wishes. However, in practice, the Crown only ever grants 60 year leases (or some lesser tenure by way of lease or licence) and, except where returning land to landowners, will grant leases only for public purposes.[[45]](#footnote-45)

* + - * 1. **Native freehold land**

Under the native freehold title system, only Cook Islanders and their descendants can have legal 'ownership' over a defined area of land. The freehold of Native freehold land cannot be bought or sold.

While land under native freehold title cannot be bought or sold, on the death of an owner, those who – under custom – are regarded as entitled to succeed to that interest, can apply to the Land Division of the High Court for a “succession order” in their favour. As a matter of custom, women hold equal inheritance rights to men. Customary interests in land and native freehold interests in land are not capable of being dealt with by will, nor do they form part of a landowner’s estate on an intestacy.

In addition to being held by 'ordinary' native Cook Islanders, Native freehold land can also be held by virtue of a person's title as an Ariki. The land over which the Ariki claims title will be held to be Native freehold land when that land has been judicially investigated, and either an order on investigation of title (pre-1915) or a freehold order (under the *CIA*) has been made. In these circumstances, the legislation makes specific provision for the unique nature of Ariki title by stating that the land will 'vest in fee simple in such Ariki or Native chief and his successors in office in the same manner as if they were a corporation sole'. That is, the land is held by the individual by virtue of his or her Ariki title, rather than personally.

A person who holds native freehold land (including as an Ariki) can deal with the use of the land by:

* granting an occupation right;
* granting a lease (or sublease);
* seeking a partition order (discussed below at [section 2.2(a)(ii)(C)](#Partion_2_2_a_ii_c)); or
* seeking a vesting order (discussed below at [section 2.2(a)(ii)(D)](#Vesting_2_2_a_ii_d)).

Occupation Right

See above. Occupation rights operate in exactly the same way in relation to customary land as they do in relation to native freehold.

Lease

In addition to occupation rights, a system of leases enables Cook Islanders and other persons (natural and legal) to use native freehold land without affecting that underlying freehold interest. Leasehold interests in the Cook Islands allow flexibility for landowners who often take a lease of land in which they are freehold owners; this allows them to sell and mortgage land or to allow other non-owners (a spouse, a family company etc.) to have security of tenure.

All leases, subleases and assignments with a five-year term or more must be approved by the Leases Approval Tribunal.[[46]](#footnote-46) The maximum term for any lease is 60 years. Furthermore, no alienation of native freehold land (the term alienation encompassing both leases and licences) is of any force or effect unless or until confirmed by the Land Division of the High Court.

* + 1. **Which, if any, of these types of tenure provide a high degree of security of tenure?**

As above, given that native freehold title cannot be bought or sold, this type of tenure offers high security of tenure. However, various issues have arisen from a ruling of the Land Division of the High Court in 1957 that significantly affected land tenure in the Cook Islands. The Court held that all children inherit equally in the registered native lands of each of its ancestors, meaning each person inherits an equal share in all lands of both parents, grandparents, great-grandparents, so on and so forth. The effect of the decision has been a serious fragmentation of ownership rights in land.[[47]](#footnote-47) It has also caused younger Cook Islanders to struggle to obtain suitably sized plots, even those from families with large amounts of land.[[48]](#footnote-48)

Occupation rights offer a relative level of security because the people who are granted occupation rights over land effectively own that piece of land. It has been suggested that 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', which in turn encourages trade locally, and advances the economy.[[49]](#footnote-49)

Despite this, people with blood rights to land almost always elect the lease process as opposed to seeking an occupation right.[[50]](#footnote-50) According to Tim Arnold, this is because banks will lend against leases but not occupation rights (except in the case of Bank of the Cook Islands).[[51]](#footnote-51) Further, leased land can be held unused for 60 years, whereas occupation rights, as noted above, can be liable to cancellation or automatic termination in circumstances where the land is not occupied or has not been developed. Once the Land Division of the High Court confirms (or confirms a resolution of a meeting of assembled owners approving a lease) a lease (which is usually for the maximum of 60 years), it is considered secure.[[52]](#footnote-52)

* + 1. **How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.**

Statistical data regarding the prevalence of each type of tenure is not readily available.

While there is no information regarding differing tenure arrangements between urban and rural areas, sources note that there are significant imbalances (actual and/or perceived) that occur between Rarotonga and the 'outer islands'[[53]](#footnote-53) (or 'sister islands' as they are now referred).[[54]](#footnote-54)

It is important to note, however, that most of those living in the outer islands today have made the deliberate decision to do so, since the ease and relative modest expense of relocating to New Zealand and Australia has driven massive depopulation of those islands.[[55]](#footnote-55) The provision of basic services and skills in those islands reflects the existential challenges of societies whose men and women of working age have largely decamped overseas. According to Tim Arnold, in today’s Cook Islands society, the most vulnerable are in fact non-landowners. The pressures of depopulation and a growing economy have seen unskilled and semi-skilled employment increasingly filled by migrant workers whose circumstances – often employed on the minimum wage and remitting money to their home country – put economic pressures on them that make them less resilient in times of crisis or disaster.

* + 1. **What are the main government and non-government bodies (e.g., representative bodies) which administer and deal with housing, land and property?**

The main government and judicial bodies which administer and deal with housing, land and property are:

* the **Land Division** of the **High Court of the Cook Islands**;
* the **Leases Approval Tribunal**, which must approve every lease and/or assignment or mortgage of lease in the Cook Islands;
* the **Land Trust Section** of the **Ministry of Justice**, which manages a leases database created by the information provided by the Land Information Division and the High Court Land Division concerning the outcome of applications for leases, and the resolution of disputes over ownership; and
* the **Land Information Division** of the **Ministry of Justice**, which is responsible for maintaining the Register of Land Titles.

The Register of Land Titles maintained by the Land Information Division of the Ministry of Justice is known for its high level of inefficiency. For example, a new landowner is entered into the register only once the Land Division of the High Court approves their succession application. The Land Division of the High Court, however, only meets twice a year for a total of four weeks. The volume of applications and the Court's short sitting time have generated significant backlog, much of which relates to succession.

The register also only includes Cook Islanders who have title to a particular parcel of land; there is no statutory requirement to register other legal instruments that affects title to the land, such as leases, mortgages and occupation rights. However, as a court of record, dealings that give rise to orders of the Land Division of the High Court – confirmations of lease, rent review orders, occupation right orders etc – are noted on the register. Assignments of lease, mortgages and other similar dealings do not find their way onto the register by this route. In practice, the legal profession uses the register to lodge these documents so that particulars are entered as a form of constructive notice.[[56]](#footnote-56) It is worth noting that there is no Torrens system of title registration; title comprises possession of the necessary chain of original title documents.

In 2015, the Land Information Division commenced a transition from a paper-based register to an electronic register. This process has been plagued by processing errors which have caused further serious delays. Illustrating the problem all too clearly, Cullen explains that

a barrier to [digitising the Cook Islands' land titles database] is the high level of concern about the quality of the data that the process would expose and the potential for disputes, due to the inappropriate method used by the Cook Islands Land Court in assigning title in the early 20th century.[[57]](#footnote-57)

* 1. Documenting tenure
     1. **What statutory instruments or legal documents (eg, title deeds or leases) are used to create or transfer tenure?**

Following from the above, all 'registration' in the Cook Islands remains entirely informal. Given that the Land Court was a court of record, all of its dealings were recorded in the minute books. The recording of these decisions in respect of land title meant that the Court records constituted, in effect, a register of title. This system continues today in the Land Court's successor, the Land Division of the High Court.[[58]](#footnote-58)

By definition, customary land interests have not come before the Land Court or the Land Division of the High Court – they are not the subject of court proceedings. As a result, these customary interests are not recorded in the minute books, nor in court orders that require the creation of a 'register of title'. On this basis, customary title is effectively incapable of registration.[[59]](#footnote-59)

In contrast, Native Freehold only comes into existence by way of Court order. Given that it is always recorded by the Court, it is effectively always 'registered'. The same applies for occupation rights, vesting orders and partition orders.

The table below identifies the types of statutory instruments used to create and transfer interests in land. Further information about these instruments is provided in the sections below.

|  |  |  |
| --- | --- | --- |
| **Customary** | Enable use of: | *Occupation Right* |
| **Native Freehold** | Creation of: | Application to the Land Division of the High Court |
| Enable use of: | *Occupation Right*  *Lease*  *Vesting Order*  *Partition Order* |
| Transfer of: | *Succession Order (in case of native freehold, occupation right, vesting order and partition order*  *Deed of assignment (in case of Lease)* |
| Occupation Right | | Application to the Land Division of the High Court  Topography map (approved by the Chief Surveyor)  List of current landowners from the Land Division of the High Court  Minutes of family meeting |
| Lease | | Application for Approval of the Leases Approval Tribunal and subsequent application for confirmation by Land Division of High Court |
| Vesting Order | | Application to the Land Division of the High Court |
| Partition Order | | Application to the Land Division of the High Court |
| SuccessionOrder | | Application to the Land Division of the High Court  Original Death Certificate  Genealogy (showing the relationship of the applicant to the deceased)  List of lands |

* + - 1. **Customary**

Customary land is absolutely incapable of alienation. However, the Land Division of the High Court can grant occupation rights of that land.[[60]](#footnote-60)

* + - * 1. Occupation Right

In order to apply for an Occupation Right, an applicant must make an application to the Land Division of the High Court and must obtain:

* a topography map approved by the Chief Surveyor;
* a current list of landowners from the Land Division; and
* the minutes of the family meeting that was held in relation to the requested area of land.[[61]](#footnote-61)

The family meeting must include all landowners, representatives, persons with power of attorney and occupiers of the requested land.[[62]](#footnote-62) The topographical map must be shown to the family during the meeting, and any resolution must be agreed by majority support.[[63]](#footnote-63) The landowners must sign the map and the meeting minutes. An application for an Occupation Order must be made within six months of the meeting.[[64]](#footnote-64)

* + - 1. **Native Freehold**

As outlined above, and for all practical purposes, native freehold cannot be bought or sold. Instead, native freehold title is inherited on the basis of a family line or title. Individuals with Native freehold title can make use of that land through use of the following:

* *Occupation right*, which (subject to the terms of the actual order) gives the owner of the right exclusive possession of a parcel of land as against the owners of the freehold title.
* *Lease*, which similarly allows an owner exclusive possession and the ability to deal with and dispose of that lease. Third parties can also take leases of land. Leases thus allow the use of native freehold land without affecting (or being affected by) the underlying freehold ownership of the land.
* *Partition order*, which is historically (and still) used to separate out different family interests from a common block. However, partition orders are increasingly used to separate the titles of individual owners, with the land allocated to an individual based on that individual's share.
* *Vesting order*, which allows for the transfer of land to a Native or a descendant to provide a site for a dwelling.
  + - * 1. Occupation Right

See above.

* + - * 1. Lease

Every application for approval of the Leases Approval Tribunal must be made in writing to the Leases Approval Tribunal.[[65]](#footnote-65) If the Leases Approval Tribunal considers that insufficient information has been made available to it in any application or supporting documents, the Committee may request the applicant to supply such further information as it considers relevant to the criteria to be taken into account.[[66]](#footnote-66)

Where there are numerous landowners of the area of land in question, a meeting of those landowners 'must' be held in order to resolve to grant a lease. In most cases, however, this is impractical and the Tribunal will instead accept consent forms that have been circulated and signed.[[67]](#footnote-67) The terms of the lease (or sublease) are negotiated by the landowners/sublessor and the prospective tenant. Those terms must then be approved by the Tribunal.

Given the matrilineal and patrilineal succession that is a feature of Native freehold title in the Cook Islands, the sheer multiplicity of owners has caused significant problems. This issue is dealt with under the *Land (Facilitation of Dealings) Act 1970* (***LFD Act***) in the following two ways:

* When any area of Native freehold land is owned by more than three persons as tenants in common, the owners may be incorporated.[[68]](#footnote-68) Incorporation as a body corporate enables the owners, among other things, to 'arrange for the lease of the land or any portion of the land'[[69]](#footnote-69) and for the affairs of the body corporate to be dealt with by a Committee of Management.[[70]](#footnote-70)
* Alternatively, and as is more common in the Cook Islands, the *LFD Act* allows land to be leased through a system of court ordered and mediated meetings with assembler owners, the outcome of which is a resolution confirmed by the Court in the lease document signed by the Registrar.[[71]](#footnote-71)

The Land Trust Section of the Ministry of Justice manages a leases database, which is created on the basis of information provided by the Land Information Division and the Land Division of the High Court concerning the outcome of applications for leases.

It is important to note that even once approved by the Leases Approval Tribunal, a lease will not take effect until either it has been confirmed by the Land Division of the High Court (where the lease is signed by the owners leasing the land) or the resolution of a meeting of assembled owners has been confirmed by the Land Division of the High Court (where the lease is subsequently signed by the Registrar of the High Court for and on behalf of all owners).

* + - * 1. Partition Order

Native freehold land can be partitioned by the making of partition orders.[[72]](#footnote-72) With large portions of the Cook Islands owned in common by dozens or even hundreds of landowners, the partitioning of land allows for land to be taken out of common ownership and allocated to an individual based on that individual's share. Depending on the size of the land, the number of owners, and the individual's respective share, land can be partitioned to a sole person or a group of people, such as a family of siblings.

The Land Division of the High Court has exclusive jurisdiction to partition Native freehold land.[[73]](#footnote-73) Any decision as to whether not to partition the land is discretionary.[[74]](#footnote-74) The Land Division of the High Court can refuse to exercise this discretion in any case in which it is of opinion that partition would be 'inexpedient in the public interest or in the interests of the owners or other persons interested in the land.'[[75]](#footnote-75) As the Court emphasised in *In re Te Raoia 12K2, Ngatangiia,*

[p]artition is only practicable for a time. As land interests become more and more fractionated and lots become smaller and smaller, it becomes impractical to partition further. Progressively fewer people hold sufficient shares to be equivalent of a usable area.[[76]](#footnote-76)

In order to obtain a partition order, an applicant must make a formal application to the Land Division of the High Court. The general form of this application is set out in the Code of Civil Procedure.[[77]](#footnote-77) If granted, the partition order will constitute, without any conveyance or other instrument of assurance, the title to the parcel of land.[[78]](#footnote-78)

* + - * 1. Vesting Order

The Land Division of the High Court also has a discretionary power, on application of an owner of 'any estate or interest in Native land', to make vesting orders in relation to that land.[[79]](#footnote-79) A vesting order allows for the transfer of any Native freehold land to a Native or a descendant of a Native to provide him with a site for a dwelling. A vesting order is personal to the holder of that order.

As is the case with occupation rights, vesting orders can be granted to any Native(s) or descendant of Native(s). In practice however, and also reflecting the practice in relation to occupation rights, landowners are reluctant to vest rights to others who are not owners of the land or connected in some way by blood.[[80]](#footnote-80)

In order to obtain a Vesting Order, an applicant must made a formal application to the Land Division of the High Court.

A vesting order may be made in favour of two or more persons as joint tenants.[[81]](#footnote-81) It must not vest any area exceeding one-third of an acre in any one person, or in two or more persons as joint tenants.[[82]](#footnote-82) However, the Court may make a vesting order in respect of a larger area where it is 'satisfied that the nature of the land is such that it is unsuitable for subdivisions into lots…not more than one-third of an acre.'[[83]](#footnote-83)

* + - * 1. Succession Order

Cook Islanders do not automatically inherit land rights from a parent, but must instead apply to the Court for a succession order. Succession is the process by which the Court determines the right of an individual to claim the interest of a Native or descendant of a Native who has died and has left an interest in the land.

In an application for a Succession Order, the Land Division of the High Court will hear evidence of the genealogical linkage of the applicant and determine if they are entitled to succeed. In addition to the application form itself, an applicant must obtain:

* an original Death Certificate;
* a genealogy, showing the relationship of the applicant to the deceased; and
* a list of lands.

All approved decisions are recorded in the Cook Islands Register of Land Titles.

* + 1. **What non-legal documents or actions (eg, verbal agreements or handshakes) are used to create or transfer tenure?**

In relation to freehold land, it is not possible to transfer or create an estate or interest other than via the processes outlined in the section above.

In relation to customary land however, it is possible for traditional leaders and traditional landowners to reach arrangements that are binding as a matter of customary law *only*. While arrangements of this sort are unusual, they do occur. By way of example, Cook Islands lawyer, Tim Arnold, has noted his involvement in a negotiation between the Crown and the people of the island Palmerston, where a non-binding, written agreement was entered into with the Crown, recognising its status and enabling the parties to install solar panels on the land.

As to be discussed in further detail below, customary rules vary across each of the islands.[[84]](#footnote-84) Regardless of the island however, the best guidance will always be found through engagement with traditional leaders and traditional landowners.

* 1. Customary ownership
     1. **Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (eg, constitution, national legislation)?**

As outlined above, the legal status of uninvestigated land is recognised by the *CIA* – that land is 'customary land'. The Actdefines 'customary land' as 'land which, being vested in the Crown, is held by Natives or the descendants of Natives under the Native customs and usages of the Cook Islands'.

In addition to the recognition of customary land, customary *law* as a general concept is expressly recognised by article 66A(3) of the *Constitution*, which states that:

[u]ntil such time as an Act otherwise provides, *custom and usage shall have effect as part of the law of the Cook Islands*, provided that this subclause shall not apply in respect of any custom, tradition, usage or value that is, and to the extent that it is, inconsistent with a provision of this Constitution or of any enactment.

Considering the application of custom in Cook Islands legislation, the Court of Appeal has noted that,

…the intention of Parliament in inserting Article 66A in 1995 was to provide for greater recognition and protection of custom and usage in the Cook Islands – or, as the Crown put it, “to acknowledge the worth and dignity of traditional Cook Islands custom”.[[85]](#footnote-85)

* + 1. **What are the sources of customary rules (eg, village chief, elders, oral tradition)?**

Article 66A(4) of the *Constitution* states that,

[f]or the purposes of this Constitution, the opinion or decision of the *Aronga Mana* [traditional leader]of the island or *vaka* [tribal territory] to which a custom, tradition, usage or value relates, as to matters relating to and concerning custom, tradition, usage or the existence, extent or application of custom shall be final and conclusive and shall not be questioned in any court of law.

Where there is no clear opinion or decision as the existence and/or content of custom, the Court has explained that there are several sources of information available to it:

[f]irst, there is the evidence presented by the parties themselves and their supporters; second, there is the record of previous statements about custom of this title made to the Court in earlier hearings; and third, there is evidence about custom recorded in historical sources such as Te Rangi Hiroa's writings.[[86]](#footnote-86)

Te Rangi Hiroa (1877-1951) (also known as Sir Peter Henry Buck) was a New Zealander doctor, military leader, politician and anthropologist who wrote a number of texts on the culture and custom of the Cook Islands. Most relevantly among these was *The Material Culture of the Cook Islands* (1927).

Further to Te Rangi Hiroa's writings, the High Chiefs (House of Ariki) prepared a paper in 1970 entitled *Maori Customs approved by the Fifth House of Ariki*. While this paper was submitted to the Legislative Assembly with a recommendation that legislation by prepared in accordance with its contents, no such legislation has been prepared.[[87]](#footnote-87) The House of Ariki produced a further statement on Cook Islands Maori custom in 1977, as did other chiefs (*Koutu Nui*/) in 1991.[[88]](#footnote-88) Despite the statements as to custom, no common definition has been adopted by the government or the Land Division of the High Court.[[89]](#footnote-89)

Despite the lack of legislative affirmation, the Courts continue to regard the *Koutu Nui* statements as particularly important records of customary law. In *Short v Whittaker*, the Court noted that the statements 'convey strong evidentiary values' on aspects of native custom.[[90]](#footnote-90) As recently as 2016Isaac J confirmed that 'the statements of custom in the 1970s papers carry significant weight, even though their recommendations have not been legislatively implemented.'[[91]](#footnote-91)

His Honours emphasised the,

accurate judicial interpretations take their cue from the evidence put before the Court. As noted by the Court of Appeal in *Hunt*: "In every case the Court must, of course, determine custom on the basis of the evidence presented to it: the Court cannot simply make up custom out of thin air."[[92]](#footnote-92)

Importantly, and as Isaac J noted in *In re Estate of Richard Pare Browne,*

…judicial statements on native custom do not define custom, but merely provide interpretation of custom. That is, the existence of native custom precedes Court pronouncements seeking to interpret it.[[93]](#footnote-93)

Similarly, the Court of Appeal has stated that the Court’s responsibility is to 'follow the appropriate native custom, not to impose what we ourselves might think was a more fair result than the custom produces.'[[94]](#footnote-94)

As at the time of writing, the *Browne* case was being appealed to the Privy Council. It is likely that definitive rulings will emerge from this case.

* + 1. **What are the customary rules governing housing, land and property?**

As in other Pacific Island States, customary rules in the Cook Islands vary across each of the islands.[[95]](#footnote-95) Regardless of the island however, there are three general points to note:

* Customary land is absolutely incapable of alienation.
* All dealings with customary land must involve engagement with traditional leaders and traditional landowners, using customary law procedures, to reach arrangements that are binding as a matter of customary law only. As noted above, while arrangements of this sort are unusual, they do occur.
* There is a fundamental right within customary law to ownership of land by blood connection to the Ariki. This was explicitly stated in the 1970 statement of the House of Ariki, and confirmed by the Land Division of the High Court in the 2007 decision of *Teariki v Strickland* [2007].[[96]](#footnote-96)
  + 1. **What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter**?

According to the 2012 OECD report *Global Forum on Transparency and Exchange of Information for Tax Purposes*,

The Cook Island Constitution, as contained in the Cook Islands Constitution Act 1964, is the supreme law of the Cook Islands. The hierarchy of the law is, in decreasing order of rank: (i) the Constitution, (ii) legislation enacted by Parliament, (iii) subsidiary legislation, (iv) common law in accordance with section 615 of the Cook Islands Act 1915 and as declared by the Courts from time to time, and (v) Cook Islands custom in relation to customary land, titles and succession in accordance with sections 422 of the Cook Islands Act 1915.[[97]](#footnote-97)

Notwithstanding the above, while customary land has not been excluded from the ultimate ownership of the Crown, legislation has made it clear that ownership of the Crown is ultimately subject to the ownership rights of indigenous owners of customary land.[[98]](#footnote-98) Indeed, the OECD hierarchy perhaps understates the pre-eminence of custom which, in appropriate areas, has constitutionally guaranteed effect in place of common law.

* 1. Informal settlements
     1. **What are the locations and boundaries of informal settlements?**

A number of academics have noted the growth of informal settlements across the Pacific Island region, including in Polynesia.[[99]](#footnote-99) However, informal settlements are not a feature of the Cook Islands. While a range of informal settlements arose during the 1970s as a result of outer islanders moving to Rarotonga (for further detail, see [section 3.4](#Landless_people) below), almost all remaining outer islanders have since taken title (usually leases) over the land they occupied.[[100]](#footnote-100)

* + 1. **What kinds of tenure arrangements are in place in informal settlements?**

Not applicable.

1. Security of tenure of vulnerable groups
   1. Women
      1. **Can women legally own, rent or inherit land and housing?**

Women can legally own, rent and inherit both land and housing. Indeed, women in the Cook Islands have well established land rights and are noted to play a particularly active part in land matters.

When the colonial authorities established the Land Court, (now the Land Division of the High Court) in the late nineteenth century, the court ruled that women have equal inheritance rights to men, and both male and female offspring inherit equally from both parents.[[101]](#footnote-101) In addition to land and property, this has also enabled women to inherit traditional Arikititle, which, as outlined above, carries with it corresponding entitlements to Arikiland.[[102]](#footnote-102) As one missionary observer commented as far back as 1838, '[w]omen were accepted as tribal chiefs, and presumably as owners of land, for it is inconceivable that a person who could be an Ariki could not own land.'[[103]](#footnote-103)

* + 1. **In practice, do they? If not, why not?**

The registers of title are unequivocal evidence of the long-standing practice of allowing women rights to land that are equal, in every way, to that of men. There is no information to suggest that women face any particular practical impediments in the exercise of their legal entitlements to land. On the contrary, the minute books of the Land Division of the High Court (and of its predecessor, the Land Court), amply demonstrate the role of women as powerful actors in land matters.

There is some information (albeit slightly outdated) regarding the number of women holding Ariki title and the associated Ariki land rights. As at June 2012, four of the six Ariki on Rarotonga were women. Prior to that, the Ariki title had similarly been dominated by women, with five out of the last six holders being women. Acknowledgement of women as Ariki is said to be less recognised in the Outer Islands than it is on Rarotonga. Of the 23 total Ariki that were ruling across the Cook Islands at June 2012, eight were women.[[104]](#footnote-104) As Falaniko Tominiko has observed, '[d]espite the numbers favouring the men slightly, [these figures] indicate a rather equal society.'[[105]](#footnote-105)

* 1. Indigenous groups
     1. **Is indigenous customary ownership (or custodianship) of land legally recognised?**

Land ownership in the Cook Islands rests with the customary indigenous owners, the Cook Islands Maori.[[106]](#footnote-106) This indigenous customary ownership is legally recognised and forms the basis of the entire land tenure system. It is this customary ownership on which the overlay of 'native freehold land' is superimposed in a way that facilitates the use and development of land, while imposing limitations on its alienation.

See discussion at [section 2.1](#Tenure_typologies) above regarding types of land tenure and customary law.

* + 1. **Does customary ownership provide indigenous people with a high degree of security of tenure?**

Given that customary land is absolutely inalienable (cannot be bought or sold, leased or licensed), customary ownership offers high security of tenure to their native holders. In the case of native freehold ownership(Native Freehold title and Ariki title), the maximum term of any alienation (inclusive of renewals) is 60 years.

For further discussion regarding the security of tenure associated with customary ownership see at [2.1(c)](#Two_One_C) above.

* + 1. **If not, what are the barriers to indigenous people owning and/or living on their land?**

Not applicable.

* + 1. **Is there conflict between indigenous groups regarding land ownership?**

While not between different indigenous groups per se, disputes over land titles are a major issue in the Cook Islands.[[107]](#footnote-107) According to Cullen and Hassall,

[l]and titles are frequently disputed by descendants due to issues such as land being partitioned upon the decease of an owner, occupation rights being dictated by succession, as well as joint ownership practices.[[108]](#footnote-108)

Further issues arise as a result of the prevalence of common ownership. As the Land Division of the High Court has observed, one of the great problems for owners in common (whether they have undefined, equal or differing levels of shareholding) is that 'every owner owns every piece of land' - no owner can point to an area or a corner of the land and say 'that is mine.'[[109]](#footnote-109)

Adding further complication and leading to frequent contest still, Corrin and Paterson have observed the manner in which '[c]ustomary boundaries and ownership are dependent on local landmarks and oral histories'.[[110]](#footnote-110)

Disputes also often arise within and between families regarding an individual's entitlement to Ariki title, and subsequent entitlement to hold title to Ariki land.[[111]](#footnote-111)

* + 1. **If so, to what degree? Are there mechanisms for resolving these conflicts?**

*(i) Determination of disputes regarding Succession*

As noted above, while land under Native Freehold title cannot be bought or sold (except for government purposes), ownership can be passed down to descendants. In order to claim their ownership interest, descendants must submit an application for a Succession Order to the Land Division of the High Court. The Land Division of the High Court has jurisdiction to investigate title to customary land in most parts of the country, except for the islands of Mangaia, Mitaro, Nassau and Pukapuka, where land matters are generally dealt with according to local custom, unless the traditional chiefly authority (the *Aronga Mana*) requests Land Division of the High Court's assistance.[[112]](#footnote-112)

As outlined in more detail at section [2.2(a)(ii)(e)](#sec_2_2_a_e) above, on an application for a Succession Order, the Land Division of the High Court will hear evidence of the genealogical linkage of the applicant and determine if they are entitled to succeed.

*(i) Determination of disputes regarding Ariki Title*

Under section 409(f), the Land Division of the High Court has jurisdiction '[t]o hear and determine any question as to the right of any person to hold office as an Ariki or other Native chief of any island.'[[113]](#footnote-113) In effect, a determination regarding a person's right to hold Ariki title will concurrently determine that person's subsequent entitlement to hold Ariki land.

Section 409(f) 'does not give the Court jurisdiction to appoint an Ariki or Native chief.'[[114]](#footnote-114) Instead, and as the Court itself acknowledges, 'the Court's role is limited to answering questions as to the right of a person to hold such office.'[[115]](#footnote-115)

As the court explained in *Ben v Greig*,

[t]he legislative provision and previous decisions of this Court demonstrate that this Court's jurisdiction is to confirm whether a title-holder has been invested with the title according to custom. While it is not the role of the Court to determine the content of that custom, it is necessary to consider its existence and practice and whether the custom has been adhered to by the applicants.[[116]](#footnote-116)

Resolutions of disputes over ownership are documented by that part of the High Court Registry that administers the Court in its Land Division, which manages a database created by the information provided by the Land Titles Section and the High Court Land Division.[[117]](#footnote-117) However, land titles themselves are not digitised, and are not available to Cook Islanders living in the outer islands, or in Australia and New Zealand.[[118]](#footnote-118)

* 1. Minority groups
     1. **Can minority groups (ie, ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing?**

As noted above, the Cook Islands is 81.3% Cook Island Maori (Polynesian), 6.7% part Cook Island Maori, and 11.9% 'other'. However, these statistics probably reflect a significant under-recording of the large number of migrant workers from elsewhere in the Pacific and South East Asia who now fill a wide range of unskilled and semi-skilled jobs that no longer attract Cook Islanders.[[119]](#footnote-119)

Over recent years, Rarotonga has become, in effect, a multi-cultural community with a range of ethnic minority migrant worker groups. Their numbers look set to rise.

These outsiders can lease land for no longer than the 'five years less one day' threshold, beyond which a tenancy is of no effect unless approved by the Leases Approval Tribunal. In practice, many have informal tenancies of modest properties on occupation right or family land of Cook Islanders who have re-located overseas.[[120]](#footnote-120)

* + 1. **If so, are they subject to special conditions or restrictions?**

Under the *Leases Restriction Act 1976,* all leases or assignments of leases in the Cook Islands must be approved by the Leases Approval Tribunal. The definition of 'lease' excludes terms of less than five years. The *Leases Restrictions (Amendment) Regulations 2006* contain a substantial list of criteria that must be taken into account when the Tribunal consider a lease, sublease, assignment of lease to a non-resident of the Cook Islands. As a consequence, the process for leasing land is 'slow and costly', as '[a]pplications need several stages of administrative review'.[[121]](#footnote-121) According to the Asian Development Bank, the costs associated with making a lease transaction in 2014 was estimated at between NZ$12,000 and NZ$15,000, and the transaction could take 6–8 months to complete.[[122]](#footnote-122)

* + 1. **In practice, do minority groups legally own and/or rent land and housing? If not, why not?**

The Tribunal currently operates according to criteria that, for all practical purposes, prevent the leasing of land to foreign persons and businesses, except for commercial purposes.[[123]](#footnote-123) As a cumulative result of the above, foreigners do not legally own or rent land or housing in the Cook Islands.

* 1. Landless people/squatters
     1. **Do landless people/squatters have rights to land and/or housing (eg, adverse possession)? If so, are those rights respected?**

During the late 1980s Rarotonga had a significant problem with so-called 'squatters' and landless immigrants, predominantly from the Northern Islands of Pukapuka, Penrhyn and Manihiki.[[124]](#footnote-124) Reference to these people as 'squatters', however, was not using the term in its proper context because these people had permission to occupy the land on which they lived. The Northern Island immigrants commonly moved in with friends and relatives living in one of the squatter areas populated by people from his or her home island. The owners did not allow a house of permanent construction to be erected, nor did they permit occupants to lease the land to others. Most owners, however, did not collect rent or even *atinga* (payment in kind). Conditions were 'below standard, houses being very close and of poor construction as well as being overcrowded.'[[125]](#footnote-125)

In the late 1980s it was estimated that one third of Rarotonga's total population (around 3000) were living as 'permissive occupants' in the manner described above.[[126]](#footnote-126) Since that time however, this problem has lapsed into history. Huge relocations into Australasia have seen an end to the old outer islands perspective of Rarotonga as the ultimate destination for work and education. In almost all cases, the few remaining residents of informal settlements have secured formal tenure, at least of some sort.[[127]](#footnote-127)

Regardless of the current number of 'squatters' however, the following can be said in relation to squatters land rights:

* In relation to customary land, there is no recognition of squatters rights or adverse possession. As Lady Hale confirmed in *Baudinet v Tavioni*,

[s]ection 422 of the 1915 Act provides that '[e]very title to and interest in customary land shall be determined according to the ancient custom and usage of the Natives of the Cook Islands'. Those customs did not allow either the mata'iapo or the Ariki to alienate land from the family or the tribe. *Nor can land be acquired by adverse possession* or prescription.[[128]](#footnote-128)

* In relation to freehold land, the limitations provisions provide that proceedings for the recovery of land cannot be brought more than 12 years after the cause of action arose (ie, original land owners may not bring actions to recover possession of land after twelve years).[[129]](#footnote-129) According to Farran and Paterson, a right of action shall accrue at the time when the owner has been dispossessed or has discontinued possession of the land.[[130]](#footnote-130)
  1. General questions
     1. **Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

Many landowners in the Cook Islands face increasing threats to their land as a result of natural disasters and the impacts of climate change. While a 2014 paper published by the Internal Displacement Monitoring Centre places the 2014 – 2018 annual disaster displacement estimate at only 182,[[131]](#footnote-131) the Cook Islands at large remains highly vulnerable to the increased frequency and intensity of tropical cyclones, sea/storm surges, coral degradation and ocean acidification as a result of climate change.[[132]](#footnote-132) Of particular concern are the populations of the low-lying atolls of Palmerston and the Northern Group. For instance, in the wake of Cyclone Martin in 1997, the island of Manihiki saw 19 people drowned, and required the evacuation of 360 individuals of a total population of 591.[[133]](#footnote-133)

In a 2013 evaluation of storm surge risk in the Cook Islands, Fes de Scally confirmed that storm surges in particular have 'historically inundated areas of the coastal lowland where virtually all human activities and infrastructure are currently located.'[[134]](#footnote-134) This comment applies to the Southern Group islands, as Palmerston and the Northern Group islands have a long history of periodic inundations that reflects their extremely low-lying landmass. Each of the disasters and adverse conditions outlined above carries with it the threat of displacement and forced mobility.

1. Eviction, Expropriation and Relocation
   1. Eviction
      1. **Are there laws or regulations prohibiting forced evictions?**

Article 40 of the *Constitution*, which is commonly referred to as the 'takings clause',prohibits compulsorily taking possession of a right over or interest in any property, except where:

* + - 1. payment of adequate compensation is made within a reasonable time;
      2. a right of access to the High Court is given to the person claiming that compensation, for the determination of his interest in the property and the amount of compensation; and
      3. the same rights of appeal are available as accorded generally to parties to civil proceedings.[[135]](#footnote-135)

In addition, article 64(1) of the *Constitution* recognises and declares the continuing existence of a number of fundamental human rights and freedoms. Most relevantly, article 64(1)(c) enshrines '[t]he right of the individual to own property and the right not to be deprived thereof except in accordance with law.'[[136]](#footnote-136)

* + 1. **In practice, are those laws adhered to?**

There is no information, nor are any recorded instances, to suggest that the prohibition against forced evictions is not adhered to in the Cook Islands. The largest acquisition in recent times was of the lands needed to extend the Rarotonga International Airport. In that case, the record of the Land Court (as it then was) demonstrates adherence to this provision of the *Constitution*.[[137]](#footnote-137)

* 1. Expropriation
     1. **Are there laws or regulations permitting the government to expropriate land?**

Section 357 of the *CIA* provides that the High Commissioner may, by warrant, take any land in the Cook Islands for 'any public purpose' specified in the warrant. After such expropriation, this land will be absolutely vested in Her Majesty as from the date of the warrant, free from all estates, rights and interest of any other person therein, save so far as any such estates, rights or interests are expressly saved by the warrant.[[138]](#footnote-138)

When land has been taken for a public purpose pursuant to section 357, any person with a right, title, estate or interest in that land which is extinguished or divested by the taking of the land shall be entitled to compensation from the Crown.[[139]](#footnote-139)

If the land taken is Native customary land then the Land Division of the High Court will investigate the customary title to that land to determine the persons entitled to, and the relative interests of those persons, and the High Court shall assess and award compensation accordingly.[[140]](#footnote-140)

Further, the High Commissioner may at any time, by warrant, resume for any public purpose any Crown land held under lease or otherwise subject to any right, title or interest in any other person, and every such lease, right, title or interest shall, in accordance with the tenor of the warrant, determine accordingly (except so far as expressly preserved in the warrant).[[141]](#footnote-141) Compensation will be payable in the same manner as in the case of land taken for a public purpose.[[142]](#footnote-142)

* + 1. **If so, are those laws or regulations applicable in the context of a disaster?**

The law governing expropriation may be applied in the context of a disaster because responding to a natural disaster will likely qualify as a requisite 'public purpose' under section 357 of the *CIA.*  Under section 364, 'public purposes' is defined to include 'public health' and, as a catchall, 'all lawful purposes and functions of the Government of the Cook Islands.'

Similarly, Article 64(2) of the Constitution recognises that the rights and freedoms referred to under Article 64(1) – including '[t]he right of the individual to own property and the right not to be deprived thereof except in accordance with law'[[143]](#footnote-143) – are subject to certain 'limitations'. Most relevantly in the context of disasters, those limitations include 'the interests of public safety' and 'the general welfare, or the security of the Cook Islands'.[[144]](#footnote-144)

* 1. Relocation
     1. **Are there laws or regulations governing relocations?**

There are no laws or regulations specifically governing relocations.

However, the *Disaster Management Act 2007* is a piece of legislation for disaster risk management in the Cook Islands. Pursuant to that Act, the Cook Islands have established the office of Emergency Management Cook Islands (***ECMI***), the designated government division charged with ensuring the coordination, maintenance and implementation of the Disaster Risk Management Plan in the Cook Islands.[[145]](#footnote-145) Its responsibilities include (amongst others):

* + - 1. to compel the evacuation of any or all persons from a disaster or emergency area;[[146]](#footnote-146) and
      2. take possession and mark use of any person's property in order to respond effectively to an event.[[147]](#footnote-147)

Further to the establishment of the EMCI, the Cook Islands have developed an overarching plan for managing disasters, entitled the 'National Action Plan for Disaster Risk Management 2009 – 2015'.[[148]](#footnote-148) The National Action Plan details the goals, strategic targets, actions and responsible agencies needed to address key issues for effective disaster risk reduction, recovery and response.[[149]](#footnote-149)

With respect to relocations, the National Action Plan includes strategies to manage each of the following:

* + - 1. effectively prepare, respond and recover by commissioning a review of the safety shelters and evacuation systems (to cover safe location, management responsibilities, number that could be accommodated in a centre, structural integrity etc.) in order to strengthen the systems of safety shelters and their management for time of disaster; and
      2. reducing the risks associated with the energy supply in the Outer Islands by developing a relocation strategy for vulnerable properties in close proximity to fuel storage facilities.

For the purposes of this paper, it should be noted that as this is a plan and strategy for disaster risk management and does not have any sort of legislative status.

* + 1. **Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?**

In 2002, the Cook Islands adopted the *Cook Islands Red Cross Society Act 2002* to establish the Cook Islands Red Cross Society. One of the primary functions of the Society is to organise, consistent with any national plan, emergency relief services for victims of disasters, however caused.[[150]](#footnote-150)

One function of disaster management supported by the Red Cross Society is to develop specific shelter strategies, which may include the relocation of vulnerable communities.

* 1. Compensation
     1. **Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?**

As outlined above at [4.1(a)](#Eviction_laws), anyone who has been forcibility evicted from his or her land is entitled to receive payment of 'adequate compensation' within a 'reasonable time'. Further to this, an affected individual must have a right of access to the High Court for the determination of his or her interest in the property and the amount of compensation, and the corresponding appeal rights.[[151]](#footnote-151)

Similarly, and as outlined above at [4.2(a)](#Eviction_laws_practice), anyone whose land has been expropriated for 'public purposes' is entitled to compensation from the Crown.[[152]](#footnote-152) If the land taken is Native customary land, then the Land Division of the High Court will investigate the customary title to that land to determine the persons entitled to, and the relative interests of those persons, and shall assess and award compensation accordingly.[[153]](#footnote-153)

With respect to relocations, as outlined in [4.3(b)](#Four_3_b), where the ECMI takes possession and makes use of any person's property in order to respond effectively to an event pursuant to section 12(2)(h) of the *Disaster Management Act 2007,* that person shall be compensated as determined by the Director of the ECMI, in consultation with the National Disaster Risk Management Council.[[154]](#footnote-154) The Director is, in turn, constrained by Article 65 of the Constitution in the exercise of that discretion, in a way that requires him or her to act in a manner consistent with the property protections of Articles 40 and 64 of the Constitution.[[155]](#footnote-155)

* + 1. **In practice, are these laws or regulations adhered to?**

There is no information, nor are any recorded instances, to suggest that the laws providing compensation are not adhered to in the Cook Islands.

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32. Department of Foreign Affairs and Trade, Commonwealth of Australia, 'Making Land Work: Volume Two Case Studies on Customary Land and Development in the Pacific'(Report, Australian Agency for International Development (AusAID), 2008)10. [↑](#footnote-ref-32)
33. Ibid. [↑](#footnote-ref-33)
34. Cook Islands News, 'Why has the law changed in respect of occupation rights?', *Cook Islands News* (Rarotonga) 2 February 2016, <http://www.cookislandsnews.com/opinion/item/56309-why-has-the-law-changed-in-respect-of-occupation-rights/56309-why-has-the-law-changed-in-respect-of-occupation-rights> [accessed 1 August 2017]. [↑](#footnote-ref-34)
35. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-35)
36. Radio New Zealand, 'Cooks land use rules to be enforced', *Radio New Zealand* (Wellington) 28 September 2016, <http://www.radionz.co.nz/international/pacific-news/314398/cooks-land-use-rules-to-be-enforced> [accessed 1 August 2017]. [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. ‘How do Rarotongans understand occupation rights?’, *Cook Islands News* (online), 2 December 2012, <http://www.cookislandsnews.com/item/17192-lsquo-how-do-rarotongans-understand-occupation-rights-rsquo/17192-lsquo-how-do-rarotongans-understand-occupation-rights-rsquo> [accessed 1 August 2017]. See *Tuoro v Toeta* [2015] CKLC 2; Application 47.11, 391.11 (29 April 2015), where the Court cancelled an Occupation Right in circumstances where the conditions of the Occupation Right had not been complied with in a reasonable amount of time. [↑](#footnote-ref-38)
39. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. [↑](#footnote-ref-39)
40. *Cook Islands Act 1915* ss 421, 423. [↑](#footnote-ref-40)
41. *Cook Islands Act* *1915* s 424. [↑](#footnote-ref-41)
42. *Cook Islands Act 1915* s 425. [↑](#footnote-ref-42)
43. Asian Development Bank, 'The Cook Islands: Stronger Investment Climate for Sustainable Growth' (Report, Asian Development Bank, 2015) <https://www.adb.org/sites/default/files/institutional-document/175293/coo-stronger-investment-climate-psa.pdf>. [↑](#footnote-ref-43)
44. The process of investigation of title – carried out at the start of the 20th century – identified a very small number of freehold estates held by the Cook Islands Christian Church. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. [↑](#footnote-ref-44)
45. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. Tim Arnold suspects that 'refuge' for displaced persons might in fact fall within the definition of 'public purposes'. [↑](#footnote-ref-45)
46. *Leases Restrictions Act 1976* s 3. [↑](#footnote-ref-46)
47. Department of Foreign Affairs and Trade, Commonwealth of Australia, 'Making Land Work: Volume Two Case Studies on Customary Land and Development in the Pacific' (Report, Australian Agency for International Development (AusAID), 2008)10. [↑](#footnote-ref-47)
48. Asian Development Bank, 'The Cook Islands: Stronger Investment Climate for Sustainable Growth' (Report, Asian Development Bank, 2015) 30. [↑](#footnote-ref-48)
49. Anupam Singh, 'Philosophical Perceptions of Pacific Property – Women and Land Tenure' (Paper presented at Pacific Rim Real Estate Society Annual Conference, Adelaide, 21-24 January 2001) 8. [↑](#footnote-ref-49)
50. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. [↑](#footnote-ref-50)
51. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. Mr Arnold notes that it can also be quicker and easier to take a lease through the *Land (Facilitation of Dealings) Act* process than it is to obtain an occupation right because the current focus of the court is on ensuring majority consent and proper informed consent. [↑](#footnote-ref-51)
52. Department of Foreign Affairs and Trade, Commonwealth of Australia, 'Making Land Work: Volume Two Case Studies on Customary Land and Development in the Pacific' (Report, Australian Agency for International Development (AusAID), 2008)14. [↑](#footnote-ref-52)
53. Habitat for Humanity International, Asia-Pacific Office, 'Poverty Housing in the Developing Nations of the Pacific Islands' (Report, Habitat for Humanity International, 2009). [↑](#footnote-ref-53)
54. Asian Development Bank, 'The State of Pacific Towns and Cities: Urbanization in ADB's Pacific Developing Member Countries' (Report, Asian Development Bank, 2012) 3. [↑](#footnote-ref-54)
55. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-55)
56. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-56)
57. Rowena Cullen and Graham Hassell (eds), *Achieving Sustainable E-Government in the Pacific Island States* (Springer International Publishing, 2017) 198.  [↑](#footnote-ref-57)
58. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 4 August 2017. [↑](#footnote-ref-58)
59. Given that the Cook Islands is a culture of oral tradition, customary land interests are rarely, if ever, the subject of written material. Dealings affecting customary land take a form that is constrained by the lack of legal rights to the land. However, that does not mean that a third party’s property is incapable of protection in collateral ways. [↑](#footnote-ref-59)
60. *Cook Islands Act 1915* s 50. [↑](#footnote-ref-60)
61. Ministry of Justice Cook Islands, *Occupation Right* (10 April 2014) Ministry of Justice Cook Islands <http://www.justice.gov.ck/index.php/land/13-occupation-right> [accessed 1 August 2017]. [↑](#footnote-ref-61)
62. Ibid. [↑](#footnote-ref-62)
63. Ibid. [↑](#footnote-ref-63)
64. Ibid. [↑](#footnote-ref-64)
65. *Leases Restrictions Act 1976* s 9. [↑](#footnote-ref-65)
66. Ibid s 10. [↑](#footnote-ref-66)
67. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-67)
68. *Land (Facilitation of Dealings) Act 1970* s 4. [↑](#footnote-ref-68)
69. Ibid s 5(d). A body corporate may also, by leave of the Court, acquire any land or interest in land, whether by way of lease or otherwise. [↑](#footnote-ref-69)
70. Ibid. [↑](#footnote-ref-70)
71. *Land (Facilitation of Dealings) Act 1970*; Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. [↑](#footnote-ref-71)
72. *Cook Islands Act 1915* s 430(1). [↑](#footnote-ref-72)
73. *Cook Islands Act 1915* s 429(1). [↑](#footnote-ref-73)
74. Ibid s 429(2). [↑](#footnote-ref-74)
75. Ibid s 429(2). [↑](#footnote-ref-75)
76. *In re Te Raoia 12K2, Ngatangiia* [2011] CKLC 1; App483.2010 & 315.2011 (17 October 2011). [↑](#footnote-ref-76)
77. *Cook Islands Code of Civil Procedure of the High Court 1981* [↑](#footnote-ref-77)
78. *Cook Islands Act 1915* s 430(2). [↑](#footnote-ref-78)
79. *Cook Islands Amendments Act 1960* s 23. [↑](#footnote-ref-79)
80. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. [↑](#footnote-ref-80)
81. *Cook Islands Amendments Act 1960* s 23(1). [↑](#footnote-ref-81)
82. Ibid. [↑](#footnote-ref-82)
83. Ibid. [↑](#footnote-ref-83)
84. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [34]; *Succession to Tuokura Maeva deceased* (1968) 28 Minute Book 156, 156; *Succession to Tuokura Maeva deceased* (1970) Land Appellate Court, Appeal No 215, 70-71. [↑](#footnote-ref-84)
85. *Hunt v De Miguel* [2016] CKCA, [56]. [↑](#footnote-ref-85)
86. *Ben v Greig* [2015] CKLC 7; App 95.2013, 230.13 (10 September 2015), [42]. [↑](#footnote-ref-86)
87. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [27], footnote 35. [↑](#footnote-ref-87)
88. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [29]. [↑](#footnote-ref-88)
89. Ron Crocombe, Makiuti Tongia and Tepoave Araitia, 'Absentee landowners in the Cook Islands: Consequences of Change to Tradition', in Department of Foreign Affairs and Trade, Commonwealth of Australia, *Making Land Work: Volume Two Case Studies on Customary Land and Development in the Pacific* (Australian Agency for International Development (AusAID), 2008)153. [↑](#footnote-ref-89)
90. *Short v Whittaker* [2003] CKCA 7; CA 3.2003, [25] [affirming the assessment in *Rake Aituoterangi Tamati Kainuku v Mata Nia* (CA1/91) Judgment 29 November 1991]. [↑](#footnote-ref-90)
91. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [42]. [↑](#footnote-ref-91)
92. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [25] [citing *Hunt v De Miguel* [2016] CKCA, [55]]. [↑](#footnote-ref-92)
93. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [24]. See also *Ian Karika* [2014] CKHC 324/14, in which Isaac J earlier confirmed that '[i]t is not for the Court to determine the custom but the Court must follow custom.' [↑](#footnote-ref-93)
94. *In re Vaine Nooroa O Taratangi Pauarii (No 2)* [1985] CKCA 1 (8 October 1985). [↑](#footnote-ref-94)
95. *Estate of Richard Pare Browne, In re* [2016] CKLC 1; Application 691.14 (29 July 2016), [34]; *Succession to Tuokura Maeva deceased* (1968) 28 Minute Book 156, 156; *Succession to Tuokura Maeva deceased* (1970) Land Appellate Court, Appeal No 215, 70-71. [↑](#footnote-ref-95)
96. *Teariki v Strickland* [2007] CKHC 18; CA No. 7/06, [43] ['identifying land interests through the relevant blood lines is of cardinal importance in Cook Islands custom.'] [↑](#footnote-ref-96)
97. OECD, 'Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Cook Islands' (Peer Review Report, Global Forum on Transparency and Exchange of Information, June 2012). [↑](#footnote-ref-97)
98. Sue Farran and Don Paterson, *South Pacific Property Law* (Cavendish Publishing Limited, 2004) 41. [↑](#footnote-ref-98)
99. See, eg, Asian Development Bank, 'The Emergence of Pacific Urban Villages: Urbanisation Trends in the Pacific Islands'(Report, Pacific Studies Press, 2016). [↑](#footnote-ref-99)
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101. Institute of Pacific Studies of the University of the South Pacific, *Land Rights of Pacific Women* (University of the South Pacific, 1986) 115. [↑](#footnote-ref-101)
102. Margaret James, 'The Cook Islands: ApproachingEquality' in Institute of Pacific Studies of the University of the South Pacific, *Land Rights of Pacific Women* (University of the South Pacific, 1986); Lorenzo Cotula, *Gender and the Law: Women's Rights in Agriculture* (Food and Agriculture Organization of the United Nations, 2006) 68. [↑](#footnote-ref-102)
103. John Williams, *A Narrative of Missionary Enterprises in the South Sea Islands* (John Snow, 1838) 214-215. [↑](#footnote-ref-103)
104. Falaniko Tominiko, *Women leaders of the Pacific* (10 June 2012) Newshub <http://www.newshub.co.nz/general/women-leaders-of-the-pacific-2012061112> [accessed 1 August 2017]. [↑](#footnote-ref-104)
105. Ibid. [↑](#footnote-ref-105)
106. Ministry of Finance and Economic Management, Government of the Cook Islands, *Taxation of Land Transactions* (2013) Ministry of Finance and Economic Management <http://www.mfem.gov.ck/images/documents/RMD\_Docs/Rulings/Taxation\_of\_Land\_Transactions.pdf> [accessed 1 August 2017]. [↑](#footnote-ref-106)
107. Rowena Cullen and Graham Hassel (eds), *Achieving Sustainable E-Government in Pacific Island States* (Springer International Publishing, 2017). [↑](#footnote-ref-107)
108. Rowena Cullen and Graham Hassall, 'e-Government in the Pacific Island states: ICT policy and implementation in small island developing states' (2016) (Cook Islands Country Report, School of Government, Victoria University of Wellington, 2016). [↑](#footnote-ref-108)
109. *In re Te Raoia 12K2, Ngatangiia* [2011] CKLC 1; App483.2010 & 315.2011 (17 October 2011), [2]-[3]. [↑](#footnote-ref-109)
110. Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Palgrave Macmillan, 2011) 273. [↑](#footnote-ref-110)
111. Given that *Ariki* title carries with it entitlement to *Ariki* land, disputes regarding title to chief are equally disputes regarding title to land. [↑](#footnote-ref-111)
112. Asian Development Bank, 'The Cook Islands: Stronger Investment Climate for Sustainable Growth' (Report, Asian Development Bank, 2015) 27. [↑](#footnote-ref-112)
113. *Cook Islands Act 1915* s 409(f). [↑](#footnote-ref-113)
114. *Noona v Munro* [2015] CKLC 8; Application 146.15 (11 September 2015), [18]. [↑](#footnote-ref-114)
115. Ibid. [↑](#footnote-ref-115)
116. *Ben v Greig* [2015] CKLC 7; App 95.2013, 230.13 (10 September 2015), [41]. See also *Re Tinomana* (1948) Native Appellate Court of the Cook Islands App 2. 14 October 1948, in which the Native Appellate Court explained that '[t]he most that the Court can do is to declare for the guidance and assistance of the people what it believes to be the custom governing such an appointment.' [↑](#footnote-ref-116)
117. Rowena Cullen and Graham Hassall, 'e-Government in the Pacific Island states: ICT policy and implementation in small island developing states' (2016) (Cook Islands Country Report, School of Government, Victoria University of Wellington, 2016) 22. [↑](#footnote-ref-117)
118. Ibid. Those on the outer islands, or overseas, must file claims through approved agents in Rarotonga. [↑](#footnote-ref-118)
119. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. According to Mr Arnold, these people represent the most vulnerable in the Cook Islands – they are the lowest paid, with no land, and with limited community support. Particularly in times of disaster, there is a significant question mark over the sustainability of their employment. [↑](#footnote-ref-119)
120. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-120)
121. Asian Development Bank, 'The Cook Islands: Stronger Investment Climate for Sustainable Growth' (Report, Asian Development Bank, 2015) 30. [↑](#footnote-ref-121)
122. Ibid. [↑](#footnote-ref-122)
123. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 15 June 2017. [↑](#footnote-ref-123)
124. John Batchelor, 'Squatters on Rarotonga, Cook Islands' in Institute of Pacific Studies of the University of the South Pacific, *In Search of a Home* (University of the South Pacific, 1987) 230. [↑](#footnote-ref-124)
125. Ibid 231. [↑](#footnote-ref-125)
126. Ibid 232. [↑](#footnote-ref-126)
127. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-127)
128. *Baudinet v Tavioni* [2012] CK-UKPC 2; Privy Council Appeal No.0078.2010 (22 October 2012), [62]. [↑](#footnote-ref-128)
129. *Limitation Act 1950* (NZ) s 7 [in force in the Cook Islands]. [↑](#footnote-ref-129)
130. Sue Farran and Don Paterson, *South Pacific Property Law* (Cavendish Publishing Limited, 2004). [↑](#footnote-ref-130)
131. Chris Lavell and Justin Ginnetti, 'Technical Paper: The risk of disaster-induced displacement' (Technical Paper, Internal Displacement Mentoring Centre, Norwegian Refugee Council). [↑](#footnote-ref-131)
132. United Nations Office for the Coordination of Humanitarian Affairs, *Cook Islands* <http://www.unocha.org/pacific/country-profiles/cook-islands> [noting that '[c]yclones are the most frequently occurring disaster, causing casualties and serious damage to property and infrastructure] [accessed 1 August 2017]. See also Chris Lavell and Justin Ginnetti, 'Technical Paper: The risk of disaster-induced displacement' (Technical Paper, Internal Displacement Mentoring Centre, Norwegian Refugee Council). [↑](#footnote-ref-132)
133. United Nations Department of Humanitarian Affairs, *Cook Islands Tropical Cyclone Martin Situation Report No. 2,* UN Doc DHAGVA - 97/0855 (18 November 1997). [↑](#footnote-ref-133)
134. Fes A de Scally, 'Evaluation of storm surge risk: A case study from Rarotonga, Cook Islands' (2013) 7 *International Journal of Disaster Risk Reduction* 9, 9. [↑](#footnote-ref-134)
135. *Constitution of the Cook Islands 1965* (17 July 1997 reprint) s 40. [↑](#footnote-ref-135)
136. Ibids 64. [↑](#footnote-ref-136)
137. Email from Tim Arnold, Barrister at Tim Arnold P.C Barristers & Solicitors, to Sarah Dobbie, 29 July 2017. [↑](#footnote-ref-137)
138. *Cook Islands Act 1915* s 357. [↑](#footnote-ref-138)
139. Ibids 359(1). [↑](#footnote-ref-139)
140. Ibid s 359(4). [↑](#footnote-ref-140)
141. Ibid s 360. [↑](#footnote-ref-141)
142. Ibid. [↑](#footnote-ref-142)
143. *Constitution of the Cook Islands 1965* s 64(1). [↑](#footnote-ref-143)
144. Ibids 64(2). [↑](#footnote-ref-144)
145. *Disaster Management Act 2007* s 5. [↑](#footnote-ref-145)
146. Ibid s 12(2)(j). [↑](#footnote-ref-146)
147. Ibid s 12(2)(h). [↑](#footnote-ref-147)
148. Anna Gero et al, 'Background Review: Disaster Response Systems of Four Pacific Island Countries' (Report, Institute for Sustainable Futures and World Health Organization Collaborating Centre, 18 June 2012) <https://www.uts.edu.au/sites/default/files/Geroetal2012BackgroundReview.pdf>. [↑](#footnote-ref-148)
149. Government of the Cook Islands, 'Cook Islands National Action Plan for Disaster Risk Management 2009 – 2015' (National Action Plan, Government of the Cook Islands, August 2010) 23. [↑](#footnote-ref-149)
150. *Cook Islands Red Cross Society Act 2002* s 6(1). [↑](#footnote-ref-150)
151. *Constitution of the Cook Islands 1965* (17 July 1997 reprint) s 40. [↑](#footnote-ref-151)
152. *Cook Islands Act 1915* s 359(1). [↑](#footnote-ref-152)
153. Ibid s 359(4). [↑](#footnote-ref-153)
154. *Disaster Management Act 2007* s 12(4). [↑](#footnote-ref-154)
155. As outlined at [section 4.1(a)](#Eviction_laws) above, Article 40 prohibits the compulsory taking of land without compensation, and Article 64 recognises and declares the continuing existence of a number of fundamental human rights and freedoms, including the right of the individual to own property and not to be of that property except in accordance with law. [↑](#footnote-ref-155)