Absentee landowners in the Cook Islands:
Consequences of change to tradition

2010 Snapshot

- 90% Cook Islanders live overseas
- But have retained their land rights.
- This is new caused by changes to customary practice
Population Changes

- 1830 – 7,000 Rarotongans
- 1900 – 1,600 Rarotongans
- 2010 – 15,000 Cook Islanders
- Overseas - 150,000
- 90,000 in NZ
- 45,000 in Australia
- 5,000 in Tahiti
- 5,000 in Europe, Asia, Americas
Precontact background

• small stable populations

• subsistence economy

• Land - emotional psychological value

• All had land rights in one village only
Traditional land tenure

- People lived on or near land they had rights to.
- Land was not the basis of membership to a tribe.
- Descent to the tribes that owned rights to the land was the basis of land membership.
- Senior men responsible for allocation of land rights and needs of all members, including women.
New Changes in Government

- Missionary theocracy rule 1821
- 1892 British Protectorate & Federal Rule
- 1901, NZ colonial rule with conditions
  1. No sale of land -
  2. All Cook Islanders to become automatic NZ citizens
- 1906 Australia NZ Agreement
New changes in Land tenure

1. 1902 Land Court established - converted and registered as native freehold land for 8 of the inhabited islands
   (Pukapuka, Nassau, Mangaia, Mitiaro retained pre-missionary land tenure system)

2. 1957 Appellate Court - all inherit equally the land rights of both parents

These two changes have since become embraced as ‘traditional and customary’.
Land Court Registration

• 1902 Land Court established with 4 aims
  1. Resolve land disputes and record who owned the land
  2. Reduce powers of chiefs over land
  3. Increase commercial productivity of land available to Cook Islanders
  4. Provide 99 years leases to Europeans to generate income
1957
Appellate Court decision

1. all children inherit equally of both parents land rights in all registered native lands.

(Appellate Court Minute Book 3, p 10 )

2. No such custom of equal inheritance ever existed before
Other changes

1. High mobility internally / externally
2. 1901 free entry NZ
3. 1906 free entry to Australia
4. Visa free entry internationally to many countries
5. Post 1974 alternative travel options by air
1915 Act

1. recognises Maori land custom

2. But a common definition by the House of Ariki 1970, 1977 and Koutu Nui 1999 has never been adopted by govt
Maori Custom

• Appellate Court Decision drawn by NZ judges – did not understand the language and custom
  
  • custom of equal share never existed before
  
  • Many now accept this error as ‘custom’.
traditional way for handling land rights of absentee owners

1. a married woman left her father's village to live in her husband’s village
2. Her rights were suspended and only reactivated when she became divorced/separated or returned to live in her father’s village
3. Her children living in her husband’s village did not exercise rights in her village
4. Men absent for a long time rarely returned.

5. When they married externally they rarely returned but sent one child to maintain blood–land ties.

6. Absentees wishing to return to their land first sought approval from the descent group related to. Reacceptance was conditional on land availability and cordial relationship.
Customary arrangements for absentees

7. Land rights was not exercised in absentia

8. Akata’a - expulsion cases – banished for serious crimes and not re-accepted back nor their descendants

9. Those expelled on lesser crimes re accepted on terms set by those accepting them with appropriate atonement and compensation
current arrangements for absentees

- Occupation – did they occupy the land,
- Adoption – are they customary feeding child with /without blood rights or legally registered
- Seniority – place within the genealogy
- place of residence – are they from the village
- effort invested in the land
- community obligations met - aratiroa/aratipoto /are-vananga
Legal arrangements for absentees

- No legal provisions provided
- No definition of what is a resident or non-resident landowner provided legally
- Land facilitation of Dealings Act 1970 require only 25% of resident landowners for a lease decision to be made
- However many absentees return for a lease/occupation meeting and then leave again
- They provide power of attorney or proxy voting rights to residents
Legal fragmentation of title

- 2005 the authors surveyed 2 blocks in Ngatipa, Avarua
- Block 1 had 8 owners in 1908
- In 2005 the registered owners were 1,105 and still counting
- Block 2 had 68 owners in 1908 and 636 in 2005 and still counting
absentee hold on land

compare - contrast

1. Of 87 occupation rights in 2 sub districts - Ruatonga, and Arerenga
   • 53 were held by absentee landowners
2. Of 47 leases, 32 were held by absentees
3. Sub district Tikioki - of 108 occupation rights, 20 were held by absentees
4. Of 51 leases, in Tikioki only 4 were held by landowners here but living outside the village
Attitudes to absentee landowners’ rights

- **Problem for some** – spiteful and expensive disputes over succession
- **Okay for some** – good leaders and well organised extended families
- Allocates land to residents/absentees willing to use the land
- or arranged for resident family members to care for the land
139 Auckland survey

- 93 said absentees should retain their land rights
- 14 said absentees should lose their land rights
- 72 said they will return
- 41 said they will not return
- 26 were unsure
- 110 wanted to lease or sell their rights to relatives on a conditional/temporary arrangement
- Nearly all wanted to retain their rights as a family heritage, security for mortgage or tourist accommodation
Attitudes to absentee landowners

• **Some are happy**, with absentee landowner situ

• Prevents land from being leased to non citizens with higher incomes, to those more knowledge of land & legal systems and can bid for higher prices

• **Some prefer to legally limit** the rights of absentee landowners especially on Raro/Aitutaki/Manihiki.
Impact of expatriate rental market and Unit Titles Act

• Tourism industry increased demand for rental properties on Aitutaki/Raro/Manihiki
• Land acquired a monetary than cultural value
• Unit Titles Act 2006 allowed subdivision of house sites, hotels, apartments, office blocks
• This may lead to more foreign ownership of property in the country
Raro Land value

• Quarter acre: NZ$45k – NZ$75k

• Good view: $65k - NZ$100k

• Beach site: $250k
Security of access to land and Finance

- Most prefer lease to occupation rights
- Partly because banks lend to leases and not occupation rights
- Partly because leased land can be unused for 60 years
- Occupation rights can be cancelled after 7 years by family
Experiences of other countries of the Pacific

Samoa
• matai reallocates land for **farming** and not for **housing** within the family

Tonga
• Land is individualized on perpetual lease

Kiribati
• traditional rule that after 7 years plus absence you are treated ‘lost at sea’ and land is reallocated to close relatives

Niue
• Planning on limiting the rights of long term absentees and those born overseas
A way forward

1. Periodically review land laws to ensure they meet the current and expected needs of the people, especially...
Way forward

2. Legislation and regulations to protect the rights of resident landowners
Way forward

3. Careful design of land registration systems to avoid fragmentation of ownership

4. Effective mechanisms to allow landowners to consolidate their landholdings

5. Mechanisms to make available low cost residential land in commercial centres
6. Sufficient administrative capacity to support registration