

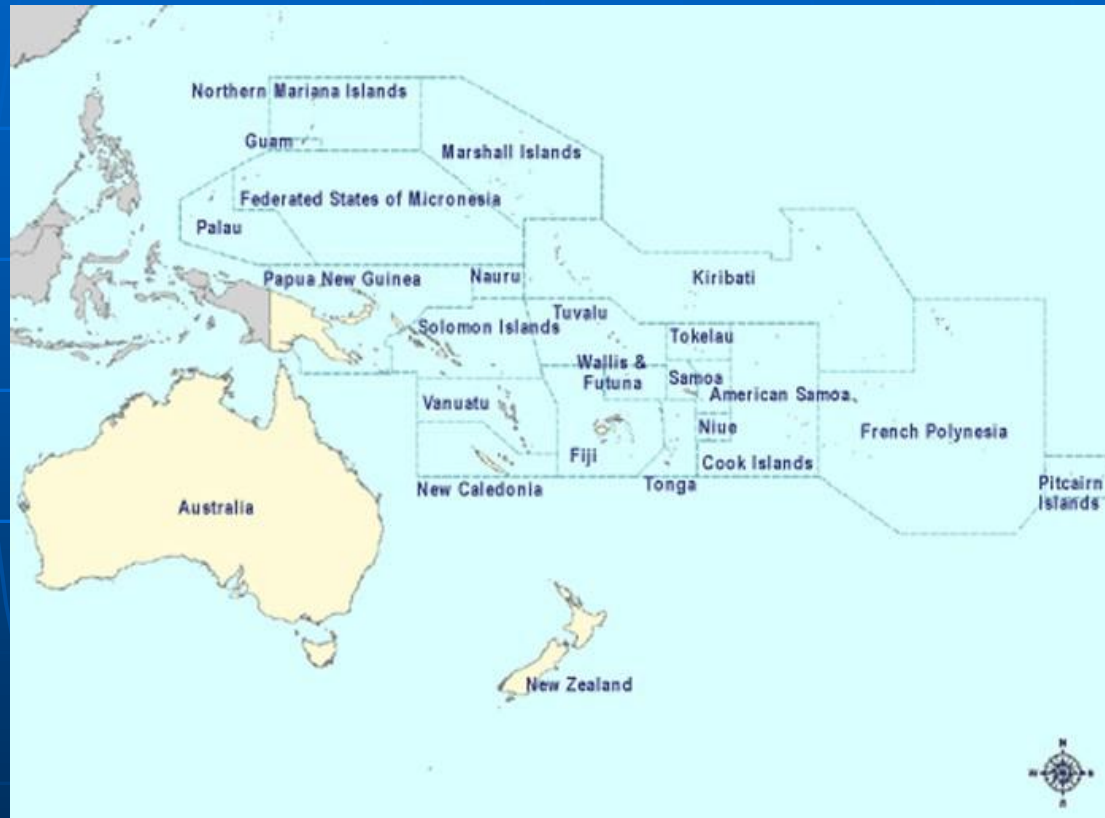
Overview of Land Systems in English-speaking Island Countries of the South Pacific

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Overview of Land Systems in English Speaking South Pacific Island Countries

- **English speaking island Countries of the South Pacific:**
- **Polynesia:**
American Samoa, Cook Islands, Niue, Norfolk Islands, Pitcairn Islands, Rotuma (Fiji), Samoa, Tonga, Tuvalu
- **Melanesia:** **Fiji, Papua New Guinea, Solomon Islands, Vanuatu**
- **Micronesia:** **Kiribati, Nauru, Rabi (Fiji)**
- **Not the French speaking territories of French Polynesia, New Caledonia, and Wallis and Futuna, nor the Chilean territories of Rapanui (Easter Island) and Juan Fernandez Islands.**
- **Not Australia and New Zealand.**

English Speaking South Pacific Island Countries



Customary land – amount / proportion

- **In most island countries of South Pacific there is customary land, ie land held in accordance with traditional customs of indigenous people of those islands.**
- **In most island countries large majority (80%-90%) of the land is customary land, eg American Samoa, Fiji, Nauru, Niue, Papua New Guinea, Solomon Islands, Tokelau, Tuvalu, Vanuatu**
- **Some island countries have small amounts of customary land:**
 - **Cook Islands - customary land only 3 of 15 islands, Mangaia, Mitiro and Pukapuka, remainder native freehold, which is not customary;**
 - **Kiribati - 30-40% of land area, Line and Phoenix Islands originally uninhabited, owned by Government**
- **Some island countries have no customary land at all:**
- **Tonga – all land owned by the indigenous King;**
- **Norfolk Island – no indigenous people present when Europeans arrived.**
- **Pitcairn Island – no indigenous people present when Europeans arrived.**

Customary land – ownership – collective/individual

- Customary land in most island countries is owned collectively or jointly by families.
- But in some island countries individual ownership of land is recognised by the law, and occurs in practice:
 - American Samoa – “Every registration [of land] shall specify whether the land is registered as family owned communal land or individual owned land”: s37.0101(c) ASCA. In 2010, 25% of registered land was individual owned land;
 - Samoa- “*Pulefaamau* means the ownership of any customary land...by a person in his sole right or on behalf of a Samoan title, family, village or district....Any Samoan who claims a *pulefaamau* ...may give notice of such claim...to the Registrar...The [Land and Titles] Court....shall have jurisdiction...to confirm any claim for a *pulefaamau*...” ss 2,14,19 Land and Titles Act 1981.
 - “...the change in tenure systems has proceeded to the point where the majority of village lands is now held by individuals rather than extended families, and is inherited directly by those individual’s children....” Samoa Bureau of Statistics, *Agriculture Census Analytical Report*, 2009, p 12;

Customary land – ownership – collective/individual

- **Nauru-**“(2) Any person who transfers...the freehold of any land in Nauru to any person other than a Nauruan person shall be guilty of an offence...(3) Any person who, without the consent in writing of the President, transfers, sells or leases, or grants any estate or interest in any land in Nauru...is guilty of an offence.” s 3 Lands Act 1976. Majority of land believed to be held by individuals as unsevered separate shares of portions of land held originally by families or individuals.

Customary land – ownership - gender



Customary land – ownership - gender



Customary land – ownership - gender

- **Collective ownership**
- **Polynesian countries - both male and female; in practice often choose male or female;**
- **Melanesian countries – male or female, majority male ownership of land, but some islands or parts of islands, customary land is owned by females, eg Guadalcanal, Solomon Islands; North Pentecost, Vanuatu;**
- **Micronesian countries – some, both male and female, eg northern islands of Kiribati, Nauru; some, male, eg southern islands of Kiribati;**
- **Individual ownership**
- **American Samoa, Samoa - male or female, but mainly male.**
- **Nauru – both male and female**

Customary land – ownership- how much indigenous blood?

- How much indigenous blood to own customary land?
- Some countries, very strict:
 - American Samoa: "It is prohibited to alienate any lands except freehold lands to any person who has less than one-half native blood, and if he has any nonnative blood whatever, it is prohibited to alienate any native lands to such person unless he was born in American Samoa, is a descendant of a Samoan family, lives with Samoans as a Samoan, lived in American Samoa for more than 5 years, and has officially declared his intention of making American Samoa his home for life." ss37.0204 ASCA. "'Native' means a full-blooded Samoan person of Tutuila, Manu'a Aunu'u or Swains Island...." s 37.0201(c) ASCA. "If a person who has any non-native blood marries another person who has any nonnative blood, the children of such marriage cannot inherit the land unless they are of at least one-half native blood": s37.0204 ASCA.
 - Solomon Islands, at least 2 indigenous grandparents: "The manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with the current customary usage applicable thereto..." "'Current customary usage' means the usage of Solomon Islanders obtaining in relation to the matter in question"..." "'Solomon Islander' means a person who has two grandparents who were members of a group, tribe or line indigenous to the Solomon Islands." ss2(1), 239(1) Land and Titles Act.

Customary land – ownership - how much indigenous blood?

- some countries, much less strict:
- Kiribati: “‘native’ means any aboriginal inhabitant ...and any descendant of any aboriginal inhabitant, whether wholly or partly, of any aboriginal inhabitant”: s2 Native Lands Act ;
- Samoa: “‘Samoan’ means a person who is citizen of Samoa, and has any Samoan blood”; s3 Samoan Status Act 1963.
- Tuvalu: “‘native’ means any indigenous inhabitant of Tuvalu and a descendant of an indigenous inhabitant, whether wholly or partly, of indigenous descent.”
- Vanuatu: “All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants....Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land” arts 73,75 Constitution of Vanuatu.
“On the Day of Independence the following persons shall automatically become citizens of Vanuatu (a) a person who has or had 4 grandparents who belong to a tribe or community indigenous to Vanuatu; and (b) a person of ni-Vanuatu ancestry who has no citizenship, nationality or the status of an optant.”: art 9 Constitution of Vanuatu.

Customary land – ownership - how much indigenous blood?



Homogeneity/diversity of indigenous people

- **Some countries indigenous people very homogeneous: American Samoa, Samoa, Tonga, Cook Islands and Niue, indigenous people homogeneously Polynesian.**
- **Fiji, Papua New Guinea, Solomon Islands, Vanuatu, indigenous people mainly Melanesian, but significant areas of indigenous Polynesian people:**
 - Fiji - Lau group; Rotuma;**
 - Papua New Guinea - Mortlock and Takau Islands; Nukumanu Islands;**
 - Solomon Islands - Ontong Java, Rennell, Sikaiana, Bellona, Reef, Tikopia;**
 - Vanuatu - West Efate, Futuna.**
 - Papua New Guinea – northern Manus Islands – indigenous Micronesian people.**

Homogeneity/diversity of custom of indigenous people

- **Some countries, customs very homogeneous; customs of indigenous people the same throughout the country: Cook Islands, Niue, Samoa, American Samoa, Tonga, Tuvalu, Nauru.**
- **Some countries, customs of indigenous people more diverse: Fiji, Papua New Guinea, Solomon Islands, Vanuatu, Kiribati.**
- **Not only differences between Polynesian and Melanesian areas, but diversities between different Melanesian areas within the same country – originally many small very separate and dispersed communities.**

Customary land – ownership - registration

- During colonial period, British colonies and protectorates, eg Fiji, Kiribati and Tuvalu, compulsory systematic registration of all customary land, but not Solomon Islands or Vanuatu. In American Samoa, voluntary registration of customary land, and in Cook Islands and Niue, and Samoa, sporadic registration of customary land from court judgments continued after self-governance /independence.
- Since self-governance/independence, compulsory systematic registration of customary land ownership is very controversial in many countries - fears of acquisition or taxation by State; uncertainties about true ownership.
 - Niue - Land Titling Project 1990'6 –systematic registration of all customary land in Niue, originally compulsory, later voluntary, eventually abandoned late 1990's – about 10% registered.
 - Papua New Guinea – Native Land Registration Act 1952 – nil; Land Registration (Communally Owned Land) Act 1962 – abandoned 1969; Bills introduced 1992,1993, abandoned 1995.
 - Solomon Islands - Customary Land Records Act 1994 – voluntary registration of customary land - not very popular, about 5% is registered.
 - Vanuatu - discussion, but no Bills for registration introduced
- Cf Tonga – compulsory systematic registration of hereditary estates and hereditary allotments, and mortgages and easements of those lands.

Customary land – ownership- determination of ownership

- **Customary processes: customary chiefs and advisers, in all countries, except Nauru which has customary land but not customary chiefs.**
- **Ordinary superior courts: American Samoa; Cook Islands; Niue**
- **Special courts: Kiribati; Tuvalu; Samoa; Solomon Islands**
- **Commissioners appointed by Minister: Fiji**
- **Tribunals appointed by chiefs: Vanuatu**
- **Committee appointed by Cabinet: Nauru**

Customary land – management

- Customary leaders:
- Family heads, *matai* (Am Samoa, Samoa); *leveki* (Niue)
- Chief(s), senior male(s), council of heads of families of land owning unit – certainly patrilineal succession, but also usually matrilineal succession and bilineal succession
- Unincorporated village land committees: Vanuatu, 1980-85
- Unincorporated land trusts: Mele Trustees,
- Incorporated statutory trusts: Fiji: Native Land Trust Board (now i-TLB), Samoa: WESTEC; Solomon Islands Land Trust 1959-1964; Vanuatu: Vila Land Corporation; Luganville Land Corporation, 1981-1988
- Incorporated companies: Ifira Trustees Ltd: Ifira Wharf and Stevedoring Co Ltd; Ifira Shipping Agencies Ltd; Ifira General Services Ltd.
- Incorporated land groups: PNG – Land Groups Incorporation Act 1974
- Incorporated land owners: Cook Islands – Land (Facilitation of Dealings) Act 1970.

Customary Land as a Security for a Loan

- Issues:

(1) Only indigenous persons can own customary land, so if default on payment of loan how can amount of unpaid loan be recovered?

(2) Most customary land owned collectively so who has legal authority to approve and sign appropriate documents?

Responses to issues:

- Expressly prohibited: Cook Islands, Fiji, Samoa
- Impliedly prohibited, (dealings of customary land “in accordance with custom”): Papua New Guinea, s132 Land Act; Solomon Islands, Tokelau, Vanuatu
- Expressly authorised:
 - American Samoa
 - mortgage of customary land signed by matai but enforcement by lease not transfer of ownership: Title 37, Chapters 10, 11 American Samoa;
 - separation of structures from customary land so that structures can serve as security: Title 37, Chapter 15 ASCA, American Samoa.
 - Kiribati: individually owned land may be mortgaged or charged to Development Bank and ANZ Bank, but can be sold only to indigenous person,
 - Niue: security charge over customary land by *leveki* to designated lending institution: ss 17, 26 32 Land Act;

Customary Land as a Security for a Loan

No authorisation or prohibition by legislation but practices have developed:

Nauru (outright transfers of individually owned land to Nauruan money lenders),

Kiribati and Tuvalu (written charges to banks)

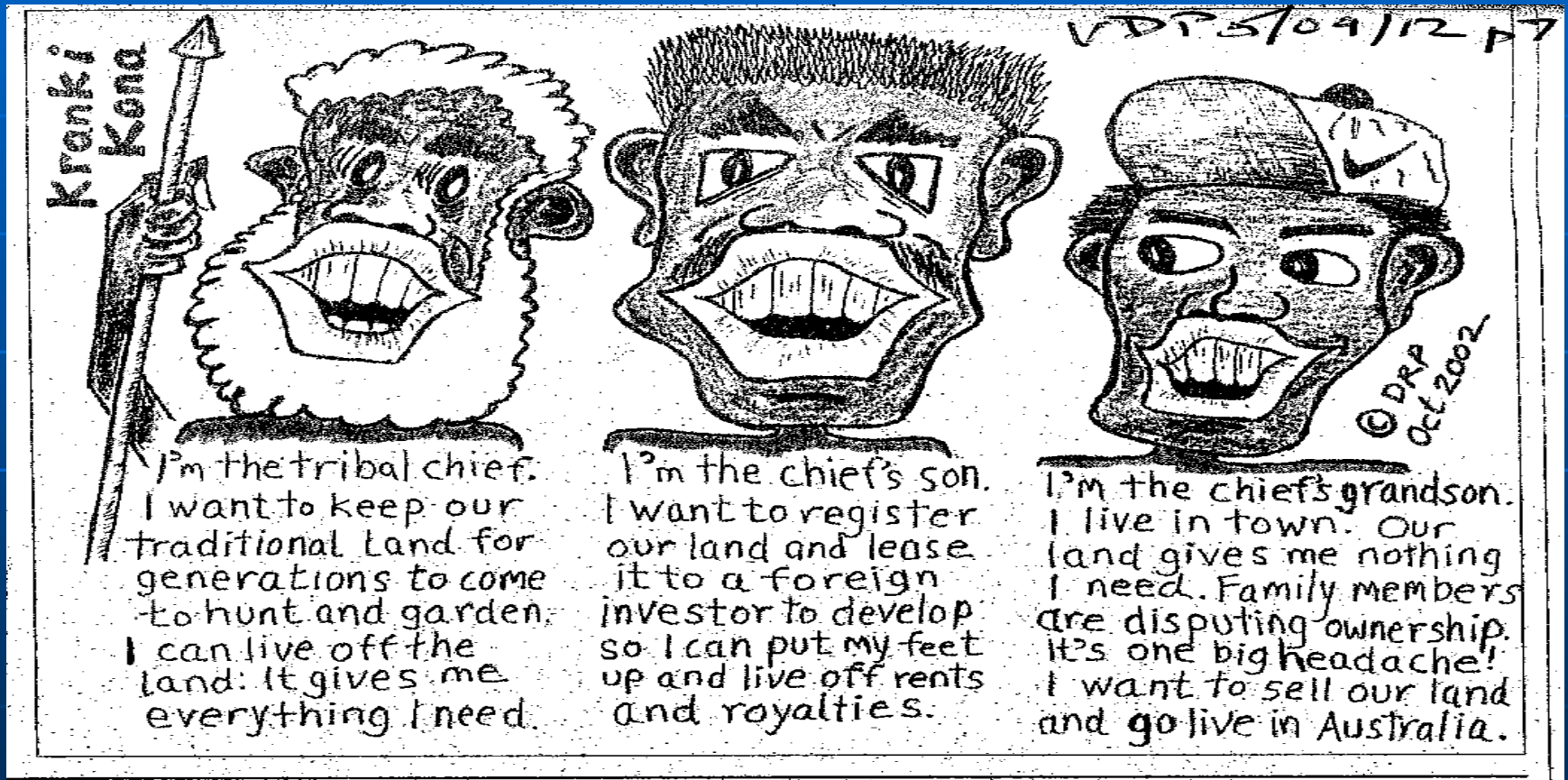
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(i) Leases of customary land are often provided as security for loan.

(ii) Conversion of customary land to freehold (PNG), native freehold (Cook Islands), perpetual and fixed term estates (Solomon Islands) which can be mortgaged



Customary Land – differing values of custom owners



Non-Customary Land - Government owned

In most countries, eg American Samoa, Cook Islands, Marshall Islands, Nauru, Niue, Papua New Guinea, Solomon Islands, Tokelau, Tuvalu, Vanuatu, where most of the land is customary land, amount of land owned by Government is small, under 5%.

In six countries Governments own larger amounts of land:

Fiji (8% reduced to 4% in 2002);

Kiribati (65% -Line and Phoenix Islands);

Norfolk Island (33%);

Pitcairn Islands (since 100% owned by Island Council and by Crown);

Samoa (10% + WESTEC (ex German lands about 4% which is being sold as freehold));

Tonga (100% owned by Crown, but 66% granted as hereditary estates to nobles; 15% granted as Royal and Royal Family estates, leaving about 15% available for government use.

But land owned by Government is often not situated in appropriate locations for public purposes, eg schools, market places, offices, clinics, hospitals, roads, wharves, airstrips.

So land in appropriate locations must be compulsorily acquired or taken on lease, but both are problematic:

- compulsory acquisitions arouse strong adverse reaction from land owners, friends and sympathisers of land owners.**

- leasing of privately owned land requires efficient Government management, and prompt payments of rentals, otherwise obstructions and resistance by land owners.**

Non-Customary Land - Government owned

Fraud squad asked to investigate sale of gov't land

THE PRIME MINISTER'S OFFICE has expressed its grave concerns over the recent exposure in the media of the sale of a piece of government land opposite the Ministry of Public Utilities to a local company for Vt1.7 million.

A statement from the Prime Minister's Office yesterday stated: "Council of Minister's has passed a resolution in decision COM 60 of 2010 that there will be no more sale of state owned assets and a letter was again sent to the Minister of Lands at the end of last year to instruct that the sale of state owned lands be suspended and frozen indefinitely and that the Minister of Lands seek resources to buy back some of the important

state owned lands.

"A meeting has held this morning (yesterday) in the Prime Minister's Office Conference Room to look into the matter and those invited to attend the meeting included representatives of the Ministry of Lands, Department of Lands, Department of Land Records, Department of Public Works, Civil Aviation Authority, State Law Office, Public Service Commission, Government Tenders Board and the Police Fraud Investigation Unit.

"The Department of Lands and Land records did not attend.

"A copy of the lease title in question was presented to the meeting which showed that the transfer of the disposal of the said land had been implemented

in January of this year.

"The meeting was advised that in the process of registration, the State Law Office and the Director General of Lands did not complete the relevant sections of the standard procedures prior to registration.

"This alone should have been enough to prevent registration approval by the Director of Lands and the Principal Registration Officer.

"As the land was considered a state owned asset, disposal of it should have been in accordance with the standard tender process used for sale of government assets.

"The meeting was advised that no valuation was sought for the land in question and no ques-

tions were raised by those public servants who had the final decisions in completing the registration.

"The meeting agreed to review this matter and collect as much information as possible and submit this to the relevant authorities for investigation and to see if there were grounds for revoking the lease and returning the monies of Vt1.7 million back to the investor.

"The representative of the Ministry of Lands has been advised to lodge a caution to prevent any further dealings with the land in question and that to seek ways to return the land to the State," the statement signed by First Political Advisor Richard Kaltongga stated.

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Non Customary Land - privately owned

- **Fiji (approx 10%), Norfolk Island (approx 66%), Samoa (approx 10%); Pitcairn Islands (until 2000) .**
- **Solomon Islands - perpetual estates; fixed term estates – about 5%;**
- **Cook Islands – native freehold in all 15 islands, except Mangaia, Mitiaro and Pukapuka. Native freehold may be partitioned and exchanged, but may not be transferred except to the Crown for public purposes, and may not be devised, only inherited in accordance with custom – bilineal, ie all children succeed to land of mother and of father. May not be charged or mortgaged except to Bank of Cook Islands. Subject to occupation orders for CIers and descendants, if 50% of owners agree, and vesting orders transferring sites for dwellings (not exceeding 1/3 acre) to Cier or descendant who holds an interest in the native freehold land.**
- **Niue – orders to convert customary land to native freehold, called Niuean freehold, authorised until 1968, but not thereafter, and Niuean land now defined as not including Niuean freehold: s43 Legislation (Minor Corrections and Errors) Act 2004. So presumably no Niuean freehold in Niue.**
- **Pitcairn Islands –land allocation titles, leaseholds, granted by Island Council since 2000.**

Adverse Possession/Prescription/Limitation of proceedings

- Acquisition of title to land by continuous, lengthy occupation, without force, without secrecy and without permission of owner. Limitation on time when court proceedings to evict trespasser
- Some countries have expressly accepted adverse possession:
 - Am Samoa – “any real estate” 30 years: 37.0120 ASCA;
 - Kiribati - s 8 Limitation Act 2002 – 12 years private land, 60 years Government land; Solomon Islands - perpetual or fixed term estate or registered lease - 12 years; s224 Land and Titles Act;
 - Tonga – all proceedings to recover land - 10 years – s170 Land Act.
- Some countries have expressly abolished adverse possession:
 - Cook Islands - native land, ie customary and native freehold – s641(3) Cook Islands Act 1915;
 - Niue – Niuean land, ie customary and Niuean freehold- s706(3) Niue Act 1966;
 - Samoa – all land s5 Limitation Amendment Act 2012.
- Some countries have modified adverse possession:
 - Fiji – only by vesting order after 20 years - s39(2), Part XII Land Transfer Act.
- Some countries have impliedly abolished adverse possession by not providing legislation to limit bringing court proceedings to oust lengthy occupier:
 - Tuvalu;
 - Vanuatu.
- Some countries have changed their attitude to adverse possession:
 - Fiji - 1876-1971 fully accepted; 1971 onwards modified;
 - Samoa - 1975–2012 fully accepted; January 2012 abolished.

Church Lands



Church Lands

- **In some countries church lands are expressly provided for by legislation:**
 - American Samoa:** customary land may be leased to an authorized recognized religious society of sufficient land for erection of church house or dwelling for pastor, or both; s37.0204(d) ASCA. Church land can be registered as such.
 - Cook Islands:** native freehold land may be leased for church purposes for up to 60 years, with perpetual right of renewal: s13 Cook Islands Am Act 1945.
 - Tonga:** religious bodies may lease land, but only for original purposes: ss17,18 Land Act
 - **In some countries, church lands are not so provided for by legislation and rather uncertain:**
 - Fiji;
 - Kiribati,
 - Nauru,
 - Solomon Islands,
 - Tuvalu,
 - Vanuatu
 - **Land given to early missions**
 - Was it for current missionaries/congregations, - like life interests?
 - Was it for current and successor missionaries /congregations for religious purposes, but not for non-religious purposes, or vacant, like determinable fees?
 - Was it an absolute gift or a conditional gift?
 - Was it for occupation for specified time and purpose, like a lease?
- What happens if Constitution provides that all land belongs to indigenous custom owners and Government Vanuatu?**

Current Issues

- 1. Disappearing land – sea level rise - global warming- especially atolls, low lying islands and coastal plains.
- 2. Movements of people off their own land onto land of others– from mountainous interior to fertile coastal plains, close to missionaries, churches, plantations, and more recently to health centres, sources of work in urban areas; and overseas, especially American Samoa, Cook Islands, Samoa, Tonga.
- 3. Squatter settlements, especially in and around cities – some with original permission, of land owners, but expanded numbers and activities; and/or needs and aspirations of land owners have changed; some with no permission of land owners, private and Government.
- 4. Land disputes regarding boundaries and ownership of customary land - ongoing land disputes restrict development of land for agriculture, tourism, education, infrastructure.
- 5. Effective management of customary land – *matai* in Am Samoa and Samoa; *leveki* in Niue, individual owners in Am Samoa and Nauru, but elsewhere largely collective owners.
- 6. Sustainable development of customary land – exploitation of forests, and minerals; long term leasing; urban sprawl and tourist resort development; weak land use planning; difficulties of using customary land as security.
- 7. Food security – fertile soil, warm and moist climate but local agriculture inadequate; seas with abundant fish but local fisheries inadequate.

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THE END

**THANK YOU
FOR YOUR ATTENTION**