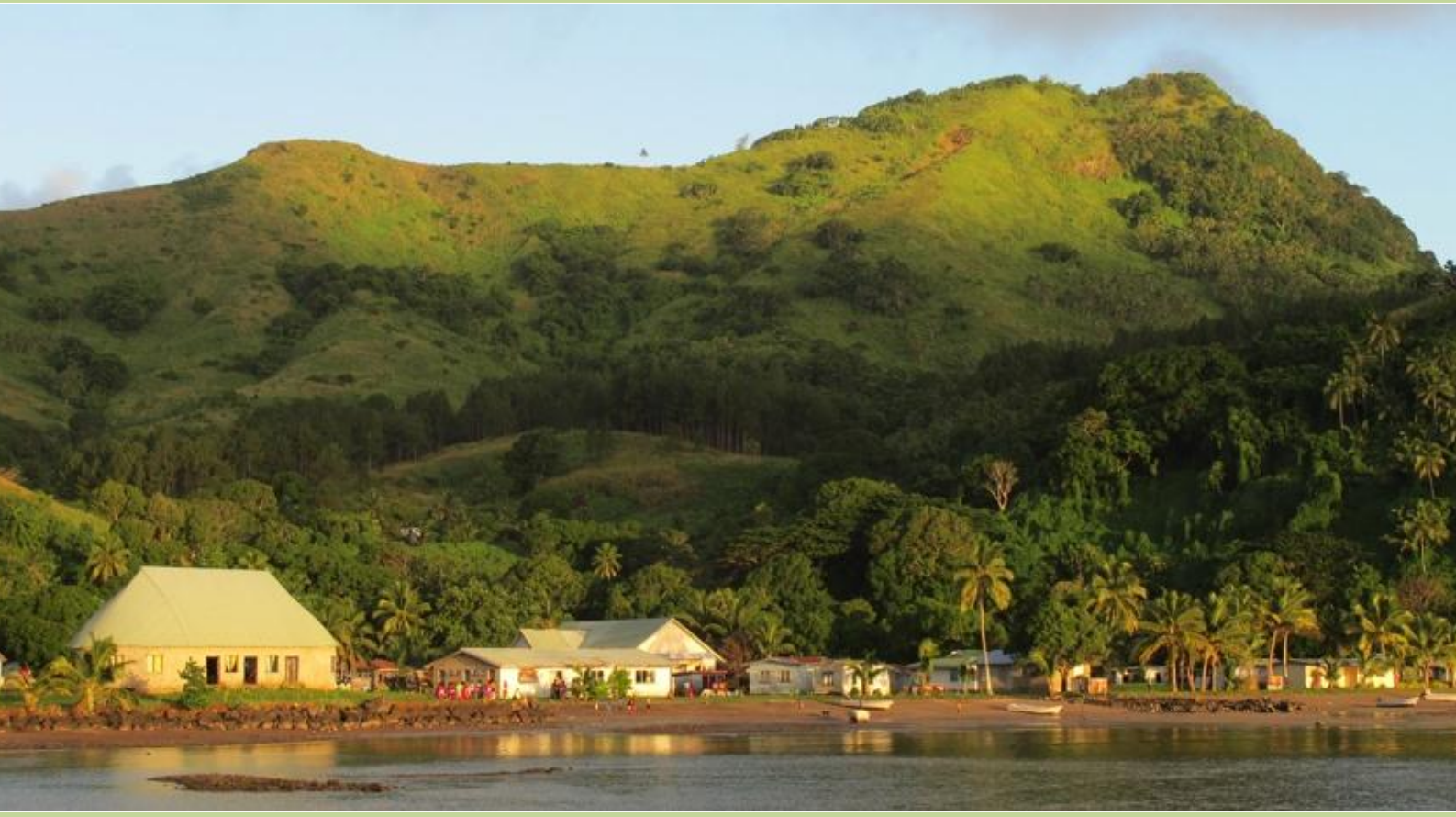
An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities

Report No. 19

Fiji



Stockholm Resilience Centre
Research for Governance of Social-Ecological Systems

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NATURAL JUSTICE

KALPAVRIKSH
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Environmental Action Group

The ICCA Consortium

"Land is the foundation of the lives and cultures of Indigenous peoples all over the world… Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous peoples' particular distinct cultures is threatened."

Permanent Forum on Indigenous Issues
Report on the Sixth Session
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ACRONYMS

ABS	Access and Benefit Sharing
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species
DoE	Department of Environment
EEZ	Exclusive Economic Zone
EIA	Environment Impact Assessment
EMA	Environment Management Act
FELA	Fiji Environmental Law Association
FHRC	Fiji Human Rights Commission
FIBoS	Fiji Islands Bureau of Statistics
FLMMA	Fiji Locally Managed Marine Areas
GCC	Great Council of Chiefs
ICCA	Indigenous and Community Conserved Areas
ICM	Integrated Coastal Management
IUCN	International Union for Conservation of Nature
LMMA	Locally Managed Marine Areas
MPA	Marine Protected Areas
MPI	Ministry of Primary Industries
NBSAP	National Biodiversity Strategy and Action Plan
NCSAP	National Capacity Self-Assessment Programme
NEC	National Environment Council
NES	National Environment Strategy
NGO	Non-Government Organisation
NJV	Namosi joint Venture
NRMP	National Resource Management Plan
NSER	National State of the Environment Report
NTF	National Trust of Fiji
PAC	Protected Area Committee
PER	Public Emergency Regulations
POAPI	The Preservation of Objects of Archaeological and Paleontological Interest
PoWPA	Programme of Work on Protected Areas
SCOP	Secretariat of the Convention of Parties
SPC	Secretariat of the Pacific Community
TAB	iTaukei Affairs Board
TFC	iTaukei Fisheries Commission
TLA	iTaukei Lands Act
TLFC	iTaukei Land and Fisheries Commission
TLTA	iTaukei Lands Trust Act
TLTB	iTaukei Lands Trust Board
TNLC	Tikina Namosi Landowners Committee
UNCA	Upper Navua Conservation Area
UNCHSICH	Convention for the Safeguarding of the Intangible Cultural Heritage
UNDRIP	Declaration of the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization

VKB	Vola-ni kawa bula
WCS	Wildlife Conservation Society
WWF	World Wildlife Fund

INTRODUCTION

Across the world, areas with high or important biodiversity are often located within Indigenous peoples' and local communities' conserved territories and areas (ICCAs). Traditional and contemporary systems of stewardship embedded within cultural practices enable the conservation, restoration and connectivity of ecosystems, habitats, and specific species in accordance with indigenous and local worldviews. In spite of the benefits ICCAs have for maintaining the integrity of ecosystems, cultures and human wellbeing, they are under increasing threat. These threats are compounded because very few states adequately and appropriately value, support or recognize ICCAs and the crucial contribution of Indigenous peoples and local communities to their stewardship, governance and maintenance.

In this context, the ICCA Consortium conducted two studies from 2011-2012. The first (the *Legal Review*) analyses the interaction between ICCAs and international and national laws, judgements, and institutional frameworks. The second (the *Recognition Study*) considers various legal, administrative, social, and other ways of recognizing and supporting ICCAs. Both also explored the ways in which Indigenous peoples and local communities are working within international and national legal frameworks to secure their rights and maintain the resilience of their ICCAs. The box below sets out the full body of work.

1. **Legal Review**
   - An analysis of international law and jurisprudence relevant to ICCAs
   - Regional overviews and 15 country level reports:
     - *Africa*: Kenya, Namibia and Senegal
     - *Americas*: Bolivia, Canada, Chile, Panama, and Suriname
     - *Asia*: India, Iran, Malaysia, the Philippines, and Taiwan
     - *Pacific*: Australia and Fiji

2. **Recognition Study**
   - An analysis of the legal and non-legal forms of recognizing and supporting ICCAs
   - 19 country level reports:
     - *Africa*: Kenya, Namibia and Senegal
     - *Americas*: Bolivia, Canada, Chile, Costa Rica, Panama, and Suriname
     - *Asia*: India, Iran, the Philippines, and Russia
     - *Europe*: Croatia, Italy, Spain, and United Kingdom (England)
     - *Pacific*: Australia and Fiji

The *Legal Review* and *Recognition Study,* including research methodology, international analysis, and regional and country reports, are available at: www.iccaconsortium.org.

This report is part of the legal review and focuses on Fiji. It is authored by**:** Kiji Vukikomoala (Coordinator, Fiji Environmental Law Association), Stacy Jupiter (Director Fiji Country Program, Wildlife Conservation Society), Elizabeth Erasito

(Director, National Trust of Fiji), and Kevin Chand (Environmental Law Association volunteer).

1. COUNTRY, COMMUNITIES & ICCAs

1.1 Country

Fiji lies in the heart of the tropical Pacific Ocean between longitudes 174º east and 178º west of Greenwich and latitudes 12º and 22º south. Fiji's Exclusive Economic Zone (EEZ), which extends 200 nautical miles from shore, contains approximately 330 islands, of which about a third are inhabited. This covers about a 1.3 million square kilometres of the South Pacific Ocean.

Fiji's total land area is 18,333 square kilometres. There are two major islands, Viti Levu (10,429 sq.km) and Vanua Levu (5,556 sq.km). Other main islands include Taveuni (470 sq.km), Kadavu (411 sq.km), Gau (140 sq.km), and Koro (140 sq.km). There are only two designated cities in Fiji: Suva, the capital, located on the southeast of Viti Levu, and Lautoka, located on the northwest of Viti Levu.

Well-endowed with forest, mineral, and fish resources, Fiji is one of the most developed of the Pacific island economies, though still with a large subsistence sector. Sugar exports, remittances from Fijians working abroad, and a growing tourist industry - with 400,000 to 500,000 tourists annually - are the major sources of foreign exchange. Sugar processing makes up one-third of industrial activity but, along with the garment manufacturing industry, is facing an uncertain future owing largely to the reduction of preferential trade agreements under increasingly promoted free trade.

Fiji was settled by several waves of people originating in southeast Asia. The first settlers were attributed to the Lapita culture some 3,500 years ago and, although the exact relation between these people and subsequent migrations is not clear, the strong links of the present day population are still apparent with the Melanesian peoples to the west and the Polynesian people predominantly to the east and south. European contact resulted in rapid developments, including more sophisticated wars and the introduction of diseases. Eventually Fiji was ceded to the British in 1874, who introduced legislation, such as the Fisheries Act, that reflected their worldview of open access to sea resources but is inconsistent with many indigenous perceptions of marine resource ownership.

Fiji became independent in 1970, but democratic rule was interrupted by two military coups in 1987 caused by concerns over a government perceived as dominated by the Indian community. The coups led to heavy Indian emigration, and the population loss resulted in economic difficulties but ensured that Melanesians became the majority. A new constitution enacted in 1997 and subsequent elections resulted in a government led by an Indo-Fijian, but a civilian-led coup in May 2000 ushered in a prolonged period of political turmoil. Criticism of subsequent governments' pro-indigenous stance reflected in proposed legislation affecting land

and inshore marine rights led to a military coup in 2006. The subsequent "interim government" has abrogated the constitution and governed largely through the use of decrees, while developing a new constitution and key legislation including laws that govern natural resource use.

1.2 Communities and Environmental Change

As of 2007, Fiji's population numbering 837,271 residents were composed of 56.8% indigenous Fijians (*i Taukei*), 37.5% Indian and 5.7% other races, including Pacific islanders, Europeans, Chinese and Rotumans. Contrary to many counties in the world where indigenous groups are the minority, Fiji's i Taukei are a steadily growing majority (in part due to a high emigration rate by Indians) and their rights are strongly recognized throughout Fijian law. Fifty-five percent of i Taukei live in rural areas (FIBoS 2008), where they are heavily dependent on farming and fishing for livelihoods (e.g., WCS 2009).

The main drivers of biodiversity loss in Fiji include: loss of native forest cover; catchment alteration and land degradation; increasing commercialization of resources; invasive species; and broader impacts of climate change coupled with the above threats. Loss of forest cover threatens Fiji's endemic birds and reptiles through loss of habitat (Anderson 2002; Harlow et al. 2007), and has negative downstream impacts on freshwater and marine communities through soil erosion into waterways (Haynes 1999; Jenkins et al. 2010; Jupiter et al. 2010). These impacts are compounded by catchment alterations through road, culvert and dam construction, agricultural expansion and coastal development (e.g., Jupiter et al. 2012a), that increase the likelihood of flood-related sedimentation impacts (Jenkins and Jupiter 2011). Many terrestrial, freshwater and marine species are at risk through increased commercialization of resources. For example, fish harvests from protected areas for fundraisers are becoming increasingly more common and damaging with access to middlemen from seafood export companies (Jupiter et al. 2012b), and high value shark and sea cucumber species are rapidly declining due to lucrative trade opportunities. In another example, Fiji's endemic sago palm (*Metroxylon vitiense*) is highly endangered due to growing demand from the tourist industry for roof thatching for traditional-style accommodation (Watling 2011). In addition, as a remote island nation with uniquely evolved flora and fauna, Fiji is highly susceptible to alien invasive species introductions. For example, the pink-billed parrotfish (*Erythrura kleinschmidti*), banded iguana (*Brachylophus fasciatus*), larger landsnails (e.g. *Placosytlus* spp., *Aspastus* spp.) and Fijian *Platymantis* frogs are highly vulnerable to impacts of predation by introduced rats (*Rattus exulans, R. rattus, R. norvegicus*) and the Indian mongoose (*Herpestes auropunctactus*) (Olson et al. 2006).

Loss of traditional knowledge represents a large threat due to loss of cultural and linguistic diversity. Fiji has a diverse lexicon with one or two dialect chains showing considerable internal diversity (Geraghty 1983). There is additionally unusually high diversity with respect to names for local species, especially those that change form during their lifecycles. For example, parrotfish of the large *Chlorurus* spp. may be called *kakarawa* or *rawarawa* as juveniles and *ulavi* as adults, reflecting colour shifts

from the juvenile to terminal phase (A. Cakacaka, pers. comm.). Further, the traditional Fijian calendar named months in terms of resource availability to guide farming and fishing activities throughout the year (Veitayaki and Sivo 2010). These words (and the harvesting activities they refer to) are quickly disappearing from the Fijian language and dialects as people spend more time speaking English and lose their connections with the environment through rapid urbanisation.

For centuries, Fijians like other Pacific island societies regulated resource use over the land and sea through customary management practices such as temporary harvesting closures, access restrictions, seasonal bans, and catch limits (Johannes 1978; Veitayaki 1997). These regulations typically applied across the ridge-to-reef tenure boundaries of traditional hierarchies (e.g. the Fijian *vanua*) (Ruddle et al. 1992). Despite the introduction of open access provisions in Fiji law as a legacy of British colonial rule, customary governance systems remain the strongest mechanism for regulating natural resource use in rural Fiji (Clarke and Jupiter 2010). Although customary tenure and taboos may have been originally designed to manage social relationships and provide short-term benefits, such as provisioning for a feast or for the funeral of a clan member (Foale et al. 2011), more recently conservation organizations and donors have worked with communities to adapt these customary practices to achieve longer-term objectives (e.g. food security). Over the past two decades, several hundred coastal communities in Fiji have established locally managed marine areas (LMMAs) (Govan et al. 2009a; Mills et al. 2011) and share knowledge about best practice through the Fiji LMMA network (FLMMA). While the primary management tool applied within LMMAs has been customary fishing closures, communities are now scaling up management activities to include adjacent freshwater and terrestrial areas within clan, village or district tenure boundaries (Clarke and Jupiter 2010). There has been recent dialogue among stakeholders in Fiji to develop parallel learning networks to FLMMA to help communities share best practice for sustainable land management and climate change adaptation.

Fijian youth in traditional attire, Suva, Fiji. © Stacy Jupiter

1.3 Indigenous Peoples' and Local Communities' Conserved Territories and Areas (ICCAs)

The majority of the ICCAs in Fiji are in marine and coastal areas, managed through communities within the FLMMA network with support from government, non-government, academic and private sector partners. Some freshwater and terrestrial ICCAs do exist and are becoming more common features as communities move toward more ecosystem-based management approaches. Box 1 indicates the approximate extent of marine and terrestrial (+ freshwater) ICCAs in Fiji.

The establishment of marine and coastal ICCAs within the FLMMA network expanded rapidly from 1 in 1997 to approximately 149 LMMAs in 2009, with at least 216 fisheries closures (*tabu* areas). In total the LMMAs and tabus cover, respectively, about 60% (approximately 17,726 km^2) and 2% (approximately 567 km^2) of the total extent of traditional fishing grounds (Mills et al. 2011). Most sites are managed by village or district communities who enforce verbal or written management rules that regulate access, gear use, species restrictions and catch limits within the village fishing area (*i kanakana*) or traditional fishing ground (*i qoliqoli*) boundaries. An undocumented but possibly significant number of marine coastal ICCAs may also exist outside the umbrella of FLMMA in the form of traditional closures, sacred sites and community arrangements (either as part of formal leases or informally) with coastal hotels and resorts.

Box 1

	Total number	Total area Km^2	ICCAs number	ICCAs area Km^2	ICCAs number (*tabu*)	ICCAs area (*tabu*) Km^2
Terrestrial protected areas	23	502	14	380	NA	380
Marine protected areas (MPAs)	149	17,726	149	17,726	216	567

Summary of protected area information for Fiji. Marine ICCAs comprise Locally Managed Marine Areas (LMMAs) within which one or more areas closed to fishing known as *tabus* may be designated. *Tabus* may be permanent (122 sq.km.), conditional with controlled harvesting (233 sq.km.) or conditional with uncontrolled harvesting (212 sq.km.). Sources: National Trust for Fiji, Mills et al. (2011) and FLMMA Network.

Although freshwater ICCAs generally are not included as sites within the FLMMA network, they are managed under the same context of customary governance. Known sites include areas with seasonal harvest bans (Rewa delta), and temporary (multi-year) bans on harvesting and cutting riparian vegetation (e.g., Macuata-i-Wai). As with marine ICCAs, studies have shown that the protection benefits can be rapidly overturned when the ban is lifted (Jenkins and Jupiter 2011), and the freshwater

ICCAs may be slower to recover than marine ICCA sites, which have higher connectivity to adjacent habitats for species replenishment.

With respect to terrestrial habitats, given the high degree of native land tenure, all protected areas that are not on freehold or State land possess sufficient community involvement to be considered ICCAs, including some 16 terrestrial protected areas are listed in the World Database of Protected Areas. For instance, although the designation 'National Heritage Park' has no legal status in Fiji, it has been used at Koroyanitu, and at Bouma on the island of Taveuni (see Part X), to denote areas where landowners, the i Taukei Land Trust Board and the government have agreed to protect nationally important natural and cultural heritage values and to assist their protection by the development of ecotourism (Clarke and Gillespie 2008). Other examples of terrestrial ICCAs include the Natewa Tunuloa Peninsula in Vanua Levu in which 11 clans have signed an agreement with an international NGO to sustainably manage 6,000 ha as a protected for the next 10 years (http://www.iccaregistry.org/en/sites/4), as well as the Kilaka Forest Park in Kubulau District (see Part X; Clarke and Jupiter 2010). In Sovi Basin, landowners agreed to cancel the logging concession, which covered a priority forest for protection in Fiji (Olson et al. 2009) in exchange for a compensatory conservation trust fund. The legal mechanism to establish the protected area was intended to include a conservation lease, together with one or more financing and management agreements. However the process is now in jeopardy due to conflicts with mining interests in the neighbouring basin.

The main threats to ICCAs stem from political/legal, institutional, and external drivers. With respect to political and legal barriers, a considerable amount of Fiji legislation and policy does not give legal authority to communities to fully restrict access to their ICCAs as they see fit. As described in section 1.2, although native Fijians have land tenure, this right does not exist below the high tide mark or for freshwaters, though a right of access is acknowledged. There is potential that these gaps in legal recognition for ICCAs could be filled with new protected area legislation, the development of which has been approved by Fiji Cabinet. However, new protected area legislation will need to be reconciled with provisions under current legislation whereby protected area status can be overturned in the interest of national government. For example, the current Mining Act gives the Director of Mineral Resources broad powers to issue prospecting licenses over land areas without owner consent and to declare a site less than 250 ha (even in a gazetted protected area) a mining site if it has importance to the nation.

Regardless of the historical or future legal context, institutional threats exist because community-based resource management committees do not have adequate human, financial or technical resources to adequately support ICCA management. Further, support from government organizations is minimal due to inadequate flows of information between communities and government or network coordinators, lack of structured process to deal with offenders and lack of vehicles (e.g. trucks, boats) to assist with enforcement (Lane 2008). Without a moderate amount of support for management implementation, there is a tendency for sites to lose interest, leading to poor compliance with ICCA rules (Govan et al. 2009b). Within the FLMMA

network, this is being overcome by efforts to improve central network coordination and communication with LMMA sites to determine which are self-sufficient and which require further support.

External threats exist through increased access to national and global markets, which result in extreme cases of overharvesting when ICCA protection status is temporarily lifted. It is also drives non-compliance among locals and outsiders once protection status is reinstated. This was observed when the communities of Kia Island opened their marine ICCA for a fundraiser (Jupiter et al. 2012b). Given the enormous impacts of overharvesting when resources become commercialized, FLMMA partners are now working to develop communications materials to circulate through the network to indicate best practice for control measures during harvests, such as pre-determining harvest targets and developing restrictions on effort, gear, duration of opening, access and total catch. External threats also come in the form of extreme weather events and coupled natural disasters, which may increase in frequency with climate change. In order to cope with these unpredictable climate disturbances, FLMMA partners are encouraging communities to manage for ecosystem resilience, by protecting areas likely to resist or recovery quickly from perturbations (Jupiter et al. in press).

2. LAND, FRESHWATER AND MARINE LAWS & POLICIES

2.1 Legislation Relevant to Native Tenure

2.1.1 Land Tenure Recognition

Fiji law recognizes both introduced and customary ownership over land and natural resources. Fiji has three main types of land tenure: State Land, Freehold Land (Box 2), and i taukei/Native Land. 87.9% or 15,000square kilometres of the total 18,333 square kilometres of land is owned by the indigenous Fijians (i Taukei).

In Fiji's pre-colonial period, resources were owned by different units of Fijian society: vanua, mataqali or itokatoka. Vanua, the largest unit, consisted of "agnatic (from the male line) descendants of common ancestors or ancestral gods living in the same area." Each vanua would have one or more yavusa, withagnatically related members. A yavusa comprised several mataqali (clans), whose members were in turn related to the descendant of their yavusa's founder. One or more extended itokatoka (families) form a mataqali. (Figure 1; Ward and Kingdon 1995). The British colonial government that formalized landownership in Fiji recognized communal ownership at mataqali level, although in practice there was some variability in the level of tenure control (Walter 1978).

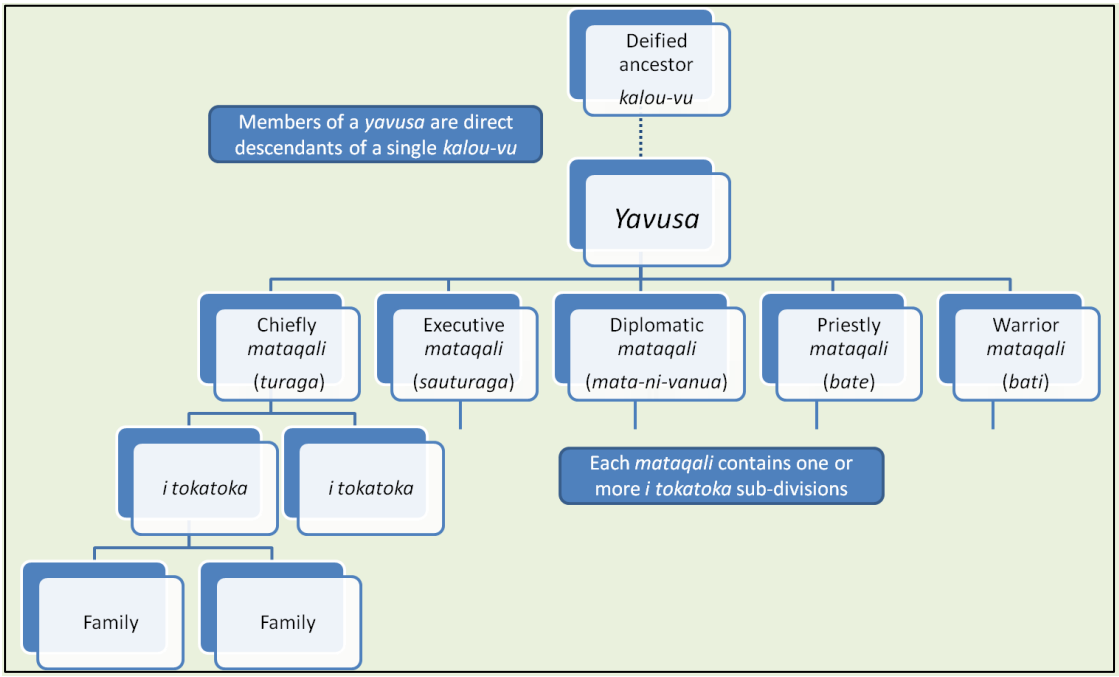
Box 2: State Land

State land comprises Schedule A, Schedule B, State Freehold, State Foreshore and State land without Title. Schedule A and Schedule B land are held by the State in trust for indigenous landowners. Schedule A is land that once belonged to a landowning unit that has become extinct. Schedule B is land that was not claimed during the initial sittings of the iTaukei Land & Fisheries Commission (TLFC) in the early part of the 1900s. Under s.18 of the iTaukei Land

Trust Act, the Reserves Commissioner is empowered to allocate these types of state owned land to indigenous landowners who genuinely need more land. (Ministry of Lands).

The customary land tenure system is well established in two pieces of legislation; namely, the **i Taukei Lands Act [Cap 133]**(**TLA**) and the **i Taukei Lands Trust Act [Cap 134](TLTA).** Formerly the Native Lands Act, and the Native Lands Trust Act, both pieces of legislation were amended by the Native Lands (Amendment) Decree and Native Lands Trust (Amendment) Decree in 2011 replacing the word "Native" or "Indigenous Fijian" wherever it appeared in the principal Act with the word " **i Taukei**".

The TLA plays a crucial role in preserving and maintaining customary communal ownership of native lands by the i Taukei. Section 3 of the TLA establishes that all i Taukei lands are to be held by the indigenous people according to native custom and tradition. Section 4 of the same Act establishes the **i Taukei Land Commission (TLC)** which was formed in 1880 primarily to: register i Taukei lands; identify ownership of such lands; and classify customary roles and migration records of communal units. The TLC can determine disputes relating to customary headships or titles and land disputes which can be appealed to the Appeals Tribunal. They can also demarcate and set aside sites as village reserves.[1]



[1]Native reserves, according to the provisions of the TLTA are native lands that will not be subjected to a lease.

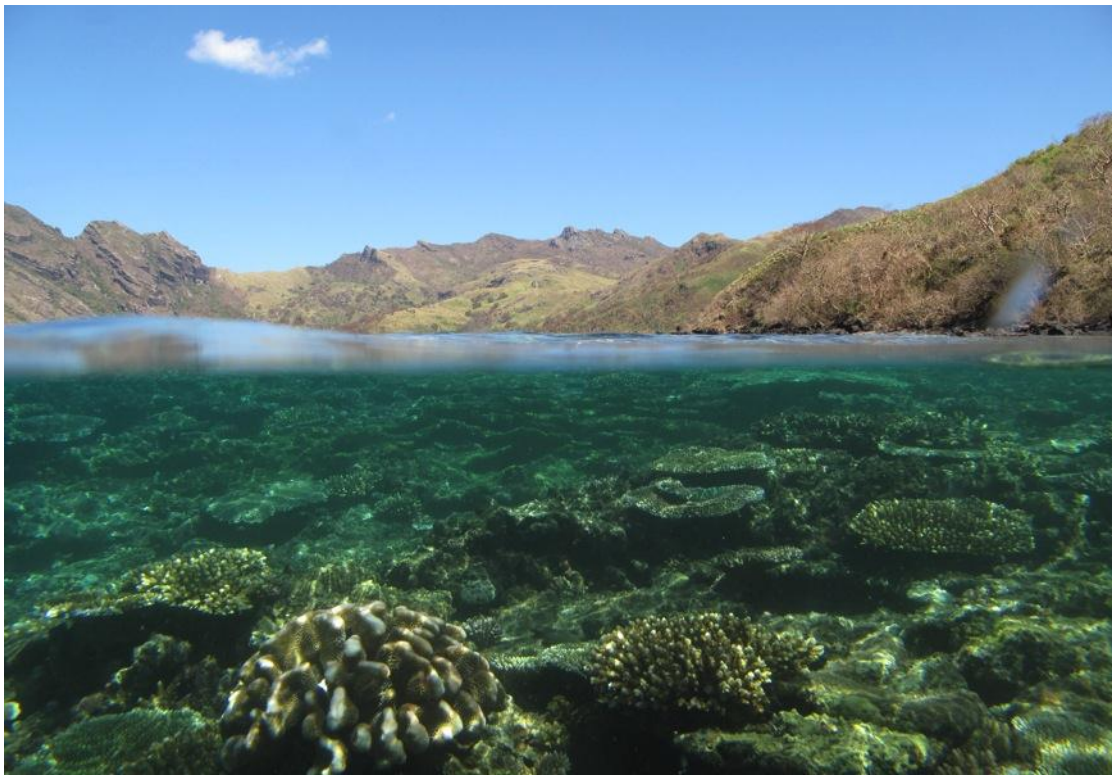
Figure 1: Schematic representation of hierarchical linkages between yavusa, mataqali, and i tokatoka. Source: Askew et al. (2011).

The TLTA establishes the **i Taukei Land Trust Board (TLTB)**. The TLTB was formed in 1940 to secure, protect and manage land ownership rights assigned to i Taukei landowners and to facilitate the commercial transactions that revolve around its use.

i Taukei lands are further classified into i Taukei land leases and i Taukei reserves. i Taukei reserves comprise 38% of all i Taukei Lands. In section 5 of the TLTA, all i Taukei lands cannot be sold except to the State and any dealings with the land require the approval of the majority of the members of the mataqali over the age of 21. Under this system, land and communal owners are registered with no individual titles issued. Ownership is vested in the mataqali and individual membership of the mataqali is recorded in the **Vola-ni-Kawa Bula (VKB**). Legally, the final decision on land lease approvals rests with the TLTB, which controls and administers all native lands. If leased, i Taukeiland falls under the 'western' system of land tenure (Ministry of Lands 1992).

2.1.2 Marine Tenure Recognition

While most land is held under customary landownership, marine and freshwater tenure is vested in the State by virtue of the **Crown/State Land Act [Cap 132]**and the**Rivers and Streams Act [Cap 136].** This is a contradiction to traditional customary law where traditional fishing grounds 'iqoliqoli' belonged to adjacent communities (see section 1.2 above).



A ridge to reef seascape from Waya Island, Fji. © Stacy Jupiter

The i Taukei Fisheries Commission **(TFC)** established under the **Fisheries Act[Cap 158]** maintains a record of the mapped and delineated boundary lines of the 385 marine and 25 freshwater i qoliqoli areas on which about 300,000 i-Taukei villagers rely for their livelihood (Aalbersberg et al. 2005; Clark and Jupiter 2010). Section 13 of the Fisheries Act recognizes the native customary fishing rights within i qoliqoli of any mataqali or other division or subdivision of the i-Taukei people that have been registered by the TFC in the Register of i Taukei Customary Fishing Rights.

Section 2 of the **Environment Management Act 2005 (EMA)** recognizes and identifies the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures as a matter of national importance. However, ICCAs are not expressly featured in national law and therefore have no formal legal status. There are, however a number of established conservation areas in Fiji. The legal status of these areas varies, including: strict nature reserves declared under national forestry legislation; heritage sites owned or leased by the National Trust of Fiji; conservation leases held by individuals and businesses; and, increasingly, marine and coastal community declared conservation areas (Govan et al. 2009;Clark and Gillespie 2008).

2.1.3 Development of New Legal Frameworks for ICCA Recognition

On the 15th of August 2011, Cabinet approved the development of national policy and legal framework for protected areas. Long overdue, Fiji's political and legal obligations under international conventions that they have ratified and increasing involvement and pressure from civil society groups have pressed the State to address some of its legislative inadequacies. The Protected Area Committee, established under the auspices of the National Environment Council (NEC) through section 8(2) of the EMA, is tasked with the responsibility of overseeing the development of the protected areas policy. The Protected Area Committee hopes to rectify the gaps in recognition of ICCAs in Fiji through the development of this new legislation.

2.2 Recognition of Indigenous/local Rights Over Above-ground and Sub-soil Resources

Several dozen enacted laws govern the allocation and disposition of resources and/or access to and use of the environment. Together, this legislation provides the framework for natural resource and environmental decision-making. Provisions in several statutes on forestry, fisheries and natural resources do recognize the right of local communities to control the use of natural resources to varying degrees (Troniak 2008). However, one should note that section 7 of the TLTB Act subjects i Taukei land to the provisions of the **Crown/State Acquisition of Lands Act [Cap 135]**, the **Forest Decree 1992**, the **Petroleum (Exploration and Exploitation) Act[Cap 148]**and the **Mining Act[Cap 146]**, which vest control of various resources with the State under specific circumstances(See example of the issues this creates in section 1.3).

Fiji's forest policies recognize that vast majority of Fiji's forests are owned by Fiji's indigenous people (MPI2011). Fiji's policy on Reducing Emissions from Deforestation

and Forest Degradation acknowledges that the knowledge and rights of indigenous peoples shall be guaranteed as defined under the ***Declaration of the Rights of Indigenous Peoples (UNDRIP***), the ***Convention for the Safeguarding of*** the ***Intangible Cultural Heritage (UNCSICH)*** and other international instruments on rights of indigenous people such as the ***International Labour Office's Convention 169 on Indigenous and Tribal Peoples*** to which Fiji is also party.

The Forest Decree recognizes customary rights of the i Taukei on native land to hunt, gather firewood, collect food and build their homes on native land, however access depends on the type of land tenure. These rights are not recognized without a license in a forest reserve or nature reserve or alienated native land without the consent of the lessee. Under section 17 of the Forest Decree, royalties received for the felling or removal of timber shall be paid to the Conservator of Forests or the TLTB for distribution after a 25% deduction by TLTB for administration fees (Sharma 1999).

In relation to mining, ownership of mineral resources vests in the State. Mining leases may be granted without landowners consent. Mining leases may also be granted over native land without landowners consent though mining is restricted under certain sensitive areas (e.g. villages, burials grounds, nature reserves).The Petroleum Act(date) reserves all petroleum resources to the State.

2.3 Implementation of Natural Resource and Environmental Laws and Policies

2.3.1 State Agencies Mandated to Carry out National Legislation and Policy

Fiji has a diverse suite of government agencies and statutory boards mandated to develop, regulate and implement terrestrial, freshwater and marine policies and legislation related to indigenous rights (Table 1).

Table 1: Summary of State agencies mandated to develop and implement policies and legislation related to territorial rights.

i-Taukei Land Trust Board (TLTB)	The control of all native land is vested in the TLTB, established under the i Taukei Lands Act and i Taukei Lands Trust Act, The TLTB is responsible for administering land for the benefit of the Fijian owners.The control and administration of all i Taukei land in the best interest of the i Taukei people. Management of i Taukei lands includes lease and licence negotiations between landowners and tenants, receiving and distributing lease monies to the landowners, management of the trust fund and the provision of relative administrative

	functions. Any policy that affects i Taukeiland must be made in consultation with the TLTB.
(i) Ministry of Lands and Mineral Resources **(i) Department of Lands**	The Department of Lands is responsible for the administration and oversight of all development on State Land in Fiji under the Crown/State Lands Act, including the exploration and mining of minerals,all public lands, mangrove areas, foreshores, inland waters, and Schedule A and B land. Also of note is the establishment of the Land Use Unit under the**Land Use Decree 2010**, which provides an option to landowning units to deposit their lands into a land bank administered by theLand Use Unit.
(ii)Department of Mineral Resources,	The Department of Mineral Resources is responsible for implementing the provisions of the Mining Act, Petroleum Act, **Quarries Act [Cap 147]**, and all matters relevant to exploration and mining of minerals.
Ministry of Local Government, Urban Development, Housing andEnvironment.	This Ministry consists of the relevant Departments responsible for Environment and Natural Resources Management. They include: (i) Department of Environment (DoE) (ii) Department of Town and Country Planning (iii) Department of Local Government and (iv) Department of Housing
Department of Environment	The DoE is the most crucial department to environment and natural resource management. It responsible for the promotion of sustainable use and

development of Fiji's environment and efficient implementation of policies, legislation and program and to fulfill Fiji's obligations under regional and international environment related conventions and treaties. DoE, as the implementing arm of the National Environment Council (NEC), coordinate the compilation of the National Resources Inventory;and the formulation, review and implementation of the National State of the Environment Report (NSER), the National Environment Strategy (NES), the National Resource Management Plan (NRMP) and the National Biodiversity Strategy and Action Plan (NBSAP). The NEC approved the establishment of the Protected Area Committee (PAC),which advises the NEC on all matters pertaining to protected areas in Fiji.

DoE is also the implementing agency for the EMA, the **Endangered and Protected Species Act [2002]** and regulations and the **Ozone Depleting Substance Act [1998], Ozone Depleting Substance Regulation 2000**

National Air Pollution Control Strategy, Climate Change Policy Paper for Fiji 2007, Fiji National Liquid Waste Management Strategy and Action Plan 2006, national Solid Waste management Strategy and Action. The Department is also responsible for implementing three international conventions namely the *Convention of Biological Diversity (CBD)*, the *Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Convention on Wetlands (Ramsar)*. As the implementing agency for EMA the DoE is responsible for carrying out Environmental Impact Assessments (EIAs), waste management policies and programs, environmental standard formulation and enforcement.

Department of Town and Country Planning	Implements the **Town and Planning Act [Cap 139]** and in the course of implementation requires the assistance of DOE where development requires EIAs.
Ministry of i Taukei Affairs **The Fijian Administraton** **The Ministry is responsible for** **(i) i Taukei Affairs Board-**	The Ministry of iTaukei Affairs is responsible for the development of the i Taukei.The Ministry's mandate before the de-establishment of the Great Council of Chiefs (GCC) was to facilitate the link between Government, the i Taukei Affairs Board (TAB), the GCC, and other related institutions in policy formulation, legislative assistance, budgetary provisions and implementation of programmes aimed at attaining greater well-being and good government of the indigenous Fijians. The i Taukei Affairs Board, constituted under the i Taukei Affairs Affairs Act governs all matters concerning the administration of i Taukei affairs. Fiji is divided administratively into four divisions which is further divided into 14 provinces. Each division is headed by a Commissioner (a Government appointee) and each province has a council. The executive head of the provincial council "Roko Tui" is also a government appointee. In September 2011, The Ministry of i-Taukei affairs officially appointed all Roko Tui, as Environment Officers. The Roko Tui are expected to head the Environment Management Units in the province, ensure that projects carried out are environmentally friendly and be the focal point in the province to assist the DOE with EIA requirements and to liase with relevant stakeholders. iTaukei Affairs has recently been empowering provincial administrators on i Taukei's sustainable environmental practices through education and awareness on environmental management systems and processes. The functions of the Provincial Councils are: "to promote the health, welfare and good

	government of Fijians resident in the province and to carry out such other duties and functions which the Minister or the
Provincial Councils	i Taukei Affairs Board may see fit to delegate to such council". The provincial councils have similar powers as are vested in municipal councils, including making of by-laws, levying of rates and control of building construction in Fijian villages. The i Taukei Affairs Board approves the appointment of these executive heads and approves all rates and by-laws applied by the Provincial Councils. .The FAB served as the executive arm and secretariat of the CGG and regulate the affairs of the provincial councils as part of its secretariat function. Before the abrogation of the Constitution and the de-establishment of the GCC, the Provincial Councils had direct input into the national affairs through the GCC and the Senate.
ii)Department of Culture and Heritage	The Department of Culture and Heritage, provides policy advice on issues related to the safeguarding and enhancement of cultural and natural heritage, in tangible and intangible, moveable and immovable forms. The aim of the Department is to ensure the protection and management of Fiji's national heritage, flora, fauna and national amenities; archaeological sites and cultural heritage collections and the development of the crafts and arts sector. The Department has responsibilities in the following legislation: • **Fiji Museum Act [Cap 263]** • **Preservation of Objects of Archaeological and Palaeontological Interest [Cap 264]**

- **National Trust for Fiji Act [Cap 265]**

(iii) i Taukei Fisheries Commission

The i Taukei Fisheries Commission is a statutory body constituted under section 14 of the Fisheries Act. It is responsible for ascertaining and registering what customary fishing rights are the rightful and hereditary property of native owners. The Commission also adjudicate in disputes over customary fishing rights.

(iv) i Taukei Lands Commission

The i Taukei Lands Commission receives its mandate in section 4 of the TLA. It is responsible for inquiring into titles of all lands, describing boundaries, ascertaining and registering what lands in each province in Fiji is the rightful and hereditary property of native owners, adjudicate in disputes over land rights.

Ministry of Primary Industry	The Ministry of Primary Industry (MPI) supports Agriculture, Fisheries and Forests, the three major sectors of the Ministry. The Ministry guides efforts around sustainable allocation and management of natural resources in the rural sector.
The Department of Agriculture	The department derived its core mandate from the Presidential decree 2007 and is currently responsible for over 33 pieces of legislation which include the **Agricultural and Landlord Tenants Act [Cap 270],Birds and Game Protection Act [Cap 170],Bio security promulgation 28 of 2008**, **Land Conservation and Improvement Act [Cap 141],** and **Land Development Act [Cap 142]**, The Department is responsible for overseeing the Land Conservation Board that administers the Land Conservation and Improvement Act.
The Department of Fisheries	The Department of Fisheries is responsible for the management of Fiji's marine resources. It is the implementing agency for the Fisheries Act and regulations and the Marine Spaces Act [Cap 158]. The Department has an advisory role to customary rights owners and is responsible for instituting legislative and enforcement measures, administers permits for fishing, approves licences, and is responsible for monitoring, evaluating and the proper utilization of tuna resources. The Department of Fisheries now provides administrative support to the FLMMA network. The Fisheries Commission is a statutory body constituted under section 14 of the Fisheries Act. It is responsible for ascertaining and registering what customary fishing rights are the rightful and hereditary property of native owners. The Commission also adjudicate in disputes over customary fishing rights.

The Department of Forests	The Department of Forests is the lead agency responsible for theadministration and enforcement of the Forest Decree which includes the management of nature and forest reserves. Issuing of licences with the approval of TLTB to fell or extract timber or to clear land. The Forest Decree establishes a Forest Board to advise on the preparation of the Forestry National Plan. With the advice of the Board, the Minister may declare forest or nature reserves on unalienated land, land leases or unalienated native land with the prior consent of the TLTB.

2.3.2 State Agencies Mandated to Carry out International Agreements

As a party to a number of international agreements, Fiji has legal and political obligations that need to be addressed and reflected in national legislation. As a Party to the ***Convention of Biological Diversity (CBD),*** its two primary obligations are the preparation and production of a National Biodiversity Action Plan which was endorsed by Cabinet in 2003 and undertaking a Capacity Self Assessment Program (NCSAP) which was completed in 2008.Fiji has ratified other related Conventions to enhance the sustainable management of its environment such as (DoE, 2010).

The Convention on International Trade in Endangered Species 1997 (CITES) works by subjecting international trade in specimens of listed species to certain controls. These require that all import, export, re-export and introduction from the sea of species covered by the convention have to be authorized through a permitting system. Each Party to the convention must designate one or more management authorities in charge of administering the licensing system and one or more scientific authorities to provide advice about the effects of any proposed trade on the status of the species.

The Convention on the Protection of Natural Resources and the Environment of the South Pacific 1986 (Noumea Convention) requires South Pacific countries to protect and preserve the environment and to ensure sound environment management and development of natural resources in the marine and coastal environment which includes the establishment of parks and reserves.

The Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 requires the identification, protection, conservation, presentation

and transmission to future generations of the cultural and natural heritage of its territory. Obligations include protecting natural and cultural heritage sites through legal, institutional or customary means.

The Convention on Wetlands of International Importance 1971 (Ramsar Convention) requires Parties to conserve wetlands through the establishment of managed nature reserves with adequate wardens and to designate significant wetlands for inclusion in a list of Wetlands of International Importance. However in general there is a recognized lack of national policy and legislative framework for protected areas, which is currently being addressed.

Fiji endorsed its National Biodiversity Strategy Action Plan (NBSAP), which was approved by Cabinet in 2003and more recently developed an implementation framework for 2010 to 2014, which has seven thematic areas of work, including protected areas. Fiji is obligated to submit national reports to the Secretariat of the Convention of Parties (SCOP) for the CBD every four years. In 2010 Fiji submitted its fourth report. In the absence of Fiji's third report, the fourth report covers a period between the second report in 2001 to 2009. The report provides relevant information pertaining to the measures taken for the implementation of the convention and the effectiveness of those measures**.**

The implementation of the Fiji NBSAP is coordinated by the DoE. The steering committee that oversees the finalization of the NBSAP i.e. Biodiversity Steering Committee is tasked with the responsibility of bringing together key stakeholders to decide on all aspects of policy, priority and programming. According to Fiji's fourth report, realizing the objectives of the NBSAP was slow and hampered by a lack of capacity. However, with the cooperation and collaboration of renowned international non-government conservation organizations as well as proactive local non-government organizations, Fiji has made some progress. Some successful collaborative efforts include:

(i) The TLTB, DoE, Forestry and Fisheries have collaborated in certain programs such as assessing Sovi Basin management plans in nature reserve's, forest policy and timber identification, integrated resource management enabling legislation and production of awareness materials and inventories of resources.

(ii) The National Protected Area committee, on behalf of the DoE, has taken an innovative approach to account for the effectiveness of different community-based marine management strategies in accounting for the amount of marine habitat "effectively" protected in Fiji (Mills et al. 2011). To date the government has been supportive of this approach and Fiji has been showcased as a leader in the region at various international fora (e.g. regional Programe of Works for Protected Areas (PoWPA) workshops in Apia, Samoa (July 2010) and Nadi, Fiji (Nov 2011)).

(iii) The Wildlife Conservation Society (WCS) is one of the several NGOs based in Fiji, which is actively supporting Fiji's efforts in the implementation of the

national NBSAP. Focussing on a three pronged approach of science, management and communication, WCS has assisted communities in Kubulau (refer to para. 10.2) and Macuata in Vanua Levu and the Fiji government to increase the amount of terrestrial, freshwater and marine areas under protection, learn about the effectiveness of their management measures and scale-up scientific findings to national –scale planning efforts.

(iv) FLMMA has shown strong and successful networking between academic institutions like the University of the South Pacific (USP), University of Fiji, Department of Fisheries, Tourism, Forestry Environment and NGOs such as World Wildlife Fund(WWF), Conservation International (CI), WCS, SeaWeb, Laje Rotuma, and resource owners with a goal to support Fiji's commitment at Maurititus in 2005 to set up 30% of marine areas as a network of ecologically representative and effectively managed marine areas within the i qoliqolis.

2.3.3 Implementation challenges

With every new government there arrives a new set of political priorities, which carries social and economic ramifications. In most instances, the socio-economic issues created causes varying degrees of uncertainty in the overall administration of native resources, which has always been the responsibility of a handful of State or State-funded agencies established and protected under statute.

In Fiji's fourth national report to the SCOP UNCBD, the main challenges to the implementation of the FNBSAP included the political instability in 2000 and 2006 which challenged cooperation between stakeholders in government and the NGO community, national priorities were inadequate and unclear, institutional, technical and capacity-related obstacles, economic and financial obstacles, lack of scientific and traditional knowledge, the lack of collaboration and the absence of appropriate mechanism to track and assess progress.

The political dynamics in the administration of native resources is beset by a number of factors including:

(i) An underlying fear that a reformist government could cause native resource owners to lose their rights. The land tenure system insofar as native lands are concerned remains a complex and highly politicised arrangement. The effects of the abrogation of the Constitution included de-establishment of the GCC in March 2012.Subsequent heightened government representation on the TLTB is likely to change the nature in which natural and land resources are managed and utilized.

(ii) Overlapping functions and the competing interests of the various state-funded agencies responsible for the administration of native resources. In order for implementation to be successful with positive outcomes and impacts, biodiversity issues need to be integrated as far as possible in policies, planning and mechanisms of the different sectors in Fiji. The importance of mainstreaming or sectoral and cross-sectoral integration as necessary for effective implementation of

environmental laws and policies however mainstreaming was fraught with constraints which include:

(i) fragmentation of responsibilities

(ii) non harmonization of environmental laws resulting in inconsistencies, overlapping and contradictory overtones where there is sectoral biases

(iii) limited strengthening and enforcement of policies and legal framework

(iv) lack of awareness

(v) inadequacy of data, informationand dissemination

(vi) financial constraints. (DOE, 2010).

One of the biggest challenges to effective implementation is striking the balance between development and conservation. This has been a long standing issue within the implementation of the FNBSAP and progress towards the 2010 targets.

The recent shift in priorities towards land and deep seabed mining by government remains one of the largest threats to sustainable resource management. Whilst the EMA subjects every inclined party, including Government, to an EIA if it is determined by an approving authority that the activity or undertaking is likely to cause significant environmental or resource management impact, there is evidence that a significant number of development projects, especially along coastal areas (e.g. development of Suva foreshore),have not undergone EIA processing. Furthermore, appeals under the EMA are presently being heard by the Permanent Secretary rather than the Environmental Tribunal, which was mandated under the Act but has yet to be established. There are real challenges to maintain transparency in the EIA process hampered by the difficulty in attaining public documents, double standards in the application of established procedures, an apparent misguided interpretation of the Act and an obvious lack of enforcement. These raise obvious questions on the integrity of the EIA process and, as a consequence, questionable precedents will prove challenging to rectify over time.

(ii) The promulgation of the Land Use Decree 2010. The new Land Use Decree provides indigenous landowners with an alternative to administer iTaukei lands and challenges the functions of the TLTB as the sole administrator for i Taukei lands. The Decree states that if there is any law that is inconsistent with the provisions of the Decree, the Decree prevails. According to Government, existing laws pertaining to leasing of i Taukei and State lands were cumbersome and bureaucratic, thus hindering the development of the economy in general. The Government also maintains that the principal issues regarding land in Fiji is not of ownership but of access, productive use and ensuring an equitable sharing of benefits. Nonetheless, land that is deposited in the land bank may not be subjected to any court, tribunal, commission or anyone exercising a judicial function.

(iv) Lack of political will for reform. There is a general lack of will and momentum to comprehensively address and effectively reform the existing administrative framework pertaining to the utilization of native resources. Such an undertaking would require a whole scale review of the functions and roles of the various institutions involved in the determination of collective and individual land use rights.

(v) Absence of clear and concise medium- to long-term government policies on the utilization of natural resources. The irony in the administration of i Taukei land lies in the fact that all the institutions involved (including the TLTB, Provincial Councils, i Taukei Affairs Board) remain highly dependent on taxpayer funds for their day-to-day operational costs and have over the years not sought greater autonomy for themselves insofar as the administration of their respective affairs are concerned.

Meaningful progress towards national conservation targets requires the co operation of all stakeholders including government agencies, NGOs and members of the community. Full participation of resource owners in a majority of cases has resulted in a number of successful biological conservation achievements. The long standing issue within the implementation of the FNBSAP and progress towards 2010 targets is the ability to strike a balance between development and conservation. Fiji is committed to finding solutions to the challenge witnessed through the vigorous implementation of various programs like the Integrated Coastal Management Framework and Plan and Mangrove Ecosystems for Climate Change and Livelihoods (MESCAL) currently in progress. (DOE, 2010).

2.4 Legislative or Other Customary Provisions that Enable Governance of ICCAs

There are several provisions in various pieces of legislation that enable customary laws to prevail for the purposes of local governance of ICCAs. Prior to abrogation of the Fiji Constitution in 2009, it provided under Article 6(b) the preservation of ownership of Fijian land according to Fijian custom. Section 38 of the Constitution further laid out that while the law applied to every person equally, it may limit this right or freedom for the purpose of allowing the application of the customary laws of the iTaukei, Rotuman and Barnaban community with regard to customary land and fishing rights. Furthermore, Section 186 provides for the application of customary laws and for dispute resolution in accordance with Fijian tradition where legislation expressly allows for its use.

In terms of current legislation, the TLA provides in Section 3 that 'native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition.' This provision allows for a broad spectrum of usage and governance rights defined by native custom and tradition, as well as being subject to the regulations made by the iTaukei Affairs Board. Section 21 of the Forest Decree gives provision for the customary rights of native Fijians on native land and the right to exercise any rights established by native custom such as hunting, fishing or collecting fruits and vegetables growing wild. Section 13 of the Fisheries Act describes that it is an offence to fish or collect shellfish without a permit for purpose of trade or sale in an area where a mataqali's fishing rights or qoliqoli are registered by the i Taukei Fisheries Commission in the Register of I Taukei Customary Fishing Rights, except by

members of the mataqali. This allows for the involvement of communities in the governance of the coastal zones and the application of customary laws to regulate the i qoliqoli in some instances.

2.5 Legislative Provisions that Foster Conservation or Encourage Development

The Land Conservation Board appointed under the Land Conservation and Improvement Act has wide powers and under section 9 can issue orders, which would 'require an owner or occupier of any land to construct and maintain on the land such works for the conservation of the land or water resources. Meanwhile, the National Trust for Fiji Actin section 10(c) provides a provision to create a conservation covenant with landowners, which would place restriction on the use or development of land. Furthermore, section 20(1) of the National Trust of Fiji (Amendment) Act provides that the Trust Council may, with the approval of the Minister, declare any area of land (including reefs) as being of natural interest or beauty. An area of land or reef declared under subsection 20(1) would be listed as a National Heritage Area.

With respect to customary land tenure section 15 of the TLTA allows for native land to be set aside as a native reserve with the consent of the Fijian owners. Native reserves have the potential to support community-conserved areas as their formation limits TLTB's capacity to lease this land (Clark and Gillespie 2009). The Forest Decree further provides in section 6 that the Minister of Forestry may, under advisement of the Forestry Board and with the consent of landowners, declare native land a forest reserve or nature reserve. However, in this instance a community-conserved area is not achieved as section 21(1) limits customary rights strictly in relation to a forest reserve or nature reserve to the collection of food and timber for domestic consumption. Section 8 gives authority to the Conservator of Forests to authorise activities in forest or nature reserves that are consistent with the provisions of the Decree.

2.6 Aspects of Existing Tenure Framework that Hinders Governance of ICCAs and Resources

Control and administration of native lands vests in the TLTB and this, to a certain extent, limits the control of the native Fijian landowners or mataqali over their land. For example, the TLTB could grant leases and licences of native land and this would take precedence over native Fijians land usage rights (Clark and Gillespie 2008).

Under the current Fisheries Act, protected areas where fishing is strictly prohibited cannot be formed legally, as all Fijians are permitted to fish for subsistence use with certain gear. This gap in the law has led to difficulties related to enforcement by the community of both customary and national fisheries laws (Govan et al. 2009a).

2.7 Processes that infringe upon tenure rights.

All sub-soil resources, including petroleum, are the property of the State as provided by Section 3 of Mining Act, and the State therefore has the power to grant rights for the extraction of such resources and minerals from any land throughout Fiji. Mining

leases may be granted without landowners consent. Section 11 of the Mining Act provides a narrow class of lands exempt from any prospector's rights or mining tenement. These include Fijian villages, burial land and reserved forests amongst others.

There are also legal provisions that allow water resources and adjacent land to be alienated form landowners for the sake of securing future water supplies. Section 4 of the **Water Supply Act [Cap 144]** gives authority to the Minister responsible to declare an area of land or water a catchment area for the purpose of water supply.

- Customary tenure grants broad usage rights to native landowners but control and administration vests in the TLTB and this, to a certain extent, hinders community governance of ICCAs. Legal reform of customary ownership rights may remedy this problem?
- The Fisheries Act provides a means for communities to establish limited governance of coastal areas via registered fishing rights (*iqoliqoli)*.
- While there is some support for ICCAs in Fijian legislation, these provisions are somewhat vague and scattered across various statutes. The lack of an explicit provision for ICCAs serves as one of the largest hindrances to the successful implementation and enforcement of ICCAs in Fiji particularly in respect to customary tenure rights.
- The PoWPA Action Plan for implementation of the CBD submitted in October 2011 reflects the drafting of national policy and legislation for protected areas as a priority. It is expected that this process may address to some extent the legislative gaps for ICCAs. It is recommended that the legislative components of ICCAs be included as part of the terms of reference for protected area legislative review. However, customary tenure rights are a highly politicized issue in Fiji. It is expected that any legislative reform will be subjected to the outcomes of the current constitutional review in process and its impact on the future of customary ownership and tenure is yet to be seen.

3. PROTECTED AREAS, ICCAS AND SACRED NATURAL SITES

3.1 Protected Areas

3.1.1 Laws and Policies that Constitute the Protected Areas Framework

There is no dedicated legislation specifically for protected areas in Fiji. Since the first environment legislation was passed in the **Rivers and Streams Ordinance 1880,** over 26 different legislative descriptions mandating 15 government authorities have been enacted by the Fiji government for the protection of the environment and natural resources (Lees and Siwatibau, 2007). These have led to a complex mix of conservation areas established in the country by different mechanisms, having different values and levels of legal status or protection.

The importance of terrestrial protected areas to biodiversity conservation is identified in Fiji's NBSAP (2007) by the following statement "*the conservation and sustainable management of Fiji's natural forests is the single most important means of conserving the vast majority of Fiji's endemic fauna and flora*".Key legislative descriptions which impact on terrestrial protected areas are described in Tables 2 and 3.

Table 2: Key features of legislative provisions impacting on terrestrial site-based conservation areas in Fiji (Clarke and Gillespie 2008)

Legislation	**Key Features**	**Sections**
i Taukei Lands Act	Recognises and maintains communal ownership of native lands.	s.3
i Taukei Land Trust Act	Establishes the i Taukei Land Trust Board, and empowers the Board to: 1) enter into leases and licenses on behalf of native landowners; 2) place conditions on the use of leased native land; and 3) declare certain areas to be native reserves.	ss. 7 -9 s.10
National Trust of Fiji Act	Establishes the National Trust of Fiji (NTF), and empowers the NTF to: 1) acquire and manage property of natural or cultural significance; 2) create by-laws for the regulation and protection of Trust properties; 3) enter into heritage conservation covenants with landowners; and 4) declare national heritage areas.	s.4 s.18 s.10 s.20
Forestry Decree	Empowers the Minister for Forests to: 1) declare multiple use forest reserves 2) declare strict nature reserves	ss.7-8 ss. 7-9
Land Conservation and Improvement Act	Establishes the Land Conservation Board and empowers the board to make conservation, closing and work orders.	s.3 ss. 7-9

Water Supply Act	Empowers the Minister to declare protected bird species and regulates the hunting of game species.	ss. 4
Bird and Game Protection Act	Prohibits the killing, wounding or taking of protected bird species and regulates the hunting of game species.	ss. 3, 6
Endangered and Protected Species Act	Prohibits the possession, sale, display or trade of listed endangered and protected species.	s.23
Environmental Management Act	Requires environmental impact of development activities that are likely to have a significant impact on the environment, including existing or proposed protected areas.	ss.2, 27

Current legislation in Fiji allows to some degree for the establishment of inshore and offshore MPAs in the country, however Techera and Troniak (2009) identify two main legislative gaps to marine protected area establishment in Fiji:

1) *Protected area management legislation*: The Crown/State Lands Act identifies the State as owner of all foreshore and seabed in Fiji. Customary fishing rights to landowners are provided for under the **Deed of Cession** but this does not allow for propriety rights. Therefore, the landowner has user rights to the inshore coastal marine areas but not ownership rights. This inevitably leads to difficulties in administration of MPA laws that will not be rectified until locally managed marine areas receive some degree of legal recognition; and

2) *Legislative and policy fragmentation*: having fragmented policies and legislation relating to the marine environment hinder integrated coastal management and marine protection. For example, the Fisheries Act does not provide for holistic protection of marine resources, and the EMA only considers the coastal zone as "the area within 30 metres inland from the high water mark", which makes it difficult to manage for land-based impacts stemming from the watershed within the same policy framework.

Table 3: Key features of legislative provisions impacting on marine protected areas in Fiji.

Legislation	**Key Features**	**Sections**
i Taukei Lands Act	Recognises and maintains communal ownership of i Taukei lands.	s.3

Crown Lands Act	Definition of "Crown" land to include 'foreshores and the soil under the waters of Fiji'	s.2
Fisheries Act & regulations	Governs the management of marine resources. Issuing of permits for commercial fisheries. Appointments and powers of fish wardens. Allows for the declaration of restricted areas. Recognises customary rights to the qoliqoli.	 s.2, 5 s.3, 7 s.9 s.13
Marine Spaces Act	Conservation and Management of Fisheries Resources in the EEZ.	s. 22
Environmental Management Act	Requires environmental impact of development activities that are likely to have a significant impact on the environment, including existing or proposed protected areas.	ss.2, 27

3.1.2 Fiji's Definition of a Protected Area

Fiji's NBSAP adopted the Convention of Biological Diversity (CBD) definition of protected areas under which "*'Protected area' means a geographic area, which is designated or regulated and managed to achieve the long-term conservation of nature with associated ecosystem services and cultural values" (IUCN, WCU, 1994)*

The NBSAP lists the following strategic objectives for protected areas:

- Establish a comprehensive and representative core protected area system
- Establish protected or conservation areas in addition to the core protected areas system
- Effective management of existing protected areas
- Adequate funding for protected area management.

The NBSAP states that '*control of local resources by traditional resource owners and users are critical to the success of biodiversity conservation'* and identifies four actions for involving traditional landowners in protected area establishment and management:

a) Secure nationally significant sites through appropriate arrangements with resource owners
b) Encourage and assist resource owners to establish their own protected areas
c) Encourage resource owner participation in management of protected areas
d) Provide equitable remuneration to resource owners for establishing and managing protected areas.

The CBD definition of protected areas provides a broad category under which current conservation areas have been established in Fiji. Each of these sites vary according to their designation status, or regulatory mechanism, such as: strict nature reserves established under the Forest Decree; heritage sites owned or leased by the National Trust of Fiji; conservation leases held by individuals and businesses; and community declared conservation areas (Clarke and Gillespie 2008).

In more recent years, the approach towards conservation has had a stronger community focus, linked to livelihoods and sustainable resource and cultural uses (Lees and Siwatibau 2007) and this has been most strongly evident in the phenomenal growth of Locally Managed Marine Areas (LMMA) in Fiji in the past decade. LMMAs are "an area of nearshore waters and coastal resources that is largely or wholly managed at a local level by the coastal communities, land-owning groups, partner organisations, and/or collaborative government representatives who reside or are based in the immediate area" (Govan et al 2008). By 2011, over149 LMMAs managed by 400 communities cover half the area of Fiji's qoliqoli (Mills et al. 2011).

3.1.3 Agencies Mandated to Develop and Implement Protected Area Laws

In 2008, Fiji's National Environment Council (NEC) approved the establishment of the Fiji National Protected Area Committee (PAC) under the EMA. The role of the PAC is to advise the NEC on all matters pertaining to protected areas in Fiji (PAC 2009). With funding provided by the Global Environment Facility for Fiji's Programme of Work on Protected Areas (PoWPA), the PAC was tasked to carry out an "*Ecological and Legal Gap Analysis"* for Fiji.

In August 2011, the Minister for Environment requested Cabinet to endorse the drafting of a national policy and legislative framework for Protected Areas in Fiji in 2011. The Cabinet Paper was approved and PAC, through the Department of Environment and the assistance of the Office of the Solicitor General, is mandated develop a draft policy and legal framework for Cabinet approval. The Fiji Environment Law Association, established in 2008 as '*an independent association that aims to protect the environment and promote sustainable natural resource management through law (www.fela.org.fj)*, may also provide legal advice to the process of protected area legislation. Other key agencies that will be involved include Ministry of iTaukei Affairs, Ministry of Fisheries and Forestry, Ministry of Agriculture, and the FLMMA network.

Governance of protected areas depends largely on the management authority. The 16 priority terrestrial, marine and mangrove areas listed for protection under the Fiji NBSAP were chosen via an *ad hoc* system of selection and most of the sites are not legally recognised.(Jupiter et al, 2011).Clarke and Gillespie (2008) point out that many of the historical conservation areas established under different legal mechanisms do not have management plans and are not actively governed.

In 2011, the Fiji Department of Environment presented a *National Coastal Plan Framework* to integrate protected areas into coastal zone planning as a strategy for

sustainable management of coastal resources. FLMMA, with its guide to governance of LMMAs, will ensure that local communities derive equitable benefits yet take responsibility for governance of their LMMAs (Govan et al, 2008).

To progress development of Fiji's protected area network and broader landscape/seascape integration, two facilitated workshops led by members of the PAC were held:

- In September 2010, PAC members met with provincial administrators to further identified sites of significance for conservation and management for each of Fiji's 14 provinces (Jupiter et al. 2011). The PAC is currently working towards facilitating the effective management of the above sites through collaboration with resource owning communities, government and other local and overseas agencies. The identified sites may be useful for initiating dialogue with stakeholders in developing ICM plans at the provincial level.

- In September 2011, PAC members worked with government and community representatives from four provinces (Ra, Tailevu, Lomaiviti, Bua) to use the outcomes of the September 2010 workshop to discuss how protected areas might become integrated into broader ICM plans (Jupiter et al.2012c).

3.2 Sacred Natural Sites

There is no single legislation that makes specific reference to the protection of sacred natural sites or to specific indigenous people's governance of sacred natural sites. There are, however, several pieces of legislation that may impact on sacred natural sites. The Preservation of Objects of Archaeological and Paleontological Interest **(**POAPI) Act and the Fiji Museum Act define processes for declaring, acquiring, preserving and maintaining objects of archaeological interest. The scope of the POAPI is considerable, due to the broad definition of "objects of archaeological and paleontological interest" (Turk 2004).

As defined in section 2 of the POAPI:

> *[An object] means any structure, erection, memorial, tumulus, cairn, place of interment, pit-dwelling, trench, fortification, irrigation work, mound, excavation, cave, rock, rockdrawing, painting, sculpture, inscription, monolith or any remains thereof, fossil remains of man or animals or plants or any bed(s) containing such fossil remains thereof, or any object(s) which are of archaeological, anthropological, ethnological, prehistoric or historic interest, and includes:*
>
> *(a) the site on which such object of archaeological or paleontological interest was discovered or exists;*
>
> *(b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological interest; and*

(c) the means of access to and convenient inspection of such object of archaeological or paleontological interest.

The definition, therefore, relates to most types of cultural heritage objects and extends to the sites in which objects of interest are found. Sacred natural sites could therefore be broadly described within this context providing an 'object' within the site has sacred value. The Act refers to these sites as "monuments", where the monument is the object of archaeological and paleontological interest and the area around it. Conservation of monuments though government ownership (by purchase or bequest), by entering into agreements with landowners, or also for compulsory acquisition if the monument is in danger, is provided for in the Act. To date, only two places, Wasavulu (near Labasa, Vanua Levu) and Nasonini Gun Site (near Fiji's capital Suva) have been designated as monuments under the POAPI Act. Both are sites of cultural value.

There are additional provisions for special protection of sacred areas in the EMA. The description of the application and purpose of the Act states:

"A person required to perform any function under this Act relating to the use and utilisation of natural and physical resources must recognise and have regard to the following matters of national importance – the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures;"

The abrogated Constitution (1997) recognised customary law and traditional rights to terrestrial lands as long as they are not inconsistent with any law or governing principle of the state (Techera and Troniak 2009). The traditional rights to terrestrial lands remain protected by statute i.e. TLTA. The use of customary law in marine resource management includes, amongst other mechanisms, the declaration of sacred fishing grounds, identification of village or clan totem fish, and the practise of village rituals, customary laws and practises to revere people's spiritual connections with marine resources (Aalbersberg et al. 2005). Sacred fishing grounds are special areas where "a close association was perceived between the living and the dead, whose spirits inhabited sacred areas, who showed offence when customary taboos and rituals were not adhered to" (Siwatibau 1984). Community management of sacred places therefore occur around the special rules which apply to these sacred places and great care is taken not to offend the spirits (e.g., fishing can only occur with the permission of a *bete*, or traditional priest, or when special requirements are met) (Siwatibau 1984; Veiytayaki 1997). Fear of retribution prevents people from straying away from tradition and outsiders are made to observe protocol in traditional areas. Often warnings are manifested in supernatural associations and incidents (Koroi 1989), and these are well accepted as this symbolises Fijian traditional culture and beliefs.

In many areas of Fiji, such sites are protected by communities simply for their spiritual value. For example, Veitayaki (1997) explains: *"In Qoma today, the people going to Cakau Davui, the sacred fishing ground, are expected to obtain special permission, to perform the rituals of an arrival party at the reef, and to fish according to the rules. Among the turtle fishermen of Qoma, the belief is that their gods will*

provide a catch sufficient for the purpose for which the fishing was asked. The fishers know that once a turtle swims through their net they have caught enough and they will not catch any more. To be successful in their fishing, the people need to please their gods by doing the correct and expected things"

There are an increasing number of sacred natural sites, which are managed by local communities for their spiritual value and for ecotourism. Two such sacred natural sites managed by traditional owners are:

- Nahehe Caves: the site of Fiji's last tribal war before the country was declared a Christian state. It belonged to the Sawaitabu people, a proud and closely knit community that sought solace in the caves during the great measles outbreak of the 17th Century where around 50,000 people lost their lives to the illness (Naisoko 2012).
- Tavuni Hill Fort: the site of fierce tribal wars that were fought against Christianity in the early 1800s (Naivaluwaqa 2007).

Managing ecotourism at these areas will require proper visitor management plans.

3.3 Other Protected Area-Related Designations

Fiji ratified the *World Heritage Convention in 1990* and submitted its first World Heritage tentative list in 1994, consisting of four heritage areas: Levuka, Sovi Basin, Sigatoka Sand Dunes and Yadua Taba Iguana Sanctuary. The Taveuni Forest Reserves and the Vatu-i-ra and Cakau Levu Reefs Seascape were added to Fiji's World Heritage Tentative List in 2007 by the Fiji National World Heritage Committee, but these sites are yet to be included on the UNESCO World Heritage Tentative List.

Despite ratifying the *World Heritage Convention* in 1990, Fiji has not developed any policy to meet its obligations under this convention and to use the convention for the benefit of Fiji. Implementation of the convention has been sporadic, uncoordinated and undertaken by agencies already under-resourced without any significant progress in the field of heritage conservation or significant benefits to Fiji in over 18 years. It was only in 2003 that Cabinet established the Fiji National Committee for World Heritage to oversee World Heritage activities in Fiji and provide for stakeholder coordination. Fiji then participated in a regional workshop to develop the Pacific Regional Action Plan on World Heritage in 2004 and use this as a guide to write the *Fiji Action Plan for World Heritage 2005 – 2009* (DNCH 2008).

In 1997, Levuka town was selected by the Fiji Government to become Fiji's first heritage area to be nominated to the World Heritage List. The main impetus for World Heritage status for Levuka for over two decades has largely been driven by factors outside of the town. Work commenced on preparing a nomination document in 1999, with the Fiji Museum and the National Trust of Fiji alternating as the lead agency up until 2007 when the lead responsibility was handed to the Department of National Culture and Heritage.

Administrative mechanisms, international 'expert' advice and action plans for Levuka occurred with little input from the local community, many of whom understand little

of the obligations of World Heritage listing. The resulting lack of consensus towards the nomination process and internal disputes over governance of the town and Levuka's 'heritage' created distrust and friction between indigenous landowners, local residents and administrators of the municipality (Fisher 2000; Levuka Case Study Team 2000; Amato-Ali 2001; Harrison 2005).

In 2007, the Department of National Culture and Heritage developed a new strategy to involve local and indigenous participation in the nomination process, commencing from identification of boundaries, involvement in surveys, discussions with consultants on the management plan and submission of proposals to the Fiji government to fund the process. With the support of all stakeholders, the submission of Levuka as a cultural site of outstanding universal value was Fiji's first nomination to the World Heritage List in February 2012.

Fiji became a party to the Ramsar Convention in 2006, nominating the Upper Navua Conservation Area (UNCA) as Fiji's first designated Ramsar site (Tokaduadua 2008). Rivers Fiji, a private sector, eco- tourism company, worked with the nine local landowning units to develop whitewater rafting tours as an economically viable and ecologically sustainable alternative to logging and gravel extraction. In 2000 with the support of landowners, the TLTB provided Rivers Fiji with a 25-year conservation lease for the 615ha property. The UNCA is a primary source of protein for the villages as is the surrounding rainforest where plants are collected and pigs hunted. There are a number of cultural sites (abandoned villages, burial caves, etc.) located in or near the UNCA which are protected by traditional customs.

Key features of the conservation lease to Rivers Fiji allows for equitable benefit sharing to landowners through: a minimum rent; user payment system per guest; first preference for employment to landowners (e.g., as guides, porters and trail maintenance personnel); and tourism training (Clarke and Gillespie 2008). Over the past ten years, Rivers Fiji has paid an approximate sum of USD 202,300 to the various landowning units and villages in the UNCA; trained and employed over twenty young men from the various mataqali along the river corridor; made donations to schools, police posts, churches, village projects or functions, delivered and distributed donated books medical supplies and clothing; and built classrooms, dug water lines, constructed washrooms, installed village radios, and contributed to other improvements to the communities (Tokaduadua 2008).

The Management and Permit Plan for UNCA implemented by Rivers Fiji primarily deals with the issuing of permits, management of tourism activities and distribution of benefits to landowning groups. Government entities involved with the potential long-term conservation issues in the UNCA include the Department of Forestry/Commissioner of Forests, DoE, and Department of Lands and Mineral Resources.

4. NATURAL RESOURCES, ENVIRONMENTAL AND CULTURAL LAWS & POLICIES

4.1 Natural Resources & Environment

4.1.1 Fiji's Legal and Policy Framework for Natural Resources

The DoEis the leading agency mandated with the responsibility of promoting sustainable use and development of Fiji's natural resources as the custodian of EMA. Section 3(4) of the Act requires that any person performing any function under the Act must have due regard to the traditional owners and guardians of resources. To a certain extent, these provisions support indigenous people and community's governance and management rights.

The Fisheries Department is tasked with regulating the fisheries sector in Fiji, including aquaculture, inshore fisheries within i qoliqoli boundaries and offshore fisheries within Fiji's EEZ. It is also the custodian of the Fisheries Act and is responsible for developing and enforcing fisheries policies.

With respect to ICCAs, the Act provides indigenous peoples and communities with exclusive fishing rights over i qoliqoli areas where the mataqali have been registered by the i Taukei Fisheries Commission. Since marine tenure vests in the State, this provision only enables indigenous people to influence access restrictions into their i qoliqoli for commercial fishing purposes (Clarke and Jupiter 2010). Under present legislation, anyone can fish for subsistence within their respective i qoliqoli or community-declared marine protected areas, which hinders the ability of indigenous communities to declare fully no-take zones. There is potential that a new Inshore Fisheries Decree will rectify this problem by granting legal recognition of community fisheries management plans; however the provision has been alternately included and then deleted in drafts of the Decree made available for public consultation.

The Forestry Department regulates activities relating terrestrial conservation in addition to the forestry sector affairs. It is also the custodian of the Forest Decree 1992. This Decree acknowledges customary rights such as hunting, fishing or collecting fruits and vegetables growing wild as stated in section 21.

The Mineral Resources Department is the statutory body that regulates the mining industry in Fiji and it is also the custodian of the Mining Act and the Petroleum Act. The ownership of all mineral resources as well as petroleum deposits vests in the State and, as a result, extractive leases may be granted without landowners consent. This is restricted for certain sensitive areas such as villages, burial grounds and nature reserves however these restrictions fail to acknowledge conserved areas as exempt.

The Ministry of i Taukei Affairs is the primary institution responsible for the rights and welfare of the 'i Taukei' people. Their roles include developing relevant policies and legislation pertaining to the i Taukei people's welfare, as well as facilitating the growth of an institutional framework of governance.

4.1.2 Customary Governance over Natural Resources

Customary law and institutions are a part of rural life, and even where there are state institutions present, they exist simultaneously with customary institutions (Clarke and Jupiter 2010).The TLTA provides in Section 3 that 'i Taukei lands shall be held by native Fijians according to native custom as evidenced by usage and tradition.' This provision allows for a broad spectrum governance rights defined by native custom and tradition. The TAF regulates indigenous Fijian affairs by way of establishing institutions and their powers and jurisdictions (Alley 2009). i Taukei communities are governed by the TFA through the four administrative divisions (Central Eastern, Northern and Western), each under the charge of a Commissioner appointed by the central government. The divisions are further subdivided into 14 provinces, each of which has a Provincial Council. The Councils primarily deal with all matters affecting ethnic Fijians within their established boundaries.

There is a chief at every level of the Fijian social hierarchy. Although the chiefly system in Fiji is hereditary, chiefly authority on the other hand has been determined by historical and political dynamics between chiefs. In contemporary Fijian society, seniority of descent and political dominance have become key factors in installation of chiefs to exercise customary authority at higher levels including which include the mataqali, tikina, vanua, and matanitu (confederacy).

Prior to its de-establishment in March 2012, the GCC gave additional legal legitimacy to these customary institutions and was responsible for making recommendations and proposals as it may deem to be for the benefit and good governance of the Fijian people. All constitutions in Fiji's relatively short history gave recognition to the GCC. The 55-member GCC in Fiji included 3 representatives elected from within each of Fiji's 14 provinces and 1 dependency, 3 ex-officio members (the President, Vice-President, and Prime Minister), 6 government appointees, and former Prime Minister Sitiveni Rabuka, who is a life-member.

The 1997 Constitution gave the GCC the power to elect 14 member of the Senate, as well as the President and Vice President of Fiji. The significance of the GCC and its relevance to indigenous Fijians is embodied in the institution's role in the overall administration of all affairs pertinent to the present and future well-being of the indigenous people. Their role exists within a framework of government that provides accommodation for other landed ethnic groups to contribute and participate in the political, economic and social life of the country.

4.1.3 Legal Reform for Greater Support to Communities

Possible reforms could include recognition of ICCAs in legislation that could potentially provide greater rights of establishing and managing community conserved areas.

Furthermore, explicit recognition of ICCAs in legislation could assist in protecting these areas from being leased to mining or petroleum prospectors. Given the importance of tenure in establishing ICCAs, protecting and strengthening customary

tenure should be a key priority. There is potential for relevant stakeholders to ensure that indigenous rights as well as customary tenure rights are featured in the Constitution with the current constitutional review in process. Also refer to comments in Part 7.

4.2 Traditional Knowledge, Intangible Heritage & Culture

There is poor legislative support for cultural and heritage support in Fiji. The Ministry of i Taukei Affairs is currently in the process of drafting a bill based loosely on the *Model Law on Traditional Knowledge and Expressions of Culture* (SPC, 2002*),* which provides statutory rights for traditional owners of traditional knowledge, and expressions of culture. This bill arose out of concern that indigenous knowledge remains legally unprotected is the subject of unrestricted exploitation and commercialization without due respect and acknowledgement of the local communities (Qereqeretabua 2008). The regional framework model on which this bill was based was developed by the Secretariat of the Pacific Community (SPC) to assist Pacific island countries looking to legally protect their traditional knowledge and expressions of culture.

The DoE has established an interdepartmental Access and Benefits Sharing (ABS) Steering Committee to oversee development of a national ABS policy in line with the Nagoya Protocol criteria. At a meeting in February 2012, committee members agreed to: request the Fiji Ministry of Foreign Affairs to write to the Convention on Biological Diversity Secretariat to initiate the process of accession to the Nagoya Protocol; and for the DoE to draft a paper to Cabinet to communicate this decision.

The Department of Culture and Heritage under the auspices of the Ministry of i Taukei Affairs is tasked with safeguarding Fiji's cultural heritage as well as promoting conservation and development with local landowners. The Department of Culture and Heritage funds three statutory organizations related to the cultural sector: the Fiji Museum, the National Trust of Fiji and the Fiji Arts Council. The National Trust of Fiji, in particular, is especially relevant to ICCAs as its role is to protect Fiji's natural, cultural and national heritage. The National Trust of Fiji is governed by a council elected by the relevant Ministry. The approach of the National Trust of Fiji is quite broad and includes cultural and natural heritage protection; heritage awareness; local community involvement; capacity building and the development of policy frameworks for integration of heritage conservation into development policies as key objectives.

The frequent shifting of the Department of Environment, Department of Culture and Heritage and National Trust of Fiji between different ministries has however made it difficult to attract consistent political and intuitional support. Weak government leadership and coordination has been identified as a barrier to effective implementation of conservation and protected area initiatives (PoWPA, 2011). With fragmented environmental laws and the absence of a single identified government department to spearhead conservation and protected area initiatives, the responsibilities are split amongst various agencies resulting in overlapping of responsibilities and a failure to coordinate efforts to produce required results.

5. HUMAN RIGHTS

Following the coup d'état in 2006 led by Frank Bainimarama, the interim military government was replaced by a nominally civilian interim government headed by Bainimarama as Prime Minister. The coup was carried out partially as a response to the introduction of the controversial **Qoliqoli Bill 2006** by the elected government. The Qoliqoli Bill proposed to transfer proprietary rights of qoliqoli areas (foreshore, lagoon and reef) to the indigenous owners. Issues of concerns raised included the effect on the tourism industry, which is centred along the coastal areas, and the resulting effect on the economy as a whole.

The Public Emergency Regulations (PER) under the **Public Order Act [Cap 20]** were used to quell dissent by clamping down on civil liberties (Svoboda 2009). The enforcement of the PER led to numerous human rights violations and to soldiers and police enjoying total impunity under the Regulations. Under the guise of maintaining law and order, the authorities have used the PER to deter any public criticism of the government, including by arresting human rights activists, lawyers, judges, and journalists (Amnesty International 2010).

When the High Court of Fiji ruled in April 2009 that the 2006 coup was illegal, the Government dismissed the entire judiciary in 2009 and replaced it with its own appointees. Further, it abrogated the 1997 Constitution, on which the decision was based, leaving uncertainty for the status of indigenous human rights in Fiji. The interim Government has taken the view that the abrogated Constitution had a non-justifiable compact in claiming as a guiding principle the primacy of Fijian interests. The compact also provided for affirmative action and "social justice" programs to "secure effective equality" for ethnic Fijians, Rotumans and other communities, to which the current Government characterized as racist and expressed opposition (USBD 2010). At the same time, the Government implemented a Media Decree that enhanced the censorship and intimidation of the media established under the PER.

More recently, the Prime Minister de-established the GCC in March 2012, and said in a press release that the institution had become irrelevant in an era where Fiji seeks common and equal citizenry (MOI 2012). He further remarked that institution of the GCC perpetuated elitism and fed into the divisive politics which plagued the country and that Fiji had to look at commonalities as citizens of the same nation, not to what separates them as individuals or groups.

Without the GCC, a body recognized under statute, it is now left to the Government to determine ways in which the administrative framework and systems governing the utilization (sustainable or otherwise) of native resources will now operate. This may entail further reforms to the institutions involved (i.e., i Taukei Affairs Board, Provincial Councils, i Taukei Land Trust Board and Ministry of i Taukei Affairs) or the articulation of a totally new system of administration that is more compliant with the priorities and interests of the Government in power. The latter may prove attractive in view of the number of Decrees enforced by the Government, which curtails what it perceives to be impediments to development and growth,

notwithstanding the fact that these reforms may generate implications on human rights generally and on indigenous rights specifically.

For example, the **TLT (Amendment) Decree 2010** changed the composition of the i Taukei Land Trust Board such that powers to declare native reserves have been shifted to the Minister of i Taukei Affairs. The amendment was viewed by a local indigenous rights movement group as detrimental to the rights of the indigenous landowners as beneficiaries and could affect the ability of the TLTB to perform both its statutory and fiduciary obligation to act in their best interests.

In another example, the Government promulgated the **Land Use Decree 2010** to improve access to land by establishing a "land bank" in the Ministry of Lands, giving land owners an option to deposit their land to be administered by the State or to remain with NLTB. Although Government declared that the purpose of the land reform was to provide equitable returns to land owners and greater security, decisions made by the State with respect to the land cannot be challenged in a court of law. The Decree overrides any other law that is inconsistent to it. Consequently, the Decree limits the rights of the landowner to challenge the decisions of the State absolutely until the expiration of the lease regardless of how the land may be administered.

Furthermore, although the law provides for an independent and impartial judiciary in civil matters, the judiciary is prohibited by the **Administration of Justice Decree 2009** from considering lawsuits relating to the 2006 coup, subsequent actions by the interim government, the abrogation of the constitution, and subsequent military decrees. Previously, in the event of a human rights violation, under the constitution an individual also could complain to the Fiji Human Rights Commission (FHRC). Presently, although the government decreed that the FHRC could continue to exist following the constitution's abrogation, under the Administration of Justice Decree it is prohibited from investigating cases filed by individuals and organizations relating to the 2006 coup and the 2009 abrogation of the constitution.

At the same time, FHRC has had its own activities called to question. In February 2010,Amnesty International reported to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council that the FHRC had been supportive of the military takeover and had published a report in January 2007 providing justification for the coup. Consequently, the FHRC was suspended from both the International Coordinating Committee for National Human Rights Institutions and the Asia Pacific Forum.

In January, 2012, the PER was lifted, however Government amended the Public Order Act by passing the **Public Order Amendment Decree 2012** which maintained most of the provisions of the PER and gave wider powers of arrest to police officers. Offences of terrorism, racial vilification, and treason can be dealt with under the provisions of the Public Order Amendment Decree. Further, the Decree contained a new Section 21 stating that that no court, tribunal, commission or other adjudicating authority may hear a challenge to the validity, legality or propriety of any decision made under the Decree by the Commissioner of Police, Divisional Police

Commander or Minister or any public official. Where any such claim is brought, the file will be taken to the Chief Registrar for termination of the proceedings. Although, control of broadcasts and publications was not been included in the Decree, it has an imposing and restrictive effect on the conduct of media outlets and individuals.

The extent in which human rights can be applied to ICCAs in Fiji is dependent on the State. Although legislation may be able to give ICCAs legal status, its future beyond that is uncertain.

6. JUDGEMENTS

As ICCAs are not expressly featured in national legislation, case law on the point is absent. Issues of relevance have been discussed in the following cases:

Before 2002,the Supreme Court of Fiji determined in***Meli Kaliavu & Others v. Native Land Trust Board (TLTB)***(1956)5 FLR 17 that individual members of a mataqalior other Fijian landowning units have no legal standing to institute proceedings in their personal capacities against the TLTB. This decision was made regardless of allegations by the plaintiffs of the failure of TLTB to administer the land and resources for the benefit of native Fijian people. This decision was upheld in the case of ***Bavadra v Native Land Trust Board [1986] FJSC 13; Civil Action 421 of 1986 (11 July 1986)***where the Supreme Court determined that the mataqali was a customary institution that was governed by customary laws and therefore was independent of the general law administered by the formal courts. The mataqali therefore had no locus standi or legal standing in a court of law. The decision of Meli Kaliavu v Ors and Bavadra v NLTB placed considerable limitations on the rights of landowners to question the administrative decisions of the TLTB. Further dissatisfaction amongst landowners regarding the administration of land and resources were subject of court proceedings however without any success.

In Narawa v Native Land Trust Board (TLTB) FCA 2002, the Fiji Court of Appeal overturned existing law on the issue of standing to sue, but also raised issues of fundamental importance to the native traditional land owners, namely the potential for the law of Fiji to recognise rights and interests under customary law and thus the potential for indigenous participation in environmental decision making (Jeffrey QC, 2007). In the case of Narawa v NLTB, NLTB and the Conservator of forests entered into two agreements with Timbers (Fiji) Limited for felling, taking and selling of timber that provided for the payment of royalties and fees. The plaintiffs claimed that: Timbers (Fiji) was in these Agreements; the NLTB was not acting as required by the **i Taukei Land Trust Act** in that it failed to administer them for the benefit of the Fijian owners; and also it was in breach of its fiduciary duties to the members of the *Yavusa Burenitu* by condoning and supporting the continuing breaches of Timbers (Fiji). The primary trial judge in the High Court of Fiji applied the existing authorities and dismissed the action instituted by the *Yavusa Burenitu*. The plaintiffs then appealed to the Court of Appeal. The courtaccepted as ***"clearly established"*** that an individual member of a mataqali could not sue and recover damages personally where damage had been suffered by the group.

However, the Court of Appeal approved the decision in***Waisake Ratu No 2 v Native Land Development Corporation & Anor CA No 801/1984 Civil Action No 580 of 1984***, which considered that the *mataqali* or a *tokatoka* were not institutions alien to the applied law of Fiji. Justice Cullinanstated that the mataqali, as well as all the individual divisions of the Fijian people, had been recognised as a central proprietary unit by the statute law of Fiji for over a hundred years and therefore could not be regarded as alien entities to formal law.

The Court of Appeal referred to various authorities relating to the common law recognition of customary title including ***In Re Southern Rhodesia*** [1999] AT 211; ***AmoduTijani v The Secretary of Southern Nigeria***[1921] 2 AC 399; and ***Mabo v The State of Queensland(No 2)*** (1992) 175 CLR 1 and held that:

(i) The plaintiffs were persons of standing.

(ii) Native customary native customary rights and obligations may be recognized by the common law and enforced in the courts.

(iii) Mataqali may by representative action, or by action brought by all those belonging to the mataqali as an unincorporated association, bring proceedings in the court seeking common law or equitable remedies for any breach of rights it is able to establish.

(iii) A person seeking to bring an action in a representative capacity did not have to obtain the consent of those whom he purported to represent.

(iv) All the members of the mataqali in this case had a common interest in ensuring that their agreements are being properly administered by the Board and that they receive whatever is due to them from their agreements. If the agreements had not been properly administered and Timbers (Fiji) were guilty of breaches for which damages had been payable but had not been claimed, the members would also have a common grievance; and

(v) There was, in any event, no other course open to the plaintiffs. They could not sue personally nor bring an action as an unincorporated association because they would not obtain unanimity.

The TLTB then sought special leave to appeal the decision in the Supreme Court who dismissed the application for special leave. The Supreme Court, in dismissing the application,said that there was no doubt that the present case could give rise to far reaching matters of law and matters of great public importance concerning whether customary communal entitlements were recognised by the common law, and the effect of existing statutory provisions in relation to such rights.

According to Jeffrey QC (2007), NLTB v Narawa had potential for positive and far reaching consequences for good environmental governance as decisions concerning land use should have input from the indigenous people who possess a wealth of traditional ecological knowledge that would promote equitable and sustainable systems of environmental management for the future of Fiji. Imposing command

and control policies and legislation from above without regard to the indigenous as well as community support and input at the grass roots level would fail to achieve good environmental governance.

7. IMPLEMENTATION

Whilst there are no explicit legal provisions related to the operation of ICCAs in Fiji, there are several provisions across various legal statutes that provide for their existence. Key to the effective implementation of ICCAs in Fiji are such issues as tenure, enforcement, legal recognition and institutional support.

Traditional tenure and governance is a key element in establishing effective ICCAs, particularly as 87% of all land in Fiji is held under customary tenure (Govan et al. 2009a). The customary tenure of land as well as de facto marine resource rights within i qoliqoli*)* further allows communities to establish, maintain and manage ICCAs, with operational constraints already described in Part II. The terms regarding enforcement should be clearly identified with legal provisions recognizing the use of community surveillance and enforcement (Paudel et al. 2011). As it stands currently, the lack of legislative support does little to ensure compliance with ICCAs.

The lack of a proper legal foundation for ICCAs in Fijian law to a certain extent affects the legitimacy and longevity of ICCAs (Techera and Troniak 2009). Perhaps as a result of the lack of formal recognition of ICCAs in Fiji, there is no framework in place at the relevant governmental institutions to offer support for ICCAs. This is demonstrated by poor communication between communities and government institutions as well as an apparent lack of cohesive policy governing enforcement (Lane 2008).

While Fiji is party to several key international agreements and treaties this does not always translate into the adoption of them into the legal framework. Some of the difficulties Fiji has in respect to satisfying their obligations under these agreements and treaties include the lack of resources as well as a lack of legal and institutional capacity to fully support these initiatives. The FNBSAP brought about in response to its obligations under the CBD has an implementation framework, which includes protected areas. There is however a recognized lack of national policy and legislative framework for protected areas, and while it is currently being addressed as it stands there is no legislative support for it.

Developing institutional support framework of ICCAs in government agencies has the potential to assist communities' cope with the growing challenges faced by ICCAs as well as maintain long-term collaboration with support systems. There should be a focus on establishing a network of partnerships that support community management and that allows these communities to remain independent and self reliant in their management approach.

In the absence of formal recognition of ICCAs, the effective implementation of the FNBSAP has a significant impact on the continued existence of identified ICCAs in Fiji. Whilst the lack of institutional capacity within the DoE has always been a nagging

issue, Fiji is fortunate to have many committed locally, regional and international NGOs and institutions, that have worked together with government agencies to meet some of Fiji's targets in the NBSAP. As highlighted in section 2.3.2 and 2.3.3. above, collaboration between relevant agencies, or mainstreaming is crucial to achieve positive conservation outcomes and impacts.

One of the main drivers in mainstreaming biodiversity is the overarching 10 year National Development Strategic Plan devised by Government. The plan defined the way forward for Fiji and highlights strategies to pave the way. One of the goals for the plan is Sustainable Development, which compels all sectors to contribute towards its goals. Since most of the sectors are resource based, their input is vital to the achievement of the goal on sustainable development (DOE, 2010).

Table 3. Examples of collaboration of activities between different agencies

1. Government	NLTB, DOE, Forestry, Fisheries have collaborated in certain programs such as assessing Sovi Basin management plans in nature reserves, forest policy and timber identification, integrated resources management plans, studies on fisheries resources, enabling legislation, production of awareness maternal and inventories of resources.
	The Forestry Department carries out timber certification process. Fiji has a Code of Practice for logging and this Code has been undergoing review. The Code is allied to a legally-binding Forestry Decree, while the Forestry Policy was revised in 2007. The Department of Forestry works closely with several non-government organizations including WCS, WWF, Birdlife International, CI, and the South Pacific Herbarium. The Fisheries Department is an active participant in the FLMMA, it works with SPREP, SPC and other local and regional organizations in raising awareness and surveying.
	The committee on invasive species comprising of the Department of Quarantine/Bio-security, Department of Immigration, Department of Fisheries, DoE, National Trust and Nature Fiji, Maraqeti Viti is currently working on eradication programs for the invasive species Green Iguana and termites in the Northern Western side of Fiji. The committee works closely with the Ministry of Provincial Development and Indigenous affairs. SPC and the Department of Agriculture have also been working together to find ways of eradicating African tulips, an invasive species from Africa.
2. NGOS	Refer to 2.3.2 for summary of WCS and FLMMA

	engagements
	Birdlife International established its Secretariat in Suva in 2003. Activities have included bird surveys at 20 forested sites in Vanua Levu in 2003-2006; at 8 forested sites n Vanua Levu in 2003- 4=2004, developed management plans for Ravilevu nature reserve, Tomaniivi nature reserve, carried out biodiversity surveys, worked with NGOs like IUCN to consider addressing legal impediments to establishing a network of protected areas in Fiji in 2008 and developing a proposal for empowering local people in their rights.
	WWW (WWF South Pacific and Fiji Country Programme). Its Pacific programme aims to support Pacific Island people in conserving and sustainable managing our natural inheritance for present and future generations. Some of its notable activities have been in their study of Wetland ecosystems in Fiji : uses and distribution in 2000; sustainable livelihoods on Kabara Island in 2006 – 2008; Self Help Tool Kit for marine protected areas for coastal communities of Fiji to encourage sustainable livelihoods in 2005 – 2007; The South Pacific marine Program – Fiji Activities; 2005-07; Report of the mangrove flora and fauna surveys conducted within Lomawai Reserve, Bole Reserve and Lotonaluya Reserve, Tikina Wai, Nadorga; Inventory of wetlands-kuta growing areas, 1999; Gau Island and Macuata province protected areas project, 2007008; community natural resource management and enhancement in Ono – i Lau for biodiversity conservation and sustainable livelihoods 2006-07
3. Academic	University of the South Pacific Geography Department: MSc Project (Takeda) flora of Sigatoka Sand Dunes and the impact of invasive species (with support of National Trust), 2008; MSc project (Kuruyawa), women in fisheries on Beqa, 2008
	Institute of Marine Resources: turtle-tagging project with WWF, 2007 ongoing Shark fining project proposal 2008
	Institute of Applied Sciences : community based closed areas in Fiji: a case study in the fishery effects of marine reserves and fishery closures, 2002; marine protected areas (MPAs), 2004 ongoing

4. Statutory Body	National Trust of Fiji- has maintained its care of the Sigatoka Sand Dune National Park and the Waisali Rainforest Reserve. It has a Kadavu Bird awareness project, the Kacu ni Gau awareness project and the Global Mangrove Information System (GLOMIS)project. The National Trust of Fiji works closely with other relevant Government Departments in the interests of preserving and protecting its protected areas.

Information Source: DOE Fiji's Fourth National Report to SCOP-CBD 2010 with additions from author.

As discussed in 2.3.2 above, Political and societal obstacles such as lack of political will and political instability were highlighted by the DoE to be the main challenge in mainstreaming. Whilst there have been many success highlighted, the Governments push towards economic development has caused some underlying friction amongst agencies responsible for natural resource management. An example of this is apparent lack of independence on the part of the DoEas the implementing agency for EMA2005. Whilst the EMA 2005 binds everyone including Government, various development initiatives have bypassed the EIA process. Current large scale development proposals like the Namosi Joint Venture, Copper Mining Project and Water Dam Construction proposals have the potential to interfere with established protected areas like the Sovi Basin if Government weighs economic development and the national economic interest ahead of conservation ideals.

8. RESISTENCE AND ENGAGEMENT

There are a couple of factors that influence the local and indigenous community's responses to the decrees and polices introduced by the present ruling regime in Fiji.

(i) Since the 2006 coup d'état, the Public Emergency Regulations that were enforced up until January 2012 have caused widespread uncertainty among the local populace. As described in Part V above, during this period the Constitution was abrogated resulting in various reports of human rights abuses and violations by the ruling regime. With the absence of any representative forum coupled by the suppression of the media, the Government was able to pursue its current reforms and rule by decree with very little open resistance.

(ii) The abrogation of the Constitution, the introduction of the Land Use Decree, amendments to the TLA and TLTA, and the recent de-establishment of the GCC have caused legal uncertainties over the status of indigenous rights in the country because the route taken in enforcing these changes did not adhere to any established protocol of law. The decisions made to effect these changes were carried out unilaterally without extensive consultation.

Due to these factors it would be difficult to provide an accurate account of the degree of engagement or resistance of local communities relative to the introduction of decrees and policies affecting the local governance and conservation of their territories and natural resources. There are, however, indicators that reflect mixed reactions to the reforms brought about by the present ruling regime.

One example is the growing resistance by the landowners within the Naitasiri Province against the first and only open pit copper/gold mining development proposal by the Namosi Joint Venture (NJV). The NJV, made up of Newcrest (Fiji) Ltd, Mitsubishi Materials Corporation and Nittetsu Mining Co. Waisoi Project, is seeking a mining license from Government to develop a mining facility to produce copper concentrate with gold by-products for export. The key mine infrastructure would include two open pits, tailings and waste rock storage facilities, a power station and processing plant, administration camp and access roads (http://www.njv.com.fj/details/). Part of the land sought for the development falls within the Sovi Basin. The development proposal was subjected to an Environmental Impact Assessment, however the NJV and Government face growing opposition as landowners voiced their concerns about NJV and Government's inability to address the landowners concerns adequately.

In an interview with the Fiji Sun newspaper in January this year, the secretary for the Tikina Namosi Landowners Committee (TLNC), Sipiriano Nariva, said that the landowners were seeking an audience with the Prime Minister to address unresolved grievances with NJV. Nariva further said that their main concerns included the issuing of prospecting licenses without their knowledge and consent, the environmental impact evident from prospecting activities, the likely environmental impact should mining commence, as well as the loss of mataqali lands (http://www.fijisun.com.fj/2012/01/19/namosi). The TNLC claimed that aside from the lack of consultation, surrounding villages were already experiencing the effects of environmental harm caused as a result of prospecting activities carried out by the NJV.

In December 2011, a blog site (http://intelligentsiya.blogspot.com/2012/01/) released pictures of Namosi landowners and children with banners in hand openly protesting mining on their land. Landowners continued to protest by restricting road access to NJV staff in Namosi demanding that their grievances be addressed. In January 2012, the Fiji Sun reported that the TNLC had sought a meeting with the Prime Minister, Bainimarama to address their concerns over the manner in which NJV and Government representatives were handling their grievances. Subsequent negotiations between the Prime Minister, NJV and the TNLC, resulted in a decision in February 2012 to halt the Environment Impact Assessment process until rehabilitation measures were effectively carried out by the NJV (http://www.tawakilagi.com/2012/02/02/namosi-welcomes-pm%E2%80%99s-decision/).

9. LEGAL AND POLICY REFORM

While ICCAs exist in Fiji without explicit legal provision, the presence of a formal legal foundation would grant greater power of enforcement and governance to communities. As it stands there are scattered provisions across several pieces of legislation that grant native Fijian communities power of governance, tenure and management of ICCAs. Several proposed areas for reform include:

(i) Build legal support for ICCA management: The development of new protected area legislation could provide a legal basis to give recognition to ICCAs. This could be modelled off of neighboring Vanuatu's **Environment Management and Conservation Act 2002[Cap 283]** (Vanuatu) (EMCA) that has explicit provisions for the protection and registration of Community Conserved Areas (CCAs). The benefit of Vanuatu's approach is that there is formal recognition of ICCAs with a structured process regulating the management and enforcement of ICCAs, whereas Fiji's approach has revealed gaps in the management of ICCAs particularly because of the fragmented nature of the legal framework pertaining to ICCAs (Techera 2009).

(ii) Build institutional support for ICCA management: New protected area legislation needs to specifically clarify what agency(ies) are mandated to support marine and terrestrial ICCAs and the arrangements by which they interact with other bodies responsible for resource management

(iii) Improve communication between agencies already mandated to support ICCAs: Tighter communication channels are needed between relevant governmental agencies so that better support can be provided to communities. For example, the Ministry of Fisheries and Forests and the Department of Environment play integral roles in relation to ICCAs and closer collaboration between these two departments can lead to more effective outcomes.

(iv) Reform existing legislation to provide recognition of ICCAs: Legislation pertaining to mining, forestry and fisheries needs reviewing in terms of where they could potentially affect ICCAs. In particular: Fiji's own EMA fails to account for ICCAs; the Mining Act has provisions that could potentially provide mining companies the means to encroach on ICCAs without regard to landowners rights; and the movement to replace inshore fisheries management under the Fisheries Act with the Inshore Fisheries Decree needs to include provisions for establishing no-take marine protected areas (Techera and Troniak 2009).

(v) The lack of explicit support of ICCAs in Fiji legislation leaves such institutions on shaky ground. Ideally, a legal gap analysis of environmentally related legislation in Fiji should be undertaken to identify vulnerabilities in the current legal framework. The review of existing legislation is part of the Protected Areas Action plan for 2012 and should include ICCAs as part of its terms of reference. Reform should begin with relevant government agencies working in close collaboration with the

relevant stakeholders and NGOs to draw up legislative bills necessary to establish provisions for ICCAs in legislation.

10. CASE STUDIES

10.1 Bouma Heritage Park, Cakaudrove Province

Geography

Bouma Heritage Park is located in Wainikeli District in Cakaudrove Province on Fiji's third largest island, Taveuni. The large majority (81%) of land in Bouma (145.7km^2) is owned by 17 indigenous landowning clans. The management area also includes the forest and the clans' customary fishing ground (152.5 km^2), which extends to the edge of the coastal fringing reef.

Protected Areas

In the late 1980s, the communities of Taveuni were under pressure from logging companies to lease their lands for forestry activities, but the landowners of Wainikeli District decided to forgo logging revenue to protect their ecosystems and ecosystem services. With assistance from the Native Lands Trust Board and the New Zealand Forest and Bird Protection Society, and funding from the New Zealand Overseas Development Agency (NZODA), the communities developed the Bouma Environment Tourism Project, which had four objectives: (1) protect the district forest and ecosystems; (2) create sustainable livelihoods for the four villages; (3) preserve natural and cultural traditions where possible; and (4) have projects managed by and for the local communities. Four different ecotourism projects were initiated, including: (1) the Vidawa Rainforest Hike (1998); (2) the Waitabu Marine Park, a permanently closed 0.27 km^{2}no-take area (April 1998); (3) the Lavena Coastal Walk (1999); and the Korovou Waterfall Park (1989) (Jupiter et al. 2012c).

Management Framework

All projects involve conservation of natural resources, supported by direct tourism income, managed by individual villages as cooperatives. For example, in Waitabu, guest fees of FJ$50 each for snorkelling tours in the marine park are divided among village youth who haves been trained as guides, women who provide the tea, and dancers who perform traditional entertainment. The remainder of the proceeds are put into a village fund for community development projects. Because of the long history of protection in Waitabu (and the other sites), a new generation has grown up with the perception of "no take" areas, which greatly increases local compliance with management rules. This flexible management scheme across all four village projects gives more autonomy to local decision-makers than, for example, gazetting a forest park as a nature reserve. Under the Forest Decree 1992, control of the reserve is transferred to the Department of Forestry and use is strictly limited, thus eliminating the possibility of eco-tourism ventures for local income generation.

10.2 Kubulau District, Bua Province

Geography

Kubulau District is located in Bua Province on Fiji's second largest island, Vanua Levu. The large majority (92%) of land in Kubulau (98.5 km^2) is owned by 57 indigenous landowning clans. The management area also includes the clans' customary fishing ground (261.6 km^2), which extends from the coast to the outer barrier reef. There are approximately 1000 residents of Kubulau who are highly dependent on fishing and farming to meet their subsistence needs, and rely heavily on fishing, farming and copra harvesting to generate income.

Protected Areas

In the early 2000s, the communities of Kubulau sought assistance from the iTaukei Affairs Ministry and the Wildlife Conservation Society to take measures to stem perceived declines in natural resources. In 2005, after collection of extensive scientific data and local knowledge, extensive participatory discussions were carried out with chiefs, clan leaders, fishers, farmers, women and youth, to create a ridge-to-reef protected area network. The network included 3 large district-wide, no take marine protected areas (MPAs), 17 small village-managed, periodically harvested marine closures (tabu areas), 1 legally recognized nature reserve and 1 proposed forest reserve. More recently in 2011, the communities adapted the network based on new information about reef resilience and disaster preparedness to increase the total number of tabu areas to 21 and add protection to a stream and the headwaters of water sources for 3 of the 10 villages.

Management Framework

The only protected area that is legally gazetted in Kubulau is the Namenalala Island nature reserve that was created under the TLTA through a conservation lease brokered by the iTaukei Land Trust Board (TLTB) on behalf of the landowners. The lease was issued to allow for the construction of a luxury tourist resort on the condition that 90% of the island remains managed as a strict nature reserve. All other ICCAs in Kubulau are locally managed under the framework of the Kubulau Ecosystem-Based Management Plan, Fiji's first ridge-to-reef management scheme. The plan was completed in July 2009 and endorsed by the Kubulau high council of chiefs. The plan places community management rules alongside national legislation and policy so that the committee tasked with its implementation (Kubulau Resource Management Committee, comprised of representatives from each village) can easily identify options for monitoring and enforcement. For example, although the Fisheries Act [Cap 158] does not legally recognize customary sea tenure, under the Act, the high chief of Kubulau can legally partially protect the district MPAs and tabu areas by issuing conditional letters of consent for restricted fishing activity that prohibit commercial fishing within the ICCAs. This has several pragmatic advantages: (1) people found fishing for trade or business inside the protected areas can be prosecuted by the police; (2) as the fishing permits must be renewed annually, offenders may be denied renewal of their licences; and (3) flexibility is retained to

adapt the network periodically to new configurations for improved fisheries management and biodiversity conservation. In terms of the proposed Kilaka Forest Reserve, the landowning clan can readily control most types of development by refusing to issue consent for a lease. Recognized within the Kubulau EBM plan are specific rules to prohibit clearing, burning and farming in drinking water catchments and along riparian zones, which in monitored in the Kilaka Forest Area by the landowners (Clarke and Jupiter 2010).

Legislative Challenges

Although the landowners of the proposed Kilaka Forest Reserve have sought legal recognition of their ICCA, all options permissible under current legislation have proved intractable:

- Declaration as nature reserve under the Forest Decree: Although designation as a nature reserve would formally transfer management rights to the Conservator of Forests, the landowners were eager to use this option in exchange for perceived heightened monitoring and enforcement capabilities through the Department of Forestry. In practice, the Department of Forestry has no resources to establish any new nature reserves and limited resources to maintain existing reserves.
- Declaration as a water catchment area under the Water Supply Act: In order for a land parcel to become legally designated as a water catchment area it must be professionally surveyed to identify the boundaries of the watershed. This process is prohibitively expensive for communities, costing potentially hundreds of thousands of dollars. This process is generally only undertaken by commercial agencies, such as Fiji Water Authority, who have brokered leases with landowners with the assistance of TLTB for protection of important water catchments for municipal water supply. In these cases, the Water Authority also pays a premium to the landowners for a 99 year lease based on the value of the forest stock, plus an annual rent payment.
- Declaration as conservation areas through a conservation lease: Although this process was effective for negotiating the conservation lease for the Namenalala Nature Reserve in the early-1980s, the landowning clan has long felt that they did not receive adequate compensation for transfer of management authority over their resources. This has led to dissent within the community and willful infractions of the Namena Marine Reserve no-take rules. Thus, legal recognition of the Kilaka Forest Reserve through a conservation lease would have to adequately account for the value of the forest resources, which may extend to the tens to hundreds of thousands of dollars. This approach has been successfully applied to negotiate a conservation lease for a large parcel of high biodiversity forest in Sovi Basin on Viti Levu. Yet, new sustainable financing mechanisms will need to be put in place before this level of funding is available to replicate the Sovi model in other areas of Fiji, such as Kilaka. Recently, there have been discussions in Fiji about types of green fees (e.g. tourist departure taxes) or levies that could be applied to finance an environment fund to ensure adequate disbursement of incentives to communities for protection and management

of their forests. The Protected Area Committee and Department of Environment will further investigate options for sustainable financing through their work under PoWPA.

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