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Abstract

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"The decolonisation process in Fiji needs to be contextualised against the background of the creation of the United Nations and the Self Determination Conventions and Declarations as well as the rise of the World Bank, International Monetary Fund and Structural Adjustment Programmes as a means of promoting development which has in turn compounded the problems of Fiji, arising from the Native Lands Trust Board (NLTB) governance system.

"This paper will illustrate how the legacy of extractive colonial capitalism, decolonisation, development strategies and globalisation - distorted tradition and created a colonial institution such as the NLTB, as a decolonisation strategy that has not delivered: leaving ordinary indigenous Fijians disenfranchised and impoverished."

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**THE FIJIAN UNDERSTANDING OF THE
DEED OF CESSION TREATY OF 1874.**

Joeli Baledrokadroka LLB(Otago) Dip. in Litigation(NZLS)

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Abstract

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The purpose of my paper is to examine whether current Fijian Legislations and Policies have reflected and honoured the spirit of the 1874 Deed of Cession under which Fiji was ceded to Great Britain. I will attempt to show that Fijians have been under the mistaken belief that their customary rights and sovereignty were taken by the Deed of Cession Treaty, and returned to them in 1970, when in fact they have never been extinguished.

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This paper will illustrate how the legacy of extractive colonial capitalism, decolonisation, development strategies and globalisation - distorted tradition and created a colonial institution such as the NLTB, as a decolonisation strategy that has not delivered; leaving the ordinary indigenous Fijians disenfranchised and impoverished.

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September 2003.

¹ Section 4(1) Native Lands Trust Act (Cap 134, 1985 Revised Edition of the Laws of Fiji states that :

The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the Fijian owners

INTRODUCTION

In discussing the history of land legislation in Fiji, one should be aware of the histories of Britain and Fiji and their respective developments as a country, in a global context at that particular moment in time.

I agree with Anghie² who says that colonial expansion in the late nineteenth century that was occurring in Asia, Africa and the Pacific was for the economic and political advantage of Britain and other major European states. This resulted in the assimilation of Fijians into a system of law that was fundamentally British in that it derived from British thought and experience.

It was against this background that Fiji was ceded to Her Majesty Queen Victoria. It is arguable, that when Cakobau and his chiefs ceded Fiji and its sovereignty to Britain in 1874, they did not have the mandate to do so by the 'native owners'³. The Deed of Cession⁴ has been accepted under International Law as the Treaty whereby the chiefs of Fiji ceded their sovereignty to the British Crown.

However, what they ceded and its context are debatable. Moreover, the implications of colonisation for Fiji and Fijians in terms of how they should be governed, and what role international law should play in decolonization is still a major political and legal issue in Fiji today.

As a place-based people, land to the Fijian was his life. When Fijians speak of their land, they invariably refer to it as *na qau vanua* or my land, or land that sustains me and from which I eat. Lasaqa⁵ elaborates that the meaning of this statement is far wider than it might at first appear because its meaning implies that the land has fed its owners for past generations, and it will do so in future; on it depends their entire livelihood. It is often said that the land is the

² Anghie, A; Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, Volume 40 Number 1, Winter 1999, pp. 2.

³ Section 2 of the Native Lands Act (Cap. 133 Vol.VIII, Fiji Law Reports 1985 Edition) states that: "native owners" means the mataqali or other division or subdivision of the natives having the customary right to occupy and use any native lands"

⁴ See Appendix A

⁵ Lasaqa (1984), p.49

people, the two are interwoven closely and cannot be separated completely. Hence the belief that many Fijians tend to accept that if Fijian land were broken up the people and their society would disintegrate.

Between 1874 and 1970 when the British ruled Fiji two critical policy decisions were made that, in my opinion, is in conflict with the spirit of the Treaty of Cession. The effect of the Crown's decision was to change, re-shape and completely shatter the foundation of the indigenous Fijian society and its people. It also helps to explain why the indigenous Fijians of today have not been able to free themselves completely from the chains of British colonialism.

For one, it passed the control and administration of their native land to the NLTB in 1944 and not to the successors of Cakobau and his ceding chiefs, who would in turn pass it on to the legal owners, the mataqali land-owning units. For another, in its haste to build and spread the mighty British Empire to Fiji for the Crown Treasury, it organised the importation of foreign Indian labour to work on its sugar plantations.

These are two glaring illustrations of how the old globalisation and extractive capitalism has distorted tradition and created the NLTB as a decolonisation strategy that has not delivered. This paper examines the NLTB and the Fijian perception of land ownership and questions the appropriateness of supplanted western/colonial ideals and land tenure within a third world framework of communal ownership, respect and chiefly systems.

A HISTORY OF SOVEREIGNTY IN FIJI

The Treaty of Cession⁶ signed by Cakobau as Tui Viti ("King of Fiji") and 12 chiefs with the British Crown recited that they were "desirous of securing the promotion of civilisation and Christianity and of increasing trade and industry within the said islands". Accordingly, "relying upon the justice and generosity of Her Said Majesty," they had agreed to cede to Queen Victoria "the possession of and full sovereignty and dominion..." over the Fiji Islands. By signing the Deed of Cession Documents in October 1874, the Chiefs of Fiji and Sir Arthur Gordon, the first Governor of the Fiji Islands inherited the Laws of England.

In return, Her Majesty promised amongst other things, "that the rights and interests of the said Tui Viti and other high chiefs, the ceding party hereto shall be recognised so far as is and shall be consistent with British sovereignty and colonial form of government".

Clause 1 of the Treaty of Cession with the British Crown states:

That the possession of and full sovereignty and dominion of the whole of the group of islands in the South Pacific known as Fiji ... are hereby ceded to and accepted on behalf of Her Said Majesty the Queen of Britain and Ireland, her heir and successors, to the intent that from this time forth, the said islands and the waters and reefs and other places as aforesaid lying within or adjacent thereto may be annexed to and be a possession and dependency of the British Crown.

Theoretically, the effect of Clause I was that the Crown now held the title to all land and any rights to land in Fiji. The cornerstone of feudal land tenure, where the king was the original proprietor of all lands in the kingdom, and consequently was the only source of legal title, appears to have been imported with the mass of common law into Fiji.

Clause 2 of the Deed of Cession stated that :

The form of constitution of Government, the means of the maintenance thereof and the laws and regulations to be administered within the said islands shall be such as her majesty shall decide and determine.

I submit that the Common Law of England and the Law of Equity (otherwise known as the Court of Chancery) were also part and parcel of this inheritance. In order to ascertain what

⁶ Supra n. 6

rights passed to the Crown or were retained by the inhabitants of a territory under a treaty, the court looked to the conduct of the British Crown and did not construe the Treaty of Cession.

In the case of *Oyekan v. Adele*⁷ the Privy Council said that:

"Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through its officers, recognised. Such rights as he had under the rule of his predecessors avail him nothing"

Their Lordships went further to point out that a Treaty of Cession was an Act of State by which the Crown acquired full rights of sovereignty. The effect of the Act of State was to give to the British Crown sovereign powers to make laws and to enforce them, and, therefore, the power to recognise existing rights or extinguish them, or to create new ones.

However, in inquiring what rights of the inhabitants are recognised, there is one guiding principle. That is, the courts will assume that the British Crown intends that the rights of property of the inhabitants are to be fully respected. Applying *Oyekan's* case to Fiji, it is arguable that the Deed or Treaty of Cession in Fiji was an Act of State by which the British Crown acquired full rights of sovereignty over the Fiji Islands. Accordingly, the courts will assume that the British Crown intended that the rights to property of the Fijian inhabitants were to be fully respected.

Frame⁸ describes 'Property' as a term denoting the set of justifications by which the benefit and control of resources, both physical and intellectual, is reserved to particular individuals and groups to the exclusion of others. These justifications can take different forms in different societies and can change shape over time even in the same society. Accordingly, property is socially constructed and constructed differently in different societies.

Herein lies the confusion that the Fijian people suffer from when confronted with the real danger of the British bringing conceptual baggage from their legal system to the description of another. The words of Viscount Haldane in 1921 is often quoted in relation to African land tenure:

⁷ (1957) All England Law Reports 785, at 788.

⁸ A.Frame, 'Property and the treaty of Waitangi: A Tragedy of the Commodities?', in *Property and the Constitution*, ed. Janet McLean, Hart Publishing, Oxford, 1999, Chapter 11.

‘There is a tendency, operating at times unconsciously, to render that title conceptually in terms which are appropriate only to systems which have grown up under English law. But this tendency has to be held in check closely. As a rule, in the various systems of native jurisprudence throughout the Empire, there is no such full division between property and possession as English lawyers are familiar with. A very usual form of native title is that of a usufructuary right ...’⁹

Clause 4 of the Treaty said:

That the absolute proprietorship of all lands not shown to be now alienated so as to become bona fide the property of Europeans or other foreigners or not now in the actual use or occupation of some chief or tribe, or not actually required for the probable future support and maintenance of some chief or tribe shall be and is hereby declared to be vested in Her Said Majesty her heirs and successors

The three categories of land which the Crown may deem to recognise, by virtue of Clause 4 the Treaty, are:

- (1) Land belonging to European and foreigners,
- (2) Native lands, either in the actual use or occupation of some chief or tribe, or lands deemed necessary for the future use support and maintenance of chiefs and tribes, and
- (3) Land being absolute property of the British Crown

Prior to Cession, Cakobau had expressed concern to the British government of the necessity of ensuring the protection of Fijian rights and had placed conditions he thought necessary, before the British. The British however felt that conditions would restrict their powers to control the government of the colony, but undertook that Fijian interests would be protected as far as possible.

Sir Hercules Robinson who negotiated the Treaty was instructed to accept only an unconditional offer of Cession. Cakobau and the twelve chiefs were persuaded to rely on the justice and generosity of Britain to settle equitably questions relating to land and the future constitution of the colony. Thus, it is arguable that the Colonial Government interpreted Clause 4 of the Treaty consistently with the intentions of the Fijians.

Paragraph (2) above highlights the ignorance of Cakobau and his Chiefs by exposing the indigenous Fijian landowners to the subtle and alienating nature of the English System of

⁹ *Amodu Tijani v. The Secretary Southern Nigeria* [1921] 2 AC 399, at p. 403. The caution has been adopted by the New Zealand Court of Appeal in *Te Runanga o Muriwhenua v. Attorney General* (1990) 2 NZLR 641, and by the Waitangi Tribunal in the Whanganui River Report (Wai 167), 1999, page 26.

land tenure and property. Within a year of signing the Deed of Cession, the Native Lands Transfer Prohibition Ordinance No. VI of 16th September 1875 was enacted prohibiting land transactions with natives.

The Ordinance said:

All conveyances transfers leases and all transactions whatsoever in land or relating to any interest between Natives and any persons not being Natives are hereby expressly prohibited and declared to be invalid and it shall not be lawful to institute any proceedings whatever in any Court of Law in respect thereof.

At the time Fiji was ceded to the British Crown in 1874, there were many foreign occupiers and claimants to large areas of Fijian land. These had come about through dealings between chiefs and European traders, settlers and beachcombers. Resident Governor Sir Arthur Gordon stopped all land sales immediately after Cession.

In 1875, the Native Lands Transfer Prohibition No. VI Ordinance to prohibit the alienation of Native Land by Natives in the Colony of Fiji was enacted by the Fiji Legislative Council. Section 2 said that:

"All conveyances transfers leases and all transactions whatsoever in land or relating to any interest between Natives and any persons not being Natives are hereby expressly prohibited and declared to be invalid and it shall not be lawful to institute any proceedings whatever in any Court of Law in respect thereof"

Under the Native Lands Ordinance No. XXI of 1880, the legal tenure of all native land was deemed to be customary as evidenced by usage and tradition. According to custom, all Fijian land had an owner whether they were occupied or not. The British understood that there were large tracts of land unoccupied prior to cession. However, before the extent of such lands could be determined it was necessary that foreign (mostly European) and Fijian land claims be first ascertained. Once this was done, all remaining land would automatically be Crown land. All along, it was the intention of the British under the Treaty¹⁰ that such lands be classified as Crown land.

¹⁰ Supra n.6, Clause 4.

A Native Land Commission was set up to investigate all Fijian claims to land and to determine who the rightful owners of these native lands were. The effect of this being that all remaining land after the settlement of foreign claims would be native land. The problem that arose was that under the Native Lands Act 1880, all remaining land after foreign claims had been settled would be native land; and not Crown Land, as was the intention of the Crown in inserting Clause 4 of the Treaty, for under customary land tenure, every portion of native land had a native owner.

The Native Lands Ordinance No. XXI of 1880 in effect varied the Treaty of Cession so that there would be no Crown land as originally intended under Clause 4. The variation of the terms of the Treaty was made by an enactment of the Colonial Legislature and not the exercise of the Crown Prerogative. This enactment gave legal effect to the recognition of indigenous Fijian rights over their customary lands that was initially spelled out in Clause 4 of the Deed of Cession, six years earlier. Comparatively, this is also the legal effect of the Treaty of Waitangi Act 1973 and the famous Mabo decision of 1992, which has not been put into Australia's Statute Books as yet.

A Commission of Inquiry into how native Fijian land became the absolute proprietorship of European and foreigners; and how these lands, (according to the Crown) was now alienated so as to become the bona fide property of Europeans and foreigners in (1) above; is an interesting topic that is a thesis in itself. The writer believes that this should be within the jurisdiction of a Claims Tribunal, similar to the Waitangi Claims Tribunal of New Zealand. The Tribunal should be given the powers to examine any claim by a mataqali (the land owning unit), a group of native Fijians¹¹, that they have been prejudiced by laws and regulations or by acts, omissions, policies, or practices of the Crown since 1874 that are inconsistent with the Treaty of Cession.

The variation of the terms of the Treaty of Cession by an enactment of the Colonial Legislature and not the exercise of the Crown Prerogative supports the doctrine of Parliamentary Sovereignty where Parliament can make or unmake any laws in its sovereign jurisdiction. However, amending Fijian Native Land Legislation which has the legal effect of removing the Crown as *ultimus haeres* and effectively vesting native land belonging to

¹¹ See Appendix B

extinct mataqalis in the NLTB, an institution created 60 years ago by the British Crown, is tantamount to colonisation by the colonised. In this case Fijians being colonised by a Fijian-dominated Government.

Therefore, the existence of Crown, Freehold land and lands belonging to extinct mataqalis, now vested in the NLTB in Fiji today, can still theoretically be challenged and legally be the subject of an appropriately appointed Commission of Inquiry, such as the suggested Fiji Land Claims Tribunal; provided appropriate legislation is passed by the Parliament of Fiji to authorise and legally set up such a Tribunal.

THE EXERCISE OF STATE SOVEREIGNTY IN THE REPUBLIC OF FIJI

The policy of the early British Colonial Administrators was to ensure as far as possible that the Fijians were governed in accordance with their ancient customs and traditions. In Fiji there is a sense of belonging and interconnectedness between the indigenous Fijian and the land (*vanua* or *whenua* in Maori). Within the Fijian language, the *i Taukei* (which is the name taken by the nationalist movement associated with the recent unrest) and *kai vanua* literally mean 'land people'¹² or *tangata whenua* in Maori.

The Fijian, as with many other indigenous groups, views the land with sacredness and spirituality. Philosophically and spiritually there is a deep-rooted belief in the stewardship of land. Scarr¹³ has stated that there is an inner connection between the land as actual turf and land as a religious symbol for the Fijian. The Native Lands Commission in its investigation of land titles under Wilkinson in the 1890s and again under Maxwell after 1910, determined as a result of its investigations, that both the membership of landowning groups and title to office were transmitted in the male line. The order of succession, with few exceptions, was found to be based on the principle of male primogeniture.

A report by Commissioner Maxwell in 1913 enumerates the main principles as follows:

A *yavusa* consists of the direct agnate descendants of a single *kalou-vu* or ancestor god, and every *yavusa* ... traces its origin in this way... Each 'god' appears to have been accompanied by sundry female relations and the traditions ... containing details as to the journeys of the 'god' ... before he finally settled ... took to wife a woman of some neighboring *yavusa*, and founded a family. If only one son was born, the *yavusa* of necessity did not expand: the first family of two or more brothers, whether sons or later descendants of the original founder, gave rise to the divisions known as *mataqali*, the descendants of each son founding a separate *mataqali*. In a similar manner the first family of sons in each *mataqali* founded the various *i tokatoka*.

The members of an original *yavusa* in its integrity were united by the tie of common blood and common worship, but in the inevitable wars and dissensions which took place subsequently complications arose by which *yavusa* became broken and scattered, and others became strengthened by the admission of other parties. There are cases in which a *mataqali* or even a

¹² Walter (1978)

¹³ Scarr, (1983)

small section of people, having either by choice or necessity, become separated from its original *yavusa* and discarded its own 'god' in favour of the 'god' of its adoption, has continued to live with that *yavusa* and has been allotted definite portions of land. In some cases the leader of the new arrivals, presuming when possessing extraordinary personal qualities, was accepted by the adopting *yavusa* as its chief and the position has been held by his family ever since.

... most of them claim to be able to trace their origin back to their original *kalou-vu*, and most of these pedigrees consist of about eight generations, ending in the senior living member. In the course of time, when the country became more closely populated, struggles for territory and other fighting took place, and while on the one hand many *yavusa* became broken and scattered, there arose on the other hand, confederations whereby several *yavusa*, or what remained of them, united together for mutual protection under a selected chief. Such a confederacy was known as a '*vanua*' ...¹⁴

In the absence of contrary evidence, it would be feasible to proceed from this to the conclusion that every Fijian must belong to some *i tokatoka* of some *mataqali* or some *yavusa*. Ability to name *yavusa*, *mataqali* and *i tokatoka* became an almost necessary condition for the admission of land claims. On this basis, the Commission recorded titles to all Fijian lands in terms of these social groups, the membership of which is now kept current by the Native Lands Commission in Suva, Fiji through birth and death registrations.

The framework developed for the control of Fijian Affairs and Fijian land closely followed the principle of Indirect Rule by the Colonial Government, through an indigenously-based leadership hierarchy that is the Great Council of Chiefs. The membership, functions, operations and procedures of the Council as established under Section 3 of the Fijian Affairs Act (Cap. 120 Vol. 7 Laws of Fiji, 1985 Edition) continues under Section 116 of the Constitution Amendment Act 1997 (Fiji).

Sections 185 and 186 of the Republic of Fiji Constitution Amendment Act 1997 deals with group rights and entrenches the rights of Fijians with regard to the alteration of certain Acts like the Fijian Affairs Act, Native Lands Act, Native Lands Trust Act and their customary laws and rights. These entrenched provisions were also a special feature of the 1970 Constitution of Fiji, when Fiji became an Independent State and the 1990 Constitution of the Republic of Fiji when Fiji relinquished its ties to the British Crown. Section 185(1)(k) of the Constitution states that:

¹⁴ Fiji Legislative Council Paper No. 27 of 1914, pp.1-2

A Bill that alters any of the following Acts ... is deemed not to have been passed by the Senate unless at its third reading in that House it is supported by the votes of at least 9 of the 14 members of the Senate appointed by the Council of Chiefs.

Fiji's most important resource is land. Indigenous Fijians and Rotumans¹⁵ make up 51% of the total population. They also comprise the majority landowning communities in Fiji, with native customary fishing rights¹⁶ to more than 83% of all land in the country, together with associated traditional fishing rights.

However, the control of all native land is vested in the NLTB, who shall administer such lands for the benefit of the Fijian owners. It is arguable that the Board is in effect an agency of government, which needs to create a market-like environment that promotes certainty and predictability for investment and economic growth predominantly for the national economy.

State (formerly Crown)¹⁷ land today consists of State Schedule A (the land of extinct native owners) and State Schedule B (land that had been unclaimed by the native Fijians at the time of Cession). Section 19¹⁸ of the Native Lands Act is a good example of how the Colonial Government used legislation and the Native Lands Commission to legalise the alienation of native land.

¹⁵ Rotuma is a volcanic island of approximately 43 sq. kilometres, located at 12 degrees south latitude and 177 degrees east longitude, approximately 465 kilometres north of Fiji. Although the island has been politically part of Fiji since 1881, Rotuman culture more closely resembles that of the Polynesian islands to the east, most noticeably Tonga, Samoa, Futuna and Uvea. Because of their Polynesian appearance and distinctive language, Rotumans now constitute a recognizable minority group within the Republic of Fiji.

¹⁶ Section 13(1) Fisheries Act Cap. 158 Laws of Fiji, Revised 1985 provides that:

Notwithstanding anything contained in the Rivers and Streams Act, it shall be an offence for any person to take fish on any reef or any kai (cockle) or other shellfish bed in any area in respect of which the rights of any mataqali or other division or sub-division of the Fijian people have been registered by the Native Fisheries Commission in the Register of Native Customary Fishing Rights ...

¹⁷ When Fiji was declared a Republic after the second coup in September 1987, effectively removing the Crown, the President of Fiji replaced the Queen of England as the Head of State.

¹⁸ Vacant Lands

Section 19(1) The Commission shall have power to mark out and define the boundaries of any lands which, on investigation by the Commission, may be found to have been unoccupied at the date of Cession of the Fiji Islands to the British Crown and to have remained unoccupied up to the time of the sittings of the Commission and to which no title has been created by the operation of any native custom which was in force before Cession. Such lands shall be declared by the Minister to be vacant lands under the control of the Crown and shall be dealt with in every respect as Crown lands.

Lands in Schedule A belonged to extinct 'native owners' meaning mataqali landowners who had become extinct, while unclaimed land in Schedule B belonged to 'native Fijians' as a description it is submitted, that was devised to suit the Crown's demonstration of sovereignty over the Fiji Islands. Legally, native land in Fiji can never be owned by 'native Fijians' as referred to in the Native Lands Act (Cap 133 Vol VIII, 1985 Edition) because of the fact that the term 'native Fijians' is not defined in the Native Lands Act or the Native Trust Act (Cap 134 Vol VIII, 1985) and because of the customary nature of Fijian land ownership that has been observed and determined by the Native Lands Commissioner.

Section 19¹⁹ of the Native Lands Trust Act also illustrates how the Crown legitimises its actions using the power of the NLTB, in respect of vacant native lands. Under the Native Lands Ordinance, any subsequent government of Fiji has had the power to determine vacant Fijian land and declare it as State land or land now belonging to the NLTB.

As recently as 2002, the Fijian dominated Qarase Government passed legislation amending the Native Lands Trust Act and substituting the Board (meaning the NLTB) for State (or Crown) in the provisions pertaining to State (or Crown) as *ultimus haeres* of lands belonging to extinct mataqalis. In fact, Qarase's Interim Government passed a Decree to that effect in 2000 which was retrospectively regularised in 2002.

Whereas lands of extinct mataqalis would 'fall to the Crown' as *ultimus haeres* in the principal Act, the new Section 19A of the amended Act has gone further by vesting lands belonging to extinct mataqali in the Board. In this respect the Board has usurped the position of the Yavusa, to which the extinct mataqali naturally belonged in Fijian customary law. The writer believes that the Yavusa is the legal successor and should be the legitimate ultimate *haeres* in the event of a mataqali becoming extinct.

The legal status of the **mataqali** was interpreted by Mr Justice Rooney²⁰ in the Supreme Court of Fiji as follows:

A **mataqali** cannot be equated with any institution known and recognised by common law or statute of general application. The composition, function and management of a **mataqali** and the regulations of the rights of members in

¹⁹ See Appendix C.

²⁰ *Timoci Bavadra v Native Lands Trust Board* (1986) Supreme Court of Fiji, Civil Action No. 421.

relation to each other and to persons and things outside it are governed by customary law separate from and independent of the general law administered in this court ... If the plaintiff wishes to pursue this case further he has to establish within the framework of common law that **tokatoka** or **mataqali** has a right to sue or be sued the Courts. It is as far as the applied law is concerned an alien institution, which is neither a corporation nor an unincorporated association.

Mr Justice Rooney also observed that modern development has transformed the **mataqali** into major landlords commanding revenues much greater than those contemplated by the Board and it is inevitable that disputes could arise with different interests as a result of these developments. Bavadra's case is authority for the proposition that mataqali landowners cannot sue the NLTB in the courts by a representative action taken by their leaders.

Other alternative remedies available to aggrieved members of mataqalis can be summarised as follows:

- (a) The landowners as beneficiaries can sue the NLTB as trustee for breach of fiduciary duty;
- (b) They can sue for loss of a right by breach of their statutory duty under section 4 of the Native Lands Trust Act, that the action taken by the NLTB has not been for the benefit of the landowners;
- (c) They could seek a judicial review of a decision made by a statutory body on grounds of procedure and natural justice. In this instance, the landowners would have the locus standi as the aggrieved party.

Although the responsibilities for the management of land resources is divided amongst several Government Ministries, section 4 of the Native Lands Trust Act vests the control of all native land in the NLTB. The vesting of control in the Board creates a trust relationship between the Board as trustees and the native owners.

Ownership of native land and user rights has been a constant source of anxiety and confusion among Fijian landowners. Mr Justice Kermode²¹ has removed all doubts and made it crystal clear to the Fijian people their legal position with respect to land. He explained their position thus:

“... legally, no individual Fijian can be said to ‘own’ native land in the sense that the word own usually conveys. Fijians in land owning units have customary rights to occupy and use native lands, but individually they are not ‘owners’ of such land.”

²¹ See *Namisio Dakai* (1984) Supreme Court of Fiji, Civil Action No. 801.

Mr Justice Kermode has stated that native land must be controlled and administered by the NLTB. He elaborates further in the same case that the:

“Fijian land system is one which in the modern commercial world requires a legal entity to control and manage the land. The English legal system, which we have adopted, was not designed to cope with a land system, which has no physical or corporate legal owner. Creating trustees by law and vesting control and administration of all native land in trustees, which as a Board is a body corporate with perpetual succession, is not only a practical and legal necessity but is eminently desirable in the best interests of the Fijian people and unborn generations of Fijians.”

With respect, I do not agree with his Honours observation. If the English system that the Fijians have adopted, has not worked for the benefit of the Fijians in the current Fijian Democratic Sovereign Republic of the 21st Century, then in my opinion it should be replaced and legislation re-drafted and designed for a system which would enhance the Fijians ability to develop their land for their benefit and for the benefit of the country as a whole.

Justice Kermode’s decision has certainly exposed the ‘colonial mentality’ that existed at the time in the Fijian Judiciary that upholds legislations that limits the ability of indigenous Fijians to develop their land, and; which they can do without in the 21st Century. It is suggested that the current Qarase-led SDL Coalition Government who campaigned on a Fijian nationalist platform and whose policies are pro-Fijian has the majority to pass legislation to give effect to this.

As outlined earlier, Section 3 of the Native Lands Act (Cap. 133, Volume VIII, 1985 Edition) states that native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition. It is argued that this section is confusing and frustrated by Section 19 of the Native Lands Trust Act (Cap. 133, Vol. VIII 1985 Edition),²² which describes the Crown (State) as *ultimus haeres* of extinct mataqalis.

The English sense of the term “*ultimus haeres*” means that the land of an extinct mataqali belongs to the Crown absolutely as the ultimate heir. The Roman sense means that the Crown takes the land of an extinct mataqali as ultimate trustee to discharge debts and distributes to beneficiaries. The words “*to be allotted to the qali of which it was a part*” in the section, supports this meaning.

²² See Appendix D

I submit that the English sense of the term does not apply to Fiji because the Crown did not grant the land to the mataqali, in the first place to have the reversion when the mataqali becomes extinct, as would be the case in England on the principle of *bona vacantia*. The issue has been further complicated by the Native Land Trust Act Decree No. 14 of 2000 which has inserted a new Section 19A. The section states that:

4. The principal Act is amended by inserting after section 19 the following new section-

"Allotment of extinct mataqali lands

19A. (1) An order by the Board under section 19(1) allotting or otherwise dealing with land vested in the Board under that section must be transmitted to the Native Lands Commission which must register the allotment or dealing in the Register of Native Lands.

(2) Until an allotment of or other dealing with vacant land is made under section 19(1), all income arising from the control and administration of the land, Less 15%, must be paid to the Central Fijian Treasury and used exclusively for the benefit of Fijians in a manner and for purposes approved by the Minister on the advice of the Great Council of Chiefs.

(3) In exercising its powers under this section or section 19(1) the Board must comply with any procedures prescribed in the Native Land (Native Reserves} Regulations."

This section is a perfect example of how the current Fijian dominated Government has continued to give more powers to the NLTB and the Native Lands Commission, two institutions set up by the Colonial Government; that has the potential effect of further alienating native lands from mataqali landowning units.

THE COLONIAL LEGACY

Fijians are a place-based people who have a profound spiritual, cultural, social and economic relationship to their total environment, which includes their lands, territories and resources. When Fiji was ceded to the British Crown in 1874,²³ the question of customary resource rights was of major concern to the High Chiefs, most of who wanted to attach conditions regarding their land and fishing grounds before agreeing to the cession of the country.

With the arrival of Ratu Sir Lala Sukuna²⁴ in the 1920s there was greater pressure to alleviate the Fijian plight. He was of the view that the guiding principle of Fijian Native Administration has been to develop the social, economic and political outlook of the governed through institutions well recognised and having roots in the people, in order to fit them, progressively and surely, to play an ever increasing part in the development of their country. There was a desire to protect Fijians and help them manage change and competition in politics and the cash economy. Fijians had moreover placed the trust of their land assets in British hands with the establishment of the Native Lands Trust Board in 1940.

The Native Land Trust Ordinance of 1940 established a new basis for the administration of native land. The main purpose was the creation of the Native Land Trust Board. The selling point for the creation of this colonial institution was that it was going to be an independent body outside the control of government. More significantly, it was going to administer all native land "for the benefit of Fijian Owners". It makes general policy relating to administration of Fijian land, approve new leases and renewal of leases, collect and distribute land rent on behalf of the native owners, improve the pattern of land subdivision and help improve landlord and tenant relations.

²³ Supra at n.6

²⁴ **Ratu Josefa Lalabalavu Vanaaliali Sukuna** was a soldier scholar and a statesman educated at Oxford, England. He was known as the 'Father of modern Fiji'.

The way he was revered by Fijians, he was 'Just a couple of rungs below God'.

K.C.M.G., K.B.E., Med. Mil., B.A. (Oxon), Barrister-at-Law of the Middle Temple,

Born 22/4/1888, died 30/5/1958

High Chief of *Yavusa* Kubuna and *Yavusa* Lakeba

Head of the *Veitarogivanua* or Native Lands Commission District and Provincial Commissioner

Chief Reserves Commissioner

Member of Legislative Council and the Council of Chiefs

1934-1944 *Talai ni Kovana* or Secretary for Fijian Affairs

By the time indentured labour was abolished in 1919 there were more than 60,000 Indians in Fiji.²⁵ The Indian community, which had been prevented from owning land, moved into small business holdings, trade and bureaucracy, or took out long-term leases on farms. As material progress advanced, however, and the interests of natives and non-natives began to clash, as the Government found it more and more difficult to replace chiefs of the old school and Fijian education lagged far behind economic progress; the Colonial Government turned to a separate Fijian Administration in 1944. On the reconstruction and review of the Fijian Administration, Sir Donald Cameron said:

The great principles to be followed throughout are those of building on the existing organisation and ideas of the people, of leaving it to the people themselves, assisted by sympathetic advice, to devise and develop their own institutions, and of resisting the temptation to play the part of 'King-maker' or constitution maker: many ideal states have been devised by theorists for mankind, but the only true political development proceeds from within by evolution.

Throughout, the British had been articulating a philosophy of the paramountcy of native interests and the Fijian Administration of 1944 gave substance to that principle. It consolidated Fijian attachment to the British Crown and Fijian sense of loyalty to their British rulers. The positive aspects of this are that it has secured Fijian land; it has kept political control in Fijian hands, sustained Fijian unity at important times and nurtured the chiefly system.

On the other hand, the Fijian Administration in practice, has become a state within a state and since independence in 1970, unease has surfaced on matters of sovereignty. Some observers see this administration as over cautious and as delaying wider Fijian economic involvement. The writer submits that by creating the Fijian Administration (1944) and the NLTB (1940) well before giving Fiji independence status on 10 October 1970, the British Government has failed to return the Fijian loyalty it had enjoyed since 1874.

²⁵ See Appendix E - The statistics showing the population trend in Fiji since the arrival of Europeans and Indians reveals that anxiety and the fears held by indigenous Fijians with respect to the immigrant community, in those early days were well founded. Within forty years, the Indian population grew from 588 in 1881 to 60,634 in 1921.

In its attempt at decolonisation, the Colonial Administration has not, to this day, returned the full sovereignty and dominion of Fijian land and its control to the heirs and successors of Cakobau and his ceding chiefs and who in theory are the representatives of the mataqali landowning units. Although the mataqali is legally recognised as landowners they do not participate in the decision-making on their land; which is controlled by the NLTB.

While Customary Law and Traditional Rights are recognised and entrenched in the Constitution of the Republic of Fiji²⁶ to protect Fijian rights to land, customs and tradition; the writer believes that this operates to the disadvantage of the very people it was designed to protect. While the responsibilities for the management of land resources are divided amongst several government ministries, the NLTB administers and controls all native land.²⁷ The vesting of control in the Board creates a trust relationship between the Board as trustees and the native owners as beneficiaries.

In *Guerin v. R. and National Indian Brotherhood*,²⁸ the Supreme Court of Canada held that the legal right to land of the Indians is derived from their historic occupation and possession which is a pre-existing legal right, and is not created by the Royal Proclamation of 1763; Section 18(1) of the Indian Act or any other legislation. Their legal right coupled with the discretion vested in the Crown to deal with surrendered land gives rise to a fiduciary obligation.

This fiduciary obligation is similar to a trust since the Crown holds the surrendered land for the benefit of the surrendering band and since damages for breach of fiduciary duty will be measured the same way. The fiduciary relationship also bears a resemblance to agency as the Crown negotiates for sale or lease of the land to third parties.

Land under customary land tenure is held communally in landholding units and in precession days were recognised as the Yavusa (*iwi*), Mataqali (*haapuu*) or Tokatoka (*whanau*). While the legal status of the mataqali and the rights of the basic proprietary unit has some times been a source of conflict between the NLTB and the native owners, the mataqali was

²⁶ See Sections 185 and 186 of the Constitution of the Republic of Fiji in Appendix C

²⁷ Section 4 Native Lands Act (Cap. 134)

²⁸ (1984) 6 W.W.R. 481

adopted as the landholding unit. "Native owners" is defined in Section 2 of the Native Lands Act to mean:

"the **mataqali** or other division or sub-division of the natives having the customary right to occupy and use any native lands"

It is submitted that the Deed of Cession created a fiduciary obligation on the British Crown who held Fijian land as an agent for the benefit of the mataqali land owning units and not for the benefit of indigenous Fijians in general. The Crown breached its duty however, when it returned the control and administration of native land to the Native Land Trust Board.

In 1876, a commission under Victor Williamson was set up to investigate all claims to title to these lands. Many claims were refused many more reduced. Even so, some 400,000 acres of Fijian land were registered in freehold title as Crown Grants. These freehold lands represented a substantial proportion of the good agricultural land in Fiji. This area has now expanded to 415,000 acres and the intention to seek compensation for this land 'taken' during colonial rule was raised in 1999 by the then leader²⁹ of the predominantly indigenous SVT (Soqosoqo ni Vakavulewa ni Taukei or Fijian United) opposition party, to the Chaudhry government.

The relationship between the members of indigenous mataqali landowning units and the NLTB has been the subject of numerous protests and litigation by the beneficiaries who quite rightly detest the apparent lack of transparency, competence and capacity in the dealings of the NLTB supposedly on their behalf, which leaves it open to corrupt practices. They do not have a voice nor do they participate in the decision-making processes made by the NLTB in the administration of their resource.

While the ordinary Fijian landowner may feel secure that he still 'owns' the bulk of land in Fiji, Mr Justice Kermode³⁰ has explained that their customary rights is limited to occupy and use native lands but are not owners of such lands. Fiji was a British Colony for 96 years until it became independent in 1970. Since sovereignty was handed back to the leaders of Fiji, there have been two attempts, at usurping the powers of the democratically elected government of Fiji because they were perceived not to have the interests of the indigenous Fijians, and were therefore a threat to Fijian control over their land.

²⁹ Kubuabola (1990)

³⁰ Supreme Court of Fiji, Civil Action No. 801 of 1984

In fact, the Fijians have never been legally in control of their land for over 50 years, since the Colonial Government set up the NLTB in 1940. During this time, the Indian Farmers who were brought in originally as indentured labourers have moved into the Fiji economy's rapidly growing segments of trade and services; which has ironically become a major source of the country's income over the last five decades, leaving the Fijian landowner a mere spectator.

Governor Sir Arthur Gordon sought economic self-sufficiency for the colony through plantation crops, such as cotton, copra and sugar cane, and productivity was boosted when Gordon began importing indentured labour from India. Hopeful Indians saw Fiji as an escape from poverty but plantation life was a predictable melange of human rights abuses, crime, suicide, rape and disease. Australians came to dominate the local economy through sugar production and gold mining, while Europeans manipulated the racial tensions between the Fijians and the Indians in an effort to maintain a stranglehold on economic and political power.

Traditional Fijian society was therefore 'god-made' for the 'god-sent' British colonial system. The Fijian State motto of 'Fear God and honour the King' which still stands today; is a living example of colonialism which is rooted in the Fijian society and Fijian institutions like the NLTB, Fijian Affairs Board and the Great Council of Chiefs, in the 21st Century. After nearly 60 years some re-thinking is necessary, as with all institutions confronted with new imperatives including globalisation and rapid change. The Fijian Administration needs to be thoroughly reviewed in light of its past weaknesses and failure to deliver to the indigenous Fijians and to the country as a whole, in the beginning of this new century.

INDIGENOUS FIJIAN RIGHTS AND CONCEPTS

'The earliest form of Fijian society of which there are hints in tradition were those of independent agnatic family groups. They were tillers of the soil. Ties of cognate blood attracted intermarrying groups to the same locality; but each unit had its own village, its own defined and recognised arable land, and the group was ruled by the senior male whose powers might be compared to the *patria potestas* of the Romans in its earlier stages'.³¹

'Indigenous' is described in the Concise Oxford dictionary as born or (especially of flora and fauna) produced naturally in a region; belonging naturally. Paragraph 26.1 of Agenda 21 of the 1992 UN Conference on Environment and Development in Rio de Janeiro, Brazil; noted that 'indigenous peoples and their communities have a historical relationship with their lands and are generally descendants of the original inhabitants of those lands'.

Dr. Erica-Irene Daes³² the chairperson rapporteur of the Working Group on Indigenous Populations, with the assistance of Indigenous legal experts, members of the academic family and modern international organizations and legal experts, established four relevant factors that inform the concept of "Indigenous peoples":

- (a) Priority in time, with respect to the occupation and use of a specific territory;
- (b) The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;
- (c) Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
- (d) An experience of subjugation, marginalization, dispossession, exclusion or discrimination, or whether or not these conditions persist

Making up the majority of the Fiji population³³ in recent years, it is submitted that the definition of indigenous peoples above, apply to Fijians who were the first inhabitants of Fiji.

Battiste and Henderson³⁴ argue firstly that the problem in understanding Indigenous knowledge from a Euro centric point of view is that Indigenous knowledge does not fit into the Euro centric concept of culture. Secondly, it is not a uniform concept across all indigenous peoples. It is a diverse knowledge that is spread throughout different peoples in

³¹ Sukuna, 1932, p. 116.

³² Battiste and Henderson, 2000, p.64.

³³ Supra at n.39.

³⁴ *ibid.*

many layers. They further argue that those who are the possessors of this knowledge often cannot categorise it in Euro centric thought, partly because the processes of categorisation are not part of Indigenous thought. The third problem is that Indigenous knowledge is so much a part of the clan, band, or community or even the individual, that it cannot be separated from the bearer to be codified into a definition.

Those who have the knowledge use it routinely, perhaps every day, and because of this, it becomes something that is a part of them and unidentifiable except in a personal context. This practical, personal, and contextual aspect of Indigenous knowledge makes it a sensitive subject of study and discussing it out of context may be viewed as intrusive or insensitive.

The current land tenure patterns and policies were based on the views of Gordon, the first substantive Governor of Fiji. He set up a framework, establishing the Lands Claims Commission, under which the validity of European claims were determined and the protection of native forms of tenure systems were recognized. Among other issues the *mataqali*³⁵ was accepted as the main land-owning unit in Fijian Society.

In Fiji 83% of the land is owned in trust by indigenous Fijians. The residue is state land and freehold. As a result the Fijians (indigenous Fijians) remain a proud race and have retained strong spiritual and family connections with the land.³⁶ The NLTB administers³⁷ Fijian land and has the authority to lease indigenous land that is not required for occupation by members of the *mataqali*.³⁸

The NLTB derives its existence from the Native Land Trust Act³⁹ of 1940. By 1880 it was realised that all land recognised to be owned by Fijians would have to be recorded and registered and also that there would have to be an authority to settle boundaries and

³⁵ Supra n.5.

³⁶ Boydell and Reddy, (2000).

³⁷ Section 4(1) NLA states:

The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the Fijian owners.

³⁸ Section 9 NLA states:

No native land shall be dealt with by way of lease or licence under the provisions of this Act unless the Board is satisfied that the land proposed to be made subject to such lease or licence is not being beneficially occupied, by the Fijian owners for their use, maintenance or support

³⁹ See Laws of Fiji Cap. 133 (Ed. 1978).

ownership disputes. A Native Land Commission was established in 1880 to enquire and investigate claims to land by the indigenous landowner.

At the same time a leasehold system was created where land could be used on a 21-year lease. Negotiations were carried out directly between the Fijian landowner and the prospective tenant. Apart from a brief period between 1905 and 1909 outright sales of native land have continued to be forbidden.

Initially problems developed between the European planters and the Fijian landowners, since the Europeans considered 21 year leases were too short to justify the investment required to develop plantations in virgin land. Apart from copra all other plantations required much permanent improvement to land first. The two main complaints were:

- That the 1880 Ordinance did not require payment of compensation for improvements on the land, at the end of the lease when the land reverted to the land owners and that those wishing to lease land had to indulge in frustrating negotiations with many members of a mataqali to obtain their consent.
- At this time the government was involved only in the registration of leases negotiated between the tenant and the landowner and not in negotiating the actual terms.

However as the plantations system declined and Europeans left agriculture, the land problem became one peculiar to Indians.⁴⁰ Their need was different: they wanted small family farms.

At this stage the land problem can be summarized as follows:

1. Obtaining lease was cumbersome and expensive for the prospective lessee.
2. The Indians were naturally choosing only the best land for their leases thus bringing about the haphazard piecemeal pattern of land use.
3. So in 1916 a Native Lease Ordinance was passed which handed over all land available for leasing to the Government, which would lease the land on the owner's behalf, and leases were now to be for a period of 21 years with a possible extension of 10 years.

The Ordinance failed to solve the difficulties as Indians still had to negotiate directly with the Fijian owners for Leases of better quality agricultural land. During this period the land problems of Fiji became more acute due to important developments in the country such as:

1. Abolishment of the indenture system that led to large numbers of Indians becoming free settlers in Fiji which led to a sudden pressure for more farming land.
2. Active encouragement by government and the Colonial Sugar Refining Company to Indians to settle in Fiji and become agriculturists, especially cane farmers.
3. Rapid growth of both Indian and Fijian population.

⁴⁰ Indians were brought to Fiji by the British Government as indentured labourers to work on sugarcane farms. At the end of their term, they were given the option to return to India or remain in Fiji.

The Fijian owners also had their grievances:

1. Under the 1916 legislation they were required to pay compensation to the lessee for improvements to the land in the event of non-renewal of a lease which would be very costly;
2. Some Fijians were becoming anxious to enter commercial agriculture for themselves; and,
3. They were anxious to safeguard the availability of the land for themselves and their descendants.⁴¹

There were many debates in the 1930's about the land issue, in the Legislative Council, in the Great Council of Chiefs meeting, in Fijian villages and Indian settlements, and; in Government circles. The government held discussions with leading chiefs with the view to devising a better system of landlord and tenant relations. The leading figure in these discussions was the late Ratu Sir Lala Sukuna.⁴² In 1936, the Great Council of Chiefs resolved that it was in the best interest of the native race that all lands not required for the maintenance of Fijian owners be opened for national development.

The Native Land Trust Ordinance of 1940 established a new basis for the administration of native land. The main purpose was the creation of the Native Land Trust Board. The selling point for the creation of this colonial institution was that it was going to be an independent body outside the control of government. More significantly, it was going to administer all native land "for the benefit of Fijian Owners". It makes general policy relating to administration of Fijian land, approve new leases and renewal of leases, collect and distribute land rent on behalf of the native owners, improve the pattern of land subdivision and help improve landlord and tenant relations.

A large part of its work in leasing land involves the assessment, fixing, collection and distribution of rents on Native Land. In simple terms, the NLTB is the landlord in official dealings over all native land.

It has been claimed that the present Fijian Land Tenure system whereby the *mataqali* is recognised as the landholding unit, was really an English idea, introduced by the Colonial Administration (Ron Crocombe, 1971). However, according to Mr Justice Rooney's definition⁴³ above in the High Court of Fiji, the concept of *mataqali* is indigenous

⁴¹ Supra at n.39.

⁴² Supra at n.37.

⁴³ See discussion on page 20.

knowledge, which is different from the internal view of the ethnographic tradition in Euro centric thought.⁴⁴

His Honour further said in Bavadra's case that if the plaintiff Mr Bavadra wishes to pursue his case further, he has to establish within the framework of common law that the *mataqali* (or *tokatoka*) has a right to sue or be sued in the Courts. He further dismisses the *mataqali* as an alien institution, which is neither a corporation nor an unincorporated association. In my humble view, his honours comments exemplifies the Euro centric views of Judges and the failure of the common law to comprehend indigenous concepts such as the *mataqali*.

What then was the Fijian's idea, the content of his notion, of the ownership of land? The reference to Mataqali in the definition of 'native owners' in Section 2 of the Native Lands Act is limited and the English language in this instance has not conveyed the true meaning of what land actually means to a Fijian landowning *mataqali*.⁴⁵ Sukuna contends that land to the Fijian was in the first place absolute in the unit, something like the right of chattel ownership in the individual at English Common Law.

Secondly, he agrees with Rev. Lorimer Fisson⁴⁶ who states that 'though the Taukei (the Fijian equivalent of *tangata whenua*) may be driven from their lands by a stronger tribe, they do not acknowledge the most crushing defeat as an extinction of their title. In fact they consider their title to be inextinguishable as long as they themselves are not extinguished. It may be held in abeyance, but it cannot be destroyed'.

Thus with the Fijian the right of ownership over land was absolute and indestructible. This extreme, unpractical, and partially accepted view was preserved for them by Victor Wilkinson, the first Native Lands Commissioner set up in 1876 to investigate all claims to title, in his tribal joint tenancies.

The tribal wars of the last two centuries gave birth to the rise of powerful states and High Chiefs. This factor together with the introduction of new values consequent on the advent of

⁴⁴ Battiste, M and Henderson, J (Sa'ke'i) Y; *Protecting Indigenous Knowledge and Heritage - A Global Challenge*, Purich Publishing Ltd, Saskatoon, Saskatchewan, Canada, (2000), p.35.

⁴⁵ The Fiji position is equivalent to the decision in *Mabo v Queensland No. 2* (1992) 175 CLR 1 (HCA). His honours decision appears to have been persuaded by the decisions in *Milirrpum v Nabalco Pty. Ltd. And The Commonwealth of Australia* (1971) 17 FLR 141 and *Delgamuukw v The Queen* (1997) 3 SCR 1010.

⁴⁶ Fison (1880).

the European moved Fiji rapidly on towards the Feudal system, a development that was only arrested by the Cession when as yet far from maturity. Tenure therefore in the sense of English Real Property law, was unknown at custom.

In pre-European contact times the *yavusa* or *vanua* land-holding unit usually held tenure over adjacent mangroves, lagoons and reefs, together with exclusive ownership of sea floor, water, marine life and rights of passage. This is unlike land, the rights to which are held by the *mataqali*.⁴⁷

Sea territories were defended to the death against outsiders operating without permission. In pre-European contact times boundaries were in a state of flux owing to conquest and changing alliances, population pressures, marriage and adoption. As elsewhere in Melanesia, fishing rights areas (*qoliqoli*) are an integral part of a tribal land-sea 'estate' (*vanua*) that extends from central watershed seawards, generally to the outer margin of the seaward slope of the fringing reef.⁴⁸ Fishing rights areas extended from the high-water mark to the outer reef. The adjacent right-holding group did not always traditionally own areas beyond the reef. These fishing rights areas are worked communally.

According to Ravuvu,⁴⁹ traditional practices and beliefs still form a very important part of the Fijian ethos even though they are not applied as widely today. Whilst there has been little documented about traditional resource management systems, this by no means indicates that these practices and beliefs do not still feature in modern society. It has also been suggested by Pulea that an appreciation and legislative endorsement of the traditional Fijian approach to resource management be incorporated into future strategies to protect the environment.⁵⁰

It is arguable that while the solution to most environmental problems requires community participation, the levels and extent of this participation varies with the problem in question, which in turn, is influenced by both national concerns and international obligations. The

⁴⁷ Ravuvu, A., *Vaka i Taukei, the Fijian Way of Life* (1983) University of the South Pacific, 70.; Fonmanu, 1991.

⁴⁸ The comprehensive term *vanua* essentially describes the totality of a Fijian community. Depending on the context it is used to refer both to a social unit and to the territory it occupies, thereby expressing the inseparability of land and people, as well as to the supernatural world and worldview (Ravuvu 1983, 1987).

⁴⁹ Ravuvu, A., *supra* n. 52

⁵⁰ Pulea, M. The Law, Custom and Development, *Report of the Workshop on Customary Tenure, Traditional Resource Management and Nature Conservation*. South Pacific Regional Environment Programme, Noumea, 28 March - 1 April 1988, 41.

development of rules of international law concerning protection of the environment is of little significance unless accompanied by effective means for ensuring enforcement, compliance, and the settlement of disputes.⁵¹

The concepts of "mana" and "vanua" in traditional Fijian society were central to ensuring that the environment be sustained for future generations. Mana was a spiritual power derived from the gods and was possessed by all things, animate and inanimate. It was a belief that a violation of mana would lead to drastic consequences. The abuse or exploitation of a fishing ground for example could result in loss of abundance, illness, or misfortune to the offender.

Vanua is seen as a living entity encompassing physical and spiritual dimensions. Literally translated as land, vanua is the Fijian version of existence, which is traceable throughout the Pacific. Physically, vanua represents the ecosystem including the coastal waters. Spiritually, vanua links a Fijian's past and future to the natural surroundings. The practice of planting a tree above a newborn baby's umbilical cord is symbolic of this affinity, and provides a physical and social identity to the individual.

Thus, the traditional Fijian is one with the vanua. As well as its guardian and protector, the Fijian treats the vanua as an extension of himself, and to defend his rights and interests in it is second to nature.

⁵¹ Birnie & Boyle (2001), p.137.

GOVERNANCE , SOVEREIGNTY AND NEW DIRECTIONS IN FIJIAN RIGHTS

Despite the setting of clear human rights standards at the international and state levels, there continues to be widespread prohibition of, and/or denial of respect for, Indigenous Peoples' esoteric traditional knowledge and cultural rights, and the language that are intrinsic to their cultures.⁵² State and global governance urgently needs reform that enhances the life chances and choices of Indigenous Peoples, through creating a balance of power enabling them to participate in governance processes and to define outcomes as individuals and as peoples.⁵³

Legally, Fijian rights to land, their customs and institutions have always been safely protected, by the entrenched provisions in the 1970, 1990 and 1997⁵⁴ Constitutions of Fiji. Apart from the opinions of several judges, there has never been any Act of Parliament since the Deed of Cession in 1874, that purported to extinguish any Fijian customary right to their land or sea resources.

The 1970 constitution provided for a 52 member House of Representatives with 22 seats each for the indigenous Fijian and Indo-Fijian communities and 8 for General Electors. Electors were given a vote in both Communal and National seats. The Senate comprised 7 nominees of the Prime Minister, 6 nominees of the Leader of the Opposition, 1 nominee of the island of Rotuma and 8 nominees of the Great Council of Chiefs. Constitutional changes required a two-thirds vote of both Houses.

Contemporary and Conceptual Claims have hit the headlines of Fiji's media in recent years. These claims have been for the continuing use of native lands that were originally taken for public and national needs and purposes, but have never been returned once they were no longer needed for the original purpose it was taken for.

One such example is the International Airport at Namaka, Nadi; which was originally acquired during the Second World War in the 1940s by the United States Army as a strategic

⁵² Havemann (2002), p. 9

⁵³ *ibid*

⁵⁴ *Supra* at n. 31

Air Force Base. After the war, the land was never returned to the indigenous landowners, nor was an agreement negotiated for the continued use of the said land. Today, Nadi Airport is the South West Pacific Regional Flight Co-ordination Centre; servicing international carriers for re-fuelling, catering, engineering, maintenance and repair purposes. Nadi Airport charges for landing fees and aeroplanes that flies over Fiji's air space. The landowners do not participate in the operation of this million-dollar business and have never been compensated for the use of their land.

At Ratu Kadavulevu School⁵⁵ in Lodonu, Tailevu North; the Colonial Government exercised its powers under Section 3 of the Crown Acquisition of Lands Act⁵⁶. The section states that:

Subject to the provisions of the Constitution and the other provisions of this Act, an acquiring authority may acquire any lands required for any public purpose **for an estate in fee simple** or for a term of years as he may think proper, paying such consideration or compensation as may be agreed upon or determined under the provisions of this Act.

(authors emphasis)

The appropriate compensation for the said land has still not been paid to the indigenous mataqali owners of the southern portion of the school. The owners have no recourse, as there is no tribunal to hear their case, but often recall the morning when, a number of bulldozers came to their village while they were still asleep; and physically uprooted their houses and the occupants from their village, which is now the site of the school.

In the early 1970's, the government under Ratu Sir Kamisese Mara,⁵⁷ acquired land at Monasavu, in the highlands of Fiji, to build a hydroelectric plant to generate cheap power for Fiji. The mataqali landowners have not received any compensation whatsoever, for the use of their land that is producing power, which is consumed nationally, and is generating income for the government-owned Fiji Electricity Authority. To add insult to injury, the landowners still use firewood, kerosene and benzene for cooking and other domestic needs, and do not have access to electric power, which is generated on their land.

⁵⁵ An exclusive boarding school for Fijian boys located on the east side of the main island of Viti Levu, 40 miles from Suva the capital

⁵⁶ Cap. 135 Vol.VIII, Fiji Law Reports (1985 Edition)

⁵⁷ Ratu Mara was groomed by the late Ratu Sukuna to be a leader of Fijian people. He was trained at Oxford and spent most of his working career as a Civil Servant and Administrator. He became Chief Minister of Fiji from 1967 until Fiji became Independent in 1970, and then became Prime Minister until 1987 when he lost the General Elections.

Education and interaction with people from various cultures, has changed the Fijians worldview. In addition, the enlightened Fijian is now more aware of the enormous untapped potential that can be developed for economic return and which is readily available to him or her through his land and natural resources; if only the NLTB or Government could facilitate their endeavours.

More importantly, investors, banks, international donor agencies, foreign governments, Indian tenants, and the ordinary Fijian resource owner have seen and proven that the governance structure of native Fijian land under the trusteeship of the NLTB is not transparent and is therefore open to corrupt practices.

This is because the trustee who is supposed to look after their interests as beneficiaries is not accountable to them but to their Board of Trustees, consisting of members appointed (not elected) by the Council of Chiefs and the Government. Moreover, indigenous mataqali landowners do not participate in any of the decision-making regarding the area to be leased, the amount of rent to be paid, the frequency of re-assessment of rent or the choice of tenant who should be given the lease on their land. This has been the responsibility of Estate Officers of the NLTB.

It is generally assumed that members of the Council of Chiefs represent Fijians on the Board of NLTB. This assumption is a fallacy because representatives of mataqali landowning units as such do not have a forum to discuss their problems or where they can exchange ideas on how best to attract investors for joint-venture development on their land. They do not have a common voice like a Council of Mataqalis (similar to the Council of Chiefs). While they own most of the land in Fiji, the governance structure of the NLTB excludes them completely. The Council of Chiefs and the NLTB with the acquiescence of successive Fijian Governments have assumed the power to make such decisions for the Mataqali Landowners, that was initially legally authorised by an act of the Colonial Government.

Given that the Native Lands Trust Act was enacted by the Colonial Government; a Claims Tribunal is an avenue whereby mataqalis of Fiji can inquire into legislations, policies and practices of the Crown that have prejudicially affected them. In the alternative, a process of direct negotiation between the mataqali and the Government should be set up to address this issue.

Havemann⁵⁸ quite rightly queries the roles that the colonial legal and political institutions and processes imposed upon indigenous peoples play in a continuing process of colonial domination in settler colonies. In Fiji, these institutions and laws in particular, include the NLTB and the Council of Chiefs (who have since 1874, elevated themselves to the 'Great' Council of Chiefs), the Native Lands Act, Native Land Trust Act; and the Agricultural Landlord & Tenant Act (ALTA).⁵⁹

Brookfield⁶⁰ has left open the possibility that wrongs done before the British Crown formally assumes power over a territory may be the subject of a Commission of Inquiry. Referring to the New Zealand position, he says that the Waitangi Tribunal inquiries into wrongs relate specifically to the Treaty of Waitangi entered into in 1840; but they may be classed generally with wrongs done whenever one people seizes power over the territory of another. It is arguable that, the Claims Tribunal may examine allegations of wrongs done to indigenous Fijians by early settlers and traders who arrived in Fiji well before the signing of Cession in 1874.

I suggest that the Claims Tribunal may employ the equitable jurisdiction of the Court of Chancery in England who first developed a judicial function in the thirteenth century. The methods employed by the courts were far more informal than those of the common law courts. They were not bound by strict rules of procedure, evidence or precedent, and could give effect to justice on the basis of the merits of the case. The lack of rules enabled the Chancellor to apply "good conscience" to a case, and there was always a remedy available. It is suggested that the Court of Chancery ("conscience") which was perceived as providing inexpensive and speedy justice for those oppressed where relief was not available under the English Common Law system, is ideally suited to rectify the untenable position of indigenous Fijians.

In looking at Historical Claims, the Claims Tribunal would naturally have to start from the terms of the Deed of Cession,⁶¹ which was signed at Levuka by the Crown, and the Chiefs who ceded Fiji in 1874, to see if there was a breach of the spirit of the Deed. Once set up by an act of parliament, the proposed Claims Tribunal should be known as the Levuka Claims

⁵⁸ Havemann, P.; (1999), pp. 2

⁵⁹ (1976) Laws of Fiji Cap. 270 (1978 edition included in 1985 edition)

⁶⁰ Brookfield, F.M.; Waitangi and Indigenous Rights - Revolution, Law & Legitimation, at p.11.

⁶¹ Supra at n.6

Tribunal so it can include claims to other sea and natural resources that the indigenous Fijians have a customary right over.

However, whalers, runaway convicts and traders in sandalwood (which was used for perfumes) and bech de mer (a chinese delicacy); frequented Fiji long before Cession. The London Missionary Society Missionaries were in Fiji by 1930 and some French Catholic priests had arrived before them. It is interesting to note that some of the most fertile and commercially valuable property in Fiji today belongs to the Methodist, Catholic and Anglican Churches.

The Constitution of Fiji has provisions that the government can use to establish the Levuka Claims Tribunal. I refer in particular to paragraphs (h), (i), (j) and (k) of Section 2, which states that:

- h) in the formation of a government, and in that government's conduct of the affairs of the nation **through the promotion of legislation or the implementation** of administrative policies, full account is taken of the interests of all communities;
- (i) to the extent that the interests of different communities are seen to conflict, all the interested parties negotiate in good faith in an endeavour to reach agreement;
- (j) in those negotiations, the paramountcy of Fijian interests as a protective principle continues to apply, so as **to ensure that the interests of the Fijian community** are not subordinated to the interests of other communities;
- (k) affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, are based on an allocation of resources broadly acceptable to all communities;

(authors emphasis)

Chapter 2 of the Constitution which sets out the principles of a Compact also says that the application of the principles are non-justiciable, except to the extent that they are made subject of other provisions of this Constitution or of a law made under the Constitution.

The present government led by Qarase has approached development, including the development of indigenous Fijians in a rather novel way. It has introduced a Blueprint for Affirmative Action for Indigenous Fijians.⁶² It has become apparent that this Blueprint Document and the idea of a Land Claims Tribunal has appeared from the ashes of Speight's failed Coup attempt and appears to address the very issues that Speight and his group claimed were the reasons behind their storming of the Fiji Parliament on 19 May, 2000.

⁶² See Appendix F.

This Blueprint document has proposed a Land Claims Tribunal⁶³ for Fiji. As discussed earlier, a Claims Tribunal that covers customary Fijian rights over their natural resources other than land may be more appropriate.

In introducing the Blueprint Document⁶⁴ to the Council of Chiefs,⁶⁵ as Interim Prime Minister on 13 July, 2000; Mr Qarase stated that the proposals set out in the document are provided for in the Constitution of Fiji⁶⁶ and cover issues which have been of great concern to Fijians regarding the security of their rights and interests as the indigenous communities in Fiji, and also the advancement and acceleration of their development, so that they can participate on an equitable basis in the progress of their country.

It is suggested that to be effective, the Qarase Government's Blueprint document should be specifically targeted at each mataqali landowning unit instead of a general clause that attempts to cover Fijians as a whole and thus open to corrupt individuals and politicians to hide behind the concept as being for the benefit of "Fijians". More importantly, it should be subjected to the "good governance" test as set down by the UN Human Rights Commission (Resolution 2000/64). This requires the conduct of public affairs by public institutions for the

⁶³ Part (V) Land Claims Tribunal to settle Land Claims:

The establishment of a Land Claims Tribunal to deal with land compensation claims for land acquired for public purposes, e.g. Monasavu Hydro site, Suva City Domain Residential site, etc. This is the best way to deal with long-standing historical land claims, away from the political arena, and in a tribunal that will comprise eminent people well qualified to consider these claims on their merit. (The legislation is also to establish a special fund to give effect to settlements decided by the Tribunal).

⁶⁴ Supra at n. 32.

⁶⁵ Chapter 8 of the Constitution of Fiji 1997 deals with the BOSE LEVU VAKATURAGA (GREAT COUNCIL OF CHIEFS)

116. - (1) The Bose Levu Vakaturaga established under the Fijian Affairs Act continues in existence and its membership, functions, operations and procedures are as prescribed from time to time by or under that Act.

(2) The Bose Levu Vakaturaga has, in addition to the functions set out in the Fijian Affairs Act, the functions conferred on it under this Constitution.

⁶⁶ Section 6 of the Constitution of Fiji Amendment Act 1997 states that the people of the Fiji Islands recognise that within the framework of this Constitution and other laws of the State, the conduct of government is based on the following principles....

(k) "Affirmative action and social justice programs to ensure effective equality access to opportunities, amenities or services to the Fijian and Rotuman people, as well as for other communities, for women as well as men and for other disadvantaged groups, are based on an allocation of resources broadly acceptable to all communities".

management of public resources and the guarantee of corrupt-free, Rule of Law-based delivery of civil, cultural, economic, political and social rights.

The key question is whether the institutions of governance in Fiji are effectively guaranteeing the right health, adequate housing, sufficient food, quality of education, fair justice and personal security⁶⁷ of the indigenous Fijian people? The writer is sceptical and doubts whether the Blueprint document will benefit Fijians in general, save a selected few.

⁶⁷ Kofi Annan, *We the Peoples: The role of the United Nations in the 21st Century* (New York: United Nations, 2000) 13.

CONCLUSION

While the Deed of Cession Treaty can be regarded as the possession by the whole nation of Fiji of an instrument of mutuality that has endured since 1874, to the Fijian people it is a charter that should protect their rights. Central to my legal critique is the criticism that the NLTB did not and has not worked as a Trustee should, i.e. *uberrimae fidei* - in the context of a fiduciary relationship. I have attempted to show that the introduction of this concept into indigenous state jurisprudence around treaties, is applicable to the functions of the NLTB and how it operates in Fiji.

Aside from an economy's human, natural and capital resources, among the most basic requirements for sustained economic growth is an institutional structure, a property rights regime that reduces the uncertainty that hinders investment. The writer submits that to the NLTB's role of controlling and managing land, should be added the responsibility of building skilled human capital and capacity at the **mataqali** level. There should be set up a separate Council of Mataqali to formulate policies and discuss issues and problems with regard to mataqali land, sea and natural resources for the benefit of mataqali members.

The governance structures of colonial institutions like the Native Lands Act, Native Lands Trust Act and its recent amendments, Native Lands Trust Board and the Great Council of Chiefs have restricted the ability of the mataqali landowning units, who are in effect the indigenous native landowners of Fiji, to realise the potential that is in their land resources for themselves and their children.

It is my opinion, that a legally competent mataqali organisation should take over some of the roles of the NLTB when Fijians eventually learn how to unlock the colonial chains that they are tied to. It is absolutely imperative that Fijians re-examine the Deed of Cession Treaty and its text to interpret their past in the light of new scholarship concerning such treaties. That will spell out British obligations to Fijians and whether these were fulfilled.

It was a consequence of the British reading of the Deed of Cession for example that non-Fijians became permanent settlers in Fiji. The Deed of Cession in Fiji needs to be accorded a similar status to the Treaty of Waitangi in New Zealand and other similar treaty/contractual agreements.

To conclude, the Fijian Government must have the political will, to put through the Parliament of Fiji, legislation establishing a Treaty of Cession Act. The purpose of this Act is to set up the above-mentioned Levuka Claims Tribunal and provide for the observation and confirmation of the principles of the Deed of Cession Treaty of 1874, and to determine certain claims against government policies and actions which are inconsistent with those principles.

Indigenous Fijians should be at liberty to take their grievances to a tribunal with an equitable jurisdiction if they can show that they have been prejudiced by laws and regulations or by acts, omissions, policies, or practices of the Crown and Governments since 1874; that are inconsistent with the Deed of Cession Treaty.

BIBLIOGRAPHY

Anghie, A; Finding the Peripheries: Sovereignty and Colonialism in Nineteenth- Century International Law, Volume 40, Number 1, Winter 1999.

Battiste, M and Henderson, J (Sa'ke'j) Y; Protecting Indigenous Knowledge and Heritage - A Global Challenge, Purich Publishing Ltd., Saskatoon, Saskatchewan, Canada, 2000.

Boydell, S. and Reddy, W; *Contemporary Land Tenure Issues in the Republic of Fiji*, paper presented at 6th Pacific Rim Real Estate Society (PRRES) Conference, Sydney, 23-27 January, 2000.

Brookfield, F.M., Waitangi and Indigenous Rights - Revolution, Law & Legitimation, Auckland University Press, Auckland, 1999.

Constitution of the Sovereign Democratic Republic of Fiji, Government Printer, Suva, Fiji 1997.

Drurie, E., "Protection of Minorities", (1987) NZLJ 260.

Frame, A; 'Property and the Treaty of Waitangi: A Tragedy of the Commodities?', in Property and the Constitution, ed. Janet McLean, Hart Publishing, Oxford, 1999.

Havemann, P., Indigenous Peoples' Rights in Australia, Canada & New Zealand, Oxford University Press, Auckland, New Zealand, 1999.

Havemann, P; '*The Participation Deficit: Globalisation, Governance and Indigenous Peoples*', Balayi: Culture, Law and Colonialism, 28/2/2002.

Held, D and McGrew, A. *The Global Transformations Reader* (2000)

Kelsey, J., A Question of Honour? Labour and the Treaty 1984-1989, Allen & Unwin, Wellington, 1990.

Marsh, A.; *Laws, Guns and Palm Trees - Teaching law for non-lawyers in pre and post-coup Fiji*, paper presented at Australian Law Teachers Association (ALTA) in Canberra ACT, (2000)

McHugh, P.G., *The Fragmentation of Maori Land*, Legal Research Foundation, Publication No. 18, 1980.

McHugh, P.G., Maori Land Laws of New Zealand, University of Saskatchewan, Native Law Centre, 1983.

McHugh, P.G., "The legal basis for Maori Claims against the Crown" (1988) Vol. 18 VUWLR 1-20.

McHugh, P.G., The Maori Magna Carta - New Zealand Law and the Treaty of Waitangi, Oxford University Press, 1991.

Native Lands Act, Laws of Fiji, Cap.133, Ed. 1978.

Native Lands Trust Act, Laws of Fiji, Cap 134, Ed. 1978.

Native Land (leases and Licences) Regulations, Laws of Fiji, Cap 134, Ed. 1978.

Norton, R; 'All Power to the Fijians'. Islands Business Pacific, January/February 1993: pp. 19-23. Norton, op. cit., pp. 140-148.

Robertson, R and Tamanisau, R; Fiji: Shattered Coups. Sydney, 1988.

Scarr, D., *Fiji: the Three-legged Stool. Selected Writings of Ratu Sir Lala Sukuna*: Macmillan Education, ed. (1983) .

Tagupa, W.E.H., "The Unanticipated republic of Fiji: Deed of Cession as the Constitutional Basis of Legitimacy", in Sovereignty & Indigenous Rights - The Treaty of Waitangi in International Contexts, ed. By William Renwick, Victoria University Press, 1991, p. 135-146.

Walter, M.A.H.B.; 'The conflict of the traditional and the traditionalised: an analysis of Fijian Land Tenure', in *Journal of Polynesian Society* 87 (2), (1978), pp. 89-108.

Ward, R.G.; 'Land, Law and Custom: Diverging realities in Fiji' in *Land, Custom and Practice in the South Pacific*, edited by Ward, R.G. and Kingdon, E, Cambridge, Cambridge University Press, (1995).

APPENDIX A

Fiji Islands - Legislation

THE DEED OF CESSION OF FIJI TO GREAT BRITAIN

10TH OCTOBER, 1874

Note. - One original of the Deed of Cession was retained in Fiji, and until the late thirties of the present century was in the archives of the Colonial Government. It began to show signs of wear, however; and photostat facsimiles - from one of which the following text is taken - were made for local use, the original being placed in safe keeping. The two interlineations, referred to in the Interpreter's certificate, initialled by him in the margin, and indicated below by asterisks, were as follows: (1) in Sir Hercules Robinson's title, the adjective *honorable*, used for the Order of Saint Michael and Saint George, was altered to *distinguished*; (2) the article *the* was transposed from a position before *bona fide* to that given in the text. The only other alterations were the correction of certain individual letters, and the deletion of the phrase *and the laws*, which had been duplicated in copying.

Instrument of Cession of the Islands of Fiji by Thakombau, styled Tui Viti and Vuni Valu, and by the other high Chiefs of the said islands to Her Most gracious Majesty Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c &c &c:

Whereas divers of the subjects of Her Majesty the Queen of Great Britain and Ireland have from time to time settled in the Fijian group of islands and have acquired property or certain pecuniary interests therein; **And Whereas** the Fijian Chief Thakombau styled Tui Viti and Vuni Valu and the other high native chiefs of the said islands are desirous [sic] of securing the promotion of civilization and Christianity and of increasing trade and industry within the said islands; **And Whereas** it is obviously desirable, in the interests as well of the native as of the white population, that order and good government should be established therein; **And Whereas** the said Tui Viti and other high chiefs have conjointly and severally requested Her Majesty the Queen of Great Britain and Ireland aforesaid to undertake the government of the said islands henceforth; **And Whereas** in order to the establishment of British government within the said islands the said Tui Viti and other the several high

chiefs thereof for themselves and their respective tribes have agreed to cede the possession of and the dominion and sovereignty over the whole of the said islands and over the inhabitants thereof and have requested Her said Majesty to accept such cession,- which cession the said Tui Viti and other high chiefs, relying upon the justice and generosity of Her said Majesty, have determined to tender unconditionally,- and which cession on the part of the said Tui Viti and other high chiefs is witnessed by their execution of these presents and by the formal surrender of the said territory to Her said Majesty; **And** **Whereas** His Excellency Sir Hercules George Robert Robinson, Knight Commander of the most distinguished* order of Saint Michael and Saint George, Governor Commander in Chief and Vice Admiral of The British Colony of New South Wales and its dependencies, and Governor of Norfolk Island, hath been authorised and deputed by Her said Majesty to accept on Her behalf the said Cession:

Now These Presents Witness,

1. That the possession of and full sovereignty and dominion over the whole of the group of islands in the South Pacific Ocean known as the Fijis (and lying between the parallels of latitude of fifteen degrees South and twenty two degrees South of the Equator and between the Meridians of longitude of one hundred and seventy seven degrees West and one hundred and seventy five degrees East of the meridian of Greenwich) and over the inhabitants thereof, together with the possession of and sovereignty over the waters adjacent thereto and of and over all ports harbours havens roadsteads rivers estuaries and other waters and all reefs and foreshores within or adjacent thereto, are hereby ceded to and accepted on behalf of Her said Majesty the Queen of Great Britain and Ireland her heirs and successors, to the intent that from this time forth the said islands and the waters reefs and other places as aforesaid lying within or adjacent thereto may be annexed to and be a possession and dependency of the British Crown.

2. That the form or constitution of government, the means of the maintenance thereof, and the laws* and regulations to be administered within the said islands shall be such as Her Majesty shall prescribe and determine.

3. That, pending the making by Her Majesty as aforesaid of some more permanent provision for the government of the said islands His Excellency Sir Hercules George Robert Robinson, in pursuance of the powers in him vested and with the consent and at the request of the said Tui Viti and other high Chiefs the ceding parties hereto, shall establish such temporary or provisional government as to him may seem meet.

4. That the absolute proprietorship of all lands not shown to be now alienated so as to have become bona fide the* property of Europeans or other foreigners or not now in the actual use or occupation of some Chief or tribe or not actually required for the probable future support and maintenance of some chief or tribe shall be and is hereby declared to be vested in Her said Majesty her heirs and successors.

5. That Her Majesty shall have power, whenever it shall be deemed necessary for public purposes, to take any lands upon payment to the proprietor of a reasonable sum by way of compensation for the deprivation thereof.

6. That all now existing public buildings houses and offices, all enclosures and other pieces or parcels of land now set apart or being used for public purposes, and all stores fittings and other articles now being used in connection with such purposes are hereby assigned transferred and made over to Her said Majesty.

7. That on behalf of Her Majesty His Excellency Sir Hercules George Robert Robinson promises (1.) that the rights and interests of the said Tui Viti and other high chiefs the ceding parties hereto shall be recognised so far as is and shall be consistent with British Sovereignty and Colonial form of government, (2.) that all questions of financial liabilities and engagements shall be carefully scrutinized and dealt with upon principles of justice and sound public policy, (3.) that all claims to title to land by whomsoever preferred and all claims to pensions or allowances whether on the part of the said Tui Viti and other high chiefs or of persons now holding office under them or any of them shall in due course be fully investigated and equitably adjusted.

In Witness whereof, the whole of the contents of this instrument of Cession having been, previously to the execution of the same, interpreted and explained to the ceding parties hereto by David Wilkinson Esquire, the

interpreter nominated by the said Tui Viti and the other high chiefs and accepted as such interpreter by the said Sir Hercules George Robert Robinson, the respective parties hereto have hereunto set their hands and seals.

Done at Levuka this tenth day of October, in the year of Our Lord one thousand eight hundred and seventy four.

| | | | |
|-------------------|--------|----------------------------------|--------|
| Hercules Robinson | (Seal) | Cakobau R. Tui Viti and Vunivalu | (Seal) |
| | | Maafu | (Seal) |
| | | Tui Cakau | (Seal) |
| | | Ratu Epeli | (Seal) |
| | | Vakawalitabua Tui Bua | (Seal) |
| | | Savenaca | (Seal) |
| | | Esekele | (Seal) |
| | | B. V. Tui Dreketi | (Seal) |
| | | Ritova | (Seal) |
| | | Kato-nivere | (Seal) |
| | | Ratu Kini | (Seal) |
| | | Matanitobua | (Seal) |
| | | Nacagilevu | (Seal) |

I hereby certify that, prior to the execution of the above Instrument of Cession - which execution I do hereby attest - I fully and faithfully interpreted and explained to the ceding parties the whole of the contents of the said document, the interlineations appearing on line 33 of page 1 and on line 30 of page 2 having been first made, and that such contents were fully understood and assented to by the said ceding parties. Prior to the execution of the said instrument of Cession I wrote out an interpretation of the same in the Fijian language, which interpretation I read to the Tui Viti and other high chiefs the ceding parties, who one and all approved thereof. A copy of such interpretation is hereto annexed marked A. Dated this tenth day of October, A.D. 1874.

D. WILKINSON

Chief Interpreter

The interpreter named in the foregoing instrument of
Cession

APPENDIX B

Fiji Islands - Legislation

**NATIVE LAND TRUST (AMENDMENT) ACT
NO 12 OF 2002**

I assent.
J. I. ULUIVUDA
President
[1 May, 2002]

**AN ACT
TO ALTER THE NATIVE LAND TRUST ACT**

[30 November 2000]

ENACTED by the Parliament of the Fiji Islands-

Short title, etc.

- 1.- (1) This Act may be cited as the Native Land Trust (Amendment) Act 2002 and is deemed to have commenced on 30 November 2000.
- (2) In this Act the Native Land Trust Act (Cap. 134) is referred to as the "principal Act".
- (3) Any Act done in respect of matters set out in Sections 6 to 9 of this Act between 30th November 2000 and the publication of this Act in the Gazette is validated and deemed to have been done under the principal Act or other written law.
- (4) At the date of publication of this Act in the Gazette, any unallotted extinct land (including any improvements on such land) occupied by the State for which no lease or other instrument or agreement has been issued remains to be vested and controlled by the State until such lease or other instrument or agreement has been issued by the Board.

Interpretation

2. Section 2 of the principal Act is amended by repealing the definition of "native land" and substituting-

"'native land' has the same meaning given in section 2 of the Native Lands Act:"

Control of native land vested in the Board

3. Section 4 of the principal Act is amended in subsection (1) by adding "or for the benefit of the native Fijians".

State ultimus haeres of extinct mataqali

4. Section 19 of the principal Act is amended-

- (a) in subsection (1)-
 - (i) by deleting "fall to the Crown as *ultimus haeres*" and substituting "vest in the Board";
 - (ii) by deleting "by the Crown" and substituting "by the Board";
- (b) in subsection (2) by deleting "fall to the Crown" and substituting "vest in the Board";
- (c) in subsection (6) by deleting "Crown land" and substituting "native land";
- (d) by deleting the section heading and substituting-"Extinct mataqali lands to vest in the Board ".

New section 19A

5. The principal Act is amended by inserting after section 19 the following new section-

"Allotment of extinct mataqali lands

19A. (1) A copy of the order by the Board under section 19(1) allotting or otherwise dealing with land vested in the Board under that section must be sent by the Board to the Native Land Commission which must register the allotment or dealing in the Register of Native Lands kept by the Commission.

(2) Until an allotment of or other dealing with extinct *mataqali* land is made under section 19(1), all income arising from leases and other dealings with unallotted extinct *mataqali* land (less not more than 15% for administration costs of the Native Land Trust Board) must be paid to the Fijian Affairs Board and used exclusively for the benefit of the native Fijians in a manner and for purposes approved by the Minister on the advice of the Great Council of Chiefs.

(3) In exercising its powers under this section or section 19(1), the Board must comply with any procedures prescribed in the Native Land (Native Reserves) Regulations."

Transfer of leases

6.- (1) Where a lease of any land was granted to any person by the Director of Lands under section 19(1) of the principal Act before the commencement of this Act-

(a) the Director of Lands is replaced by the Board as lessor for all purposes; and

(b) the income from the lease must be dealt with in accordance with section 19A(2) of this Act,

but otherwise the terms and conditions of the lease remain as before.

(2) All leases, deeds and instruments issued by the Director of Lands in respect of any land allotted or otherwise dealt with under section 19(1) of the principal Act before the commencement of this Act and current at the commencement of this Act shall, until their expiry or earlier termination in accordance with their terms and conditions, be deemed to have been issued by the Board and governed by the principal Act.

Transfer of contracts etc.

7. -(1) All contracts, agreements, conveyances, deeds, leases, licences and other instruments or undertakings which-

(a) were entered into by or made with and addressed to the Director of Lands (whether alone or with any other person);

(b) were in force at the commencement of this Act; and

(c) relate to land allotted or dealt with under section 19(1) of the principal Act before the commencement of this Act,

are binding and enforceable by or against the Board after the commencement of this Act.

(2) All documents or instruments brought into existence for the purpose of evidencing recording, or effecting the matters referred to in subsection (1) relating to the transfer of such property from the Director of Lands to the Board or the vesting of any such property in the Board are exempt from stamp duty under the Stamp Duties Act and that Act does not-

(a) apply to any agreement or instrument brought into existence for the purpose of recording, evidencing or effecting any transfer of such property from the Director of Lands to the Board or the vesting of any such property in the Board;

(b) operate to impose or attract any duty, fine, penalty or assessment required or necessary to give effect to the purpose of this Act.

(3) Nothing in the State Acquisition of Lands Act, Forests Act, Land Sales Act, Land Transfer Act or any other written law invalidates or affects any mortgage, transfer, bill of sale or security given or made to the Director of Lands to which the Board is entitled to under this Act.

Land titles

8. (1) The Registrar of Titles must, upon application and lodgement for registration made by the Board, make necessary entry on a certificate of title, mortgage, lease or other instrument or document under his or her custody or control as a result of the vesting in the Board of lands owned by extinct *mataqali*, under section 19 of the principal Act as amended by this Act, and the Board must notify the holder of the certificate of title, mortgage, lease, instrument or document to produce it to the Registrar of Titles for that purpose.

(2). The Registrar of Titles must, upon application and lodgement for registration made by the Board, make any other memorial or entry in any public record that is necessary or expedient to record the vesting of such land in the Board under the principal Act as amended by this Act.

Actions etc., not to abate

9. (1) At the commencement of this Act, any action, arbitration or proceeding pending by, against, or in favour of the Director of Lands, does not abate and is not discontinued or in any way prejudicially affected by this Act but may be prosecuted, continued and enforced by, against or in favour of the Director of Lands or the State as the case may be.

(2) For the avoidance of doubt, neither the Board nor the native owners are liable in any way whatsoever in respect of any cause of action which may accrue or has accrued {whether or not legal proceedings have begun) before the commencement of this Act in respect of extinct *mataqali* lands vested in the Board by virtue of this Act.

Passed by the House of Representatives this 12th day of April, 2002.

Passed by the Senate this 26th day of April, 2002.

Appendix C

Vacant lands

19.-(1) The Commission shall have power to mark out and define the boundaries of any lands which, on investigation by the Commission, may be found to have been unoccupied at the date of cession of the Fiji Islands to the British Crown and to have remained unoccupied up to the time of the sittings of the Commission and to which no title has been created by the operation of any native custom which was in force before cession. Such lands shall be declared by the Minister to be vacant lands under the control of the Crown and shall be dealt with in every respect as Crown lands:

Provided always that all income arising there from less ten per cent shall be paid to the Native Deposit Account and shall be used exclusively for the benefit of the native Fijians of Fiji in such manner and for such purposes as may be approved by the Minister on the advice of the Council of Chiefs.

(2) An order of the Minister declaring lands to be vacant lands under subsection (1) shall, on presentation to the Registrar of Titles, be filed by him, and the land shall be deemed to be Crown land for all purposes

(Amended by Order 7th October, 1970.)

(3) The provisions contained in subsections (1) and (2) shall apply to all lands which have hitherto been found by the Commission to be lands vacant at the date of cession.

(4) A certificate under the hand of the chairman of the Commission that the land therein specified was vacant at the date of cession and has since remained vacant shall be conclusive evidence of these facts.

(11 of 1930, s. 4.)

Appendix D

Crown ultimus haeres of extinct mataqali

19.-(1) If any mataqali shall cease to exist by the extinction of its members its land shall fall to the Crown as *ultimus haeres* to be allotted to the qali of which it was a part or other division of the people which may apply for the same or to be retained by the Crown or dealt with otherwise upon such terms as the Board may deem expedient.

(2) A report to the Board under the hand of the Chairman of the Native Lands Commission appointed under the Native Lands Act or of the Commissioner that a mataqali has ceased to exist by the extinction of its members and describing the lands which in consequence of such extinction fall to the Crown under subsection (1) shall be evidence that the mataqali is extinct.

(Cap. 133.)

(3) At any time after a report referred to in subsection (2) has been received the Board shall direct a notice in the form prescribed to be published in the Gazette and in a newspaper published in the Fijian language and circulating in Fiji, and a copy of such notice shall be sent as soon as possible by the Board through the Commissioner to the roko tui of the province in which any part of the land is situated.

(Amended by Act 1 of 1978, ss. 2 and 3.)

(4) If any person desires to show that the mataqali has not ceased to exist by reason of the extinction of its members, he may, within three months of the date of publication of the notice in the Gazette and in a newspaper published in the Fijian language and circulating in Fiji, give notice of objection in writing to the Board setting out particulars of any members of the mataqali alleged to be still surviving. Upon receipt of such notice of objection the Board shall cause such investigation to be made as it may consider necessary.

(Amended by Act 1 of 1978, s. 2.)

(5) If the Board after such investigation is of the opinion that the objection to declaring the mataqali extinct is not well founded, the Board shall cause the Commissioner to send notice by post to the person who has given notice of objection in writing and also to the roko tui of the province in which any part of the land is situated informing them that the objection is disallowed.

(Amended by Act 1 of 1978, s. 3.)

(6) If no notice of objection as provided for in subsection (4) is received by the Board, or if such objection having been duly made is disallowed, the Board may make an order in the form prescribed and such order shall on presentation to the Registrar of Titles be filed by him and the land shall be deemed to be Crown land for all purposes.

Appendix E

Census of Population 1881 -1996 | Population by Sex and Age 1996 | Key Demographic Indicators
Gross Domestic Product of Fiji: Current Prices | Gross Domestic Product of Fiji: Constant Prices
Balance of Payments: Gross Flows (\$F Million) | Balance of Trade | Consumer Price Index
Paid Employment: Wage and Salary Earners | Numbers in Wage Employment
Visitor Arrivals: Number by Country of Residence | Visitors: Average Length of Stay

CENSUS OF POPULATION

1881 -1996

| | | CENSUS DATES | | | | | | | | | | | |
|---------------|--------|---------------|---------------|----------------|---------------|----------------|----------------|---------------|----------------|----------------|----------------|----------------|----------------|
| Ethnic Group | Sex | 1881 4-Apr | 1891 5-Apr | 1901 31-Mar | 1911 2-Apr | 1921 24-Apr | 1936 26-Apr | 1946 2-Oct | 1956 26-Sep | 1966 12-Sep | 1976 13-Sep | 1986 31-Aug | 1996 25-Aug |
| Total | Total | 127,486 | 121,180 | 120,124 | 139,541 | 157,266 | 198,379 | 259,638 | 345,737 | 476,727 | 588,068 | 715,375 | 775,077 |
| | Male | 70,401 | 66,367 | 66,874 | 80,008 | 88,464 | 107,194 | 136,731 | 178,475 | 242,747 | 296,950 | 362,568 | 393,931 |
| | Female | 57,085 | 54,813 | 53,250 | 59,533 | 68,802 | 91,185 | 122,907 | 167,262 | 233,980 | 291,118 | 352,807 | 381,146 |
| Chinese | Total | + | + | + | 305 | 910 | 1,751 | 2,874 | 4,155 | 5,149 | 4,652 | 4,784 | 4,939 |
| | Male | + | + | + | 276 | 845 | 1,476 | 2,105 | 2,624 | 2,910 | 2,503 | 2,546 | 2,573 |
| | Female | + | + | + | 29 | 65 | 275 | 769 | 1,531 | 2,239 | 2,149 | 2,238 | 2,366 |
| European | Total | 2,671 | 2,036 | 2,459 | 3,707 | 3,878 | 4,028 | 4,594 | 6,402 | 6,590 | 4,929 | 4,196 | 3,103 |
| | Male | 1,879 | 1,273 | 1,531 | 2,403 | 2,297 | 2,263 | 2,467 | 3,374 | 3,427 | 2,605 | 2,240 | 1,713 |
| | Female | 792 | 763 | 928 | 1,304 | 1,581 | 1,765 | 2,127 | 3,028 | 3,163 | 2,324 | 1,956 | 1,390 |
| Fijian | Total | 114,748 | 105,800 | 94,397 | 87,096 | 84,475 | 97,651 | 118,070 | 148,134 | 202,176 | 259,932 | 329,305 | 393,575 |
| | Male | 60,899 | 56,445 | 50,357 | 46,110 | 44,022 | 49,869 | 59,862 | 74,989 | 102,479 | 131,413 | 167,256 | 199,895 |
| | Female | 53,849 | 49,355 | 44,040 | 40,986 | 40,453 | 47,782 | 58,208 | 73,145 | 99,697 | 128,519 | 162,049 | 193,680 |
| Indian | Total | 588 | 7,468 | 17,105 | 40,286 | 60,634 | 85,002 | 120,414 | 169,403 | 240,960 | 292,896 | 348,704 | 338,818 |
| | Male | 388 | 4,998 | 11,353 | 26,073 | 37,015 | 48,246 | 64,988 | 88,359 | 122,632 | 147,194 | 175,829 | 171,796 |
| | Female | 200 | 2,470 | 5,752 | 14,213 | 23,619 | 36,756 | 55,426 | 81,044 | 118,328 | 145,702 | 172,875 | 167,022 |
| Part European | Total | 771 | 1,076 | 1,516 | 2,401 | 2,781 | 4,574 | 6,142 | 7,810 | 9,687 | 10,276 | 10,297 | 11,685 |
| | Male | 387 | 529 | 759 | 1,217 | 1,454 | 2,325 | 3,195 | 4,008 | 4,951 | 5,358 | 5,396 | 6,052 |
| | Female | 384 | 547 | 757 | 1,184 | 1,327 | 2,249 | 2,947 | 3,802 | 4,736 | 4,918 | 4,901 | 5,633 |
| Rotuman | Total | 2,452 | 2,219 | 2,230 | 2,176 | 2,235 | 2,816 | 3,313 | 4,422 | 5,797 | 7,291 | 8,652 | 9,727 |
| | Male | 1,126 | 1,056 | 1,036 | 1,043 | 1,129 | 1,413 | 1,696 | 2,232 | 2,939 | 3,666 | 4,387 | 5,008 |
| | Female | 1,326 | 1,163 | 1,194 | 1,133 | 1,106 | 1,403 | 1,617 | 2,190 | 2,858 | 3,625 | 4,265 | 4,719 |
| Total | | 6,100 | 2,267 | 1,950 | 2,758 | 1,564 | 2,353 | 3,717 | 5,320 | 6,095 | 6,822 | 8,627 | 10,463 |

| | | | | | | | | | | | | | |
|--------------------|-------|-----|------|------|-----|-----|-----|-------|-------|-------|-------|-------|-------|
| | Femal | 471 | 344 | 366 | 329 | 293 | 883 | 1,572 | 2,481 | 2,888 | 3,348 | 4,128 | 5,049 |
| | | | | | | | | | | | | | |
| All Others | Total | 156 | 314 | 467 | 812 | 789 | 204 | 514 | 91 | 273 | 1,270 | 810 | 2,767 |
| | Male | 93 | 143 | 254 | 457 | 431 | 132 | 273 | 50 | 202 | 737 | 415 | 1,480 |
| | Femal | 63 | 171 | 213 | 355 | 358 | 72 | 241 | 41 | 71 | 533 | 395 | 1,287 |
| | | | | | | | | | | | | | |
| Growth Rate | | - | -0.5 | -0.1 | 1.5 | 1.2 | 1.6 | 2.7 | 2.9 | 3.3 | 2.1 | 2.0 | 0.8 |

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Appendix F

BLUEPRINT FOR THE PROTECTION OF FIJIAN & ROTUMAN RIGHTS AND INTERESTS, AND THE ADVANCEMENT OF THEIR DEVELOPMENT

{Presentation to the Great Council of Chiefs by the Interim Prime Minister, Mr Laisenia Qarase, 13 July, 2000}

Introduction The proposals set out below cover issues which have been of great concern to Fijians and Rotumans regarding the security of their rights and interests as the indigenous communities in Fiji, and also the advancement and acceleration of their development, so that they can participate on an equitable basis in the progress of our country.

The purpose of the Blueprint is to bring together all the proposals to address these concerns. It will be noted that follow-up action to be taken comprises the enactment of necessary legislation, the issuance of appropriate Government directives and the provision of budgetary allocations. The Blueprint will, of course, require preparation in detail with full background and supporting information. It will also be necessary for individual Government Ministries to submit papers to Cabinet on specific measures to be taken. Much of the measures proposed in the Blueprint can be implemented in the next two years. However, it is also proposed that a TEN-YEAR plan for Fijian and Rotuman development be prepared.

This will incorporate the measures set out in the attached summary Blueprint together with the development proposals in other areas. Education, for example, is a very important area where we need to pay greater attention in order to improve the performance of Fijian and Rotuman children. A good and successful education is the most effective pathway to a successful future for each individual. The ten-year plan can also set out the broad vision for all indigenous Fijian and Rotuman and for our country as a whole. The plan can thus play an important role in our current endeavour to bring greater unity to Fijians and Rotumans.

For it is in our unity that we can best protect our future. The specific proposals summarised below, together with others, will be part of this ten year plan. It is proposed that a meeting representative of all Fijian and Rotuman interests is to be convened by Government early in the year 2001 to discuss and to map out what should be in this ten year plan. This is to ensure that it is a plan for Fijians by Fijians for their future.

Background

Indigenous Fijians and Rotumans make up more than 51% of the total population of the Fiji Islands, and their numbers, according to the 1996 Census, are continuing to grow at 1.8% per annum compared to the national population growth rate of 0.8%. They also comprise the majority landowning communities in Fiji, with customary proprietary rights to more than 83% of all land in the country, together with associated traditional fishing rights, or qoliqoli. Given the above, anything that affects them must affect the nation. Ensuring the paramountcy of their interests and their equitable participation in all aspects of life in Fiji is thus a pre-condition for the achievement of long term peace, stability and sustainable development in the country. What is needed is an enabling environment to facilitate the achievement of these objectives. This is what this Blueprint seeks to provide. It is to enable indigenous Fijians and Rotumans to fully exercise their rights of self-determination within the unitary State of the Republic of the Fiji Islands. It is to safeguard the paramountcy of their interests in our multi-ethnic and multi-cultural society. And it is to improve and enhance opportunities, amenities and services for Fijians and Rotumans in their development and participation.

1. Legislative Action {by Decree}

{i} New Constitution Preparation of a new Constitution to be promulgated on 24 July, 2001 {Constitution Day} to give effect to the collective desire of Fijians that the national leadership positions of Head of State and Head of Government should always be held by them. The new Constitution is also to address other issues of importance to Fijians and Rotumans in line with the Terms of Reference, as approved by the Great Council of Chiefs. The point is stressed that it will be a new Constitution.

{ii} Schedule A & B Lands The transfer of administration of State Schedule A and B lands by Government to the Native Land Trust Board, as requested by the GCC and the NLTB.

{iii} Agricultural Leases on Native Land Moved to NLTA The removal of native land from the ambit of ALTA and placing it under the NLTA, as requested by the GCC and the NLTB. {Appropriate amendments to be considered for NLTA to protect the interests of tenants. First step is further discussions with NLTB.}

{iv} Ownership Rights to Customary Qoliqoli The conferment of ownership rights, similar to customary ownership of land, on all traditional qoliqoli, as requested by the GCC and the NLTB. {This will take some time as survey and demarcation of boundaries by the Native Lands and Fisheries Commission need to be completed. Appropriate safeguards will be included in the legislation on the right of public access and the protection of the interests of investors.}

{v} Lands Claims Tribunal to Settle Land Claims The establishment of a Land Claims Tribunal to deal with land

compensation claims for land acquired for public purposes, e.g. Monasavu, Suva {Domain}, etc. This is the best way to deal with long-standing historical land claims, away from the political arena, and in a tribunal which will comprise eminent people well qualified to consider these claims on their merit. {The legislation is also to establish a special fund to give effect to settlements decided by the Tribunal.}

{vi} Strengthening of the Great Council of Chiefs Review of the Fijian Affairs Act and the Great Council of Chiefs Regulations to determine the need for separate stand-alone Legislation for the GCC, given its enhanced authority under the Constitution.

{vii} Fijian and Rotuman Development Trust Fund The establishment of a Fijian {including Rotumans} Development Trust Fund {similar to the Banaban Trust Fund and the Tuvalu Trust Fund}. This is a capital endowment to be invested to earn interest income to support Fijian {and Rotuman} development. Specifically, it is to be used for the following purposes:

{1} to fund the Fijian Foundation - to undertake and sponsor programmes, including research, etc. on Fijian language, culture, and ethno-geography and ethno-history studies, etc. {this is to accompany the introduction of these as a compulsory subject in all schools};

{2} leadership and other training programmes at Nadave; and

{3} any other purposes approved by the GCC {including the financing of its own operation, so that it is financially independent of the elected political government of the day}.

{viii} Compulsory National Savings Scheme The establishment of a national savings scheme for Fijians and Rotumans. A paper on this is to be presented to the GCC for its approval. The Fund is to finance increased Fijian and Rotuman equity and other forms of participation in business, and also investment in education. The concept has been discussed before and agreed to in principle in both the FAB and GCC.

{ix} Law on Affirmative Action Enabling legislation on affirmative action for Fijians and Rotumans to accompany the relevant provisions of the new Constitution.

{x} Royalty for Underground Water Review the law on mining, so that there is also royalty payment for commercial use of artesian or underground water. This is also to ensure that landowners receive a fair share of the royalties, as in the regime for mining of minerals. Other interests of landowners, i.e. environmental protection, to be also taken into account in the review.

{xi} Tax Exemption for Fijian Companies Enabling legislation, i.e. amendment to the Company Tax Act, for exemption of Fijian-owned companies from company tax for a specified

period. This is to assist with cash flow in the formative stage of Fijian company operations. This scheme would be consistent with the grant by Government of tax concessions to companies {e.g. 13 year company tax holiday} in the tourism, mining and garment industry sectors in order to stimulate increased investment and employment creation. Fijian-owned companies or joint venture companies with Fijian controlling interest have not really benefited from the grant of these concessions.

{xii} Review of Legislation to Improve Service A review needs to be undertaken of both the Native Land Trust Act and the Native Lands Act to ensure that their provisions are conducive to the effective delivery of services to Fijians and others by the NLTB and the Native Lands and Fisheries Commission. 2. Policy Direction {by Cabinet together with Budget provision, where needed}

{i} Fijian Administration Revamping the Fijian Administration under the Fijian Affairs Act, so that in its operation, it is fully autonomous of the Central Government. This will include a review of the legislative framework for the Great Council of Chiefs, reflecting its enhanced constitutional and other responsibilities.

{ii} Government to Fund Fijian Administration Government subvention to fund the entire operation of the Fijian Administration {i.e. the GCC, FAB and Provincial Councils}. Meanwhile, there is to be no cuts in Budget allocations to the Ministry of Fijian Affairs in the Mini-Budget from August to December, 2000. It will be up to each Province to decide whether to continue or discontinue the collection of provincial levy or rates. However, since the full running costs of the Fijian Administration are to be covered by the Government grant, fundraising by the Provinces either by way of a provincial levy or by other means is to enable the Provinces to apply more funds to community development projects, the improvement of schools and education, and increased investment in business ventures through their provincial-owned companies.

{iii} Government to Restart Financial Assistance to NLTB Government annual grant support to the NLTB to assist it -

{1} in further reducing its poundage levy on lease rent, thus increasing nett rent income to the landowners;

{2} in its development activities to assist landowners in the commercial development of their land; and

{3} in the restitution of rent income foregone during the grace period {12 months} for expiring ALTA leases.

{iv} Government to Pay Arrears in Rent Budget provision for \$1.5 million to cover the payment to the NLTB of arrears in rent for leases on State Schedule A land. These are arrears in rent since 1994 which Government has not paid to the NLTB.

{v} Government to Help Establish the FDTB Government to provide a grant to endow the proposed Fijian Development Trust Fund {FDTB}.

{vi} Fijian Education Fund Government to provide a Fijian Education Fund to cover scholarships {currently \$4.7 million}, supplementary assistance {additional to the Ministry of Education's} to Fijian schools, and research into Fijian education issues.

{vii} Government Assistance to FHL Government to convert the \$20 million interest-free loans to the Fijians Affairs Board {shares in Fijian Holdings Limited} to a Government grant on the following conditions:

* Transfer \$1 million "B" shares held by FAB in Fijian Holdings Limited to each of the 14 Provinces {for their provincial companies}.

* Balance of \$6 million to remain with FAB {as equity in FHL}.

{viii} Government Assistance to YHL Government to provide an interest-free loan to FAB for purchase of shares in Yasana Holdings {YHL}. YHL to acquire shares in other companies similar to the operation of FHL.

{ix} Government Shares for Fijians Reserve 50% of Government shares in companies for Fijians as they become available for sale to the public. {This is through competitive bids. Preference is to be given to provincial-owned companies. Joint ventures with majority control by Fijians are also to be allowed as this will have the added benefit of attracting business experience and expertise into the venture, as well as promoting inter-racial and inter-community co-operation.

{x} Licences for Fijians Reserve 50% of major licences for Fijians {e.g. import licences, taxi permits, etc.}.

{xi} Government Contracts for Fijians Reserve 50% of Government contracts for Fijians {as in {ix} above}.

{xii} FDB Loan Scheme Continuation of the FDB Loan Scheme for Fijians and Rotumans but to exclude other communities who are to be covered by a separate scheme at the FDB.

{xiii} Assistance in Purchase of Shares Establish a Small Business Equity Scheme at the FDB with annual allocation of \$5 million from Government {for all citizens}.

{xiv} Small Business Agency Establish a National Small Business Agency under the umbrella of the Fiji National Training Council to provide training, advisory services, business information, etc {for all citizens}. This will be the central agency, co-ordinating with other schemes that are providing similar assistance.

{xv} Dealings on Mahogany on Hold Any dealings on "Mahogany" to await the report of GCC Committee on this industry. The report could also have implications on other industries like the pine industry.

{xvi} Discontinue Land Use Commission Discontinue the Land Use Commission as proposed by the last Government. Government is to be involved in land development programmes under the Ministry of Agriculture, Fisheries and Forests and the Land Development Authority, as well as land development for the resettlement of evicted tenants, and for low cost housing through the Housing Authority, and the resettlement of squatters. Government is also to assist the commercial development of native land through the NLTB.

{xvii} Assistance with Buy Back of Freehold Land Re-instate Government Budget provision of \$500,000 to assist Fijians through interest-free loans in buying back ancestral land alienated as freehold land. These are freehold land available on sale by their owners.

{xviii} Assistance for Provincial Business Participation Government to re-instate the annual allocation of \$1.5 million to Provincial Councils, via the FAB, for their participation in business. This allocation will henceforth be a grant and not an interest-free loan.

{xix} Assistance to Landowners Taking Up Cane Farming Establishment assistance to be given {through FDB and FSC} to Fijian landowners, taking up cane farming on their reverted land.

{xx} Mining Royalties Percentage of mining royalties to be paid by Government to landowners to be determined by Cabinet, and not by Parliament as provided in the 1997 Constitution.

{xxi} Royalty for Underground Water The royalty regime for minerals should also apply to artesian or ground water.

{xxii} Renting of Fijian-owned Commercial Office Buildings Government to resume renting, on a need basis, of commercial office buildings owned by Provinces and Tikina companies.

{xxiii} Tax Assistance to Fijian-owned Companies Tax exemption to be granted to Fijian-owned companies for specified periods similar to existing tax concession schemes for particular sectors.

11 July 2000.

13 Blueprint for the Protection and Advancement of Indigenous Fijians and Rotumans