

Land Tenure Systems in Fiji

1. Introduction:

Fiji has four main types of land holdings: State Lands, Freehold Lands, Native Leases and *vakavanua* Native Lands. As *Figure 1* shows, these land holdings can be further classified into two different types of land tenure systems: as 'western' land tenure system, and a 'customary' land tenure system. Freehold Lands, State Lands and the portion of Native Land that are leased out as 'Native Leases' operate under the 'western' land tenure system; while the communally held Native Lands operate under the 'customary' or *vakavanua* land tenure system.

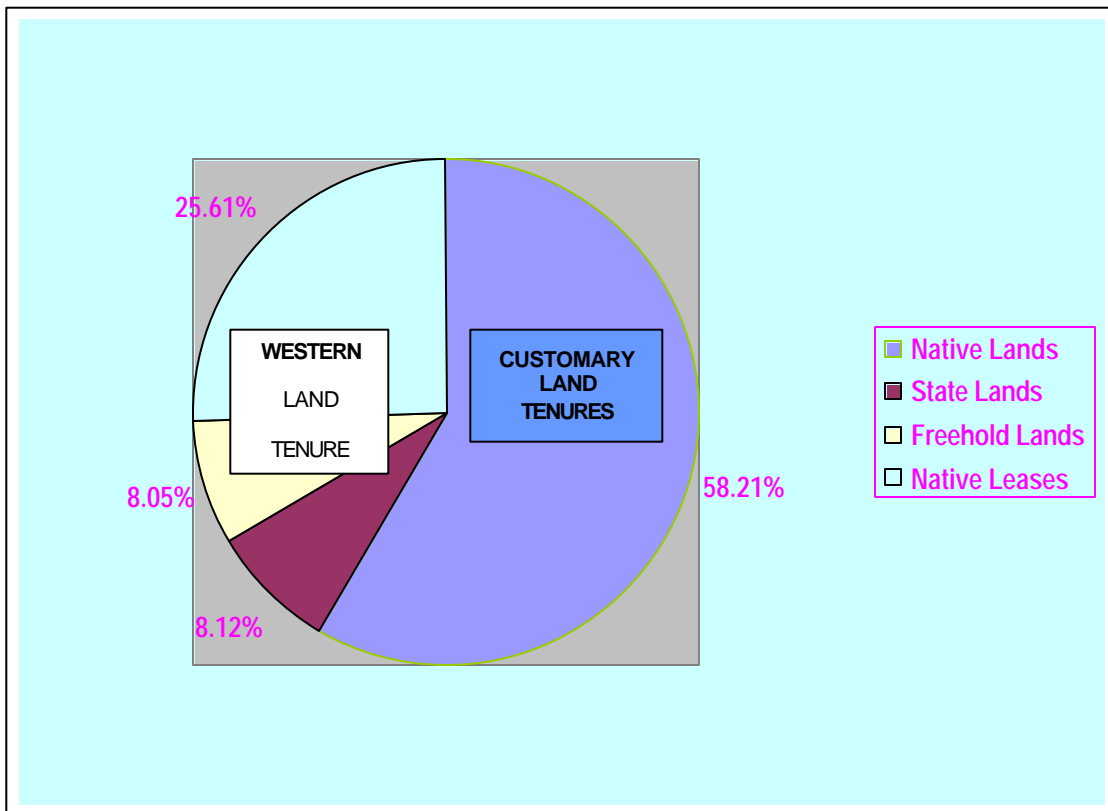


Figure 1: Comparison of Land Tenure by Areas
(Data derived from NLTB Statistics, 1992; Lands Dept, Statistics, 1992)

2. The Customary Land Tenure System:

This system is based on supposedly Fijian customs and traditions, and applied to all Native Land (until they become Native Leases, for which the 'western' system applied). The term "Native Lands" refers to lands that belong to the *tauvei*, the indigenous Fijians, and are held in accordance with their customs and traditions.

Section 3 of the Native Lands Act (cap.133Rev.1985) defines the tenure of these lands as:

Native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to their native customs and subject to any regulations made by the Fijian Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst native Fijians is relevant all courts of law shall decide such disputes according to such regulations or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light there upon.

Native lands include those lands that are farmed/used by the *tauvei* for their subsistence and, increasingly, commercial needs, as well as Native Reserves - lands that in principle, have been set aside to be used exclusively by the Fijians only. However as Eaton (1988) pointed out some of these lands have been leased to Indians under the customary or *vakavanua* arrangements.

As mentioned previously, Native Lands can be further divided according to the land tenure systems under which it is held. Unless they are leased out, Native Lands refer to those unalienated lands that are held under the customary land tenure system. Once leased out these lands, known as Native Leases, are held under the western land tenure system for their duration of the lease.

If Native Leases are included, Native lands make up almost 84% of Fiji's total land area. However only about 31% of this actually accessible cultivable land, which is already leased out as Native Leases, mainly to non-Fijians. This leaves the *tauvei* with lands that are in difficult terrain, not easily accessible, and of lower quality, to use.

Within the area classified as Native Lands, the Native Reserves comprise 38% of the total land area. Non-reserved native land can be leased to anyone eligible. The NLTB presently administers about 30,000 tenancies for 7,000 different landowners, both on reserved and non-reserved native land.

Lands under this customary land tenure system work on the principle of communal ownership of a land parcel that has already been topographically surveyed, charted on Native Land Commission (NLC) Maps, and registered in the Register of Native Lands (RNL). Under this system **land and communal land owners** are registered, with no individual titles being issued. Ownership of land is vested in the *mataqali* or tribal group

as registered in the RNL. Individual membership of the land owning *mataqali* or tribal group is recorded in the *Vola ni Kawa Bula* (VKB).

The NLC Maps, containing charted *mataqali* land parcels, were compiled from topographical surveys that were carried out by a variety of methods, ranging from those using prismatic compass, tape and plane-tables to those using conventional surveys, and even aerial photography and photogrammetry (Dutt & Volavola). Because these lands were not oriented specifically for individual enterprises, they have not been surveyed and mapped accurately. For areas that have not been surveyed, some efforts have been initiated to survey the un-surveyed areas using modern technology.

The RNL records the names of the *mataqali* or land-owning units, the Native Land Commission (NLC) Map reference, and the size and NLC lot number of the land parcel. It (RNL) is maintained by the Register of Titles.

Native lands cannot be sold; and any dealings or works to be done on or with respect to the land requires the approval of the majority of the members of the *mataqali* that are over 21 years of age. Legally the final approval/decision rests with the NLTB. Although Native Lands cannot be sold, they can be officially leased out, with the consent of the *mataqali* landowners, through the NLTB. Once released out they naturally come under the 'western' system of land tenure for the duration of the lease, as previously mentioned.

The advantages of the customary tenure system for the *taukei* is that it has firstly, prevented outright land sales and land speculation, and thus has ensured that they have not become a landless people in their own land. Secondly, it has helped the *taukei* to maintain their land-based customs and traditions, which are based fundamentally on the maintenance of family and kinship ties, and ultimately on the basic principles of sharing and caring - a principle that has prevented the Fijians as a whole from being swept away by the materialism of the modern age. Ironically however, it is this very principle that has been once of the major stumbling blocks in the *taukei*'s quest for economical progress.

Administration of the lands held under this system lies with the :

- ◆ NLTB - for all matters relating to their land, whether it is for leasing, for acquisition for public purposes, for improvements to be made to the land through major capital projects, or for compensations for any loss of land or damages sustained;
- ◆ NL&FC - for all land and fishing rights disputes;
- ◆ FAB - in so far as their rules and legislations affect the native land customs.

Table 1 lists some of the features associated with the administration of the lands held under these land tenures.

Table 1: Comparative Administrative Arrangements				
(Data derived from NLTB (1989); Lloyd (1982))				
	Customary Tenures	Torrens-Based 'Western' Tenures		
	Native Lands	Native Leases	Freehold Lands	State Lands
Definition	◆ Lands held by native Fijians	◆ Native Lands leased out to all citizens	◆ Lands held under fee simple	◆ Lands vested in the State as either Public Lands or Lease holds
Statutes Applying	◆ Native Lands Act ◆ Native Land Trust Act ◆ Fijian Affairs Act	◆ Native Land Trust Act ◆ Agricultural Landlord and Tenants Act ◆ Native Land Trust Leases & Regulations Act	◆ Land Transfer Act ◆ Property Law Act ◆ Agricultural Landlord and Tenants Act	◆ Crown Lands Act ◆ Crown Acquisition of Land Act ◆ Land Transfer Act ◆ Agricultural Landlord and Tenants Act
Administered by:	◆ NLTB ◆ NL&FC ◆ FAB ◆ Registrar of Titles for storage of RNL's	◆ NLTB ◆ Registrar of Titles for recording of leases	◆ Registrar of Titles	◆ Director of Lands for Crown Leases ◆ Registrar of Titles for recording of titles
Term of ownership or lease	◆ In perpetuity, unless land owning group dies out, or acquired by State cannot be sold	◆ Up to 30 years for Agricultural ◆ Up to 99 years for Residential Commercial, Industrial	◆ In perpetuity unless acquired by State	◆ Up to 30 years for Agricultural ◆ Up to 99 years for Residential Commercial, Industrial ◆ In perpetuity for Public Lands unless otherwise stated
Associated Registers, Plans, Maps	◆ <i>Vola ni Kawa Bula (VKB)</i> ◆ Register of Native Lands ◆ Native Land Commission Maps	◆ Register of Titles or Torrens Register ◆ For Registered Leases ◆ Tenancy Agreements for Unregistered Leases ◆ Approved SO Plans for Registered Leases; ◆ Lease Diagram for Tenancy Agreements, based on NLC Maps, chain & Compass ◆ Survey and/or orthophotos	◆ Register of Titles or Torrens Register ◆ Approved DP, based on Cadastral Map Sheets	◆ Register of Titles or Torrens Register for Registered Leases ◆ Approval Notice for Unregistered Leases ◆ Approved SO Plans for Registered Leases ◆ Lease Diagram for Unregistered Leases, based on Cadastral Maps

3. The Western Land Tenure System:

This system is based on European-styled, capitalist-oriented concepts, and is intended primarily to facilitate land conveyancing of land and economic development (Williamson, 1982). With its emphasis on individual land ownership, it applies, as already mentioned, to **Freehold** lands, **State** lands, and **Native Leases**. It is based on the Torrens Title

Registration System and, because it is oriented towards individualistic commercial enterprises, and accurate Cadastral Surveying and Mapping System.

Freehold lands are lands that are held individually or corporately in fee simple. Once accurately surveyed, mapped and registered, tenure over these lands are guaranteed by the Government.

State Lands are all Public Lands in Fiji, and include those held by the State for Public Purposes - for roads, reservoirs, dams drains; for leasing - for either residential, commercial, industrial or agricultural leases, and all lands below high water mark (which includes mangrove swamps and all foreshores). It presently also includes those lands that had not been claimed by Fijians when Fiji became a British Colony in 1874 (State Schedule 'B' Land); and those Native lands for which the *mataqali* or land-owning group have since become extinct (State Schedule 'A' Land), but these lands are in the process of gradually reverting back to the *taukei*. Like freehold lands these lands are subject to accurate surveying, mapping and registration, before being guaranteed by the Government.

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The Freehold and State lands account for only 16% of Fiji's total land area, but as Crocombe (184,31) notes, this figure is "misleading and irrelevant", because in terms of value, they include the best urban, commercial, industrial and agricultural lands. They account therefore for most of Fiji's land assets, and are owned generally by non-indigenous Fijians, mostly Indians.

Native Leases are those Native lands that have been leased out: largely to allow the lands that were not being used by their *taukei* land owners, to be used by the other peoples of Fiji, including the non land-owning *taukei*. These lands make up the small proportion of Native lands that is more accessible and arable (31% of all Native Lands, or 25% of Fiji's (total land area), and are found obviously, in the more valuable agricultural lands such as the cane growing areas, and near the main urban centres.

The great advantage of this 'western' tenure system is that dealings for lands held under this system are straightforward and can be efficiently completed, and tenure over these lands is generally secure and guaranteed by the Government.

Administration of the lands held under this system of tenure lies with the Department of Lands and the Registrar of Titles for Freehold and State Lands; and with the Native Land Trust Board and Registrar of Titles for the Native Leases.

3. Strengths and Weaknesses Of Existing Customary Land Tenure System:

3.1 Overlapping of customary and western land tenure boundaries:

In order to avoid the delays caused by the stringent survey requirements for the survey of alienated lands (i.e. freehold land, state land, native leases), the NLTB has used what can be termed a Deeds System of Registration for its leases. It therefore issues out "Instruments of Tenancies" for leases that are yet to be surveyed. Once surveyed to cadastral standards, these "Instruments of Tenancies" are cancelled and replaced with Registered Lease documents.

This situation has meant that Lease Diagrams are issued by the NLTB for the leases, with the site being located approximately by NLTB officers, using compass and chain or tape, in many cases. Incidents of the land being apportioned in this way being either too large, or incorrectly positioned on the ground still occur (Chang, 1993). This sometimes give rise to disputes between the lessees and *taukei* land owners, particularly when a redefinition survey carried out reveals that the lessee has been unwittingly using a portion of Native Land that he was not entitled to; or that the *taukei* land owners have been using lands that theoretically had been leased out to the lessee.

3.2 Existing system out of touch with reality:

The customary land tenure system was intended to preserve for all time, the lands and customs of the *taukei*. However as stressed earlier, the existing customary tenure system is based on the British Administration crystallising a system that was in operation at a particular place and time. Given their non-Fijian background, and the economical and political constraints of the time, it was only natural that they would modify or exclude some seemingly less important but quite significant details in the system that they imposed on Fiji (Ravuvu, 1988)

Thus while adopting the system as it stood then may have been the best solution at that time, it has now become quite incongruous with existing realities. For instance some of today's young urban Fijians are not aware of their tribal groupings. This is understandable since knowledge of their respective *tokatoka*, *mataqali* or *yavusa* groupings is really needed only at certain times, such as during election times, for land disputes, or when consents are required for development works (which they have not interest in, being long-settled out of their villages). This is also understandable in view of the fact that the *mataqali* was actually a social grouping of people that could arise under a variety of conditions - conditions that need not and sometimes was not linked in any way to land. Thus, since the traditional social groups are not so distinct in the urban areas, where they are affected by other affiliations, such as religious, sporting, business, school, neighborhood affiliations, the systems is not application to the urban areas.

In addition imposing the *mataqali* social structure into the whole country effectively forced *mataqali* that were numerically smaller to be incorporated into the larger *mataqali* groups. Ravuvu (1988) notes however that there are times when the smaller, officially non-existent *mataqali* still retain their own identity, despite having been officially subsumed by the larger group.

3.3 Disincentives of customary group ownership of land for individual enterprise

Although the fact that Native Lands cannot be sold has had the advantage of ensuring that the *taukei* would not be dispossessed of their lands, it has also disadvantaged them by discouraging the more enterprising members of the village from developing their lands further. For instance there are many cases where an individual's initiatives or hopes of improving his productivity is stunted by his failure to obtain the necessary *mataqali* approval, as a result of rivalry, jealousy, or grudges held against the individual by other members of the *mataqali*. Thus the individual's attempts at obtaining the required *mataqali* approval for finance for the scheme falls through. Land, which could have been more productively and/or efficiently used, is therefore left undeveloped and under-used.

Another well known fact of customary group ownership is that it leaves the aspiring individual farmer very vulnerable to unintentional 'exploitation' by his fellow *mataqali* members - i.e., there is the not unnatural tendency for the remaining villagers to ask the 'successful' individual farmer for donations from either his crop or his livestock, when a death, birth or celebration requires it. The continuing incidence of this has led invariably to the failure of the individual farmer's enterprises.

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