Managing Customary Land in Fiji – is the current trust structure fit for purpose?

FIVEM Annual Conference 2013
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Intercontinental Fiji

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The mission of the Asia Pacific Centre for Complex Real Property Rights (APCCPR) is to:

*Specialise in land tenure and real property rights research, advocacy, public policy development and consultancy.*

Our remit includes land management, political economy, and conflict minimisation issues relating to:

- Property rights in land and buildings;
- Politics and Economy of Emerging Property Rights (e.g. water, carbon, biota);
- Urban Planning and Compensation;
- Leasehold issues, including expiration and renewal;
- Institutional arrangements and land trusts;
- The financial management of inalienable customary land in Australia and the South Pacific; and
- The challenge of Common Property in urbanised areas.
Introduction
Introduction
Background
Efficiency
Plurality
Informal arrangements (Vakavanua)
Capacity & Operational Matters
The Way Forward
No land politics: PM Commodore Bainimarama warns TLTB to improve landowner services

"I must say that when I have been around Fiji there have been instances when potential tenants who want to lease land at the right value, TLTB staff have been very lethargic," Commodore Bainimarama said in his welcome speech at yesterday's TLTB annual strategic corporation planning workshop on the Coral Coast.

http://www.fijisun.com.fj/?p=185855
• Purpose of Trust
  – Legal identity on behalf of beneficiaries
  – Professional Advice / Representation

• Examples
  – Vanuatu = Ifira and Mele trusts
  – Solomon Islands = Aluta Basin (trial)
  – PNG = Incorporate Land Groups (LGI Act 1974)
  – Fiji = NLTB, now the i Taukei Land Trust Board
    • valuation, legal, financial, accounting, lease management, negotiation / representation and spatial capacity
    • representation rather than advice
MILDA REPRESENTS A PLATFORM FOR A VOCAL REGIONAL DEFENCE OF CUSTOMARY LAND, AND AN OPPOSITION TO THE CORPORATE LAND GRAB AGENDA.

Its principal aim is to assist Indigenous Peoples in Melanesia maintain control over their land, sea, water, air and resources through continued use of their customary tenure systems. We assert that the customary land systems are the basis of life and community in Melanesia.

http://mildamelanesia.org/


Joel Simon, November 17, 2013
Deed of Cession 1874 (clause 4)

Lands Commission 1876

Native Land Commission 1878

Native Fisheries Commission 1941

Native Land Trust Act 1940 (NLTB est.1946)

Native Lands Ordinance 1905

Schedule A & B (reverted to NLTB 2000)

Amendment to NLA & NLTA 2010

Amendment to iTLTB 2011
• Negotiating aspirations of customary landowners with expectations of investors
  – Agriculture (ALTA / NLTA)
  – Tourism development
  – Forestry
  – Extractive industries

• Leases and Licensing Regulations
  – Determines payment structure / distribution
  – Revenue for iTLTB (management fee)
LEASE APPROVAL PROCESS

Investor - submit development plans and comply with the Town & Country Planning provisions for

Process: OF

Decision: OF

Estimated timeframe for completion of the LEASE APPROVAL PROCESS = 6 months.
Income distribution after iTLTB management fee [currently 15%]

Vanua - headed by Turaga-i-Taukei [5%]

Yavusa (tribe) – headed by Turaga-ni-qali [10%]

Mataqali (Clan) – headed by Turaga-ni-mataqali [15%]

i Tokatoka (smaller clan) – Turaga-ni-tokatoka & General Membership [70%]
Asia-Pacific Centre for Complex Real Property Rights

Plurality of Registers

Custom / Tradition

Hybrid?
Is that possible for compensating customary landowners?

Western materialism

High Context society

Determinants of Value

Rights
Obligations
Restrictions
Formal
Informal
Concrete
Categorical

Low Context society

Intergenerational Equity

Emphasis on the land owning group over oneself

Focus on current generation

Perpetual interest

Emphasis on the self over others

Emphasis on informal institutional arrangements

Five year time-span (until next election)

Emphasis on formal institutional arrangements

– Vakavanua – informal arrangements
– Results from deficiencies of formal institutional arrangements
– Risks

... and the Governments response:

The Land Bank

or should this be a ‘shop window’ for iTLTB?
• **Lease Length**
  – Appropriate length to recoup capital outlay

• **Basis of Rental**
  – Currently UCV – hypothetical construct
  – Ignores willing lessor / willing lessee market

• **Ownership of Improvements**
  – Confused, but need to vest in landowner not tenant (c.f. Vanuatu Land Leases Act s.41(i))

• **Lease Management**
  – Proactive management of rent reviews, debtors, lease renewals (and negotiating premiums)
• Valuation Approaches
  - Currently weak and sometimes confused
  - Need to look more closely at marriage of customary landowner and tenants interests (i.e. synergistic value)
  - Need to conform to International Valuation Standard
  - Need to have same capacity and skill sets as tenants (who may have international professional advice)
VALUE OF TENANTS INTEREST CAN BECOME A NEGATIVE VALUE IF THE LANDLORD HAS NO FUNDS TO COMPENSATE FOR IMPROVEMENTS AND TENANT CHOOSES TO CLEAR SITE.
LEASE EXTENDED (THROUGH SURRENDER AND RENEWAL – OR SOME FORM OF ENFRANCHISEMENT)

VALUE OF TENANTS INTEREST – INCREASES AS NEW LEASE

VALUE OF LANDLORDS MARKET BASED RENTAL (FOR MARRIAGE OF LAND AND BUILDING INTERESTS)

ORIGINAL GROUND RENT

VALUE $
The Way Forward

- Range of lease terms fit for purpose
- Frequency and Quantum of Rent Review
- Clear & Explicit policies on Improvements
- Transdisciplinary skill sets
- Negotiate terms that match aspirations (prior informed consent)
- Accommodate ancillaries (carbon / heritage / environment)
- Use market value rather than UCV
- Engage International Valuation Standards
• Customary land is complex
• Fiji is fortunate in that it has a clear genealogy
• NLTB / iTLTB has protected customary interests
• Critics say it has not adapted to societal change
• However, it is currently reviewing its processes and operation
• Optimism
But, we think the iTLTB needs more help, so we have set out our recommendations for reform at:

[Customary Land Solutions](http://customarylandsolutions.com/leaseholds/leaseholds-sample-scope-of-work/)
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