

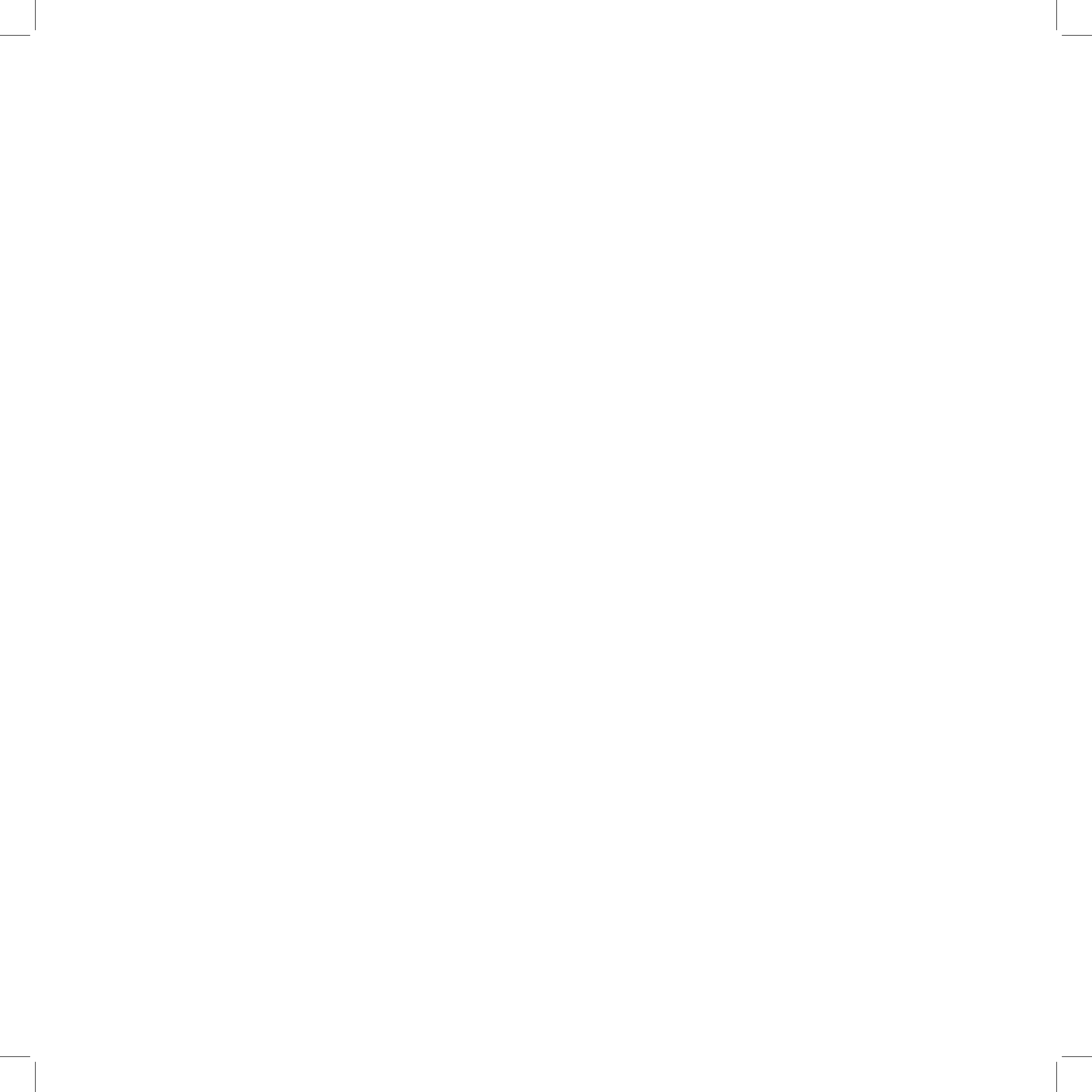
**iTaukei**  
Land Trust Board



*iTaukei Land, Our Heritage, Our Future*



## Land Ownership in Fiji





## THE FIJI ISLANDS

Land is limited and therefore a very valuable resource and need to be managed on an efficient system that has a solid legal framework and clear policies on how it is to be owned, shared, transferred and used.

The ownership of land in Fiji, whether absolute or qualified, is based upon well settled law or custom. Every inch of land in Fiji has an owner. Every parcel or tract of land has a name and the boundaries are defined and well known.

The Fiji Islands now known as the Republic of Fiji Islands is located between 15 degrees and 22 degrees south of the equator and longitudes of between 177 degrees west and 174 degrees east.

The Republic comprises of around 364 islands and atolls of which only about 100 are permanently inhabited. The aggregate land area is 18,333 square kilometres. The main islands are Viti Levu and Vanua Levu whose areas are 10,429 square kilometres and 5,556 square kilometres respectively accounting for 85 percent of the total landmass and inhabited by 93 percent of the population. The islands are mostly volcanic with rugged terrain with the small islands mainly of coral or limestone.

## TRADITIONAL GROUPINGS

According to the iTaukei Land & Fisheries Commission records, the earliest form of indigenous society in Fiji was that of independent agnatic family groups. They were tillers of the soil. Cognate ties attracted inter-marrying groups within the same locality, but each unit had its own village and its own defined and recognized arable land.

Danger drove these families to migrate and the same force now compelled them to combine for the purpose of mutual protection or defence and in the process, there emerged the tribe or "**Yavusa**" and its leader. Colonial administrators and researchers who had experience in the African colonies and West Indies before coming to Fiji identified the tribe in Fiji as the **Yavusa**.

In the course of time when the country came to be more closely populated, struggles for territory and other fighting took place, and while on the one hand many Yavusa became broken and scattered, but some on the other hand formed confederations which are now known as the **Vanua**. Below are descriptions of some of the classifications or groupings of indigenous societies in Fiji.

### (i) The Vanua

A Vanua is an independent kingdom of its own, comprising one or several Yavusa that recognize, pay homage and respect to a leader. It's head would exercise overlord authority over all Yavusa within the Vanua and would be referred to by Title as Tui or King, Vunivalu, Roko Tui, Sau. Examples being: the Tui Vuda, the Roko Tui Dreketi, Ka Levu of Nadroga, Tui Ba, Momo of Nadi, Sau of Totoya, Sau of Mualevu, Tui Dravuwalu, etc. Under the colonial administration, Vanua boundaries came to be defined also as Tikina or District boundaries administered under the Tikina and Provincial administration. In some cases, a tikina may comprises of a number of Vanua.

### (ii) The Yavusa

A Yavusa may be described as a group of correlated Mataqali who have a generic name [A i Cavu] by which they are known to other Yavusa and live together under a Chief who is the nearest lineal descendant of their common ancestors or Kalou-Vu.

It had its beginnings in the Yavutu, the old village settlement establishment by the Kalou-Vu who was the founder of the Yavusa and to whom all the members, however remotely, are related by a bond or blood.

The name of the Yavusa was derived usually from some natural feature near the Yavutu and this was preceded by the dialect equivalent for "**people of**" [such as Kai, Noi or Lewei]. Thus a Yavusa whole Yavutu was known as "**Nasaumatua**", became known as the "*Kai Nasaumatua*", "*Noinasaumatua*", or "*Lewei Nasaumatua*", as the case may have been'.

A Yavusa is simply a collection of closely related families joined together or living closely together primarily for defence. The century and a half of hardships and fighting had convinced them of the necessity for unity and leadership.

As a result the Yavusa organisation came to be regarded as something preordained. The leader being the closest by blood relation to the Ancestral God. He was now conceived as the tribal chieftain. Yavusa settlements came to be known as a village or 'koro' and is headed by a village headman 'Turaga ni Koro' who is now linked to the Provincial Administration.

### (iii) The Mataqali

As the primitive settlement increased it gradually evolved into a series of separate units of population, each bearing a distinctive name and performing separate functions in the Yavusa. These functions were strictly passed down in the family from father to son and were not considered to be inter-changeable. These divisions became known as the Mataqali. This is the only word that existed in most parts of Fiji and the Mataqali unit was therefore used as Land Owning Unit (LOU) for landownership in most of the areas.

The Mataqali was composed of those agricultural family groups that lived in close proximity and were related to each other by ties of marriage, the bond that brought and held them together when the Yavusa was first formed. It was natural in the delegation of powers to assign responsibility for the due performances of tribal duties to the senior male in each of the localized related groups and the person became the Head of the Mataqali [Liuliu ni Mataqali or Turaga ni Mataqali].



In the course of time, each Mataqali took up distinct roles in the life of the tribe as seen today as the chief [Turaga], Executive Chiefs [Sau Turaga], Heralds [Matanivanua], Priests [Bete], Warriors [Bati], Fisherman [Gonedau], Craftsman [Mataisau], etc.

#### **(iv) The Tokatoka**

Each Mataqali was composed of two or more Tokatoka, or family division. Every Tokatoka was known under its own name and had a headman who was under the immediate orders of the chief of the Mataqali.

Just as much as the Mataqali was the unit of Government, the Tokatoka was the unit of service. In Mataqali meetings these groups would be charged with doing this or that, the supplying of a quantity of material for house building, the provision of so many turtles or pigs or the furnishing or so many ovens of food. Such duties are being translated today into the modern form of social and traditional obligations where money is now mostly involved.

#### **LAND TENURE BEFORE CESSION**

History books inform us that the tribal wars which were often assisted by early Europeans gave rise to the rising of powerful states with resultant high chiefs. Peace brought disintegrating forces that divide the large groups back to individual Yavusa, resuming village life, controlling and cultivating the land in which they had chosen to settle. These tribal clashes restored and strengthened tribal sovereignty but it did not change the group management of village lands.

The itaukei idea of ownership of land in the first place was absolute in the unit. Lorimer Fison, who was an eminent authority on native custom in the 1800's, had written that, *"Though the taukei may be driven from their lands by a stronger tribe they did not acknowledge their defeat as an extinction of their title. In fact they consider their title to be inextinguishable as long as they themselves are not destroyed.* (Lorimer Fison "Land Tenure in Fiji", 1880)

Thus with the indigenous population, the right of ownership over land was absolute and indestructible. It was also known that long before the white men arrived, transfer of lands amongst tribes through some form of custom was also a common practice and such transfer were in return for military or some form of dowry or for services rendered.

In 1835, Christianity was introduced into Fiji by Wesleyan Missionaries. The changes the European settlers brought in regard to land usage caused the High Chiefs of Fiji to cede the sovereignty of the Islands of Fiji to Her Majesty Queen Victoria of Great Britain. The handing over was formally concluded in the Deed of Cession on 10th October 1874 where Fiji officially became a British Crown Colony.

#### **CLAUSE 4 – DEED OF CESSION 1874**

*"That the absolute proprietorship of all lands not shown to be alienated so as to become bona fide the property of Europeans or other foreigners or not 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 Majesty, her heirs and successors."*

The above clause defined the three major land tenure types in Fiji:



- (i) Freehold Land,
- (ii) State Land, and,
- (iii) iTaukei Land.

The Fiji colony, under Governor at that time Sir Arthur Gordon had to determine the land that were bought by early settlers to be able to account for land available to the indigenous population. The Land Claims Ordinance of 1876 gave rise to the Lands Claims Commission that investigated all land claims and endorsed the issue of Freehold Land titles known as Crown Grants.

The Fiji National Archives holds the record of the proceedings of the Lands Claims Commission where records of articles like whiskey, axes and guns were used to buy land. This exercise took about six years so that by 1882, Sir Gordon, despite opposition from all quarters, was ready to confer the remainder of all land in Fiji to indigenous Fijians under the 1882 Native Lands Ordinance, later known as the Native Lands Act of 1905 and currently known as the iTaukei Lands Act of 1905.

Land not claimed to be Freehold or iTaukei owned became vested in the Crown by virtue of the iTaukei Lands Act and were known as Vacant or Schedule B lands. Some lands were also found to have been owned by landowning units which have become extinct and these also became vested in the Crown by *ultimus haeres* and are known as Schedule A lands.

As such, land in the Fiji Islands is managed through three systems- iTaukei Land, Freehold land and State Land. Freehold land can be bought and sold. iTaukei Land and State Land on the other hand cannot be bought and sold but is available only on a leasehold basis. Leasehold land can be developed as much of it is available on a long-term lease basis (often 99 years). Each type of land tenure has different implications for the development and planning processes.

### **(i) FREEHOLD LAND**

Approximately 6% of land in Fiji is freehold land registered under the Torrens System of land registration, by which titles to land are guaranteed. Freehold land can be purchased, transferred, or leased, subject to the conditions of the Land Sales Act, which among other things restricts the quantity of land which can be purchased by individuals who are not resident in Fiji, and by companies not wholly owned by Fiji citizens.

### **(ii) STATE LAND**

Approximately 4% of land in Fiji is State Land, administered by the Department of Lands. In addition, all foreshore lands below mean high water mark, the soil under Fiji waters and the beds of navigable rivers and streams are State Land. State Land is not sold outright but some is available on a leasehold basis. State leases are granted and managed by the Director of Lands.

There are a number of types of state land which are as follows:

1. State Freehold lands – state lands with current freehold titles;
2. State land without Title – state lands where freehold titles have been cancelled;
3. Schedule A land – these have been transferred to TLTB;
4. Schedule B land - these have been transferred to TLTB;
5. State Foreshore - all land below high water mark.

State Schedule A and B lands have been transferred to the TLTB by Legislation in 2002 and are now iTaukei Land. The Director of lands now administers leases over the state foreshore and the state freehold lands including state lands without title.

State lands may be claimed and proclaimed as iTaukei Reserve under Section 18 of the iTaukei Land Trust Act Cap 134. The Reserves Commission carries out the investigation into such claims and makes recommendations to the Board.



### **(iii) iTAUKEI LAND**

About 89.75% of land in Fiji is iTaukei Land. All iTaukei land belongs to iTaukei communal groups or 'land-owning units'. Typically a portion of each land area is set aside for the site of the village, and the rest is iTaukei Reserve. Land within iTaukei Reserve may be made available for use and development by others through short-term or long-term lease after a process known as De-reservation. The total land area of Reserve Land in Fiji is 505,429.75 hectares. This includes the 119,523.5 hectare of land from the reverted Schedule A & B lands and land being de-reserved for lease as of date is 27,393.30 hectares. Therefore, percentage of land within reserve is 60% of the total iTaukei land area.

In order for development to take place on iTaukei Land, the developer must obtain a lease. Leases on iTaukei Land are offered through the iTaukei Land Trust Board (TLTB), a statutory authority which administers all such lands on behalf of the iTaukei owners.

In order for development to take place on iTaukei Land, the developer must obtain a lease. Leases on iTaukei Land are offered through the iTaukei Land Trust Board (TLTB), a statutory authority which administers all such lands on behalf of the iTaukei owners. Native Lands Ordinance 1905 led to appointment of a Native Lands Commissioner.

The objectives of the Commission were as follows:

- Record history, organization and migration of each Yavusa;
- Records boundaries of land owned by each land owning unit;
- Record the names of the owners.
- Record vacant lands (Schedule B) and extinct mataqali lands (Schedule A).

### **TENURE OF iTAUKEI LAND**

The tenure of iTaukei Lands or how ownership of iTaukei Lands are held is as summarized at Section 3 of the iTaukei Lands Act Cap 133 which reads:

"iTaukei Lands shall be held by iTaukei according to iTaukei custom as evidenced by usage and tradition ...such lands may be cultivated, allotted and dealt with by iTaukei Fijians, as amongst themselves according to their iTaukei customs and subject to any regulation made by the iTaukei Affairs Board.....".

### **LAND CLAIMS ORDINANCE**

European settlers came to Fiji early in the 19th Century and land was sold in exchange for weapons such as guns or axes and also for tools, clothes and even trinkets or toys. (extracted from archival records of land sales)

At the time of the Deed of Cession, there were many occupiers and claimants to large tracts of land, so shortly after, the Colonial Government passed Legislations where the Land Claims Commission was set up to investigate all claims to titles to lands held by the various occupiers.

Claims recommended by the Commission and approved by the Governor were registered as Crown Grants. These Crown Grants now form the basis of Freeholds and crown freeholds we have today.

Many claims were refused, many more were reduced, but even so some 400,000 acres of Fijian land were registered under Freehold titles. The Land Claims Commission which investigated the ownership of land bought by Europeans, commenced work in 1876 and finished around 1881.

The term Crown Grant was used as all land in the Colony was the property of the Crown and the crown had given the land to the claimants as a grant after having proved its valid purchase from the iTaukei.

There was a total of 1582 Crown Grants issued before the sale of iTaukei land was stopped by the Colonial Government.

Sale of iTaukei Lands was opened again in 1905 -1908 by Governor Imthurn to allow for regularising of land required for government purposes and for major infrastructure and business development. Lands purchased were issue with a Native Grant (NG) title.

The term Native Grant was used as the affected land have already been determined to be owned by iTaukei land owning units after having been determined by the iTaukei Lands Commission. The Buli of the Province negotiated on behalf of the iTaukei owners and signed the deed of sale of such lands.

Land sales stopped in 1908 and put in legislation through the Native Lands Ordinance and Native Lands Act.

### **OWNERSHIP BY THE MATAQALI**

In most cases iTaukei Lands in Fiji are held by the Mataqali. The Great Council of Chiefs (GCC) meeting held at Mualevu in Vanua Balavu in 1880 had resolved after deliberating on the subject for some years from soon after Cession, that iTaukei Land ownership were to be registered under the Mataqali. It also turned out that the word "Mataqali" was with slight variations, common in its pronunciation and meaning throughout all the dialects spoken in all provinces.

### **OWNERSHIP BY THE TOKATOKA OR YAVUSA**

Ownership by the Tokatoka, the sub-unit of the Mataqali can be found mostly in the province of Ba and Nadroga, but there are very few cases of ownership registered under the larger groups of the tribe or Yavusa or groups of Yavusa. Such instances of ownership is common by the Yavusa or groups of Yavusa were deliberate decisions of the Commission in cases where a large population thrived but few land owned by them available to be shared amongst members of the tribe. Examples to this type of common ownership can be found with the 3 Yavusa at Narewa village in Nadi, and 3 Yavusa (Yavusa e Tolu) residing at Navoci and Namotomoto village also in Nadi and 3 Yavusa (Yavusa e Tolu) residing at Suvavou village in Suva.

### **OWNERSHIP BY INDIVIDUALS**

The iTaukei Lands Ordinance empowered the Commission to determine ownership of iTaukei Lands as evidenced by custom and usage to define the traditional and hereditary property of iTaukei owners. Apart from ownership by the Mataqali or the Yavusa or the Tokatoka, there were instances where ownership was by an individual or descendants of an individual. This was in the form of land given away as a dowry or donation. Some of the main ones registered by the Commission of these types of land donation or alienation were:

- (a) "Covicovi ni Draudrau" or "Covicovi ni Lolou" or "Drowry"
- (b) "Ai sere ni Wa ni Kuna" or to untie the Strangling Cord
- (c) "Tatau ni Mate" or Parting words before Death
- (d) "Ai mudu ni Liga" or Chopping of the Little Finger

### **CUSTOMS THROUGH WHICH TRIBAL LANDS WERE ALIENATED:**

#### **(a) "Covicovi ni Draudrau" or "Covicovi ni Lolou" or "Drowry"**

This is for the case of a woman from one Mataqali marrying into another Mataqali. Members of her Mataqali would donate land on her behalf in recognition of her children's special links [vasu] to her Mataqali. The same type of alienation is known by different terms in other dialects of other provinces. In Ba province it is called "Lewe ni Kete" and in Nadroga it is called "Lewe ni Kato".



The lands affected would now be registered in the name of the woman and her agnate descendants as the proprietors or in the name of the Mataqali she has married into.

**(b) "Ai sere ni Wa ni Kuna" or to untie the Strangling Cord**

This is the term used for land donated in the case of a woman due to be strangled to death after the death of her husband as it was customary for wives to be killed also when their husbands die. The wife's relatives from her Mataqali would donate land to save her from death and the land would now be found registered with her husband's Mataqali.

**(c) "Tatau ni Mate" or Parting words before Death**

This is in the case of an elderly person who has no children and is looked after during his old age by a family of another Mataqali. As a token of appreciation, he gives away a piece of land as heritage to the family looking after him. The land affected would now be registered in the name of the care giving family or their Mataqali.

**(d) "Ai mudu ni Liga" or Chopping of the Little Finger**

This form of land donation is also associated with the death of a husband where the wife through her grief chops off a little finger. The husband's family would donate land in appreciation of such act by the wife and such lands were registered by the Commission as owned by the woman and her descendants. There were other customs through which lands were transferred as a reward for bravery in battle or some heroic deeds that saved a tribe from certain disaster.

**REVERSIONARY RIGHTS**

During the iTaukei Land Commission investigations, details on how lands came to be owned by each Mataqali or the Tokatoka and those owned by individuals and their decedents, would be on record in evidence books, compiled by each of the Commissioners, who worked in different provinces of Fiji. The law already provides for Extinct Mataqali Land to revert to the Crown, when the Mataqali becomes extinct and for extinct Tokatoka land, to be reverted to the Mataqali.

For other lands donated by custom and registered to an individual and his or her decedents, on extinction, land will be reverted to the donors or the Mataqali from which that land was part of originally. In practice on extinction of such units owning such lands the matter is normally referred to the iTaukei Lands Commission to advice on who holds the reversionary right.

**RESERVES POLICY**

In one of its meeting, the Council of Chiefs resolved as follows:

*"This Council is in complete accord with the proposal to reserve in each Province sufficient lands for present and future needs of the iTaukei and to prohibit the leasing of such lands so reserved."*

The same resolution was passed in 1933 and in 1936. The Council agreed that:

*" it would be in our best interest if Native lands at present lying idle were put to use, that the amount of land needed for the proper development of the native owners be determined...that all lands not so required be handed over to the government to lease on our behalf"*

The resolution was incorporated into the iTaukei Land Trust Act of 1940.

**iTAUKEI LANDS TRUST ACT (CAP 134)**

An Act relating to the control and administration of iTaukei Land. Enacted in 1940:

**Section 4**

"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 iTaukei owners."

**Section 5**

"iTaukei land shall not be alienated by iTaukei owners whether by sale, grant, transfer or exchange except to the Crown, and shall not be charged or encumbered by iTaukei owners, and any iTaukei to whom any land has been transferred heretofore by virtue of a native grant shall not transfer such land or any estate or interest therein or charge or encumber the same without the consent of the Board."

**Section 9**

"No itaukei 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 leased is not being beneficially occupied by the iTaukei owners and is not likely to be required by the iTaukei owners for their use, maintenance or support.

**Section 16**

"Subject to the provisions of the Crown Acquisition of Lands Act, the Forest Act, the Petroleum (Exploration and Exploitation) Act, the Mining Act, and to the provisions of this section, no land in any iTaukei Reserve shall be leased or otherwise disposed of. (Cap. 135, Cap. 150, Cap. 148, Cap. 146.)

(2) Leases or licences may with the consent of the iTaukei owners be granted by the Board to iTaukei Fijians in accordance with regulations made under section 33.

(3) Leases may with the consent of the iTaukei owners be granted by the Board to the Land Development Authority as if it were a iTaukei Fijian, in accordance with the aforesaid regulations and subject to the following conditions:

- a) no land leased under this subsection shall be transferred, sublet or in any other manner disposed of by the Land Development Authority except to a iTaukei Fijian;
- b) no lease shall be granted under the provisions of this subsection in respect of any land which is in use by, or required by, or likely to be required by the iTaukei owners or any member of the land owning unit or dependant of such member during the currency of the lease for the use, maintenance or support of members of the land owning unit or to enable it or its members to fulfil obligations under iTaukei custom or under any regulations made under the iTaukei Affairs Act; (Cap. 120.)
- c) whenever the consent of iTaukei owners is necessary under this or any other section of this Act, such consent shall be obtained by the Board in such manner and after such consultation with the iTaukei owners," and shall be signified by the iTaukei owners in such manner, as may be prescribed by regulations made under section 33, or in default of any such regulations as the Board may consider appropriate.

**Section 15**

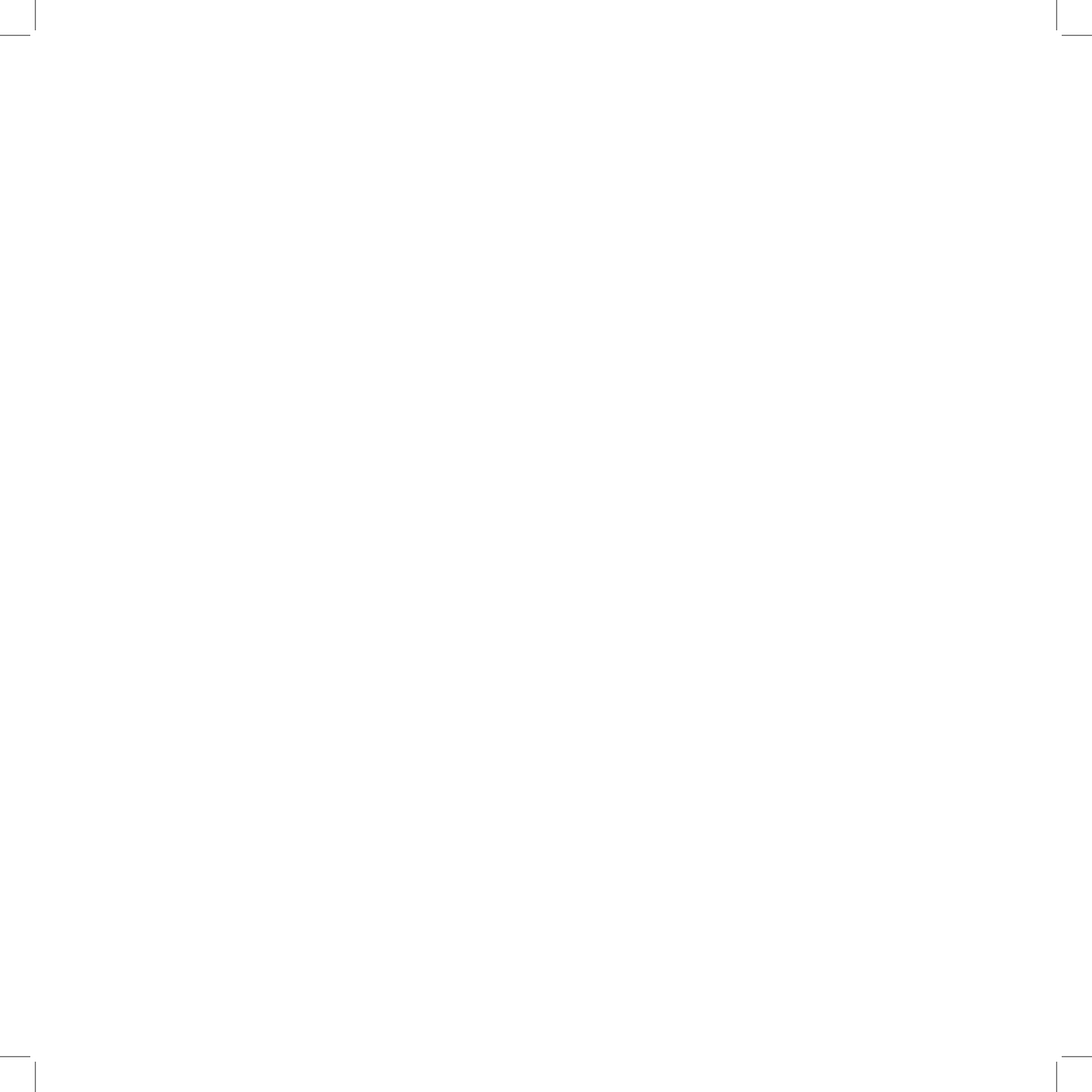
"It shall be lawful for the Board, by notice in the Gazette, to set aside any portion of iTaukei land as a iTaukei reserve. Every such notice in the Gazette shall also be published in a newspaper published in the iTaukei language and circulating in Fiji."

**Section 17**


"The Board may, upon good cause being shown and with the consent of the iTaukei owners of the land, exclude either permanently or for a specified period any portion of land from any iTaukei reserve. (2) Every such exclusion as aforesaid shall be published in the Gazette and in a newspaper published in the iTaukei language and circulating in Fiji. (3) When any iTaukei land has been excluded from a iTaukei reserve for a specified period such land shall upon the expiration of such period resume the same character and incidents as were attached to it before its exclusion from the iTaukei reserve."


**Section 18**


"If the Minister is satisfied that the land belonging to any Mataqali is insufficient for the use, maintenance or support of its members it shall be lawful for the Minister by Proclamation to set aside such Crown Land or land acquired for or on behalf of itaukei by purchase, as in his opinion may be required for the use maintenance or support of such Mataqali. Any area so set aside shall be deemed to be a iTaukei Reserve."




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 iTaukei Land Trust Board

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