

LAND RIGHTS IN FIJI – A SAD IRONY

It is a little known fact that Fiji is one of the pioneer countries to recognise the rights of its indigenous people, including their including rights over customary lands. Even more startling is the fact that such recognition was handed out at the hands of its colonial master, the British Crown in 1874. This at the height of the slave trade and blackbirding to sustain the extension of colonialism.

In this regard Fiji stands out as a pioneer, far out at the forefront in comparison to the Aborigines of Australia, the Maoris of New Zealand and Canadian Indians. But while the indigenous people of these other countries have been given the liberty by their own governments and financial support to develop their customary lands, the native Fijians continue to fight for the reform of the existing regime of statutory and regulatory constraints that continue to strangle their freedom to deal with their customary land as they desire.

The result is a sad irony. Native Fijians own 86% of the land in Fiji. They continue to subsidise the economic development of the country and the economic wealth of individuals who lease their land. A mere \$30 million is paid to them in annual rent while tenants and investors enjoy the multi million investments of sugar, tourism and other land based industries.

I. RECOGNITION OF FIJIAN LAND RIGHTS

The recognition of Fijian land rights did not come about after a wave of protests and a lengthy court battle as happened for the

Aborigines in Australia and the resultant outcome of the land mark case in **Mabo**. Nor the political wisdom and maturity as the New Zealand government did in enacting the **Treaty of Waitagi Act**. Neither did it come out of international pressure arising out of the UN Declaration of Human Rights in 1948 or the Draft UN Declaration of Indigenous Rights. In Fiji, the recognition of the rights of native Fijians to customary land came about by the benevolent gesture and goodwill of the British Crown, accepting Fiji as a crown colony in 1874 under the primary purpose of protecting the rights and interest of its indigenous population against exploitation.

Clause 4 of the Deed of Cession of 1874 contained the promise by the Crown to grant to native Fijians rights over their customary lands. That did not give recognition any legal effect, a fate that Maoris were to find out after successive judicial attempts to enforce the Treaty of Waitagi. Because, unless the term of a Treaty is transmitted to domestic law, it has no legal effect. Fortunately for native Fijians, the first Governor of the Colony, Sir Arthur Gordon, (fondly remembered by native Fijians as their benefactor), had made sure before his departure that Clause 4 of the Deed of Cession was enacted into the Domestic Laws of Fiji. That became so under the **Native Lands Ordinance** of 1880. That was 112 years earlier than the much acclaimed Australian land mark case of **Mabo vs. Queensland** and the New Zealand **Treaty of Waitagi Act**. Yet, ironically, the nature and effect of the rights of native Fijians to land are similar in most respect to the judicial declaration of the High Court of Australia in **Mabo**. That is, native land is determined on the basis of customary usage and occupation. It is a

bundle of rights, inalienable under communal ownership where individuals have but a life interest.

The **Native Lands Ordinance of 1880** defined native land as based on customary usage and occupation and directed a commission to investigate and register native owners on that basis. That task began in 1880 and ended in 1936 after a complete determination of native ownership, survey of boundaries, and registration of customary ownership under the Torrens system of registration.

Fiji had hosted Papua New Guinea, Vanuatu, the Solomons and a group of Native Americans who had come to Fiji to observe what was then regarded as a unique system but what is now increasingly recognized as an international norm.

II. WHAT WENT WRONG

Fiji excels above similar countries in the recognition of lands rights to its native population. That came as early as 1874 under the terms of the Deed of Cession or to be more exact in 1880 under the ***Native Lands Ordinance*** of that year. But Fiji's current problem arises from the apportioning of the value of use of native land that is made available for leasing to the general public including the 45% of its landless Indian migrant population. The consequence of clause 4 of the Deed of Cession and the Native Lands Act 1880 is that native Fijians own 86% of the landmass in Fiji. Yet the disparity of the return of value in dollar terms on the use of native land between native Fijians and its tenants is glaring. This is due to the regime of statutory and regulatory constraints that give to native Fijians a negligible amount in return for the leasing of their native land. The consequence has been that native Fijians had been left to subsidize the economic development of the country as a whole and the wealth of the users of native land. Most people,

Consider the following examples:

- (a) Some laws restrict rent payable on native leases to 6% of the unimproved capital value. In sugarcane lease this implies that for every \$100.00 earned by a tenant, \$20.00 goes to the miller (the Government) \$78.00 to the tenant and \$2.00 to a community of landowners who often number more than 30. Yet the tenants may average an annual production income of \$12,000 per annum.

In terms of dollar value Fiji has gone through more than three devaluation of its dollar which has further reduced the worth of return to native Fijians.

- (b) Similarly on forest concessions for the cultivation of native timber the returns payable to native owners in royalty is restricted to .009% of the value of the timber milled.

(a) The immediate eviction of tenants on breach of lease agreements is also constrained by legislation that it is a useless form of safeguard. It has allowed tenant to incur arrears of rent of up to \$6 million.

(b) On agricultural land where rent is levied at 6% of unimproved capital value, native owners are required to pay compensation on termination of the tenant's lease. In a recent example the consequence of these has been that the tenant had been allowed to recover back the \$17,000.00 that he had paid in rent for the duration of his lease whilst securing to keep in excess of \$100,000.00 earned in income over the same period.

Other examples are bound of such disparity that one wonders why native Fijians have not raised the issue for such a long time. The reason, as one sociologist professor suggests is engrafted in the cultural value system of the native Fijians. Their values are based on duties and not rights and they will wait patiently for others, in

values require them to concede and give high priority to the needs and wishes of others without ascertaining or demanding that they be given any return.

(III) WHAT MUST BE DONE.

The land issues and issues relating to the rights of indigenous Fijians are politically volatile subjects. That have had a bearing on a number of coups in Fiji. What is needed is a constitutional acknowledgement of the rights of the indigenous Fijians including their land rights that were afforded to them by the British Crown. These are now recognized under the UN Draft Declaration of Indigenous Rights. Second is recognition of the differences of the value system of native Fijians and a resultant affirmative measures to assist them. Third is a review of all existing legislation conferring to them full and complete discretion to enjoy their rights. Politics must be left far and apart limiting it only to facilitating the government to confer with native Fijians on how those rights maybe utilised to benefit all races who make Fiji their home.

(Prepared by Mr. Niko Nawaikula)