Housing, Land and Property Mapping Project

Fiji

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context can assist in delivering stronger and more equitable responses, however these documents are not intended to be legal advice.

The HLP mapping project has been undertaken by Allens lawyers, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

If you would like to make any changes to the document, please submit to the document manager Leeanne Marshall via the below table.

|  |  |  |  |
| --- | --- | --- | --- |
| **Title** | Fiji HLP Profile | | |
| **Description** | Fact Sheet and Research Memo | | |
| **Created By** | Allens Lawyers, Australian Red Cross, IFRC | | |
| **Date Created** | May 2018 | | |
| **Maintained by** | Leeanne Marshall [lemarshall@redcross.org.au](mailto:lemarshall@redcross.org.au) | | |
| **Date** | **Submitted by**  (name, organisation, email) | **Suggested amendments**  (please indicate section, paragraph, page as needed) | **Status** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Housing, Land and Property Law in Fiji

**1 Key laws and actors**

|  |  |
| --- | --- |
| [Laws](#Laws) | The main laws governing housing, land and property law are the [*Constitution of Republic of Fiji 2013*](http://www.paclii.org/fj/Fiji-Constitution-English-2013.pdf)*;* [*Agricultural Landlord and Tenant Act* [Cap 270]](http://www.paclii.org/fj/legis/consol_act_OK/alata308/); [*iTaukei Land Trust Act* [Cap 134]](http://www.paclii.org/fj/legis/consol_act_OK/nlta206/) (formerly the *Native Land Trust Act*); [*iTaukei Lands Act* [Cap 133]](http://www.paclii.org/fj/legis/consol_act_OK/nla131/) (formerly the *Native Lands Act*); [*Land Sales Act* [Cap 137]](http://www.paclii.org/fj/legis/consol_act_OK/lsa99/); [*Land Transfer Act* [Cap 131]](http://www.paclii.org/fj/legis/consol_act_OK/lta141/); [*Land Use Decree 2010*](http://www.paclii.org/cgi-bin/sinodisp/fj/promu/promu_dec/lud2010103/lud2010103.html?stem=&synonyms=&query=land%20use%20decree%202010&nocontext=1)(Decree No.36 of 2010); [*State Acquisition of Lands Act* [Cap 135]](http://www.paclii.org/fj/legis/consol_act_OK/caola279/) (formerly the *Crown Acquisitions of Lands Act*); and [*State Lands Act* [Cap 132]](http://www.paclii.org/fj/legis/consol_act_OK/cla134/)(formerly the *Crown Lands Act*). |
| [Key government actors](#KeyGovernmentActors) | The government actors involved in administering land in Fiji differs depending on the type of land concerned.  The Registrar of Titles is responsible for administering the National Land Register, which contains information about land ownership and records certain dealings in land. The National Land Register pertains to all three types of land: Crown land, iTaukei land and freehold land.  iTaukei land is vested in the iTaukei Land Trust Board (formerly the Native Land Trust Board) as trustee, and administered by the Board for the benefit of the Fijian owners or native Fijians. One of the functions carried out by the iTaukei Land Trust is the approval and administration of leases of iTaukei land. The Lands Use Unit duplicates part of the Board's function because it also administers leasing of iTaukei land.  Crown land is administered by the Department of Lands, which is a department of the Ministry of Lands and Mineral Resources. |
| [Shelter cluster](#ShelterCluster) | There is an active Shelter Cluster in Fiji which is led by the Fijian Ministry of Local Government, Housing & Environment, and co-led by the IFRC. |

[**2 Common types of tenure**](#CommonTenureTypes)

There are three main types of land in Fiji: Crown land, iTaukei land and freehold land. Several different types of tenure exist for each type of land.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Type of land** | **Commonly Registered?** | | **Key Features** | **Title Document** |
| [Crown land](#CrownLand) | Yes | Crown land refers to land held by the Fijian Government. It can be sold or leased or licenced, but only in accordance with the *State Lands Act*.  A sale of Crown land is called a 'Crown grant'. Once a Crown grant has been made, the land becomes freehold land (see below).  A Crown lease may be for a variety of purposes (eg, commercial, grazing, agricultural) and is subject to a 99-year maximum term. | | Registered Crown grant  or  Registered lease or sub-lease |
| [iTaukei land](#iTaukeiLand) | Yes | iTaukei land is communal land held for the benefit of indigenous Fijians. iTaukei land is typically held by a *mataqali*, meaning a social unit comprised of several family units.  iTaukei land cannot be sold, except to the Crown, iTaukei land may, however, be leased for a period of up to 99-years. | | Registered lease or sub-lease |
| [Freehold land](#FreeholdLand) | Yes | Freehold land is land which has been alienated by the Crown or by its indigenous custom owners and is now privately owned. Freehold land can generally be sold, leased, sub-leased or licensed. However, freehold land which was formerly Crown land may be subject to certain restrictions. | | Certificate of title  or  Registered lease or sub-lease |

[**3 Security of tenure of vulnerable groups**](#SecurityofTenureofVulnerableGroups)

|  |  |
| --- | --- |
| [Women](#Women) | Ownership practices of Fijian and Indo-Fijian groups are generally based on systems where males inherit property. This is true even in minority groups influenced by Islamic law, which provides that female children inherit at least half of what their brothers inherit. |
| [Minority groups](#MinorityGroups) | The land rights of the Indo-Fijian minority are notoriously weak. Historically, the Indo-Fijian population relied on 'presumed leases' under the *Agricultural Landlord and Tenant Act*. Presumed leases began expiring in the late 1990s, resulting in a large number of Indo-Fijians living in informal settlements. |
| [Informal settlements](#InformalSettlements) | There are an estimated 230 or more informal/squatter settlements around the islands of Fiji, predominantly located in Suva. Residents of informal/squatter settlements generally have limited land rights. It is possible to adversely possess freehold land, however most informal settlements occupy Crown lands which cannot be adversely possessed. |

[**4 Eviction, expropriation and relocation**](#EvictionExpropriationRelocation)

|  |  |
| --- | --- |
| [Eviction](#Eviction) | Fijian authorities have historically taken a tough approach to the eviction of residents of informal/squatter settlements. During the past decade, however, there has been a clear shift, with Fijian authorities now showing a preference for assisting squatters to relocate, rather than forcefully evicting them. This shift is enshrined in article 39(1) of the *2013 Constitution*, which provides protection against arbitrary eviction, including eviction without a court order. |
| [Expropriation](#Expropriation) | The Fijian Government is empowered to compulsorily acquire land for a 'public purpose' provided that the land owner receives adequate compensation. In the event of a public emergency, the Fijian Government is entitled to compulsorily take possession of property. Possession can be taken immediately, but must be returned to the land owner if they successfully appeal to a tribunal. |
| [Relocation](#Relocation) | The Fiji Government is actively engaged with the issue of relocations and has been developing *National Relocation Guidelines*, and a list of potential community relocations. We have, however, been unable to locate a draft of the Guidelines. Government-assisted relocations are already occurring in Fiji due to climate change. |

|  |
| --- |
|  |
| **Disaster Law Housing, Land and**  **Property Mapping Project**  Fiji |
|  |
|  |

Contents

[1 Introduction 1](#_Toc510712119)

[1.1 Overview 1](#_Toc510712120)

[1.2 Background information on Fiji 1](#_Toc510712121)

[2 Common tenure types 4](#_Toc510712122)

[2.1 Tenure types 4](#_Toc510712123)

[2.2 Documenting tenure 10](#_Toc510712124)

[2.3 Customary ownership 11](#_Toc510712125)

[2.4 Informal settlements 13](#_Toc510712126)

[3 Security of tenure of vulnerable groups 14](#_Toc510712127)

[3.1 Women 14](#_Toc510712128)

[3.2 Indigenous groups 15](#_Toc510712129)

[3.3 Minority groups 17](#_Toc510712130)

[3.4 Landless people/squatters 17](#_Toc510712131)

[3.5 General questions 17](#_Toc510712132)

[4 Eviction, Expropriation and Relocation 18](#_Toc510712133)

[4.1 Eviction 18](#_Toc510712134)

[4.2 Expropriation 18](#_Toc510712135)

[4.3 Relocation 19](#_Toc510712136)

[4.4 Compensation 20](#_Toc510712137)

[4.5 Shelter cluster 21](#_Toc510712138)

**Acknowledgements**

In preparing this memorandum, Allens has received assistance from Howards Lawyers, Fiji. Allens is grateful to Howards for their generous and invaluable contribution to this research.

**Disclaimer**

This report is the result of a desktop review of publically available information. This report is not legal advice.

1. Introduction
   1. Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects of a disaster are countered and the needs of the affected communities are met.

The Australian Red Cross (***ARC***) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies (**IFRC**) to respond to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

Australian Red Cross, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

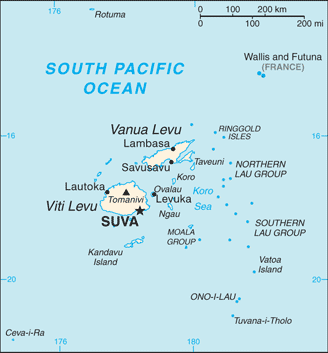
* The first section, entitled '[common tenure types](#CommonTenureTypes)', provides an overview of the different types of housing and land tenure in Fiji. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled '[security of tenure of vulnerable groups](#SecurityofTenureofVulnerableGroups)', considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing.
* The third section, entitled '[eviction, expropriation and relocation](#EvictionExpropriationRelocation)', considers the Fijian laws which govern, or are applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.
  1. Background information on Fiji
     1. Geography and land use

Fiji comprises 332 islands, 110 of which are inhabited, and a land area totalling approximately 18,270 square kilometres.[[1]](#footnote-1) The population of Fiji is approximately 0.9 million,[[2]](#footnote-2) with the majority of the population inhabiting the two major islands of Viti Levu (*Great Fiji*) and Vanua Levu (*Big Island*).[[3]](#footnote-3) Viti Levu alone comprises more than 50% of Fiji's total land mass and approximately 70% of Fiji's total population.[[4]](#footnote-4)

Fiji has a tropical marine climate with slight seasonal temperature variation, with the capital Suva having an average summer high temperature of approximately 29 degrees Celsius and an average winter low temperature of approximately 20 degrees Celsius.[[5]](#footnote-5) The land mass of the islands is predominantly composed of volcanic rock and coral.[[6]](#footnote-6)

Fiji's leading export is bottled mineral water and it has a growing tourism industry. One of the major, but declining, export industries is sugar. Other major exports include textiles, coconut and vegetables. Fiji's economy has been impacted by its political instability and long-term problems involving leaseholds and land ownership.[[7]](#footnote-7)

In February 2016, Tropical Cyclone Winston (***TC Winston***) severely damaged many crops and homes, with the Fijian Ministry of Economy's webpage still focusing on the cyclone and calling for donations.[[8]](#footnote-8) TC Winston was the strongest storm ever recorded in the Southern Hemisphere.[[9]](#footnote-9)



**Figure 1: Map of Fiji (Source: CIA World Factbook)**[[10]](#footnote-10)

There are three official languages in Fiji: English, Fijian and Fiji Hindi.[[11]](#footnote-11) English was brought to Fiji by British colonials, Fijian is the indigenous language of Fiji (the Bau dialect is the most prominent) and Fiji Hindi was brought to Fiji by Indian labourers during colonial rule. Fiji Hindi derives from several dialects of Hindi, and has English, Fijian and Arabic influences.[[12]](#footnote-12) All three languages are referenced in the Fijian Constitution, with Fijian and Fiji Hindi being compulsory subjects in all primary schools.[[13]](#footnote-13)

* + 1. Political instability

Fiji became a British Colony in 1874 when the King and chiefs ceded sovereignty to Her Majesty Queen Victoria by signing a Deed of Cession. Fiji became an independent sovereign democratic state in 1970 and, subsequently, declared itself a republic in 1988.

Political instability has plagued Fiji since it gained its independence in 1970. The following table provides a summary of the key events contributing to political instability in Fiji from 1987 to 2014.[[14]](#footnote-14)

| **Date** | **Event** |
| --- | --- |
| May 1987 | ***Rabuka coup no. 1***  Sitiveni Rabuka seizes power from the Indian dominated coalition of Timoci Bavadra with the aim of making indigenous Fijians politically dominant. Coup fails. |
| October 1987 | ***Rabuka coup no. 2***  Sitiveni Rabuka stages second coup. Coup is successful. Elected government is deposed, the Constitution is revoked, and Fiji is proclaimed a republic. |
| July 1990 | New Constitution (*Constitution of the Sovereign Democratic Republic of Fiji*) enshrining the political dominance of indigenous Fijians is signed into law. |
| July 1997 | 1990 Constitution is amended. |
| May 1999 | General election is held under the 1997 Constitution. Ethnic Indian Mahendra Chaudhry elected as Prime Minister. |
| May 2000 | ***Speight coup***  George Speight occupies parliament taking Mahendra Chaudhry and his cabinet hostage. Military intervention follows, martial law is declared, an Interim Military Government is declared, and the 1997 Constitution is purportedly abrogated. In July 2000, the Military establish an Interim Civilian Government and appoint a new Prime Minister and President by decree. |
| March 2001 | Court of Appeal of Fiji rules that the 1997 Constitution had not been lawfully abrogated and that the Interim Military Government and Interim Civilian Government were illegal. |
| August 2001 | General election is held and indigenous Fijian (ethno-nationalist) party is elected into government. |
| December 2006 | ***Bainimarama coup***  Military commander Frank Bainimarama declares a state of emergency, appoints a new President, and dissolves parliament. Bainimarama is appointed Prime Minister. |
| April 2009 | Court of Appeal of Fiji rules that the 2006 coup was unlawful and that the interim government was invalid. Court ruling prompts the President and Prime Minister to abrogate the 1997 Constitution and revoke all judicial appointments. |
| September 2013 | New Constitution (*Constitution of the Republic of Fiji*) is signed into law. |
| September 2014 | General election is held. Bainimarama elected Prime Minister. |

Although Fiji's political instability has complex causes (including broader social, economic and demographic factors), ethno-political divisions between the Indo-Fijian and indigenous Fijian communities are generally accepted as the major underlying factor.

The instability has resulted in a breakdown of the rule of law and has seen the country arbitrarily ruled by decree on a number of occasions. The most recent period during which Fiji was governed by decree was between April 2009 (following the Court of Appeal decision in *Qarase v Bainimarama*) and September 2013 (the ratification of the *2013 Constitution*).*[[15]](#footnote-15)*

This Decree system was neither transparent, certain, predictable, accountable, nor democratic. It was a system that largely operated in secret and could not be challenged.[[16]](#footnote-16) This system expressly removed the jurisdiction of the courts or any adjudicating body to accept, hear or determine, or in any other way, entertain any challenges whatsoever (including judicial review) by any person to the validity or legality of any Decrees made by the President.[[17]](#footnote-17)

A significant number of legislative instruments were amended and new laws created during this period. Governance by Presidential Decree ended with the ratification of the *2013 Constitution* on 7 September 2013. The *2013 Constitution* expressly provides that all Decrees and any subordinate laws made under a Promulgation, Decree or Declaration between 5 December 2006 and 6 October 2014 remain in force in their entirety.[[18]](#footnote-18)

1. Common tenure types
   1. Tenure types
      1. What are the key pieces of legislation governing housing, land, building and planning?

The key pieces of legislation are listed below.

* [*Constitution of Republic of Fiji 2013*](http://www.paclii.org/fj/Fiji-Constitution-English-2013.pdf)
* [*Agricultural Landlord and Tenant Act* [Cap 270]](http://www.paclii.org/fj/legis/consol_act_OK/alata308/);
* [*iTaukei Land Trust Act* [Cap 134]](http://www.paclii.org/fj/legis/consol_act_OK/nlta206/) (formerly the *Native Land Trust Act*);
* [*iTaukei Lands Act* [Cap 133]](http://www.paclii.org/fj/legis/consol_act_OK/nla131/) (formerly the *Native Lands Act*);
* [*Land Sales Act* [Cap 137]](http://www.paclii.org/fj/legis/consol_act_OK/lsa99/)
* [*Land Development Act* [Cap 142]](http://www.paclii.org/fj/legis/consol_act_OK/lda168/)
* [*Land Sales Act* [Cap 137]](http://www.paclii.org/fj/legis/consol_act_OK/lsa99/)
* [*Land Transfer Act* [Cap 131]](http://www.paclii.org/fj/legis/consol_act_OK/lta141/)
* [*Land Use Decree 2010*](http://www.paclii.org/cgi-bin/sinodisp/fj/promu/promu_dec/lud2010103/lud2010103.html?stem=&synonyms=&query=land%20use%20decree%202010&nocontext=1)(Decree No. 36 of 2010)
* [*State Acquisition of Lands Act* [Cap 135]](http://www.paclii.org/fj/legis/consol_act_OK/caola279/) (formerly the *Crown Acquisition of Lands Act*)
* [*State Lands Act* [Cap 132]](http://www.paclii.org/fj/legis/consol_act_OK/cla134/) (formerly the *Crown Lands Act*)[[19]](#footnote-19)

During the most recent period of rule by decree (April 2009 to September 2013), the *Land Use Decree 2010* was promulgated and several of the above Acts were amended by Presidential Decree. These amendments and the *Land Use Decree 2010* remain in force by virtue of the *2013 Constitution*.

* + 1. What types of tenure exist?

Land in Fiji falls into three main categories:

* **iTaukei land** (also referred to as 'native land') meaning the customary land of indigenous Fijians;
* **Freehold land** meaning land which has been alienated by the Crown or by its indigenous custom owners and is now privately owned; and
* **Crown land** (also referred to as 'State land') meaning land held by the Fijian Government.

The Fijian Department of Town & Country Planning reports the following breakdown of land type.[[20]](#footnote-20)

|  |  |
| --- | --- |
| **Type of Land** | **Percentage Distribution** |
| iTaukei land | 83% |
| Crown land | 7% |
| Freehold land | 10% |

The United Nations has reported this breakdown to be approximately 84%, 8% and 8% for iTaukei land, Crown land, and freehold land respectively.[[21]](#footnote-21)

It is important to note that, although iTaukei land represents the vast majority of Fijian land, it largely comprises rough terrain which is not suitable for agriculture. It is estimated that only 31% of iTaukei land is suitable for agriculture, a large portion of which is leased to non-indigenous people.[[22]](#footnote-22)

These three types of land are discussed in sections (i), (ii) and (iii) below.

* + - 1. iTaukei land

The inalienability of iTaukei land is fundamental to Fijian land law and has been entrenched in all of Fiji's Constitutions.[[23]](#footnote-23)

The *iTaukei Land Trust Act* prohibits the alienation of iTaukei land by its indigenous Fijian owners, even if it is their wish to do so. iTaukei land cannot be transferred, charged or encumbered by its indigenous Fijian owners. The only exception is that iTaukei land may be alienated to the Fijian Government.[[24]](#footnote-24)

Due to the inalienability of iTaukei land, land rights in Fiji are predominantly administered through leasing regimes, which allow non-indigenous persons to access iTaukei land while maintaining ownership by indigenous Fijians.

The *iTaukei Land Trust Act* vests control of all iTaukei land in the iTaukei Land Trust Board (the ***Board***).[[25]](#footnote-25) There are, however, two Government entities which administer the leasing of iTaukei Land: the Board and the Lands Use Unit (the ***LUU***).

iTaukei landowners, therefore, have a choice as to whether to lease their land through the Board or the LUU. Additionally, it is possible for a presumed lease of iTaukei land to arise by virtue of the *Agricultural Landlord and Tenant Act*.

* + - * 1. **Leasing through the Board**

The *iTaukei Land Trust Act* provides that the Board may grant leases or licences of portions of iTaukei land, but only if it is satisfied that the land is not currently being occupied by its indigenous Fijian owners, and is not likely to be required by the owners during the term of the lease or licence.[[26]](#footnote-26)

The Board has a duty to consult landowners before leasing land, and landowners also have a right to impose conditions on a lease granted by the Board over their land.[[27]](#footnote-27) The Board is entitled to retain a proportion of rental proceeds to cover its administration expenses, however this proportion must not exceed 25%; the remainder of rental proceeds are transferred to the landowning group, to be distributed in equal portions.[[28]](#footnote-28)

There are several different categories of lease, including agricultural, commercial, industrial, residential and tourism leases. Agricultural and residential leases are the most common types of lease, respectively accounting for approximately 14,000 and 16,000 of the 36,000 leases administered by the Board.[[29]](#footnote-29) The maximum term for any type of lease is 99 years.[[30]](#footnote-30)

* + - * 1. **Leasing the through the LUU**

The *Land Use Decree of 2010* established the LUU, which sits within the Ministry of Lands. The objective of the LUU is to promote longer term leases in order to encourage the development of Fiji's agricultural and commercial sectors.[[31]](#footnote-31)

The *Land Use Decree* *of 2010* empowers the LUU to lease both iTaukei land and Crown land.[[32]](#footnote-32) There is, therefore, duplication between the function of the LUU and the Board. Although the LUU is empowered to lease both Crown and iTaukei land, it has predominantly been involved in leasing iTaukei land.

As an alternative to leasing through the iTaukei Land Trust Board, landowning iTaukei may apply to lease their land through the LUU, in which case the Director of Lands decides the purpose for which to lease their land. The Director is not required to consult the iTaukei landowners. Further, the iTaukei landowners are not permitted to challenge the terms, or validity, of the lease.[[33]](#footnote-33)

Similar to leases granted by the Board, a maximum lease term of 99 years is also mandated.[[34]](#footnote-34)

* + - * 1. **Leases arising under the *Agricultural Landlord and Tenant Act***

The *Agricultural Landlord and Tenant Act* (***ALTA***) applies to leases of agricultural land, including agricultural iTaukei land. The ALTA prescribes terms which must be contained in all agricultural leases, or will be implied by the courts in the absence of formal documentation.

Importantly, ALTA provides that if a person has occupied and cultivated agricultural land for a period of 3 years or more, they are presumed to have an agricultural lease.[[35]](#footnote-35) The duration of the presumed lease is 30 years. If a landlord objects to a presumed lease, it must prove that the occupation of the land occurred without their consent.[[36]](#footnote-36)

In light of the above, it is possible for a presumed lease of agricultural iTaukei land to arise without the involvement of either the Board or the LUU. However, ALTA does not provide tenants with a right of renewal, meaning that presumed leases expire after 30 years unless the landowner grants the tenant an additional term.

Presumed agricultural leases began expiring in the late 1990s, 30 years after the introduction of ALTA. The expiry of presumed leases has been a significant source of conflict between Fijians and Indo-Fijians, the latter of which are commonly agricultural tenants.

* + - 1. Freehold land

The term 'freehold' refers to full and perpetual ownership of land. When Fiji became a British colony in 1874, land rights held by foreigners prior to cession were registered as freehold.[[37]](#footnote-37) Freehold land is governed by the *Land Sales Act* and accounts for approximately 8 to 10 percent of land in Fiji.[[38]](#footnote-38)

Indo-Fijians have access to less than 12 per cent of freehold land.[[39]](#footnote-39) Non-residents require Ministerial consent to lease or purchase freehold land if the land exceeds one acre, either alone or in combination with other land leased or owned by the non-resident.[[40]](#footnote-40)

In 2014, the Fijian Parliament enacted significant amendments to the *Land Sales Act* with the aim of making freehold land more affordable for Fijian citizens and companies.[[41]](#footnote-41) The changes were very controversial because they increased the regulatory burden on foreign residents. The key changes were:

* narrowing the definition of 'resident', such that the restrictions on non-residents acquiring freehold land have broader application. The term 'resident' is now defined to mean a Fiji citizen or a company controlled by Fijian citizens.[[42]](#footnote-42) Previously, the term 'resident' referred not only to a citizen, but also to a person whose home is in Fiji and who has been resident in Fiji for 7 years;[[43]](#footnote-43)
* prohibiting non-residents from leasing or purchasing freehold land within city or town boundaries. There are exceptions for strata title, leases for 5 years or less, transactions between immediate family members, and land used for industrial, commercial or tourism development purposes;[[44]](#footnote-44) and
* requiring non-residents who own vacant freehold land beyond city or town boundaries to build a dwelling on their land within two years from the date of sale, transfer or lease or within 24 months from 31 December 2014. A penalty of 10% of the sale or lease price applies if construction is not completed, or if the construction costs are below AUD$150,000.[[45]](#footnote-45)

The changes replaced an initial Fijian Government plan to ban foreigners from buying land in Fiji altogether. Fiji's reliance on foreign investment and trade is likely the impetus behind the amended legislation (rather than a total ban), and the specific exceptions for industrial, commercial and tourism purposes. In 2013, the Fijian Government reported 257 new foreign investment applications valued at USD 627 million.[[46]](#footnote-46)

* + - 1. Crown land

The terms Crown land and State land are synonymous and refer to land held by the Fijian Government. Crown land can only be sold, leased or licensed in accordance with the *State Lands Act*.[[47]](#footnote-47)

Leases of Crown land are granted and managed by the Director of Lands.[[48]](#footnote-48) The same restrictions which apply to non-residents purchasing or leasing freehold land apply to Crown land.[[49]](#footnote-49) Ordinarily, a lease of Crown land entitles the lessee to transfer, sublease and mortgage the lease. However, the Government has a power to designate a lease as a 'protected lease', in which case the lessee may not deal with the land in any manner without the written consent of the Director of Lands.[[50]](#footnote-50)

There are several different categories of leases, including agricultural, residential, commercial, grazing, industrial, dairying, tramway and quarry leases.[[51]](#footnote-51) The maximum term for an agricultural, grazing, dairying or quarry lease is 30 years, while the maximum term for all other types of lease is 99 years.[[52]](#footnote-52)

The Minister, after consulting with the Cabinet, may sell Crown land.[[53]](#footnote-53) This is referred to as a Crown grant. Once a Crown grant is made, the land becomes freehold. However, unlike other freehold land, a Crown grant is subject to reservations in favour of the Government. Specifically, the landowner does not have any rights to any precious metal, coal or minerals under the land.[[54]](#footnote-54) Further, the Crown may enter on the land at any point to search for and carry away any such metals, coals or minerals.[[55]](#footnote-55)

* + 1. Which, if any, of these types of tenure provide a high degree of security of tenure?

As discussed in [section 2.2(b) below](#section22b), the *Land Transfer Act* establishes a Torrens Title system, under which registration of an interest in land provides indefeasible title. That is, once a person registers an interest in land, the instrument of title provides conclusive proof of their interest in the land.

Importantly, leases and sub-leases for more than one year must be registered.[[56]](#footnote-56) Leases and sub-leases for one year or less may, but are not required to, be registered.[[57]](#footnote-57) Where a dealing in land is required to be registered, the dealing has no effect until it is registered.[[58]](#footnote-58)

We have not located any resources that analyse the extent to which the types of tenure identified in [section 2.1(b) above](#section21b) provide secure tenure. However, the principle of indefeasibility of title means that persons with a registered interest in land have strong legal rights. Further, they are likely to possess an instrument of title, which serves as proof of their interest.

By contrast, the following categories of persons have weaker legal rights:

* persons whose rights to land are documented in a manner which does not comply with formal requirements — for example, a written but unregistered 2-year lease;
* persons whose rights to land do not contravene formal legal requirements, but are nonetheless not well documented — for example, an oral agreement to sublease land for one year;
* persons who do not have rights to the land they occupy — for example, persons residing in informal settlements (discussed further in [section 2.4 below](#section24)).
  + 1. How does tenure differ between urban and rural areas? If possible, please provide statistics about the prevalence of each type of tenure in urban and rural areas.

We have been unable to locate information regarding how tenure differs between urban and rural areas.

* 1. Documenting tenure
     1. What are the main government and non-government bodies (eg, representative bodies) which administer or deal with housing, land and property?
        1. iTaukei Land Trust Board

The *iTaukei Land Trust Act* provides that the control of iTaukei land is vested in the Board, to be administered for the benefit of the Fijian Owners or native Fijians.[[59]](#footnote-59) The Board is a perpetual body corporate comprising:

* the Minister as Chairman;
* five members who must be members of iTaukei land owning units appointed by the Minister Responsible for iTaukei Affairs;
* three members appointed by the Minister on the recommendation of the iTaukei Affairs Board from a list of nominees submitted by provincial councils to the iTaukei Affairs Board; and
* two other members, appointed by the Minister.[[60]](#footnote-60)

The Board's major function is to develop policy regarding the administration of iTaukei land. At a practical level, the Board is responsible for the approval and renewal of leases, and collection and distribution of rent.

* + - 1. National Registrar

Dealings in all types of land are governed by the *Land Transfer Act*, which establishes a Torrens Title system.[[61]](#footnote-61) The Registrar of Titles administers the National Land Register (the ***Register***) which contains information about land ownership and records certain dealings in land.

* + - 1. Ministry of Lands and Mineral Resources

The Ministry of Lands and Mineral Resources comprises two departments:

* the Department of Lands; and
* the Department of Mineral Resources.

The Department of Lands, managed by the Director of Lands (under the direction of the Minister for Land and Natural Resources), is responsible for the administration of Crown land. The Ministry has six divisions:

* Surveying Division;
* Valuation Division;
* Crown Land Administration/Management;
* Land Use Division;
* Fiji Geospatial Information Management Division; and
* Corporate Service.[[62]](#footnote-62)
  + 1. What statutory instruments or legal documents (eg, title deeds or leases) are used to create or transfer tenure?

The *Land Transfer Act* establishes a Torrens Title system, under which registration of an interest in land provides indefeasible title.[[63]](#footnote-63) The *Land Transfer Act* prescribes the forms to be used to register each type of dealing (eg, transfer of freehold, lease). These forms are referred to as instruments of title.

The process of registration is as follows:

* the parties prepare the instrument of title using the prescribed form and execute it in the presence of a witness;[[64]](#footnote-64)
* the executed instrument of title is presented to the Registrar, preferably in duplicate;
* the Registrar:
* in the event of a dealing with an existing interest in land, enters a memorial on the instrument of title in the Register; and
* in the event of the creation of a new interest in land, signs the instrument of title, marks it with a serial number and enters it in the Register;[[65]](#footnote-65) and
* if the instrument of title was presented in duplicate, the Registrar:
* enters a memorial on the instrument of title;
* authenticates the instrument of title by signing his name and affixing his seal; and
* returns the duplicate to the person who holds the interest in land.[[66]](#footnote-66)

The duplicate certificate of title serves as conclusive evidence of the interest in land.[[67]](#footnote-67)

* + 1. What non-legal documents or actions (eg, verbal agreements or handshakes) are used to create or transfer tenure?

We have been unable to locate information regarding this issue.

* 1. Customary ownership
     1. Is customary ownership of land legally recognised? If so, what is the basis for legal recognition (eg, constitution, national legislation)?

Fiji has a long history of recognising and protecting iTaukei land. Protectionist policy was first implemented by Sir Arthur Gordon, the late Governor of Fiji, through the *Deed of Cession of 1874*.[[68]](#footnote-68) Gordon believed that if land tenure was open to non-indigenous people (as was the case in New Zealand), indigenous Fijians would slowly lose all of their land rights and would be greatly socially impacted.[[69]](#footnote-69) Although successful in reserving land for the native people of Fiji, the policies have arguably led to an unproductive and hindered land tenure system.[[70]](#footnote-70)

The *2013 Constitution* recognises and protects iTaukei land,[[71]](#footnote-71) which has resulted in iTaukei land accounting for the majority of land in Fiji. The Preamble to the *2013 Constitution* recognises the iTaukei and their ownership of iTaukei lands. Further, article 28(1) of the *2013 Constitution* provides that:

*[O]wnership of all iTaukei land shall remain with the customary owners of that land and iTaukei land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State.*

The *iTaukei Land Trust Act* and the *iTaukei Lands Act* further protect iTaukei land by:

* proscribing the alienation of iTaukei land;
* establishing the iTaukei Land Trust Board to administer all iTaukei land; and
* imposing certain restrictions on the leasing of iTaukei land (eg, maximum lease terms and consultation requirements).

The protections provided by the *iTaukei Land Trust Act* and the *iTaukei Lands Act* are discussed in further detail in [section 2.1(b)(i)(A) above](#section21biA).

* + 1. What are the sources of customary rules (eg, village chief, elders, oral tradition)?
    2. What are the customary rules governing housing, land and property?

Prior to colonisation, there was a high degree of variation in the iTaukei customary laws governing land tenure. As a general rule, a *tokatoka* (family unit) had usufruct rights to cultivate a parcel of land in exchange for furnishing their chief with part of whatever was grown on the land.[[72]](#footnote-72) However, there was variation in terms of:

* whether such rights passed to male heirs or were merely a life interest;
* whether such rights could be transferred between rights-holders or could only be granted by a chief; and
* whether such rights were exclusive, or whether other *tokatoka* were also entitled to use the land.[[73]](#footnote-73)

The effect of colonisation was to marshal 'diverse customs … into a rigid orthodoxy'.[[74]](#footnote-74) During the late 1800s and early 1900s, the Native Lands Commission surveyed and recorded all iTaukei land and produced a 'definitive model' of Fijian social structure and land tenure which failed to reflect the high degree of variation.[[75]](#footnote-75) This definitive model has since served as the basis for laws governing iTaukei land, with the result that modern customary tenure now reflects the definitive model.

Under the definitive model, there are three main social units: the *yavusa* (tribe) comprises several *mataqali* (clans); in turn, a *mataqali* comprises several *tokatoka* (family units).[[76]](#footnote-76) In contrast to pre-colonial customary ownership, the land owning unit is the *mataqali* rather than the *tokatoka*.[[77]](#footnote-77) Further, *mataqali* have exclusive, rather than shared, possession of contiguous blocks of land.[[78]](#footnote-78) Decisions in relation to the land generally require the approval of a majority of the *mataqali* members that are 21 years of age or older.[[79]](#footnote-79) However, certain decisions may additionally require approval from the iTaukei Land Trust Board.

* + 1. What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?

Customary ownership of land is distinct from other forms of tenure and is protected by virtue of its inalienable status. Customary land may, however, be:

* acquired by the Government through agreement or by compulsory acquisition, in which case the rights of customary owners are extinguished; or
* leased for a period of up to 99 years, in which case the rights of customary owners are suspended for the duration of the lease.
  1. Informal settlements
     1. What are the locations and boundaries of informal settlements?

There are an estimated 230 or more informal or squatter settlements in Fiji, predominantly located in the country's capital Suva.[[80]](#footnote-80) It is estimated that these settlements house 100,000 people, representing 16% of Fiji's population. Academics have identified a number of causes of increased squatting in and around Suva. These include global warming, the expiry of presumed agricultural leases and the hope of being accommodated in Department of Housing developments.[[81]](#footnote-81)

* + 1. What kinds of tenure arrangements are in place in informal settlements?

United Nations documents indicate that the majority of informal settlements occupy Crown land.[[82]](#footnote-82) The general policy position of the Ministry of Land and Mineral Resources is that entering and occupying vacant Crown land is forbidden. Despite this, makeshift houses are often built on Crown land overnight.

To combat this issue, the Ministry of Land and Mineral Resources mooted the idea of employing State Property Officers, charged with the responsibility of protecting Crown lands and dedicated to deterring would-be squatters and monitoring would-be informal settlements. There is, however, little evidence to suggest that this initiative has been followed through.[[83]](#footnote-83)

In some instances, the Fijian Government uses Crown leases to formalise informal settlements. Specifically, the Fijian Government leases Crown land to the Department of Housing which, in turn, subdivides the land and installs services. The Department of Housing provides existing residents of the informal settlement with an 'approval notice' which permits the residents to remain on the land in exchange for payment of a premium, which may be highly subsidised.[[84]](#footnote-84)

1. Security of tenure of vulnerable groups
   1. Women
      1. Can women legally own, rent or inherit land and housing?
      2. In practice, do they? If not, why not?

Fiji is one of the worst countries in the world for all forms of violence against women.[[85]](#footnote-85) The World Economic Forum 2013 also ranked Fiji at 117th of 136 countries in terms of gender disparity in economic participation and opportunity, educational attainment, political empowerment, and health and mortality.[[86]](#footnote-86) Women's rights to land are not an exception.

Ownership practices of Fijian and Indo-Fijian groups are generally based on systems where males inherit property.[[87]](#footnote-87) This is true even in minority groups influenced by Islamic law, which provides that female children inherit at least half of what their brothers inherit.[[88]](#footnote-88) There are a few areas of Fiji, such as Macuata, where social groups practice matrilineal land inheritance and women have some decision-making rights in relation to land, however this is uncommon.[[89]](#footnote-89)

Amongst indigenous Fijians, land tenure has historically revolved around a man's relationship to the chief who controls all land in the area.[[90]](#footnote-90) Land has been a fundamental aspect in social, religious and economic practices, and the amount of land that a chief controls indicates his status in society.[[91]](#footnote-91) Traditionally, upon the death of a chief, his widows would be strangled and each of their families would be given a piece of land as compensation.[[92]](#footnote-92) Separately, if a woman nursed a chief back to health she would also be given a piece of land.[[93]](#footnote-93)

Colonial forces did little to improve women's access to land, instead bringing patriarchal land laws and systems that reinforced male-dominated practices.[[94]](#footnote-94) Today, land policy reform in Fiji predominantly revolves around ethnicity, rather than the need to include women in land ownership.[[95]](#footnote-95) Recently, however, couples have started becoming joint owners of agricultural leases, which may be an indicator of progress towards improved access to land for women.

* 1. Indigenous groups
     1. Is indigenous customary ownership (or custodianship) of land legally recognised?
     2. Does customary ownership provide indigenous people with a high degree of security of tenure? If not, what are the barriers to indigenous people owning and/or living on their land?

iTaukei have the strongest claim to lands in Fiji and currently hold 87% of all land through inalienable iTaukei title.[[96]](#footnote-96) For iTaukei, ownership of land is central to their core identity and a representation of their indigenous privilege.[[97]](#footnote-97) The legal recognition and protection of iTaukei land is discussed in further detail in [section 2.1(b)(i) above](#iTaukeiLand).

Despite having the strongest claim to title, some iTaukei do not have access to land. This may be due to belonging to tribes that have land in short supply or which do not own land. Alternatively, it may be due to iTaukei resettling in a part of Fiji where their tribe does not possess land.[[98]](#footnote-98)

* + 1. Is there conflict between indigenous groups regarding land ownership? If so, to what degree? Are there mechanisms for resolving these conflicts?

We have been unable to locate information regarding the prevalence of land disputes between native Fijians. However, it is clear that disputes regarding customary land do occur and often arise due to a lack of acceptance of formal institutions, a lack of coordination between administrative bodies, and inconsistencies between formal legal and customary processes.

The conflict between formal legal and customary transfer of land practices has resulted in inconsistencies and conflict. Traditional transfers were done through conquest, dowry for women and gifts for chiefs. The introduction of the colonial administration system prevented the traditional system from operating effectively, with the dual systems resulting in confusion.

Disputes arising in relation to iTaukei land commonly relate to:

* the management and administration of the land (including distribution of lease revenue);
* competing relationships between traditional leases and iTaukei leases;
* the application of iTaukei inheritance laws, especially where a child is adopted; and
* land boundaries.[[99]](#footnote-99)

Land boundaries were traditionally natural boundaries (eg, rivers), however the Department of Lands has surveyed the iTaukei land boundaries using different methods, which has caused many disputes.[[100]](#footnote-100)

Traditionally, the iTaukei dispute resolution mechanism has been that families on the land will come to a compromise and agreement going forward, prioritising communal interests.[[101]](#footnote-101) This method involves addressing the issues in a public manner, and serves a restorative justice purpose, different from the adversarial court system.[[102]](#footnote-102)

Land disputes, however, predominantly go through the Fijian court system, and often the cases are prolonged due to the absence of substantive iTaukei land information.[[103]](#footnote-103) iTaukei land records and policies are not readily attainable, which, paired with a lack of an alternative dispute resolution system, has provoked calls for reform.[[104]](#footnote-104)

* 1. Minority groups
     1. Can minority groups (ie, ethnic minorities, immigrants, stateless people) legally own and/or rent land and housing? If so, are they subject to special conditions or restrictions? In practice, do minority groups legally own and/or rent land and housing? If not, why not?

The land rights of the Indo-Fijian minority are notoriously weak. Due to the migration of their ancestors to Fiji as tenant farmers, Indo-Fijians currently lack the legal status to sustain rights on the majority of land in Fiji.[[105]](#footnote-105) This is at odds with the country's significant economic reliance on the Indo-Fijian dominated sugar cane industry and the fact that Indo-Fijians comprise a large proportion of the population.[[106]](#footnote-106)

The Indo-Fijian population previously relied on presumed leases granted under the *Agricultural Landlord and Tenant Act*, a large number of which were not renewed in the late 1990s to 2000s.[[107]](#footnote-107) The failure to renew those leases resulted in the displacement of many Indo-Fijian families and the migration of a large proportion of Indo-Fijian families away from Fiji. Since the initial expiry of presumed agricultural leases in the late 1990s, there have been no new lands acquired by the iTaukei Land Trust Board to aid the resettlement of Indo-Fijians, leading to a number of informal squatter settlements.[[108]](#footnote-108)

The importance of land and ethnicity in Fijian politics has meant that attempts at potential land reform have proved difficult, with many provoking hostile reactions from the iTaukei majority.[[109]](#footnote-109) No constructive reform has been effected to date.

* 1. Landless people/squatters
     1. Do landless people/squatters have rights to land and/or housing (eg, adverse possession)? If so, are those rights respected?

Squatters and landless people have limited land rights. It is possible to adversely possess freehold land. Section 78 of the *Land Transfer Act* provides that a person who has been in continuous possession of freehold land for twenty years may apply to the Registrar for an order vesting the land in their favour.[[110]](#footnote-110) Importantly, however, this provision does not apply to vacant Crown land, which is where most informal settlements are located.

* 1. General questions
     1. Are there any other persons or groups that face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?

We have been unable to locate information regarding this issue.

1. Eviction, Expropriation and Relocation
   1. Eviction
      1. Are there laws or regulations prohibiting forced evictions?
      2. In practice, are those laws adhered to?

Article 39(1) of the *Constitution* is a protection against arbitrary eviction. It provides that:

Every person has the right to freedom from arbitrary evictions from his or her home or to have his or her home demolished, without an order of a court made after considering all the relevant circumstances.[[111]](#footnote-111)

Thus, a person cannot be evicted from their home without a court order.

Fijian authorities have traditionally taken a tough stance against squatting and have actively encouraged the eviction of squatters. In 2006, the then Minister for Housing stated, 'squatters are like thieves because they live illegally on someone else's land… and police should make every effort to round them up and remove them'.[[112]](#footnote-112)

Over the past decade, however, there has been a discernible shift in urban policy in Fiji, both in rhetoric and practice.[[113]](#footnote-113) In 2015, the World Bank noted that the Fijian Government has taken a 'progressive policy perspective to dealing with challenges of urbanisation, and sees settlers as important contributors to society'.[[114]](#footnote-114) Senior Government officials have also observed a change in attitude towards evictions of squatters, with the Government now preferring to assist squatters to relocate, rather than forcefully evicting them.[[115]](#footnote-115)

There is anecdotal evidence that some Fijians, particularly Indo-Fijians, have faced eviction from land due to the non-renewal of presumed agricultural leases.[[116]](#footnote-116) However, similar to the change in the Government's attitude, landowners' attitudes have softened and there has been an overall shift in practice in relation to renewing agricultural leases.

* 1. Expropriation
     1. Are there laws or regulations permitting the government to expropriate land?

Article 27(1) of the *2013 Constitution* provides that:

Every person has the right not to be deprived of property by the State other than in accordance with a written law referred to in subsection (2), and no law may permit arbitrary acquisition or expropriation of any interest in any property.

Article 27(2) provides that a written law may authorise the compulsory acquisition of property when the acquisition is necessary for a 'public purpose' and on the basis that the owner will be given compensation in consideration for the acquisition. The term 'public purpose' is not defined in the *Constitution*.

The *State Acquisition of Lands Act* provides that, subject to the *2013 Constitution*, an acquiring authority may acquire any land required for a public purpose provided that the person being deprived of their property is compensated in accordance with the provisions of the Act.[[117]](#footnote-117) The Act defines a 'public purpose' as a purpose of defence, public safety, public order, public health, town and country planning, or preserving property of national, archaeological, paleontological, historical, cultural, architectural or scenic value.[[118]](#footnote-118)

* + 1. If so, are those laws or regulations applicable in the context of a disaster?

The *State Acquisition of Lands Act* empowers the Government to take possession of land during any emergency or calamity that threatens the life or wellbeing of the community.[[119]](#footnote-119) If the Government decides to exercise this power, it may take possession of the land immediately. It must, however, adhere to the following process:

* + 1. the Minister, or Director of Lands acting under the authority of the Minister, must promptly write to inform the landholder that the land is being compulsorily possessed and that the landholder has a right to object;
    2. if the landholder has an objection, the Director of Lands must, within thirty days of receiving the objection, apply to a tribunal for a determination of his entitlement to compulsorily possess the land; and
    3. unless the tribunal is satisfied that the taking of possession is reasonably justifiable in the circumstances, it must order that possession of the land is returned to the owner; and
    4. following determination by the tribunal, or if no objection is raised, adequate compensation for taking possession of the land must be paid to the landholder.[[120]](#footnote-120)
  1. Relocation
     1. Are there laws or regulations governing relocations?
     2. Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?

We have not located any laws or regulations which specifically govern relocations. Theoretically, if the Government wishes to relocate a person (or group of persons), and that person or group do not wish to relocate, the Government could rely on its Constitutional power to expropriate land.[[121]](#footnote-121) Alternatively, if the person or group does not have rights to the land, the Government could evict them after first obtaining a court order.[[122]](#footnote-122)

It appears unlikely, however, that the Government would take this approach. The Fiji Government is actively engaged with the issue of relocations and has been developing *National Relocation Guidelines*, and a list of potential community relocations.[[123]](#footnote-123) We have been unable to locate a copy of the *Guidelines*, however it appears that they are either finalised, or close to being finalised, as they were presented at a 'Side Event' at the Fiji Pavilion at the UN Climate Change Conference held in Bonn in November 2017 (COP 23).[[124]](#footnote-124)

Relocations are already occurring in Fiji due to climate change. For example, in January 2014, the residents of Vunidogoloa village on the northern coast of Vanua Levu relocated to a new site within the customary land boundaries of the community.[[125]](#footnote-125) The new site was located just 2 kilometres from the original village.[[126]](#footnote-126) This relocation was initiated by the Vunidogoloans, rather than the Government.[[127]](#footnote-127) The Vunidogoloans applied for and received a large amount of financial assistance from the Government for the relocation.[[128]](#footnote-128)

* 1. Compensation
     1. Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?
     2. In practice, are these laws or regulations adhered to?

Article 27(2) of the *2013 Constitution* provides that a written law may only authorise compulsory acquisition of property on the basis that the owner will be:

* promptly paid an agreed amount of compensation, or;
* failing agreement, paid a just and equitable amount of compensation as determined by a court or tribunal after considering all relevant factors.

The factors to be taken into account by a court or tribunal when determining just and equitable compensation include:

* the public purpose for which the property is being acquired;
* the history of its acquisition by the owner;
* the market value of the property;
* the interests of any person affected by the acquisition; and
* any hardship to the owner.[[129]](#footnote-129)

The *State Acquisition of Lands Act* also provides a list of factors that a court must take into account when compulsorily acquiring property under that Act. These include:

* the market value of the land;
* the damage sustained by the landholder by reason of the taking of any crops or trees on the land at the time of taking possession;
* the damage sustained by the landholder if the acquisition of the land severs the landholder's land from their remaining land;
* the incidental damage sustained by the landholder to their other property, real or personal, or their earnings; and
* the consequential costs or losses if, by acquiring the land, the landholder is required to change residence or place of business.[[130]](#footnote-130)

The Act also prescribes a list of factors that a court must *not* take into consideration for the purposes of determining compensation:

* the degree of urgency which has led to the acquisition;
* any disinclination of the landholder to part with their land;
* any damage sustained by the landholder which, if caused by a private person, would not render the person to a suit;
* any increase in value of the acquired land likely to accrue from the use to which it will be put when acquired;
* any increase to the value of the other land of the landholder likely to accrue from the use to which the acquired land will be put; or
* any outlay or improvements on the land which were commenced, made or effected after the date of the notice of the intention to take such land.[[131]](#footnote-131)

We have not located any information indicating that these laws are not adhered to in practice.

* 1. Shelter cluster
     1. Is there an active shelter cluster in Fiji? If not, has the shelter cluster been activated during any previous disaster?

There is an active Shelter Cluster in Fiji which is led by the Fijian Ministry of Local Government, Housing & Environment, and co-led by the IFRC.[[132]](#footnote-132) The Shelter Cluster has provided coordination support during the 2012 floods, Cyclone Evan in 2012 and Cyclone Winston in 2016.[[133]](#footnote-133)

1. United Nations, Sustainable Development Knowledge Platform, Fiji Documents and Reports, *Land in Fiji* <http://www.un.org/esa/agenda21/natlinfo/countr/fiji/land.pdf>. [↑](#footnote-ref-1)
2. World Bank, *Total population of Fiji as of 2015* <http://data.worldbank.org/indicator/SP.POP.TOTL?locations=FJ>. [↑](#footnote-ref-2)
3. Sophie Foster and Barrie K Macdonald, Encyclopaedia Britannica, *Fiji*, 2017 <https://www.britannica.com/place/Fiji-republic-Pacific-Ocean/Land#ref1003314>. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. United Nations, Sustainable Development Knowledge Platform, Fiji Documents and Reports, *Land in Fiji* <http://www.un.org/esa/agenda21/natlinfo/countr/fiji/land.pdf>. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ministry of the Economy, Government of Fiji, <http://www.economy.gov.fj/>. [↑](#footnote-ref-8)
9. United Nations, UN Women in the Pacific - Special Issue: Tropical Cyclone Winston (May 2016) <http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2016/05/unwp\_newslettertcwinstons.pdf?vs=2056>. [↑](#footnote-ref-9)
10. CIA, 'Fiji', *The World Factbook* <https://www.cia.gov/library/publications/the-world-factbook/geos/fj.html>. [↑](#footnote-ref-10)
11. Oishimaya Sen Nag, World Atlas, *Languages of Fiji*, 2016 <http://www.worldatlas.com/articles/languages-of-fiji.html>. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. *Constitution of the Republic of Fiji* art 3(3)-(4) (the ***2013 Constitution***). [↑](#footnote-ref-13)
14. See The Law Society Charity (International Bar Association), *Fiji: The Rule of Law Lost* (January 2012) <www.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3DF9CF0D75-3761-41E3-AB4A-3EBD48F33485&usg=AFQjCNFIJGYto5bFmMYWMBfCF\_2-EJRYmw>; Sanjay Ramesh, *Fiji, 1987 – 2007: The Story of Four Coups* (30 April 2007) <http://www.worldpress.org/Asia/2773.cfm>; BBC News, *Fiji profile – Timeline* (11 November 2016) <http://www.bbc.com/news/world-asia-pacific-14919688>; George Williams, 'Feature – Republic of Fiji v Prasad' (2001) 2 *Melbourne Journal of International Law* <http://law.unimelb.edu.au/\_\_data/assets/pdf\_file/0017/1680011/Williams.pdf>. [↑](#footnote-ref-14)
15. *Qarase v Bainimarama* [2009] FJCA 9; Office of the President and Commander in Chief of the Republic of the Fiji Military Forces, *Executive Authority of Fiji Decree 2009 (No. 2 of 2009)* 10 April 2009. [↑](#footnote-ref-15)
16. The Law Society Charity (International Bar Association), *Fiji: The Rule of Law Lost* (January 2012) <www.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3DF9CF0D75-3761-41E3-AB4A-3EBD48F33485&usg=AFQjCNFIJGYto5bFmMYWMBfCF\_2-EJRYmw>. [↑](#footnote-ref-16)
17. Government of Fiji, *Administration of Justice Decree 2009 (No.9 of 2009)* 16 April 2009. [↑](#footnote-ref-17)
18. *2013 Constitution* art173. However, note some express repeals provided by the *Constitution* at art 164, which are not relevant to issues with respect to land described in this memorandum. [↑](#footnote-ref-18)
19. Fiji legislation was consolidated in 1985. The 'Cap' references refer to the chapter that the piece of legislation falls in in the consolidated version. [↑](#footnote-ref-19)
20. Ministry of Lands & Mineral Resources, Department of Lands <http://www.lands.gov.fj/index.php/department/department-of-lands>. [↑](#footnote-ref-20)
21. United Nations, Sustainable Development Knowledge Platform, Fiji Documents and Reports, *Land in Fiji* <http://www.un.org/esa/agenda21/natlinfo/countr/fiji/land.pdf>. [↑](#footnote-ref-21)
22. Keresi R. Fonmanu & ors, *Dispute Resolution for Customary Lands: Some Lessons From Fiji,* Centre for Spatial Data Infrastructures & Land Administration, University of Melbourne<http://www.csdila.ie.unimelb.edu.au/publication/journals/Dispute%20resolution%20for%20customary%20lands.pdf>. [↑](#footnote-ref-22)
23. Vijay Naidu and Mahendra Reddy, *Na ghar ke na ghat ke; ALTA and expiring land leases: Fijian farmers' perceptions of their future*, (Centre for Development Studies, University of the South Pacific, Suva, 2002). [↑](#footnote-ref-23)
24. *iTaukei Land Trust Act* s5. [↑](#footnote-ref-24)
25. Ibid s4. [↑](#footnote-ref-25)
26. Ibid s9. [↑](#footnote-ref-26)
27. Ibid s23(1); *iTaukei Lands Act*, s 3. [↑](#footnote-ref-27)
28. *Native Land Trust (Leases and Licences)(Amendment) Regulations 2010*, s 2(a). [↑](#footnote-ref-28)
29. iTaukei Land Trust Board, 'Types of Lease' <https://www.tltb.com.fj/types-of-lease/>. [↑](#footnote-ref-29)
30. *iTaukei Land Trust (Leases and Licences) Regulations*, Schedule 4, at reg 6. [↑](#footnote-ref-30)
31. *Land Use Decree 2010*, No 36 (2 July 2010) Republic of Fiji Islands Government Gazette Vol 11, No 4, s3(2)(b). [↑](#footnote-ref-31)
32. Ibid. [↑](#footnote-ref-32)
33. *Land Use Decree 2010*, No 36 (2 July 2010) Republic of Fiji Islands Government Gazette Vol 11, No 4, s15(1); Matthew Dodd, *Reform of Leasing Regimes for Customary Land in Fiji,* A dissertation submitted in partial fulfilment of the requirements of the degree of Bachelor of Laws (Honours) (Otago University, 2012). [↑](#footnote-ref-33)
34. *Land Use Decree 2010*, No 36 (2 July 2010) Republic of Fiji Islands Government Gazette Vol 11, No 4, s 10. [↑](#footnote-ref-34)
35. *Agricultural Landlord and Tenant Act* s4(1). [↑](#footnote-ref-35)
36. Ibid ss 4, 5 and 6. [↑](#footnote-ref-36)
37. Spike Boydell and Krishn Shah, *An inquiry into the nature of land ownership in Fiji*, The International Association for the Study of Common Property, 2003, 5 <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/2266/Boydell\_%26\_Shah\_inquiry\_into\_land.pdf?sequence=1> . [↑](#footnote-ref-37)
38. *Land Sales Act.* [↑](#footnote-ref-38)
39. Padma Lal & ors, *The Land Tenure dilemma in Fiji – can Fijian landowners and Indo-Fijian tenants have their cake and eat it too?* Pacific Economic Bulletin, 2001, 16, 115 <https://openresearch-repository.anu.edu.au/bitstream/1885/70042/2/162\_09.pdf>. [↑](#footnote-ref-39)
40. Ibid, ss 6 and 7. [↑](#footnote-ref-40)
41. Liam Fox, *Fiji Government amends Land Sales Act to restrict foreign property ownership,* ABC News <http://www.abc.net.au/news/2014-12-12/foreigners-face-strict-new-fiji-land-ownership-laws/5962152> ; *Land Sales (Amendment) Bill 2014*. [↑](#footnote-ref-41)
42. *Land Sales (Amendment) Bill 2014* s2. [↑](#footnote-ref-42)
43. *Land Sales Act* s2. [↑](#footnote-ref-43)
44. *Land Sales (Amendment) Bill 2014* s3. [↑](#footnote-ref-44)
45. Ibid. [↑](#footnote-ref-45)
46. U.S. Department of State, *2015 Investment Climate Statement – Fiji*, May 2015 <https://www.state.gov/e/eb/rls/othr/ics/2015/241560.htm>. [↑](#footnote-ref-46)
47. The *State Lands Act* specifically states that the principle that Crown land is not to be alienated is subject to the provisions of the *iTaukei Land Trust Act*, the *Mining Act*, the *Oil Mines Act* and the *Forest Act*. [↑](#footnote-ref-47)
48. Department of Town & Country Planning, Government of Fiji, *Land Tenure* (2015) <http://www.townplanning.gov.fj/index.php/planning/planning-issues/land-tenure>. [↑](#footnote-ref-48)
49. *Land Sales (Amendment) Bill 2014* ss 2, 3. [↑](#footnote-ref-49)
50. *State Lands Act* s 13. [↑](#footnote-ref-50)
51. Ibid s 7. [↑](#footnote-ref-51)
52. Ibid ss 8, 9. [↑](#footnote-ref-52)
53. Ibid s 6. [↑](#footnote-ref-53)
54. Ibid s 7. [↑](#footnote-ref-54)
55. Ibid. [↑](#footnote-ref-55)
56. *Land Transfer Act* s 54. [↑](#footnote-ref-56)
57. Ibid. [↑](#footnote-ref-57)
58. Ibid s 37. [↑](#footnote-ref-58)
59. *iTaukei Land Trust Act*, s 4(1). [↑](#footnote-ref-59)
60. Ibid s 3(1). [↑](#footnote-ref-60)
61. *Land Transfer Act*. Also see Munro Leys, *Buying or dealing in Fiji land* (2017) Munro Leys Law <http://www.munroleyslaw.com/doing-business-in-fiji/buying-or-dealing-in-fiji-land/>. [↑](#footnote-ref-61)
62. Ministry of Lands & Mineral Resources, Department of Lands <http://www.lands.gov.fj/index.php/department/department-of-lands>. [↑](#footnote-ref-62)
63. *Land Transfer Act* s 38. [↑](#footnote-ref-63)
64. Ibid s 23. [↑](#footnote-ref-64)
65. Ibid s 21. [↑](#footnote-ref-65)
66. Ibid s 25. [↑](#footnote-ref-66)
67. Ibid s 18. [↑](#footnote-ref-67)
68. Krishn Shah, *Facilitating Property Developments in the Fiji Islands: The Legal Mechanisms*, Tenth Annual Conference, Pacific Rim Real Estate Society, 2004, 2 <http://www.prres.net/Papers/Shah\_Facilitating\_Property\_Developments\_In\_The\_Fiji\_Islands.pdf>. [↑](#footnote-ref-68)
69. Ibid. [↑](#footnote-ref-69)
70. Ibid. [↑](#footnote-ref-70)
71. *2013 Constitution*. [↑](#footnote-ref-71)
72. Matthew Dodd, *Reform of Leasing Regimes for Customary Land in Fiji,* A dissertation submitted in partial fulfilment of the requirements of the degree of Bachelor of Laws (Honours) (Otago University, 2012), 4-5. [↑](#footnote-ref-72)
73. Ibid 5. [↑](#footnote-ref-73)
74. Ibid. [↑](#footnote-ref-74)
75. Ibid. [↑](#footnote-ref-75)
76. Ibid. [↑](#footnote-ref-76)
77. Ibid; Keresi R. Fonmanu & ors, *Dispute Resolution for Customary Lands: Some Lessons From Fiji,* Centre for Spatial Data Infrastructures & Land Administration, University of Melbourne<http://www.csdila.ie.unimelb.edu.au/publication/journals/Dispute%20resolution%20for%20customary%20lands.pdf>. [↑](#footnote-ref-77)
78. Ibid. [↑](#footnote-ref-78)
79. Keresi R. Fonmanu & ors, *Dispute Resolution for Customary Lands: Some Lessons From Fiji,* Centre for Spatial Data Infrastructures & Land Administration, University of Melbourne<http://www.csdila.ie.unimelb.edu.au/publication/journals/Dispute%20resolution%20for%20customary%20lands.pdf>. [↑](#footnote-ref-79)
80. Jennifer Joy Bryant-Tokalau, 'Urban squatters and the poor in Fiji: Issues of land and investment in coastal areas' (2014) 55(1) *Asia Pacific Viewpoint* 54-66. [↑](#footnote-ref-80)
81. United Nations Department of Economic and Social Affairs, 'Land in Fiji" <http://www.un.org/esa/agenda21/natlinfo/countr/fiji/land.pdf>. [↑](#footnote-ref-81)
82. Ibid. [↑](#footnote-ref-82)
83. Commentary of Tuwere suggests that during the 2014 election, the need to constructively deal with housing for informal settlers was a central election issue, suggesting citizen and official concern of the tenure arrangements for informal settlements <http://fijisun.com.fj/2014/08/06/solutions-for-squatters/>. [↑](#footnote-ref-83)
84. Tarryn Phillips and Meg Keen, 'Sharing the City: Urban Growth and Governance in Suva, Fiji' (Discussion Paper 2016/6, State, Society & Governance in Melanesia, 2016) 10. [↑](#footnote-ref-84)
85. ABC News, '*Fiji among world's worst for violence against women*' (2012) < http://www.abc.net.au/news/2013-12-12/an-fiji-among-world27s-worst-for-violence-against-women/5152018>. [↑](#footnote-ref-85)
86. International Women's Development Agency, *Public Perceptions of Women in Leadership – A Research Project of the Fiji Women's Forum, In Partnership with International Women's Development Agency (IWDA)*, 2014, Section 1.2 <https://www.iwda.org.au/assets/files/Public-Perceptions-of-Women-in-Leadership.pdf>. [↑](#footnote-ref-86)
87. Biman C Prasad and Sunil Kumar, *Property Rights in Fiji: Women's Welfare and Empowerment*, Atlantic Publishers and Distributors, 2001. [↑](#footnote-ref-87)
88. Ibid. [↑](#footnote-ref-88)
89. Cema Bolabola, *Fiji: Customary Constraints and Legal Progress*, Institute of Pacific Studies of the University of the South Pacific, 1986, 11. Macuata is a former communal constituency that was reserved for indigenous Fijians. All constituencies were abolished in the *2013 Constitution*, which was promulgated by the interim military-backed government. [↑](#footnote-ref-89)
90. Ibid. [↑](#footnote-ref-90)
91. Ibid. [↑](#footnote-ref-91)
92. Ibid 6. [↑](#footnote-ref-92)
93. Ibid 6. [↑](#footnote-ref-93)
94. Ibid 13. [↑](#footnote-ref-94)
95. Biman C Prasad and Sunil Kumar, *Property Rights in Fiji: Women's Welfare and Empowerment*, Atlantic Publishers and Distributors, 2001, 55*.* [↑](#footnote-ref-95)
96. *Fiji Facts and Figures* as at 1st July 2008 (Fiji Islands Bureau of Statistics, Suva, 2008). [↑](#footnote-ref-96)
97. Matthew Dodd, *Reform of Leasing Regimes for Customary Land in Fiji,* A dissertation submitted in partial fulfilment of the requirements of the degree of Bachelor of Laws (Honours) (Otago University, 2012). [↑](#footnote-ref-97)
98. Vijay Naidu and Mahendra Reddy, *Na ghar ke na ghat ke; ALTA and expiring land leases: Fijian farmers' perceptions of their future*, (Centre for Development Studies, University of the South Pacific, Suva, 2002). [↑](#footnote-ref-98)
99. Keresi R. Fonmanu & ors, *Dispute Resolution for Customary Lands: Some Lessons From Fiji,* Centre for Spatial Data Infrastructures & Land Administration, University of Melbourne<http://www.csdila.ie.unimelb.edu.au/publication/journals/Dispute%20resolution%20for%20customary%20lands.pdf>. [↑](#footnote-ref-99)
100. Ibid. [↑](#footnote-ref-100)
101. Ratu Filimone Ralogaivau, *Problem Solving Courts: Blending Traditional Approaches to Dispute Resolution in Fiji with the Rule of Law- The Best of Both Works*, paper presented to the 3rd Asia Pacific Mediation Forum Conference, University of the South Pacific, 2006<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/BlendingTradDisputeReswithRoL.pdf>; Keresi R. Fonmanu & ors, *Dispute Resolution for Customary Lands: Some Lessons From Fiji,* Centre for Spatial Data Infrastructures & Land Administration, University of Melbourne<http://www.csdila.ie.unimelb.edu.au/publication/journals/Dispute%20resolution%20for%20customary%20lands.pdf>. [↑](#footnote-ref-101)
102. Ratu Filimone Ralogaivau, *Problem Solving Courts: Blending Traditional Approaches to Dispute Resolution in Fiji with the Rule of Law- The Best of Both Works*, paper presented to the 3rd Asia Pacific Mediation Forum Conference, University of the South Pacific, 2006<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/BlendingTradDisputeReswithRoL.pdf>. [↑](#footnote-ref-102)
103. Keresi R. Fonmanu & ors, *Dispute Resolution for Customary Lands: Some Lessons From Fiji,* Centre for Spatial Data Infrastructures & Land Administration, University of Melbourne, 9<http://www.csdila.ie.unimelb.edu.au/publication/journals/Dispute%20resolution%20for%20customary%20lands.pdf>. [↑](#footnote-ref-103)
104. Ibid. [↑](#footnote-ref-104)
105. Swastika Narayan, *Racial Discrimination in Fiji*, (2008) 12 Journal of South Pacific Law 1, 1. [↑](#footnote-ref-105)
106. Ibid, 72. [↑](#footnote-ref-106)
107. Of the 4222 leases that expired between 1997-2001 over 2000 were returned to iTaukei tribes. [↑](#footnote-ref-107)
108. Swastika Narayan, *Racial Discrimination in Fiji*, (2008) 12 Journal of South Pacific Law 1, 72. [↑](#footnote-ref-108)
109. Matthew Dodd, *Reform of Leasing Regimes for Customary Land in Fiji,* A dissertation submitted in partial fulfilment of the requirements of the degree of Bachelor of Laws (Honours) (Otago University, 2012). [↑](#footnote-ref-109)
110. *Land Transfer Act,* s 77. [↑](#footnote-ref-110)
111. *2013 Constitution* art 39(1). See also the National Housing Policy of 2011. [↑](#footnote-ref-111)
112. Jennifer Joy Bryant-Tokalau, 'Living in the Qoliqoli: Urban Squatting on the Fiji Foreshore' (2010) 33(1) *Pacific Studies* 1-20 quoting Cacau 2006. [↑](#footnote-ref-112)
113. Tarryn Phillips and Meg Keen, 'Sharing the City: Urban Growth and Governance in Suva, Fiji' (Discussion Paper 2016/6, State, Society & Governance in Melanesia, 2016) 3. [↑](#footnote-ref-113)
114. World Bank, *Unsettled: Water and Sanitation in Urban Settlement Communities of the Pacific* (November 2015) World Bank Group p 9 <https://openknowledge.worldbank.org/bitstream/handle/10986/23336/Full0report.pdf?sequence=1&isAllowed=y>. [↑](#footnote-ref-114)
115. Tarryn Phillips and Meg Keen, 'Sharing the City: Urban Growth and Governance in Suva, Fiji' (Discussion Paper 2016/6, State, Society & Governance in Melanesia, 2016) 3. [↑](#footnote-ref-115)
116. Padma Lal, Hazel Lim-Applegate and Mahendra Reddy, 'The land tenure dilemma in Fiji – can Fijian landowners and Indo-Fijian tenants have their cake and eat it too?' (2001) 16(2) *Pacific Economic Bulletin* 108 <https://openresearch-repository.anu.edu.au/bitstream/1885/70042/2/162\_09.pdf>. [↑](#footnote-ref-116)
117. *State Acquisition of Lands Act* s 3. [↑](#footnote-ref-117)
118. Ibid s 2. [↑](#footnote-ref-118)
119. Ibid s 8. [↑](#footnote-ref-119)
120. Ibid. [↑](#footnote-ref-120)
121. *2013 Constitution* art 27(2). [↑](#footnote-ref-121)
122. *2013 Constitution* art 39(1). [↑](#footnote-ref-122)
123. Karen E McNamara and Helene Jacot Des Combes, 'Planning for Community Relocations Due to Climate Change in Fiji' *International Journal of Disaster Risk Science* 315. See COP 23 Fiji, 'Fiji Pavilion Side Events' (3 November 2017) <https://cop23.com.fj/wp-content/uploads/2017/11/Fiji-Pavilion-Agenda.pdf>. [↑](#footnote-ref-123)
124. COP 23 Fiji, 'Fiji Pavilion Side Events' (3 November 2017) <https://cop23.com.fj/wp-content/uploads/2017/11/Fiji-Pavilion-Agenda.pdf>. [↑](#footnote-ref-124)
125. Karen E McNamara and Helene Jacot Des Combes, 'Planning for Community Relocations Due to Climate Change in Fiji' *International Journal of Disaster Risk Science* 315, 316. [↑](#footnote-ref-125)
126. Ibid. [↑](#footnote-ref-126)
127. Ibid. [↑](#footnote-ref-127)
128. Ibid 316-7. [↑](#footnote-ref-128)
129. *2013 Constitution* art 27(b). [↑](#footnote-ref-129)
130. *State Acquisition of Lands Act* s12(a). [↑](#footnote-ref-130)
131. Ibid s12(b). [↑](#footnote-ref-131)
132. Global Shelter Cluster, 'Fiji' <https://www.sheltercluster.org/pacific/fiji>. [↑](#footnote-ref-132)
133. Ibid. [↑](#footnote-ref-133)