CHAPTER ONE : INTRODUCTION

Then God said "Let us make man in our image, in our likeness, and let them rule over the fish of the sea and the birds of the air, over the livestock, over all the land and over all the creatures that move along the land"

Genesis 1:26

1.1 Introduction

Land problems are usually seen as the product of ecological, demographic and socio-economic pressures. In the Pacific, the focal point of these problems is a psychological, religious or spiritual attachment to land, which transcends the economic and legal arrangement of the western systems. Pacific Islanders therefore are torn between embracing their psychological attachment to their mother-land or being influenced by the question of leasing or selling their land for economic productivity and national development.

Noronha and Lethem (1983) describes land tenure system as, "the rules accepted by a group of the ways in which land is held, used, transferred and transmitted...". Williamson (1982) describes western land tenure system as based on the European, capitalistic-oriented concept, which is intended to facilitate land conveyancing and economic development. In Fiji, customary land tenure system is established as the result of the practices and traditions of the *taukeis,* the indigenous Fijian people. Collectively most of the indigenous people of the Pacific nations have developed a different value system on their land, and Burton-Bradley (1974) describes these land values as:

> "His land is the place where he is born, where he was subjected to primary enculturation, where he has lived the most important aspect of his life, where the values of his cultural linguistic group have been constantly reinforced, and where in most instances he may die.

> As he grows up he learns that this is the place where his ancestors preceded him, and to which they may return, thus giving the attachment a magico-religious sanction. It is a place where his children and his children's children will follow."

Crocombe (1978) considers that emotional involvement in land is very strong in the Pacific but so is the influence of the industrialised world around it. Perhaps there has been no time in recent history when the relevancy has been greater for governments with customary land laws to focus on land issues and problems. This is because the exposure of new influences, ideas and possibilities has changed traditional patterns and culture, with the result that religious, ethical and cultural differences have caused disputes, which tend to worsen over time. The introduction of western land tenure systems by colonial administrations and the pressure of achieving economic, social and political stability has forced customary landowners to be participants in the new "western" system. Misunderstanding, confusion and differences have resulted in customary land problems.

The question, therefore, to ask is: How can land administrators incorporate western land administration concepts and still maintain some of the advantages of the traditional system, for example cultural identity and social security?

The operation of two diverse land tenure systems is not the only factor that cause land disputes because land has been the focal point in ecological, demographic, social and political pressures. Although governments are aware of the continuous disturbances caused by disputes, land administrations have not been modelled specifically to accommodate this national concern. This thesis therefore aims at remodelling land administration in Fiji, so that resolution of customary land disputes can be addressed. This research examines customary land disputes from three dimensions: landowners, land boundaries and land administration. Therefore, for the

introduction, chapter one will firstly review Fiji's customary land tenure system, and then will introduce the basic concepts regarding customary land disputes.

1.2 Fiji's Land Tenure System

The land tenure system, as it exists in Fiji today, reflects the traditional and social structure of the *taukeis* (the indigenous Fijians) together with the legislative framework that was formulated by the colonial government. The present system therefore represents "a long process of evolution, simplification, and institutionalisation" (Overton 1994). Crocombe (1994) explains that the forces of society shape land tenure and, in turn, land tenure also contributes to the shaping of its society. Land laws and land reforms were introduced to accommodate arrivals of migrants and also to open land for economic development.

Fiji, like other Pacific nations with colonial inheritance, has a dual system of land tenure. While the customary, communally owned lands are held by the *taukei* (the indigenous people) in accordance with their customs and traditions, the western commercially oriented system applies to freehold land and state or government land (Rakai 1993). The comparative figures of land ownership as derived from the 1992 statistics are shown in Figure 1.1. Although Freehold and State lands account for only 16.06 % of the total land area, this figure could be misleading because in terms of economic value, they include the most valuable land (Crocombe 1984).

1.2.1 The Western Land Tenure System

Freehold lands, together with the State Lands, account for 16% of the total land area in Fiji. Freehold lands are lands held individually or corporately in fee simple. In the decade 1860 - 1870 the white population increased in Fiji from about 50 to 2000, due to the world shortage of cotton as a result of the American civil war (Lloyd 1982). Fiji was proven to be amenable to European settlers, especially planters. Fijian chiefs or warlords in exchange for trade goods, mostly firearms, sold native land.

Freehold purchase and other forms of transactions were recorded by Europeans in the English language, and were sealed by the chief's thumbprint (Lloyd 1982).

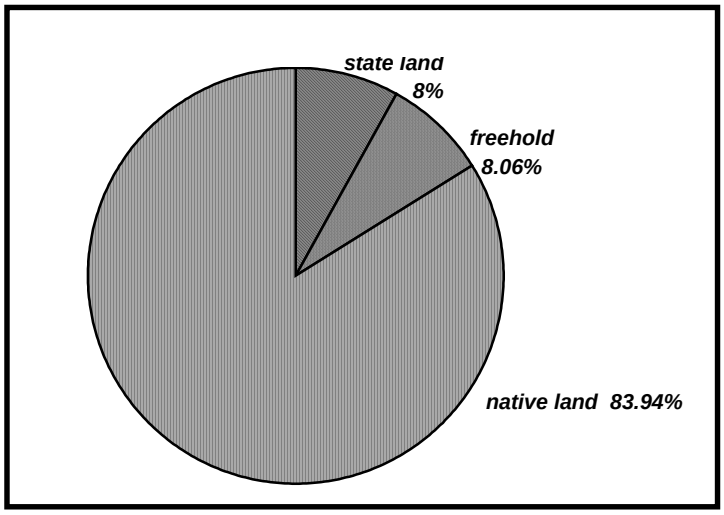


Figure 1.1: Comparison of Land ownership by Area
(Data from NLTB Statistics 1992;Lands Dept. Statistics 1992)

Therefore after cession, there were many European claimants to large areas of Fijian lands that were submitted to the Lands Claims Commission. The Lands Claims Commission was set up in 1878 to investigate all claims to freehold titles. Many of these claims were refused, some were reduced in size but, even so, the approved claims of 430,000 acres of land contained much of the productive and accessible land in the country (Lloyd 1982). Registration of freeholds was recorded using the Torrens Title Registration System. This system requires an accurate cadastral surveying and mapping, and is oriented towards an individualistic commercial enterprise.

The Native Lands Commission (NLC) later continued the work of investigating ownership of native lands. It was at this stage that Crown or State land came into being and was classified as follows: (Rakai 1993)

- State Schedule 'A' land - All lands of which the native owners have died out or have become extinct.

- State Schedule 'B' land - All lands that were found vacant because they were unoccupied or unclaimed by the *taukeis* at the time of cession.
- State Foreshore land - All land below high water mark.

The total State land area is 153,884 hectares or 8% of the total land area and is administered by the Department of Lands (Lands Dept. Statistics 1992). State lands include all public lands, all lands used for public purposes such as roads, reservoirs, dams, drains, and all lands below the high water mark, including mangroves, swamps, and all foreshore. State lands are also available for leasing. The Lands Department is responsible for the development and allocation of leaseholds. The main types of leases are: agricultural, residential, commercial or industrial, and development leases. State Schedule 'A' and 'B' lands are in the process of gradually being reverted to the *taukeis* under the provisions of Section 18 and 19 Cap 134 of the Native Lands Trust Act of 1946.

1.2.2 The Customary Land

Customary lands or Native lands, include all lands that are held and used supposedly in the Fijian tradition and custom. Administratively, Native Lands include:

- All lands that are used and farmed by the *taukei* for their subsistence or commercial needs.
- All lands that are known as native reserves, that is, lands which have been set aside to be used exclusively by Fijians.
- All lands leased under the customary or *vakavanua* arrangements.
- Native leased lands to which the western system applies.

Under the Native Lands Act (Cap. 133 Rev. 1985) native land is defined in this way:

> *Native land shall be held by native Fijians according to custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to*

> *their native customs and subject to any regulations made by the Fijian Affairs Board, and in the event of any dispute arising for legal decision in which the question of tenure of land amongst native Fijians is relevant all courts of law shall decide such disputes according to such regulations or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.*

The above Act clearly indicates that the customary land in Fiji is administered by both the statute law and also by the unwritten laws of the *taukeis.* Practically it is when these laws have opposing effects on the landowners that conflicts occur. Land to the *taukei* is regarded as a *yau bula*, which means a living treasure. Land is a treasure that is indispensable and will live to be part of all the generations. Misunderstanding of the value, use, ideas and legislation of customary lands cause differences that lead to land conflicts.

The dual tenure system has been criticised as one of the contributing factors to the economic disparity that exists in Fiji today; therefore Rakai (1993) suggested that unless this disparity is bridged, the country's social, economic, and political stability will always be threatened. It has been a growing concern for the government of the day throughout the years, and many of the country's problems have been seen as land problems.

1.3 Basic Concepts

1.3.1 Land Disputes

Land disputes are a natural aspect of life and have been experienced throughout the generations. It represents struggles between opposing forces over resources, ideas, values, wishes and deep-seated need for land. Land disputes can also be described as an argument, debate or quarrel over land. A minor dispute could be known as a land

conflict and a major stronger encounter could be regarded as a land fight. Most situations cannot clarify why and in what aspect land dispute, land conflict, and land fight differ in intensity because the after result is violent confrontation or even open warfare.

The sources of conflicts are as many as there are human interactions; therefore it is important to identify the sources of customary land conflicts in order to aid planning for the appropriate action or response. Condliffe (1991) defined conflict as: "a form of relating or interacting where we find ourselves (either as individuals or groups) under some sort of perceived threat to our personal or collective goals". These goals are usually to do with our interpersonal wants. These perceived threats may be either real or imagined. Customary land disputes have three main components that are similar to Condliffe's (1991) explanation. These are:

1. **Interests**:

   These are things that motivate people. Interests are both objective and subjective, which means that they are also about roles and position or status. A chief or head of a *yavusa* may have a different interest in the land from the *mataqali* or villager. Since he receives about 5% of all the lease monies of each lease within his headship, his interest would be to lease more customary lands. This is an objective interest. The interest of a rapidly growing land-owning unit population would be different, because they would be subjective to the welfare of its members. Interest is a substantive issue in land conflict.

2. **Emotions**

   These are the feelings displayed in any human interaction. They include anger, resentment, fear, rejection, anxiety, loss, insecurity and greed. In most land disputes, emotion overrides the respect between families. In a culture that has strong family ties, emotions can be hurt so badly in a dispute that it may take years to resolve and it also involve other family members for generations. Dale (1997)

suggests that, sometimes, emotional hurts and pains over the years materialise in land disputes. This is especially true for the Pacific nations, where they have stronger family ties and higher cultural values.

3. Values

These are the most difficult to resolve because they are associated with deeply rooted ideas and feelings of right and wrong that govern or maintain behaviour.

These three components are present in every dispute, but the importance of each one may vary. For example, in a dispute between a landowner and a land user, values may be predominant, whereas in a dispute between a *mataqali* (land owning unit) with another *mataqali,* interest may then be a predominant factor. The emotional component of any conflict should be the first to be dealt with before any other technicalities (Condliffe 1991).

Maenu'u (1994) describes customary land tenure problems as a howling wind desperately calling for help and adds with great concern that genuine help does not come because:

> "…efforts to resolve land problems are sometimes motivated by other regions. Academics are interested in the subject mainly as an opportunity to gain additional qualifications. Foreign governments and aid organisations interest is primarily in security for their investment in the islands."

This thesis challenges the above concern and aims to discuss and improve the administration of land disputes in Fiji by remodelling the administration and management of the present system.

1.3.2 Dispute Resolution

The primary objective of any methodology for dispute resolution is to have a procedure for a non-violent solution. Most, if not all land reform programs seem to concentrate on economic development and the formalising of tenure in an individual manner without considering dispute resolution. Dispute resolution should be included in all land reform programs, especially in countries with customary land tenure.

The major difference between western land tenure and customary land tenure, in regards to land dispute resolution, has led to a great deal of misunderstandings. In the western societies a dispute is taken through a court procedure which preserves the solidarity of the social system (Jandt and Pedersen 1996). It is an extension of the western legal system, be it civil law or case law which provide specific dispute resolution procedures, even if it is litigatory. Customary systems are flexible and are based on customary laws which are more accommodating and **not** on formal administrative structures or written records (Crocombe 1978). The cultural aspect emphasises collective responsibilities in the traditional methods and procedures for conflict management.

In the early 1980's, the Administrative Conference of the United States recognised the potential of an attempted philosophy of Alternate Dispute Resolution (ADR) for public policy making. ADR is an umbrella term used for a wide range of alternatives, including various forms of mediation and arbitration, to traditional hearings and litigation for disputes. In the Pacific, ADR was the only procedure practised, until the colonial administration, when the legalised court system was set up. Today, most of the Pacific nations would regard the legalised court as an alternative to the customary informal negotiation, since most disputes are expected to be resolved without the legal proceedings. The ADR method will be able to accommodate the problem of cultural cost and value of customary information, confidentiality and liability issue. For this reason most of the Pacific nations prefer the traditional approach rather than hearings and litigation.

Since the colonial administration both the traditional system and the western court system are used for customary dispute resolutions. However, the procedure and the administration for customary dispute resolution is not always regarded as a priority, even though there has been an increasing pressure to prioritise this subject in most Pacific nations.

Two factors that both western and cultural structures have in common and which are vital to resolving any land disputes are: the availability of accurate information, and the lines of communication between the land administrators and the landowners. Land information is one of the most valued commodities for the resolution of land disputes.

1.3.3 Information

Information is a prime requisite for decision making. It is vital for making, implementing and enforcing decisions, rules, regulations and law. Clear, reliable and timely information reduces uncertainties. Therefore the best and most appropriate resolutions and decisions can be made from the most reliable information (Dale and McLaughlin 1988). In Fiji, some of the so-called reliable customary records of the Ministry for Fijian Affairs have been questioned by the customary landowners therefore, some major decisions have been prolonged because of the lack of reliable information.

Information system is a combination of human and technical resources together with an organisational procedure that produces information to support some managerial requirements (Dale and McLaughlin 1988). Land Information System (LIS) and Geographic Information System (GIS) are systems that give support to the management of land and its resources. A GIS provides the capability of combining thematic information about land, such as land cover, topography, soil type, rainfall and other geographical features, with the land ownership and land boundary

information. GIS also has the ability to perform spatial analysis therefore, it would be a suitable tool for decision-making for dispute resolution. These tasks are more efficient in the computer environment than on paper thus the need for GIS.

It is very important, however, to note that, like any other technology, information system development is a resource-intensive activity. The progress is dependent on the availability of hardware, appropriate software, trained technicians, computer-knowledgeable users and an environment conducive to new high technology (Furmston and Logan 1987). Referring to South Africa, Fourie and van Gysen (1996) suggest that a flow of land information and good land management will resolve some of their land problems.

1.3.4 Land Information Management (LIM)

Land Information Management (LIM) is a process that determines the effectiveness of the decisions made (Dale and McLaughlin 1988). A carefully planned and well managed resource will have a maximum output and, likewise, land information needs to be carefully managed to maximise its potential benefits (see Figure 1.2). The goal of land information management is to meet the needs of the user more effectively, efficiently and equitably (Dale and McLaughlin 1988). Fourie and van Gysen (1996) argue that land management decision making must facilitate a flow of information from the local level right down to the ordinary people.

Figure 1.2 The Land information management challenge (from Dale and McLaughlin 1988)

GIS is a useful computer resource required for land information management purposes. Land information management allows a more informed decision to be made with a better awareness and knowledge of consequences and options. Also, most land information is made available for a more equitable decision and the consequences of decisions can be monitored, analysed and enforced (Dale and McLaughlin 1988).

Ezigbalike (1996) points out in reference to Africa, the lack of awareness of the role of information in general decision-making results in poor land management. The same applies to Fiji where the awareness of the role and the importance of information in general decision making are very low. Most decisions are made on political influences and on the basis of traditional interests of the hierarchical structure.

1.4 Overview of Thesis

1.4.1 Objectives and Application

This thesis has a primary objective of improving the management of customary land disputes. This research has investigated customary land disputes in Fiji and other jurisdictions and has proposed an improved administrative model as a Centre for Customary Dispute Resolution.

The secondary objectives of this thesis are:

- To review the rights in the customary land ownership.
- To review the importance of customary land boundaries.
- To examine the roles played by the different customary land administrators in a customary land dispute.

This thesis is relevant for developing countries where customary land disputes are increasing as the result of misunderstanding between the customary landowners and the land administrators. Administration of customary lands in Fiji may be unique in

comparison to other Pacific nations but the social structure, the customary values and the cause of influence are applicable and common. Therefore, it is anticipated that even without a computerised information system this thesis can still be useful as a guide to resolving customary land disputes for the Pacific nations.

1.4.2 Research Method

The method used to conduct the research was as follows:

- Land problems and land disputes in Fiji and other Pacific nations were studied. In order to understand the quality of land disputes it was necessary to closely study the landowners of Fiji, their rights, their values, traditions and their culture.
- The historical demarcation of customary land and its accuracy was also investigated along with the effect it has on the lives of the people of Fiji.
- The administration of customary land in Fiji was examined and the responsibilities that the Fijian administration has over customary land disputes were defined.
- Extensive research was done on the management of disputes and dispute resolutions.
- LIS initiatives were investigated in order to assess the appropriateness of the system in the management of dispute resolution.
- From the above input, an analysis of the areas of concern in the resolution of customary land disputes was carried out. The conclusion and a recommendation were then prepared.
- A great advantage to this research is the on the job experiences of the writer which allowed easier access for participatory observation techniques and structured interviews.

1.4.3 Data Collection

The sources of data and information are outlined below:

1. As a technical officer for the Native Lands Commission, the author of this research has first hand knowledge and experience on customary disputes and resolutions in Fiji.
2. The researcher has completed courses on Land Administration and GIS, a prerequisite for the Masters programme.
3. Extensive research into journals and publications obtained from institutions in Australia and Fiji was undertaken.
4. Information and notes were also obtained from lecturers and professors in GIS, land administration and Pacific studies.
5. A preliminary period of eight weeks was spent with Fiji's LIS Support Centre and other Government departments, statutory bodies and educational institutions. This visit introduced the use of GIS and the problems encountered with customary land tenure.
6. A five weeks field trip to Fiji was undertaken as part of the research. This field trip was spent in rural areas, where informal discussions with landowners and tenants were made, and also discussions with officials from the provincial offices and town councils.

1.4.4 Structure of Thesis

This thesis is organised into eight chapters. Chapter 1 introduces the inter relationship between Fiji's customary land system and land disputes. Land disputes are seen as the indicator of land problems; therefore, the first chapter explains the concepts of land disputes and customary land disputes.

Chapters 2, 3, and 4 detail the three dimensions that determine land disputes. Customary ownership, the effects of survey boundaries, and the loopholes in land administration are highlighted in these chapters.

Rights of customary ownership differ from the legal rights of the western system therefore Chapter 2 explains the concepts of customary land ownership and the different types of land rights that are now practised by the indigenous owners.

Chapter 3 reviews the survey of customary land and the registration of boundaries. This chapter also discusses unsurveyed customary land.

Chapter 4 reviews the administration and management of customary land disputes emphasising the three main administrative bodies: the Native Land Trust Board, Native Lands Commission and the Fijian Affairs Board. The management of customary disputes by the three bodies individually can bring about misunderstandings and confusions to landowners. This chapter also reviews the potential and the initiatives of LIS/GIS in management of land dispute resolution.

Chapter 5 discusses the customary land disputes in Fiji. This chapter is divided into the three main sources in land disputes: landowners, land boundaries, and land administration; and then describes the customary disputes in each dimension. Some disputes are in descriptive form and others are examples in case study format.

Chapter 6 reviews customary land disputes in other jurisdictions and discusses their resolution programme. It also reviews the influence of LIS/GIS in customary land tenure.

Chapter 7 reviews the present procedure for resolving customary disputes in Fiji. It is recommended that a Centre for Dispute Resolution (CDR) be established. This chapter looks at the proposed structure for the CDR and proposes three options for the administration of the centre.

Chapter 8 is the final chapter. It summarises the conclusions drawn from this research and also recommends the best administrative set up from the three options shown in

chapter seven. The recommendation and all the ideas built around these options are original and are the author's own work.

1.4.5 Flow of the Thesis

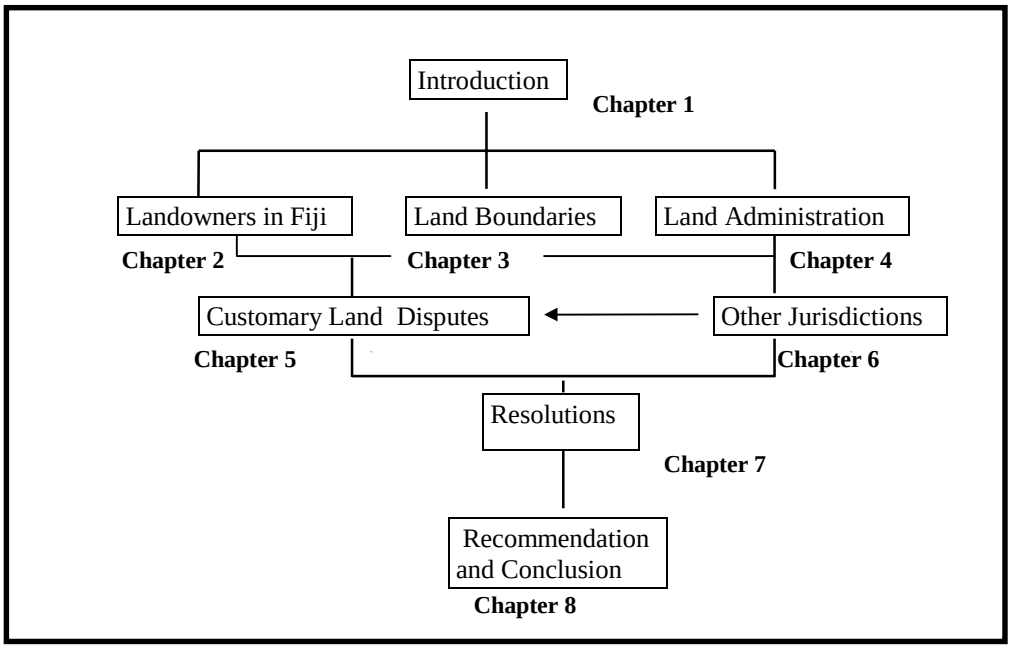


Figure 1.3 Flow of thesis

1.5 Chapter Summary

Land disputes are generally costly, time consuming and often very frustrating to Government, land administrators, developers, proprietors and landowners. These

effects are exacerbated in customary land due to the complexity of the tenure rights that exist there.

This chapter briefly reviews Fiji's dual land tenure system. The complexity of the dual land tenure systems and the influence of the western system of land conveyancing, economic development and individual rights over land have brought about misunderstanding, confusion and differences.

This chapter also discusses the basic concept of customary land disputes, dispute resolutions and the emerging role of LIS/GIS for the management of customary land and its application for dispute resolution. In Fiji land issues are more demanding now then ever before and land administrators are trying to work out the best solutions to land problems which will definitely affect the nation's economy. This thesis recommends a model that uses both the western and the customary systems for the resolution of customary disputes.

Chapter One also describes the overview of the thesis where most the research work reveal the writer's experience as an officer for the Ministry for Fijian Affairs.

CHAPTER TWO: LANDOWNERS IN FIJI

Now the Lord had planted a garden in the east, in Eden;.. And the Lord God made all kinds of trees grow out of the ground - trees that were pleasing to the eye and good for food... The Lord God took the man and put him in the Garden of Eden to work it and take care of it.

Genesis 2: 8 & 15

2.1 Introduction

Customary landowners play a significant role in the process of development in any country of the South Pacific. However, very little has been written about them; rather more attention has been directed towards the management, planning and other administrative processes. Today, as economic development progresses throughout the world, the outcry of the indigenous landowners cannot be ignored and governments are forced to take heed of their demands and to respond accordingly. Goodchild and Munton (1985) suggest that a study of landowners should contribute to a better understanding of a nation and its development process. It will also provide planners and policy makers with a better foundation for their decisions. They also point out that the first problem faced during any inquiry is the lack of accurate information on land ownership.

The question of the definition of "landowners" now arises. This chapter will firstly answer this question by differentiating the terms "land ownership" and "land rights" and also, in its introduction, will define some important terms that characterise the concept of communal land ownership. In order to fully understand the customary landowners in Fiji it is very important to know the history of the indigenous Fijian people. This chapter will include some historical abstracts on the Fijian people and will describe the customary landowners and their different land rights. All disputes arising from ownership problems will be outlined in chapter five.

2.2 The Concept of Land Ownership

Goodchild and Munton (1985) describe the ownership of a property as consisting of a bundle of rights where rights may include the power to lease or sell, the power to occupy and use and the power to pass land on as inheritance. Dale and McLaughlin (1988) explain that, although the term "land ownership" is commonly used, it is impossible to own land, but the right to use land can be owned. These rights can be held through custom or in the formal process of law. Therefore the allocation and control of land is one of the most important attributes of the power of authority (Ezigbalike et.al.1995). Nwabueze (1972) explains that absolute or allodial ownership under customary law means the owner's title is superior to any other rights in the property.

In Fiji, the powers of the landowners and the rights of occupancy by a reserve claimant must be clearly legislated. An indigenous Fijian would refer to land ownership as *na qau vanua,* which means "my land which sustains me and from which I eat" (Lasaqa 1984); and would refer to reserve land as *na noqu i kovukovu* which means "my parcel" or "my gift". The power of possession is very strong in both the meaning and the understanding of these words. Therefore great care must be taken when applying the word "ownership" and "rights" in relation to the indigenous Fijian land.

2.3 The Concept of Rights in Land

Bohannan (1963) considers that there is confusion in the word "rights" because the western system assumes that rights to space and the environment is the same as rights in land. Humans can use, develop and even exploit these rights. Hohfeld also notes the ambiguity of the word "right" and this has led to his attempt to sort out its meaning in the Hohfeld principle (Stoljar 1984). The Hohfeldian principle maintains

that rights have duties and restrictions, which Ezigbalike et al (1996) tabulate as the rights, restrictions and responsibilities associated with customary land tenure in Fiji, as shown in Table 2.1.

Rights	Restrictions	Responsibilities
Right to build a house	Height and style restrictions on others not to rebuild over land without consent, even in case of absenteeism	Contribution to village maintenance Community obligations
Agricultural rights		Contribution to village maintenance Community obligations
Inherited ownership and land -use rights of individual	Cannot transfer right without first obtaining consent of community	Fulfilment of social and traditional obligations Good land management practices
Inherited land use rights of older siblings	Cannot transfer right without first obtaining consent of community	Maintenance of interests of younger siblings and their families Good land management practices
Acquisition rights of women	Rights attach only until marriage or migration, when they revert to remaining members	Fulfilment of social and traditional obligations Good land management practices
Rights of Chiefs to a portion of the profits of the land		Fulfilment of social and traditional obligations Good land management practices
Land use rights of migrant settlers	Rights restricted to use and occupation of land Rights not inheritable	Fulfilment of social and traditional obligations Passing of part of harvest to supplier of land
Fishing and hunting rights	Location specific method restrictions rights restricted to allocated areas Seasonal restrictions (eg. during breeding season)	Observation of conservation practices
Access to sites of spiritual, historical	Free access to selected individuals only (priests, chiefs)	Dress and behave respectfully, in accordance with customs and traditions

Table 2.1 Rights, Restrictions and Responsibilities associated with Customary tenures in Fiji (from Ezigbalike *et.al.* 1996).

Today, the owner's powers over land may be overuled by restrictive rights of the planning authorities and by land use and environmental programmes. The landowners (*mataqali*), the NLTB as custodians of all native lands, the reserve claimants, lessees or users all have a bundle of rights over the customary lands.

These diverse yet numerous interests in land may overlap and may conflict but are very dynamic in nature. It is when land is in reserve that the landowners do not have powers over its administration.

Claiming or making a claim on a right means a speech-act of demanding a legitimate agreement (Stoljar 1984). This therefore shows that claims are made on the understanding that the claimed article, in this case land, is due to the claimant. A claim is always for a right, or sometimes the right is already there but needs to be affirmed.

Fiji's problem is the ambiguity of the meaning and understanding of the words "land rights" and "land ownership." Legislation has not defined terms appropriately so that the meaning of the words may be interpreted and understood by a layman. Native landowners and native reserve claimants can have conflicting rights over the same piece of land because native lands can have a dual ownership, the donor unit and the reserve claimants. Reserve rights include powers to use, to consent to lease, to develop, and to utilise commercially for as long as the claimants are in existence. As soon as the claimants become extinct the land is reverted to the donor unit. Ambiguity over the powers of ownership is the main cause of conflict between the landowners and the reserve claimants. Native reserve is discussed later on in this chapter.

2.4 The Concept of Communal Ownership.

The most important feature of customary land tenure is the predominance of communal ownership (Ezigbalike and Benwell 1994). In Fiji the only customary law that is more firmly established is that no member of the landowning unit has a separate individual title of ownership to the whole or any part of the communal land (Nwabueze 1972). Land is controlled by a social group that is either a tribe, clan, village, family or a lineage and is often described as a communal ownership.

Communal ownership may result from tribal wars where the land and people are passed to the conqueror by right of conquest. In Fiji, some ownership is usually formed from communal groups that have agnatic descendants of a common ancestral god living in the same area. Most of the Pacific nations have a social structure which group families together. These family groups have a placing in the overall hierarchical system of the indigenous people. In most instances the normal unit is not the community or the village but the family or extended family.

Family is the most common social unit. In the English language, family has a definite meaning. By extension of kinship principles the Pacific regard families in terms of social and biological ties which continue to be emphasised and maintained. Coker (1966) defines an extended family among the Igbo tribe of Nigeria as :

> "a group of closely related people, known by a common name and consisting usually of a man and his wives and children, his brothers and half brothers and their wives and children and possibly near relations... All people born in a village believe themselves to be descended ultimately from a common ancestor."

Ravuvu (1983) also describes the meaning of family in Fiji, where brothers of the same parents should regard all their children as their own and should treat all children, as one's own. A child is usually registered in his father's lineage and is a member of his father's *tokatoka* [family unit]. Only if the biological father does not claim him, will this child be registered as a member of the mother's family unit. In this system it is ensured that all indigenous people are members of a family unit. This family unit has the same principle of an extended and classificatory kinship. The family however defined, is the most important landowning unit, with its size increasing as new members are added.

2.5 The Taukei (Indigenous Fijians)

2.5.1 History of the Taukei

Many theories have been put forward in the past about the origins of the first Fijian settlers. Lapita pottery found throughout the island group during the past five or so years has indicated that Fiji was inhabited about 3,000 years ago. It is generally assumed that the direct ancestors of the present Fijians were Polynesians who, on arrival in the islands, mixed with the earlier Melanesian migrants already settled in the group. According to NLC report (1930), the earliest form of Fijian society was an independent agnatic family group. They were tillers of the soil. Cognate ties attracted inter-marrying groups to the same locality, but each had its own village, its own defined and recognised arable land. Danger drove these families to migrate and the same force now compelled them to combine for the purpose of mutual protection, and in the process there emerged the tribe or the y*avusa* and its leader (Caginavanua 1991). In the course of time, when the country came to be more densely populated, struggles for territory and other fighting took place. While, many y*avusas* broke up and were scattered, there arose other confederation whereby several *yavusas* or what remained of them united together for mutual protection under a selected chief. Such confederations were known as the *vanua.* Rev. Lorimer Fison writes, as noted by Sukuna (1983), that, "even though the *taukei* may be driven from their lands by a stronger tribe, this does not mean the extinction of their title. Their title is indistinguishable as long as they are not extinguishable". Thus, with the *taukei*, the ownership of land was and still is absolute and indestructible.

2.5.2 The Social Structure

It was by the authority of the colonial government that several attempts were made to classify the social structure of the indigenous people. Maxwell, who was appointed

Native Lands Commissioner in 1912, tabulated for the Legislative Council a report (Figure 2.1) showing the Fijian social units with their distinctive names and their relationship to each other (France 1969).

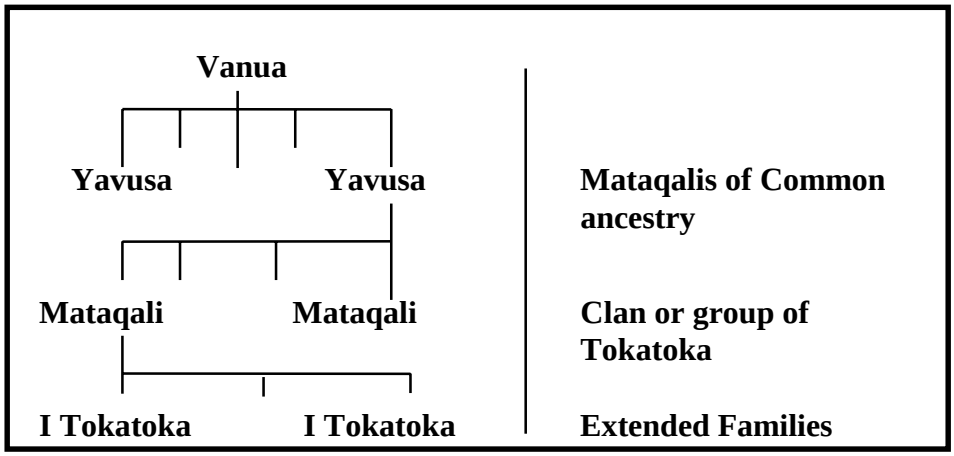


Fig 2.1 Classification of Fijian Social Structure (from Rakai, 1993)

Every *taukei* belongs to a *tokatoka* (family) unit, the *mataqali* (family group) and the *yavusa* (clan). A number of these *yavusas* form the v*anua*, which is a socio-political association where each *yavusa* owes allegiance to a single overlord.

The Native Land Ordinance of 1879 enshrined the *mataqali* as the proprietary unit, however there are cases where land is recorded under the *yavusa* and *tokatoka* units or even under the individuals, by virtue of their status in the *yavusa* or by their agnate descendants. Land owning units and individual landowners are not legal entities and they cannot dispose of land or allow any dealings in the native lands.

2.6 Customary Land for the Taukeis

The demarcation and distribution of native lands ensures that the natives do not become landless, however, it does not mean that land is evenly distributed within the land owning unit. The amount of land held by a *mataqali* does not take into account the *mataqali* population. It also ignores the fact that some *mataqali* with large land

areas lack the enthusiasm and the knowledge needed to utilise their land; while some with enthusiasm and motivation may be given a small restricted *mataqali* land.

The customary lands in Fiji can be divided into two main streams of operation (as shown on Figure 2.2). The first is the unreserved native lands and the second is the native lands in reserve. The two operating systems specifically show the aim to develop Fiji economically and socially. Under the two operating systems are two land tenure systems. The native leases operate under the western land tenure system while the unleased native lands operate under the customary or *vakavanua* land tenure system. Unleased native land would remain in the hands of the person or extended family that cleared it. Once land is left to fallow the rights of the previous owner are weakened.

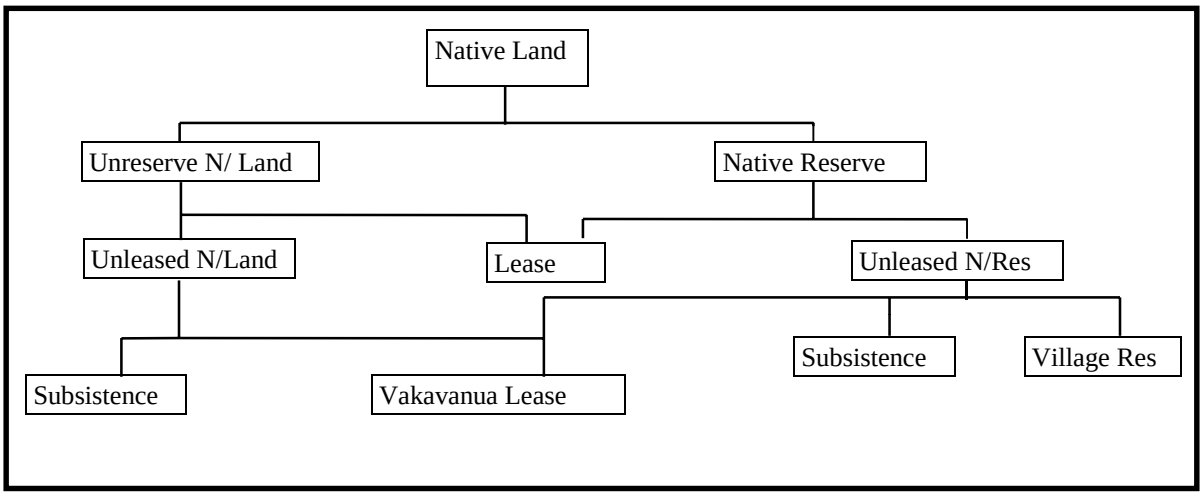


Figure 2.2 Division of Native Land

Although the *taukei* may live in a community life, it does not deny the fact that the spirit of individualism exists within the communities. *Galala* or individualism started to gain some momentum after 1945 despite the lack of official support from local authorities (Lasaqa 1984). New social considerations such as education, a higher standard of living, and other communal responsibilities, demand a cash economy, therefore the indigenous people have stronger incentives for individualism.

In the smaller islands there is a restricted land limit and resources, so people emigrate to the bigger islands, particularly Viti Levu and Vanua Levu and their respective urban centres. While some *taukeis* have moved out of their villages to occupy their own *mataqali* land, or land borrowed from their families, others have also moved out to lease their own *mataqali* land, reserve lands or other native lands available.

2.6.1 Native Lessees

Native leases are granted over native land and native reserve through the Native Land Trust Board. Leasing of native lands can be granted to both non-Fijians and Fijians, while only the indigenous Fijians can lease land on native reserves. Table 2.2 shows the amount of leased land in both native land and native reserve. Increasing interest in commercial agriculture is one of the many reasons why Fijians seek formal individual lease holdings on native land.

	Area (km2)	per cent of Total Area
Reserve Land	5508.47	36.63
(of which leased 31/6/93)	*816.43*	*14.82*
Unreserved Land	9528.15	63.37
(of which leased 31/6/93)	*3869.31*	*40.61*

Table 2.2 Figures from Ward (1995)

There are five main types of leases: agricultural, residential, commercial, industrial, and special leases. The different leases have their own particular lease arrangements and conditions. Agricultural leases are normally for thirty years and residential leases are for ninety-nine years and the Native Land Trust Act legislates and protects the rights of the tenants. The Agricultural Landlord and Tenants Act (ALTA) was introduced in 1966 to give the tenants more security and incentives to increase productivity. Once the land is leased the lessee has the sole right of occupancy and assumes full responsibility for the land during the term of the lease. While NLTB looks after the legal administration of all native leases, the landowners on the other hand make their own informal arrangements in the *vakavanua* leases.

2.6.2 *Vakavanua* Lessees

Vakavanua lessees are migrating Fijians or non-Fijians who, in a ceremonial presentation of *yaqona* supplemented with *tabua* or cash to the land owning unit or *mataqali*, make requests for land. This arrangement bypasses the NLTB's control of native land administration. Despite the fact that it is an illegal arrangement, the *vakavanua* system of lease has been widely practised and is a common arrangement in the urban areas. There are advantages and disadvantages of this practice to both the landowners (*mataqali*) and the tenants. The following examples show how tenants can have access to land which cannot otherwise be available to them: use of native reserve land by a non Fijian tenants, use of land for the tenant's own purposes and availability of native land for residential purpose. However, the insecurity of the term is the main problem, as this arrangement is not legally recognised. Eaton (1988) also reports demands by landowners for payments as much as ten times the NLTB's rates. Therefore, the land owning units benefit by receiving more from the tenant and have direct control over their land, even though the land might exhaust its usage and its administration could lead to misunderstandings and conflicts.

2.6.3 Native Reserve Claimants

In 1930 the Governor recommended to the Council of Chiefs meeting the necessity to reserve sufficient land for the indigenous people for future needs (Lasaqa 1984). Listed below are some justifications for the formulation of this policy.

1. In his recommendation to the Council of Chiefs the Governor said that:

   …it is necessary that you should reserve to yourselves sufficient lands for your present and future needs. In some districts the land around your

villages has been leased and your people who now desire to plant more extensively find themselves without sufficient areas. (Lasaqa 1984).

From the above it can be seen that the Native reserve was formulated to ensure that the *taukeis* have sufficient land for their use at all times.

2. Ratu Sukuna recommended to the Council of Chiefs in 1939 that:

… it would be in the 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: this step would indicate the amount left over; and that all land not so required be handed over to the Government to lease on our behalf.

From the above recommendation native land was readily released for commercial agriculture to non-Fijians.

3. Lloyd (1982) writes:

… it has blunted the edge of what could well have developed into a sharp open and direct confrontation with racial implications between the subsistence sector and the commercial sector of the economy… It has taken the political sting from the unbalanced proprietary structure which colonisation has generated.

The two major points shown by Lloyd are, firstly, that this policy has rectified any differences that could develop between non Fijians and the *taukeis,* and secondly, that the proprietary structure laid down by the colonial government has now allowed flexibility over use and ownership of native lands.

4. Native reserve also allowed the *taukeis* to protect their *vanua tabu* (sacred areas). These *vanua tabu* are grounds which have spiritual ancestral powers and are restricted from any form of activities.

5. Native reserves sealed some arrangements and relationship that were made between the landowners and the *taukei* users. Some customary practices of *kana veicurumaki,* sharing land and its resources were accommodated in this policy.

From the total land area owned by the *taukei*, approximately 63% is available for leasing and 37% has been set aside as native reserve (Ward 1995). The Native Reserve Commissioner and his staff consult each landowning unit on the boundaries of land they wish to set aside for their own use. Native reserve claimants can be the *yavusa, mataqali, tokatoka* units, individuals or agnate descendants of a *tokatoka* member. Quite often the landowning unit reserves land for its own use. There are cases where land may be reserved for other units within the same *yavusa* or for units from another *yavusa* which have a historical connection to the landowning unit. In these two cases the ambiguity of land ownership and reserve right is found.

2.7 Villagers

The village is the foundation of Fijian life and all Fijians belong to a particular village of origin. The pride and joy of a Fijian is being identified with a village and all its multifunctional activities. A village is a home and the focus of Fijian life. The hierarchical leadership of the traditional units is practised first in the village, with the *Yavusa* as the highest in the hierarchy. The village portrays the general pattern of the Fijian rural setting. Lasaqa (1984) reports that nearly all-Fijian villages existing today established their present sites about the 1930s. Some villages have been relocated in recent years due to natural hazards and some new villages have been established since then.

All villages in Fiji are located on land that belongs to a *mataqali* or a landowning unit. Such land should be reserved for a village site. The reservation of land for this purpose is a source of social cohesion for all the villages. The land owning unit keep a close watch over their boundaries and the utilisation of village land, these are potential causes of village competition and friction (Lasaqa 1984). In a village there are traditional ancestral home sites or foundations known as *yavu*, which are vested in certain families who may not be landowners of the village land. These sites are well guarded and have been an inheritance since the village was first settled. Figure

2.3 below shows the placing of the village in the level of the social hierarchical structure of the Fijian administration.

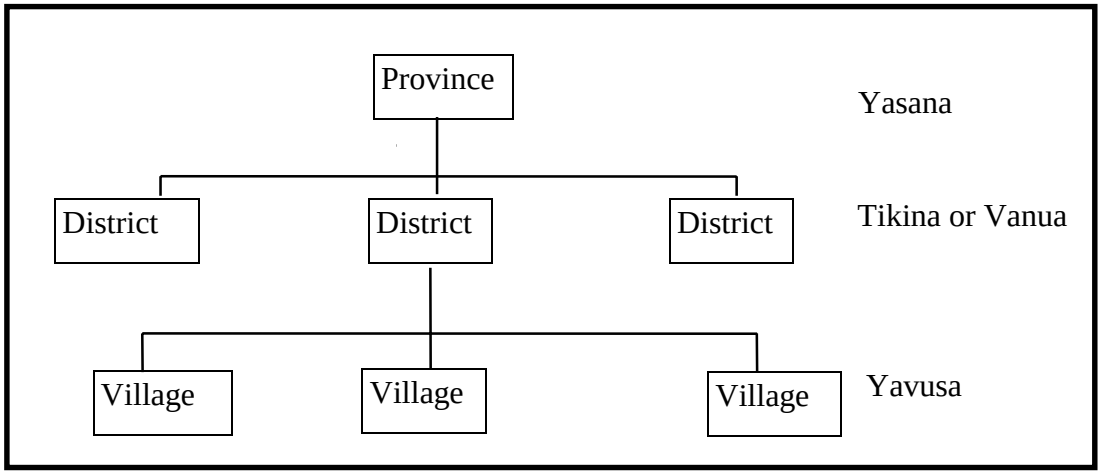


Figure 2.3 Village within the hierarchical structure

Today a Fijian village is not only a home of patrilineal descendants, but also of the residents of those both related and unrelated to village members. Usually migrants to a Fijian village use land belonging to landowning units of the village. In Table 2.3 Nayacakalou compiles comparative figures on residents of five villages in different provinces.

Village	*Population*	*Patri lateral*	*Matri lateral*	*Husband Living uxoriloc*	*Others*	*Unrelated*
Draubuta (Tailevu)	160	72%	14%	4%	7%	3%
Lomawai (Nadroga)	117	83%	9%	-	7%	1%
Nakavu (Nadi)	123	52%	24%	7%	7%	10%
Nakorosule (Naitasiri)	273 (212)	66%	4%	1%	27%	2%
Tavuki (Kadavu)	157	61%	8%	1%	7%	23%

Table 2.3 Comparative Figures on Five villages. (Data from Nayacakalou 1978)

2.8 Absentee Landowners

(Real names are not used)

As people move away from their islands and villages for employment and education into the main towns, the question of returning home becomes less strong each year they stay away. For example, Ratu Tomasi is a member of *Tokatoka* Vuni in the *Mataqali* Vuni. Ratu Tomasi has been living in Melbourne for the past 17 years and goes home for holidays every three years. From an interview with him it is quite clear that he does not expect his *mataqali* members to overlook his standing as a member of the *mataqali* when major land development decisions have to be made. Even though Ratu Tomasi is far away from home his family contacts him whenever there is a major *mataqali* decision to be made and he contributes in many ways to the welfare and needs of his extended family.

This is a typical example of an absentee landowner's expectation. As long as their names are still registered in the *Vola ni Kawa Bula (VKB*), which is the Register of Landowners, they are part of the landowning unit and therefore they can go back home and claim their inheritance or their standing in the *mataqali*. This fact is quite acceptable to those living in the villages and the more often the absentee landowner goes back for visits or contributes to the well being of the village, the more he will be respected and accepted in the community. The Native Lands Act Cap 133 Section 20 states however, that a man who is absent from his clan for two years or more, can have his name deleted by the clan from the claims on the clan land. From the time this Act was enacted no clan has ever made such a claim, even though some men have left their land for more than two years and have not contacted or contributed to their village.

2.9 Chapter Summary

This chapter has attempted to review Fiji's customary landowners through the description of the social structure of the *taukeis*, their landownership, their native reserve claims, together with the spirit of individualism. This chapter has also shown the complexity of the customary landownership in Fiji. Therefore, a clear understanding of this chapter will enhance the purpose of this thesis. The following conclusions can be drawn with respect to Fiji's customary landownership.

1. Customary land can be divided into the following categories for administrative purposes:
   - Native land in reserve.
   - Unreserved native land.
   - Native land under lease.
   - Unleased native land.

2. Native lands are not evenly distributed amongst the landowning units.
3. Although held communally in practice, land is actually used on an individual basis by a family or household.
4. As Fiji develops economically, land pressure will be encountered and land problems will not only be a governmental issue but also will greatly affect the daily living of the landowners.

Although the study of landowners may not seem a central issue, the confusion and the problems associated can greatly affect the government and its development. The decisions the landowners make will greatly affect the economic, social and political development of the country. Therefore, managers, administrators and all decision-

makers must be aware that landowners play a major role in the development of the country.

CHAPTER THREE: LAND BOUNDARIES

As the men started on their way to map out the land, Joshua instructed them, "Go and make a survey of the land and write a description of it.

Joshua 18: 8

3.1 Introduction

Native land boundaries during the pre-colonial era existed insignificantly and the indigenous Fijians were satisfied with this flexible traditional way of life. Land was plentiful and most people settled near the coastline, farming very thin strips of land enough for their subsistence. During this period Fiji had a population of only 15,000. However, territorial tribal boundaries did exist by mutual agreement and understanding between neighbouring tribes. Tribal wars greatly affected these territorial lands by increase and reduction depending on the outcome of the confrontations.

The arrival and settlement of the early missionaries in the 1830s brought changes, when they set out to establish their mission stations by fencing off the property given to them by the chiefs. Although the fences were initially intended to prevent stray animals and natives from pilfering, it became a means of demarcation of properties. During the colonial era, the administration revolutionised the land boundary system by the introduction and establishment of land survey procedures. The main reason was to hear claims, to establish the boundaries of lands claimed by the early European settlers, and also to protect the native landowners from any fraudulent claims (France 1969).

Technology has greatly advanced since the rope and prismatic compass surveys of the early Europeans in Fiji. However, native land maps are still in the original plane

table survey data and these are the only form of record for native boundaries, thus making the existing Native Land Commission (NLC) surveys and maps 50 to 80 years old (Lloyd 1982). Because these lands were not oriented specifically for individual enterprises, the survey and the maps were not done accurately (Rakai 1993). Today land boundary dispute is one of the main problems faced by land managers and administrators. Therefore the purpose of this chapter is to study the reasons for and the methods of native land survey used in Fiji.

There are about 100,000 registered land parcels in Fiji, spread over 18,200 square kilometres of land. The land parcels are composed as follows (FLIS News February 1992) (Rakai 1993):

Native Lands Commission (NLC) land parcels	over 10 892
Registered Native Leases	over 29 000
Registered Crown Lease	over 20 000
Registered Titles	over 27 000

A balance of 9% of the total land area is still to be surveyed. As land administrators agree that land division is vital, tradition can also argue that boundaries and records have finalised the flexibility of their communities, therefore, the issue of boundaries have been greatly determined by social factors such as increase in population, urban drift and economic development. In this chapter a study of the unsurveyed land will also allow the drawing of a new dimension for developing countries. Chapter five will discuss the land boundary disputes.

3.1.1 The Concept of a Land Boundary

Land boundary is a line of demarcation that divides two properties. This simple definition is used and is appropriate for the purpose of this thesis. There are two types of methods and requirements of land boundary survey. A fixed boundary survey,

which is a precise line that has been determined and recorded, and the general boundary survey, which is an accurate line but not precise (Dale 1976). The unique description of a parcel so that it can be identified precisely on the ground is the main purpose of fixing a boundary. Surveys of general boundaries are less precise than the fixed boundary surveys. Dale (1976) also notes that a distinction must be drawn between those systems requiring an accurate survey and those requiring an accurate map. In the programme of land reform, most countries are looking into another alternative, which is an accurate information system. The choice of a fixed or a general boundary system must be based on the requirements of each country. Most importantly it must depend "on whether in a developed area it is economic to carry out adjudication systematically or whether the approach should be sporadic, based upon the needs of the landowners; it should also depend on finding the best method for keeping the register as a reflection of the ground" (Dale 1976).

In Fiji most of the customary land boundaries follow natural features and all customary boundaries are in general boundary descriptions.

3.1.2 Cadastral System

A cadastre is an up to date information system of all interests in land parcels. It was first introduced to support land taxation but the system is now closely linked to land registration, land ownership and the land market. The key components consist of a land registration system and a cadastral survey and mapping system. Cadastres have flexibility in recording land tenure arrangements, from individual land rights to communal ownership, with an ability to accommodate traditional or customary rights (Williamson 1997). The system is also designed to provide a continuum form of cadastre from the very simple to the very sophisticated. Therefore local governments, government administrations and management of utilities use this basic framework for the development of a land information system (FIG No. 11, 1995). The UN/FIG Bogor meeting of 1994 recognised that:

> "the success of a cadastral system is not dependent on its legal or technical sophistication, but whether it protects land rights adequately and permits those rights to be traded (where appropriate) efficiently, simply, quickly, securely, and at low cost."

During the last century the cadastral system has developed multi purpose roles due to the advent of computer technology, which provides better access to information, better manipulation of data, better quality and better legal and physical security than manual systems (FIG No. 11, 1995). As continued interests and activities improved universally on the cadastral system, the question of whether the system was necessary was debated. One of the important realisations from this was that a country should use the most appropriate cadastral system in order to enhance economic, social and political stability (Williamson 1997). As cadastral survey is an important component of a cadastral system, these are things that Toms (1988) explains may necessarily involve:

- Demarcating the boundaries of land parcels.
- The survey of the boundaries of the land parcel.
- The preparation of a plan showing the dimension and area of each land parcel.
- The production of cadastral maps that show all land parcels in their correct relationship to one another.

Cadastral surveying and mapping legislation in Australia has been almost totally concerned with the operation of land markets (Williamson 1997). Although Fiji does not have the same value system, the only legislation of surveying and mapping is in the form of a Surveyors Regulation, which is an adoption from the Australian and New Zealand land policy. The regulation permits the practice of Government and private surveyors who have been registered by the Fiji Survey Board and the Board also has the sole authority for cancelling or dismissing the practice of surveyors in accordance to quality and standard of work. The Surveyors Regulations also control the methods and standards of surveying and mapping.

3.1.3 Registration

Most registration systems are a source of government revenue through the collection of fees and transfer taxes. The two main types of registration systems have been continuously improved to meet new demands for information, land transactions and cost reduction. The deeds registration which files documents as evidence of title and the registration of title, in which the register itself serves as the evidence, have few distinctions such as computerisation, parcel indexing, cadastral mapping and legislative framework (FIG No. 11 1995). Both types of registration support land conveyancing and property taxation.

In most countries the needs and conditions of the jurisdiction are most important when considering implementation of a new land registration system, or in reforming an existing system. Registration provides a security of tenure for interests. In most Pacific nations "Registration" means a sense of community recognition of rights in accordance with social structures, or by memorials of great achievements. The introduction of recordings has led to the writing of events and places and the determination of land rights.

In Fiji, the western individually inclined system is based on the Torrens Titles Registration System, which requires an accurate cadastral surveying and mapping system. This system is applicable to Freehold land, State lands and Native leases. The customary land tenure system is based on communal ownership of a land parcel which has been surveyed at a lesser accuracy and charted on the NLC maps and registered in the Register of Native Lands (RNL). No individual titles are issued as land is registered under the *mataqali* or communal land units. The RNL is maintained

by the Titles Office and records the name of the *mataqali* or land owning unit, the NLC map reference and the size of the lot, together with the description of the lot.

3.2 Land Boundaries in Fiji

The early missionaries introduced the concept of boundary and land rights to the Fijians. Rev. David Cargill wrote in his diary of how the King of Lakeba gave him a piece of land which they cleared "to put up fences and make roads, as well as to keep a constant watch on the natives to prevent their pilfering" (France 1969). Consequently it became a practice for mission stations to be built on land close to but physically separated from the villages. The missionary fence taught Fijians a lesson, which was going to be a new way of life. Gardens and crops were protected and planters were more attached to their land as they also marked out their ownership with fences. As the European population increased the European planters secured their purchase by producing sealed contracts with the native vendors. Most of the dealings were made on the purchase of land in exchange for trade goods or firearms (France 1969). Boundaries were fixed to prominent physical features. Simple surveys of boundaries using prismatic or ship's compasses for direction, and pacing or ship's ropes for linear measurements provided simple sketches of boundaries. Professional land surveyors arrived later from Australia and New Zealand to perform surveys in accordance with regulations used in their countries at that time (Lloyd 1982). These surveyors were recruited during the colonial administration.

3.2.1 The Colonial Legislation

Fiji became a British Crown colony on the 10th of October 1874 and the first step the colonial administration took in resolving land matters was to legitimise the claims to land by early European settlers. On approval of a claim, the land was surveyed by a

surveyor in accordance with the Surveyor General's regulations and a Crown Grant validated the approved claim. Freehold lands came into being at this stage.

The Native Lands Ordinance of 1880, which is known as the Native Lands Act Cap 114 in the current Laws of Fiji, began with declaring that the lands of the *taukeis* be held by the *mataqali* as proprietary units, and that all native lands be unalienated. The law therefore prohibited the sale of native lands to non-Fijians, except through the Crown and limited direct transactions between natives and non-natives.

The Native Lands Ordinance of 1892 aimed at establishing the tenure of the lands belonging to the indigenous people by defining and recording the *mataqali* boundaries and then investigating their ownership. The systematic task could be outlined as:

- Work to be done province by province.
- Boundaries to be surveyed.
- Record on general maps for each province.
- Registered in a Register for Native Lands (RNL).

The work, which was difficult and slow in progress, took more than 50 years to complete and even now a balance of 350 000 acres of native land is still to be surveyed. Natives regarded the investigations as a threat to their ownership because many thought that if a *mataqali* was declared owner of the land then they could not plant in the area. Ratu Savenaca Seniloli, a chief, wrote and pleaded to the Governor that the recording of *mataqali* boundaries was in accordance with the European custom and

> "…causes trouble and disputes, because the blocks of land of individuals from different *tokatoka* and *mataqali* are *veicurumaki* (interdependent usage of land), that is why it is not correct to write down the *mataqali* boundaries in accordance with European practice" (France 1969).

The Commissioners found it impossible to determine with certainty the native custom of ownership and even for Europeans it was difficult to obtain a lease (France 1969). Fixing of the boundaries and the registration of names of the members of each land owning unit caused major changes to the *taukeis* (Ward 1995) because:

- It removed the flexibility of the previous arrangements where an extinct *mataqali* land would be available for use by other people instead of reverting to Crown.
- It increased uneven distribution of land, especially with the growing *mataqali* population.
- Absentee landowners found their rights becoming weaker or even disappearing even though their names were on the record.
- All traditional mechanisms became illegal, including traditional gift of land, or transfer by conquest, dowry or other traditional land transfer arrangements.

The colonial administration introduced a system that was borrowed from Australia and New Zealand. This system required surveying, mapping and registration of land.

3.2.2 Survey of Native Lands

In 1912, Maxwell, who was the Native Lands Commissioner, began his work on the Native Lands by first establishing a record of ownership on the *mataqali* lands. He tried to enforce the Native Lands Ordinance of 1892, which provided that Fijians should mark out the boundaries of their claims, but this proved to be an impossible task (France 1969). With the help of the Australian survey professionals, a new Land Surveyors Ordinance was formulated. This ordinance include standard surveyors regulations, a standard survey accuracy, the methods of survey used, and costing, and it also gave the Surveyor General the authority to approve all land survey work (Lloyd 1982).

The Lands Department carried out the survey of native lands. Mounds constructed of earth, gravel, stones or rocks depending on the material available marked the native

boundaries. The earth mounds were liable to be destroyed by natural causes (erosion, vegetation) over a period of time and could not be considered permanent. Natural physical features were also used as common boundaries, and these features were also destroyed or shifted with the years. The topographical survey was carried out by a variety of methods, ranging from those using prismatic compass and plane tables (Lloyd 1982) to those using conventional surveys, and even aerial photography and photogrammetry (Dutt & Volavola 1977). Because these lands were not subject to individual ownership and there were no market value, customary lands were not surveyed and mapped precisely. Dale (1976) explains that there are three categories of general boundaries:

- Ownership of boundary features is not established.
- Boundary follows edge of a natural feature.
- Approximate boundary line only exists.

The above three features reflect that the precise boundary lines cannot be determined on the ground. Most of the native land boundaries in Fiji come under one of the above three categories. The high cost of cadastral survey makes redefining the early NLC surveys impossible. In cases where a customary land boundary dispute arises, only those landowners that can afford the cost of survey can clarify boundary differences by having a re definition survey.

The Register of Native Lands (RNL) title does not include the diagram of the NLC lot and it does record any dealings at all therefore, registration of native lands is likened to information on land ownership being placed in a coffin.

Below is a table that has been compiled in order to show possible dealings that **could be** included in the native land title.

Dealings	Included	Reasons for Inclusion
Cancellation	Yes	Cancellation of a title due to extinction of land owning unit
Transfer	Yes	Native Land can be transferred to other units or to State if land owning unit becomes extinct

Partially Transfer	Yes	Part of land is reserved for native use only, transfer to reserve claimants
Encumbrance	Yes	Some traditional ceremony may be required before a transfer
Power of Attorney	Yes	for Absentee landowner
Caveat	Yes	Endorsement to stop any transactions that could cause conflicts among landowners
Lease and Sub Lease	Yes	Allows Native Lease Nos to be noted on the RNL

Table 3.1 Transactions that could be noted on RNL

The only transaction that cannot be done on Native Land is a Transfer by Sale because native lands in Fiji cannot be sold. Although other transactions are eligible, the RNL has not been utilised for noting purposes. As the colonial government introduced the registration of native lands, this process has never been activated.

3.3 Unsurveyed Native Lands

From the total native land area, about 354,000 acres are still to be surveyed and registered into the 1235 *mataqali* parcels that own them. The description of the unsurveyed boundaries and their ownership are recorded in the Fijian language and the Native Lands Commissioner keeps these records. Each parcel is uniquely identified from the other and individual land owning units can identify their own land boundaries on the ground.

Some of the unsurveyed lands have high economic potentials like the Serua and Namosi hills which are good forest and mining grounds while in the smaller islands there is a restricted land limit and most of the lands are used for subsistence farming. Therefore, since most of the unsurveyed lands have no commercial value, it is very important for the Government of Fiji prioritise any proposed survey programme for the areas that have potential economic value.

The New Zealand Department of Survey and Information (DOSLI) (Hamilton Office) prepared a feasibility study on the survey of the unsurveyed customary lands in 1996, as requested by the Ministry of Fijian Affairs. This study estimated the cost of survey to be from $35 to $56 million. The Lands Department in Fiji prepared a similar study in 1986 and quoted $11 million. Both quotations are for the survey work only and do not include mapping and registration.

Other native boundaries that have not been demarcated yet include, the village boundaries and the native reserve boundaries. The Native Regulations (1930) required that all Fijian villages be demarcated and villages be proclaimed in the Fiji Royal Gazette. In cases where the reserve is part of a lot the boundaries need to be demarcated to avoid confrontation between the landowning units and the reserve claimants. Both exercises are still to be completed.

3.4 Chapter Summary

Modern technology and advanced computer programs have greatly contributed to developing quicker and more efficient recording of interests in land and, the establishment of a secure land information system. In Fiji customary land information have been incorporated into LIS even though most of the land boundaries are quite out of date.

The NLC surveys are now 50 to 80 years old and *mataqali* ownership have been registered in the RNL. However, the RNL title has **not** been developed into a system so that all the transactions are endorsed on the title.

Native land boundaries that are still to be surveyed include:

- 354,000 of native lands
- Reserve boundaries
- Village boundaries

It is most important to consider an alternative method of updating the original surveys and maps, and at the same time initiate a methodology for the remaining unsurveyed native boundaries. Fiji must adopt a survey and mapping legislation that would emphasise integrated planning, management and land administrative needs rather than the operation of land markets.

Ezigbalike (1996) explained the differences between the social needs of the western communities, which emphasise competition, and economic growth and the social needs of other communities, which emphasise sustainable agricultural development, and integrated planning and management of land resources.

CHAPTER FOUR: CUSTOMARY LAND ADMINISTRATION AND LIS/GIS INITIATIVES

But select capable men from all the people - men who fear God, trustworthy men who hate dishonest gain - and appoint them as officials over thousands, hundreds, fifties and tens. Have them serve as judges for the people at all time.

Exodus 18: 21 - 22

4.1 Introduction

Like other growing nations Fiji is experiencing many changes and challenges in land administration and land management as forces of development impact upon it. The government wants economic growth and a better standard of living but struggles with land exploitation, population increase, urbanisation, and other similar problems. Therefore, government is burdened with the responsibility of ensuring that the nation has an adequate and equitable supply of land, the security of leases and developing a more efficient and appropriate land use programme. Fiji is depending on land resources for most of the nation's economy.

In Fiji the administration and the management of customary affairs is under the umbrella of the Ministry of Fijian Affairs. The three main organisations that deal with customary lands are: the Native Land and Fisheries Commission (NL&FC) or commonly known as Native Lands Commission (NLC) a governmental organisation; the Native Land Trust Board (NLTB); and the Fijian Affairs Board (FAB), both statutory organisations. These organisations have a westernised organisational structure. Although government departments and statutory bodies manage land, the landowners themselves have significant powers over the management of their land. Their role as customary landowners cannot be ignored and their consent must be obtained before any development is made on their land. However, customary

landowners still manage their land in the traditional flexible system of their forefathers. The Lands Department administers all state lands and is directly involved with native land issues such as the process of reverting some state lands to native reserves. The Lands and Survey Department is under the Ministry of Lands and Mineral Resources. Other government ministries that are involved with customary lands and their development are the Ministry of Forests, Ministry of Primary Industries and the Directorate of Town and Country Planning within the Ministry of Housing and Urban Planning. Land administrators may have channels of consultation between them but in most cases these are uncoordinated and often they duplicate each others work. This chapter aims at reviewing the roles of customary land administrative bodies and the LIS/GIS initiatives in their administration.

4.2 Ministry for Fijian Affairs

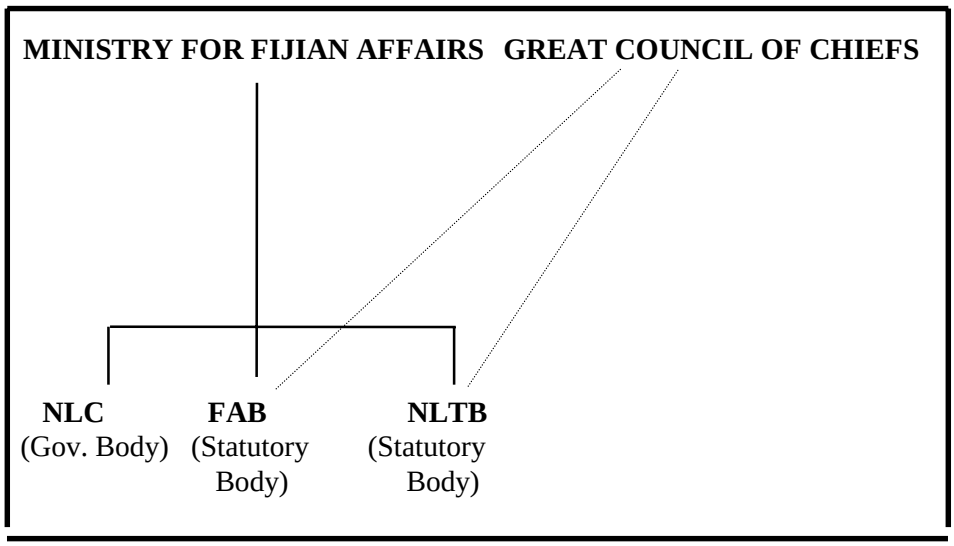


Figure 4.1 Institutions affecting customary land tenure From Rakai (1993).

The Ministry for Fijian Affairs was one of the ministries that were set up by the first independent administration of 1970. The Ministry for Fijian Affairs and Rural Development is responsible for the administration and management of the affairs of the *taukeis*. In relation to land matters the three organisations that function under the

ministry are: the Fijian Affairs Board, the Native Land Trust Board and the Native Land and Fisheries Commission (Rakai and Williamson 1995).

As shown in Figure 4.1, the administration for Fijian Affairs is only complete with a special referral to the Great Council of Chiefs. In the 1874 Deed of Cession the group of ruling chiefs that signed the treaty later became the advisory council to the first national native government (Lloyd 1982). The Great Council of Chiefs is the highest Fijian council in the native administration and its main function is to advise government on matters affecting interests of the *taukeis*. Although the three native land administrative bodies are all under the umbrella of the Ministry for Fijian Affairs (Fig. 4.1), their duties are uncoordinated and in some areas overlap each other.

4.3 Fijian Affairs Board (FAB)

The Fijian Affairs Board (FAB) is a corporate body whose primary role is to look after the well being of the Fijian people as a whole (Lasaqa 1984). Therefore the board prepares papers, reports and proposals that are of importance and directly affect the welfare of the natives for consideration by the Great Council of Chiefs. The FAB, through the Provincial Offices, coordinates all district meetings and provincial meetings and is responsible for the appointment of the Roko, the Assistant Roko and the Provincial Treasurer.

In 1995/1996, data was collected for each village and, although it took two years of hard work, the village profile was the first of its kind to be compiled. With the help of an American Peace Corps Volunteer, the FAB developed a database containing socio-economic information for the more than one thousand villages and settlements in Fiji. This database will also be used to improve the administration and management of land if and when it is integrated with graphics and attribute data from the NLTB and NLC. If this application is seriously considered then this database or

information system will be an invaluable decision support tool for the Ministry for Fijian Affairs (Rakai and Williamson 1995). The following information layers are in use:

1. Village profile :

- Name of village, Tikina, Province.
- Name of Mataqali, Tokatoka.
- No. of Houses - Concrete, Wooden, Corrugated Iron, Thatched.
- Types of Latrines.
- School.
- Electricity.
- Roads.
- Medical Centre - Village Nurse, Dispensary, Health Centre, Hospital.
- Shops.

Register of Landowners (VKB), The Fijian Affairs Board (FAB), The Native Lands Commission (NLC) and the Fiji Land Information System (FLIS) joined together in a programme of introducing the computerised VKB data to the provincial offices. The first two provinces that were introduced to the system were Bua and Tailevu and the New Zealand government funded both installments. Although the VKB data in the provincial office is used for queries only, it has made daily operations more efficient.

4.4 Native Lands Commission (NLC)

Soon after the Deed of Cession in 1874, the colonial government established the Native Lands Commission with a task of determining the ownership of all lands owned by the *taukei.* Although the work took more than 50 years to finalise, the Native Land Commissioners also gathered added information on the history of each tribe or *Yavusa.* These records, which are called *Tukutuku Raraba*, *described* the movements of the tribes in pre contact times and are the most valuable source of information during disputes and reconstruction of pre contact conditions (France

1969). At the end of the survey of native lands, the Native Land Commissioners compiled a final report that records the names of the land owning units and their respective land holdings. The VKB, the *Tukutuku Raraba* and the Final Report are three of the most valuable records in the NLC. The VKB and the Final Report are the only available data in the NLC system at the moment. Although the VKB data is one of the most important documents it does not have a proper system of updates. It depends on the field visits by the NLC officers or data supplied by the Registrar of Births and Deaths. Field workers may visit a province once every two years and the Registrar of Births and Deaths do not have a legislation to allow for VKB data supply, therefore their data may be two or three years behind.

Another valuable record is the Evidence Book (EB). The EB shows all the oaths and evidences made during the Native Lands Commission inquiries. It also includes those inquiries made on notable land disputes or disputes over customary titles. As most indigenous Fijians are Christians, the EB is an honoured record obtained under oath, sworn on the bible. However, some of its contents are still questioned and are unsatisfactory to the landowners themselves. The EB is a classified record and is not accessible to the public. Shown in Figure 4.2 is the relationship between the NLC LIS/GIS and other land administrative bodies.

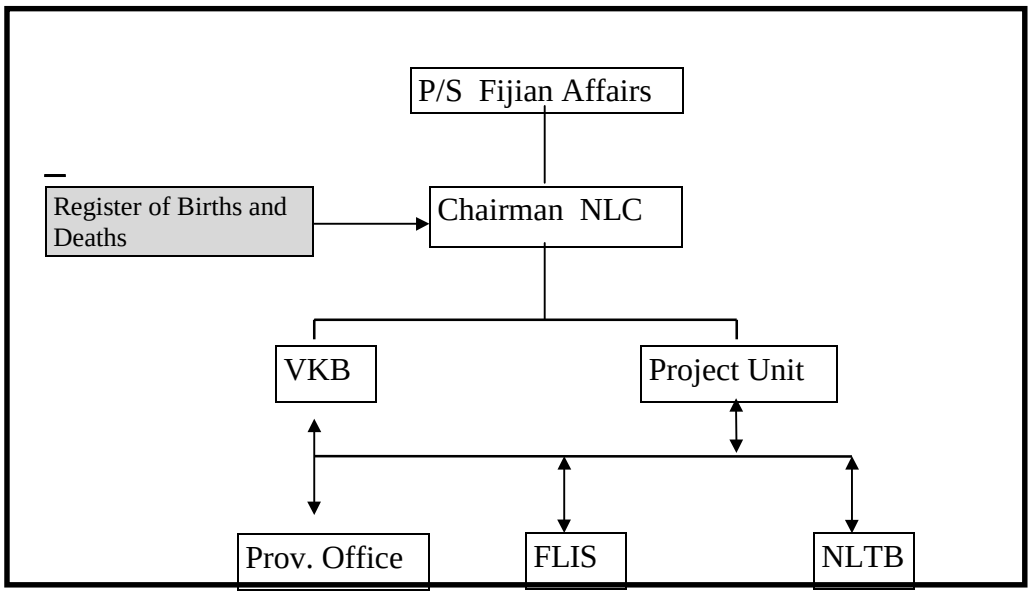


Figure 4.2 NLC LIS/GIS Initiative. P/S : Permanent Secretary; VKB : Vola ni Kawa Bula (Register of Native Landowners) ; Prov : Provincial ; FLIS : Fiji Land Information System;

Other records that could be captured in the NLC system are:

Attribute Data:

- *Tukutuku Raraba* : The historical record of each tribe.
- The Register of Native Lands: This is the Native Lands title. Description of individual parcels and their ownership are registered with the Registrar of Titles, except the unsurveyed native lands boundary description which is in the Fijian language and is kept in the Office of the Native Lands Commissioner.
- The Register of Customary Fishing Rights: This is the surveyed boundary description of all customary fishing rights boundaries and their ownership.
- Evidence Book (EB) is the record of all the evidence and oaths taken during the Native Lands Commission meetings. These evidence records are most treasured and powerful resource to all the decisions made during a dispute.

Graphical Data

- NLC maps sheets of all native land parcels.
- Buliship Maps - charts of some unsurveyed native land.
- Customary Fishing Rights surveyed boundary maps.

The NLC data has been the most commonly used data and averages the most number of queries each month as shown on Table 4.1

FLIS System	Average monthly queries
Titles Index/Journal	650
Survey Plan Index/Journal	600
Valuation	340
Lease Administration	1,100
Vola ni Kawa Bula (VKB)	1,500

VKB (Provincial Office Only)	50

Table 4.1 Number of System Queries - mid June (from Masikerei et al: Aurisa 1996 Report)

4.5 Native Lands Trust Board (NLTB)

Since its establishment in 1940 the Native Land Trust Board (NLTB) has become one of the most powerful establishments in Fiji. Apart from the 10% of land which is freehold and the 7% that is government owned, all land is under the managerial jurisdiction of the Native Land Trust Board (Cole 1994). As custodian of all native lands the Board is empowered to grant leases, or licences, and is responsible for all transfers and changes on these leases. The native landowners receive rents and premiums for leases and royalties for forest and mineral extraction, which are distributed by the Board after retaining 25% percentage for administrative costs (Volavola 1995). After more than fifty years of operation the NLTB has extended its initial functions to include:

- Awareness of sustainable development.
- Setting up of the NLTB land information system.
- Decentralisation of offices to regional centres.
- Extension of the tourism development section.
- Allocation of State lands that have been reverted to native reserve to appropriate units that do not have sufficient lands for its maintenance and support.
- Preparation of the Agricultural Landlord and Tenant Act Report which will affect many tenants, as the 30 years of lease term is coming to an end in the period 1997 - 1999.

It can be clearly seen that the NLTB is also focussing on the national economic development programme, although many of the Board's administrative systems have come under close scrutiny and criticism.

The NLTB acquired its first computer in 1974, solely to improve administration. In 1986 the NLTB LIS was implemented to capture maps and store data for better management of land. This then was the first fully developed LIS in Fiji. After 10 years of work, and training from overseas consultants, the system has now captured over 700 map sheets comprising different data types that are required by the NLTB. The system administers about 30,000 tenancies for 7000 different landowners. Future plans exist for a separate database for planning and other developments.

4.6 Fiji Lands Information System (FLIS)

Fiji Lands Information System (FLIS) was established in 1990 and was based on a study that was conducted by the Department of Surveys and Land Information of New Zealand as requested by the Fiji government. The main objective of a national LIS was to develop a "core" system that would provide the essential economic and planning framework for land administration and utilisation (Rakai 1993). A total of thirteen separate but linked systems were developed between four government departments. FLIS, being the storehouse under the Department of Lands and Survey, links to other sections of the department, the Department of Town and Country Planning, Registrar of Titles Office, and to the Native Lands and Fisheries Commission.

FLIS believes in the sharing and exchange of data between potential users and has introduced the development of **Standards -** for data, hardware and software. The Fiji Land Information Centre (FLIC) has adopted a suite of standards which is also used by member organisations and which other land administration agencies are encouraged to use (Masikerei et.al. 1996). The FLIS has a lot of potential that is still being developed and with the successful years of implementation, development of LIS/GIS will provide a stronger organisational framework.The vision and the mission of FLIS are as follows: (Masikerei et.al. 1996)

Vision:

- The social and economic development, and environmental management of Fiji**.**
- Effective and efficient administration, management and planning.

Mission:

- The Fiji Land Information Council will provide the human, data, technology, and administrative structures to maximise the benefits obtainable from land information.

With the above vision and mission FLIC should be able to encourage the application of LIS/GIS, the system to develop and maintain it and the ability to maximise the community's access to it.

4.7 Cultural Issues in LIS/GIS

As the western cadastral systems develop into a computerised land information system to manage land and to support a free land market, the developing countries are struggling with the cultural issues in LIS/GIS. In Fiji the main objective for the LIS is to improve the administration and management of land and its resources (Masikerei et al. 1996). Therefore, land administrators, various government departments and statutory bodies are aware of LIS/GIS, although it may not be fully developed as yet.

Customary landowners play a significant role in the management of their own land. Therefore, if the main objective of Fiji's LIS is to improve management of its land, then the active involvement of the customary landowners, together with the three institutions that are responsible for the indigenous Fijians is essential. These institutions should be major users of the LIS/GIS for decision making before the involvement of the *taukeis* can be active.

Ezigbalike and Benwell (1994) explain that cadastral and land registration systems are too specific to western culture to be applied to customary land tenure without cultural costs. Cultural costs can be seen by the differences in opinion between

landowners and between administrators and by the number of disputes arising from this. Some cultural issues shown below will be elaborated in the dispute cases outlined in the next chapter:

- One of the important cultural factors is the pride of belonging to a *mataqali* and the ownership of land that is attached to it. This status may be misinterpreted as a legal status and could meet with resistance.
- Cultural information usually favours the informant and therefore it may not be the most reliable information.
- The rules of customary landowners are usually flexible and are more dependent on relationship and kinship. Therefore customary land ownership, land use and land development may lose their flexibility as information is computerised.
- Most areas have their own sacred stories that would not be advisable to record. Such information, although important, is kept within the tribe and passed on by traditional methods.
- Customary lands in Fiji have been surveyed, although not precisely. LIS has been developed for western land tenure, which is mostly parcel based. As most customary landowners know the boundaries of their land, LIS will only be helpful if it is designed for an imprecise system that is based on topographical information (Rakai and Williamson1995).

4.8 Chapter Summary

The study of customary land administrators outlines the role and functions of each administrative body and their LIS/GIS initiatives. The following conclusions can be drawn in regards to Fiji's customary land dispute:

1. There should be more coordination between the customary land administrators so that issues are well addressed.
2. Legislation on customary land have not been reviewed to accommodate the present day pressures on land.

3. Despite studies on customary lands and its resources the Fiji government has been reluctant to introduce any changes in its land tenure system because of political pressures and the fear of losing the trust of landowners.
4. Although the NLTB, NLC and the FAB administer customary lands the final decision and management still lies in the landowners hands.

The LIS/GIS initiatives have had a minimal impact on the people who continue to live under the customary land tenure system. Rakai and Williamson (1995) suggest that this is because:

1) LIS has been directed largely at the administration and management of Native leases, which have been brought under the western tenure system. The Native leases are placed on the property market and therefore are of importance to the survival of Fiji's economy.
2) LIS/GIS is new and the Ministry is still trying to understand and appreciate its relevance. Until this has been achieved, relevant data may not be incorporated into LIS, thus not allowing the information system to have an impact on people living under customary land tenure.

Table 4.2 shows the advantages and the disadvantages of releasing data to landowners.

Data Type	Advantage	Disadvantage
NLC VKB Data	Queries are now decentralised	Access to changing of data can cause many problems
NLC Final Report	Landowners will be able to know their entitlement	Fear that landowners and other admin. bodies could change data
FAB Village Profile	Improve management of villages and administration of village development projects	Villages will be in comparison to one another and may not be treated individually.
NLTB Lease Data	Lease details could be used by other administrative bodies for assessment of situation in a dispute	Can cause more problems if monetary benefits are made public
NLTB Graphics	Greatly used and very informative	Graphics to be comparable to

	for landowners in land use planning, sustainable development, and other development planning programme	other graphics or to the land owners traditional maps.

Table 4.2 Advantages and Disadvantages of Releasing Data to Landowners

Another reason is the insecurity and the mistrust between the administrative bodies due to their lack of coordination. This has resulted in data being guarded selfishly and not being released for administrative or management purposes.

CHAPTER 5: CUSTOMARY LAND DISPUTES IN FIJI

> *But the land could not support them while they stayed together and quarrelling arose, so Abram said to Lot "Let's not have any quarrelling between you and me for we are brothers. Is not the whole land before you? Let's part company. If you go to the left, I'll go to the right, if your go to the right then I will go to the left.*
>
> Genesis 13: 6 – 9

5.1 Introduction

Today most of the developing countries are facing major problems of land policy, land tenure, land reform and land registration and the relationship of these to rural productivity. Fiji and other Pacific island countries are experiencing most of the pains and problems of the transition from a traditional, subsistence society to the need to modernise and accelerate the development to an international economic system (Acquaye, 1984). However, it could be argued that economic pressures are not the only cause for problems. France (1969) quotes the Governor of Fiji's address to the Legislative Council in 1892, adding that:

> "The boundaries of all lands in Fiji, dividing one *mataqali* from the other and one province from another were prior to the date of Cession, always more or less unsettled and had ever been the subject of bitter disputes and frequent fighting."

Crocombe (1994) also agrees that in small communities with no centralised government, "disputes were frequent and open conflict over land was found from time to time". This chapter will follow the order of influence on land disputes that have been discussed in the last three chapters: landownership; land boundary and land administration; and will list examples and case studies of all customary land disputes for each of them.

5.2 Disputes Over Land ownership

5.2.1 Communal Ownership

Case 1.1

Land disputes arise out of refusal to use the *mataqali* land for personal enterprise. The concept of communal ownership can often be questioned because in Fiji land has always been used individually. Ownership does not mean that each member has a separate right of ownership or an undivided share over a portion or all the land. It means that the land is vested in the *mataqali* unit. Communal land can only be used commercially if approved and consented by the head and the members of the *mataqali*. Often rivalry, jealousy or grudges amongst the members may influence their decision of not supporting or encouraging an individual to succeed in using the *mataqali* land.

Case 1.2

As *mataqali* is the land owning unit, the fact remains that the population of the *mataqali* is not taken into account during the process of investigating and determining each claim. Land dispute occurs as the result of an over populated *mataqali* where land resources are limited.

Case 1.3

In communally owned land, disputes are common between the members of the land owning units regarding economic development of their land. Some of the members are ignorant of the economic benefits and some are aware of possible exploitation. The lack of objective discussion causes landowners to have conflicting opinions.

Case 1.4

Tokatoka, or family units, have lost their rights over their blocks as land is registered under the *mataqali.* Land disputes occur over the ownership and use of *tokatoka* blocks.

Case 1.5

Communal land cannot be used by one person for his own personal benefit without the consent of his *mataqali.* For example, a dispute will arise if a member declares ownership of his *mataqali* land in his application for loans or any personal interests.

Case 1.6

One of the most common disputes is between members of the landowning unit over lease money distribution. Native Lessees are charged rents at the rate of up to 6% per annum on the unimproved value. Lease monies are distributed so that 25% is retained by the NLTB for administration cost, the *Turaga ni Vanua* (chief of the District) gets 3.75%, *Turaga ni Yavusa* (chief of the village) gets 7.5%, *Turaga ni Mataqali* (chief of the land owning unit) gets 11.25% and the members of the *mataqali* gets 52.5% (Rakai, 1993, 65). Members of the land owning unit are aware of the unfair distribution especially if the population of the *mataqali* is increasing and certain households are getting more than others. This is a case that should be dealt with internally between the members of the *mataqali* but in most cases land administrators are dragged into such conflicts.

Case 1.7

Vakavanua lease is customary lease that is not recognised by the law. In most cases the arrangement is made with the head of the landowning unit, who accepts the traditional request for land on behalf of his *mataqali.* Because it is an illegal practise the head of the *mataqali* does not have any guidelines and can demand more money and goods from his tenants. Disputes occur when the members of the unit do not receive any benefit from this arrangement or when they demand to use the *mataqali* land themselves.

Case 1.8

The land is a group's most valued possession, thus, its use is well guarded and protected by the members of the group. Conflicts can be encountered if an individual decides to live on his *mataqali* land away from the village. Individualism is loathed and discouraged because people work together in a network of dependence on one another (Ravuvu 1988).

Case 1.9

Conflicts often arise when members of the *mataqali* resort to the past and refer to practices "before the flag". Dissatisfaction over land use, land ownership and distribution of land amongst the members often leads to arguments that have been considered void and null by the strictures of the 1874 Deed of Cession (Ravuvu 1988)

Case 1.10

Some extinct *mataqali* have already made verbal arrangements for people to use their land by their last surviving member. This arrangement cannot be honoured as all extinct mataqali land is reverted to the State as State Schedule 'A' land. Disputes arise if the State has a development plan over the land or if it decides to lease this land to someone else.

Case 1.11

Increased *mataqali* population and the limited amount of land has caused great anxiety amongst the land owning unit, as seen in Case 1.2. Dispute within the *mataqali* occurs over consent of leases to individuals or the need to terminate some leases in order to accommodate the land owning unit.

Case 1 .12

Customary rights allowed the forest land to be used by members of the village. It provided the people with firewood and building materials, as well as hunting and foraging (Ravuvu, 1993). Due to the influence of registration of land and the pressure of economic development, the members of the land owning unit have disallowed others from using it.

5.2.2 Reserve Ownership

Case 2.1

Native reserve land has dual ownership and, if the reserve is leased out to another individual, then there will be another right over the same. This is more or less a case of misunderstanding the legalities and the concept of native reserves. The Native Land Act does not clearly outline the legalities of rights of occupancy. It has been taken for granted by the native Fijians that, if one group or family or an individual is given reserve land, then absolute ownership rights are granted with it. Practically, in most cases, this right overrules the landowner rights which therefore leads to conflict of interest.

Case 2.2

An airstrip was to be built on a remote island in the eastern group of islands in Fiji. Land in this group had not been surveyed and registered but the NLC records all land ownership in the Fijian language. A strip of the runaway cut across land belonging to a *mataqali*. The *mataqali* head gave his son in law this piece of land to plant and the second generation of the son in law is still using the land today. Conflict between land users and landowners over the approval of the land for an airstrip.

Case 2.3

Disputes between the native reserve owners and the landowners are very frequent today, due to misunderstanding and the lack of legislation over these rights. Consent

of lease and recipients of lease moneys are areas of disputes, where both the reserve owners and the landowners fight for the right of ownership over a piece of land.

Case 2.4

Reserve owners living in their reserved land share their claims with migrating *taukei* and non-*taukei* for a fee. Although this is an illegal practice, *vakavanua* leases are common around the urban centres. Land disputes occur reserve owners over money and goods paid by the illegal tenants.

Case 2.5

The family units or *tokatoka* know the boundary of their reserve land, although this boundary is not recorded or registered. All land has been registered to the *mataqali,* therefore the tokatoka unit disputes their inheritance and rights over land that is now controlled by the *mataqali* unit.

Case 2.6

Land ownership over village reserve is the cause of many social problems. Most village sites are not reserved for village, therefore the village area is still within the parcel belonging to a land owning unit. If land on the village site is not reserved for the village, then the landowning unit holds ownership powers in the village. This conflicts with the social system, where the head of the *Yavusa* is the only recognised chief in the village. The government representative, who is the headman, is like an overseer who is responsible for the welfare and order of the village. Conflicts arise between these three authorities: the village site landowners, the headman and the chief of the village.

Case 2.7

Home sites or foundations are vested in the families they belong to. Disputes over the house sites are common today. Absentee landowners find their home sites occupied by others or used for the village community hall or church. Because village

elders find the empty space convenient for common village projects, disputes erupt between the absentee landowners and villagers.

5.2.3 Register of Native Landowners (VKB)

Case 3.1

In accordance with Native Regulations, a child born out of wedlock is registered in the mother's *tokatoka*. If this child's mother is a daughter of a headman then this child could one day become the headman. Disputes arise when members of the unit rebel against an illegitimate person being the head of the unit and, more- over, as a headman, this child will receive a part of the lease money.

Case 3.2

An illegitimate son is born, registered, and brought up in his mother's *tokatoka* and then later recognised by his father's family. Therefore, his father's family should perform a traditional request for forgiveness *ai soro* to the mother's family, followed by *ai lakovi,* another traditional request of asking the boy to go to his father's home. If both requests are granted, then through his mother's consent the boy's name should be deleted from her *tokatoka* and should be entered in his father's *tokatoka*. Danger can be encountered if the boy remains in his mother's home and does not go to his father after the *ai lakovi*. Later on in life he will realise that he will not have a say in any legal claim to land or any other customary rights, as his legal ownership is registered under his father's unit. It is quite often in such cases that the illegitimate child could either be found missing from the VKB or he could be entered in the register of both parents.

Case 3.3

Sarah, who belonged to the *Yavusa* Solo, *mataqali* Solo, *tokatoka* Vuniba, was living with Li, a Chinese farmer, since the birth of their first son. Altogether they had four sons and two daughters. After Li died, Sarah went back to her village, where her

children built her a beautiful home. They also provided the village with a generator and funded the building of the new village church. The village that was once hidden and unknown became a source of pride to the owners as the old thatched roofs were being replaced one by one with concrete and wooden homes. Fijians are usually emotional and flexible in their attitude to their women and in this case Sarah's *tokatoka Vuniba* and *Mataqali Solo* agreed to register these children in the VKB. However, a dispute arose as the Native Act does not accommodate such cases, especially when all the children use their father's name and are legally known as non Fijians.

Case 3.4

In comparison to the above case, Rupeni is also a registered member of the *Tokatoka Vuniba*. He was born in the city, educated there and, at present, is working as a civil servant. Together with his nursing sister wife they are recognised as a well-to-do family in the community. However, Rupeni has never been to his village nor has any intention of attending his village functions. His father does not talk about his *tokatoka* and Rupeni is not inquisitive. As an indigenous, legitimate Fijian, Rupeni and his children will always remain members of the *Tokatoka Vuniba*, and the Li children will always remain outsiders even though they are the more frequent visitors and better contributors to the village welfare.

Case 3.5

Legal adoptions are not recognised in the VKB. Although a child has been legally adopted and registered in the Register of Births to the adoptive parents, this child will be shown and registered to his natural parents in the VKB. This situation causes conflicts, as other chattels can be willed to the child except the sense of belonging to his adoptive father's *tokatoka*. It would not be a problem if this child were the child of the adoptive father's brother, because he would still be a member of the same ownership clan. However, if he is from a completely different *tokatoka* or area, then

he is a member of a land owning unit that is unfamiliar and could be a complete stranger to them.

Case 3 .6

By the authority of the colonial government, the Native Land Commission organised an administrative structure for the native Fijians. Land owning units were reorganised and some were incorporated with other units. Land which was once a domain of a particular group only, was later merged with another group by the NLC. Therefore the ownership was vested in all the members of the newly reorganised *mataqali*. Disputes still occur today over the merging and incorporating of ownership and the differences of opinion over *mataqali* affairs.

5.2.4 Summary

Dispute Cases	Communal	Reserve	VKB
1. Individualism			
2. Increase in population			
3. Ignorance over economic development			
4. Unmarked Ownership			
5. Lease money distribution			
6. *Vakavanua* leases			
7. Reference to practises “before the flag”	✔	✔	✔
8. Extinct *mataqali* land	✔	✔	✔
9. Rights over forest land	✔	✔	
10. Dual ownership over reserve claims	✔	✔	
11. Landowners vs Landusers	✔	✔	
12. Home sites	✔	✔	
13. Illegitimate child’s rights			✔

Table 5.1 Summary of Disputes over Landownership

5.3 Disputes Over Land Boundaries

5.3.1 Surveyed Boundaries

Case 4.1

In Fiji disputes over land boundaries are common. As discussed in chapter three, all surveys on customary lands have been done to a lesser degree of precision and most of the boundary marks were made of stone or earth mounds. Land disputes may arise as a result of boundary marks being destroyed over the years and land boundaries can no longer be identified. Therefore, disputes arise because of uncertainty of boundaries.

Case 4.2

The overlapping of customary land and western land tenure boundaries results in disputes between freehold owners or the state lands and *taukei* landowners. Land which may have been used for many years by a group could change ownership by a redefinition survey. Sometimes disputes arise when groups are not aware of the boundaries and land users have encroached on the neighbouring property.

Case 4.3

Fencing of properties and customary lands is a sign of selfishness in communal living. Fencing off to show ownership may cause conflicts between close families and land owning units. Traditionally land boundaries are ultimately of the mind. A farmer expands his garden until he feels uncomfortable to move further because his neighbour is also expanding towards him. There is a spatial distance between the gardening areas of different families (Ravuvu, 1988). Feelings rather than calculated imaginary lines bound farms and plantations.

Case 4.4

Descriptions of boundaries are written in both English and the Fijian language. The interpretations of the two languages cause disputes. The English description of the boundaries is registered with the Register of Titles and is therefore considered the legal. Natives argue that it was in the understanding of the Fijian interpretation that all records were prepared.

Case 4.5

Dispute arose between two landowning units over their land boundaries. The boundary, which was along point 'A' to point 'B', was later disturbed by a rail track. The track did not run in parallel to the boundary but cut the boundary in a zigzag manner. Out of confusion the two *mataqalis* disputed the boundary of their land. Three different surveyors had done redefinition surveys on the land but landowners were still dissatisfied with the resolution. Construction of roads and railway lines did not consult the *mataqali* boundary maps, therefore boundary disputes over the *mataqali* boundaries are encountered.

Case 4.6

It is quite common to find that lease boundaries do not follow the NLC boundaries, therefore a leased area may fall in two or three NLC parcels. Disputes arise between lessees and *mataqali* owners over the lease boundaries.

5. 3.2 Reserve Boundaries

Case 5.1

Most reserve lands are within the *mataqali* lot. Disputes arise because most of the reserve boundaries have general boundary description and cannot be identified on the ground. All reserve boundaries have not been surveyed.

Case 5.2

An ancestral sacred site of a *mataqali* is situated in a piece of land that has been reserved for another family. This site although closely watched and revered by the *mataqali* has no customary value to the reserve claimants. Therefore a conflict occurs because the claimants of the land abuse the *mataqali's* sacred site.

Case 5.3

A village site should be demarcated and reserved for all the members of the village in accordance with the Native Regulations (1930). However the boundaries of the village are to be decided by the land owning *mataqali* of the village site. The pressure of giving up land for the extension of the village can lead to disputes amongst the landowning unit members. Village boundaries cannot be demarcated if land owning units do not agree to this project.

Case 5.4

Because the landowning unit do not agree to extend the boundary of the village, members of the village move to their own lands, thus establishing new settlements. This causes disunity and conflicts amongst the villagers.

Case 5.5

A village on the southwestern coast of Viti Levu is surrounded by State Schedule 'A' land. The surrounding land was reverted to State after the extinction of the landowning unit. The population of the village is growing and they need land for village extension. The villagers have had numerous ugly encounters with the lessee of the State land, because they understand that the surrounding land was once owned by an extinct *mataqali* (land owning unit) from their *yavusa* (village). The clash between the villagers and the lessee over the village boundary shows the differences between the legal status and the customary law on land.

Case 5.6

A pond or a water catchment site has been reserved to a family that has an historical connection to the chief of a landowning unit. Access to the site is a mutual understanding between the early donors and the receiver. Today, unrecorded agreement concerning the access is causing dispute between the family and the landowners.

5.3.3 Unsurveyed Boundaries

Case 6.1

All reserve boundaries are unsurveyed except if the reserve covers the entire surveyed NLC lot. Disputes arise between the landowners and reserve owners over unidentified reserve boundaries where the reserve area is part of a lot.

Case 6.2

Boundaries of unsurveyed lands are fading from landowner memories, as most elders with the knowledge of the boundary are dead and the younger people have migrated to the city. Land disputes arise because landowners are not sure of their land boundaries.

Case 6.3

In an unsurveyed land, the rights of ownership can be disputed with the right of occupancy and the right to use. This is because land is not registered and there is no legislation binding these lands except the customary laws of occupancy.

Case 6.4

The NLTB issues an "Instrument of Tenancies" for leases that are yet to be surveyed. For defining the boundary, compass and chain or tape method is used which provide an approximate lease diagram. This results in the land being either too large or incorrectly portioned on the ground. Disputes arise between the lessees and *taukei* landowners when a redefinition survey reveals that the lessee has been using native land he was not entitled to or that the *taukei* landowners have been using lands that theoretically have been leased out.

5.3.4 Summary

Dispute Cases	Surveyed Boundary	Reserve Boundary	Unsurveyed Boundary
1. Boundary marks destroyed			
2. Redefinition survey			
3. Fencing			
4. Description of boundaries			
5. Leasehold boundaries			
6. General boundary description			
7. Abuse of sacred sites			
8. Village boundaries			
9. Increase in population			
10. Unidentified boundaries			
11. Unregistered boundaries			

Table 5.2 Summary of Land Boundary Disputes.

5.4 Disputes Over Native Land Administration

Case 7.1

Conflicting interests in the Native Affairs Administration has led to confusion and disputes amongst the native landowners. The Ministry of Fijian Affairs constitutes the Native Land Trust Board, which is the sole custodian of all Fijian lands; the Native Lands Commission that determines the ownership of native lands; and the Fijian Affairs Board that administers the daily activities of Fijian rural life. Therefore each of these bodies has powerful influence over the Fijian community and unless the roles of each are clearly defined to the grassroots, their authority is reduced or lost due to confusion or misunderstanding. Disputes arise as landowners choose to follow whichever advice suits them even though they may be conflicting.

Case 7.2

Legislation and early land policy was based on the customary system prior to western influence, which was introduced by the colonial administration to try and accommodate the pre-colonial native system. One of the effects of the land policy is the rigid rule against traditional transfers of land through conquest and other exchanges that had existed before. Land disputes arise due to some of the exchanges were recorded but some were ignored. Today there are no traditional transfers of land in practice amongst the *taukeis*.

Case 7.3

The rigidness of the legislation of the native land policies has affected the lives of the *taukeis* in more ways than one. The flexibility of land use amongst the people was taken away when land was recorded and leased. Whilst the landowners were satisfied with receiving lease money, land users were forced into leasing land they were using to give them security of tenure. If the prosperous lessee is a member of the landowning unit, jealousy may lead to land disputes.

Case 7.4

As the three administrative bodies mentioned above, manage their own different land strategies, their common concern is the betterment of the rural Fijians. Therefore, it is their duty to respond to the landowners needs. However, because there is very little coordination between the three offices, it is possible for disputes to be handled by all three administrative bodies independently of each other.

Case 7.5

One of the growing concerns of the administration of native lands is the security of leases. The Agricultural Landlord and Tenants Act (ALTA) was introduced in 1966 to give tenants a stronger feeling of security and the incentive to increase productivity. However the NLTB has been criticised by landowners and tenants because of administrative delays, legal and financial problem, rigidity and

inefficiency (Rakai, 1993). This therefore has resulted in demonstrations, such as roadblocks by landowners, unproductive tenants and disputes between tenants and landowners.

Case 7.6

Extension of leases by ALTA is a present day issue in Fiji. ALTA was solving the problems of 1977 in the sugar cane belt, where the cane farmers needed more than 10 years for security in their agricultural products. ALTA provided a security lease of 30 years. As most ALTA leases are now expiring, there is an impending triangular issue between the landowners, the tenants and the NLTB. More importantly, this issue is of national concern, as Fiji's economy could be adversely affected depending on what common solution can be found by these three parties.

Case 7.7

Fiji has had a law for over half a century whereby if a man is absent from his clan for two years or more, the clan may have him deleted from the list of joint owners of the clan land. From that time, no clan has ever deleted any member, even though many men have left their clan for more than two years. Apart from a few difficult cases within the village, absentee landowners have not posed any major disputes in the control of customary land. This law has been dormant all these years and its existence proves that very little has been done to examine existing native land laws.

Dispute Cases	**Legislation**	**Customary**	**Administration**

	Landowners
1. Conflicting interest in administration	
2. Rigid rules in land policies	
3. Jealousy over prosperity	
4. Confusion over Admin duties	
5. Security of Lease	
6. ALTA	
7. Absentee Landowners	

Table 5.3 Summary of Native Land Administration Disputes

5.5 Chapter Summary

This chapter has tried to list all land dispute examples in Fiji. The purpose is mainly to focus and understand the reasons for land disputes, before resolution can be devised. There are other customary disputes that are connected to land. These include customary title and customary fishing rights. Most of the customary disputes can be summarised as being caused by the influence of money. Areas that have a high percentage of leased land also have the most number of customary disputes. The author agrees with Dale (1997) who, in a personal conversation, suggested that customary disputes can be initiated by :

- Jealousy within the families.
- Family quarrels.
- Personnel problems within the group or community.
- Greed.
- Insecurity.

Customary land and customary fishing grounds are the two main ownerships, *yau bula*, that reveal the true identity of the *taukei.* Although many indigenous Fijians have bought their own freehold properties in the cities or other areas they are still protective over their customary land and fishing rights. Land disputes encountered in Fiji are common to most jurisdictions in the Pacific, but, because of the differences in

land ownership, administration and geographical features, each Pacific nation has its own procedure and programme for resolving customary land disputes.

CHAPTER 6: DISPUTE RESOLUTION IN OTHER JURISDICTIONS.

A land management system must reflect the value systems and interests of the people it serves and not be an alien imposition.

Emmanuel Mutale (1996).

6.1 Introduction

The purpose of this chapter is to study how other countries are dealing with customary land disputes. Naturally, since this thesis looks at the administration of land and an information system for resolving customary land disputes, the countries or jurisdictions selected are those that have customary land tenure and in some way or another have recognised the importance of LIS/GIS. Indonesia is a fast growing nation which is experiencing many customary disputes and problems, and their experience of resolution has been selected so that it can be compared to the less rapid development of the Pacific nations. Indonesia's customary landownership has been greatly affected by the dictatorship of leadership and also by the exploitation of land for economic development. Papua New Guinea, Samoa, and Vanuatu are three South Pacific Island nations that have been selected for this study. Their individual land administration policies and procedures for resolution of customary land disputes have been examined closely, together with their LIS/GIS initiatives.

To fully understand the causes of land disputes it is important to study the trends and issues in land tenures which could determine land problems in the Asia - Pacific region where the four selected nations are located.

6.1.1 The Forces that Shape Land Tenure

Changes in the land tenure system in most of the Pacific region are the legacy of the early colonial administrations. Today, modification of this system in each country is again influenced by external forces and is shaping the society it serves. Listed below are some forces that change land tenure (Crocombe 1994):

1. Population:

During the past decade the population of most nations in Asia and the Pacific has increased tremendously. In Vanuatu the population is growing at the rate of 3.5 per cent per year which is one of the highest growth rates in the world while Papua New Guinea's rates are not much lower than this (Crocombe 1994). This has created more social, economic and political problems for each nation and the region. The factors of population and its movement are a driving force on land policies and tenure. Shown below are some demographic figures on the jurisdiction.

Country	Land Area	Population	Population Density Person per km2
Indonesia	200m.ha	206million	
Papua New Guinea	46m.ha	3.5million	**7**
Western Samoa	2,935km2	166,000	**57**
Vanuatu	11,880km2	150,000	**12**
Fiji	18,272km2	722,000	**40**

Table 6.1 Demographic Statistics on the Jurisdiction from Crocombe 1994

2. Individualism:

During the last century most indigenous people were living in groups in a form of communal settlement. Life styles were common throughout the community and were interdependent. The community was responsible for building homes to planting food

for each family, and all needs were met. Today, indigenous people are moving out of communal land and venturing into commercial farming. Individualism is now a common factor that either requires leasing processes or the *galala* policy, whereby people leave and establish a home in their own piece of land away from the village.

3. Financial Power:

One of the problems faced today in the Pacific Islands is the illegal dealing connected with land transactions. Individuals without the consent of the land owning units show examples of illegal dealings in the selling of land. This is commonly practiced in Cook Islands, Tonga, and Vanuatu (Crocombe 1994). In Fiji, the NLTB leasing arrangements has been bypassed by landowners in order to obtain immediate cash and exercise direct control over their land (Rakai 1993). Despite not having any legal status, this practice is widely practised. In most countries foreign investors who are non-residents of the land own the freehold lands.

4. Political Power :

In the last decade land has been a political issue in most Pacific nations. In Fiji the Cane Growers Union continue to fight over sugar cane issues in which parliamentarians become personally involved; and, in other nations, the changing of government could change land policies which could swing decisions of ownership. Foreign aid is a power that is significant and many land administrations are dependent on aid and expertise. While donors finance and provide only projects that they wish, the receivers should also be aware of their needs and their individual strategy.

5. Increasing migration :

Increasing migration population has changed land policies in most Pacific nations. The tax free zone policy in Fiji tried to accommodate the growing foreign industries, mainly garment factories. Since the growth of the garment industries in Fiji, the Chinese migrant population has increased. Europeans and Chinese are found in

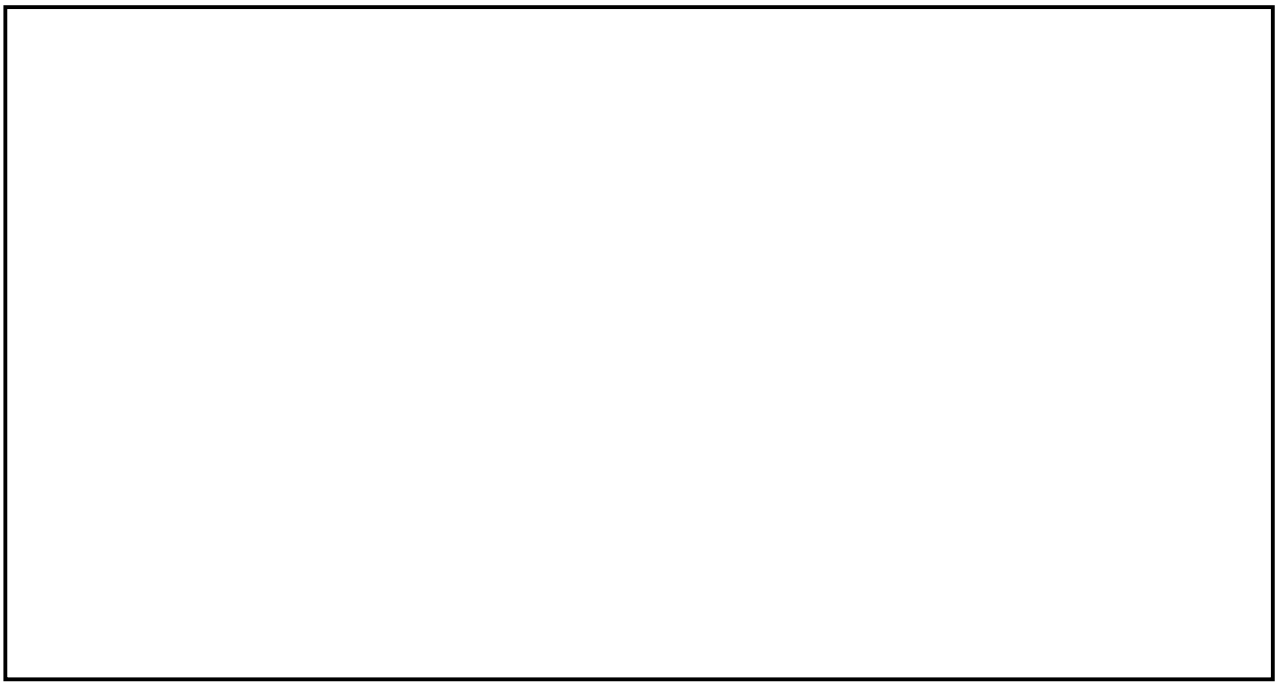
increasing numbers in Papua New Guinea while most other islands also have an influential number of foreign residents.

Other factors are not only affecting land tenure in the Pacific but are affecting the whole world. These include economic development, the dependence on technology, especially computers; the recognition of rights for women; and the increase in the land market value (Crocombe 1994). Land problems therefore are encountered universally, although more in some countries than in others. It is therefore important to examine the different methods by which land disputes are handled, so that a methodology may be constructed that will improve the present system in Fiji.

6.2 Western Samoa

MAP 3 : Administrative Boundaries in Western Samoa

(Lamour et al, 1985)



6.2.1 Land Tenure in Western Samoa

The land tenure system in Western Samoa is similar to the landownership of most Pacific colonised islands. Total landmass was once held under the Samoan customary land tenure until the establishment of British, American and German consulates. Trading was extensive during this period and land was purchased from locals in exchange for goods. Three categories of landownership arose, which is the classification endorsed today in the Samoan constitution:

- Freehold land comprising about 8% of the total land surface.
- State land comprising about 12%.
- Customary lands with over 80% of total land surface.

6.2.2 Customary Land

A treaty stopped alienation of customary land in 1889. Usually called native land or Samoa land, the authority over this land was vested solely in the *matai*, or the chief of the family, or in the village council of chiefs in the case of the village land. The system is fundamental to Samoan society because of the relationship between the position and the land authority. Therefore land cannot be sold, mortgaged or transferred and no single person has an absolute authority over customary land.

In 1965 a provision was allowed by the powers of Alienation of Customary Land Act for leasing of customary land. The *matai* (chief) that is in control of the land can apply for lease for economic development to the Minister of Lands. Today rural residents claim individual ownership to land. Although it is contrary to the Samoan constitution, to land legislation and to custom, individual tenure is considered as a "new thing", having been adopted progressively from parents and grandparents (O'Meara 1994). Individual tenure is never mentioned in government, even though it may be in support of it. Officially, the court does not publicly recognise or accept its existence.

6.2.3 Customary Land Disputes

In old Samoa, land disputes and disputes over *matai* title often turned into violent civic wars where "might before right was the order of the day". This meant that the rightful heir, who belonged to a defeated party, had to submit to the victorious side (Scultz 1911).

Land disputes can be classified into four main categories (Schmidt 1994).

- Dispute over control of land (73.8 percent).
- Dispute over land boundaries (11.5 percent).
- Confirmation of *pulefa'amau* (4.9 percent).
- Banishment from usage of land, residence etc (9.8 percent).

The head of the extended family *(aiga)* is the *matai* who is the titleholder. He acts as the administrator of the *aiga* land, the trustee of family heritage and the main decision-maker for the family. The *matai's* decision to allocate land to family heirs can be contested and one known case shows that the court can rule against them. Natural features mark land boundaries between villages and districts. Compromising amongst the owners of the competing boundaries usually solves boundary disputes. *Pulefa'amau* is similar to the concept of individual ownership which excludes the occupation or use of land by any other owner or his heir. Even if the owner is absent from the land or is away overseas he can always come back and claim back his land (Schmidt 1994).

6.2.4 Dispute Resolution

Land disputes are resolved at village level but an increasing number of unresolved disputes are taken to the Lands and Titles Court (LTC). Before the disputed case is petitioned, the staff of the Office of the Registrar of the LTC conduct searches and visit the disputed areas in order to assess the merits of the grievances. This is a voluntary duty by the staff, which is not laid down by the Act of 1981. The staff may resolve the dispute by applying customary practices; however, if they do not, then the parties are asked to file petitions to be published before the Court hears them. One of the main goals of the Office is to make disputants have an open discussion so that

they are aware of each other's opinions and arguments. When mediation by the staff fails then the parties are asked to file formal petitions to the Lands and Titles Court. If reconciliation takes place at any of these levels then the disputants sign a formal agreement. In Section 103 of the Constitution the Lands and Titles Court provides a jurisdiction to deal with queries and disputes to *matai* titles and customary land. The Land and Titles Court Act 1981 provides for the establishment of a court of record called the Land and Title Court.

In practice, the rules of the Supreme Court apply but "... where strict compliances with any rule of practice or procedure may be inequitable or inconvenient, the court may act in each case in such a manner as it considers to be most convenient with natural justice and convenience" (Schmidt 1994). Section 37 of the Land and Titles Act 1981 provides that in all matters before it, the court shall apply: (a) customs and usage, (b) the law relating to customs and usage.

While the Court is resolving disputed boundaries, the surveying and registration of customary boundaries and land rights is also taking place. The deeds registration traces back the original title of any freehold land, so that the eligibility for selling the land is confirmed. If land is transferred or subdivided several times, each transaction is registered to a different volume and the same piece of land can be registered several times. For each transaction and subdivision a completely new entry is made while the old is still retained.

6.2.5 Information Available

Kramer's "Die Samoa Inseln has recorded genealogies, firstly in 1902" and then in 1946 by Churchill and Williams, which was published by the London Missionaries Society. Although both records did not record all the Samoan families, they have shown many important genealogies whereby relatives and land rights can be clearly traced. Once recorded, the forces of need or utility (Thomas 1984) cannot change

genealogies. Land boundaries and land rights are recorded as the LTC adjudicates disputed land matters. A full boundary and land rights register was recommended so that a full register of the customary land could be held by the Justice Department and the Lands and Titles Court.

6.3 Vanuatu

6.3.1 Land Tenure in Vanuatu

In 1980, the newly independent Vanuatu returned all freehold land to the indigenous owners. Vanuatu ("Our Land") is the only Melanesian country in the Pacific to abolish, after independence, the colonial influence of alienation of land into freehold. The new constitution reverts all land ownership to the indigenous individuals or groups based on the customary principles and practices. Therefore, only the customary owners and the Government are to hold land in perpetuity. Unlike Western Samoa where land tenure principles are uniform, and Fiji where law has made land tenure uniform, Vanuatu has a "much variety land tenure principles" (Rodman 1995). Geographically, Vanuatu has more than 80 islands (68 inhabited) scattered over a Y-shaped archipelago about 80km in length. With a total population of 156,500 Vanuatu has more than 100 languages. With such geographical variations it is hardly surprising that land tenure principles are varied. Variation factors that are noted by Rodman (1995) are:

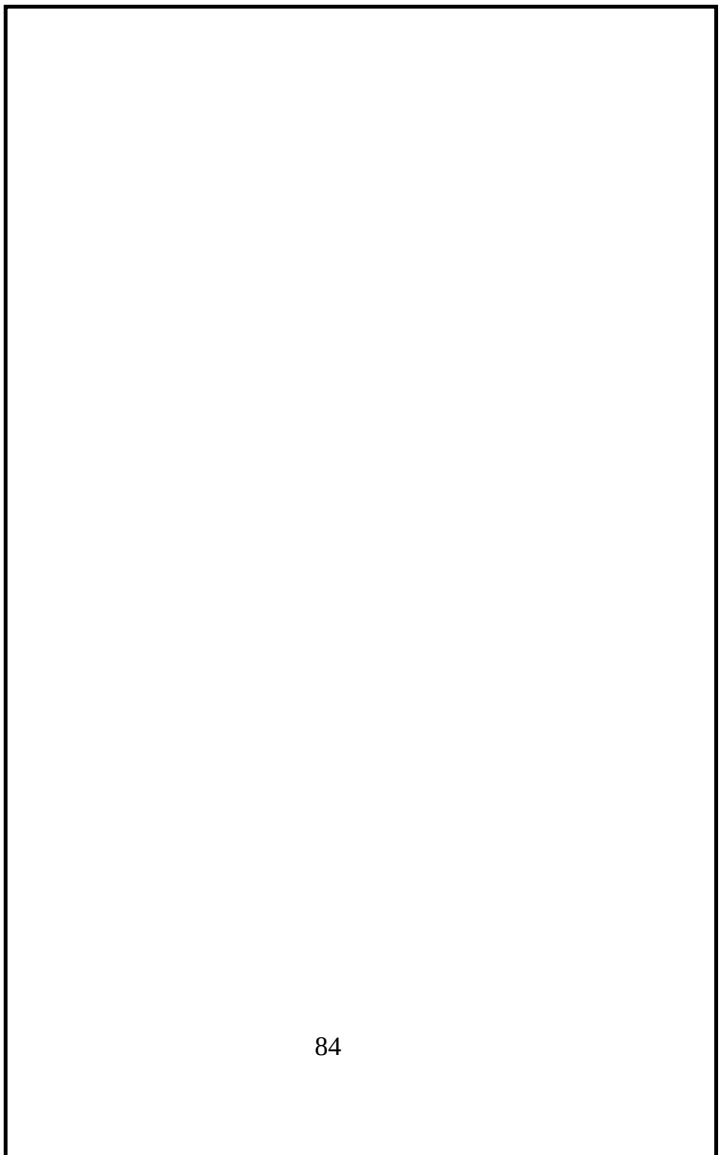
- Ownership under the patrilineal or matrilineal descent rules.
- Individual or group ownership.
- Descent and marriages were matrilineally organised but land was inherited patrilineally.
- Acquisition of land rights was flexible in some areas.

Different islands have their own land tenure system and some islands, like the island of Ambae, practise the patrilineal lineage of inheritance in the western half of the

island, while the eastern half practises the matrilineal pattern. Although there are variations in the land tenure systems in Vanuatu, there are still factors that are common with other Pacific islands. Sharing of access way and land with family members is common in Vanuatu (Rodman 1995). Like other Pacific nations, land problems in Vanuatu are caused by the safeguard of land ownership, the insecurity of leases and the practice of the unrecorded customary laws. Land developments will depend greatly on the type of land tenure a country has, therefore, in most customary tenure, land is slow to develop because investors look for long term certainty as found in freeholds or long term leases. In Vanuatu, foreign investors can only hold land by leaseholds and, if the lease terms are long, then it will prove satisfactory for them (Rodman 1995).

MAP 4 : Vanuatu Administrative Boundaries

(Lamour et al, 198)



6.3.2 Customary Land Disputes

As land tenure principles vary enormously in Vanuatu, the native landowners practise their varied customs and even reinvent new unwritten custom rules to suit their own purpose. This is because the national law states that the rules of custom shall form the basis of ownership and use of land in the Republic. As stated above, the rules of custom vary from island to island and even within the same island. Therefore customary ownership and its rules form an impossible concept and become a common ground for disputes.

The determination of customary land ownership is the main cause of land disputes. Pierre (1994) also quotes this problem as the "biggest single obstacle to rural development". Disputes between claimants are normal due to increase in population and migration between the islands. Sometimes it is the potential investors who are in dispute because of the difficulty faced when trying to make dealings with more than one landowner to negotiate a lease. Most of the land disputes do not focus on uncultivated land but on land that has been occupied and is in use. Although land is generally not fought over, it is the lived-in space that is contested (Rodman 1995). Land boundaries are usually unclear and therefore land boundary disputes are quite common. Overlapping boundary claims between neighbouring villages and also between divisions within the big villages (Ward 1994).

Population movements due to epidemic disease, the colonial onslaught, the search for opportunities, work and education have caused more confusion to landowners because most people cannot recall precisely the pre-colonial distribution of land. Therefore, as land ownership and land boundaries were not recorded, ideology and activism have been based on assumption. In 1990, leases were granted over properties that have a viable economic potential. Landowners could not be identified for half of the leases, therefore the Santos Land Council or the Minister exercised the right to grant leases over disputed areas and hold the rents in trust under the Land Reform Regulation.

6.3.3 Dispute Resolution

In 1983 the Island Courts Act established seven island courts to deal with customary problems and the increasing number of land disputes. Due to lack of trained staff, land cases were still pending, therefore a magistrate and three justices were appointed to each island court just to deal with land dispute cases. Although in most cases the legal island courts imposed fines, the uncodified customary principles continued to guide because customary problems are solved by the power of words and knowledge. Napat (personal interview, 1998) gave an account of how a chant that belonged to their family land identified them as the landowners during a land dispute hearing.

It has been recognised by the magistrates and the island courts that land disputes should be settled at the lowest possible level, as customary disputes and practices of dispute resolutions are the roles of customary leaders. Rodman (1995) suggests that the courts were established to administratively bridge the gap between the national and the local customary law and also between the diversity of customary tenure. However, as the island courts face problems, the old ways of handling land disputes seems to find resolutions, which has therefore caused the government to face the questions of:

- Creating a mandate to legalise land ownership.

- Increasing rural productivity.
- Developing rural land economically.
- Acquiring customary abilities.

With the above questions in mind it can be concluded that the present method of resolution for customary land disputes is short lived and is not permanent. The Lands Referee Office of the Ministry of Lands plays an important role in:

- Facilitating land development.
- Resolving land disputes on - value of improvements
  -value of lease rentals
  - interpretation of lease provisions.
- Resolving disputes between customary landowners and alienation.
- Resolving disputes between lessors and lessees.
- Facilitating land development in that when development value is disputed there is no further development change, until the issues have been resolved.

6.3.4 Information Available

Customary land is not registered, even though landowners have been promised registration since independence. Most rural land is not surveyed; but most islands have been mapped by aerial photography. Forest maps and maps of land holdings are available for certain areas only. Because of the numerous disputes, landowners are preparing their own records of their land boundaries and genealogy. It is still the intention and it remains important to the national government to work out a possible registration programme. Any land that is to be developed must be surveyed under the new Constitution and a survey plan must be attached to the lease document. The Vanuatu Lands Records Database (VALRD) was developed merely as an information database to assist the three departments that are responsible for the land tenure functions of the government:

The Department of Lands: responsible for negotiating, issuing and managing

all rural leases;

The Department of Land Records: responsible for maintaining the title register and the registration of all transactions affecting leases;

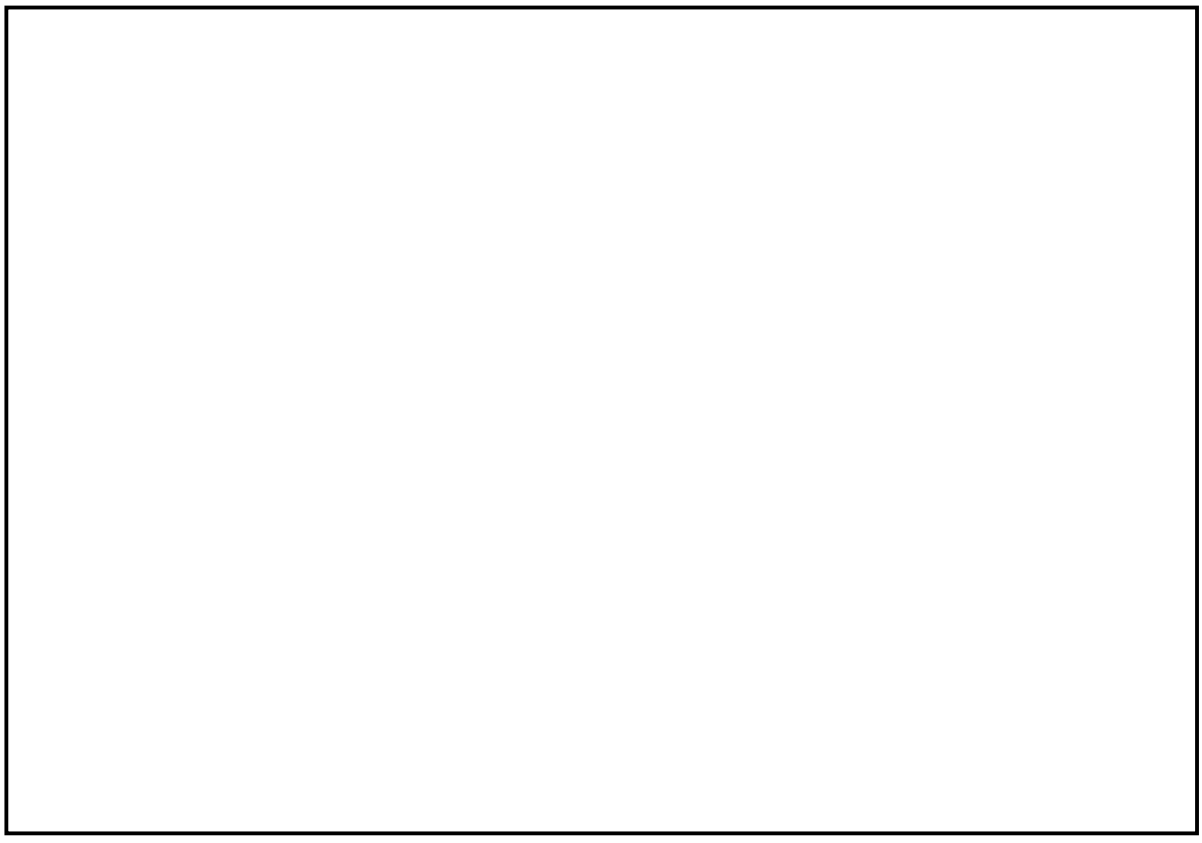
The Department of Lands and Surveys: responsible for the mapping and surveying of the nation, including the definition of all cadastral parcels, together with the valuation of all urban lands.

There is a separate file in the personal computer (PC) and dBASE III+ software network that has been created for customary land ownership even though customary lands and ownership are yet to be recorded and surveyed.

6.4 Papua New Guinea

MAP 5 : Papua New Guinea Administrative Boundaries

(Lamour et al,1985)



6.4.1 Land Tenure in Papua New Guinea (PNG)

PNG has a population of 3.5 million, with 700 different language groups and a great diversity in customs and cultures. Like Vanuatu the government faces a major problem of maintaining its unity and trying to preserve and respect the traditional culture of the various communities. Only 3 percent of the total land area (462,840 sq.km) is freehold or government land, 97 percent of the land area is held under the customary tenure.

Like Fiji, PNG has a dual tenure system: the western leasehold and freehold lands are administered and managed by written legislation, and the customary land tenure is governed by unwritten customary laws, principles and practices. About 80% of the people depend on subsistence farming whilst the 20% urban dwellers depend on formal employment. The indigenous landowners are now aware of the importance of land and are reluctant to give their land for lease or for purchase payments for public use or general investments. It is quite common when studying PNGs land that the issue of development is discussed, because customary landownership in PNG is argued to cause the hold up in economic development (Lakau 1994).Papua New Guinea is divided up into 20 administrative provinces. It has been noted by James (1985) that the provincial governments have been inadequate and irresponsible as a means of service to the customary landowners.

6.4.2 Customary Land

Customary land is vested in the several hundred clans and tribal groups and is based on custom and the historic occupations of the indigenous people. There is a

considerable diversity of behaviour patterns and there is no common ideology to form a uniform pattern of tenure principles. Flexibility is a distinctive characteristic of the customary land tenure, and other common features of the indigenous ownership that have been noted by Crocombe and Hide (1987) are:

- Illiteracy affecting people's ability to record.
- Short genealogy.
- Absence of rank structures.
- Too great a diversity of land rights.
- Large ownership groups (generally in the highlands).
- No decision-making authority (all decisions by sub group).

These groups were not independent, as social, political and economic tradings and interactions with neighbouring communities were common. Land ownerships with their respective boundaries are yet to be systematically recorded and, although drafts have been drawn up for this proposal, there have not been any definite plans to record customary land.

6.4.3 Customary Land Disputes

In Papua New Guinea fighting is a distinctive feature that determines the relationship between the land and the people. Warfare is common in the highlands where there is a high population and a grave shortage of arable land. Such tension and rivalries often result in bloody and serious breeches of the peace. Even when Papua New Guinea became self-governing in 1973, one of the greatest concerns was the increase in the number of land disputes. These disputes reflected the social, political and economic struggles within and between groups.

Like other jurisdictions that have customary land problems, Papua New Guinea faces similar struggles and more. About 80-85% of the people depend on customary land for their basic needs, therefore customary land becomes an overly sensitive issue when it is addressed (Iatau and Williamson 1997). The complex system of multiple

ownership rights poses serious problems to the traditional landowners themselves, as well as to the state, which is concerned with the economic development of land. Foreign investors and locals who have capital find it difficult to negotiate land from landowners, as their demands are high and extravagant (Lakau 1994). The high illiteracy rate and ignorance amongst the indigenous landowners cause misunderstandings and often lead to major land disputes, when the landowners realise that they have been used by successful businessmen, politicians and investors. Unclear boundaries are again another problem common to other jurisdictions that have unsurveyed customary land. Naturally this is another common ground for land disputes, especially in the highlands where arable land is scarce but of great value.

It has been noted by Lakau (1994) that the government and the Lands Department attend to the 3% of the land under the western land tenure system and do not uphold or upgrade legalities and development on the 97% of the land under the customary tenure system. However, interestingly, Lakau (1994) also suggests that land disputes and conflicts are used by the landowners to take out their frustration on the system and the real issue may be rooted elsewhere. Lakau (1994) summarises that their wants may be in equity shares, schools and health centres and other spin off benefits and, therefore, to get these, demands on land compensation or land disputes occur.

6.4.4 Dispute Resolution

In 1975, a Lands Dispute Settlement Act was enacted to place settlement of land dispute on the customary landowners instead of on the legalities of the Titles Commission Office and the Courts. The recommended system was more relevant to traditional dispute settlement and would follow the practice of the indigenous people (Eaton 1988). However, the land courts were effective in some areas but, in the highlands, a more traditional method was expected. Mediators and Land Magistrates were often criticised because of how they handled disputes. Some decisions were impartial while some did not understand the land tenure of the area before making

decisions (Eaton 1988). Therefore, the need to train mediators and Land Magistrates was necessary. It is however important to honour the fact that land legislation calls for reform in administration and the legal machinery to facilitate the problems of the customary landowners, so that they can be given the maximum benefits.

6.4.5 Information Available

Freehold land and State lands are under the western land tenure system and leases, transfers and other dealings are registered under the Torrens registration system. There are 120,000 land parcels and the number is increasing due to:

- Subdivision of existing parcels.
- Compulsory or voluntary acquisition of customary land.
- Conversion of tenure from customary land to freehold or state lands (Rakai 1993).

Several attempts to facilitate the systematic registration of the customary lands have been made over the last 30 years. Registration of customary land is felt to give a greater security of tenure and also it may help reduce land disputes. The Commission of Inquiry of 1973 regarded the registration of customary lands as a matter of urgency, but its recommendation has not been implemented.

Due to nonregistration of customary lands, some illegal procedures have been taking place, such as:

- Transfer of customary lands.
- Trading of land to investors.
- High demands by landowners that cannot be controlled by legal actions.
- Landowners being taken advantage of by investors and local business men (Eaton 1988).

As land began to open up for lease and acquisition, the 1987 Land Tenure Conversion Act allowed the registration of customary lands that could be alienated. Such land was surveyed (by chain and compass method) and was given a unique

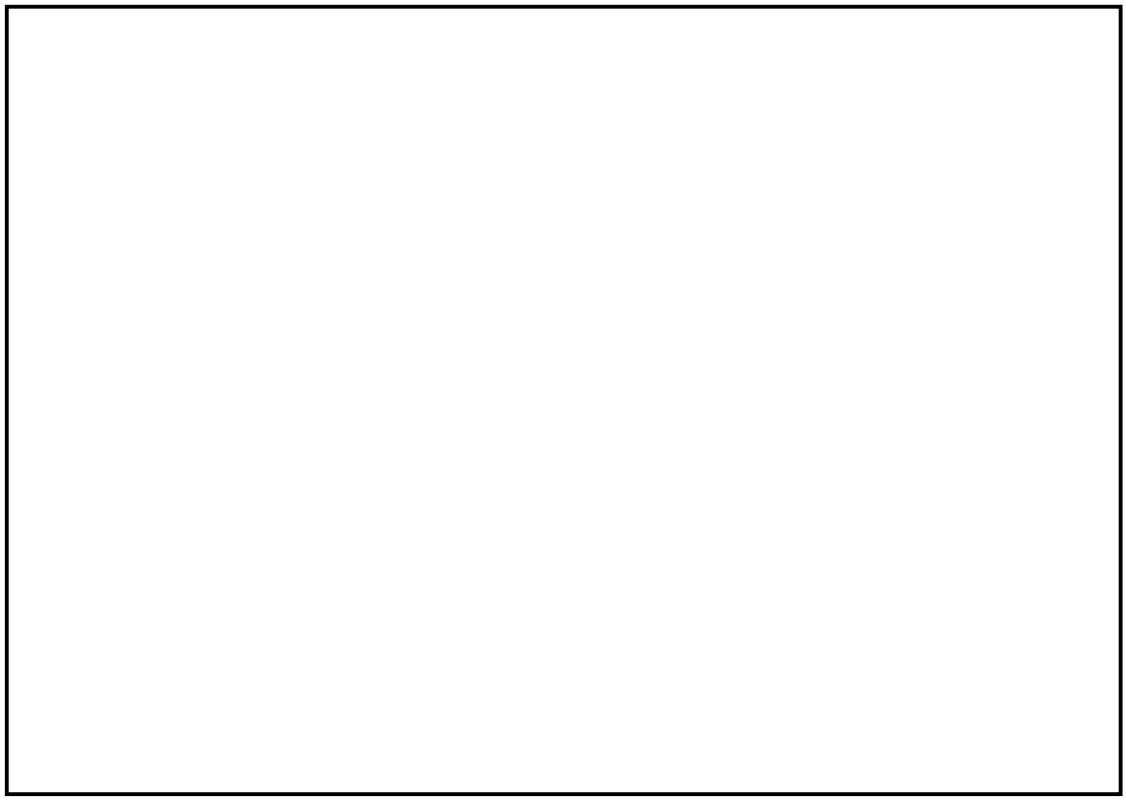
identifier for LIS. Some provinces have attempted to systematically register customary lands but have been unsuccessful because they are not supported by the national framework.

The Papua New Guinea Land Information System (PNGLIS) was set up "to provide an accessible source of accurate data relating to all parcels of land in use in land administration" (Rakai 1993). In 1993 the PNDLIS was integrated with the National Mapping Bureau to form the PNG Land and Geographic Information System (PNG LAGIS). The LAGIS is now the Lands Department information service and will later be incorporated with the Department's Management Information System (MIS). LAGIS plans to develop and install the support for the registration of customary land in the provinces.

6.5 Indonesia

MAP 6 : Map of Indonesia

(Indonesia Home Page Factbook 1998)



6.5.1 Land Tenure in Indonesia

The dual system of the colonial times characterised the land ownership practice of Indonesia until the enactment of the Basic Agrarian Law (BAL) of 1960. BAL retained some elements of the previous system while providing some new approaches. One of the main features of the new BAL was the revocation of the old dual system and the establishment of a regulation that strengthens the state's power of ownership. The three types of land tenure in Indonesia are:

- *Adat* Lands: Lands that are held or claimed under the customary law and maybe owned by individuals or group.
- State Lands: Land owned by the Republic of Indonesia without outstanding claims. All previous titles that have been issued on some of the state lands are revoked by the BAL and new title issued.
- Western Titled Lands: Titles are issued by the western or civil law procedures. Under the BAL such titles have to be converted to the titles rights provided by the BAL.

Only Indonesian citizens are issued with certificates of rights and there is no guarantee that certificate of rights means full legal ownership.

6.5.2 *Adat* : Customary Land

Before the independence of Indonesia the dual land tenure system was characterised by western land tenure lands which were surveyed, registered, titled and based under the western civil law procedure; the lands owned by Indonesians were under the *adat* land tenure system and were unsurveyed, unregistered and nontitled. The *adat* lands were community based, where the community accepted and recognised land boundaries with no written records of ownership, but when BAL was enacted in

1960, it took precedence over the *adat* system of land law. However, Crocombe and Hide (1987) state that in rural areas law is of little effect and "customary rules and regulations are the only determinants of landholding". The BAL required all land to be registered (Article 19), but most of the *adat* landowners did not see the need for or the importance of land certificate.

6.5.3 Customary Land Disputes

The difference between the state attitude to customary land rights and the local Indonesians' attitude towards the *adat* land is one of the reasons why the government and the people have major disputes. The state refers to customary rights as a right of possession and not ownership, however the locals believe that possession and ownership are the same (Ting 1996). Land disputes between government and locals are common because the new government policies are not understood. Two main facts that can be drawn from this research are:

1. The landowners and the local people of Indonesia are generally confused with land policies and blame the land administrators for the problems they face, such as;
   - The poor compensation they receive for their land.
   - The relocation of landowners, as their lands are being negotiated for government projects.

   An example showed by Ting (1996) on the resort development in Lombok where police and soldiers forcibly evicted the 300 residents of the village of Rowok from their homes. This clearly demonstrates the loopholes in land policies. Djuweng (1997) also conducted a research on his Dayak culture and concluded that his people had "nothing to gain but much to lose from development".
2. Government blames the stronghold of traditional *adat* claims as a hindrance to development. Unused *adat* land cannot be used for development and most areas suffer from unavailability of land for public purposes, because the traditional *adat* owners would not release their land (Ross 1984). Because of the delays in land

registration there is no mechanism for the government to expedite the implementation of projects.

It is obvious from the above that land disputes demonstrate the overall land problems faced by the government and the people due to the weaknesses in the land policies. MacAndrews (1986) concluded by explaining that "if land matters and land problems are to be dealt with effectively then land policy must be given greater political recognition".

6.5.4 Dispute Resolution

The difference between the other jurisdictions that have been discussed and Indonesia is that the problems in Indonesia are mainly caused by land policies. The government acts as a mediator between the developers and the landowners and often becomes the tool to drive people from their land. Therefore the locals do not trust the government or its representatives and they also do not trust the court system to resolve their land disputes. Because landowners feel cheated out of a proper share of compensation and negotiations, they prefer the informal alternate dispute resolution rather than the institutionalised arbitration (Ting 1996). A not so common practice is for the landowners to have their own lawyers to fight their cases, which are commonly discussed in a round table negotiation. Loffler (1996) briefly describes the institutions involved in solving and finding resolutions for land disputes:

1. The Courts

The judges and the lawyers have only a limited knowledge of the *adat* law and cannot acquire this knowledge only in the short period they remain in the same court before their next transfer. The different courts have different *adat* rulings and they do not speak the same language. Judges usually seek to find solutions to land disputes through informal negotiations, because a court hearing brings out thousands of people in one disputant party alone.

2. Government Institutions

The Land Rights Directorate is responsible for legal rights to land and for the resolution of the land rights disputes. There are no set procedure and rules for regulating disputes. At the provincial level, the Law and Public Relations Bureau plays an important role in the resolution of land disputes. The task of this office may be inadequately discharged due to insufficient financial and personnel resources. Local Government officials are also involved in resolution of land disputes. The village headman, the *Camat*, and the official from the Department make decisions and are asked for advice at the lowest administrative level. Sometimes it is not clear whether these local leaders are concerned for the locals or are more interested in the projects at the higher level.

3. Non government Organisations

There are many organisations involved in land issues and disputes resolution. Some are involved in environment protection and conservation of nature and some are legal aid institutions, which give advice to the landowners and those in the poor sector of the general public.

4. *Adat* Institution:

Adat contributes to the resolution of land disputes amongst the traditional landowners. The a*dat* leaders can make clear significant decisions in *adat* land rights disputes. The *adat* institution plays a very important role in negotiating for land development, even though it may not be successful in a bargaining position with the national government.

6.5.5 Information Available

Indonesia is an archipelago covering more than five million square kilometres of both land and sea. Altogether there are about 13,667 islands, with only five of them of any size. Indonesia has the fifth largest population in the world after China, India, Russia and America. Within this population there are 250 different languages amongst the 300 different ethnic groups (Supranowo 1988). Indonesia is rich in physical and human natural resources with an outstandingly unequal distribution. Regional physical planning which can redistribute or assist with the redistribution of resources is an interest that needs to be developed (Wall et. al. 1988). However, basic planning information is not available over all the provinces and government is now aware of this deficiency. Indonesia lacks accurate topographical base maps and, until recently, reliable land resource data. Cadastral maps also define land allocations and most of these allocations are over commercially used land and government lands. This is land used for forestry and mining concessions, agricultural and forestry plantations, irrigation projects, transmigration sites and settlements. Customary lands are not included in the cadastral maps and are not legally recorded (Wall et. al. 1988).

6.6 Chapter Summary

This chapter has reviewed the land administration, land problems and the resolutions to disputes in four countries; Western Samoa, Vanuatu, Papua New Guinea and Indonesia. These four countries have a land tenure system that is similar in some ways to the dual tenure system in Fiji. The common factor between all these countries is that there are customary lands in their land tenure. The notable features from the review are:

- Most land disputes are taken to court.
- Court cases on land disputes are prolonged because of lack of information on customary land and customary landownership.
- Countries have blamed the colonial administration for the present day land legislation that has undermined the flexibility of the customary laws.
- All the jurisdictions, however, are in need of a better system that would upgrade the present land administration, so that customary lands are not exploited.

- Land legislation does not make provision for customary laws, therefore land administration will in most cases result in conflicts.

The principles and experiences of the above four jurisdictions have been noted as a useful guideline to developing resolutions for the Fijian context.

CHAPTER 7: PRESENT AND PROPOSED CUSTOMARY DISPUTE RESOLUTION IN FIJI

"All our problems can be overcome if we are supported by a bureaucracy which is increasingly cleaner and more authoritative, with a more open and responsible attitude and has a full participation of the people".

Head of the Indonesian Legislative Assembly, Wahono

(quoted in Lisa Ting's Masters Thesis, 1994)

7.1 Introduction

During the colonial era, information on land was collected, stored and maintained by various organisations in different mediums, methods and forms. Rakai (1993) notes that integration of information in Fiji has been very difficult; therefore "duplication of work has always been a common occurrence; this being carried out at the expense of the public!"

Since Fiji's Independence in 1970, developments have been prolonged due to misunderstandings and lack of reliable information. These misunderstandings often occur when landowners react negatively to developments. They express their anger and frustrations over lease agreements, lease monies, and lack of knowledge by putting up roadblocks, attacking proprietors or developers and damaging properties. However, even land administrators are frustrated that land legislation cannot be enforced in some of these customary land disputes and government is spending more money each year trying to resolve disputes. The availability of all land information for the benefit of resolving land disputes is one of the areas that is being highlighted in this thesis. Fourie and van Gysen (1996) emphasise the importance of making

land information easily available for public use. The purpose of this chapter is, firstly, to review the present procedure for customary land disputes resolution and then propose an improved system of administration, which recommends a Centre for Dispute Resolution.

7.2 Management of Customary Land Disputes in Fiji

Fiji is the only Pacific nation that is reasonably rich with land based information. However, it is counter productive in that most of the information is stored in various departments and statutory bodies that lack coordination with one another. Therefore the management of information and the communication lines are the two main problems faced by administrators today. Most of the government departments and statutory bodies have their own rural programmes and all have a common goal which is the "bettering of the conditions of living of the rural population" (Lasaqa 1984). Therefore it is vital that there is coordination to ensure that rural people get the best results. Lasaqa (1984) explains the need for coordination in two distinct areas:

- Coordination between officials, of the different agencies, share a common goal of improving rural life. There is a need for these agencies to coordinate and put their resources and techniques together so that they can communicate in a common system to simplify presentation to the rural people.
- Coordination between the development committee themselves. Here, the various committees in the rural areas are brought together: rural health, rural education, social welfare, district development, rural housing and other committees that have been part of a governmental programme in the rural areas. These committees should put their resources, finances and manpower together and allocate an acceptable method and approach to best achieve common goals.

During the colonial administration, communal meetings carried out management of customary land disputes in Fiji, where the chiefs' rulings were final and unquestionable. However, as disputes became more frequent and complicated, they

were directed to land administrators. Below in Figure 7.1 is a flow diagram that shows the procedures that a land dispute follows if it cannot be resolved in the village meeting. In this diagram customary land disputes are handled by the various government ministries and statutory bodies in accordance with the nature and causes of the disputes.

Fiji also has a system where the indigenous people own rights over the fishing grounds. The fishing grounds are surveyed and registered under *Yavusa* or *Vanua* ownership with the Register of Titles Office. It is also common to have disputes over Customary Fishing Rights (CFR) ownership, CFR boundary and the administration of CFR.

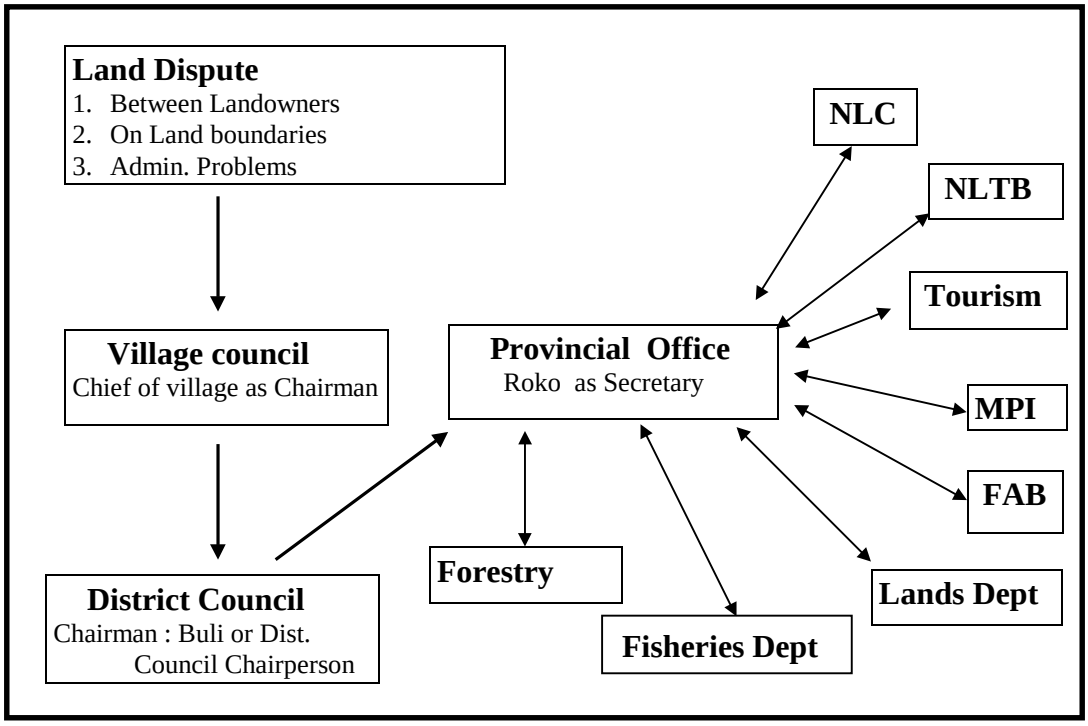


Figure 7.1 Flow Chart on Procedure for Customary Land Dispute NLC - Native Lands Commission; NLTB - Native Land Trust Board; FAB: Fijian Affairs Board; MPI : Ministry of Primary Industries; Dist. : District; Dept : Department

Disputes are also common over customary title. The head of all the social groups in the Fijian hierarchical system are also recipients of lease monies, and these

customary leaders have traditional titled names for example, the *Kalevu* is the title for the paramount chief of the Province of Nadroga. Where areas have been developed for economic reasons there tends to be a higher rate of disputes over customary lands and customary titles.

The Project Unit of the Native Lands Commission recorded a total of 140 land disputes and 60 customary fishing rights and customary title disputes in 1991. Only one third of the total number of disputes were resolved. Most of the dispute cases are still pending have been delayed because customary landowners cannot afford to pay for the survey of the disputed boundaries, or pay court fees and lawyer fees to fight for their grievances. Therefore some cases have been pending for more than five years. The number of dispute cases is increasing by 20 - 50 cases each year (Project Unit Annual Report 1991 - 1993).

7.2.1 Management of Customary Land Dispute in the Village

Verbal or physical combat was common during disputes in the village before the colonial government. After the establishment of the Native Affairs Administration the hierarchical system in villages was strengthened and the village chief presided over meetings on any disputes in the village. Although many functions of the village chief, primarily as a leader, were lost when tribal warfare ceased, a new mechanism for protection and settlement for disputes and the continuing reliance on chiefs as leaders was now supported by the Native Regulations. As they became the sheltered elite, few of the traditional leaders had the skill or inclination to lead the people in the new Native Administration (Ravuvu 1988). Under the new system, claimants would notify the village chief of their dispute and the chief would call a meeting of the entire community to hear their arguments. Disputes would be resolved at this level only if :

- The village chief was well versed in information concerning the land or the subject of dispute.

- The chief was a resident of the village and had been guided and taught by his father on family values and customary duties before holding the title of village chief.
- A chief had the popularity for his decision to be respected by his people.
- A chief's strength was measured by the size of his plantation or personal achievements; therefore, a strong chief would be respected.

In the village, most of the information used and argued over is in the collective memory of the village elders. Disputed boundaries, disputed land ownership or family conflicts are all mentally stored and recorded (Ravuvu 1988). Some landowners have recently sought their land titles, maps, and copies of the VKB. These copies are highly treasured by the landowners, but few landowners are able to identify the map features on the ground.

Traditionally a customary dispute meeting would have its own traditional procedure. This procedure neither calls for an agenda nor record minutes of dispute meetings. No evidence, arguments, agreements or decisions are recorded. Therefore, if land disputes are resolved at the village level, all records are kept in the mind and such incidents are retold throughout generations. However, in most cases, as years pass by, these stories keep on changing until the previous decision becomes vague and disputes may again arise. History indeed repeats itself.

7.2.2 Management of Customary Land Disputes at District Meetings

The *Vanua* is the indigenous grouping which later became the District in the colonial administration. The tribal paramount chief is the *Turaga ni Vanua* and each *Vanua* may consist of two or more *yavusas*. The *Turaga ni Vanua (or Turaga i Taukei* as they are alternatively known) receive 5% of the lease monies from any *mataqali* lease in their customary authority (Ravuvu 1988). The indigenous people are totally committed to their *Vanua* and to its expectations. The *Vanua* concept is the source of identity and self respect and, if one is lost from the *Vanua* it is "likened to a floating

debris" (Ravuvu 1988). The district meeting or the *Vanua* meeting is scheduled for every quarter and is so highly regarded that the village which hosts the meeting prepares well in advance for it. Representatives from each village include the *Turaga ni Koro* (Headman and government representative), the *Turaga ni Yavusa* or his representative and, in cases of disputes, the two disputant parties. The Provincial Office and the *Roko* coordinate the district meeting or his assistant is always present. This is also the forum where Government officials can communicate directly to the people. The members usually elect the chairman of this meeting and the secretary is a staff member from the Provincial Office. When a land dispute is addressed in a district meeting, the provincial officer will be responsible for that particular case and will see that the appropriate authority is notified for its resolution. A disputed land case in a district meeting may take at least two weeks before an action could be taken. The following reasons cause the delay:

- The Provincial Office is not equipped to handle technical problems. It is more or less a stepping stone, from the landowners to the government and vice versa.
- Delays may be due to transport and mailing problems.
- The Provincial Office does not keep any land information or any related records.
- There is a shortage of manpower in most provincial offices as they are all paid by the provincial funds, except the *Roko,* who is the only government official.

In most cases the provincial officers put in personal time and effort to attend to the needs within the province, but that task can be very frustrating because their work is mostly coordinating and liaising between the people and the higher authority. The information found in the Provincial Office includes:

- Copies of the VKB.
- Files of all dispute cases.
- Village profiles.
- Minutes of Provincial Meetings.
- Files on Government projects and development proposals.
- Accounts of Provincial funds.

The introduction of a computerised VKB system has opened a new chapter in some provinces and it is hoped that in the near future all of the 14 provinces in Fiji will be using computers for VKB searches and all other land information searches.

7.2.3 Management of Customary Land Disputes in the Ministry of Fijian Affairs

The colonial administration did not take the opinions of the rural people into account when planning a development programme. The officials knew what was good for the people and therefore the people should submit to a higher authority (Lasaqa 1984). It was in 1969 that the national development took a different approach where the rural people were consulted and their needs were prioritised in development programs. Village and district meetings were strengthened by this approach and the people soon realised that they had to plan wisely as resources were limited (Lasaqa 1984). The fourteen (14) Provincial Offices do not constitute a local government organisation but provide a system that is similar and which caters only for indigenous Fijian interests. The members of the Provincial Council are mostly elected by the people to voice their needs. The *Roko* holds the post that is equivalent to a chief executive in the Provincial Office and in the past only persons of chiefly status held this position. Today almost all the *Roko* and his staff are appointed by the FAB with close consultation by the provincial councils.

The management of customary land disputes in the Ministry of Fijian Affairs is distributed between the three administrative bodies, NLTB, FAB and NLC. The Provincial Office consults the relative organisation in accordance with the case at hand and coordinates all the meetings that follow. At times the provincial office finds it hard to identify the true cause of disputes thus making it difficult to identify the relevant organisation to refer such cases to. Sometimes there is a need to consult more than one office to resolve a dispute. Each of the administrative bodies works

independently and there is very little consultation between them. Figure 7.2 shows the different organisations that contribute to resolving customary disputes.

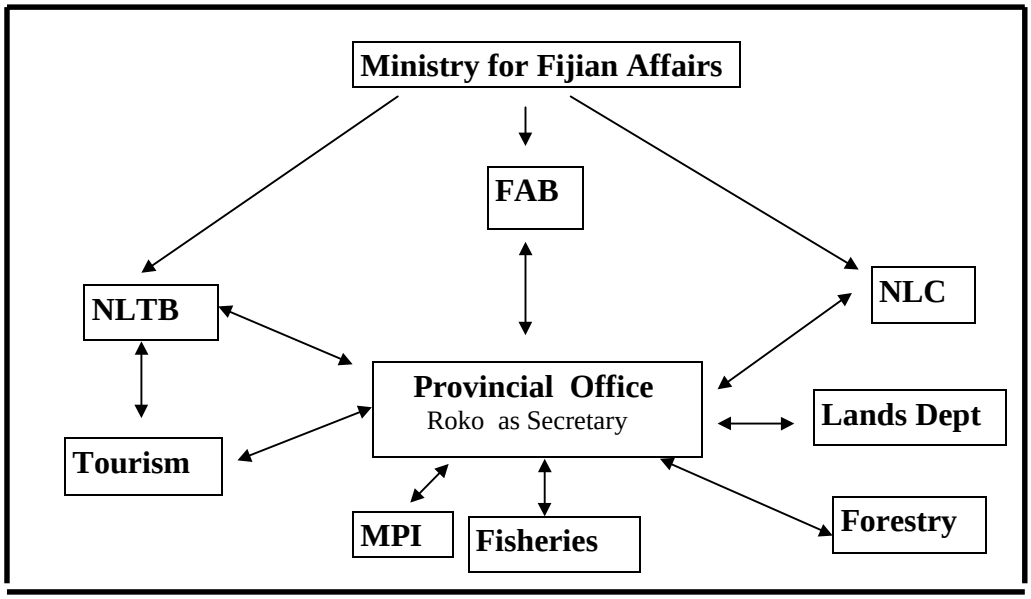


Figure 7. 2 Dispute Management in the Ministry of Fijian Affairs

The Native Lands Act, Cap 133 Sec 16 outlines the procedure for resolving customary land disputes:

1. *In the event of any dispute arising, the parties to which are Fijians, in connection with land in a province or tikina in which the proprietorship of the Fijian owners has been ascertained by the Commission to visit without delay or in any other case when he may deem it expedient, the Minister may delegate a member of the Commission or some other proper person to inquire into the same.*
2. *It shall be lawful for the Minister to appoint one or more persons being native Fijians to sit as assessors with the commissioner appointed as aforesaid.*

3. For the purpose of holding an inquiry under subsection (1), the Commissioner shall have the same powers as those vested in the Commission and shall follow the same procedure as is laid down for the Commission in inquiries.

4. During such inquiry the commissioner shall take or cause to be taken a full account in writing of all proceedings and of the evidence.

5. On the conclusion of any inquiry held under subsection (1) the commissioner holding it shall inform the parties interested of his decision to the scribe of the province in which the land is situated and such decision shall be publicly read at the next meeting of the provincial council.

It is possible to appeal within 90 days from the day a decision has been announced to the Appeals Tribunal, which is a three-member committee. Under the Native Lands Act the Appeals Tribunal has the duty to hear grievances caused by the decision of the Commissioners and the Native Lands Act Cap. 133 Section 7 (3) states that the Appeals Tribunal can only hear new evidence if all of the three following conditions are satisfied:

- It is shown that the evidence could not have been obtained with reasonable diligence for use at the inquiry before the Commission or commissioner.
- The further evidence is such that, if given, it would probably have an important influence on the decision.
- The evidence is such as is presumably to be believed.

Most of the cases of the Appeals Tribunal are on the decisions made by the Native Lands Commission on customary title or headship. Most of the appeals on customary land dispute are made to the Fiji Magistrates Court, where in almost all the cases private lawyers represent the landowners. The landowners pay large amounts of money for their cases and, if unsuccessful, face financial loss. Statistics gathered from the Native Lands Commission in 1998 showed that the Western Division has the most appeal cases. Decisions made on land disputes in these areas

will greatly affect the lives of the landowners, because of the sugar and tourism industries.

7.3 Dispute Resolution

Land disputes are demonstrated by physical fighting, putting up roadblocks, forcibly evicting tenants, harassing and abusing of power, and other ways which are more dangerous and could even lead to killings. It was a major governmental problem when the landowners decided to put up a roadblock and burn down a building at the Monasavu Hydro Electric Power Station in early 1998. The Monasavu Power Station is the electrical power source for the capital, Suva, and its surrounding areas. This is the type of event that is quite common in Fiji and other Pacific nations today. It is not possible to find a resolution that would eliminate land disputes but it is possible to find a way to help with the resolution of land disputes.

During its 1996 conference, the Asian Pacific Peace Research Association (APPRA) was concerned with the theory and practice of contemporary dispute resolution was bound to a Western cultural framework which may have a questionable result when used in the customary and traditionally oriented environment. Table 7.1 shows the values of the western legal system in comparison to the values of the Aboriginal dispute resolution.

ABORIGINAL DISPUTES	WESTERN LEGAL SYSTEM
Emotional response	Controlled response
Oral records	Written records
Disputants live together	Disputants often strangers

Training by experience	Formal legal training
No rules of evidence	Strict rules of evidence
Process in front of community or family	In front of strangers
Disputants speak	Use of advocates
Time not an issue	Deadline intensive
Informal	Formal
Communal	Systematic

Table 7.1 The values of Aboriginal dispute resolution and the values of the western legal system from Behrendt, 1995

Although it is not shown in the Table, the most needed factor that is common to both systems is the availability of reliable information for the resolution of disputes. Disputes occur because of misunderstanding and ignorance; therefore information enables realistic decisions to be made and meets the needs of the disputants. Land information must be available to the public because information reduces uncertainty and helps identify and analyse the problems at hand (Dale and McLaughlin 1988). It is therefore proposed that the administration of customary land disputes must be reorganised to meet the growing need.

7.4 Dispute Resolution System for Fiji

In the studies of land administration, customary land disputes and their resolutions in four countries, Western Samoa, Vanuatu, Papua New Guinea and Indonesia, the following principles and experiences have been noted as useful guidelines to developing solutions for the Fijian context.

- **Samoa:** The Samoan Land and Titles Court deals with customary queries and disputes only. The President or Deputy President and at least two Samoan judges and two Samoan assessors exercise this Court's jurisdiction. The Court applies law relating to customs and usage in their judgements (Schmidt 1994).
- **Vanuatu:** It has been recognised in Vanuatu that land disputes should be resolved at the lowest possible level. This means at the village or family clan level, since customary disputes and their resolutions are the duty of the customary leaders or family elders (Islands Court Act 1983).

- **Papua New Guinea:** Because of the diversity of languages and customs in Papua New Guinea (700 languages groups in PNG), government has recommended that a local government type of authority be set up in the provinces. Customary information was collected, stored and utilised publicly by the landowners (Eaton 1988).
- **Indonesia:** Ting (1996) makes the following recommendations, amongst others, for dispute resolutions in Indonesia:
  (a) Informal negotiation methods suited to the local community (there are over 200 ethnic groups in Indonesia).
  (b) Total commitment by government to train officers for serving the community.
  (c) Mobile mediation teams that must be well trained in mediation techniques and should have diverse skills such as quasi-legal training and also a firm knowledge of *adat* (customary law).

From the principles and experiences shown above, together with the Fijian experiences during the past century, a customary land dispute resolution management model is presented. Listed below are the main points that determine the role and function of the model:

- Most land disputes are currently taken to court.
- Court cases on land disputes are prolonged because of lack of information on customary land and customary land ownership.
- Information is not accessible to the public, and landowners are ignorant of the records, legislation, and policies of their ownership.
- Land administrators must have knowledge of customary land principles.
- Legislation should accommodate the dynamic nature and flexibility of customary laws.
- Government should provide a system for the resolution of customary disputes which is financially viable and expeditious.
- The dispute resolution model must be acceptable to the customary landowners.

- Customary land disputes should wherever possible be resolved at the local or village level.

7.4.1 Centre for Dispute Resolution (CDR)

As the Fiji government is spending more money each year seeking to resolve disputes, a system for customary land dispute resolution must be introduced. The system must be relevant to Fiji and should be inline with the need of customary land administration. Ezigbalike (1996) explained in regards to a system relevant to Africa that the emphasis is on planning, sustainable agriculture and rural development. Similarly for Fiji the emphasis is not on land conveyancing but the recording of rights and other interests in customary land, fishing rights and titles. FLIS has completed the capture of the NLC maps, which shows the customary allotments and their areas. Ezigbalike (1996) again noted that although a survey map is absolutely necessary, a multi purpose map should be adopted, where, for example in Fiji's reserve areas, an approximate survey method or even a sketch map could be used to provide indexing and cross-referencing. The database approach explained by Ezigbalike (1996) emphasise administrative needs to manage the allocation of rights where the use should be made of local or traditional expertise. This database will be appropriate for the management of dispute resolution, as they are purely textual databases that could be linked to spatial data for survey (which is made to an appropriate accuracy) and mapping works.

It is proposed that any model for Fiji dispute resolution must incorporate a Centre for Dispute Resolution having three main administrative sections as follows:

1. Customary Disputes Section

This section will handle all customary disputes and this includes disputes on customary lands, fishing rights and customary titles using qualified mediators who are knowledgeable with customary systems and legislative law. The Minister for

Fijian Affairs will appoint these mediators as Commissioners and they will have powers of the Native Lands Commission (Native Lands Act Cap 133 Section 4) to hear grievances and to use the Alternate Dispute Resolution method of resolving disputes. The ADR methods include traditional negotiation, mediation, conciliation and arbitration. The Commissioners therefore must have a vast knowledge of the disputant's backgrounds to be able to resolve disputes.

All customary land information, customary fishing rights and customary title information should be easily accessible to this section. Some of the information is already in computerised attributes or graphical data, therefore, the need for the development of standards for data acquisition and transfer is again noted (Rakai 1993). Future development of databases should include traditional entitlement and historical records. However, in the meantime many important facts are still in hard copy and kept in the office of the NLC.

2. Court

The Court Section will have two distinctive roles. The main role of the Court shall be similar to the Samoan Lands and Title Court and the Fijian Magistrate Court that was abolished in 1970, except that this Court will handle customary dispute cases only. The second role is to handle all appeal cases just as the Appeals Tribunal is doing. Native Lands Act Cap.133 Section 7 allows the landowners to appeal any decision made by the Commissioners or mediators within 90 days of the announcement. The Appeals Tribunal is following a procedure that is a customary version to the proceedings of the courtroom. However in this recommendation the Court is the supreme authority in this section, therefore all final decisions will be announced and made by the Court. The Court will have a jurisdiction to hear cases in the following circumstances:

- Cases unresolved by the mediation process of the Customary Disputes Section.
- Cases that have been resolved by the mediation process but need a legal enforcement on the decision.

- Where legislative rather than customary principles apply or a combination of legislative and customary principles is involved.
- Where non-Fijians are involved or where one of the disputant party is a freehold landowner or a state land tenant.
- Cases that have been recommended for Court decision.
- Decisions and announcement on all appeal cases.

The Court Section will have to work closely with the Attorney General's Office so that all proceedings will follow the procedure of the Fiji Court System. The proceedings of this Court provide a western structure for settling cases and enforcing decisions of the mediators. It is however important that customary law be applied when the need arises.

The Appeals Tribunal will be under the responsibility of the Court. The Court will prepare the Tribunal's work procedure and appoint the members of the Tribunal when the need arises. The Appeals Tribunal will only be activated under these circumstances:

- If landowners prefer a Tribunal hearing when they appeal a decision made by the Commissioners or the mediators of the Customary Dispute Section. They will need to apply within 90 days from the day the decision was announced.
- If recommended by the Customary Dispute Section. There are complicated cases where a Tribunal hearing is essential before the Court makes the final decision.
- If recommended by the Court, especially in cases where the Court needs more customary evidence before it makes a final decision.

The advantages of a Tribunal hearing are:

- Tribunal hearings are usually held in villages where the disputants live.
- The customary landowners speak freely as they represent themselves.
- The landowners are comfortable with the customary and the traditional procedures.

After a Tribunal hearing the members of the Appeals Tribunal will recommend their decisions to the Court, which will announce the final decision for the case.

As the Court builds its experience in dealing with customary laws and traditions, its decisions are recorded in official court records. Due to the diversity of social structures in the Fijian customary set up, these records will become a useful and efficient reference for future Court cases. This will eventually reduce the number of cases as well as the duration of each case. A good recording system that emphasises the administrative needs will be appropriate for this Section.

Another role for this Section is to research all historical records and verify the validity and accuracy of information. This third role could be organised as a project and will become a very important exercise for the indigenous people. This section will also ensure that a good recording system be applied.

3. Training Section

The training section will organise all training programmes, which should include training for customary landowners, native tenants, native land lessees, administrators and provincial and field workers. The Training Section will meet the need for landowners to be educated in the knowledge and the legislation of their ownership.

One of the biggest problems faced in Fiji today is the lack of involvement of landowners in making decisions about their land. Often, decisions are made by government or land administrators and all the landowners ever see is the actual implementation of these decisions. The Training Section will try and develop a process that is a more transparent and information input more visible for landowners to see and participate in the making of decisions on their customary ownership.

The Training Section will also allow customary dispute officers or Native Land Commissioners to be trained as mediators, equipped with the knowledge of legal and

customary land laws as well as customary dispute resolution methods. This section will be responsible for collecting, storing, and updating all land information and other customary information. Since this section will be responsible for all the information systems of the Centre, it will be linked to the FLIS network.

The objectives of the proposed Centre for Dispute Resolution are as follows:

1. The primary objective is to set up a Centre that would efficiently and effectively administrate customary disputes.
2. Other objectives are:
    - To utilise all customary information to its maximum value for resolutions.
    - To allow the flow of information right down to the landowners level.
    - To minimise the financial expenses used for resolving land disputes.
    - To resolve disputes at the shortest time possible.
    - To provide an effective training programme for all ; landowners, mediators, administrators, tenants, land users and government officials.

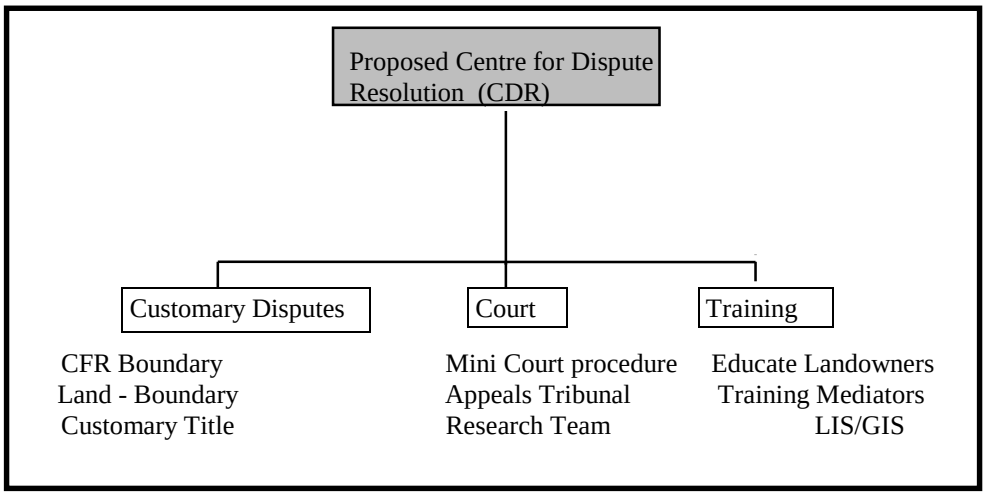


Figure 7.3 Proposed Centre for Dispute Resolution. CFR: Customary Fishing Rights

The above three sections make up the administrative model that is to be the Centre for Dispute Resolution.

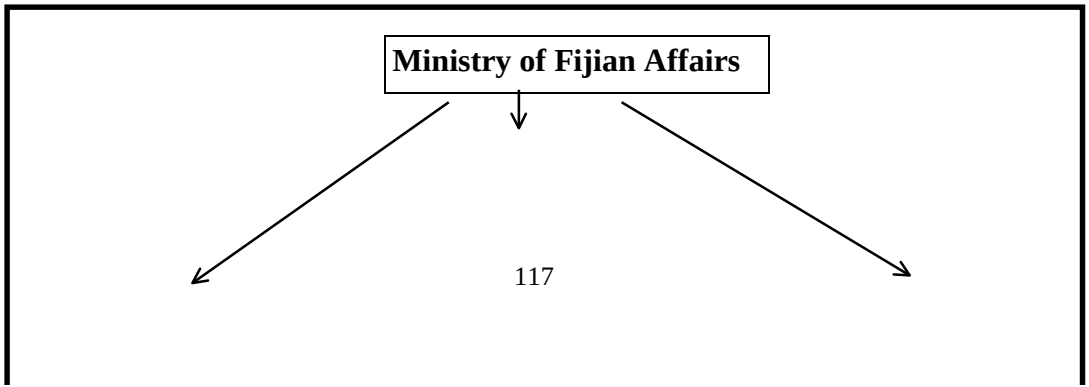
7.4.2 Where to base the Centre for Dispute Resolution (CDR)

The Centre needs to be located in an administrative or institutional structure that will enhance its objectives and will serve its purpose to its maximum capability. Three options are proposed below. It is suggested that all options could be applicable to any Pacific country, with modification to reflect different geographic and administrative environments.

Option One

In Option One the CDR is to be located within the Provincial Office structure. The Provincial Offices will be extended to manage all customary land information from other land administrative bodies and even that given by the customary landowners. With the introduction of the computerised VKB system in the provincial offices, relevant information from other sources could now be installed on this system so that all necessary customary information is available for dispute resolution. Option One will provide easy access to all land information to serving both the public and the customary landowners (Native Lands Act Cap. 133 Section 14). Fourie and van Gysen (1996) suggested that at local level the Participatory Rural Appraisal (PRA) system could be introduced. In Fiji the Provincial Office could introduce the PRA system which directs the landowners to tackle and manage their problems using formal techniques (group problem solving approaches). The PRA approach "can have a direct impact on the ability of a local community to manage its own problems, including land management issues" (Fourie and van Gysen (1996).

In Fiji there are more land disputes in some provinces than others. Therefore if this option is adopted for Fiji, then it is suggested that some Centres will look after more than one province depending on the frequency of the dispute. This would be a more economical approach.



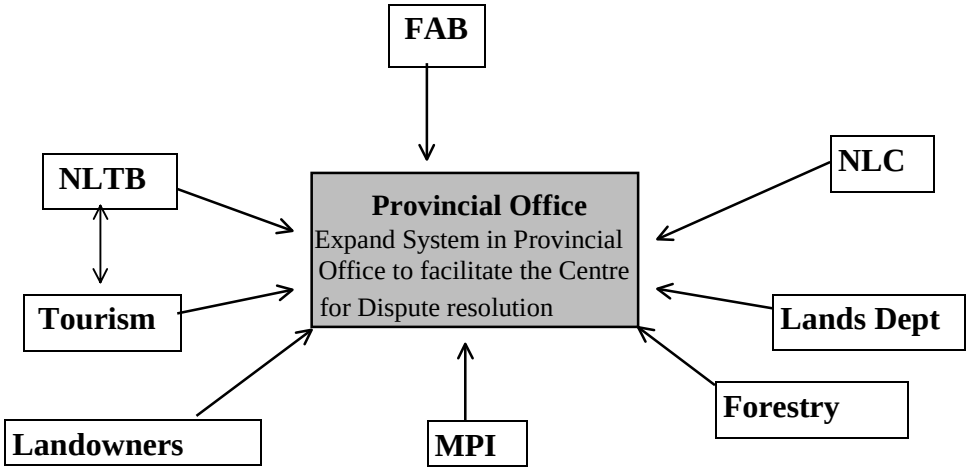


Figure 7.4 Option One : Expanding the Provincial Office to facilitate a Centre for resolving customary disputes. MPI: Ministry for Primary Industries

Below Table 7.2 lists the advantages and the disadvantages for extending the Provincial Offices.

Advantages	Disadvantages
1. All land disputes are handled close to the villages therefore landowners do not have travel to resolve disputes.	1. There will be 14 provinces to upgrade and staff
2. Landowners will have a better understanding of their land because the centre is close to them	2. There are more disputes in the more developed areas of Fiji
3. Other land administrative bodies will be free to concentrate on their land strategies.	3. This model will only work if government provides funding
4. The provincial office will be upgraded with equipment and skilled manpower	4. Setting up the Centre in 14 provinces will be expensive (relative to 1. Above)
5. Most of the land information will be decentralised and accessible to the landowners.	5. The Prov. Office provides services to the *taukeis* only, non-Fijians will be left out.

Table 7.2 Advantages and Disadvantages of extending Provincial Office

Option Two

The second option investigates expanding the Native Land Commission (NLC), so that a section is set up as a Centre for resolving customary disputes only. As this

office administers most of the customary disputes, this option looks at the possibility of upgrading the existing department. The most important component that has been discussed in this paper is the availability of all information for the resolution of customary disputes. The NLC is the Centre for all customary information, although most are still in hard copies. Since the only NLC office is located in Suva, the recommendation made by Ting (1996) on the mobile mediation teams would be more applicable and would be incorporated into the Customary Dispute Section of the CDR.

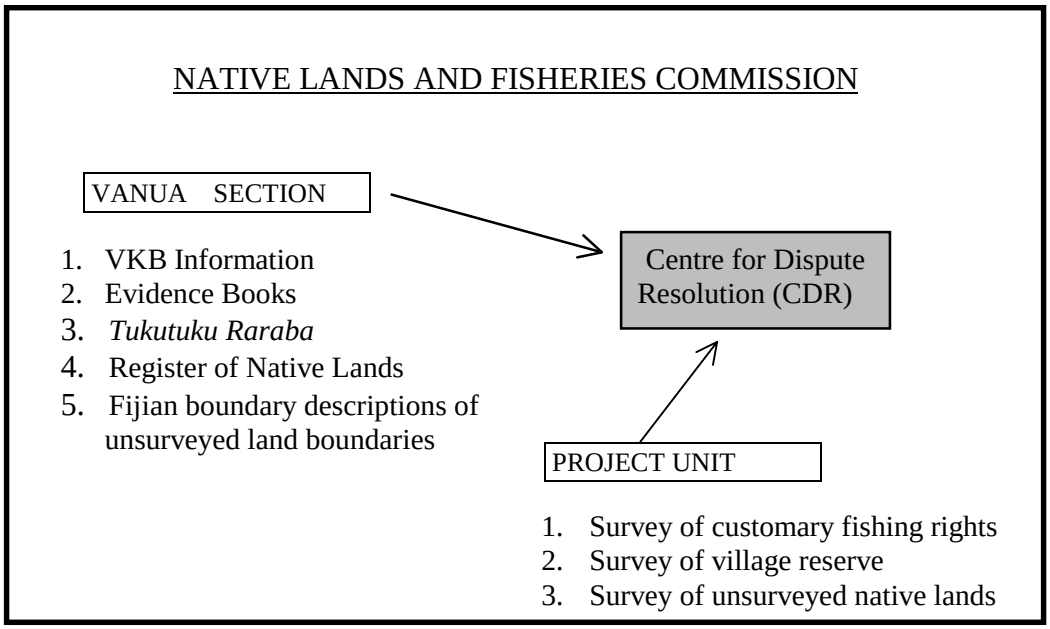


Figure 7.5 Option 2: Expand Native Lands Commission

The list below shows the advantages and disadvantages of having the Centre within the Native Lands Commission office.

Advantages	Disadvantages
1. Most of the references needed for customary land dispute resolution are kept in the NLC.	1. The NLC serves the indigenous people only
2. The NLC has a technical team which can provide the Centre with all technical advice	2. NLC has completed its task, disputes should be looked after by NLTB as custodian of all native lands
3. To preserve the confidentiality of the records it is better that they are kept in the NLC	3.NLC records are very old and its credibility is questioned by some landowners
4. NLC is revered by most indigenous rural Fijians	4. Most of the NLC duties are neglected because of the pressure of disputes eg. redefinition of NLC surveys, updating old records, decentralisation of records
5. Legislation gives NLC the responsibility to determine ownership of land in case of disputes.	
6. Most disputes are handled by NLC	

Table 7.3 Advantages and Disadvantages for Extension of NLC

Option Three

The last Option is to set up the CDR under the Ministry for Fijian Affairs. This Centre becomes a new department independent from the existing NLC, NLTB and the FAB, therefore, it will not have any customary information or records. A review of the present legislation must be made so that the Centre will have access to information that is otherwise classified. Setting up the CDR as in Option 3 will be cheaper than expanding the 14 provincial offices as shown in Option 1 and will be more accommodating and accessible to non-Fijians than Options 1 and 2. Non Fijians are neither employed in the Provincial Office nor in the NLC and it is recommended that they be employed in this set up to provide assistance to tenants and proprietors who are leasing on *taukei* land. However, it will be difficult for landowners to come to the Centre or to have access to the information at the Centre unless mobile mediation teams are employed or the Centre is decentralised.

Option Three

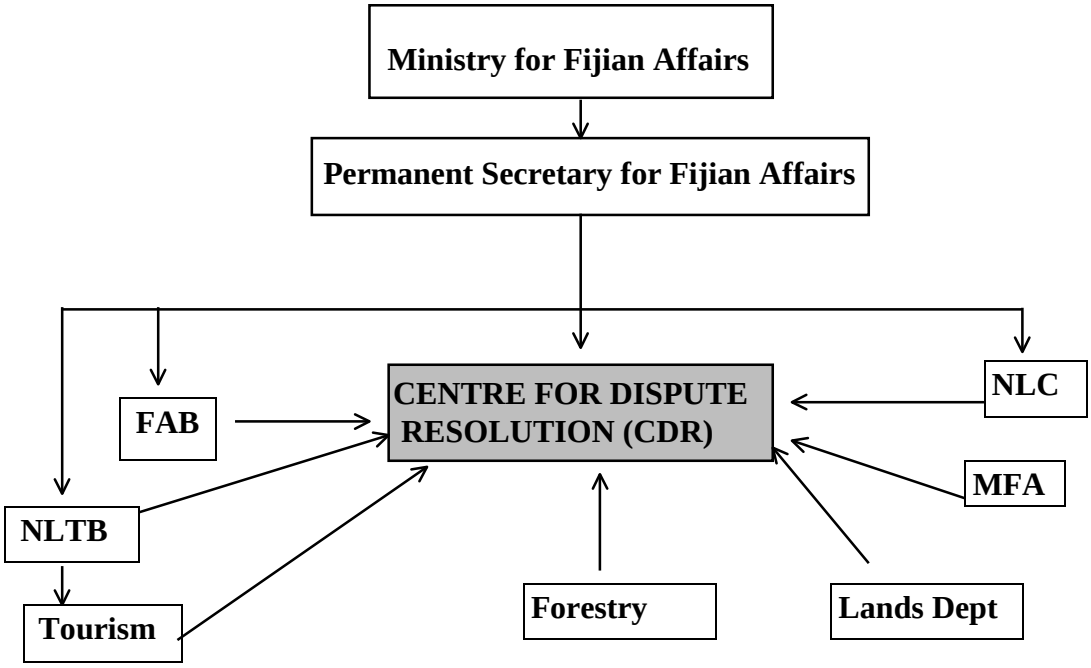


Figure 7.6 Option 3: Centre for Resolving Customary Disputes under the Ministry for Fijian Affairs

Advantages	Disadvantages
1. Convenient for all queries to go to one centre	1. Very expensive to set up
2. Provincial Office will liase directly with the Centre	2. Information may not be released by the custodians
3. Non Fijians can voice their opinions freely	3. New legislation to be formulated
4. Building the CDR as a major resource centre will equip it with high technological facilities.	4. Centre need to be decentralised to be effective

Table 7.4 Advantages and Disadvantages of setting up a new department for Dispute Resolution

7.5 Chapter Summary

This chapter has reviewed the present systems for managing customary land disputes and has proposed an improved structure, which recommends a Centre for Dispute Resolution. The following conclusions have been found in the present system:

- The Native Lands Act has not clearly defined a systematic procedure for resolving customary disputes.

- Although used in various government and statutory bodies, LIS is not linked between them because of the differences in the systems used.
- Customary disputes can be handled by more than one office independently of each other.
- The cost of resolving disputes is expensive because, unsatisfied parties will have to meet the costs of surveyors to survey a disputed boundary; pay lawyers and court fees if a dispute is taken to court; pay a land valuer if land needs to be valued; and meet costs of travelling to and from the government offices.
- Disputes arise because of ignorance and misunderstanding, due to lack of training on customary ownership.
- Government is spending more money seeking to resolve disputes and also meet the compensation claims made by unsatisfied landowners and tenants.

This chapter has recommended that any model for land dispute resolution for Fiji must incorporate a Centre for Dispute Resolution. The Centre should have three main administrative sections: the Customary Disputes Section which handles customary disputes using qualified mediators, the Court Section which handles disputes not resolved by the Customary Disputes Section and all appeals, and the Training Section which organises training programmes for customary landowners, tenants, and administrators.

This chapter has also proposed three options for the management of the Centre of Dispute Resolution. The first two proposals expand the provincial office and the NLC where customary disputes are managed at the moment. The third option proposes a new Centre, which would require amendments to the legislation and also approval by the government.

CHAPTER EIGHT : CONCLUSION AND RECOMMENDATIONS

"Blessed are the peacemakers for they will be called sons of God"

Matthew 5:9

8.1 Introduction

This thesis is concerned with customary land disputes, which is an increasing issue in many developing countries. Governments, investors and aid donors are also concerned about the increase in customary land disputes, although finding the best resolution for customary disputes is almost impossible. This thesis has not tried to eliminate the problems but it has made proposals, which could help Fiji and developing countries with the management of customary land disputes.

The main purpose therefore has been to identify the current problem areas in resolving land disputes and then to make necessary recommendations to improve such areas without removing customary values and inheritance. Specifically, the research has proposed establishing a Centre for Dispute Resolution and has outlined three proposals for the management and administration of the Centre. Leading up to the three proposals, this thesis has investigated the following:

- Reviewed the different types of customary rights practised by the customary landowners.
- Reviewed the purpose and the legitimacy of the customary land boundaries.
- Reviewed the administration of customary lands.
- Listed examples of customary land dispute cases commonly found in Fiji.
- Proposed a Centre for resolving customary land disputes.

8.2 Summary and Conclusion

Chapter 1 introduced the relationship between the land tenure system in Fiji and the concept of land disputes. Land disputes are one of the major issues in developing countries where the lack of security in land acquisition defers developments and infrastructure. Aid donors are also dissatisfied because disputes have hindered a nation's economic development and have depleted resources in its resolution. Chapter One introduced the basic concepts in land disputes and has explained the relevancy of this research.

The concepts of rights and land ownership were discussed in Chapter 2, placing more emphasis on communal ownership and family units. This chapter explained all the different types of customary landowners rights practised in Fiji. Some important facts seen by studying the landowners were:

- Uneven distribution of land amongst the landowning units.
- The rapid increase of the *taukei* population.
- The expectations of the absentee landowners.
- The complications of legislation and other formalities to the landowners.

Chapter 3 discussed the concepts of land boundaries and defined the terms "fixed" and "general boundaries". This chapter also explained the survey of the customary lands in Fiji. Although it is now 50 - 80 years old, most of this work is still used as the base for major decisions. It has been recommended that the Fiji government should prioritise the survey needs in the unsurveyed areas, so that those areas that are economically potential should be surveyed first.

Chapter 4 discussed the different customary land administrative bodies and their LIS/GIS initiatives. Even though most of the land administrative bodies have strategies which are geared towards the expansion of LIS/GIS usage, there is very

little coordination between them; therefore, problems of insecurity, mistrust and ignorance result in data being guarded selfishly and not released for administrative or management purposes. This problem can result in the duplication of work.

Chapter 5 detailed all the types of land disputes encountered in Fiji by case studies or examples. Most of the disputes listed are common to other jurisdictions within the Pacific. The primary objective of this chapter is to assist other countries with customary land tenure, to identify their problems with Fiji's. In this way, the proposal made in this research could be used to modify their resolution procedure. Most of the land disputes noted in this chapter have been recorded from the author's own experiences whilst working in the Office of the NLC.

Chapter 6 reviewed the customary land dispute resolution in four other jurisdictions: namely, Western Samoa, Vanuatu, Papua New Guinea and Indonesia. Although all have customary land tenure, they practise resolution of customary land disputes differently. However, one of the common factors in each of these countries, and including Fiji, is the influence of colonialism, which has limited the management of land disputes, so that the western court system is the dominating, ruling power over the customary resolution system. The study of other countries has helped in the proposal for a Centre for Dispute Resolutions and its three main administrative sections discussed in Chapter 7.

Chapter 7 put the core of the research into perspective and proposed the establishment of a Centre for Dispute Resolution where three Options were described to review the administration of customary land disputes, and to remodel this administration to include the CDR. Option One discussed the possibility of expanding the present 14 provincial offices to facilitate the Centre. Option Two looked at the expansion of the Native Land Commission office. The third option proposed a new centre, under the Ministry for Fijian Affairs, which is independent from other customary land administrations but should be linked to them because it

needs all their land information. This chapter also explained the three administrative sections within the proposed Centre and their different tasks. These sections are the:

- Disputes Section, which looks after customary land, fishing rights and title disputes.
- Training Section organises training for landowners, lessees and administrators. This section will also be responsible for the Centre's information systems and network.
- The Court system steps in when mediation fails. A formal hearing by the Fijian Magistrate Court will provide justice and convenience in a manner that is accommodating to all the parties involved in a customary dispute. The Appeals Tribunal is under this section.

8.3 Recommendations

1. It is recommended that the Fiji government should recognise the need for a Centre to resolve the growing customary disputes in the country. Such problems have hindered development and have deterred would-be investors
2. The Centre by legislation should be able to have access to information that is otherwise classified and it must be well equipped with customary information so that it will achieve its objectives.
3. The Centre should provide assistance to public interest groups, advice local governments and other statutory bodies, and organise training for landowners and all those who work closely with the customary landowners.
4. The Centre will be funded by a government grant and, after the first two years, an evaluation should be made.
5. The staff for the Centre must include land administrators, professional mediators or facilitators, lawyers, surveyors and other technical people and clerks. Since some of the land information is in computerised data form, all staff should ideally be computer literate.

6. The Centre must be able to meet the needs of non-Fijians who are leasing *taukei* land.

This research recommends the Second Option for the administration of the Centre for Dispute Resolution where it is established under the Native Lands Commission. The following reasons justifies this recommendation:

- All the evidence, records and other tribal and historical books of all customary land inquiries are kept in the NLC.
- Native Lands Commissioners are responsible for customary land disputes under the Native Lands Act Cap 133 Section 5.
- The customary landowners know and trust the work of the NLC and see the NLC as providing the best resolution for customary disputes.
- One of the continuing duties of this office is to update the Register of Native Landowners (VKB); this is the most important information in a customary dispute.

However, since the only NLC office is located in Suva, the recommendation made by Ting (1996) on the establishment of mobile mediation teams should be adopted. These mobile teams should be employed by the NLC and should be trained in customary and legislative law with local dispute resolution skills. In most instances the indigenous people are the ones involved in customary disputes because all customary land belongs to them. In cases where non-Fijians are involved, the Centre should involve a representative of the court who is an expert on legislative law to assist with the mediation between the landowners and the non-Fijian disputant.

The three main sources of customary disputes in Fiji highlighted in this paper are the disagreements over customary ownership, the lack of well defined boundaries for customary lands, and the lack of effective administration to resolve customary land disputes. The common issue is the lack of appropriate institutional infrastructure to address customary land disputes. To address this need it is recommended that a Centre for Customary Dispute Resolution be established that will:

- Clarify the procedure for resolving customary land disputes.
- Educate customary landowners on their customary and legislative rights and responsibilities, both within the customary and western land tenure systems.
- Assist in the identification of customary land boundaries.
- Manage and update all customary information.
- Facilitate mediation, tribunal and court proceedings which have the flexibility to apply customary laws, where appropriate, in their decisions.

It is therefore necessary to upgrade the relationship and involvement between the NLC land information system and the FLIS network so that all the native lands information in Fiji can be utilised to the maximum.

The recommendation of a Centre for Dispute Resolution and its three administrative sections is an original proposal and represents the author's own work, opinions, and vision for Fiji.