

# State land transfer in Fiji: issues and implications

Mahendra Reddy

Center for Development Studies, School of Social and Economic Development  
University of the South Pacific

Padma Lal

Graduate Studies in Environment Management and Development, National Centre for Development Studies  
The Australian National University

The state has been put to the test many times in Fiji, most recently in the transfer of some of the state land to the trustees of indigenous Fijian land, the Native Lands Trust Board (NLTB). Most land in Fiji is under communal ownership by the indigenous Fijians. Of the total land area, 9.5 per cent is held by the government, 8.2 per cent is held as freehold and 82.4 per cent is held by ethnic Fijian landowning units (Ward 1995).

Since the small amount of state and freehold land is inadequate to meet the needs of commercial agriculture there has been a heavy reliance on leasing of native land which, under the constitution, is inalienable. Land used for agriculture was leased out to tenants under, first, the Native Lands Trust Act (NLTA), then the Agricultural Landlord and Tenant Ordinance (ALTO) and later under the Agricultural Landlord and Tenant Act (ALTA) (see Lal et al 2001 for a discussion on the difference between ALTA and NLTA) Agricultural leaseholds under ALTA have been expiring in recent years, in increasing numbers, giving rise to widespread anxiety among agricultural tenants about their future. The government, the NLTB, the landowners and the tenant community have been unable to resolve the problems posed

by the expiring land leases. Generations of sugar cane farming families are facing the prospect of losing their livelihood and becoming landless overnight. This is because there is little alternative for leaseholds outside of native land. The NLTB has stated that a large majority of the landowners want their land back when the leases expire, and that those few leases which are to be renewed, should be renewed under a different act rather than the ALTA which is seen to be tenant friendly (accuracy of this perception is discussed in Lal and Reddy 2002).

The non-renewal of leases can lead to several problems. Since most of the leases are associated with sugarcane farming, the economy will be directly affected. The sugar industry, 'Fiji's economic backbone', has made major contributions to the growth and development of the Fijian economy and society. The sugar industry alone accounts for more than 40 per cent of the agricultural GDP and approximately 25 per cent of the economically active population derive their income directly from the sugar industry. Since 40 per cent of the country's export earnings are obtained from this sector, the backward and forward linkages from this industry have major implications for the entire economy.

Policy dialogue
-----------------

Apart from its effects on the national economy the non-renewal of leases will also have serious social and economic problems at the micro level.

Some farmers who have lost their farms and their homes are taking refuge with relatives, some have bought residential leases closer to towns while some have moved to refugee camps set up by farmers' unions. While the Indo-Fijian tenants faced this crisis, the government entered into another controversy—the transferral of state land to native landowners. This paper examines the controversy surrounding the legislation that transferred 119, 523 hectares of what was Schedule A and B state land to the trusteeship of the NLTB.

### State lands—Schedule A and B

State Lands Schedule A and B have their origins in the land administration system introduced by the colonial British Government. Following the establishment of Fiji as a British Colony in 1874, its first Governor, Sir Arthur Gordon appointed a Land Commission in 1875 'to deal with the whole question of the ownership and

occupation of land' including verification of land claims made by European occupants and buy the native inhabitants. Where land was not claimed or occupied, these lands were declared to Crown property. For those land whose mataqali had become extinct, the land was classified as Crown Schedule A

...[i]f any *mataqali* shall cease to exist by the extinction of its members its land shall fall to the Crown as *ultimaus haeres* to be allotted to the Qali to which it was a part or other division of the people which may apply for the same or to be retained by the Crown or dealt with otherwise upon such terms as the Board may deem expedient (Native Land Trust Act Cap 134 S 19, 1).

On the other hand, lands which were not claimed or were unoccupied at the time of the Land Commission's deliberations, were declared to be under the control of Crown. The State did not, however, have registered titles over these lands. Furthermore, although they were to be dealt with in every aspect as Crown lands, the rental income, less 10 per cent administrative fees, from the use of these lands, were to be paid into the Native Deposit Account. These rental money were to be used

Table 1 Distribution of Schedule A and B lands in Fiji (hectares)

Province	Schedule A	Schedule B
Ba	16,423.25	9,195.25
Bua	5,169.25	4.25
Cakaudrove	10,447.00	1,715.25
Kadavu	780.75	
Lomaiviti	4,818.00	5.75
Macuata	14,202.00	125.50
Nadroga	9,741.25	12,722.75
Naitasiri	11,038.75	4.00
Ra	6,626.75	11,828.00
Rewa	463.25	2.25
Serua	..	72.25
Namosi	1,283.00	
Tailevu	2,809.75	45.25
Total	83,803.00	35,720.50

Source: Parliamentary Paper No. 17 of 2002, Government of Fiji.

exclusively for the use of the native Fijians, as approved by the Minister on the advice of the Council of Chiefs under the Native Lands Act Cap 133 (S19(1)).

### Native Land Amendment Bills

Given that state did not have title to Schedule A and B land, these lands were always considered by the Fijian people as their land. In 1954 the Council of Chiefs first passed a resolution calling for the return of all Schedule 'A' and 'B' lands. Following repeated requests for the transfer of the Schedule A and B to the NLTB, the Colonial Government set up the Burns Commission in 1960 to inquire into the validity of such an action, amongst other things. The Burns Commission ruled that there was no moral or legal reasons for the Government to transfer of these lands to the Fijians. The land, the Commission recommended, should remain Crown property for use by all citizens of Fiji.

In our view there are no legal or moral reason why the Government should give up control of Schedule A and B land, which should be held in trust for the benefit of the Colony as a whole or for leasing otherwise. (Burns Commission 1960).

Despite this conclusion, different post independent governments, and particularly post 1987 coups, expressed their intention to transfer these lands to the NLTB for exclusive ownership by indigenous Fijians. Such a transfer was seen as a demonstration to the indigenous community of the government's commitment to them.

Prior to the current Qarase government, the Soqosoqo ni Vakavulewa ni Taukei (SVT) and People's Coalition governments attempted to transfer these two categories of land to indigenous owners. The SVT government introduced two Bills No. 25 and 26 to the Parliament on 19 February 1999 and after second reading was submitted to the Joint Select Committee of the House for further deliberation. However, the SVT Government

decided not pursue the transfer in the interest of focusing on revising and promulgating the 1997 Constitution. Following the promulgation of the Constitution, the government did not return to power. The new government, the People's Coalition government also tabled two bills (Bills Nos. 15 and 16 of 1999) to transfer the control and administration of Schedule A and B land to the Fijians. These Bills, too, were committed to a Joint Parliamentary Committee but again the events of May 2000 putsch took over and the process was not completed.

The present Soqosoqo Duavata ni Lewinvanuta (SDL) government, once elected to power, lost no time in tabling the revised bills. Two reasons were given for the transfer of Schedule A and B land. Firstly, to facilitate the full and speedy compliance by the State, with its obligation under Section 18(1) of the Native Land Trust Act; secondly, since Schedule A and B lands are native lands, these should be administered by the NLTB (Parliamentary Paper No. 17 of 2002). Thus the two bills were introduced. Bill No. 8 of 2002 seeks to amend the Native Land Trust Act (Cap. 134) to declare all extinct *mataqali* land (State Schedule A Land) to be native land and to be controlled and vested in the NLTB as trustee. Bill No. 9 of 2002 seeks to amend the Native Land Trust Act (Cap. 133) to declare all vacant land (State Schedule B land) to be native land and to be controlled and vested in the NLTB as trustee. The Bills also empower the NLTB to allot extinct *mataqali* lands to a *mataqali* or other division or subdivision of native owners who do not have sufficient land for their maintenance and support.

### Submissions to the Parliamentary Select Committee and the Passing of the Bill

As per the requirements of the Standing Orders of the Parliament of Fiji, all bills are to be referred to the appropriate Sector Standing Committee, the report from which is to be tabled in the parliament. Therefore,

---

Policy dialogue

---

the bills were referred to the Sector Standing Committee on Natural Resources. This committee consists of 15 members from the Government side and the Opposition, with government members in the majority. Submissions were called from members of the public, however only four days was given. This short notice resulted in only a total of 17 submissions being received (see Table 2).

A number of issues arose from the submissions, including

- why would NLTB want to take on the additional obligations of administering and controlling state land when government, through the Lands Department, was undertaking this?
- do provisions exist for NLTB to honour the commitments and obligations already in place by the Lands Department in respect of lease renewal and rental, reassessment of rental, and usage of land?
- would tenants feel more secure with the NLTB as a landlord than with the government?
- there are no provisions in the bills to protect state facilities, infrastructure, water catchment areas that will be administered by the NLTB after the transfer
- while the intention of the Bill is to transfer and vest the control of Schedule A and B land with the NLTB, the committee noted that it was not clear whether this commitment is met effectively by the obligations of the NLTB
- the rightful owners of the land should be established before the land is transferred to the NLTB
- the NLTB is the trustee for the landowner and should not be involved in any arbitration relating to land.

The committee was split along party lines on support for the bills. The Fiji Labour Party argued that wide consultations should be undertaken before the bills were tabled in parliament. However, the Government, with a majority (8), outvoted the six Fiji Labour

Party members (who did not sign the report) and thus the bills were tabled in Parliament. The Government again moved to accept the bills and, given their majority, it was passed. Discussion in Parliament was quite heated, as one daily newspaper reported. Land bills passed: Parliament ends stormy session on Schedule A and B lands (*Fiji Sun*, Saturday, April 13, 2002).

The passing of the bills result in Indigenous Fijians owning 86.8 per cent of land in Fiji. The passage of the bills raises a number of issues.

**Rush in passing the bill.** Given that the transfer was controversial and could have serious implications for the economy, the issue of wider consultation was certainly germane. It seems that the communal interests of government led to this transfer which, given the sensitivities surrounding it, will be impossible for any future government to reverse it.

**Reduction in land rent to landowners.** Currently, the government receives F\$584,784.62 per year from Schedule A land and F\$93,108.32 per year from Schedule B land, a total of F\$677,892.94. Of this amount, 10 per cent is deducted by the state for administration costs and the rest is distributed to landowners. However, with the transfer, the NLTB will deduct 15 per cent for administration costs. This outcome was noted by Prime Minister Qarase in Parliament.

We are concerned that the Native Land Trust Board will deduct 15 per cent as compared to 10 per cent by the Lands Department from the lease rent income (*Fiji Sun*, 13 April, 2002).

**The role of the state.** As pointed out by one of the submissions, in the government's eyes, all citizens should be treated equally. However, while government reiterates that a significant proportion of the indigenous Fijians are landless and therefore this land needs to be transferred, it has ignored the plight of the other communities in Fiji who comprise 53 per cent of the total population.

## Policy dialogue

Table 2 Summary of submissions to the Parliamentary Sector Standing Committee on Natural Resources

No	Institution/Person	Position with regard to the bills	Reason/Comments
1	Fiji Development Bank	Support the bills	The FDB raised concerns about operational matters such as the allocation of land to <i>mataqalis</i> , the need for a transition period for the NLTB to take on the new leases.
2	Managing Director of Fiji Sugar Corporation	No objection to the Bill.	Should be allocated to indigenous Fijians who do not have any land.
3	Chairman, Vatukaloko Development Advisory Committee	Supports the bills	It rightfully belongs to Fijians.
4	Chairman, Sugar Commission of Fiji	Land should be held by the state.	If land is transferred to the NLTB, it will be a tragedy for the tenants and the farmers. There is lot of insecurity for existing tenants leasing Native land.
5	Chief Executive, Sugar Cane Growers Council	Land should not be transferred. It should be held by the state and used for resettlement of evicted farmers	Will have serious implications for the sugar industry and increase landlessness and poverty. It is ironic that government is discussing the transfer of land from state to NLTB when farmers on Native land are being evicted.
6	General Secretary, Cane Growers Association	Land should not be transferred but held by the state	Will cause the demise of the sugar industry and thus have severe negative social implications for the people that live on it.
7	Representative, National Farmers Union	Land should be retained by the state for use by landless people	Indigenous Fijians already own 83 per cent of the land and those who do not have land could be allocated land from this pool. The plight of the Indo-Fijian farmers needs to be addressed and keeping this land would provide some solution.
8	General Secretary, Fiji Kisan Sangh	The land should not be transferred.	The Director of Lands is an excellent landlord. The state as a landlord provides a sense of security and protection to sitting tenants, which will not be possible with the NLTB. It will have a serious impact on the social fabric of the nation.

## Policy dialogue

- 9 Academic 1 This land could be utilised to address the growing landlessness of the Indo-Fijian community. Failure to address this problem will result in increased poverty, squatting, and other social problems that will affect the whole nation. The state, by transferring this land, will also become very vulnerable to external shocks.
- 10 Academic 2 The transfer of land will have serious consequences for the economy and the sugar industry, which contributes very highly to Fiji's growth and development. This will lead to further instability in the country.
- 11 Former General Manager of NLTB Provide historical evidence of Indigenous Fijian ownership of these lands and suggest that it should be transferred to NLTB. Also comments on operational matters relating to liability, which needs to be discussed between the NLTB and the government.
- 12 Landowner 1 Raised concerns that once the land is transferred to NLTB, the *mataqalis'* ownership should be immediately identified.
- 13 Landowner 2 Fijians are the rightful owners of the land. All land was ceded to the Queen and, as such, the land should be returned to them.
- 14 Member of Parliament The move does not consider the current or future needs of any other community in Fiji. It seems to be emotionally based. Any government, regardless of its racial composition and objectives, has a moral obligation to every citizen in the country and as such, policies must reflect a balanced and progressive view that will ultimately benefit all citizens.
- 15 Grower 1 State is performing its function well in terms of the lessor, a large proportion of the Indo-Fijians are landless and therefore this land should be utilised to address their concerns. Passing this bill would send wrong signals to would-be investors
- 16 Grower 2 Indigenous people have more than enough land for their survival.
- 17 Grower 3 Existing tenants will suffer greatly with the transfer of ownership. It should be held by the state for the benefit of Fiji's economy. There will be serious implications, in particular social implications with the transfer of the land.

The movement of Indo-Fijians farmers into refugee camps is evidence of the plight of this community.

**Importance of the economy.** Land is a vital resource for Fiji in its present state of development and the release of Native land for agricultural purposes has resulted in the large contribution of the agriculture sector to Fiji's development. However, the recent expiry of land leases is having a serious impact on the economy as more and more land is withdrawn from the sugar industry (Lal et al. 2001). Neither does this action auger well for Fiji in terms of attracting foreign investors—an extremely important issue given the contraction of the economy following the events of 19 May 2000. Not only is the timing wrong, but the seriousness of the government's intentions to revive the economy is also suspect.

NLTB, the trustee of landowners, has been seen by some in Fiji as an obstacle to the growth and development of the Fijian landowners. In a paper recently presented at the Symposium on Transforming Land Conflict held in Fiji, Timoci Waqaisavou, Lecturer in Tourism Studies at the University of the South Pacific, stated

...[i]t has been suggested that the real problem facing the tourism industry and potential investors is the conflict between the role of the Native Land Trust Board and the land-owning units and individuals. While landowners may have their own plans for tourism development, the plan depends on NLTB acceptance of the landowners for it to work out (*Fiji Times*, 12 April, 2002).

It appears that the SDL Government is more concerned about consolidating its power base amongst the indigenous Fijians than about governing Fiji in the interest of all Fiji citizens.

The SDL Government's statements at the second reading of the Bills suggest that they are more concerned with appeasing the Fijians when it argued to transfer Schedule A and B land for the 'benefit of Fijians who do

not have sufficient lands for their maintenance and support, and to Fijians who are landless'. According to the records in the Native Lands Commission, only 5,520 Fijians in some 223 *tokatoka* and *mataqali* in seven provinces in Fiji do not own land. These landless Fijians, Qarase argued, do not have access to any lease monies, or have any security of land except through traditional customs and goodwill. The Government is thus arguing for these Fijians who comprise less than 1 per cent of the population when over 50 per cent of the population who are non-Fijians and will remain landless. Eight per cent of land in Fiji is available as fee simple land to all Fiji citizens, Fijian and non-Fijians (Lal et al. 2001).

The move to transfer state land into communal ownership is in defiance of the broad approach to removing barriers to allow markets to operate efficiently. Government is generally seen as an efficient re-distributor of property rights (Gillman 1999). According to Coase (1988), the state may fulfill two efficiency roles

- lowering of transaction costs, such as through the establishment of a system of socioeconomic contract law or a set of social mores under which the economic exchange may take place more easily
- redistributing property rights given the level of non-zero transaction costs.

The government seems to be caught between fulfilling some of the promises that were made prior to coming into power and the national issues of landlessness, homelessness and poverty.<sup>1</sup> The government, it seems, could not ignore the calls of ethno-nationalists.

## Summary and conclusion

Land is an economic resource and thus its allocation should be put to best use to derive sustainable growth and development. The efficiency of land use is even greater from the viewpoint of developing economies due to

the role sugar sector plays in the overall economy—sugar contributes to 22 per cent of Fiji's GDP.

The expiration of land leases and the eviction of farmers has serious social implications for Fiji as a nation. Apart from these social implications, the economy is losing from the fall in sugar output due to the eviction of farmers from agricultural land. The loss in output, and thus loss in export revenue, will have a strong multiplier effect on the whole economy. Farmer and landowners' incomes will fall, and the government will have less revenue to cater for its operating and capital expenditure.

Despite the strong indications of social and economic consequences from the eviction of farmers from the Native land, the government passed the two bills that transferred state land to the NLTB. This action raises questions about the government's commitment to sustaining and uplifting the quality of life for all Fiji citizens, including the Indo-Fijian and other minority communities in Fiji. The move will lead to further instability and social woes, thus questioning government's commitment to providing positive signals to potential investors. In pursuit of fulfilling the appetites of ethno-nationalists, the state has become more vulnerable to internal and external shocks. Policies such as the transfer of assets and tax cuts are basically irreversible and thus require careful analysis of their long term implications before being approved. Given the combination of population growth, technological change, climatic vulnerability and political instability, it is high time government paid attention to the management of its common property resources in the best interests of the indigenous community and the nation. If communal property rights system is here to stay, common property institutions such as the NLTB need to be thoroughly examined so that they best serve the needs of contemporary Fiji as well the landowners.

## Note

- <sup>1</sup> The transferring of State Land Schedule A and B was one of the promises made in the Blueprint by the SDL government. This promise of land transfer was part of their 2000 election manifesto.

## References

- Burns Commission 1960. *The Report of the Commission of Inquiry into the Natural Resources and Population Trend of the Colony of Fiji*, Legislative Council Paper No. 1, Suva.
- Coase, R.H., 1988. *The Firm, the Market and the Law*, The University of Chicago Press, Chicago.
- Gillman, M., 1999. 'The problem of social cost: the role of the state', *International Journal of Social Economics*, 26(5):590–95.
- Hitchcock, R.K., 1981. 'Traditional systems of land tenure and agrarian reform in Botswana', *Journal of African Law*, 24(2):12–16.
- Lal, P., Lim-Applegate, H. and Reddy, M. 2001. 'The land tenure dilemma in Fiji—can the Fijian landowners and Indo-Fijian tenants have their cake and eat it too?', *Pacific Economic bulletin* 16(2):106–19.
- Lal, P. and Reddy, M., 2002. 'Old wine in new bottle? Proposed sugar industry restructure an land conflict', Paper presented at the FAO/RIC/USP Land Symposium Transforming Land Conflict, 10–12 April, Suva.
- Parliament of Fiji Islands, 2002. *Report of the Sector Standing Committee on Natural Resources on the Native Land Trust (Amendment) Bill, 2002 (Bill No. 8 of 2002) and on the Native Lands (Amendment) Bill, 2002 (Bill No. 9 of 2002)*, Parliamentary Paper No. 17, Department of Legislature, Parliament House, Suva.
- Ward, R.G., 1995. 'Land, law, custom: diverging realities in Fiji', in R.G. Ward and E. Kingdon (eds), *Land, Custom and Practice in the South Pacific*, Cambridge University Press, Melbourne:198–249.