

ITAUKEI LAND TRUST BOARD



HEAD OFFICE

Please Address All Correspondence
To The Chief Executive Officer

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16 September, 2021

Hon. Alvick Maharaj
Chairperson
Standing Committee on Justice, Law and Human Rights
Parliament of the Republic of Fiji
SUVA

Dear Sir

**Request for clarification on an issue raised regarding the Climate Change Bill 2021
(Bill No. 31 of 2021)**

1. Reference is made to your letter dated 12 September, 2021 on the above subject matter.
2. As we are not privy to the full scope of the submissions, we will provide comments based on the information contained in your letter, and viewed in light of iTaukei land rights under:
 - (a) the provisions of the Fiji Constitution 2013,
 - (b) the Board's statutory mandate under the iTaukei Land Trust Act 1940, and
 - (c) the initiatives to be introduced under the Climate Change Bill.

The 2013 Fiji Constitution

3. Section 28 of the Constitution states as follows:

"The ownership of all iTaukei land shall remain with the customary owners of that land and iTaukei land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27"

4. The Constitutional safeguards already protects the **ownership** by iTaukei landowners of their land is paramount and continue to be protected.

The iTaukei Lands Act 1905 and iTaukei Land Trust Act 1940

5. Under section 2 of the iTaukei Lands Act, "iTaukei land" is defined as:

"land which is neither State (formerly State) land nor the subject of a State (formerly State) grant nor iTaukei grant but includes –

(a) all vacant land including such land declared under section 19;

- (b) all land set aside by proclamation under section 18 of the iTaukei Land Trust Act 1940; and*
- (c) all extinct mataqali land vested in the Board under section 19 of the iTaukei Land Trust Act 1940"*

6. Under section 3 of the iTaukei Lands Act ownership and tenure of iTaukei land is by the iTaukei who hold the said land in accordance with their itaukei custom. Furthermore, the iTaukei Lands Act defines "iTaukei owners" as the mataqali or other division or subdivision of the iTaukeis having customary right to occupy and use any iTaukei lands.
7. Section 4 of the iTaukei Land Trust Act provides "*Control of iTaukei land vested in Board*

4.-(1) The control of all iTaukei land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the iTaukei owners or for the benefit of the iTaukei"
8. Section 4 provides that all iTaukei land is vested in the Board which is to be administered for and on behalf of the iTaukei landowners for their benefit.
9. Under section 5 of the iTaukei Land Trust Act, iTaukei land can only be alienated to the State (this is provided for under section 27 of the Fiji Constitution).
10. The provisions of the laws set out above show that:
 - (a) the **ownership** of iTaukei land is protected and cannot be alienated except to the State; and;
 - (b) the **control** and **administration** of iTaukei land under the iTaukei Land Trust Act is protected.
11. The constitutional and statutory protections above remain intact.

The provisions of the Climate Change Bill

12. The Board, as landlord of more than 90% of all land in Fiji, recognizes the vital role it plays in helping the State to achieve its aim of setting up a national response to climate change – the Climate Change Bill being the legislative mechanism for the regulation and governance of the national response to climate change.
13. We note that carbon sequestration property rights would come into existence upon its registration under section 46. In relation to iTaukei land, we understand that carbon sequestration property rights may apply in relation to:
 - (a) land already subject of iTaukei leases; and
 - (b) land not subject of any iTaukei leases.

14. The Board recognizes that owners of existing leases, whether they are iTaukei landowners or non-iTaukei landowners and/or entities, may apply for the registration of carbon sequestration property rights over the land subject of their lease. We are of the view that third parties – including iTaukei landowners - are not estopped from applying for registration of carbon sequestration property rights in respect of their own land.
15. Any rights over iTaukei land not subject of any lease or licence are, of course, owned by the iTaukei landowners. The Board encourages landowners to apply for leases or licences over their own land for REDD+ purposes so that they can fully participate in the carbon trading initiatives set up by the Climate Change Bill.
16. We appreciate that the Bill provides for the making of Regulations to give effect to the various aspects of the Bill and would be happy to render assistance where clarification or consultation with the Board may be required to contribute to the formulation of such Regulations.
17. The above comments are submitted in response to the clarification requested and we hope it may assist in the Standing Committee's deliberation of the Climate Change Bill.

Yours faithfully,



Tevita Kuruvakadua
Chief Executive Officer

1. Hon Josaia.V.Bainimarama, Chairman TLTB Board of Trustees
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