



STANDING COMMITTEE ON JUSTICE LAW AND HUMAN RIGHTS

REPORT ON THE PETITION BY YAVUSA NAVAUVAU



PARLIAMENT OF THE REPUBLIC OF FIJI

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Chair's Foreword

The Standing Committee on Justice, Law and Human rights was tasked by the Honourable Speaker to scrutinise the petition presented by the Hon. Viliame Gavoka on issues pertaining to the return of land known as Tovatova, to the Yavusa Navauvau.

The Committee deliberated on this issue and also held public hearings at the Tavua Town Council Chambers. During consultations, it noted that there were other claimants to the disputed piece of 7,549 acres of Tovatova land.

The petitioners claimed that the Tovatova land was purchased in 1870 from the chiefs and native owners of the Mataqali Nabila and Mataqali Navauvau, with 97 muskets. A Mr John Berry claimed the whole of Tovatova during the Land Claims Commission and it was granted to him in 1885. Mr Berry divided the land and sold 2168 acres to Western Mining Corporation and 4319 acres to Colonial Sugar Refinery (CSR).

The Committee noted that after independence, the 4319 acres of land belonging to CSR was returned to state ownership in 1971 and is now classified as a 'state land without title' under Section 4(2) of the Crown Lands Act Cap. 132. There are provisions in the law for the return of state lands to iTaukei if they were deemed to be in need of land, however claims are currently not being processed under this provision due to a moratorium.

The Committee has considered the provisions in Section 28 of the Constitution and also the laws relating to the powers of the President to set aside land as native lease, and also land acquired for public purposes which may revert to native land.

The Committees findings are contained in this report and I am pleased to present it for consideration by Parliament. In doing so, I wish to sincerely express my appreciation to the substantive Members of the Standing Committee on Justice, Law and Human Rights, their alternate Members and lastly to the Secretariat.

HON. ASHNEEL SUDHAKAR

CHAIRMAN

ACRONYMS

CSRC	-	Colonial Sugar Refining Company
EGM	-	Emperor Gold Mine
JLHR	-	Justice, Law and Human Rights
TLFC	-	iTaukei Lands and Fisheries Commission
TLTB	-	iTaukei Lands Trust Board
WMC	-	Western Mining Company



Petition to Review the Request by Yavusa Navauvau

Report of the Standing Committee on Justice, Law and Human Rights

1.0 Introduction

In accordance with Standing Orders 37(5), the Hon. Speaker referred a petition from the Yavusa Navauvau to the Standing Committee on Justice, Law and Human Rights to investigate its contents and provide a report to Parliament.

2.0 Background

On **25 August 2015** Hon. Villiame Gavoka presented Parliament with a petition from the Yavusa Navauvau. The petition relates to a piece of disputed land in the goldfields of Tavua in the province of Ba, which the then Tui Tavua sold for 97 muskets (guns) in 1870.

Part of the land is currently 'state land without title', after several changes in ownership and re-classification through the years. The petitioners want the government to revert the ownership of this section of land to them, as they consider themselves the rightful owners. In presenting the petition, Hon. Gavoka stated:

This State land of 4,286 acres, Madam Speaker, traditionally belongs to the people of Yavusa Navauvau and they have been asking Government since 2010 to have that returned to them in line with the Constitution which says that land which is no longer used, should be returned to the traditional landowners.

Madam Speaker, the Yavusa now numbers some 480. All they have today is 449 acres of land, so basically, one acre, one person. They need this land,

Madam Speaker, to survive, to live on and it was theirs from the beginning. Now, we are asking the Parliament to convene an appropriate Committee to look into this matter and address this request by the people from the Yavusa Navauvau, Madam Speaker.¹

The full 7,549 acres of land in question, originally known as ‘Tovatova’, has been divided and sold various times since 1870. The Committee heard from a number of other landowning units who claim to be the rightful owners of the land, and during the Committee’s research, it discovered that there were many more claimants to this land, going back to the 1890s.

The petition was referred to the Standing Committee on Justice, Law and Human Rights Committee (JLJR) for consideration, and it heard evidence in January and February 2016 from the Hon Viliame Gavoka, the iTaukei Land and Fisheries Commission (TLFC), the iTaukei Land Trust Board (TLTB), and the Ministry of Lands. The Committee also held a public hearing in Tavua on 4 February 2016, where it heard relevant evidence from Yavusa Navauvau, Yavusa Nubu, Yavusa Bila, Yavusa Tovatova and Mr Toma Nabuli.

3.0 Chronology

The following chronology is a list of events that the Committee consider to be as close to indisputable evidence as it could find. Other claims about this land are not included, as the Committee is not satisfied that there is sufficient evidence to support them.

- **1870** – Tui Tavua (referred to as ‘Buli Tavua’ in some evidence) sold the 7,549 acres of land known as ‘Tovatova’ to John and Thomas Berry, Walter Fleetwood and Mannering Hunger Fraser for 97 muskets. The guns were shared between Tui Tavua, who received 39 muskets, and Kai Navauvau, who received the remaining 58.²
- **1874** – The Deed of Cession of Fiji to Great Britain was signed. Section 4 of the Deed stated that all lands not either owned by Europeans or other foreigners, or in use or occupation by a tribe or Chief, became the property of the Queen.³ John Berry and his colleagues owned the Tovatova land at this point, so the Deed of Cession did not affect its ownership.

¹ Fiji Parliament Hansard 25 August 2015: <http://www.parliament.gov.fj/getattachment/9c759dd5-4e40-4e41-ae58-7b723a90f536/Tuesday-25-08-2015.aspx>

² Evidence from Yavusa Navauvau petition and from the Ministry of Lands presentation to the Committee

³ Deed of Cession of Fiji to Great Britain, section 4: <https://www.usp.ac.fj/index.php?id=13527>

- **1885** – A land claim commission was established to look into cases of foreigners who claimed to have bought native lands. John Berry claimed the Tovatova land, and he was granted the entire 7,549 acres as Crown Grant 1144.⁴
- **1903** – On 10 January 1903 John Berry transferred the whole area of land to the Colonial Sugar Refining Company (CSRC) Limited, and the title conveyed to it was CT2659.⁵
- **1933** – Gold mining began at Vatukoula (on the Tovatova land), under various operators.⁶
- Between **1937 and 1983**, parts of the land were sold to the Western Mining Company (WMC), who joined up with the Emperor Mining Group (EMG). The WMC divested from the venture in 1991.⁷ **The EMG currently own 2,168 acres as private freehold land.**⁸
- **1956** - EMG gained complete control of mining operations at Vatukoula.⁹
- **1964** – The Colonial Sugar Refining Company requested a new certificate of title for 4,319 acres of the land.¹⁰
- **1964/5** – the Colonial Sugar Company transferred 1,062 acres of the Tovatova land to the Native Land Trust Board.¹¹
- **1970** – Fiji became independent from Great Britain. The instruments of independence did not affect the ownership of this land.¹²
- **1971** – The Fiji Government took over the sugar production arm of the Colonial Sugar Refining Company. A section of the Tovatova land that

⁴ Evidence from Yavusa Navauvau petition

⁵ Evidence from Yavusa Navauvau – letter from Solicitor General to Naiwaikula Solicitors, May 2010

⁶ Oxfam Mining Ombudsman report on Vatukoula Mine, 2004:

<http://resources.oxfam.org.au/pages/view.php?ref=99>

⁷ Oxfam Mining Ombudsman report on Vatukoula Mine, 2004:

<http://resources.oxfam.org.au/pages/view.php?ref=99>

⁸ Evidence from Yavusa Navauvau – letter from Solicitor General to Naiwaikula Solicitors, May 2010 and Ministry of Lands presentation to the Committee

⁹ Oxfam Mining Ombudsman report on Vatukoula Mine, 2004:

<http://resources.oxfam.org.au/pages/view.php?ref=99>

¹⁰ Request for new Certificate of Title no 90047 from CSR, November 1964, provided to the Committee at public hearing in Tavua

¹¹ Transfer Certificate no 90046 (1964) and Certificate of Title no 11665 (1965), provided to the Committee at public hearing in Tavua

¹² Fiji Independence Act 1970:

http://www.legislation.gov.uk/ukpga/1970/50/pdfs/ukpga_19700050_en.pdf and Fiji Independence Order 1970: http://www.constitutionnet.org/files/1970_constitution.pdf

CSR previously owned, **totalling 4,319 acres, was transferred to the state, and became 'state land without title'**.¹³ However, it appears that this title was not cancelled until 1978 (see below).

- **1973** - The Colonial Sugar Refining Company changed its name to 'CSR Limited' in 1973, when it divested itself of its Fijian sugar interests and expanded into new ventures such as mining.¹⁴ The Emperor Mining Group acquired CSR in 1973.¹⁵
- **1978** – The Certificate of Title for **4,286 acres** of the Tovatova land previously owned by CSR was cancelled by the Lands Department.¹⁶
- **1997** – The Native Land Trust Board (now known as iTaukei Land Trust Board) **transferred 1,062 acres of the Tovatova land to the Nasomo Landowners Trust under private freehold**, which they still currently own.¹⁷

4.0 Other claimants to the land

This section outlines the other claimants to the land that became known to the Committee during its inquiry. We thank them for their assistance and evidence, which was valuable in drawing our conclusions in this report. The petition specifically related to the land claim by Yavusa Navauvau, so the scope of the inquiry did not extend to other claims.

Other claimants to the land, as heard at the Committee's public hearing, and as described by the iTaukei Land and Fisheries Commission presentation, the Oxfam Mining Ombudsman report and the submission to the EGM Closure Negotiating Committee in support of the Vatukoula Communities¹⁸ include:

- Yavusa Nubu, Waikububu, Savutu, Ba;
- Yavusa Bila, Mataqali Tilivasewa;
- Yavusa Tovatova;

¹³ Oxfam Mining Ombudsman report on Vatukoula Mine, 2004: <http://resources.oxfam.org.au/pages/view.php?ref=99> and Ministry of Lands presentation to the Committee

¹⁴ Light Railway Research Society of Australia: http://www.lrrsa.org.au/LRR_SGRa.htm

¹⁵ Oxfam Mining Ombudsman report on Vatukoula Mine, 2004: <http://resources.oxfam.org.au/pages/view.php?ref=99>

¹⁶ Cancellation of certificate of title, no 164106, provided to the Committee at the public hearing in Tavua

¹⁷ Ministry of Lands presentation to the Committee

¹⁸ Submission to the EGM Closure Negotiating Committee in support of the Vatukoula Communities: http://api.ning.com/files/6mkD5JdL41lnDY-aEMk2iMarQuzGrILPoY7LcDX-f*YUUa-2CszQQkXhpaN*JHe4dUDhwinpPs5X9DrQthk7TVzpiwBKik6/OAusVatukoulaClosureSubmission0107.pdf

- Mr Toma Nabuli;
- Tokatoka Qara, Sorokokoba, Bulu, Ba;
- Mataqali Lololevu, Bukuya, Ba;
- Mataqali Nakoroboya (who claim to have a native title claim to the land, including the Vatukoula mine, and they claim that they have documentation dating back to the 1870s to support their claim); and
- Mataqali Natolevu (who claim that they have documentation including the native land title recording the community's ownership of the land).

5.0 Relevant legislation

The Committee considered three pieces of legislation in relation to this petition. The petition was brought under section 28 of the 2013 Constitution.

Fiji Constitution, section 28

Section 27 of the **Fiji Constitution**¹⁹ states that no-one should be deprived of property by the State, except when 'necessary for public purpose'.

Section 28 provides that any iTaukei land acquired by the State for a 'public purpose' after the commencement of the Constitution (in September 2013) shall revert to the customary owners if the land is no longer required by the State.

The Committee does not consider that this provision is relevant to the petition as the land was not acquired by the State for 'public purpose' – it was acquired as a result of the takeover of sugar production from the Colonial Sugar Refining Company in 1971. In any event, the land was acquired before the commencement of the Constitution.

Native Land Trust Act, as amended [Cap 134], section 18

This section²⁰ provides the State with the power to designate State land as a 'native reserve' for use, maintenance or support of any mataqali that do not have sufficient land for its members.

However, the Committee considers that there are three problems with using this provision:

- This legislation does not give the State the power to transfer ownership of State land to a mataqali in need of land, but to designate a reserve

¹⁹ Fiji Constitution, 2013: <http://www.fiji.gov.fj/getattachment/8e981ca2-1757-4e27-88e0-f87e3b3b844e/Click-here-to-download-the-Fiji-Constitution.aspx>

²⁰ Native Land Trust Act [Cap 134], section 18: http://www.paclii.org/cgi-bin/sinodisp/fj/legis/consol_act_OK/nlta206/nlta206.html?stem=&synonyms=&query=cap%20134

just for the use and subsistence of the mataqali. The proclamation gives right of usage in accordance with Decree No. 32 of 2010 which states:

Power of Minister to set aside land as itaukei reserve

18(1) If the Minister is satisfied that the land belonging to any mataqali is insufficient for the use, maintenance or support of its members it shall be lawful for the Minister by proclamation to set aside such State land, or land acquired for or on behalf of iTaukei by purchase, as in his opinion may be required for use, maintenance or support of such mataqali. Any area so set aside shall be deemed to be a iTaukei reserve.

- Also, the law does not refer to ‘returning land to its original owners’, as noted by the Ministry of Lands presentation to the Committee. Any mataqali that can prove they do not have sufficient land for the use, maintenance or support of its members could be considered for this land, not just those who can prove their original ownership of the land; and
- As noted by the iTaukei Land Trust Board and the Ministry of Lands presentations to the Committee, the Fiji Government issued a policy directive in 2011 declaring that no requests for State freehold land to be returned to native landowners would be processed. This ‘moratorium’ means that even if the Yavusa Navauvau could prove that they were in need of land, and as a result were given use (not ownership) of the 4,286 acres, their claim could not be currently processed. That moratorium would be in line with the current legislation which provides for the establishment of reserves and not the return of land.

Although the petition was not brought under these laws, the Committee ventured to explore them in order to reach finality on the matter.

6.0 Deed of Cession and Instruments of Independence

The Committee also studied the Deed of Cession of Fiji to Great Britain from 1874, and the instruments of independence from Great Britain from 1970, but did not consider any provisions were relevant to this petition.

7.0 The Committee's view

The Committee considers that:

- there is insufficient evidence to prove that the Yavusa Navauvau are the original owners of the 4,286 acres of land originally known as Tovatova. We received various pieces of evidence, some of which contradict each other, and there are significant gaps in the evidence, such as proof of lands sales and transfers;
- even if it could be proven that the Yavusa Navauvau were the original owners, there is currently no provision in Fiji law to revert ownership to them. The Fiji Government has the power to create a native reserve, but this would be available to any mataqali with insufficient land from anywhere in Fiji; and the Committee has sympathy with the petitioners and heard from many groups of people claiming ownership of this land. The Committee appreciates that issues of land boundaries and family histories are complex. Some claimed that their tribes were nomadic, but lived on the land; some claimed that their ancestors were warriors and were paid to protect the land.

For the purposes of this petition, we could not explore every claim in detail but the evidence presented by the other claimants was used to determine the current claim. Our remit was to look at the viability of the Navauvau petition, and in doing so we have concluded that there is:

- a) insufficient evidence to corroborate their petition, and
- b) no current provision in law that would allow the land to be reverted to the Yavusa's ownership.

8.0 Conclusion

For the first part of the claim in the petition by Yavusa Navauvau, which requests for the return of the land to the traditional landowners, the Committee considered that no new cases have been processed under Section 18 of the Native Land Trust Act (Cap.134), from the date of the Amendment Decree No. 32 of 2011 as the new procedures are yet to be discussed between the Ministry and the Board.

Processing of claims have also been put on hold by the Board due to the moratorium which seems to be in line with the to revert State land to iTaukei land owners.

The Committee, in its findings has found various other claimants to the same piece of land which raises uncertainties. The emergence of other claimants imposes a caveat on the work of the Committee on the basis that it does not have the authority to determine who, out of all the claimants is the rightful original proprietor of the Tovatova land. If it is going to occur in future, then TLFC is the only body that can determine claims of this sort.

The Committee therefore recommends that the petition be dismissed.

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We, the Members (and Alternate Members) of the Standing Committee on Justice, Law and Human Rights, concur that the views expressed in this report were reached by consensus:

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Hon. Ashneel Sudhakar
(Chairman)

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Hon. Semesa Karavaki
(Deputy Chairman)

.....

Hon. Mataiasi Niumataiwalu
(Member)

.....

Hon. Mikaele Leawere
(Alternate Member for Hon. Niko Nawaikula)

.....

Hon. Balmindar Singh
(Alternate Member for Hon. Lorna Eden)

.....

Date