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Tourism and Residential Development in Suva and Nadi, Fiji

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View of the city centre of Suva, the capital city of Fiji @Shutterstock

The South Pacific Islands Country of Fiji is facing rapid urbanisation. The urban areas of Fiji currently host 50.7% of the 865,611 people of the country (2014 estimate).¹ More than 60% of Fiji's population will live in urban areas by 2030.² The growth rate of the urban population is significantly greater than the rural population growth rate in Fiji.³

INTRODUCTION

Fiji is an archipelago consisting of 330 small islands, of which 110 are permanently inhabited, with a total land area of about 18,300 square kilometres. Naturally, all of the major cities and towns in Fiji are located in coastal areas, rendering them vulnerable to cyclones, storm surges and probable sea level rise due to climate change.⁴ According to a study, nearly one fifth of the people in the urban areas of Fiji live in settlements facing a “diverse range of physical, legal and social conditions that often do not meet basic human rights and are highly vulnerable to climate change impacts.”⁵

87% of the Fiji's population live in two major islands Viti Levu and Vanua Levu. However, most of the towns and cities are in Viti Levu, which is hilly in the interior. Two major cities in Fiji named Suva and Nadi are among the most populated cities of the South Pacific Island countries. While Suva is the capital of Fiji, Nadi is the major communication hub for Fiji and some other small island countries of the South Pacific. Therefore, these two cities are not only important for Fiji but also for the region. Both greater Suva (GSUA) and Nadi area are experiencing rapid population growth creating the need for new housing projects. Moreover, because

¹ Fiji Bureau of Statistics, Population and Labour Force Estimates of 2014 (FBoS Release No. 99, 2015, 31 December, 2015). UN Habitat, Fiji Urban Profile (UN Habitat, 2012).

² UN Habitat, Greater Suva Urban Profile (UN Habitat, 2012).

³ UN Habitat, above n 1.

⁴ UN Habitat, above n 1.

⁵ People's Community Network, Fiji Informal Settlement Situation Analysis (2 August 2016) <https://pcnfiji.files.wordpress.com/2017/06/pcn_unhpsup_ssa_final_report.pdf>

of the natural beauty of Fiji, there is a demand for holiday homes, hotels and other tourism related development. Therefore, the main forms of urban development in both cities are tourism and residential expansion.

Taking these main forms of urban development into account, environmental reviews in Fiji must be considered from a complex environmental, economic, social and cultural perspective. For example, residential and tourism development is indivisibly interlinked with the land ownership. Most of the land in Fiji is held customarily by the iTaukei (indigenous) people and managed by the iTaukei Land Trust Board. The customary nature of iTaukei land means that the land is owned by groups called mataqali; rather than the names of the individuals in the group, the name of the mataqali appears in the title document as the landowner. iTaukei land is generally not be sold, transferred, mortgaged or otherwise encumbered, except to the state.⁶ However, leasing is possible through the iTaukei Land Trust Board.

While 91.68% of Fiji land is customary iTaukei land, there are three other categories of land in Fiji: individually held (freehold) private land (7.94%), state land managed by the Department of Lands (0.13%),⁷ and Rotuman Land that is governed through a different land management system (0.25%).⁸ That being said, most of the tourism and residential development activities there are on land leased from iTaukei people. For example, 72% of the land in the Great Suva Urban Area (GSUA) is iTaukei land.⁹ On many occasions, local people have challenged proposed development projects in court because of landownership disputes.

This paper critically analyses the relevant laws for environmental review of tourism and residential development in Fiji, particularly in two major urban centres, Suva and Nadi. This paper examines whether the current legal framework for environmental review is adequate to address the emerging environmental issues and moreover, whether the principles of sustainable development can be integrated into the process, through a Strategic Environmental Assessment (SEA).

RESIDENTIAL DEVELOPMENTS

The GSUA is the main urban area of Fiji. The GSUA consists of Suva City and three nearby municipal towns including Lami, Nasinu and Nausori. The estimated population of the GSUA accounts for more than 57% of Fiji's total urban population (and nearly 29% of the total population of the country).¹⁰ As the major economic centre, contributing 40% of the national gross domestic product, this area is experiencing a 1.7% growth rate of population, with even higher growth in some

specific parts of the area.¹¹ Moreover, a large number of people commute to GSUA every day for work and other purposes

Many residents of Suva do not have proper housing. There are approximately 230 squatter settlements in Suva that host almost 16% of the city's population.¹² This creates some complex problems as identified in a project information document of a World Bank funded project:

“The lack of accessible, affordable and safe housing has contributed to a situation whereby a large number of people are compelled to live in substandard conditions in squatter/informal settlements without any security of tenure. It has led to increased demands on infrastructure services, e.g., roads, utilities such as water, sewerage, electricity, telephone and fire hydrants, as well as an increase in health and social problems. The settlements are generally characterized by overcrowding with high concentrations of people occupying relatively small areas, and large extended families with more than one family/household in a single shelter. The majority of inhabitants are unable to sustain what may be considered a basic standard of living, including housing. This has led to insecurity and undue stress among the settlers, as well as exploitation. The generally poor hygiene and sanitation also continue to lead to ill health for these vulnerable populations.”¹³

The Fiji Government's Urban Policy Action Plan (2004), Urban Growth Management Plan (2006), and National Housing Policy (2011) show the government's willingness to take increased initiative in providing affordable housing to the people. Relevant authorities are taking new projects and inviting the private sector into development leases for housing and land development projects.¹⁴ In general, the serious demand for housing is leading to more housing projects: a number of major housing projects are either completed, underway or proposed, including Waila City, Tacirua East, and Wainibuku and Nepani subdivisions.¹⁵

However, some projects do not make it to completion, for example, Waila City. When it began in 2011, Waila City was supposed to be the biggest housing project of Fiji, spread over 700 acres of freehold land with the target to develop approximately 5,000 housing units that cater for all categories of home buyers including low, middle and high income earners.¹⁶ This project was initiated by the Fiji Housing Authority but was given to Top Symphony (Fiji) Limited of Malaysia under a Private Participation Partnership arrangement.¹⁷ Unfortunately after several years of inaction and uncertainty, the contract with this company was terminated in 2016.¹⁸

⁶ On iTaukei land, see, Constitution of the Republic of Fiji 2013, s 28.

⁷ Kelera Gadolo, 'Securing Land Rights for Equity, Sustainability & Resilience: The Successful Management of Customary Land', paper presented at the 2017 World Bank Conference on Land and Poverty, the World Bank, Washington DC, March 20-24, 2017.

⁸ Ibid. On Routama land management, see Don Paterson and Makereta Hiagi Mua, 'Rotuma', in Don Paterson and Sue Farran (eds.) South Pacific Land Systems (USP Press, 2013) 227 – 234.

⁹ TLTB, Revised TLTB Land Use Plan for The Greater Suva Region, (2016) <http://gjsconference.gsd.spc.int/images/2016-conf-presentation/DAY2/Session2/GIS_RS_Conference_2016_TLTB_Land_use_plan.pdf>.

¹⁰ UN Habitat, above n 2.

¹¹ Ibid.

¹² Jennifer Joy Bryant-Tokalau, 'Urban squatters and the poor in Fiji: Issues of land and investment in coastal areas' (2014) 55 Asia Pacific Viewpoint 54–66. Another estimate shows that "In 2011 the GSUA had over 100 informal settlements, increased from 50 identified in the 2006 UGMAP. Most of these new settlements are located along the GSUA's main link roads. Informal settlements in the GSUA contain more than 90,000 residents, some 30 per cent of the total GSUA population, and are of varying size and density with limited access to basic urban infrastructure." UN Habitat, above n 2. It is also "estimated that 15,445 households (77,794 people) currently live in over 240 squatter settlements around the country. This is equivalent to about 7 percent of Fiji's total population and 15 percent of the total urban population." World Bank, Project Information Document (PID)- Utility Services for the Development of Housing in Squatter/ Informal Settlements (30 September 2016) <<http://documents.worldbank.org/curated/en/636021468273901429/pdf/PIDC56649.pdf>>.

¹³ World Bank, Ibid.

¹⁴ UN Habitat, above n 1, World Bank, Ibid.

¹⁵ UN Habitat, above n 2

¹⁶ Housing Authority of Fiji, Waila City Project, (2014) <<http://www.housing.com.fj/waila-city-project/>>

¹⁷ Ibid.

¹⁸ Arieta Vakasukawaqa, Terminated, Fiji Sun (online) 2 September 2016 <<http://fijisun.com.fj/2016/09/02/terminated-2/>>.

Without major housing improvements, the growing demand and high price of housing in Suva city is leading to often unregulated residential development projects and subdivisions in peri-urban areas as well as in nearby towns, Nasinu and Nausori.¹⁹ Unregulated residential, industrial and tourism development have been identified as major threats to the mangrove forests around urban and peri-urban areas, with detrimental environmental effects in the GSUA.²⁰ Developments in coastal areas and wetland reclamation, especially around densely industrialised and urban areas of Fiji, are responsible for the destruction of mangrove and Littoral forests.²¹ Littoral forests, like mangrove forests, are a wetland forest area with a sensitive ecosystem and home to many endangered species. Moreover, land reclamation, coral extraction, and river dredging encompass some of the other major environmental issues for the coastal cities in Fiji.²²

The destruction of the mangrove and littoral forests for housing and tourism projects and its consequential environmental and social impact on the people is not a new phenomenon in Fiji, particularly in greater Suva areas. Here is an example from the 1980s:

“In 1985, Fiji’s Housing Authority decided to establish a low income housing area in Davuilevu, near Suva. Because statutory bodies in Fiji are not subject to an EIA, no attempt was made to determine the likely environmental effects of this proposal. An area of 20 hectares of rainforest was bulldozed and divided into suburban lots. Seven years later, most of the Plots are unoccupied and the area is a wasteland of bare red soil. The soil was so seriously disturbed that nothing has grown since. An EIA would have pointed out the folly of removing all the forest cover over such a wide area.”²³

The example above indicates the longstanding problem regarding EIA processes for residential or housing development projects in Fiji, particularly in and around the GSUA area. Amidst these concerns, Fiji significantly developed an environmental legal and institutional framework in the last few decades, including a legal framework for EIA. However, despite the significant development of a legal framework supporting EIA, the situation has not been changed, due to a lack in enforcement and institutional deficiency.²⁴

ENVIRONMENTAL IMPACT OF TOURISM DEVELOPMENTS

Fiji has achieved record earnings from the tourism sector in the last few years. In 2016, Fiji earned FJD 1,602.9 million from tourism, 2.7 percent higher than the FJD 1,560.2 million figure from 2015.²⁵ A record 792,320 visitors arrived in Fiji in 2016 which was 5% higher than the 2015’s arrival of 754,835.²⁶ It is remarkable that 792,320 people visited the country in 2016 whereas the total population of the country is only 865,611 (2014 estimate). A record 68,495 visitors arrived in Fiji in April 2017, which is 17.8% higher than April 2016.²⁷ This increased interest in tourism encourages more and more tourism related development.

In a recent statement, Fiji’s Permanent Secretary for Industry, Trade and Tourism stated that ‘the tourism sector is the most important contributor to the Fijian economy, contributing 30 per cent to our GDP and providing direct and indirect employment to one in three Fijians in the workforce.’²⁸ In his speech, the Permanent Secretary identified a number of priority strategies including inter alia attracting quality investment to grow the industry in a sustainable manner and ensuring the industry’s preparedness for climate change and global economic shocks.²⁹

The Fiji government is currently drafting a new Tourism Development Plan, known as Fijian Tourism 2021.³⁰ It is encouraging to see the issue of climate change has been given attention in the proposed tourism plan but tourism related impact on the environment and the consequential sufferings of local people is yet to be mainstreamed in the national tourism development policy agenda.

However, the Permanent Secretary stated the following in his statement about environmental sustainability of the industry:

“Whilst ensuring that there are economic benefits for all Fijians, we have to ensure that industry grows in a sustainable manner... Sustainable development is not only considering the needs of future generations, it is also about protecting existing tourism infrastructure and services from environmental impacts. It is about keeping this sector – vital to our economy – resilient to climate-related catastrophe.”³¹

This aspiration makes the importance of robust application and enforcement of an environmental review system under the environmental and planning legal regime even more crucial.

Nadi is the tourist capital of Fiji and hosts the Nadi International Airport and the Denarau Port. 85% of the total number of visitors in Fiji are concentrated in Nadi.³² Nadi is the gateway of Fiji as well as for some other South Pacific countries. With a present population of around 42,000 people (including Nadi Town and the

¹⁹ UN Habitat, above n 2.

²⁰ ADB, Country Partnership Strategy: Fiji, 2014–2018, Environment Assessment (Summary) <<https://www.adb.org/sites/default/files/linked-documents/cps-fij-2014-2018-ena.pdf>>

²¹ ADB, *ibid*: Bryant-Tokalau, above n 12; Wadan Narsey, Development at What Environmental Cost? Fiji Times (online) 21 June 2014 <http://www.fijitimes.com/story.aspx?id=272094>; MESCAL, Review of Policy and Legislation Relating to the Use and Management of Mangroves in Fiji <https://www.iucn.org/sites/dev/files/content/documents/fiji_policy_and_legislative_review_report.pdf>.

²² ADB, above n 20.

²³ Richard K. Morgan, A Guide to Environmental Impact Assessment in the South Pacific (SPREP, 1993) 3.

²⁴ Bryant-Tokalau, above n 12.

²⁵ Fiji Bureau of Statistics, Fiji’s Earnings from Tourism - December & Annual 2016 (28th March 2017) <<http://www.statsfiji.gov.fj/latest-releases/tourism-and-migration/earnings-from-tourism>>

²⁶ Fiji Bureau of Statistics, Provisional Visitor Arrivals - December 2016 (17th January, 2017) <<http://www.statsfiji.gov.fj/latest-releases/tourism-and-migration/visitor-arrivals/697-provisional-visitor-arrivals-december-2016>>

²⁷ Fiji Bureau of Statistics, Provisional Visitor Arrivals - April 2017 (17 May 2017) <<http://www.statsfiji.gov.fj/latest-releases/tourism-and-migration/visitor-arrivals>>

²⁸ Shaheen Ali, Tourism is the Future Driver of Economic Activity in Fiji, Fiji Sun (online), 24 February 2017, <<http://fijisun.com.fj/2017/02/24/tourism-is-the-future-driver-of-economic-activity-in-fiji/>>

²⁹ *Ibid*.

³⁰ *Ibid*.

³¹ *Ibid*.

³² Fiji Government, Tourism Development Plan in Final Stages (18 January 2016) <<http://www.fiji.gov.fj/Media-Center/Press-Releases/tourism-development-plan-in-final-stages.aspx>>



A Squatter Settlement in Nadi



A Squatter Settlement in Nadi



A Squatter Settlement in Nadi

surrounding peri-urban areas) the town is experiencing a population growth of 2.5% per year.³³ Economic activities of Nadi rely mainly on three interconnected sectors: tourism, transport and real estate.³⁴ Growth in the tourism sector has changed the land use pattern of Nadi and surrounding area from predominately residential to tourism related development. However, the effectiveness of environmental review of tourism related development projects is questionable. This will be elaborated here with an example from the Denarau island development.

Before the development of Denarau as a tourist area, it was an area of mangroves, swamps, small, low-laying islands, and mud flats.³⁵ Denarau Island's development is approximately 850 acres of landscaped area situated within the close proximity of Nadi town and Nadi International Airport. It features an 18-hole international standard golf course, port, marina and more importantly eight world-class, high-end resorts.³⁶ It is the biggest tourism development endeavour in Fiji.

The preliminary development of Denarau started in 1969 by an American developer and the construction of the resort started in 1972.³⁷ In 1988, a Japanese property developer became involved with the project and between 1988 and 1993, extensive development work in the island was undertaken including “clearing of the balance of

the 600 acres of the island, the reclamation of a vast area of swamp, the construction of an 18 hole championship golf course, a clubhouse, extensive dredging in the marina, the construction of marina facilities, and foreshore protection.”³⁸ In 1996, ownership was transferred again to another consortium.³⁹ The adjacent areas are still undergoing further development. An extensive further development master plan for Port Denarau Marina is underway to construct a new sailing club, marina village, maritime school, boat yard, stadium and residential apartments.⁴⁰

The project has involved significant construction on reclaimed land using soil and concrete.⁴¹ An entire hill was demolished to bring 2.5 million cubic meters of soil from an adjacent village.⁴² The coastline of the area was full of old mangroves, many of which were more than 100 years old, but vast areas of mangroves were removed for the construction of resorts and other facilities and the course of the nearby Nadi river was also changed.⁴³ As observed by an affected local resident:

“I am from a community that approved one of Fiji's biggest mangrove destructions 23 years ago for the development of Denarau Golf Course. I was just in class 7 and was not involved in the consultation process nor the approval process, however we were part of a small group that

³³ UN Habitat, Fiji: Nadi Town Urban Profile (UN Habitat, 2012).

³⁴ Ibid.

³⁵ Karen Bernard and Samantha Cook, ‘Luxury Tourism Investment and Flood Risk: Case Study on Unsustainable Development in Denarau Island Resort in Fiji’ (2015) 14 (3) International Journal of Disaster Risk Reduction 302–311.

³⁶ Denarau Corporation Ltd, Destination Denarau (2017) < <https://www.denarau.com/destination-denarau/> >

³⁷ Denarau Corporation Ltd, History of Denarau Island (October 2010) < <https://www.denarau.com/history/> >

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ John Ross, Exciting New Development by Port Denarau Marina, Fiji Sun (online) 17 January 2015, <<http://fijisun.com.fj/2015/01/17/exciting-new-development-by-port-denarau-marina/>>

⁴¹ Bernard and Cook, above n 35.

⁴² Ibid.

⁴³ Ibid.



Mangrove Destruction in Nadi

protested the mangrove destruction. Today the Vanua [land] of Nadi is facing numerous floods that are partly linked to the clearing of mangroves in Denarau Island and Denarau Island's beach front sand erosion... In terms of livelihood, we have lost forever our mangrove food source, while we gained some source of employment for our villagers. At that time no proper economic analysis on the opportunity cost foregone for clearing the mangroves for the golf course was undertaken...⁴⁴

This indicates the need for an appropriate legal framework to require proper spatial planning suitable for tourism developments, ensure sustainability through conservation efforts, and resource management to prevent the destruction of coastal resources.⁴⁵

The Denarau island development shows the inadequacy of a project-based EIA and the need for a SEA, in order to consider impact on the entire area. The assessment should also consider the position of the development project within the overall planning and sustainable urban development scheme while taking into account emerging and likely environmental, demographic, economic changes.

ENVIRONMENTAL REVIEW AND

CLIMATE CHANGE

The Republic of Fiji National Climate Change Policy, 2012 identified a number of challenges Fiji is facing in respect of urban development and housing because of climate change.⁴⁶ Extreme events like flooding and cyclones may incur additional pressure on the urban areas particularly in the "lives of people in poorly built or poorly located houses."⁴⁷ This marginal segment of the society will bear a disproportionate burden, which will be further exacerbated by the migration to urban areas due to land loss and reduction of arable land.⁴⁸ Damage to houses and residential buildings due to floods, storm surges, cyclones and other extreme weather events may make the urban poor more vulnerable.⁴⁹

The National Climate Change Policy identified a number policy objectives for climate change mitigation and adaptation in the context of urban development including inter alia increasing energy efficiency and the use of renewable energy; reducing waste burning; the introduction of cyclone and flood resilient construction methods as well as encouraging the use of resilient construction materials; discouraging construction in foreshore areas, riverbanks and floodplains; increasing measures for flood control; and elaborated measures for "reforestation, land-use controls, protection of wetlands and soil conservation."⁵⁰

The National Climate Change Policy also identified climate change related issues for the tourism sector. Some of the policy objectives in the context of adverse

⁴⁴ Cited in Bernard and Cook, above n 35.

⁴⁵ Philip Feifan Xie, Vishal Chandra, Kai Gu, 'Morphological Changes of Coastal Tourism: A Case Study of Denarau Island, Fiji' (2013) 5 *Tourism Management Perspectives* 75–83.

⁴⁶ Republic of Fiji National Climate Change Policy, 2012 (Secretariat of the Pacific Community, 2012)

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*



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impact of climate change on tourism may be highly relevant for environmental review of tourism related developments in urban and peri-urban areas. The Climate Change Policy further states that the tourism sector may face some challenges due to climate change including buildings and infrastructural damage; disruption in transport network; a decrease in the number of tourist arrivals; adverse changes in natural attractions; increase of costs for adaptations; and a decrease of touristic capital investments due to climate impact.⁵¹

Although the Climate Change Policy of Fiji identified probable threats from climate change in urban development, climate change impact is yet to be fully integrated into the environmental review system of development projects in Fiji. The Policy (2012) offers some policy objectives for mitigation and adaptation of climate change in the context of the tourism sector, but it does not provide any direction for how the impact of climate change will be incorporated in the environmental review process of future development projects. There is a lack of mechanism for SEA that makes the issue even more problematic. It is pertinent to make specific reference to climate change in the environmental review related legislation, particularly to the Environmental Management Act, Town Planning Act and Subdivision Act. Establishment of a process for interagency cooperation to fully integrate climate change aspects in the environmental review is needed. More importantly, a consideration of the future climate change projections is a necessary component of the environmental review of development plan and urban and regional planning schemes.

ENVIRONMENTAL REVIEW AND SUSTAINABLE DEVELOPMENT GOALS (SDGS), 2030

It is also relevant to highlight whether the current legal and institutional framework is adequate in considering the broader issues of poverty reduction and livelihood, such as whether the current environmental and social review legal framework of Fiji adheres to the global Sustainable Development Goals (SDGs), 2030. This section examines whether the existing review process incorporates the issue of social review as well as whether the review of development projects in the peri-urban areas adequately addresses the issues of agriculture and food security.⁵²

The Prime Minister of Fiji said in a speech at the United Nations that “Fiji’s commitment to the 2030 global sustainable development agenda is absolute and is a cornerstone of our national policies.”⁵³ Goal 11 of the Sustainable Development Goals (SDGs), 2030 is dedicated to make “cities and human settlements inclusive, safe, resilient and sustainable”.⁵⁴ An effective environmental review system is essential for ensuring resilient and sustainable urban development. SDG Goal 11 set a number of targets for achieving the goal by 2030 including inter alia integrated and sustainable human settlement planning and management; reduction of per capita adverse environmental impact of cities and adoption and implementation of

⁵¹ Ibid.

⁵² On agriculture, see generally, Md Saiful Karim et al., “Policy and Legal Framework for Promoting Sustainable Agroforestry in Fiji” in Steve Harrison and Md Saiful Karim (eds.) Promoting Sustainable Agriculture and Agroforestry to Replace Unproductive Land use in Fiji and Vanuatu. Australian Centre for International Agricultural Research (ACIAR, 2016) 171-181.

⁵³ Ministry of Foreign Affairs, Prime Minister Voreqe Bainimarama’s Statement at the UN High Level Debate on the Achievement of Sustainable Development Goals (21 April 2017) <<http://www.foreignaffairs.gov.fj/media-publications/media-release/869-pm-s-statement-on-achievement-of-sdgs>>.

⁵⁴ United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (21 October 2015).

integrated policies and plans for inclusiveness, resource efficiency, climate change mitigation and adaptation and disasters management and resilience.⁵⁵ Fiji needs to mainstream these targets in the environmental review process of future urban development project approvals, as well through planning schemes by using the method of SEA.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL REVIEW IN FIJI

Many laws of Fiji are relevant for environmental conservation. Fiji is a member of most of the major international environmental legal instruments and has enacted domestic laws to give effect to some of these international legal instruments. Administrative mechanisms for environmental impact assessments (EIA) were first introduced in Fiji in the early 1980s, mainly through the discretionary power of the Director of Town and Country Planning under the Town Planning Act 1946.⁵⁶ However, government-led development projects were excluded from the process.⁵⁷ In general this early introduction of EIA in Fiji does not represent a significant success for the environmental protection regime.⁵⁸

EIA is now institutionalised under the Environment Management Act 2005 (EMA) which is the main environmental Law of Fiji. The main purpose of the Act is to “apply the principles of sustainable use and development of natural resources.”⁵⁹ The Act obliges any person utilising natural and physical resources to regard the following

matters of National importance:

- a) “the preservation of the coastal environment, margins of wetlands, lakes and rivers;
- b) the protection of outstanding natural landscapes and natural features;
- c) the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna;
- d) the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures;
- e) the protection of human life and health.”⁶⁰

The EMA introduced a complex system for EIA. Two government institutions play a major role, namely the relevant authority of development projection within the government departments and the EIA administrator under the Department of Environment. The EMA defines the authority with the decision-making power on development proposals as a minister, department, statutory authority, local authority or person authorised under a law to approve the proposal.⁶¹

Section 12 of the Act provides for the establishment of an Environmental Impact Assessment unit within the Department of Environment, comprised of an Environmental Impact Assessment Administrator and other public officers. This unit has the duty to examine and process every development proposal which:

- a) ‘is referred to the EIA Administrator by an approving authority;



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⁵⁵ United Nations, Goal 11: Make Cities Inclusive, Safe, Resilient and Sustainable (2015) <<http://www.un.org/sustainabledevelopment/cities/>>.

⁵⁶ Jane Turnbull, “Environmental Impact Assessment in the Fijian State Sector” (2003) 23 *Environmental Impact Assessment Review* 73–89.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ EMA, s 3(2).

⁶⁰ EMA, s 3(3).

⁶¹ EMA, s 2.

- b) may come to the attention of the unit because it may have a significant environmental or resource management impact; or
- c) causes, or in the opinion of the Minister, is likely to cause, public concern'.⁶²

The Act provides the Approving Authority the decision making power in the screening stage of EIA. Section 27 of the Act obliges the Approving Authority to examine every development proposal submitted to it and to determine the likely significant environmental and resource management impact of the development proposal, considering the following:

- a) "the nature and scope of the activity or undertaking in the proposed development;
- b) the significance of any environmental or resource management impact;
- c) whether any technically or economically feasible measures exist that would prevent or mitigate any adverse environmental or resource management impact; or
- d) any public concern relating to the activity or undertaking."⁶³

After considering the above, if the Administering Authority determines that there is a likely cause of significant impact, it will forward it to the EIA Administrator either for processing or for determination of the need for EIA, depending on types of development. If a government 'ministry, department, statutory authority or local

authority makes its own proposal for development activity or undertaking must refer the proposal to the EIA Administrator for processing..."⁶⁴

The Environmental Management Act defines a 'development activity or undertaking' as 'any activity or undertaking likely to alter the physical nature of the land in any way, and includes the construction of buildings or works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing'.⁶⁵ It defines a 'development proposal' as 'a proposal for a development activity or undertaking submitted to an approving authority for approval under any written law'.⁶⁶ The Act elaborates provisions for screening, scoping, preparation of an EIA report, content, reviewing, decision, approval, environmental management and monitoring, and other prescribed procedures.⁶⁷

For further elaboration of these provisions, the Fiji government adopted the Environment Management (EIA Process) Regulations, 2007. The Regulations elaborated provisions for screening, EIA processing, and the EIA Study and Report. A very important provision of the guidelines is the clarification regarding development projects by government ministries and entities. According to these regulations, if a government ministry or other government entity proposes a development activity or undertaking for which it would otherwise be the approving authority, it must apply to the EIA Administrator wherein the EIA Administrator performs the role of the approving authority. However, the power of screening is conferred upon the environmental management unit of the proposing government entity,⁶⁸ which may create some problems. The Department of Environment also published the



Landfilling After Mangrove Destruction in Nadi

⁶² EMA, s 12.

⁶³ EMA s 27.

⁶⁴ EMA s 27(6).

⁶⁵ EMA s 2.

⁶⁶ EMA s 2.

⁶⁷ EMA s 28, 29, 30, 31, 32.

Environment Impact Assessment (EIA) Guidelines in 2008.⁶⁹

The extent to which public participation and the right to information in the review process is ensured is another important issue. The scope for public participation and access to information is practically very limited. The EMA provides for the establishment of an Environmental Register wherein the prescribed matters must be recorded; any person is entitled to have access to any record or document within the Environmental Register.⁷¹ Regulations 41 and 42 of Environment Management (EIA Process) Regulations, 2007 further elaborated these provisions to include all EIA documents in the Register.⁷² Despite these advances on paper, they have not been upheld in practice. In a recent decision, the High Court of Fiji ordered the Department of the Environment to provide EIA reports of a planned development project to some people who may be affected by the project.⁷³ The Department of the Environment initially refused to provide the documents.⁷⁴

The support for the legal framework of environmental reviews by necessary institutional, technical and other organizations is also a questionable issue in Fiji. The inter-agency cooperation as well as that between different levels of government is another area that warrants improvement.

LAND USE PLANNING AND DEVELOPMENT APPROVAL SYSTEM

The Environmental Review process for urban residential and tourism developments is interlinked with the legal framework for urban and regional planning and development. Apart from the EIA system under EMA, discussed above, environmental reviews of residential and tourism development projects may directly or indirectly involve a number of Fijian laws including inter alia: The iTaukei Lands Act, The iTaukei Land Trust Act, The Town Planning Act, The State Lands Act, The Land Transfer Act, The Forestry Act, The Subdivision Act, The Public Health Act, The Roads Act, The State Acquisition Act, The Water Supply Act, and The Local Government Act.

It is important to develop regulatory system for strategic physical planning because land use planning law has a very significant role in the environmental assessment of residential and tourism development projects. The main aim of land use planning law is to satisfy the competing demands for land in a sustainable way. However, the full consideration of environmental issues in planning is a relatively modern concept. As observed by Leslie A. Stein:

“It is hard to decide whether planning or environmental issues need more attention. Urban decay, inadequate infrastructure, endless traffic congestion, and resultant harm to the environment point to the need for planning solutions. However, the nightmares of climate change, overexploitation of natural resources and loss of habitat make environmental issue a primary focus for the world... It is the case that all decisions made in the implementation of the planning process have an effect on the physical environment. For example, the clustering of housing density around transport corridors may reduce car trips and thus lessen pollution in the central city, or the encroachment of housing into suburbs may have an effect on habitat corridors. Historically, however, environmental matters were not part of the planning regulatory system.”⁷⁵

The connection between environmental and planning law developed slowly after 1970s in some countries.⁷⁶ Modern land use planning should consider all aspects of sustainable urban development including environmental and ecological aspects. In order to achieve these results, land use planning law and environmental law should optimally complement each other. Strategic land use planning in Fiji is yet to be fully developed, as opposed to development and regulatory controls.

The Town Planning Act governs the land use planning and development approval system in Fiji. The Subdivision of Land Act is important for areas where the Town Planning Act is not applicable. The Director of Town and Country Planning is responsible for the implementation and enforcement of both The Town Planning Act and The Subdivision of Land Act.

The main mechanism for regulation used in The Town Planning Act is known as the town planning scheme. The Act provides that local authority shall prepare and submit a scheme in respect to all land within the town planning area. There are two declared cities and ten declared towns in Fiji.⁷⁷ The Fiji government also declared several rural town planning areas. These are the surrounding areas of some of the declared cities and towns or else they are areas where the government envisages significant development and/or subdivision.⁷⁸ According to the Act, permission must be obtained from the Local Authority for land developments carried out within a town planning area.⁷⁹ After a 2008 reform, local councils are now governed by a Special Administrator appointed by the government.

The Department of Town and Country Planning (DTCP) recently prepared drafts for a revised Town Planning Act and a Subdivision of Land Act.⁸⁰ DTCP also prepared a draft procedure for lodgement, assessment and the approval of development and subdivision applications.⁸¹ The main features of these revised Acts will be the concentration of all planning related power to the Director and the creation

⁶⁹ Environment Management (EIA Process) Regulations 2007, Regulation 5.

⁷⁰ Department of Environment, Environment Impact Assessment (EIA) Guidelines (Government of Fiji, 2008).

⁷¹ Ibid.

⁷² EMA, s 17.

⁷³ Environment Management (EIA Process) Regulations 2007, s 41 and 42.

⁷⁴ Losalini Bolatagici, Court Rules on EIA Regulations, The Fiji Times (Online) 25 May 2016 <<http://www.fijitimes.com/story.aspx?id=355152>>

⁷⁵ Ibid.

⁷⁶ Leslie A. Stein, Principles of Planning Law (Oxford University Press, 2008) 23.

⁷⁷ Ibid.

⁷⁸ 'Lautoka City, Suva City, Ba Town, Labasa Town, Lami Town, Levuka Town, Nadi Town, Nasinu Town, Nausori Town, Savusavu Town, Sigatoka Town, Tavua Town.' Department of Country and Town Planning, Town Planning Areas, <<http://www.townplanning.gov.fj/index.php/planning/planning-context/town-planning-areas>>

of a planning Tribunal. The existing Act does not include any consideration of environmental review within the process for development and subdivision application,⁸² and the revised Act will not change the scenario. Despite the importance of emerging environmental issues like climate change in Fiji, both the existing and proposed revised law fail to adequately integrate environmental reviews within the land development and subdivision framework.⁸³

As mentioned earlier, the environmental review and consideration of emerging environmental issues is yet to be fully integrated within the town and country planning system. According to the Town Planning Act, a planning scheme may be made “with the general objective of controlling the development of the land to which such a scheme applies, and of securing suitable provisions for traffic, transportation, disposition of commercial, residential, and industrial areas, proper sanitary conditions, amenities and conveniences, parks, gardens and reserves, and of making suitable provisions for the use of land for building or other purposes...”⁸⁴ This provision was made in 1946 in the colonial era. However, despite Fiji’s vulnerability to many emerging environmental issues including the need for climate change adaptation and mitigation, the overall objective of the planning schemes under this Act is still the same. Even the most recent proposed amendment of the Act does not deal with the emerging environmental issues. This is inconsistent with the broader environmental, climate change and sustainable development policy objectives of the country. It is important to have mechanisms for environmental review of the planning scheme itself not just a development application under the scheme. If the environmental issues are not well integrated into the planning scheme, subsequent review of development applications using this plan or planning scheme will not be very effective.

There are many states in the world where there has been legislative reform to integrate environmental conservation into the planning scheme. An example of integration of environmental conservation in town planning schemes is the planning law of the Australian State of Western Australia. The Planning and Development Act, 2005 of Western Australia provides that in making state planning policy, “conservation of natural or cultural resources for social, economic, environmental, ecological and scientific purposes” need to be considered.⁸⁵ The Act also provides that regional and local planning schemes have to be referred to the Environment Protection Agency.⁸⁶ The Environment Protection Agency has the power to “require the responsible authority, if it wishes that scheme to proceed, to undertake an environmental review of that scheme and report on it to the Authority, and issue to the responsible authority instructions concerning the scope and content of that environmental review.”⁸⁷ There is scope for Fiji to learn from the experience of

other jurisdictions and integrate environmental review within the broader urban and country planning and development approval legal regime.

TOWARDS A COMPREHENSIVE ENVIRONMENTAL REVIEW SYSTEM

Although Fiji has developed a legal framework for environmental reviews or environmental impact assessments, the framework for development projects in the urban areas of Fiji is not effective. The integration of environmental review within the framework of urban and country planning is yet to be achieved. Moreover, the principle of sustainable urban development and integration of sustainable development goals within the environmental review process yet to get proper attention. The planning and review regime of Fiji is yet to fully address and integrate the emerging environmental issue of climate change.

Considering the multidimensional problems faced by Fiji’s urban areas and the country as a whole, it is pertinent to introduce a system of SEA for urban and regional planning schemes in order to extend the application of EIA from projects to policies, programs and plans.⁸⁸ Sadler and Verheem define SEA as “a systematic process for evaluating the environmental consequences of proposed policy, plan or programme initiatives in order to ensure that they are fully included and appropriately addressed at the earliest appropriate stage of decision making, on par with economic and social considerations.”⁸⁹ Some case studies show that the integration of sustainability principles into urban planning can be achieved by introducing SEA.⁹⁰

The inadequate integration of environmental considerations in regional and urban development has been identified as one of the main reasons for high vulnerability to natural disasters in developing countries.⁹¹ Mainstreaming environmental review in the broader urban and country planning context is essential to considering the interconnection of many competing issues. Fiji’s current legal framework is mainly based on EIA of particular development projects. Considering the changing context and emerging environmental challenges, Fiji needs to comprehensively review the existing legal framework for environmental review.

Coordination between Environmental

⁷⁸ The declared Rural Town Planning Areas are: ‘Ba Rural, Dreketi Rural, Labasa Rural, Lautoka Rural, Nabouwalu Rural, Nadi Rural, Nadroga Rural, Nausori Rural, Navua Rural, Ra Rural, Savusavu Rural, Seqaqa Rural, Suva Rural, Tavua Rural, Wainikoro Rural.’ Ibid.

⁷⁹ Town Planning Act, s 7(1).

⁸⁰ Department of Town and Country Planning (DTCP), Proposed Revised Town Planning Act [Cap-139] <http://www.townplanning.gov.fj/images/4-11-15__PROPOSED_REVISIED_TPA1a.pdf>; Department of Town and Country Planning (DTCP), Proposed Revised Subdivision of Land Act [Cap-140] <http://www.townplanning.gov.fj/images/Subdivision_of_Lands_Act_Booklet_17_11_15.pdf>.

⁸¹ The Department of Town & Country Planning (DTCP), Proposed Procedure for Lodgement & Assessment of Development Applications, (2017) <http://www.townplanning.gov.fj/images/Proposed_Procedure_for_Lodgement_of_Development_Applications_02-11-15.pdf>

⁸² Amadou S. Dia, ‘How to Adapt the Planning Legislation to the Ground Reality in the Pacific Small Islands Nations: The Fiji Town and Country Planning Act Case Study’, paper presented at the 46th ISOCARP Congress, 2010 <http://www.isocarp.net/Data/case_studies/1786.pdf>

⁸³ Nevertheless, subdivision approval process made a provision for referral to stakeholder agencies. According to the proposed amendment to the Act, one of the stakeholder agencies will be the Department of Environment. The Department of Town & Country Planning (DTCP), Proposed Procedure for Lodgement & Approval of Subdivision Applications, (2017) <http://www.townplanning.gov.fj/images/Proposed_Procedure_for_Lodgement_of_Subdivision_Applications_02-11-15.pdf>

⁸⁴ Town Planning Act, s 16.

⁸⁵ Planning and Development Act 2005 (WA) s 27.

⁸⁶ Planning and Development Act 2005 (WA) s 81 and s 38.

⁸⁷ Environmental Protection Act 1986 (WA), s 48C.

⁸⁸ Kulsum Ahmed and Ernesto Sánchez-Triana ‘SEA and Policy Formulation’ in Kulsum Ahmed and Ernesto Sánchez-Triana (eds.) Strategic Environmental Assessment for Policies: An Instrument for Good Governance (World Bank, 2008) 1- 10.

⁸⁹ Cited in Ibid.

⁹⁰ Anne Shepherd and Leonard Ortolano, ‘Strategic Environmental Assessment for Sustainable Urban Development’ (1996) 16 Environmental Impact Assessment Review 321-335

Impact Assessment and Town and Country Planning and Development Approval System

As identified in this paper, there is a lack of coordination between environmental impact assessment and town and country planning. Town and country planning and development approval is a relatively old system first introduced by the former colonial ruler. The new system of EIA, rather, is yet to be fully developed in Fiji. Environmental impact assessment and town and country planning are administered by different government authorities having different responsibilities within the broader governance system. The lack of coordination between the existing system of urban planning and newly emerged concept of environmental impact assessment is not a problem unique to Fiji. Many countries, particularly developing countries, are suffering from the same problem.

One of the methods for coordination would be interagency collaboration. The Department of Environment, for example, must have a role in the town and country planning and development approval processes. The main problem in many developing countries, including Fiji, is the reluctance of planning and development approval authorities or ministries to recognise the role of the Department of Environment in the development approval and planning process. Rather than becoming part of a coordinated overall development and planning regime, the environmental impact assessment process has been developed as a weak, separate system. The lack of capacity and expertise of the Department of Environment, as a relatively new institution, is also partly responsible for this unsatisfactory scenario.

A harmonised effort from the highest level of government for better coordination and the recognition of the role of the environment related government agencies is needed to solve this critical problem. A well-funded program for capacity building of the Department of Environment is also essential. However, without mainstreaming environmental conservation in the national development agenda, none of this will be achieved.

Climate Smart Urban Planning, Governance and SEA

Urban areas may face many distinct challenges for climate change adaptation.⁹² Prioritising adaptation options is critical, when considering the various challenges and resource limitations for adaptation that cities are facing.⁹³ Climate smart spatial planning, mainstreaming urban adaptations into the overall urbanisation agenda, and collaborative approaches may be critical for overcoming the urban challenges.⁹⁴ An interdisciplinary, systematic modelling approach may be needed due to some unexpected long term implications of climate change related urban planning strategies.⁹⁵ A comprehensive SEA can play a vital role in this regard.

Integrated assessments are critical for avoiding maladaptation.⁹⁶

It is pertinent to examine whether the current legal and institutional framework for environmental reviews is capable of considering emerging and pressing issues the country is facing, such as the issue of climate change and increasing natural disasters. As discussed in this paper, the major coastal cities of Fiji are facing an increasing impact of changing climate. The current Environmental Impact Assessment system is inadequate for future climate change related challenges. In order to reach the necessary level of competence, Fiji needs to establish a system for SEA. In the urban context, the system for SEA should be strongly linked with the existing system of town and country planning and the development approval process. The comprehensive system should be developed to ensure the assessment of both development policies and plans, as well as development projects from the perspective of climate change mitigation, adaptation and loss and damage. The core of this should be considering the probable future impact of development plans or projects, not just short term impacts. This, again, will require a very high level of scientific and institutional capacity building.

Customary Land Ownership and Public Participation in Environmental Impact Assessment and Urban Planning and Development Approval Process

As discussed earlier, in Fiji most of the lands are under customary landownership. Customary land tenure and sustainable development is a challenging issue in the South Pacific countries.⁹⁷ This makes public participation even more important in environmental impact assessments and urban planning and development approval processes. Despite some provisions for public participation in relevant laws, public participation has not been ensured in practice. This has aggrieved the traditional customary owners of the land. As mentioned earlier, in a recent case, the relevant authorities refused to provide local people EIA related information of a project that may have impact on the environment surrounding them. This prompted them to take the matter to the High Court. A representative of the applicant said the following to a local newspaper: “they were not opposed to the development but they wanted to know what was happening on their borders, adding that they lived in flood prone areas, so any development taking place in the area should be known, particularly if there were provisions for drainage and other sort of services.” He said further that “the community committee had called and emailed the Department of Environment but was told that no copies would be released.”⁹⁹ Even the department refused to give the document to their lawyers who claimed that these are public documents.¹⁰⁰

The court held that section 17 of the Environment Management Act, 2005 obliges

⁹¹ Ahmed and Sánchez-Triana, above n 88.

⁹² Meghan Doherty, Kelly Klima, and Jessica J. Hellmann, ‘Climate Change in the Urban Environment: Advancing, Measuring and Achieving Resiliency’ (2016) 66 *Environmental Science and Policy* 310

⁹³ Chen Chen et al. ‘Measuring the Adaptation Gap: A Framework for Evaluating Climate Hazards and Opportunities in Urban Areas’ (2016) 66 *Environmental Science and Policy* 403.

⁹⁴ Jeremy G. Carter et al., ‘Climate Change and the City: Building Capacity for Urban Adaptation’ (2015) 95 *Progress in Planning* 1.

⁹⁵ V. Massona et al., ‘Adapting Cities to Climate Change: A Systemic Modelling Approach’ (2014) 10 *Urban Climate* 407.

⁹⁶ Yvonne Andersson-Sköld et al., ‘An Integrated Method for Assessing Climate-related Risks and Adaptation Alternatives in Urban Areas’ (2015) 7 *Climate Risk Management* 31

the Department of Environment to maintain an environmental register that should contain all the documents prescribed in the regulations 41(1) and 41(2) of the EIA Regulations, 2007. The Court also held that the public must have access to this register and is entitled to obtain copies of the documents needed without any restriction.¹⁰¹ However, access to EIA documents is not enough. There should be a practically operational system for public participation, particularly the participation of customary landowners in decision making for environmental assessment, development planning and approval processes. Although existing laws have some avenues for public participation, these provisions have not been operationalised. Nevertheless, a comprehensive legal and institutional reform is needed in this regard.

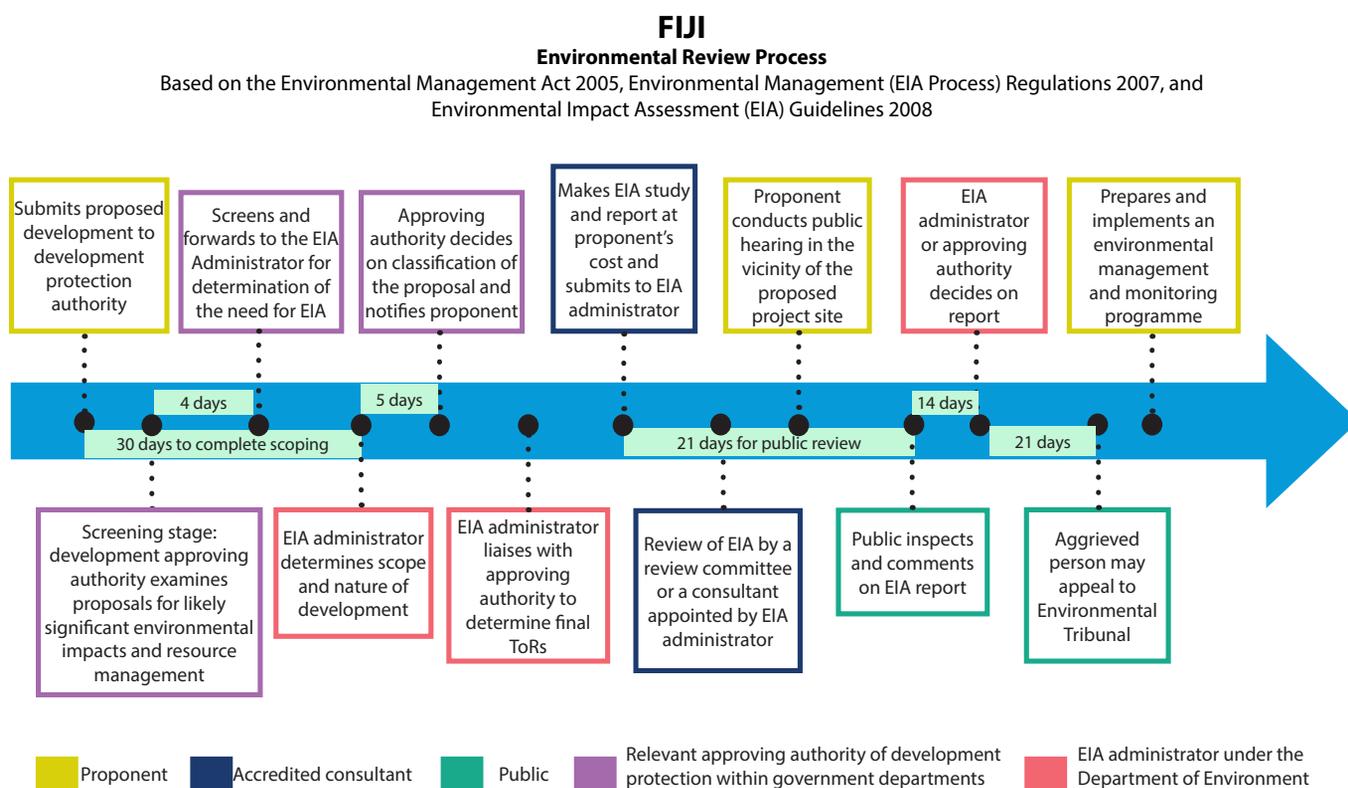
Like many other newly emerging independent developing countries, Fiji introduced an environmental legal framework mainly copied from developed countries. No comprehensive study was undertaken to examine how far these modern legalisation and associated mechanisms such as EIA can be harmonised with customary law and practices. In Fiji, and in some other South Pacific countries, customary laws of land ownership and modern legislative development for environmental protection coexist as two separate systems in apparent disharmony.

It is also pertinent to examine whether wholesale replication of western approaches for environmental protection is effective in the small island developing countries, having long standing tradition of customary practices with a very complex land tenure system. Moreover, the introduction of the modern techniques like EIA has

not been supported by a simultaneous development of institutional and technical capacity in the relevant government departments.

CONCLUSION

Fiji is facing rapid urbanisation and a number of ongoing and future environmental challenges, but legal and institutional development for environmental review of tourism and residential development in the country have not been established in a coordinated way. Despite the ongoing and future environmental threats, an effective system of EIA and SEA is yet to be achieved. Public participation in the development and environmental decision making is yet to be fully operationalised. This paper suggests a comprehensive legal and institutional reform for environmental review in the urban context. A joint strategy for this should be prepared with the participation of all relevant government agencies, civil society, non government organisations, researchers and the community. Considering the complex customary landownership system, the participation, involvement and prior informed consent of people will be sine qua non for successful environmental review of plans and projects.



⁹⁷ Ron Crocombe, Customary Land Tenure and Sustainable Development: Complementarity or Conflict? (South Pacific Commission and University of the South Pacific, 1995).

⁹⁸ Bolatagici, above n 73.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.