I. Safeguarding System & Policy

Despite absence of laws that specifically looks at safeguarding of ICH, there are various mechanisms that we can say tries to address ICH related concerns. The Government has just recently ratified the Convention on the Protection of Intangible Cultural Heritage. This is a milestone achievement in the cultural sector and it also gives stakeholders much needed guidance and legislative authority to proceed with programme earmarked towards protection of Intangible Cultural Heritage.

In addition a national legislation is currently being developed that will ensure protection of Intangible Cultural Heritage. Called the 'Model Law on Traditional Knowledge & Expression of Culture,' the government, is spearheading development of this legislation with support from the World Intellectual Property and regional bodies such as South Pacific Forum Secretariat and the Secretariat of Pacific Community. The Institute of Fijian Language & Culture is currently the Secretariat to the development of the Model Law. A Working Group that is inclusive of officers from the Attorney Generals office, Fijian Affairs Board, Department of Culture & Heritage and Institute of iTaukei Language and Culture has been established with specific Terms of Reference to see that legislation is developed and finalized.

An expert with previous experience in Intellectual Property laws needs to be engaged on a fulltime basis. This is because issues involved in this law is not straightforward as this is a very heavily debated area at the international community on how to synchronize patent, copyright, appellate of origin and trade secrets issues. Policies have to be designed very smartly to overcome all arguments about separating them, at the same time the ministry should not be too naïve to come up with a simple legislation that at the end of the day does not secure the rights and compensate indigenous rights owners from the commercial usages of their knowledge in any form or manner. A simple draft will be easy to do but will at the end not serve any purpose at all. This law will need to be tied in with an amended Patent, Trade Marks,
Copyrights, Trade Secrets, Appellate of Origins and new ones on Plant varieties and Utility Models. We should be able to defend the law from any international scrutiny and criticism.

1. National Law/Act

A. Definition of intangible cultural heritage

According to the (2003 Convention for the Safeguarding of the Intangible Cultural Heritage), the intangible cultural heritage (ICH) – or living heritage is the mainspring of humanity's cultural diversity and its maintenance a guarantee for continuing creativity. It is defined as follows:

‘Intangible Cultural Heritage’ means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

The ‘intangible cultural heritage’, as defined above, is manifested inter alia in the following domains:

(a) Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
(b) Performing arts;
(c) Social practices, rituals and festive events;
(d) Knowledge and practices concerning nature and the universe;
(e) Traditional craftsmanship.

Fiji ratified this Convention in 2008.
At the moment Fiji does not have any legislation that specifically deals with Intangible Cultural Heritage. The focus is primarily on tangible cultural heritage. However, existing legislations namely the Fiji Museum Act, Copyright Act, Trade Marks and Patent Act loosely to a certain degree gave legislative authority to protection of Intangible Cultural Heritage.

Whilst we do not have a current permanent legislation on ICH, the Ministry of Indigenous Affairs is currently working towards the provision of a draft legislation that promotes the protection of indigenous knowledge systems and their expressions, basically it revolves around the issue of Intangible Cultural Heritage. Whilst the former does not specifically use the term ‘intangible cultural heritage’, the UNESCO five pillars or elements that composites the ICH subject is envisaged in the definition of the term ‘traditional or indigenous knowledge’ and ‘expressions of Culture’ embodied in the draft legislation. The legislation tries to break down the two terms into various fields and subject areas which all in all can be collated as a subset of one of the five pillars or elements of ICH. Fiji’s definition of the intangible heritage is all encompassing.

B. Title of the law

**Model law on Traditional Knowledge & Expression of Culture.**

As highlighted above, Fiji is in the process of an enactment of a piece of law that will deal with intangible cultural heritage. At present we have the Fijian Affairs Act 1978 which provides for the administration of affairs for the indigenous Fijian, including the Great Council of Chiefs. Then there is the Native Land Act 1940 which provides for the regulation of native land using customary law and establishes the Native Land Commission with the mandate to deal with land related disputes whilst the Native Land Trust Act, 1940 deals with the control and administration of native land whereas the Native Land Trust Board Act provides for traditional institution to be set up to ensure that native land and the right of indigenous people associated with these lands are properly addressed. All these legislation though deal with Native Land.

In the past little has been done to better protect and promote the rights of Pacific Islanders as exclusive owners of their traditional knowledge and expressions of culture, and to recognize their value, and reward or compensate accordingly for their use and exploitation for commercial
purposes. However this was finally realized when the Secretariat of the Pacific Community (SPC), World Intellectual Property Organization (WIPO), United Nations Educational Scientific and Cultural Organization (UNESCO), and the Forum Secretariat jointly commissioned a consultancy to formulate a legal framework for the protection of traditional knowledge and expressions of culture. The Model Law for the Protection of Traditional Knowledge and Expressions of Culture was devised as a result. (Asia/Pacific Pacific Cultural Centre for UNESCO : 2002)

In 2003, with the adoption of the Model Law on Traditional Knowledge and Expressions of Culture, the cabinet approved that options and mechanisms be developed to ensure that the legislation is properly implemented. The legislation arose out of the concern that indigenous knowledge which has been in existence for thousands of years remains unprotected by legal measures and is the subject of unrestricted exploitation and commercialization without due respect and acknowledgement of the vanua and local communities. It is important to note that at this stage of formalization, Fiji had less familiarity with the ‘2003 Convention for the Safeguarding of the Intangible Cultural Heritage’ and its requirements, particularly Article 12 which stipulates that ‘...state parties shall draw up, in a manner geared to its own situation, one or more inventories of (ICH) present in its territory.’ (Qereqeretabua, Misiwaini: 2008, ‘Cultural Mapping: An Approach to Safeguard Indigenous Fijians Intangible Cultural Heritage’).

Regardless, Fiji's proposed legislation on indigenous knowledge and expressions of culture serves a dual function - it seeks to protect indigenous knowledge from misappropriation and non-customary use, such as commercialization. The second role targets the safeguarding of indigenous Fijian intangible cultural heritage for continuity. This is an opportunity whereby indigenous intangible heritage will be covered under a legislative framework - an aspect of cultural heritage that has been neglected for quite some time in Fiji's national policy and legislative planning. Currently, the Ministry of Fijian Affairs through its Internal Working Group has almost completed the drafting of this legislation before submission to the legal drafter for final touch-ups to the bill. This will then be presented to local provinces and districts for their scrutiny before a final presentation is made to Cabinet.
C. **Section/Division in charge**

With the legislation still being drafted, the Ministry of Indigenous Affairs (Institute of Fijian Language and Culture) acts as the secretariat to a working committee on the legislation, and includes working members from the Department of Culture & Heritage, the Attorney General’s Office and the Fijian Affairs Board.

At the same time it is opportune to know that with the signing of the convention by Fiji, the Department of Culture & Heritage is tasked with drawing up of a legislation that specifically looks at ICH and as part of its contributions to mandatory tasks stipulated in the convention clauses.

D. **Year of establishment**

The draft legislation has yet to reach its BILL status and later passing by the Head of State on behalf of Parliament. We have prepared an Action Plan that should see completion of work towards development of the said legislation. The Institute recently received confirmation from Trade Com( Brussels) about funding for the legal expert to be involved in the drafting of the said law. With assistance of the Forum Secretariat, we have managed to secure an expert on Intellectual Property and Traditional Knowledge whose contract has been currently negotiated for this important role. In addition the World Intellectual Property Organization(WIPO) is working closely with Fiji government by provision of funding and technical expertise that should see completion of the said bill. They will facilitate provincial consultation and two National Workshops to seek comments contributions from important individual and institutional stakeholders.

In other word, the Ministry of Indigenous Affairs and the department of Culture and Heritage of Fiji has actively developed practical and policy measures to preserve and safeguard Fiji’s cultural heritage, with the aim to strengthen the conservation, preservation, promotion and protection of all forms of cultural and natural heritage. These include intangible and tangible, movable and immovable heritage and cultural industries.
E. Amendments

The working Group that is currently working on the drafting are being tasked to insert amendments where appropriate so that it is acceptable to the public in general. To date the legislation on intangible cultural heritage is still being discussed and an ongoing process to be made into law.

F. Particular article related to ICH

- National level agency/organization dedicated to preservation and promotion of traditional/folk performing arts
  http://www.accu.or.jp/ich/policies/C_FIJ.html

- COUNTRY REPORT : FIJI Cultural Mapping - An Approach to Safeguarding Indigenous Fijians Intangible Cultural Heritage
  (by Misiwaini Qereqeretabua)

G. Responsible organization/department

The Ministry of Indigenous Affairs

H. Contact details

- Name: Setoki Qalubau
- Title: Secretary to Working Group
- Phone: 679 – 310 0909
- E-mail: setoki.qalubau@govnet.gov.fj
- Fax: 679 – 330 8761

I. Information source

- Name: Seruwaia Nayacalevu
- Title: Legal Officer – Drafting - Solicitor General’s Office
- Phone: 679 – 330 9866
- E-mail: seruwaia.nayacalevu@govnet.gov.fj
2. Cultural Policy

A. Title

Initial work for the above policy started way back in 1997, but continuation has been stalled and is currently being continued by the Department of Culture and Heritage of the Ministry of Education. This is to be in line with recent ratification on the United Nations Convention on Safeguarding of Intangible Cultural Heritage.

B. Purpose

This will consolidate work towards research or usage of the indigenous culture. Policy will also provide framework for related legislations in this important area.

Appropriate Capacity – it requires those that not only have the technical expertise but the experience in the field whether it be cultural heritage in general or ICH specifically to boost the system;

Proper Project Planning – learn from existing projects on the provision of appropriate tools and mechanisms to implement;

Legislative measure – always appropriate to have legal binding instrument;

Policy measures – to cover those areas not specifically mentioned by the legislation, the policy intends to specify the systems, processes and means of implementation;

Enforcement and monitoring mechanism – a major challenge to the inauguration of any safeguarding policy or system is the setting up of an appropriate enforcement or monitoring institution. This may include a body such as an ‘authority’, ‘a commission’, ‘a board’ & s.