

# *IP Survey Report*

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# I . Introduction

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The Fijian government congratulates ICHCAP for its formation as a category 2 centre and is happy to take part in the regional survey related to intellectual property issues in the process of building and sharing ICH information. Working towards a form of legal protection has been discussed repeatedly in many cultural heritage forums.

Western contextualisation of intellectual property rights are newly developed legal concepts compared to traditional methodology of property rights. However, it is the application of the latter in modern day society that proves difficult to facilitate. Furthermore, it has been the subject of on-going negotiation and its recognition as part of the modern legal systems.. Nevertheless, European cultures have allowed their theories of intellectual property rights to evolve over time, and thus the rest of the world has benchmarked European intellectual property laws without developing their own legal theories based on their own customary laws. Most intellectual property rights are governed by statutes that allow minimal room for customary laws to settle.<sup>1</sup>

This report is Fiji's coordinated approach to researching the current status of intellectual property issues in the field of ICH in Fiji as part of the larger Asia-Pacific region; to highlight the intellectual property problems that ICH-related organisations may encounter during ICH information building and sharing activities, such as identification, documentation, and digitisation; to promote the groundwork in the region to establish a guideline for protecting intellectual property-related aspects of ICH in the process of information building and sharing.

The Fiji survey was carried out by an interim secretariat for intellectual property rights, comprising the Department of National Heritage, Culture and Arts, the Fiji Arts Council, and the Cultural Youth Ambassadors. The intellectual property

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<sup>1</sup> Park, Protection of Intellectual Property Rights for the ICH Practitioners

rights questionnaire was administered to six institutions involved in carrying out work concerning ICH in Fiji. The questionnaires were dispatched to respondents via e-mail and in hard copy.

## 1. Fiji's Context

Fiji is a group of volcanic islands in the South Pacific, lying about 4,450 km southwest of Honolulu and 1,700 km north of New Zealand. The archipelago is made up of 322 small islands and 522 small islets, Viti Levu being the largest island, covering 57 per cent of the land area, and Vanua Levu, which is 64 km to the north of Viti Levu, covering just over 30 per cent of the land area. Fiji has over 300 languages and an ancient traditional indigenous culture and belief system that is rich in ICH but also threatened by modernised practices. For many years, Fiji has traded with neighbouring islands throughout the Pacific, and this has had a profound influence on its cultural heritage and language.

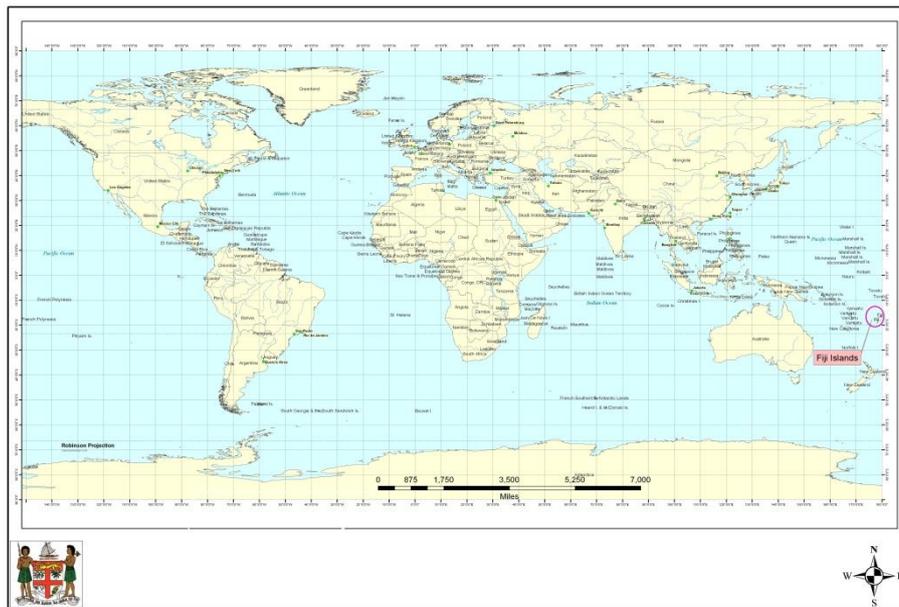


Figure 1: Fiji in relation to the world

## 2. International Initiatives

Fiji, like many other Pacific islands, is rich in ICH, and it is one of six Pacific Member States of UNESCO to have signed and ratified the UNESCO 2003 Convention by 2012. The April 2010 ratification, which was approved by cabinet and deposited by the Minister for Foreign Affairs on behalf of state, came following a national stakeholder consultation..

The 2003 Convention is important for Fiji as it features prominently the safeguarding of the living, intangible, and knowledge-based aspects of indigenous culture. While most of these intangible elements have historically passed from generation to generation, in recent years, the elements' value and manifestations have lessened because of westernization and because there are few venues through which traditional knowledge can be cross-generationally transferred.

ICH consists of practices, expressions, knowledge, and skills that communities recognise as part of their heritage. Thus, international societies that have worked in tandem with UNESCO garnered enough public attention to ICH safeguarding, and so the Convention for the Safeguarding of the Intangible Cultural Heritage was able to be adopted in 2003.

Article 13, d.iii. of the 2003 Convention clearly states that parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory, and this report will highlight the institutions in Fiji that carry out these tasks.

The process of ICH information building and sharing could be the stepping stone into safeguarding ICH. However, with major work being carried out concerning ICH information building and sharing, there is the possibility of intellectual property (IP) issues arising.

Though the Convention does not elaborate on its legal measures for safeguarding ICH, its IP rights to protect ICH and holders are implied throughout the Convention's provisions.<sup>2</sup>

Since Fiji ratified the 2003 ICH Convention, an interim Fiji interagency committee was established. The committee comprises representatives of the

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<sup>2</sup> Techera, Case Study: Safeguarding Cultural Heritage: Law and policy in Fiji.

Ministry iTaukei Affairs, Fiji Arts Council, Department National Heritage, Culture and Arts and representatives from the Rotuman community who have met to forward proposals to UNESCO for ICH in need of urgent safeguarding, to work on projects to implement the 2003 Convention, and to improve communication and networking among the Departments involved in implementing activities.

Traditional Fijian culture is still rich despite the nation's troubled history, and this culture has been transmitted orally from one generation to another. In the 1800s, the foundation of Fijian culture was shaken by western settlers who came in with their own beliefs. Over time, these foreign cultural elements penetrated Fijian cultural values and changes became visible in the people. In light of Fiji's obligation to its heritage, Fiji has advanced in the area of inventory making for the iTaukei<sup>3</sup> ICH since 2003 when the Department of National Heritage was with the Ministry of Fijian Affairs, Culture and Heritage. It is proposed that InventoryinventoryInventory making for the Rotuman Community, followed by other ethnic communities in Fiji will be undertaken soon followsoonfollow suit.

### **3. Pacific Regional Participation**

The inventory-making process for the iTaukei Community ICH was pursued in response to a call from the twenty-two Pacific Member States who identified a priority issue to protect or safeguard traditional knowledge. With Pacific legal experts and endorsements by Ministers of Culture, a Pacific Regional Model Law on protecting traditional knowledge and cultural expressions (TKEC) was endorsed in 2002 at the SPC<sup>4</sup> Pacific Cultural Minister's Meeting in Noumea, New Caledonia.Caledonia. The Cultural Mapping Programme was an initiative to document aspects of TKEC with the primary aim of identifying the owners of cultural knowledge and resources in 2004. This documentation process is unique in that:

- (a) it captures the principle of Intellectual Property (IP) through the identification of owners/custodians of knowledge;
- (b) documents living and endangered elements of culture;
- (c) substantiates on one of the key requirements of the 2003 ICH Convention pertinent to the inventorying of ICH;
- (d) promotes the revitalisation of endangered and those ICH in urgent need of safeguarding.

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<sup>3</sup> iTaukei refers to the indigenous people of Fiji, the indigenous Fijians.

<sup>4</sup> SPC – Secretariat of the Pacific Community: a regional Pacific organization;

Since this development, Fiji has also been a beneficiary of the TradeCom, funded Pacific Regional Action Plan (PRAP), for traditional knowledge development through promoting tradition-based innovation, creativity, and sustainability. This foresees the drafting of an appropriate legislative measure and policy to implement the Regional Model Law on the Protection of Traditional Knowledge and Expressions of Culture in the country.

#### **4. Respondents to the ICHCAP Fiji IPR Field Survey Questionnaire**

Six institutions and departments in Fiji were identified to take part in the questionnaire. The institutions involved were:

- Department National Heritage, Culture and Arts
- Fiji Arts Council
- iTaukei Institute of Language and Culture
- Fiji Museum
- Fiji Intellectual Property Office
- CreatiVITI Nadi

Four of the six invited institutions responded as fully as possible despite the time constraints and busy Christmas and New Year public holiday period.

A brief summary of the roles of the participatory agencies is given below.

- A. The Department of National Heritage Culture and Arts (DNHCA) provides advice on policy matters concerning heritage culture and arts. The department undertakes community consultations, workshops, and training and provides funds and support to implementing agencies and local groups within the sector. The department also provides technical advice on the conservation and management of built and landscape architecture. The Department also dispenses legal advice and opinions concerning heritage, culture, and arts besides the heritage education and awareness it conducts in communities and schools.
- B. The Fiji Arts Council coordinates national programmes and activities across all art forms including traditional and contemporary. This includes the development of a professional art sector to ensure recognition, and that a high moral and economic value is placed on the arts.

- C. The Ministry iTaukei Affaires is charged with developing policies and implementing and monitoring programmes for the good governance and well-being of the iTaukei (indigenous population). The Ministry's expertise lies in all matters of indigenous interest and knowledge and in dispute resolution. The iTaukei Institute of Language and Culture's foremost role is the research and documentation of the iTaukei culture. Also embedded in this function is the revitalisation, promotion and protection of indigenous culture and heritage.
- D. The Fiji Museum's expertise lies in archaeological investigation and archaeological impact assessments as well as in researching, collating, presenting, and storing historical artefacts. The museum facilitates foreign researchers and offers training in the area of preserving artefacts. The storage facilities of the museum and the skills of the staff are on par with current international practices and standards.
- E. The Fiji Intellectual Property Office of the Attorney General's expertise lies in establishing an office to cater for all IPR registrations, including patent, trademarks, copyright, and traditional knowledge. This is a newly established office. CreatiVITI Nadi is a membership organisation representing artists from across Fiji and is home to Fiji's only pottery production studio and the second largest art gallery in the country. The organisation's expertise lies in developing arts and crafts in Fiji through offering arts training and promoting expressional creative arts.

## 5. Background and Justification

The need to preserve Fijian cultural heritage whether it be human crafted or natural has been long recognised as an important task. Cultural heritage has been recognised to be economically, intrinsically, and environmentally valuable, yet it is under threat from a range of processes and effects, triggering action, including the expansion of international heritage law in the past few years. As mentioned, Fiji is has a rich history and abundant cultural heritage, but it is facing a number of challenges as are many other island states.<sup>5</sup>

Fiji is home to coexisting cultures; amongst these are thriving arts, tradition, heritage, and expressions of the indigenous peoples, more specifically the iTaukei and Rotumans. Historically, the indigenous people have depicted their

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<sup>5</sup> The Establishment "National Living Human Treasures" Systems in Fiji

history, stories, songs, lullabies, traditions, and cultural elements through visual art, expressive art, and heritage art. However, some creative and innovative works are being exploited and misappropriated by individuals who tend to gain greater economic returns than the originators themselves.<sup>6</sup>

As mentioned, various projects have been carried out by the DNHCA and other agencies involved with ICH safeguarding. Thus, in carrying out this survey, we hope to raise more awareness on the significance of IP and matters concerning ICH, and we hope to initiate networking among the relevant organisations involved in protecting IP-related aspects and to share the information collected from the survey as a guideline for countries in the Asia-Pacific region.

## **6. Status of Indigenous Intellectual Property Protection in Fiji**

Fiji's intellectual property protection system followed closely the United Kingdom model of copyright protection simply because of its long association with the British Crown during the Fiji's colonial era (1870 – 1970). While attempts were made to review this regime in the 1980s, a revised Copyright Law for Fiji was passed in 1999 and came into effect on 1<sup>st</sup> July 2000. The Copyright Act of 1999 was based on UK, Australian and New Zealand legislation and introduces a comprehensive scheme for protecting copyright and related rights. While the act is an improvement on the current copyright regime, albeit minimal in giving protection to traditional knowledge and cultural property rights. Hence, moves at consolidating and facilitating the set-up of a sui-generis or special protective laws for communal copyright begun.<sup>7</sup>

In 2003 cabinet endorsed in principle Fiji's adoption of the Regional Model Law on the Protection of Traditional Knowledge and Expressions of Culture (TKEC) that had been developed by regional legal experts. This provided the platform for recognition of intellectual property sustained and owned by communities as a group and not as individuals. The then Ministry of Fijian Affairs thought it appropriate that to facilitate the protection of knowledge, the actual knowledge and expressions must first be identified and its "keepers" recognised. This can only be managed through a databank or database to enhance electronic storage of the cultural information collected.

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<sup>6</sup> The Establishment "National Living Human Treasures" Systems in Fiji

<sup>7</sup> Asenaca Uluiviti, Fiji Copyright Report, 1999, Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands, Noumea, New Caledonia.

Thus, commenced the Cultural Mapping Programme to inventorise ICH which in the Pacific is synonymous with knowledge systems and how cultural practices are manifested physically. The project was initiated by the Department of National Heritage, Culture & Arts and the iTaukei Institute of Language and Culture map the 14 provinces of Fiji focusing only on the indigenous Fijian population – *itaukei*.

The split of the Department of National Heritage from the Ministry of iTaukei Affairs in 2008 changed the priorities of the former altogether to look at the needs of other ethnic communities in Fiji. The iTaukei Institute of Language and Culture remained with the iTaukei Affairs and remained the primary section in the Ministry focusing on cultural mapping. To date, eight provinces out of the 14 in Fiji have been fully mapped (Namosi, Serua, Rewa, Tailevu, Ra, Lomaiviti, Bua, and Naitasiri) through its inventory process which requires prior community consent and consultation.

In September 2009, a new amendment to the Copyright Act (1999) introduced which allowed for certain presumptions to have effect in the prosecution of offences under certain section of the Copyright Act. Again this was modelled on the Australian legislation. Nevertheless, the culture sector in Fiji awaits with optimism the endorsement of the draft Traditional Knowledge and Expressions of Culture Decree which is currently being scrutinised by relevant authorities.

In 2011, cabinet had approved the establishment of a Fiji Intellectual Property Office (FIPO) under the Attorney General's Office which pursued to cover important areas such as traditional knowledge. This is an important step with appropriate institutional measures in place to accommodate for TKEC issues highlighted.

## 7. Proposed Activities for the Survey

### A. Week one and two (December 2011)

- Confirm the lead institution to coordinate and conduct the questionnaire—DNHCA
- Establish contract for TOR, DNHCA, and ICHCAP for IPR project and the Fiji Arts Council account details for administration support
- Establish secretariat administration costing—Engage Fiji Craft Society Secretariat

Three Part-time Researches:

- 1) Ms Tuliana C. Druava (Principal data collection and meetings assisted by Ms Violet Marama and Keleni Buli for meetings and logistics)
- 2) Ms Vilma Isireli (Drafting of final report)
- 3) Ms Adi Meretui Ratanabuabua (Principal Cultural Development Officer [PCDO])— Coordination

- Identify, contact, and confirm stakeholders taking part in the questionnaire
- Confirm names and involvement proposed from relevant organisations and ministries
- Desktop research, reference contributors, and seek permission to use personal resources and equipment as the project is conducted over the public holidays, evenings, and after hours
- TOR agreed along with Fiji Crafts Society and Fiji Arts Council to promote IPR and undertake secretariat tasks for the project
- Research methodology agreed upon consultation with the Fiji Arts Council implementing agency
- Send out questionnaires and conduct interviews with individual participants.
- Conduct field survey and hold meetings and consultations with key stakeholders

### B. Week three (January 2012)

- Conduct interviews with individual participants and collate responses
- Conduct field survey and hold meetings and consultations with key stakeholders

- Submit status report to ICHCAP

C. Week four

- Submit interim report for the field survey on intellectual property issues to ICHCAP
- Hold a consultative meeting with stakeholders to finalise the project

D. Week five and six (January–February 2012)

- Compile and submit the final report to ICHCAP