

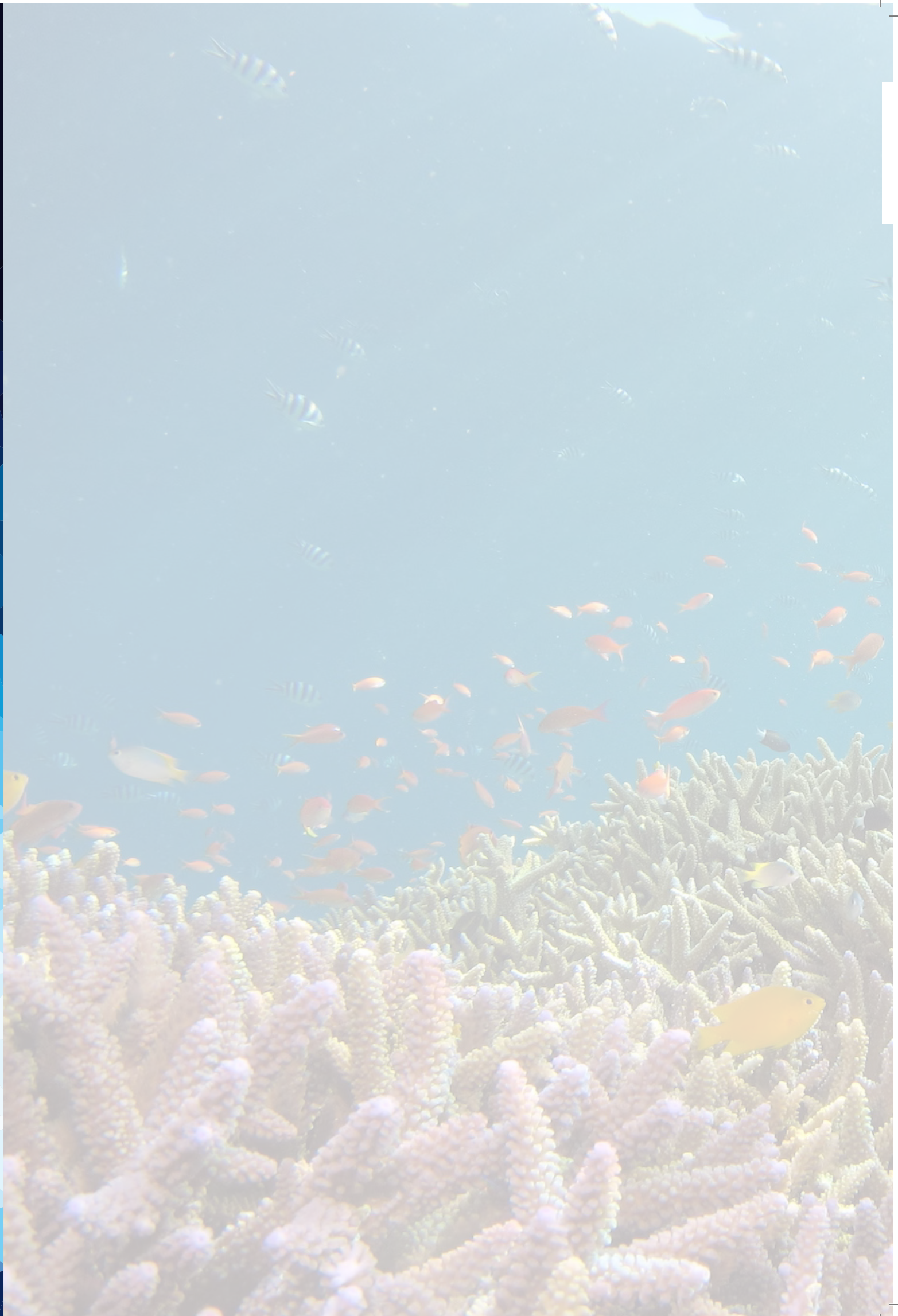


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# BLUE CARBON IN FIJI: CARBON RIGHTS ASSESSMENT AND BENEFITS-SHARING

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Conservation International – Fiji  
2023





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Additionally, we express our gratitude to the Government of Fiji for their commitment to recognizing and respecting the rights of indigenous peoples, as well as their dedication to observing international conventions and agreements concerning environmental preservation and climate change mitigation. The findings of this study have been thoughtfully aligned with Fiji's international commitments under the Paris Agreement of the UN Framework Convention on Climate Change, the Aichi Targets of the UN Convention on Biological Diversity, and the 2030 Agenda for Sustainable Development (the Sustainable Development Goals). This alignment reinforces our collective efforts in mitigating greenhouse gas emissions and safeguarding our planet's vital natural resources.

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## List of Acronyms and Abbreviations

<b>BAU</b>	Business as usual
<b>BCR</b>	Blue carbon rights
<b>BSM</b>	Benefit Sharing Mechanism
<b>BSP</b>	Benefit Sharing Plan
<b>CBD</b>	UN Convention on Biological Diversity
<b>CBIT</b>	Capacity Building Initiative for Transparency
<b>CCD</b>	Climate Change Division
<b>CEDAW</b>	Convention on the Elimination of Discrimination Against Women
<b>CSPR</b>	Carbon sequestration property right
<b>CoF</b>	Conservator of Forests
<b>CoP</b>	Council of the Parties (UNFCCC)
<b>CO<sub>2</sub>e</b>	Carbon dioxide equivalent
<b>EEZ</b>	Exclusive economic zone
<b>EIA</b>	environmental impact assessment
<b>EMA</b>	Environment Management Act
<b>ERM</b>	Emissions Reduction Methodology
<b>ER-P</b>	Emissions Reduction Program for Fiji under REDD+ Policy
<b>ERP</b>	Emissions reduction project, programme or activity
<b>ERPA</b>	Emissions reduction payment agreement
<b>ERR</b>	Emissions reduction and removals
<b>ERU</b>	Emissions reduction unit
<b>ESMF</b>	Environmental and Social Management Framework
<b>ESMS</b>	Environmental and Social Management System
<b>FCPF</b>	Forest Carbon Partnership Facility
<b>FGRM</b>	Feedback grievance and redress mechanism
<b>FMOU</b>	Fiji mitigation outcome unit
<b>FPIC</b>	Free, prior and informed consent
<b>FRA</b>	Forest resources assessment
<b>FRL</b>	Forest reference level
<b>FSC-IF</b>	Forest Stewardship Council – Indigenous Foundation
<b>GHG</b>	Greenhouse gas
<b>IBRD</b>	International Bank for Reconstruction and Development
<b>ICM</b>	Integrated coastal management
<b>IC-VCM</b>	The Integrity Council for the Voluntary Carbon Market
<b>IERS</b>	International emissions reduction standard
<b>ILUA</b>	Indigenous land use agreement



<b>iQoliqoli</b>	Traditional coastal fishing grounds and associated rights
<b>ITMO</b>	Internationally traded mitigation outcome
<b>iTaukei</b>	Indigenous Fijians
<b>IVSC</b>	International Valuation Standards Council
<b>IVEM</b>	Institute of Valuation and Management
<b>LEDS</b>	Low Emission Development Strategy
<b>LMMA</b>	locally managed marine area
<b>LOU</b>	land owning unit
<b>MMG</b>	Mangrove Management Guideline
<b>MNI</b>	Matters of national importance
<b>MoF</b>	Ministry of Forestry
<b>MoFin</b>	Ministry of Finance
<b>MoP</b>	Meeting of the Parties (UNFCCC)
<b>MPA</b>	Marine protected area
<b>MRV</b>	Measuring reporting and verification
<b>MTA</b>	Ministry of iTaukei Affairs
<b>NBSAP</b>	National Biodiversity Strategy and Action Plan for Fiji 2020
<b>NDC</b>	Nationally determined contributions
<b>NGO</b>	Non-government organisation
<b>OPM</b>	Office of the Prime Minister
<b>P</b>	Proponent
<b>REDD+</b>	Reducing Emissions from Deforestation and Forest Degradation
<b>REDD+SC</b>	REDD+ Steering Committee
<b>SDG</b>	Sustainable Development Goal
<b>SESA</b>	Strategic, environmental and social assessment
<b>SIS</b>	Safeguard Information System
<b>TLTB</b>	iTaukei Land Trust Board
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>Vanua</b>	land that a person is connected to
<b>VCU</b>	verified carbon unit
<b>VEC</b>	Village Environmental Committee
<b>VKB</b>	Vola ni Kawa Bula
<b>VMMC</b>	Village Mangrove Management Committee
<b>YMST</b>	Yaubula Management Support Team

## EXECUTIVE SUMMARY

The Government of Fiji has in place since January 2021 an agreement with the World Bank's Forest Carbon Partnership Facility (FCPF) and a consequential Emissions Reduction Payment Facility exists to provide incentives and reward efforts to reduce carbon emissions from forests (not including mangrove forests) under Fiji's REDD+ Emissions Reduction-Program (ER-P).

Blue carbon emission reduction projects are now being considered having regard to Fiji's natural resources, the superior ability of mangroves and seagrass to sequester and store carbon (over terrestrial forests), the need and demand globally to mitigate greenhouse gas emissions in the face of persisting climatic changes and their impacts, the ecosystem services benefits to Fijians in preserving and enhancing mangrove forests and seagrass beds, other (including financial) benefits that could flow to Fijian communities from engaging in appropriately governed and regulated blue carbon emission reduction projects and trading, Fiji's obligations under the Paris Agreement of the UN Framework Convention on Climate Change, the Aichi Targets of the UN Convention on Biological Diversity and the 2030 Agenda for Sustainable Development (the Sustainable Development Goals).

Fiji has extensive areas of mangroves and seagrass, but sufficient work is yet to be done to understand the likely extent, for baselines to be established. This work, together with a greater understanding of the extent of the capacity for the sequestration and storage of blue carbon in Fiji is required before blue carbon projects may be developed.

The indigenous peoples of Fiji (iTaukei) own almost 90% of the land (communally held in landowning units) and traditionally hold coastal fishing and other rights in coastal areas (*iQoliqoli*); land and *iqoliqoli* rights being protected constitutionally. Mangroves and seagrass grow in coastal areas – the foreshore and reef lagoons. The land is State land, managed by the Department of Lands, but recognition of traditional rights is generally observed.

The UN Declaration of the Rights of Indigenous Peoples (UNDRIP) has been adopted by the Fiji Government and in 1998 the Government acceded to the ILO Convention No. 169 on Indigenous Peoples. In consequence it is bound to observe the rights of its indigenous peoples including their right to be consulted to obtain their free and informed consent prior to any proposed project that might impact on their lands, territories or resources. The Fiji Government acceded to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995 and in doing so affirmed the national commitment to advance the situation of women in Fiji.

Coastal communities and *iqoliqoli* rights holders have traditionally managed the coastal resources and it is essential that they are engaged in blue carbon projects from the outset, either as initiators, or as collaborators or partners, involved in the design, management and implementation.

The coastal areas of and ocean surrounding Fiji are matters of national importance given the location of this island nation and the reliance of its inhabitants on healthy marine and coastal ecosystems for their physical, cultural and economic wellbeing. Protection is afforded by the *Environment Management Act 1995*.

The *Climate Change Act 2021* was enacted in 2021. Although not yet in operation, it provides for the

implementation of Fiji's commitments under the UNFCCC, including establishing one system of governance and accounting for all emissions reduction projects, programmes and activities. In the result, all emission reduction projects would be nested and brought into account under the one national system.

By the *Climate Change Act*, a right to carbon sequestered and stored in vegetation and soil is established, separate from the land ownership. In the context of blue carbon where the land is owned by the State of Fiji, this would result in a blue carbon right (termed under the Act a 'carbon sequestration property right') able to be held by the proponent or developer of a project to enhance the storage and sequestering of carbon in mangrove forests and seagrass beds resulting in the generation of carbon credits or emissions reduction units, convertible after verification to tradeable mitigation outcome units. Existing legislation would require that a lease be granted for foreshore land with accommodation for *iqoliqoli* rights and the interests of adjoining or abutting landowners addressed for a blue carbon project. The Report discusses whether this is the optimal approach.

An alternative approach to carbon rights - that being the status quo, namely that the right to blue carbon remains with the land owner - is also discussed. While this has the superficial appeal of simplicity, in reality it would mean that every proponent who has permission of the landowner to develop a blue carbon project and trade the generated carbon credits would have to have that permission recorded in some form of authority sufficient to give the proponent an unassailable right to ownership of the carbon credits to enable trading. A leasehold authority is discussed, including the pros and cons in the context particularly of mangrove protection and restoration and *iqoliqoli* rights.

For the purposes of entering into the Agreement with the World Bank's FCPF, the Fiji Government was required to have settled on a benefit sharing mechanism and plan for REDD+ projects under Fiji's REDD+ ER-P. The final version of this is referred to in this Report as the REDD+ BSP 2021. It was finalised after extensive consultation with community and stakeholder representatives. In the interests of consistency of approach and having regard to the fact of the consultation, the Study resulting in this Report focussed not on drafting a new benefit sharing plan for the proceeds of blue carbon credits resulting from Fiji blue carbon emissions reduction projects, but on adapting the existing REDD+ BSP for blue carbon.

The Study had to take into account the existing legislative requirements and thus the likely duty on the part of a proponent to compensate *iqoliqoli* rights-holders and/or abutting/adjoining landowners. Discussion of the most appropriate approach to compensation resulted in a recommendation that a negotiated benefits agreement approach consistent with modern policies elsewhere towards compensable rights of indigenous peoples would be the fairest and most efficacious, and consistent with international law regarding indigenous peoples' rights.

Recommendations are made in respect of legislative change and regulations that it is concluded would be necessary for a success of blue carbon emission reduction projects. These encompass the recognition that ridge to reef regulation and management is essential for the health of mangroves and seagrass and that the governance of mangrove resources in Fiji needs an improved approach at executive level and a national management plan. The primary legislative change recommended is to include mangrove within the meaning of 'forest' (as it is in the *Climate Change Act*). This will be a step on the path to blue carbon projects being included under Fiji's REDD+ umbrella, as well as clarifying which department has primary responsibility for their management as a resource.

## RECOMMENDATIONS

### General

1. The REDD+ Policy and Fiji's REDD+ ER-P be amended to include blue carbon projects.
2. The Forest Act be amended to incorporate the MoF responsibilities with respect to the REDD+ Programme referenced in section 48 of the *Climate Change Act* and that regulations be made.
3. The *State Lands Act (Lease and Licences) Regulations 1980* be amended, as relevant to the foreshore and inland waters to facilitate blue carbon emission reduction projects in mangrove areas and seagrass beds.
4. The *State Lands Act (Lease and Licences) Regulations 1980* be amended, to enable the proponent and the rights owners to negotiate an agreement with conditions such as the continued protection of existing rights and that no rights are extinguished permanently for the purposes of the blue carbon project, in lieu of compensation (for the temporary loss of (some) iqoliqoli rights occasioned by a blue carbon project) to iqoliqoli owners as an alternative to a waiver and lease.
5. A benefit sharing plan for REDD+ blue carbon ER projects follow generally the national BSP (2021) for REDD+ ER-Program, adapted as appropriate for blue carbon.
6. Review and strengthen the *Environment Management Act* (as recommended by the National Adaptation Plan) and *Environment Management (EIA Process) Regulations 2007* to ensure they are fit for purpose in particular having regard to:
  - i. The need to promote ridge to reef management of natural resources to avoid pollution from land-based sources of mangroves and seagrass, in the interests of their health and the success of blue carbon projects; and
  - ii. That mangroves and seagrass are part of Fiji's coastal environment, the preservation of which is a matter of national importance.
7. In the **alternative scenario** where a lease would be necessary, the *State Lands Act (Lease and Licences) Regulations 1980* be amended to provide that the payment of compensation may be effected by the registration by the lessee of a blue carbon agreement, being an agreement reached through negotiations in good faith between the lessee and the iTaukei landowners of adjoining or abutting lands that includes as a component compensation for the infringement of rights, whether monetary or partly monetary and partly non-monetary.

### Mangroves

8. A regulation be drafted under the *Climate Change Act* specifically addressing the requirements for blue carbon (mangrove) projects, in consultation with the Ministry of Land and Mineral Resources, the Ministry of Forestry and the Ministry of iTaukei Affairs.
9. The *Forest Act* be revised to include that:
  - the meaning of 'forest' includes mangrove forest; and
  - mangrove forests be permanently protected including an offence provision.
10. The Mangrove Management Committee be reconvened.
11. Formally adopt a Mangrove Management Plan.

### Seagrass

12. Amend the *Climate Change Act* to enable the Director, CCD to consult an expert within the appropriate agency prior to making a decision in respect of a blue carbon (seagrass) ERP, consistent with the requirement to consult the Conservator of Forests for a forest ERP.
13. A regulation be drafted under the *Climate Change Act* specifically addressing the requirements for blue carbon (seagrass) projects, in consultation with the Ministry of Lands and Mineral Resources, the Ministry of Fisheries and the Ministry of iTaukei Affairs.
14. The *Fisheries Act* be amended to provide permanent protection for seagrass meadows including an offence provision.

# 1. INTRODUCTION

In January 2021, the Government of Fiji signed an agreement with the Forest Carbon Partnership Facility (FCPF), based at The World Bank, facilitating results-based payments for increasing carbon sequestration and reducing emissions from deforestation and forest degradation. Fiji signed an Emissions Reduction Payment Agreement (ERPA) with the FCPF that is intended to reward efforts to reduce carbon emissions from deforestation and forest degradation, having developed an inclusive benefit-sharing plan for REDD+ programmes after extensive consultations with stakeholders particularly local communities who should be fairly recognised and rewarded for their role in reducing emissions (The World Bank, 2021).

The FCPF Agreement is for 5 years and relates to Fiji's existing REDD+ Emissions Reduction Program (ER-P) that does not include blue carbon emissions reduction projects, but only specified terrestrial forest projects. The four activities proposed within Fiji's Forest ER-Program include Sustainable Forest Management, Sustainable Land Management or Climate Smart Agriculture, Forest Conservation & Tree Planting, and plantations establishment by the Fiji Hardwood Corporation Limited (FHCL) and Fiji Pine Limited (FPL), coupled with alternative livelihoods that will be of benefit to the communities who choose to participate.<sup>1</sup>

Subsequently but anticipated, Fiji's comprehensive *Climate Change Act 2021* was enacted, but is not yet in force. The Act is awaiting the drafting of regulations and it is understood, is under fresh consideration by the current Government.

This Report is the culmination of a Study considering the nature of blue carbon and how it could be possible for Fiji to engage in or encourage, the development and implementation of blue carbon projects, specifically for mangroves and seagrass meadows, for the benefit of the Fijian people. The context is Fiji's existing legislation, particularly the *Climate Change Act*, and Fiji's policies, particularly those relating to human rights, equity ('no-one will be left behind') and the rights of indigenous peoples, as well as the United Nations Sustainable Development Goals (SDGs).

The Report considers briefly the state, use and ecosystem and carbon sequestration benefits of mangroves and seagrass in Fiji, considering this information to be important context for the Study. This is followed by more contextual material, namely the nature of land tenure and other property rights relevant to blue carbon emission reduction projects in Fiji; specifically *iqoliqoli* rights.

Aspects of the rights accorded in the Constitution and other relevant legislation and policies, and recent developments are summarised, followed by a review of the international law principles endorsed in the adoption by most nations of the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* and the *Convention on the Elimination of Discrimination Against Women (CEDAW)* and their implementation in Fiji.

The property right to carbon sequestered or stored in biomass and soil underpins the concept of carbon credits that could be generated by blue carbon emission reduction projects and subsequently traded for financial benefit – benefits that if shared in an appropriate manner could in a variety of ways assist Fijians towards realising the Sustainable Development Goals of critical importance to them. The Report considers the property right to carbon and how a carbon project might be initiated, carbon credits generated and traded.

<sup>1</sup> <https://fjireddplus.org/forest-conservation-with-fijis-forestry-er-program/>

Of critical importance for the value of carbon credits in the marketplace is their quality and the integrity of the system in which they have been registered. These matters are of central importance to engender confidence in buyers in the marketplace, whether the World Bank or corporate commercial entities, for example, and the Report reviews Fiji's proposed approach in this regard.

A benefit sharing plan (BSP) clarifies how carbon funded benefits linked to emission reductions performance are used to provide benefits to stakeholders (such as different levels of governments, the private sector, and communities) and the way such benefits are distributed at each stakeholder level. The BSP needs to specify vertical allocations between national and local level stakeholders, and horizontal allocations between and intra communities, households, private sector, and other stakeholders. It might also clarify the full set of institutional arrangements, governance structures and institutions that distribute finance and other net benefits from emission reduction project implementation and identify the flow of funds and legal arrangements.

As compensation is presently a requirement where foreshore land is temporarily alienated, various models are explained and considered before a conclusion is reached. Given the recent finalisation of the REDD+ BSP (July 2021) developed for the purposes of obtaining access for Fiji to the Carbon Fund through the FCPF Agreement for emissions reduction projects under the Fiji REDD+ Programme the Study considered whether this BSP, suitably adapted having regard to the fact that any blue carbon projects of necessity would be undertaken on State land with *iqoliqoli* rights-owners potentially impacted, could apply to the sharing of benefits obtained from the successful implementation of blue carbon projects. The 2021 REDD+ BSP is reconsidered in the context of blue carbon projects, but not extensively to 'reinvent the wheel' as far as dictating institutional arrangements, governance structures and institutions to distribute finance and other net benefits from blue carbon project implementation.

## 2. BACKGROUND

In November 2012, under the auspices of the Secretariat of the Pacific Community (SPC) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and as part of a regional REDD+ Project for Climate Protection through Forest Conservation in Pacific Island Countries, the discussion paper *REDD+ and Forest Carbon Rights in Fiji: Background Legal Analysis* was completed (the 2012 Trenorden Report). The purpose of the paper was to commence a discussion on the relevance of carbon rights for REDD+ and to identify the options for ownership of forest carbon rights.

In 2019, Conservation International commissioned two separate studies to assist the Fiji Government in enabling the REDD+ Emissions Reduction Programme (ER-P), one of which was to revisit the 2012 Trenorden Report and identify gaps to enable the Government of Fiji to a) assign property rights to forest carbon and b) to transfer Emission Title to a third party while respecting the land and resource tenure rights of the potential rights-holders, including *iTaukei* and non-*iTaukei*. The other was to prepare a BSP for the benefits provided by REDD+ projects.

Since the 2019 report was completed, the legislative and policy framework around climate change in Fiji has been advanced, particularly with the enactment of the *Climate Change Act*. This Act is not yet in force, no date having been appointed by the relevant Minister by notice in the Gazette for its coming into force.

Only forest carbon was considered in the 2019 Report; mangroves and seagrasses (blue carbon) were not part of the terms of reference despite being included in Fiji's Forest Policy Statement (2007).

It has been observed that high quality blue carbon projects and credits optimize outcomes for people, nature, and climate in a transparent and equitable way, and that these projects (1) sequester and store carbon with high fidelity; (2) restore the ecological integrity and resilience of the ecosystem in question; and (3) open pathways for local and indigenous communities to equitably participate in and benefit from the voluntary carbon market (Conservation International, 2022).

In 2020 Fiji updated its Nationally Determined Contribution (NDC) and submitted to the (United Nations Framework Convention on Climate Change (UNFCCC) secretariat. While the mitigation targets remain firmly focussed on reducing emissions from the energy and transport sectors, and energy efficiency improvements economy-wide, Fiji has committed to adaptation targets including the following:

*Target 10:* To conserve natural environment and biodiversity wealth enabling long-term provision of ecosystem services, including carbon sequestration potential.

*Target 11:* To plant 30 million trees (including mangroves (Watling, 2021)) by 2035.

The NDC expanded upon this commitment in stating that Fiji will prioritize the conservation and protection of its marine biodiversity and critical ocean ecosystems including measures for promoting ... coastal protection, preservation and enhancement of its mangroves, and engaging with coastal communities to promote sustainable practices and livelihoods.

In January 2021, the Government of Fiji signed an agreement with the FCPF, based at The World Bank, facilitating results-based payments for increasing carbon sequestration and reducing emissions from deforestation and forest degradation. Fiji signed an ERPA with the International Bank for Reconstruction and Development (IBRD) that is intended to provide incentives and reward efforts to reduce carbon

emissions from deforestation and forest degradation during the period 2020-2025, having developed an inclusive national benefit-sharing plan for REDD+ emissions reduction projects (BSP 2021) after extensive consultations with stakeholders (The World Bank, 2021).

Presently neither the REDD+ Policy nor the REDD+ category of projects under Fiji's ER-P to benefit from the FCPF Agreement includes mangrove or seagrass projects. Mangroves, not being included in the meaning of 'forest' under Fiji's forest legislation, were not included when calculating the forest reference emission level for Fiji (The World Bank, 2020).

Although not yet operational, Part 10 of the *Climate Change Act* addresses emissions reduction projects, programmes and activities, whether involving forests, blue carbon or other project types.



### 3. STUDY OBJECTIVES AND TASKS

This Report is the final comprehensive report of the Study, having taken into account feedback on earlier drafts. The objectives of this Study were as follows:

1. *Assess the status of the legal rights over “blue carbon” in Fiji (carbon that is stored and sequestered in seagrasses and mangroves) and make recommendations as to what legal measures are required to enable the use and transfer of carbon rights, to enable carbon projects and carbon credits trading for international and domestic voluntary and compliance markets.*
2. *In alignment with the first objective, develop benefits-sharing recommendations for carbon sequestration property rights within blue carbon ecosystems in Fiji to ensure that monetary and non-monetary benefits are shared between the various stakeholders within the context of blue carbon trading for international and domestic voluntary and compliance markets. This should include the design of clear, effective and transparent benefit sharing mechanisms, principles and channels, with support from all relevant stakeholders and communities.*

The general principles required to be applied are set out in the Terms of Reference (TOR) and included in Annex 1 to this Report.

## 4. THE STATE OF FIJI'S BLUE CARBON RESOURCES

### 4.1 The Nature of Blue Carbon

Mangroves and seagrasses absorb and store carbon, both in biomass and in sediment, and therefore act as a 'sink' for carbon dioxide in the atmosphere. It is now recognised that coastal ecosystems such as mangrove, tidal marshes and seagrass meadows store more carbon per unit area than terrestrial forests and their role in mitigating climate change is significant (International Union for Conservation of Nature).

The estimates are that mangroves in general store at least 4 and up to 10 times the volume of carbon compared with terrestrial forests, but the carbon capture and storage ability of mangrove ecosystems varies with location (Cameron, Kennedy et al). Recent studies in Fiji suggest that carbon storage across its mangrove ecosystems (including soil carbon to a depth of 1.5m) equates to 73.3% of carbon stored in the terrestrial forests (not including soil carbon), while occupying just 7.3% of the total area, and conclude that Fiji's mangroves are highly efficient, dense carbon sinks, suitable for inclusion into Fiji's climate change mitigation strategies (Cameron, Kennedy et al). However this level of density in carbon storage is only achieved after many years of accumulation (Watling, 2021).

Seagrass has high below-ground biomass which effectively traps and buries organic carbon for thousands of years. While the carbon sequestration rate of seagrass varies according to location and other factors, they provide very efficient storage of carbon with seagrass-detritus carbon contained in sediments has been reported to exceed carbon stored in living plants by threefold (Brodie et al).

The coastal ecosystems must be protected, lest the carbon sink capacity is lost or adversely affected (IUCN). Their carbon storage capacity can increase over time as soils accrete in the location, compared with terrestrial forests and other vegetation sinks, that become saturated over time (Bell-James).

It has also long been known that coastal ecosystems provide valuable ecosystem services such as stabilising shorelines, mitigating storm damage, providing water filtration services and fish nurseries and habitats, in addition to providing a resource for customary users. Mangroves are the primary source of nutrients for aquatic organisms and thus their survival is critical for coastal fisheries (Lal, 1984). Seagrasses also have a close association with fisheries, particularly as habitats.<sup>2</sup> This is recognised in summary fashion in the *Climate Change Act* (Brodie et al).

High quality blue carbon projects can benefit local communities and assist to mitigate against climate change, in addition to restoring or rehabilitating natural ecosystems for their value.

Marine ecosystems are susceptible to differing threats and impacts compared with terrestrial vegetation which may impact the success of carbon sequestration projects. For example, seagrass may suffer from terrestrial activities which impact on the marine water quality through the input of nutrients. Thus, separate methodologies may be prudent for each of terrestrial and marine carbon sequestration projects, due to distinctions between the ecosystems (Bell-James).

As we know, sequestered carbon is now valuable and by the enacted-but-not-yet-in-operation law a 'carbon sequestration property right' (CSPR) is a component in the 'bundle of rights' that constitute property rights.<sup>3</sup> If the *Climate Change Act* as enacted is gazetted into operation, a CSPR will be a commodity, that is an exclusive and distinct legal right to 'carbon sequestration and stocks',<sup>4</sup> and once registered, be traded in the form of carbon credits.

<sup>2</sup> Brodie, G., Holland, E., N'Yeurt, A., Soapi, K. & Hills, J. (2020).

<sup>3</sup> Ownership of land is usually described as 'a bundle of rights', including the right to sell or dispose of the land, the right to lease it, the right to mortgage it, the right to sell or dispose of the fruits of the land, and the right to the reversion of the leasehold, etc.

<sup>4</sup> *Climate Change Act*, s.45

### 4.1.1 Mangroves in Fiji

Fiji has been assessed as having the third largest mangrove area (at an estimated 424.6km<sup>2</sup>) in the Pacific after Papua New Guinea and Solomon Islands, with the Rewa, Ba and Labasa deltas together holding 10,683 ha or 28% Fiji's mangrove forests (Mangubhai et al, 2019).

It has been asserted that Fiji's mangrove areas have decreased in size over time (i.e., from 483.17km<sup>2</sup> in 2000 (Watling, 2013) to 424.6km<sup>2</sup> in 2019), due to poor planning of coastal development (Mangubhai et al, 2019), but also from the impact of cyclones. The extent of mangrove coverage in Fiji is not agreed; the 2019 Fiji Ministry of Forestry ER-P Document submitted to the FCPF Carbon Fund listed mangrove coverage in Fiji as 541.89km<sup>2</sup> while recent scientific studies (Cameron, Maharaj, et al) deduced that mangrove coverage in Fiji is 65,243 ha (652.43km<sup>2</sup>). Overall there is a 40% difference between the highest and lowest estimates of mangrove coverage since 2013 (Watling, 2021), suggesting that baseline mapping needs to be carried out using standard data and methodologies for a more reliable estimate of mangrove cover before consideration of blue carbon projects for mangroves (Watling, 2021; Avtar et al).

Mangroves have traditionally been used and continue to be used extensively by Fiji's indigenous people, the iTaukei. It has been estimated that 35-40% Fiji's population relies to some extent on coastal mangroves and fisheries and are vital for women, enabling them to feed their families (Ministry of Forestry, *SESA*, 2019).

The 2013 draft Mangrove Management Plan (not adopted as yet) acknowledged that although coastal village communities have no ownership rights to mangrove or its resources, they are beneficiaries of mangrove services and also custodians who have a deep understanding of mangrove ecology and utilisation, but that the advent of the cash economy has seen mangroves become important in supporting rural communities (Watling, 2013 citing Thaman 1998).

Communities have witnessed mangroves being impacted by the degradation of catchment areas, pollution and outright loss through conversion for sugar and other agricultural plantations and tourism developments, and also cyclones. Until recently it had been unclear as to whether natural or anthropogenic factors have the greater impact on mangrove areas (Watling, 2013). However, based on online GIS datasets and a time-series analysis of relevant Landsat composite images for the period 2000-2018 and other tools it has been deduced that mangrove loss has been primarily due to natural factors (cyclones) followed (at some distance) by tourism development (Cameron, Maharaj et al).

The significance of mangroves was acknowledged in the Forest Bill No. 13 of 2016 in which it was proposed to designate mangrove forests as 'protection forests' (forest areas that are maintained under permanent forest cover, especially dedicated to the protection and maintenance of biological diversity and ecological integrity ... where forest use, if any, is restricted to harvesting (of) non-wood forest products, eco-tourism, carbon storage, and research).

According to Watling (2013) at the village level there is a need for new initiatives for the conservation, protection and where necessary reforestation of mangroves, and villagers will remain the key to such initiatives designed to appreciate and reward community conservation management rather than the expectation of community support 'in their own interests'.

Villagers and other mangrove users must be involved in the planning for any reforestation project and barriers to including women in the planning for a blue carbon project must be removed. Women may spend more time in coastal habitats like mangroves and shallow reef flats than men and so have likely developed a wealth of traditional knowledge about these environments which can assist to solve issues but without them (and other marginalized groups), the opportunity to access new, innovative solutions for coastal management is lost (Mangubhai, 2022)

Presently there is no endorsed policy or plan for the management of mangroves. As part of its strategy to reduce major threats to Fiji's coastal ecosystems the National Biodiversity Action Plan for Fiji 2020 (NBSAP 2020) calls for the national mangrove management plan to be finalised, gazetted and implemented.

Scientific studies undertaken in 2019 (Cameron, Kennedy et al, 2021) towards understanding not only the possible extent of mangrove coverage in Fiji but the causes of the negative impacts on mangrove forests as well as their carbon storage capacity, has concluded that Fiji's mangroves have high carbon sequestration potential, although the conclusions are qualified and not without dispute (Watling, 2021).

The Community-based *Management Guideline for Mangrove Rehabilitation and Restoration in Fiji (Mangrove Management Guideline)* released on 8 December 2022 (Tuiwawa, 2022), is a tool to potentially assist communities interested in mangrove restoration.

The thoughtful discussion paper by Dick Watling in response to the Fiji Low Emission Development Strategy 2018-2050 (LEDS), argues that mangrove afforestation of low-tide mud-flats is not a blue carbon project opportunity for Fiji (Watling, 2021).

Mangroves are not listed under forest in Fiji's Global Forest Resources Assessment (FRA) country report, partly because the areas of mangrove ... is located [sic] below the high tide water mark (i.e., not considered as land). Moreover, mangrove was not included in the forest reference level (FRL) because (i) at least three governmental agencies have regulatory jurisdiction over mangrove and, therefore, the MoF refrained from including mangrove in the FRL to avoid potential conflict between the agencies involved, (ii) mangrove may be considered under "Coastal Wetlands (Blue Carbon)" in the LEDS, and (iii) to ensure consistency with other reporting requirements (that is, FRA reporting) (Ministry of Forestry, ER-PD, 2019).

Fiji has been working on redesigning the National Forest Reference Level to integrate mangrove forest as a major carbon source and sink and the Fiji National Forest Inventory was expected to be including mangrove areas by this time (FCPF, Progress Update (CF20)).

#### 4.1.2 Seagrass in Fiji

Fiji has extensive seagrass beds on sandy areas of the fringing reef flats, generally located in intertidal and shallow sub-tidal parts of protected and soft shores (Department of Environment, 2011). They are important habitats for many fish and invertebrates including shellfish and are a feeding ground for turtles, significant for survival of these species (Sykes and Morris).

It is known that seagrass beds generally are significant coastal habitats also for their carbon storage ability, and as a major provider of ecosystems services such as coastal protection (i.e., wave energy reduction) and food security. They are highly productive biologically, efficiently recycle nutrients and support a variety of marine life. It has been estimated that 400 m<sup>2</sup> of seagrass can support 2000 tonnes of fish annually (Department of Environment, 2011), and in Fiji 8 of the 44 fish species highlighted as significant fisheries resources have a specific link to seagrass while others are linked to estuarine habitats within which seagrasses are likely to occur (Brodie et al).

According to the 2018 Fiji LEDS no sequestration studies had been carried out on, nor is there any baseline data available for seagrass meadows in Fiji (Ministry of Economy, 2018). While a 2004 study suggested Fiji enjoyed 16.5km<sup>2</sup> of seagrass coverage (Mangubhai et al 2019, citing Waycott et al, 2004), that figure has more recently been considered a gross underestimation and there is an identified need for seagrass mapping on a national scale of Fiji waters (Mangubhai et al, 2019, citing Brodie). Further to the LEDS statement, mapping of seagrass at 4 locations in Suva Lagoon was undertaken in 2017 by a research student for a MSc thesis (Chand, 2019), but national scale mapping is yet to be undertaken.

The main threats to seagrass habitat have been identified as sediment and nutrient runoff from human-altered water catchments through development of all kinds with its attendant waste, and storm surge and flooding, together with a general lack of understanding of seagrass ecosystem values and the omission of

seagrass from key regional and national policy instruments (Mangubhai et al, 2019). Seagrass beds have been destroyed or compromised by dredging and excavation works through channels and reefs for tourist resort developments.

Recent research suggests that seagrass meadows being a reliable source of fish, are likely to be the regular fishing location of choice for and depended upon both by low-income households for economic and food security, and high-income households with greater access to fishing resources for the high rewards (volume of catch) (Jones et al). That indicates a social-ecological system in which seagrass and consequently fish species are at risk of modification from people, and they are at risk from seagrass depletion and its consequences (as with mangroves) (Mangubhai et al, 2019).

A recent Fiji-specific study also highlighted the dependence of a vulnerable sector of Fijian society (Indo-Fijian small-scale fishers), on the ecosystem services provided by coastal fisheries and their particular vulnerability during the recent economic downturn (Mangubhai et al, 2021).

The principles in the *Climate Change Act* recognise the critical nature of oceans to the livelihoods of Fijians generally, and the need to promote the Sustainable Development Goals (including SDG 10 – reducing inequality within the country: ‘no-one will be left behind’) in climate change action.

#### **4.1.3 Matters affecting coastal ecosystems**

As noted above, land based activities can affect the coastal ecosystems through pollution from runoff from diffuse sources. Identifying and managing pollution sources is essential to the success of blue carbon projects.

##### **Ridge-to-reef management and sustainable governance**

To manage and restore mangroves and seagrasses and the ecosystems of which they are a part, sustainable resource governance through an integrated systems approach to land and river catchment management, and awareness raising and training, is necessary.

The ridge-to-reef or island system approach is recommended in the National Biodiversity Strategy and Action Plan for Fiji (NBSAP) 2020 under Principle 5 ‘Adopting an ecosystem-based approach’ and is being implemented with communities by the Department of Environment working at provincial, district and village levels, and through various projects, such as the GCF Forest and Landscape Restoration for climate benefits and resilience in Fiji (Green Climate Fund, 2021).

##### **Coastal areas protection and local communities**

Fiji is a party to the *UN Convention on Biological Diversity* (CBD) and in consequence is required to develop a NBSAP that upholds the three pillars of the CBD (i.e. biodiversity conservation, sustainable use, equitable benefits sharing), and to align to Aichi Target 11 that calls for at least 17% of terrestrial and inland water areas and 10% coastal and marine areas to be conserved by 2020. The NBSAP 2020 informs that the Fiji targets include that 100% of traditional fishing grounds (*iqoliqoli*) are effectively managed within locally managed areas by 2025.

The NBSAP 2020 establishes that an essential principle underpinning the Biodiversity Strategy is acknowledgement of community rights over natural resources and the need to actively involve local communities and resource owners in planning, implementation, monitoring and evaluation of biodiversity conservation initiatives.

Fiji’s updated NDC (2020) includes as an adaptation target that 30% of its exclusive economic zone (EEZ) will be established as marine protected areas (MPAs) by 2030. This is further addressed in the National Ocean Policy.

## Locally Managed Marine Areas (LMMA)

A locally managed marine area (LMMA) is defined as an area of nearshore waters and coastal resources that is largely or wholly managed at a local level by the coastal communities, land-owning groups, partner organizations, and/or collaborative government representatives who reside or are based in the immediate area (Govan et al, 2019).

There is a strong network of LMMAs in Fiji (FLMMA) that assists to manage coastal resources, based on iTaukei customary rights to set the rules and uses of coastal areas (*iqoliqoli*) (*National Ocean Policy*, 2020). In 2020 there were 460 traditionally managed inshore areas covering 80% inshore areas (*National Ocean Policy*, 2020), incorporating management tools such as MPAs and management plans. The FLMMA network cooperates with provincial government authorities in the establishment of MPAs and promotes sustainable livelihood projects to underpin conservation efforts and compensate local fishers during tabu periods. These projects include mangrove rehabilitation and tree nurseries (UNDP, 2012).

One of the NBSAP 2020 targets is to have 100% of inshore traditional fishing grounds (*iqoliqoli*) effectively managed within LMMAs by 2025 (Department of Environment, *NBSAP*, 2020).

## Mangrove protection

Mangroves grow predominantly in land vested in the State and managed by the Department of Lands. The *Climate Change Act* interpretations include mangrove forest in the meaning of 'forest' and thus the Act as enacted requires that a carbon sequestration right for a proposed emissions reduction project (ERP) involving mangroves receive the consent of the Conservator of Forests (CoF),<sup>5</sup> who must also be consulted before a determination is made on a proposed ERP<sup>6</sup>. The Ministry of Forestry (MoF) previously had a responsibility for mangroves, and it was proposed earlier that they be categorised as protection forests within the responsibility of the Department of Forests.<sup>7</sup>

Despite the existence of the interdepartmental Mangrove Management Committee, it appears that responsibility for mangroves has fallen into a gap. There is no single government body or institution that is specifically dedicated to managing mangroves. There is a proposed mangrove policy or management plan advanced under the *Environment Management Act* 2005, but it is yet to be adopted by Government at the time of this Study.

## Environmental impact assessment (EIA)

Expertly assessed environmental impact reports and monitoring and enforcement of development with an approved EIA is of major significance in reducing land-sourced pollution affecting coastal ecosystems. Developments with likely significant impacts including coastal development must be the subject of EIA and approval by the EIA Administrator under the *Environment Management Act*.<sup>8</sup> Successful implementation of this system relies on qualified expert staff and adequate ongoing resourcing of the responsible public agency.

Recent criminal court convictions such as in *State v Freesoul Real Estate Development (Fiji) PTE Limited*<sup>9</sup> where the company was convicted and fined FJ\$1m for undertaking development (the clearance of 19ha mangrove forest on Malolo Island) without an approved EIA contrary to the *Environment Management Act*, and ordered to rehabilitate the area to the satisfaction of the Department, at its own expense (Sloan, 2022), suggest perhaps that there is now a greater emphasis on enforcement of EIA provisions in coastal areas.

<sup>5</sup> *Climate Change Act*, s.46(4)

<sup>6</sup> *Climate Change Act*, s.50(6)

<sup>7</sup> Forest Bill No. 13 of 2016

<sup>8</sup> *Environment Management Act*, s.27 and Schedule 2 Part 1

<sup>9</sup> *State v Freesoul Real Estate Development (Fiji) Pte Ltd* [2022] FJHC 201; HAC282.2021 (28 April 2022)

## 5. AN OVERVIEW OF LAND AND PROPERTY TENURE SYSTEMS IN FIJI

### 5.1 Land tenure

In Fiji, approximately 89.75% of the land is owned communally by indigenous landowners (iTaukei), with 4% of all land held by the State (government) and the remainder (approximately 6%) is freehold land owned either by private individuals or companies (iTaukei Land Trust Board). The iTaukei land is registered under respective landownership units in the *Register of iTaukei Lands (Vola ni Kawa Bula (VKB))*, with boundaries and living members of the landowning units recorded.

iTaukei land may be owned by the chiefs or hereditary titular heads (*Na Ka Levu*) of tribes, the agnate descendants of a member of a tribe (*qele ni kawa*), the *itokatoka* (extended family unit), the *mataqali* (clan), the *yavusa* (tribe), or jointly by several *yavusa* (iTaukei Land Trust Board). Control of iTaukei land is vested in the iTaukei Land Trust Board (TLTB).<sup>10</sup>

iTaukei land cannot be alienated under the Constitution, but can be leased either through the TLTB or through the Land Bank (Ministry of Lands) for a maximum period of 99 years.

Women have full rights of inheritance and property ownership by law, but local (customary) authorities often excluded them from the decision making process on the disposition of iTaukei land. Women also have the right to share in the distribution of proceeds from the lease of iTaukei land, but this right was seldom recognized by the authorities (Fiji 2021 Human Rights Report).

In general, iTaukei women have the same legal rights as men to inherit and have access to land and non-land assets regardless of their marital status, but some traditional inheritance norms in decision-making processes concerning land use often prevent this (Asian Development Bank).

### 5.2 *iQoliqoli* rights

iTaukei also possess what has been described as a communal fish harvesting right (Sloan and Chand) or access right to harvest fish resources (Mangubhai et al, 2019) in the coastal fisheries (*iqoliqoli*) of Fiji. While the *iqoliqoli* has been defined as customary fishing grounds and the rights to access for fishing purposes and to take fish, it has been acknowledged that in practice the *iqoliqoli* owners exercise traditional fisheries management tools (Sloan and Chand). These rights are held by the customary owners of the adjacent land (and with the passage of time and mobility the customary owners now include persons in other *mataqali* who may be living far from the location of the *iqoliqoli* rights).

More recently the *iqoliqoli* was described as the iTaukei people's 'traditional rights to set the rules and uses of coastal areas' (National Ocean Policy) but Sloan and Chand note that these rules such as a tabu or 'no-take' zone declaration cannot bind more than the *iqoliqoli* owners, are informally declared and can be revoked by the community, and that the rights-holders have no power to declare a MPA under fisheries or other legislation.

Prior to colonial governance, marine tenure was held communally by relevant (usually adjacent) groupings of iTaukei and considered to be an exclusive proprietary right over adjacent lagoons, reefs and mangroves (Sloan and Chand). Some, perhaps many iTaukei land owning groups regard the *iqoliqoli* as theirs, and they wish to have legal authority over it (Bryant-Tokalau). To state the obvious, *iqoliqoli* rights are very important to many iTaukei. However, *iqoliqoli* rights do not extend to control over the coastal and foreshore areas and indeed the State retains the sovereign rights to explore, exploit, conserve and manage natural resources of the seabed and subsoil.<sup>11</sup>

<sup>10</sup> iTaukei Lands Act s.4

<sup>11</sup> State Lands Act 1945, Continental Shelf Act 1970.

*iQoliqoli* or customary fishing rights are recognised as a property interest and if registered in the Register of iTaukei Customary Fishing Rights (a record of *iqoliqoli* boundaries and the rights owners), are protected. The *iqoliqoli* areas (numbering 411) are located within Fiji's near shore waters. The foreshore and seabed are owned by the State under the *State Lands Act*. Management rights and the right of exclusion rests with the State, not the adjacent land-owning iTaukei group. Any person who is not a member of the customary rights owning group who wants to fish on the reef casually (except with hook and line/spear/small portable fish trap) and anyone wanting to fish commercially may only do so with a permit issued by the State Fisheries Commissioner who is required to consult the *iqoliqoli* owner. In practice the Commissioner usually only grants a permit where the *iqoliqoli* owner has agreed (Sloan and Chand). Thus the State acknowledges and respects customary law but without ceding the State's authority.

Both men and women engage in coastal fishing but women are significantly involved in subsistence fishing. Women tend to fish in shallow-water reefs, lagoons, or estuaries for small fish and seafood for subsistence or income generation (Asian Development Bank).

### 5.3 Constitutionally guaranteed property rights

Ownership of iTaukei lands, Rotuman lands and Banaban lands is protected by the Constitution which confirms that ownership remains with the customary owners of the land and prohibits permanent alienation except to the State under the public acquisition provisions.<sup>12</sup>

State acquisition of property must be in accordance with a written law and for a public purpose.<sup>13</sup> Where acquisition is permitted, compensation for the property taken must be agreed or as determined by a court or tribunal after having considered all the relevant factors.

Registered customary fishing rights are protected by the Constitution as property interests, evidenced by the existence of a benefit sharing mechanism (BSM) whereby registered *iqoliqoli* rights holders have a constitutional entitlement to a fair share of the royalties paid to the State resulting from any grant by the State to extract minerals from land and seabed.<sup>14</sup>

The Constitution also provides that all ownership of land, all rights and interests in land leases and land tenancies continue and cannot be diminished nor adversely affected by any law.<sup>15</sup>

### 5.4 Blue Carbon Rights

The 2013 Trenorden report *REDD+ and Forest Carbon Rights in Fiji* stated the following:

'In Fiji, foreshore land and the land under territorial waters is owned by the State. The State owns the foreshore which is between the mean high water and the mean low water marks. In Fiji most mangrove species grow in the foreshore zone. Mangroves frequently occur in conjunction with coral reefs and seagrass beds and there is interaction between them. As the mangroves in the foreshore zone, are growing on State land, they are owned by the State. ...

Some species of mangroves grow adjacent to the foreshore zone, in abutting land that is either iTaukei, State or freehold land. The trees will be owned by the relevant landowner in each case.'

<sup>12</sup> See Section 27 of the Constitution of Fiji 2013.

<sup>13</sup> Constitution of the Republic of Fiji, 2013 s27.

<sup>14</sup> See section 30 of the Constitution of Fiji 2013

<sup>15</sup> See Section 29 of the Constitution of Fiji 2013.



A subsequent observation was made:

‘Mangroves were designated as ‘forest reserves’ and managed by the Forestry Department, between 1933 and 1974 when responsibility for the foreshore was given to the Department of Lands (Watling, 1985). The Fiji Forest Policy Statement 2007 states that the Forestry Department would advocate for “the permanent conservation of mangroves to serve sustainable customary uses”.

Given the huge ecosystems services potentially provided by mangroves, exploring the legal means to capitalise on REDD+ opportunities for foreshore land through the medium of forest carbon rights is bound to reap benefits.’

The legal position regarding ownership of land in the foreshore zone remains the same as in 2013. It is owned by the State, as is the land constituting the seabed of the territorial waters of Fiji.<sup>16</sup>

The Fiji State also retains sovereign rights in respect of the seabed and subsoil to the extent of the outer limit of Fiji’s exclusive economic zone (extending from the baseline for a distance of 200 nautical miles)<sup>17</sup> and of the continental shelf.<sup>18</sup>

Mangroves and seagrass grow primarily in land that is State land, being the foreshore in the case of mangroves, and the soil under the coastal waters of Fiji in the case of seagrass.<sup>19</sup> Carbon is sequestered in the mangroves and seagrass and in the soil in which they grow.

State land may not be sold, but it may be set aside as iTaukei reserve.<sup>20</sup> Land that is foreshore or seabed land may only be leased for a specified purpose and cannot infringe existing or claimed public rights or privileges.

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<sup>16</sup> *State Lands Act 1945*, s.2

<sup>17</sup> *Marine Spaces Act 1978*, ss 6, 7, 9

<sup>18</sup> *Continental Shelf Act 1970*, s.3

<sup>19</sup> *State Lands Act 1945*, s.2

<sup>20</sup> *State Lands Act*, s.3

## 6. EXISTING POLICIES AND REGULATIONS RELATED TO THE LEGAL RIGHTS OVER CARBON AND LAND TENURE NATIONALLY

The TOR provides that benefit-sharing recommendations for blue carbon ecosystems will be guided by Fiji's legal and policy frameworks.

As it is essential that the approach to blue carbon projects be within the Fiji context, a brief summary of national laws and policies that are or could be relevant to coastal and foreshore areas and activities within those areas follows. There are also international obligations owed under various international instruments to which Fiji is a signatory.

### 6.1 Legal Frameworks/Legislation

#### Fiji Constitution

Constitutional rights in respect of land and customary fishing rights have already been described.

Other constitutional rights of Fijians include the right to a clean and healthy environment including 'to have the natural world protected for the benefit of present and future generations through legislative and other measures' and the right to health.<sup>21</sup> This right means that Fijians have a duty to each other and subsequent generations to protect healthy ecosystems and rehabilitate unhealthy or degraded ecosystems.

#### Climate Change Act 2021

This is the paramount legislation addressing climate change, although not yet in force. In enacting the *Climate Change Act*, the Fiji lawmakers have declared that there is a global climate emergency, announced Fiji will implement its obligations under the Paris Agreement, and set out a framework for a whole of government approach to address the climate emergency in Fiji, and recognise that climate change is a threat to the constitutional rights and freedoms of Fijians.<sup>22</sup>

The principles that must be applied by all responsible persons and bodies whenever making policy and implementing decisions under the Act include<sup>23</sup>:

- respect for, promotion and consideration of the constitutional rights and freedoms;
- that domestic policies and measures to protect against climate change should be appropriate for Fiji and integrated with national development programmes;
- loss of income or livelihoods should be avoided or mitigated;
- respect, promotion of and consideration for:
  - the Sustainable Development Goals
  - gender equality and responsiveness, social inclusion and participation in decision-making

<sup>21</sup> S.40 (1) Constitution, but note the qualification in subsection (2) 'To the extent necessary, a law or administrative action taken under a law may limit, or may authorize the limitation of, the rights set out in this section.'

<sup>22</sup> *Climate Change Act*, s. 6, 7, 65.

<sup>23</sup> *Climate Change Act*, s.5

- the rights of persons, particularly women, people living with disabilities, the elderly, children, youth and vulnerable and marginalised groups and communities;
- recognition of the indigenous peoples, their respective land ownership, and their unique cultures, customs, traditions and languages;
- that oceans are critical to Fijians and must be healthy and urgently protected; and
- that climate change remains the single greatest threat to the peoples of Fiji and the Pacific.

The Act was informed by and aligned with current national policies, and in particular REDD+ policies which address forest sequestered carbon property rights in general and do not specifically address mangroves or seagrasses. However the Act is enabling as regards greenhouse gas (GHG) emission reduction programmes, projects and activities (ERPs); it does not limit the nature of ERPs.<sup>24</sup>

Blue carbon is given the meaning 'the carbon sequestered by coastal and marine ecosystems and stored in the form of biomass and sediments, including mangroves, salt marshes and seagrasses'.<sup>25</sup>

Part 10 of the Act establishes the concept of a carbon sequestration property right (CSPR) - a separate interest in land - and sets out the legislative framework for ERPs designed to generate emissions reduction units (ERUs) while clarifying in section 59 that there is no intention to limit the ability to undertake ERPs that are not designed to generate ERUs.

Under the heading *Transactions under international REDD+ programmes*,<sup>26</sup> for blue carbon ERPs the Government must compensate the TLTB or landowner as applicable (the State, for blue carbon), or a registered CSPR holder under an approved BSP, where the government has participated in a transaction under an international REDD+ programme.

Benefit sharing under the *Climate Change Act* is not defined, but underlying recognition of the concept can perhaps be inferred from a wider reading of specific provisions, for example, section 2 includes 'climate finance means money available for or mobilized by the State or non-State entities to finance climate change mitigation and adaptation programmes, actions, and interventions'. Guidance for benefit sharing may also be drawn from the meaning of sustainable development in the Act, which includes achieving the principles of sustainable development consisting of the precautionary principle; that of intergenerational equity; the conservation of communities, infrastructure, biological diversity and ecological integrity; that decision making processes should effectively integrate both long-term and short-term considerations, and improved valuation, pricing and incentive mechanisms should be promoted.

The *Climate Change Act* gives responsibility for the *development* of a benefit sharing arrangement for REDD+ forest ERPs (including mangrove forests) to the Minister responsible for forests who also has the responsibility to develop policies, procedures, and safeguards for the implementation of REDD+ and forest ERPs with all the safeguards to be developed in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>27</sup>

However the *approval* of a BSP for any transaction under international REDD+ programmes is the responsibility of the Minister for forests in consultation with the Minister responsible for lands.<sup>28</sup> The BSP for any transaction under international REDD+ programmes must:

- specifically take into account matters raised by landowners, owners of registered CSPR, communities, and other stakeholders in response to public consultations;

<sup>24</sup> See *Climate Change Act*, Part 10

<sup>25</sup> *Climate Change Act*, s.2

<sup>26</sup> *Climate Change Act* section 60(1)(c)

<sup>27</sup> *Climate Change Act* section 48

<sup>28</sup> *Climate Change Act* section 60(2)

- equitably and transparently recognize and reward landowners, CSPR owners and other stakeholders including women and minority groups for their contributions to the ERs achieved under the programme;
- clearly identify the beneficiaries of the plan and establish a mechanism for the distribution of payments for verified ERs; and
- identify the nature of the benefits to be distributed under the plan including whether they are monetary or non-monetary benefits.<sup>29</sup>

In Part 14 of the Act, the Minister responsible for finance may act as a conduit between donors, donors and sector recipients of climate finance,<sup>30</sup> and may grant incentives to persons that encourage and put in place measures for the mitigation of climate change including the reduction of GHG emissions.<sup>31</sup>

Public private partnerships are contemplated in Part 15 of the *Climate Change Act*, in that the Minister may establish a private sector advisory committee for purposes that include promoting and creating an enabling environment for public private partnerships that are consistent with achieving the objectives and principles of the Act.<sup>32</sup>

Regulations are yet to be made under the *Climate Change Act* in relation to specified aspects of ERPs. It is noted here that the regulation making power includes the prospect of a regulation specifically directed to a particular type of ERP.<sup>33</sup>

<sup>29</sup> *Climate Change Act*, s.60(3)

<sup>30</sup> *Climate Change Act* s.87(1)(a)

<sup>31</sup> *Climate Change Act* s.88(1)

<sup>32</sup> *Climate Change Act*, s 92

<sup>33</sup> *Climate Change Act*, s.111(3)(c) and (d)

## Other Relevant Legislation

A summary of other relevant legislation is in Table 1.

**Table 1:** Summary of other Relevant Legislation

Act	Summary
<p><b>Environment Management Act 2005</b></p>	<p>Binds the State and its application cannot be limited.</p> <p>Purposes are two-fold: to apply the principles of sustainable use and development of natural resources, and to identify matters of national importance (MNI) for Fiji.</p> <p>MNI include the preservation of the coastal environment, the relationship of iTaukei with their ancestral lands and waters, and the protection of human life and health.</p> <p>Seagrass beds and mangrove areas are ecosystems of national importance to Fiji, as part of the coastal environment which must be preserved.</p> <p>An environmental impact assessment is required – to be approved by the EIA Administrator for a development proposal that an approving authority has determined will cause significant or resource management impact, where the proposal could (in addition to other natural resources impacts):</p> <ul style="list-style-type: none"> <li>• result in the erosion of any coast or foreshore;</li> <li>• result in pollution of marine waters;</li> <li>• alter tidal action, wave action currents or other natural processes of the sea including mangrove areas and foreshore;</li> <li>• harm or destroy designated or proposed protected areas including mangrove conservation areas, fishing grounds, fish nursery areas; or</li> <li>• destroy or damage an ecosystem of national importance including a sea-grass bed, mangrove swamp, pelagic ecosystem and estuary.</li> </ul> <p>The Department of Environment is charged with monitoring the conditions of approval of EIAs, preventing of dumping and pollution, and monitoring the status of mangroves as a natural resource.</p>
<p><b>Fisheries Act 1941</b></p>	<p>Applies to all Fiji waters and enables the grant of a personal licence to take fish for trade or business and the registration of a fishing vessel.</p> <p>Preserves and protects the customary fishing rights of the iTaukei people in relation to reefs and kai (cockle) and shellfish beds, where those rights have been registered; facilitates the establishment of restrictions by area or species or both (locally managed marine areas); enables the grant of fishing permits and authorises the appointment of honorary fish wardens.</p>
<p><b>iTaukei Lands Act 1905</b></p>	<p>Preserves the land tenure of iTaukei land by the iTaukei people “according to iTaukei custom as evidenced by usage and tradition”, providing for the registration of the names of the persons comprising each land-owning unit together with a description of the land by its boundaries and situation.</p>
<p><b>iTaukei Land Trust Act 1940</b></p>	<p>Control of all iTaukei land is vested in the iTaukei Lands Trust Board (TLTB). Any dealing with iTaukei land by lease or licence shall be by the TLTB in its name (or under the Land Use Act), once TLTB is satisfied that the land is neither being beneficially occupied by the owners nor likely to be required for their use, maintenance or support.</p> <p>With the iTaukei (Leases and Licences) Regulations defines benefits that LOUs may derive income from encumbrances on their lands, including premium payments, rent for leased land, and royalties for the timber harvesting, forest concessions and gravel extraction licences.</p>
<p><b>Land Conservation and Improvement Act 1953</b></p>	<p>Empowers the Land Conservation Board (chaired by the Director of Agriculture, with its membership including the Director of Lands and the Conservator of Forests) to exercise general supervision power over land and water resources in the interests of their conservation and improvement.</p> <p>The Board has extensive powers to require landowners to take action or to cease cropping or grazing or other activity, in the interests of conserving or improving water resources and the avoidance of the degradation of land.</p>

<p><b>Land Use Act 2010</b></p>	<p>With the Land Use Regulations, supports a process of leasing iTaukei land through the Land Use Unit and the Land Use Bank that is alternative to the process under the iTaukei Lands Trust Act. Prior to being available for leasing, the category of the land is designated by the Prime Minister and can only be changed after 5 years have elapsed. It enables the Director of Lands to lease land on behalf of LOUs for a maximum period of 99 years 'in the best interests of the land owners and the overall well-being of the economy'. As with leasing under the iTaukei Lands Trust Act, a precondition is that land must be free from all encumbrances.</p>
<p><b>Marine Spaces Act 1977</b></p>	<p>Defines the various marine spaces of the state of Fiji, reflecting relevant provisions of international law codified in the UN Convention on the Law of the Sea. It confirms as law that the internal waters of Fiji are the waters between the mean high water and low water marks. As mangroves are inter-tidal woody plants, meaning they grow between the low-water and high-water levels, they are part of Fiji's internal waters within its territorial sea. Fiji has sovereign rights over its internal waters, archipelagic waters, territorial waters and the waters of its EEZ and thus (subject to international law), over the natural resources (living and non-living) of the seabed and subsoil of these waters, for the purposes of exploring and exploiting, but also conserving and managing those natural resources.</p>
<p><b>National Trust for Fiji Act 1970</b></p>	<p>The purpose includes promoting the permanent preservation of lands (including reefs) for the benefit of the nation); and protecting animal and plant life. The National Trust has special powers to enter into a conservation agreement with landowners, either permanently or for a specified period, and to enforce any agreement against the landowner and successors in title. The National Trust could manage a conservation fund if established by the Government for the purpose of species conservation.</p>
<p><b>Offshore Fisheries Management Act 2012</b></p>	<p>The objective is to conserve, manage and develop Fiji fisheries in Fiji waters to ensure long term sustainable use for the benefit of Fijians. The Ministry of Fisheries has the principal function and authority for the conservation, management and development of the fisheries resources, with the Act prevailing over other laws, but the <i>Climate Change Act</i> (which has effect notwithstanding any provision of any other written law) would prevail in the case of an inconsistency or incompatibility, being the later enactment. 'Fish' is extensively defined to include aquatic plants, and thus would appear to include seagrass. The principles to be observed in the performance of functions or the exercise of powers under the Act include protecting biodiversity in the marine environment 'especially habitats of particular significance for fisheries resources', implementing and enforcing conservation and management measures, and maintaining traditional forms of sustainable fisheries management.</p>
<p><b>Regulation of Surfing Areas Act 2010</b></p>	<p>The objects are to promote Fiji as a premier surf travel destination, to liberalise access to surfing areas and enable unrestricted access to them. It aims to achieve the objects by deeming any lease or licence over a surfing area (those reefs or other foreshore or offshore areas in Fiji together with any surrounding areas, used for surfing or any water sport) to be cancelled with the land vesting in the Director of Lands and no compensation payable. It purports to override other Acts including the State Acquisition of Lands Act 1940 and prevents any judicial review of it or any decision made under it. There are no regulations under the Act, nor any provision for identifying those parts of Fiji's coastal areas used exclusively for surfing or other water sports.</p>
<p><b>State Lands Act 1945</b></p>	<p>Clarifies that the foreshores and the soil under the waters of Fiji (the seabed and subsoil) is State land. All applications for use, conversion, and/or development are decided by the Department of Lands (DoL). The leasing of the use of Fiji's foreshores and seabed is governed by this Act. Before determining to lease any part of the foreshore or seabed, the Minister of Lands must publicly notify details of the proposed lease including location and purpose and consider any objections made by members of the public. The Minister must be able to declare that the proposed lease will not substantially infringe existing or claimed public rights or privileges before a lease is granted. Once the Minister approves a lease of the foreshore or seabed (the lessor is the Director of Lands), the particular area of the foreshore or seabed vests in the lessee for the purposes of the lease, free of any existing or claimed public rights or privileges, so far as is necessary for the purposes of carrying out the lease. A lease would be subject either to the exercise of customary rights of adjacent landowners to gather seafood, fish and wood for fuel for subsistence purposes, or compensation for the loss of the rights. The lease of foreshore or seabed land would likely be classed as a 'special lease' under the State Lands (Leases and Licences) Regulations 1980, having a maximum term of 99 years. The Act does not enable the grant of a licence to use foreshore land.</p>

## 6.2 Policies

The national policies of Fiji are important context for the design of a national system for carbon rights, ERPs and carbon credits trading, even though it is acknowledged that a national system must meet the international standards and expectations of global funders, international exchanges and those in the marketplace.

Fiji has several policies from other sectors, including agriculture, the energy sector, national adaptation plans, and the Green Growth Framework, that provide for transparent and effective national forest governance structures. These have varying degrees of impact on mangroves given their sectoral intent, but their collective application and parallel consideration provide tangible outcomes for mangrove protection, sustainable use, and management.

Overall, Fiji’s policies and laws have shown marked evolution in recent years, supporting a shift towards sustainable development, the conservation of biodiversity, sustainable management, and use of forests and other natural resources, aligned with the articulation of a sustainable development framework for Fiji. This materialized in the *Green Growth Framework (2014)*, and under impetus of Fiji’s 33 international environmental commitments. However, the legal reform process has not kept pace and has yet to provide the required enabling tools and processes to practically implement these policies. A brief summary of Fiji’s current policies relevant to this Study is included at Annex 2.

In general these policies aim for sustainable development; recognise the value of natural ecosystems for the services they provide to Fiji; look to nature-based solutions to mitigate the impacts of climate change and to adapt to a climate-affected future; and acknowledge the necessity of consultation with communities. The more recent policies seek inclusivity and acknowledge the rights of indigenous peoples including free, prior and informed consent (FPIC) for matters that could affect them.

Other policies relevant to social and environmental safeguards - important contextually for the consideration of blue carbon projects and the design of an appropriate BSP - are summarised below in Table 2.

**Table 2:** Summary Of Relevant Social And Environmental Safeguards Policies

Policy	Summary
<b>Environmental and Social Management System Policy (ESMS)</b>	<p>MoE developed the ESMS to attain the highest standards of environmental and social safeguards in its work. Requires that all approved projects be non-discriminatory.</p> <p>The Fiji Government through the Ministry of Economy, according to the ESMS:</p> <ul style="list-style-type: none"> <li>• strives to ensure that environmental, social, gender and economic benefits are equitably distributed among marginalized and vulnerable groups, acknowledging that ‘(t)his may include Free, Prior and Informed Consent under certain circumstances.’; and</li> <li>• shall not engage in the implementation of projects that are inconsistent with the rights and responsibilities set forth in the UN Declaration on the Rights of Indigenous People, the Constitution and national legislation, noting that ‘(t)his may include Free, Prior and Informed Consent under certain circumstances.’(3.11)</li> </ul> <p>All projects are to be screened for their environmental and social impacts and rated according to the likelihood and severity of impacts, followed by a stakeholder consultation process with communities and individuals potentially affected by the project, and preparation by the Ministry of an environmental and social impact assessment that includes the potential for cumulative and indirect impacts.(4.1, 4.2)</p>
<b>Gender Equity and Social Inclusion Policy 2021-2024 and Action Plan 2021-2022</b>	<p>Seeks to promote increased regard for environmental sensitivity, climate change impacts and disaster risks and the role of men and women at all levels in facilitating the harmonious and sustainable use of the country’s limited natural resources, and the utilization of gender impact assessments, gender analysis and gender aware approaches in assessing environmental issues and on the utilization, exploitation and preservation of natural resources in Fiji.(5.4)</p>

<b>Gender Equity &amp; Social Inclusion</b>	This is an internal policy for the guidance of staff of the Ministry of Economy when making climate change decisions.
<b>Policy 2021-2024 and Action Plan 2021-2022</b>	Recognises the Government's commitment to gender equity and social inclusion, while recognising that patriarchal attitudes are still dominant in many aspects of Fiji society; such that men still have a high degree of control over women, including in their ability to access information and services, participate in income-generating activities and assume leadership positions, and that gender-based violence remains a serious and widespread problem. (pp6-7)

### Strategic, Environmental and Social Assessment 2019 (SESA)

The Strategic, Environmental and Social Assessment of 2019 (SESA) was undertaken by the MoF as part of Fiji's FCPF Readiness submission to the FCPF. It identified that 35-40% of rural lowland iTaukei households rely to a significant extent on coastal mangroves and fisheries, and that they are vital for women. It was for these socio-economic reasons that the SESA recommended the inclusion of mangroves in the ER-P, but it did not eventuate.

The gender analysis indicates that although iTaukei women have equal rights regarding the ownership of land and to receive lease payments, they often have little or no control over customary land, and in the Indo-Fijian community where the land is leased, it is the men who hold and control the lease. Effort must be made to include women in decision-making at all levels.

In relation to the key recommendation to include mangroves in the ER-P Accounting Area, the SESA cautioned that stakeholders in relation to coastal mangrove areas are not only local communities and the Fiji Government and its relevant agencies, but also the private sector that invests in and develops the coastal resorts where much of the existing and vital tourism development has been and is occurring.

A recommendation of the SESA is that stakeholders be reassured that proposed carbon emission reduction projects/programs/activities seek to implement a more sustainable approach to (forests and) mangrove management that does not exclude people from the (forests and) mangroves – in contrast to a strictly conservation approach.

The SESA notes that it will be important to ensure that the interests of both major ethnic groups in Fiji (and smaller ethnic minority groups) are safeguarded in undertaking the FPIC process.

### 6.3 Provincial Integrated Coastal Management Plans

At Annex 2 the Integrated Coastal Management Framework (2011) is summarised as being a framework plan for the development of provincial integrated coastal management (ICM) plans. As ICM would be a key consideration in planning any blue carbon projects, activities or programmes, the existence and contents provincial ICM plans could be relevant.

Provincial plans have or are being developed under the ICM Framework (Mangubhai et al, 2019), but it is not clear how relevant these plans are to the management of coastal ecosystems. In the interests of consistency and an integrated approach it would be beneficial for a blue carbon project proponent / a community to be able to refer to a relevant provincial ICM plan.

Existing ICM Plans should be reviewed and revised to include blue carbon projects, activities and programmes. However, it is observed that (but not known whether) the concept of provincial ICM plans may have been overtaken by provincial Yaubula Management Plans.

While the provinces of Ra and Kadavu have each endorsed an ICM Plan<sup>34</sup> it is unclear from desktop research whether all coastal provinces have made and adopted a provincial ICM plan, or whether those that have been made are current, that is, regularly reviewed and adapted to changing circumstances and perceived needs.

<sup>34</sup> <https://rescue.spc.int/fiji/activity/integrated-coastal-management-plans> (accessed 27/04/2023)



The NBSAP 2020 under its objective for strategic area SUD5 (Reduce major threats to Fiji's coastal ecosystems) has as its first action 'Strengthen cross-sectoral forums that facilitate integrated coastal management...'

#### 6.4 Guideline

In the absence of a current mangrove management plan for Fiji, the recent release of a comprehensive Mangrove Management Guideline (MMG) may be relevant in contemplation of blue carbon projects involving mangrove rehabilitation and restoration. The Guideline is summarised below.

##### Mangrove Management Guideline 2022

Described as the first "how-to" manual on mangroves in Fiji, it is suggested that the MMG will enable coastal communities to improve the management of their mangrove resources, with the objectives being to educate and strengthen the capacities of stakeholders in mangrove rehabilitation and restoration work; inform initiatives on potential options and management approaches to mangrove rehabilitation and restoration; initiate dialogue on mangrove conservation and sustainable management; and raise awareness and encourage the involvement of private and public institutions in supporting the mangrove conservation and sustainable management.<sup>35</sup>

The MMG suggests that the purpose of the Yaubula Management Support Team (YMST), Village Environmental Committee (VEC) or Village Mangrove Management Committee (VMMC) in each village is to:

- Maintain and promote the sustainable use of mangrove resources;
- Conserve and safeguard remaining mangroves through the collective and cooperative efforts of the community;
- Initiate and support training and awareness programs about mangroves and proper management practices for all members in the community; and
- Coordinate initiatives between communities and supporting government institutions such as the Ministries of Forestry, Waterways and Environment, and Lands and Mineral Resources.

The MMG further suggests that the Provincial Offices through their Conservation Officers will collaborate with the YMST/VEC/VMMC, provide advice, seek external advice and where necessary secure support from partners and Civil Society Organisations/Non-Government Organisation (NGOs,) including technical and funding support. Provincial Offices are to be the liaison body for YMSTs/VECs/VMMCs with national government agencies.

The MMG notes that mangrove rehabilitation and restoration efforts have failed in the past and concludes that these failures were due to the following:

- a. lack of community engagement and involvement;
- b. poor governance infrastructure and management;
- c. unclear objectives;
- d. lack of basic understanding of mangrove ecology; and
- e. unfamiliarity with the normal hydrology of existing natural mangrove communities.<sup>36</sup>

<sup>35</sup> [https://www.itto.int/news/2022/12/08/new\\_guidelines\\_and\\_videos\\_launched\\_on\\_restoring\\_mangroves\\_in\\_fiji/](https://www.itto.int/news/2022/12/08/new_guidelines_and_videos_launched_on_restoring_mangroves_in_fiji/)

<sup>36</sup> Tuiwawa, (2022) 41 ((7.1.1)

## 7. Human Rights and the Rights of Indigenous Peoples in Fiji

The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognised the rights of indigenous peoples to self-determination; to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; and to free, prior and informed consent (FPIC) to acts and activities that may affect them, their lands or their livelihoods. The rights had earlier been recognised (1989) in the *International Labour Organisation (ILO) Convention No. 169*, and in *Agenda 21* (1992) for sustainable development.

Most of the nations of the world have now adopted the UNDRIP. Fiji announced that it would adopt UNDRIP in March 2023 (Devi). As a result of this widespread global support, the provisions of UNDRIP would now be recognised as international law respected by most nations but the concept of FPIC is not necessarily interpreted in the same way by all nations.

### 7.1 The Right to determine development: Free, Prior and Informed Consent

The concept of FPIC was initially recognised by many governments as an aspirational goal, but some countries have incorporated it into legislation, government policy and processes. Although not without its problems,<sup>37</sup> FPIC's basic notion reflects a recognition that indigenous peoples should be accorded the right to determine their own futures; that governments should seek indigenous peoples' consent before taking actions that are likely to have an impact on them, their lands or their livelihoods.

The principles underpinning FPIC are protection of the rights of indigenous peoples, and respect for their knowledge, cultures and traditional practices. Observance of the principles in the context of development mean that:

- full information about a project and its likely impacts must be shared by the proponent with indigenous people, in a culturally appropriate manner, a language and mode that is readily understood by them, and at a location that is culturally acceptable, well prior to the drafting of any final plans
- communities should be supported in their efforts to gather additional information on the full extent of any impacts, given time to understand these impacts and to enter into a dialogue with the proponent P; to query the basis for proceeding in the manner proposed, to object, to challenge assumptions or projected impacts, to make suggestions/submissions including with respect to the manner of implementation, etc.
- P should engage all elements of the community including women and youth; not just the customary decision-makers
- P cannot use violence, threats, intimidation, pressure, manipulation or bribery to obtain a decision in favour of the project and must act in good faith at all times
- a consent should be freely given by customary or other authorities freely chosen by the community or in accordance with customary law, and respect customary laws and decision-making processes while taking into account the concerns and interests of ALL sections of the community
- while a consent once given is binding, a line of communication should always be open between the proponent/project operator and the community for dialogue and discussion regarding concerns and grievances, project variations, new stages of the project, etc..

<sup>37</sup> See, for example: Stephen Young, *Indigenous Peoples, Consent and Rights*, 2020, Routledge

However there are significant issues to be considered and addressed, such as the following:

- a. In the context of Fiji, what might constitute consent with respect to a project on iTaukei lands or affecting iTaukei communities? Would it be a minimum of 60% of the adult permanently-resident-in-Fiji members of a land-owning unit, as it is for consent to the registration of a CSPR and the consent to land being designated under the *Land Use Act*?<sup>38</sup> Or would it be deemed to have been given if a mere majority of adult iTaukei owners has signified consent, as was formerly the case under the *iTaukei Land Trust Act*?<sup>39</sup>
- b. Again in the context of Fiji, other stakeholders' interests must be considered, as noted above in the summary of the SESA. Particularly with blue carbon, the interests of all people using the foreshore/inshore fishing areas must be considered, as well as those private operators and developers of coastal tourism ventures – so important to the Fiji economy.
- c. How much weight is to be accorded to the concerns of indigenous peoples in a democratically governed country? In some countries where FPIC has been adopted genuinely and in good faith by legislation or policy resulting in mining and resource extraction not being permitted due to a failure to obtain FPIC, in subsequent years the indigenous peoples' views have been overridden and FPIC abandoned through adoption of conflicting policy or legislation.<sup>40</sup> Why? Because the national government in each case concluded that the country needed to permit resources extraction for the economic benefit of the entire nation. Although this might not be an issue in a nation where the indigenous population owns the majority of the land, it is politic to reflect that there are a number of stakeholders contributing to the democratic state of Fiji.

That the Fiji Government has endorsed an FPIC approach to development is evidenced not only by the Ministry of iTaukei Affairs website statements, but also in policy statements. However, it is of note that it is sometimes observed that a decision 'may involve FPIC'. (added emphasis)

The following is from the website of the Ministry of iTaukei Affairs:

'Free, prior and informed consent (FPIC) is a right recognized by international law and a principle that the Ministry is adamant in incorporating in all development projects and programmes. FPIC principle argues that communities must be provided with all information regarding a programme; before they can freely decide on their next action. As we move towards sustainable development, the principle becomes more imperative for the iTaukei community.'

'The principle of FPIC is protected by international human rights law as all peoples have the right to self-determination' and linked to the right to self-determination, 'all peoples have the right to freely pursue their economic, social and cultural development'.

'Recognizing the rights of all iTaukei to freely give or withhold their consent to any decision that will affect their lands, territories or livelihoods will be the gist of the MTA FPIC Framework.'<sup>41</sup>

A comprehensive Guideline was developed for the Ministry of Forests for REDD+ Fiji, *Obtaining Free, Prior and Informed Consent for REDD+ Initiatives in Fiji* (July 2019).<sup>42</sup> In its Preface, it states that the guide contains the fundamental principles underlying FPIC and the process or procedures to ensure that FPIC is incorporated into all REDD+ initiatives, and *may also be applied to non-REDD+ projects such as natural resources management where planned activities are likely to affect the customary land of the iTaukei and local*

<sup>38</sup> *Climate Change Act*, s.46(2); *Land Use Regulations 2011*, reg.4;

<sup>39</sup> *iTaukei Land (Miscellaneous Forms) Regulations 1940*, reg 2. Note the TLTB website now asserts that a majority is 60%: [https://www.tltb.com.fj/About-Us/FAQs-\(1\)](https://www.tltb.com.fj/About-Us/FAQs-(1))

<sup>40</sup> Examples are The Philippines, Peru, Bolivia (the first nation to adopt UNDRIP as domestic law (2007)

<sup>41</sup> <https://www.itaukeiaffairs.gov.fj/index.php/divisions/development-services-division/fpic> (last accessed 23/05/2023)

<sup>42</sup> Accessed via <https://fijireddplus.org/resources/policy-documents/> at file:///C:/Users/PC/Downloads/FPIC-Guideline-July-2019-1.pdf

population in Fiji. (added emphasis)

It is noteworthy that the project requirements for the latest international standard for certification of a project for blue carbon credits by one of the world's larger accrediting agencies, insists on conformity with FPIC principles. The *Plan Vivo* Standard V5 is very specific in its requirements as set out in the box below:

- Projects must follow an FPIC process that enables Indigenous Peoples and local communities with statutory or customary rights to land or resources in the project area(s) to negotiate the conditions under which the project is designed, implemented, monitored and evaluated.
- The FPIC process must meet or exceed the requirements of national legislation and legal obligations under international standards safeguarding Indigenous Peoples' rights.
- The FPIC process must follow a decision-making process and timeline defined by the rights holders, who must be able to participate through their own freely chosen representatives, while ensuring the involvement of women and Marginalised, Vulnerable and/or Disadvantaged People.
- The FPIC process must enable a collective decision by the rights holders to grant or withhold consent at key stages of project development and implementation that include, as a minimum whether to: i) Consider the proposed Project; ii) Engage in the Project design process; and iii) Implement the Project.
- Consent must be sought before the Project or activity takes place and be re-confirmed periodically.
- Consent must be independently decided upon based on accurate, timely and sufficient information provided in a culturally appropriate way, including full details of risks, responsibilities, and potential negative impacts of the Project.
- All rights holders must be able to raise issues relating to consent at any time throughout the Project Period through the Grievance Mechanism (see Section 3.17).

The *Climate Change Act* does seem to distinguish between 'free, prior and informed consent' and 'prior and informed consent'. When the Government participates in any transaction under an international REDD+ programme, the Minister is taken to have the authority of the CSPR owner to sell and transfer the sequestered carbon provided that the Minister has the prior and informed consent of the TLTB, if applicable.<sup>43</sup> On the other hand, the Minister may relocate at-risk communities (acutely exposed and vulnerable to the adverse impacts of climate change) 'only with the full free and prior informed consent of the communities, following inclusive and gender responsive consultation and participatory processes'.<sup>44</sup> The latter suggests a higher standard of consent is to be achieved before the Minister may exercise the power to relocate a community.

In summary, while it appears that the *Climate Change Act* does not specifically require full observance of the FPIC principles in relation to ER projects and the sale of ERUs – a matter that could be addressed in regulations for ERPs - the principles will be adhered to by the Ministry of iTaukei Affairs and the consent of the relevant iTaukei community would be required for a blue carbon project. The Guide to obtaining FPIC from local communities already exists including the contents headings for any agreement reached (REDD+ Fiji, 2019).

<sup>43</sup> *Climate Change Act* s.60(1)(a)

<sup>44</sup> *Climate Change Act* s.77(1)9e)

## 7.2 The Rights of Indigenous Women and Girls

The Republic of Fiji is a party to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) having acceded to the Convention in 1995.

As referred to earlier, women use the coastal areas differently from men and harvest food from the coastal resources for their families. They are likely to be impacted differently by mangrove and seagrass projects and may have different inputs to the FPIC process. Their marginalisation must be avoided and efforts made to include their participation not only in the FPIC process, but at all stages of any blue carbon project.

The UN Committee on the Elimination of Discrimination against Women in October 2022 adopted General Recommendation No. 39 (CEDAW GR 39) on the rights of Indigenous women and girls - a recommendation to states who are parties to the CEDAW. It reminds states that:

- indigenous women and girls have a right to effective and equal participation in decision-making, to consultation in and through their representative institutions to obtain their FPIC before the adoption and implementation of legislative and administrative measures that may affect them, and that it is discriminatory to violate or ignore this right;
- indigenous women and girls are heavily affected by existential threats connected to climate change, environmental degradation, the loss of biodiversity and barriers in gaining access to food and water security;
- CEDAW should be interpreted in a manner that takes into consideration the 2030 Agenda for Sustainable Development in which States agreed that the achievement of gender equality and the empowerment of women and girls is paramount to sustainable development and the end of poverty;
- discrimination collectively against women and girls can threaten and disrupt the social fabric of indigenous peoples and their communities;
- and recommends that States parties develop comprehensive policies to eliminate discrimination against indigenous women and girls.

## 7.3 Summary: protection of rights and working with communities.

Much if not all the literature on social licence makes clear that it is common sense to work with the local communities in planning for and implementing a significant project. Understanding and respecting the local culture, the environment and local ecosystems, the needs and dependencies of the local communities and their concerns and reaching agreement with them around impacts and benefits for the communities likely to be affected is respectful, evidence of good faith and will reap rewards for the proponent and the communities if properly implemented.

Planning the design and implementation of a project with local communities will take their needs into account, and generate trust, provided that an open line of communication and a process for hearing and resolving grievances promptly is maintained. While there have been numerous studies in a variety of countries that have shown the clear benefits of commencing the planning of a project by engaging the local communities, it is evident that this is also the case for conservation projects in Pacific Island countries (Keppel et al).

## 8. BLUE CARBON EMISSION REDUCTION PROJECTS

The *Climate Change Act* establishes a comprehensive process (to be augmented by regulations) whereby a carbon right may be obtained and registered, a carbon ERP may be registered and proceed, ERUs obtained, certified and converted into Fiji mitigation outcome units (FMOUs), and traded.

The detailed legislation is necessary for the integrity of the ERUs certified and FMOUs issued; a necessity for market trading and to ensure the system does not allow double counting; that is accounting more than once for a unit of carbon sequestered from the atmosphere in Fiji.

### 8.1 Carbon rights for a blue carbon project

A carbon right is an entitlement to the carbon sequestered/stored in the soil or the vegetation of the land to which the carbon right relates. The right to carbon sequestered or stored in vegetation and soil runs with the land; that is, carbon rights belong to the owner (or lessee) of the land, unless the law (or the lease) states otherwise.

A carbon right is not tradeable as a carbon credit, but the holder of a carbon right may apply to engage in a carbon ERP and it is the basis for a transferable carbon credit, meaning that the title to units of CO<sub>2</sub> permanently sequestered over a period of time (that are in addition to the anticipated quantity of CO<sub>2</sub> that would have been sequestered over the period under business as usual (BAU)) as a result of particular known emissions reduction efforts may be transferred for benefit (sold for profit).

Under the national scheme according to the *Climate Change Act* as enacted, ownership of a carbon right enables the owner to proceed with obtaining approval for an ERP which can generate carbon credits or ERUs, that if verified, may be converted to a tradeable Fijian Mitigation Outcome Unit (FMOU). ERPs have to be approved, will be regulated by the national government, and required to report ERs at nominated periods to the Director, Climate Change Division (CCD), now in the Office of the Prime Minister (OPM). This in essence is a nested approach within a national jurisdiction scheme.

#### 8.1.1 Carbon sequestration property right under the *Climate Change Act*

The right to carbon is named a *carbon sequestration property right* (CSPR); established by the *Climate Change Act*.<sup>45</sup> This separates the right to sequestered and stored carbon from the ownership rights in the land (including the soil and vegetation growing in it).

For blue carbon the description of CSPR in the *Climate Change Act* is sufficiently broad to encompass the right to carbon in mangroves and seagrass. A blue carbon CSPR will be the right to the carbon in the mangrove forest on the foreshore or the seagrass meadow on the land under the coastal sea, where the landowner is the State according to the *State Lands Act*.

Presently the *Climate Change Act* identifies the categories of persons who may apply for a CSPR for carbon projects (not specifically blue carbon). They are limited to:

- a. lessees and licensees with the consent of the landowner;
- b. a third party - a person who is neither lessee/licensee nor landowner - where the landowner consents to the person being issued with a CSPR for the land; and
- c. the landowner of freehold land provided there is no conflicting lease or licence.

Although the categories do not include the State or agencies of the State<sup>46</sup> and freehold land does not

<sup>45</sup> *Climate Change Act* s.45

<sup>46</sup> *Climate Change Act* s.46

include State land, a 'third party'<sup>47</sup> could include a partnership or joint venture company where one of the parties is the State (perhaps through an agency e.g., Ministry of Lands (MoL) or MoF) and the other is a carbon project developer-financier or NGO, provided the partnership or joint venture is in accordance with the *Public Enterprises Act 2019*. However difficulties could arise with a partnership, where one of the parties is also the regulator as MoF would be in the case of a REDD+ project, or the lessee as could be the case with MoL.

A 'third party' could also in theory include a number of landowning units (LOUs) in a partnership/cooperative/entity together, or a number of LOUs forming a partnership/joint venture/entity with a NGO or carbon project developer-financier.

To obtain a CSPR for a blue carbon ERP under the existing provisions of the *Climate Change Act*, the intending proponent must:

- a. If an existing lessee from the Director of Lands for and on behalf of the State - obtain the consent of the Director of Lands;
- b. If an intending lessee - obtain the approval of the Minister of Lands and a lease from the Director of Lands; and
- c. If a third party – obtain the consent of the Minister of Lands (lease not essential under the *Climate Change Act*).

Some form of authority is required for a P to carry out ERP activities on an area of the foreshore/reef lagoon seabed, but unless the ERP requires the exclusive use of the area for the entire permanence period of the ERP, a lease might not be essential. Provided the approval of the Minister of Lands is obtained to the registration of a CSPR for an ERP of a specified area of land, the declaration of an ERP will be sufficient authority for P to carry out activities on the land.

Here some explanation of the difference between a lease and licence might be useful. A lease gives an exclusive right to possession for a specified purpose in exchange for lease payments (rental), creates an interest in the land, and runs with the land, so there is security of tenure provided the terms of the lease are observed. On the other hand a licence is a mere contractual right between the licensee and the landowner to occupy or use the land for a specified period (usually a short term compared with a lease) and purpose in exchange for licence fee payments. A licence is not exclusive nor does it create an interest in land or run with the land.

If it will be necessary for the success of the ERP that P exclude for the permanence period any person not involved in implementing the ERP or measuring, verifying, etc, ERUs, then P will need to have exclusive possession of the relevant area(s) for the ERP, and so would need a lease over the area(s) of land from the Director of Lands. If exclusive possession is not necessary to the success of the ERP (which could be the case if legislation protects mangroves and seagrass and is enforced) the approval of the Minister of Lands would suffice and a lease would not be required, it is suggested. The decision as to whether exclusive use is required will be relevant to the question of compensation for *iqoliqoli* rights holders.

As *iqoliqoli* rights and adjacent landowners' rights could be affected by an ERP, an intending P should engage in FPIC discussions with rights owners prior to seeking CSPR registration, with the assistance of the Ministry of iTaukei Affairs.

A CSPR will be registered for a specific term and only for the purposes of a proposed ERP with the consent of the CoF (for a mangroves ERP) who may also determine the term of the CSPR (permanence period of the ERP). Note that there is presently no requirement for the Director, CCD to consult with any person prior to declaring an ERP for seagrass meadows.

<sup>47</sup> *Climate Change Act s.46(1)(b)*

An application for a CSPR is to be made to the Registrar of Titles, who will also be the Registrar of Carbon Sequestration Property Rights once the *Climate Change Act* is in force.

The *Climate Change Act* inferentially acknowledges that it will be difficult for a P where P is required to have a lease, to have both a proposed ERP approved by the CoF (where mangroves are the subject of the ERP) and a lease for the relevant foreshore land parcel before applying for a CSPR (which is needed to be able to be granted approval for an ERP), by enabling a P to apply for a CSPR while holding only an approval notice of lease (from the Minister of Lands) or an agreement to lease from the Director of Lands. In this case, if the CSPR is approved (for the term of the proposed lease), a certificate is issued to P and the CSPR must be registered as a Deed by the Registrar of Deeds, pending approval of the ERP. If the ERP is not approved, the CSPR is cancelled on the application of the proponent.<sup>48</sup>

In summary, to succeed in registering a CSPR in respect of a blue carbon project under existing provisions of the *Climate Change Act*, the proponent P would need at least the following (illustrated in Figure 1):

- a proposed ERP (with identified permanence period) for a specified parcel of land that is not the subject of an existing CSPR
- the consent of the landowner, namely the Minister of Lands
- the free and informed consent of the relevant *iqoliqoli* owners (and any other stakeholder, including the adjacent LOU) to the proposed ERP
- an approval notice of lease from the Minister of Lands or an agreement to lease from the Director of Lands for a specified period, for the purpose of the proposed ERP (where a lease is required)
- the consent of the CoF (for a mangroves project).

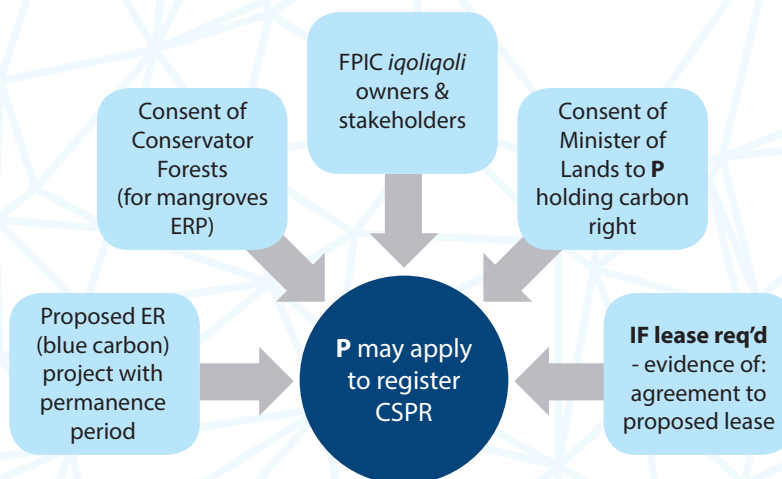


Figure 1. Requirements for Carbon Sequestration Property Right (Blue Carbon): *Climate Change Act*

### 8.1.2 Effect of registration of a carbon sequestration property right

The CSPR is a separate and distinct interest in land and does not confer a right of possession. A CSPR:

- may be for all or part of a parcel of land
- may only be for a limited period of years that is equal to or greater than the permanence period

<sup>48</sup> *Climate Change Act*, s.46



of the ERP (or as determined by the CoF)

- must be registered with the Registrar of Titles (now also the Registrar of CSPRs)
- is a transferable right, so may be sold, etc, subject to the approval of the Minister of Lands.

Once registration has been effected a CSPR for blue carbon (mangroves):

- is the exclusive right to sequestered carbon in the mangroves;
- is registered as an encumbrance on the title for the land; and
- is recorded in the Register of Carbon Rights.

## 8.2 Lease or licence to use State land for an ERP

In the context of the foreshore and seabed being the property of the State of Fiji, how might P be able to prove their lawful right to undertake the ERP? A lease or licence acknowledging the purpose as the implementation of an ERP would suffice, but the *State Lands Act* does not authorise the grant of a licence to use the foreshore or soil under the waters of Fiji (seabed); only a lease of foreshore or seabed land is authorised.

### Lease

It is suggested that a project to reforest or restore mangroves is unlikely to need the *exclusive* use of the particular parcel of foreshore land, assuming that a law to protect mangroves will be legislated. Extractive activity (exploration and exploitation/mining/extraction) would have to be excluded but under the *Climate Change Act* (as enacted) that activity would be barred once a CSPR has been registered and an ERP approved. However whether it would be necessary to exclude adjacent land owners or *iqoliqoli* rights holders is a practical question and one which would need to be discussed between a P and the Department of Lands.

It is noted that *iqoliqoli* owners would currently sign a Waiver of Fishing Rights form in relation to an activity that is the subject of a foreshore/seabed lease, whereby exclusive rights are granted to the lessee. It is doubtful that *iqoliqoli* owners would need to waive their fishing rights for a mangrove restoration ERP; it would be a question to be determined having regard to the activities proposed, their location and likely impacts. If the ERP would be unlikely to interfere with *iqoliqoli* rights, it would be undesirable to exclude *iqoliqoli* rights owners from the location.

### Licence

With reference to the discussion in section 8.1.1 above regarding leases and licences, would the consent of the Minister of Lands in the form of a licence be sufficient? It does seem that a licence (renewable) might be sufficient to enable P to benefit from the carbon sequestered through the ERP by way of tradeable ERUs, assuming appropriate drafting of the licence, but that is a matter to be determined on the facts by the Minister of Lands.

It is noted that State foreshore or seabed land may not be leased or licensed other than in accordance with the *State Lands Act* provisions, subject to "the provisions of any other Act in force".<sup>49</sup> The *State Lands Act* provisions regarding foreshore and seabed land contemplate leases but not licences.

If a licence of the foreshore or seabed is considered adequate for the purposes of a blue carbon ERP to be implemented, it would be necessary either to amend the *State Lands Act* to allow for licences to be issued for foreshore land for the purpose of a blue carbon ERP, or amend the *Climate Change Act* (as enacted) to provide that foreshore land may be licensed by the Director of Lands for the purpose of a blue carbon ERP

<sup>49</sup> *Climate Change Act*, s.3

- given that the *Climate Change Act* has effect notwithstanding any other legislation<sup>50</sup> and section 3 of the *State Lands Act* provides that its provisions regarding leases and licences are subject to the provisions of other enactments.

### 8.3 An alternative scenario: carbon rights remain with the land

In this scenario, there would be no requirement in the *Climate Change Act* (or any other legislation) for a P to obtain a CSPR, because the status quo would remain, meaning that the carbon rights would remain with the land and therefore would be part of the property rights of the landowner. It envisages the amendment of the *Climate Change Act* before it comes into operation to remove the concept of a CSPR, whereby carbon rights are separated from the land and taken from landowners.

This scenario assumes no other change to the *Climate Change Act* prior to its coming into operation.

If the *Climate Change Act* were to be amended to maintain the status quo, namely that the ownership of carbon rights runs with the land, meaning that a landowner also owns the rights to carbon sequestered or stored in the soil and vegetation growing in that soil (unless by separate agreement the trees or other vegetation are the property of another), it would not be necessary for the ERP proponent to apply to have the carbon rights ownership registered. However, for the integrity of the project and the ERUs generated, P would have to be able to show that they possessed lawful authority to undertake the project.

If the ERP was in relation to a terrestrial forest emissions reduction project, P would have to lease the land with its rights to carbon stored and sequestered in that land for exclusive use, from the owner/LOU, but as this Study is in relation to blue carbon, this Report will restrict its discussion of the alternative scenario to the blue carbon context.

Under this scenario, it would appear that carbon rights could not be transferred separately from the land, which could be problematic. In a long-running project, P might be several different entities across the passage of time and it would be essential that P's rights are transmitted to the subsequent P. With careful drafting of agreements and leases, this potential issue could be resolved, but that is not the most significant issue.

It is not the carbon rights themselves that are of value, but the carbon credits/ERUs achieved by the ERP, although it is the rights to the carbon sequestered through the ERP that generates the potential right to tradeable ERUs. For the integrity of the carbon credits/ERUs the title to the carbon must be able to pass separately from the land. If the carbon rights run with the land, the landowner/lessee would still need a mechanism to separate the (permanent) rights to carbon credits/ERUs from the land, to enable them to be traded.

That could be achieved with a lease, whereby the landowner leases the land (including the vegetation thereon) for a long period at an agreed lease rental for the purpose of an ERP, thus entitling the lessee to profit from their efforts to sequester carbon, in the same way as a landowner might presently lease land for the purposes of a plantation forest whereby the lessee benefits from the use of the soil to grow trees to produce timber for sale by the lessee. In the interests of clarity, the lease should specify that the lessee has the right to benefit from the storage and sequestration of carbon as a result of the implementation of the purpose of the lease – the ERP. In effect then, the lessee would have as a benefit of the lease, a CSPR – a similar outcome to the system set out in the *Climate Change Act*, with the right to ERUs able to be identified as an aspect of the leasehold interest in the land.

<sup>50</sup> *Climate Change Act*, s.110

If this scenario is pursued, a lease would be essential in every case. Thus for a blue carbon project, the Minister of Lands would have to consider and approve a lease for an ERP to proceed. The scenario and progression might look as depicted conceptually and skeletally in Figure 2. The assumptions underlying this depiction are:

1. The Ministry of Lands would not undertake an ERP
2. The ERP is a nature-based emissions reduction project undertaken for the voluntary carbon market or the purposes of Article 6 of the Paris Agreement
3. P is most likely (but not necessarily) to be a NGO
4. The ERP would be planned in collaboration with and the FPIC of the local community (landowners and *iqoloqoli* rights owners and/or a community association or cooperative comprising landowners and *iqoliqoli* rights owners) with the assistance of the Ministry of iTaukei Affairs (MTA) at the provincial level
5. Community or stakeholder consent would be set down in one or more agreements (through MTA) comprising at least the following:
  - A mangrove/seagrass stewardship agreement including the purpose of the ERP and the acts and activities community agrees to do/refrain from doing) to achieve the purpose
  - A benefit sharing agreement articulating what, how and when benefits would be provided to the community/ its members in exchange for their cooperation
  - A trust would be established under the *National Trust for Fiji Act* to hold the residual income from the sale of MOUs for distribution for the benefit of the community
  - The costs of the provision of administrative services by government departments and divisions (application for ERP approval, Conservator of Forest consent, application for Fijian ERS, services of MTA, etc) would be recovered on a fee-for-service basis through licence fees for approvals and necessary consents required under Part 10 of the *Climate Change Act*.

In this scenario, if the lessee is a not-for-profit (NFP) NGO, ultimately they would recover their capital and operating expenses out of the revenue from the sale of the ERUs/MOUs, with residual income to be distributed to stakeholders in accordance with a BSP as agreed with them at the outset and in accordance with the project's certification and registration under an international emissions reduction standard.

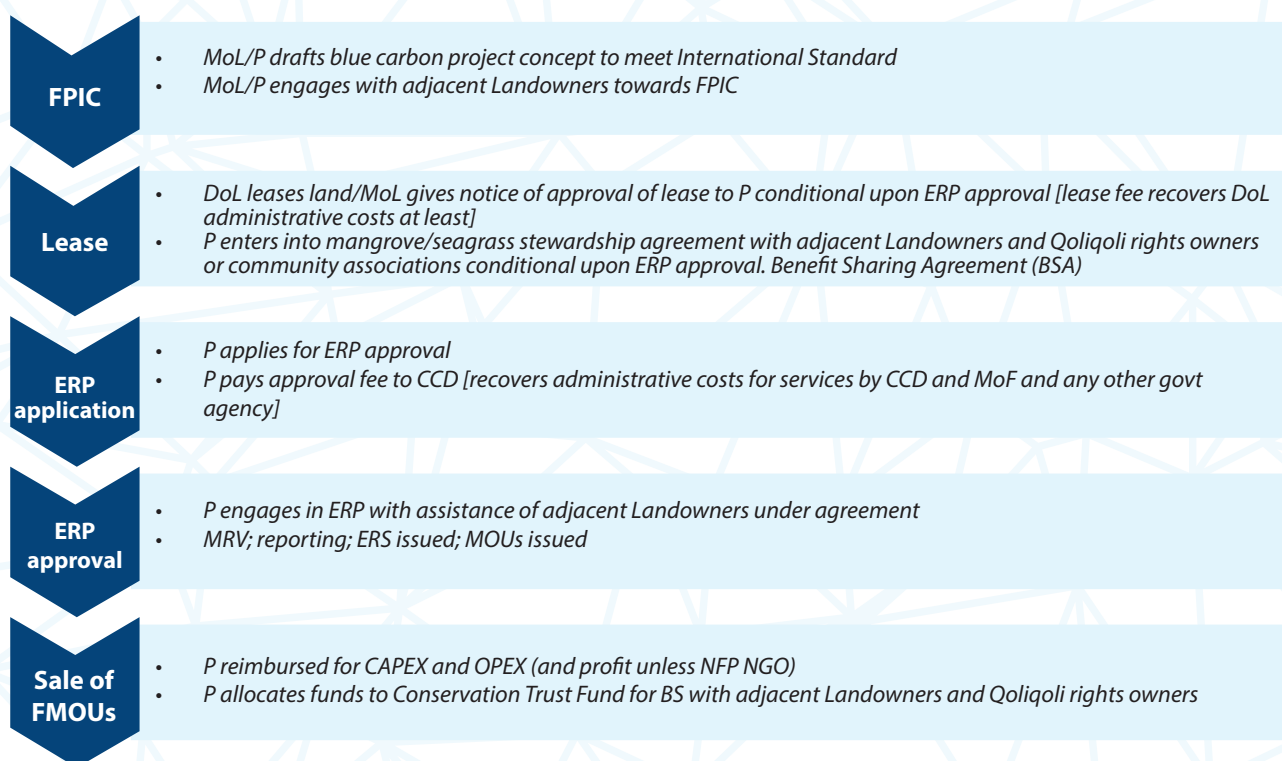


Figure 2 : Conceptual approach to Blue Carbon Project - alternative scenario where carbon rights remain with the land

It is suggested not only would the ERP have to be approved and registered by the Director, CCD, but that at some point P would ultimately have to be recognised as having ownership of the ERUs by virtue of the terms of the lease of the land, and because ownership enables the right to sell/transfer, etc, that recognition would need to become a registration - be recorded in the CCD Registry as part of the tracking record for the integrity of the ERUs.

The *Climate Change Act* (as enacted) system where an application to be registered as a CSPR owner is necessary is neater, enabling easy tracking of the proponent and ERP, in the interests of the necessary integrity of nature-based ERUs or carbon credits. In addition, as argued in section 8.2, a lease of State land is probably not desirable for a blue carbon project. It might be more efficacious to stay with the concept of a CSPR as established in the *Climate Change Act*.

The World Bank identified as a key risk of Fiji’s proposal for REDD+ carbon financing in 2020, the absence of the ability to transfer title to ERs free of any interest, encumbrance or claim of a third party, and agreement to the proposal was conditional upon evidence of such an ability being created (through the *Climate Change Act* (CCA)); the World Bank having been informed that a Bill for a CCA had been drafted (IBRD, 2020):

*Even though Fiji’s ER Program received unconditional approval to join the Carbon Fund portfolio, it has been noted that further provisions are needed to clarify the Government’s ability to transfer ER titles from landowners to the World Bank as trustee of the Carbon Fund. ... Most importantly, a draft CCA needs to be passed to transfer title [of ERs] to the Carbon Fund. The draft CCA has specific provisions for REDD+ and ER Program that are deemed sufficient to serve as evidence to demonstrate Fiji’s ability to transfer ER titles.*

Amending the *Climate Change Act* to remove the concept of a CSPR for a blue carbon ERP (State land) is not recommended, because it would require a lease, and it is doubtful that in practice a lease granting *exclusive* use of foreshore or seabed land to P would be necessary (assuming legislation to protect mangroves and seagrass beds is enacted).

If a decision is made to amend the *Climate Change Act* to retain the status quo for iTaukei and freehold land but not State land, that is to leave carbon rights as part of the ownership rights of the landowners of iTaukei and freehold land, there would have to be two systems in operation:

- a. for a blue carbon ERP (with or without a lease) a CSPR would be required; and
- b. for a terrestrial forest ERP only a lease would be required together with a system of registration of the right to carbon resulting from the terms of a lease of the iTaukei or freehold land.

The following questions would arise for consideration:

1. Would it be too confusing, or inefficient to operate two systems of carbon ownership rights?
2. Would there be a risk to the integrity of the system to operate two systems for the recognition and registration of carbon rights?

No recommendation is made in respect of the rights to carbon stored and sequestered in iTaukei and freehold land as that is not within the TOR for this Study.

#### **8.4 Blue Carbon Emissions Reduction Project**

A blue carbon ERP must be identified before a CSPR may be registered. Under the FPIC process, the stakeholders, namely the relevant iqoloqoli owners must be engaged and included in the project design process. In addition, the Director of Lands and any other stakeholder with an interest in the project location including any person authorised to fish or harvest in the project area would be a stakeholder. It is suggested that for a mangrove project, the adjoining landowners might also be stakeholders (in addition to their interest as *iqoliqoli* rights owners), at least if the ERP would need access across their land. If the landowners are iTaukei LOU, a licence might need to be granted by the TLTB (for access).

##### **8.4.1 Stakeholder identification.**

The first stage of any disturbance of customary rights is to undertake a stakeholder analysis to provide some clarity on the power / influence / relationship / interest dimensions that arise in a particular context. There is a large body of emergent literature on stakeholder analysis (see, for example, Holland, 2007 for a comprehensive summary). Our particular approach to land policy stakeholder analysis (per Boydell, 2008) utilizes eight key questions, seven of which are relevant and summarised below in the preliminary stakeholder analysis in Table 3.

**Table 3:** Preliminary Stakeholder Analysis Questions

PRELIMINARY STAKEHOLDER ANALYSIS RESULTS	
<b>1. Who are the potential beneficiaries?</b>	<p>(a) In terms of the marine and inner reef areas and mangroves the registered iQoliqoli owners; these could be the custom owners for example in Village A and Village B, as well as those from other parts of the country with rights over marine and inner reef areas. Potentially, the State through project helping in meeting its NDC.</p> <p>(b) Potentially, the custom landowners in coastal villages, together with custom holders of the marine access resources, and other users with customary arrangement for access, to achieve a mutually beneficial compromise that allows (ideally through the auspices of the State) a realization of the synergistic value of the development collaboration.</p>
<b>2. Who might be adversely affected?.</b>	<p>(a) Limitation of exercise of rights to Village A &amp; B;</p> <p>(b) Other members of the public who use the commons;</p> <p>(c) Fishing licence holders;</p> <p>(d) other users with customary arrangement for access;</p> <p>(e) marine environment - from pollution; and</p> <p>(f) mining tenement holders.</p>
<b>3. Who has existing rights?</b>	<p>(a) Village A ;</p> <p>(b) Village B ;</p> <p>(c) Any other customary interests in the waterway and marine areas;</p> <p>(d) Any existing fishing licensees; and</p> <p>(e) Mining tenement holders.</p> <p>The discussion elaborates on these existing rights using a categorization of rights model (Boydell, 2007, 117) The model is adapted from a range of sources (including Benda-Beckmann, Benda-Beckmann, &amp; Wiber, 2006; Bromley, 1991; Crocombe, 1975; Farran &amp; Paterson, 2004; Payne, 1997; Rigsby, 1998; Schlager &amp; Ostrom, 1992; J. Sheehan &amp; Small, 2002; World Bank, 2003).</p>
<b>4. Who is likely to be voiceless?</b>	<p>(a) Individual members who are not in the majority – so there is a need to make sure that everyone who has a right to speak has spoken (including young/old, male/female), so absentees may have limited rights;</p> <p>(b) Role of absent members (who may send remittances);</p> <p>(c) Neighboring custom landowners;</p> <p>(d) Historical associates and those who have connection;</p> <p>(e) General public who use the area (other than through formal planning approval channels); and</p> <p>(f) mangrove and coastal sea users with customary arrangement of access.</p>
<b>5. Who is responsible for intended plans?</b>	<p>(a) The Conservator of Forests; and</p> <p>(b) Other State apparatus and statutory institutions in terms of providing exploration licenses and mining agreements.</p>
<b>6. Who has money, skills or key information?</b>	<p>(a) The blue carbon developer company management and shareholders hold money to realize the opportunity;</p> <p>(b) The blue carbon project investors in terms of prospecting skills, blue carbon market capability, and market realization; and</p> <p>(c) Associated with Blue Carbon information, the registered CSPR .</p>
<b>7. Whose behavior has to change for success? [NB: The questions may be premature and are potentially contingent on the perceptions of the parties]</b>	<p>(a) Potentially other LOU and Qoliqoli registered members seeking to entice a particular development to the area;</p> <p>(b) Potentially the registered CSPR holder company if they want access to resources in customary land, and the need to move towards a synergistic valuation approach;</p> <p>(c) Potentially the State, to facilitate collaboration between the diverse stakeholders; and</p> <p>(d) Potentially the custom landowners in coastal villages, together with custom holders of the marine access resources, and other uses with customary arrangement for access, to achieve a mutually beneficial compromise that allows (ideally through the auspices of the State) a realization of the synergistic value of the development collaboration.</p>

Once a project has been designed, the proponent must also obtain the approval of the Minister of Lands and any other formal right to carry out activities as required by the Minister.

#### 8.4.2 Requirements for Minister of Lands approval and foreshore lease (as required)

Prior to granting approval to the registration of a CSPR, Minister of Lands will have to be satisfied that the proposed ERP has the consent of the *iqoliqoli* owners and consider the impact on other stakeholders.

For a lease the Minister must be satisfied that a lease of land will not substantially infringe public rights<sup>51</sup> and that a lease may be subject to the exercise of the customary rights of the *iqoliqoli* owners acknowledged under the *Fisheries Act*<sup>52</sup>.

The *State Lands Act* also provides that a lessee of foreshore land must compensate the owners of adjoining or abutting land for any rights that may be infringed.<sup>53</sup>

The Minister of Lands may be satisfied that the proposed ERP has the free and informed consent of the *iqoliqoli* owners by sighting written evidence of that consent (obtained perhaps with assistance from the Ministry of iTaukei Affairs). It is doubtful that *iqoliqoli* owners would need to waive their fishing rights for a mangrove restoration ERP; it would be a question to be determined having regard to the activities proposed, their location and likely impacts. This issue is discussed above (at 8.2) including whether the Director of Lands should have the authority to grant a licence over foreshore and seabed land.

Before a blue carbon mangrove ERP is registered, in accordance with the *Environment Management Act* 2005 and the *Climate Change Act* (as enacted) a proponent would also have to:

- a. prepare and receive approval to an EIA of the proposed ERP from the EIA Administrator;<sup>54</sup> and
- b. acquaint the CoF with the proposed ERP and consider any suggested amendments.<sup>55</sup>

Could a proposal for an ERP be exempted from the requirement under the *Environment Management Act* to be the subject of an approved EIA? No, not without undermining the significance and integrity of that legislation for Fiji's environment and ecosystem health, mindful of the Constitutional right of every Fijian to a clean and healthy environment.<sup>56</sup> The preservation of Fiji's coastal environment is a matter of national significance.<sup>57</sup> The *Environment Management Act* binds the State of Fiji and its application may not be excluded or limited, without amending the Act itself.<sup>58</sup> It is notable that any proposal for mining and commercial logging, to take but two examples, are not only not exempted from the EIA process, but require the highest level of approval along with coastal and marine developments – processing by the EIA Administrator.<sup>59</sup>

Presently there is no requirement in the *Climate Change Act* (as enacted) for the Director CCD to consult with the Director of Fisheries or any other appropriate officer before approving a blue carbon seagrass ERP (compare the requirement to refer a mangroves ERP to the CoF). However if the expertise with respect to seagrass meadows lies with the Department of Lands rather than the Ministry of Fisheries, no addition to the *Climate Change Act* will be necessary.

<sup>51</sup> *State Lands Act* s.21

<sup>52</sup> *Fisheries Act*, s.13

<sup>53</sup> *State Lands Act* s.22

<sup>54</sup> *Environment Management Act*, s.31

<sup>55</sup> See *Climate Change Act*, s.50

<sup>56</sup> *Constitution of Fiji*, cl 40.

<sup>57</sup> *Environment Protection Act*, s.3

<sup>58</sup> *Environment Protection Act*, ss. 4, 6

<sup>59</sup> *Environment Protection Act*, s.27(4), Schedule 2, Part 1.

It is suggested that the Minister of Lands would want to be satisfied either that necessary approvals are in place prior to granting an approval, or where a lease is necessary, issue an agreement to lease subject to the fulfilment of conditions precedent to the grant of a lease; that is that a lease would only be granted if certain prescribed conditions are first met.

### 8.4.3 Permanence: protecting mangroves and seagrass through law

For either of the models of carbon rights ownership (CSPR or lessee rights) to be feasible for an ERP, mangrove forests and seagrass beds would have to be permanently protected. This could be achieved through a lease for the requisite period (but it is argued above that this is probably not desirable). Mangrove forests are best protected for the long term (beyond the life of a lease) by law, such as was proposed for mangrove forests in Forest Bill No. 13 of 2016, under which mangrove forests were to be classed as ‘protection forests’ meaning forests ‘maintained under permanent forest cover, especially dedicated to the protection and maintenance of biological diversity and ecological integrity, ... where forest use, if any, is restricted to harvesting of non-wood forest products, eco-tourism, carbon storage, and research’. It is not suggested that this example from the 2016 Forest Bill is a sufficient form of protection. Redrafting would be necessary for the protection of mangroves and seagrass.

It is noted that Fiji’s Department of Environment is in the process of consulting with stakeholders towards the drafting of the Environment Management (Mangrove Conservation and Management) Regulations (OPM, Press release, May 2023).

The law would have to be very clear about who could harvest which products from mangrove forests. In addition, the law would have to make it an offence to take from or wilfully or recklessly damage any part of a mangrove forest and the relevant authority would have to enforce compliance after dissemination and awareness-raising of the law.

This has been the approach generally in those countries where the mangrove blue carbon projects described in Annex 3 have been undertaken.

Seagrass beds would require similar protection under the *Fisheries Act* to that proposed for mangroves in the preceding paragraphs, at least mirroring the protection provided to aquatic plants under the *Offshore Fisheries Act*.

## 8.5 The Emissions Reduction Projects: international requirements

Critically, an ERP must be able to produce carbon credits that are high-quality and do not amount merely to greenwashing. This means that an ERP that has produced carbon credits must be able to show it has met the following minimum standards:

- Leakage: the ERP project has not achieved its success in the target area by merely shifting deforestation/mangrove/seagrass destruction or degradation to another location.
- Additionality: the ERP’s benefits in reducing carbon emissions have been achieved through activities additional to what would have been required by law or per BAU so that actual benefits are generated by the project; if there is an inability to predict what would have happened in the absence of the project and hence the project’s true benefits the project would be unable to show it sequestered carbon/reduced carbon emissions additional to BAU.
- Permanence: the ERP’s target ecosystems can be protected for the long term, and where there is a risk of reversal measures are in place to address the losses and compensate for them.
- Measurement: the additional carbon stored in nature through the ERP must be able to be accurately quantified through a conservative approach and recognised, science-based method, which involves having an accurate/accepted baseline measurement.



*Meeting these standards can be difficult.*

Increasingly, it is also necessary to show that the ERP will do no harm to local communities, that social and environmental safeguards are in place, that the FPIC of local communities has been obtained and they have been and will be actively involved in the design and implementation of the project, and that the ERP will contribute to the achievement of the SDGs.

In addition, the generated carbon credits must have been:

- Reported: reported to a record-keeper of integrity in a system which does not permit of double counting the quantity of carbon removed from the atmosphere; and
- Verified: the volume of carbon removed must have been verified by an independent auditor/verifier accredited by a reputable and internationally acceptable accreditor.

The above standards are reflected in the internationally recognised Standards operated by non-government organisations such as Verra (VCS), Gold Standard and Plan Vivo, and should be reflected in the regulations if they are to be drafted under the *Climate Change Act*, noting also that Fiji may opt to adopt an existing emissions reduction methodology approved under an international emissions reduction standard as a Fiji Emissions Reduction Methodology (ERM).<sup>60</sup>

## 8.6 Fiji blue carbon emission reduction projects

For the proponent P to obtain approval for an ERP, P must apply to the Director, CCD in the OPM, and meet certain specified requirements. Under the *Climate Change Act* as enacted, P must:

- own a registered CSPR for the land on which the ERP is proposed (and therefore hold a lease/agreement to lease/approval notice for lease of the land, if a lease is required)
- meet requirements set out in a Fijian ERM
- meet requirements of the *Climate Change Act* and any Regulations.

The steps in the process are depicted in diagrammatic form in Figure 3.

The Director, CCD must be satisfied that the above requirements are met, consult with the CoF (for a mangroves ERP) and make a decision within 60 days of receiving the application. A person who disagrees with the decision may appeal within 30 days.

It is noted that while proposed ERPs for terrestrial forest and blue carbon (mangrove) must be referred to the expert in the form of the CoF for consideration prior to a determination by the CCD Director, there is no equivalent expert to whom a blue carbon (seagrass) proposed ERP must be referred under the *Climate Change Act*. **It is recommended** that this be remedied if blue carbon (seagrass) ERPs are seriously in contemplation.

If the Director, CCD declares the proposed project to be a Fijian ERP, (the Director also specifies the crediting period and registers the Fijian ERP forthwith in the Fijian Registry<sup>61</sup> (which must be electronic and publicly accessible online<sup>62</sup>).

Once an ERP is approved, the land over which the CSPR has been registered cannot be subject to logging, mining or other extractive activity, nor may exploration on the land be approved.

<sup>60</sup> *Climate Change Act, s.49*

<sup>61</sup> *Climate Change Act, s.50*

<sup>62</sup> *Climate Change Act, s.61*

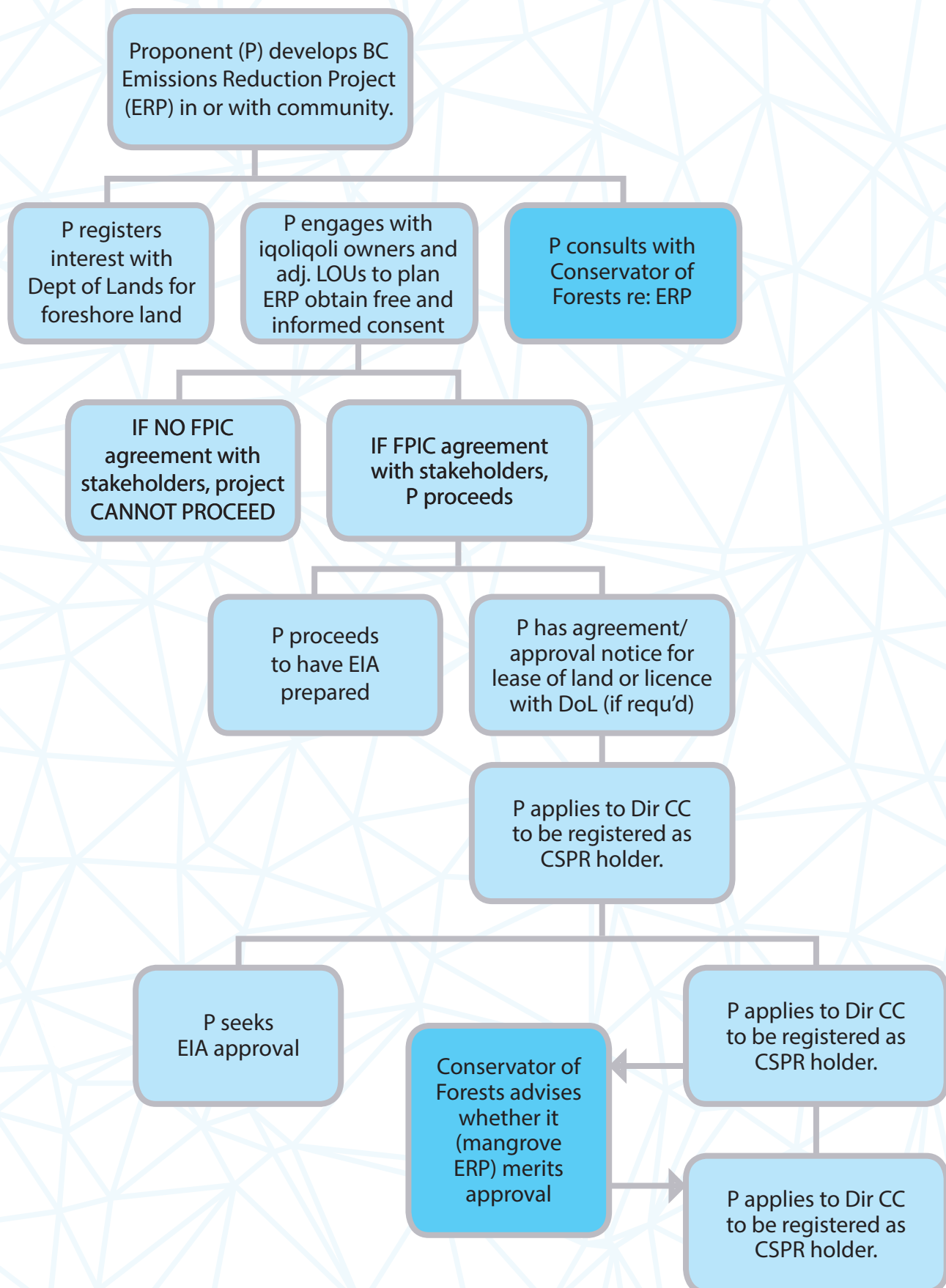


Figure 3. Steps required to have blue carbon project declared as Fiji Emissions Reduction Project/ Programme/ Activity: Climate Change Act

## 8.7 Blue carbon projects for voluntary markets

Although the Climate Change Act is not yet in force, it is possible for nature-based blue carbon projects to proceed under an Integrity Council for the Voluntary Carbon Market (IC-VCM) approved international emissions reduction standard operated by a non-government organisation, with assistance from civil society (NGOs) and/or an international carbon project developer-financier. Some examples of blue carbon projects operating in other countries are set out in Annex 3.

An international emissions reduction standard for the voluntary market will have its specific project requirements that the proponent P would need to meet to enable registration.

Because Fiji has a nested national jurisdictional scheme under the *Climate Change Act*, ultimately any ERPs commenced under an international standard would have to be brought into the Fiji scheme once the Act is in force, as is expected of the Drawa Rainforest Conservation Project operating under a Plan Vivo standard (Republic of Fiji, 2019).

### 8.7.1 Blue carbon voluntary market project in Fiji

For a blue carbon project, baseline data is necessary. While a recent, updated national baseline for mangroves in Fiji has been deduced (Cameron, Maharaj et al), it is a deduction from limited information (online GIS datasets, Landsat composite images over the 2000-2018 period and field surveys in 4 regions), the quality of which has been questioned, and does not amount to national baseline mapping of Fiji's mangroves. This work remains to be done for mangroves and also for seagrass meadows. If there is no or only vague/unreliable baseline data, it would be difficult to determine the additionality of a project or measure the quantity of carbon sequestered.

The TOR for this Study indicate that the recommendations are to relate to blue carbon projects for the Ba Delta, the Rewa Delta and Viti Levu Bay in Ra Province), where mangrove forests, although extensive, have been impacted by cyclones and through other causes. Note that the scale of ERPs in each location might be a factor given the high costs reported for projects; it having been recently reported that the average abatement cost of a mangrove restoration project in Indonesia is USD50-100/tCO<sub>2</sub>, with the expected market price in Southeast Asia presently USD30/tCO<sub>2e</sub>, and average project costs in the order of USD60/tCO<sub>2e</sub>.<sup>63</sup>

The concerns with respect to scale for projects at these sites could be misplaced, despite the likely project costs. It has been argued that the high carbon sequestration potential of Fiji's mangroves at these sites coupled with the ability to mitigate CO<sub>2</sub> emissions from soils of damaged forests in comparison to other habitat types may suggest that the magnitude of GHG mitigation benefits may offset to some degree the scale of potential interventions, according to Cameron et al, who conclude that for Fiji, even small-scale (~20 ha) rehabilitation projects may be feasible having regard to the other ecosystem services also provided by mangroves (Cameron, Maharaj et al). But care should be taken with this tentative conclusion (see Watling, 2021).

In the event the optimism of Cameron et al is concluded to have been misplaced, as a result of further research or when the CAPEX is calculated for a mangrove ERP at any one of these sites or for other reasons, an approach could be to bundle the three mangrove reforestation or restoration projects into a single ERP to try to achieve economies of scale, which might be possible with the assistance of a carbon project developer-financier, or a NGO with relevant experience.

Additionally, in the interests of the permanency aspects of a mangrove restoration project, legislative provisions are necessary to permanently protect mangroves from destruction and degradation caused through human intervention, as is the means to enforce the provisions. The case has been made above

<sup>63</sup> <https://bluecarboncosts.com/costs-and-benefits/>

(8.4.2) for the need for legislative action to this end.

If a blue carbon ERP could sensibly proceed (and not be labelled 'greenwashing'), in theory the proponent could be the adjacent landowners (who also possess some/most of the *iqoliqoli* rights), a group of LOUs, a company, an adjacent lessee (with consent of the lessor), a NGO or a third party (including a cooperative or a body corporate of LOUs, holding a CSPR with the support of and assistance from the relevant Provincial Council and the Ministry of iTaukei Affairs and perhaps in partnership or through an agreement with a NGO or blue carbon project developer-financier).

There is a demand for high quality blue carbon credits and the recent establishment of the Blue Carbon Buyers Alliance will assist in meeting that demand through measures including mobilising capital for high quality blue carbon projects and partnering with leading NGOs and governments to foster capacity building for local communities.<sup>64</sup>

A specific parcel of foreshore or seabed land might be the subject of a lease by the Director of Lands to P, but this is not *required* under the law (and probably not needed or desirable, as argued above) and would depend on the policy of the Department of Lands. A licence (not presently available) could be sufficient: see the discussion above in 8.1.1. For the integrity of the project and the ERUs achieved, it is essential that P, if not the landowner, be able to show a lawful right to undertake the project on the land.

If a lease is required, it would be for the public purpose of a blue carbon ERP that would be registered under an IC-VCM approved international emissions reduction standard and include the following special provisions/conditions at a minimum:

- the right to existing blue carbon as at the execution of the lease runs with the lease and is transferable only with the lease (with approval)
- the rights to any blue carbon generated by the project (blue carbon rights 'BCR') will be the property of P or P's successors in title
- BCR are property that may be dealt with by transfer, sale, mortgage, charge or pledge and may be converted into tradeable carbon credits
- for mangrove forest, that the CoF is consulted on the project
- for seagrass meadows, that the relevant Government expert is consulted on the project
- that the project be notified to the relevant provincial government.

For a mangrove project P would also need to have an EIA approved under the *Environment Management Act*, prior to the Minister of Lands approving any lease required.

If P is a third party it is suggested that P obtain the FPIC of the adjoining landowners through the Ministry of iTaukei Affairs before finalising the development of a blue carbon project for the approval of any lease required from the Director of Lands.

If the *Climate Change* as enacted comes into force, this type of nature-based project for the voluntary carbon market will have to be nested within the national jurisdictional scheme, provided that P holds the CSPR for the land and the Director, CCD, OPM grants consent.<sup>65</sup>

Finally, it is noted that establishing successful high-quality nature-based blue carbon projects typically involves a very long lead time, with the largest capital expenditure (CAPEX) being during this period, and revenue flow commencing typically only after 10 years post CAPEX (Nature4Climate).

<sup>64</sup> <https://scalingclimatesolutions.org/wp-content/uploads/2021/11/Blue-Carbon-Buyers-Alliance.pdf>

<sup>65</sup> *Climate Change Act*, s.55

## Proponent - options

It is clear from earlier sections of this Report that it is desirable for a coastal ecosystem restoration project in Fiji to be carried out by, in collaboration or at least in consultation with the local community, having regard to local knowledge, customary usage and practice and the community's stake in the health of coastal ecosystems. There is no reason why the concept of an ERP could not commence with the local community.

A village (koro) may wish to restore and protect the mangroves, of its own volition or on the advice of the village or provincial YMST. An ERP to generate carbon credits (ERUs) and restore the mangroves entered into by one koro or *mataqali* is not feasible and would not be viable.

It is noted that a provincial council is a body corporate and may lease and develop land within and beyond the province, and its functions include (formulating and) implementing policies for promoting the economic development of the province.<sup>66</sup>

An ERP undertaken by P being a provincial council might be viable if undertaken as either a REDD+ project; or in partnership/ a joint venture with either a blue carbon developer-financier; or an experienced NGO (supported by private finance), but politically it may not be desirable for a provincial council to take on such a role, and an issue here is that the areas of mangrove where blue carbon projects are contemplated are in 3 separate provinces.

Other options for P include:

- a cooperative or an incorporated body comprising a number of LOUS, in partnership or by agreement with a NGO or a private sector carbon project developer-financier;
- the State of Fiji, in a partnership or joint venture with a NGO or carbon project developer-financier, in accordance with the *Public Enterprises Act 2019*; and
- an experienced NGO, in partnership/joint venture with a number of LOUs in the nominated mangrove areas.

### 8.7.2 Voluntary ERP under the *Climate Change Act*

If the *Climate Change Act* as enacted comes into force, a P may register and conduct an ERP (forests, blue carbon or other type of ERP) on land in Fiji under an approved international ER standard operated by a non-government organisation for a designated crediting period, provided P owns the CSPR for the land, with existing ERPs in this category having to apply for consent to continue, once the Act becomes operative. These ERPs would be producing carbon credits or ERUs for the voluntary carbon market.

Centralised reporting and approval is required both for a project, and to use, sell or transfer domestically or internationally any ERUs issued for an ERP under an approved international ER standard. The Director, CCD must be satisfied that the ERP, or the use, sale or transfer of ERUs is consistent with Fiji's NDC, as well as the Act and regulations, Fiji policies, guidelines, standards or procedures, and if applicable, consistent with the Paris Agreement (particularly in relation to double counting) and any guidance developed by the Conference of the Parties (CoP) for the meeting of the Parties (MoP) for Articles 6 and 13 of the Paris Agreement.

Care must be taken in the registration of ERUs issued (unique serial number and properly recorded, and tracked and accounted for in the Fijian GHG Inventory) and to record the approval of an international transfer of ERUs.

<sup>66</sup> iTaukei Affairs Act 1944, s.8; iTaukei Affairs (Provincial Councils) Regulations 1996, reg 25.

ERUs generated by an ERP in Fiji under an approved international ER standard may be converted to Fijian MOUs with approval of the Director, CCD who must be satisfied that the P holds a relevant CSPR and that there will be no double counting.

### **8.7.3 ERPs in Fiji for the purposes of Article 6 of the Paris Agreement**

A person holding a relevant CSPR may apply to register, conduct or otherwise operate an ERP in Fiji for the purpose of Article 6 of the Paris Agreement, but consent may only be granted if the Director is satisfied that the ERP is consistent with Fiji's NDC, current carbon budget and the long-term emissions reduction target. It is to be noted that there is a difference between ERPs under Article 6.2 of the Paris Agreement which if approved may generate ERUs and in consequence ITMOs, and ERPs under Article 6.4 that, once approved as an ERP in Fiji, require the P to seek external approval from a Supervisory Body yet to be designated by the CoP serving as the MoP to the Paris Agreement.

## 9 CARBON CREDITS TRADING

### 9.1 Compliance markets

A compliance market will exist where a country has by legislation set a carbon budget and imposed a cap on GHG emissions typically by granting a limited allowance of emissions that a certain industry sector or company is permitted to emit; that is high emitters have to reduce emissions to below the specified limit (cap) or buy emissions credits to meet the target (while endeavouring to reduce their emissions). Businesses who do not need to use their allowances may sell them on the market (carbon trading scheme). Generally, the cap on emissions is tightened annually or at periodic intervals to incentivise businesses to reduce GHG emissions progressively, which also has the effect of increasing the market price/demand for emissions credits. Thus a carbon trading scheme where polluters are able to buy carbon credits to offset their emissions above the regulatory limit is established. This is a carbon compliance market.

Fiji has not yet set a carbon budget, emissions limits or plan for an emissions trading scheme.

#### 9.1.1 Compliance market Fiji

As the *Climate Change Act* is not yet in force and there is no carbon budget, no emissions limits or an emissions trading scheme in operation in Fiji, nor is blue carbon identified as a current REDD+ project or activity in Fiji, a national compliance market within Fiji cannot exist, nor can a sub-national market operate.

### 9.2 Voluntary carbon markets

Voluntary carbon markets are said to be thriving (Hewitt). But much depends on the quality of the underlying carbon credits, which must be accurate, permanent, additional and with strong benefits for biodiversity and local communities.

Without a jurisdictional scheme in place for ensuring the integrity of carbon credits generated, the best option would be for P to work with an internationally recognised standard that has been approved by the IC-VCM or an equivalent trusted organisation.

The standards have methodologies that can be applied to blue carbon projects to quantify the emissions reduction and removal benefits and be issued with verified carbon units (VCUs) to sell in the voluntary carbon market.

The integrity of VCUs in the marketplace has been an issue. Following concern about the integrity of some carbon credits available in the voluntary market and recent serious criticism of a particular internationally recognised certifier, the IC-VCM has published the *Core Carbon Principles* that provide a baseline, framework and benchmark for what every carbon credit should have in order to be used as an offset. The commentary suggests they aim to create an understanding of what high integrity means for a carbon crediting programme, being grouped under headings of governance, emissions impact and sustainable development (Jackson).

While the governance principles generally reflect the system proposed in the *Climate Change Act*, the detail provided will assist any person wanting to understand what is required for carbon credits to be accepted as credible, high quality carbon credits for trading in a trustworthy voluntary carbon market.

In addition, carbon trading markets or exchanges have been established with their own rules to ensure the integrity of carbon credits offered for trade. One example is Climate Impact X (CIX), a carbon trading marketplace focused on nature conservancy projects, established in Singapore in 2021 through a joint

venture (DBS Bank, Singapore Exchange, Standard Chartered Bank and Temasek). It is an exchange for trade in large quantities of high-quality carbon credits, as well as being a marketplace of nature-based projects for investors.

According to its website, the CIX is very alert to the need to be responsible for the integrity of its trading platform and so will hold suppliers (as well as purchasers) to account for their environmental performance and observance of human rights in the projects producing carbon credits and will use high technology tools (including drones) to verify and check the integrity of projects, which must have been risk-assessed by independent rating companies. The carbon credits available on CIX will primarily be sourced from nature-based climate solution projects and must have been verified by an approved international global standard.<sup>67</sup>

That CIX will facilitate trading in ERUs from blue carbon projects is evidenced by the news that 250,000 tonnes of vintage 2021 credits from the Delta Blue Carbon Project in Pakistan (see Annex 3) were sold at an auction conducted by CIX in November 2022, at USD27.80 per tonne.<sup>68</sup>

Other international carbon emission trading markets either just established in the Asia-Pacific region, or about to be include:

- the Hainan International Carbon Emissions Trading Center in China's free trade port of Hainan, was expected to open in late 2022;<sup>69</sup> and
- Hong Kong's Core Climate trading platform, launched by Hong Kong Exchanges and Clearing Limited (HKEX) in October 2022 and traded approximately 40,000 tonnes of carbon credits in its first month of operation (Hong Kong Exchanges and Clearing Limited).

Also of regional interest is the support for the development of high integrity international carbon markets evidenced by the Green Economy Agreement (GEA) between Australia and Singapore signed in October 2022 which includes carbon markets as one of the specified areas of cooperation (clause 9 (d)). Recognising that cooperative approaches under Article 6 of the Paris Agreement are an important part of efforts to raise global climate ambition and meet the Paris Agreement goals, (but) that emitters should first seek to reduce emissions before turning to carbon markets, the GEA also recognises that interest in carbon markets is increasing globally, that establishing standards and systems across the region is important to foster and facilitate participation in high-integrity carbon markets, and that robust international carbon markets that trade in verifiable, high integrity offsets will enable economic growth and benefits to local communities among many other benefits. By the GEA, the two countries have agreed (inter alia) to collaborate to:

- support the development of compatible and credible international carbon markets that demonstrate high standards of social and environmental integrity, in alignment with Article 6 of the Paris Agreement; and
- support, strengthen and enhance climate actions by partners in the region, by undertaking specific cooperative activities including supporting internationally harmonised rules and well-functioning carbon markets and sharing their experience and expertise in carbon accounting, operating carbon markets and conducting MRV (Government of Australia, DFAT).

### 9.2.1 Voluntary trading for purposes of Article 6, Paris Agreement

Article 6.2 of the Paris Agreement enables cooperative trading approaches between countries through voluntary cooperation to achieve and enhance their climate goals. These may include bilateral or multilateral approaches, whereby the buying country B purchases ITMOs from a selling country S to assist in achieving its NDCs and adjustments are made by the country S to ensure the ITMOs are not counted against its NDCs;

<sup>67</sup> See: <https://www.climateimpactx.com/about>

<sup>68</sup> See: <https://www.climateimpactx.com/news>

<sup>69</sup> <https://www.chinadailyasia.com/article/264667>



that is, that double counting is avoided.

Article 6.3, Paris Agreement notes that the use of ITMOs to achieve NDCs is voluntary and is tailored and authorised by participating parties between them.

Article 6 trading is envisaged under the provisions of the *Climate Change Act* including recognition of the need for adjustments, but this opportunity is not yet available.

A country that presently operates a national emissions trading scheme but is closed to international carbon markets, such as New Zealand, might in the future be open to an Agreement with Fiji whereby Fiji ITMOs could be sold to New Zealand parties. However, the Fiji ITMOs would have to meet the New Zealand standards, that is, be of high quality, genuine and have environmental integrity (Government of New Zealand).

### 9.3 Carbon credits trading summary

In summary, in relation to blue carbon credits:

- there are presently trading opportunities in the voluntary markets for nature based offsets that are of high quality and integrity;
- there are and will be trading opportunities in the voluntary carbon markets in the future for blue carbon credits that are high quality and generated under a governance system of the highest integrity; and
- there is potential for partnerships with other countries through bilateral or multilateral agreements to trade carbon credits to buyers in those other countries, but Fiji carbon credits would have to meet the standards of those countries, namely show the carbon credits are of the highest quality and generated under a governance system of the highest integrity.

Because of the demand for high quality carbon credits and the concern regarding the quality of some of the carbon credits presently available in global voluntary markets, it is suggested that the best option presently is to plan for blue carbon projects by taking the necessary preparatory steps while awaiting the establishment in Fiji of a nationally governed high integrity scheme for registering and monitoring ERPs with safeguards, verifying the carbon credits produced and accounting for reversals and registering the credits/ERUs/MOUs in a system that is safe against fraud and double counting – as proposed in the *Climate Change Act* (as enacted).

## 10 NESTING OF BLUE CARBON ERPS IN THE NATIONAL REDD+ FRAMEWORK.

### 10.1 Fiji's National Nested System

Under its REDD+ Policy that did not contemplate mangrove restoration projects (nor are they within any of the activities proposed within Fiji's existing Forest ER-P<sup>70</sup>), Fiji envisaged a nested or 'hybrid' scale approach to REDD+, enabling both national and sub-national or project-scale activities to be adopted.

According to Fiji's ER-P (14 June 2019), the MoF was developing a Nesting Guideline 'to establish a single national accounting framework within which projects can nest' and a roadmap was included indicating activities such as 'enactment of the Forest Bill 2016' and 'carbon trading regulation'. Subsequently the *Climate Change Act* has made clear the intention for a national nested emissions reduction scheme.

By the provisions of the *Climate Change Act* Fiji has chosen to implement a centralised nested approach as outlined in diagrammatic form in Figure 4.

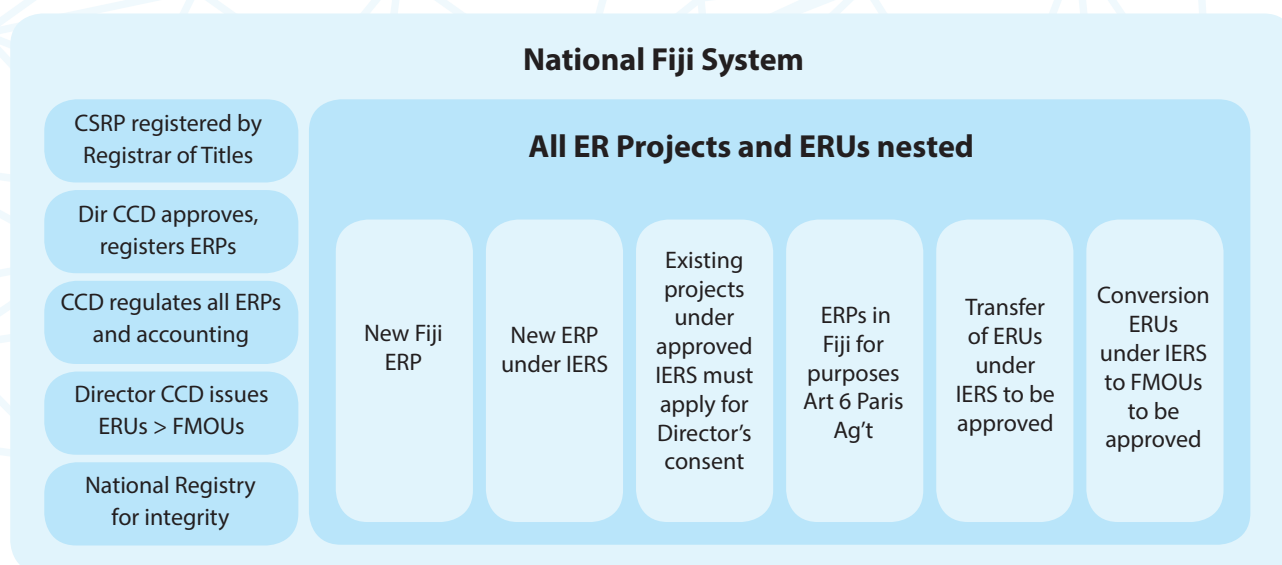


Figure 4: all emissions reduction projects and erus nested within fiji national system

Fiji's national system encompasses all ERPs that meet the requirements specified in the Act, and requires all ERPs, whether new or existing, under REDD+ or an international emissions reduction standard (IERS) to meet Fiji requirements and be approved by the Director, CCD (following consultation with the CoF if the ERP involves forests (including mangroves)).

### 10.2 Fiji's REDD+ Programme

Fiji has a REDD+ Programme and Framework to which reference has already been made. The REDD+ programme has been in development for many years and is administered by the MoF, as acknowledged in the *Climate Change Act* and in the BSP for Fiji's REDD+ ER-P.

The REDD+ Programme is not central to the achievement of Fiji's NDCs but it is a plank in its national response to climate change and is central to the sustainable management of Fiji's forests and the sequestration of carbon in a nature-based approach. The national scheme for ERPs and trading in ERUs precludes neither ERPs that are not REDD+ projects nor ERPs that are not designed to generate ERUs<sup>72</sup>.

<sup>70</sup> <https://fjireddplus.org/forest-conservation-with-fijis-forestry-er-program/>

<sup>71</sup> See *Climate Change Act*, s.50

Mangroves are addressed in the policies and strategies of the *National Forest Policy Statement* (2007), which sought to refocus the MoF toward the sustainable management of forests but are omitted from the *REDD+ Policy* (2011). This omission is perhaps understandable given that blue carbon conservation and restoration activities, due to barriers to certification resulting from uncertainty about carbon accounting methodologies, only became eligible for finance as a REDD+ project type following the finalisation of blue carbon conservation methodologies (includes tidal wetland conservation and restoration) within the REDD+ methodology frameworks in 2020 (Verified Carbon Standard Association, 9 September 2020).<sup>73</sup>

While there is scope in the *Climate Change Act* for mangrove forest ERPs that are not REDD+ projects, having regard to the sequestration potential of mangrove forests as well as the non-monetary benefits that could flow from the implementation of such projects in Fiji, it could be helpful in the future for access to available REDD+ project support if mangrove forest ERPs are included in the REDD+ Programme.

**It is recommended that the REDD+ Policy and Fiji's REDD+ ER-P be amended to include blue carbon projects.**

### 10.3 Enabling blue carbon emission reduction projects

The meaning given to 'forest' in the *Climate Change Act* is inclusive of mangrove forest, but mangroves are not addressed by the Forest Act 1992, where 'forest' is not defined. It is acknowledged in the *Climate Change Act* that the MoF is responsible for Fiji's REDD+ scheme and that the necessary technical expertise to assess a blue carbon ERP for mangroves lies within MoF.

For the success of ERPs, mangrove forests and seagrass beds would have to be permanently protected by law such as was originally proposed for mangrove forests in Forest Bill No. 13 of 2016, as argued earlier in this Report.

It is noted that several Ministries have responsibilities relevant to mangroves and seagrass beds. They include at least the MoL, MoF, Ministry of Fisheries, Ministry of Environment and now the OPM being the location of the CCD and having regard to the prospect of blue carbon ERPs. It is understood that the Mangrove Management Committee has not met for some time. The feedback at the Project Workshop held on 2 May 2023 included the observation that in the interests of the better management of mangroves, government agency silos need to be breached and an excellent means of achieving this in the interests of improved approaches to mangrove management is the reconvening of the cross-agency Mangrove Management Committee.

**It is recommended that the Mangrove Management Committee be reconvened.**

Suggestions if not recommendations in other policy documents include the authorisation by the Government of a Mangrove Management Plan, and strengthening of regulations addressing the use of, and acts and activities that may be undertaken in mangrove forests/areas.

**The authors endorse the recommendations for the adoption of a Mangrove Management Plan.**

It is evident with the passage of the *Climate Change Act*, having regard to its contents that the Forest Bill of 2016 as it stands cannot proceed without revision. It is equally evident that the Forest Act needs revision, at least to synchronise it with the *Climate Change Act*, but in particular to recognise that forests includes mangrove forests as without this change blue carbon ERPs cannot be developed as REDD+ projects. Comments made to the authors at the May 2023 Workshop included the need for enforcement against persons taking unlawfully from mangroves.

<sup>72</sup> *Climate Change Act*, s.59

<sup>73</sup> Subsequently Plan Vivo Foundation updated its methodology to include protection and restoration of wetlands and improved management of marine areas to increase carbon stocks with Plan Vivo Standard Project Requirements version 5.0 in 2022: <https://www.planvivo.org/news/plan-vivo-releases-icrao-endorsed-standard>

**It is recommended that the Forest Act be revised to provide that:**

- **The meaning of ‘forest’ includes mangrove forest; and**
- **mangrove forests be permanently protected including an offence provision.**

Seagrass beds would require similar protection to that proposed for mangroves if they are to be the subject of blue carbon ERPs. That would require amendment of the *Fisheries Act*, at least to mirror the protection provided to aquatic plants under the *Offshore Fisheries Act*, and in addition creating an offence provision.

**It is further recommended that the *Fisheries Act* be amended to provide permanent protection for seagrass meadows including an offence provision.**

#### **10.4 Fijian Emissions Reduction Project**

A person may apply to the Director, CCD for a declaration that a project, programme or activity is a Fijian ERP, provided the person owns the CSPR for the land on which the Fijian ERP (forests, blue carbon or other type of ERP) is proposed to be conducted. The ERP must meet specified requirements – that are or will be set out in the ERM, the *Climate Change Act* and Regulations - and the CoF must have been consulted.<sup>74</sup>

The *Climate Change Act* as enacted demands centralised reporting by a proponent periodically (at the end of a reporting period – yet to be specified in the ERM and/or regulations) advising the quantity of emissions reductions generated by the ERP supported by a verification report prepared for the ERP proponent by an independent auditor.

Provided the Director is satisfied with the periodic report including that there will be no double counting of the ERs, the outcome is certified with the issue of a Fiji Emissions Reduction Statement that entitles the grantee to the issue of Fijian Mitigation Outcome Units, personal property that can be traded domestically or internationally.

#### **10.5 Fiji Government transactions under international REDD+ Programmes**

The Government may transfer the rights to sequestered carbon via the sale of Fiji MOUs under an agreement made having been accepted into an international REDD+ Programme (such as the World Bank’s FCPF or the Green Climate Fund), provided:

- The Minister has the prior informed consent of the TLTB, or any other person who owns the registered CSPR for the land, as applicable,
- The Government compensates the TLTB and any other landowner with forest carbon or the person who owns a CSPR – under an approved BSP;
- The Minister has considered current market value of the ERs or Fijian MOUs and the impact of the transaction on Fiji’s NDC; and
- Any other necessary arrangements with the landowner and owner of the Registered CSPR.

Fiji is currently participating in the international REDD+ Carbon Fund Programme of the FCPF.

<sup>74</sup> *Climate Change Act*, s.50

# 11. PLANNED INSTITUTIONAL ARRANGEMENTS

## 11.1 International carbon credit transfers and process for accounting nationally

The arrangements for the authorisation of international carbon credit transfers and national accounting have been set out in the *Climate Change Act*. It is reiterated that this Act is not yet in operation and is awaiting the drafting of regulations. As the authors understood this Study to be largely a desktop study, they are unable to comment on planned institutional arrangements, save for the following:

- In the interests of its integrity and ease of access, the administrative aspect of safeguarding Fiji's national accounting system for carbon credits should lie with the agency who is also responsible for managing Fiji's climate change commitments. Thus the Registry of ERPs, FMOUs, ERUs issued under and approved IERS and ITMOs might appropriately be centralised in the Climate Change Division of the Office of the Prime Minister; and
- The MoF has the technical expertise and experience in forestry matters and has presently the oversight and implementation of Fiji's REDD+ Programme including a role in registering beneficiaries. There is no reason to change this arrangement given the expertise developed over many years and the fact that the REDD+ Programme is concerned with ERPs for forests.

## 11.2 Treatment of the Fiji national greenhouse gas (GHG) inventory

By law, the Minister responsible for the *Climate Change Act* must develop the Fijian GHG inventory in accordance with guidelines and methodologies established under the *UN Framework Convention on Climate Change*, and it must be made publicly available online.<sup>75</sup>

The *Climate Change Act* further provides in Part 7 the process by which information concerning emissions and emissions reductions activities is to be collected, with mandatory reporting required from the permanent secretaries responsible for the following sectors: energy and transport; industrial processes and product use; agriculture, forestry and other land use; and waste. The legislation opens the way to mandatory reporting being required of State entities and private commercial operators emitting GHG above a nominated threshold to be determined following consultations with stakeholders.

A national inventory report using the emissions data from the Fiji GHG inventory and in accordance with the Paris Agreement must be prepared biennially for submission in accordance with Fiji's international obligations. This report is required to be publicly available online, once submitted.<sup>76</sup>

In August 2022 Fiji's *Capacity Building Initiative for Transparency* (CBIT) project was launched by the UN Environment Program (UNEP) and the Global Green Growth Institute. The aim of the project is the development of an online system that will host the national GHG inventory systems and a measurement, reporting and verification (MRV) system. This will enable the tracking of Fiji's national GHG emissions and reporting on Fiji's Nationally Determined Contributions (NDC) implementation (Fiji Climate Change & NDA Portal). It is a 3 year project under an agreement between Ministry of Economy and UNEP with the Global Green Growth Institute and funded by the Global Environment Facility (GEF).

Given the provisions of the *Climate Change Act* and the 3-year ongoing CBIT Project (to August 2025), there is nothing further to be said in this report with respect to national accounting and the GHG inventory.

<sup>75</sup> *Climate Change Act* s.29

<sup>76</sup> *Climate Change Act* s.33

## 12. BENEFIT SHARING

### 12.1 Introduction to benefit sharing and compensation

The Benefit Sharing Mechanism (BSM) under Fiji's REDD+ ER-P clarifies how carbon funded benefits linked to emission reductions performance are used to provide benefits to stakeholders (such as different levels of governments, the private sector, and communities) and the way such benefits are distributed at each stakeholder level.

The premise for designing a REDD+ BSM (either national, jurisdictional or local) should be fair and acceptable to relevant stakeholders. All sponsors of the REDD+ programs require in one form or another the following:

- Identification of the relevant beneficiaries and their eligibility and the general principles on how such benefits will be distributed (the "mechanics" of the benefit sharing arrangement)
- Identification of policy, legal and regulatory frameworks, and civil society and political discourses influencing benefit sharing
- To develop different options for BSMs and to suggest a benefit sharing mechanism appropriate for the country and project
- That a BSM be designed in a consultative, transparent, and participatory way appropriate to the country
- That a BSM respect customary rights to lands and territories and reflect broad community support so that REDD+ incentives are applied in an effective and equitable manner
- That a BSM be built upon various national readiness processes including SESAs and taking into consideration existing benefit-sharing arrangements
- That a BSM comply with relevant applicable country laws including relevant international conventions and agreements and customary rights
- That a Feedback Grievance Redress Mechanism (FGRM) system be established prior to any finalized ER program.

Fiji has an existing national REDD+ BSP (2021) finalized in 2021 (Conservation International Fiji, 2021) prepared for World Bank approval towards the FCPF Agreement signed in 2021 for Fiji's REDD+ ER-P. This predates Fiji's *Climate Change Act 2021*, and applies to the benefits from the sale of carbon credits derived from Fiji ERPs under the Fiji REDD+ ER-P.

This Blue Carbon Study agrees with the conceptual approach, methodologies, and recommendations of the 2021 BSP and endeavours where necessary, to adapt its content. The BSP 2021 generally covers a wide range of topics and issues, and the underlying principles are common to both forest carbon and blue carbon ER projects. These are (as relevant to blue carbon projects):

- Safeguards need to be implemented effectively, equitably, and sustainably
- The UNFCCC safeguards principles - transparency, participation, protection of biodiversity, and protection of the rights of local people must be followed
- Safeguards need to ensure that ER projects do not inadvertently harm communities and ecosystems by exacerbating existing inequalities

- Safeguards and benefit sharing should be developed around the particular country/ jurisdictional situation recognizing that different safeguard systems can be used, as there is no “uniform” country safeguards system with “one size fits all”
- ER projects should also have appropriate due diligence, monitoring, verification and reporting elements commonly referred to as a Safeguard Information System (SIS).

In addition, specific to blue carbon projects:

- All stakeholders participating in Blue Carbon ER activities must be rewarded according to their contributions to reducing deforestation of mangroves, reducing destruction of seagrass, degradation, conservation and carbon stock enhancement
- Under existing law compensation must be paid by a lessee to adjoining and abutting property rights owners whose rights have been infringed in the case of a part of the foreshore being leased.<sup>77</sup>

For the purposes of this report, the following definition of benefit sharing is adopted: *Benefit sharing in the context of ER Projects is the intentional transfer of monetary and non-monetary incentives (goods, services, or other benefits) to stakeholders for the generation of emissions reductions and removals (ERRs) and other objectives funded by payments received under result- based payments or an ERPA.*

The definition does not include compensation as required under the law, which means that compensation is to be addressed separately from a benefit sharing approach.

Under the adopted definition, carbon-funded benefits must be used to provide:

- Monetary benefits in the form of cash received by beneficiaries; or
- Non-monetary benefits in the form of goods, services or other benefits (e.g., technical assistance, capacity building, in-kind inputs or investments such as seedlings, equipment, buildings etc.).

Note that the FCPF Carbon Fund Methodological Framework (2016) categorizes a third type of benefits – [Non-carbon benefits] – which do not form part of the BSM. Non-Carbon Benefits are any benefits other than Monetary or Non-Monetary Carbon-funded Benefits produced by or in relation to the implementation and operation of an ER-P. Non- Carbon Benefits may be in-kind benefits (e.g., improvements of local livelihoods, improved forest governance structure, clarified land tenure arrangements, enhanced biodiversity and other ecosystem services etc.) or may be financial benefits (e.g., revenues from sale of timber or non- timber forest products, or from increased agricultural yields).

Fully aware of Fiji’s existing BS Framework (in the REDD+ BSP 2021), this Study specifically aims to consider benefit sharing considerations appropriate in the context and specifics of Fiji’s mangrove and seagrasses, with regards to tenure and ownership of the underlying land.

However the next Part of the Report will first address the approaches to compensation for rights affected by a lease to a P under the *State Lands Act* for the purposes of a blue carbon ERP.

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<sup>77</sup> *Climate Change Act* s.22

## 13. COMPENSATION FOR IQOLIQOLI AND ADJOINING LOU RIGHTS

The *State Lands Act* provides that where foreshore land is leased by the Director of Lands, the lessee must compensate abutting or adjoining landowners for rights that may be infringed. This would include customary *iqoliqoli* rights. In the case of dispute regarding the amount of compensation, it is to be determined in the manner provided by the *State Acquisition of Lands Act 1940*<sup>78</sup> which involves an application to the High Court with the standard criteria such as market value and damage sustained to be considered. This approach is not appropriate for compensation for loss of customary rights.

Earlier in this Report the issue of whether a lease of the foreshore/seabed would be required for a blue carbon project. Under existing law, compensation is only payable to abutting/adjoining landowners where a lease is granted. The following discussion therefore could relate strictly only to the situation where a lease is granted, but as will be seen the conclusion is that a lease may not be necessary for a blue carbon ERP and the recommendation is that P, whether lessee or not, enter into a negotiated agreement with affected *iqoliqoli* rights holders, of which compensation for any rights that would be likely to be temporarily forgone would be a component.

It should be noted that in the **alternative scenario** where carbon rights remain with the landowner, a lease of the foreshore or seabed would be essential to effect the transfer of the rights to stored and sequestered carbon.

Drawing on a detailed analysis of both institutional arrangements and stakeholder interpretations, together with insights from lessons learned from other jurisdictions, potential compensation models are explored and analysed. This is contextualized by the scenario analysis of a blue carbon project to allow the interests of the various stakeholders in a potential ERP to be reconciled, and this in turn allows for a discussion and elaboration on the appropriate valuation methods that can be applied, drawing on international best practice. The conclusion reached is that the synergistic value approach, a valuation method more familiar to the valuation profession than mainstream economists, has more to offer in the context of combined land and sea rights resource compensation.

### 13.1 Background to *iqoliqoli* rights compensation

With the increasing prevalence of foreshore development and its impact on customary fishing grounds, in 1940 the government recognized and instituted a system of registering traditional fishing rights owners (*iqoliqoli*). Since then they have been entitled to recompense for the loss of fishing rights in a process which remains the sole basis for fishing rights compensation today. In accordance with constitutionally guaranteed rights to property and the prevailing compensation process for loss of customary fishing grounds, when the right to fish in a customary fishing ground is interfered with, the owners have a right to be recompensed in a capital sum by the lessee/licensee or the State, whichever party is responsible for the development that causes the interference.

The process for compensation commences with a signed waiver of customary fishing rights by registered *iqoliqoli* owners for a single one-off lump sum payment. The independent arbitrator in such instances, bases judgement on the capitalized economic value of the marine resource inventory on a given day/night. The fisheries value per hectare is calculated, and value per annum for the (anticipated) fish stocks rate of loss, which is then capitalized and adjusted in light of other available evidence and local conditions (e.g sedimentation rates, and other environmental considerations).

The question for blue carbon ERPs that consist of mangrove protection and mangrove forest restoration, is whether such ERPs would substantially interfere with customary fishing rights. If the answer is that they

<sup>78</sup> *Climate Change Act* s.22(3)



would interfere absolutely, a waiver would need to be signed and compensation would be payable. If the answer is no, or not to a significant extent, there would be no need to deprive *iqoliqoli* owners of their rights and no compensation would be payable, but other measures might be available in acknowledgement of the opportunities foregone (where not major). The answers will depend on the nature and extent of each blue carbon ERP - on the nature of activities, their frequency, the area impacted in each case and whether access should be excluded for any period.

In the past there have been examples where the quantum of compensation for *iqoliqoli* owners has been mitigated, for example where sand dredging has occurred within *qoliqoli* areas and sand dredging royalties are payable. There is no evidence found to suggest that there can be a precise determination of existing rights (inventory) over a particular area or the division of people enjoying these rights. Yet, there remains an anomaly between the concept of a single compensation payment for waiver, and the notion of (supposedly) an annualized rental payment and a fixed term use /access/infringement for a foreshore lease or special licence.

### 13.2 Valuation approach

Given the absence of a comprehensive compensation policy that clearly specifies the nature and extent of the compensable rights and interests, any coastal development, herein blue carbon, is likely to run into problems given the understanding of customary owners that they own everything above and below the land (including seabed), including the minerals. Often, friction arises between the customary owners on the one hand and the developer (or resource investor company) on the other, with the former feeling that fair compensation has not been paid (McLeod, 2000). Fiji has had a mixed history in this regard, in that it recognised that it had no comprehensive system of compensation and commenced work towards a policy in 1999, albeit that such policy reforms are yet to be enacted in legislation.

The definition of compensable damage and compensation was a key consideration in the derivation of Fiji's compensation policy, including the award of damages for any loss in value or damage to land, water, foreshore or other resources as well as in relation to rights arising from resource extraction developments such as prospecting, exploration and mining activities - to landowners, occupiers, other users through customary arrangement and the surrounding communities, in monetary or non monetary forms (Republic of Fiji Islands, 1999). This draft policy is explicit in listing all possible damages, including the loss of cultural rights. However, it did not translate the possibilities of compensable rights and interests that are intangible but inherent to the culture of the landowning unit that forms part of the traditional estate.

In the absence of legislative development, landowners have to contend with the compensation regime pre August 1999. The notable development for landowners since 1999 has been the clarification of dividends paid via the *Fair Share of Mineral Royalties Act 2018*. The latter does little to inform on constituent considerations of subsisting rights and interest in resource negotiations but addresses dividends to be paid directly. Research on the review of *iQoliqoli* compensation (2010) identified that the lack of a comprehensive resource compensation policy has resulted in compensation sums for the land-based aspects such as mines being arbitrary, largely due to the *ad hoc* nature of the negotiations. Like most of the Pacific Island States, compensation thus far has been largely limited to surface damage in addition to the monetary benefits arising out of the leasing of surface land for mining or access purpose (as in English-based legal systems).

It is suggested that an optimal contemporary arrangement for *iqoliqoli* compensation might be appropriate given the legal treatment of customary rights that straddles the compromised area of customary law versus contemporary legal, modern precepts of property. While there is a range of compensation models available, international best practice where indigenous land rights and culture may be affected is clearly moving towards negotiated frameworks. These can be large-scale agreements often taking years to negotiate, which embed compensation within an overall redress package. Both monetary and non-monetary forms of redress are given. The quantum of the monetary component does not always directly relate to market or non-market values of particular rights.

<sup>79</sup> See *Native Title Act (Cth)*, s.51

This study has analysed four compensation approaches, which are discussed in more detail below and then incorporates them into a hybrid model that can best address the complexities and peculiarities of customary rights to mangroves and coastal waters (*iqoliqoli* areas).

**Model A – Tailor compensation to the exact rights of customary landowners**

This approach requires some kind of recognition system as a precursor to determining compensation, most likely a common law or statutory native title system. The advantages and disadvantages of this approach are listed in Table 4.

Table 4: Advantages And Disadvantages Of Model A – Compensation Tailored To The Rights Of Customary Landowners

Compensation tailored to the exact rights of customary landowners	
Advantages	Disadvantages
Tailors the compensation to the exact rights held – possibly providing a more nuanced quantum of compensation.	Sits very uncomfortably with those countries with a continued recognition of rights, such as Fiji.
Allows for western commodification of rights (which some stakeholders seem to want).	Is complex
Is likely to result in a lump sum compensation figure, noting that lump sum compensation avoids many of the complexities introduced by diverse (multi-criteria) compensation packages, such as how to legally implement / enforce indirect payments.	Requires human resources and capacity that Fiji might not currently have, as the establishment of rights on a case by case basis is costly.
	Can be a very blunt tool, as with any monetary determination of compensation
	Does not allow for a meaningful transfer of profit or wealth sharing, so is likely to result in a single lump sum monetary figure, rather than a diverse compensation package.

**Model B – Assume a set of common property rights prevail and tailor compensation accordingly**

Native title claims, be they derived from the common law or statute are lengthy, expensive, and require specialists in the form of lawyers, anthropologists and historians where it is necessary to prove unbroken connection to land (as in Australia). It is doubtful that Pacific countries generally have the capacity to enter into a recognition process, but as Fiji has the benefit of the existence of the VKB and Register of Customary Fishing Rights Holders it would not be necessary to prove connection to land or *iqoliqoli* rights.

Where native title rights and interests are lost or affected by certain acts of others in Australia, they are entitled under the *Native Title Act (Cth) 1993* to compensation for any loss, diminution, impairment or other effect of the act on their native title rights and interests.<sup>79</sup> ‘Interests’ includes cultural loss that is, ‘compensation for that aspect of the value of land to native title holders which is inherent in the thing that has been lost, diminished, impaired or otherwise affected by the compensable acts.’<sup>80</sup>

The advantages and disadvantages of this approach are set out in Table 5.

<sup>80</sup> *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwuru and Nungali Peoples* [2019] HCA 7 (13 March 2019), in the first compensation case under the *Native Title Act (Cth) 2019*

**Table 5:** Advantages And Disadvantages Of Model B – Compensation Tailored To An Assumed Set Of Common Property Rights

Compensation tailored to an assumed set of common property rights	
Advantages	Disadvantages
Assumes a simple base-line that customary rights are similar in all areas.	Does not take into account the nature of the infringement.
Can include a component for cultural, social and environmental aspects	Necessitates commodification of the property rights.
	Does not provide for any particular equality or distribution of resources.
	Can be difficult to quantify the cultural, social and environmental aspects of the development.
	Assumes a single monetary figure, rather than a raft of compensation measures.

### Model C – Development Driven Quantification

This approach circumvents the need to determine the nature and extent of customary rights. Instead, compensation is assessed by reference to the benefits accruing to the developer, rather than the infringement on the rights of the customary owner(s). The benefits accruing to the developer are based on the ‘marriage value’ that is created by recognising, and combining, the interests in the various land and marine components from the development site and to the edge of the coastal waters.

This marriage value is known in contemporary literature as synergistic value. The International Valuation Standards (API & PINZ, 2008, s.4.3.6; IVSC, 2011, 12) defines *synergistic value* as: ‘An additional element of value created by the combination of two or more interests where the combined value is more than the sum of the separate values’. The IVSC (2011, 24) elaborates, ‘If the synergies are only available to one specific buyer then it is an example of *special value*’.

The advantages and disadvantages of this approach are listed in Table 6.

**Table 6:** Advantages And Disadvantages Of Model C – Development Driven Quantification

Development Driven Quantification	
Advantages	Disadvantages
Avoids the need to determine particular property rights	Is much more difficult to legally implement
Provides for a diverse, flexible and index-linked compensation package	Raises questions of form (contract) and enforcement.
Encourages transfer of profits / adequate sharing of wealth	
Can be set up to provide for intergenerational equity	
Can distribute payments easily per year (or some other period) as occurs now	
Can be tailored to minimise / avoid some of the problems likely to ensue within the community when compensation is paid as a large, single, up-front lump sum (premium)	

## Model D – Negotiated agreement

This proposed valuation methodology suggested explores how an equitable compensation model can be formulated for complex resource mix where the principles of customary land ownership are protected by both a Constitution and traditions. Taking law as an analytical concept to articulate the disconnected worldviews of indigenous values and capitalist interests, the proposed methodology explores a plurality of registers (see: Boydell et al, 2015).

Research indicates comparative developments in the region including smaller scale agreements that may provide a guide, such as Indigenous Land Use Agreements (ILUAs). ILUAs are contracts formed between developers and actual or potential native titleholders under the auspices of the *Native Title Act (Cth) 1993* in Australia. As potential holders are able to contract, the contracting does not depend always on a precise identification of their rights over land and/or waters. The compensation (composed of financial and non-financial components) does not therefore necessarily reflect a market value determination of their identified rights.

There is also the possibility of larger umbrella agreements, negotiated by an industry association or First Nations organization or cooperative on behalf of its members, with members able to 'opt in' at subsequent points in time. There are examples both in Australia and Canada.

Negotiated Agreements are emerging as international best practice and are based around a negotiation that is determined on a case-by-case basis, with engagement of all stakeholders who have a legal / financial interest. They have emerged as a mechanism through which relationships between, for example, extractive industry companies and Indigenous landowners are formalised and governed. These agreements are variously called benefit-sharing agreements, local-level agreements, community development agreements, Indigenous land use agreements, impact and benefit agreements and other terms. They can cover a wide range of matters, including land rights, compensation, revenue sharing, land management, education, health, employment, consultation processes, and environmental, social and cultural heritage impacts (Kung et al).

This is a common Australian model in the context of native title and development projects. It is also a common way of doing business in both Canada and New Zealand, although in that context it usually pairs recognition of rights with monetary compensation to redress past grievances. Negotiated agreements have been utilised in some resource schemes in Papua New Guinea under the Mining Act (PNG) 1992 but are open to contestation as a result of uncertain genealogy, and co-ownership is a model also used in that country.

Negotiated agreements are confidential in nature, so there is little evidence available to reference, although the increasing quantity of experienced negotiating practitioners is giving rise to a growing volume of literature on the subject.

Similar to ILUAs in Australia, Impact and Benefit Agreements (IBAs) in Canada are private agreements negotiated between a resource company/developer and a First Nations people (whether their land rights are settled or claimed) whereby the First Nations people give consent or support for a project to proceed in their lands and/or waters in exchange for compensation for the impacts as well as other benefits for the community. The IBAs are a result of the Canadian Government's constitutional duty to consult with Indigenous peoples whenever an activity is contemplated that is likely to impact their rights or the exercise of their rights. It is in the interests of developers to negotiate directly with the Indigenous peoples concerned.

The following outline the requirements of a compensation agreement:

- a. **Legitimacy** - One of the particular attributes of negotiated agreements is that they confer legitimacy on the outcome. Those who negotiate and authorise the agreements feel that they own

the agreements and that the contents are tailored towards their specific needs. In the context of Fiji, this would allow a tailored and flexible approach that recognises individual rights and needs of different *iQoliqoli* owners in the context of the specific proposed project (including its likely impacts)

**b. Timeliness** - Negotiated settlements can be complex and lengthy – thereby creating a risk of significantly delaying a development timeline, with associated ramifications on finance and the feasibility of the project. Conversely, as the agreement is ‘owned’ by the parties, it can also lead to a greater level of compliance and associated efficiency in the process. Our research has identified that in Fiji, current processes for development approval take between 4 and 12 months, depending on the complexity of the project. Optimally therefore a negotiation timeframe should be approximately the same duration. Nevertheless, given that a development lease can be for between 50 and 99 years (possibly with a right of renewal) it is reasonable to devote some time to determining an equitable compensation package, particularly as it would likely be negotiated as part of or in parallel with the consent process.

**c. Structured Framework** - Given the issues of capacity in Fiji, this study’s recommendation is that a structured framework be developed within which negotiations can take place. This framework should provide the parameters for a negotiated agreement. It should include a standard form (proforma) heads of agreement, which the parties can easily complete and modify (as necessary). Using this approach, a diversified and flexible compensation package can be developed – one that allows for both financial and non-financial components, structures both these components to allow for inter-generational equity and the needs of all including women and youth, and provides ultimately for ongoing equitable financial transfer from the developers to the *iQoliqoli* owners.

**d. Legal Certainty** - In order to provide legal certainty, the framework should be set out in legislation or the need for negotiations in good faith towards a negotiated agreement mandated in legislation with the framework established in a regulation. The legislation can then give statutory ratification to the agreement and provide for requisite enforcement / compliance mechanisms. Effectively the agreement becomes a statutory contract. There would have to be provision for the situation where the parties are unable to reach agreement, which could be referral to arbitration, mediation or ultimately, the High Court.

**e. Disclosure-Requirements**- Such an approach, and the calculation of ‘marriage value’ (synergistic value) between the foreshore land and *iQoliqoli* components, relies significantly on disclosure by the developers. The government would need to take steps to ensure disclosure requirements are boosted and that there are severe enforceable penalties for non-compliance. It is accepted that a certain amount of information in any development has aspects that are commercially confidential, but this can be taken into account if the appropriate mechanisms are put in place to recognise the interests of the *iQoliqoli* holders.

If it is decided to proceed with a negotiated agreement for compensation, the following approach is suggested:

**a. Pre-negotiation Proforma** - It is recommended to use a pre-negotiation proforma. The preliminary fill in sheet would need to have answered the questions set out in Table 7.

**Table 7:** Sample Pre-Negotiation Question Proforma

Who are registered iQoliqoli owners?
Is there specific recognition of all vanua landowning units (right users) associated with the mangrove / seagrass ERP programme / reclamation / infrastructure?
Who is authorized to speak, negotiate, and enter into an agreement on behalf of the iQoliqoli owners and native landowning groups involved?
Are those authorized to speak available to attend the preliminary and subsequent meetings? What is the mangrove forest and sea currently used for? – here iQoliqoli owners can outline their iQoliqoli rights.
What is the proposed use? Can the current and proposed uses co-exist with other existing rights? - If yes to co-existence = response A, i.e. such as use for water sports and recreation
If no to co-existence – What are the options for a negotiated agreement for the grant of a proposal?
What is the geographic extent of the proposed development, over which the Foreshore Lease or Special iQoliqoli Licence will be granted?
What is the geographic extent of the iQoliqoli? In conjunction with the extent of the development, this will provide context about the impact of the development or grant of licence / lease.
What is the Environmental Impact of the development / project, during the construction phase, during the lease / licence, and at lease / licence expiration?
Who are the other stakeholders, and how will their interest be represented? Do the iQoliqoli owners have an appropriate legal holding entity to hold / manage monies generated from the iQoliqoli area? This could, for example, be the <i>Mataqali</i> themselves (if they have locus standi) / a corporation such as an iQoliqoli Body Corporate) / an iQoliqoli Trust / the iTLTB.

**b. Consultation meeting** - As the second formal stage, there should be a meeting of the *iQoliqoli* owners, in which they are asked a series of pre-prepared questions that are designed to find out, and reach consensus, on what they want as compensation. Compensation in this regard is not limited to formal financial payments, but can for example include such matters as employment provisions, help with schooling, medical support / access to a doctor, finishing the roofs on homes in adjoining villages, power / generator supply, an improved reticulated water supply, together with any material items that are often regarded as dealmakers (albeit they are one off depreciating items) such as vehicle / transport / boat provision. Stakeholders need to understand that many of these items will depreciate and deteriorate over a significantly shorter timescale than the lease term, so it is important to ensure intergenerational equity is adequately represented in any index-linked annual rental payment provisions. The purpose is not to limit the feasibility of any development proposal. It is appropriate to suggest a monetary cap be set on the overall quantum. This quantum can relate to a percentage of estimated income turnover (rather than actual turnover; it is commonly accepted that in the context of tourism or resource exploration companies a significant component of income is generated offshore and so will not be shown in formal financial statements that may be audited in Fiji).

**c. Exemplar Heads of Agreement** - It is recommended that three draft, or sample exemplar, heads of agreement are made available to the primary stakeholders. For example, very small developments might need a small, uncomplicated agreement - particularly if the infringement is for a

short period. For complex development projects (e.g., Blue Carbon ERP), a more detailed negotiation framework may be needed. This may need to incorporate multi-stakeholder benefits and interests, where for example in the demarcation of areas, the *iQoliqoli* infringement is only one dimension of a much larger initiative.

**d. Valuation Requirements** - A valuation of the Synergistic Value / Marriage Value of the development and the *iQoliqoli* is required, in addition to the diversity of valuation dimensions that comprise aspects of taking, infringement, loss and damage associated with any given development (this aspect is explored and explained). All valuations should address the requirements of the International Valuation Standards (IVSC, 2010) to engage with the diversity of professional valuation approaches. The Institute of Valuation and Estate Management (IVEM) of Fiji should be tasked with facilitating this component.

**e. Training and Capacity Building** - The government will need to appoint and provide training for several officers whose task will be to represent *iQoliqoli* owners and advise chiefs during development negotiations. These specialists should be independent of the Department of Lands, the TLTB, the Ministry of Fisheries and Forests etc.

**f. Good Governance Principles** - The Government is encouraged to rely on the extensive independent resources developed under the Pacific Islands Forum Secretariat Land Management and Conflict Minimisation initiative (see Loode et al). These resources provide in-depth resources on the related land reform issues of one-stop-shop (being considered by the Land Use Unit), the management of trusts, leasehold management, and the financial management of customary land.

**g. Legislative Principles** - A contemporary compensation process needs to be underpinned by several basic principles. These should be clearly explained in the vernacular and in English at the introduction to any legislation. Principles in relevant material from New Zealand provides some useful guidance in this regard. These principles include:

1. Full acknowledgement of the obligation to the Vanua. Such recognition and obligation is ongoing regardless of leasing provisions or development processes;
2. The need to respect and ensure continuity of culture and tradition; and
3. An acknowledgement that no extinguishment of customary rights has occurred. This means that compensation is payable for the infringement / loss of ability to exercise customary *iQoliqoli* rights for the duration of the agreement only (rather than in perpetuity). International examples recognise that the customary relationship to a place can endure even though the area may be adapted, reclaimed or altered either for the duration of the lease or even permanently.

The advantages and disadvantages of this approach are set out in Table 8.

Table 8: Advantages And Disadvantages Of Model D - A Compensation Agreement

Negotiated Agreement	
Advantages	Disadvantages
Can lead to a quite diverse and sophisticated compensation package.	Takes a long time – thereby potentially holding up development significantly (as with the FPIC process).
Allows the customary rights owners to have a stake in what happens to their rights – to ‘own’ the agreement.	Causes capacity issues, as the parties need to be fully advised and may need to be represented by independent legal and valuation practitioners, with the requisite skills to forecast future income growth and liabilities.
Does not require precise identification of property rights.	Needs the State (Crown) to be a party where the project is in relation to State-owned land or resources, thereby complicating matters further.
Is consistent with the rights of indigenous peoples under UNDRIP ... the right to participate in decision-making in matters which would affect their rights (Article 18).	Is personal to the parties and does not have to be made public. Might result in inconsistent approaches.

In relation to the disadvantages articulated in Table 8:

- concerning time – negotiating any agreement with a group of people takes time. It has to be factored in, in order to comply with the principles of FPIC; and
- concerning capacity issues - the principles of FPIC and UNDRIP require that the party who is seeking consent has a responsibility to facilitate understanding and awareness on the part of the indigenous people whose consent is sought. That may involve expenditure on the part of the 1st party (developer/P) to engage independent expert advice for the 2nd party (*iQoliqoli* owners) in the interests of achieving their informed consent.

### Model E – The Hybrid

There is a practical need to integrate this analysis into the valuation considerations. This study acknowledges a large body of international literature on economic valuation and resource management, and ecosystem valuation. Much of the resource valuation literature takes a *Total Economic Value* approach, where values are allocated to use values (direct and indirect) and non-use values (option value, quasi-option value, bequest value and existence, or psychic, value). These approaches are used by several of the contributors in Ahmed et al (2005) and applied in the Fiji context by Korovulavula et al (2008). The valuation techniques engaged in these use and non-use approaches are those applied by neo-classical economists (as opposed to valuers) and include: Effect on Production; Replacement Costs; Damage Costs; Travel Costs; and the Contingent Valuation Method (Pascual et al., 2010, 192-211). These have been variously applied on a range of international situations, with varying success.

A table of summary comparisons is provided in Table 9, by way of example, providing the breadth of valuation approaches that should be engaged in addressing the compensation issues to be negotiated in respect of our scenario. In this regard, reference is made to the International Valuation Standards (IVSC, 2011) as a basis for the terminology. The tabulated compensation issues that are included are not necessarily exhaustive but are grounded on a synthesis of the literature on the sustainable management of land and reef areas as well as stakeholder evidence from other notable sources. The table is for demonstration purposes only and should be adapted as needed to fit the circumstances of the geographic location of the proposed scheme, the country context, and the proximity of associated physical and social factors.

The valuation components that are derived through this process will produce a much clearer indication of the overall compensation quantum. This final quantum figure, which represents the present value of the



loss / infringement, should then be dealt with as a compensation package. This package should have regard for the benefits accruing from the scheme (if any), such as employment opportunities, food and service provision, training, and the current package of notionally goodwill items (such as village infrastructure projects benefits, medical fees, schooling, donations and material items e.g. boats / vehicles).

Article 25 of UNDRIP demands a transparent process to the methodology in the above in stating that indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources, and to uphold other responsibilities to future generations in this regard. And the mandatory right to participate in the process of facilitating the above under Article 27. Further, Article 28 clearly states that unless freely agreed upon by the peoples concerned, compensation for traditionally owned lands, territories and resources that have been taken or used without FPIC shall take the form of lands, territories, and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Table 9:** Application Of Ivsc Valuation Methodologies Appropriate To Iqoligoli- (Boydell& Baya, 2010)

	Cost Approach	Income Approach	Direct Market Comparison	Depreciated Replacement Cost	Synergistic ( 'marriage ' ) Value	Relief-from-Royalty method	Premium Profits method	Excess Earnings Method	Fair Value	Special (Indigenous) Value	Going-Concern Value	Discounted Cash Flow	Risk Replication Method	Marine Resource Inventory
Marriage of interests between the land and the iQoligoli	X	X	X		X				X	X	X			
Loss of access, if any (taking)		X			X				X	X	X			
Removal of mangrove, if any (taking)	X	X			X	X	X		X	X	X			
Removal of reef, if any (taking)	X	X			X	X			X				X	
Removal of sand / shale (taking)	X	X			X	X			X				X	
Loss of mangrove habitat (damage)	X				X				X				X	
Increased vulnerability through lost nutrient filtering / flood control / storm buffer / shoreline stabilisation / microclimatic stabilization / biodiversity maintenance / education and research / bio-prospecting / carbon sequestration	X		X		X				X				X	
Environmental contamination from resort waste, dumping and spillage (damage)	X		X		X				X				X	
Sedimentation (damage)	X		X		X				X				X	
Eutrophication (damage)	X		X		X				X				X	
Reef degeneration (damage)	X		X		X				X				X	
Construction contamination risk (damage that can be addressed through the EIA bond)	X		X		X				X				X	X
Reduction of fish stock (damage)	X	X	X		X				X	X	X		X	X
Potential loss of income from possible restriction on fishing access (damage)		X	X		X				X	X	X		X	
Loss of amenity / privacy (damage)					X				X				X	
Truncation of cultural association, and diminution / impact on cultural heritage (damage)					X				X				X	
Loss of direct cultural and spiritual connection (loss of Special Indigenous Value)					X				X				X	
Loss of ability to exercise cultural and spiritual connection (loss of Special Indigenous Value)					X				X				X	

### 13.3 Requirements of a workable compensation model

As stated, international best practice is clearly moving towards negotiated frameworks which embed compensation within an overall redress package. Both monetary and non-monetary forms of redress are given. The quantum of the monetary component does not always directly relate to market or non-market values of particular rights; for example, in Australia ILUAs may be negotiated with potential native title rights holders so the compensation package necessarily cannot reflect a market value determination of identified rights.

This Study has identified that any compensation mechanism for blue carbon ERPs should:

- be based on a rich understanding of the nature of the property rights, including the customary owners themselves as without such understanding any new mechanism may lack legitimacy;
- acknowledge the experience of other jurisdictions, whilst being appropriate to the given circumstances in Fiji;
- be sophisticated enough to ensure an appropriate transfer of wealth from developers to customary owners;
- not be limited to a singular monetary sum, but rather ensure ongoing social and economic improvement for custom owners (non-monetary benefits);
- respond to capacity problems;
- be embedded in a legal arrangement that provides certainty for all parties;
- determine how compensation will be held, managed, invested, accounted and distributed;
- ensure any development activity is undertaken sensitively and sustainably, prioritizing cultural and ecological wellbeing;
- provide for inter-generational and intra-generational equity; and
- reflect the principles of international law as set out in UNDRIP.

### 13.4 Recommended approach for compensation

Any dealing in customary property that seeks its appropriate placement in the western property paradigm is complex, particularly when the customary property or incidents of it, are to be transferred across for market considerations to satisfy conscionable dealings that import fair and equitable returns for the use of that property. We have suggested several innovative approaches as discussed.

Given the nature of the property of a prospective blue carbon CSPR that presently vests in the State as owner of sea-bed hosting mangroves and seagrasses, we anticipate that a full waiver of iqoliqoli rights in exchange for compensation determined through an encompassing valuation method may not be necessary given the exercise of certain known rights might be impeded and held in abeyance only for the duration of the blue carbon projects or for only some period(s) within that duration. The exercise of other unaffected rights may continue if there are no inconsistencies with the permanence required for the ERP. That explains why there is a need to inventory rights and interests likely to be affected in the context of an ERP proposed.

It follows that rather than the payment of compensation (in exchange for a full waiver of rights) a **negotiated agreement** is recommended with salient conditions such as the continued protection of existing rights

and that there are no rights extinguished for the purposes of the blue carbon project. The negotiated agreement addresses the curtailment of such exercise if it is indeed anticipated. However, the final decision as to whether a negotiated agreement in lieu of compensation is an appropriate approach should only be made after consultation with communities.

**If a negotiated agreement is the appropriate approach, legislation/regulation is recommended to recognize the approach in the case of blue carbon ERPs.**

In the **alternative scenario** where a lease would be necessary, compensation would be payable to abutting or adjoining iTaukei landowners for any infringement of rights under the *State Lands Act*. **If a lease is necessary, it is recommended that regulations be made under the *State Lands Act* to provide that the payment of compensation may be effected by the registration by the lessee of a blue carbon agreement, being an agreement reached through negotiations in good faith between the lessee and the iTaukei landowners of adjoining or abutting lands that includes as a component compensation for the infringement of rights, whether monetary or partly monetary and partly non-monetary.** It is noted that 'land' has a broad meaning in Fiji laws.<sup>81</sup> It is suggested that a time limit for negotiating an agreement be considered, and an alternative dispute resolution process be provided for the case where an agreement is not reached within the specified period.

The monetary component paid to *iqoliqoli* rights holders under a negotiated agreement with the blue carbon developer (P) would have to be recovered as a share of the benefits accruing from the sale of carbon credits/emissions reduction units generated by the blue carbon ERP.

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<sup>81</sup> *Interpretation Act 1967*, s.2

## 14. BLUE CARBON BENEFIT SHARING PLAN

### 14.1 Context for blue carbon benefit sharing plan

Fiji's position in the clarification and proposing of a BSP for blue carbon ERPs is aided by the enactment of the *Climate Change Act 2021*, although its status is pre-operational. Although the *Climate Change Act* refers to a BSP only in the context of REDD+ programmes, there is a power for the relevant Minister to make regulations in relation to the benefit sharing aspects of an ERP<sup>82</sup>, with the Minister for Forests apparently having the responsibility for developing a benefit sharing arrangement for forest (including mangrove forest) ERPs<sup>83</sup>.

It is noted that the Forest Stewardship Council–Indigenous Foundation (FSC-IF) recently published an open letter to the global finance community supporting high-integrity forest protection carbon credits (FSC-IF 2023). The letter which details the importance of well-managed REDD+ projects as the most direct pathway to recognizing, safeguarding and receiving compensation for indigenous-led conservation efforts, could be construed as support for bringing blue carbon projects in Fiji into Fiji's national REDD+ ER-P.

If external to Fiji's REDD+ ER-P, a blue carbon ERP would be implemented by a CSPR owner (or under the Alternative Scenario, by a lessee under a lease from the DoL), most likely under a Fiji ERM<sup>84</sup> or an internationally recognized emissions reduction standard. The latter will have its own mandatory (although general) requirements regarding benefit sharing of income from the project. One example of a general requirement is in the *VCS Climate, Community and Biodiversity Standards, v.3.1*:

*Describe the design and implementation of a benefit sharing mechanism, demonstrating that smallholders/community members have fully and effectively participated in defining the decision-making process and the distribution mechanism for benefit sharing; and demonstrating transparency, including on project funding and costs as well as on benefit distribution.*

Another example, from the Plan Vivo Standard, v.5, is more specific, requiring that a minimum of 60% of the income from the sale of ERUs net of any charges, taxes or similar fees levied by the host country must directly benefit project participants and local stakeholders, as indicated in the box below.

#### 3.16 BENEFIT SHARING MECHANISM

##### Requirements

**3.16.1** All income from the sale of Plan Vivo Certificates must be distributed according to an agreed Benefit Sharing Mechanism, developed in partnership with Project Participants.

**3.16.2** At least 60% of income from the sale of Plan Vivo Certificates, after payment of any charges, taxes or similar fees levied by the host country, must directly benefit the Project Participant(s) and other Local Stakeholders.

**3.16.3** The Benefit Sharing Mechanism must specify the proportion of income from Plan Vivo Certificate sales that will be allocated to the Project Participants, Project Coordinator and other parties such as government or technical support partners.

**3.16.4** The Benefit Sharing Mechanism must specify how and when benefits to Project Participants will be received with details of amounts allocated to cash transfers, training, and in-kind support.

<sup>82</sup> *Climate Change Act* s. 111(3)(p)

<sup>83</sup> *Climate Change Act, s.48(e)* (although there is an argument that this is limited to ERPs under the REDD+ Programme)

<sup>84</sup> *Climate Change Act, s.49*

**3.16.5** The Benefit Sharing Mechanism must describe the mechanism and any dependencies for dispersal of funds and/or other benefits to Project Participants including monitoring responsibilities, targets and corrective actions for Progress Indicators (see Sections 4.1 and 4.6).

**3.16.6** A summary of the Benefit Sharing Mechanism with details of the minimum amount the Project Participant is eligible to receive if monitoring targets and other dependencies are met, and consequences if targets are not met, must be included in each Project Agreement.

It is open to the Fiji Government through an ERM or regulation under the *Climate Change Act* to require that a blue carbon ERP where the proponent is a NGO or private entity must allow for a specific percentage of ERP income net of taxes, charges and fees, to be available for benefit sharing among stakeholders.

The BSP for any transaction under an international REDD+ programme, is to be developed by the Minister responsible for forests and approved by the Minister in consultation with the Minister responsible for lands and must specifically take into account matters raised by landowners, owners of registered CSPR, communities, and other stakeholders in response to public consultations. Furthermore, the BSP must equitably and transparently recognize and reward landowners, CSPR owners and other stakeholders including women and minority groups for their contributions to the ERs achieved under the programme.<sup>85</sup>

The BSP must also clearly identify the beneficiaries of the plan and establish a mechanism for the distribution of payments for verified ERs. Finally, the BSP must identify the nature of the benefits to be distributed under the plan including whether they are monetary or non-monetary benefits.

In summary, like other participating countries under the FCPF, in Fiji the requirement (under the *Climate Change Act*) is to design in a participatory way, rules for benefit sharing at different scales. Further, there is a suggestion to perhaps test the system in some pilot transactions.

It is assumed in this Study that the BSP 2021, available on the REDD+ webpage of the MoF website is Fiji's REDD+ BSP and is in conformity with the *Climate Change Act*.

Fundamental in terms of context is the underlying ownership of coastal mangrove forest land and seabed for coastal waters hosting sea grasses (found in bays, estuaries, and coastal waters from mid inter-tidal shallow inshore areas) which is reserved to the State. These ownership rights coexist with the rights and interest of registered customary owners of *iqoliqoli* communities and other stakeholders' user rights such as fishing licence holders and other users with traditional arrangements to access *iqoliqoli* areas.

The legal framework for mangrove ecosystem uses and management is provided through the intersecting coverage of laws, sectoral policies, and regulations of activities, as described earlier. Several government agencies have responsibility variously under the *Fisheries Act*, *Environment Management Act*, *iTaukei Land Act* and *State Lands Act* in relation to matters that could impact mangroves in the areas of ownership, governance, customary use rights, and sustainable management. There are other policies, laws and regulations relating to resource use that also affect mangroves indirectly that are identified earlier in this Report.

## 14.2 Existing Benefit Sharing Plans for ERPs under Fiji REDD+ ER-P

The design of a blue carbon ER project BSM must consider existing processes and the national REDD+ BSP 2021 and aim to improve the efficiency of existing models while meeting the needs of the FCPF Benefit Sharing Guidelines.

Although the *Fair Share of Mineral Royalties Act* is set up for mineral royalties, reflecting constitutional rights; the BSP should align to the principles of distribution of benefits outlined therein where landowners and

<sup>85</sup> *Climate Change Act*, s.60(3)

*iqoliqoli* rights owners equitably share no less than 80% of the royalties (leaving 20% royalties to be paid into Fiji's Consolidated Fund to be used by the government for the benefit of the general population of Fiji, and noting that the administrative costs of the Department of Mineral Resources are met separately through the fees payable for the grant of a lease and annually under the *Mining Regulations 1966*).

In the case of ER-P performance payment outlined in Fiji's REDD+ BSP beneficiaries are to share 85% of the gross carbon benefit (proceeds) after operational cost (10%) and performance buffer (5%) are set aside. However, it is understood from recent communication with MoF that shares of the carbon benefits resulting from REDD+ ERPs are to align with the *Fair Share of Mineral Royalties Act* reflecting constitutional rights, that means that beneficiaries will share 80% of gross proceeds after the deduction of 20% gross proceeds to be shared between those areas of government having responsibility/involvement in the administration of the ER-P: the Project Management Unit (PMU), MoF and MTA.<sup>86</sup> This Study is informed by these dividend bases understood to be agreed, and will not deviate from them in respect of blue carbon benefits achieved under REDD+.

### 14.3 Blue Carbon REDD+ ERP Project Benefit Sharing Plan

This Report will not extensively review the existing BSP 2021, given its relatively recent finalization and currency. If blue carbon ERPs, or at least blue carbon ERPs for mangroves are embraced in the REDD+ Programme, the existing BSP (with the final share percentages of 80% for stakeholder beneficiaries and 20% for government agencies/offices) although it will need some adaptation and rewording, will be appropriate for mangrove projects.

The overall principles that guided the development of the REDD+ BSP 2021 are recognised internationally as standard general principles for BSPs. Adapted for blue carbon ERPs, they are as follows:

- equitable and fair, respecting land ownership and customary rights, considering opportunity costs, and considering the effort and costs needed to implement activities;
- inclusive, with special attention to participation of women, youth and ethnic minorities;
- effective in providing incentives for further action to reduce emissions and increase removals;
- efficient, ensuring that maximum benefit flows to the beneficiaries;
- transparent;
- flexible to enable adaptive management;
- comply with relevant laws and support meeting international agreements;
- based on commitment and performance.

In addition, local communities are expected to benefit the most and beneficiaries should participate voluntarily through free, prior, and informed consensus, enabling their consideration of options and alternatives. Non-monetary benefits should be prioritized, and consideration should be given to net carbon benefit where necessary as an incentive to initiate good behaviour and engagement in (for example):

- removal of deposited waste material from mangrove forest;
- maintenance of natural mangrove forest and seagrass beds; and
- mangrove and seagrass restoration.

Consistency of approach for plans and policies addressing similar models of distribution of benefits is

<sup>86</sup> Email communication from Ministry of Forestry via Conservation International 20/6/23.

important, for clarity concerning implementation, efficiency and effectiveness. Hence it would be sensible then to develop a BSP that complements and is consistent with Fiji's REDD+ BSP 2021, with benefits shared at 80% (beneficiaries) and 20% (government).

Despite the complex and intricate issues pertaining to the application of blue carbon management in a multi-sectoral setting, the Study for the proposed BSP focuses on identifying key challenges and the mitigation role of key agencies; adopting a hybrid approach that blends existing legal frameworks and anticipated regulatory frameworks through the approval of blue carbon ERPs to the registration of beneficiaries who will share the net carbon benefits from the ERP. In this respect, the BSP focuses on the core role of the MoF, and its support to the successful implementation of the ERP including performance-based rewards to all beneficiaries.

It is proposed that these findings, principles and expectations as far as they are relevant, be incorporated into a BSP for blue carbon ERPs and **it is recommended** that a BSP for blue carbon ERPs follow generally the national REDD+ BSP 2021, adapted as appropriate for blue carbon.

#### 14.4 Blue Carbon ERP Project Benefit Sharing Plan (not REDD+)

For blue carbon ERPs that are outside the Fiji REDD+ ER-Ps, a separate BSP will be required but it should be designed to align with the existing national REDD+ BSP 2021 and some guidance is provided in this Report.

This separate BSP would be drafted by P who may be an experienced NGO or private sector developer, under guidelines established it is suggested by regulations made under the *Climate Change Act*. These guidelines would be informed by the Fiji REDD+ BSP 2021 and an internationally emissions reduction standard, but the final version of a BSP for these ERPs would have to be agreed with stakeholders including the local community through the FPIC process, before approval could be granted to an ERP.

It is suggested that the percentage of gross carbon benefits resulting from sales of ERUs to be shared with stakeholder beneficiaries be not less than 60% and not more than 80% of net carbon benefit, but it is acknowledged that further work will be necessary if a percentage is to be required for benefit sharing by regulation. For example, there may be tax considerations where the developer is a private developer, and thought should be given to the quantum of the beneficiaries' share as a percentage of the gross carbon benefit after the payment of Fiji Government fees, charges and taxes.

## 15. THE BENEFICIARIES

### 15.1 Quantification of Rights and Interests.

State ownership of the land on which mangrove forests and seagrass beds are situated having been confirmed (see earlier justification), considerations for the remaining stakeholder beneficiaries is limited to registered customary qoliqoli owners under the purview of the Native Lands and Fisheries Commission operationalized per *iTaukei Lands Act*, adjacent iTaukei landholding units who are registered customary owners, iTaukei users of *iQoliqoli* areas through customary arrangements with registered *iQoliqoli* owners, non-iTaukei coastal communities, local subsistence fishers and fishing licence and access permit holders amongst others.

The rights and interests among the group vary with the need to critically inventory existing rights and interest in the blue carbon areas. Further, the future impacts of the rights during the lifetime of the Blue Carbon ERP must be ascertained, and whether the existing activities are adversely affected by partial limitation of their activities that are inconsistent with the Blue Carbon ERP. The prospect of these rights being extinguished and/or held in abeyance must therefore be ascertained and how it impacts the future of the qoliqoli owners and other stakeholders informing on the total opportunity costs. The application of an appropriate valuation methodology to determine existing rights before evaluation and monetization of the rights and interest foregone is critical.

Divisional consultations conducted for the purpose of the REDD+ BSM study (2019) identified the particular criteria for allocation of benefits to each beneficiary. These are followed and adapted for blue carbon ERPs. Beneficiaries will include those:

- Who have legal rights to blue carbon (include customary qoliqoli rights holders);
- Who are essential to facilitate/enable results (e.g. government, private sector, NGOs etc.);
- 
- Who incur costs when implementing blue carbon ERP activities; as well as:
- Who are resource stewards (communities that collectively maintain/support REDD+ activities); and
- Whose behaviour needs to change.

### 15.2 Identification of beneficiaries

A crucial element that shaped the REDD+ BSP in Fiji is the determination of carbon rights. This is to safeguard the interest of resource owners, communities, and other stakeholders. It is the determination of what entities have the rights to generate, transfer, receive finance and share in the benefits from emissions reduction. For blue carbon, given all foreshore lands and lands under the seabed of all Fiji waters are owned by the State, the formal process towards owning a CSPR under the *Climate Change Act* may begin with a lease or licence from DoL to private individuals, private organizations, a LOU or customary qoliqoli ownership unit or an amalgamation of such units, under appropriate entities, as described above. In the **alternative (to CSPR) scenario** a lessee from DoL would hold the carbon rights.

Different actors have different rights, influences, and responsibilities with respect to each of the blue carbon activities proposed in the blue carbon ERP aiming at addressing various drivers of mangrove and seagrass removal and degradation, and other barriers to blue carbon stock enhancement in Fiji. The identification of beneficiaries, who would each play a direct and important role in the implementation of a blue carbon ERP is guided by the ultimate objective - to create incentives to achieve long term emissions reduction, consistent with relevant international and national laws and policies.



The objectives and principles for the REDD+ BSP 2021 are based on feedback from participants that contributed to the development of the BSM Report (June 2019) which recommended to focus on particular goals including (as relevant to blue carbon ERPs) developing climate-resilient communities and strengthening local communities to improve management and sustainable development of their livelihoods.

The two main reasons identified to share benefit are, firstly, to create effective incentives by rewarding individuals, communities, organizations, and businesses for actions that change land uses and reduce emissions. This means providing benefits for actions that are somewhat above the costs of their sacrifices to change BAU. Second, is to build a wider national [and international] legitimacy and support behind REDD+ (reducing emissions from [mangrove] deforestation and degradation) actions by ensuring the wider public are treated fairly and equitably. In the blue carbon context, support is required in Fiji for the blue carbon concept, i.e., reducing the damage to and destruction of mangroves and seagrass caused by human acts and activities and encouraging a stewardship approach to their restoration and management.

The identification of potential beneficiaries is also guided by the principles and objectives of REDD+ BSP 2021, following which those eligible for allocation of blue carbon ERP benefits are:

- The owner of a CSPR (or owner of the rights to carbon)
- Those essential to facilitate/enable results (e.g., government, private sector, NGOs, etc)
- Resource stewards (communities and *iqoliqoli* rights owners who collectively maintain/support BC activities; critical to support permanence)
- Those impacted - incurring costs/losses when changing/abandoning activities in coastal waters (e.g., tourism operators, coastal tourism development owner/operator)
- Those whose behaviour needs to change.

Potential beneficiaries include those listed in Table 10.

**Table 10:** List Of Potential Beneficiaries Blue Carbon Er Project

Potential Beneficiary	Rationale
Private sector	<ul style="list-style-type: none"> <li>• carbon rights owner?</li> <li>• coastal tourism operator/development owner: may be impacted - need to change/abandon use of coastal waters for tourism activities</li> </ul>
Adjacent community/village/settlements	<ul style="list-style-type: none"> <li>• may be impacted</li> <li>• members of adjacent LOU : resource stewards / essential to facilitate results</li> <li>• may need incentive to change behaviour</li> </ul>
Registered <i>iqoliqoli</i> owners at location	<ul style="list-style-type: none"> <li>• interest in carbon rights</li> <li>• may be impacted</li> <li>• resource stewards; may be essential to facilitate results</li> <li>• may need incentive to change behaviour</li> </ul>
Licensed fishers	<ul style="list-style-type: none"> <li>• may be impacted</li> <li>• may need incentive to change behaviour</li> </ul>
Farmers of adjacent land	<ul style="list-style-type: none"> <li>• may be impacted</li> <li>• may need incentive to change behaviour</li> </ul>
National Trust of Fiji	<ul style="list-style-type: none"> <li>• has statutory role in conservation</li> </ul>

NGOs involved in forest conservation	<ul style="list-style-type: none"> <li>• carbon rights owner?</li> <li>• potential role in organizing activities/sharing knowledge</li> <li>• provision of expert training</li> </ul>
Provincial/District Councils	<ul style="list-style-type: none"> <li>• essential to facilitate/enable results: provide guidance and assistance for the successful integration and implementation of BC activities, especially in the context of qoliqoli areas.</li> </ul>
In alternative scenario: Lessee/licensee of foreshore/seabed	<ul style="list-style-type: none"> <li>• Owner of rights to carbon</li> <li>• May have to pay compensation to iqoliqoli owners</li> </ul>

Although not a requirement presently in legislation, those persons intending to claim as beneficiaries with respect to a BC ERP should be identified by registration with the relevant authority. It is expected that this would be required by regulations under either the *Climate Change Act* or the *Forest Act*.

All stakeholders will incur costs or suffer losses in one way or another when implementing a BC ERP and some will place more emphasis on economic returns than others.

Having evaluated input and feedback from stakeholder consultations held on 02 May 2023, and the premised provisions of the existing REDD+ BSP 2021, the following contextual approach is proposed for Fiji’s REDD+ Blue Carbon Benefit sharing template.

### 15.3 The Benefits Matrix

This study reiterates and extrapolates from the existing paradigm for REDD+ activities proposed in the ER-P document that informs current national BSP. For planning purposes, it will be necessary to estimate the number of beneficiaries in each category of beneficiary. The information required is shown as headings in Table 11. Each beneficiary is to be listed against their rights to resources in addition to the estimated number of beneficiaries anticipated to participate. The project impact and rationale for being included as a beneficiary is needed to gauge the beneficiaries’ commitment to implement blue carbon activities and to highlight the relevance of each beneficiary.

**Table 11: Impact And Rationale Of Beneficiaries**

Beneficiaries		Resource Rights	Estimated # Beneficiaries	ER Impact	Rationale
Private Sector	Lease/licence from DoL	Holds CSPR or (under alternative scenario) rights to carbon			Activities directly contribute to ER Have legal rights over carbon sequestered/stored
Communities/ village/ settlements	Adjacent landowners manage natural resources locally				Incentivise behavioural change
iQoliqoli rights holders		Rights to harvest coastal waters			Incentivise behavioural change
Licensed Fishers for the area					Incentivise behavioural change
National Trust of Fiji	Statutory role in conservation				Assist to Incentivise behavioural change Potential trustee of monetary benefits
NGO	Licence/lease from DoL	Holds CSPR or (under alternative scenario) rights to carbon			Have legal rights over carbon Assist to Incentivise behavioural change
Provincial Councils	Natural Resource Management in Provincial Councils under the 20 Priority Districts	Registered villages / communities with traditional access to blue carbon ERP area	No. of District Councils	Strengthen governance of natural resource protection and sustainable use	Essential to facilitate/ enable results

## 16. BENEFITS

### 16.1 Calculation of benefits

The gross benefits will be calculated at the relevant time. If Fiji is able to bring blue carbon ERPs under the REDD+ umbrella, the relevant time would be in accordance with any agreement Fiji enters into with a carbon fund provider.

If blue carbon projects are undertaken by an experienced NGO or private developer for the voluntary carbon market or for the purposes of the Paris Agreement, Article 6, the relevant time will be either following sale of the ERUs when the sale price is known, or in accordance with any agreement entered into for the transfer of the ERUs/MOUs.

### 16.2 Operational costs

#### 16.2.1 Blue Carbon ERPs under REDD+

For Fiji REDD+ BC ERPs, from the gross carbon benefit received at national level a portion will be used to cover operational costs for necessary services necessarily undertaken by the MoF, project management unit (PMU) and MTA to address REDD+ coordination, awareness, communications, project management, MRV, provincial and district oversight, etc. The default portion for operational costs should align with the REDD+ BSP 2021.

The operational costs support the function and roles of the project management unit (PMU) and consist of financial and fixed costs. Annual cash flow requirements for operational costs includes both Government contributions and carbon fund revenues. Financial costs include Internal Audit and Communications while the fixed operational cost covers coordination and logistics. Actual allocation will have been determined during the ongoing REDD+ ER-P implementation, potentially including other program management aspects required for the ER-P, and aligned to the existing REDD+ BSP.

Fiji Government contribution is assumed to cover program implementation, awareness, and coordination. Program implementation might include a safeguard specialist to address MRV with the MRV team consists of Divisional Staff from the MoF as well as secondment officers in the Ministry of Rural and Maritime Development, Ministry of Agriculture and Provincial Councils on account of YMSTs at District level, as per the REDD+ BSP 2021.

For the purposes of the above, it is assumed that the State as landowner, through DoL would have recovered the administrative costs of preparing and administering a lease (or any other form of permission to undertake a BC ERP) - where a lease of the foreshore or seabed is required - through lease fees and annual lease payments. If a lease is not required, as DoL would have entered into other formal arrangements with P (the holder of a CSPR) and should have the ability to charge an administrative fee to cover its costs in this regard, in each case.

### 16.3 Performance Buffer Contingency Fund

As detailed in the BSP 2021, a performance buffer contingency fund of a percentage of the benefits from ERP payments may need to be set aside to cater for possible loss associated with climate change and under performance. The content of the REDD+ BSP 2021 is reiterated in the following paragraphs.

Fiji experiences cyclone season between November and April. Climate Change projections indicate more intense hurricanes in increasing frequency across all the group of islands in Fiji. Storms can result in heavy damage to mangrove forests in some parts of the country and with climate change the frequency of such damaging storms is anticipated to increase. The risk of a storm event impacting a REDD+ interventions exists. To mitigate potential losses, it is suggested that areas identified for mangrove restoration projects undergo prior assessment of suitability with the aim of minimizing losses.

Performance buffer contingency funds will be used to reward potential beneficiaries in project areas where there has been underperformance due to circumstances beyond their control.

The use of the Performance Buffer Contingency Fund will be triggered when there is under performance across the entire ER-P (assuming blue carbon ERPs are included) as assessed by the MRV team such that the net carbon benefits received are not sufficient to provide benefit payments and non-monetary incentives. The MRV team according to the BSP 2021 will make assessments and recommendations to the Divisional Working Group to undertake field verification. The *Climate Change Act* provides no detailed guidance in this area; these matters are for the Minister responsible for forests who is responsible for developing policies, procedures and safeguards for the implementation of REDD+ and forest emission reduction projects, programmes and activities.<sup>87</sup>

The Performance Buffer Contingency Funds for REDD+ projects would be kept with the Ministry of Finance (MoFin) in its consolidated funds with clear processes and guideline in place that will support the MoF to access the same as and when needed, in accordance with the BSP 2021.

Key criteria that the REDD+ Steering Committee and the Forestry Board may consider when making necessary decisions on the use of Performance buffer includes the following:

- Nature of the underlying causes that result in non-performance;
- Validity of registration under REDD+ Licence;
- Stakeholder engagement and support of the Provincial/District Council;
- Historic performance of the beneficiary.

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<sup>87</sup> *Climate Change Act*, s.48

## 17. THE BENEFITS FLOW-INSTITUTIONAL ARRANGEMENT

### 17.1 Net carbon benefit

The net carbon benefit is the balance of gross carbon benefit after operation and performance contingency buffer are considered as expressed in Equation 1 (from the REDD+ BSP 2021).

**Equation 1: Net Carbon Benefits**

$$\text{Net Benefit} = \text{Gross Carbon Benefits} - (\text{Operational Costs} + \text{Performance Buffer Contingency Fund})$$

Once operational fixed costs and performance buffer have been deducted from the gross carbon benefits received at national level, the remaining Net Carbon Benefits will be distributed to beneficiaries as outlined in Figure 4 (which assumes the ERP is within the ER-P of the Fiji REDD+ Programme). The net carbon benefit shared with beneficiaries in accordance with this BSP are derived from Net Carbon Benefits (net carbon benefit).

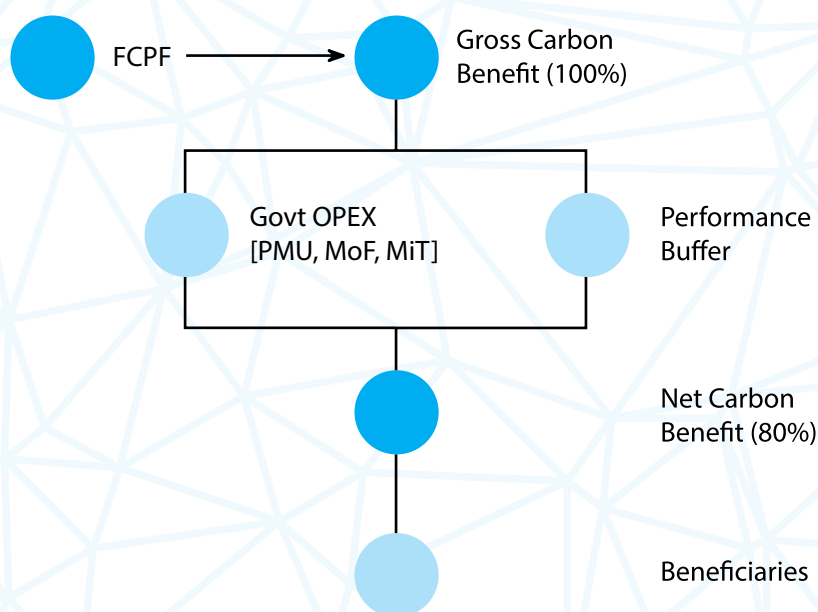


Figure 4: Gross and Net Carbon Benefit (BSP 2021)

As per the dividend allocation under the BSP 2021, Blue Carbon will similarly follow suit in that the type and amount of net carbon benefits for each group takes into consideration appropriate incentives for participation in activities that generate ERUs, appropriate rewards for past contributions to generation of ERUs, costs involved including opportunity costs, and other incentives such as non-carbon benefits linked to the activities and perceived by each group; that is the benefits they receive through the implementation of the activities and/or financed from other sources other than the ERR payments.

Table 12 was prepared for REDD+ projects under the ER-P and is shown by way of example only to indicate how funds might be allocated to classes of beneficiaries, depending on the nature of the proponent, type and location of the blue carbon ERP.

**Table 12:** Types Of Carbon Benefits For Each Beneficiary

Beneficiaries	Types of Carbon Benefits		TOTAL
	Monetary	Non-Monetary	
Private Sector	@20%	Not applicable	20%
Community/ Village/ Settlement	@10%	@10% support tree planting aimed at communities to supplement supply of tree seedlings, equipment may include nursery and associated implements, basic fire fighting tools as well as other agriculture-based economic incentives to support economic wellbeing	20%
Small Holder Farmers/ Licensed Fishers for the area	@25%	@10% Support for agroforestry opportunities targeted as small holder farmers would include apiculture incentives, vanilla, cocoa and coffee planting materials to diversity and promote agroforestry.	35%
National Trust of Fiji Non-Government organizations	@20%	Not applicable	20%
Provincial Council	@5%	Not applicable	5%

## 17.2 Carbon and non-carbon benefits

When considering the most effective, efficient and equitable use of carbon finance to provide net carbon benefit, it is important to consider the type of incentive that will be most appropriate, taking into consideration the non-carbon benefits each group of actors is expected to receive from implementation of the activity. The non-carbon benefits include those inherent in the implementation of the activity such as improvement of local livelihoods, improved yields from coastal fisheries or maintenance of water catchment, and those benefits which are provided from other sources such as government budgets.

The types of carbon benefits distributed to beneficiaries take into consideration the types of activities involved in implementing the ERP aiming to reward stakeholders for contributions to generating ERUs and providing incentives for future generation of ERUs. Carbon benefits are provided either as monetary benefits or non-monetary benefits as appropriate for each activity and beneficiary group.

Carbon non-monetary benefits would include community development projects and the provision of materials to assist with, e.g., the planting of mangrove propagules for mangrove forest restoration.

Ineligible non-monetary benefits include the purchase of chainsaws, hunting and fire-fighting tools/equipment and projects that would disproportionately benefit any individual or family. Application of the BSP 2021 will adopt the Environmental and Social Management Framework checklists for ineligible and prohibited activities and a BSP for blue carbon would follow.

## 18. BENEFIT DISTRIBUTION [REDD+]

### 18.1 Allocation of net carbon benefits

The net carbon benefit will be allocated to different beneficiaries in accordance with discussions across broad stakeholders where each beneficiary is allocated a proportion of the net carbon benefit.

Beneficiaries are defined by the types of activities they undertake, as aligned to a blue carbon ERP. Examples of conditions of participation for different beneficiaries are listed in Table 10.

The type and amount of net benefits for each beneficiary would take into consideration appropriate incentives for participation in activities that generate ERUs, appropriate rewards for contributions to generation of ERUs, costs involved including opportunity costs, and other incentives such as non-carbon benefits linked to the activities and perceived by each group; that is the benefits they receive through the implementation of the activities and/or financed from other sources other than the ERR payments.

The beneficiaries are rewarded in recognition of the level of commitment and efforts required to participate in the ERP. The ERP involves activities that directly generate ERUs.

### 18.2 Allocation under different scenarios

Three hypothetical scenarios are discussed. Each scenario is based on anticipated response and assumed willingness of the greater population to participate and engage in ERP activities.

- 100% performance;
- 50% under performance;
- 150% performance;

**Scenario 1:** At 100% performance, all ERP activities are fulfilled, and anticipated ERs outlined in the relevant ERP document delivered. Under this scenario, all the parameters assumed in the ERP are fulfilled and ERU successfully generated.

Funds for Performance Buffer Contingency Fund will be set aside in accordance with administrative processes/regulations.

**Scenario 2:** assumes underperformance in all ERP activities that could be a direct result of many factors including:

- **Natural catastrophe** is self-explanatory and may include cyclones but their occurrence and intensity cannot be predicted prior to the event.
- **Anthropogenic** causes of underperformance may include among other factors: slow implementation associated with governance systems, or absence of planting material in the first year of operation.

At 50% performance, the estimated ER is expected to reduce by 50% and subsequent revenue decline by half. The allocation to Operational Cost, Performance Contingency Buffer and Net carbon benefit outlined in Figure 1 will be retained.

Under 50% performance, the amount of ERs payments set aside for Performance Buffer Contingency Fund will be accessed subsequently; the detail to be determined.



**Scenario 3:** assumes overperformance in all ERP activities and may result from wide scale acceptance and implementation of the REDD+ ERP activities across the accounting area. No additional flow of funds is expected.

Under Scenario 3, there is no need to draw on the Performance Buffer Contingency Fund. In a such case the Performance Buffer Contingency Fund will be held until a pre-determined date and then divided equally among all beneficiaries. The motive behind this equal benefit sharing is associated with the idea of sharing equal benefits for collective efforts to all beneficiaries.

## 19. FLOW OF FUNDS [REDD+]

Prior to distribution of benefits, institutional arrangements currently in place supporting REDD+ initiatives at Divisional and Provincial level would coordinate the registration process for all beneficiaries under the MoF.

### 19.1 Flow of funds and delivery of benefits

The Ministry of Economy (now Finance) was granted Cabinet Approval to negotiate carbon trade and be the focal point for Fiji to the World Bank. The Warsaw Framework suggests that the national entity or focal point designated to serve as liaison with the secretariat and bodies under the UNFCCC on coordination of support may also be nominated to receive and obtain results-based payments (under FCPF Agreement).

Prior to the distribution of benefits, institutional arrangements currently in place supporting REDD+ initiatives at Divisional and Provincial level would coordinate the registration process for all beneficiaries under the MoF.

Key institutions that have a part to play in the facilitation of sharing net carbon benefits to beneficiaries may support delivery of benefits. These institutions include Provincial/District Councils under the MTA, Ministry of Rural and Maritime Development, Divisional Working Group and the REDD+ Unit under the MOF. A schematic representation of the two-step process for distributing benefits is outlined in Figure 5 (noting that some Ministry names have changed) with key steps listed below:

Step 1: Measuring, Reporting and Verification (in pale orange shade Figure 5)

- a. The REDD+ Unit (MoF) undertakes MRV and submits report to Divisional Working Group for verification.
- b. The Divisional Working Group may revert back to REDD+ Unit for clarification of pertinent issues or submit report to the REDD+ SC for approval. Upon approval, the REDD+ SC submits the report to the MoF.

Step 2: Distribution to beneficiaries (see Figure 5)

- a. The MoF makes submission to the MoFin recommending the release of payments to beneficiaries in alignment to the register of REDD+ projects under the Climate Change Act.
- b. MoFin verifies the report from MoF and makes payment to MoF from the pool assigned to Net carbon benefits.
- c. The MoF distribute benefits to beneficiaries in accordance with the agreed proportions as outlined in Figure 5 or as recommended by the Forestry Board and endorsed by MoF and MoFin.

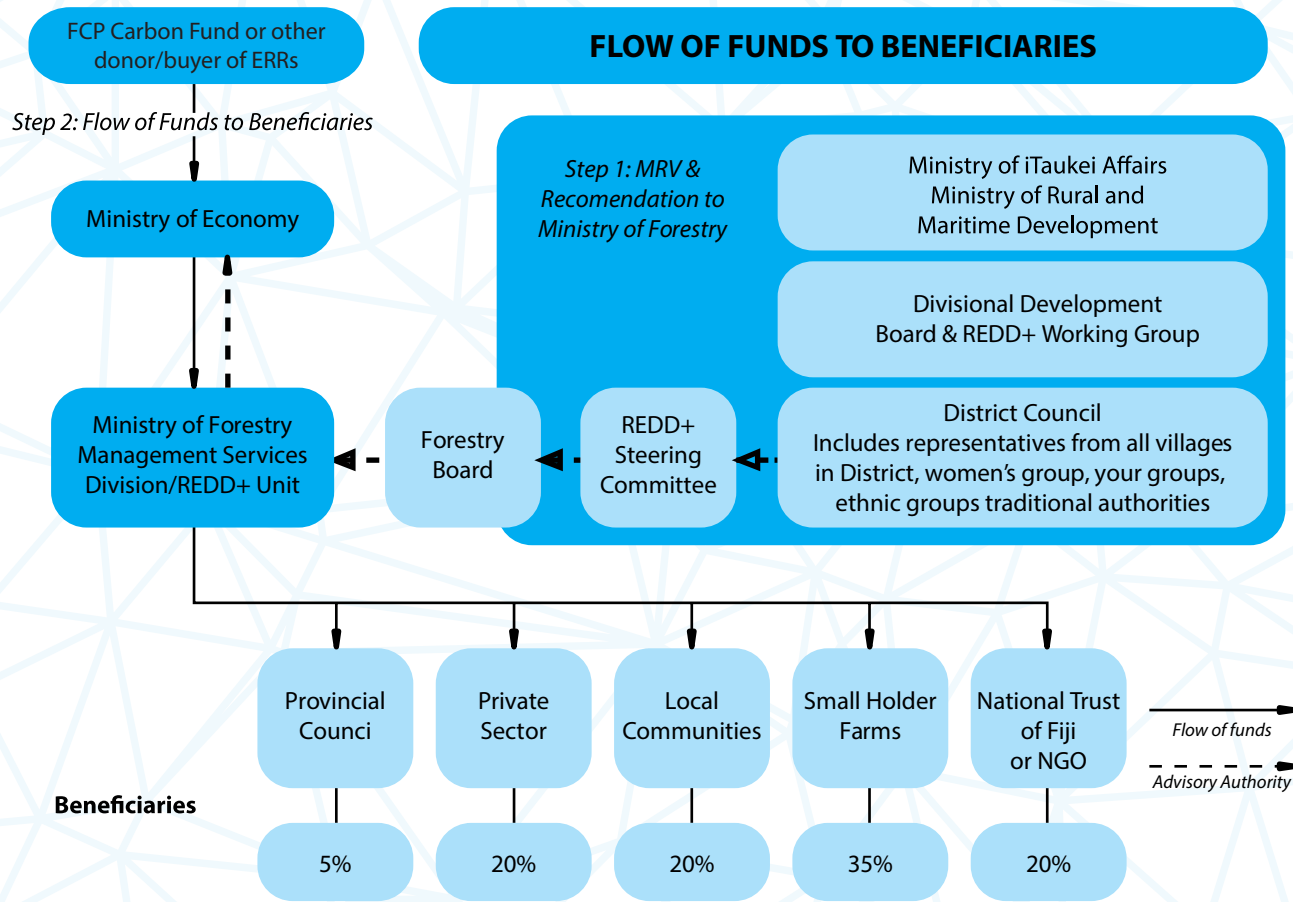


Figure 5: Financing Flow Of Benefits To Beneficiaries  
Source National BSP For Redd+ (2021)

## **20. SAFEGUARDS; FEEDBACK GRIEVANCE AND REDRESS MECHANISM; MONITORING OF BENEFIT DISTRIBUTION; AND SAFEGUARDS INFORMATION SYSTEM**

The BSP 2021 addresses matters under these headings and the authors have nothing to add to the important and relevant content, for blue carbon ERPs under Fiji's REDD+ Programme.

## 21. DESCRIPTION OF NATIONAL ARRANGEMENTS AND PROCEDURES

The TOR for the Study requested Deliverable 4 to include a description of proposed national arrangements and procedures to be included in the Final Report, and to that end set out eleven questions to be answered. The responses to these questions are below.

- i. If any, what is the government agency in charge of giving authorization to project proponents to operate carbon projects?

Under the *Climate Change Act* it is the Director of the Climate Change and International Cooperation Division, appointed by the Minister responsible for Climate Change (currently the Prime Minister) who may declare a project to be a *Fiji Emissions Reduction Project*, or an approved ERP under an international emissions reduction standard, or an approved ERP for the purposes of Article 6 of the Paris Agreement, after having consulted each case with the CoF. It is understood the relevant Division is now the CCD in the OPM.

Prior to having a project authorized, a project proponent must own the CSPR for the land and have the benefit of a lease, an approval notice of lease or agreement for lease (if required by the Minister of Lands) in respect of the project area.

- ii. Who can be authorized by the government to generate, facilitate and receive payments for emissions reductions for terrestrial and mangrove forests (REDD+)?

While the *Climate Change Act* includes mangrove forests in the meaning of 'forests', it is noted that there are presently no REDD+ projects in respect of mangrove areas, but it is clear that ERPs for both mangrove and terrestrial forests may be generated and authorised under the Act.

Only the Government, in the person of the Director of the CCD, OPM, may issue a Fijian Emissions Reduction Statement and as soon as practicable thereafter must issue to the nominated Registry account an equivalent number of Fijian Mitigation Outcome Units, each having a unique serial number.<sup>88</sup> The FMOUs may be sold for payment, domestically or internationally, subject to the *Climate Change Act*.

- iii. Is there a policy or legislation and regulations that explicitly allow or prohibit initiatives to be developed at a site or project scale for generating carbon credits and receiving financial compensation for carbon credits from international and/or domestic buyers?

Yes, the *Climate Change Act* allows initiatives in the form of an approved ERP to be developed for the generation of carbon credits/emission reduction units and resulting FMOUs that are personal property and may be traded domestically or internationally subject to the provisions of the Act and prohibits projects that are not approved.

There are presently no regulations that either allow or prohibit initiatives.

It is anticipated that the drafting of the regulations under s.111(3) of the *Climate Change Act* will address the necessary legal measures to facilitate the trading of carbon credits to be known as FMOUs or Internationally Traded Mitigation Outcomes (ITMOs) (where these are not committed to IBRD under the REDD+ Programme and the FCPF Agreement).

According to section 58 of the *Climate Change Act*, the Director has the power to develop standards and guidelines for the international transfer of FMOUs, and a person wanting to trade FMOUs internationally

<sup>88</sup> *Climate Change Act*, ss. 51, 52

will have to receive the approval of the Director, CCD. The need for approval reflects not only the need for good governance to reassure the international community of the high integrity of FMOUs, and that double counting is avoided, but also to ensure that transfer of FMOUs will not be counter to Fiji meeting its commitments under its NDC.

- iv. **What is the current and future position of the government with regards to measuring for embedding existing and future site-scale carbon projects in the national REDD+ framework?**

According to the *Climate Change Act*, the quantity of ERs generated by a blue or forest carbon project will have to be measured in accordance with a Fiji ERM (yet to be developed/adopted by the Director, CCD and/or approved by the Prime Minister having first consulted with the Minister for Forests) and verified by an independent auditor certified under an international emissions reductions standard.

- v. **What measures have been taken by the government to streamline and integrate carbon accounting at a national and sub-national level and to prevent double counting of carbon rights?**

The following is provided for in the *Climate Change Act*:

- The CSPR is a separate interest in land, entitling the holder to undertake an approved ERP;
- Only one CSPR may be issued for an area of land identified by description or scheme plan;
- The CSPR is registered for a specific term by the Registrar of Titles and a certificate issued to the owner;
- The CSPR is registered as an encumbrance on the lease or the title for the land;
- All ER projects must be approved by the Director, CCD, as shown in Figure 3.
- The ERP proponent must report at the end of a crediting period determined by the Director, CCD;
- The ERUs must be independently verified by an auditor certified under an emissions reduction standard;
- A material reversal or loss of carbon stocks must be reported, and remedied within a legislated time period, if required;
- Each FMOU issued will have a unique serial number and issued only to a specific Fijian Registry account;
- ERUs issued under an approved international emissions reduction standard may with approval be converted to FMOUs but only where the Director, CCD approves, having been satisfied that there will be no double counting and that the ERUs to be cancelled are equal to the ERUs represented by the FMOUs sought to be issued;
- The Director, CCD may not issue FMOUs until there is evidence of the cancellation of ERUs from the foreign account;
- Each FMOU and ITMO issued must be given a unique serial number that allows them to be registered and tracked by the Fiji Registry; and
- No FMOU may be transferred internationally without the consent of the Director, CCD.

vi. What measures have been taken by the government to clarify blue carbon rights?

The right to blue carbon is as for forest carbon. Under the *Climate Change Act* a CSPR may be sought by a proponent with the consent of the landowner, the Minister of Lands; a lease from the Director of Lands (if required), and possibly from the TLTB (for access across iTaukei lands if required) and acknowledging customary rights of the adjacent LOU and the consent of the *iqoliqoli* (acknowledging their customary rights)); and an ERP proposed (consultation with CoF). Then a proponent may apply for a CSPR to be approved and registered. It remains for the government to make regulations.

vii. What measures have been taken by the government to clarify land tenure and community rights over blue carbon?

The Fiji Government enacted the *Climate Change Act 2021* the provisions of which enable a person to own the right to the blue carbon sequestered in a mangrove forest or seagrass meadows separately from the land on which the forest is located/growing, provided certain pre-conditions are met by that person. The right is named a 'carbon sequestration property right' (CSPR) by the Act and protected through registration with the Office of the Registrar of Titles, also identified as the Registrar of Carbon Sequestration Property Rights.

As a 'person' is interpreted in the Act to include 'any individual, ... body of persons, corporate or unincorporated', the person owning a CSPR may be a community in the form of an entity that is a landowning unit, or two or more LOUs that have joined together to form a cooperative or incorporated association. Thus a community potentially could obtain rights over blue carbon, through a lease from the Director of Lands.

viii. What diverse land tenure systems exist and how do they impact community blue carbon rights?

Land tenure forms in Fiji, as detailed in the body of this Report, are:

- iTaukei land with landowners registered in the VKB; is inalienable except through acquisition by the State for a public purpose with fair and just compensation – may be leased through the TLTB with the TLTB as lessor or through the Land Bank. These lands where adjacent to or abutting the foreshore may impact or be impacted by a blue carbon ERP, so the LOU is likely to be a stakeholder and may be entitled to compensation under the *State Lands Act*.
- Freehold land; alienable - may be leased by private lease agreement. The development existing on this land may impact blue carbon development. The landowner would be a stakeholder.
- State Land (which includes all foreshore and seabed areas of land) - may be leased in accordance with legislation (if required) for a blue carbon project. The State as landowner will be a stakeholder.

In addition *iqoliqoli* rights are customary rights in respect of coastal waters (and including the right to access the land of the foreshore and seabed) that may be impacted by blue carbon ERPs developed on the foreshore or in coastal waters. The rights holders will be stakeholders and may be entitled to compensation.

ix. What measures have been taken by the government to recognize and respect human rights within forests that have customary peoples?

The current government earlier this year announced that Fiji would adopt the UN Declaration on the Rights of Indigenous Peoples. The UNDRIP recognizes the rights of indigenous peoples to their lands, territories and resources and their rights to own, use, develop and control them, in addition to requiring a State government to consult and cooperate in good faith with indigenous peoples through their representative institutions to obtain their FPIC before adopting any measures that may affect them.<sup>89</sup>

<sup>89</sup> UNDRIP Articles 19, 26.

In 2019, the Ministry of Forests published the Guideline (developed by the Soqosoqo Vakamarama iTaukei), *Obtaining Free, Prior and Informed Consent for REDD+ Initiatives in Fiji*, described as being a practical guide to obtaining FPIC of indigenous Fijians, the iTaukei and local communities during the development and implementation of REDD+ initiatives in Fiji.

Customary rights on iTaukei land are preserved under section 21 of the Forest Act 1992, except where the land is in a forest or nature reserve, and on leased land, with the consent of the lessee.

- x. Are there any requirements regarding the distribution of revenues at national and sub-national level? Or precedents regarding this matter?

There are no legislative requirements for revenues from blue carbon ERPs specifically, but under the *Climate Change Act* the BSP developed for any transaction under international REDD+ programmes by the Minister for Forests in consultation with the Minister responsible for lands, must establish a mechanism for the distribution of benefits (monetary and non-monetary as determined by the BSP). The BSP 2021 has been developed for this purpose (international REDD+ programme transaction) and establishes that 85% of the benefits are to be distributed to beneficiaries, but it is understood that current policy is that 80% of the carbon benefits of a REDD+ ERP will be distributed to beneficiaries.

Under the *Fair Sharing of Mineral Royalties Act*, the share of royalties to be distributed to landowners or, in the case of the seabed, to registered customary fishing rights holders is 80%. This Act implements the constitutional rights of landowners (Constitution, clause 30).

- xi. Are there any other recommendations regarding how the country's legal framework can support nesting and the transfer of carbon rights?

It is expected that these will be set out in the regulations to be drafted under s.111(3)(b) of the *Climate Change Act*, given that it enables the drafting of a regulation that provides 'guidance on satisfying the requirement to hold the legal right to carry out the project, programme or activity'.



## 22. RECOMMENDATIONS

The recommendations set out in this Report are consolidated below:

### General

1. The REDD+ Policy and Fiji's REDD+ ER-P be amended to include blue carbon projects.
2. The Forest Act be amended to incorporate the MoF responsibilities with respect to the REDD+ Programme referenced in section 48 of the *Climate Change Act* and that regulations be made.
3. The *State Lands Act (Lease and Licences) Regulations 1980* be amended, as relevant to the foreshore and inland waters to facilitate blue carbon emission reduction projects in mangrove areas and seagrass beds.
4. The *State Lands Act (Lease and Licences) Regulations 1980* be amended, to enable the proponent and the rights owners to negotiate an agreement with conditions such as the continued protection of existing rights and that no rights are extinguished permanently for the purposes of the blue carbon project, in lieu of compensation (for the temporary loss of (some) *iqoliqoli* rights occasioned by a blue carbon project) to *iqoliqoli* owners as an alternative to a waiver and lease.
5. A benefit sharing plan for REDD+ blue carbon ER projects follow generally the national BSP (2021) for REDD+ ER-Program, adapted as appropriate for blue carbon.
6. Review and strengthen the *Environment Management Act* (as recommended by the National Adaptation Plan) and *Environment Management (EIA Process) Regulations 2007* to ensure they are fit for purpose in particular having regard to:
  - i. The need to promote ridge to reef management of natural resources to avoid pollution from land-based sources of mangroves and seagrass, in the interests of their health and the success of blue carbon projects; and
  - ii. That mangroves and seagrass are part of Fiji's coastal environment, the preservation of which is a matter of national importance.
7. In the **alternative scenario** where a lease would be necessary, the *State Lands Act (Lease and Licences) Regulations 1980* be amended to provide that the payment of compensation may be effected by the registration by the lessee of a blue carbon agreement, being an agreement reached through negotiations in good faith between the lessee and the iTaukei landowners of adjoining or abutting lands that includes as a component compensation for the infringement of rights, whether monetary or partly monetary and partly non-monetary.

### Mangroves

8. A regulation be drafted under the *Climate Change Act* specifically addressing the requirements for blue carbon (mangrove) projects, in consultation with the Ministry of Land and Mineral Resources, the Ministry of Forestry and the Ministry of iTaukei Affairs.
9. The Forest Act be revised to include that:
  - the meaning of 'forest' includes mangrove forest; and
  - mangrove forests be permanently protected including an offence provision.

10. The Mangrove Management Committee be reconvened.
11. Formally adopt a Mangrove Management Plan.

### **Seagrass**

12. Amend the *Climate Change Act* to enable the Director, CCD to consult an expert within the appropriate agency prior to making a decision in respect of a blue carbon (seagrass) ERP, consistent with the requirement to consult the Conservator of Forests for a forest ERP.
13. A regulation be drafted under the *Climate Change Act* specifically addressing the requirements for blue carbon (seagrass) projects, in consultation with the Ministry of Lands and Mineral Resources, the Ministry of Fisheries and the Ministry of iTaukei Affairs.
14. The *Fisheries Act* be amended to provide permanent protection for seagrass meadows including an offence provision.

## 23. CONCLUSION

Blue carbon from coastal wetlands consisting of mangroves, seagrasses and salt marshes play a critical role in climate change mitigation and adaptation. These are estimated to sequester 4-10 tons of CO<sub>2</sub> per hectare annually and up to 10 times faster than tropical forest. (see [www.weforum.org](http://www.weforum.org)). National and global stakeholders can work together through activities such as implementing carbon budgets and blue carbon emission reduction projects generating tradeable carbon credits for our global future. In Fiji the blue carbon focus is on mangrove forests and seagrass beds.

These activities must be for the benefit of all involved and not at the cost of those in small island developing countries such as Fiji. The livelihoods of the communities where blue carbon projects are proposed and implemented should not be adversely affected and indeed, the communities should fairly share in the benefits generated as both an incentive for the changes they have had to make and a reward for their efforts to support the projects.

In addition, the customary and constitutional rights of the indigenous peoples must be respected. In Fiji that includes not only their customary user rights on land and in Fiji's territorial waters, but also their ownership rights. It follows that the separation of carbon rights from the bundle of rights that constitute land ownership in order to facilitate forest carbon and blue carbon ERPs must be acknowledged and compensated. One means of doing that which has been the focus of this Report is through a fair and equitable sharing of the benefits that come from the sale of carbon credits / ERUs among the communities who have contributed, in addition to the project proponent / developer and the landowner(s).

Adhering to the principles of a fair and equitable benefit sharing for communities is crucial, as is investing only in high quality carbon projects grounded in credible science and ensuring that there are safeguards. There are now new frameworks emerging to ensure both buyers and projects ensure benefits for people and the planet. A fair BSP template may provide incentives to local leaders and communities for access to international market.

Many communities already value their blue carbon ecosystem for fishing livelihood, shoreline protection and other benefits. Sequestered carbon as an additional benefit can unlock external financial opportunities for these ecosystems on top of their daily lived benefits. The country can unlock high integrity capital investment in blue carbon ecosystems by providing local communities access to voluntary carbon markets. In addition, this has the add-on effect to equip governments to achieve their Paris Agreement climate goals. However, as blue carbon ecosystems span land and sea, jurisdiction over these can be confusing and policies challenging. It is therefore crucial in Fiji's case that government clarify carbon rights, *iqoliqoli* rights and the forms of interest in coastal land required in order to streamline approaches to blue carbon ERPs.

Blue carbon ERP partnerships will no doubt seek to halt losses of mangroves and seagrass, double protection globally and ensure sustainable long-term financing for restoration and protection of existing mangroves and seagrass. To this end, community-based solutions and fair recompense, no doubt incentivized through an inclusive BSM is crucial. This Report has identified that:

- a growing awareness of the lack of fairness and equity in the standard resource development model is causing customary owners, other stakeholders, and communities to urge governments and companies to ascertain how communities and customary holders envision their future in relation to conservation projects and whether they want development on their lands and coastal zones.
- It is essential to ensure proper decision-making process, powers and levels of benefit sharing if blue carbon ERPs are to be encouraged and implemented. This is supported in international standards notably the UNDRIP 2007 and the earlier ILO Convention 169 of 1989 which refers inter alia to the rights of Indigenous Peoples to decide their own priorities and exercise control over their own development, together with the CEDAW and its recent GR 39, as well as in international emissions reduction standards.

- the Free Prior and Informed Consent process should be mandatory for the project initiation and development phase, through decision-making (including compensation where appropriate) and subsequently for community liaison and project monitoring - as a project management tool.
- It will be necessary to ascertain customary rights and interest in an inventory process to inform appropriate valuation for negotiation (for a negotiated compensation agreement) and to ascertain rights-holders' continuing status re: abeyance or extinguishment during the blue carbon project period.
- beyond BSPs, negotiated agreements with communities wherein social investments are volunteered by project proponents, are to be encouraged.
- It will be essential to implement and monitor safeguards standards and FGRM.
- A blue carbon project approach will also have ecosystem or nature-based benefits for Fiji and Fijians, provided there is a corresponding systematic approach to all development (e.g., ridge to reef awareness and management).
- To support a blue carbon approach, appropriate legislative frameworks, regulations and policies are essential together with the means to implement and monitor adherence.

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# ANNEX

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# ANNEX 1

## Terms Of Reference

### Benefits-Sharing and Carbon Rights Assessment for Blue Carbon in Fiji

#### OBJECTIVES OF THE CONSULTANCY:

This consultancy has two main objectives:

1. Assess the status of the legal rights over “blue carbon” in Fiji (carbon that is stored and sequestered in seagrasses and mangroves) and make recommendations as to what legal measures are required to enable the use and transfer of carbon rights, to enable carbon projects and carbon credits trading for international and domestic voluntary and compliance markets. The benefit-sharing recommendations are guided by the priorities and processes of the Fiji Ministry of Economy, Climate Change and International Cooperation Division (CCICD), and the Ministry of Lands, and will align with Fiji’s national GHG inventory accounting process.
2. In alignment with the first objective, develop benefits-sharing recommendations for carbon sequestration property rights within blue carbon ecosystems in Fiji to ensure that monetary and non-monetary benefits are shared between the various stakeholders within the context of blue carbon trading for international and domestic voluntary and compliance markets. This should include the design of clear, effective and transparent benefit sharing mechanisms, principles and channels, with support from all relevant stakeholders and communities.

#### GENERAL PRINCIPLES TO BE APPLIED

- The design and implementation of the benefit sharing recommendations have to comply with relevant applicable laws in Fiji, primarily the *Climate Change Act of 2021* and others, including agreements and customary rights, and should ensure a high degree of efficiency and transparency in order to be successful and incentivize stakeholders’ participation.
- Benefits are shared based on standard matrices and formula: monetary benefits derived from the sale verified carbon units certified under agreed accreditation scheme/authority will be shared between the identified beneficiaries.
- Local communities are expected to benefit the most: the proportion of benefits allocated to the communities should represent the most significant share of benefits, as they are the key actors whose behaviour (in terms of land use) need to change for ERs to be achieved from mangroves.
- Central to the application of this benefit sharing recommendations is the concept of adaptive management. Benefit sharing payments are innovative concepts, and the Emissions Reductions (ER) Program is only at the early stage of its implementation in Fiji. In the same way it will be crucial that the Fiji Benefit Sharing Plan (BSP) be periodically revised and updated according to available information and progress made on the ground. This will ensure the progressive and continuous incorporation of key lessons learnt into the BSP to make sure that its functioning and remains relevant and efficient.
- The Benefit sharing recommendations will frame the allocation, administration and the provisions of monetary and non-monetary benefits under a project in alignment with Fiji’s Sustainable Development Goals (SDG) and the Fiji REDD+ Benefits Sharing Plan (e.g. payments to support activities that reduce deforestation and degradation across mangroves systems and to incentivise the conservation and permanence of blue carbon system in Fiji). The development of blue carbon benefit sharing recommendations will learn from the lessons of the Fiji REDD+ BSP, noting the clear difference in the ownership in respect to mangrove forest in Fiji and the various legislative and policy oversight amongst various government to mangrove management.

- The consultant will provide an analysis and recommendations on nesting”, the state of affairs with regard to technical, policy and legal measures that will allow the nesting (embedding) of voluntary pilot carbon projects in national policies or accounting measures, such the national REDD+ framework.
- The development of the Fiji blue carbon benefit sharing recommendations must involve comprehensive, multi-level (national TLTB, iTaukei boards, divisional, provincial, district/tikina and community/village and inclusive stakeholder engagement (local communities, civil society, government agencies, statutory bodies, academia, private sector, etc) throughout its preparation.

### **LEGAL UNDERPINNINGS OF THE BENEFIT SHARING PLAN (BSP)**

The benefit-sharing recommendations for blue carbon trading will be guided by Fiji’s regulatory, legal and policy frameworks. Furthermore, the recommendations will derive from specific legislations and international conventions that have been identified through studies from the Fiji REDD+ FCPF Program such as:

- Carbon Rights Study
- Strategic Environmental and Social Assessment (SESA)
- Environmental and Social Management Framework (ESMF)
- Free, Prior and Informed Consent (FPIC) &
- Gender Action Plan
- Fiji Low Emission Development Strategy
- Fiji REDD+ Policy
- Fiji’s National Climate Change Policy
- Fiji *Climate Change Act* and relevant provisions

### **ASSIGNMENT**

The consultant or consultancy firm will complete several tasks to prepare the next deliverables, including development of a work plan to define the analysis scope and methodology, to be refined with CI country office and other CI global teams.

#### **Deliverable 1. Work plan, scope and methods to be applied to prepare deliverables**

1. A document describing work plan/schedule
2. Includes scope of the analysis and methods (desk review and documents to be revised, interview with experts, workshops, etc.)
3. Includes date to deliver a draft of the report requested

#### **Deliverable 2. Draft report: the state of blue carbon, carbon and ownership rights and nesting of projects**

1. A document screening the existing policies and regulations related to the legal rights over carbon and land tenure nationally [and at the subnational if applies].

2. An overview of land tenure systems in the country and their implications to carbon rights nationally and at the subnational level.
3. In alignment with the *Climate Change Act* and specific to blue carbon projects, recommendations as to what legal measures are required to enable the use and transfer of carbon rights, to enable carbon projects and carbon credits trading for voluntary and compliance markets nationally and at the subnational level.
4. If carbon rights have not been addressed, recommendations as to what legal measures are required to address land tenure and community rights over carbon nationally and at the subnational.
5. An overview of the state of affairs with regard to technical, policy and legal measures that will allow the nesting of carbon projects from both terrestrial and mangrove forests in the national REDD+ framework.
6. An analysis of existing and planned institutional arrangements for authorizing international carbon credit transfers and process for accounting nationally and at the subnational level, including corresponding adjustments, and treatment of the Fiji national GHG inventory.
7. An overview of the status of recognition, respect, and protection of human rights and especially rights of indigenous peoples.
8. The report should include a list of all national, regional and local laws, statutes and regulatory frameworks in the host country that are relevant to the project activities. Provide assurance that the project is complying with these and, where relevant, demonstrate how compliance is achieved.

Deliverable 3: Benefit-sharing recommendations for blue carbon ecosystems, based on D2.

1. In close consultation with local communities, iTaukei Land Trust Board, Ministry of iTauke Affairs, the REDD+ CSO platform, and key stakeholders, government departments to identify potential beneficiaries and existing benefit sharing mechanism in the country.
2. Assess the existing benefit sharing mechanisms in the country that may be relevant to this assessment (e.g., REDD+ Benefits-sharing program)
3. Conduct an in-depth literature review, particularly focusing on
  - a. Linkages between carbon sequestration property rights, and land and tree tenure and mechanisms in the country
  - b. Current benefit sharing and incentive programs developed to further conservation and management of blue carbon ecosystems in Fiji
  - c. Policy, legal and regulatory provisions of the country pertaining to the benefit distribution
  - d. Take stock of programmes, initiatives and experiences from the region and the globe that provides incentives related to blue carbon and examine the most appropriate and applicable in the national context and how such initiatives can be replicated/adopted in Fiji from the benefit sharing point of view
4. The benefit sharing recommendations contain the following information:
  - a. A full set of institutional means, governance structure and instruments that will be necessary to distribute finance and other net benefits from blue carbon projects in Fiji,



- including tracking and reporting of benefits.
- b. The categories of potential beneficiaries and their eligibility to receive potential Monetary and Non-Monetary benefits and types and scale of such potential Monetary and Non-Monetary Benefits.
  - c. Examine how non-monetary/non-financial incentives can contribute to fair, just and equitable benefit sharing in the implementation of blue carbon projects in Fiji;
  - d. Identification of beneficiaries may consider expected implementers, strategic options intended to implement to address the drivers of net emission, geographic boundary of program, and land and resource tenure rights.
  - e. The benefits sharing should be are Identify how different constituencies define benefits
  - f. Provide recommendations Fiji's blue carbon strategy including practical benefit sharing options at different levels and how this can be targeted and tailored to various sectors;
  - g. How non-monetary incentives can be best used in the Fijian context to motivate behaviour change in mangrove protection.

Deliverable 4. Final comprehensive report combining Deliverables 2 & 3. This final report must include improvement on the draft presented previously plus a description of national arrangements and procedures.

The description of national arrangements will answer the following questions.

1. If any, what is the government agency in charge of giving authorization to project proponents to operate carbon projects?
2. Who can be authorized by the government to generate, facilitate and receive payments for emissions reductions for terrestrial and mangrove forests (REDD+)?
3. Is there a policy or legislation and regulations that explicitly allow or prohibit initiatives to be developed at a site or project scale for generating carbon credits and receiving financial compensation for carbon credits from international and/or domestic buyers?
4. What is the current and future position of the government with regards to measuring for embedding existing and future site-scale carbon projects in the national REDD+ framework?
5. What measures have been taken by the government to streamline and integrate carbon accounting at a national and sub-national level and to prevent double counting of carbon rights?
6. What measures have been taken by the government to clarify blue carbon rights?
7. What measures have been taken by the government to clarify land tenure and community rights over blue carbon?
8. What diverse land tenure systems exists and how do they impact community blue carbon rights?
9. What measures have been taken by the government to recognize and respect human rights within forests that have customary peoples?
10. Are there any requirements regarding the distribution of revenues at national and sub-national level? Or precedents regarding this matter?

11. Are there any other recommendations regarding how the country's legal framework can support nesting and the transfer of carbon rights?

## ANNEX 2

### List of Fiji National Resource Policies

National Policy/ Plan	Summary
Agriculture Sector Policy Agenda (2020)	<p>The Policy complements the National Green Growth Framework recently launched and provides new dimensions by opening to global innovation for climate-smart agriculture that generates both adaptation and mitigation benefits. The policy also addresses sustainable diversification that will increase production with a holistic and focused vision pursuing sustainable development. It also creates the right atmosphere and incentives for stakeholders.</p>
Fiji Forest Policy Statement (2007)	<p>The goal of the Policy is the sustainable management of Fiji's forest to maintain their natural potential and to achieve greater social, economic and environmental benefits for future generations; sustainable development of forests, which it recognised required an integrated approach.</p> <p>Mangroves are identified as one of the four categories of protected forest, where forest and biological diversity, together with values such as water supply soil conservation, and ecological integrity or scenic appeal, will be protected. The policy sees the protection of mangrove ecosystems to maintain their ecological values as a priority.</p> <p>It included as an action that the Forest Law 1992 be revised to be consistent with other natural resources, land use and environmental legislation.</p>
Fiji Liquid Waste Management Strategy and Action Plan (2006)	<p>Covers all forms of liquid waste that in one way or another affects mangroves and the mangrove ecosystem. Whilst not specifically mentioned about mangroves, their impacts on coastal waters and the coastal environment have been highlighted. This strategy plan impacts mangroves by the proximity of its coverage of coastal waters contiguous to mangroves and the mangrove ecosystem.</p>
Fiji Low Emission Development Strategy 2018-2050 (2017)	<p>Identifies the means by which Fiji will achieve its goal of net zero carbon emissions by 2050 through mitigation; in the process making its economy more sustainable and resilient.</p> <p>Specific pathways towards decarbonisation in high carbon-emitting sectors are identified, including supporting adaptation benefits which align with National Adaptation Plan objectives for the restoration, enhancement and conservation of coastal ecosystems, such as mangrove and seagrasses, particularly in critical riparian and coastal zones. The LEDS informs that the Ministry of Lands and Resources 'is working ... to assist in identifying locations for mangrove replanting, when applications are received for corporate bodies as part of their corporate social responsibility issues'</p> <p>Relies on the adoption of new, more ambitious policies and technologies and the availability of additional financing to implement mitigation actions, and achieve significant emission reductions by 2050 compared with the business-as-usual scenarios.</p>

<p>Fiji National Adaptation Plan (2018)</p>	<p>To spearhead efforts to comprehensively address climate change, in response to Fiji's international commitments and national needs and to bring adaptation efforts across multiple government sectors under one document. Sub-titled 'A Pathway towards climate resilience', this Plan is a high-level strategic plan to address climate change. The inclusion of section 16 'Biodiversity and the natural environment' was predicated on the large social and economic climate resilience benefits derived from intact and healthy ecosystems, the need to protect biodiversity and the natural environment from climate and other threat and the principle of inter-generational equity, enshrined in section 40 of the Constitution of Fiji.</p> <p>Adaptation measures listed under the Biodiversity and natural environment heading include strengthening legislative and institutional frameworks including the <i>Environment Management Act</i>; gain endorsement of mangrove management plan, implement mangrove rehabilitation projects and strengthen the regulations regarding mangrove removal and conversion; implement a national ridge to reef programme for the monitoring and management of rivers and watersheds to reduce negative impacts; and endorse and implement a comprehensive waste management plan to reduce the impact of pollution on terrestrial and marine ecosystems.</p>
<p>Fiji National Energy Policy (2013)</p>	<p>To establish environmentally sound and sustainable systems for energy production, procurement, transportation, distribution, and end-use</p>
<p>Fiji REDD+ Policy (2011)</p>	<p>This Policy sits within the Framework of the National Forest Policy 2007, supporting the sustainable management of Fiji's forests to maintain their natural potential and achieve greater social, economic and environmental benefits for current and future generations. Its aim is to contribute towards the development of a national carbon trading policy.</p> <p>It does not include blue carbon, or mangroves and seagrass meadows in its scope of activities and they are not included within the definition of 'forest' in the Policy.</p>
<p>Fiji State of Environment Report (1992)</p>	<p>To document key drivers and pressure in Fiji that are behind changing environment. To provide a full assessment of Fiji's environment using the best available information on the state of Fiji's environment for 7 key themes; Atmosphere and Climate, Inland Waters, Land, Marine, Biodiversity, Culture and Heritage, and Built Environment.</p> <p>To document the impacts on Fiji's society, economy, and environment from changes in the State of the Environment.</p> <p>To document current responses by Fiji to address the environmental changes, to protect and better manage Fiji's resources.</p>
<p>Fiji Tourism Development Plan (2016)</p>	<p>The Plan provides a framework for the sustainable growth of tourism in Fiji. It recognizes the link between tourism development and the environment. The protection of mangroves has been acknowledged and recognized in the Plan. Initiatives through the plan have seen mangrove planting in some regional areas with the regional strategy (Yasawas) to encourage the development of marine protected areas and discourage overfishing and programs to implement sewage treatment and the provision of ecologically sustainable wastewater and solid waste solutions.</p>

Green Growth Framework for Fiji (2014)	<p>A tool to accelerate integrated and inclusive sustainable development; Inspires action at all levels, to strengthen environmental resilience, build social improvement and reduce poverty; Supports economic growth and strengthens capacity to withstand and manage adverse effects of climate change; To be innovative in finding new transformative solutions to long-standing problems through bold and adaptive leadership and fair and transparent consultative processes, in advancing the transition to a people-centered green economy;</p> <p>Integrated through a holistic approach to support development that is sustainable and climate change resilient; Inclusive of all sectors and cultures from the village to corporate boardrooms to seek to address root causes of poverty and promote sustainable, social, economic, and environmental development.</p> <p>To inspire through creation of empowerment of all members of the community to make decisions and take actions to build a green economy; To invest in transformative change to better align the economy and society with the environment to sustain livelihoods now and future generation</p>
Integrated Coastal Management (ICM) Framework (2011)	<p>Administered through the Department of Environment and reviews current coastal conditions in the context of tourism development, coral reef degradation, siltation and erosion, waste management, coastal reclamation and construction, and natural disasters. It assesses the current legal and institutional governing framework to recommend a proposal for actions and policy toward sustainable coastal resources management. Addresses mangroves directly in section 4.6 and indirectly through coastal environment discussions.</p> <p>It is a framework document and a resource for provincial ICM plans - a more effective way of developing an ICM plan that is relevant and practical, given the competing stakeholder interests and scientific uncertainty that often surrounds natural resource management decision-making. Provincial ICM plans should directly influence mangrove management. The recognition that a plan should cover ridge to reef areas provides a pathway to the effective protection and sustainable management of Fiji's coastal environments.</p>
Mangrove Management Plan [Phase I and 2] (1985)	<p>Extensively covered management and protection of mangroves. Review of the Plans to revisit some of its earlier recommendations. A national policy on mangroves was highlighted in the plans looking specifically at zonation through mangrove reserves (resource and national reserves), managed resource areas for traditional use, wood and shoreline protection zones) and development zones for sewage processing, urban expansion, tourism, and agriculture.</p>
Ministry of Forestry Strategic Plan (2013)	<p>To formulate and implement Forest Strategies and Policies; Provide and administer the regulatory function under the Ministry's respective legislation and regulations; Monitor, and evaluate current strategies, policies and deliverables; Develop and promote effective training, communication and awareness, and extension advisory services; Strengthen community and industry networks and support infrastructure; Maintain international bilateral and multilateral commitment; and Undertake applied research for sustainable forest resource management practices and product development.</p>
National Biodiversity Strategy and Action Plan 2020-2025 (2020)	<p>The goal is to conserve and sustainably use Fiji's terrestrial, freshwater and marine biodiversity and to maintain the ecological process and systems which are foundations of national and local development.</p> <p>Provides an overview of the significance of mangrove and mangrove ecosystems and seagrass.</p> <p>Committed to developing and implementing national strategies to conserve and use components of biological diversity sustainability.</p> <p>The Principles underpinning the Strategy include Community Participation and Ownership, Biodiversity mainstreaming and ownership, Gender mainstreaming and equality, Ecosystem-based management approach, and Ecosystem-based adaptation approach.</p>

**National Climate Change Policy (2012)** This Policy (NCCP) is guided by a number of principles, including that of inclusivity, and recognises that gender equality, inclusivity, responsiveness and balance is key to effectively addressing environmental challenges and climate risks in an equitable and sustainable way.

Its Vision 2050 Statement is ‘A resilient and prosperous Fiji, in which the wellbeing of current and future generations is supported and protected by a socially inclusive, equitable, environmentally sustainable, net-zero emissions economy’. The Government is committed to minimising national contributions to the drivers of climate change through nation-wide emissions reductions and the achievement of net zero annual national emissions by 2050. Mangroves are directly covered in the Policy through the adaptation and resilient development objectives and strategies of the NCCP calling for resource management planning such as integrated coastal watershed management plans, ecosystem-based approach (for environmental resilience through nature-based solutions), vulnerability assessments, best practice adaptation measures, and implementation of key policies such as Fiji REDD+ Policy and Fiji Biodiversity Strategy Action Plan.

It has a number of aims including to ensure all national and sectoral policies align with NCCP, to preserve and enhance Fiji’s natural carbon sinks and improve the accuracy of scientific data collected in the interests of monitoring climate change impacts nationally.

**National Development Plan (2017) 5-YEAR and 20-YEAR Development Plan (2017)** Ensures inclusive socio-economic development through consideration of scenarios to consider all socio-economic rights in the Constitution are acknowledged. It emphasizes a policy of no one left behind an approach to gender and ethnicity, and geographical location. It seeks a formulation of a national land use plan. New and emerging growth sectors will be nurtured and green growth will be a key guiding principle in the implementation of the Plan.

There will be an increased focus on proper and sustainable management of Fiji’s forests, mangroves and coral reefs because of the complex natural biodiversity that these systems support.

**National Forest Policy (2007)** The goal of the Policy is the sustainable management of Fiji’s forest to maintain their natural potential and to achieve greater social, economic and environmental benefits for future generations and it aims to ensure ecosystem stability through conservation of forest biodiversity, water catchments, and soil fertility.

Increased engagement by landowners and communities in sustainable forest management and ensure an equitable distribution of benefits from forest products and processes including ensured protection of intellectual properties.

Included is a policy and strategies for mangrove management, namely that the Government would consult with its departments and agencies involved in mangrove management and with qoliqoli owners and other stakeholders with a view to introduce an effective mangrove regulatory and management framework; that it would draw up guidelines or a plan to replace the current Mangrove Management Plan for Fiji (Phases 1 & 2 – 1985, 1986); and the Policy offered that a strategy for the conservation of mangrove ecosystems to maintain their ecological values will be a priority.

**National Housing Policy (2011)** Key areas of the policy that are related to mangrove ecosystem, their use, and conservation are highlighted in the policy measures, calling for the provision of tenure to squatters and informal settlements on State lands and Freehold lands, improving land supply for urban development, urban land use planning, to better reflect housing needs, future expansion of cities, changing weather patterns and the periodic updating of Master Plans and Zoning Plans by local governments and development authorities.

**National Ocean Policy 2020-2030** The Policy sets as a goal the 5-fold increase in marine protected areas by 2024, with a proposal to increase this to 30% of Fiji's waters by 2030. It aims for sustainable management of the ocean.

It recognises the role of marine ecosystems in sequestering and storing CO<sub>2</sub>, while also recognising the economic value to Fiji of small-scale inshore fisheries and acknowledging that the inshore areas hold the greatest species and habitat diversity, and are critical to the health, wealth, food security, and wellbeing of the Fijian people.

The approach to ocean management is to be guided by overarching principles that include evidence-based decision-making, ecosystem and integrated resource management, adaptive and precautionary management, fair and equitable participation and sharing of benefits, gender equality and equity, respect for traditional culture, and accountability and transparency.

**National Solid Waste Management Strategy and Action Plan. (2011-2014)** Administered through the Department of Environment. It sets a direction for sustainable solid waste management through informed and responsible communities. The proposed goal is to increase the proportion of solid waste that is managed at cost-effective, financially sustainable, legally compliant, and in an environmentally sound manner. This goal will be accomplished through an integrated approach in eight thematic areas of sustainable financing, legislation, awareness and education, capacity building, environmental monitoring, policy and planning, solid waste industry, and integrated solid waste management.

**Road Map for Democracy and Sustainable Development (2009-2014)** This is an overarching policy that sets the framework to achieve sustainable democracy, good and just governance, socio-economic development, and national unity. Mangrove, mangrove management, and mangrove use and protection have been indirectly addressed in the key sectors of development addressed in the roadmap. The road map embraces sustainable development and management. The benefits of these sectors would indirectly impact the mangrove ecosystems and mangroves. Calls for a detailed EIA to be submitted to the relevant authorities and government approval agencies on the port, jetty and any related marine transport development. This directly impacts mangroves and the mangrove ecosystem.

**Rural Land Use Policy (2006)** Strengthening the foundation of sustainable development through establishing a policy framework, having a system of law and regulations promoting sustainable development in place; To outline strategic objectives for sustainable development; Establishing natural resources and environment monitoring systems, natural resources statistics, planning, and information support systems for social economic rural development; Developing education, raising awareness of the sustainable development issues, and building capacities for implementing sustainable practice. The strategies contained in the policy concern management measures on land, which would indirectly provide positive impacts on the management of mangroves and protection of mangroves.

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**Sustainable  
Economic and  
Empowerment  
Strategy (SEEDS)  
2008-2009 (2007)**

The document provides coverage to mangroves, its use, management, and ecosystem. This includes water and sewerage (5.8) land resource and management (8.1), forestry (8.4), marine resources (8.5), and urban development (9.6) Sustainable development, sustainable management of resources, sustainable land use and practices and environment protection forms key objective of the strategies. Environmental sustainability is discussed in section 22.5 with aim to see the sustainable use and management of Fiji's natural resources, highlighting the policy objective (at 9.4) that Fiji's environment is protected from degradation and provide people with a healthy clean environment. It promotes awareness of environment management at all levels, to mobilize communities to manage their environment as a priority. Also call to strengthen legislations which includes environment management provisions eg (*Forest Act, Public Health Act, and Litter Decree*) and co-ordinate implementation in the framework of the *Environment Management Act*. Also, to enforce *Environment Management Act* giving priority to early enforcement of provisions of EIA, Waste Management and Pollution Control. Finally, it calls for the continuous implementation of the Biodiversity Strategy Action Plan and Endangered and Protected Species Act, and *Ozone Depleting Substance (ODS) Act*.

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## ANNEX 3

### Examples of blue carbon projects from other countries

Examples from some other countries may be informative. Below are summaries of these projects gleaned from desktop resources.

#### 1. Indus Delta Blue Carbon, Pakistan

South-eastern Pakistan is the location of the Indus Delta blue carbon project, with the goals of building climate resilient communities, nurturing biodiversity and reducing emissions by planting mangroves. The provincial Government of Sindh entered into a public-private partnership with Indus Delta Capital Limited in 2015 for what is the world's largest mangrove conservation and restoration project. It engages the support of local communities through mangrove stewardship agreements with them.<sup>90</sup> It is an afforestation, reforestation and revegetation (ARR) project registered in 2022 with Verra under the VCS standard. The 60 year project works with local communities in the Sindh Indus Delta region in partnership with the Sindh provincial government and others, and expects to restore and protect about 250,000 mangroves and reduce 2.4 million tonnes CO<sub>2</sub>e on average each year, as well as protecting a number of marine species, employing 1000 community members fulltime and with other significant benefits to the ecosystems, community health, education and economy.<sup>91</sup> It has its own website: <https://deltabluecarbon.com/>.

The project proponent is the Government of Sindh (Forest Department) with Indus Delta Capital Limited (incorporated in the UK); the project manager is Indus Delta Capital; the carbon project developer is Silvestrum Climate Associates, San Francisco; the technical advisor is Blue Ventures, United Kingdom.<sup>92</sup> Mangrove forests and mangrove lands were previously open access resources, but in 2010 were declared protected forest under the Pakistan Forest Act 1927 and all trees declared reserved, enabling the government to make rules for the protection of them. Individuals have no legal right to mangroves and while there is no customary law concerning access and usage some community members enjoy customary use rights.<sup>93</sup> To support the Project, laws against destructive use of mangrove forest are being enforced (along with training and education of the community). Carbon credits from the project were sold at USD27.80/tonne in November 2022.<sup>94</sup>

#### 2. Mikoko Pamaja, Kenya

Southern Kenya is the location of a small mangrove restoration, said to be the world's first blue carbon project: Mikoko Pamoja (meaning "mangroves together" in Kiswahili) project, located in Gazi Bay, Kenya has planted 114ha of mangrove forests. It has been certified by Plan Vivo since 2013, with an average of 2,500 credits sold per year, with one credit equivalent to 1 tonne of CO<sub>2</sub>. On average, the carbon sales generate about USD24,000 per year, 35% of which covers the project costs, while 65% is reinvested in the community.<sup>95</sup> It is a carbon offset facility that is restoring mangroves along a degraded shoreline, through planting mangrove seedlings. The revenue generated from the sale of carbon credits is used to support a variety of local development projects for 5400 community members. Mangrove forests in Kenya had been categorised as state forests but had lacked clear management strategy and structure. Regulation has played a key role in the success of the project, as the *Forest Act 2005* and subsequently

<sup>90</sup> Sindh Government Chief Minister, Syed Murad Ali Shah, <https://deltabluecarbon.com/>. Also: <https://www.respira-international.com/portfolio/delta-blue-carbon/> (accessed 21/04/2023)

<sup>91</sup> <https://www.southpole.com/projects/indus-delta-blue-carbon> (accessed 21/04/2023)

<sup>92</sup> Gaia Natural Capital, *The Indus Delta Blue Carbon Project VCS 2250 Initiation Report*, August 2022 file:///C:/Users/PC/Downloads/Gaia-Natural-Capital-VCS2250-Research-Report-August-2022\_comp.pdf (accessed 24/04/2023)

<sup>93</sup> Gaia Natural Capital (n164) at 22, 33.

<sup>94</sup> See: <https://www.climateimpactx.com/news/>; Shaikh, Hina. Market-based solutions for sustainable development: Lessons from the Delta Blue Carbon project in Pakistan. 5 June 2023. <https://www.theigc.org/blogs/climate-priorities-developing-countries/market-based-solutions-sustainable-development>

<sup>95</sup> <https://impact.economist.com/ocean/ocean-health/are-blue-carbon-markets-becoming-mainstream>

the *Forest Conservation and Management Act 2016* established the concept of a ‘community forest’ and enabled the signing of a co-management agreement between Kenya Forest Service (KFS) and the Gogoni Gazi Community Forests Association of which Mikoko Pamoja (a user group) is a member whereby KFS conducts regular surveillance and forest policing. In addition, various agencies including KFS collaborated with Mikoko Pamoja to formulate the 2017-2027 National Mangrove Ecosystem Management Plan, to guide future management of mangroves.<sup>96</sup>

### 3. *Vida Manglar, Colombia*

In Colombia the Vida Manglar Project in Cispata Bay that is part of a grouped project in the Gulf of Morrosquillo, is said to be the first fully accounted carbon offset project for mangroves.<sup>97</sup> The project will sequester an estimated 939,296 tCO<sub>2</sub>e over 30 years<sup>98</sup> by conserving and sustainably managing 7,561 ha of coastal mangrove ecosystem, marshes and associated streams<sup>99</sup>. The first verified blue carbon credits ever issued were issued from this Project in May 2021 and according to Conservation International, all have been traded and 92% of the revenues will be used in implementing Cispata Bay’s mangroves conservation management plan. The project commenced with the technical support of South Pole Carbon Assessment Management Ltd, a REDD+ developer, at the instigation of project proponent Conservation International in a funding partnership with Apple Inc, among others. The project is registered in the Verified Carbon Standard (VCS) Programme with Verra, using a Verra methodology (VM0007), commenced in 2015 and has an expected duration of 30 years. Implementing and monitoring the Project are Instituto de Investigaciones Marinas y Costeras (INVEMAR), the regional environmental authorities (which operate with a corporate assembly of territorial government representatives and a board of directors with functions including executing projects to protect and restore the natural environment<sup>100</sup>) Regional Autonomous Corporation of Sinu and San Jorge Valleys (CVS), and Regional Autonomous Corporation of Sucre (CARSUCRE), and NGO Fundación Omacha, with validation conducted by Asociación Española de Normalización y Certificación (AENOR).<sup>101</sup> It is a grouped project, and additional areas within the Regional Integrated Management District (DRMI) Mangrove and lagoon ecosystem Ciénaga de La Caimanera (municipality of Coveñas) will be added in future verifications.

The regulatory catalyst was that the mangrove areas were previously ordered for integrated management (approved by Resolution 721 of 2002 by the Ministry of Environment, Housing and Territorial Development of Cordoba Department) within the Integrated Management District of Cispata Bay and areas surrounding the delta of the Sinu River - a regional protected area declared by the CVS.<sup>102</sup> CVS establishes the management guidelines that regulate the activities to be carried out in the area but lacked the financial resources to implement them. So, despite Cispata Bay having been declared a marine protected area in 2006, the mangroves continued to be cleared for cattle and agriculture due to the needs of the community.

### 4. *Palawan Protection, Philippines*

The Philippines’ blue carbon mangrove project announced in 2019<sup>103</sup> also has Conservation International as its proponent with funding assistance from Procter & Gamble. The location is the southern part of the island of Palawan - a province – known for its rich biological diversity both terrestrial and marine and

<sup>96</sup> Equator Initiative, *Equator Initiative Case Studies: Mikoko Pamoja Kenya*, 2020 <https://www.equatorinitiative.org/wp-content/uploads/2020/03/Mikoko-Pamoja-Kenya.pdf> (accessed 20/04/2023)

<sup>97</sup> Conservation International, *Vida Manglar: Impact Report*, 2022 [https://www.conservation.org/docs/default-source/publication-pdfs/cispata-bay-mangroves-2022-impact-report.pdf?sfvrsn=2b5b6f4d\\_3](https://www.conservation.org/docs/default-source/publication-pdfs/cispata-bay-mangroves-2022-impact-report.pdf?sfvrsn=2b5b6f4d_3) (accessed 19/04/2023)

<sup>98</sup> <https://registry.verra.org/app/projectDetail/VCS/2290>

<sup>99</sup> [file:///C:/Users/PC/Downloads/20210407\\_CCB\\_VCS\\_Adjusted\\_Project\\_Description.pdf](file:///C:/Users/PC/Downloads/20210407_CCB_VCS_Adjusted_Project_Description.pdf)

<sup>100</sup> Allen Blackman, Richard Morganstern and Elizabeth Topping, *Institutional Analysis of Colombia’s Autonomous Regional Corporations (CARs)*, June 2006, Resources for the Future. <https://media.rff.org/documents/RFF-Rpt-ColombiaCARs.pdf>

<sup>101</sup> <https://verra.org/press-release-verra-has-registered-its-first-blue-carbon-conservation-project/>

<sup>102</sup> South Pole Carbon Asset Management S.A.S., Blue Carbon Project Gulf of Morrosquillo “Vida Manglar” version V1.0 (November 06, 2020) [file:///C:/Users/PC/Downloads/20201106\\_CCB\\_VCS\\_Project\\_Description\\_English.pdf](file:///C:/Users/PC/Downloads/20201106_CCB_VCS_Project_Description_English.pdf) (accessed 19/04/2023)

<sup>103</sup> Neo Chai Chin, “Philippines mangroves could generate first-of-its-kind blue carbon credits in Asia-Pacific” *Eco-Business*, Dec 13 2019, <https://www.eco-business.com/news/philippines-mangroves-could-generate-first-of-its-kind-blue-carbon-credits-in-asia-pacific/> (accessed 21/04/2023)

its mangrove forests, that has been the subject of conservation programmes since at least 1992 when specific legislation, namely the *Strategic Environmental Plan for Palawan Act Republic Act #7611* was enacted. The project, which is part of the larger Mantalingahan Landscape Conservation Project, is to protect, improve and restore the forests and critical ecosystems of the Mount Mantalingahan Protected Landscape including mangroves, in partnership with indigenous populations and local communities. Despite its protected status, the area has continued to be deforested and suffered degradation due to illegal clearing.<sup>104</sup>

## 5. Gulf of Nicoya, Costa Rica

Costa Rica has a blue carbon project in the Gulf of Nicoya, where Conservation International is working on restoration and conservation of the diverse mangrove ecosystem in the Gulf that is suffering from degradation and loss, affecting the local economy as well as having adverse effects with respect to greenhouse gas emissions.<sup>105</sup> Costa Rica reversed its forest loss through deforestation, becoming the first Latin American country to do so. One of the consequences was that the land in Costa Rica became a carbon sink; carbon dioxide emissions due to deforestation were reduced by 166 million tonnes between 1997 and 2015. This achievement was enabled through a programme of payments to farmers for environmental services, authorised by the 1996 Forest Law (*Ley Forestal 7575*) and ancillary laws. The Forest Law recognises four environmental services, namely the mitigation of greenhouse gas emissions, the protection of biodiversity, of water and of the natural scenic beauty. From 2002, the Ministry of Environment and Energy took further action to control illegal felling and tightened the requirements for permissions to fell trees in farm lands.<sup>106</sup> This is the background to a country that has embraced a carbon-neutral approach. In 2021 it announced its updated Nationally Determined Contribution under the Paris Agreement whereby it will protect 100% of its wetlands including 22,000ha of mangroves.<sup>107</sup> It is said that the country is leading the way on decarbonisation and reducing emissions, as a result of political will, a national ethos of *pura vida* or pure life, and a constitution that recognises a healthy environment as a right of citizenship.<sup>108</sup>

### Further examples and key resources for blue carbon

Note that further examples and key resources for blue carbon generally can be found in Table A1 in:

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[https://oceanpanel.org/wp-content/uploads/2023/06/Ocean\\_Panel\\_Blue\\_Carbon\\_Handbook-1.pdf](https://oceanpanel.org/wp-content/uploads/2023/06/Ocean_Panel_Blue_Carbon_Handbook-1.pdf)

<sup>104</sup> Conservation International, "The Natural Climate Solutions Initiative", (2023) <https://www.conservation.org/corporate-engagements/the-natural-climate-solutions-initiative> (accessed 18/04/2023)

<sup>105</sup> <https://www.conservation.org/projects/blue-carbon>

<sup>106</sup> Climate Chance, *Annual Synthesis Report on Sectoral Climate Change 2020: Case Study Costa Rica*, (citing the Ministry of the Environment and Natural Resources of Costa Rica (2016). Modified REDD+ Forest reference emission level/forest reference level (FREL/FRL). COSTA RICA. SUBMISSION TO THE UNFCCC SECRETARIAT FOR TECHNICAL REVIEW ACCORDING TO DECISION 13/CP.19) [https://www.climate-chance.org/wp-content/uploads/2020/09/costarica\\_landuse\\_climatechance\\_engl.pdf](https://www.climate-chance.org/wp-content/uploads/2020/09/costarica_landuse_climatechance_engl.pdf) (accessed 20/04/2023)

<sup>107</sup> <https://www.pewtrusts.org/en/about/news-room/press-releases-and-statements/2021/02/01/pew-applauds-costa-ricas-bold-new-plan-to-protect-coastal-wetlands>

<sup>108</sup> <https://www.rand.org/blog/rand-review/2021/08/costa-rica-leads-the-way-in-cutting-carbon-emissions.html>

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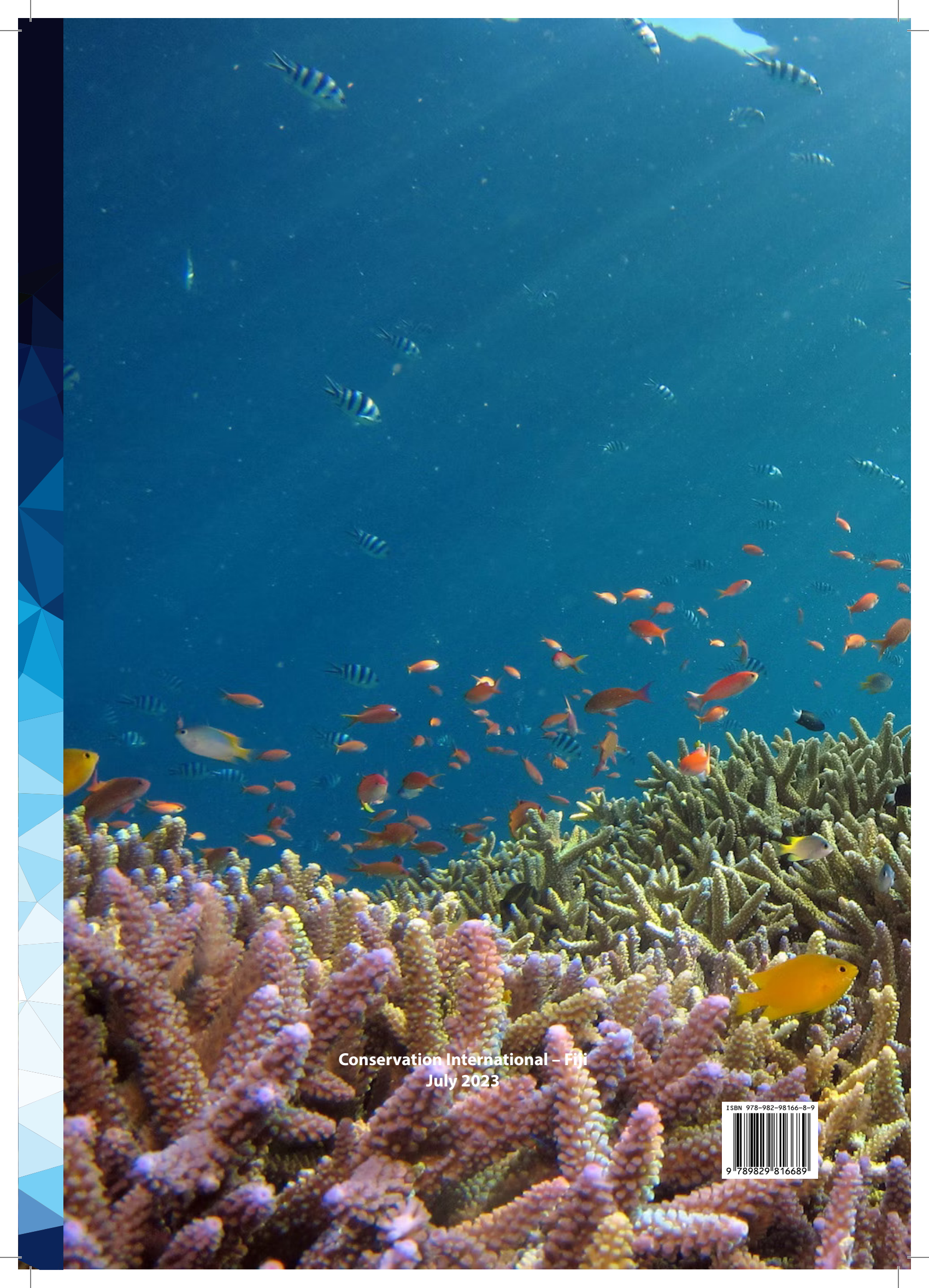
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