



REDD+
FIJI



SITUATION ANALYSIS REPORT

Annex 3 – Legal and gap analysis

8 March 2021



**CONSERVATION
INTERNATIONAL**

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List of Abbreviation

ADR: Alternative Dispute Resolution

AFOLU: Agriculture Forestry and Other Land Use

CEO: Chief Executive Officer

CP: Cabinet Paper

CBD: Convention on Biodiversity

CORSIA: Carbon Offsetting and Reduction Scheme for International Aviation

CSO: Civil Society Organization

DGMO: Deputy General Manager-Operations

DoDD: Drivers of Deforestation and Forest Degradation

EEZ: Exclusive Economic Zone

EIA: Environment Impact Assessment

ER: Emission Reduction

ESMF: Environmental and Social Management Framework

FGRM: Feedback, Grievance and Redress Mechanism

FMOU: Fiji Mitigation Outcome Unit

FPIC: Free, Prior, Informed, Consent

GHG: Green House Gases

GRM: Grievance Redress Mechanism

ICAO: International Civil Aviation Organization

ICCPR: International Covenant on Civil Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labor Organization

LEDS: Low Emission Development Strategy

LoU: Landowning Unit

MBM: Market Base Measure

MRV: Monitoring, Recording and Verification

NAP: National Adaptation Plan

NBSAP: National Biodiversity Strategy and Action Plan

NCCP: National Climate Change Policy

NDC: National Determined Contribution

NDP: National Development Plan

NGOs: Non-Government Organizations

NPR: National Planned Relocation

NRSC: National REDD+ Steering Committee

PLRs: Policies, Laws and Regulations

PS: Permanent Secretary

TLFC: iTaukei Land and Fisheries Commission

TLTB: iTaukei Land Trust Board

REDD+: Reducing Emissions from Deforestation and forest Degradation

SDGs: Sustainable Development Goals

SEEDS: Sustainable Economic and Empowerment Development Strategy

SESA: Strategic, Environmental and Social Assessment

SPC: South Pacific Commission

SPREP: Secretariat of the Pacific Regional Environment Program

UNCAT: United Nations Convention Against Torture

UCV: Unimproved Capital Value

UNFCCC: United Nations Framework Convention on Climate Change

Background

Fiji has sought financial assistance through the UNFCCC pertaining to its REDD+ preparatory and readiness phase since 2009. These progressions are not without conditions. Towards its preparations, Fiji has reviewed its current legal framework to avoid possible inconsistencies against recognized international standards inherent to international instruments such as treaties, declarations, and agreements, informing it needs assessments. The objectives of the international framework are then interrogated against local legislative provisions. This is to help identify capacity gaps such as to inform technical support, policy advise, training and other capacity development efforts against Fiji's specific needs and context.

In postulating a legal framework to meeting the requirements of Cancun Safeguards Standards, the provisioned legal analysis, must render consistency and harmonization with the objectives of the national forest program, which can be found in the interplay of current pieces of policies, laws and regulations that clarifies the objectives of the national forest program.

It is crucial that the proposed must consider the legal findings of completed REDD+ readiness components via; SESA and ESMF, DoDD, FGRM, Carbon Analysis studies, Benefit Sharing Mechanism, and the Review of National REDD+ Policies. Cumulatively, the studies have identified and informed on Fiji legal landscape and institutional arrangements relating to ownership and control, governance, access and developments, equitable arrangements, benefit sharing and transparent grievance redress mechanism. Furthermore, past studies, from lessons learnt, have collectively recommended the way forward at national level through customized legislative proposals, demonstrated in the current proposed draft of the *Climate Change Bill (2019)* and the *Forest Bill (2016)*.

Cancun safeguards

(a) REDD+ actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements

a.1 Consistency and complementariness with the objectives of the National Forest programme

Relevant PLRs for forest programmes

Policies

- National Forest Policy (2007)
- National Biodiversity Strategy and Action Plan 2020-2025 (2020)
- Fiji REDD+ Policy (2011)
- National Climate Change Policy (2012)
- Fiji National Energy Policy (2013)
- Green Growth Framework for Fiji (2014)
- National Adaptation Plan Framework (2017)
- Fiji Low Emission Development Strategy-2018-2050 (2017)
- National Development Plan (2017) 5-YEAR and 20-YEAR Development Plan (2017)
- Fiji National Adaptation Plan (2018)
- Ministry of Forestry Strategic Plan (2017-2030)
- Agriculture Sector Policy Agenda (2020)
- Rural Land Use Policy (200?)

Laws

- iTaukei Lands Act (1905)-CAP 133
- iTaukei Lands Trust Act (1940)-CAP 134
- State Acquisition of Lands Act (1940)-CAP 135
- State Lands Act (1945)-CAP 132
- Town Planning Act (1946)-CAP 139
- Mining Act (1966)-CAP 146
- Agricultural Landlord and Tenant Act (1967)-CAP 270
- National Trust of Fiji Act (1970)-CAP 265
- Land Transfer Act (1971)-CAP 131
- Petroleum (Exploration and Exploitation Act (1978)-CAP 148
- Forest Act (1992)-CAP 150
- Endangered and Protected Species Act (2002)
- Environment Management Act (2005)
- Land Use Decree (2010)
- Constitution of the Republic of Fiji (2013)
- Forest Bill (2016)
- Fair Share of Minerals Royalties Act (2018)

- Fair Share of Minerals Royalties Act (2018)
- Climate Change Bill (2019)

Regulations

- iTaukei Land (Forest Regulations Act) (1940)
- iTaukei (Leases and Licenses) Regulations (1984), Regulation 23, section 33
- Forest Guard Regulation (section 135) (revised 1985)
- Environment Management (EIA Process) Regulations (2007)
- State Lands (Leases and Licenses) Regulations (2007)
- Land Use Regulations (2011)
- Forest Harvesting Code of Practice (2013)

Constitution (2013)

- Preamble - declaration of commitment to justice, national sovereignty and security, social and economic well-being and safeguarding of our environment
- s.1(h) - state founded on a prudent, efficient, and sustainable relationship with nature
- s.27 - freedom from compulsory or arbitrary acquisition of property
- s.28 - rights of ownership and protection of iTaukei, Rotuman and Banaban lands
- s.29 - protection of ownership and interests in land
- s.30 - rights of landowners to fair share of royalties for extraction of minerals
- s.32- right to economic participation
- s.40 - environmental right to a clean and healthy environment for future generational equity

Forest Policy (2007)

- Ensures ecosystem stability through conservation of forest biodiversity, water-catchments and soil fertility;
- Ensures sustainable supply of forest products and services by maintaining a sufficiently large permanent forest area under efficient and effective management;
- 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;
- Increased employment in the forestry sector, sufficient supply of domestic markets and increased foreign exchange earnings through sustainable forest-based industry development;
- Enhanced national capacity to manage and develop the forest sector in collaboration with involvement of all stakeholders.

REDD+ Policy (2011)

- It has the overall intention of enhancing the national forest-based carbon balance by supporting and strengthening initiatives that address the drivers of forest-based carbon emissions and encouraging the drivers of forest-based carbon sinks;
- It will regularly review policy and technical issues to maintain alignment with ongoing international policy and technical developments. Furthermore, the implementation policy will

ensure REDD+ plus program will involve the participation of all relevant stakeholders coming from the various sectors and agencies.

National Development Plan (2017)

- Aligned with global commitments including the 2030 Agenda for sustainable Development and the Paris Agreement on Climate Change (2015);
- Recognize the huge potential of the industry to support economic development and the continuance of the sustainable forest-management practices, FNDP places increased effort on plantation development with promises of a National Plantation Policy to provide guidelines for setting up private sector plantation and operations as well as a Fire Management Strategic Plan to address threat of forest fires to standing stock.

Rural Land Use Policy (2005)

- Protecting the integrity of ecological systems and biodiversity;
- Reducing the rate of and areas of land degradation;
- Protecting natural resources;
- Maintaining and extending indigenous forest and plantation forest coverage;
- Improving rural environment systems;
- Implementing international environmental accords to which Fiji is a signatory.

Agriculture Sector Policy (2020)

- Compliments the National Green Growth Framework recently launched;
- It provides new dimensions by opening up to global innovation for climate smart agriculture that generates both adaptation and mitigation benefits;
- Addresses sustainable diversification that will increase production;
- Holistic and focused vision pursuing sustainable development;
- Creates right atmosphere and incentives for stakeholders.

National Biodiversity Strategy and Action Plan 2020-2025 (2020)

- Emphasizes the conservation and sustainable management of Fiji natural forest as the single most important means of conserving the vast majority of Fiji endemic flora and fauna while meeting local needs.

Ministry of Forestry Strategic Plan (2017-2030)

- 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.

Fiji LEDs (2018)

- Implementation of existing and official policies, targets, and technologies that are unconditional in the sense that Fiji would implement and finance them without reliance on external or international financing;
- Implementation of existing and official policies, targets, and technologies that are conditional in the sense that Fiji would rely on external or international financing to implement mitigation actions, thus this scenario would have higher ambition than “BAU” unconditional;
- Relies on the adoption of new, more ambitious policies and technologies and availability of additional financing to implement mitigation actions, and achieves significant emission reductions by 2050 compared with the business as usual scenarios;
- A “Very High Ambition scenario” project ambitions well beyond those already specified in policies, thus relying on the adoption of new, significantly more ambitious policies and availability of new technologies and additional financing to implement mitigation actions, and in which most sectors achieve net zero or negative emissions, by 2050.

Fiji National Adaption Plan (2018)

- To spearhead efforts to comprehensively address climate change, in response to Fiji’s international commitments and national needs;
- To bring adaptation efforts across multiple government sectors under one document;
- To influence and accelerates the national development pathway towards climate resilient development;
- It seeks to improve resilience against changes in climate but also climate variability which will also increase under future scenarios;
- Created as a continuous, progressive, and iterative process to support a systematic and strategic approach to adaptation by all government decision making, which will facilitate institutional co-ordination, resource mobilization and ultimately effective adaptation actions.
- To increase the efficient use of energy and the use of indigenous energy resources to reduce the financial burden of energy imports on Fiji.

Fiji National Energy Policy (2013)

- To establish environmentally sound and sustainable systems for energy production, procurement, transportation, distribution, and end use;

Mechanisms are in place to ensure consistency and complementarities with these objectives

1. POLICIES

Rural Land Use Policy (2002)

- Strengthening the foundation of sustainable development through establishing a policy framework, have 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 sustainable development issues, and building capacities for implementing sustainable practices.

REDD+ Policy (2009)

- Policy is aligned to the objectives of the Fiji sustainable Economic and Empowerment Development Strategy; (SEEDS) on the review of Fiji's Economic and Social Development strategies that include amongst others, energy environment strategies and decarbonisation strategy such as reduction of fossil fuel consumption;
- Involve the participation of all relevant stakeholders coming from various sectors and agencies;
- Aims to provide a framework to facilitate access to all available financing instruments for the REDD+ sector;
- Regular reviews of policy and technical issues to maintain alignment with ongoing international policy and technical developments;
- Protection and respect for the knowledge and rights of indigenous people as stated in UNDRIP and UNSICH and other international instruments;
- Full participation of indigenous peoples and other relevant stakeholders;
- Equitable distribution of benefits to landowners;
- Adopt Hybrid scale approach to both national and sub national or project scales activities;
- Link to national scale forest carbon measuring reporting and verification (MRV) system and the national reference level to facilitate high level quality assurance for project activities.

National Development Plan - 5-Year and 20 Year NDP (2017)

- Ensures inclusive socio-economic development through consideration of to consider all socio- economic rights in the Constitution are acknowledged;
- With no one left behind approach to gender and ethnicity and/or geographical location;
- Formulation of a national land use plan;
- Develop a plantation policy on forest conservation to ensure better sustainable forest management;
- Fire management strategic plan;
- Training and development;
- New regulatory framework for native and pine forests.

Green Growth Framework for Fiji (2014)

- 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 strengthen 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;
- Integrated through a holistic approach to support development that is sustainable and climate change resilient;
- Inclusive 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;
- 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.

National Climate Change Policy (2012)

- Integrate climate change issues in all national and sector policy and planning process by incorporating climate change into national plans and budgets with Climate Change Policy framework and to ensure all national and sectorial policies align with NCCP;
- Collect manage and use accurate and scientifically sound climate change related data and information through a clearing house mechanism for climate change;
- Increase awareness and understanding of climate change related issues across all sectors and at all levels in Fiji; Integrate climate change in school curricula, tertiary courses, vocational, non-formal education and training programmes through development of appropriate materials and learning tools;
- Reduce the vulnerability and enhance the resilience of Fiji's communities to the impacts of climate change and disasters;
- Reduce Fiji GHG emission and implement initiatives to increase the sequestration and storage of greenhouse gases;
- Ensure sustainable financing for climate change efforts;
- Effectively participate in and contribute to international and Pacific region climate change negotiations, discussions, and outcomes.

Ministry of Forestry Strategic Plan (2017-2030)

- This Strategic Plan is a deliberately granular document to ensure that the complex strategic goals have well established achievement pathways that can be monitored, and progress towards the outcomes measured. The four apex strategic goals are summarized below:
- Establish sustainable life cycle management of forest resources in Fiji;
- Improve the socio-economic impact of Forests;
- Contribute positively to the Global Environment;
- Substantially improve service delivery.

FIJI LEDs -2018-2050 (2018)

- Transformation of Fiji's energy sector to one based on a wide variety of on-grid and off-grid renewable energy generation. This transformation in the energy sector would involve the adoption of clean energy for commercial, industrial, and household use, as well as the conversion of most of Fiji's land transport systems to electric vehicles.
- The domestic aviation and maritime sectors will also convert to electricity at a more modest scale, while introducing other measures which will drastically reduce emissions. Under the Very High Ambition scenario, Fiji's energy sector itself will be virtually GHG emission free by 2050.
- Similarly, emissions from the waste sector will be reduced to nearly zero due to full methane capture and utilization for organic waste and extensive waste reduction and recycling programs.
- Fiji is able to ultimately achieve net negative emissions as a result of extensive afforestation measures, reduced deforestation, and increased use of sustainable forest plantations in the AFOLU sector.

Fiji National Adaption Plan (2018)

- NAP is guided through process that is climate resilient development pathway which enables Fiji to anticipate, reduce and manage environmental and climate risks caused by climate variability and change to support a vibrant society and prosperous economy;
- General theory underpinning the NAP is for a paradigmatic change to occur there must be intervention to update development planning system as well as address threats to key sectors;
- Adaptation plan to seek identify environmental and climate risks within localities and then both incentivize and support action by these groups that can tackle these risks within their specific contexts;
- Framework highlighting following values as being important to the NAP process: participation and inclusivity of all shareholders and interests, Promotion of ecosystem based and gender and human rights-based approaches to adaptation, Promotion of outcomes equitably benefitting low-income and otherwise disadvantaged groups;
- Promotion of both scientific and traditional knowledge.

Fiji Energy Policy (2013)

- The policy has been led by the Department of Energy with assistance of an advisory committee consisting of representatives from key government institutions, regional development partners and a team of international consultants;
- Broad direction has been provided through strategic government documents such as the Roadmap for Democracy and Sustainable Economic Development Plan (2010-2014), and aligned to Peoples Charter for Change;
- Mainstreaming analysis-assess the status of implementation and mainstreaming of the 2006 national Energy Strategic Plan at national level;
- SE4ALL rapid assessment and gap analysis - NEP is aligned with the sustainable energy for all initiative of the UN. The rapid assessment and gap analysis establishes the baseline in Fiji for the three objectives of SE4ALL and identifies gaps and support needed.

2. LAWS

Constitution (2013)

- s.26 - Gender protection-right of every person to equality and freedom from discrimination on the basis of gender, race, color and creed;
- s.123 - State services - prompt and faithful implementation of government policies and administration of laws;
- s.47 - A Bill may proceed more quickly than permitted if its mover, requested that Parliament approve consideration of Bill without delay;
- Act No 11/2018 - An Act to give effect to section 30 – re Royalties, establishing the process of fair sharing of royalties along the lines of the proposed benefit sharing mechanisms of REDD+.

iTaukei Land Trust Act (1940)

- Creation of special leasing clauses to accommodate REDD+ leases;
- Leasing provisions allowing landowner group trust to amalgamate as landholding entities to lease customary lands areas to make leases more viable in terms of project areas and assist in having economy of scale;
- Consent procedures and consultation requiring 60 percent of registered landowning unit members for formal approval of leasing native reserved lands otherwise designated specifically for future use and enjoyment of land ownership unit.

Land Use Act (2010)

- s.3(1)(a) To utilize designated lands in a manner that is in the best interest of the native landowners
- To utilize designated land with a view of optimal return S.3(1b)

Forest Decree (also referred to as Act) (1992)

- s.7(3) - forest reserves shall be managed for the exclusive purpose of permanent preservation of their environment, including flora, fauna soil and water;
- s.12 - Provision relating to trees, management of land, and harvesting of tree subject to applicable standards;
- s.12(2) - a license to sell trees or extract timber shall be based upon verification that the applicant is entitled, meeting all compliance including a logging plan;
- s.21 - saving of customary rights-exercise of such rights are not restricted native land or native land, forest reserve or nature reserve i.e. exercise of rights established by custom to hunt, fish or collect fruits and vegetables growing in the wild;
- s.23 - prohibition of fire in forest reserve, nature reserve, or fire hazard area with penalties under s. 28.

Climate Change Bill (2019)

The Bill heralds the legislative formalization of a new property, in forest sequestered carbon with clear provisions of its trading units through Fiji Mitigation Outcome Unit (FMOU), which can be transferred and traded internationally through the framework institution of the Bill. Given it is a later legal development to pre-existing laws on resource access and development, land, forestry and other related matters, its introduction demands a retrospective alignment of some existing laws to ensure consistencies and avoid conflicts. In this context, this is a Bill for an Act to establish a comprehensive response to climate change, to provide for the regulation and governance of the national response to Climate change, to introduce a system for measurement, reporting and verification of green-house gas emission and for related matters. Further, the Bill provides for the stated national administrative platforms:

- s.13 - Establishes the National Climate Change Co-ordination Committee;
- s.13(2) - All Permanent Secretaries are to be members of the Committee;
- s.13(3) - The Permanent Secretary responsible for Climate Change may nominate other representatives from Ministries, departments, and agencies to be members.

3.REGULATIONS

iTaukei Land (1940) - See amendments of 2010

- Equitable basis sharing of benefits from lease monies through even distribution to individual members of the landowning unit;
- Lease conditions to ensure ownership of trees on leased land to remain with landowner;
- Ensuring fit for purpose leases in accordance with land use planning considerations.

Land Use-Regulations for iTaukei Lands under Land Use Act (2011)

s.4 - All lands designated under the Act are free from encumbrances and are of special protection;

- Land dealt under this Act is free from provisions of other Act;
- Land Use Unit provides certainty through long term leases;
- s.14 - The Minister may make regulations under this Act with respect to leases issued under it.

Gaps in PLRs and their implementation for a.1

- Inadequate awareness of the PLRs, very low, especially amongst customary landowners;
- Weak implementation and enforcement regime;
- Limited capacity both in human and financial resources;
- Limited involvement of communities and landowners in direct participation in making of PLRs;
- Introduction of new property in Carbon may see retrospective alignment and amendments in associated resources PLRs;
- Current administrative framework for Fiji environment management is developed with ill-defined responsibilities and administratively compartmentalized. Currently there is lack of coordinated management in place for native forests, on major land typology types of iTaukei and State lands; (Note: There is no such forest on public land per se)
- Current forest governance structure is geared toward exploitation;
- There are overlaps in Environment Management and Forest Management especially through EIAs required of forest/logging operations. Also, Environment Management Act (EMA) has a recent history and much power but is predated with Forestry policies such as the Fiji Forest Harvesting Code which must be reviewed to ensure harmonization;
- No recognition of free ecosystem services provided by the forest, and therefore undervalued e.g. water.
Government policies planning amongst government agencies needs to be better coordinated for conservation and environment protection;
- Social forestry must be encouraged, where communities must play active leading role in management of their forest resources;
- Knowledge of sustainable resource management amongst landowners varies in the Provinces and not widely shared.

Regional commitments that Fiji made related to climate

Fiji has committed itself to a raft of regional/international Conventions, Treaties and Agreements in relation to climate change by being a party being a signatory of the following international instruments;

- The International Tropical Timber Agreement (1940)
- Convention on International Trade in Endangered Species of Wild Flora and Fauna (1983)
- Convention for the Protection of the National Resources and Environment of the South Pacific and Asia (1986)
- The Convention on Biological Diversity (1992)
- UN Framework Convention on Climate Change (1992)
- Agreement Establishing the South Pacific Environment Program (1993)
- The UN Convention to Combat Desertification (1994)
- The Convention on International Trade on Endangered Species (1975)
- International Plant Protection Convention (1997)
- Protocol to the UNFCCC (1998)
- Cartagena Protocol on Biodiversity (2000)
- International Treaty on Plant Genetic resources for Food and Agriculture (2001)
- The RAMSAR Convention on Wetlands Agreement (1971)- [signed in 2006]
- International Plant Protection Convention (1951)
- Statute of the International Renewable Energy Agency (2009) Cancun Agreement (2010)
- Nagoya Protocol to Genetic Resource and Fair and Equitable Benefit Sharing (2011) Pacific Island Regional Policy Framework on REDD+ (2012)
- Paris Agreement under UNFCCC (2015)

Instrument	Date	Summary
The International Tropical Timber Agreement	1940	Provide an effective agreement for consultation and international cooperation and policy development amongst all members of the world timber economy, to provide for a non- discriminatory timber practices and to contribute to the process of sustainable development
The Convention on International Trade on Endangered Species CITES-aka Washington Convention	1975	Largest and oldest Convention on conservation and sustainable use agreements. Aim to ensure international trade in specimens of wild animals and plant does not threaten the survival of the species in the wild, and it accords varying degrees of protection to species of animals and plants
The Convention on Wetlands of International Importance Especially as Water flow Habitat	1975	Is an international treaty for conservation and sustainable use of wetlands, named after RAMSAR, in Iran where it was signed
International Plant Protection Convention	1979	International Plant health Convention that aims to protect cultivated and wild plants by preserving the introduction and spread of pests
Convention on Biodiversity	1992	A multilateral Treaty. Has three main goals: (i) conservation of biological diversity (ii) sustainable use of its components (iii) fair and equitable sharing of benefits arising from genetic resources
UN Framework Convention on Climate Change	1992	International treaty addressing Climate Change with the aim at preventing dangerous human interference with the climate system by seeking to stabilize GHG concentrations in the atmosphere at a level that would prevent anthropogenic human induced interference with the earth's climate system
UN Convention to Combat Desertification	1994	Sole legally binding international agreement linking environment and development to sustainable land management
Kyoto Protocol	1998	It operationalizes UNFCCC by committing industrialized countries and economies in transition to limit and reduce GHG emissions in accordance with agreed individual targets.
Cartagena Protocol on Biodiversity	2000	An international agreement which aims to ensure safe handling, transport and use of living modified organisms resulting from modern biotechnology that may have adverse effects on biological diversity

International Treaty on Plant Genetics resources for Food and Agriculture	2001	Comprehensive international agreement in harmony with the CBD which aims at guaranteeing food security, though conservation and exchange and sustainable use of the world's plant genetics resources for food and agriculture, fair and equitable benefit sharing from its use and recognition of farmer's rights
Statute of the International Renewable Energy Agency	2009	Desired to promote the widespread and increased adoption and use of renewable energy with a view to sustainable development. Parties also convinced that renewable energy could play a major role in reducing greenhouse gas concentrations in the atmosphere therefore contributing to the stabilization of climate system, allowing for sustainable, secure and gentle transit of carbon economy
Cancun Agreement	2010	Set of significant decisions by the international community to address the long-term challenge of climate change collectively and comprehensively overtime, and to take action immediately to attract global response to it. It includes the safety safeguards now referred to as the Cancun safeguards
Nagoya Protocol to Genetic Resource and Fair and Equitable Benefit Sharing	2011	Nagoya is a supplementary Agreement to the Convention on Biodiversity aimed at implementation of one of the three objectives of the CBD, the fair and equitable sharing benefits arising out of the genetic resources thereby contributing to conservation and sustainable use of Biodiversity
Paris Agreement under UNFCCC	2015	A legally binding international Agreement on Climate Change. Its goal is to limit global warming to well below 2 but preferably 1.5 degrees Celsius as compared to pre - industrial levels

International commitments that Fiji made on climate

- Convention for the Protection of the National Resources and Environment of the South Pacific and Asia (1986)
- National Biodiversity Strategy and Action Plan (2020-2025)
- Pacific Island Regional Policy Framework on REDD+ (2012)
- Paris Agreement under UNFCCC (2015)
- Carbon Offsetting and Reduction Scheme for International Aviation (2016)

Instrument	Date	Objectives
Convention for the Protection of the National Resources and Environment of the South Pacific and Asia	1986	Major multiple umbrella Agreement for the protection, management and development of the marine and coastal environment of the South Pacific.it represents the legal framework of the Action Plan for managing Natural Resources of the South Pacific adopted in 1982, Objective is to enhance co-operation of the Parties to protect the South Pacific Region from threat and effects of pollution
Pacific Island Regional Policy Framework on REDD+ (2012)	2012	Capacity building to enable countries to participate in REDD+ implementation activities-considers readiness legal capacity, financial capacity, technical capacity, ability to make economic analysis, design and development of legal instruments and logistical arrangements and ability to project manage. It is designed to provide policy options to guide REDD+ program development at the regional and national scale and to provide a rationale support for the sustainable management and use of forest and tree resources.
Paris Agreement under UNFCCC	2015	A legally binding international Agreement on Climate Change. Its objective, amongst others, is to limit global warming to well below 2 but preferably 1.5 degrees Celsius as compared to pre -industrial levels
Carbon Offsetting and Reduction Scheme for International Aviation	2016	CORSIA is an ICAO Assembly Resolution in the form of carbon off-setting and reduction scheme for international aviation to address Global Market Based measures (MBM) aimed at addressing any annual increase in total CO ₂ from international aviation above the 2020 levels taking into account special circumstances and respective capabilities

PLRs that provide for the implementation of these International Conventions and Agreements

- Fiji REDD+ Policy (2011)
- National Climate Change Adaptation Strategy (2012)
- Republic of Fiji National Climate Change Policy (2018-2030)
- Climate Change Bill (2019)
- National Biodiversity Strategic Plan (2020-2025)

PLR in Fiji that clarify the national climate policy objectives

- Fiji REDD+ Policy (2011)
- National Climate Change Adaptation Strategy (2012)
- Republic of Fiji National Climate Change Policy (2018-2030)

- Climate Change Bill (2019)
- National Biodiversity Strategy and Plan (2020-2025)

Objectives in terms of mitigation and adaptation

National Climate Change Policy (2012)

With the policy goals to support Fiji's roadmap to democracy and sustainable socio-economic development, to promote integration of climate change issues in national planning, budgeting, and implementation processes, to provide guidance on Government's response to climate change policy issues, to guide sectors on government's climate change adaptation and mitigation strategies and to contribute to Pacific regional actions and to meeting international commitments.

The sectorial emphasis in the local context:

- Reducing energy consumption that will also reduce fuel imports and in turn reduce household energy bills;
- Mitigation measures focused on reducing petrol and diesel consumption that may also improve traffic conditions, reduce reliance on vehicular transport and reduce pollution in urban areas;
- Reduction in the use of fuel-based transport and emission of GHG will encourage healthier lifestyles (e.g. walking and cycling) which can reduce prevalence of non-communicable diseases;
- Mitigation measures focused on maintaining forest carbon stocks and increasing sequestration of carbon through forest conservation, reforestation, afforestation,
- enrichment planting will also contribute to biodiversity conservation, improved food security and improved waterways conditions;
- Conservation and sustainable management of mangroves will protect a large carbon sink and reservoir, while providing physical foreshore protection, marine breeding grounds and healthy coral reef systems.

Gaps in PLRs and their implementation for a.2

- Lack of awareness of international commitments made by Fiji;
- Lack of effective structured implementation arrangements between stakeholder institutions;
- Lack of capacity in financial and human resource needs.

a.3 Coordination among agencies and implementing bodies for REDD+, national forest programmes and national policy(ies) that enact the relevant international conventions and agreements.

Agencies and implementing bodies responsible for REDD+, national forest programmes and the international conventions and agreements

- Fiji REDD+ Unit
- Ministry of Forestry
- Ministry of Land and Minerals
- Ministry of Commerce, Trade, Tourism and Transport

- Ministry of iTaukei Affairs
 - iTaukei Lands Trust Board
 - Ministry of Waterways and Environment
 - Department of Town and Country Planning
 - Ministry of Foreign Affairs
 - Ministry of Economy
- **REDD + Unit** - is a special purpose division looking after Fiji's preparedness and readiness for REDD + placed within the Ministry of Forest operating out of Colo-i-Suva. The Unit has the overall aim of implementing the National REDD+ Policy with the objective of enhancing the national forest-based carbon balance by supporting and strengthening initiatives that address drivers of forest-based carbon emissions and encourage the drivers of forest-based carbon sinks. It assists in the overall implementation of the National REDD+ program, overseen by the National REDD+ steering Committee a multi sectorial and inter-agency committee with decision making capacities and technical expert in various related fields;
 - **Ministry of Forestry** - Overall national planning, oversight in the administration and control of Fiji's forestry sector including Fiji's obligations to Forestry and Climate matters, the Ministry plays a critical role in the face of national obligation to deal with ongoing threat to climate change and the need to sustainably manage Fiji's resources and grow the economy. It ensures that Fiji plays its role in climate change mitigation, environmental protection and increasing diversity to grow the economy and improving livelihood that leads to socio economic and political stability;
 - **Ministry of Land** - Effective administration of all State lands and designated iTaukei lands under the Land Use Unit/Land Bank for resource access and development especially for potential of REDD+ leases and climate change projects;
 - **Ministry of Industry and Trade** - Facilitates responsibly and implement policies and strategies that create and facilitate growth in Industry, investment and Tourism, Transport and Cooperative business, micro and small enterprises and enhance metrology. Objective is sustainable economic growth of commerce and Industry;
 - **Ministry of iTaukei Affairs** - information dissemination on major developments such as Climate Change and REDD+ Projects and other impacts of International Agreements, Conventions, and Treaties that Fiji Government is a party to, regarding rights of customary owners, gender issues and sustainable management and conservation of resources (flora and fauna). It is also the lead ministry in terms of consultation with landowning unit through the Provinces and Districts.
 - **iTaukei Land Trust Board** - Statutory trust that has the legal mandate to control and administer all customary lands (90 percent) of Fiji land's land mass regulates, control and administer leasing conditions and lease agreements in general.
 - **Department of Environment** - Promote the sustainable use and development of Fiji's environment and efficient implementation of policies, legislation, and programs. To fulfil Fiji's obligation under regional and international environment related conventions and treaties;
 - **Ministry of Economy** - has within it, the **Climate Change Unit Division**, responsible for the co-ordination of the implementation of the National Climate Change Policy. It identified 8 objectives with accompanied strategies to achieve. It seeks to:
 - i. integrate climate change issues in all national and sector policy and planning processes
 - ii. collect and manage and use accurate scientific data and information

- iii. increase awareness and understanding of climate change related issues, across all sectors and at all levels
- iv. integrate climate change in school curricula
- v. reduce the vulnerability and enhance resilience of Fiji communities to the impact of climate change and disasters
- vi. reduce GHG emissions and implement initiatives to increase the sequestration and storage of GHGs
- vii. ensure suitable financing for climate change efforts
- viii. effectively participate in and contribute to international and Pacific region climate change negotiations, discussions, commitments, and outcomes

Ministry of Foreign Affairs - Has the Political and Treaties Division as the focal point in all negotiations and ratification of International Agreements, Treaties, Conventions and Declarations.

National REDD+ Technical Working Group - is established under the REDD+ Steering Committee when required for undertaking certain tasks associated with the implementation of the Fiji REDD+ Programme. Provides overall supervision of all technical aspects and implementation procedures of the National REDD+ Programme. Ensuring risks compliance of all aspects of the component studies of readiness are met, lessons are learnt are shared effectively, overlaps avoided, and activities are mutually enforcing and in line with the national priorities:

- Current composition of Technical Working Group MRV - consist of representatives of academic Institutions: University of the South Pacific and Fiji National University, Ministry of Forestry, Conservation International, South Pacific Commission and Fiji hardwood;
- Current Composition for safeguards Technical Group-Conservation International, Nature Fiji, Soqosoqo Vaka-Marama (iTaukei Women's Group), Ministry of Forestry, Ministry of Agriculture, Live and learn (NGO), Ministry of iTaukei Affairs and Grace Trifam Ministry (religious organization).

National REDD+ Steering Committee

The NRSC is the implementing authority. It is a multi-sectoral and inter agency committee with decision making capacities and expertise in various fields. NRSC is involve in decision making and endorsement for REDD+ program in Fiji Under the NRSC are technical working groups like Safeguards, Awareness and Monitoring, Verification and Recording - (MRV). The NRSC carry out targeted workshops to develop specific guidelines and approach that Fiji is moving forward in its preparation and readiness. NRSC also hold regular consultations on overall implementation of the strategy and ensure that the strategy is incorporated in the agency work plans from which specific work plans are drawn for implementation.

Gaps in PLRs and their implementation for a.3

- Lack of commitment from stakeholders (unavailability and conflict of interests)-some representatives of industry such as Sawmillers pose perceive conflicts in terms of interest of their organization's interest in increased production and harvest against sustainable use and conservation;
- Contradicting and superseding development policies and goals e.g. Mining Act supersedes Forest policy in application;
- Data gaps and technical incompetency - data to inform national analysis are sometimes not properly collated or centralized. In some cases, absence of current data make assessment difficult, hence related analysis takes longer.

a.4 Consistency with the achievement of the Sustainable Development Goals; contribution to national poverty reduction strategies.

PLRs that clarify national poverty reduction and sustainable development strategies and goals

Fiji Community Resilience and Economic Opportunities (CREO) Delivery Strategy- 2012-2016

- Theory of change focused on three development outcomes;
 - (i) Increased net outcomes for poor people, to address growing unemployment problem by looking at creation of new diversified livelihood opportunities for the poor;
 - (ii) Improved utilization of financial services for the poor-through the need for new financial models;
 - (iii) Increased community resilience to shocks and stresses- by building community capacity to deal with financial shocks and strengthen support systems for the poor.

Food Security Strategies for the Republic of Fiji (2001)

- Objectives are to assess food security problems in Fiji, identify effective strategies and formulate appropriate policy options for solving the respective problems by:
 - Analyzing food availability and related risks, distribution institutions, food balances covering supply and utilization, and existing food strategies and policies at the national and provincial levels;
 - Analyzing household food availability, assess consumption patterns, nutritional quality and sufficiency, risk coping mechanisms and related government policies;
 - Identifying strategies and formulation of policy options to improve food security in Fiji.

Fiji National Development Plan-5 Year & 20 Year Development Plan (2017)

- Fiji recognizes the transformative and development ambition of the SDGs and considers the 2030 Agenda, taken together with the Paris Agreement, the Addis Ababa Action Agenda, and the Social Framework for Disaster Risk Reduction, provides a framework for achieving a sustainable, prosperous, and peaceful future for the world and its peoples. Fiji's considers under the Plan to be nationally relevant and capable of having a transformative impact on the quality life of its citizens;
- SDGs have long been the basis of Fiji's national development Plans. In implementing the SDG's Fiji has adopted a 'whole of government approach' and has utilized the NDP as a primary instrument to drive forward the SDGs implementation;
- Mainstreamed and integrated within the various thematic areas are 17 SDGs. 15 SDGs are explicitly integrated into the corresponding 29 strategic priorities of the NDP. While SDG 10(reduce inequalities) and SDG 12 (responsible consumption and production and SDG 13 (climate action) are treated as cross cutting issues across the NDP;
- At sector level, SDGs have been incorporated but not limited to education, health, and agriculture;
- Fiji recognizes the obligation towards SDGs at national level, but also advance implementation goals, through multiple stakeholders consisting private enterprises, NGOs, CSOs.

Constitution (2013)

- Chapter 2 on the Bill of Rights has under its various sections 6-45 address., in part or fully, the 2030 agenda as per the SDGs;
- Gender equality treated under s.26 (3);
- Right to education s. 31(1) and s.31(2);
- Right to peace and Justice- Special reference for access to Courts and Tribunals is mentioned in section 15, Rights of accused persons under section.14, Rights to personal

liberty under section 9, and, Rights to executive and administrative justice under section 16

National Climate Change Policy (2014)

- Policy Development framework-is aligned to the Road Map for Democracy and sustainable socio-economic development 2009-2014, which identifies the need to give priority to protection of the environment, sustainable management and utilization of natural resources;
- Seeks implementation framework towards environmental protection, sustainable management and utilization of resources;
- Strengthening institutional capacity for environment management;
- Strengthening food security.

Climate Change 2019 (Bill)

- Climate Change Action-section 7-Implementation of Paris Agreement
- s.8 - Preparation and implementation of Fiji Nationally Determined contributions
- Part 5 - Climate Change obligation of State Entities ss.16-23
- Part 9 - Climate action - Climate Change Mitigation ss.35-44
- Life under sea/Life on Land-Oceans and Climate Change ss. 84-93
- s.5 - Principles prescribes the Act be implemented in accordance with the principles of sustainable development including the importance of achieving a sustainable ,prosperous, and peaceful future through the implementation of the Sustainable Development Goals, the Sendai Social Framework for Disaster Risk Reduction and also that domestic policies and measures to protect the climate system against anthropogenic climate change should be appropriate for Fiji's specific conditions and integrated with national developments programmes taking into account that economic development is essential for adopting measures to address climate change

Fiji's sustainable development goals/objectives

The Parliament of Fiji and the SDGs (2018)

- "whole of government approach" and has utilized the NDP as a primary instrument to drive forward the SDGs implementation;
- Mainstreamed and integrated within the various thematic areas are 17 SDGs -15 SDGs explicitly integrated into the corresponding 29 strategic priorities of the NDP. While SDG 10 (reduce inequalities) and SDG 12(responsible consumption and production and SDG 13 (climate action) are treated as cross cutting issues across the NDP.
- At sector level, SDGs have been incorporated but not limited to education, health, and agriculture;
- Fiji recognizes the obligation towards SDGs at national level, but also advance implementation goals, through multiple stakeholders consisting private enterprises, NGOS, CSO.

The goals for Fiji pertaining to SDGs are:

- i. Building understanding of the SDGs in Parliament with the emphasis on reliability of data to progress SDGs to help Minister set goals and targets;
- ii. Bringing the SDGs from global to local level by galvanizing participation from all local levels and from all actors in society reflecting Fiji's specific capacities, constraints and challenges. Report notes apparent lack of understanding, both generally and specifically on the SDGs by MPs and staff;

- iii. Mainstreaming the SDGs within Parliamentary systems-currently there is no Ministry or parliamentary group solely responsible for the SDGs in Fiji but oversight processes ensure commitments to gender equality;
- iv. Financing the SDGs-development issues covered by the SDGs forms part of Fiji's main budget and therefore is catered for e.g. Education, infrastructure, youth, water sanitation etc.;
- v. Monitoring- this is now possible through the production of Fiji's national Development Plan, that w not in existence as at time of assessment;
- vi. (v) Engagement with the Public-there is weak engagement with citizens on the SDGs-hence, the need to effectively promote and raise awareness.

a.5 Consistency with international commitments on the environment; contribution to national biodiversity conservation policies (including National Biodiversity Strategies and Action Plans)

International commitments that Fiji made on environment

Convention on International Trade in Endangered Species of Wild Fauna and Flora	1973	Largest and oldest Convention on conservation and sustainable use Agreements. Aims to ensure international trade in specimens of wild animals and plant does not threaten the survival of the species in the wild, and it accords varying degrees of protection to species of animals and plants.
Convention for the Protection of the National Resources and Environment of the South Pacific and Asia	1986	Major multiple umbrella Agreement for the protection, management, and development of the marine and coastal environment of the South Pacific.it represents the legal framework of the Action Plan for managing Natural Resources of the South Pacific adopted in 1982, Objective is to enhance co-operation of the Parties to protect the South Pacific Region from threat and effects of pollution
Convention on Biodiversity	1992	A multilateral Treaty. Has three main goals: (i) conservation of biological diversity (ii) sustainable use of its components fair and equitable sharing of benefits arising from genetic resources
UN Convention to Combat Desertification	1994	Sole legally binding international agreement linking environment and development to sustainable land management.
Cartagena Protocol on Biodiversity	2000	An international agreement which aims to ensure safe handling, transport and use of living modified organisms resulting from modern biotechnology that may have adverse effects on biological diversity
Fiji National Biodiversity Strategy and Action Plan	2020-2025	A national policy document recognized under the Environment Act (2005). It is also aiming at meeting requirement for all parties to the Convention on Biological Diversity and its 2020 Aichi Targets. Objective is to take urgent action to halt the loss of biodiversity to ensure they are resilient and continue to provide potential services,

	ecosystems are restored, and biological resources are sustainably used.
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PLR that clarify the national biodiversity and environmental objectives

National Biodiversity Strategy and Action Plan 2020-2025 (2020) [with ref. to UN Convention on Biological Diversity]

- Committed to developing and implementing national strategies to conserve and use components of biological diversity sustainably;
- Integrating biodiversity policy into relevant sectoral or cross -sectoral plans, programmes and plans, and;
- Monitoring and periodically reporting on the status of biodiversity in the environment;
- NBSAP underpins the protection of Fiji unique biodiversity and essential ecosystem good and services, which support the national economy;
- Aligns the Fiji NBSAP with global CBD strategic plan and Aichi targets.

Fiji National Climate Change Policy (2014)

- National framework includes environment protection, sustainable management and utilization of resources;
- Strengthen institutional capacity for environment management;
- Strengthening food security;
- Climate Change mitigation and adaptation measures including maintaining forest carbon stocks, and increase sequestration of carbon through forest conservation, improved watershed management and waterways conditions.

Fiji's State of Environment Report (1992)

- To document key drivers and pressure in Fiji that are behind changing environment;
- To provide 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;
- To document the impacts on Fiji's society, economy and environment from changes in the State of the Environment;
- To document current responses by Fiji to address the environment changes, to protect and better manage Fiji's resources.

Environment Management Act (2005)

- An Act for the protection of natural resources and for the control and management of development waste management and pollution control and for the establishment of a national environment and for related matters;
- s.2 - Protecting environment means the establishment of measures to ensure the protection of human health, safety, property, legitimate uses of environment, species of flora and fauna, ecosystems, aesthetic properties, and cultural resources, or preventing nuisance or risk of harm to any such value, on sustainable basis;
- s.3(2)(a) - The application and purpose of this Act is to apply the principles of sustainable use and development of natural resources and (b) to identify matters of national importance for the Fiji Islands as set out in subsection (3);
- s 4(a) - Person performing a function under this Act relating to the use of natural resources must have regard to the traditional owners, the intrinsic value of ecosystems, the maintenance and enhancement of the quality of environment;

- s.3(a) - The preservation of coastal environment, margins of wetlands, lakes and rivers and (d) the relationship of indigenous Fijians with ancestral lands, water, sites, sacred areas and other treasures and the protection of human life and health are matters of national importance;
- s.12 - Part 4 - Importance and facilitation of the process of EIA.
- S.32 - Environment management monitoring.

Climate Change Bill (2019)

- s.2 - Interpretation-Sustainable development-means development that meets the needs of the present without compromising the ability of future generations to meet their own needs and includes achieving principles of sustainable development;
- s.2(b) - Principle of inter-generational equity included;
- s.2(c) - The conservation of communities, infrastructure, biological diversity, and ecological integrity should be a fundamental consideration decision-making.

Biodiversity objectives

NBSAP (2020-2025)

- To strengthen the sustainable use, management, and protection of the country's biodiversity;
- Reflects the general vision of and principles of Fiji's Green Growth Framework that recognizes the cross-cutting nature of many development issues;
- Promotes working together in more integrated and inclusive ways towards sustainable development;
- Recognizing the collective efforts of government, land and resource owners, scientists, and researchers who profits from using Fiji's natural resources is crucial if Fiji's commitment under the Convention (CBD) halting biodiversity loss;
- Highlight practical ways forward for addressing gaps in knowledge, particularly with regard better understanding Fiji's specific conservation needs;
- Develop country targets and indicators against Aichi Targets and to guide NBSAP implementation framework.

a.6 Consistency with the State's human rights obligations under international law, including the core international human rights treaties and ILO 169, where applicable.

International commitments that Fiji made on human rights

- Geneva Convention (1949);
- Convention against Torture and other Criminal Inhuman or Degrading Treatment (UNCAT) 1984 signed 2015;
- Additional Protocol to Geneva Convention (1977);
- Convention on the Rights of the Child (1989);
- Indigenous and Tribal Peoples Convention - ILO 169 (1989);
- International Convention on the Protection of the Rights of all Migrant Workers and their Families (1990);
- Optional Protocol on the involvement of Children in Armed Conflict (2000);
- International Convention for the Protection of all Persons from Enforced Disappearance (2006);
- Protocol against the smuggling of Migrants by Land, Sea and Air (2017);
- UN Convention on the Rights of Person with Disabilities (2017);

- International Covenant on Civil and Political Rights (ICCPR) 1966 c.f. Fiji (2018);
- International Covenant on Economic, Social and Cultural Rights (1966)-Fiji signed on (2018).

Overview and specific sections of the commitments

- **International Covenant on Economic, Social and Cultural Rights – ICESCR (1969)**
 - Treaty ensures enjoyment of economic, social, and cultural rights including rights to education, fair and just conditions of work, an adequate standard of living, the highest attainable standards of health and social security.
- **International Covenant on Civil and Political Rights-ICCPR (1969)**
 - It enables people to enjoy a wide range of human rights including those relating to:
 - freedom from torture and other cruel inhuman or degrading treatment or punishment
 - fair trial rights
 - freedom of thought, religion and expression
 - privacy of home and private life
 - equality and non-discrimination
- **ILO 169 – Indigenous and Tribal Peoples Convention No 169 (1989)**
 - Article 15-Party State to safeguard the rights of Indigenous Peoples to the natural resources and their lands and participation in use, management and conservation;
 - Binding international Convention concerning Indigenous Peoples and Tribal Peoples-fore runner to UNDRIP (2009).
- **International Convention for the Protection of all Persons from Enforced Disappearance (2006)**
 - Aims to combat impunity from the crime of enforced disappearance and credence to the person’s right to be free and the rights of victims to justice and reparation.

Convention Against Torture (1985)

- Prohibits torture and other cruel acts of cruel inhuman or degrading treatment or punishment is also accepted as a principle of customary international law;
- Aim to prevent torture by opening up places of detention to external scrutiny by independent bodies;
- Article 2-Each State Party shall take legislative, administrative, judicial or other measures to prevent acts of torture;
- Article 4-Each State party must ensure that Torture is classified under criminal law;
- Article 12-Each State Party shall have competent authorities to proceed to a prompt and impartial investigation; where there are reasonable grounds to believe that an act of torture has been committed in its territory or under its jurisdiction.

PLR that clarify the national human rights objectives

Fiji Constitution (2013)

- Refer to the Chapter 2 -Bill of Rights, under sections 9-45.

Objective

- s.7(a) - To promote the values that underlie a democratic society based on human dignity, equality and freedom;
- s.7(b) - For alignment with International law, if relevant for alignment with the protection of rights and freedom.

Safeguard (b) - Transparent and effective national forest governance structures, taking into account national legislation and sovereignty

b.1 Access to information

PLRs that clarify access to information

Fiji Constitution (2013)

- s.25(a) and (b) - Access to information-Every person has the right to access information held by any public office;
- s.150 - Freedom of Information.

Information Act (2018)

- An Act that facilitates the Constitutional sections.25 and 150;
- To facilitate the right of access held by government and public agencies;
- To correct or delete false or misleading Information that directly affects a person;
- To promote access to information and for related matters.

Requirements in Fiji PLR on active dissemination of information

iTaukei Land Trust Act (Leases & Licenses Regulations) (CAP 134) 1940

- Consultation meetings of landowning unit and proponent facilitated through Board technical staff and communicated through to members of the landowning units (LoUs) in a culturally accepted and appropriate way and through the Provincial Administration Office such that members attend and also be able to give majority consent.

Environment Management Act (2005)

- s.34 - When the preparation of an EIA is completed, a public hearing must be conducted by the proponent within the vicinity of the area of the proposed development.

Land Use Unit (2010)

- Technical staff regularly disseminate information to general the public including members of the landowning units regarding ownership interests in a designated land by proponents for consultation meetings. This may also be advertised in a publicly via national print media.
- Land Use Regulation, (4 March 2011) - Consent of landowning unit members to provide land to the Land Use Unit (LUU) is 60 percent of members must agree, of those above 18 years.

Fiji Climate Change (Bill) 2019)

- Implementing Paris Agreement- s.7(a) - through Minister, to prepare, communicate and maintain successive national determined contributions (NDC) the Minister intends Fiji to achieve;
- Implementing Paris Agreement - s.7(c) informed by the global stock take, communicate a NDC every 5 years which represents a progression beyond Fiji's then current NDC and reflects Fiji's highest possible ambition, reflecting its common but differentiated responsibilities and capabilities in light of the national circumstances;

- s.7(d) - Re-Implementation of Paris Agreement in communicating Fiji NDC, provide the information necessary for clarity, transparency and understanding.

Requirements in Fiji PLR on passive disclosure of information

Fiji Constitution (2013)

- s.25(3) - To the extent that it is necessary, a law may limit, or may authorize limitation of, the rights set out, and may regulate the procedure under which information held by public office may be made available.

Information Act (2018)

- s.9 - Refusal of information by Commission for non-compliance- person requested is not a 'directly affected' person;
- s.20 - Information requested is exempt from disclosure-grounds of national interests-sub section (a) to (h);
- s.21 - Exemption for disclosure at discretion of Minister following consultation with the Commission may exempt the information from being disclosed;
- s.22 - Avenue of complaint by aggrieved party through Commission.

Procedures for Rights to Information can only apply if a person is directly affected by the information requested;

- s.6(3)(a) - Request made by a member of public for information from a public agency made on a form prescribed by regulations under the Act;
- s.6(3)(b) - Applicant to specify the public agency in which the information is held;
- s.6(3)(c) - Applicant to specify the particulars of the information requested or identify the information;
- s.6(3)(d) - Applicant to specify the preferred mode of accessing the information;
- s.6(3)(e) and (f) - Comply with requirements of Commission and be accompanied with the prescribed fee;
- s.7 - Commission to make determination after 10 days of receiving application;
- s.8 - Commission with 20 days of receipt to direct application to relevant agency;
- s.9 - Commission can refuse application, if application did not comply, does not substantially comply, or information sought is exempt from disclosure;
- s.10 - Commission has the power to transfer request to another agency;
- s.11 - Emergency application can be dealt urgently by the Commission-if it concerns matters of life and death or liberty of a person is at stake.

Gaps in PLRs and their implementation for b.1

- Not all information can be disclosed - some may have restrictions (prima facie there are no restrictions premised on Climate Change or REDD+, but there may be technical stipulation of restrictions should the nature of the information sought becomes sensitive to security and national interest);
- There are little incentives to store and collate information electronically;
- Most information on hard copy, that require personal visit and time to access;
- Problem with connectivity;
- Integrity of Information protected is not guaranteed. Because of lack clear policy on data policies, management and access - there is a possibilities data may not be updated, well-kept or even missing;
- Lack of information centralization.

b.2 Accountability

Requirements in PLRs related to fiscal transparency and oversight in the forest/land use sector

Fiji Companies Act (2015)

- Financial statements must be prepared annually for all public companies, large private companies and managed investment schemes;
- s.43 - A small private company is not required to prepare financial statements unless directed to do so by members with at least 10 percent of votes;
- s.44 - Small companies need only lodge pro forma statements if directed by the Registrar of Companies and/or if the company was controlled by a foreign company which has not otherwise lodged any financial statement,
- There is no requirement to file annual returns;
- s.46 - For an audit, or review of Financial Statements, the auditor must give the Directors of the Company, a written declaration that to the best of the auditor's knowledge and belief there has been no contraventions of auditor independence requirements of the Act and there has been no contravention of the professional code as set out in breaches and declarations;
- The declaration must be given when the auditor's report is given to the Directors and must be signed by the declarer;
- s.47 - The declaration is given to the Directors before the Directors approval of the Director's report;
- Regarding contract or dealings of the Company - A director has the duty to act within the powers conferred upon them (s.30) exercise independent judgement (s.32), duty to exercise reasonable care, skill and diligence (s.33) and duty to avoid conflict of interest (s.34) and, duty to declare interest in a proposed transaction or arrangement (s.36).

Fiji Constitution (2013)

- s.27 - Freedom from compulsory or arbitrary acquisition of property;
- No law that permits arbitrary acquisition of property unless for public purpose but with promptly agreed compensation; s.27(3) nothing contained or done under authority of the law under this section shall be inconsistent with provisions for the acquisition of tax and other modes of recovery e.g. s.27(3)(e) liens or execution of judgement of Court under s.27(3)(f).

iTaukei Land Trust Act (1940)

- s.4 - The control of all native land shall vest in the Board and all such land shall be administered by the Board;
- s.8 - Lawful for the Board to grant leases and licenses on iTaukei lands;
- s.9 - Grant of leases and licenses can be issued under conditions;
- s.10 - Form of leases, registration and fees.

Agricultural Landlord and Tenant Act (1978) CAP 270

- s.22(2) - The Tribunal in assessing, fixing, and certifying the maximum rent for an agricultural holding, shall allow the landlord a return of no more than six per cent per annum on the unimproved capital value of the land, the subject of the holding.

Regulations

iTaukei Land Trust Act (1940)

- s. 33 - iTaukei Land (Forest) Regulations [iTaukei Land Trust];
- s.3(a)(c)-No person shall fell, cut, convert, manufacture or remove forest produce except in accordance with a license as approved by the Board;
- s.5 - Before issuing of license-a deposit is required;
- s.8 - Royalties for all forest produce cut, sawn, converted under license in prescribed forms at a rate laid down in the royalty rate list per specific Schedules in the Regulations;
- s.16 - Board may for any reason, without prejudice to existing rights, prohibit, restrict the cutting or removal of any forest by any particular person, within any specified area of iTaukei land for such time as it may deem necessary.

Land Use Unit Regulations (4th March 2011), Vol 6, No 12

- Rent is set by reference to “fair market rent” and reassessed every 5 years;
- If any Director, the LoU or the sub-lessee disagree with the rent, they meet and negotiate a new rent;
- Regulation 8(4) (ii) - Alternatively, within 30days of rent assessment, parties may ask and expert valuer appointed by the PM to make a binding rent assessment.

Crown Lands (Leases and Licenses) Regulations (1985) section 41

- s.10 - Re assessment of rent every 10 years;
- s.11 - Procedure on re assessment- valuer at time of reassessment must have due regard to what would at the time of valuation a fair market rent for the land under a lease granted for the same term and on the same conditions but not taking into consideration the improvements which are then in existence and unexhausted;
- The fair market rent under section 11 shall in no case exceed 6 percent of the value of the fee simple estate of the land not taking into account any improvements.

Gaps in PLRs and their implementation for b.2

- Inconsistent enforcement systems (tracking) may hinder on time collection of monetary levy leading to unpaid sums owed to landowners;
- Inconsistent and late timing of land re-assessments may cause loss to landowners and State;
- Hypothetical valuation methodology for lands in the customary register as it is not premised on fair market rental.

b.3 Land tenure

Types of rights over forest land and resources are legally and clearly recognized (Statutory and customary ownership or use rights)

Fiji Constitution (2013)

There are three land typologies in Fiji to which the Constitution apply. These are, iTaukei lands (customarily owned by registered landowning units) that constitutes (89.9 percent), State Lands (that belongs to the State) at 4 percent, and private freehold land (held in fee-simple) owned by individuals, at 6 percent.

- s.27 - Freedom from compulsory or arbitrary acquisition of property;
- s.28 - Rights of ownership of and protection of iTaukei, Rotuman, and Banaban lands;
- s.29 - Protection of ownership and interests in land;
- s.30 - Right of landowners to fair share royalties for extraction of minerals.

- These rights are protected through the operationalization of regulations, policies, and procedures of the various mandated institution such as iTaukei Land Trust Board- where section 4 of its Act mandated that TLTB has control and administration of all customary owned lands in Fiji and that any dealings in customary lands is illegal;
- TLTB also issues license for logging over customary owned lands;
- Department of Lands facilitates all dealings regarding State lands;
- Department of Lands also deals with iTaukei lands to the extent that these have been designated under the *Land Use Decree of 2010*;
- Ministry of Forest deals with all licenses regarding forest logging.

Gaps in PLRs and their implementation for b.3

- Management and governance issues with royalties and benefits derived from access to and of forest projects at landowning unit level;
- At landowners' level, details of financial management with regards to forest royalties and forest use benefits are not transparent;
- There may be instances of land rights disputes regarding the inner bounds of customary estate, genealogies and membership issues, and traditional leadership of landowning units.

b.4 Access to justice, including procedures that can provide effective remedy for infringement of rights, and to resolve disputes (i.e., grievance mechanisms)

Grievance mechanisms for infringement of rights and disputes related to forest/land governance

It is noteworthy that various government Ministries and Departments, such as the Ministry of Land and Minerals, Ministry of Forestry, iTaukei Land Trust Board have their own internal grievance and redress mechanisms. These are implemented in house mechanisms that serves internally relating to conducts, affairs of its clients in relation dealings, decisions, benefit sharing and other to grievances that staff and client have against the relevant institution relating to procedures, governance etc.

iTaukei Land Trust Board

- This comes under the oversight of the Landowners' Affairs Division within TLTB. There have been past assurances provided during comparative studies that a GRM process resides within the Landowners' Affairs division.

State Lands

- Meetings in the past with Director Land Use has revealed information of a very active and robust GRM and its procedures within the State Lands Ministry. However, despite numerous attempts, no documentation on policy nor procedures have been received.

Fiji Constitution (2013)

- s. 15(1) - Every person charged with an offence has the right to a fair trial before a Court of law;
- s. 15(2) - Every party to a civil dispute has the right to a fair trial before a Court of a Tribunal;
- s. 16(a) Executive and administrative Justice-every person has the right to executive or administrative action that is lawful, rational, proportionate, and reasonably prompt;
- s. 16(b) - Every person aggrieved and adversely affected by any executive or administrative action has the right to be given written reasons for the action;
- s. 16(c) - Any executive or administrative action may be reviewed by the Courts.

iTaukei Lands and Appeals Tribunal - [Under section 7 of iTaukei Lands Act (1905)]

- Role is to hear and determine appeals from the decision of the iTaukei Land and Fisheries Commission (TLFC) under sections 6 and 17 regarding boundaries disputes and ownership and membership of landowning units or ownership of registered fishing grounds;
- Any determination is final and conclusive and cannot be challenged in a Court of Law;
- Any aggrieved by the decision can appeal within 90 days to the appeals Tribunal who has the power to hear further evidence, if the same has not being used in the earlier hearing.

Agriculture Tribunal

- The Agricultural Tribunal has the jurisdiction to hear appeals where a Landlord or a Tenant is aggrieved by an award, order or certificate of Agricultural Tribunal made or issued under the provisions of the Agricultural Landlord and Tenants Act (CAP 270).

iTaukei Land Trust Act (1940 CAP 134)

- In house Grievance Redress mechanisms under the Landowner Affairs Unit that invites parties together and mediate their differences. This is done without extinguishing the right of either party to seek Court determination at any time of their choosing.

Arbitration Act Cap138 (1965)

- An Act to provide for the reference and submission of disputes to Arbitration;
- s.3 - Submission made to be irrevocable and have the effect as an order of the Court;
- s.8 - Arbitrator has the power to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court.

ADR Fiji

- Dispute resolution in Fiji according to studies have been largely ineffective in resolving trade disputes.
- The ADR procedures in Fiji operates within the ambit of government interference and therefore, has surfaced issues of impartiality and dependence on the system. The criticism of the existing procedures has to come from many stakeholders in the society, including employers and trade unions with explicit call for its reviews.
- It also highlighted that other macro factors, particularly political and the economic context have played an important role in fostering the adversarial relationship that persists between social partners- see [Sivendra, M.Kumar,N., *Dispute Resolutions: the Case of Fiji Islands, International Journal of Arts and Science, (2015), pp. 75-88.*

Other mechanisms that provide effective remedy for infringement of rights and to resolve disputes

- Hybrid FGRM Mechanism, bespoke for land and resource grievances, that will traverse between formal and informal procedures currently in use, that is designed to be consistent, credible, legitimate, gender neutral and transparent in its process and binding on the parties - see FGRM Studies for REDD+ (yet be implemented and undergoing iterations of gender-based violence);
- The FGRM for Fiji REDD+ has been designed and validated but not yet implemented. It compliments existing GRMs and not supersede them;
- The approach in its design is premised on existing synergies between land and resource systems and improved governance, improved awareness, and capacity building for all stakeholders on REDD+ and benefits, accountability and free prior informed consent in order to render a trustworthy mechanism that is intended to be fair, objective and provide impartial treatment through the consideration of all parties;

- The objective of the FGRM is to develop a framework for Fiji's REDD+ program that actively engages concerned stakeholder groups and supporting institutions in Fiji's readiness and implementation phases, addressing both the positive and negative feedback from different stakeholders affected by climate change;
- Thematic areas of studies informing its research questions were in Conflict, Legal, Environmental and Social contexts

Gaps in PLRs and their implementation for b.4

- Existing laws are not being integrated into various institutional policies, affecting co-ordination;
- Cultural barriers and nescient understanding of duality of property paradigms exists e.g. customary vs. western concepts of ownership;
- Lack of gender considerations;
- Lack of confidentiality and time bound considerations.

b.5 Gender equality

PLRs that promote and enhance gender equality and women empowerment, especially with regards to benefit sharing, participation, and land tenure

Fiji Constitution (2013)

- s.22 - Right to equality and freedom from discrimination;
- s.22(1) - Every person is equal before the law and has the right to equal protection treatment and benefit of the law;
- s.22(3) - A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her personal circumstances including gender.

Fiji National Gender Policy (2014)

- Overall goal of the policy is to promote gender equity, equality, social justice and sustainable development in Fiji;
- Reinforce the inextricable links between gender equality and sustainable development goals in national development;
- Promote active and visible gender mainstreaming in all sectors and within civil society to ensure agency for gender equity and equality in all spheres of national life;
- Promote gender aware and gender sensitive policies, plans and strategies in the Ministry of Rural development, Ministry of Agriculture and the iTaukei Land Trust Board, which foster gender equality in the agriculture and rural development sectors and promote strategies to increase women in decision making at all levels, including issues of land rentals, application for financing from financial institutions and the distribution of rental and lease monies under the Land Use Decree (2010);
- Facilitate the acquisition of data on the role played by women in the rural and agricultural sector and using data for gender responsive budgeting and national planning on agriculture;
- 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, the utilization of gender impact assessments, gender analysis and gender aware approaches in EIA and exploitation and preservation of natural resources in Fiji through training and continuous monitoring;
- Strengthening equitable access by men and women to the factors of agricultural production, paying particular attention to gender differences in access to and repayments of credits,

beneficiaries of land purchase, land titling, amenities, services, and technology taking into consideration the vulnerability of women in rural areas.

iTaukei Lands Trust Act (1940) Cap 134

- Amendments to its benefit sharing mechanisms payment process in 2010, has enabled direct remittance and individual payments to members of landowning unit including women and youth. Shares for members under 18 years are entrusted until majority age is reached;
- Representation of landowning groups to national or regional meetings have women and youth representation.

National REDD+ Steering Committee representation

- Include special groups representing women's groups.

Gaps in PLRs and their implementation for b.5

- Existing cultural barriers affecting gender equality;
- Unwillingness of policy implementers to implement gender-based policies to address inequality.

b.6 Institutional framework

Institutions have mandates and authority for forest/land use governance and what are their roles

iTaukei Lands Trust Board (1940) CAP 134

- To control and administer all iTaukei Lands, issues logging license on iTaukei lands;
- To grant forest plantation leases and special leases for REDD+ projects;
- Determines rental and forms and procedures for all lease types including special leases;
- TLTB also impose conditions on lease terms and monitor terms.

Native Lands and Fisheries Commission - under Cap 133 (1905)

- NLFC is mandated to arbitrate all land boundary disputes, membership issues and traditional leadership.

Ministry of Lands

- It is mandated for all leases including forest plantation of State lands;
- They also deal with all forestry matter and land use on State lands;
- They are responsible for implementing the National Rural Land Use plan;
- Ministry also grants REDD: lease if on State Lands or designated iTaukei land through Land Use Unit.

Ministry of Forestry

- It is responsible for issuing forest logging license;
- Grants REDD+ license that includes entitlement to seed funding and proceeds to sale of ERs generated;
- Ministry of Forestry - Approves REDD+ projects and contracts;
- Ministry of Forestry - Monitors fulfilment of REDD+ conditions.

Department of Mine and Minerals

- s.23 - Mining Act entitles the holder to enter upon land to prospect for minerals upon notice and in the case of unalienated iTaukei land, upon notice also to TLTB and to the Divisional Commissioner (with whose directions) the prospector must comply;
- The right includes the right to remove naturally growing trees subject to certain exceptions;
- This applies to areas less than 400ha and for specified minerals only.

Gaps in PLRs and their implementation for b6.

- Limited human resources and logistics.
- Limited financial capacity.

b.7 Law enforcement

Institutions have mandates and authority for forest/land use law enforcement

- iTaukei Lands Trust Board (CAP 134) - has control and administration mandate on forest and land use law, including forest extraction license on or relating to iTaukei land;
- Ministry of Forests-has direct authority relating to forest and leases on State lands;
- Ministry of Land & Minerals has overriding power over all legislations (but not Climate Change), in relation to mining prospectus license and has direct authority on forest and land use within mining tenements;
- Ministry of Agriculture has indirect control on land use;
- Department of Environment-has indirect control and administration on land use activities through EIA;
- Land Use Unit controlling authority on leasing of iTaukei land designated under Land Use Decree and all dealings on State lands including Forest Licenses;
- Department of Mines;
- Department of Town and Country Planning;
- Ministry of Economy;
- Minister of Rural, Maritime Development and Disaster Management and Minister of Defense;
- Ministry of Agriculture controlling authority on land use through Ministry's inhouse Land Use Unit. The Unit advocates for land use planning through district Land Use plans.

PLRs that define forest-related offenses and corresponding penalties

iTaukei Lands Trust Board (CAP 134)

- s.26 - Any omission or neglect to comply with and every act done or attempted to be done, contrary to the provisions of this Act or any of the Regulations or order made thereunder, or in breach of the conditions and restrictions subject to or upon which any license or permit has been issued, shall be liable for a fine or imprisonment for up to six months or to both such fine and imprisonment.

Ministry of Forest-Forestry Act (1992)

- s.28 - Offences Acts deemed Offences listed from subsections (a) to (n) from negligently causing damage in felling any tree, to refusing to produce or make available for inspection by any officer a license or other document to be kept under this Decree;
- s.29(1) - Penalties liable for fine not exceeding \$10,000 or a term of imprisonment not exceeding twelve months;

- s.29(2) - any person guilty of felling or extracting timber in contravention to the Act shall be liable, in addition to subsection (1), to a fine equal to the amount of any royalty and fees which would be payable unless he has agreed to compounding under section 33;
- s.30 - Compensation to be paid to the owner of a forest produce for damage or injury caused by a person convicted of an offence under this Decree. Compensation must not exceed the value of forest produce compensated;
- s.31 - Forfeiture of property used in commission of forest offence.

Ministry of Lands Act –State Lands Act (CAP 132) 1978

- s.39 - Penalty for false declaration- penalty for an offence under this Act declaration in relation to any matter or thing required under this Act or by Regulation made thereunder shall be guilty of an offence under this Act;
- s.40 - Penalty for omission or neglect to comply with, every act done or attempted to be done contrary to the provisions of this Act;
- s.40(2) - For every offence under this Act for which there is no penalty is specially provided, an offender shall be liable under this Act to a fine to the amount of one hundred dollars or to imprisonment for six months or to both such fine and imprisonment.

Department of Environment - Environment Management Act (2005)

- s.43 - Offences and Penalties
- s.44 - Other Offences
- s.45 - Pollution Offences
- s.46 – Outline of General Penalties
- s.47 – Mentions other orders that can be made in addition to penalties.
- s.50 - Civil Claim and damages
- s.51 - Liability of Corporation and Directors
- s.53 - Priority or damages in cases of bankruptcy

PLRs that define procedures for forest-related offenses and corresponding penalties

iTaukei Land Trust Board (CAP 134) 1940

- s.23 - Proceeding to be brought in the name of the Board if;
- Proceeding respecting any licenses or leases, licenses or permit relating thereto;
- Or respecting a breach of any covenant contained in any such a lease, license or permit or respecting any trespass;
- Or damage accruing by reason of such trespass;
- Or for the recovery of any rents or fees;
- Or relating to any damage whatsoever in respect of such land;
- May be commenced, prosecuted and carried on in the name of the Board.

Department of Environment-Environment Management Act (2005)

- s.57 - Institution of Proceedings – any person may institute a proceeding in a Court to compel any Ministry, department, or statutory authority to perform any duty imposed on it by this Act or a Schedule Act.

Ministry of Lands- (1978 ed) CAP 132

- s.29 - Proceeding to be brought in the name of the Attorney General-all actions, suits and proceeding respecting Crown land or lease, license or permit, or respecting breach of any covenant contained in any such lease, license, or permit or respecting any trespass on such land, or any damage accruing u reason of such trespass or for recovery of any rents or fees

or relating to any damage or wrong whatsoever in respect to land, may be commenced , prosecuted and carried on in the name and title of the Attorney General.

Department of Mines and Minerals-Mining Act (1965) CAP 146

- Penalties for listed Acts as defined from
- s.57 - Unlawful prospecting and license
- s.58 - Penalty for failure to notify owner
- s.59 - Assault on authorized person etc.
- s.60 - Fraud by applicant for mining tenement
- s.61 - Salting or fraudulent deposit and fraudulent sampling
- s.67 - General penalties for disobeying any provision of the act or refusing or willfully omitting to do an act shall be guilty of an offence under this Act.

Ministry of Agriculture (1978) CAP 270

- s.54 - A tenant of an agricultural holding shall be responsible for ensuring that the boundaries of holdings shall be clearly marked and maintained throughout the term of his tenancy;
- s.57 - Offences any landlord who.

(a) grants a tenancy of an agricultural holding, otherwise than in writing;

(b) fails to give without charge a registered copy of the instrument of tenancy to his tenant forthwith upon the registration of such instrument;

(c) fails to register the instrument of tenancy in accordance with the provisions of subsection (3) of section 8;

(d) fails to give to his tenant a receipt for rent at the time such rent is paid or payment credited;

(e) evicts or threatens to evict a tenant on the ground that such tenant has made an application to a tribunal or a complaint to a court;

(f) sub-lets the whole or part of an agricultural holding made after the commencement of this Act, otherwise than in accordance with the provisions of subsection (2) of section 45;

(g) markets or buys the crops of his tenant otherwise than in accordance with the provisions of section 12, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or both such fine and imprisonment, and, in the case of a continuing offence against the provisions of paragraph (b), (c) or (d), to a fine of twenty dollars for each day during which such offence continues after conviction;

(2) Any landlord or tenant who fails to comply with the provisions of section 54 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred dollars;

s.57(2) any landlord or tenant who fails to comply with provision of section 54, regarding maintaining clearly marked boundaries, shall be guilty of an offence and shall be liable for conviction.

Gaps in PLRs and their implementation for b.7

- Lack of logistical capacity affects enforcement and ability to provide effective reviews;
- Possible instances of corruption affect governance and could compromise implementation;

- Compromised enforcement means inconsistent application of provisions and penalties.

Safeguard (c): Respect for the knowledge and rights of indigenous peoples and members of local communities, by considering relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples

c.1 Definition/determination of indigenous peoples and local communities

PLRs that define who are indigenous peoples and local communities

Fiji Constitution (2013)

- Preamble recognize indigenous people or the iTaukei, especially their ownership of iTaukei lands, their unique culture, customs, traditions, and language but does not define the word iTaukei distinctly or what is an Indigenous iTaukei or who can become one, except in relation landownership. However, there is a definition of native owner under iTaukei Lands under Act Cap 133 (1905) in relation to the “mataqali” as landowning unit or any other division or sub-division of the natives having customary right to occupy and use any native lands. In sum the Constitution refers to ITaukei in a generic sense, specifically in association with land or social grouping but fail to define iTaukei, through a working definition at law, as to who or what constitutes a iTaukei person per se or its relation if any, to an indigenous person in Fiji;
- Preamble recognize other local communities in indigenous Rotumans, descendants of indentured laborers from British India and other immigrants their traditions, language, culture now under common citizenry;
- s.28 - Rights of ownership protection of indigenous Fijian lands, Rotuman and Banaban communities protected;
- s.1(a) provides for a common and equal citizenry and national unity.

iTaukei Lands Act (1905) CAP 133

- s.3 - Definition of tenure of native lands held by Fijians as lands held by native Fijian according to native customs and usage;
- s.2 - definition of native owners of land as mataqali or other division or sub-division of natives having the customary right or occupy and use any native land.

iTaukei Land Trust Board (1940) CAP 134

- s.2 - definition of native owners of land as mataqali or other division or sub-division of natives having the customary right or occupy and use any native land.

Climate Change Bill (2019)

- s.2 - Interpretation of iTaukei Owners has the same meaning given to that term under section 2 of iTaukei Land Trust Act (1940).

c.2 Recognition of collective rights to lands, territories and resources

PLRs that recognize and protect collective ownership and/or use rights of forests

Forest Act (1992)

- s.21 - Saving of customary rights-acknowledging the exercise of such rights by any native in accordance with native custom. This includes usufructuary rights to hunt and gather, the right of access, right to use, right to possession and the right to exclude others;
- s.17 - Payment of royalties attributable to harvesting of timber relating to iTaukei land paid either to Forestry Department or TLTB.

iTaukei Land Trust Board (1940) CAP 134

- s.2 - Definition of native owners of land as Mataqali or other division or sub-division of natives having the customary right or occupy and use any native land.

PLRs that recognize and protect customary tenure systems and/or customary use rights

Fiji Constitution (2013)

- Preamble-recognize indigenous people or the iTaukei, their ownership of iTaukei lands, their unique culture, customs, traditions and language but do not define Indigenous or indigeneity in the context of Fiji;
- Preamble-recognize other local communities in indigenous Rotumans, descendants of indentured laborers from British India and other immigrants their traditions, language, culture now under common citizenry;
- s.28 - Rights of ownership protection of indigenous Fijian lands, Rotuman and Banaban communities protected;
- s.30 - Right of landowners to fair share of royalties and extraction of minerals;
- s.29 - Protection of ownership interest in land- apply to both landowners and communities;
- s. 32 - Right to economic participation apply both to landowners and communities;
- s.36 - Right to adequate food and water;
- s.40 - Environmental rights.

iTaukei Land Trust Board (1940) CAP 134

- s.3 - Central control and administration of all iTaukei land vests to the Board
- s.7 - iTaukei land not to be alienated but in accordance with the Act
- s.16 - Land in iTaukei reserve not to be alienated
- s.27- Unlawful occupation of iTaukei land
- Regulations-on taking of Forest Produce- at Section 8-Royalties to be paid in relation to takings from iTaukei Land

Climate Change Bill (2019)

- s.81 - Relocation of 'at risk' communities;
- s.81(m) - Minister must pay recognize traditional knowledge of iTaukei and Rotumans;
- s.81(f) - At risk communities to relocate only with full free, prior informed consent;
- s.67 - No mining or exploration activity to be approved over lands which has been approved for REDD+ program or over which carbon sequestration property rights are granted;
- s.69 - REDD+ transaction by the Government, s.69(a) Minister must have prior and informed consent of iTaukei Land Trust Board;
- s.699(b) - Under an approved benefit sharing plan, government to compensate YLTB where relevant.

Gaps in PLRs and their implementation for c.2

- Definition of Indigenous may be precisely defined from the Constitution to tie in other related connotations of the word, offering uniform application in relation land ownership and related traditional laws and customs unique to Fiji;

- There is only a general recognition provided and definitions are not precise. Further, this definition is relative to and through recognition of property. Indigenous is therefore recognized through general statements of the preamble of the Constitution by reference to Indigenous or iTaukei, their ownership of iTaukei lands, their unique culture, customs, traditions and language. It is noted that the Preamble is not an operative part of the Constitution and therefore has no legal effect.
- Lack of National Land Use Policy hence, with the potential to expose indigenous lands towards unsuitable land use that are not 'fit for purpose';
- Lack of National Land Use (Regulations)-this may allow for non-centralized planning protocols, resulting in compartmentalized segregated approach, duplicitous procedures and costs over runs.

c.3 Right to compensation and/or other remedies in the case of involuntary resettlement and/or economic displacement

Right to compensation and/or other remedies in the case of involuntary resettlement and/or economic displacement

State Acquisition of Land Act (1940) CAP 135

- s.12 - Compensation matters to be considered during an acquisition of lands by State for public purpose include: market value of
 - (i) damages sustained by person interested-re standing crop
 - (ii) damages sustained by person interested-re severing of landform other land of the property owner

damages sustained by person interested, by reason of acquisition of land, affecting real or personal, in any other manner of his earnings;

- (iii) if in consequence of the acquisition of the land, the person is compelled to change his residence or place of his business, the reasonable expenses, if any, incidental to such change.

Climate Change Bill

- s.79 - Part 13- Climate displacement;
- s.79(1) - The section establishes the Fiji Task Force on Relocation of Communities vulnerable to the impact of Climate Change;
- s.80 - The Minister with the assistance of Fiji Taskforce on relocation, must prepare successive National Planned Relocation Guideline;
- s.80 - Minister must operationalize NPR Guidelines in s.80(1) through developing Standard Operating Procedures (SOP);
- s.80(3) - Review of S00 after every 5 years.

Gaps in PLRs and their implementation for c.3

- Customary rights of indigenous people [without formal title] may be truncated, especially where indigenous people live in "vakavanua" arrangement in non-formalized but customary understanding with the registered landowners;
- Questionable basis on quantum of compensation for customary rights of indigenous people without formal title- basis of compensation may be not so solid and therefore no obligation to pay such occupants but for disturbances to gardens etc.;
- The Climate Change Bill is still going through public consultation stages as per requirements of its Parliamentary passage;

- The NPR procedures that form part of the Bill is expected to trigger into action once the Bill is assented into an Act by the President.

c.4 Right to share in benefits when appropriate

PLRs that require equitable sharing of benefits from the utilization of forest resources, the utilization of genetic resources, and the utilization of traditional forest-related knowledge

General Note:

- All payments made through the TLTB from forest extraction, gravel extraction or those funneled through the State in terms of Mining Royalties are paid on equal basis and direct to individual members of the landowning unit as per the amended Regulations of the TLTB;
- All land rentals of iTaukei Lands administered under the Land Use Unit (per Ministry of Lands) are paid direct to the landowning unit Trusts where it is distributed to members. Trustees are vetted under the Land use Regulations by the PM-see Land use Regulation (2011), s.5(i).

The relevant sections of the Constitution that must be considered are listed:

Fiji Constitution (2013)

- s.27 - Freedom from compulsory or arbitrary acquisition of property;
- s.28 - Rights of ownership and protection of iTaukei, Rotuman and Banaban lands;
- s.29 - Protection of ownership and interests in land;
- s.30 - Right of landowners to fair share of royalties of extraction of minerals- this was further enacted into implementable law see Fair Share of Minerals Mining Act (2018);
- s.32 - Right to economic participation.

Fair Share of Minerals Mining Act (2018). Its objective is to achieve the following through its stated intention and the application of the relevant sections;

- To give effect to the Constitution under section 30-to establish the process for fair sharing of Royalties for the extraction of Minerals and all related matters;
- s.6 - Royalties to be held in Trust by the Ministry until such time as the Royalty is shared in accordance with the Act;
- s.7 - The ministry upon receipt of Royalties, must liaise relevant agencies and consider relevant registers to correctly identify the owner;
- Minister to ensure royalty is paid in accordance with s.5 to the State and Owner 20 percent to the State and 80 percent to the owner;
- s.7(1)(b)(ii) - If land is communally owned land, the share of royalty that is paid to the owner is equally distributed to all owners of the communally owned land.

Ministry of Forest- Royalty to iTaukei landowners from timber production on iTaukei lands, plus equitable negotiation agreement heads for social packaged deals, contracts, etc.

Ministry of Mines - Royalty to iTaukei of landowners' rom minerals, plus equitable negotiation agreement heads for contract work and other socio-economic benefits.

iTaukei Lands Trust Board (1940) - Special lease conditions equity packages are negotiated as part of terms of lease agreements in projects-consisting of educational funds, community development, in addition to employment opportunities and procurement contracts; In some instance equity shares are negotiated through joint partnerships.

Nagoya Protocol (2011) - on Access and Benefit Sharing (**Ratified by Fiji 24/10/2012**) augments the Convention of Biological Diversity:

- Nagoya is a supplementary Agreement to the Convention on Biodiversity aimed at implementation of one of the three objectives of the CBD, the fair and equitable sharing benefits arising out of the genetic resources thereby contributing to conservation and sustainable use of biodiversity;
- Parties endorsed the updated and revised strategic plan and 20 targets for post 2010. The Strategic Plan and Targets would guide parties to align their NBSAP with the mission goals of the CBD in harmonizing with nature;
- Fiji has taken implementation framework steps towards National Biodiversity Strategy and Action Plan (2010-2014) in 2007;
- Plan addressed five thematic areas for implementation process. These are; Forest conversion management, Invasive alien species, Inshore fisheries, Coastal development, and Species Conservation;
- It advocates the valuation and accounting of direct and indirect goods from biodiversity and bio-resources;
- Ensure under its strategies, meaningful participation and provide equitable incentives and remuneration to resource owners for Protected area establishments and management.

Gaps in PLRs and their implementation for c.4

- No centralized body to organize and improve negotiations based on current market trends and improvements from other jurisdictions. Land access rentals is based on the valuation of iTaukei lands, which is not based on open market valuation principles i.e. willing buyer/willing seller, but based on a devised hypothetical basis, premised on unimproved capital value (UCV). It is noted that the sales comparison figures to base UCV of iTaukei Lands are premised on recorded open market sales;
- Current valuation methodology of iTaukei Lands and its assessment is capped, therefore not classified as equal in value status to private freehold land.
- iTaukei land can only be leased, and cannot be sold;
- Lack of financial and human resource to monitor and enforce agreements;
- Disparity in power between investors and landowners;
- Lack of technical capacity.

c.5 Free, prior and informed consent

PLRs that require free, prior and informed consent for activities that affect the collective rights of local communities

UNDRIP (2007) - Notes

- On international stage, Fiji has not signed UN Declaration on the Rights of the Indigenous People
- All PLRs mentioned in the previous section have non standardized application, of FPIC principles to the full extent of its technical application;
- All PLR for forest resource and land developments observed have consultation procedures that may equate to the application of FPIC but with different technical emphasis and iterations.

National Biodiversity Strategy and Action Plan (2020-2025)

- This is developed in collaboration and consultation between Government of Fiji, non-government organizations, resource owners and private and academic institution.

iTaukei Land Trust Board (1940) Operation of relevant section of the Act and Regulations are stated below:

- s.16 - Land in native reserve may be dealt through leases or licenses with the consent of the native owners-granted through the Board to native Fijians according to regulations under section 33;
- TLTB is required to arrange for a formal sit down under its Regulations to consult the landowning unit on the nature of the development and get consent signature. This consultation does not have set checklist considerations but may technically satisfy the application of FPIC.

Forest Bill (2016)

- s.51 - States that a license under this Act must only be issued;
- With the prior consent of iTaukei Lands Trust Board, Director of Lands, and Private owners as may be the case for the relative land classification; and
- Consent stated under this section is administratively and institutionally - provided by the TLTB in its role as trustees under its Act on behalf of the landowning unit (who are the beneficiaries).

Climate Change Bill (2019) - The Bill addresses the need for FPIC under the following provisions:

- s.69(1) - Where government participates in in any transaction under REDD+ programmes including but not limited to the FCPF and the GCF Partnership Facility, and the GCF results based payments, the Minister is deemed to have the authority of the landholder to sell or trade all carbon sequestered by the forest including the form of emission reduction, Fiji Mitigation Outcome Units, or carbon sequestration provided that the Minister has (a) had the prior informed consent of the TLTB where relevant, (b) Government compensates the TLTB where relevant;
- This is institutional FPIC, not requiring the prior informed consent of the landowners but provided on behalf of the landowners' unit by TLTB in its role as a trustee.

Gaps in PLRs and their implementation for c.5

- Lack of Awareness, full implementation and standardization of FPIC;
- Decision not to sign UNDRIP, although reasons for doing so are provided and is a matter for the State;
- Observation of Article 45 of UNDRIP - By not signing, Fiji's future actions may not necessarily be obligatory to UNRIP, regarding diminishing or extinguishing the rights of indigenous peoples.

c.6 Recognition and protection of indigenous peoples' and local communities' traditional knowledge and cultural heritage

PLRs that recognize and protect local communities' traditional knowledge and cultural heritage

National Trust Act (1978) CAP 265

- There is no mention to the protection of cultural property, knowledge or cultural heritage;
- Its objective is to promote permanent preservation of for the benefit of the nation, lands buildings, furniture and chattels having historic, architectural or natural interest or beauty.

Heritage Bill (2006) states inter alia that;

- s.2 - Heritage means both cultural and national heritage;
- s.3 - The Heritage Bill, does not specify how cultural and national heritage are protected as it is mainly for the recognition and management of places having World heritage values in Fiji through the establishment of a Council and grants functions, powers, and duties for safeguarding the integrity of places having potential and actual world heritage values per section 3(b).

Fiji Copyright Act (1999)

- There is no process of registration of copyright interest under the Act;
- Copyright simply subsists within the “works” in accordance with the provisions of the Act.

Fiji Patents Act (1978) Cap 279

- s.3 - Every invention shall be entitled under the conditions and restrictions hereinafter enacted to the sole exclusive right of, and in his invention.

National Biodiversity Strategy and Action Plan (2020-2025)

- Principles underpinning strategy calls on national partners and stakeholders to actively recognize, respect and support community property rights including traditional rights over natural resources, indigenous intellectual property rights relating to natural resources and cultural knowledge;
- Community decision making structures and practices to be recognized while ensuring gender inclusivity in decision making;
- To ensure active participation and ownership of resource owners in conservation and resource management initiatives will ensure long term sustainability and ensure biodiversity conservation;
- Recognizing the use of traditional knowledge and wise use of management practices to sustainable biodiversity management.

Environment Management Act (2010) Relevant section states:

- s.3(3) - A person required to perform any functions under this Act relating to use and utilization of natural and physical resources must recognize and have regard to the;(c)the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna;
- s.3(3) – Person must have regard to the relationship of indigenous Fijian with their ancestral lands, waters, sites, sacred areas and other treasures;
- s.4 - Person performing function under this Act must have due regard to(a) traditional owners of guardians of resources and (d) the maintenance and enhancement of the heritage values of buildings and sites.

Convention on Safeguarding of the Intangible Cultural Heritage (2003)

- Fiji is a signatory to the Convention
- Fiji is mandated under s.11 of the Convention to safeguard intangible cultural heritage products within its territory;

- s.29 - Of Convention Fiji must submit periodic reports to the Convention Committee of legislations, regulations and measures taken for implementation of Convention; Purpose is to safeguard intangible cultural interests;
- To ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
- To raise awareness at national and international levels;
- To provide international co-operation.

Gaps in PLRs and their implementation for c.7

- Onerous enforcement procedures in Fiji requires deferment to colonial procedures and subjection to the operation of the UK Laws in relation to Patent registration and protection premised on traditional knowledge and cultural protection that ties in colonial procedures of referencing platform to the UK;
- Lack of legal framework for cultural heritage protection-no substantive Act or law to specifically protect traditional knowledge and cultural heritage;
- No reviews in the recent past.

Safeguard (d) - The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities [in REDD+ actions]

d.1 Identification of relevant stakeholders

PLRs that identify or require the identification of relevant stakeholders related to environmental decision-making process

REDD+ Policy (2009)

- REDD+ stakeholders have been identified from initial national meeting in 2009 to map out National REDD+ Strategy workshop. These include relevant government Ministries and Departments, landowners, landowner's representative organizations, land users, the private sector, statutory bodies, local municipalities, academic institutions, primary and secondary schools and civil societies organization;
- Section 3.7.2 as mentioned on page75 of National REDD + Strategy proposed the following representatives; Ministry of Forestry (Chair), Environment, Agriculture, TLTB, Private Sector, Fiji Pine, NGO International Environment NGO and local community-based NGO, Resource/Landowner, University of the South Pacific, University of Fiji.

National Climate Change Policy (2012)

- Stakeholders identified in its organization chart (see p.10), including Government Ministries and Departments, academic institutions, regional organizations CROP agencies, private sector, and community representatives

Forest Bill (2016)

- s.51 - Forest Protection Forest owners, stakeholders in the forestry industry and professional foresters may form an association for the purposes of representing their interests and lobbying for their issues.

Gaps in PLRs and their implementation for d.1

- PLRs as such mandates the identification of all relevant stakeholders, but practicality of actual decision making and implementation may be cognizant of different levels of understanding and capacities that may contribute to passive voices at forums and

discussions e.g. Climate Change Bill, Forest Bill discussions, given the technical and purposive scope of the Bills.

- Marginalized stakeholders must be provided with extra assistance in order to fully informed on the likely socio-economic impacts of projects such that this is widely shared amongst its membership.

d.2 Legitimacy and accountability of bodies representing relevant stakeholders

Bodies defined in PLRs to represent relevant stakeholders, including local communities

iTaukei Land Trust Act (1940) CAP 134

- s.3 - Mandate of the Board is derived from the creation of Statutory Trust by Government under s.3 of the Act;
- s.4(1) - The control of all native land shall be vested in the Board and all such land shall be administered by the Board for the benefit of the iTaukei owners.

National Climate Change Policy (2012)

- Cabinet decision CP 12(18) approved the National Climate Change Policy for Fiji, with stakeholders of 2012;
- The National Climate Change Policy is based on Climate Change Policy Framework endorsed by Government on 04 December 2007;
- The policy was developed through a consultative process including government, non-government organizations, CSOs, private sector and academic institution from June to October 2011;
- Stakeholders identified in its Organization Chart (pp.16), include Government Ministries and Departments, academic institutions, regional organizations CROP agencies, private sector, and community representatives.

Climate Change Bill (2019)

- s.13 - This section establishes the National Climate Change Co-ordination committee;
- s.13(2) - All Permanent Secretaries are members of the committee;
- s.13(3) -The Permanent Secretary responsible for Climate Change may nominate other representatives from Ministries, departments and agencies to be members of the committee;
- s.71 - National Adaptation Plan to facilitate a National Adaptation Plan (Steering Committee), comprising per section 71(5), government, non-government bodies, private sector, and civil society members to help inform the review of the NAP and the development of revised action.

REDD+ National Policy (2009)

- Mandate its creation from Cabinet Decision CP (10)342/2010 endorsing its implementation in 2022 for the Fiji's draft Policy on Reducing emissions and its implications;
- Fiji REDD+ stakeholders comprising the National Steering Committee have been identified from initial national meeting in 2009 to map out National REDD+ Strategy workshop. These included representations from relevant government Ministries and Departments, landowners, landowner's representative organizations, land users, the private sector, statutory bodies, local municipalities, academic institutions, primary and secondary schools and civil societies organization.

Environment Management Act (2005)

- Act received presidential assent into law on 17 March 2005;
- s.7 - Part 2[Administration] National Environmental Council to comprise CEO as Chairperson, CEO for Ministry of Land and Minerals, Agriculture, Fisheries or Forest, CEO for Ministry of iTaukei Affairs, GM TLTB, CEO Health, CEO Tourism, President of Local Government Association, and a member representing the interests of NGOs.

Forest Act (1992) Relevant section of the law under the Act is specific on representative composition to include;

- s.4 - Forestry Board Composition-shall consist of - Conservator of Forest (as Chairman), PS Primary Industry or his nominee, Director of Town Country Planning, or nominee, seven other persons appointed by Minister to include GM TLTB, and one person not holding any State emolument shall represent forest owners, land users, forest industry, and public interest;
- s.5 - Forestry Committee Members of the Forestry Committee shall be chosen on the basis of expertise in the matter for which the committee is appointed.

Provisions ensure their legitimacy and accountability

iTaukei Land Trust Act (1940)

- s.3(1) - There is hereby established a Board of Trustees called the Native Land Trust Board consisting of five iTaukei members as appointed by the Prime Minister, three iTaukei members appointed by the iTaukei Affairs Board from a list of nominees submitted by the Provincial Councils and not more than two members of any race appointed by the Prime Minister;
- Common law duties apply equally as dictated under Fiji Corporate Law (2015) to Directors in the exercise of independent judgement (s.32), duty to exercise reasonable care, skill and diligence (s.33), and duty to avoid conflict of interest (s.34).

Land Use Decree (2010) for designated iTaukei lands Under State administration see Land Use Regulation (2011)

- s.4 - A person may not continue or become a Trustee if:
 - a. convicted of any indictable offence involving fraud;
 - b. person is an undischarged bankrupt.
- s.5 - The PM may remove a Trustee at any time if PM is of the opinion Trustee is not adequately discharging his/her duties as per the Trust Act (1966);
- s.47 - A trustee may, in his or her own absolute discretion from time to time, cause the accounts of the trust property to be examined or audited by a chartered accountant and shall for that purpose produce such vouchers and give such information as such as the accountant may require.

Climate Change Policy (2018-2030)

- s.3 - Legitimacy basis provided within the Act. This Act binds the State;
- s.3(2) - Act applies to all things done in, on and, above or below Fiji's land and airspace, including its internal waters, territorial waters, archipelagic waters and EEZ and including seabed and subsoil underlying the waters.

Gaps in PLRs and their implementation for d.2

- Stakeholder representatives from landowning units on Committees often do not report back to inform its membership;

- Selection of stakeholder representation, in some cases, often lack transparency, given process of nominations may vary amongst submitting entities/organizations.

d.3 Recognition and implementation of procedural rights including consultation and participation

PLRs that define rights to consultation and participation in environmental decision making and how these are implemented

No observed PLRs that specifically demand the right of consultation and participation that specifically directs consultation process in relation to the drafting of laws, policies, programs. Where views of public and stakeholders have been sought in the lead up to policy formulation that later informs the law, such an exercise are provisioned not because of the dictates of the law but rather out of policy process and of social responsibility.

Direct involvement of stakeholders in consultation during process of drafting of Laws and Regulations are less clear at the initial process of formulation, however the process of engagement in policy development that informs drafting of laws and regulations are stated from examples below.

Fiji National Biodiversity Strategy and Action Plan (2020-2025)

- Was developed in collaboration and consultation between government of Fiji, non-government organizations, resource owners, the private sector and academic institution- per acknowledgement section on page 1 of the Plan

Green Growth Framework for Fiji (2014)

- Developing a new integrated approach in its process, with all stakeholders collaborating and collectively working together for the common good. The cross-cutting nature of issues relating to sustainable development requires harmony and synergy in the formulation of the strategies.

Fiji REDD+ Policy (2009)

- Formal beginning in 2009 during a series of broad national consultations held between February 2008 February 2010 after UNFCCC COP 15 Paris Agreement.

National Climate Change Policy (2012)

- The policy recognizes the need for constructive co-operation among all the relevant sectors. This was an inter-disciplinary multi-sectorial approach;
- Acknowledgement in the Policy Report of the various stakeholders.

d.4 Stakeholders have the information they need to participate effectively

PLRs that ensure that stakeholders have the information they need

Climate Change Bill (2019)

- s.81(2) - Mandated consultations and other considerations in relation to relocation of 'at risk' communities;
- s.9(a) - Minister has to prepare and communicate Fiji's first and subsequent NDC's under the Paris Agreement;
- s.9(j) - Formulate and implement education programmes for industry groups or the general public related to the implementation of the Act or climate change policy;

- s.9(p) - Appoint experts and establish an independent advisory board to assist in providing in relation to the implementation of the Act.

Environment Management Act (2005)

- s.34(1) - When the preparation of an EIA assessment is completed, a public hearing must be conducted by the proponent within the vicinity of the proposed development;
- s.34(2) - Where Government is a proponent, Minister responsible for the development must establish a committee to be responsible for undertaking consultations with all interested parties.

iTaukei Land and Trust Act (1940)

- S.9 - No iTaukei land shall be dealt with by way of lease or license under the provisions of this Act unless the Board is satisfied that the land proposed to be made the subject of such lease or license is not being beneficially occupied by the iTaukei owners and is not likely during the currency of the lease or license to be required by the iTaukei owners for their use, maintenance and support.

Gaps in PLRs and their implementation for d.4

- Non willingness of information keepers to share information that are ought to be shared;
- Stakeholders do not always know what information is available.

Safeguard (e) - [REDD+] actions are consistent with the conservation of natural forests and biological diversity, ensuring that REDD+ actions are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits

e.1 Definition of natural forest and biological diversity

PLRs that define natural forest and require their identification and mapping

Fiji REDD+ Policy (2009)

- Make mention of biological diversity conservation (amongst others) in its Preamble statements, as other sectors that may benefit from actions that reduce emissions but no precise definition is given.

Forest Bill (13 of 2016)

- s.2 - Natural Forest - **defined as forest composed of indigenous trees and not classified as forest plantation** (c.f. with 28.7 percent of total forest are endemic species of forest, see (NRI, Government of Fiji, 2010, FOF and SPC, 2010);
- s.5(d) - Department of Forest through the Conservator carry out the national forest assessment, collect other important information about forest resources and make this data publically available;
- ss.12-16, National Forest Policy and Classification mentions of current various classification;
- s16 - Calls for National Forest Resource Assessment to collate data for purposes of implementing sustainable forest management;
- s.16(b) - Forest monitoring at national level through (i) carrying out the national forest resources assessment, collect, other important information about forest resources and

make these data publically available, (ii) develop and provide technical advice to and for community forestry programs and agro forestry schemes, (iii) take appropriate measure to investigate ,prevent and suppress destruction forest degradation, forest fires and forest clearings, (iv) identify and promote reforestation and afforestation on suitable sites and rehabilitation of degraded forest areas;

- s.16(3) - Conservator of Forest, within the Ministry of Forest, taking into account data from the National Forest Resource Assessment must identify areas where forest conditions would allow timber harvesting.

PLRs that define biological diversity and require identification and mapping for priorities for conservation of biological diversity

National Biodiversity Strategy and Action Plan - [2020-2025]

- At 2.1 Provides **definition of biodiversity** as meaning the variability among living organisms from all sources including inter alia terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part.; including diversity within species and of ecosystem;
- Biodiversity performs essential part of safeguarding the biological life support systems in Fiji;
- Presents status and trends and threats to Fiji's biodiversity with reference to the key ecosystems and species they support including Forest ecosystems;
- Priority locations for terrestrial protected areas have been identified by protected areas committee (PAC) and mapped in 2013. (see annex 4 of Report) The prioritization built upon gap analyses based on criteria including endemic biodiversity richness, number of vegetation types, economic importance, size degradation, scarcity, and priority connectivity forest areas.

Fiji REDD+ Policy (2009)

- Make mention of "biological diversity" conservation (amongst others) in its Preamble statements, as other sectors that may benefit from actions that reduce emissions, but offers no clear definition.

Fiji Forest Policy (2007)

- Guiding Principles - Sustainable forest management is anchored in an adequate information and knowledge base.
- Decision making towards sustainable forest management will be based on scientific research and systematic monitoring.

Gaps in PLRs and their implementation for e.1

- Definitions in NBDSAP policy of biodiversity not picked up in legislation;
- Mapping is not widely prescribed as a requirement at law but are necessitated through document submission as required by regulations for applications- for example leasing of iTaukei lands where mapping is not mentioned in the Act but prescribed as requirement through its Leases and Licenses Regulations (see iTaukei Land Trust Board Leases and Licenses Regulations (section 33) Cap 134).

e.2 Avoid or minimize adverse impacts on natural forests, biological diversity and ecosystem services and instead promotes their conservation

Requirements that exist in PLRs related to avoiding or minimizing adverse impacts on natural forests, biological diversity and ecosystem services and instead promoting their conservation

Environment Management Act (2005)

- s.8(f) - The functions of the Council is to ensure that commitments made at regional and international fora on environment and development are implemented;
- s.11 - In carrying out its functions, the Council may require the Department to design and implement policies and programmes on pollution and waste management, abatement and reduction;
- s.11(i) - To provide technical advice on pollution control and abatement methods; section.14-waste management and pollution control unit to (b) formulate, implement, monitor the national waste management strategy;
- s.15 - Environmental Management Units-for processing of environment impact assessments and (c) for the surveys, inspections and collation of geographic and natural resource information for the purpose of the national resource inventory.

National Biodiversity Strategy and Action Plan (2020-2025)

- Mission Statement to ensure that pressures on biodiversity are reduced, ecosystems are restored, biological resources are sustainably used and benefits arising out of utilization of generic resources are shared in a fair and equitable manner;
- Conservation biodiversity is an essential part of safeguarding the biological life support systems in Fiji.

Fiji Forest Policy (2007)

- Fields of Forest Policy and Action - Ensured ecosystem stability through conservation of forest Biodiversity water catchments and soil fertility;
- Part 5 - Guiding principles - Conservation and sustainable use of Fiji Forest resources are the foundation of all development in the forest sector and for ensuring intergenerational equity;
- Conservation and sustainable use of forest resources is a collective responsibility of all levels of government;
- Conservation and sustainable management of Fiji's natural forests are the most important means of conserving the vast majority of Fiji's endemic flora and fauna, therefore the establishment of a comprehensive system of reserves and conservation area at the national and local level is integral part of the national forest policy.

Forest Bill No 13 (2016)

- s.15 - Management of nature reserves and forest reserves to be managed sustainably for the purposes of ensuring their protection and securing long term benefits for future generations;
- s. 15(2) - Nature reserves must be managed for the exclusive purpose of permanent preservation of their environment including flora, fauna, soil and water.

Gaps in PLRs and their implementation for e.2

- Natural forest not defined but need clear laws for its protection through sustainable development and conservation.

e.3 Avoid or minimize adverse social impacts and instead promotes and enhances human well-being with special attention to the most vulnerable and marginalized groups

Requirements that exist in PLRs related to avoiding or minimizing adverse social impacts and instead promoting and enhancing human well-being with special attention to the most vulnerable and marginalized groups

Climate Change Bill (2019)

- s.42 - Low Emission Development Strategy (LEDS) in developing review of Fiji's low emission development strategy is to be informed by:
- (g) the social circumstances, in particular the likely impact of strategies and policies on the marginalized and disadvantaged communities

REDD+ Policy (2009)

- Recognize that vast majority of Fiji forests are owned by Fiji's indigenous people and therefore the knowledge and rights of the indigenous people shall be guaranteed as defined under UNDRIP, the Convention on Safeguarding of the Intangible Cultural Heritage (UNCSICH), and other international instrument on rights of Indigenous people;
- Full and active participation of indigenous people and other relevant stakeholders;
- Equitable distribution of benefit to rights owners;
- Consideration of gender issues in all phases of decision making and implementation.

National Biodiversity Strategy and Action Plan for Fiji (NBSAP)-2020-2025

Principles underpinning Strategy-based on premise:

- That most natural resources in Fiji are owned and used by indigenous and local communities;
- Biodiversity conservation in Fiji is greatly dependent on how landowners and local communities choose to manage their landholding ownership and fishing rights;
- Call on partners and stakeholders to actively recognize, respect and support; community property rights including traditional rights over natural resources, indigenous intellectual property rights relating to natural resources and cultural knowledge;
- Community decision making structures and practices are to be respected while ensuring gender inclusivity in decision making;
- Active participation and ownership of resource in conservation and resource management initiatives will ensure long term sustainability and success of biodiversity conservation;
- That increasing commercialization of natural resource use is threatening the system and constitutes a major challenge to biodiversity conservation;
- Recognition of the value of traditional knowledge and wise use of management practices to sustainable Biodiversity management.

Forest Bill (2016)

- s.15(1) - Forest reserve must be managed sustainably for the purposes of ensuring their protection and securing long term benefits for the future generations;
- s.21 - Conservator of Forest shall issue Forest Management Licenses for the purposes of creating long term tenures for persons, organizations, or companies which can demonstrate a commitment to sustainable forest management and harvesting of trees within a forest plantation;
- s.32 - The Conservator must endorse and issue forest management policies to ensure sustainable forest management and the marketing of forest products in accordance with standards set up for forest owners and forest users.

Gaps in PLRs and their implementation for e.3

- Need participatory mapping of community reliance on forest resources;
- Lack of definition in PLR of vulnerable and marginalized people;
- Often social impact assessment is not fully implemented because of logistical and enforcement issues.

Safeguard (f) - Actions to address the risks of reversals

f.1 Risks of non-permanence

PLRs that require assessment of risks of reversal to past practices and loss of benefits achieved

Climate Change Bill (2019)

- s.52 - If Fiji Mitigation Outcome Unit have been issued in respect of Fiji Emissions Reduction Programme, Project or Activity, and there has been a reversal or loss of carbon stocks within the permanence period of that Programme, the proponent must report the reversal or loss of carbon stock so Head of Division, taking account of any factors outside the control of the proponent, require the proponent to remedy the reversal or loss of carbon stocks;
- s.52(3) - Proponent may satisfy a requirement under this section to remedy the reversal within 90 days;
- s.52(3)(a) - Submit a remediation plan to HOD.
- s.52(3)(b) - Purchasing and cancelling a number of Fiji Mitigation Outcome Units or other reduction units approved by HOD;
- Liability for failing proponent is to pay all costs incurred by Government to remedy the loss;
- s. 59 - Minister may make Regulations to require a person to keep all transaction records of 7 years prior.

PLRs that promote and support actions to address the risk of reversals/non-permanence

Yes, see Climate Change Bill (2009):

- s.50 - Issue of FMOU in respect of Fiji Emission Reduction Projects, Programmes and Activities;
- s.51 - Property in Fiji Mitigation Outcome Unit;
- s.52 - Requirement to cancel FMOU where there have been reversals;
- s.53 - Registration and conduct of emission reduction costs program and activities under approved international emission reduction standards.

Safeguard (g) - Actions to reduce displacement of emissions

g.1 Risks of displacement

PLRs that require assessment of risks of displacement of activities

Climate Change Bill (2019)

- s. 27(1) - A person who operates facilities in Fiji that collectively emit in excess of the amount of tonnes of carbon dioxide equivalent per financial year designated by the Minister by regulation, order or by-law for the purposes of this subsection must, from the financial year commencing on 1 August 2020, keep and provide information to the Head of Division on - (a) their net greenhouse gas emissions for the financial year, including emissions by sources and removals by sinks of greenhouse gases and any emission reductions transferred internationally under Article 6 of the Paris Agreement or for any other purpose; and (b) any other matter prescribed in regulations developed in accordance with subsection;
- A person who is required to provide information in accordance with subsection 27 and fails to do so within 3 months after the end of the financial year commits an offence and is liable on conviction to a fine not exceeding \$750,000;
- Review of the National Climate Change Policy 25 - (1) The Minister must, with the assistance of the Head of Division, review and amend the NCCP for successive 10-year periods in alignment with the review and enhancement of Fiji's successive NDCs;
- s.27(5) - The Minister may make regulations which set out the content and form of the information that must be kept and provided to the Head of Division in accordance with subsection 27, including with respect to:
 - a. volumes of fuel imported, exported, produced, distributed, sold, or used, and the nature of the use of that fuel;
 - b. industrial processes, including by-products from industrial processes;
 - c. emissions of greenhouse gases into the atmosphere;
 - d. composition of vehicle fleets and use of vehicles, including, but not limited to, distances travelled;
 - e. waste composition and weight, dimensional characteristics of landfills and dumps, and volume of landfill and dump gases extracted and combusted;
 - f. numbers of ruminants and other farmed livestock and their emissions;
 - g. areas of crops and amounts produced; (h) amount of nitrogenous and lime fertilizers used;
 - h. native and planted trees, the amount of harvesting, the area of land in scrub, and the area of land in other land uses that are necessary to determine land use change under the Convention or the Paris Agreement;
 - i. imports and exports of greenhouse gases controlled by the Montreal Protocol; and
 - j. imports, exports, manufacture, sales, and the nature of the use of products that contain hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride.
- s.27(6) - Regulations made under subsection (5) may specify - (a) requirements that an activity, or series of activities, must meet to be a facility under this Act; (b) minimum thresholds of greenhouse gas emissions, energy consumption and energy production for facilities or persons; (c) methodologies for calculating anthropogenic emissions by sources and removals by sinks of greenhouse gases; and (d) the system for monitoring, reporting and verification so as to ensure the accuracy and integrity of reports.

PLRs that promote and support actions to address the risk of displacement

Emission displacement can mean the country's foreign trade contributes to reduced domestic emissions through low carbon intensity exports but increased emissions abroad through imports of high carbon intensity industrial goods.

Fiji Low Emission Development Strategy (2018-2050)

- LEDS national context in order to ensure sustainable national development, it is critical to decouple economic growth from carbon emissions, whilst at the same time ensuring that Fiji meets all its development objectives.

Fiji Sustainable Economic and Empowerment Development Strategy (2008-2010)

- Strategy has environment objective of enacting appropriate legislation to improve sustainable energy use, including National Energy Policy (NEP) and Renewable Energy based Rural Electrification Act;
- Strategy to measures to reduce fossil fuel consumption, including in the transport sector, and encourage alternative fuels for the power and other sectors efficiency service.

Green Growth Framework for Fiji (2014)

- Aims to make Fiji more energy reliant by improving efficiency and reducing dependence on import fossil fuels;
- This will require investment in additional renewable energy project, increasing public education and awareness on energy efficient technologies and practices and attracting more private sector investment in large scale electricity generation.

National Energy Policy (2013-2020)

- The objectives of the national policy are to establish environmentally sound and sustainable systems for energy production, procurement, transportation, distribution, and end use;
- To increase the efficient use of energy and the use of indigenous energy sources to reduce the financial burden of energy imports on Fiji.

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Annexes

Annex I

CANCUN SAFEGUARDS	
<p>a. REDD+ actions complement or are consistent with objectives of national forest programmes and relevant and relevant international Conventions and Agreements</p>	1. Consistency and complementariness with the objectives of the national programme
	2. Consistency with regional commitments on climate, contribution to national climate policy objectives, including those of mitigation and adaptation strategies
	3. Coordination among agencies and implementing bodies for REDD+, national forest programme and national policy(ies) that enact the relevant international Conventions and Agreements
	4. Consistency with the achievement of Sustainable Development Goals, contribution to national poverty reduction strategies
	5. Consistency with international commitments, contribution to national biodiversity conservation policies (including National Biodiversity Strategies and Action Plans)
	6. Consistency with State's human rights obligation under international law, including the core international human rights treaties and ILO 69 where applicable
<p>b. Transparent and effective national forest governance structures, considering national legislation(s) and sovereignty</p>	1. Access to information
	2. Accountability
	3. Land Tenure
	4. Access to justice, including procedures that can provide effective remedy for infringement of rights, and to resolve disputes (i.e. grievance mechanism)
	5. Gender Equality
	6. Institutional Framework
<p>c. Respect for the knowledge and rights of indigenous peoples and members of the local communities, by taking into account relevant international obligations, national circumstances, and laws, and noting the UN General Assembly has adopted the United Nations Declaration on the Rights of Indigenous People.</p>	1. Definition/determination of indigenous people and local communities
	2. Recognition of collective rights to lands, territories, and resources

	<p>3.Right to compensation and/or other remedies in the case of involuntary resettlement and/or economic displacement</p> <p>4.Rights to share benefits where appropriate</p> <p>5.Free, Prior, Informed Consent</p> <p>6. Recognition and protection of indigenous peoples' and local communities' traditional knowledge and cultural heritage</p>
d. Full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities [in REDD+ actions]	<p>1.Identification of relevant stakeholders</p> <p>2.Legitimacy and accountability of bodies representing relevant stakeholders</p> <p>3.Recognition and accountability of bodies representing relevant stakeholders</p> <p>4 Stakeholders having the information they need to participate effectively</p>
e. REDD+ actions are consistent with the conservation of natural forests and biological biodiversity, ensuring that REDD+ actions are not used for the conversion of natural forests and their ecosystem services, and to enhance other social and environment benefits	<p>1.Definition of natural forest and biodiversity</p> <p>2.Avoid or minimize adverse impacts on natural forests, biological diversity and ecosystem services and instead promotes their conservation</p> <p>3.Avoid or minimize adverse social impacts and instead promotes and enhances human well-being with special attention to most vulnerable and marginalized groups</p>
f. Actions to address the risks of reversals	<p>1.Risk of non-permanence</p>
g. Actions to reduce displacement of emissions	<p>1.Risk of displacement</p>

ANNEX 2: LAWS OF FIJI

- ✓ iTaukei Lands Act (1905)-CAP 133
- ✓ iTaukei Lands Trust Act (1940)-CAP 134
- ✓ State Acquisition of Lands Act (1940)-CAP 135
- ✓ State Lands Act (1945)-CAP 132
- ✓ Town Planning Act (1946)-CAP139
- ✓ Mining Act (1966)-CAP 146
- ✓ Agricultural Landlord and Tenant Act (1967)-CAP 270
- ✓ National Trust of Fiji Act (1970)-CAP 265
- ✓ Land Transfer Act (1971)-CAP 131
- ✓ Petroleum (Exploration and Exploitation Act) (1978)-CAP 148
- ✓ Forest Act (1992)-CAP 150
- ✓ Endangered and Protected Species Act (2002)
- ✓ Environment Management Act (2005)
- ✓ Land Use Decree (2010)
- ✓ Constitution of the Republic of Fiji (2013)
- ✓ Forest Bill No.13(2016)
- ✓ Fair Share of Minerals Royalties Act (2018)
- ✓ Climate Change Bill (2019)
- ✓ Constitution of the Republic of Fiji (2013)
- ✓ Prevention of Fires Act-CAP 145 (1989) - repealed by Forest Decree (Act) (1992)

ANNEX 3: INTERNATIONAL INSTRUMENTS

- ✓ The International Tropical Timber Agreement (1940)
- ✓ UN Convention to Combat Desertification (1940)
- ✓ The RAMSAR Convention on Wetlands Agreement (1971)
- ✓ The Convention on International Trade on Endangered Species (CITES) (1975)
- ✓ The Convention on Wetlands of International Importance especially as Water Flow Habitat (1975)
- ✓ International Plant Protection Convention (1979)
- ✓ Convention on International Trade in Endangered Species of Wild Flora and Fauna (1983)
- ✓ Convention on the Protection of the Natural Resources and Environment of the South Pacific/Asia (1986)
- ✓ UN Framework Convention on Climate Change (1992)
- ✓ Convention on Biodiversity (1992)
- ✓ Agreement Establishing the South Pacific Environment Program (1993)
- ✓ Kyoto Protocol (1998)
- ✓ Protocol to the UNFCCC (1998)
- ✓ Cartagena Protocol on Biodiversity (2000)
- ✓ International Treaty on Plant Genetics Resources for Food and Agriculture (2001)
- ✓ Statute of the Renewable Energy Agency (2009)
- ✓ Cancun Agreement (2010)

- ✓ Nagoya Protocol to Genetic Resource and Fair and Equitable Sharing (2011)
- ✓ Pacific Island Regional Policy Framework for REDD+ (2012)
- ✓ Paris Agreement under UNFCCC (2015)
- ✓ Carbon Offsetting and Reduction Scheme for International Aviation (2016)

ANNEX 4: INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

- ✓ Geneva Convention (1949)
- ✓ International Covenant on Civil and Political Rights (ICCPR) (1966)
- ✓ International Covenant on Economic, Social and Cultural Rights (ICESR) (1966)
- ✓ Additional Protocol to Geneva Convention (1977)
- ✓ Convention against Torture and other Criminal Inhuman or Degrading Treatment (UNCAT) (1984)
- ✓ Convention on the Rights of the Child (1989)
- ✓ Indigenous and Tribal Peoples Convention - ILO 169 (1989)
- ✓ International Convention on the Protection of the Rights of all Migrant Workers and their Families (1990)
- ✓ ILO i69 (1998)
- ✓ Optional Protocol on the involvement of Children in Armed Conflict (2000)
- ✓ International Convention for the Protection of all Persons from Enforced Disappearance (2006)
- ✓ UN Declaration on the Rights of Indigenous People (2009)
- ✓ Protocol Against the Smuggling of Migrants by Land, Sea and Air (2017)
- ✓ UN Convention on the rights of Person with Disabilities (2017)