Fiji:
Various Issues of Alienation of Land Through Failed
Land Tenure & Policy

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I. INTRODUCTION

In the latter half of the twentieth century, a number of Indo-Fijian farmers on the Western side of Fiji’s main island, Viti Levu, burned down their own houses and establishments despite having successful farms. Naturally, one asks: what forces were at play to cause such a phenomenon?

This article will explore this question and the general land tenure issues that both Indo-Fijians and Fijians face. In order to do so, I will first discuss the colonial policy, as it is still very much unchanged despite Fiji’s independence from Britain in 1970. By the end of this article, the reader should understand the complexity and discriminatory frustrations that both ethnic groups systemically endure and its build up to the series of coups, as well as the aforementioned phenomenon of the destruction of one’s own property.

Colonial-imposed policy implemented through both the British Colonial Office and the Australian Colonial Sugar Refinery (“CSR”) created a land tenure system that ultimately alienated Fijians from their ancestral land and Indians from their labor and land. The British Colonial Office faced challenges with different agendas from various stakeholders, including the protection and simultaneous appeasement of native Fijians, the guaranteeing of land for CSR’s sugar cane production, and the dismay and protests of Indo-Fijians. In response, the Colonial Office tried to

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accommodate these complex, conflicting interests by enacting land tenure statutes and policies. However, long after Fiji’s independence, the majority of these land policies have remained intact and have been a major cause of Fiji’s coups. As there is existing literature on the causation of coups and political and economic strife in Fiji, particularly on the subject matter of land tenure, I aim to focus on systemic alienation of Indo-Fijians and Fijians from their land, respectively. More specifically, throughout my discussion, I will analyze land law policies that enabled and catalyzed alienation, particularly the Torrens system, the iTaukei Land Trust Board (“iTLTB/NLTB”), and Agriculture Land Tenure Act (“ALTA”). I will use dominating theoretical approaches, especially in relation to property, in order to critically analyze the policies themselves and their contribution to exemplify the alienation of property.

It should be noted that Fijians and Indo-Fijians tend to be discussed in terms of either their identity constructs in ethnography or sociology literature or in a separate manner, from more recent political and economic conflicts; however, the two matters cannot be divorced. One cannot comment on the political and economic history or analyze the versions and drafts of policies and legislation without first understanding the historical alienation of each respective ethnic group in the context of one of the most contentious issues of Fiji—land tenure. It becomes easy to fall into the trap and overlook the history in discussing such a complex issue and has simplified the relationship of Fijians and Indo-Fijians to “native-and-settler,” respectively. Whilst I argue for more of a “native-and-slave” context in which the former term implies a zero-sum privilege enjoyed by the settler to the detriment of the native and the latter term implies subordination of both groups. As such, this article should serve as a precursor to academic discussion surrounding Fiji’s recent political and economic strife.

In discussing land tenure policies, this article questions the ability of Fiji’s modern land tenure system as the South Pacific country still endures a similar design to other former British colonies, which was instilled to effectively protect interests of landowners and renters while simultaneously maximizing the economic utilization of the land. I will briefly discuss short-term solutions implemented to address the inefficiencies of remaining colonial land tenure.

In order to discuss alienation of land, it is first necessary to define land ownership. I rely on Blackstone’s English definition of ownership, particularly relevant for a fee simple absolute estate, or freehold, in which owners have absolute ownership of their property with the exception of the

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2 Agriculture Land Tenure Act (1966) (Fiji).

laws of the land as a limitation. In his article characterizing and distinguishing land tenure in the South Pacific, Boydell argues, in support of the Pacific Islands Forum Secretariat report, that there often occurs misusage of imposed terms such as “ownership.” As such, Blackstone’s traditional definition is substantially inadequate as there are further restrictions that lie on Fijian freehold land, including that of the Crown and the State. Fiji’s land laws, however, were created under a system of English law, therefore, one cannot divorce Fijian law from English common law. This being the case, Blackstone’s definition is sufficient in practical, modern-day use in Fiji. As such, it is still appropriate to apply this Western definition of ownership as it has become generally accepted by Fijian nationals, practitioners, and courts alike.

II. BRITISH-IMPOSED LAND TENURE: INDO-FIJIAN ALIENATION OF LABOR & LAND

The majority of today’s Indo-Fijians are descendants of former indentured servants who were brought to Fiji as girmityas, or those of the girmit, a Hindi attempt of the English word “agreement.” These indentured servants were often brought to Fiji for the specific purpose of sugar cane farming under CSR. Some have even suggested that the term “indentured servant” is misleading as indentured servitude in Fiji was closer to slavery in practice. For example, European plantation owners would remind indentured servants that “for five years you belong to me” and it was not uncommon for female indentured servants to be sexually abused. Thus, enduring such treatment is more characteristically similar to slavery than servitude. Furthermore, many of these indentured servants worked on European plantations in which the European settlers either wholly owned

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5 Spike Boydell, South Pacific Land: An Alternative Perspective on Tenure Traditions, Business, and Conflict, 11 GEO. J. INT’L AFF. 18 (2010) (arguing that ownership in the communal sense of many South Pacific nations are not in alignment with Western preferences of the individual and Western notions of property rights).


8 See id. at 107.

9 Id. at 107.
these freehold lands or were substantially leasing from natives.\textsuperscript{10} As of the early twentieth century, it has also been argued that indentured servitude was a global substitute to African slavery given the high costs of using emancipated slave labor.\textsuperscript{11}

As sugar cane farming, a labor-intensive process, continued after the end of indentured servitude, many descendants of these servants still continued to farm sugar cane. CSR took over these European plantations and subleased plots of land to Indo-Fijians.\textsuperscript{12} This can be compared to African-American cotton farmers in the South who continued to farm even after slavery was abolished. As such, even after the abolishment of indentured servitude in Fiji, the Indo-Fijians were still unable to own freehold land under the Colonial regime; they were merely leasing the land from either natives or CSR.

Although no longer indentured servants for about one hundred years, Indo-Fijians, along with other ethnic groups, still lack full legal proprietary rights as imposed by colonial policy. Currently, Indo-Fijians may only hold Crown land through a lease or fee simple absolute which amounts to 8\% of land.\textsuperscript{13} More commonly, Indo-Fijians have the option of leasing land owned by the Native Land Trust Board ("NLTB"), particularly farm land through ALTA.\textsuperscript{14} More than half of the agricultural leases in Fiji and nearly half of all residential leases in Fiji are to Indo-Fijians who make up 43\% of Fiji’s citizenry.\textsuperscript{15} It is also important to note that Indo-Fijians make up 80\% of all sugar cane farmers in which sugar cane is a staple to the export industry and Fiji’s economy.\textsuperscript{16} Leases granted under the Native Land Trust Act ("NLTA") were often short-term leases ranging from five to ten years, renewable at the discretion of the landowner and the NLTB.\textsuperscript{17} Under ALTA, Indo-Fijians in the early twentieth century were given ninety-nine years on leases of native land, which started expiring in the early 21\textsuperscript{st} century, further deemed unrenewable under the same scheme. This is where

\begin{itemize}
  \item[\textsuperscript{10}] See Michael Moynagh, \textit{Land Tenure in Fiji’s Sugar Cane Districts since the 1920s}, 13 J. PAC. HIST. 54 (1978).
  \item[\textsuperscript{12}] Moynagh, \textit{supra} note 10, at 54.
  \item[\textsuperscript{13}] Matthew Dodd, Reform of Leasing Regimes for Customary Land in Fiji (2012) (unpublished LL.B.(Hons.) dissertation, University of Otago) (on file with the University of Otago Library).
  \item[\textsuperscript{14}] Id. at 21.
  \item[\textsuperscript{15}] VIJAY NAIDU & MAHENDRA REDDY, NA GHAR NA GHAT KE; ALTA AND EXPIRING LEASES: FUJIAN FARMERS’ PERCEPTIONS OF THEIR FUTURE 4 (2002).
  \item[\textsuperscript{16}] Id.
  \item[\textsuperscript{17}] Id. at 7.
\end{itemize}
the modern-day land issue crisis begins for Indo-Fijian sugar cane farmers: what to do when your 99-year leasehold ends and the native landowners do not wish to renew it?

It is important to look at the historical context before delving into the current policy dilemma. One of Fiji’s earlier statutes regulating Indians in their use of land was the Native Lands (Leases) Regulations of 1915 under the Native Land Ordinance of 1905, which was used as “specific discrimination against Indians” in order to separate and distinguish the Indian community from the Fijian community.\(^\text{18}\) Furthermore, when creating ALTA under the Agriculture Landlord and Tenant Ordinance (“ALTO”),\(^\text{19}\) the British Colonial Office thought their plan ingenious, at least from a colonial and business context. The Colonial Office thought they had struck a balance between both ethnic groups’ interests by protecting Fijian landowners and simultaneously ensuring productivity of land, not necessarily its marketability.\(^\text{20}\) As a case in point, Gillion, who explains the socioeconomic position of Indo-Fijians, writes that the colonial government of the early twentieth century “was happy to see the Fijians lease their unused lands to Europeans or Indians, but was concerned that Indian settlement should be controlled.”\(^\text{21}\)

During this time, it is also crucial to note that England was undergoing land tenure reforms of its own in which a system of title by registration,\(^\text{22}\) would significantly increase the marketability of land to ensure smoother land sales and title transfers. In Fiji, however, the opposite was true as a high turnover of legal titles in Fiji was against the interests of the Colonial Office. In fact, in order to protect native Fijians’ land interests but also to ensure that corporations could produce sugar by the Indo-Fijians’ labor, they devised, after several drafts, a clever plan to capture all these interests. Through ALTA, long-term leases would be available to Indo-Fijians of Fijian land for at least thirty years.\(^\text{23}\) However, after these 30-year leases ended, the Fijians could choose not to renew or extend the leases provided they were able to compensate Indo-Fijians for permanent improvements to the land.\(^\text{24}\) In *Hallen v. Spaeth*, the English Privy Council held that, in the case of lease contention between a lessee and landlord,


\(^{19}\) Agriculture Landlord and Tenant Ordinance (1966).

\(^{20}\) See Moynagh, *supra* note 10, at 70.

\(^{21}\) Gillion, *supra* note 18, at 189.


\(^{24}\) Id. at 6-7.
should the landlord choose not to extend a lease, he is liable to pay the valuation of all the lessee’s “buildings, crops, implements, and stock.” As I will explain later, the Fijian landowners may have had no choice but to allow the Indo-Fijians to keep leasing their land as they may not have been able to afford the compensation owed to the Indo-Fijians. As a direct result, this increased frustrations and tensions between the Fijian landowner and Indo-Fijian farmer. In the aforementioned scenario regarding burning one’s own house, the Indo-Fijian farmer likely burned their house in frustration of 1) not being compensated fairly for their improvements to the land such as the construction of a house, and 2) not being able to obtain a fair, substantial lease. Thus, this paints a clearer picture as to the reasons why Indo-Fijians may have been motivated to burn down their own houses.

The English colonial officers, knowing that Fijians were not likely to afford the compensation for improvements to the land, implemented ALTA to prevent native land from being securely and efficiently used by Indo-Fijians. The legacy of colonial policy discrimination rooted in ALTA continues as reaffirmed by the Fijian courts in Nadi Bay Beach Corporation v. Sakina and Ahmed in which the court interpreted s. 13 of ALTA in favor of the freehold owners, to only allow for a one-time extension of the lease after its original expiry date. Furthermore, the court noted that the defendants were not entitled to another lease extension and ordered them to vacate the land premises within one month. It is further noted that the process in procuring a lease was lengthy and required Indo-Fijians negotiating with Fijians, particularly in regards to native land. Especially relevant is the fact that many Indo-Fijian farmers were never compensated for their improvements to the land per policy stipulations. Bennett, focusing on the impact of global forces during World War II has argued that during Fiji’s wartime efforts under the British Colonial Empire, Indo-Fijians were compensated fairly and were not discriminated against in this sense. However, I argue that it is more than just a mere monetary compensation dilemma of their investments in land they did not own.

To Indo-Fijians, such a system meant insecurity in the future of their land tenure. Would their leases be renewed? If not, what was to be their fate? How would they provide for themselves and their families after generations of sugar cane farming? Where would they relocate to? Naturally, to Indo-Fijians facing lease termination, land tenure became a heated national political issue.

While many Indo-Fijians chose to emigrate to Australia, New Zealand, and the United States, particularly after the coups, those who stayed back had three main options: 41.9% preferred a lump sum payment (compensation), 3.1% preferred resettlement to a five-acre plot, and 55% preferred a lease renewal. As such, the majority of surveyed farmers preferred their lease renewed with the lump sum payment preference trailing closely behind, indicating farmers’ strong dismay and lack of faith in the land tenure system of agricultural leaseholds. Furthermore, in Re Azmat Ali, the Court of Appeal held that the Agriculture Tribunals had the ability to create leases under ALTA without express consent of the NLTB. Naidu’s survey further established that ALTA is perceived by Indo-Fijians to be favorable to other means of securing a lease. However, the Tribunal and ALTA’s limited ability to assist Indo-Fijians in establishing leases or tenancies, particularly with the allowance of extension of leases, is little more than a short-term solution that does not solve the Indo-Fijian problem of security and barriers to gaining land ownership rights.

How can Indo-Fijians ever feel secure about their future when every several years they face the prospect of their farm and even families being displaced at the hands of landowners or the NLTB? While investment and maintenance to land is to be compensated under the current and colonial system, how can a monetary value be assigned to the labor, care, planning, and efforts put into the land, especially land that has been in the family for so many generations? Moreover, the current land tenure system makes it difficult, or nearly impossible, for Indo-Fijians to become property owners.

To better illustrate the context and alienation of Indo-Fijians, I will briefly compare the status of Indo-Fijians land ownership (policy) rights to that of Arabs in Israel. As it currently stands, the Israel Land Authority (“ILA”) manages 93% of Israel’s land, which includes the Jewish National Fund, established on behalf of Jewish settlement of Israel (17%), the Development Authority lands (61%), and ILA lands (71%). In contrast, the Arab population of Israel owns approximately 2.5% of land in Israel through the collective Arab local governments. While ILA-managed land is not for sale as an absolute fee simple or freehold, it can be leased in terms of 49- or 98-year leases. Furthermore, in Aadel Kaadan v. Israel Land Authority

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30 Id.
Authority, the Supreme Court of Israel prohibited the Israel Land Authority, a public authority, from discriminating both directly and indirectly on the basis of nationality or religion.\textsuperscript{34}

However, as the Palestinian land displacement conflict is more well-known than the systemic oppression of Indo-Fijians, I seek to demonstrate that Indo-Fijians are not in a much better position in terms of land tenure policy. Whereas Arabs make up approximately 20\% of Israel’s population and own 2.5\% of Arab land (freehold),\textsuperscript{35} Indo-Fijians, approximately 43\% of the population, comparatively own only 1.5\% of land (freehold) in Fiji.\textsuperscript{36} Furthermore, Europeans and those of European descent, making up 3\% of the population, own approximately 5.5\% of the 9\% freehold land in Fiji.\textsuperscript{37} Additionally, Arabs in Israel who do manage to acquire short-term leases can procure them for terms of 49 or 98 years compared to Fiji’s Indian population who are only entitled, under ALTA, to receive an extension of thirty years. In this sense, Arabs or Palestinians, who have greater opportunities to purchasing longer-term leases and manage to effectively purchase a lease, have more security in their tenure than Indo-Fijians who hold leases. While the actual practice of marketing and selling leases to Arabs and Palestinians may be altogether discriminatory, Palestinians, prima facie, arguably have more security and land ownership rights than Indo-Fijians do, at least from a policy perspective.

III. THE FAÇADE OF FIJIAN LAND OWNERSHIP: ALIENATION OF FIJIANS FROM THEIR LAND

Cultivated land belonged to the man who originally farmed it, and is passed undivided to all his heirs. Waste land is held in common. Native settlers who have been taken into the tribes from time to time have been permitted to farm some of the waste land, and for this privilege they and their heirs must pay a yearly tribute to the chief either in produce or in service. Thus this form of personal lala is simply rent. The whole subject of land-ownership has given the poor English a world of trouble, as one may see who cares to read the official reports of the numerous intricate cases that have

\textsuperscript{34} HCJ 6698/95 Aadel Kaadan v. Israel Lands Administration (2000) (Isr.) (referencing opportunities of leasing land without any discussion of the original displacement of Palestinians and highly controversial issue regarding Israeli treatment of non-Jews).

\textsuperscript{35} LAND AND HOUSING RIGHTS VIOLATIONS IN ISRAEL’S UNRECOGNIZED BEDOUIN VILLAGES: IV. DISCRIMINATION IN LAND ALLOCATION AND ACCESS, supra note 33.

\textsuperscript{36} See Naidu & Reddy, supra note 15, at 4.

\textsuperscript{37} Id. at 4-5.
come before the courts.\(^\text{38}\)

At first, it seems quite remarkable that indigenous peoples are able to hold much of their customary land. In spite of the Crown holding interest in Fijian lands,\(^\text{39}\) it was a fundamental goal of the British to prevent Fijian’s alienation from their land.\(^\text{40}\) In fact, Gilbert, in his discussion of indigenous land rights, commended Fiji’s signing of a declaration in protecting native’s land rights.\(^\text{41}\) This is misleading. As the British needed a more impactful way of colonizing the Fijians, they increased the chiefs’ power of land management and distribution, which was not initially the customary practice of Fijians. While the chiefs were given the power to oversee land management, native Fijians traditionally had a more communal, social approach to land distribution and management which was based more on need and actual use than Western land inheritance values.\(^\text{42}\)

Indigenous land practices had a more Lockean approach to property ownership in which the addition of labor to the commons resulted in property ownership. John Locke defines private property by stating “[t]hat labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right.”\(^\text{43}\) While John Locke was not writing in specific reference to native Fijians, this is a more accurate description of traditional Fijians’ idea of acquiring private property in comparison to the British reallocation of property rights indirectly to their Colonial Office through the hands of the chiefs. One can even make a more fundamental argument that introducing such a concept of private property and division of lands not only completely reconfigured the Fijians’ relationship with their land by adding the dimension of temporality to land ownership such as fee simple absolutes and leases, but it also changed the social and power hierarchy of Fijian society.

Accordingly, chiefs’ power over land was more powerful post-British contact than pre-British contact; the British-coined term \textit{matanitu},\(^\text{44}\) for victorious chiefs’ newly carved land was created to allow them to


\(^{39}\) Boydell, \textit{ supra} note 5, at 21.


\(^{42}\) \textit{Ron Crocombe, LAND TENURE IN THE PACIFIC} 9 (3d ed. 1987).

\(^{43}\) \textit{John Locke, SECOND TREATISE OF CIVIL GOVERNMENT}, Ch. 5 (1699).

\(^{44}\) \textit{Crocombe, supra} note 42, at 8.
exercise their land rights. For the British, such centralization of power meant an ease of ability to do business and increase economic productivity—an essential feature for colonization. Naturally, giving the chiefs extended power over the lands led to a decreased power of the common Fijian within his tribe. Crocombe further elaborates:

Unlike systems of codified law, wherein specific rights are gained and lost by specific acts, in the various unwritten codes and customs of the Pacific peoples, potential rights frequently grew over time as a function of participation in particular activities. That is, land rights waxed and waned as an integral part of other social and democratic processes . . . . In highly monetized societies, by contrast, land rights are more frequently acquired by acts independent of other relationships.\(^{45}\)

In essence, this led to the common Fijian, allocated with specific plots of property in relation to his chief and tribe, being less able to make decisions over his land. To further alienate the common Fijian from his land, the NLTB was initially established to protect Fijian interests. Over the course of colonization, the common Fijian would continue to lose exclusive ownership rights over his own land. The Colonial Office assumed that the common Fijian was disinterested or not capable of understanding property ownership rights and responsibilities,\(^{46}\) which conveniently allowed for the justification of the colonization of Fiji.

I argue that the NLTB is a hybrid of the Torrens system’s land registry with a board of trustees tasked with protecting the interests of Fijian beneficiaries. In comparison to most common law land registry systems and trusts, the NLTB is counterproductive in its management of land and its beneficiaries’ interests. In common law, property owners have an absolute, \textit{in rem} right over their land and can choose how to enjoy their land, including the issuing of a license or sublet, leasing of their land, etc. However, in Fiji, the distinction is that the NLTB has the final word in approving leases, licenses, and even sublets. Thus, the Western definition of ownership is distinguished in Fiji for 91% of land which is governed by and subjected to the actions of the NLTB.\(^{47}\) In fact, not so much as a license can occur on Fijian owned-land, also known as \textit{mataqali} land, without the permission of the NLTB. In traditional English common law, however, a license can often occur without the consent of a governing board or council; it is merely a contract between the licensor and the licensee. This does not,

\(^{45}\) \textit{Id.} at 14.

\(^{46}\) \textit{Mayer, supra} note 38.

\(^{47}\) \textit{Dodd, supra} note 13.
however, hold true of the vast majority of land in Fiji where the NLTB must even approve of licenses.

Is there actual “sovereignty” of Fijian land? Since the British Crown’s Deed of Cession in 1874, Fijians have merely been in possession of their own land, but it was ultimately at the hands of the law-making British.48 As such, there is an important distinction to be made between possession and ownership as ownership would imply more sovereignty and absolute power according to Blackstone’s definition.49 Furthermore, it is important to distinguish the fact that the Crown allowed Fijians to continue possession of their land, unlike neighboring Australia where the British declared the land to be terra nullius, or no man’s land.50 In categorizing South Australia as terra nullius, the British were able to justify their colonization and appropriation of the land. This was not the case in Fiji, as the British felt it was their duty to protect Fijians’ land from outsiders, particularly from the indentured Indo-Fijians they brought in.51

Theoretically, Fijian’s land is still more sovereign than that of other British colonies’ natives, particularly if we utilize a more Hegelian approach, in which recognition and identity is symbiotic and contingent upon property rights. As such, this puts Fijians in an odd place where recognition was “achieved” but not full ownership, which I classify as pseudo-recognition being subjected to the Crown or NLTB as Fijians would fail a basic litmus test of recognition. Today, Fijian land ownership is still not sovereign or absolute because it is completely subject to the iTaukei Land Trust Board in practice. In Re Azmat Ali, the Court of Appeal, in discussing the NLTA and the importance of the tribunals and ALTA, stated that “the NLTA took away the power of the native owners of dealing with their land. The NLTB was made solely responsible for controlling and administering native land for the benefit of the owners.”52 The court clearly acknowledges native Fijians’ lack of full ownership and property rights. However, the second part of the quote makes one question whether the iTaukei Land Trust Board is actually administering native land for the benefit of native Fijian owners.

In English common law, a trustee is transferred legal title from the settlor in order to make decisions and act on behalf of the beneficiary. If the trustee acts in a manner clearly opposite of the interests of a beneficiary, a court may require a trustee to act accordingly, particularly in situations of

48 Kurer, supra note 40.
49 See BLACKSTONE, supra note 4.
51 Gillion, supra note 18.
fraudulent trustees. Penner has argued for a genuine approach to fiduciary or trustee obligations that cannot merely be assumed for the sake of loyalty; it requires thick loyalty.53 This is especially important as the Fijian landowners are assigned trustees through the iTaukei Land Trust Board. How can their interests truly be observed by a colonial-constructed trustee board?

In surrendering control of native land to the iTaukei Land Trust Board, the court has consistently upheld the power of the NLTB. In Waqa v. iTaukei Land Trust Board, which references Lok v. Ram, the Court of Appeal wrote: “I state further that the concept of indefeasibility of title under the Torrens System should not be allowed in instances where a deed is declared to be void ab initio as in the present case.”54 Furthermore, the Court of Appeal in Waqa applied the British principle of nemo dat habet non, which translates into “no one can give more than what he has.”55 Applying this to the case, the High Court held that the Director of Lands of Fijian mataqali reserves cannot make a decision with a legal impact on the lands without the consent of the iTaukei Land Trust Board. Essentially, what this implies is that the Director of Lands did not have legal title or ownership of the land in the first place and therefore, the land use plan is void from the beginning. In other words, this strengthens the iTaukei Land Trust Board’s power to make final decisions over the land that neither the Director of Lands nor Fijian landowners have the ability to do.

Certain colonial imposed land tenure policies were put in place to strengthen the British government’s control of Fijians’ land. The earliest and probably most significant was the Native Land Trust Ordinance (“NLTO”)56 as it transferred land management from Fijians and their chiefs to the British-controlled Fijian government.57 As Dodd writes, prior to the NLTO, leases were usually short and not renewable. The solution introduced in 1940 was the [iTLTB]. It monopolised the leasing of iTaukei land, and formed a regulatory structure that assumed the burden of negotiating with customary owners of land.58

53 See J. E. Penner, Is Loyalty a Virtue, and Even If It Is, Does It Really Help Explain Fiduciary Liability?, in PHILOSOPHICAL FOUNDATIONS OF FIDUCIARY LAW 159-75 (2015).

54 Waqa v. iTaukei Land Trust Board [2016] FJHC 912 (Fiji).

55 Id.

56 Native Land Trust Act (1940) (Fiji).

57 Moynagh, supra note 10, at 54.

58 Dodd, supra note 13, at 10.
Thus, the NLTB, later known as the iTLTB, became the natives’ required “real estate broker.” However, to demonstrate that Fijians still had power over their land, the British allowed Fijian landowners to reject or choose to not renew leases. This gave Fijians the illusion of ownership choices and furthermore, caused problems between Indians and Fijians as Fijians started to choose not to renew leases, hurting the productivity of the land, Indian laborers’ farming livelihood, and CSR’s ability to produce sugar. In response, the British passed Ordinance No. 23, requiring compensation for all work done to land and fixtures to be paid to the previous tenants. Fijians, particularly in the early twentieth century, were strapped for cash, and, as such, their inability to pay led to the automatic renewal of leases. As Moynagh includes in his analysis of the compensation, Officer Wright was in support of the compensation requirement:

In most cases the native owners are unable to pay compensation fixed by the Governor-in-Council for permanent and unexhausted improvements and the leases are consequently renewed . . . . This procedure affords an effective check to any general movement to refuse renewal of leases. 60

As such, the compensation requirement, which still exists, made land significantly less marketable for Fijian landowners but guaranteed sugar cane farming leases for CSR and Indo-Fijians. It is crucial to note that in traditional English common law, both marketability and saleability are essential to title by registration. However, the implementation of English common law worked to make the opposite stand true for Fijian landowners who could not sell their own land or make it marketable to even new tenants without compensating previous tenants.

IV. FJII’S NEW LAND COMMISSION: HOPE OR PATCH UP?

In Fiji, nothing is more important than land. It is so important that conflict over proposed land reform has been the cause of four coup d’états in Fiji since 1970 . . . . No one initiative would make more of a difference to the future of Fiji than successful land reform. 61

With the emigration of many Indo-Fijians following the coups and ongoing land struggles, the Indo-Fijian population dropped to a more manageable position. In May 2015, the Committee on Better Land Utilisation (“CBUL”) by the Bainimarama Fijian government was given $7

59 Moynagh, supra note 10, at 55 (describing Ordinance No. 23 (1916)).
60 Id. at 56.
61 Dodd, supra note 13, at 1.
million (FJD) in investments in order to subsidize lease payments for further agricultural use.\textsuperscript{62} In addition, the CBUL directly asked the iTLTB to provide information regarding agricultural land use in order to address the ongoing problem of 1,000 sugarcane leases expiring in 2015 and 2016.\textsuperscript{63} While this is merely a short-term patch, it is hopeful that the problems are being directly identified and the government is addressing this problem as a whole rather than on a mere lease-by-lease basis. However, the fear is that it will be as stagnant as ALTA in the sense that it will not address the systemic, recurring issues.

V. Conclusion

Addressing the scenario presented at the beginning of this article, after the first coup in the election of Mahendra Chaudhry as Prime Minister, a small number of Indo-Fijian agricultural tenants whose leases ended and were not renewed, set fire to their own houses. This can be viewed as a response in protest and long-term frustration of the systemic land policies aimed at preventing legal ownership, security, citizenship, equality, and a means of earning a livelihood.

To some academics, the ethnic tensions between Indo-Fijians and Fijians relate more to their inherent characteristics and socio-economic developments; however, this can be overly simplistic because it reinforces the colonial attitude where the ambitious and cunning Indo-Fijians brought to Fiji by the British themselves needed to be checked from the naïve, communal Fijians. This only feeds into the justifications for Colonial intervention. Land tenure, if anything, demonstrates the intricate policies instilled to separate and segregate the two dominating ethnic groups. The aforementioned phenomenon of burning one’s own house is a metaphor explosion of such divisive land tenure policies. As a case in point, this academic quote from 1996 made the following claim regarding Indo-Fijians: “[d]espite its semi-feudal nature, indentureship carried with it aspects of capitalism, including waged labour, rational calculation, and individualism.”\textsuperscript{64} Although Boxill argues that ethnicity is a smokescreen for class division, such assertions further alienate Indo-Fijians from not only their labor on the land but also their choice to continue as sugar cane farmers. Moreover, it promotes a stereotype whereby alienation and hardships endured by Indo-Fijians are easily forgotten and the blame then lies on the ethnic group rather than the policies at hand. Essentially, this view would indicate that the policies themselves align with the inherent


\textsuperscript{64} Ian Boxill, The Limits of Ethnic Political Mobilization in Fiji, 45 SOC. & ECON. STUD. 100 (1996).
nature of Indo-Fijians, which then leads astray from the failures of the still-standing colonial policies.

One of the failures of the colonial policies includes the fact that many native Fijians have not been given the opportunity to substantially own their land, especially if they cannot afford to pay compensation for land improvements to their property. Additionally, the income they receive is heavily taxed as the iTaukei Land Trust Board will pocket a 25% administration fee and then a 30% administration fee goes toward the chiefs and tribes, which does not necessarily ensure equal distribution.

The British, from early on, attempted to address the lease problem Indo-Fijians faced by attempting to pass the Indian Land Settlement Ordinance in 1916 with the approval of the Council of Chiefs, which only allowed for all available land not in use to be leased out to non-natives. This attempt to implement a statute demonstrates the Colonial Office’s acknowledgment and awareness of the land tenure crisis, ultimately forecasted and continued for over 100 years. This issue would again be significantly revisited in the 1993 coup after the election of Mahendra Chaudhry who campaigned in favor of land tenure reform. As such, colonial policy was only the beginning of what would evolve into a deadlocked land tenure system that would deprive native Fijians of substantial use of their land and, simultaneously, Indo-Fijians of ownership rights and security.

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66 Gillion, *supra* note 13, at 188.