

REPORT OF MISSION TO THE FIJI ISLANDS

3 - 26 March 2006

Our mission to the Fiji Islands was very rewarding for us both from the professional and the personal points of view. Concerning the professional one, we had a unique chance to see the reality of international cooperation, its real and potential benefits for local populations, but also the difficulties of getting together a team devoted to an environmental cause. We also had an occasion to give our legal knowledge in service of the Ministry for Fisheries and Forests when commenting for Mr. Batibasanga (*Research director of the Fisheries Department*) one of the first versions of a new law concerning the fisheries that is being drawn up at the moment (*Fisheries Management Act*).

From the personal point of view, this first practical experience was extremely fulfilling and has contributed to our bigger open-mindedness. We had the possibility to meet a traditional community culture and have learned about a political and legal system based correlatively on the Common and the customary laws. Last but not least, we have been marked by the kindness of local people and the beauty and richness of the Fiji's nature.

All the practical requirements for a smooth progress of our mission were satisfied. The welcome we were given was pleasant, in many cases even really warm. In most cases we obtained easily the information needed and often were given access to the relevant documentation. Thanks to the kindness of our contacts at the USP the photocopying was available for us. The living and working conditions were most suitable. Except the first two days spent at the Tanoa Plaza Hotel for the purpose of the CRISP meeting we stayed the whole time with local inhabitants (*The Colonial Lodge*).

→ Law inventory¹

The marine environment law in Fiji is only emerging. We found the human, technical and financial capacities devoted to this field insufficient and not allowing establishment and implementation of rules of control and enforcement that are necessary for any legal regulation to be effective.

There is a number of ministries competent in the field of exploitation and protection of marine resources in Fiji, namely the Ministry for Local Government, Housing, Squatter Settlement & Environment, the Ministry for Fisheries and Forests, the Ministry of Lands & Mineral Resources (competent for mangrove extraction and protection) and the Ministry of Foreign Affairs and External Trade (competent in the field of international relations and issuing of research permits).²

Apart from the texts having the force of law (i.e. the non-respect of which is sanctioned), entitled mostly « Act » or « Decree », the rules concerning the marine environment in Fiji can often be found in form of what the lawyers call the *soft-law*. This « law » is based mainly on the work of international non-governmental organizations as for example WWF (*World Wildlife Fund for Nature*) and regional organizations of which the most important are SPREP (*Secretariat of the Pacific Regional Environmental Programme*) and FFA (*Forum Fisheries*

¹ See Annex 4: Relevant instruments

² See Annex 3 : Contacts

Agency). Last but not least, an important role is played by the scientists from the USP: they help the competent ministries in solving certain technical questions.³

The implementation of rules of exploitation and protection of marine resources is largely dependant on the will of those in power. The political climate between the Indo-Fijian and the native-Fijian communities seemed calm to us, however the elections to the Parliament (Chamber of Representatives) that took place from 6 to 13 May this year⁴ could have an impact on the enactment and the application of certain laws⁵.

We found most of the Fijians we met fully conscious of the richness of their environment and willing to participate actively in elaboration of legal rules that would be more adapted to the economic and social reality of their country.

→ Legal gaps

The protection and exploitation of marine biodiversity in Fiji is based on sectional rules dealing with different, though not all, aspects of the question (marine spaces, fisheries, mangroves) the main problem of which is the application in practice. On the other hand, no legal regulation exists in the field of research activities, bioprospection and exploitation of active marine substances. Finally, in the absence of a competent national authority it is Australia who assesses the patent applications.

The elaboration of new legal rules corresponding to the needs of the country and completing the existing ones seems essential to us in order to help Fiji to profit in a sustainable way from the exploitation of their marine resources. The people we met during our stay are expecting a contribution in this sense from the CRISP programme and are interested in following its progress. We have committed ourselves to fulfil these expectations as far as possible.

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³ Mainly in the field of fisheries, aquaculture, aquarium trade and bioprospecting.

⁴ The political party Soqosoqo Duavata ni leweninavua (SDL) representing the native Fijians won the elections obtaining 36 seats out from a total of 71. The Fiji Labour Party (FLP) supported mostly by the Indo-Fijians finished second with 31 seats.

⁵ Mainly the *Customary Tenure Act*, but to some extent the new *Fisheries Management Act* as well.

Annex 1: FIELDS OF STUDY

We have adopted a large approach in order to find out which legal rules governing marine environment exist in Fiji and to what extent they are consistent.

I. Ownership and environment

- Typology of terrestrial and marine resources
- Landownership (customary, collective, public, private)
- Use of land and terrestrial resources

II. Protection of Marine Biodiversity

- Marine protected areas
- Introduction of exotic species
- Genetically modified organisms
- Pollution
- Endangered species
- Coral reefs
- Mangroves

III. Exploitation of marine resources

- Typology of exploitation
- Fisheries
- Aquaculture
- Trade with protected species
- Aquarium trade

IV. Marine Scientific Research and bioprospecting

- Scientific and technological capacities
- Rules governing Marine Scientific research – conformity with international regime under Part XIII UNCLOS
- Access to marine resources: consent, research permits, bioprospecting agreements, models of law
- Benefit sharing: cooperation, education, technology transfer
- Fundamental research, marine species inventories, taxonomy

V. Intellectual Property

- Patent law
- Protection of traditional knowledge

Annex 2: Timetable

(the given hours are only approximate)

Day	Time	Persons visited
<u>Saturday 4 March 06</u>	9 – 1 pm	CRISP Meeting
<u>Sunday 5 March 06</u>	9 – 12 am	Mr. Aalbersberg Bill (USP)
<u>Monday 6 March 06</u>	9 - 10 am	Mr. Aalbersberg Bill (USP)
	10 – 11 am	Mr. Manoa Pio (USP)
	1 – 3 pm	Ms. Benzaken Dominique (SPREP)
<u>Tuesday 7 March 06</u>	10 – 1 pm	Mr. Batibasaga Aisake (Fisheries Departement)
	2 – 5:30 pm	Coral Reefs Workshop
<u>Wednesday 8 March 06</u>	9 – 10 am	Mr. Zann Leon (USP)
	10:30 – 12:30 am	Mr. Tawake Alifereti (USP)
	12:30 – 1: 30 pm	Mr. Tabudravu Jioji (USP)
	3:30 – 4:30 pm	Mr. Manoa Pio (USP)
	5 – 7 pm	USP Library
<u>Thursday 9 March 06</u>	9 – 10 am	Ms. Kohli Anne (French Embassy)
	11 – 12 am	Mr. Nasomi Epeli (Department of Environment)
	2 – 3 pm	Ms. Harm Nam Judy (Ministry of Foreign Affairs & External Trade)
	3 – 4 pm	Native Lands & Fisheries Commission
<u>Friday 10 March 06</u>	9 – 10 am	Mr. Tabudravu Jioji (USP)
	10 – 12 am	Mr. MacKay (USP)
<u>Monday 13 March 06</u>	8:30 – 11:30 am	Mr. Pumale Reddy (Ministry of Lands & Mineral Resources)
	2: 30 – 4: 00 pm	Mr. Sovaki Manasa (Department of Environment)
<u>Tuesday 14 March 06</u>	9:00 – 10:00 am	Mr. Seeto Johnson (USP)
	11:00 – 12:30 am	Mr. Pickering Timothy (USP)
	2:00 – 5:00 pm	Institute of Marine Sciences Library (PIMRIS: Pacific Island Marine Resources Information System)
<u>Wednesday 15 March 06</u>	9:00 – 10:00 am	Fisheries Department
	2:30 – 4:30 pm	Mr. Lovell Edward (USP)
<u>Thursday 16 March 06</u>	9:00 – 10:00 am	Mr. Batibasaga Aisake (Fisheries Department)
	10:00 – 11:30 am	Ms. Singh Pritti (Fisheries Department)
	2:30 – 10 pm	Visit of the coastal village „Waiqanake“ (guide – Mr. Sikolia Jolame)

<u>Friday 17 March 06</u>	10:00 – 1:00 pm	<i>Fiji Marine Aquarium & Coral Council Meeting (Fisheries Department)</i>
<u>Monday 20 March 06</u>	2:00 – 5:00 pm	<i>USP Library</i>
	9:00 – 10:30 am	Mr. Watling Dick (Environmental Consultants)
	11:00 – 12:30 am	Mr. Rupeni Etika (WWF)
	2:30 – 4:00 pm	Ms. Power Mary (SOPAC)
<u>Tuesday 21 March 06</u>	8 – 9:30 am	<i>Patent Office- Attorney General Office</i>
	10 – 12 am	Ms. Fanifau Sholto (WWF)
	2:30 – 4:30 pm	Mr. Batibasaga Aisake (Fisheries Department)
<u>Wednesday 22 March 06</u>	9 – 10 am	Mr. Goundar Nilesh (Greenpeace)
	11 – 12 am	Mr. Qaranivalu Joji (Research Unit, Ministry of Education)
	2:30 – 4:30 pm	Mr. Nemani Sipiriano (Institute of Fijian Language & Culture)
	5 – 7:30 pm	<i>USP Library</i>
<u>Thursday 23 March 06</u>	10 – 12 am	Ms. Mills Peta (Department of Environment)
	<u>Friday 24 March 06</u>	8 – 12 am

Annex 3: CONTACTS

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Annex 4: RELEVANT INSTRUMENTS

This annex contains the legal texts we found or, at least, we made an inventory of, constituting a basis of environmental law in Fiji.

I. International Conventions to which Fiji are a State Party

a) Law of the Sea

- *United Nations Convention on the Law of the Sea*
(adopted in 1982, Montego Bay, Jamaica, entered into force in 1994)

b) Environmental Law

Global conventions

- *International Plant Protection Convention*
(adopted in 1951, FAO, Rome, Italia, entered into force in 1952)
- *Convention concerning the Protection of the World Cultural and Natural Heritage*
(adopted in 1973, UNESCO, Paris, France, entered into force in 1975)
- *Convention on International Trade in Endangered Species of Wild Fauna and Flora*
(adopted in 1973, Washington, USA, entered into force in 1975)
- *Convention on Biological Diversity*
(signed in 1992, Rio de Janeiro, Brazil, entered into force in 1993)

Cartagena Protocol on Biosafety to the Convention on Biological Diversity
(adopted in 2000, Cartagena, Colombia, entered into force in 2003)

In preparation

- *Convention on Wetlands of International Importance especially as Waterfowl Habitat*
(adopted in 1971, Ramsar, Iran, entered into force in 1975 - will entered into force for Fiji in August 2006)

Regional conventions

- *Convention on Conservation of Nature in the South Pacific*
(adopted in 1976, Apia, Samoa, entered into force in 1990)
- *Convention for the Protection of Natural Resources and Environment of the South Pacific Region*
(adopted in 1986, Noumea, New Caledonia, entered into force in 1990)

Protocol for the Prevention of Pollution of the South Pacific Region by Dumping
(adopted in 1986, Noumea, New Caledonia, entered into force in 1990)

Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region
(adopted in 1986, Noumea, New Caledonia, entered into force in 1990)

c) Fisheries Management

Global conventions

- *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*
(adopted in 1995, New York, USA, entered into force in 2001)

Regional conventions

- *Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific*
(adopted in 1989, Wellington, New Zealand, entered into force in 1991)
- *Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific Region*
(adopted in 1992, Niue, entered into force in 1993)
- *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*
(adopted in 2000, Honolulu, Hawaii, USA, entered into force in 2004)
- *Convention on conservation of nature in the south Pacific*
(adopted in 1976, Apia, entered into force in 1990)
- *Agreement establishing the South Pacific Regional Environmental Programme*
(adopted in 1993, Apia, Samoa, entered into force in 1995)

Intellectual property law

- *Agreement on Trade-related aspects of Intellectual Property Rights*
(adopted in 1994, Marrakech, Morocco, entered into in 1995)

II. National law

a) In Force

Law of the sea

- *Continental Shelf Act/ 1970*
- *Marine Spaces Act/ 1977*

Environmental law

- *Forest Decree/ 1992*
- *Environment Management Act/ 2005*

Commerce of endangered species

- *Endangered and Protected Species Act/ 2002*
- *Endangered and Protected Species Regulations/ 2003*

Fisheries management

- *Fisheries Act/ 1942*
- *Fisheries (protection of Turtles) (Amendments) Regulations/ 2004*

Exploitation of mineral resources

- *Petroleum Act/ 1978*
- *Mining Act/ 1966*

Land law

- *Native Lands/ 1905*
- *Native Land Trust Act/ 1940*
- *Crown Lands Act/ 1946*
- *Land Conservation and Improvement Act/ 1953*

Intellectual property law

- *Patents Act/ 1879*

b) In preparation

- *Customary Fisheries Bill*
- *Fisheries Management Act*
- *Protection of Traditional Knowledge and Expressions of culture*
- *Model of Law on Access and Benefit Sharing (prepared by WWF)*

c) Retired drafts of proposed laws

- *Sustainable Development Bill/ 1996⁶*

III. Plans, Programmes, Guidelines

a) In force

- *Mangrove Management Plan for Fiji/ 1987*
- *National Environmental Strategy (1993)*
- *Code of Conduct for Aquaculture*

⁶ An “environmental code”, rather long and complex, that has never been adopted. We have in our possession the summary and Part 17 concerning biodiversity (including bioprospecting), conservation and national parks management.

- *Code of Conduct on Marine Scientific Research* (subject to obtaining it through Mr. Batibasanga)

b) In preparation

- *Agreement between Government of the Republic of the Fiji Islands and the University of the South Pacific concerning the Marine Scientific Research (draft/confidential/ 2006)*
- *Aquarium Trade Policy Guidelines (draft/ 2005)*

Annex 5: SELECTED BIBLIOGRAPHY

I. Books, articles, reports

AALBERSBERG (W. G.):

- *The Role of a Fijian Community in Bioprospecting Project*, 1997
- *Bioprospecting and intellectual property rights*, Report of First Regional Conference on Intellectual Property Rights, Suva, Mai 1997
- *Bioprospecting as an enterprise in conservation*, Abstract for Fifth SPREP Conference on Nature Conservation and Protected Areas, Pohnpei, September 1997
- *Bioprospecting and its Regulation by Government in Fiji*, 1998
- *The Development of Bioprospecting Agreements in Fiji*, 1998
- *Community-based Bioprospecting as Tool for Conservation*, 1999

BAINBRIDGE (D.): *Cases and Material in Intellectual Property Law*, 2nd ed., Financial Time & Pitman Publishing, 1999, 481 p.

BENTLY (L.), SHERMAN (B.): *Intellectual Property Law*, Oxford University Press, 2001, 481 p.

BOER (B.), RAMSAY (R.), ROTHWELL (D.R.): *International Environmental Law in the Asia Pacific*, Kluwer Law International, 1998, 364 p.

COYLE (S.), MORROW (K.): *The Philosophical Foundations of Environmental Law: Property, Rights and Nature*, Hart Publishing, 2004, 228 p.

CRAVEN (J.P.), SCHNEIDER (J.), STIMSON (C.): *The International Implications of Extended Maritime Jurisdiction in the Pacific*, Proceedings of the 21st Annual Conference of the Law of the Sea Institute, 1989, 471 p.

CRUCIBLE II Project: *Options for National Laws Governing Control over Genetic Resources and Biological Innovations*, the International Development Centre, the International Plant Genetic Resources Institute & the Dag Hammarskjöld Foundation, 2001, 243 p.

EVANS (N.): *Natural Resources and the Environment in Fiji. A Review of Existing and Proposed Legislation. A Report for the Fiji Department of Environment and the International Waters Programme of the SPREP*, USP (Marine Studies Programme), 2004

FAO: *Regional Compendium of Fisheries Legislation (Indian Ocean Region)*, Study 42/1-42/2, 1987

FAO & South Pacific Fisheries Agency: *Fisheries Management Law Advisory Programme Regional Compendium of Fisheries Legislation (West Pacific Region)*, GCP/INT/466/NOR-Field, Report 93/31/FL/WPCS/93/19, 1993

FINGER (J.-M.), SCHULDER (P.) (ed.): *Poor People's Knowledge: Promoting Intellectual Property in Developing Countries*, International Bank for Reconstruction and Development & The World Bank, 2004, 250 p.

- HAND (T.), DAVIS (D.), GILLETT (R.): *Republic of the Fiji Islands: Fisheries Sector Review (Financed by the Asian Development Bank's technical assistance funding program)*, Asian Development Bank, 2005, 86 p.
- IAS & USP: *Marine Bioprospecting: the Pathway for Organism to product and the Implication for Indigenous*, 1999
- KOSHY (K.), LAL (M.), MATAKI (M.): *Sustainable Development and the Pacific Islands Countries*, USP (Pacific Centre for Environment and Sustainable Development), 2005
- LAL (P.N.): *Conservation or Conversion of Mangroves in Fiji. An Ecological Economic Analysis*, Environment and Policy Institute East-West Centre, Occasional Paper No. 11, 1990, 83 p.
- LEANE (G.), TIGERS (von B.) (ed.): *International Issues in the South Pacific*, Ashgate Pub., 2005
- LEVETT (R.), McNally (R.): *A Strategic Environmental Assessment of Fiji's Tourism Development Plan*, WWF, 2003, 115 p.
- LOVELL (E.R.): *Status Report: Collection of Coral and other benthic reef organisms for the marine aquarium and curio trade in Fiji*, WWF, 2001, 74 p.
- LOVELL (E.), ZANN (L. P.), VUKI (V.), N'YEURT (A.) et SEETO (J.): *Biodiversity of Fiji's Marine Environment*, Paper presented at Session S3, Conservation & Biodiversity. Eighth Pacific Science Inter-Congress 13-19th July, University of South Pacific, Suva, 1997
- Mc LOUGHLIN (D.) : *The approach by Fiji- a mid- ocean archipelago- to the Conference on the Law of the Sea*, Melanesian Law Journal, vol. 1, n°3, 1972, p. 37- 46.
- RUSHING (F. W.), GANZ BROWN (C.) (ed.): *Intellectual Property Rights in Science, Technology, and Economic Performance: International Comparisons*, Coll. Westview Special Studies in Science, Technology and Public Policy, Westview Press, 1990, 354 p.
- SOUTH (G. R.): *Position Paper. The South Pacific Regional Seas Programme Cooperation in Marine Technology*, Marine Studies Programme, USP, Suva, 1997
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- SPREP: *Convention on Biological Diversity. An Information Package for Pacific Islands Countries*, SPREP, 2000, 254 p.
- SPREP: *Strategic Action Programme for International Waters of the Pacific Island Region*, SPREP, 1998, 58 p.

SPREP & SOPAC: *Coastal Protection in the Pacific Islands: Current Trends and Future Prospects*, Proceedings of the First and Second Regional Coastal Protection Meetings held on 21-23 February 1994 in Apia, Western Samoa and on 16-20 May 1994 in Suva, Fiji, SPREP & SOPAC, 1994

TARTE (S.): The Second Multilateral High-Level Conference on Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific, in *Pasifika* n° 4(9), pp. 8-13, 1997

WATLING (D.), CHAPE (S.): *Environment: Fiji. The National State of the Environment Report (Prepared by IUCN for the National Environment Management Project as part of technical assistance provided by the Asian Development Bank to the Government of Fiji)*, 1992

WWF: *Access to Genetic Resources and Benefit Sharing in the Pacific Islands Region and Preparation Workshop*, 13-17 March 2000

WIPO: *Background reading material on Intellectual Property*, 1988, 381 p.

II. Relevant journals available at the USP library

Aquatic Conservation – Marine and Freshwater Ecosystems

Coastal Reefs (Journal of the International Society for Reef Studies)

Conservation Biology (Journal of the International Society for Conservation Biology)

Diversity and Distributions. A Journal of Conservation Biogeography

Journal of Coastal Research – An International Forum for the Littoral Sciences

Journal of Experimental Marine Biology and Ecology

Journal of Marine Research (Yale University)

Journal of Natural Products

Marine Biology. International Journal of Life in Oceans and Coastal Waters

Marine Ecology

Marine & Freshwater Research

Pacific Science (A Quarterly Devoted to the Biological and Physical Sciences of the Pacific Region)

Plant Genetic Resources Newsletter (FAO, IPGRI)

South Pacific Journal of Natural Science (USP, Suva)