

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

No. 49

FRIDAY, 15th OCTOBER

2021

[LEGAL NOTICE NO. 107]

iTAUKEI LANDS ACT 1905

iTaukei Lands (Appeals Tribunal) Regulations 2021

REGULATION

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SCHEDULE – FORM: NOTICE OF APPEAL

IN exercise of the powers conferred on me by section 24 of the iTaukei Lands Act 1905, I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the iTaukei Lands (Appeals Tribunal) Regulations 2021.

(2) These Regulations come into force on the date of publication in the Gazette.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the iTaukei Lands Act 1905;

“appellant” means an iTaukei person registered in the *Vola ni Kawa Bula* who, in accordance with regulation 6, appeals against a decision of the Commission under sections 6 and 17 of the Act and the decision of a Commissioner under section 16 of the Act;

“Chairperson” means the chairperson of the Appeals Tribunal appointed in accordance with section 7 of the Act;

“Commission” means the iTaukei Lands Commission established under section 4 of the Act;

“interlocutory application” means an application made to the Tribunal after an appeal has been initiated by the appellant;

“iTaukei” means the indigenous land owners of Fiji whose names are registered in the *Vola ni Kawa Bula*;

“*iTokatoka*” means a land owning unit consisting of one or more family units;

“legal practitioner” has the meaning given in section 2 of the Legal Practitioners Act 2009;

“*Mataqali*” means a land owning unit also known as a clan consisting of one or more *iTokatoka*;

“Ministry” means the Ministry responsible for iTaukei affairs;

“parties” means both the appellant and respondent in an appeal to the Tribunal;

“Permanent Secretary” means the permanent secretary responsible for iTaukei affairs;

“Registrar” means the Registrar of the Tribunal appointed in accordance with regulation 4(1);

“respondent” means the Commission or a Commissioner and a person, an *iTokatoka*, *Mataqali* or *Yavusa* who may be listed as a party to the proceedings;

“Tribunal” means the Appeals Tribunal established under section 7 of the Act;

“*Vola ni Kawa Bula*” means the register containing the names of the members of iTaukei land owning units being the *iTokatoka*, *Mataqali* or *Yavusa*, and is also known as the Register of iTaukei Landowners or the Register of Landowners; and

“*Yavusa*” means a land owning unit, also known as a tribe, consisting of one or more *Mataqali*.

Objectives

3. The objectives of these Regulations are to—

- (a) ensure the just treatment of the parties;
- (b) promote the fair and efficient resolution of cases before the Tribunal;
- (c) engender public confidence in the Tribunal; and
- (d) encourage the identification of issues between the parties at an early stage.

PART 2—ADMINISTRATION

Registrar and other staff

4.—(1) The Permanent Secretary must appoint the Registrar of the Tribunal.

(2) The Permanent Secretary may appoint such other staff as he or she deems necessary and must allocate the necessary resources required for the efficient performance of the functions of the Tribunal.

(3) The Registrar must maintain a register or other similar mechanism for the recording of every document that is submitted to or produced by the Tribunal in relation to an appeal.

(4) A party to an appeal may access any document kept in the register or a similar mechanism in respect of the appeal to which the person is a party.

Annual report

5. The Tribunal must, as soon as practicable, after each calendar year or at any other time requested by the Permanent Secretary, furnish to the Minister an annual report on the exercise of the Tribunal’s powers and functions under these Regulations during the year.

PART 3—APPEALS TRIBUNAL

Notice of appeal

6.—(1) Any appeal against a decision made in accordance with the section 6, 16 or 17 of the Act by the Commission, a member of the Commission or a person appointed by the Minister under section 16 of the Act must be brought by notice of appeal and 3 copies of such notice must be filed with the Registrar within 90 days from the date of the announcement of the decision that is appealed against.

(2) The notice of appeal may be filed by any person who is a registered member of an *iTokatoka*, *Mataqali* or *Yavusa* that is a party to the dispute.

(3) The notice of appeal must be in the Form in the Schedule and must—

- (a) clearly and distinctively state the appellant's and respondent's full name and addresses in Fiji;
- (b) clearly and concisely state the decision of the Commission against which the appeal is initiated;
- (c) clearly outline the grounds of appeal;
- (d) have annexed to it a copy of the decision of the respondent that is the subject of the appeal;
- (e) be signed by the appellant and witnessed by a Commissioner for Oaths, Justice of the Peace or Magistrate; and
- (f) be filed with a fee approved by the Tribunal.

(4) The Registrar must not accept the notice of appeal if it does not comply with this regulation.

(5) If the Registrar accepts the notice of appeal, the Registrar must ensure that a copy of the notice of appeal is served upon the respondent within 14 days of such receipt.

(6) A notice of appeal served on the respondent must include a list of the requirements under regulation 7(1), which may be attached to a copy of the notice of appeal filed by the applicant under this regulation.

Respondent to file response

7.—(1) A respondent, other than the Commissioner or a Commissioner, must upon receipt of a notice of appeal, within 14 days from the date of service, file with the Registrar a notice—

- (a) that clearly and distinctively states the respondent's full name and addresses in Fiji;
- (b) that clearly and concisely states any decision made by the Commission or by any person under the supervision of the Commission, having a bearing on the matter, the date on which that decision was made, and the reasons thereof; and
- (c) accompanied by a copy of each of the documents before the respondent at the time the respondent made, or that resulted in the making of the decision that is the subject of the appeal.

(2) The Registrar must ensure that the documents filed by the respondent under subregulation (1) are served upon the appellant.

Commission to furnish report

8.—(1) In addition to regulation 7, the Commission as a respondent to the proceedings, must within 14 days after a notice of appeal has been lodged with the Tribunal under regulation 6, furnish to the Registrar a report on the proceedings including—

- (a) the manner in which the proceedings were conducted;
- (b) the decision of the Commission regarding those proceedings;
- (c) the reasons for the decision of the Commission;
- (d) the documentary evidence and verbatim recording of those proceedings including any electronic recordings taken at those proceedings;
- (e) all documentation and research or records used by the Commission to come to a decision; and
- (f) any other relevant documents, records, photographic or electronic records held by the Commission in relation to those proceedings.

(2) The Tribunal upon a receipt of a report submitted by the Commission in accordance with subregulation (1) may, if it deems necessary, require the Commission to submit further documentation, records or evidence that it feels necessary to determine the matter on appeal.

(3) If the Commission is unable to furnish some of the information under subregulations (1) and (2) the Registrar must include in the report such information as he or she is able to collect from the records of the Commission, the Ministry, the Tribunal and other relevant sources.

Notice of hearing

9.—(1) The Registrar must within 30 days of the receipt of the notice of appeal filed pursuant to regulation 6, provide written notice to the parties clearly indicating the date, time and venue for the hearing of the appeal by the Tribunal.

(2) A written notice provided in accordance with subregulation (1), must list the persons and parties required to be present at the sitting of the Tribunal and the names of the persons appointed to be members of the Tribunal.

(3) For the purposes of subregulation (1), the venue, time and date of the hearing must be published in the Gazette, a daily newspaper circulated in Fiji and announced over the radio.

Evidence

10.—(1) Evidence tendered to the Tribunal by or on behalf of a party to any proceedings, including the report tendered by the Commission under regulation 8, must be given on oath and the Tribunal may at any stage of the proceedings require that such evidence, or any specific part of it, be given on oath whether orally or in writing.

(2) For the purposes of hearing further evidence in relation to a decision of the Commission, the Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit provided that such further evidence is obtained pursuant to section 7(3) of the Act.

(3) All evidence and information received or ascertained by the Tribunal under subregulation (2) must be disclosed to each party in the proceedings.

(4) Pursuant to subregulations (1) and (2), the Tribunal may receive and take into account any relevant evidence or information, notwithstanding the provisions of any written law in relation to the admission of evidence in court and whether or not the same would normally be admissible in a court of law.

(5) If the case of any party is not presented to the Tribunal, after reasonable opportunity has been given to him or her to do so, the issues in dispute in the proceedings may be resolved by the Tribunal, or relief in respect of an undisputed claim may be granted by the Tribunal, on such evidence or information as is before it, including evidence or information obtained pursuant to subregulations (1) and (2).

(6) In accordance with this regulation and the interests of justice and efficiency, the Tribunal may call for evidence from any person, and may—

- (a) ask questions of any witness;
- (b) call its own witnesses, including witnesses to give expert evidence; and
- (c) by telephone or other electronic means contact a person and take into account the results of such conversation.

Interlocutory applications

11. An interlocutory application may be made to the Tribunal by a party for the following orders—

- (a) the production of clearer or more elaborate grounds of appeal;
- (b) the production of particulars of the Commission's decision that is the subject of the appeal;
- (c) the production of relevant books or documents;
- (d) the amendment of any filed document; or
- (e) the adjournment of the hearing of proceedings.

Withdrawal of appeal

12.—(1) An appellant may, at any time, withdraw an appeal that has been initiated by filing a notice of withdrawal with the Registrar and serving the respondent with such notice.

(2) A notice of withdrawal filed in accordance with subregulation (1) must include the reasons for such withdrawal.

(3) Notwithstanding the withdrawal of a claim—

- (a) the Tribunal may order that the appellant for withdrawal is liable to pay witnesses fees, allowances and travelling expenses; and
- (b) any order made by the Tribunal remains in force, unless discharged or varied by the Tribunal.

Functions and powers of the Tribunal

13.—(1) The Tribunal may hear and determine appeals under the Act or any relevant

written law, and any interlocutory application relating to the appeal.

- (2) The Tribunal has the power to—
 - (a) require the appellant to provide clearer or more elaborate—
 - (i) grounds of appeal; and
 - (ii) particulars of the case intended to be presented;
 - (b) require the respondent to provide particulars of a relevant decision that is the subject of the appeal;
 - (c) issue a summons to a witness following an application by either party;
 - (d) require the production of books or documents;
 - (e) examine witnesses on oath or affirmation;
 - (f) admit any oral or written evidence within the confines of regulation 10, notwithstanding the admissibility of such evidence in civil or criminal proceedings;
 - (g) exclude any person from the hearing, if and when it deems appropriate in order to ensure the proper conduct of the appeal or the preservation of order;
 - (h) allow the appellant to amend the notice of appeal;
 - (i) adjourn the hearing of the appeal from time to time, if and when it deems appropriate; and
 - (j) make any other order as it deems appropriate for the proper hearing and determination of the appeal.
- (3) The Tribunal may confirm or dismiss an appeal.
- (4) Upon confirming an appeal, the Tribunal may by order—
 - (a) reverse or vary the decision appealed against; and
 - (b) make such consequential orders as it deems appropriate to give effect to the reversal or variation of such decision.

Proceedings of the Tribunal

14.—(1) The Tribunal may determine the manner and procedures in which its proceedings or hearings are conducted.

- (2) In the conduct of its proceedings, the Tribunal must—
 - (a) accord natural justice to the parties to the appeal;
 - (b) maintain a written record of its proceedings; and
 - (c) give reasons for its decisions.

(3) In performing its functions, the Tribunal must endeavour to combine fairness to the parties with economy, informality and speed.

(4) Where a hearing is conducted, the Chairperson may call upon the appellant and the respondent to make submissions or to give any additional evidence required by the

Tribunal pursuant to section 7(3) of the Act.

(5) At the hearing of an appeal, a party to a proceeding may appear in person or be represented by a representative or spokesperson appointed by the *iTokatoka*, *Mataqali* or *Yavusa* which is a party to the dispute.

(6) For the purposes of subregulation (3), a legal practitioner may only make submissions at any proceedings or hearings of the Tribunal if he or she is a member of the *iTokatoka*, *Mataqali* or *Yavusa* which is a party to the proceedings before the Tribunal and is registered as such in the *Vola ni Kawa Bula*.

(7) All proceedings before the Tribunal must be conducted in a language or dialects of that language that the Tribunal considers is best suited for the parties.

(8) All documentation in relation to the proceedings submitted by the parties must be in a language or dialect of that language determined by the Tribunal pursuant to subregulation (7) and where the documents are provided in an alternative language or dialect the party submitting those documents must ensure that those documents are translated for the Tribunal and for all parties involved.

(9) The Tribunal must appoint a suitable person to translate proceedings for the benefit of a party or the Tribunal.

(10) Where an appellant or respondent is being called to make submissions in accordance with subregulations (4) and (5), the Chairperson may direct both the appellant and respondent to focus on the main issues relevant to the matter in his or her submissions.

(11) During a hearing, the Chairperson may call upon any witness who may wish to give evidence in support of the appellant or respondent to give evidence before the Tribunal.

(12) The Chairperson may allow the members of the Tribunal, the persons present during the hearing and the respondent or the appellant to examine and question any evidence introduced in the proceedings.

(13) Where necessary the Chairperson, based on the grounds of appeal, may request the Commission to clarify any aspect of its ruling or decision.

(14) The Tribunal at its discretion may use teleconferencing or videoconferencing technology where the circumstances necessitate and allow for the use of such technology.

Hearing

15. The Tribunal may allow evidence to be adduced at a hearing by means of any communication facilities and in such a manner as would provide for a full and proper hearing and to dispose of the appeal in an expeditious manner including—

- (a) the filing of affidavits and other documentary evidence;
- (b) the presentation of written or oral arguments or both;
- (c) the calling, questioning and cross-examination of witnesses; and
- (d) the testimony of any party.

Non-appearance

16.—(1) If a party fails to appear before the Tribunal on the date fixed for hearing of the appeal, the Tribunal may adjourn the hearing of the appeal to a later date or dismiss

the appeal.

(2) Notwithstanding subregulation (1), a party may apply to the Tribunal to restore a dismissed appeal.

(3) The application must be accompanied by a fee approved by the Tribunal and must be made within 21 days from the date of the dismissal.

(4) If the appellant or his or her representative fails to appear before the Tribunal for hearing at the first date fixed for the hearing and subsequently at the later date referred to under subregulation (1), the appeal is deemed to have been abandoned by the appellant.

(5) An appellant or his or her representative is not entitled to restore an appeal which is deemed to have been abandoned under subregulation (4).

Postponement and adjournments

17.—(1) Before the commencement of a hearing, a party may apply to the Tribunal in writing to have the hearing postponed.

(2) Before the resumption of a hearing, a party may apply to the Tribunal in writing, to have the hearing adjourned.

(3) A party whose application for a postponement or adjournment is denied may reapply orally at the commencement or resumption of the hearing.

(4) The Tribunal, in determining whether a hearing should be postponed or adjourned, where applicable, must take into account the following factors—

- (a) whether the postponement or adjournment would unreasonably impede the proceedings;
- (b) the nature and complexity of the issues relevant to the proceedings;
- (c) the efforts made by the parties to be present at the hearing;
- (d) the nature of the evidence to be presented, and the likelihood of causing injustice to any party by proceeding in the absence of that evidence; and
- (e) the efforts made by the parties to proceed expeditiously.

Contempt of Tribunal

18.—(1) Any person who—

- (a) wilfully assaults, insults, or obstructs a member of the Tribunal, or any witness or any officer of the Tribunal during a sitting of the Tribunal or while a member of the Tribunal, a witness, or an officer is going to or returning from a sitting of the Tribunal;
- (b) wilfully assaults, insults, or obstructs any person in attendance at a sitting of the Tribunal;
- (c) wilfully interrupts, or otherwise misbehaves at a sitting of the Tribunal; or
- (d) wilfully and without lawful excuse disobeys any order or direction of the Tribunal in the course of the hearing of any proceedings,

commits an offence and is liable on conviction to a fine not exceeding \$400 or to

imprisonment for a term not exceeding 6 months, or to both.

(2) The Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in the opinion of the Tribunal, constitutes an offence under subregulation (1) whether or not such person is charged with the offence; and the Registrar, or any officer under his or her control, or police officer may take such steps as are reasonably necessary to enforce such exclusion.

Notification of decision

19.—(1) Where the Tribunal is satisfied with all the submissions made, evidence produced and witnesses called at the time of the hearing, the Tribunal may adjourn the matter and give further notice of a time and date where the decision of the Tribunal is to be delivered.

(2) A notice given in accordance with subregulation (1) must be published in a daily newspaper circulated in Fiji and announced over the radio.

(3) A notice given in accordance with subregulation (1) may with proper justification by the Tribunal and with the approval of the Permanent Secretary, be amended by the Tribunal and notified to the relevant parties.

Decisions of the Tribunal

20.—(1) In accordance with section 7(5) of the Act, decisions of the Tribunal are to be final and conclusive and cannot be challenged in a court of law.

(2) Pursuant to regulation 14(2)(c), the Tribunal must provide written reasons for the determination of an appeal made in accordance with these Regulations.

(3) A copy of the decision of the Tribunal provided pursuant to this regulation must be given to all parties to the proceedings.

PART 4—SERVICE IN PROCESS

Service to be personal

21.—(1) Unless the Tribunal deems it just and expedient otherwise to direct, service must be personal and the notice or any other document to be served must be served on the person to be served.

(2) The personal service of a notice or any other document may be made by any person.

(3) The service of a notice or any other document is completely effected by the delivery of a duplicate or attested copy of such document, without the exhibition of any original copies.

(4) Any person serving a notice or any other document must, on the request of the party served, explain to such party the nature of such notice or document.

Service other than personal

22.—(1) If it appears to the Tribunal, either after or without an attempt at personal service, that for any reason, personal service cannot be conveniently effected, the Tribunal may order that service be effected—

(a) in the case of a person in prison who is to be served, by delivery of the notice or any other document to an adult at the usual or last known place of

residence or business of the person to be served;

- (b) by delivery of the notice or any other document to a person, who may be an agent of the person to be served, if there is reasonable probability that the notice or document will, through that person, come to the knowledge of the person to be served;
- (c) by advertisement in the Gazette or in a daily newspaper circulating within Fiji;
- (d) by e-mail correspondence;
- (e) by notice put up at the office of the Registrar, any other place of public resort or at the usual or last known place of residence or of business of the person to be served; or
- (f) by sending the document by prepaid registered post addressed to the person to be served at his or her last known place of residence or business.

(2) An order for service may be varied by the Tribunal, from time to time, with respect to the mode of service directed by the order.

Dies non

23. The service of a notice or any other document must not be made on a Sunday or a public holiday.

When service is refused or threatened

24. Where a person charged with the service of the notice or any other document on any person is prevented by the refusal of such person to receive such notice or document or by the violence or threats of such person, or any other person in concert with him or her, from personally serving the notice or any other document, it is sufficient to inform the person to be served of the nature of the notice or any other document and to leave the notice or any other document as near to such person as it is practicable.

Acknowledgement of service

25. Any person who serves a notice or any other document must acknowledge the service of such notice or document by way of an affidavit or a statutory declaration, provided however that the affidavit or statutory declaration outlines the date, place and to whom the service of the notice or any other document was effected, and that the signature of such person is witnessed by a Commissioner for Oaths or Justice of the Peace.

PART 5—MISCELLANEOUS

Practice directions

26. The Tribunal may issue practice directions, not inconsistent with these Regulations, with respect to the functions and the proceedings of the Tribunal for the information and guidance of the parties and their representatives.

Record of sittings

27.—(1) In accordance with regulation 4, the Registrar must keep and maintain a record of all sittings of the Tribunal.

(2) The Registrar must keep careful and accurate records of the Tribunal's meetings

and decisions, which must be as far as possible verbatim records.

(3) If any proceedings for which the Tribunal has made a decision is further subjected to a judicial the review, the party applying for judicial review must at their own cost engage a translator approved by the Tribunal to translate any part of the record or proceedings which has been written or given in evidence in the iTaukei language in the Tribunal to be translated into English and certified by the person making the translation as having been truly and faithfully translated.

(4) The certified copy of the record must as soon as possible after it has been made, be forwarded to the Tribunal for its verification, amendments where necessary and confirmation before it is forwarded to the High Court.

Want of form

28. Proceedings of the Tribunal or an order or other document thereof must not be set aside or quashed for want of form.

Absence of any rule

29. If there is no provision in these Regulations to meet the circumstances arising in any matter, the Tribunal may be guided by the Magistrates Court Rules 1945.

Made this 7th day of October 2021.

J. V. BAINIMARAMA
Prime Minister and Minister for iTaukei Affairs

SCHEDULE
FORM: NOTICE OF APPEAL

IN THE APPEALS TRIBUNAL
SUVA

Appeal No. _____ of 20 _____

IN THE MATTER of an appeal under Section 7 of the iTaukei Lands Act 1905 from the Decision of the iTaukei Lands Commission or a Commissioner of the Commission.

NOTICE AND GROUNDS OF APPEAL

APPELLANT (Fill all details)		
Name		
Address – Residential		
– Postal		
Phone contact	Landline:	Mobile:
Email address		
Nationality		
RESPONDENT(S)		
MATTER IN RELATION TO WHICH THE APPEAL IS BEING SOUGHT		
DATE OF DECISION OF THE COMMISSION		
DECISION (Attach copy if available)		
GROUNDS OF APPEAL		
(use additional sheets if more space is needed)		
DATE	Dated this _____ day of _____, 20 _____	
SIGNED	Appellant: _____	
	Witnessed by JP, Commissioner for Oaths or Magistrate: _____	