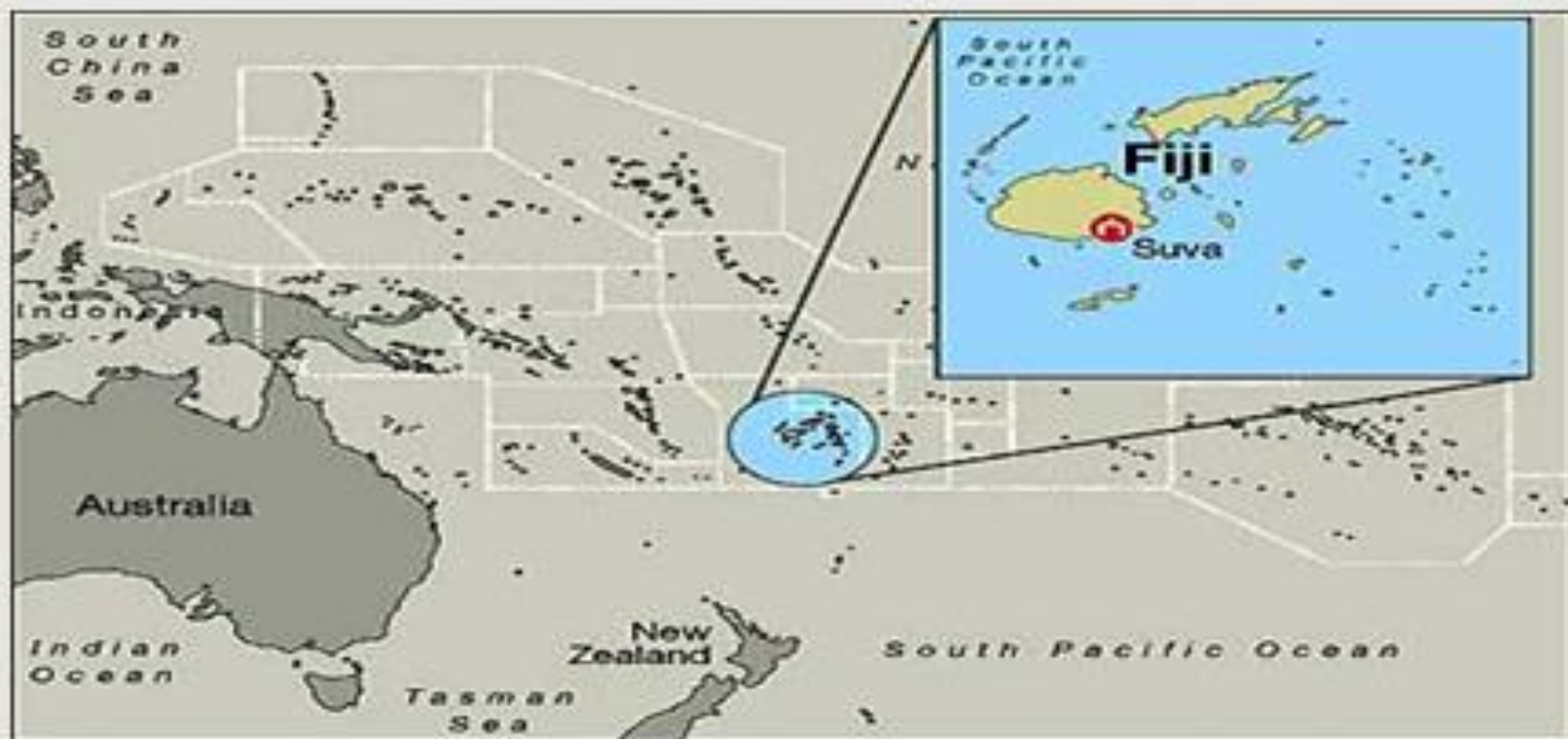


# Traditional Knowledge and Traditional Cultural Expression from a Fijian perspective



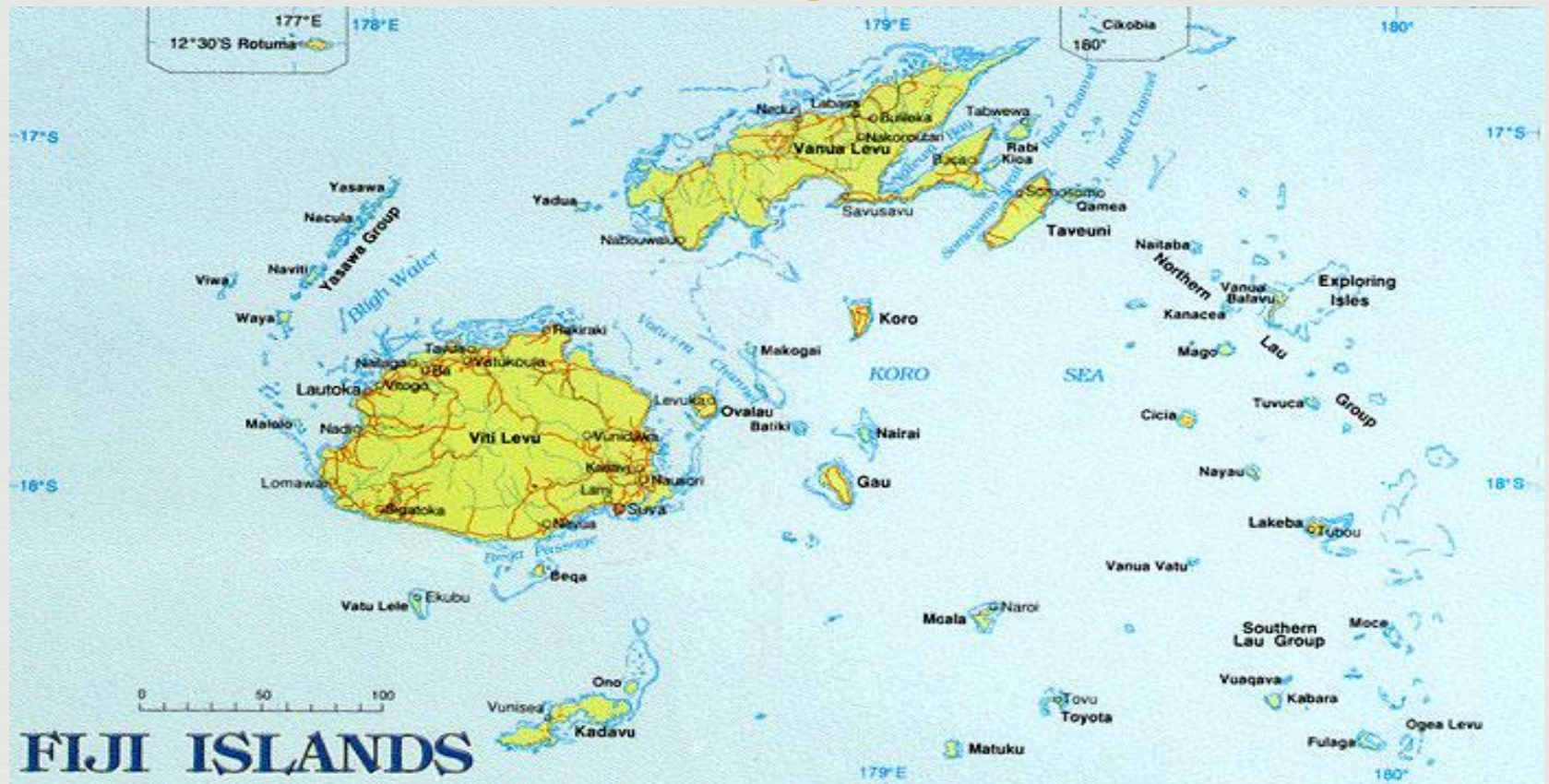
Traditional Measures and Management of  
Rights

# Fiji in the Pacific





# Republic of Fiji – over 300 islands





# The People of Fiji



- Fiji's population as per recent census – around 800,000
- Fiji is a multicultural society with a mix of people of asian decent mostly Chinese and Indian, Micronesians (Kiribas), Polynesians (Rotumans and others) and the iTaukei



# The Indigenous – iTaukei

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- iTaukei are the indigenous of Fiji
- iTaukei people make up 56% of the population
- Fiji is divided into 14 provinces
- With over 300 dialects
- History is passed down orally
- **Traditional knowledge-** preparation and use of traditional medicinal, agricultural practices (includes traditional knowledge on weather), fishing practices and the preparation of traditional food and kava
- **Traditional cultural expression-**songs, dances, crafts, titles/names, art, designs (tapa/masi)

# Ownership



- ❧ Traditional ownership of TK , TCEs and resources in general is communal
- ❧ Hierarchy of ownership–Yavusa, Mataqali and iTokatoka
- ❧ Every iTaukei person is registered at birth – iVola ni Kawa Bula (VKB)
- ❧ In land ownership, lease is distributed to each person who is registered in that land owning Yavusa, Mataqali or iTokatoka
- ❧ TK and TCE rights is based on this same model of ownership



# The status of the protection of TK and TCE in Fiji



- ❧ draft law: Draft Traditional Knowledge and Traditional Cultural Expression Bill 2016 which WIPO is providing drafting assistance to Fiji on
- ❧ the indigenous people and Fijians in general are passionate about protecting TK and TCEs
- ❧ rights are exercised by raising objections to the registration of TK and TCEs as a Trademark and Patent under the Trade Mark and Patent laws in Fiji

# TK and TCE's – what is at stake





# Tapa/Masi





# Weaving – pandanus mats / Kuta – water reeds





# Handicraft: Fans, basket and rope from coconut husk



Image by David Stanley



# Misuse and misappropriation in Trademark





# Misappropriation in Fashion

**AFRICAN**

Passport to Style

**PASSPORT to STYLE**

PHOTOGRAPH BY TONY LILLIBRIDGE

**Neneke Legone**  
Like This Page · June 20 '16

The month Women's Health set their wardrobe wardrobe free with Neneke's "African Dress"

Shop <http://bit.ly/1zD91qj>

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21 people like this · Top Comments · 2 shares

**Wanwanee I Aka Hukukafaka Neneke**  
Passport to Stealing not Style!!  
Like · Reply · 4/21 · September 14 at 11:29pm via mobile

**Kavanda Kavandemwa I ameli H. Kavanda** · 1 page that you're aware that your Aka dress is not Aka!! et al, the design is unique to my home the Fiji Islands in the heart of the South Pacific ocean. Please give credit where it's due and do not confuse the Aka with the Fijian.

Thank you!

This has also come to the attention of Fiji Fashion officials.

Like · Reply · 4/22 · August 2 at 12:44pm via mobile

**H Walker Aka I ameli** ... stop stealing our Pacific patterns and calling it something else.  
Like · Reply · 4/22 · September 13 at 11:56am

**Julian Sima I ameli**  
Like · Reply · 4/22 · August 1 at 10:56am

Write a comment...

Transitional Measure and  
Management of Rights:  
Draft Articles on the Protection  
of Traditional Knowledge  
September 2016





# Article 5 – Administration of Rights



## ARTICLE 5

### ADMINISTRATION [OF RIGHTS]/[OF INTERESTS]

5.1 [Member States]/[Contracting Parties] [may]/[shall] [establish]/[appoint] a competent authority or authorities, [with the free, prior and informed consent of] [in consultation with] [traditional knowledge holders]/[owners]], in accordance with their national law [and without prejudice to the right of traditional knowledge holders]/[owners] to administer their rights/interests according to their customary protocols, understandings, laws and practices].

#### *Optional addition*

[Where so requested by the beneficiaries, a competent authority may, to the extent authorized by the beneficiaries and for their direct benefit, assist with the management of the beneficiaries' rights/interests under this [instrument].*[End of optional addition]*

#### *Alternative*

5.1 [Member States]/[Contracting Parties] may establish a competent authority, in accordance with national law, to administer the rights/interests provided for by this [instrument]. *[End of alternative]*

5.2 [The [identity] of any authority established under Paragraph 1 [should]/[shall] be communicated to the International Bureau of the World Intellectual Property Organization.]

## Outstanding issues with Article 5 - drawing from the Chairs notes



### ☞ Administration of rights/interests

Article 5 has different alternatives. There appears to be no agreement on –

- ☞ the extent of participation of the TK holders in the establishment/appointment of the authority; or
- ☞ whether the establishment of a competent authority is mandatory or not.
- ☞ the key question which member states need to consider is: should there be flexibility at a national level to implement arrangements relating to competent authorities, rather than attempt to establish a one size fits all solution?



# Article 9 – Transitional Measure



ARTICLE 9

TRANSITIONAL MEASURES

9.1 These provisions [should]/[shall] apply to all traditional knowledge which, at the moment of the provisions coming into force, fulfills the criteria set out in Article [1]/[3].

Optional addition

9.2 [[Member States]/[Contracting Parties] [should]/[shall] ensure [the necessary measures to secure] the rights [acknowledged by national law] already acquired by third parties are not affected, in accordance with its national law and its international legal obligations.]

Alternative

9.2 [[Member States]/[Contracting Parties] [should]/[shall] provide that continuing acts in respect of traditional knowledge that had commenced prior to the coming into force of this [instrument] and which would not be permitted or which would be otherwise regulated by this [instrument], [should be brought into conformity with these provisions within a reasonable period of time after its entry into force], subject to respect for rights previously acquired by third parties in good faith]/should be allowed to continue].

Alternative

9.2 [Notwithstanding Paragraph 1, [Member States]/[Contracting Parties] [should]/[shall] provide that:

(a) anyone who, before the date of entry into force of this instrument, has commenced utilization of traditional knowledge which was legally accessed, may continue such utilization of the traditional knowledge[, subject to a right of compensation];

(b) such right of utilization shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations to utilize the traditional knowledge.

(c) the foregoing gives no right to utilize traditional knowledge in a way that contravenes the terms the beneficiary may have set out as a condition for access.]

# Issues on Transitional measure



- ❧ Transitional measures deals with application of a the newly introduced legal protection of TK and TCE's that will usually have a retrospective effect.
  - ❧ How far back?
- “This Act applies to all matters relating to traditional knowledge and traditional cultural expressions that –
- (a) were in existence before the commencement of this Act; or
  - (b) comes into existence on or after such commencement.”
- ❧ Applying protection with retrospective effect can create difficulties because third parties may have already used the protected material in good faith, believing it not to be subject to legal protection.
  - ❧ On the other hand, retrospective protection, may seem to be a safer, inclusive and better alternative in terms of protecting all forms of TK and TCE's
  - ❧ The objective is to find a consensus or a middle ground alternative so that TK and TCEs are protected as far as possible but still fall within a reasonable period.



# The End

