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DRAFT CITIZENS CONSTITUTIONAL FORUM PAPER

BY

Akuila Yabaki, Jone Dakuvula and Vijay Naidu

LAND CONFLICT AND ETHNIC RELATIONS IN FIJI:

A CIVIC PERSPECTIVE

Introduction:

Although ethnic and non-ethnic Fijians have established social relationships over the use of land for more than a hundred years, the ownership and usage of land have been a major factor in ethnic relations. With the on-going expiry of agricultural leases under ALTA ethnic relations have deteriorated.

This paper describes briefly the basis of native land ownership in Fiji and the administrative structure and policies of the Native Land Trust Board (NLTB or "the Board"). It then critically reviews the Report of the Task Force appointed by the NLTB in 1995, to review the policies of the NLTB and recommended its approach to the native leases governed by the Agricultural Landlord and Tenants Act (ALTA), which began expiring in 1997. All agricultural leases in Fiji are governed by the provisions of ALTA Cap 270, covering terms and conditions, mechanism for resolving disputes and the provisions for termination and expiry. The ALTA Task Force Final Report 1997, has been fundamental to the approach of the NLTB, particular when the person who led the Task Force, Maika Qarikau, was appointed General Manager and Chief Executive of the NLTB in 1998.

Since the Elections of the Chaudhry led Government, in 1999, the NLTB position of non-renewal of most expired leases in expectation that landowners who wanted their lands back, would become canefarmers, about 70% of expired leases have been underutilized¹. This has intensified the crisis in the sugar industry, which is facing a real possibility of death². Mr Qarikau's term expired in March 2002 and he has not been reappointed. The NLTB's new General Manager, Kalivati Bakani, a former Banker, faces the challenge of either continuing with the controversial direction set by Mr Qarikau or charting a new one.

We examine critically some of the reasons that led the NLTB to not renew most of the leases when they expired, the effects of these on former tenants, their perceptions and the future of the Sugar Industry. We also question why the NLTB and the Government continue to prefer the Native Land Trust Act (NLTA) as the legislation to displace ALTA for the administration of leases. At the conclusion, we outline some general recommendations about policies and future direction.

¹ Only a minority of these former leaseholds produce sugarcane; some are being used to cultivate cassava and taro; others are reverting to bush.

² Personal communication; Jagannath Sami, CEO, Fiji Sugarcane Growers Council.

The view taken in this paper stresses the importance of dialogue and the cobbling together of a consensus amongst all stake holders in commercial agriculture in general and the sugar industry in particular. The paper is especially critical of NLTB's failure to address the problems faced by tenants and landlords. It maintains that dialogue or "*talanoa*" on land matters among those who own and those who till the land will help to resolve the lease issue in Fiji.

Indigenous Tenure

About 83% of lands in Fiji are "native land." The "native owners" are the indigenous Fijian members of the mataqali or other division and subdivisions of Fijians having customary right to occupy and use any native land³.

Native land is therefore held by ethnic Fijian land owning units as evidenced by usage, traditions and the regulations made by the Fijians Affairs Board. (Native Lands Act Cap 133, Section 53) A Register of native lands is held by the NLTB and copies for individual provinces are kept by the Provincial Council Offices. A Native Lands Commission appointed by the Minister for Fijian Affairs decides on disputes between landowners about customary use rights and the headship of the land owning units.

Native Land cannot be alienated by Fijians by sale, grant or transfer except to the State. The NLTB grants all leases and licences over native land and resources and its consent is required for any sale, transfer or sublease of all native leases and licences.

The control over all native land is vested in the NLTB, consisting of twelve members with the Fijian Affairs Minister, as Chairman, the President of the Republic as the President of the Board and ten (10) appointed Members.

The NLTB is serviced by a Secretariat headed by a General Manager, a Secretary of the Board, and staff. The Head Office of the NLTB is in Suva and there are regional offices in Lautoka (West), Labasa (North) and Nausori (Central/East).

The NLTB is entitled to deduct up to 25% of all rents, premiums and fees income it receives, for the cost of administration. The other 75% of income is paid out to the members of the proprietary units (Mataqali, Tokatoka, Yavusa) as follows:

75%	to the members of the Proprietary Unit
15%	to the Turaga ni Mataqali
10%	to the Turaga ni Qali or Yavusa
5%	to the Turaga i Taukei

³ With the proposed reversion of Crown Schedule A and B lands to ethnic Fijian *mataqalis* and NLTB, the total land area of Fiji under indigenous ownership will be close to 90%.

Section 15 of the NLTB Act empowers the Board to set aside any portion of native land as "native reserve". Native, reserve cannot be leased except to native Fijians, with the consent of the landowners.

The NLTB can grant leases for native land outside the reserves. The ALTA Task Force Report says:

"The Board is not obligated to obtain the consent of the landowners - a practice the Board has always insisted on. This has no legal basis..." (Page 25).

However, the policy of the Board has always been **"to discuss the lease proposals with the Fijian owners to obtain their endorsement, not consent, after they have been shown the pros and cons of the proposal"** (Page 25). It seems, since 1997, the NLTB has seen no further need to consult landowners again about the expiry of leases and the consequences of non-renewal.

The Board justifies its policy of acting as if it owns all Fijian land, for a number of reasons including the prevention of bribery of landowners, when they insist on their consent as precondition for the grant of leases. Another reason given is that it should **"not be accused of being a racist organisation and a barrier rather than an instrument of national development"** (Page 25).

Since the removal of the Fiji Labour Party led Coalition Government in May 2000⁴, the NLTB's image has been tarnished by the very negative image that the ALTA Task Force Report said it wanted to avoid in 1996.

THE S.V.T. GOVERNMENT'S APPROACH TO THE ALTA LEASES

The SVT Government, elected in 1992, did not approach the issue of expiring ALTA leases with urgency partly because the National Federation Party (NFP) and the Fiji Labour Party (FLP) Opposition wanted the issue of review and amendment of the 1990 Constitution resolved first. The NFP and FLP wanted the two issues kept separate, as they feared the issue of renewal of ALTA leases might be used by the SVT as a bargaining issue in the negotiations for a new Constitution. The SVT Government's approach was two pronged:

- To review the provisions of the Agriculture 'Landlord and Tenant Act' (ALTA).
- The Native Land Trust Board (NLTB) and the Lands Department, as the largest landlords were to review the provisions of ALTA in relation to Native and State lands.

⁴ There has been widespread publicity around Maika Qarikau's instrumental role in the "Deed of Sovereignty" document circulated after the overthrow of the Chaudhry Government. It appears that the overthrow of the FLP Coalition was actively supported by Qarikau and some of his colleagues.

The aim was to find a "lasting solution" to the issue of availability of land. The SVT Government had not taken a firm position on which legislation it preferred for the administration of native leases (ALTA or NLTA) up the time it was defeated in the 1999 General Election. In 1998, it had formed a Select Committee of Parliamentarians from both sides to consider the questions of agricultural land and the future of ALTA leases. Consequently, most of the 134 leases that expired in 1997 were renewed.

In June 1994, the NLTB, the Sugar Commission of Fiji, the Fiji Sugar Corporation, and the Ministry of Agriculture conducted a joint survey of leases. Their report was presented to the NLTB in early 1995, which then decided to appoint an ALTA Task Force consisting of NLTB staff only, headed by Maika Qarikau who became Chief Executive of the organization.

THE ALTA TASK FORCE REPORT OF THE NLTB

The ALTA Task Force was not given a Term of Reference by the Board. It drew up its own, to review all ALTA Sugar cane leases on native land to assess:

- The needs of the Fijian land owning units whose lands were currently leased for sugarcane production.
- The needs of tenants leasing native land whose leases would expire between 1997 and 2024.
- After taking the response of both landowners and tenants, recommend how their concerns can be **"amicably addressed bearing in mind the Board's duty under the Native Land Trust Act and the future of our nation's sugar industry"**
(Page 2)

The Task Force decided that the governing legislation for native leases should be NLTA and not ALTA. This was quite obvious from its own term of reference.

The Task Force visited 47 Tikinas in the Provinces of Ba, Macuata, Nadroga, Cakaudrove and Ra - only five of the 14 Fijian Provinces that have native land under Sugar cane leases. However, the Task Force's 47 volumes of Reports of each Tikina were summarized only as Pie Charts showing the current status of ALTA leases in 1996 held by Indo-Fijians and Indigenous Fijian farmers in each Tikina. There was no summary account in the ALTA Task Force Report of how the landowners were informed about the ALTA and other legislations discussed or how the landowners decided about the lands they wanted returned and the reasons given from the Fijian landowning units that were consulted. (See the Chart and Pie Charts at Appendix 1)

THE POLITICS OF THE N.L.T.B.

The ALTA Task Force did its work of consulting landowners between 1995 to 1996 at the time the 1990 Constitution was still in place and also when the

Constitution Review Commission chaired by Sir Paul Reeves began its work (The Reeves Commission). Because both ALTA and NLTA were entrenched legislations requiring 2/3 majorities in both the House of Representatives and the Senate to be changed, the Task Force recommended a Constitutional amendment to make it easier to change ALTA. It proposed that the veto power of political parties in the House of Representatives be removed, leaving the power to amend ALTA in the Senate, which had 24 out of 32 Council of Chiefs Senator appointees.

Although the NLTB Management made submissions to the Reeves Commission, the 2/3-majority requirement in both the Houses remained in the 1997 Constitution. This probably convinced NLTB senior staff members that the Parliament was just not listening to the views of Fijian landowners.

The Task Force view is that ALTA took away the power of the NLTB to make decisions on the renewal or otherwise of native leases as provided under NLTA, especially under Section 9. Under this Section, the Board has a duty to satisfy itself that the land proposed to be leased is not already occupied by Fijian owners or is required by Fijian owners during the currency of such lease "for their use, maintenance and support".

It argued that the provisions of ALTA dictate to the Board that whenever any lease under ALTA expires and is renewed, it would be for a minimum term of 30 years (Section 6 (b) of ALTA). It saw ALTA, as dictating the terms of a native lease. The NLTA, it argued, did not impose a minimum or a maximum term for a lease.

NLTB wanted to introduce a "rolling concept" of leases of between 5 years and up to 50 years. Half way through such leases, the tenant may give notice to the Board seeking extension and the Board decides then if the lease is extended at the end of the current term. NLTB recommended that there be an amendment to Section 3 of ALTA to the effect that all agricultural leases of native land granted after the date of the amendment are not to be governed by the provisions of ALTA (Page 79, paragraph 220).

It is evident that Fijian landowners' decision not to renew most of the leases in the cane belt was based on the fear that they will never be able to farm their own land if leases renewals were decided under the provision of ALTA. The rise of indigenous Fijian nationalism, especially after the 1987 coups, was also rooted in this sense of insecurity about control over their land. The NLTB Task Force felt that the views of landowners were likely to be ignored again if ALTA remained a protected legislation under the new Constitution.

The ALTA Task Force then took a controversial political position by demanding that the government of the day implement its proposed amendment to the Constitution and the ALTA legislation. It warned,

" As soon as we receive feedback that such is acceptable, we will finalise 316 tenancies, which will expire between 1997, and end of 2105" (Page 79, paragraph 221).

The Council of Chiefs and the S.V.T. government positively received the ALTA Task Force Report in 1997. However, its recommendations were not implemented. When the S.V.T. government was defeated in the General Election of May 1999, by the F.L.P. led "Peoples Coalition", the NLTB under the leadership of Maika Qarikau, began its campaign in the Provincial Councils against the new Government⁵. The politics of land took on a Nationalist edge, merging with the campaign of the S.V.T. and other Fijian Nationalist groups, culminating in the seizure of the Government by George Speight's group on May 19th 2000. When former Prime Minister, Sitiveni Rabuka, went to negotiate on the President's behalf for the release of the hostages, he saw Maika Qarikau and some of his staff in Parliament with George Speight.⁶

Although the NLTB Task Force claimed that the ALTA legislation constrained the NLTB from exercising its statutory obligations, its recommendations and subsequent actions do not evidence any such real constraints. Within less than a year of consultation with landowners, it produced reports summarized in most of pie charts showing that landowners in almost Tikina 49 in the cane belt wanted their land returned. The Report said:

" The overpowering nature of ALTA has received negative response from the landowners who fear that the Board has lost control of the powers vested in it or them as well as their tenants. Therefore, to ensure that they and their children are looked after they have now indicated that they will want to take all of their arable land back and that the Board should generally accept the landowners' responses" (See Table below and Pie Charts at Appendix 1).

The NLTB also opposed the policy of the People's Coalition Government for the state to pay \$28,000.00 resettlement compensation to tenants who want to leave farming permanently and \$10,000.00 to new farmers for the cost of takeover or resettlement. It also opposed its proposal for a Land Use Commission to be responsible for identifying new crops, land suitable for commercial agriculture upgrading rural infrastructure and working with NLTB, the Government and landowners for development of such land and approval of new leases. NLTB saw this as its responsibility alone, to consult with the Ministry of Agriculture and to employ agricultural economists on its staff at government costs (Page 81, paragraph 240-245).

The NLTB did not see the government's proposal for a Land Use Commission as a practical commitment consistent with its own ambition to assist in the development of commercial farming. Nationalism had blinded the NLTB to the positive desire of the Chaudhry led Government to resolve this critical issue.

⁵ Information received at Constitutional workshops in 5 Provinces.

⁶ Personal communication between CCF's Jone Dakuvula and the former Primer Minister.

QUESTIONS OF THE ALTA TASK FORCE REPORT

At the beginning of its Report, the ALTA Task Force summarised the main issues of its survey in the following questions:

1. There being no provisions for renewal under the provisions of ALTA, what will the tenants' position be when their tenancies expire?
2. If tenants are to give vacant possession of the land to the landlords as provided under the ALTA, where will the tenants go?
3. Are the tenants going to be paid compensation as provided for under the provisions of ALTA?
4. Is the NLTB, as landlord under the ALTA, financially in a position to pay tenants compensation?
5. Fijian landowners are generally inexperienced sugarcane growers, now that their land will finally be available to them, will they live up to the expectation to produce sugarcane as well as their Indian counterparts?
6. If the inexperienced new sugarcane farmers do not produce the required sugarcane, what will be the future of our sugar industry?
7. If the sugar industry falls, how will it affect the whole of Fiji's economy?
8. If ALTA does not provide the security and protection for both tenants and landlords, what legislation is there to provide the needed protections? (4)

The Task Force asked the above questions but then, did not systematically provide answers to the conflict of interests between stakeholders that could avoid major disruptions.

Most of the Report covers thinly the history of the sugar industry, the development of the NLTB, the fears of native landowners about losing their lands as the justification for preferring the Native Land Trust Act. The account also does not consider how the current problems might be resolved in ways that could encourage co-operation and compromise between the stakeholders: the landowners, the tenants, the Government and the organisations of the Sugar Industry.

Below we discuss issues raised in the above questions asked by the ALTA Task Force Report.

1) WHAT WILL THE TENANT'S POSITION BE WHEN TENANCIES EXPIRE?

Section 9(1)(f)(ii) of the Agricultural Landlord and Tenants Act states:

That on termination of the tenancy the tenant if he has paid all the rent and observed and performed all the conditions shall be entitled, at the option of the landlord, during the next 12 months to cultivate and reap any standing crops or receive compensation in lieu.

The ALTA Task Force Report recommended that those tenants who had not observed the conditions of their tenancies, such as building on the land without NLTB approval, would not be compensated and this has been NLTB policy. Many farmers were compelled to pull down their houses and shift them when their lease expired, and they were not given the 12 months grace period. This grace period was time for NLTB to decide to renew the lease or not and if not, to find alternative Fijian farmers to replace evicted tenants. NLTB had made no arrangement to train enough prospective indigenous Fijian farmers to take over cane farming.

The situation now is that 70%⁷ of farms where leases have expired remain unoccupied and unutilised, resulting in a drop in sugarcane production this last harvest year by 1.4 million tons (about 1/3) from 4.2 million tons to 2.8 million tons⁸. If this drop in production continues, the sugar industry may not survive.

In Parliament in February 2002, Prime Minister Laisenia Qarase said 4222 agricultural leases expired between 1997 to 2001. The figures were:

<u>Year</u>	<u>No. Of Leases Expired</u>
1997	95
1998	204
1999	1541
2000	1940
2001	442
Total	4222

The Native Land Trust Board has sub divided some of the 4222 leases into residential and agricultural leases and thus created 5591 leases. The 5591 leases were processed as follows:

825 leases processed to sitting tenants
696 residential leases

⁷ The authors of this paper have made direct observation of former leasehold lands that are underutilized and reverting to bush.

⁸ Personal communication: Jaganath Sami, CEO, Fiji Sugarcane Growers Council.

2031 leases processed to landowners or new tenants
2039 leases still remain to be processed
5591 Total Leases

In other words, of the native leases expired since 1997 about 27% have been renewed to sitting tenants, 36% returned to landowners and 36% still not decided. That means at least 70% might be taken over by landowners.

2) WHAT WILL THE TENANTS DO AFTER EXPIRY OF LEASES UNDER ALTA?

Just over 800 Indo Fijians have taken residential leases on land they used to farm; others have moved to live as dependents on relatives on other farms, many have moved to the urban and peri urban areas of squatter settlements or to other rural parts of Fiji, for employment as agricultural labourers, or tenants through "vakavanua" (tenants at will) arrangement on native lands. Some displaced farmers are staying in "refugee camps" such as Valelewa in Vanua Levu, set up by the National Farmers Union.

Since 1997, the ALTA settlement Unit in the Ministry of Agriculture been able acquired three resettlement sites, Navua, Navudi and Navovo, a total area of 537 hectares, divided into 132 lots of between 2 to 11 hectares in sizes. These are inadequate for the needs of those who are willing to resettle on other lands to farm different crops.

Even though the NLTB Task Force did recognise the need to resettle evicted tenants, it has done nothing since 1997 to assist the State or the Sugar Industry in finding native land for resettlement of over 1000 former tenants⁹.

3) ARE THE DISPLACED TENANTS BEING PAID COMPENSATION AS PROVIDED FOR UNDER THE PROVISIONS OF ALTA?

The Task Force Report had insisted that evicted tenants be compensated under Regulation 19 of NLTA, based on the market value of improvements. (Pages 46 & 80). Section 40 of ALTA provides for compensation for improvements made by the tenants on agricultural holdings when leases expire, provided these were made with NLTB approval. The NLTB policy since 1997 has been not to pay compensation for improvement that were not lawfully approved.¹⁰

In consequence many tenants had pulled down their houses and sold off their agricultural equipment before their leases expired, when they knew they were not going to be compensated. This has been a cause of bad relations

⁹ Between 1999 and 2002 the NLTB had diverted its energies to opposing the Government and supporting George Speight rather than working with Stakeholders in the sugar industry to find practical solutions.

¹⁰ Interviews with sugarcane farmers and officials of the Fiji Sugarcane Growers Council revealed numerous corrupt and arbitrary practices of NLTB field officers over the years. These include giving on the spot verbal permission for building extensions etc on receipt of monetary or in kind bribes.

between to landowners and tenants. Some landowners occupied farms before the leases expired.

4) IS THE NLTB FINANCIALLY IN A POSITION TO PAY TENANTS COMPENSATION?

The NLTB had not made financial provisions for compensation payments since 1997. Nor had the State, until the Labour-led Coalition Government was elected in 1999. In its budget in 2000 the Peoples' Coalition Government set aside \$20 million for resettlement. It decided \$28,000 was to be paid to farmers who wanted to leave cane farming when their leases expired and \$10,000 assistance for new farmers who took over vacated leases. The \$28,000 was based on the Ministry of Agriculture's ALTA Resettlement Units' estimate of the average value of improvements on the average farm.

The seizure of the Government by George Speight's supporters in May 2000 and the establishment of the Interim Government led to the reduction of the resettlement grant to \$ 10,000, for both outgoing tenants and new ethnic Fijian farmers.

5) FIJIAN LANDOWNERS - CAN THEY PRODUCE SUGARCANE AS WELL AS THE INDO - FIJIAN FARMER TENANTS?

The ALTA Task Force Report pointed out that indigenous Fijian canefarmers who supplied Penang were as productive as their Indo-Fijian counterparts. It said:

"The success of cane as a commercial crop has nothing to do with race of the farmers as shown by the performance at Penang Mill and other Mills. The traditional reason that Fijians have more social obligations than Indians no longer hold water" (Para 203, page 76).

The Report argued that native owners should take over more of their land to show that they can adequately replace experienced Indo-Fijian farmers. The problem, however, is that not enough was done to prepare indigenous Fijians to effectively takeover and maintain the vacant farms. There was no proposal on how these new Fijian farmers would be identified in sufficient numbers, or how they were to be prepared to manage the vacated farms. It seems it was all left to the landowners to make these decisions, on the assumption that cane farming was not a new occupation requiring special skills or change of attitude and life styles for the ethnic Fijians.

This is reflected in the current situation where landowners have occupied only 30% of expired farms.¹¹ As noted earlier this has led directly in a drop in production of 1.4 million tons in harvest year 2001 from 4.7 million to 2.2 million tons. If this drop in production becomes permanent, the sugar industry will not be able to meet its contracted supply commitments in future and may not survive.

¹¹ Personal communication: Mr Jaganath Sami, CEO, Fiji Sugarcane Growers Council.

6) IF THE SUGAR INDUSTRY FALLS, HOW WILL IT AFFECT THE WHOLE OF FIJI'S ECONOMY?

The ALTA Task Force Report did recognise that: **"Fiji cannot afford to lose the industry now. The only way to ensure that this does not happen is for the industry to take stock and stand ready to meet the challenges of competing on the world market"** (Paragraph 196, page 72).

There was no analysis or estimation of the likely effects of a collapse of the Sugar industry on Fiji's Economy. However, the Report did outline some changes that needed to be made.

- Increased mechanisation of cultivation and harvesting
- Diversification to other crops
- Acceptance of displacement of farm labour to the urban areas because of increased mechanisation.
- More financial assistance from the State to develop other crops.
- The opening of native reserve lands for subdivision into plots for other types of commercial crops. The State to create "belts of selected commercial crops" in various parts of Fiji with financial support from NLTB and other stakeholders.

These were worthwhile proposals but the NLTB Task Force did not recognise the other needs of the Sugar industry for more investment to modernise the Mills and the rail transport system.

NLTB only saw Fijian landowner farmers replacing displaced Indo-Fijian farmers as cane producers but did not even consider if it was worthwhile entering the industry at a stage when it is in crisis and its future doubtful. The Report also did not envisage any other constructive roles for the landowners, especially in the need to restructure the industry to continue to survive.

There is no doubt that the Sugar Industry needs to be kept in operation as Fiji's major export income earner for sometime until new export industries are developed. There was no vision in the NLTB for a co-operative partnership between landowners, tenants, the Government and other stakeholder to keep the industry alive.

7) If Not ALTA, What Alternative Legislation Will Provide Security For Both Landlords And Tenants?

This was a loaded question posed by the ALTA Task Force because it favoured NLTA.

The Report said that ALTA was understood to be only a **"temporary arrangement for the purpose of buying a generation of time."** The

argument is that indigenous Fijians will never be able to get their land back if their old leases are renewed again for another thirty years under ALTA.

"While tenants can plead they have no other alternative, by the same token Fijian landowners are just as adamant claiming that they too have no other alternative. Now at the end of 30 years there being "No Other Way", it is time we stop paying the price for buying that "Generation of time." (Paragraph 132, 133 page 39)

NLTB OBJECTION TO ALTA

The Task Force Report said "the full force of what NLTB was established for has been removed by Sections 4, 5, 18, and 59" of ALTA. But the Report did not provide a precise analysis of how ALTA removed the NLTB powers. We analyse very briefly here the basis of this view by looking at the two legislations.

POWERS OF THE NLTB UNDER NLTA

The Native Land Trust Act vests power in the Board to administer all native Land for the benefit of Fijian owners (Section 4).

Fijian owners cannot alienate Native Land by sale, grant, transfer or exchange except to the State. All transfers or charges have to be approved by the Board or they are null and void. (Section 5) Only the NLTB can grant leases or licenses under the NLTA on land under native reserve or, land outside the reserve and must be executed under the seal of the Board. The Board must also approve any sale, transfer or sublease by a tenant (Section 12).

However the powers of the NLTB to fix rent and determine length of leases by regulation and appoint Tribunals have been removed.

When Mataqali land owning units do not have enough land for their "use, maintenance or support", the President can set aside State land to be purchased by the Mataqali for this purpose. If a Mataqali becomes extinct, the State can redistribute such lands to other Fijian landowners on terms approved by the Board.

The state is required to pay compensation to landowners through NLTB for any disturbance, damage or destruction of native land or its resources on the land. The Minister has wide powers to make regulations about activities involving use of resources on native land.

THE AGRICULTURAL LANDLORD TENANTS ACT (ALTA)

This Act was passed in December 1967 to apply to all lands of 1 hectare or more, except native reserves under the provisions of NLTA.

The ALTA replaced the concept of registered leases under NLTA with "contracts of tenancy", with forms and content defined in ALTA (Section 3).

Under ALTA, a person who is occupying or cultivation native land for 3 years, and the NLTB does not take steps to evict him; will be presumed to be a tenant, especially if the tenant has paid money in kind. The onus is on the landlord to prove there is no tenancy. (Section 4) If the landlord refuses to accept the presumed tenant, the latter can apply to the Tribunal for a declaration that he is a tenant, and if he wins, the tenancy begins from the time he occupied the land (Section 5).

All tenancy contracts created after the ALTA Amendment Act 1976 have minimum term of 30 years (Section 6) but in reality this is also the maximum. There is no provision for renewal of leases when they expire. Rents under contract of tenancy are reassessed every 5-years on the basis of unimproved capital value (6%) for the different classes of land, determined by a Committee of four valuers appointed by the Minister (Section 21).

The ALTA sets up a tribunal of one person with the powers of a Magistrates Court to hear and settle disputes by orders (Sections 16 to 35).

The landlord under the ALTA has the right to terminate a contract of tenancy on notice if the tenant:

- (a) Leaves the land uncultivated for more than 12 months
- (b) Sublets or subdivides without consent
- (c) Is in breach of any conditions of the tenancy that materially injures the landlord.
- (d) Is not observing "the practice of good husbandry" as defined under the ALTA (Section 13 (2)) and materially injures the interest of the landlord.
- (e) Rent is in arrears by a period of more than three months

Section 5 of the ALTA subjects Sections 7, 8, 9, 10, 11 and 12 of the Native Land Trust Act to the parallel provisions of ALTA and its regulations.

This meant that all leases and licences authorised by the NLTB were to be consistent with the provisions of ALTA. Disputes are adjudicated under the jurisdiction of the Tribunal set up under the ALTA and not the Tribunals provided in NLTA.

The ALTA does not take away most of the power of NLTB to create and determine the terms of leases and licenses issued with respect to native land. It only provides a better procedural legal framework under which the interests of the landowners and the tenants are more securely and fairly catered for. It also spells out the conditions under which the tenants must perform their

obligations to the landlord and, the powers of the landlord to terminate or discipline the tenants.

The NLTB does not recognise that it must shoulder some of the blame for the illegal building improvements made by tenants and other breaches of the Statute. For example, the failures of tenants to observe the provision of "good husbandry."

NLTB had also been critical of the fact that under ALTA, rent is determined under Unimproved Capital value (U.C.V) and not current market value, as it claims would be the case under NLTA. In a situation, where the sugar industry's unit cost of production is about \$40 per ton, as against current world market price of sugar at \$35 per ton, "one wonders what would market rate of rental be without the subsidized price of the European Union".¹²

A recent study by Naidu and Reddy (2002)¹³ has reported that 97% of the farmers interviewed in the sample preferred their native leases to be renewed under ALTA. This preference reflects the feeling of disillusion amongst Indo-Fijian tenants over the hard line policy of the NLTB since 1999, against payment of compensation and non-renewal of most leases that have since expired.

We pointed out earlier that the incumbent General Manager, Maika Qarikau and some of his colleagues at the NLTB had openly supported the seizure, of the Chaudhry - led Coalition Government in May 2000. They saw the abrogation of the Constitution as providing the opportunity to remove ALTA and validate NLTA as the legislation for native land leases. The Management of NLTB even circulated a "Deed of Sovereignty" amongst Fijian Chiefs to sign as an expression of their concept of "right of self-determination", to empower NLTB to deal with native land in the way that the indigenous nationalists in the organisation wanted, without the checks and constraints of the Constitution.

With the return of the 1997 Constitution since the Court of Appeal Judgment in the Chandrika Prasad vs. The Republic Of Fiji Islands in March 2001, the NLTB has still not deviated from its position in 1996, of preferring NLTA over ALTA, notwithstanding the Constitutional difficulty of getting rid of the legislation. The ALTA Task Force Report had recommended exempting all native Land from its provisions. The SDL/CAMV Government led by Prime Minister Qarase has also taken the same position. However, it has also stated that it will review the Native Land Trust Act and the land administration of the NLTB. With the appointment of Kalivati Bakani as the new General Manager, Qarase had said he will expect new ideas from him.

NLTB needs to involve other non-ethnic Fijian stakeholders in this review so that a balanced new legislative framework that involves a compromise

¹² Personal communication: Mr Jaganath Sami, CEO, Fiji Sugarcane Growers Council

¹³ Naidu, V. and Reddy, M. "Na Ghar Ke Na Ghat Ke; ALTA and Expiring Land Leases, Farmers' Perceptions of their Future", Centre for Development Studies, School of Social and Economic Development, University of the South Pacific, (2002) Asia Pacific Migration Network (APMRN) Research Paper, *mimeo*.

between ALTA and NLTA is considered. A bipartisan approach to the future of native leases and the future of the sugar industry could create a climate of understanding, tolerance, co-operation and, public confidence.

The industry has to undergo radical changes to survive. These changes will affect the present interests of all stakeholders who will resist change if they do not understand, are not consulted or involved in the change plan of the Industry. So it is vital therefore that a bipartisan approach, guided by a consensus about goals, is taken at the political and executive management level of the stakeholders institutions.

CONCLUSION

The Sugarcane Industry is on the verge of collapse. For some time, it has had a situation of dissatisfied stakeholders, the growers, landowners, employees, and Government. In the last 10 years about \$100 million was lost by the Sugar Industry because of strikers.¹⁴ This State of affair cannot be allowed to deteriorate further. The Government needs to take a lead in inviting the stakeholders to work together to help the industry survive.

The Sugar Industry's aim is to restructure to be competitive in world markets by upgrading equipment, the transport system, the quality and quantity of cane and sugar and work practices.

The way the industry is structured and operates today is not profitable and will not be profitable in the future. In the last financial years, the Fiji Sugar Corporation incurred a loss of \$21 million and \$7 million the previous year. The FSC is basically insolvent and had it been a purely commercial entity operating in a competitive domestic and international market, it would have been wound up. Preferential prices in the European market may not continue after 2007.

To improve efficiency and capability, the FSC needs to improve management, work practices and skills of workers. To improve farming methods it should increase available cane varieties, stop cane burning and introduce more mechanisation in harvesting.

All these changes need to be made in an environment in which the stakeholders are willing to co-operate because they understand the major problems that the industry faces and are willing to make sacrifices and compromises in the national interest. This environment of reconciliation and co-operation cannot happen until the political leaders in Parliament begin the process of reconciliation.

Both the Government and the Native Land Trust Board should lead the nation in a new direction to ensure the survival of the Sugar Industry.

The CCF has begun "*talanoa*" or dialogue sessions with all stakeholders in the sugarcane industry, the outcomes of these "conversations" will be presented at the SPLTC Symposium. The following 23 Recommendations provide beacons toward the resolving of the current impasse on land matters which constitute the major treat to the survival of the sugar industry.

¹⁴ FSC official calculation presented by Hafiz Khan, Chairman of the FSC Board.

RECOMMENDATIONS

- A Multi-Party Government of National Unity (GNU) to be formed soon to support restructure of the sugar industry into four relatively independent Sugar Milling Companies responsible for their own cost structures and profits.
- A Parliamentary Select Committee on the Sugar Industry to be appointed to build support and consensus at the political level and the grassroots amongst Communities for the restructure of the Sugar Industry.
- The four Sugar Mill Companies to lease all sugarcane land from the NLTB and the State under one head lease and then sublease to those farmers who decide to stay in sugarcane farming.
- The four milling companies to pay the NLTB and the State for the leases twice a year.
- NLTB poundage and administration cost can aim to reduce to 5% of the lease income because it will no longer need to collect rent from tenants and will become merely a rent income distribution agency.
- The Sugar industry is to be depoliticised by a shift of ownership from the State to the main stakeholders.
- The State to become a minor owner of the four Sugar Companies and to transfer 90% of its share ownership to the NLTB (50%) and the Fiji Canegrowers Council (50%) to hold the shares in trust for the native landowners in the sugar belt and members of the Canegrowers Council and Trade Unions in the Industry until the restructure of the sugar industry is completed and the Sugar Mills are profitable, then sell the shares to landowners, farmers and workers co-operatives to be formed.
- Landowners trade unions and tenants organisations to be represented on the Boards of the four Milling Companies.
- In terms of funding, the Government should extend its existing guarantees of loans that the industry needs to restructure and upgrade.
- The FSC, the farmers organisations, Trade Unions, NLTB and major landowners units in the cane belt to agree to a "no strike" agreement in the sugar industry for five years and, to work together towards a united. Mission to make the industry competitive and profitable.
- The State and NLTB to find alternative land and crops for farmers for resettlement of farmers displaced from the sugar industry as a consequence of the restructuring and, develop infrastructure for the

opening up of new lands for settlement. The State to request major aid donors for low interest loans for infrastructure development.

- Provide assistance to farmers who merge or amalgamate and compensate landowners where appropriate.
- State to pay the lump sum of \$10,000 to farmers who are permanently displaced and compensation for costs of improvement on the land.
- The State to identify suitable new commercial crops for both lands presently under sugarcane farming and new lands for resettlement (State, native land and freehold land) and provide advisory assistance and financial loans incentives through the Fiji Development Bank (FBD).
- NLTB to agree to five years moratorium on expiring ALTA leases. Government to amend ALTA 1 year grace period to extend to 5 years.
- NLTB to review ALTA Task Force Report of 1997, consult landowners again and identify lands presently under cane cultivation that landowners definitely need for their own use and sustenance and inform the 4 Sugar Mill Companies and Government within the 5 years grace period.
- The majority of Members of the NLTB are to be representatives from the cane belt, (2/3), for the next five years and to include at least two Indo- Fijian members who represent tenants' organisations. (In line with NLTB Task Force Report recommendation, Paragraph 250, Page 83.)
- NLTB to concentrate on developing core expertise in financial analysis and management, valuers, surveyors, agricultural advisory experts and other commercial expertise that will be needed by Fijian landowners. The NLTB employment policy to be based on employing the best regardless, of race (as recommended in the NLTB Task Force Report, Paragraph 248)
- NLTB can also form land development companies with major indigenous Fijian land owning units and in partnership with Indo-Fijian and other enterprises.
- A bipartisan Parliamentary Committee to work with a Task force led by the NLTB and consisting of representatives of other stakeholders, to review the Agricultural Landlords and Tenants (ALTA) Cap 270, the Native Land Act (NLA), Cap 133; the Native Land Trust Acts (NLTA) Cap134 and other relevant legislations and regulations with a view to recommending amendments to current legislation's or, new legislation appropriate for land development and conservation needs in the 21st Century.

- The Parliamentary Select Committee on Sugar and representatives of Stakeholders to hold joint meetings for landowners, tenants and employees of the FSC as soon as possible to explain the restructure plans for the sugar industry and to develop a new consensus on the way forward for dealing with expiring leases, displaced tenants, new land settlement schemes, new crops, etc.
- Government to develop adult education programmes especially for displaced farmers and agricultural labourers to develop alternative skills such as mechanical, carpentry, plumbing, or intensive agriculture, etc to assist them find alternative livelihoods.
- The Government and institutional stakeholders in the Sugar Industry to develop an agricultural and rural enterprises bank rooted in domestic savings and aimed at meeting the development and welfare needs of rural dwellers.

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Appendix 1

EXPIRING ALTA LEASES

➤ As at 07/10/98, the details of ALTA leases as provided by the NLTB in respect of expiry years 1997 – 2028 are listed hereunder: -

<u>EXPIRY YEAR</u>	<u>NO. OF LEASES</u>	<u>EXPIRY YEAR</u>	<u>NO. OF LEASES</u>	<u>EXPIRY YEAR</u>	<u>NO. OF LEASES</u>
1997	134	2008	299	2018	254
1998	237	2009	278	2019	306
1999	1,594	2010	374	2020	152
2000	1955	2011	445	2021	168
2001	458	2012	419	2022	135
2002	622	2013	487	2023	148
2003	432	2014	380	2024	88
2004	600	2015	784	2025	85

2005	463	2016	361	2026	65
2006	521	2017	177	2027	54
2007	652			2028	13
Sub-Total	7668		4004		1468
Grand Total	13,140				

<u>ACREAGE OF NATIVE LANDS UNDER ALSTA LEASES</u> <u>MACUATA PROVINCE</u>						
<u>TIKINA</u>	<u>Current</u>			<u>Proposed Change</u>		
	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>
Nadroga	1059	7772	16	8392	456	0
Labasa	415	6341	301	6930	127	0
Wailevu	461	6334	25	6308	521	
Macuata	1978	4814	25	5319	1,499	0
Sasa	1656	1789	21	3400	66	0
Seaqqa	690	2506	652	1087	2108	652
Namuka	348	44		348	44	0

<u>ACREAGE OF NATIVE LANDS UNDER ALSTA LEASES</u> <u>CAKAUDROVE PROVINCE</u>						
<u>TIKINA</u>	<u>Current</u>			<u>Proposed Change</u>		
	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>
Wailevu West	648	286	16	950	0	0
Vaturova	183	183	0	366	0	0
Wairiki	19	19	0	19	19	0

<u>ACREAGE OF NATIVE LANDS UNDER ALSTA LEASES</u> <u>BA PROVINCE</u>						
<u>TIKINA</u>	<u>Current</u>			<u>Proposed Change</u>		
	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>
Bulu	1180	8389	76	7750	1885	10
Tavua	318	4232	219	4769	2	0
Nadi	8293	4001	42	4269	67	0
Vitogo	305	3872	3	3594	587	0
Vuda	15	3279	28	3260	62	0
Nawaka	110	3248	34	3045	326	20
Nailaga	295	2353	100	2580	154	15
Sabeto	170	2472	12	2148	502	4
Nalotawa	284	1604	0	1547	341	0

Savatu	45	1177	0	1222	0
Sikitoru	23	1159	4	1186	0
Rukuruku	273	125	0	398	0
Naloto	47	5	0	52	0

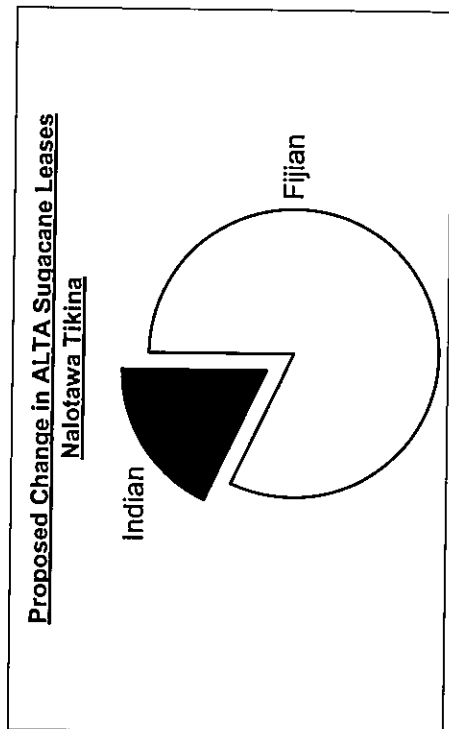
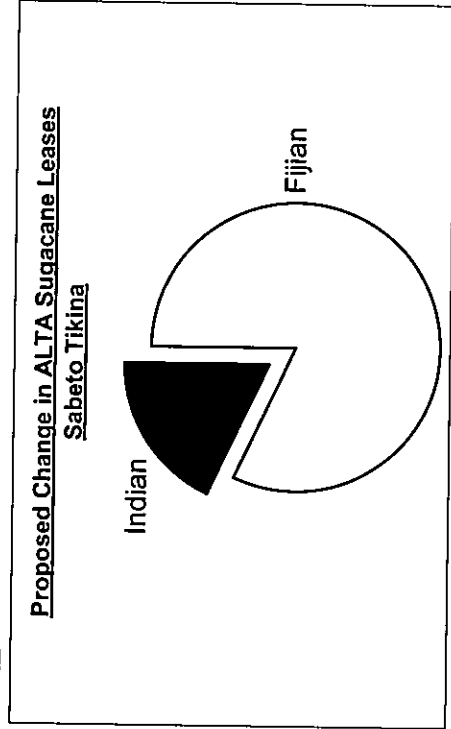
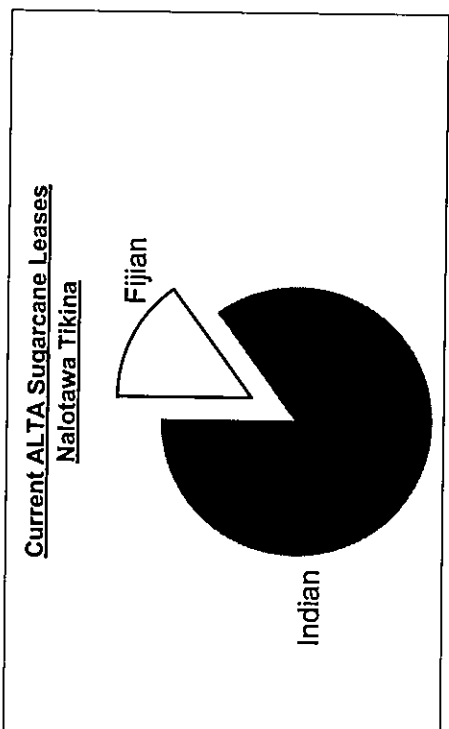
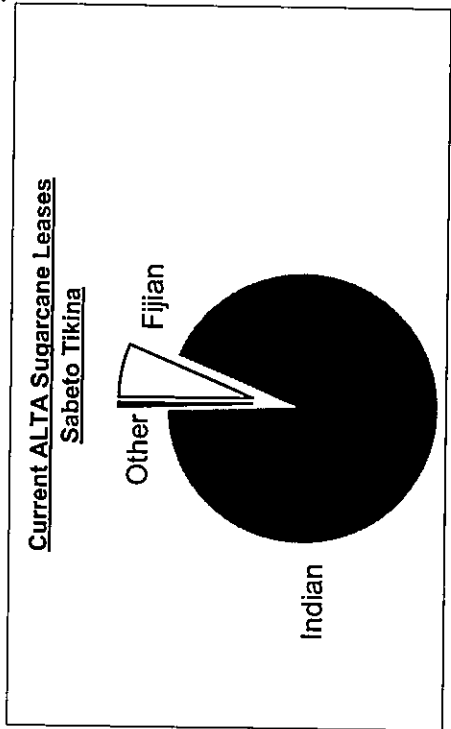
**ACREAGE OF NATIVE LANDS UNDER ALSTA LEASES
RA PROVINCE**

TIKINA	Current				Proposed Change			
	FIJIAN	INDIAN	OTHER	OTHER	FIJIAN	INDIAN	OTHER	OTHER
Raviravi	523	691	7	7	1132	89	0	0
Nalawa	302	764	14	14	849	224	7	7
Saivou	152	719	0	0	779	92	0	0
Rakiraki	270	86	4	4	679	1	0	0
Naroko	191	595	21	21	630	178	0	0
Nakualava	181	47	0	0	228	0	0	0
Mataso	99	115	12	12	227	0	0	0
Nababa	129	71	12	12	212	0	0	0
Navitilevu	20	184	0	0	204	0	0	0
Navulau	8	236	0	0	80	164	0	0
Naleba	397	0	0	0	397	0	0	0

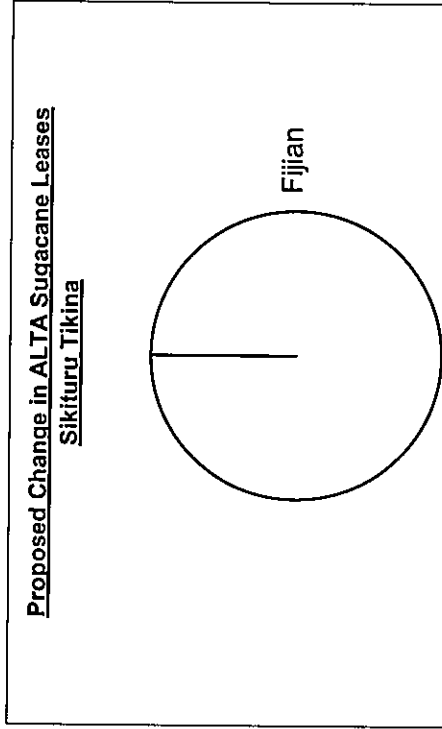
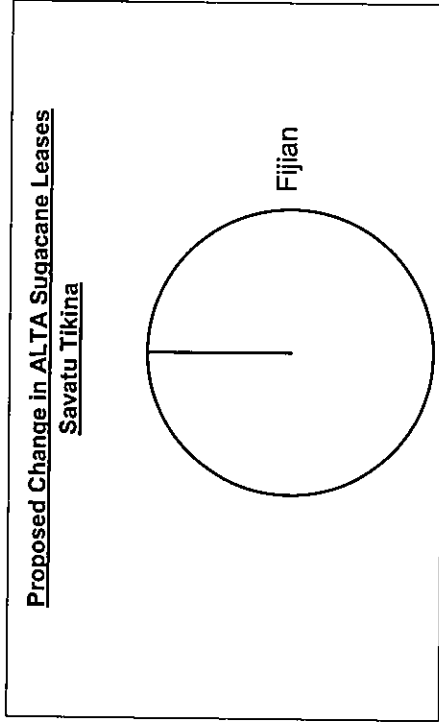
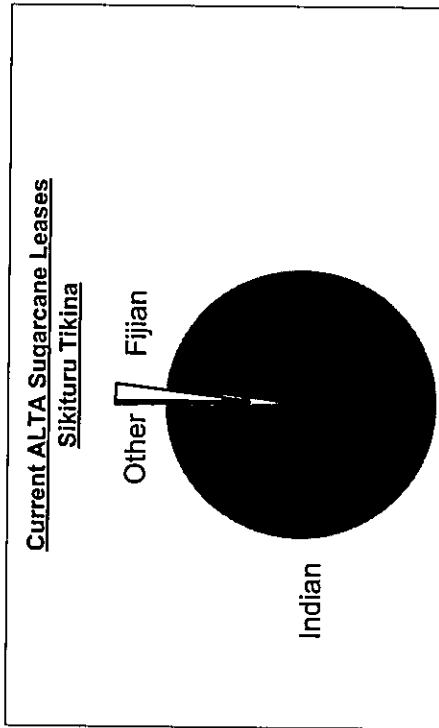
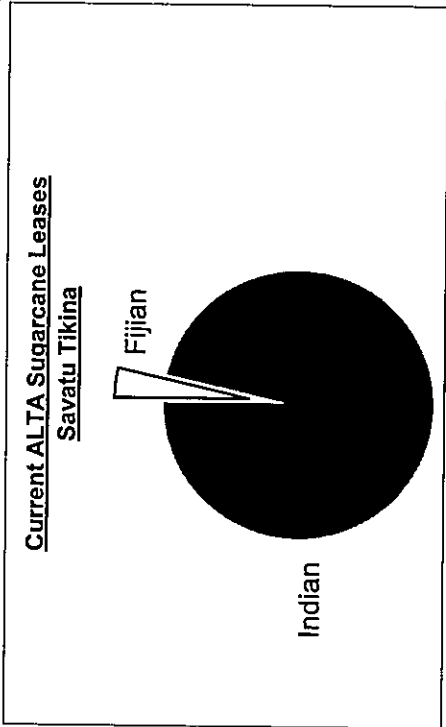
Tokaimalo	166	0	0	166	0	0
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<u>ACREAGE OF NATIVE LANDS UNDER ALSTA LEASES</u> <u>NADROGA PROVINCE</u>						
	<u>Current</u>			<u>Proposed Change</u>		
<u>TIKINA</u>	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>	<u>FIJIAN</u>	<u>INDIAN</u>	<u>OTHER</u>
Momi	122	2717	56	2069	818	9
Wai	42	1379	0	1035	387	0
Malomalo	104	820	75	939	59	0
Tuva	338	1601	20	6658	1273	202
Conua	152	493	0	645	0	0
Sigatoka	24	432	32	438	26	24
Cuvu	27	331	70	313	115	0
Waicoba	20	184	0	204	0	0

BA PROVINCE

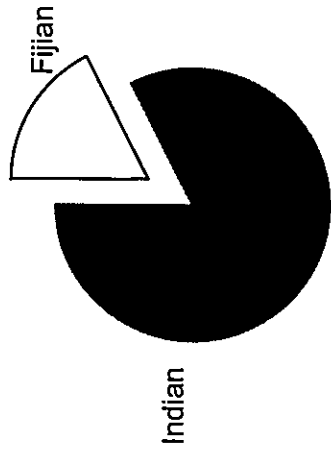


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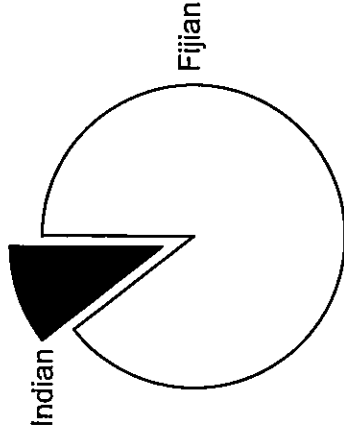


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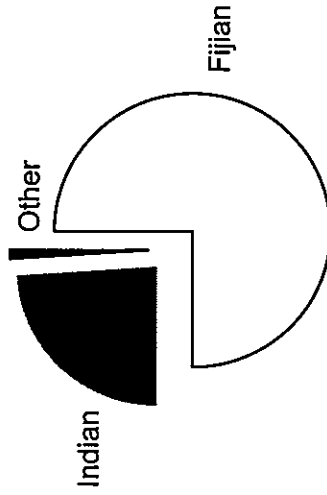
Current ALTA Sugarcane Leases
Saivou Tikina



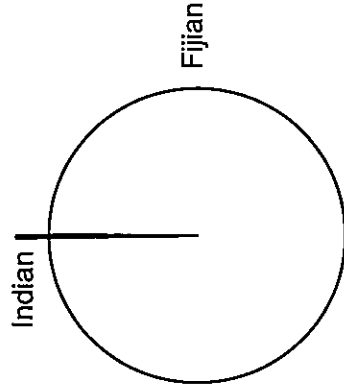
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Saivou Tikina



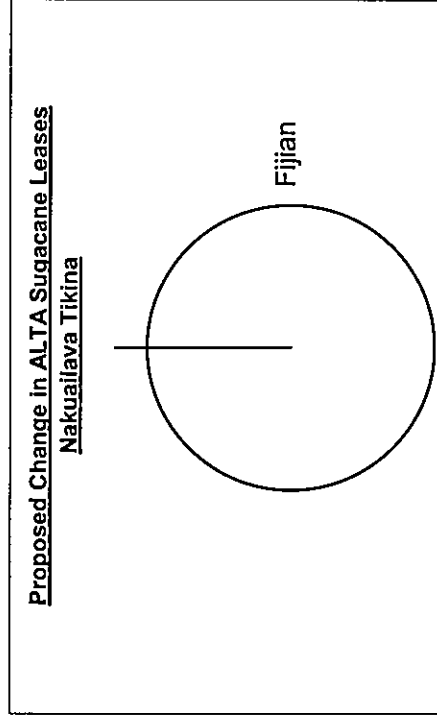
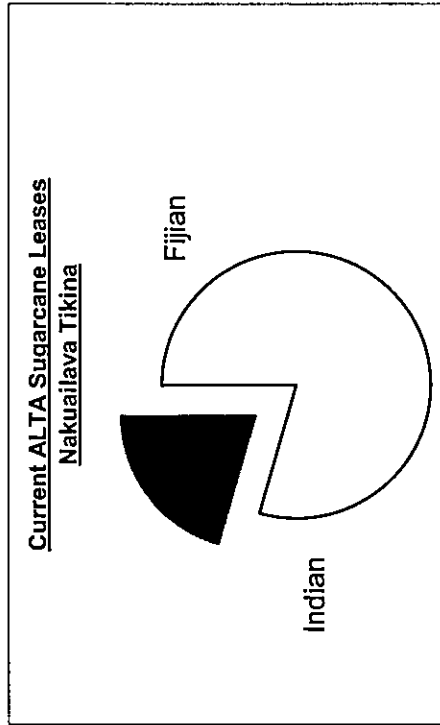
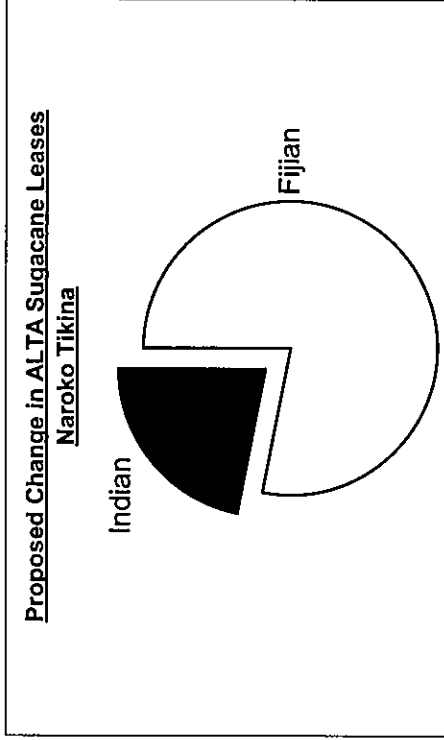
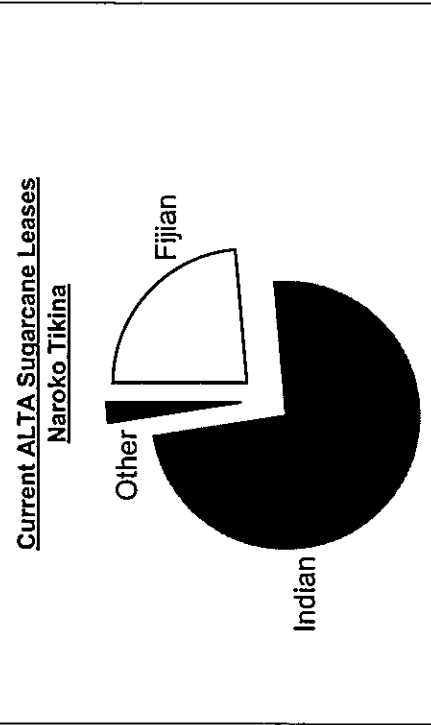
Current ALTA Sugarcane Leases
Rakiraki Tikina



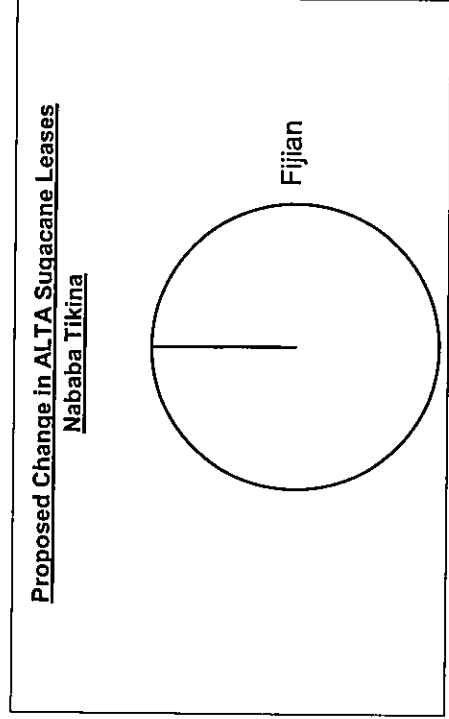
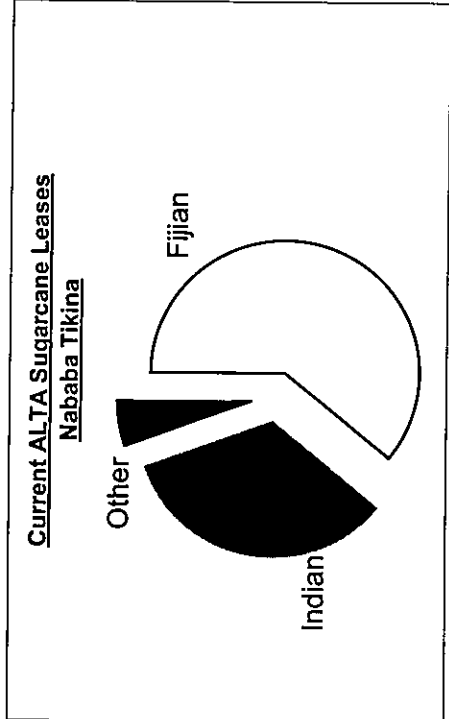
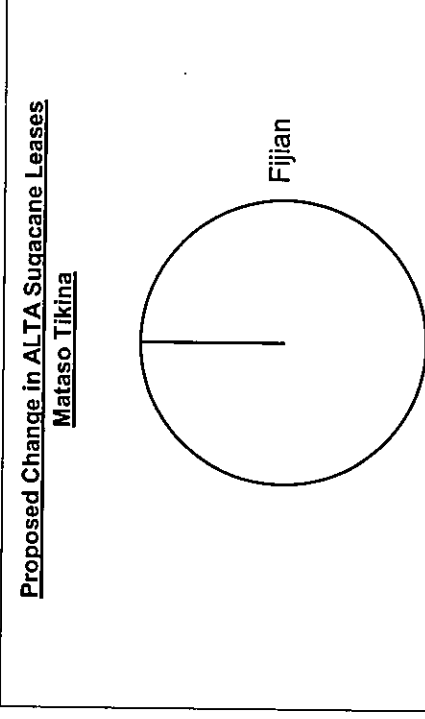
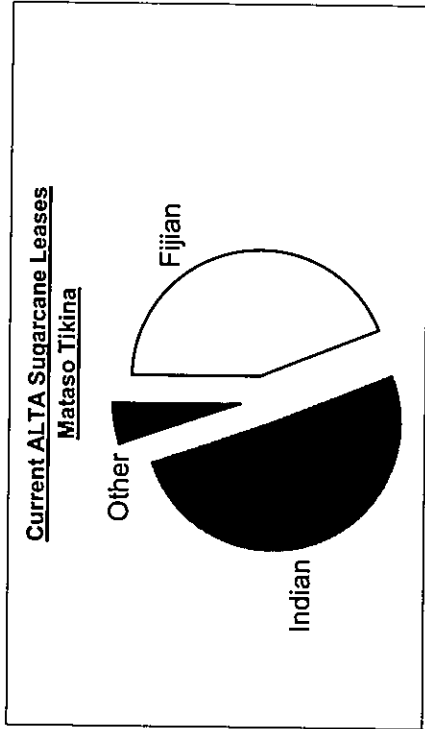
Proposed Change in ALTA Sugarcane Leases
Rakiraki Tikina



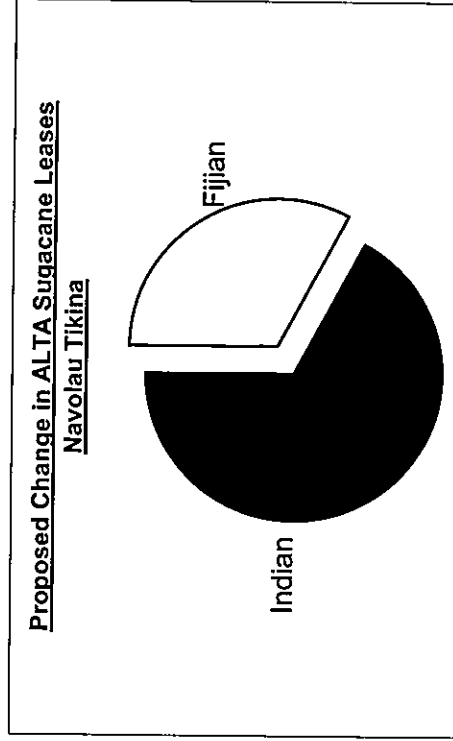
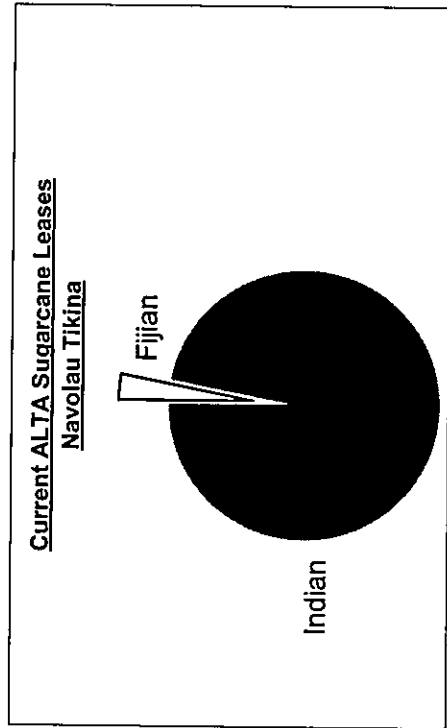
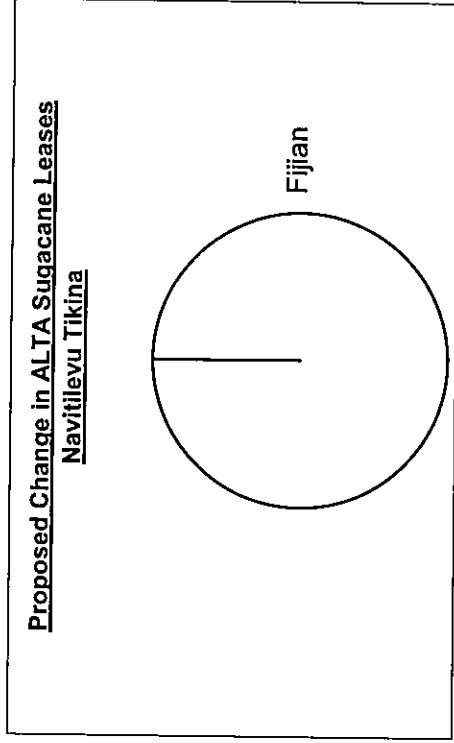
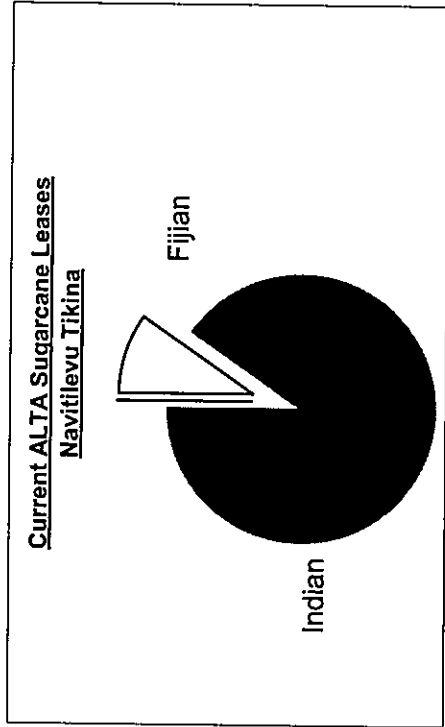
RA PROVINCE



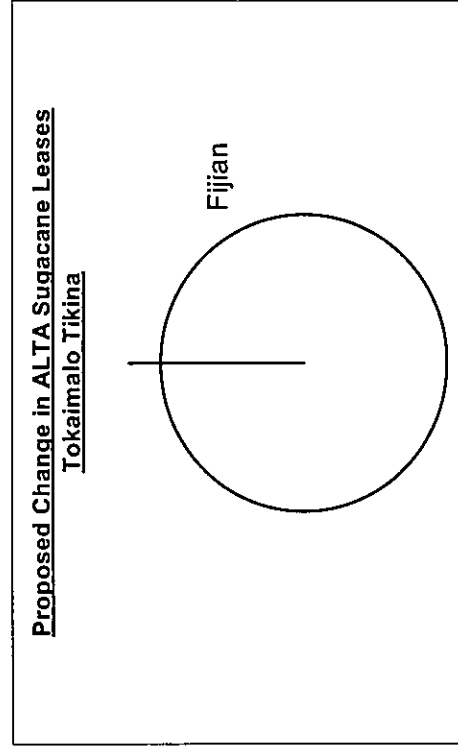
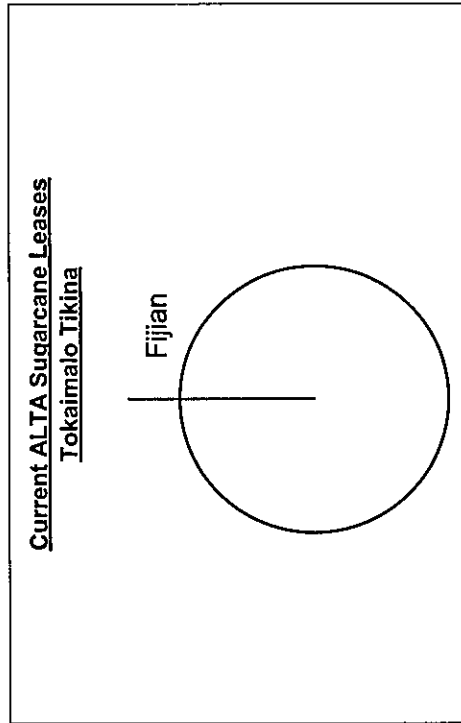
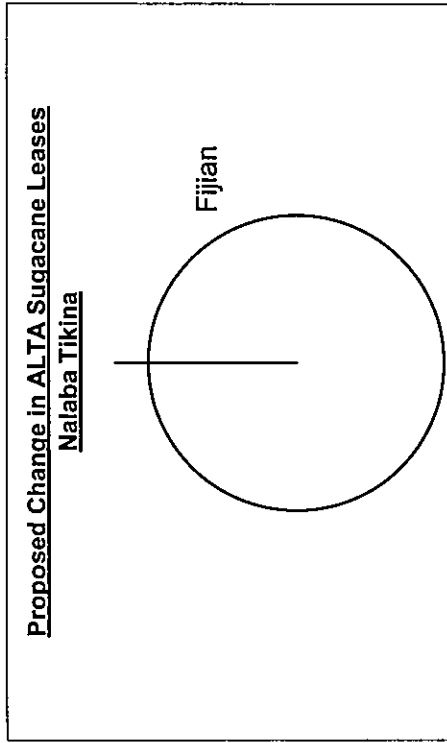
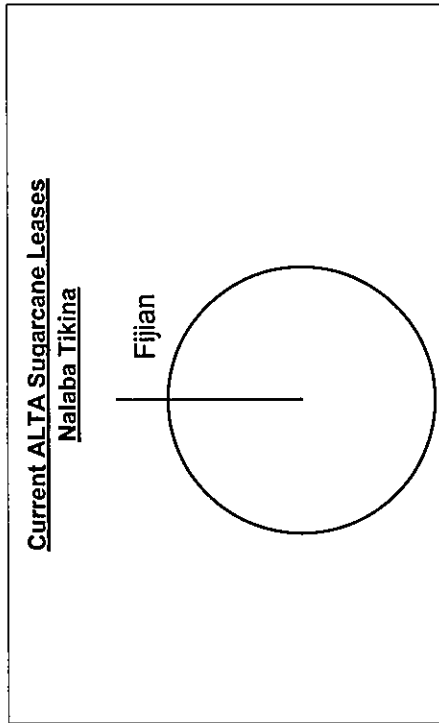
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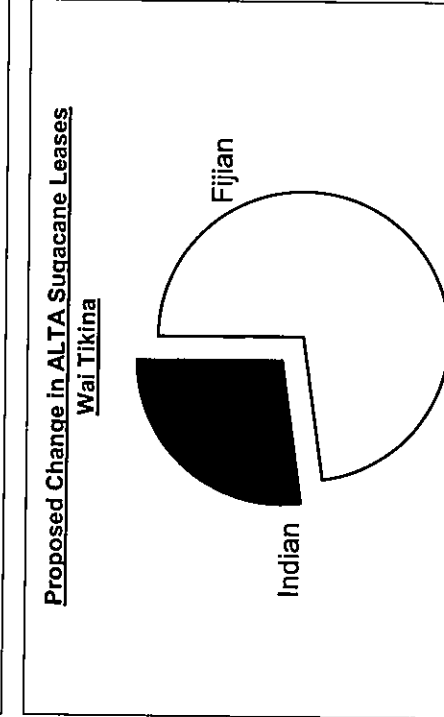
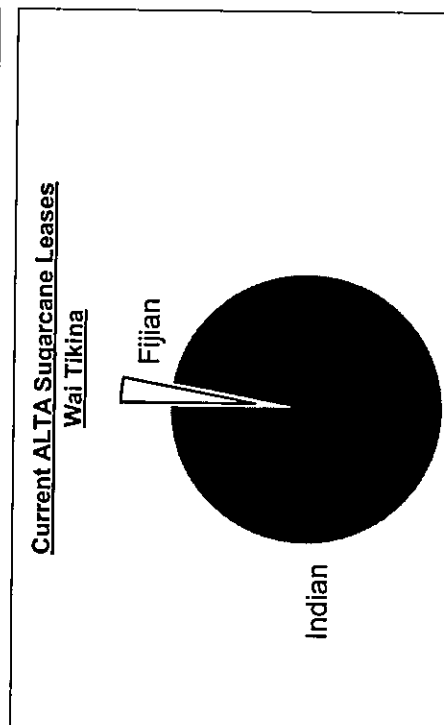
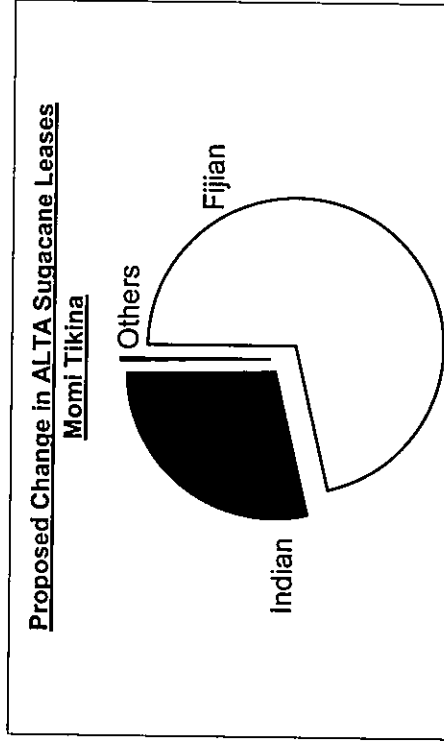
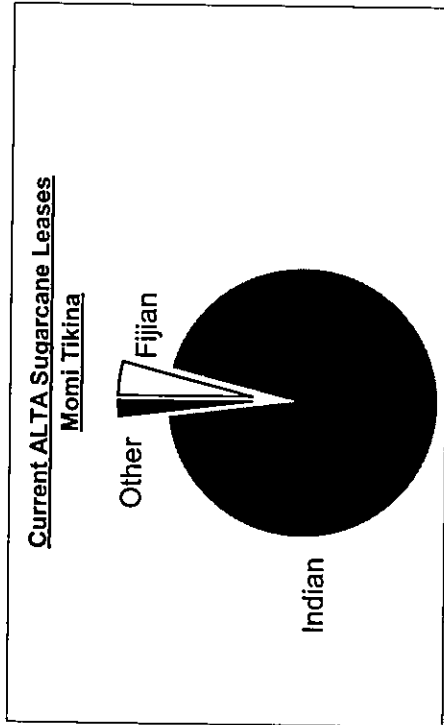
RA PROVINCE



RA PROVINCE

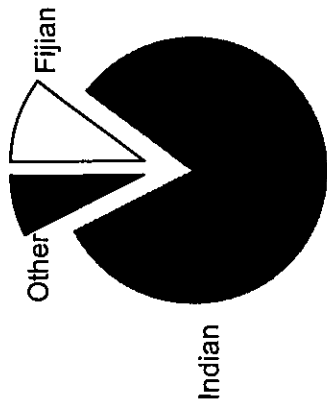


NADROGA PROVINCE

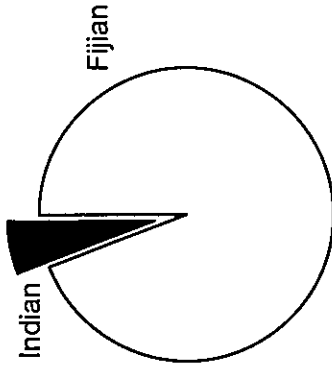


NADROGA PROVINCE

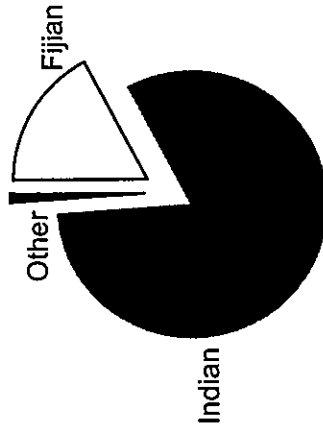
Current ALTA Sugarcane Leases
Malomalo Tikina



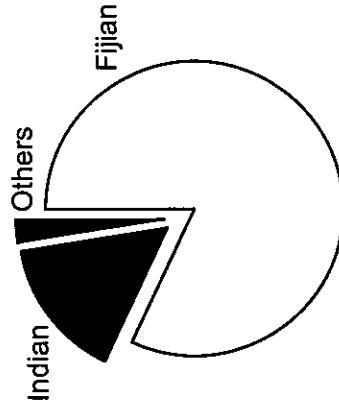
Proposed Change in ALTA Sugarcane Leases
Malomalo Tikina



Current ALTA Sugarcane Leases
Tuva Tikina

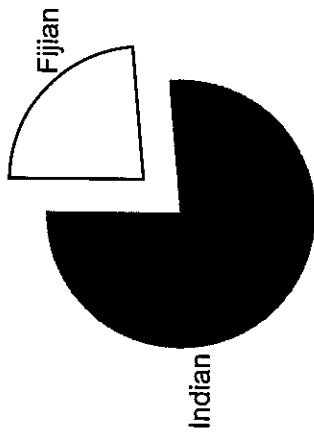


Proposed Change in ALTA Sugarcane Leases
Tuva Tikina

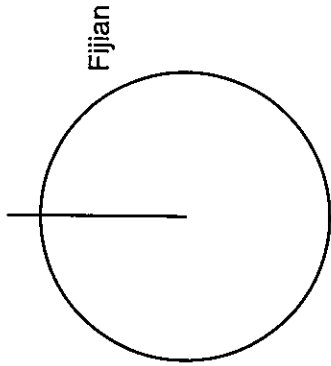


NADROGA PROVINCE

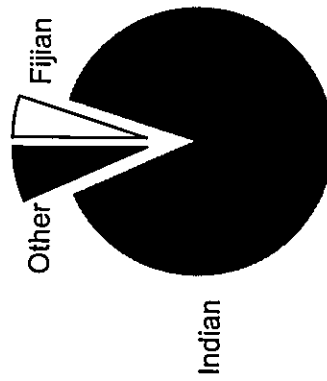
Current ALTA Sugarcane Leases
Conua Tikina



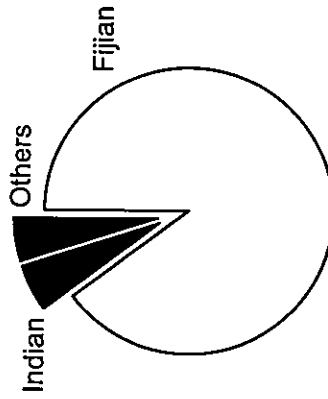
Proposed Change in ALTA Sugarcane Leases
Conua Tikina



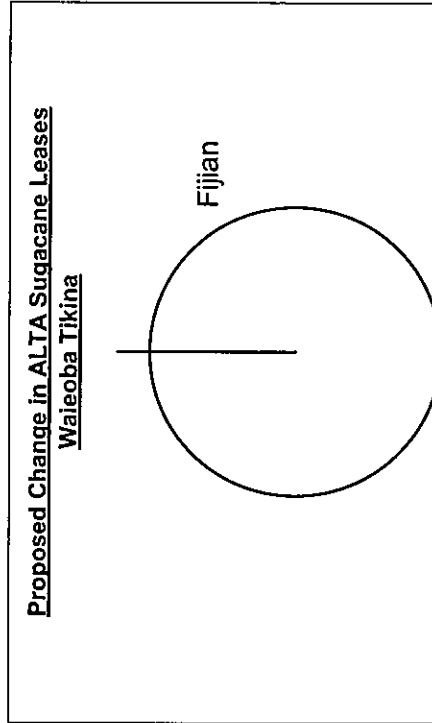
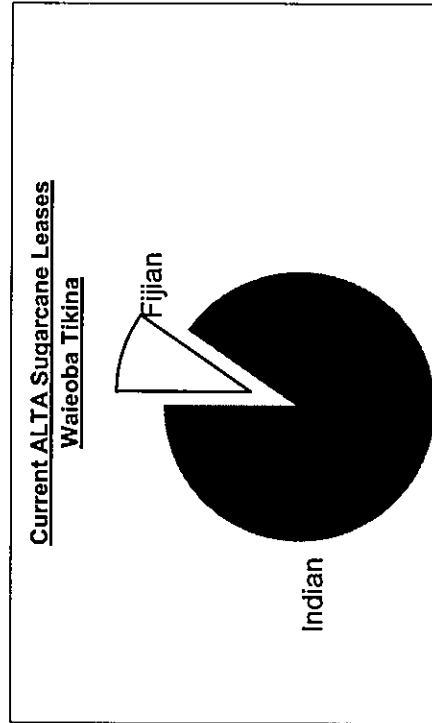
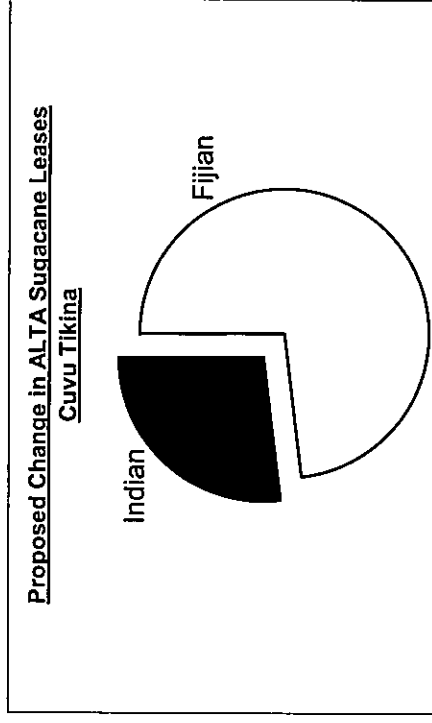
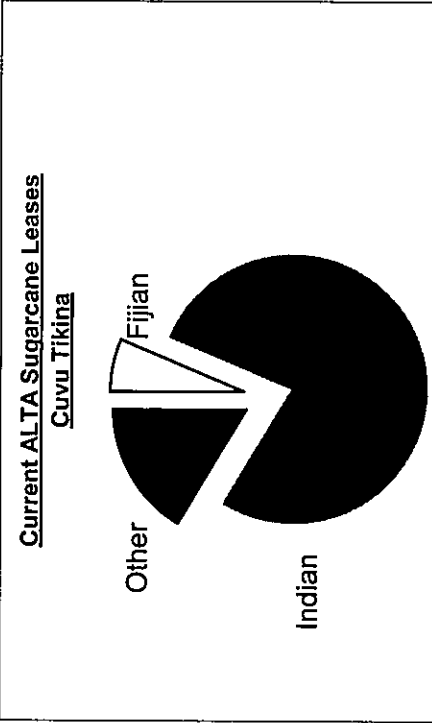
Current ALTA Sugarcane Leases
Sigatoka Tikina



Proposed Change in ALTA Sugarcane Leases
Sigatoka Tikina



NADROGA PROVINCE



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Kelburn Campus Map

