

PROTOCOL AND PROCEDURES
WITH INDIGENOUS
LANDOWNERS AND OCCUPIERS



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Introduction

Mineral rights in Fiji are vested in the State. The Mining Act makes provision for the Government to grant permits, licences and leases for the exploration, development and mining of minerals on native land, state land and private (freehold) land. These permits, licences and leases (Rights) entitle the holder of the Rights (Holder) to enter these lands for the approved purpose. The regulatory provisions and *Exploration Code of Conduct* (Code) set out the rights, limitations and obligations of the Holder of the Rights and the procedures to be followed. The Mining Act and other Acts also, protect the Landowners of their rights to the ownership of the land and the rights of Occupiers granted under the leasing provisions.

The Mining Regulations and '*Exploration Code of Conduct*' require the Holder of the Right to follow certain procedures prior to entry on any land. The Holder of the Right will be in breach of statutory compliance if these procedures are not followed correctly. The pamphlets on "*Exploration Code of Conduct*" and this pamphlet provide guidance on the formal and informal requirements for entry to any land.

Eighty three percent of all land in Fiji are communally-owned by the indigenous Fijians and this land is administered for development by the Native Land Trust Board (NLTB) as trustees, on behalf of the indigenous communities. NLTB, therefore has statutory obligations and responsibilities for the administration of native land on behalf of the Landowners, but it does so only under well established customary protocols and procedures of consultation and permissions from Landowners.

In view of the large majority of land belonging to native Fijians, the Holder of any Right will invariably have to deal with the local indigenous communities, their tenants, who are granted formal leases for occupancy by the NLTB, NLTB itself and with the Native Lands Commission and Provincial offices.

Communally-owned land boundaries are well established for most of Fiji and the ownership and boundaries of various landowning units (*Mataqalis*) are registered at Native Land Commission's office in Suva. The head of a *mataqali* is referred to as *Turaga ni Mataqali*, who is the spokesperson for his/her group, when dealing with land matters.

The Provincial Office in various towns and townships, fourteen altogether, represent the Ministry of Fijian Affairs and the Native Lands Commission. These offices provide guidance on traditional ownership, *mataqali* boundaries and the local customs and traditions, applicable in a particular area.

Indigenous landowners have a very strong, virtually a religious affiliation to their land. They also highly value their chiefs and their chiefly system, the culture and customs and the church. They have, therefore, high expectation that proper customary consultations are done and permissions obtained, before any work is undertaken on their land.

Indigenous communities also have certain customs which are widely observed, particularly in the rural/village situations. These customs and traditions should be understood and adhered to for a harmonious working relationship with the Landowners. The guidelines in this pamphlet provide some information in the observance of these customs and traditions and supplement "*Exploration Code of Conduct*". The requirements in the Code are legally binding on the Holder; whereas the guidelines in this pamphlet are advisory only.

Entry on land prior to commencement of any work

The presentation of the notice of entry to land and the explanation of the exploration work can be best achieved through a meeting with the Landowners and the Occupiers. Since the initial meeting is the first opportunity for the applicant to address the Landowners and Occupiers, it is essential that the Holder communicates effectively, to ensure that the Landowners and Occupiers clearly understand the information presented. Prior to the meeting, the role of the NLTB and the local Provincial Office should be understood and they should be involved as necessary. The Holder or his field coordinator should be very familiar with the Mining Act and also have some knowledge of

the Native Land Trust Act; the Crown Land Act and the Native Land Act. He should also be familiar with the requirements of the local protocol. The following procedures would apply:

- The Manager be issued on behalf of the Provincial Office.
- The Holder should assign a field coordinator, who should liaise closely with the landowners, but involving the Provincial Office. He must be familiar with all aspects of field work.
- The coordinator should arrange a meeting with the Landowners and Occupiers to discuss the proposed exploration programme.
- If a Radio Message is intended to be sent to a village, it should be done after consulting the Provincial Office.
- Provide to the landowner of the land and any lawful Occupier a written notice of entry indicating the type of activity proposed to be undertaken, by whom, and when the activity is to take place.
- Leave with the landowner a large scale map showing the exploration area, which will be disturbed and other informational material, including tenement boundaries.
- Enter into a compensation agreement for compensation payable in respect of any damages as a result of the proposed activity.
- Undertake to rehabilitate the land.
- In the case of native land, obtain the names of the landowners of the licence area from the Provincial Office and give notice of entry to *Tui of the Tikina, Turaga ni Mataqali, Turaga ni Koro, Roko Tui* of the Province, Manager of NLTB of the Division, Divisional Commissioner and District Officer, as provided in the Act and the Code.
- Give the notice personally to *Turaga ni Koro* and *Turaga ni Mataqali*.
- Give notice to legal occupiers, if exploration area is occupied.
- MRD could assist in the coordination and facilitation of the initial meeting with Landowner and Occupiers.

Protocol with village customs

Present a *sevusevu* during the first meeting. The *yaqona* (kava) for *sevusevu* should not be less than 1 kg. After the meeting, a customary permission should be received to work on their land.

- Dress code has to be observed for meetings in a village. It is expected that loose clothing will cover body from neck to legs for both ladies and gents. Clothing should allow comfortable sitting on the floor.
- Items like caps, helmets, very dark glasses, shoes and socks are not worn during the meeting; caps and hats should be taken off in the village compound.
- Visitors should dismount from horses before entering the village.
- Vehicles should be left at the periphery of the village.
- Shouting, whistling and talking very loudly is unacceptable.
- During a sevusevu, don't smoke; maintain silence; remain seated unless absolutely necessary to move; do not normally refuse the first bowl of *yaqona* presented, but if unable to comply, appoint someone prior to the ceremony, to drink on your behalf; sit cross-legged.
- Meet with villagers in informal *yaqona* sessions, when communication is easier from their side.
- Any informal arrangement and undertaking should be respected and honoured together with any formal agreement between the Landowner/Occupier and the exploration company.
- Make acknowledgement that sacred sites will be left undisturbed and request landowners to point out all sacred and historic sites. Alternatively, employ a local guide nominated by *the Turaga ni Mataqali*.
- Discussions in the meetings should proceed slowly and clearly in vernacular or in simple English. An interpreter may be required.

The role of the Native Land Trust Board and the Provincial Office

- The holder of the Right should obtain information from the Provincial Office on the correct ownership of the native land covered by his tenements and NLC maps showing *mataqali* boundaries.
- The Provincial Office should provide guidance on local protocol requirements which may vary in detail from province to province.

- The Provincial Office and NLTB representatives should attend the initial meeting with the landowners and facilitate in the setting up of the meeting. The transport and related expenses should be met by the Holder.
- The Provincial Office will be assisted by the Holder's field coordinator designated under the requirements of the "*Exploration Code of Conduct*".
- A compensation agreement is required prior to any disturbance to the land.

The Provincial Office and NLTB explain to Landowners and Occupiers the terms and conditions of Standard Compensation Agreement*. In case of disagreement, assist in the negotiation of a fresh agreement.

Technical presentation

- Copies of topographical maps showing main geographical features, outline of *mataqali* boundaries of the tenement, should be available at the initial meeting.
- A copy of this map should be left behind for the landowners and occupiers as well as with the Provincial Office which should be updated with information on tracks, camp sites, drill hole sites etc. and presented in future meetings.
- The background of the company should be presented including the company's past record in Fiji and elsewhere.
- Large-scale photos, posters, video tapes showing the various types of exploration activities that will be used during the exploration programme should be presented and copies left with the village.
- The proposed exploration program should be explained and the difference between exploration and mining emphasised. The presentation should also include :
 - ❖ The objectives of the work plan and minerals targeted for exploration.
 - ❖ Various exploration methods to be employed and likely disturbance to land and vegetation arising from these methods of activity.
 - ❖ Use of any large instruments and machinery.
 - ❖ Duration of the work programme.

* See pamphlet "Exploration Code of Conduct"

- ❖ Engagement of expatriates, local outsiders and local villagers.
- ❖ Avoidance of damage and disturbance of sacred sites and the need for an experienced local guide recommended by the *Turaga ni Mataqali*.
- ❖ Environmental protection and rehabilitation measures.
- ❖ Camping requirements and use of local facilities.
- ❖ Benefits to the local situation which include:
 - Upgrading of roads/tracks and new tracks,
 - Casual employment for locals,
 - Training to locals in exploration work,
 - Contracting work to locals, if skills and equipment are available eg. track making, clearing of tracks and/or camp sites.

General guidelines

- Keep landowners informed of all exploration activities and maintain ongoing communication. Continuity of contact and information exchange are essential for good relationship with Landowners and Occupiers.
- Give employment to landowners on priority basis, if they satisfy the requirements of skill and knowledge and provide additional training to them as necessary.
- Make token contribution to local cultural obligations.
- At the completion of the field program and prior to departure, pay a courtesy call and obtain symbolic permission to leave. Appreciation and thanks are expressed with a presentation of a bundle of *yaqona*. This ceremony to depart is called the “*I-tatau*”. Also provide feedback of your exploration work.

References containing additional information **

- *Exploration Code of Conduct*
- *Compensation Policy for Fiji’s Mineral Sector* (in preparation)

Glossary of Terms

I-tatau means a ceremony prior to departing from a village.

Holder means holder of a Prospector’s Right or a holder of a Mining Tenement.

Mataqali means a native Fijian primary social division, commonly recognised as the land-owning unit.

Mining Tenement means a Prospecting Licence/Special Prospecting Licence or a Mining Lease/Special Mining Lease

Native Land means land which are neither State Land or freehold.

Native Owner of land means the mataqali or other division or subdivision of Fijians having the customary right to occupy and use any native land.

Occupier means legal occupier.

Sevusevu means a ceremonial presentation.

Tenement means Prospecting Licence/Special Prospecting Licence or Mining Lease.

Turaga-ni-koro means a civil servant appointed by the Provincial Office to serve as a coordinator and a facilitator in a village.

Turaga-ni-mataqali means a customarily recognised head of a mataqali.

Yaqona means kava.

NOTES