



# A NEXT GENERATION OF CLIMATE LAWS IN FIJI AND THE PACIFIC – EXPLORING THE ROLE AND VALUE OF THE *CLIMATE CHANGE ACT 2021 (FIJI)*

**Pacific Action for Climate Transitions – a research collaboration  
between Fiji National University and Monash University Australia**

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# Executive Summary

In 2021, the Fijian parliament passed a comprehensive, ambitious new climate law: the *Climate Change Act 2021*. Framework climate legislation like this is being introduced around the world to frame and coordinate governmental responses to climate change under the international Paris Agreement. The Fiji example builds on best practice approaches internationally and has significant potential to strengthen domestic climate governance and help channel international climate finance to key areas of need. Yet its effective implementation relies heavily on the resources, capacity and political will of government and the engagement of other stakeholders, such as civil society and the private sector. This report draws on a research workshop involving key government and non-government stakeholders held in Suva in July 2023, as well as experiences implementing framework climate laws in other relevant jurisdictions, to discuss emerging barriers and challenges to the effective implementation of the Climate Change Act 2021. The discussion is intended as a foundation for the development of further applied research activities which can support policymakers and decision-makers across the Fiji government to develop and deliver processes, engage stakeholders, access data and other inputs to facilitate effective implementation of the legislation as part of Fiji's evolving domestic climate change governance.

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CONTENTS		PAGE
<b>1</b>	<b>Introduction</b>	<b>4</b>
<b>2</b>	<b>Framework climate laws and domestic climate governance – exploring the international context</b>	<b>5</b>
2.1	What is framework climate legislation?	5
2.2	What has been the impact of framework climate legislation to date?	6
<b>3</b>	<b>Fiji's <i>Climate Change Act</i> and evolving domestic climate governance</b>	<b>11</b>
3.1	The <i>Climate Change Act 2021</i> (Fiji)	11
3.2	How does the <i>Climate Change Act 2021</i> compare to emerging international best practice standards for the design and implementation of framework climate legislation?	17
<b>4</b>	<b>Barriers and Enablers to Effective Implementation</b>	<b>24</b>
4.1	Barriers to the implementation and enforcement of Environmental Law in Fiji and the Pacific	24
4.2	Stakeholder research workshop, July 2023	25
<b>5</b>	<b>Realising the potential of the <i>Climate Change Act</i> – a research agenda?</b>	<b>28</b>



# 1 Introduction

The *Climate Change Act 2021 (Fiji)* [the *Climate Change Act*] sets out a comprehensive and ambitious legislative blueprint for Fiji's response to climate change. It establishes and formalises domestic governance arrangements for the development and implementation of decarbonisation and climate change adaptation policy and the channelling of international climate finance to these ends.

Framework climate legislation like the *Climate Change Act* has been introduced in many jurisdictions around the world and the Fijian example employs and expands on best practice approaches internationally. Given the law's focus on establishing domestic climate governance, its success as a legal instrument will depend heavily on the resources and capacity of governmental bodies and political support for its implementation. Its impact is also expected to be enhanced if external stakeholders (private sector and civil society) engage with the law and its processes.

This report has been prepared through a pilot research project undertaken in 2023 as part of the *Pacific Action on Climate Transitions (PACT)* research collaboration between Fiji National University and Monash University (Australia).

The pilot project aimed to explore the role and value of framework climate legislation like the *Climate Change Act* in a Pacific context and to identify barriers to, and enablers for, its effective implementation. The project involved:

- a detailed legal analysis of the *Climate Change Act* in its legal and policy context against the background of emerging international best practice standards for the design and implementation of framework climate legislation; and
- targeted comparison with framework climate legislation operating in other relevant jurisdictions to identify common barriers and enablers for effective implementation; and
- discussions with government and non-government stakeholders in a research workshop setting to develop a contextual understanding of the resources and inputs required for effective implementation and to identify further research activities which could support government to develop and deliver processes, engage stakeholders, access data and other inputs to facilitate effective implementation of the Act.

The report is structured as follows:

**Part 2** – explores the emergence of framework climate legislation around the world as a tool to strengthen domestic climate governance and support the implementation of the Paris Agreement at national and subnational scales, noting available evidence of its practical impact.

**Part 3** – introduces the Fijian *Climate Change Act* in its broader legal and policy context, exploring how this legislation aligns with international best practice approaches to domestic climate governance, and highlighting features that reflect its Pacific context.

**Part 4** – draws on international experience and stakeholder input to discuss barriers and challenges to the effective implementation of the *Climate Change Act* in Fiji.

**Part 5** – highlights opportunities for further applied research to support the effective implementation of the *Climate Change Act*.

## 2 Framework climate laws and domestic climate governance – exploring the international context

### 2.1 What is framework climate legislation?

Fiji's *Climate Change Act* is an example of framework climate legislation, increasingly used by governments around the world to frame and coordinate their response to climate change under the international Paris Agreement. While there is variation in legal approaches reflecting differences in legal tradition, pre-existing governance arrangements and policy emphasis, a recognisable body of climate laws that follow a common model has emerged. These laws typically provide for:

- **Decarbonisation:** Framework laws are used to set long-term greenhouse gas [GHG] emissions reduction targets aligned to Paris Agreement goals (e.g., net zero emissions by 2050 or earlier), to provide for a process for setting interim targets or emissions budgets along regular intervals on the pathway to net-zero, and to require government to develop and implement strategy and policy actions to achieve targets and report regularly on progress.
- **Adaptation:** Framework laws often also set out requirements to plan for and respond to climate change impacts across different policy areas.

The first framework climate law was introduced in the United Kingdom (UK) in 2008 – *Climate Change Act 2008* (UK). The UK legislation inspired the introduction of similar laws around the world, mostly at the national scale, but sometimes also at the subnational scale in federated jurisdictions. There are now over 50 jurisdictions with framework climate legislation, including many European countries, as well as an increasing number of countries across Africa, Asia, South America, and the Pacific.<sup>1</sup> Among Pacific Island Countries, the most comprehensive examples are found in Papua New Guinea and Fiji.<sup>2</sup>

Typically, framework climate legislation is not used to implement substantive climate policy responses which impose obligations on third parties such as the private sector (e.g., carbon taxes, emissions trading, regulatory limits on emissions, regulatory constraints on land use and development). Rather these laws impose obligations *on government* to set targets, develop and implement policy to achieve those targets, and report regularly on progress. As such, framework climate legislation tends to focus on:<sup>3</sup>

- **Robust policy development, implementation and decision-making** – For example, these laws often provide principles and considerations to constrain and guide policymakers and decision-makers. They also set out policy-development and decision-making processes in detail including timelines, provision for expert advice and input as well as provision for stakeholder engagement in policy development and implementation.
- **Integration and coordination** – Many framework climate laws explicitly recognise climate change as a cross-cutting issue which is relevant across different areas of government policy including health & well-being, natural resource management, transport, and infrastructure. They include measures to support and facilitate integration and coordination through mainstreaming climate change considerations into all relevant areas of government policy and operations.
- **Transparency and accountability** – To drive timely progress towards decarbonisation and adaptation targets, framework laws often include transparency measures (e.g., regular progress reporting), which can enable third parties, such as civil society and the private sector, to pressure government to deliver on targets and policy implementation. Legal duties (both procedural and substantive) are also used to articulate the roles and responsibilities of different government actors.

<sup>1</sup> The [Climate Laws of the World database](#), maintained by the Grantham Research Institute on Climate Change and the Environment lists 53 pieces of framework climate legislation, plus another 228 executive documents that could be considered to create some kind of framework.

<sup>2</sup> *Climate Change (Management) Act 2015* (PNG) and *Climate Change Act 2021* (Fiji).

<sup>3</sup> There is a substantial academic and grey literature exploring the design and implementation of framework climate legislation, including: Thomas L Muinzer (ed), *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (Hart Publishing, 2020); Ecologic Institute, *Climate Laws in Europe: Good Practices in Net-Zero Management* (Report, February 2020); ClientEarth, *Navigating Net-Zero – Global Lessons in Climate Law-making* (2021); World Bank Group, *World Bank Reference Guide to Climate Change Framework Legislation* (Dec 2020); Anirudh Sridhar et al, *Climate Governance Functions: Towards context-specific climate laws* (Oct 2022).

As can be expected, the emphasis within framework climate legislation varies according to geopolitical context. In Global North countries, these laws have emerged as an important mechanism to promote ambitious interim emissions reduction targets and policy development and boost transparency and accountability. Enshrining climate targets and associated processes in law is widely seen to be an important way to strengthen climate commitments and safeguard climate policy from future backsliding.<sup>4</sup> While it is of course possible to rescind legislation, this is much harder than reversing policy commitments, especially where framework climate laws establish comprehensive whole-of-government processes over long timeframes.

In Global South countries, which have contributed least to global GHG emissions but are highly vulnerable to climate change impacts, the emphasis of framework climate laws is less about holding governments accountable for reducing emissions and more about shaping robust government policy responses to emerging climate impacts and low carbon development imperatives and channelling international climate finance to support these responses.<sup>5</sup>

## 2.2 What has been the impact of framework climate legislation to date?

While there is considerable academic research exploring best practice approaches to the *design* of framework climate legislation,<sup>6</sup> there has been comparatively little research exploring its implementation and practical impact, with most available empirical evidence drawn from the Global North.<sup>7</sup> This can be partly explained by the fact that many framework climate laws, especially in the Global South, are relatively new.

This report draws on the available evidence of implementation and impact from a small selection of Global North and Global South jurisdictions with framework climate laws:

- United Kingdom – *Climate Change Act 2008*
- Ireland – *Climate Action and Low Carbon Development Act 2015*
- Victoria (subnational Australian jurisdiction) – *Climate Change Act 2017*
- Kenya – *Climate Change Act 2016*
- Mexico – *General Law on Climate Change 2012*

While the legal traditions, pre-existing climate governance and policy emphasis differ across these examples, common themes emerge in illustrating and explaining successful implementation (Table 1) and in highlighting persistent barriers and challenges (Table 2).

**Table 1: Evidence of successful implementation of framework climate legislation**

Implementation success	Examples
<p><b>Ambitious Interim Target-setting</b></p> <p>In Global North jurisdictions where legislation sets out a clearly constrained process for interim target setting involving independent expert input, governments are setting reasonably ambitious interim targets that underpin timely achievement of the long-term net-zero goal.</p>	<p><b>Victoria:</b> The <i>Climate Change Act 2017</i> includes a long-term emissions reduction target of net zero by 2050 &amp; a clearly articulated requirement for the Minister to set interim targets every 5 years (ss 6(1), 10). The target-setting process is tightly constrained by legislation, including the requirement that the Minister seeks and considers advice from independent experts (which must refer to the long-term temperature goal of the Paris Agreement) (ss 12(1), 14 (1)). The first round of interim targets developed under the Act were announced in 2021 for the years 2025 and 2030. While these targets were consistent with the legislative scheme, they were in the lower end of the range recommended by the expert panel and were criticised for a lack of ambition (i.e., not well aligned to the more ambitious Paris Agreement temperature goal).</p> <p>However, in subsequent target-setting, the government’s ambition has increased. Targets for 2035 were announced in 2023 (alongside a revised net-zero target for 2045) and have been welcomed as well-aligned to international climate goals. Further, the Victorian government reports that it is on track to meet and exceed its 2025 and 2030 targets and is decarbonising at the fastest rate of any state and territory in Australia.<sup>8</sup></p>

<sup>4</sup> Ecologic Institute, *Climate Laws in Europe: Good Practices in Net-Zero Management* (Report, February 2020).

<sup>5</sup> Anirudh Sridhar et al, *Climate Governance Functions: Towards context-specific climate laws* (Oct 2022), 8.

<sup>6</sup> For a useful overview see, Muinzer (above n 3).

<sup>7</sup> Sarah L. Nash, Diarmuid Torney and Simon Matti, ‘Climate Change Acts: Origins, Dynamics, and Consequences’ (2021) 21(9) *Climate Policy* 1111

<sup>8</sup> State of Victoria Dept of Energy, Environment and Climate Action, *Victoria’s 2035 Emissions Reduction Target – Driving Real Climate Action* (May 2023)

Implementation success	Examples
<p><b>Stronger climate policy</b></p> <p>Stronger climate policy is emerging in jurisdictions where legislation enshrines climate targets and establishes clearly constrained processes for developing climate policy to achieve targets and report on progress.</p>	<p><b>Mexico:</b> The <i>General Law on Climate Change 2012</i> includes emissions reduction targets for 2030 and 2050, as well as associated sectoral targets (transport, electricity, residential, oil and gas, industry, agriculture, waste), including a target of 31% reduction in emissions for the electricity sector by 2030, considered to be quite ambitious considering the high reliance on fossil fuels in the electricity sector in Mexico.</p> <p>The law and its legislated targets have been identified as key drivers for comprehensive energy sector reform including renewable energy targets, clean energy auctions, carbon taxation measures.<sup>9</sup> However, these reforms were partially undone following a change of government in 2018, elected on a platform of energy security and self-sufficiency (see further in Table 2).</p>
<p><b>Improved accountability for robust policy development and decision-making</b></p> <p>Framework climate legislation in both Global North and Global South has opened up pathways for public interest litigation to drive stronger climate policy.</p>	<p><b>Ireland:</b> In 2017, civil society group, Friends of the Irish Environment (FIE), challenged the Irish government's approval of the National Mitigation Plan in 2017, arguing that this plan violated the <i>Climate Action and Low Carbon Development Act 2015</i>. The plaintiffs argued that the plan (which allowed for an increase in emissions from 2017–2020) was missing mandatory elements such as a specification of the manner in which it was proposed to achieve the national transition objective (to 'transition to a low carbon, climate resilient and environmentally sustainable economy by the end of the year 2050'); and that the State could not be said to have had regard to prescribed matters such as international and European Union climate law and climate justice. At first instance, the High Court of Ireland found that even if the plan is justiciable, the State must be given a broad margin of discretion in its adoption, with reference to the separation of powers doctrine and the nature, extent, and wording of the relevant statutory obligations. In particular, the Court noted the broad discretion granted to the State under the Act in making the mitigation plan, as well as the lack of any interim targets to direct early mitigation efforts. However, this decision was subsequently overturned on appeal by the Supreme Court. The Court acknowledged the justiciability of the obligation on the government to set out serious and credible measures to achieve the national transition objective, noting that 'the overriding requirement of a compliant plan is that it specifies how that objective is to be achieved by 2050'. Therefore, the Court held that the 2017 plan fell a long way short of the sort of specificity which the legislation required and should therefore be quashed.<sup>10</sup></p> <p><b>Kenya:</b> In 2019, a civil society group relied on the <i>Climate Change Act 2016</i> to challenge the decision to grant a licence for the first ever coal-fired power plant in Kenya (<i>Save Lamu et al. v National Environment Management Authority and Amu Power Co. Ltd</i> [2019]). The plaintiffs argued, inter alia, that the project's Environmental Impact Assessment (EIA) was not compliant with the EIA regulations (which required explicit consideration of the <i>Climate Change Act 2016</i>). Specifically, during the preparation of the EIA, there was insufficient public consultation; climate change risks were not adequately considered; and information related to the project was not freely accessible. The National Environmental Tribunal set aside the licence, finding that the project would be inconsistent with Kenya's commitments under the Paris Agreement and that the decision failed to consider the <i>Climate Change Act</i>. As such, the <i>Climate Change Act</i> bolstered the more general requirements under EIA regulations by setting out clearer obligations to consider climate impacts in the EIA process.<sup>11</sup></p> <p><b>UK:</b> In 2022, civil society groups ClientEarth and Friends of the Earth challenged the legality of the UK government's <i>Net Zero Strategy</i> (which is required to be developed under the Act to meet legally binding carbon budgets set for 5 year intervals on the pathway to net-zero emissions by 2050). The plaintiffs argued that the strategy failed to set out policies that were capable of reducing emissions sufficiently to meet the legally binding carbon budgets, and that the strategy failed to include sufficient information about the policies and their expected effects to allow for the UK Parliament and the public to properly scrutinise its plans. The case was successful with a finding in the High Court that that the government was in breach of its statutory obligations to demonstrate that its climate policies will sufficiently reduce emissions to meet legally binding carbon budgets.</p>

<sup>9</sup> See Alina Averchenkova, 'Mexico's Framework Legislation on Climate Change: Key Features, Achievements and Challenges Ahead' in Thomas L Muinzer (ed), *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (Hart Publishing, 2020), 93-110; Heiner von Lüpke and Mareike Well, 'Analysing climate and energy policy integration: the case of the Mexican energy transition' (2020) 20(7) *Climate Policy* 832-845.

<sup>10</sup> *Friends of the Irish Environment CLG v Ireland* [2020] IESC 49.

<sup>11</sup> See discussion in Clarice Wambua, 'The Kenya Climate Change Act 2016: Emerging Lessons from a Pioneer Law' (2019) 4 *Carbon and Climate Law Review*, 257; and Odunayo O. Olashore, 'Implementation of the International Legal Framework Regarding Climate Change in Developing Countries: A Review of Nigeria, Kenya, and Botswana's Environmental Provisions Governing Climate Change' (2019) 21(3) *Environmental Law Review* 189; Meissy Janet Naeku, 'Climate Change Governance: An Analysis of the Climate Change Legal Regime in Kenya' (2020) 22(3) *Environmental Law Review* 170, 180.

Implementation success	Examples
	<p>The court ordered the UK Government to update its climate strategy, giving considerable weight to the independent advice of the expert Climate Change Commission and to include a quantified assessment of how the proposed policy measures will achieve the emissions reduction targets.<sup>12</sup> In July 2023, following the release of the revised strategy a fresh legal challenge was launched arguing that the revised strategy provides insufficient information on the risk of the proposals and policies not being delivered and not meeting legally binding climate targets. Further, many of the technologies being relied on to deliver substantial emissions savings are high risk, raising serious questions about the government's assumption that they will be delivered 'in full'. This challenge was successful. The UK Government has been ordered to prepare a revised and legally compliant strategy within 12 months.<sup>13</sup></p> <p><b>Victoria:</b> Civil society group, Environment Victoria, challenged the decision of the Victorian Environment Protection Authority (EPA) to renew the operating licenses for coal-fired power stations in Victoria, arguing, inter alia, that there had been a failure by the EPA to consider climate change in this decision as required by the <i>Climate Change Act 2017</i> (Vic). Under the Act, the EPA was required to consider 'the potential contribution to the State's greenhouse gas emissions of the decision or action,' and 'the potential impacts of the decision on climate change' when making this decision (s17, Schedule 1). The EPA's review of operating licenses was initiated in 2017 and resulted in the EPA imposing amended conditions on the operation of the power stations in 2021, including in relation to risk management and monitoring and emissions discharge limits for various air pollutants. It did not result in conditions directly addressing greenhouse gas pollution, and this was also not addressed in the original operating licenses. This case was unsuccessful. The Victorian Supreme Court confirmed that the EPA, when imposing amended or new conditions on licensees, was clearly required to consider climate change in line with section 17 of the Act. However, the judge did not find that there had been a failure to do so in this case.<sup>14</sup> While the case was unsuccessful, it has had the more indirect effect of raising awareness about legal obligations to consider climate change and prompted the EPA to develop regulatory guidance for decision-makers on how to take CC into account in various decision-making contexts.<sup>15</sup></p>
<p><b>Redress and remedy for climate harms</b></p> <p>Framework climate legislation in Global South jurisdictions has opened up pathways for litigation to seek compensation for victims of climate harms.</p>	<p><b>Kenya:</b> <i>The Climate Change Act 2016</i> provides broad rights to enforce the Act – section 23 creates a right for any individual (or organisation) to bring a claim against another person who 'has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change'. There is no need to prove loss or injury when bringing such an application before Kenya's Environment and Land Court. Kenya also has a constitutionally protected right to a clean and healthy environment.</p> <p>In 2022, a case was initiated by a public interest legal centre on behalf of a group of people affected by climate-related flooding in the Lake Baringo region, which led to displacement, loss of life, and loss of property.<sup>16</sup> The claim seeks to enforce the climate change duties under the Act, as well as other constitutional rights, with plaintiffs arguing that government officials either failed, neglected or refused to discharge their duties under Act. The case seeks a declaration that government officials failed, refused or neglected to take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse impacts; a declaration that relevant government officials failed, refused or neglected to avert, minimize and address effects of climate change suffered by the petitioners; an order to compel relevant government officials to rehabilitate, relocate, and restore damaged infrastructure; an order for compensation for climate change damage; and an order for resettlement of flood victims.</p>

<sup>12</sup> *R(Friends of the Earth, ClientEarth and Good Law Project) v SSBEIS* [2022] EWHC 1841 (Admin)

<sup>13</sup> Friends of the Earth, *High Court Judgement on government's climate plan*, (3 May 2024, webpage).

<sup>14</sup> *Environment Victoria Inc v AGL Loy Yang Pty Ltd & ORS* [2022] VSC 814.

<sup>15</sup> EPA Victoria, *Our role in managing climate change risks*, (webpage).

<sup>16</sup> *Incorporate Iten ELC Petition No. 007 of 2022 – Legal Advice Centre T/A Kituo cha Sheria & Anor v. Attorney General and 7 Others* (note that this case is still pending).

**Table 2: Evidence of challenges and barriers to effective implementation of framework climate legislation**

Challenges and Barriers	Examples
<p><b>Delays</b></p> <p>Considerable delays have been experienced in implementing framework climate laws especially where laws rely heavily on the promulgation of associated regulations to take effect, where laws require coordination across government and where laws require the establishment of new institutions.</p>	<p><b>Victoria:</b> There were significant delays in the early implementation of the <i>Climate Change Act 2017</i>, with the government missing legislated timelines for interim target-setting and strategy development. This has been attributed to the ambitious nature of the integrated strategy development requirement by the Act and the consequent need for investment in capacity building and resources across government to support this.<sup>17</sup> While there have since been improvements in relation to target-setting and policy development and the government appears to be back on track with the statutory timeline, some important aspects of the legislation remain un-implemented. This includes development of guidelines for decision-makers on how to take climate change into account in relevant decisions and actions in line with statutory mainstreaming duties (ss 18 and 21).</p> <p><b>Kenya:</b> Delays have been experienced in establishing the National Climate Change Council, a new coordinating institution for climate governance under the Act. The failure to constitute the Council had the effect of halting the implementation of key provisions within the Act, as many functions under the Act are contingent on the Council. Once the Council is eventually formulated, additional delays are foreseeable in the creation of regulations. However, failure to properly constitute the Council is not a clear-cut breach of the Act, as there is no legislated deadline for its formation.<sup>18</sup></p>
<p><b>Complex coordination and integration challenges</b></p> <p>Despite statutory objectives to achieve coordination and integration of climate change across government, and in some cases vertical integration between national and state level governments, in many cases, this has been difficult to achieve in practice. This is especially difficult where there are ambiguities in institutional mandates and the articulation of roles and responsibilities, and where legislation does not include strong accountability mechanisms assigned to relevant governmental actors.</p>	<p><b>Kenya:</b> A dual system of climate governance is created by the Act involving national and county (subnational) governments. County governments have a legal obligation under the Act to incorporate climate change considerations into their planning and budgeting. In practice, this has been difficult to achieve as many county governments are not resourced and equipped to undertake climate mainstreaming and reporting functions. Indeed, the county governments (as they exist now) were only established via the 2010 Constitution. In this sense, Kenya's multilevel governance system is still maturing. Some counties, such as the Machakos County, have made significant developments in their climate governance – which has enabled them to access funding from donors, including the Green Climate Fund. Yet, this progress has not been universal.<sup>19</sup></p> <p><b>Mexico:</b> A similar dual system of climate governance is established by the Act, which sets out legal obligations for state (subnational) governments to produce state-level climate policies and participate in various climate governance bodies. In practice, participation by state governments has been minimal, and this has been attributed to a lack of clear implementation mechanisms, timelines and financing strategy to ensure sufficient resources.<sup>20</sup></p> <p><b>Victoria:</b> One of the legislative approaches used to achieve coordination and integration under the Victorian Act is to require sectoral emissions reduction pledges (plans) to be developed by sectoral ministers. However, the statutory constraints for sectoral pledges lack detail, and in practice different ministries have highly varied capacity and buy-in in these processes, resulting in weaker than anticipated pledges in some sectors in the first round of planning.<sup>21</sup></p>

<sup>17</sup> Anita Foerster, Alice Bleby, Anne Kallies, Jonathan Church, 'Paris at the subnational scale? An exploration of the role and potential of framework climate change laws' (2022) 45(3) *Melbourne University Law Review* 1045, 1077.

<sup>18</sup> See discussion in Clarice Wambua, 'The Kenya Climate Change Act 2016: Emerging Lessons from a Pioneer Law' (2019) 4 *Carbon and Climate Law Review*, 257.

<sup>19</sup> Ibid. See also Naeku (above n 11), 180.

<sup>20</sup> Israel Solorio, 'Leader on paper, laggard in practice: policy fragmentation and the multi-level paralysis in implementation of the Mexican Climate Act' (2021) 21(9) *Climate Policy* 1175-1189.

<sup>21</sup> Foerster et al (above n 17), 1070-73.

Challenges and Barriers	Examples
<p><b>Political will remains critical to effective implementation</b></p> <p>Successful implementation of framework climate legislation requires political will, strong leadership and sustained commitment. Experience to date shows that framework climate laws remain vulnerable to political shifts, and without political leadership, climate change laws achieve very little.</p>	<p><b>Mexico:</b> While the 2016 Act is an example of a strong, best practice framework law, it was substantially wound back following a change of government in 2018. The incoming government, elected on a platform of energy security and self-sufficiency prioritized state-run non-renewable electricity generation and re-activated coal fired power stations, contrary to the policy direction introduced by the 2016 legislation.<sup>22</sup></p> <p><b>Victoria:</b> An earlier framework climate law – the <i>Climate Change Act 2010</i> (Vic) – was also substantially wound back following a change of government. The political situation is however now more stable with more evidence of bipartisan support for climate action. Further, the implementation of the 2017 law across government is now well underway. It is considered far less likely that an incoming government would seek to dismantle its comprehensive and far-reaching policy processes.<sup>23</sup></p> <p><b>Kenya:</b> Certain features in design of the Act have been identified as important safeguards to insulate climate policy implementation from politicisation and protect the law from being scaled back upon a change of government. For example, the content of National Climate Change Action Plans is governed by the Act, making it difficult to publish plans that neglect certain aspects of government policy. Further, the composition of various bodies created under the Act, including the National Climate Change Council and the Climate Change Directorate, is also multi-disciplinary in nature, which assists in creating a forum that is immune to ‘political flux’.<sup>24</sup></p>

<sup>22</sup> See e.g., David Agren, ‘Mexico Was Once a Climate Leader – Now It’s Betting Big on Coal’, *The Guardian* (online, 15 February 2021).

<sup>23</sup> Foerster et al (above n 17), 1074-77.

<sup>24</sup> Olivia Rumble, ‘Chapter 2: Climate Change Legislative Development on the African continent’ in Patricia Kameri-Mbote et. al, *Law and Constitution in Africa* (Nomos Verlagsgesellschaft, 2019) 54.

# 3 Fiji's *Climate Change Act* and evolving domestic climate governance

## 3.1 The *Climate Change Act 2021* (Fiji)

The *Climate Change Act* is a codification of a long historical development of climate policies and governance in Fiji. It seeks to strengthen existing climate policies by institutionalizing them into the national legal framework, as well as formalising and developing climate government arrangements. The key features of the Act are summarised below: Table 3 set outs the cross-cutting climate governance themes which are developed in various ways throughout the Act and Table 4 introduces the substantive themes which represent key areas of climate policy for Fiji, and which are addressed in detail in dedicated chapters of the Act.

**Table 3: Cross-Cutting Themes**

Themes	Provision in <i>Climate Change Act 2021</i>
Domestic Climate Change Governance	<p>The Act formalises and expands pre-existing climate governance institutions. It establishes various national level committees and appoints appropriate persons, setting out their respective obligations and functions under the legislation:</p> <ul style="list-style-type: none"> <li>• <b>Minister Responsible for Climate Change</b> (who in Fiji's case is the Prime Minister) – s 9 sets out broad powers for the Minister to support the implementation of the Act; s 10 requires the Minister to review the implementation of the Act every 5 years and report to Parliament on findings.</li> <li>• <b>National Climate Change Coordination Committee</b> – s 12 set out the composition, and advisory and policy development role, of the committee, including assisting the Minister to develop and implement a National Climate Change Policy every 10 years. The Committee has powers to request assistance from state entities, form technical working groups and consultative groups with relevant experts and stakeholders (s12(10)).</li> <li>• <b>Director of Climate Change and International Cooperation Division</b> – s 11 sets out the functions of the Director including assisting with the implementation and enforcement of the Act, reporting under the UNFCCC and Paris Agreement and oversight of the carbon market (discussed further below).</li> <li>• <b>Ministerial Focal Points</b> – s 13 provides for the appointment of persons in each ministry with the responsibility of promoting the implementation of the Act and reporting bi-annually on implementation within their ministry. There is a general duty for each focal point to take all reasonable steps to support the implementation of the Act within their Ministry (s 21(1)), and reporting obligations are further articulated in s 21(2)).</li> <li>• <b>National Adaptation Plan Steering Committee</b> – s 67 sets out the role of the committee to review and prepare successive National Adaptation Plans (NAP – see further discussion in Table 4), with provision for public consultation and reporting. The recommendations of the committee must be considered by the Minister when deciding whether to approve the updated NAP.</li> <li>• <b>National Ocean Policy Steering Committee</b> – ss 82 &amp; 83 provide for the composition of the committee (including scientific advisors) and their role in reviewing and developing successive National Ocean Policies (NOP) (at least every 5 years). The recommendations of the committee must be considered by the Minister when decided whether to approve the updated NOP.</li> <li>• <b>Fijian Taskforce on the Relocation and Displacement of Communities Vulnerable to the Impacts of Climate Change</b> – s 76 sets out the role of the Taskforce to assist the Minister in reviewing and preparing successive Planned Relocation Guidelines, operationalised through Standard Operating Procedures which enable pro-active approaches to address displacement risk. The Taskforce has a clear role in implementing responses to displacement, including community consultation and public hearings. The Minister must take into account any recommendations of the Taskforce when making a decision about relocation.</li> <li>• <b>Private Sector Advisory Committee</b> – s 92 provides the Minister with power to establish this committee to engage with the private sector on the implementation of the Act.</li> </ul>

Themes	Provision in <i>Climate Change Act 2021</i>
Climate Mainstreaming	<p>Part 5 of the Act sets out the climate change obligations of state entities including:</p> <ul style="list-style-type: none"> <li>• a general (enforceable) duty on state entities to ensure decisions, policies, programs, and processes are consistent with objectives and principles of the Act (s18), with some retrospective application requiring review and updating of decisions, policies, and programs already in operation prior to the commencement of the section (s18(2)). This duty is framed in terms of consistency with Ministerial Guidelines, and therefore depends on their development and issue, which should occur within 12 months of the commencement of the section (s 19(4)&amp;(5)).</li> <li>• a specific duty to ensure scheduled decisions and actions are consistent with the objectives and principles of the Act and other relevant objectives (s 19). Schedule 1 lists 40 pieces of legislation but does not identify specific decisions or actions under these laws. The Minister is obliged to develop guidelines for decision-makers bound by the s 19 duty (s20).</li> </ul> <p>The court may set aside a decision, policy, or process made, developed or implemented by a state entity, if it finds that climate change was relevant and that the decision, policy or process was not consistent with achieving the objectives and principles of the Act (s18(3)).</p> <p>Explicit requirements to integrate climate change are also included for specific decisions and actions include:</p> <ul style="list-style-type: none"> <li>• <b>Environmental Impact Assessment</b> under the <i>Environment Management Act 2005</i> – this legislation is also amended to ensure that climate impacts are assessed where a project may result in material greenhouse gas emissions or could be adversely impacted by the impacts of climate change (s 22).</li> <li>• <b>Government Procurement</b> – with obligations for the Fijian Procurement Office to formulate procurement policies that are consistent with the objectives and principles of the Act (s 23).</li> <li>• <b>Ministerial portfolios, functions, and human resourcing</b> – with obligations to develop KPIs relevant to climate risk management and revise job descriptions to ensure civil servants are equipped with relevant specialist skills to support the implementation of the Act (s 24).</li> <li>• <b>Integration of climate change into school and university curricula</b> (s 25).</li> <li>• <b>Budget Submissions</b> – the Minister responsible for Finance must report on the economic implications of climate change (s 26(1)) and all state entities must note climate-related expenditure and financial impacts of climate change in budget submissions (s 26(2)).</li> <li>• <b>Decisions relating to proposals for new infrastructure</b> must incorporate climate risk and resilience assessments, using integrated risk scenarios (s 71). The Minister must prepare guidelines on climate risk assessments (s 71(3)).</li> <li>• <b>Review and amendment of the National Building Code</b> to increase the climate resilience of Fiji’s buildings (s 72).</li> </ul>
Participation, Consultation and Rights Protection	<p>Fiji’s Constitution reinforces the importance of public participation and consultation in law-making and legislative processes (ss 50(2) and 72). Traditionally, public consultation has always been part of the law making or review process whereby parliamentary standing committees call for public hearing or submissions during a law review process or on the introduction of a new Bill.</p> <p>Explicit participation and consultation requirements are included in existing environmental laws such as the <i>Environment Management Act 2005</i> (s34) and associated regulations, which require consultation prior to any development that would have an impact on the environment.</p> <p>Similarly, participation and consultation have been integral to previous climate policy development in Fiji.</p> <p>The <i>Climate Change Act</i> does include specific provision for public participation and stakeholder consultation, including in the development of the National Climate Change Policy (s 27(3)), reviewing and developing successive NAPs (ss 67 (20&amp;(5)), development of the National Oceans Policy (s 83) and for any relocation of at-risk communities (s 77 (2)&amp;(3)).</p> <p>The Act often specifically provides for consultation with vulnerable groups and for ensuring gender diversity (e.g., s 77(4)).</p>

Themes	Provision in <i>Climate Change Act 2021</i>
	The Act clearly states that Fiji will respect, promote, and consider the rights and freedoms recognized in Chapter 2 of the Constitution when taking action to address climate change (s 5(a)). It also recognises that climate change is a threat to these rights and freedoms, particularly the right to a clean and healthy environment, the right to adequate food and water, the right to health, the rights of children and persons with disabilities, the right to housing and sanitation and the right to reasonable access to transportation (s 65).
Access to Justice	<p>Third parties are granted rights to enforce the Act under s 104 – any person can bring proceedings for an order to remedy or restrain a breach of this Act (where a breach is defined as a contravention of or failure to comply with the Act or a threatened or apprehended contravention). The court has broad powers to make an order to remedy or restrain the breach.</p> <p>Further, any person who has suffered a loss as a result of any breach of the Act may institute a civil claim for damages – economic loss, loss of earnings, loss to natural environment or resources (s 107).</p>

**Table 4: Substantive Climate Policy Themes**

Theme	Policy Context	Provision in <i>Climate Change Act 2017</i>
Climate Mitigation	<p>Prior to the enactment of the Act, Fiji had developed extensive climate change policy recognising both climate mitigation and adaptation objectives as central to resilient development: <i>National Climate Change Policy 2018–2030</i> (NCCP).</p> <p>The NCCP sets out the following objectives to achieve climate change mitigation and resilient development:</p> <ul style="list-style-type: none"> <li>• To derive 100% of national electricity production from renewable energy sources by 2030 and achieve net zero annual GHG emissions by 2050;</li> <li>• To decarbonise Fiji’s Transport sector</li> <li>• To prioritise GHG mitigation initiatives that increase national resilience and help achieve the Sustainable Development Goals; and</li> <li>• To preserve and enhance Fiji’s natural carbon sinks and carbon reservoirs.</li> </ul> <p>The <i>Low Emissions Development Strategy 2018 – 2050</i> (LEDS) helps to operationalise the NCCP objectives of mitigation and resilient development by defining pathways to achieve low emission development in Fiji until 2050.</p>	<p>Part 9 of the Act sets a long-term emissions reduction target of net zero by 2050 and sets out a process for the development of 5 year carbon budgets beginning in 2026 (with the carbon budget for the period 2026–2031 to be determined on or before 31 March 2023). The Minister has a duty to take all reasonable steps to promote the achievement of each carbon budget (s39(11)) and is subject to 5 yearly reporting obligations (s38(3)).</p> <p>The Minister has wide powers to introduce and implement regulations, measures and actions to reduce emissions including carbon pricing, emissions trading, fees and charges levied on emissions, fiscal incentives to encourage private investment in renewable energy and energy efficiency, enhanced protection of land and ocean-based carbon sinks, building infrastructure standards (s 43). There is a specific obligation on the Minister to develop a Transport Decarbonisation Strategy within 2 years of commencement of the section (s 44).</p> <p>Part 7 requires the Minister to develop a publicly available Fijian GHG Inventory in accordance with agreed international methodologies. Emissions data is to be collected on a sectoral basis by relevant departmental secretaries, who can request data from state and private entities (s 30). The Director must report biennially on GHG emissions in the form of a national inventory report (s 33).</p>

Theme	Policy Context	Provision in <i>Climate Change Act 2017</i>
Carbon Sequestration	<p>The <i>Fiji REDD+ Policy</i> (2011) is implemented within the framework of the <i>National Forest Policy 2007</i> and contributes to the national Forest Sector goal: ‘Sustainable management of Fiji’s forests to maintain their natural potential and to achieve greater social, economic, and environmental benefits for current and future generations’.</p> <p>The REDD+ policy seeks to support and strengthen initiatives that address the drivers of forest-based carbon emissions; and encourage the drivers of forest-based carbon sinks. It seeks to contribute to the development of a national carbon trading policy and build capacity to access international finance mechanisms including in the context of the UNFCCC (Policy field 6.6, National Forest Policy).</p> <p>The REDD+ Policy is also aligned to the objectives of the <i>Fiji Sustainable Economic and Empowerment Development Strategy</i> (2008–2010), aiming to contribute to the overall sustainable development of the Fiji Islands, including poverty reduction.</p>	<p>Part 10 of the Act establishes the legal framework for the recognition and registration of carbon sequestration property rights and for Fiji’s ongoing participation in international REDD+ programmes. Rights may be granted to landowners, licensees, or lessees, or third parties with consent from landholders. For iTaukei land, consent to register a right will be deemed to be given if a consent notice is signed by a minimum of 60% of qualifying members. Mining, logging, exploration, exploitation, and extractive industries must not be approved on lands which are covered by a carbon sequestration right (s 47). Consequential amendments have been made to <i>Petroleum (Exploration and Exploitation) Act 1978</i> to this effect.</p> <p>Part 10 also provides for the development of emissions reduction methodologies for emissions reduction projects, programmes or activities involving forests (but also blue carbon or other activities) (s49) and the declaration and registration of such projects including crediting periods and the issue of Fijian Mitigation Outcomes Units (FMOUs) which are transferable (domestically or internationally) (s 50-54). Consent from the Director of Lands is required for registration and transfer of FMOUs under an approved international emissions reduction standard (s55), for registration, conduct or operation of an emissions reduction project for the purposes of Article 6 of the Paris Agreement (s57, s58) and for international transfer of FMOUs, either to a foreign account or for the purposes of Article 6 (s58-59).</p> <p>For government participation in REDD+, the Minister is taken to have the authority of the carbon sequestration rights holder to sell and transfer resulting FMOUs, provided that prior and informed consent is received. For iTaukei lands, there is provision for the development of benefit sharing plans and compensation (s 60(1) (c)&amp;(2)).</p>
Adaptation and Resilient Development	<p>The NCCP identifies Adaptation as one of the two strategic dimensional objectives to achieve resilient development. The <i>National Adaptation Plan 2018</i> (NAP) provides a strategic high-level action plan for climate change adaptation that builds on the existing policy and development planning landscape.</p> <p>The NAP sets out prioritized actions that are split across a total of 10 systems including: climate information services and management; horizontal integration; vertical integration; climate change awareness and knowledge; and resource mobilization.</p>	<p>Part 11 of the Act establishes the National Adaptation Plan Steering Committee with the responsibility to develop successive NAPs to address various sectoral adaptation issues (s 67). A broad range of factors are listed which must inform the development of NAPs including constitutional rights and freedoms, best available science, integrated risk scenarios developed in accordance with the Act, and fiscal impacts, especially in relation to the avoidance of future costs (s 67(3)).</p> <p>The Minister has broad powers to introduce and implement regulations, policies, measures, adaptation planning processes and actions to increase reliance and ability to adapt (s 68) – and these must be recorded on the Adaptation Registry (s 68(3)). The Adaptation Registry records all adaptation projects in Fiji, and there are some voluntary reporting requirements (s 73 and 74).</p>

Theme	Policy Context	Provision in <i>Climate Change Act 2017</i>
	<p>The NAP addresses the following sectors:</p> <ul style="list-style-type: none"> <li>• Food and nutrition security</li> <li>• Health</li> <li>• Human settlements</li> <li>• Infrastructure</li> <li>• Biodiversity and the natural environment</li> </ul>	<p>Specific provision is made for the development of integrated risk scenarios to model potential and projected physical impacts of climate change, assess vulnerability, exposure, and sensitivity to these impacts, and assist efforts to improve adaptive capacity (s 69). However, their development is not a mandatory obligation.</p> <p>Specific provision is also made for:</p> <ul style="list-style-type: none"> <li>• the audit of existing public infrastructure and physical assets at risk from climate change (but this is not an obligation on the Minister) (s 70).</li> <li>• decisions on new infrastructure – there are strong obligations to conduct climate risk and resilience assessment and make decisions regarding new infrastructure in a way that is consistent with this assessment (s 71). New infrastructure includes infrastructure that must be replaced due to the impacts of natural disasters and climate change.</li> <li>• There are also mandatory obligations to review and amend of the National Building Code – to increase climate resilience of Fiji’s buildings (s 72).</li> </ul>
Displacement and Planned Relocation	<p>Prior to the introduction of the Act, displacement and Relocation processes were addressed under two policy instruments:</p> <ul style="list-style-type: none"> <li>• <i>Displacement Guidelines – In the context of climate change and disaster (2020)</i> – The displacement guidelines aim to reduce the vulnerabilities associated with displacement and develop durable solutions to prevent and minimize displacement. The guidelines provide guidance for both State and Non-State stakeholders in addressing displacement and planned relocation in various stages.</li> <li>• <i>Planned Relocation Guidelines – A framework to undertake climate change related relocation (2018)</i> – These guidelines seek to ensure that the relocation of any local community is carried out in a manner that guarantees its long-term survival, including ensuring viable options for economic activity, and provision of support and services. It also contains provisions to ensure the well-being, and safeguard the rights of, vulnerable members of any community being relocated.</li> </ul>	<p>Part 12 of the Act establishes the Fijian Taskforce on the Relocation and Displacement of Communities Vulnerable to the Impacts of Climate Change (Taskforce), which has the role of advising, assisting, and supporting the Minister in various ministerial functions including:</p> <ul style="list-style-type: none"> <li>• Preparation of Planned Relocation Guidelines, with Standard Operating Procedures which enable pro-active approaches to address displacement risk (s 76).</li> <li>• Relocation and supporting at-risk communities – as guided by objectives and principles which include orderly, respectful, and dignified relocation, a minimum standard of protection and assistance to those at risk or affected by climate disasters and climate change, free and informed consent of communities following consultation and participatory processes, relocation sites must meet certain standards (s 77(1)).</li> </ul> <p>Ministerial decisions on relocation are carefully constrained, with requirements to consult, to ensure vulnerable persons or communities are considered, and to take account of various matters including guidelines and statutory principles (s 77(4)). Monies from the Climate Relocation of Communities Trust Fund can be used for the purposes of this part.</p>

Theme	Policy Context	Provision in <i>Climate Change Act 2017</i>
Oceans and Climate Change	<p>The <i>National Ocean Policy 2020 – 2030</i> (NOP) provides a holistic framework for integrated action and partnerships on all of Fiji's national and global ocean-related commitments. Its overarching vision is “a healthy ocean that sustains the livelihoods and aspirations of Fiji's current and future generations.” The policy includes a range of climate-related commitments including in relation to carbon sequestration and climate resilience benefits of healthy marine ecosystems.</p>	<p>Part 13 of the Act sets out important guiding policy objectives (s79) and asserts the permanence of Fiji's maritime zones notwithstanding the effects of climate change and sea level rise (s80). It sets out policy targets (100% of oceans to be sustainably managed and 30% of oceans to be protected areas by 2030) with a duty on the minister to take all reasonable steps to promote the achievement of these targets through the development and implementation of the NOP.</p> <p>There is also provision for governance arrangements including the NOP Steering Committee (representatives from ministries, Navy and 2 independent scientific advisers) (s 32), which is to develop subsequent NOPs (s 83).</p> <p>The Act gives the Minister wide powers to make and implement regulations, policies, measures, and actions for the conservation and restoration of Fiji's oceans (including protecting stores of blue carbon) (s 84) and enhancing the mitigation potential of oceans (s 85).</p>
Sustainable Financing	<p>The NCCP identifies sustainable financing as one of the strategic pathways to achieve resilient development. The objectives of sustainable financing outlined in the NCCP are as follows:</p> <ul style="list-style-type: none"> <li>• To increase the use and availability of domestically derived climate finance; and</li> <li>• To leverage internationally derived climate finance for transformative outcomes; and</li> <li>• To improve and amend public financial management systems in response to changing public service delivery.</li> </ul> <p>The NAP establishes the mechanisms for adaptation-based climate finance prioritization and resource mobilization, whilst the Fiji LEDES sets out strategic guidance and sector-based mitigation and plans to support coordination and oversight of financing GHG emission reduction priorities.</p>	<p>Part 14 of the Act sets out governance arrangements for accessing and managing international climate finance including:</p> <ul style="list-style-type: none"> <li>• A range of climate-finance related powers for the Minister for Finance, including overseeing Fiji's engagement with the Green Climate Fund, Adaptation Fund, multilateral development banks (s 87) and providing incentives for mitigation, adaptation, or related training projects (s 88).</li> <li>• Ministerial accreditation of climate finance organizations (state entities or private organizations) to receive or administer public or private contributions to implement mitigation or adaptation activities (s 89).</li> <li>• An obligation on the Minister to develop a national climate finance strategy (s91).</li> </ul>
Private Sector Transition and Engagement	<p>Private sector transition and engagement is also recognised in the NCCP as a strategic pathway to achieve a climate resilient economy. The NCCP envisages new public-private engagement mechanisms, increased policy consultation and interactions with the private sector and the development of market-based mechanisms to help establish sustainable climate finance flows.</p>	<p>Part 14 of the Climate Change Act sets out a range of initiatives to engage with the private sector on climate change (e.g., a private sector advisory committee (s 92)).</p> <p>The Act also clarifies legal obligations to identify, manage and disclose climate-related risks (for company directors and directors of managed investment schemes, the Fiji National Provident Fund Board, licensed financial institutions, and the Reserve Bank) with reference to relevant reporting obligations and duties under the <i>Companies Act 2015</i>, the <i>National Provident Fund Act 2011</i>, the <i>Banking Act 1995</i> and the <i>Reserve Bank of Fiji Act 1983</i>.</p>

Theme	Policy Context	Provision in <i>Climate Change Act 2017</i>
		There is also an obligation for the Minister to prepare guidance materials to assist directors and other officers of companies and financial institutions to fulfil their obligations under this part (s 93), and in so doing to have regard to the Financial Stability Board’s Task Force on Climate-related Financial Disclosures.

It is important to note that, at the time of writing, only some sections of the *Climate Change Act* had commenced. Many of the obligations, powers and functions set out above only become applicable on commencement of the relevant statutory provision. Further, many of the obligations, powers and functions depend heavily on subsequent development of regulations, guidelines and operating procedures, and will only become applicable once these have been developed. Standard operating procedures for planned relocation have been finalised,<sup>25</sup> as has the national climate finance strategy.<sup>26</sup> However, a range of other significant provisions are not yet operational as they rely on the preparation of regulations or guidelines which are yet to be developed. This includes ministerial guidelines on climate change mainstreaming (s19(4) and (5)), ministerial guidelines on climate risk assessments (s71(3)), development of emissions reduction methodologies for emissions reduction projects (Part 10), the adaptation registry (ss73 and 74), development of integrated risk scenarios (s69), and guidance materials to assist company directors in fulfilling their obligations under the Act (s93). Since the Act was introduced, there has been a change of government in Fiji, with the incoming government committing to review the legislation and making some changes to institutional arrangements.

### 3.2 How does the *Climate Change Act 2021* compare to emerging international best practice standards for the design and implementation of framework climate legislation?

As an increasing number of countries implement climate change legislation in response to the Paris Agreement, various criteria for a successful framework law have emerged.<sup>27</sup> One prominent example, which reflects a range of academic and policy discussions, is the *World Bank Reference Guide to Climate Change Framework Legislation*.<sup>28</sup> Table 5 assesses the extent to which the *Climate Change Act*, as a legal instrument, meets these standards, considering both the extent to which a particular standard is addressed through the legislation and the strength and specificity of any associated obligation.

**Table 5: International Best Practice Standards for framework climate legislation**

Best Practice Standards	Strength and Specificity of provision in the <i>Climate Change Act 2021</i> (Fiji)
<p><b>Long term targets</b></p> <p>Does the law enshrine emissions reduction targets for 2050 and include a net-zero target (ideally by 2050 or shortly thereafter)? Does the law specify objectives for adaptation?</p>	<p><b>Medium-high alignment</b></p> <p>Despite small contributions to global emissions, the Act sets a long-term emissions reduction target of net-zero emissions by 2050 for Fiji (s 38(1)) and frames this as Fiji’s contribution to the transformation to a net-zero emissions global economy (s 6(5)). The Minister responsible for the implementation of the Act must take all reasonable steps to promote the achievement of the long-term target (s 38(2)).</p> <p>Aside from a statement recognising that climate change is a threat to the rights and freedoms of Fijians (s 65), objectives for adaptation are less explicitly provided in the legislation itself. Instead, the Act focuses on establishing governance arrangements for adaptation and resilience, building on pre-existing policy frameworks already developed through the National Adaptation Plan (NAP) (Part 11).</p>

<sup>25</sup> Office of the Prime Minister, Republic of Fiji, *Standard Operating Procedures for Planned Relocation in the Republic of Fiji* (2023)

<sup>26</sup> Fiji Ministry of Economy, *National Climate Finance Strategy* (2023)

<sup>27</sup> For example, see Sridhar et al, (above n 3); ClientEarth (above n 3); Ecologic Institute (above n 3).

<sup>28</sup> World Bank Group, (above n 3).

Best Practice Standards	Strength and Specificity of provision in the <i>Climate Change Act 2021</i> (Fiji)
<p><b>Immediate and Sectoral Targets</b></p> <p>Does the law enshrine emissions reduction targets for 2030? Does the law include a mechanism for translating targets into action (e.g., carbon budgets, sectoral targets)? Does the law provide a mechanism to periodically increase the level of ambition in emissions reductions (and at least contain a clause to prevent backsliding)?</p>	<p><b>Medium-high alignment</b></p> <p>No interim targets are set out in the legislation itself; however, the Act obliges the Minister to determine a carbon budget for 5 yearly periods beginning January 2026, towards the long-term emissions reduction target (s 39), with a corresponding duty to take all reasonable steps to promote the achievement of each carbon budget (s 39(11)).</p> <p>There is no specific provision to periodically increase ambition with each successive carbon budget, and a carbon budget may be amended by the Minister in exceptional circumstances (s 42).</p>
<p><b>Risk and Vulnerability Assessments</b></p> <p>Does the law require climate risk and vulnerability assessments? Does the law require the publication of those assessments? Does the law require periodic updates or risk and vulnerability assessments in line with new evidence and science?</p>	<p><b>Low-medium alignment</b></p> <p>There is no obligation to produce climate risk and vulnerability assessments.</p> <p>However, the Act does provide that the Director of Climate Change and International Cooperation Division (the Director) <i>may</i> commission integrated risk scenarios to model potential and projected physical impacts of climate change, assess vulnerability, exposure, and sensitivity to these impacts, and assist efforts to improve adaptive capacity (s69). These should be presented to the National Climate Change Coordination Committee (the committee) and made publicly available (s69(4)).</p> <p>Similarly, the Director <i>may</i> conduct an audit of existing public infrastructure and physical assets at risk from climate change (s70).</p> <p>There are stronger obligations for all ministers, state entities and other persons making decisions about new infrastructure to conduct climate risk and resilience assessment and make decisions regarding new infrastructure in a way that is consistent with this assessment (s71). New infrastructure includes infrastructure that must be replaced due to the impacts of natural disasters and climate change.</p> <p>Similarly, the review and amendment of the National Building Code to increase climate resilience of Fiji's buildings is a clear mandatory obligation for various Ministers and the Director (s72).</p> <p>The Director must also develop a publicly accessible Information Platform online to increase the availability and accessibility of comprehensive data, information, and government policies in relation to climate change (s37).</p>
<p><b>Climate Change Strategies and Plans</b></p> <p>Does the law mandate the development of decarbonisation and adaptation strategies and plans? Does the law provide for integration of strategies and plans in existing national planning instruments, such as development plans, sectoral plans and the annual budget process?</p>	<p><b>Medium-strong alignment</b></p> <p>There is a clear obligation on the Minister to develop and implement a National Climate Change Policy (NCCP) for the period to 2030 and for successive periods of 10 years (s 27).</p> <p>The NCCP is often listed as a relevant consideration for decisions and other actions taken under the Act and other relevant legislation. For example, in making a decision or taking an action under any law that is prescribed under Schedule 1, the decision-maker must make a decision or take an action that promotes and is consistent with the NCCP (s 19).</p> <p>The Act also requires regular review of the National Adaptation Plan (NAP) and preparation of successive NAPs (with no timeline provided) and little detail on required content (s 67). Similar provision is made for regular review of the National Oceans Policy (s 85).</p>

Best Practice Standards	Strength and Specificity of provision in the <i>Climate Change Act 2021</i> (Fiji)
<p><b>Policy Instruments</b></p> <p>Does the law mandate the development of decarbonisation policy instruments (e.g., carbon pricing, information, regulation, public spending, and fiscal actions)? Does the law mandate the development of adaptation policy instruments (e.g. information, regulation, public spending and fiscal actions)? Is it clear who is required to prepare each of the decarbonisation and adaptation policy instruments and by when?</p>	<p><b>Medium alignment</b></p> <p>There is no obligation in the Act to develop climate policy instruments.</p> <p>However, the Minister is granted broad powers to ‘formulate, implement, and review measures and actions, including economic, fiscal, financial and market-based instruments as required, on climate change mitigation, adaptation, climate displacement, planned relocation and oceans’ (s 9(1)(a)) and to draft and propose budget provisions for the implementation of the Act (s 9(1)(f)).</p> <p>S 43 also sets out broader powers to introduce and implement regulations, measures and actions related to climate change mitigation (with a broad range of examples provided). Similar provision is made in relation to adaptation planning processes and actions (s 68) and oceans policy (s 84).</p> <p>There is a specific obligation to develop and implement a detailed Transport Decarbonisation Implementation Strategy (s 44), underscoring the significance of transport emissions to meeting Fiji’s long term emissions targets.</p>
<p><b>Independent expert advice</b></p> <p>Does the law ensure that the government has access to independent expert advice? Does the expert advice cover both decarbonisation and adaptation? Is expert advice required in processes of target setting, policy development and evaluation? Is the government required to respond to the advice?</p>	<p><b>Poor-medium alignment</b></p> <p>There is little specific reference to independent expert advice, and no obligations on government to seek and consider such advice. Unlike some other examples of framework climate laws, the Act does not establish an independent climate change commission to advise government and monitor progress. The Minister does however have the power to appoint experts and establish an independent advisory board to assist with providing advice in relation to any aspect of the implementation of the Act (s 9(d)).</p> <p>The Act does allow the Committee to establish technical working groups and consultative groups with relevant experts and stakeholders (s 12(10)).</p> <p>In many instances however, the Act provides the Minister with the power to establish a body, agency or working group to support, advise and carry out administrative functions towards the implementation of the Act (e.g., s 30(4) in relation to developing the GHG Inventory). The National Oceans Policy Steering Committee must include 2 scientific advisors from academic institutions (s 82(3)(c)).</p>
<p><b>Coordination Mechanism</b></p> <p>Does the law authorise a body to coordinate the government’s response to climate change? Are both decarbonisation and adaptation covered? Does a senior authority lead the coordination body? Are subnational governments included?</p>	<p><b>Medium-high alignment</b></p> <p>The governance regime established by the Act emphasises coordination among senior public servants and across sectors relevant to both mitigation and adaptation.</p> <p>The Act establishes the National Climate Change Coordination Committee (the Committee) consisting of permanent secretaries of each department, and other nominated representatives from state entities, to be chaired by the permanent secretary responsible for climate change (s 12). Functions include promoting the creation, implementation, and monitoring of cross-cutting policies, ensuring alignment of ministerial and departmental activities with the Act, and ensuring the mainstreaming of climate change by national and local governments (s 12(9)). Local governments and provincial administrations do not appear to be expressly included in this committee.</p> <p>The Act also establishes focal points in each ministry to promote the objectives and principles of the Act and report to the Director on the implementation of the Act within their ministry (s 13). Ministers must also review and assess ministerial functions and portfolios in relation to climate risks and make changes to key performance indicators, job descriptions etc. to adequately address climate risks and support the implementation of the Act (s 21).</p> <p>In relation to adaptation, the Act establishes the NAP Steering Committee, with the role of preparing successive NAPs (s 66), which must ultimately be approved by the Minister (s 67(7)). Little detail is provided in the Act itself on the composition of the committee or the required content of the plan.</p> <p>Institutional arrangements are also established for the National Ocean Policy Steering Committee, which must include representatives from relevant ministries, from the Fijian Navy and 2 scientific advisors from academic institutions (s 82, 83).</p>

Best Practice Standards	Strength and Specificity of provision in the <i>Climate Change Act 2021</i> (Fiji)
<p><b>Stakeholder Engagement</b></p> <p>Does the law create a mechanism for engagement with the private sector, civil society organisations and the public? Is there a clear mandate, objective and structure and is participation inclusive? Are both decarbonisation and adaptation covered? Does the law require public engagement on the formulation and implementation of key policies and plans, as well as the review of monitoring reports?</p>	<p><b>Medium alignment</b></p> <p>The Act does requires public participation and stakeholder consultation in the development of the NCCP (s 27(3)), reviewing and developing successive NAPs (ss 67(2)&amp;(5)), development of the NOP (s 83) and for any relocation of at-risk communities (s 77(2)&amp;(3)).</p> <p>The Act often specifically requires consultation with vulnerable groups and for ensuring gender diversity (e.g., s 77(4)).</p> <p>To engage with the private sector, the Minister may establish a private sector advisory committee (s 92)).</p>
<p><b>Subnational Government</b></p> <p>Does the law require subnational governments to set targets, prepare plans and report on implementation? Does the framework law provide the means and incentives to decarbonise and adapt?</p>	<p><b>Low alignment</b></p> <p>Local governments and provincial administrations are rarely referred to in the Act, indicating that climate change is largely treated as a centralised national government issue in Fiji.</p>
<p><b>Financing Implementation</b></p> <p>Does the law require the national government to address climate change risks and policy objectives in the preparation of its public financial management instruments? Does the law require the publication of information on public finances and climate?</p>	<p><b>Medium-high alignment</b></p> <p>The minister responsible for Finance must include information on the economic implications of climate change in the supplement to the national budget (s 26(1)).</p> <p>Budget submissions by state entities must include actual and estimated detail of climate-relevant expenditure and the financial impacts of climate change on the state entity (s 26(2)).</p> <p>Part 14 sets up the institutional architecture to coordinate Fiji’s engagement with international climate finance sources such as the Green Climate Fund. The Minister responsible for Finance, has an obligation to prepare a national climate finance strategy to support and coordinate Fiji’s ongoing access to climate finance (s 91).</p>
<p><b>Measurement, Reporting &amp; Verification</b></p> <p>Does the law define the information to be collected, empower government collection, and require periodic reporting and assessment of progress and public access to the information?</p>	<p><b>Medium-high alignment</b></p> <p>Part 7 provides for the development of the Fijian GHG Inventory in line with best practice standards. The Director bears ultimate responsibility for the preparation of this inventory, with clear duties also on permanent secretaries of different portfolios to provide sectoral emissions and emissions reduction data on a biennial basis (s 30). Permanent secretaries may request emissions data from state entities and from private parties (s 30(5)) and the Act also envisages voluntary facility-level reporting on emissions and emissions reductions (s 32).</p> <p>S 31 provides for mandatory biennial reporting on fuel imported and sold in Fiji.</p>
<p><b>Oversight</b></p> <p>Does the law provide for parliamentary oversight of executive actions (and inactions) on climate, and is the executive required to table progress reports in the parliament?</p>	<p><b>Medium-high alignment</b></p> <p>Core climate strategies including the NCCP, NAP and NOP must be regularly reviewed. The review of the NCCP must be presented to parliament and made publicly available (s 28). Reviews of the NAP and NOP are also subject to considerable oversight (s 67, 85), whereby steering committees undertake reviews and make recommendations to the Minister, who must consider these in deciding whether or not to approve the policy, and publish any reasons for any failure to adopt such recommendations. Review reports are to be made publicly available.</p>

Best Practice Standards	Strength and Specificity of provision in the <i>Climate Change Act 2021</i> (Fiji)
Does oversight and accountability include both decarbonisation and adaptation? Are there provisions for regular independent assessments of progress on implementation of the law?	Further, the Minister must review the implementation of Act every 5 years and report to parliament on the findings of this review (s 10). There is also an obligation on the Minister to report annually to parliament on the status of implementation of international and national obligations to respond to climate change and progress towards net zero emissions and climate resilient development (s 10(4)).

### *Applying a context-specific climate governance lens?*

While benchmarking the Act against international standards such as those developed by the World Bank provides insights into the strength of this legal instrument on paper, it is important to also consider its value and role in light of Fiji’s legal tradition, existing governance arrangements and political context.

Shridhar et al caution against relying on ‘a top-down imposition of an ideal template for a law, or indeed presuming the necessity of a law versus another instrument.’<sup>29</sup> They highlight that legal and policy responses to climate change will differ according to legal traditions and political contexts and that framework climate laws may not always be central to these responses. Indeed, in some contexts, policy settings and fiscal measures may be more important than legislation. As such, they propose a more bottom-up consideration of the ‘key governance functions that should be met – one way or another – by a state in tackling climate change, noting that the relevance of each function will not be uniform between countries.’ These core functions of domestic climate change governance are set out in Table 6 below.<sup>30</sup>

**Table 6: Core Functions for Domestic Climate Governance (adapted from Shirdhar et al)**

Governance Function	Description
<b>Narrative and high-level direction setting</b>	A well-constructed narrative should set out climate change objectives appropriate to the political context (e.g., an emphasis on adaptation for highly vulnerable countries and low-carbon development for developing countries).
<b>Strategy Articulation</b>	Strategies backed by long term and interim targets can play a key role in establishing stable and enduring pathways for the large-scale, long-term transformations required to address climate change.
<b>Knowledge and expert advice</b>	Strategic climate policy making requires robust mechanisms for knowledge production and sharing. Independent expert advice can play an important role.
<b>Integration</b>	Existing regulatory architecture must enable rather than impede the realisation of climate objectives, and new institutional forms may be needed.
<b>Mainstreaming</b>	Interventions across many different policy areas are required to address climate change. Mainstreaming climate change into government policies, processes and operations can enhance integration, and help build capacity.
<b>Coordination</b>	Effective climate change responses demand horizontal coordination between sectors and policy areas. Vertical coordination between national, subnational, and local governments is also important, especially in federal systems of government.
<b>Stakeholder Engagement &amp; Alignment</b>	The credibility of, and political support for, climate policy responses can be enhanced through engagement processes which incorporate a plurality of voices and perspectives, including the most vulnerable.
<b>Finance Mobilisation and Channelling</b>	The ability to channel domestic and international investment (including foreign aid) to climate changes responses depends on the strength of all other governance functions.
<b>Oversight, accountability and enforcement</b>	Multiple complementary processes (e.g., progress reporting, parliamentary scrutiny, open standing provisions for legal challenges) can be used to address the frequent gaps between a legal or policy instrument and its implementation.

<sup>29</sup> Shridhar et al, (above n 3), 3.  
<sup>30</sup> Ibid, 4.

Averchenkova and Chan have recently assessed Fiji's *Climate Change Act* against these governance functions as part of a broader assessment of governance pathways to credible implementation of net zero targets.<sup>31</sup> This assessment involved a desktop analysis of the legislation, cross-referenced with qualitative data collected through stakeholder interviews to help understand the broader legal and political context. The assessment found that the *Climate Change Act* reflects relatively strong climate governance functions in some areas (e.g., narrative and long-term targets, strategy, coordination, stakeholder engagement, finance mobilisation and oversight/enforcement). However, as a legal instrument, it is much weaker in establishing other important climate governance functions (independent expertise, horizontal and vertical mainstreaming). Yet these gaps and weaknesses need to be considered in the context of the legal traditions and political context in Fiji and may potentially be addressed by other mechanisms beyond the immediate ambit of the *Climate Change Act*. Further, the assessment highlighted that although the Act may appear to strongly reflect core governance functions on paper, stakeholders interviewed did not always agree with this assessment in practice, highlighting considerable social, economic, and political implementation hurdles for this legislation.

### **A law for the Pacific Islands context?**

Although the *Climate Change Act* adopts many of the common features of framework climate laws around the world, there are certain features which reflect its Pacific Island context:

- **Declaration of a climate emergency** – The Act declares that Fiji and the Earth are facing a climate emergency (s6), noting Fiji's particular vulnerability to climate change, and stating that '*a rapid and ambitious transformation to a net zero emissions global economy is necessary to address and mitigate the climate emergency, and Fiji will contribute to this transformation by achieving net zero GHG emissions by 2050.*' This clear recognition of the urgency of the climate change challenge and the inequitable distribution of its impacts globally, echoes many other statements and declarations by Pacific Islands Nations, such as the 2022 Pacific Islands Forum declaration of a Climate Emergency.<sup>32</sup> It illustrates well the critically important leadership role that PICs, including Fiji, have played throughout international climate change negotiations for many years in drawing attention to the plight of the most vulnerable nations, and urging stronger action on reducing emissions.
- **Recognition of climate change as a threat to constitutionally protected rights and freedoms, opening up the potential for rights-based climate litigation** – Like many other PICs, Fiji's constitution explicitly protects a range of civil and political rights and freedoms,<sup>33</sup> and provides the right to a remedy for their violation, available through the High Court,<sup>34</sup> as well as an avenue to lodge complaints with Fiji's Human Rights and Anti-Discrimination Commission.<sup>35</sup> The *Climate Change Act* clearly states that Fiji will respect, promote, and consider the rights and freedoms recognized in Chapter 2 of the Constitution when taking action to address climate change (s 5(a)). It also recognises that climate change is a threat to these rights and freedoms, particularly the right to a clean and healthy environment, the right to adequate food and water, the right to health, the rights of children and persons with disabilities, the right to housing and sanitation and the right to reasonable access to transportation (s 65).

As one of us has noted elsewhere, the Fijian legal system, like that of other PICs, appears to be amenable to rights-based climate litigation, through which victims of climate harms could potentially seek redress and remedy. The references to protected rights and freedoms in the *Climate Change Act* noted above and the provision for third party civil claims (s 107), certainly strengthens the basis for such claims. While claims against the Fijian Government are theoretically possible, such claims would not be the most equitable, effective, and efficient use of this legal pathway. Instead, the most productive focus may be on the potential to seek redress from private actors such as fossil fuel companies, who are largely responsible for climate harms experienced in the Pacific as a result of their historical and ongoing contributions to global GHG emissions.<sup>36</sup> Indeed Fiji's Constitution explicitly states that 'to the extent that it is capable of doing so' the protection of human rights and associated right to remedy 'extends to things done or actions taken outside Fiji'.<sup>37</sup>

<sup>31</sup> Alina Averchenkova and Tiffanie Chan, *Governance pathways to credible implementation of net zero targets* (Oct 2023).

<sup>32</sup> IISD, *Pacific leaders declare climate emergency* (webpage, 27 July 2022). See also, Pacific Islands Forum, *2050 Strategy for the Blue Pacific Continent* (2022).

<sup>33</sup> Constitution of the Republic of Fiji, art 6-43.

<sup>34</sup> Constitution of the Republic of Fiji, art 44.

<sup>35</sup> Constitution of the Republic of Fiji, art 45(4)(f).

<sup>36</sup> Margaretha Wewerenke-Singh, 'Litigating Human Rights Violations Related to the Adverse Effects of Climate Change in the Pacific Islands' in Jolene Lin and Douglas Kysar (eds) *Climate Change Litigation in the Asia Pacific*, CUP 2020), 94-119. Wewerenke-Singh refers to the Carbon Majors, the 90 fossil fuel companies that have contributed most to global GHG emissions and its adverse effects and argues that 'domestic courts in Fiji may assume jurisdiction over claims against carbon majors based on alleged violations of human rights in Fiji, even where these violations are caused by action taken elsewhere' and 'in light of the vast scale of the loss and damage resulting from climate change, lawsuits by local or national governments on behalf of those whose rights are implicated by this loss and damage appear to be the most efficient way of seeking redress for the human rights implications of climate change.' While this legal avenue is not without its challenges, advances in attribution science and jurisprudence may help in establishing a causal link between the activities of carbon majors and harms suffered. 100-105.

<sup>37</sup> Constitution of the Republic of Fiji, art 6.

- **International leadership on climate policy issues of high relevance to the Pacific and other small island developing states** – As outlined in Table 4 above, the substantive policy areas covered by the *Climate Change Act* include issues such as planned relocation of at-risk communities; a focus on oceans, marine resources and climate change; and enabling participation in international carbon markets as a source of international climate finance. In these areas, Fiji is increasingly seen as an international leader in climate policy development.

Policy development around planned relocation of at-risk communities is particularly advanced, with the Fijian Government pioneering best practice internationally, through establishing a proactive, human-centred and participatory approach which respects human rights. The *Climate Change Act* provides a legal basis for this process, with legal safeguards and protections for affected communities including careful constraints on administrative decision-making, that could potentially be enforced through legal proceedings to remedy or restrain a breach of the Act (s 104).

# 4 Barriers and Enablers to Effective Implementation

## 4.1 Barriers to the implementation and enforcement of Environmental Law in Fiji and the Pacific

A review of the academic and grey literature highlights several pervasive barriers to the implementation and enforcement of environmental law in Fiji and the Pacific,<sup>38</sup> that are likely to be relevant to the implementation of Fiji's *Climate Change Act*. These include:

- **Gaps and weaknesses in environmental legislation** – The body of environmental legislation in place across PICs is comprehensive and includes legislation establishing environmental governance arrangements and procedures for environmental impact assessment and project approvals (e.g., Fiji's *Environment Management Act 2005*); sector-specific legislation governing access to natural resources (e.g., *Fisheries Act 1941* (Fiji)); and legislation addressing climate change or disaster management (e.g., Papua New Guinea's *Climate Change (Management) Act 2015* and *Disaster Management Act 1984*).<sup>39</sup> Yet some of this legislation is outdated and has not been reviewed since its introduction, many environmental laws provide only minimal penalties for breaches, and there are gaps in coverage, particularly in smaller PICs.<sup>40</sup>
- **Capacity and resource constraints and institutional challenges** – Across PICs, staffing and resource constraints are a common concern, impeding the full implementation of environmental legislation, particularly the monitoring and surveillance required to detect breaches and to pursue enforcement action (e.g., illegal fishing and logging or water pollution). Difficulties are compounded by the remoteness of many areas. In some countries, the same institution is responsible for enforcing environmental law and delivering environmental services and advice. The lack of an independent environmental regulator can compromise implementation and enforcement of environmental law. In other contexts, problems are more to do with poor integration and collaboration across multiple governmental institutions.<sup>41</sup>
- **Weak environmental rule of law** – Despite the multitude of environmental problems and reasonable coverage of environmental legislation, environmental justice and litigation are not prominent in PICs. Weak institutions, limited resources, and a lack of information on legal remedies, has meant that legal avenues to address breaches of environmental law and/or address environmental harms are not commonly pursued.<sup>42</sup> Few PICs have specialised environmental courts or tribunals focused on access to justice and effective resolution of environmental disputes. National court systems can be inefficient and slow, and rules of standing can inhibit access to justice in environmental disputes and stifle public interest litigation.<sup>43</sup> Environmental disputes can also become highly politicised.

Despite these challenges, an environmental jurisprudence is gradually emerging, with some high-profile cases recently decided in Fiji and Papua New Guinea.<sup>44</sup> For example, in *State v Freesoul Real Estate Development (Fiji) Pte Ltd* [2021], the Fijian High Court found multiple breaches of the *Environment Management Act 2005* for two unauthorised developments undertaken by the company. The company failed to conduct the required Environmental Impact Assessments prior to commencing development involving destruction of mangroves and the foreshore. Freesoul was fined FJ\$1 million.<sup>45</sup> In *Ramendra Prasad v Total (Fiji) Ltd* [2020], the Fiji Court of Appeal found civil liability on the part of Total (both under principles of negligence and under the *Environment Management Act 2005*) for its failure to rectify a leak at a petroleum station leading to land contamination and water pollution.<sup>46</sup>

<sup>38</sup> There is a limited literature evaluating the implementation and enforcement of environmental law in Fiji and other PICs. This review drew particularly on two sources: Margaretha Wewerenke-Singh and Evan Hamman (eds) *Environmental Law and Governance in the Pacific – climate change, biodiversity and communities* (Routledge, 2020) and International Union for the Conservation of Nature & World Commission on Environmental Law, *Advancing Environmental Law in the Pacific* (2021).

<sup>39</sup> Secretariat of the Pacific Regional Environment Programme (SPREP) and EDO NSW, *Fiji – Review of Natural Resource and Environment Related Legislation* (Jan 2018).

<sup>40</sup> IUCN & World Commission on Environmental Law, *Advancing Environmental Law in the Pacific* (2021), 49, 59, 63.

<sup>41</sup> *Ibid.*, 48–60, 64.

<sup>42</sup> *Ibid.* 63.

<sup>43</sup> *Ibid.* 22–24, 97.

<sup>44</sup> For example, *Saonu and Morobe Provincial Government v Minister for Environment and Conservation and Climate Change and others* OS (JR) 35 of 2021 (10 Sept 2021) (PNG Court of Justice) concerned the challenge by Morobe Provincial Government to an environmental permit issued for a mining project. The challenge argued that the community had not been consulted on a project that was likely to lead to significant environmental harm and that the decision-maker had not considered the environmental and climate change consequences of the proposed mine as required by the *Environment Act 2000*. The challenge was upheld with a finding that the decision was indeed in breach of the *Environment Act 2000*.

<sup>45</sup> See discussion in Emily Samulele and James Sloan, 'Fiji Environmental Law Update: High Court upholds Environment Management Act 2005 and requirement for EIAs' (5 April 2023).

<sup>46</sup> See further discussion in James Sloan, 'Landmark Fiji Environmental Law Judgement finds TOTAL negligent and liable for pollution incident upholding Fiji's Environment Management Act and the principle "Polluter Pays"' (2 March 2020).

- **Legal Pluralism** – The interplay and recognition of customary law with formal state law in Fiji and other Pacific Nations create further complexities for the implementation and enforcement of environmental legislation. Dual systems of land and resource ownership and management exist in many Pacific countries, including Fiji, where formal state law exists alongside customary law, and customary land tenure is the dominant form of land tenure.<sup>47</sup> Customary environmental and resource management approaches are not always well recognised by formal state law and can be overridden by these laws.<sup>48</sup> Environmental legislation can also be poorly understood and observed in indigenous communities.<sup>49</sup>

For example, in Fiji, locally managed marine areas are an important tool to enable sustainable use and protection of marine resources such as mangroves and fisheries, using traditional management strategies and governance.<sup>50</sup> Yet these community-led initiatives, supported by coordinating NGOs such as Fiji Locally Managed Marine Area Network, are not legally recognised in Fiji’s environmental law, such as the *Environment Management Act 2005*, nor well integrated with licensing regimes administered through the *Fisheries Act 1941*.

## 4.2 Stakeholder research workshop, July 2023

In July 2023, the project team facilitated a research workshop with governmental and non-government stakeholders to gather data from workshop participants on the role and value of the *Climate Change Act*, and further contextual information on the barriers and enablers to its effective implementation.<sup>51</sup> Participants included civil society organisations (CSOs), public servants from two government ministries, academics, and independent legal and policy experts.<sup>52</sup> Tables 7, 8 and 9 below set out the guiding questions used for group discussion and summarise the responses of participants.

**Table 7: The role and value of the *Climate Change Act 2021***

Discussion Questions	Stakeholder Responses
<p><b>Do you think this kind of law is appropriate to the Fijian context? Why? Why not?</b></p> <p><b>Do you think the <i>Climate Change Act</i> was needed in Fiji? Why/ Why not?</b></p> <p><b>Do you think that the <i>Climate Change Act</i> will make a difference to climate change governance in Fiji? In what ways?</b></p>	<p>Participants expressed strong support for the legislation, recognising its potential to strengthen domestic climate governance in the following areas:</p> <ul style="list-style-type: none"> <li>• recognition of climate change as a cross-cutting policy issue,</li> <li>• promoting integration and coordination across government, and</li> <li>• particularly in guiding the allocation of resources and finance (including international climate finance).</li> </ul> <p>CSOs noted that the legislation would also help to pressure the government to progress climate policy responses in a timely way and strengthen accountability. They also noted that the legislation creates a platform to engage with communities on climate change issues.</p> <p>Parallels were drawn between the <i>Climate Change Act</i> and the <i>Environment Management Act 2005</i> which employs a similar legislative framework model, involving multi-stakeholder committees. While this was initially seen to be quite effective, it was noted that the emphasis on implementation (and particularly stakeholder committees) had lessened over time.</p> <p>While participants expressed clear support for the Act, the practicability of implementing this legislation was questioned. It was noted that the Act was very technical and very ambitious. It was also suggested that the government should have spent more time consulting before its introduction to tailor this legal instrument more closely to the Fijian context.</p>

<sup>47</sup> Sue Farran, ‘Environmental Law in the context of Legal Pluralism’ in Margaretha Wewerenke-Singh and Evan Hamman (eds) *Environmental Law and Governance in the Pacific – climate change, biodiversity and communities* (Routledge, 2020); Joseph Foukona, ‘Customary Land in Pacific Island Countries: Laws and Threats’ in Margaretha Wewerenke-Singh and Evan Hamman (eds) *Environmental Law and Governance in the Pacific – climate change, biodiversity and communities* (Routledge, 2020)

<sup>48</sup> IUCN & World Commission on Environmental Law, *Advancing Environmental Law in the Pacific* (2021), 70-73, 113.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid, 36.

<sup>51</sup> This workshop was approved by the Fiji National University Human Research Ethics Committee, *FNU-HREC-23-48 A next generation of climate laws in Fiji and the Pacific*. Discussions were not recorded, however detailed notes were taken by 3 facilitators and later collated for general analysis against the discussion questions.

<sup>52</sup> There were 20 participants including from civil society organisations (9), government agencies (6), academic institutions (3), independent environmental law experts (2).

Discussion Questions	Stakeholder Responses
<p><b>How does environmental legislation like the <i>Climate Change Act</i> interact with customary law in Fiji?</b></p> <p><b>What does this legal context mean for the impact of legislation like the <i>Climate Change Act</i>?</b></p>	<p>Participants noted two policy areas where the interplay between the Act and customary law and management practices was particularly important:</p> <ul style="list-style-type: none"> <li>• <b>Planned relocation of at-risk communities</b> – the discussion focused on the process of identifying areas for relocation and the need for further transparency around this decision-making to illustrate that this really was being approached as an option of last resort with the full involvement and prior engagement and consent of iTaukei communities as well as appropriate consideration of alternative responses such as hard protection measures which could enable the avoidance or delay of relocation.</li> <li>• <b>Participation in international carbon markets</b> – the discussion noted the complexity of governance arrangements for forest carbon projects given customary land tenure and benefit sharing requirements and the ongoing need for legal clarity around the ownership of carbon. In a blue carbon context, this complexity is increased as communities do not hold customary tenure over the foreshore and coastal waters where blue carbon projects would be located but do hold usufructuary rights and are concerned about losing access to, and control over, resources and ecosystem services, if this is not appropriately managed through blue carbon projects.</li> </ul> <p>More broadly it was noted that many communities (often with CSO leadership and involvement) are adapting and responding to climate change already. There were concerns that the new formal level framework established by the Act may impede this important bottom-up response.</p>
<p><b>Do you think there is a high level of awareness of the <i>Climate Change Act</i> within the Fijian Government? Among non-government stakeholders?</b></p>	<p>Participants suggested that awareness of the legislation throughout government and among non-government stakeholders was uneven and often quite low. Awareness among the private sector was noted as particularly low. Participants noted similar low awareness of the <i>Environment Management Act</i>, even though it has been in place since 2005.</p> <p>Responses to the questions posed in the workshop however indicated a reasonable, but mixed, level of awareness of the scope and content of the <i>Climate Change Act</i> among workshop participants, with strongest awareness and engagement from CSOs and independent observers.</p>

**Table 8: Challenges and Opportunities for Implementation**

Discussion Questions	Stakeholder Responses
<p><b>Drawing on your understanding of the implementation of environmental law in Fiji to date, what challenges do you foresee for the implementation of the <i>Climate Change Act</i>?</b></p> <p><b>Please consider:</b></p> <ul style="list-style-type: none"> <li>• <b>Data availability and accessibility for policy-makers and decision-makers?</b></li> <li>• <b>Resources, capacity and capabilities across government?</b></li> <li>• <b>Governmental coordination and integration?</b></li> </ul>	<p>Data availability and accessibility were seen as very significant challenges.</p> <p>Lack of data has often led CSOs to invest in generating data (e.g., climate modelling and mangrove mapping undertaken by IUCN and flood risk mapping undertaken by the National Trust). Where data is developed by one ministry, data sharing can be problematic. There have however been recent improvements with targeted data generation and coordination through the Fiji Bureau of Statistics and Bureau of Meteorology.</p> <p>Even where relevant data is available, there are often capacity and capability issues in government which prevent the full and effective use of climate change data in policy and decision-making. More investment in data generation, as well as in knowledge translation and sharing is needed.</p> <p>Beyond general concerns about limited resources across government, participants also discussed constraints on the resources and capacity of CSOs to participate in stakeholder committees and other processes under the <i>Climate Change Act</i>.</p> <p>Participants noted the tendency for different government departments to operate in silos and saw the framework for institutional coordination established through the <i>Climate Change Act</i> (i.e., overarching committees and focal points) as important but very challenging to implement.</p> <p>In terms of integrating climate change into legislative and policy frameworks across sectors and operations, concerns were raised about the ongoing review and reform of forestry legislation and the need to adequately integrate climate change considerations.</p>

Discussion Questions	Stakeholder Responses
	<p>It was also noted that the <i>Environment Management Act 2005</i> had very similar policy mainstreaming objectives and provisions to the <i>Climate Change Act</i>, but these have not been implemented. No sectoral laws were amended to reflect the objectives of the EMA.</p> <p>Participants also highlighted that the <i>Climate Change Act</i> is not fully in force and will only gradually come into force over time. There are risks of long delays and only partial implementation if government resources and political support for the Act are insufficient.</p>

**Table 9: Challenges and Opportunities for Enforcement**

Discussion Questions	Stakeholder Responses
<p><b>Is it likely that civil society groups (or other stakeholders) would seek to enforce the <i>Climate Change Act</i> against government (e.g., for failing to take climate change into account in environmental impact assessment and other relevant decisions? Or for failing to meet statutory deadlines and prescriptions)?</b></p> <p><b>Considering the Fijian context, would such enforcement action be beneficial in driving stronger climate policy and action? Or would it hinder such action?</b></p> <p><b>What barriers would civil society and other potential litigants face in bringing enforcement action? (e.g., costs, appropriate tribunal)</b></p> <p><b>Beyond litigation, are there other ways for non-government stakeholders to enhance the implementation of the <i>Climate Change Act</i>?</b></p>	<p>CSOs participating in the discussion framed their role in different ways – both as holding government to account for the implementation and enforcement of environmental law, but also as stepping in to facilitate effective responses to environmental challenges on the ground where government resources and capacity were lacking. It was suggested that bringing litigation against government may not always be the most effective way to achieve desired responses.</p> <p>Public interest environmental litigation is uncommon in Fiji. There are many barriers including a lack of specialised environmental lawyers, costs, difficulties accessing the environmental tribunal due to complex processes, and barriers in getting access to the information to support a claim (e.g. information included in environmental impact assessments).</p> <p>It was however noted that CSOs are becoming more active in monitoring the implementation of environmental laws and lodging complaints. There is clear potential for public interest litigation to emerge in the future. In particular, the new requirements introduced by the <i>Climate Change Act</i> which require consideration of climate change in environmental impact assessments present opportunities for closer monitoring of assessment and approval processes for activities that may worsen climate change impacts (e.g. gravel extraction activities that heighten flood risk and impacts, foreshore developments that lead to run-off impacting marine life) and potential legal challenges.</p> <p>Given the multiple barriers noted above, it was suggested that more informal grievance mechanisms could play a role in resolving some environmental and climate-related disputes.</p>

The stakeholder responses summarised above suggest that the *Climate Change Act* has considerable potential to strengthen domestic climate change governance in Fiji and is broadly welcomed by stakeholders as an important and necessary development, particularly to attract international climate finance to Fiji. Yet, the responses also highlight significant concerns about the way in which this law will interface with customary environmental management practices and whether the detailed, technical, administrative framework envisaged by this law can be effectively established in a timely fashion in the Fijian context.

The general barriers and challenges outlined above (resources, capacity and capability, weak environmental rule of law) and the challenges experienced implementing framework climate laws in other countries such as implementation delays, coordination and integration challenges, and shifting political will (Table 2, Part 2 above) are highly relevant to the successful implementation of the *Climate Change Act*.

## 5 Realising the potential of the *Climate Change Act* – a research agenda?

This exploration of the *Climate Change Act* has described a comprehensive, ambitious legal intervention, which largely embodies international best practice approaches to framework climate legislation and domestic climate governance, as well as including features that are specific to its Pacific context. The potential of this legislation to strengthen domestic climate governance and help to attract and distribute international climate finance to key adaptation and mitigation priorities is widely recognised.

Yet this scoping research has also underscored that there are considerable barriers and challenges to realising the potential of the *Climate Change Act* in practice. To some extent these challenges mirror experiences around the world implementing framework climate legislation (e.g., complex coordination and integration challenges, shifts in political will, delays in implementation). Some challenges are quite specific to the Pacific and Fijian contexts (e.g., legal pluralism and potential conflict with customary environmental management practices) and there is some lingering concern that this top-down legal template may not be well-suited to the legal and political context of Fiji. Further, the broader well-documented challenges regarding the implementation and enforcement of environmental law across the Pacific are highly relevant to the implementation challenge for this new legislation (e.g., resources, capacity and capability across government and weak environmental rule of law).

### ***Developing further applied legal research?***

Understanding these barriers and challenges is a first step to developing legal research activities to support effective and appropriate implementation of this legal instrument in the Fijian context.

In our stakeholder research workshop, we explored four different research proposals that could contribute to the ongoing development and strengthening of domestic climate change governance in Fiji. All four proposals would have a strong focus on research engagement, including involving government and non-government stakeholders in research design and delivery, and producing outputs that would be useful to stakeholders. As well as helping to address identified barriers and challenges to the effective implementation of the *Climate Change Act*, these proposals could play an important role in raising awareness about the legislation and broader developments in domestic climate governance among key stakeholders.

Table 10 sets out the four research proposals explored in the workshop, highlighting focus research questions that were considered and developed by workshop participants. Stakeholder feedback on the potential value of these four proposals, priorities for stakeholder engagement, and what kinds of research outputs would be most useful for relevant stakeholders is also included. All four proposals were strongly supported by workshop participants.

**Table 10: Developing proposals for legal research and engagement**

Research Proposal & Focus Questions	Stakeholder Feedback
<p><b>Climate Mainstreaming under the <i>Climate Change Act</i></b></p> <p>How is climate change currently addressed and integrated into government decisions, policies, programs, and processes in key policy areas (e.g., environmental management, urban planning &amp; building)?</p> <p>Do relevant government officers have a practical understanding of statutory mainstreaming duties and how to discharge these duties?</p> <p>How can consideration and integration of climate change be strengthened and deepened? (e.g., accessible data, decision-support tools, guidance, peer learning networks, duties reflected in key documents &amp; processes, training)</p>	<p>Strong support from workshop participants.</p> <p>Participants suggested that many government staff know what climate mainstreaming is, but do not know how to mainstream climate change into their work areas.</p> <p>Priorities for stakeholder engagement – Suggested focus on ministries/policy areas critical to climate change responses, such as energy, where climate change is not necessarily well-mainstreamed.</p> <p>Useful outputs – policy briefs and papers co-produced by academics and CSOs, to be used by policy-makers and decision-makers. Briefs should be specific to policy areas and focused on how to ensure alignment with/implementation of the <i>Climate Change Act</i>, including how to address potential conflicts between climate change and other sectoral policy objectives. Recommendations on how to better align other legislation with the <i>Climate Change Act</i> would also be beneficial. It would be useful to develop a tailored package of guidance and relevant information and data for different policy areas/ministries.</p>

Research Proposal & Focus Questions	Stakeholder Feedback
<p><b>Legal frameworks for beneficial community participation in blue carbon projects</b></p> <p>What opportunities are emerging for coastal communities to participate in blue carbon projects (e.g., mangrove rehabilitation)?</p> <p>What lessons can be learnt from Fiji's experience with REDD+? What lessons can be learnt from other countries more advanced in developing blue carbon frameworks?</p> <p>How might blue carbon projects impact food security and other ecosystem services? What would be the impact on customary fishing rights?</p> <p>Do current legal and policy frameworks support beneficial community participation in blue carbon projects? Is legal and policy reform needed to enable and enhance community participation?</p>	<p>Reasonably strong support from workshop participants.</p> <p>Some participants were highly sceptical of engaging with blue carbon projects and carbon markets generally following Fiji's experience to date with REDD+. Nonetheless, they recognised the government's focus on carbon markets and community interest in this area, particularly among coastal communities, and therefore the need for critical research exploring potential community benefits and risks.</p> <p>Priorities for stakeholder engagement – communities already involved in locally managed marine areas, CSOs working in the blue carbon space such as Conservation International.</p> <p>Useful outputs – policy briefs on implementation pathways for blue carbon covering both potential benefits and risks. Summaries should be produced in local languages.</p>
<p><b>Relocation of at-risk communities</b></p> <p>How does the relocation process work in practice (e.g., how are communities identified? What is the location, size, and tenure of land to which they are relocated? Are these decisions informed by integrated risk scenarios and mapping? What type of cost-benefit analysis is undertaken)?</p> <p>What is the community experience of relocation (before, during, after)?</p> <p>What is the experience of existing communities in the areas to which at-risk communities are relocated?</p>	<p>Reasonably strong support from workshop participants.</p> <p>Participants identified a need to increase transparency around how relocation decisions are made and the associated risks. They also noted the value of learning from communities engaged in these processes about their lived experience of relocation.</p> <p>Priorities for stakeholder engagement – Considering that there has been some research conducted with at-risk communities already, care should be taken in approaching communities to participate and ensuring that outputs produced are shared with communities and sensitive to their needs and experiences. Local authorities/provincial offices are also important stakeholders.</p> <p>Useful outputs – Short publications highlighting findings. Summaries should be produced in local languages.</p>
<p><b>Climate Risk and the Fijian Private Sector</b></p> <p>What are current levels of awareness of climate-related financial risks in the Fijian private sector?</p> <p>What are current approaches to the identification, management and reporting of these risks?</p> <p>What are current levels of awareness of legal obligations to identify, disclose and management climate risks?</p> <p>What guidance and other support is required to support robust risk disclosure and management?</p>	<p>Strong support from workshop participants.</p> <p>Participants noted that awareness of the <i>Climate Change Act</i> within the private sector was low and uneven, and research designed to raise awareness of climate-related risks and responsibilities would be very beneficial.</p> <p>Priorities for stakeholder engagement – Suggested focus on state-owned enterprises and/or sectors that are particularly exposed to climate-related risks, including tourism, energy, extractive industries and forestry. A focus on the lending activities of development banks would also be useful.</p> <p>Useful outputs – policy briefs to support the development of guidance and associated activities.</p>

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