



FWRM
FIJI WOMEN'S RIGHTS MOVEMENT

REVIEW &
RECOMENDATIONS
OF DRAFT VILLAGE BY-
LAWS

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Introduction

The Fiji Women's Rights Movement (FWRM¹), established in 1986, is a multi-ethnic and multicultural non-governmental organisation committed to removing all forms of discrimination against women through institutional reform and attitudinal change.

FWRM uses feminist analysis in widely diverse fields including as a basis for this submission to address gender inequality with particular regard to the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW²), which Fiji ratified in 1995, and the role of the State on the Fiji National Gender Policy as well as other human rights commitments, including Fiji's 2013 Constitution. The endorsement of these international and national commitments imply that women are equal partners in decision-making and implementation rather than just beneficiaries. It also recognises the rights of people with diverse sexual orientation, gender identity and expression including men and women and the different ways they are affected by existing policies and laws.

The development of Village Bylaws

Bylaws are regulations made by a person or body, authorised by law that would have effect within their area of responsibility. In the context of the Village Bylaws, the Ministry of iTaukei Affairs (Indigenous Affairs) is proposing a by-law to govern indigenous Fijian communities, that is villages, citing the need to ensure traditional leadership is upheld, respected and protected; maintain law and order [and] harmonious peaceful living in the village³.

The first village by-laws were made in 1875 under the colonial administration of Sir Arthur Gordon. They were amended later but have always existed in one form or another. In 2009, the Ministry of iTaukei Affairs (the Ministry) drafted a model village by law in response to complaints from village provincial councils about a growing disregard for traditional village order.

In the same year, the initial draft which included women's dress code was circulated for responses amongst the indigenous village communities. It was during the circulation of this draft that reports began to emerge of village headmen imposing their own interpretations of the bylaws with no regard to the rights of women affected.

While the draft bylaws were not gender specific in terms of dress code, its enforcement mainly targeted women and girls, which led to accounts of public flogging of young women. One such account involved the assault of a 16 year old girl who was punched and beaten with a stick by the village headman. The teenager was accompanying her mother to town wearing a singlet and three-quarter pants.⁴

FWRM and sister organisation the Fiji Women's Crisis Centre (FWCC) critiqued the Village Bylaws in their respective submissions in 2011. After robust discussions and consultations with community partners and particularly women (in all their diversities)⁵, FWRM found that much of the same concerns remain with the proposal to re-impose the Village Bylaws.

¹ <http://www.fwrn.org.fj/about>

² <http://www.un.org/womenwatch/daw/cedaw/>

³ See section 4 of the draft Bylaws.

⁴ Violence is not our culture (2011) Fiji: Girl beaten by village headman for wearing pants. <http://www.violenceisnotourculture.org/content/fiji-girl-beaten-village-headman-wearing-pants> (Accessed 12/3/17)

⁵ Including Lesbian, Trans and Bisexual women.

Implication on Women s Human Rights, the Constitution and International Conventions ratified by Fiji

- I. The Village Bylaws overall discriminate against women. The purpose of the Village bylaws is outlined in Part I section 4, specifically subsection 4. (i). states one of the purposes is to ensure that traditional leadership is upheld, respected and protected. Traditionally indigenous Fijian leadership structures are patriarchal in nature and if formalised in its current framing, it would reinforce gender discrimination against women and girls. This would highlight a violation of women s right to equality and freedom from discrimination which is protected under section 26 of the Constitution⁶, subsections (1)-(4). i.e.

Right to equality and freedom from discrimination

26. (1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.
(2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law.
(3) A person must not be unfairly discriminated against, directly or indirectly on the grounds of his or her
(a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; or
(b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others, or on any other ground prohibited by this Constitution.
(4) A law or an administrative action taken under a law may not directly or indirectly impose a limitation or restriction on any person on a prohibited ground.

Moreover, the proposed Village Bylaws current framing neither sufficiently complies with the requisite exceptions to subsection 26. (3)(a) outlined in subsection 26. (8)(g) i.e.

- (8) A law, or an administrative action taken under a law, is not inconsistent with the rights mentioned in this section on the ground that it

(g) to the extent necessary and without infringing the rights or freedoms set out in any other section of this Chapter, gives effect to the communal ownership of iTaukei, Rotuman and Banaban lands and access to marine resources, or the bestowing of iTaukei, Rotuman and Banaban chiefly title or rank.

- II. The provisions that apply directly or have implications for women include the following:

Sections 30 sets up a Women s Committee to oversee issues regarding women and their interests within the community.

⁶ Constitution of the Republic of Fiji 2013.

Section 32 sets up a Committee for the elderly/widowed, physically & mentally disabled persons;

Section 45 on appropriate dress code within the village boundaries;

Section 76 on a person having a house and a farm before he marries;

While acknowledging that Village bylaws (-inconsistent By-laws/by-laws) promote the welfare, safety and health of all village dwellers overall, they directly contravene government commitments such as domesticating the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the National Gender Policy 2014). The Bylaws perpetuate rigid cultural and traditional stereotyping of women and men, threatening the progress that has been made, especially for iTaukei women living in villages. Additionally, women's issues in the Bylaws have been relegated to be addressed by the establishment of Women's Committee⁷ without specific systems or processes for consultation with women residing in the villages, and fails to consider the stereotypical challenges women face in articulating their concerns.

FWRM in its community consultations for Access to Justice for Women in Fiji (phase 1 of the Research currently underway) heard from women in Levuka, Kadavu and Taveuni that they continue to struggle in raising and addressing their concerns because there is a lack of understanding from their Turaga-ni-koro (Village Headman) . This is not surprising as the Village Headmen, as the name implies, are males with little to no understanding of the gender divides and prejudices women face. Moreover, the stringent enforcement of Village Bylaws threatens to exclude women from the decision-making process including substantial leadership roles because the emphasis is on traditional leadership and the role (s) of the Turaga-ni-koro,⁸ both of which are traditionally patriarchal in construct.

Key Recommendations

1. Reconsider the initiative to formalise the indigenous traditional and customary structure of governance a patriarchal structure that contravenes existing national laws and policies that reiterate the importance of gender equality in all spaces of Fiji's society.
2. If the Ministry is adamant to impose the Village Bylaws then due consideration should be made to extend the consultation phase. With special regard to ensuring active participation of women, young people, including those living with disabilities and Lesbian, Gay, Bisexual, Trans, Queer and Intersex persons (LGBTQI) that reside in or around communal village areas.
3. The Village Bylaws would be better suited for all village contexts if the overall framing focused on regulating housing, sanitation, hygiene, health, peace and security, with specific corresponding penalties and due consideration to national laws to ensure a cohesive national legal system.
4. The current draft is limiting in that it fails to provide adequate language to align it to the Bill of Rights provisions in the Fiji Constitution, the Crimes Act 2009, the Family Law Act 2005, the Domestic Violence Act 2009 and other main stream legislation that impact on women and gender development practices in Fiji.

⁷ See section 30 of Bylaws

⁸ See section 11-17 of the Bylaws

5. There are also fundamental flaws in the enforcement measures (s.81) where it is the Turaga-ni-koro who has the power and authority of investigator and enforcer. Hence provisions that affect women such as the dress code in the villages (s.45), governing candidates for marriage (s.76) have no mention of how it will be enforced by the Turaga-ni-koro a position usually held by males. We suggest a review of this provision and a consideration of renaming this supervising role to ensure that those appointed to this role are not limited by gender but appointed on the basis of their capability to fulfill the objectives of the role with fairness to all residing in or around communal village areas.
6. Another point for consideration is to review the current silo approach in which the provisions are framed without incorporating current gender development practices. For example, women s issues have been relegated to section 30, which stipulates the establishment of Women s Committees. This is contrary to accepted best practices and policies of incorporating women s issues in mainstream development of the village communities.
7. Reconsider the number of committees. Too many committees will not be practical to enforce, particularly in smaller villages. We reiterate similar submissions that have called for committees to be centred around the following key thematic areas of concern i.e.-
 - a. General Welfare Committee (Bula Raraba) - health, wellbeing, environment, hygienic, vulnerable populations, education, women, youth.
 - b. Village Development Committee- village developments including capacity building.
 - c. Finance and Resources Management Committee
 - d. Arbitration Committee (Committee Ni Veivakameyautaki) (for addressing disciplinary matters as well as settling minor disputes).

ENDS.

Annexure

On 6th April, 2017, FWRM organised and hosted an interactive Public Panel at De Vos on the Park, with an approximate attendance of around 120 people. Those in attendance were between the ages of 18 to 55 years with a majority being women, within the 18-35 years age bracket. The Panel was organised to discuss both the content and consultation process of the proposed Village Bylaws. Some of the views shared (but not limited to) are as follows:

- A young woman living in a village in the Tamavua area shared that young women were not given the opportunity to share their views during the consultation process that took place.
- A young transwoman living with disabilities raised her concerns on the consultation process in her village on Vanua Levu. She reflected that there was very little discussion on issues related to people living with disabilities who reside in the villages. She highlighted provisions of concern including the requirement for young men to own a house and have a farm, stating it was unrealistic for all villages, and not inclusive of people living with disabilities who were unable to farm but can do other work. The exclusive mention of farming restricted discussions on being able to provide and support yourself and your family, she said, adding

that the framing was divisive and the language regarding people living with disabilities was hollow and needed to be strengthened.

- A young woman from a village in the Namosi area shared that government people came to her village and distributed copies of the draft Bylaws but were unable to respond to their questions. She later learnt that they were from the Provincial Council. Additionally, she shared that there is an intergenerational divide in her community, as the older women have readily agreed with the proposed Village Bylaws but the younger women are concerned that the Bylaws will further constrict them in the villages.
- A young woman and a community human rights training officer, shared on her experiences in community work in villages and thoughts on the proposed Village Bylaws- the consultation process thus far has consisted mostly of just men, including the turaga-ni-koro and provincial council officials, failing to account that the proposed Village Bylaws will affect everyone and probably incentivise an overwhelming rural to urban drift. In recent trainings she has conducted, women in the village shared they thought the Village Bylaws were a good thing but were unsure of its implications and purpose.
- A woman, social worker and counsellor shared that she worked with providing counselling and support mostly to women and girls who were survivors of sexual and physical abuse. She did not understand why there were so many committees (12 in total) in the draft Village Bylaws as this would not be practical in smaller villages that are comprised of ten or less households. Furthermore, it potentially ran the risk of exploiting young children, especially girls to sexual abuse because parents and guardians would be so caught up in participating in the Committees (on top of religious and other communal obligations), leaving children unattended or supervised, as her work experience has often highlighted.
- An older woman agreed with an earlier reflection that the consultation process was selective but added that the draft by-laws mirrors past attempts to impose regulations to govern villages. The formation of the by-laws, as she understands, were intended to run parallel to the Church. They were intended to foster social coalition in the villages and respect to the vanua⁹, yet for the Bylaws to be effective they needed to be framed and considered in the various contexts, as villages differ from province to province. Also the bylaws would work better if they were made by the villagers and not imposed.

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⁹ Indigenous Fijian traditional custom and communal norms.

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