

Fiji's Gender Equality Commitments and the iTaukei Village (General) By-Law, 2016

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20 July 2018

Introduction

iTaukei Village By-Laws was first introduced in Fiji during the colonial era in 1875. In 2010, pursuant to the iTaukei Affairs Act the military regime re-introduced the draft iTaukei Village (General) By-Laws, with the aim to protect and promote the indigenous culture, leadership and values. However this was subsequently shelved amongst criticism and concern over its content. In October 2016, the Ministry of iTaukei Affairs again introduced a version of the draft Village By-Laws and started consultations in villages. In January 2018, the process was suspended and the Village By-Laws shelved.

This paper will outline some of the key elements of the process undertaken with the 2016 draft Village By-Laws and how its content fails to uphold the gender equality commitments made by the State. It will explore how the 2016 draft Village By-Laws is perpetuating discrimination and gender inequality.

Key Elements of the Development of the Village By-Laws

A 'scoping study' was carried out in 2011 to inform the 2010 draft Village By-Laws. During this 'scoping study' government and non-government stakeholders were consulted, however information is not available on which government agencies and non-government stakeholders participated.¹ During this time, the Ministry of iTaukei Affairs stated the village by-laws would be guided by State obligations and commitments under international laws and declarations; and in the event of any conflict over rights, an effective and inclusive dialogue will be taken to reconcile these rights.² The 2010 and 2016 draft Village By-Laws vary and one assumes that the feedback from the 2011 'scoping study' was used to inform the new draft in 2016.

The 2016 Village By-Laws draft copy was made available to the public on 28 October 2016 with submissions collected and compiled by the Ministry of iTaukei Affairs. This would have then been submitted to the iTaukei Affairs Board³. The iTaukei Affairs Board would have made the final decisions on the recommendations and then the Village By-Laws were to be given to the Solicitor-General's office for confirmation before it is implemented. The Methodist Church was identified as the key stakeholder and was involved actively in the process.

In April 2017, the consultation for the draft Village By-Laws was completed in the 14 provinces and the Ministry of iTaukei Affairs continued creating awareness in

¹ <http://www.fiji.gov.fj/Media-Center/Press-Releases/Village-by-laws-under-review---PM.aspx>

² <http://www.fiji.gov.fj/Media-Center/Press-Releases/Village-by-law-under-scoping-study.aspx>

³ The iTaukei Affairs Board directly manages the administration and affairs of the fourteen (14) Provinces as stipulated under the iTaukei Affairs Act (Cap 120).

villages.⁴ This process should have been transparent with all the submissions and the 2011 ‘scoping study’ report to be made available publicly.

Apart from this process, the Fiji Women’s Rights Movement held a panel discussion on the content and the process of the consultation on the Village By-Laws. It was attended by 120 people with a majority of them being women within the age group 18-35 years.⁵

The Village By-laws were being made in a highly patriarchal setting with men at the helm. Most of the consultation process generally involved group meetings and gathering in villages with no effort undertaken to create spaces conducive to young people, women, people with disability and LGBTIQ. Effort should have been made to create spaces for vulnerable and marginalised communities to be able to participate without any fear or retaliation.

Given the impact that the Village By-Laws can have on the autonomy, self-determination and lives of the iTaukei community it is crucial that the consultation process is gender sensitive and is enabling for all the community members.

There has been no discourse around protection of women’s rights and of achieving gender equality by the key stakeholders directly involved in the process. However, patriarchal values in the guise of tradition have been promoted. Commentary on controlling what women can wear⁶, over-consumption of kava by women reported by the men in the village⁷, for men to own houses before they can marry perpetuating economic and social power of men⁸ and support for flogging as a form of punishment⁹.

The Village By-Laws would have been a strategic opportunity to codify customary laws in a way that transforms gender relations and addresses the structural and cultural inequalities that prevail against girls and women.

National Gender Equality Commitments

The role, if any, of the Ministry of Women, Children and Poverty Alleviation in the formulation of the draft Village By-Laws has been unclear. The Women’s Plan of Action (2010-2019) and the National Gender Policy (came into effect 2014) are two key national policy documents developed by the Ministry of Women to advance women’s human rights in accordance with Fiji’s obligations to international commitments including the UN Convention on the Elimination of all forms of Discrimination against Women. The Ministry is also responsible for the

⁴ <http://fijisun.com.fj/2017/04/19/draft-village-by-law-consultations-end/>

⁵ <http://www.fwrn.org.fj/images//FWRM-Village-Bylaws-Submission.pdf>

⁶ <http://fijisun.com.fj/2016/10/27/village-by-laws-to-regulate-activities/>

⁷ <http://fijisun.com.fj/2017/01/24/board-womens-kava-drinking-worrying/>

⁸ <http://www.abc.net.au/radio-australia/programs/pacificbeat/fiji-mp-backs-village-by-laws-as-a-way-to-preserve/8340816>

⁹ <http://fijisun.com.fj/2015/06/11/flogging-banned/>

coordination of implementing these national policies across the whole of government.

There was recognition that parts of the Village By-Laws were incompatible with the policies of other ministries and department.¹⁰ However, it was not clear which ministries and departments, and whether the Ministry of iTaukei Affairs was working with them in addressing the concern.

In detail, the aim of the Women's Plan of Action 2010-2019 is *"to provide directions for actions to be taken by government; its development partners stakeholders, NGOs to promote gender equality and reduce inequality and discrimination against women in all sectors"*. The aim of the National Gender Policy, which is the national gender equality blueprint, is *"to promote the development of women's human rights in accordance with Fiji's obligations under the Convention on the Elimination of Discrimination Against Women and its General Recommendations, and all other conventions and international laws relevant to women."* It further states *"this policy intends to promote gender equality in all aspects of Fiji's development, and to eradicate or modify institutional and social barriers to such equality."*

The overall goal of the National Gender Policy is to *"promote gender equity, equality, social justice and sustainable development in the Republic of Fiji."*

Whereas Section 26 (3) of the Fiji Constitution 2013 states that a person cannot be unfairly discriminated against, directly or indirectly on the grounds of his or her race, culture, gender, and ethnicity.

Gender Assessment

Gendered language

Overall the Village By-Laws continues to reinforce patriarchal leadership. For instance, the language in the Village By-Laws is either gender neutral or masculine, continuing to perpetuate male superiority and reinforce inequality. The definition of 'Turaganikoro' is the Village Headman appointed under Regulation 30 of the iTaukei Affairs (Tikina and Village Council) Regulation 1996. 'Turaga' means man. There is no mention of a Marama ni Koro which would be the female village head.

The Ministry of iTaukei Affairs annual report 2015¹¹ also uses masculine pronoun for the titles such as 'Turaga' ni Yavusa and 'Turaga' ni Mataqali despite there being both men and women at the leadership helm alas the number of women are substantially less. Statistics from the 2015 annual report show that 7% of women are 'Turaga' ni Yavusa and 8% of women are 'Turaga' ni Mataqali. The language itself is problematic as the word 'Turaga' is used instead of the 'Marama'. Furthermore, the number of Turaga ni Koro or Marama ni Koro is not mentioned in the annual report. However there are well over 1100 villages around the country and each would have a village head. There is suggestion that there is one

¹⁰ <http://fijisun.com.fj/2017/04/28/ministry-awareness-on-village-by-laws-at-village-level/>

¹¹ <http://www.parliament.gov.fj/wp-content/uploads/2017/02/MTA-AR-2015.pdf>

female village head in Fiji – Marama ni Koro.

The Turaga ni Koro is also listed as the Enforcement Officer of the Village By-Laws thus continuing to deny women leadership opportunities and entrenching rigid gender roles.

Committee Leadership Quota

Eleven committees were to be established under the regulations. A sincere attempt to ensure that women are fairly considered and institutional barriers addressed, a quota should have been stipulated mandating that at least half of the committee members should be women. This would address gaps in women's leadership within the traditional structures, increase the visibility of women's leadership and ensure that the committee is able to function in the best interests of all the village members. Furthermore, a women's and youth committee is being proposed as part of the eleven committees, and having women and young people being represented on the respective committees would be ideal.

Moral policing and control

There is a high risk given the discourse surrounding the village by laws that the Village By-Laws will result in heavy policing and control of women and girls, including members of the LGBTIQ community.

Section 37 on *Guilty of Accessory in Breaking the Village By-Law* states:

- (a) It shall be the responsibility of each member of the village to report any act that breaches provision of any section within the By-Law to the Turaganikoro.*
- (b) Failure to act in paragraph (a) of Section 37 shall be guilty of accessory to breaking the By-Law. “*

Section 45 on *Dress Code* states:

Every village resident and visitor(s) shall abide by a dress code while in the village, as a way to accord respect, bestow honor on traditional leadership and authority, harmonize social relationships, and uphold religious belief and faith. The following is prohibited;

- a) wearing a cap or covering the head with a piece of cloth; and b) to dress inappropriately in accordance with traditional protocols within the village*

It is important to recognise the social and cultural context in which these laws will operate and that there is already control on girls and women's movements, bodies and expression. There is heavy moral policing of women and girls clothing, ranging from slut shaming and victim blaming. There have been media reports and several cases have surfaced of girls and women being beaten up or harassed for their clothes and/or hairstyles.^{12 13} There also have been reports that police officers were telling people what kind of clothes to wear.¹⁴

¹² <http://www.wluml.org/node/5964>

¹³ <http://www.fwrn.org.fj/images//FWRM-Village-Bylaws-Submission.pdf>

¹⁴ <http://www.wluml.org/node/5964>

Provisions on reporting and dress codes operating in an already hostile culture against girls and women, can lead to an over zealous application of it by villagers penalising them and also members of the LGBTIQ community.

Violence against girls and women

The village by laws is silent on recognising girls and women as victims of violence, and using gender specific language around assault, despite a prevalence study revealing that all forms of violence is higher among iTaukei women compared to other ethnic groups. With respect to child protection provisions, a villager is mandated to report to the Turaga ni Koro and the local authorities. The provision with 'Assault' where reference is made to various descriptions under the domestic violence decree (but without any acknowledgment of domestic violence specifically), the villager is mandated to only report to the Turaga Ni Koro, who then will report to the responsible authorities.

A 2013 national prevalence research conducted on women's life and health experiences carried out by the Fiji Women's Crisis Center (FWCC) reveal the following.¹⁵

Nature of Violence	iTaukei Women %	Indofijian Women %	All Women %
Physical violence in Eastern Division ¹⁶	79	-	61
Sexual violence in Eastern Division	53	-	34
Physical violence nationally	69	47	61
Most severe forms of physical violence - hit with an object or weapon, being kicked, dragged or beaten up, and being threatened with a weapon.	55	24	44
Rates of injury	51	35	47
Sexual violence by husbands or partners	41	21	34
Emotional violence by husbands or partners	65	44	58
Non-partner violence - physical	33	16	27
Non-partner and since turning 15 years - Rape	5	Less than 1%	-

(Source: Somebody's Life, Everybody's business! National Research on Women's Health and Life Experiences in Fiji (2010/2011): A Summary exploring the prevalence, incidence and attitudes to intimate partner violence in Fiji. 2013)

¹⁵ <http://www.fijiwomen.com/wp-content/uploads/2017/11/National-Survey-Summary.pdf>

¹⁶ Eastern Division is made up of predominately iTaukei communities.

It is important to note that the Eastern Division (Kadavu Province, Lau Province, Lomaiviti Province and Rotuma) has one of the highest percentages of women who have been subjected to domestic violence by their husband or partner during their lifetime. And is one of the very highest recorded to date in the world. The FWCC prevalence study also found out that Indo-Fijian women are more likely to seek help than Taukei women.

The Village By-Laws raises concern on the failure of the government agencies to address the high rates of violence experienced by iTaukei women.

Economic empowerment

Another key provision of concern in the Village By-Laws is on Section 76, which states:

House and Farm Before Marriage

Before a person marries, that person must have a house and a farm in order to support his own family

The assumption and discourse¹⁷ around this has been on young men and men, also the use of the pronoun 'his' that further perpetuates a culture of men being the 'breadwinners' and their economic empowerment. This culture effectively prevents women from owning property and being economically empowered.

¹⁷ <http://babasiga.blogspot.com/2017/06/about-village-by-laws.html>