

# **Codifying custom and the situation of women in a Fijian village setting**

**Fiji's Draft Village By-Law**

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# Background

- Colonial Government's Native Policy
- Governance of natives – restrict movements, establishment of a administration fusing both introduced and native forms of governance, codifying custom.
- Colonial legal framework for the codification of custom
- Village by-laws and the role of women



# Motivations to codify custom during the colonial era

- Codification of custom and registration of land an effective colonising tool – to protect natives and their custom and also to control
- Regulations were introduced codifying custom and also ‘incorporating foreign ideas of public health and social stability’ - (***France P. 1968, “The Founding of an Orthodoxy: Sir Arthur Gordon and the doctrine of the Fijian Way of Life”, The Journal of the Polynesian Society, Vol. 77, No. 1, pp. 6-32.***)
- Establishment of native courts to enforce these native regulations – village courts and the provincial courts
- Protection equated with restriction
- Chiefs became effective representatives of the colonial administration

- ***“Regulation Number 5 of 1879 is an example. This imposed an obligation upon every man to maintain his dependants and cast upon the chief of the mataqali a duty to reprove those who failed in this respect. This regulation also required the chief to instruct, correct and guard the welfare of growing children. Another example is the curious Regulation Number 4 of 1885 which is still in force. This punishes the indiscriminate drinking of yaqona, and prohibits its consumption by males under eighteen, females under twenty-one, and women who are suckling children.” Knox-Mawer 1961***

# Legal Framework

- iTaukei (Fijian) Affairs Act of 1945 and the iTaukei Lands Act of 1905 and 1940.
- The iTaukei Affairs Act (Fijian Affairs Act) provides for the regulation of Fijian affairs and establishes the Great Council of Chiefs and as well as the Fijian Affairs Board or iTaukei Affairs Board (See Fijian Affairs Act, Cap 120).
- iTaukei Village (General) By-Law 2016 is drafted under Section 6 of the iTaukei Affairs (Provincial Council) Regulations (Fijian (iTaukei) Affairs Act, Subsidiary Legislation, Cap 120)

- *There were four systems composing the colonial administration of criminal justice in Fiji. “Firstly existing in the main towns were police courts which sat regularly. Secondly, a single supreme court often sat in the capital of Levuka to adjudicate mainly on crimes of serious nature. Thirdly, sitting near plantations were magistrate’s courts which dealt with violations of ordinances relating to employment in the plantations. The fourth which were the provincial courts, dealt with cases involving native Fijians in relation to breaches of ordinances or customary law” (Etherington E. 1996, “The Gendering of Indirect Rule: Criminal Law and Colonial Fiji, 1875-1900”, The Journal of Pacific History, Vol.31, No.1, pp. 42-57)*

# Draft Village by-law

- Motivations behind village by-law? s. 4 of the draft village by-law
- (i) ensure that traditional leadership is upheld, respected and protected;
- (ii) maintain law and order, harmonious and peaceful living in the village;
- (iii) ensure that hygiene, sanitation and environmental standards are maintained;
- (iv) to preserve, safeguard and strengthen leadership, culture, tradition and the vanua and to encourage community responsibility.

# Conclusion

- Similarities between colonial aspects of codification and recent attempts to codify custom through the draft by-laws; e.g reviving the village councils, regulation of marriage etc, women's role
- A continuation from colonial experience?
- Danger of codifying custom using colonial process, similar motivations as colonial administration? How this affects women's role and lives within village settings.