

## **CODIFYING CUSTOM AND THE SITUATION OF WOMEN IN A FIJIAN VILLAGE SETTING**

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### **INTRODUCTION**

Recent attempts to codify custom in Fiji have been unclear and challenging. This process has taken the form of a draft village by law in Fiji aimed at regulating life within the boundary of Fijian villages. Whilst custom and customary law remain an important aspect of the legal framework in many Pacific Island countries, they have presented some difficulty, especially in Fiji in relation to attempts to codify custom.

One way Fiji is facing challenges in this area is attempting to regulate villages under legislation enacted during the colonial era. Another challenge is identifying which customs to codify given changing values and norms with the onset of development and new ideas. This, coupled with the State's international commitment of aligning itself to international standards of human rights, creates difficulties not only in Fiji, but also in other Pacific island countries. Recently in Fiji, efforts to codify custom have been met with strong objections: firstly, in relation to the way this process has been undertaken, and secondly, in relation to the type of regulations drafted to apply within village boundaries. In its review and recommendation of the draft village by-law in Fiji, the Fiji Women Rights Movement (FWRM) identified a number of key reasons as to why the draft village by-law needs to be reconsidered. The FWRM identified "formalising indigenous traditional and customary structure of governance as reinforcing patriarchal values and as such contravening national legislation that promotes gender equality" (FWRM 2017).

The very first process of codification of custom in Fiji took place during the colonial era. Sir Arthur Gordon, Fiji's first British Governor, actively pursued the codification of custom when he introduced and implemented his native policy (Sohmer, 1984). Gordon worked effectively with the traditional structures during the colonial period merging customary and colonial forms of governance to further the interests of the colonial power, and also ensure that the native people were brought under some

control and order (Sohmer 1984, p.140). As a result, the codification of custom and the registration of native land became effective colonising tools, not only safeguarding traditions and customs, but also effectively controlling and excluding native Fijians from interfering in the work of the colonial administrators.

Codification during the colonial period took the form of registering and determining disputes about land titles through the setting up of a native land commission and also by the imposing native regulations. Through his native policy, Gordon was able to protect Fijian custom and way of living, effectively codifying customs that increasingly restricted women and also regulating how women lived their lives in a traditional Fijian village.

Given the backdrop of Gordon's native policy, this paper will look at recent efforts to regulate villages through a village by-law in Fiji, and how this may affect how women live their lives in a Fijian village setting. In the light of Fiji's colonial history, this paper will consider how non-state and state actors have interacted, and are still interacting, in Fiji in order to codify custom: looking first, at how the process of codification would have looked during the colonial era, and then, considering how this has translated to recent times in current initiatives to regulate villages through village by-laws.

In this paper, I argue that the current legal framework within which drafting of village by-laws and codification are being undertaken in Fiji is of a colonial architecture and outdated. As a result, codifying custom and attempting to regulate villages under current existing colonial legislation in Fiji may have unintended outcomes and would essentially result in the regulation of women's lives, in ways that they were during the colonial period. Whilst custom and traditions remain an important aspect of Fijian society today, there are risks of codifying custom under current colonial dated legislation in Fiji, especially as customs change and village life evolves, especially as compared to how it was over 100 years ago.

## **THE LEGAL FRAMEWORK FOR THE CODIFICATION OF CUSTOM IN FIJI**

In this section, I briefly discuss the legislative framework that currently exists in Fiji, allowing for the protection and codification of custom.

Fiji has had four Constitutions following independence in 1970, with all except one containing provisions for the recognition and application of customary law in Fiji. Express provisions relating to customary law are absent in Fiji's current 2013 Constitution. However native affairs and the administration of native land and custom are provided for in a number of pieces of legislation in Fiji allowing for the protection of customary land and customs. These Acts, however, have been unable to deal with the challenges of development and globalisation and of the increasingly evolving Fijian village. Accordingly, the State has had to enact new laws to be able to exercise more control over native land and custom in the light of development and modernisation.

Native institutions and colonial legislation which were a direct result of Gordon's native policy continue to exist in Fiji, although there have been changes as to how these institutions function. Perhaps the most important aspect of the colonial administration in Fiji was the introduction of a policy that sought to protect customary ownership of land. By protecting native land, the colonial administration effectively encapsulated "the way of the land or vakavanua, allowing the continuation of ancestral practices" (Torren cited in Jolly 1992, p.330).

Native interests and native land are protected in Fiji through a legislative framework consisting of a range of enactments which were established during the colonial era. These are in place to protect custom and land, and also determines how custom is to be codified. These pieces of legislation are the iTaukei (previously Fijian) Affairs Act of 1945 and the iTaukei (previously Native) Lands Act of 1905 and 1940. The iTaukei Affairs Act (previously Fijian Affairs Act) provides for the regulation of Fijian affairs and establishes the Great Council of Chiefs, as well as the Fijian (now iTaukei) Affairs Board (See Fijian Affairs Act, Cap 120).

#### **Codifying customary ownership of land**

*'The land and the people are one thing there can be no separation, as people without land cannot be a people, and land without people cannot be land.'* (Scarr1970, p.7).

The colonial administration recognized the importance native Fijians attached to land as something to which their identity was inextricably linked. Customary ownership of land was legitimised by the colonial administration by stopping the alienation of customary land by means of the ***Native Lands Transfer Prohibition Ordinance 1875***. Gordon then introduced a form of land registration system through a land claims commission (France 1968, p19).

In order to control the sale of land and protect native ownership of land, Gordon introduced the land commission, to register and adjudicate on disputes relating to land claims. Gordon was highly interested in the welfare of the native people, holding “*a belief that he possessed an intimate understanding of the Fijian society*” (France 1968, p.8). As such Gordon ensured that native interests to land and customary way of living were protected, ensuring native Fijians were able to take back land unfairly acquired by European settlers.

Gordon therefore expressly prohibited the alienation of land through instituting the Native Lands Transfer Prohibition Ordinance “***To Protect the Alienation of Land by Natives in the Colony of Fiji***” (Native Lands Act 1875). This law not only prohibited land alienation but also prevented the prohibition of the alienation of land being questioned in a court of law. “*Although later throughout the 20<sup>th</sup> century this prohibition of the alienation of land was challenged by subsequent colonial administration, these were unsuccessful as Chiefs and some colonial administrators strongly opposed it.*” (Bayliss Smith *et al* in Jolly 1992, p. 339)

The Native Lands Act (Cap 133) and Native Land Trust Act (Cap 134,) were later enacted, the former establishing the native lands commission and the latter establishing the Native Land Trust Board. The Native Lands Commission was conferred with powers to determine customary ownership of land and land boundaries. The Native Lands Trust Board, on the other hand, was then established and vested with powers to control and administer native land, on trust for the benefit of its native owners (Section 4, Native Land Trust Act).

In this way Fiji’s colonial administrators effectively and indelibly codified custom by safeguarding customary ownership of land. This is clearly expressed in

Section 3 of the Native Land Act (Cap 133) which safeguards custom and traditions especially in the ownership of land by native Fijians.

*Tenure of native lands by Fijians*

- 1. Native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to their native customs and subject to any regulations made by the Fijian Affairs Board...*

Over 140 years later Gordon's protectionist policy on land is still in place in Fiji, however, with certain exceptions. Gordon's policy led to the legitimization of the customary ownership of land and essentially leading to the codification of custom and traditions. To this day I-Taukei land or native Fijian land is owned by native Fijians in collective groupings according to their custom and tradition. The structure of the ownership of native land is as follows:

- *"Land owned by titular heads of tribes e.g. Chief who for the time being holds the hereditary title of the Na Ka Levu;*
- *Land owned by agnate descendants of a member of a tribe – qele ni kawa;*
- *Land owned by a tokatoka (family unit). This ownership style is widely used in the province of Ba;*
- *Land owned by the mataqali (clan);*
- *Land owned by the yavusa (tribe); and,*
- *Land jointly owned by several yavusa." (tltb.com.fj)*

**The Native Administration**

To protect native interests, Gordon also introduced a form of administration which incorporated and legitimised traditional institutions (France 1968, p.10), fusing introduced forms of administration with the traditional chiefly structures. His native administration were made up of the village council, the district council and the provincial council which were instituted throughout Fiji (France 1968:11).

Gordon formed the Great Council of Chiefs, a gathering of high chiefs throughout Fiji, making himself as its head. Gordon was able to effectively govern the native population by legitimising the role of Chiefs, allowing Chiefs to exercise power

and control over their villages with little intervention except for the collection taxes which was to be paid in kind (Sohmer 1984).

The Native Affairs Board was then formed, vested with statutory powers to make regulations on behalf of the native people (Knox-Mawer 1962, p.642). The Native Affairs Board, later called the Fijian Affairs Board, and now called the iTaukei Affairs Board), established under the Fijian Affairs Act, has powers to make regulations to be obeyed by all Fijians ***“providing for the peace, order, welfare and good government of Fijians”*** (Section 6, Fijian Affairs Act, Cap 120). The Act also establishes the provincial councils which may ***“subject to the approval of the Board, make such by-laws for the health, welfare and good government of, and, subject to the approval of the Minister, impose such rates or charge such fees to be paid by Fijians residing in or being members of the community of the province as may be authorised by regulation”*** (Section 7, Fijian Affairs Act, Cap 120).

Gordon’s native policy, was given legal effect through the introduction of regulations to govern the native Fijian people. These regulations codified aspects of custom in Fiji but “some regulations were also foreign, embodying European ideas of public health and social stability” (France 1968, p. 13).

The most effective process of codification of custom was perhaps through the establishment of native courts in Fiji. In this way, native courts were able to enforce customs and regulate life in the village according to customs. This being the objective of the colonial administrators in order to ***“preserve the Fijian communal system and the customs and observances traditionally associated with that system”*** (cited in Knox-Mawer 1962, p. 645). As a result there were two courts adjudicating on matters relating to natives, these being the Tikina or district courts and the provincial courts (Knox-Mawer 1962, p.645), each having jurisdiction to decide on both civil and criminal matters. These courts were presided over by men, not surprisingly. Furthermore, the regulations provided for appeals: the “Fijian Regulation Number 9 provides for appeals. Appeals in criminal matters lie from the Tikina Courts to the Provincial Courts. Appeals lie from the Provincial Courts, in both criminal and civil matters, to the Supreme Court of Fiji” (Knox-Mawer 1962, p.644). However Knox-Mawer writes that appeals were rare.

### **Native Policy and the Role of Women in Fijian Villages**

Gordon's protectionist policy had far reaching consequences on how native Fijian women lived in the village. Native policy was administered through various native regulations which further entrenched and institutionalised customs and traditions that were patriarchal. Chiefs were given powers through regulations to manage and control their respective villages and provinces. In this way, chiefs became influential in making decisions directly affecting the lives of women in the village.

Whilst restricting the movement of native women, given the restrictive nature of Gordon's native policy, customary practices affecting women were accepted, codified and legitimised by the colonial administration and were enforced by native courts. (Knox-Mawer 1961, p.643). "Whilst custom and tradition were said to be the source of native regulations, some regulations expressly limited or abrogated Fijian custom." (Knox-Mawer 1961, p.643).

The objectives of the native policy also lead to the introduction of the Indian indentured labour in Fiji's growing sugar industry in the late 1800s to the early 1900s. Colonial policy on indentured Indian labourers and women specifically in Fiji's sugar plantations were extremely harsh and controlling. Like the native Fijians, indentured labourers found themselves the subject of a different set of laws. As a result, both native Fijians and Indian labourers were governed under separate system of laws.

Etherington (1996, p.44) highlights that there were four legal systems running parallel to each other in colonial Fiji, as a result of which the colonial administration of criminal justice in Fiji was different for different groups of people. "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" (1996, p.44).

Whilst native regulations aimed to protect natives, they were highly restrictive. Knox-Mawer (1961, p. 643) makes reference to Native Regulations 5 of 1879:

"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.”

Women’s lives were highly regulated, with regulations not only creating an obligation for men as head of the household to look after his family but also gave chiefs the power to punish those who failed to do so. Chiefs also had a duty to **“instruct, correct and guard the welfare of growing children”**. Women’s reproduction therefore was controlled through criminal sanctions - female crimes most commonly entering the criminal justice system during the colonial period being abortion and concealment of birth (Etherington 1996, p.48). Apart from regulating families, female social lives were also regulated with the consumption of *yaqona* or kava being prohibited for all females aged twenty years and below, and as well as breastfeeding mothers who were also prohibited from consuming *yaqona* or kava. Women’s roles as wives and mothers in the village settings were determined directly by the colonial administrators through native regulations and directly through chiefs. The native courts became the “ultimate sanction for the maintenance of chiefly power over women’s production and reproduction” (Etherington 1996, p.56).

Native women were subject to two forms of law that existed during the colonial era, ie the native regulations and the general law of the colony. Knox-Mawer remarks that some criminal offences punishable under the native regulations as applied in *tikina* (district) and provincial courts, were not offences under the General Law of the colony (1961, p.644). An example was the offence of ordering a pregnant wife to fish, weed, and carry food, firewood or water. *“Fijian Regulation Number 10 is the Criminal Offences Code. Certain of the offences under the code, such as assault, theft, receiving stolen property, disorderly conduct, malicious damage to property, are also punishable under the general law of the colony. Others, such as neglect to maintain an elder, ordering a pregnant wife to fish, weed, carry food, firewood or water, and the practising of draunikau are certainly not offences under the general law.”*

Whilst these were offences under native regulations, they were not under the general law applying outside the village areas. This raises questions as to the effectiveness of enforcing this offence since there was another set of laws, arguably more dominant than the native regulations that did not criminalise the offence of ordering a pregnant wife. This is important as native Fijians were not only subject to native regulations enforced in native courts, they were also subject to the general law applied in the ordinary courts of the Colony (Knox-Mawer 1961, p.645).

Women's life became even more regulated when the Colonial administration was faced with the daunting task of addressing a decreasing native population. Attempts were made to address the growing threat of a dying native population in Fiji. Causes of depopulation were identified and sought to be addressed through regulating certain behaviours and customs that were seen to be contributing factors to the problem of depopulation (Thomas 1990, p.153).

Once again women became the subject of native regulations as the Colonial administrators were tasked with addressing the threat of a dying native population. Thomas (1990, p.154) explains that a report was compiled looking into the causes of population decline in Fiji. Various causes were identified and grouped under four general groups. Two such groupings directly affecting women were *Causes more immediately affecting the unborn child* and *Causes affecting the infant*. Under these two main groupings were the following causes: - "work during pregnancy, fishing by child-bearing women, domestic dirt, general insouciance of the native mind, heedlessness of mothers, and weakness of maternal instinct" (Thomas 1990, p.155). Further Thomas explains that the cause attributed to fishing by child-bearing women also "*referred to women of child bearing age and not just those that were actually pregnant*" (Thomas, p.155).

Perhaps the best indication of the type of regulation to which women were subjected in Fijian villages is provided by the type of criminal offences that were specifically enforced against women during the colonial period. The repealed section 6 of the Criminal Offences Code under the Fijian Affairs Act (Cap 120) provides a brief insight into the types of customs and traditions that the colonial administration sought to criminalize and also those that it tried to enforce. One type of custom which was

widely practiced during that time and which the colonial administrators sought to prohibit was that relating to pregnant women, as illustrated by section 3 of the Act as follows:

*Care of pregnant women*

*3.-(1) It shall be unlawful for a husband whose wife is pregnant or for any male relative in whose charge any pregnant woman is to order her to enter into any water for the purposes of fishing or to order her to weed, plant or carry food, firewood or water, and any such husband or relative contravening the provisions of this subsection shall be liable on conviction to a fine not exceeding \$10 and in default to imprisonment for any period not exceeding one month.*

*(2) It shall be unlawful for a woman who is pregnant or is the mother of a child under six months old to enter into or be found in any water for the purposes of fishing and any such woman shall be liable on conviction to a fine not exceeding \$2 and in default to plait mats of equivalent value.*

The above offence would also have been a direct outcome of efforts by the colonial administration to address the decreasing native population given the onset of new diseases. It also points to the fact that women undertook bulk of the work both inside and outside their respective village dwellings even when pregnant.

The fact that women were seen to be committing a criminal offence if found fishing when having a child under 6 months old (see section 3(2) above) points to the harshness faced by women as a result of the attempts by the colonial administration to govern and regulate life in the effort to address the decreasing native population in traditional Fijian villages.

Another harsh and restrictive offence was one relating to girls absenting themselves from their village. Section 8 of the Fijian Affairs Criminal Offences code states:

*Girl absenting herself from her village*

*8. Any unmarried girl under eighteen years of age absenting herself from her village without the consent of her parents or the person under whose control she is according to Fijian custom may be arrested on warrant and taken before a magistrate who may order her to be returned*

*in safe custody to her home. Upon conviction for a second or any subsequent offence the court, in addition to ordering her be returned to her home, may impose a fine not exceeding \$2 and in default imprisonment for any period not exceeding seven days.*

The above regulations and laws that were in force in Fijian villages during the colonial period were highly restrictive and controlling of women's lives. Lives of women of child bearing age and those who were actually child bearing were rigorously regulated. Reproduction was regulated and also women's social lives. It is on this foundation that Gordon's native policy was established and implemented. There exists to an extent, a correlation between a lack of consideration of the rights and interests of women as reflected in modern day draft village-by laws in Fiji and Gordon's native policy as reflected in the above colonial native regulations.

### **The Draft Village By-Law of 2016**

Village by-laws formed an important aspect of the colonial administration's governance structure. By-laws were enacted to regulate various aspects of life in the village. Specifically under regulation 22 of the Fijian Affairs (Provincial Council) Regulations, provincial councils are tasked to make by laws;-

#### ***Powers and functions***

*22.-(2) ...a Provincial Council may make by-laws with respect to any powers and functions entrusted to or vested in a Provincial Council under the provisions of these Regulations or with respect to all or any of the following matters:-*

- (a) roads, paths, tracks, jetties and landing places;*
- (b) recreation and sports grounds;*
- (c) medical relief, public health and child welfare;*
- (d) village planning;*
- (e) water supplies;*
- (f) education and libraries;*
- (g) cemeteries;*
- (h) the promotion of agriculture, fisheries, forestry and stock rearing;*
- (i) markets and pounds;*
- (j) provincial transport and carriage of mail.*

Provincial councils are also established and vested with powers under section 7 of the Fijian (now iTaukei) Affairs Act to make by-laws for health, welfare and good government of Fijians residing in a province

Apart from by-laws enacted during the colonial period, a draft village by-law was first introduced in Fiji in 2009, and later in October 2016 after consultations it is now shelved. The draft iTaukei Village (General) By-Law 2016 is drafted under Section 6 of the iTaukei Affairs (Provincial Council) Regulations made under the Fijian (now iTaukei) Affairs Act, Cap 120). The stated objective of the draft by-law, amongst others, is to maintain law and order and peaceful living in the village, the upholding and protection of traditional leadership and the safeguarding of culture, tradition and the vanua (land).

Whilst previous by-laws specifically addressed topics like public health, by, for example, bylaws relating to construction of buildings, cleanliness of village dwellings and disposal of rubbish, the iTaukei Village (General) By-Law 2016 merges both public health issues with other issues such as minor criminal offences like assault and larceny offences, child protection, regulation of village transportation and natural disaster procedures and evacuation plans.

In terms of jurisdiction, the village by-law is aligned to the iTaukei Affairs Act (Cap 120), the Crimes Decree of 2009, the Criminal Procedure Decree of 2009, the Domestic Violence Decree 2009 and the Child Welfare Decree 2010. Section 5 (ii) of the draft states that “a breach of the above laws is also a breach of the village by-law.” The draft bylaw applies to all persons within the boundaries of a Fijian village including those registered in the *vola-ni-kawa bula*, which is the register of native Fijians in Fiji. The village by-laws will automatically apply to all iTaukei entering a Fijian village, irrespective of whether that village is their own or not.

An important aspect of the draft by-law is the attempt to revive the village council under Part VI, section 18 of the by-law. Village councils originally were part of Gordon’s native administration system (France 1968, p.11). As such they were established under Part 2, Section 24 of the Fijian Affairs Act (Cap 120, and Section 6 & 9 – Fijian Affairs (Tikina and Village Council) Regulations). France explains that

*“although it had been a Fijian habit to discuss matters in council at a village level, or even at the level of a local group of villages in time of war, there is no evidence that the councils set up by Gordon were “purely native and of spontaneous growth.”* (1968, p.12).

Functions of the village council are provided under section 19 of the draft by-law which is similar to the provisions laid out in section 24 of the Fijian Affairs Act. Failure to attend these village council meetings without leave constitutes an offence and are to be penalized according to the by-laws.

In relation to the practice of the observance of traditional cultural ceremonies and other traditional obligations, the draft village by-law does not impose observance of cultural ceremonies, leaving this as a matter of personal choice. Although every iTaukei is obligated to fulfil his or her traditional obligation within the village (section 14-15), the by-law does not spell out what are these traditional obligations, leaving these for the village councils to determine. Functions of the village council include *“safeguarding and improving spiritual development based on sound moral principles and unity of the village community, and formulation of rules to ensure respect and due regard is observed in the village, in matters affecting traditional authority, discipline and protocol.”* (Section 19)

A number of provisions of the by-law affect how women live in the village. First, the draft by-law establishes a number of sub-committees with the aim of *“ensuring that the welfare and good governance of the iTaukei community remains paramount”*. One such committee is the culture committee (section 28) tasked with the responsibility of (i) *ensuring that traditions and cultural expressions are safeguarded* and (ii) *promoting the protection of endangered cultural origins unique to the village*. A women’s committee is also established under section 30 to *“oversee issues regarding women and their interests within the community.”* Dress code within the village is regulated under section 45 of the draft by-law stipulating that *“every village resident and visitor must abide by a dress code as a way of respect, bestow honour on traditional leadership and harmonize social relationships”*.

The by-law also regulates marriages by requiring that a person must have a house and farm in order to support his family before he marries (section 76). This provision has the potential to marginalise single pregnant women and girls who may be

abandoned because a man cannot afford to have a house and farm first in order to marry. Section 76 is an archaic provision having its origins from the native regulations of the colonial era. France (1968) makes reference to this very provision when referring to discussions by chiefs on the relevancy of such a law. ***“The chiefs decided, for example, that it should be customary, and therefore obligatory under the regulations, that a couple wishing to be married should have a house built before consent to the marriage could be given. This gave rise to difficulties. In 1877, Roko Tui Ba complained that “It sometimes happens that the love of couples is in greater haste than the housebuilders.”***(France 1968, p.13)

Sections 49 and 50, Part X, of the draft by-law deal with child protection and assault. A difference is seen in the drafting of these two respective provisions. Under section 49, a villager must not only inform the Turaga-ni-koro when he or she becomes aware of a child being harmed but must also report to the local authorities. Local authorities are not defined in the by-law but this term typically refers to the police. This requirement is missing in section 50 of the by-law in relation to reporting cases of assault as referenced in the Domestic Violence Decree. A villager is required to inform the Turaga-ni-koro when he or she becomes aware, or reasonably suspects, that an individual has been assaulted, but does not require that person to report to local authorities. The Turaga-ni-koro is then expected to report the crime to responsible authorities. However, the provision does not expressly require the Turaga-ni-koro to report cases of assault. Section 81 of the by-law gives authority to the Turaga-ni-koro to be the enforcement officer in the village and to administer the village by-law. Duties of the Turaga-ni-koro are wide ranging including the duty to conduct preliminary investigations on suspicions of violations of the village by-laws. This must be read together with section 83 of the draft by-law relating to traditional reconciliation. Section 83 of the draft by-law states:

*“For the purpose of peaceful co-existence, traditional reconciliation shall be encouraged at all times, however this shall not distract the due process of the law where necessary”.*

The above provision creates a problem as it allows for domestic violence within the village setting to be excused through traditional reconciliation. A study in 2012 in Fiji by the Fiji Women’s Crisis Centre showed that domestic violence was a problem

in Fiji with norms and values generally tolerant of violence against women. In this regard, traditional reconciliation has been criticised as one of the customary norms accepting of domestic violence.

## **CONCLUSION**

In hindsight, Gordon's native policy has shaped and influenced laws governing native land and native affairs in Fiji even up to today. Gordon's native policy modified Fijian custom to an extent, by institutionalising the role and influence of chiefs and by effectively separating the native populace from the Indian indentured labour populace and the English planter- trader settlers. It also introduced a capitalist economy in a traditional, subsistence and highly stratified village setting by virtue of the introduction of a taxation system (Sohmer 1984).

Whilst it was not the objective of the colonial administration to codify customs as we would have understood it today, that administration did effectively allow natives to continue in their own traditional way of living, interpreting and applying their customs within their villages under an imported system of administration. The preservation of customs and traditional way of living first legislated during the colonial period encapsulate the native policy aimed at the "protection of the delicate organism of Fijian society" (Sohmer 1984, p 146). This objective was echoed throughout various enactments and regulations that continue to exist in Fiji aimed at protecting customary rights to land and at safeguarding traditions.

The draft village by-law is drafted under these laws and introduced in order to regulate modern day Fijian villages. An assessment of the regulations implemented by the colonial administration shows they were restrictive and designed to address a native population that was dying out at one point in time. Native regulations were also very controlling and regulated the lives of Fijian women within the boundary of Fijian villages. Recent attempts to codify customs and traditional values in the draft village by-laws run the risk of repeating the restrictive nature of previous native regulations as they do not clearly give consideration to the interests of indigenous women in a modern day village setting in Fiji. Attempts to regulate life in the village indicate that Fiji is transitioning from a society that fully recognises the validity of non-State actors and

the adjudicating power of chiefs in villages and provinces, to one where there is little recognition by the State of the right of non-State justice systems to exercise adjudicative power and encourage the existence of non-State justice systems (Forsyth 2009,p. 203). This however runs some risk, as discussed in this paper, especially in relation to how women live their lives in village boundaries.