

STANDING COMMITTEE

on

SOCIAL AFFAIRS

SUBMISSION

ROTUMA BILL No 6 of 2015

ROTUMA LANDS BILL No 7 of 2015

Submitted Signed By



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A EXECUTIVE SUMMARY

This Submission is in response to an invitation by the Secretariat to the Standing Committee on Social Affairs regarding the two Bills; Rotuma Bill No 6 of 2015 and Rotuma Lands Bill No 7 of 2015.

The following are key objectives of the Submission;

1. to facilitate understanding for the authorities, so they may appreciate that Rotumans are the Indigenous people of Rotuma; and the relevant laws should be drafted to protect their custom, tradition and beliefs without disrespect for others in the wider community;
2. Rotuma comprise the islands and waters between 12° & 15° S latitude and between 175° & 180° E longitude from the meridian of Greenwich as defined in the previous Act;
3. the people of Rotuma have a distinct culture and language that should be protected and promoted through the appropriate use and application of vernacular terms in the legislations;
4. to emphasise the traditional hierarch of authority and responsibility within Rotuman society so they may be used in the proper context of the law;
5. to facilitate a better understanding of the correlation between the kainaga and their lands and the portions that may have been alienated to a member or members of the same or different kainaga;
6. to facilitate the return of alienated lands to the original kainaga that owned such lands whenever a case arises;
7. to convince the Authorities that the State should not take ownership of land but to lease or pay royalties as the case may be, for the benefit of the owners; except where the land is for public use;
8. to recognise the important role of women in Rotuman culture and therefore accord them similar privileges enjoyed by men in their respective kainaga;
9. to recognise that Rotumans can be a member of more than one kainaga on both the maternal and paternal ancestry;
10. to help provide a framework that is consistent with Rotuman custom and tradition for ease of implementation and therefore, maintain harmony within the community;
11. to help the ordinary Rotuman preserve his/her identity and therefore take ownership of the legislation and its operation;
12. to make provision for the Council to create the necessary by-laws that will maintain peaceful coexistence within the communities;
13. to highlight the need for ordinary Rotumans to be kept informed of deliberations and decisions made by the Council and its subsidiary forums and committees;

14. to highlight the need for wider consultation with the Rotuman Community on any issues affecting their lands, beliefs, custom and tradition;
15. to assist Rotumans appreciate their rights granted under the legislation so they can take responsibility to promote better utilisation of their resources;
16. to make provision for the amendment of this Act where Rotumans concur that it will further protect their language, customs, beliefs, tangible and intangible property;
17. to help promote and maintain a peaceful environment to be enjoyed by the residents and visitors alike;
18. to recognise the executive authority of Government and its wisdom to appreciate the plight of Rotumans in a shrinking global society where mere numbers are fading into extinction.

B PREAMBLE

Since Fiji became independent from the British Crown in 1970, Rotumans silently conformed to the systems of government introduced to administer their daily lives on the island. While changes were introduced by the new regimes in Fiji it had little impact on the people. Whatever consultations that may have taken place during these changes, the ordinary Rotuman remain oblivious of how these decisions would affect them.

Prominent Rotumans may have taken the initiative in good faith to negotiate for the betterment of the people and the island; however their good intentions were always viewed with suspicion. The perception we have of these ordinary people in the last 30 years no longer hold, as people are better educated, and better informed through the advances in technology.

Being a minority community in the Republic of Fiji, Rotumans have always considered themselves left out in contributing to major decisions that affect them as an Indigenous people. While there may be representation in various forums, the dissemination of important information to the ordinary Rotuman is basically non-existent. Apart from hearsay, the social media is the only alternative for reliable information.

The current process initiated by Parliament will hopefully give hope to the Rotuman people to participate in developing a legal framework that would be consistent with their custom and tradition in administering how they relate to each other as Kainaga and their Hanua (land).

C INTRODUCTION

The review of Laws affecting Rotuma and its people is long overdue as the scenarios they were designed for have changed along with global developments that affect the way Rotuman people live as a community, how they relate to each other and how they identify with their homeland.

It is important to establish that the Rotuman people are the Indigenous inhabitants of the islands of Rotuma prior to discovery and subsequent colonisation of the Islands. Before cession to the British Crown, Rotuma had its own undocumented rules and guidelines that oversees the day to day lives of its people. May seem erratic but they had their own form of governance with the chiefs that hold authority to deliberate on matters concerning the livelihood of the

people within their jurisdictions independent of any external influence. It is through their collaborative decision and hope to bring a better future for its people, that the chiefs ceded the sovereignty of Rotuma, its lands and its people to the British Crown and later annexation to the Colony of Fiji. To further the blessings upon its people the chiefs embraced the Christian faith with a lot of blood, sweat and tears.

The UN Resolution 61/295 – United Nations Declaration on the Rights of Indigenous People adopted on 13 September 2007, safeguards the individual rights of Indigenous people. Therefore it is imperative that any laws drafted concerning Rotuma and its people should protect the language, traditions, customs, beliefs and resources however possible. This is the only avenue that will ensure Rotumans can continue to identify with their homeland given the ever shrinking global village. It is a matter of choice for anyone to be identified with these values; nevertheless, these guidelines should be the norm on the island as it embraces the changes through time.

It is this commitment by Government that the hopes of the Rotuman people are dependent on to see that the new legal framework will protect their interests and maintain their identity as an Indigenous minority within the Republic of Fiji. On the other hand, there is fear that a majority in the House can easily pass laws where it considers necessary to govern for the wider benefit of the Republic of Fiji and its citizens.

D BACKGROUND

Rotuman society revolves around its chiefly hierarchy and the respective family lands. However in the last four to five decades respect for the chiefs have slowly dwindled due to social and economic changes introduced through better education, increase in people's earning capacity and exposure to the western way of life. Access to paid opportunities and better education are only available outside Rotuma, thus attracting most young people in the hope of securing a better future and to be able to support families left behind. As a result land was left idle or used only for subsistence farming.

The introduction of new laws through the UN Charters does not help, especially where it conflicts with established norms that sustains the peaceful coexistence of families within the communities. An example is where an individual exercises his or her own right that comes into conflict with traditional obligations required by their chiefs and elders.

Since the mid-1880 various Proclamations and Ordinances were promulgated by the different Administrators to provide a framework for effective governance of the Rotuman people and their lands. In each case, attempts were made to try and adhere to the local customs and practices wherever practicable. While these laws are essential to safeguard land in Rotuma, some aspects of it are not consistent with custom, thus the reluctance of the people to participate in its operation.

Rotuma has a land area of 11,000 acres which is less than 1% of total land area of the Fiji Islands. Hence it is important that the people should retain as much available land without the Government having to lay claim to any lands including accretion through forces of nature. Land boundaries along the foreshore is always taken to be the high-water mark as passed down from generation to generation. Imposition of Government rights over such lands has restricted the people from such traditional understanding.

Waters within the reefs and extending from the foreshore is considered the rightful fishing ground for the respective Itu'u (district). This is always considered the norm and generally accepted by all Rotumans.

Disputes concerning land are the most difficult of cases to resolve in Rotuma. The number of Ordinances and Regulations introduced over the years is evident that there is inconsistency between the law and custom as understood by the people. As a result, it is believed there are still cases pending to be determined. The current Rotuma Act, the Rotuma Lands Act and the recent Bills before Parliament stand witness to this effect.

Since accepting the Christian faith, Rotumans always believed they are blessed with these lands and waters which are under divine protection; hence there is divine justice where there is reward or retribution for every dealing. While there are no documented cases, it is known that land obtained through 'devious' means have presented difficulties for its beneficiaries.

E OBSERVATION

When laws are to be designed to govern a people with some adherence to their custom, it will be prudent to possess a good knowledge and understanding of the culture before making an attempt at drafting them. It is also accepted that these laws should be consistent with other laws concerning the Republic of Fiji, but there are specifics that only affect Rotuma and those residing on the Island. When the people can relate to these legislations with ease, they take ownership of it and willingly participate in its implementation.

It is encouraging there is some effort to use vernacular terms in the Bills but there are still others that can provide similar usage. These terms will be referred to when commenting on the respective clauses in the Bills.

F ILLUSTRATIONS

The illustration (Figure 1) briefly shows the general correlation between key entities that would be easily understood by present day Rotumans.

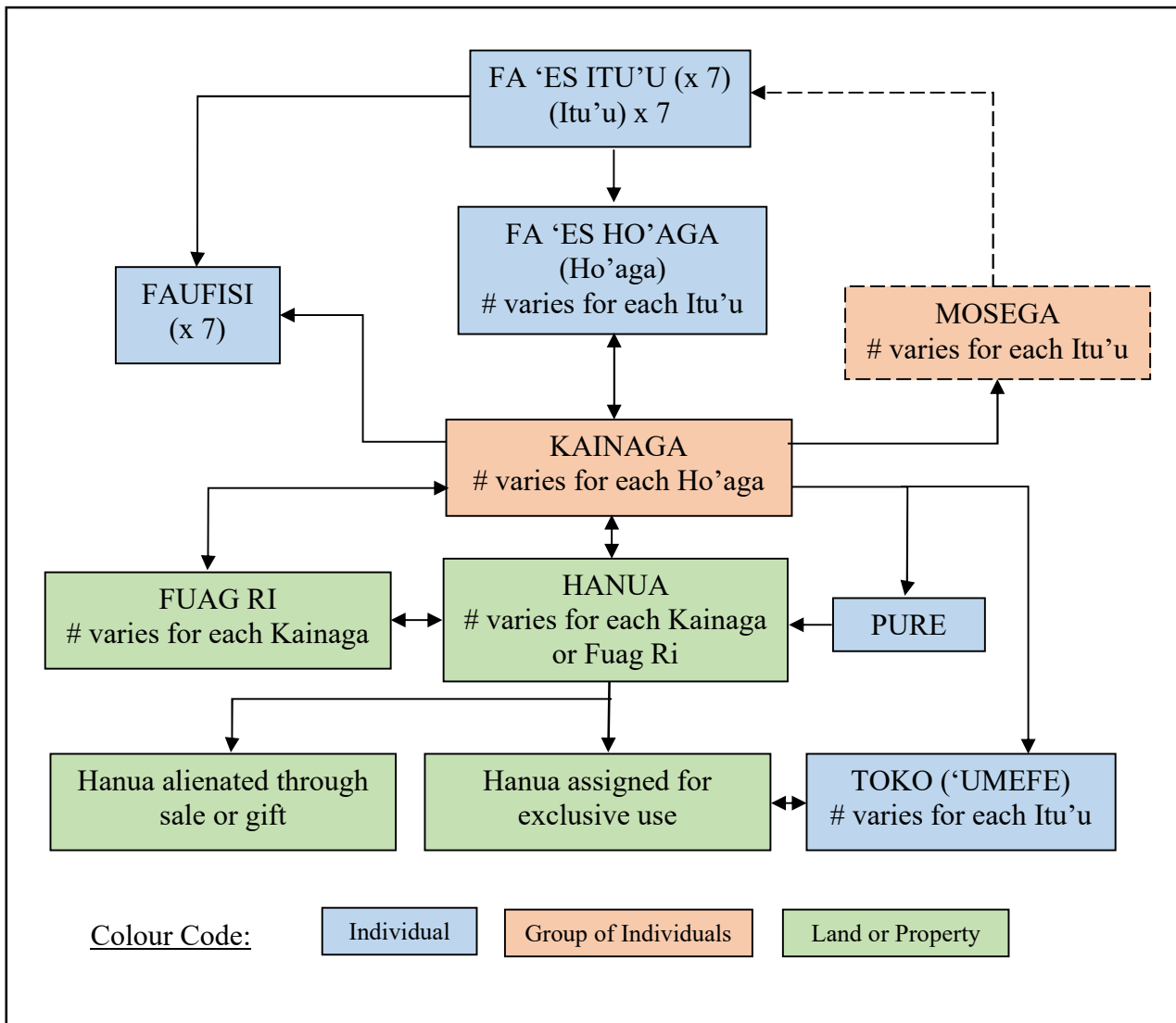
Most of the sub-chief positions (*Faufisi, Pure, Toko and Fa 'es Ho'aga*) are vacant due to the responsibilities and obligatory functions expected from them in these modern times. While these positions are vacant, they are still considered relevant to Rotuman culture and may be filled by the *Kainaga* whenever they wish to do so.

The "*Fuag Ri*" is an important entity which provide a basic relationship between a *Kainaga* (Clan) and their *Hanua* (Land lots). It is the foundation (house mound) that established the beginning of a *kainaga* with its associated *hanua*. As the *kainaga* grew over time, members may decide to divide their *hanua* and assign a division to separating siblings thus forming a new *kainaga*. Other land dealings may have transpired over these *hanua* of the *kainaga*. In some cases the *kainga* may set aside certain portions of their *hanua* for the exclusive use of their *Toko* or *Fa 'es Ho'aga* to assist them with their customary obligations for and on behalf of the *kainaga*. Such lands is assigned to the Title and only enjoyed by the holder during his tenure.

It is important to note that a Rotuman can be associated to more than one *Kainaga* or *Fuag Ri*, since he or she is linked to the *kainaga* of both paternal and maternal ancestry. Rotumans are more passionate about their relationship to the *kainagas* than having large areas of land.

The latter is merely a means of sustaining the needs of the *kainaga*, whereas for some, it represents status within the community.

Figure 1:



The 'Toko' or 'Umefe' refer to sub-chief titles or leaders and used interchangeably depending on the occasion. They support the Fa 'es Itu'u in managing major functions and key activities undertaken by or within the Itu'u.

Toko when they take lead roles in fishing, planting, harvesting, building, dances, conflicts etc. During Itu'u meetings the Toko are seated according to their ranks on either side of the Fa 'es Itu'u.

'Umefe, when at traditional feastings, their food is prepared on a raised platform known as 'umefe.

G COMMENTS & PROPOSED CHANGES – ROTUMA BILL No. 6

PART 1 - PRELIMINARY

Interpretations

2 {to adopt the vernacular term where applicable}

“district” be replace with “Itu’u”

“district chief” replace with “Fa ‘Es Itu’u”

“Forum” replace with “Tauna’ ‘On Famor Rotuma”

“Rotuma”*the island of Rotuma and surrounding islands, rocks, reefs and fisheries lying between 12° & 15° S latitude and between 175° & 180° E longitude from the meridian of Greenwich.... this is to reaffirm that Rotuma was once an independent territory before discovery, cession and subsequent annexation for administration and governance by Fiji*

“Rotuman”*remove ‘or eligible to be registered’ so that only those registered in the PEFR qualify – to avoid conflict when it comes to matters relating to the Kainaga and Hanua*

“seven districts” replace with “Itu’ Hifu” means..... *Noatau, etc....*

PART 2 – COUNCIL OF ROTUMA

4 *Establishment of Council*

(2)(a) {replace ‘District Chiefs’ with “Fa ‘Es Itu’u”}

(3) {the term of Chairperson of the Council should be **three** years and allowed only 2 consecutive terms if elected}

*{the preferred option is to have only the Fa ‘es Itu’u as Chairman of this august body and rotated according to the traditional hierarchy of the seven Itu’u.. each serving one term of **four** years}*

{the latter is assumed to be the practice in the past – wider consultation on the merits of each option}

5 *Functions of the Council*

5(1) *{the poor dissemination of decisions have resulted in most people not being informed on time leading to ineffective implementation – meeting of Itu’u should be convened within 7 days after the Council meeting}*

PART 3 FORUM OF THE ROTUMAN PEOPLE

{to replace the term “FORUM OF THE ROTUMAN PEOPLE” with “TAUNA’ ‘ON FAMOR ROTUMA”}

7(1) *{note the proposed replacement of ‘Forum of the Rotuman People’ above}*

7(2)(a) *{replace ‘District Chiefs’ with ‘Fa ‘Es Itu’u’}*

7(2)(d) *{the appointment of four members preferably from the Rotuman Community}
{there should be an advisory body to advise the Minister on the 4 appointments}*

8 *Functions of the Forum*

8(1) *{the poor dissemination of decisions have resulted in most people not being informed on-time leading to ineffective coordination and implementation at Itu'u level – meeting of Itu'u should be convened within 7 days after the meeting}*

PART 4 – ELECTIONS

11 *Election of District Chiefs*

{note proposed replacement of “District Chiefs” with “Fa ‘Es Itu’u”}

11(4) *{the assistance of the Commission (Rotuma Lands Act) could help guide the decision of the District Officer}*

H COMMENTS & PROPOSED CHANGES – ROTUMA LANDS BILL No. 7

CLAUSES

11 *{replace “Register of Lands” with “Puk Ne Hanua ‘On Famor Rotuma” “PHFR”}*

PART 1 - PRELIMINARY

2 *Interpretations*

{replace “Register of Lands” with “Puk Ne Hanua ‘On Famor Rotuma” (PHFR)”}

PART 2 – REGISTRATION OF ROTUMANS

4, 5 & 6 *{the Commission as custodian of the PEFR is the only authority to make entries into PEFR; the DO may recommend changes as per (6 Rectification of PEFR)}
{the legislation should clarify the position of Rotumans who are not Fiji citizens}*

PART 3 – ROTUMA LANDS COMMISSION

7 *Rotuma Lands Commission*

7(3)(h) *{not only where the lease has lapsed; it has been deserted and proven to be unoccupied for some time; where possible outgoing lessees should make good the land to its prior condition}*

8 *Procedure of operation*

8(10)(b) *{all lots of hanua ne kainaga should be associated with a “fuag ri” and should be recorded together with the number, name of the hanua, and fuag ri or kainga name (if fuag ri not known)}*

{refer the essence of having the 'fuag ri' as specified in 12(2)(a)}

8(10)(c) *{replace the word 'unowned' with 'unclaimed or extinct kainaga' – all land in Rotuma is owned; just not being claimed for various reasons or no surviving member of the kainaga}*

11 *Register of Lands*

{to replace all occurrences of Register of Lands with “Puk Ne Hanua ‘On Famor Rotuma (PHFR)”}

13 *Estate or interest conferred by registration*

{therefore it is prudent to have a good understanding of the Rotuman custom when drafting the legislation to ensure correlation between custom and provisions under the Act}

14 *Rights conferred by registration*

14(b)(iv) *{there should be some clarity as to this right of taking soil or produce from another owner's property or reference to a subsisting legislation – otherwise it is open to abuse..... appropriate royalties should be paid}*

PART 4 – DEALINGS

16 *Written consent of District Officer*

16(2) *{consent of majority of the 'kainaga residing in Rotuma' should read 'kainaga that habitually reside in Fiji and Rotuma' .. note; some if not most kainaga have more than 50 percent of members residing in Fiji and they provide monetary support for those on the island – to maintain harmony, such good relationship should be acknowledged and promoted}*

18 *Restrictions on dealing with land*

18(1) *{compulsory acquisition of land in Rotuma by the State, should **not** be considered the same application in Fiji as it would have very little significance to the general public residing in Fiji;; therefore any acquisition of land on Rotuma should be to the benefit of the Rotuman Community residing in Rotuma after consultation and consent of the kainaga}*

21 *Power and method of dealing with hanua ne kainaga and hanua ne 'on tore*

21(3) *{similar to reasons provided in 16(2) where consent of majority of the 'kainaga or 'on tore residing in Rotuma' should read 'kainaga or 'on tore that habitually reside in Fiji and Rotuma' .. note; some if not most kainaga or tore have more than 50 percent of members residing in Fiji and they provide monetary support for those on the island – to maintain harmony such good relationship should be acknowledged and promoted}*

- 22 *Power and method of dealing with hanua togi*
- 22(2) *{where the kainaga agrees to buy back their land but do not have the funds, the State should assist to secure the required resources to enable purchase of such lands by the kainaga}*
- 23 *Power to deal with unowned land*
- {replace the word ‘unowned’ with ‘unclaimed or extinct kainaga’ – refer comment in 8(10)(c)}*
- 23(1)(c) *{consultation with the Council and consent, must include the specific consent of the Fa ‘es Itu’u whose Itu’u is where the ‘Unclaimd’ land is located in...}*
*{assigning such lands to the applicants should be for **usage** only and for a term to be decided on the merits of each case – should not be for perpetual occupation..}*
- 25 *Transmission of leases*
- 25(1) *{proof for termination is presumably determined when conditions of granting the lease has been contravened – this can be raised by the kainaga that own the land}*
{the outgoing lessee shall be obligated to make every effort to restore the land to its prior condition}

PART 5 – TRANSMISSION ON BIRTH OR DEATH

- 26 *Transmission of hanua ne kainaga*
- {insert a full stop after ‘lineages.’ and remove sub-clauses (a) and (b)}*
- 26(1)(b) *{this subsection is not consistent with Rotuman custom and practises where women have equal opportunities to land;; most families reside and are brought up with the maternal kainaga}*
- 26(2) *{remove the words ‘to a male member’ so it reads ‘to the birth of a child thereof,...’}*
- 26(3) *{Register in this context refers to the PEFR}*
- 27 *Transmission of hanua ne kainaga to Council on failure of owners*
- {propose use of ‘unclaimed or extinct’ as the case may be in place of ‘unowned’}*
- 28 *Transmission of hanua ne ‘on tore*
- {entries into the PEFR and the PHFR should be the responsibility of the Commission on recommendation by the District Officer;; refer PART 2 – REGISTRATION OF ROTUMANS}*
- 28(3) *{there seem to be some duplicity in recoding name of member in the Puk ne Hanua ‘On Famor Rotuma – PHFR (Register of Lands} and the PEFR}*

{authority to make changes to the registers (PHFR & PEFR) should be the responsibility of the Commission – refer PART 2 - REGISTRATION OF ROTUMANS}

29 *Transmission of hanua togi*

29(3)(b)(iv) *{before registration in the name of the Council such land should first be offered as a sale to the original kainaga that owned the land as in subsection 22(2) with the respective proposals}*

35 *Rights of State preserved*

{while the State has overarching authority over the people and their land, the State is also obliged under International Resolutions to exercise these powers with great responsibility and empathy for the Rotumans as the Indigenous owners of these resources}

36 *Regulations*

36(a) *{as proposed earlier ‘Register of Lands’ to be replaced with PHFR (Puk ne Hanua ‘on Famor Rotuma)}*

I RECOMMENDATIONS

The following recommendations are provided for consideration by the Standing Committee;

1. to adopt the Rotuman terms suggested in the respective sections of the Bills;
2. reconsider some of the current sections in line with the inserted proposals to allow for consistency with custom and tradition;
3. to provide clarification on rights of Rotumans who have renounced their citizenship or nationality of the Republic of Fiji;
4. a provision for Council to recommend changes to the Acts where they consider it necessary to protect the custom, tradition and beliefs or when they feel there is a threat to the harmony enjoyed by the Rotuman community in Rotuma;
5. that Government withdraw the tabled Rotuma Bill No 6 of 2015 and Rotuma Lands Bill No 7 of 2015 from Parliament;
6. the Bills in their revised form if any, to be widely discussed with the Rotuman Community.

J ACKNOWLEDGEMENT

My appreciation to family members and friends who freely contributed their knowledge and experiences with regard to the Rotuman culture and traditions.

It is appropriate to acknowledge the Honourable Members of the Opposition and all the people who have put in the efforts to highlight the plight and concerns faced by the Rotuman people with regard to their land and resources.

Gratitude is also extended to the Government for having the temperament to hold passage of the Bills, and invite the Rotuman people to make further representation with regard to their homeland and what is dear to them.

K CONCLUSION

In conclusion it is noted that the influence of other social behaviours will always have an impact on the culture and traditions of the Rotuman people through intermarriage and migration. However the Rotuman people must be prepared to embrace these changes and decide their own fate in preserving what is dear to them.

Therefore through this submission it is hoped that some contribution is made towards the formulation of relevant laws that will govern and protect the identity of what is Rotuman. Those who are chosen to lead should uphold those qualities to deserve the respect of their people and therefore bring harmony to the community.

It is also important that the revised Bills are presented to the Rotuman People for further deliberation and understanding before they are re-tabled in Parliament to be passed as the Law that govern Rotuma, the people and their resources.

I hope and pray the Almighty will grant the Honourable Members of Parliament, and the Standing Committee for Social Affairs, the wisdom and understanding as they deliberate on matters concerning the people and the Island of Rotuma.

Faiäksea.

===== end of submission =====

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Traditions of Rotuma and its Dependencies	
Rotuma: Custom, Practice and Change (2003)	Aubrey L Parke
Rotuma Land Bill 1959	House Debate
Extracts from National Archives of Fiji	
Rotuma – Chapter 122	Laws of Fiji
Rotuma Lands – Chapter 138	Laws of Fiji
United Nations Declaration on the Rights of Indigenous People	UN Resolution 61/295

Note: The authors named above have extensive knowledge of Rotuma having served as District Officers or Research Scholars