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To the Honourable Members of the Standing Committee for Social Affairs,

**Submission on Rotuma Bill #6 of 2015 and Rotuma Lands Bill #7 of 2015
("the bills").**

As indigenous Rotumans and Fiji citizens, we respectfully request that you consider our concerns, comments and suggestions regarding the above mentioned bills. Rotumans are a recognised indigenous group under the Fiji Constitution 2013 and we anticipate that our rights, interests and culture will be respected and protected. We request your support to use this opportunity to ensure that our traditional customs, land and sea territories are protected by law.

The survival of Rotuman culture is at risk. If the bills become law in their current form, they will have economically and culturally devastating consequences for us, as indigenous Rotumans. The United Nations ("UN") has officially recognised Rotuman language on its list of endangered languages. The Fiji Department of Heritage and Arts has also acknowledged the Rotuman community as one of the most endangered groups, as far as the survival of its culture and language is concerned.¹ Fiji's ratification of the UN Convention for Safeguarding Intangible Cultural Heritage in 2010, indicates its commitment to preservation of intangible cultural heritage. Despite this, many aspects of the bills represent further endangerment of Rotuman culture. Our cultural identity and collective Rotuman heritage both tangible and intangible, is strongly connected to our practices and our traditional land and sea territories. We have an internationally recognised right and a duty to maintain our land and sea boundaries and cultural traditions, which we have inherited from our ancestors, for the benefit of our future generations and the survival of our culture.

We appreciate this opportunity to raise our concerns regarding the bills, which are set out below:

1. The Rotuman community was not consulted about the bills, before they were tabled in Parliament.

¹ <http://www.culture.gov.fj/fiji-museum/> (viewed on 16 August 2015)

- 1.1. We would like to confirm to you that in Rotuma, we only became aware of the bills for the first time, after they had already been tabled in Parliament. Before this time, the bills were not made publicly available in Rotuma or elsewhere in Fiji for viewing, nor to our knowledge, was the Rotuman community consulted about the changes the bills would introduce. Specific sections of the bills erode and remove our cultural inheritance, economic and social rights and dramatically change our system of governance by reducing the authority of our Chiefs and the Rotuma Council. The lack of wide consultation with the Rotuman Community about these huge changes, which directly affect us, must be addressed.

The Rotuma Bill #6 of 2015 (“Rotuma Bill”)

2. **Under the Rotuma Bill, the definition and territorial boundaries of Rotuma will be changed. We will lose our indigenous rights to the sea boundaries of Rotuma, including the loss of our right to ownership of the rocks, reefs and fisheries. We will also lose our right to benefit from any future development, utilization or exploitation of mineral, water or other resources.**

- 2.1. We are against the change to the definition of Rotuma, which has been reduced to only include ‘*the islands of Rotuma*’. This removes much of our legally protected, indigenously held Rotuman land and sea territory, as defined under the current *Rotuma Act* [Cap122] (“**Rotuma Act**”):

““Rotuma” means the island of Rotuma and its dependencies, that is to say all islands, rocks, reefs and fisheries lying between the twelfth degree and the fifteenth degree of south latitude and between the one hundred and seventy-fifth degree and the one hundred and eightieth degree of east longitude from the meridian of Greenwich”.

- 2.2. This definition of Rotuma has officially remained in place since the 1881 Deed of Cession of Rotuma. This definition has never been changed and should remain in place, taking into account relevant obligations under the Law of the Sea or other international maritime laws. This definition acknowledges and honours Rotuma’s separate territorial composition and extensive rights to its own sea territory. The loss of this definition, which represents our indigenous inheritance from our ancestors, would have culturally devastating consequences; it is a threat to our livelihood, the survival of our culture and connection to our heritage.
- 2.3. In accordance with Fiji’s obligations under the UN Convention on the Law of the Sea, which it ratified in 1982, Fiji has consistently reported to the UN that Rotuman territorial seas are separate from Fijian territorial seas.² This honours Fiji’s ongoing recognition of Rotuman territorial seas as belonging to Rotuma and Rotumans; and that Rotuma is considered as a separate territory under Fiji’s administration. This has always been the case and we request that it remain so.

² Law of the Sea Bulletin #66 of 2008; Marine Spaces (Territorial Spaces) (Rotuma and its Dependencies) (Amendment) order 2012. (United Nations Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs).

2.4. To encourage Rotumans to remain living on Rotuma, there must be economic incentives and opportunities; – removal of our traditional sea boundaries and rights over rocks, reefs and fisheries, denies us of our traditionally held territorial seas, which were entrusted to us by our ancestors. It will reduce our present and future ability to make an income while living on Rotuma. It will also deny us of any benefit from the development, utilization or exploitation of mineral, water or other resources. This will only force more Rotumans to move away from the island for employment, in order to support the kainaga (family). Increased migration away from Rotuma will directly and adversely endanger our traditional culture and way of life. It will diminish our ability to pass on our language and cultural traditions to future generations. We request that the definition of Rotuma in any future law, maintains the definition of Rotuma as set out in the current *Rotuma Act*.

3. The power of District Chiefs and the Council of Rotuma will be reduced. The Council of Rotuma will lose authority to make decisions on social and economic issues affecting Rotuma and Rotumans.

3.1. We are concerned that the changes to the Council of Rotuma (under Part 2) and introduction of a Forum of the Rotuman People (under Part 3) would substantially reduce the traditional role and authority of the Council of Rotuma and Rotuman District Chiefs, over matters affecting Rotuma. We fear that the role of the Council of Rotuma and the power of Chiefs will become merely symbolic and even redundant, as they will be limited to only making decisions about customary issues. The Council of Rotuma's power to decide on social and economic matters has been removed, in favour of the proposed Forum of Rotuman People. The diminished role and duties of the Council of Rotuma and establishment of the Forum of Rotuman People will have the effect of removing the long held, respected authority of our Chiefly system, eroding our Rotuman culture and traditions. To respect and preserve our traditions, it is extremely important that the respected role of our Chiefs and their authority is maintained.

3.2. Under section 5(1)(a), the duties of the Council of Rotuma will be limited to 'matters that affect or are likely to affect Rotuman Customs, including issues relating to traditional protocol...' If you compare this to the Council of Rotuma's specific duties and powers to regulate on economic and social issues under s 15 of the *Rotuma Act* it is clear that Rotuma Bill #6 removes the Council of Rotuma's powers to regulate and decide on economic and social matters, in addition to removing its ability to report to the Minister. This represents a significant loss of Chiefly authority; a loss of traditions and the ability of Rotumans, as a distinctive indigenous group, to influence social and economic decisions which will affect them and future generations. This is a denial of economic and social human rights.³

3.3. We note that the Council of Rotuma would be given the power to refer matters to the Forum of Rotuman People for their consideration (s5(4)). This

³ Universal Declaration of Human Rights, Article 22.

further indicates the reduced authority of the Council of Rotuma to decide on matters affecting Rotuma and Rotumans.

- 3.4. Even though the proposed Forum of Rotuman People includes the 7 District Chiefs among its members (s 7(2)), their influence is lessened because they represent only 7 of the 20 voting members, (among them, government representatives in the form of the District Officer and Minister appointed members). In effect, this highlights the radically reduced influence of Rotuman Chiefs within the Forum of Rotuman People. It limits them to symbolic positions, and goes against Rotuman tradition.
- 3.5. Under the Forum of the Rotuman People, (s7(8)) the approval of the Chiefs will only be requested when considering customary matters. Even in this instance, approval of only 4 out of the 7 Chiefs will be necessary in order to progress a decision. This is still only minimal in terms of the total of voting members; it demonstrates that Chiefly authority and influence can be easily overridden during any voting process under the Forum of Rotuman People. There is no requirement for the approval of any of the Chiefs, in relation to social or economic decisions.
- 3.6. Under section 13(1) of the current *Rotuma Act*, the Council of Rotuma is required to meet at least once in each quarter, a minimum of 4 times a year. Under the Rotuma Bill, it would only be required to meet once a year (s6(1)). This is compared to the proposed Forum of the Rotuman People who would be required to meet twice a year (s9(1)). This change in the Council of Rotuma's minimum requirement to meet at least 4 times a year, to only once a year represents a decline in the authority, importance and role of the Council of Rotuma.

The Rotuma Lands Bill #7 of 2015 ("Rotuma Lands Bill")

4. The Rotuma Lands Bill discriminates against Rotuman women on the basis of gender, in relation to land transmission.

- 4.1. Under section 26 (1)(b) of the Rotuma Lands Bill, land will only be transmitted from the mother's side, with the permission from the majority of male members of the kainaga (family). This provision discriminates against women and goes against the Fiji constitutional right to freedom from discrimination on the basis of gender.⁴ It is also inconsistent with this same right to freedom from discrimination based on gender, in accordance with Human Rights Decree 11 of 2009,⁵ and Fiji's obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women.⁶

⁴ Fiji Constitution 2013, section 26(3)(a).

⁵ Human Rights Decree 11 of 2009, section 19 (1).

⁶ Fiji's accession to the Convention on the Elimination of All Forms of Discrimination against Women occurred on 28 August 1995.

4.2. In addition to being illegally discriminatory, section 26 (1)(b) of the Rotuma Lands Bill shows cultural disrespect to our female kainaga and to our female ancestors. In Rotuman culture, paternal and maternal land transmission happens on equal terms. Therefore, this section is culturally offensive and inappropriate for Rotuma, as it reduces the traditionally respected status of Rotuman women in favour of the will of male family members. This type of discriminatory provision should not be included in any regulations affecting Rotuma.

5. Legally adopted kainaga will be discriminated against, as they will lose their rights to inherit land.

5.1. Under section 31 of the Rotuma Lands Bill, adopted children will lose their rights to inherit land as members of their kainaga. Adoption is a common practice in Rotuman culture and adopted children traditionally enjoy the same land rights as biological children. To rule that adopted children have no rights to land goes against our culture and diminishes the value of our family traditions and family structures.

5.2. This section discriminates against adopted Kainaga on the basis of birth and is not consistent with Fiji's obligations under Human Rights Decree 11 of 2009,⁷ which requires that people must not be discriminated against on the basis of birth. Article 2 of the Universal Declaration of Human Rights also provides such a protection against distinction in granting rights on the basis of birth and at article 17, grants the specific human right to own property alone, as well as in association with others. We request that adopted kainaga are not excluded from their human rights to inherit land.

6. Rights of Indigenous Peoples to Free, Prior and Informed Consent.

6.1. The UN Declaration on the Rights of Indigenous Peoples has been popularly supported by many nations around the world. It sets an important standard for the treatment of indigenous peoples. Regardless of Fiji's official position on this declaration, globally, there is immense support in favour of the preservation of indigenous cultures and the protection of their rights to be consulted on matters that affect them. In the spirit of valuing diversity and preserving human, cultural heritage, states have a moral obligation to consult and co operate in good faith with indigenous peoples to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;⁸ and particularly prior to approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.⁹

6.2. Fiji supports the preservation of culture and ratified the UN Convention on Safeguarding Intangible Cultural Heritage in 2010. The Fiji Department of

⁷ Human Rights Decree 11 of 2009, section 19 (1).

⁸ UN Declaration on the Rights of Indigenous Peoples section 18.

⁹ UN Declaration on the Rights of Indigenous Peoples section 32.

Heritage and Arts¹⁰ has noted that the Rotuman community is one of the most endangered groups, in terms of survival of its culture and language; which incidentally, is on the UN List of Endangered Languages. We request that Fiji recognise their moral responsibility to assist the preservation of our culture, and at the very least, not to take steps that would put our culture in more danger. We seek your assistance to legally ensure that our culture is not further diminished. If the bills were to pass in their current form, Fiji would risk playing a significant part in facilitating the loss of our rich Rotuman culture and heritage, via enactment of legislation which dismantles our ability to practice and pass on cultural traditions, places us at an economic disadvantage, and goes against the interests of an endangered, indigenous people.

7. Conclusion

As indigenous Rotumans and as citizens of Fiji, it is our duty to preserve our heritage, for future generations. The proposed changes from the bills that we have outlined in our submission would, if they were made into law, erode our cultural, social and economic rights, traditions, sea territory and way of life. This would have a detrimental effect on our future and our well being as an indigenous group. Maintaining our cultural practices and indigenous ownership rights to keep and benefit from our traditional territory and waters, which were passed on to us by our ancestors, is vital for our survival as an indigenous people and culture, well into the future.

We respectfully request your assistance and recommendation that the bills are returned for wide consultation with the Rotuman community in order to obtain our free, prior and informed consent on these important issues, before drafting any future bills or other laws affecting Rotuma and Rotumans.

Sincerely,

Date: _____

Name	Address	Signature

¹⁰ <http://www.culture.gov.fj/fiji-museum/> [accessed on 16 August 2015].

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