



Rotuma Lands Bill 2015 – No.7 of 2015

The Rotuma Lands Bill 2015 repeals and replaces the Rotuman Lands Act (Cap.138¹). This Bill and the Rotuma Bill 2015 (Bill No.6 of 2015) were first tabled in Parliament in May 2015. **The Bills were re-introduced to Parliament in the April 2016 sitting.**

The Bill provides for:

- the **repeal and replacement** of the Rotuma Land Act (Cap.138);
- the **regulation and administration of Rotuman lands**;
- the establishment of a **Lands Commission** in Rotuma;
- the **registration of Rotumans** and;
- the regulation of **registration and transmission of land** and related matters.

The original Rotuman Lands Act (Cap 138) was passed in 1959 by the British colonial government based in Fiji, primarily to establish a land commission that would deal with the surveying and transmission of land rights on Rotuma.

A review of the Act began in 2009² after Rotuman islanders called for a review when Prime Minister Voreqe Bainimarama visited the island that year. According to a Government statement in 2011,³ the 1959 Act, together with the Rotuma Act (Cap. 122) were due for review as the laws were “archaic” and had not been amended for some 50 years. As noted by an Australian academic case study, the 2006 election manifestos also included various promises to review the Acts.⁴

When this Bill and the Rotuma Bill were tabled in 2015, a petition presented to Parliament asked MPs to defer progress of the Bills until they had been “fully discussed” by Rotumans.⁵

¹ http://www.paclii.org/fj/legis/consol_act_OK/rla148/

² ‘Final Draft of the Rotuma Acts to be Before Cabinet Soon’ Fiji Government Press Release, 25th January 2011 <http://www.fiji.gov.fj/Media-Center/Press-Releases/Final-Draft-of-the-Rotuma-Acts-to-be-Before-Cabinet-Soon.aspx> Retrieved 06/04/16

³ *Ibid*

⁴ From Election to Coup in Fiji: The 2006 Campaign and Its Aftermath, Case study 14 – ‘From marginalization to mainstream – Rotuma and the 2006 election’, Kylie Jayne Anderson p194: <http://press.anu.edu.au/wp-content/uploads/2011/05/ch143.pdf>

⁵ Petition text:

http://www.rotuma.net/os/NewsArchive/Archive2015/Rotuma_Bills_Petition_by_Fuata_Jione%20.pdf



Bill Summary

Rotuma

Rotuma is administratively incorporated into Fiji as a dependency, with some measure of autonomy given to local government. In 1879 the leading local chiefs asked Britain to annex the island group via the Fiji-based British colonial administration. Rotuma was formally ceded in May 13, 1881 through a *Letters Patent - Annexation of Rotuma 1880*⁶ and consequently incorporated into the Colony of Fiji.

Rotuma has been politically and administratively affiliated with Fiji for more than 120 years. The administrative capital is 'Aha in the district of Itu'ti'u, where the *tariqgsqu* (traditionally the name of the *squ*'s palace) meeting house for the Council of Rotuma is based. Rotumans are a unique indigenous ethnic group and linguistically distinct from Fiji's indigenous people.

The island group's culture is more akin to that of Polynesia, particularly Tonga, Samoa and Futuna. Rotuman's are a small but unique indigenous ethnic group and constitutes a recognisable minority within the population of Fiji. Its population at the 2007 census was 2,002, although many more Rotumans live on mainland Fijian islands, totaling over 10,000.

Differences between the Bill and the Rotuma Land Act (Cap.138)

The primary differences between the original Act and this Bill include (but are not limited to):

- **the definition of a child** in the Act is "a person under twenty-one years of age"; in the Bill it is "a person who has not reached the age of 18 years";
- **definition of Rotuman** - "Rotuman" in the Act means "any person of Rotuman or part-Rotuman descent" and it is left to the Council to decide in case of a dispute, and anyone aggrieved by the Council's decision can appeal to the Minister for a final decision. In the Bill "Rotuman" has the meaning given to it under the Rotuma Bill 2015 where a "Rotuman" means "any person of Rotuman or part-Rotuman descent who is registered or eligible to be registered in the PEFR";
- **registration of Rotumans** - a new provision in the Bill is the formal Registration of Rotumans (Part 2); the Bill establishes a formal register of Rotumans to be known as **Puk ne 'Es on Famör** (PEFR); and to be updated, maintained and kept in Rotuman by the Rotuma Lands Commission. This did not exist in the Act, although the Commission was responsible for registering Rotumans in their respective *kainaga*;
- **the functions of the Rotuman Lands Commission** in the Bill have been expanded; in the Act there are 6 functions (a – f) listed in Section 4, while in the Bill there are 10 specific functions (a – j). Some of the added functions are: to inquire into and ascertain all lands that have been given away under various customary tenures and establish the types of dealings entered into;

⁶ Letters Patent – Annexation of Rotuma Island http://www.paclii.org/fj/legis/fj-uk_act/lpaor1880370/ Retrieved 04/04/16.

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inquire into a situation where the *kainaga* is alleged to have withdrawn its support from the person to whom they had entrusted the position of *pure* as the person is alleged to be unfit in his or her general management of *hanua ne kainaga*; and revert to the *kainaga* land for which a term of lease, tenancy or the purpose for which it was granted has elapsed;

- **establishment of an Appeals Tribunal** - the Bill provides for the establishment of an **Appeals Tribunal** (clause 10) whereas in the Act appeals from aggrieved persons are heard by the “Commissioner, Eastern Division, sitting with two Rotuman assessors appointed by the Council to advise him”. In the Bill, the Tribunal is established by the Minister following a recommendation from the Commissioner responsible for the Central and Eastern Division and consultation with the Deputy Secretary responsible for Rotuma. It should consist of a chairperson and two other members of the Rotuman community who are well versed with the customs of Rotuman land tenure. This new provision in the Bill effectively removes the power of the Commissioner Eastern to hear and make decisions regarding appeals;
- **unowned land** – In the Act “unowned land” is vested in the Crown in trust for the Rotuman people, but shall not be deemed to be Crown land”. In the Bill, these lands are held in trust by the Council for Rotumans who are “(a) are registered in the PEFR; and (b) habitually reside in the district where such land is situated, and such land shall not be deemed as land owned by the Council”;
- **offences and penalties** – the fine for offences in relations to boundaries have increased from “a fine not exceeding forty dollars” (S 34(1) of the Act) to “a fine not exceeding \$100” (S 34(1) of the Bill); furthermore in the Act there was a provision (S35) “Penalty for insulting or interrupting Commission” which made it an offence if someone “wilfully insults a member of the Commission” while engaged in taking evidence in an inquiry. In the Bill this provision has changed and grouped together under clause 34, as subsection 3. The wording has changed from “wilfully insults” to “wilfully interferes” and the fine has increased to “a fine not exceeding \$200” whilst in the Act it was \$40;
- **Minister responsible** - in the Act, the administration of the law and regulations were “controlled by the Office of the Prime Minister”. In the Bill the term “Minister” – means the Minister responsible for Rotuma.

Consultation

The Explanatory Note to the Bill states that “the views of Rotumans freely expressed during public consultations can be summarised into four main categories—

- that some weighing be given to customs and tradition as the unifying influence that safeguards the identity of the indigenous people of Rotuma;
- that the chiefs of Rotuma be bestowed with the responsibility of being the repository of customs and tradition;

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- that in the process of land registration, Rotumans are to be registered on both maternal and paternal lineages; and
- that communal land (hanua ne kainaga) be given the necessary protection from further fragmentation and that any unowned land found be vested in the Council of Rotuma in trust.”

Objectives, scope and intent of the Bill

The Bill provides for a lands commission in Rotuma, to provide for the registration of Rotumans, to regulate the registration, dealing with and transmission of land and related matters.

Summary of provisions

Part 1 – Preliminary

Clauses 1 and 2 provide the short title, commencement and interpretation. Definitions used in this Bill are provided in Annex A of this paper.

Clause 3(1) states that the Bill does not affect any title to any land registered under the *Land Transfer Act (Cap.131)*

Clause 3(2) states that, unless clearly stated in this Bill, no land registered under the repealed Act, or this Bill shall be subject to the provisions of the *Land Transfer Act (Cap. 131)*.

Part 2 – Registration of Rotumans

Clause 4 (1) provides for a register of Rotumans to be known as *Puk ne ‘Es on Famör Rotuma* (PEFR) to be kept in Rotuma by the Commission.

Clause 4 (2) requires the Commission to provide a copy of the PFR to the Office of the Registrar of Titles

Clause 4(3) allows a copy of the PEFR or extract to be accessed from the Commission with the payment of the prescribed fees.

Inspection of PEFR

Clause 5(1) allows anyone to inspect the PEFR during official working hours and with the payment of the prescribed fees.

Clause 5 (2) prohibits people from damaging or making unauthorized amendments or deletion to any part of the PEFR; **Clause 5(3)** anyone contravening this commits an offence and shall be liable on conviction to a maximum fine of \$40 or maximum 4 months in prison, or both.

Rectification of PEFR

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Clause 6 gives power to the District Officer (DO) to correct the PEFR under the following circumstance:

- in the case of an error or omission not significantly affecting the interests of any owner;
- with the consent of all persons interested; and
- if he/she is satisfied that registration was done through fraud, mistake, omission, and he/she deems it necessary to rectify the PEFR.

Part 3—Rotuma Lands Commission

Clause 7 (1) establishes the Rotuma Lands Commission.

Clause 7(2) requires the Commission to consist of a Chairperson and two other persons appointed by the Minister.

Clause 7(3) outlines the functions of the Commission, which are to ascertain:

- lands in Rotuma that are the rightful property of Rotuman owners as *hanua ne kainaga*, *hanua pau* or *hanua ne 'on tore*, and the lands that are unowned and to categorise such land accordingly;
- lands that are the rightful property of Rotuman owners under other forms of Rotuman customary land tenure and to designate all such land as *hanua ne kainaga*, *hanua pau*, *hanua ne 'on tore* or unowned land as the Commission deems appropriate;
- the lands that are *hanua togi* and to categorise such land accordingly;
- lands that are leased for a term exceeding one year;

The Commission can also:

- inquire into and ascertain lands that have been given away under various customary tenures and establish the types of dealings entered into;
- make an inquiry where the kainaga is alleged to have withdrawn its support from the person to whom they had entrusted the position of *pure* as the person is alleged to be unfit in his or her general management of *hanua ne kainaga*;
- consider and determine all disputes arising out of paragraphs (a) to (e) and make orders as the Commission deems appropriate;
- revert to the kainaga land for which a term of lease, tenancy or the purpose for which it was granted has elapsed;
- cause the boundaries of all such lands to be demarcated on the ground; and
- cause a register to be prepared in the manner provided for in this Bill.

Clause 7(4) requires that all Rotumans be registered on both maternal and paternal lineages within the PERR.

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Clause 7(5) after the Commission's inquiry under subsection (1)(e)⁷, and it is satisfied that the *pure* is an unfit person as alleged, the DO and District Chief (DC) concerned shall convene a meeting of the kainaga for the appointment of a new *pure*.

Procedure of operation

Clause 8(1) requires the Commission to sit in every district when making inquiries in relation to land ownership in that district.

Clause 8 (2) requires the Commission to put out a public notice on its inquiries at least 3 months prior to commencing the inquiry.

Clause 8 (3) when a notice under (2) above has been made, every person claiming to own land in the district within which an inquiry is held shall, at his or her own expense, mark out and define, in a manner as may be directed by the DC, the land of which he or she claims to be the respective owner and to cut away undergrowth, if required, to make the boundaries clearly visible.

Clause 8(4) requires that any claimants must identify the land boundaries to the Commission, when required.

Clause 8(5) the Commission shall record ownership of the land if:

- all conditions as to notice of the inquiry and the claim have been complied with;
- full opportunity of objecting to the ownership claimed has been given to all interested persons;
- there is no dispute as to the ownership of any land marked out and defined under subsection (3); and
- the Commission is satisfied that the claim is genuine,

Clause 8(6) requires the Commission to make inquiries if there are any ownership disputes, and after hearing evidence of the parties to the dispute and their witnesses, it shall decide and record the ownership of the land.

Clause 8(7) states that the decision of the Commission shall prevail.

Clause 8(8) gives the Commission the power to allow a compromise between parties to a dispute.

Clause 8(9) Any Rotuman who is absent from Rotuma when the Commission is sitting may make written submissions to the Commission by any means available and a duly authorised agent in Rotuma may make a claim or objection on behalf of the Rotuman and subsections (3) to (7) shall be interpreted as if references to claimants and parties to a dispute included their duly authorised agents.

Clause 8(10) provides for the way in which ownership of lands is recorded by the commission. These are:

- the owners to mark the boundaries of the land in a manner deemed by the Commission as best calculated to mark the boundaries as permanently as practicable, or, in the case of leased land (not

⁷ This appear to be a typographical erro

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exceeding one year) to endure for the remainder of the term of the lease, and may require different methods of marking of different boundaries according to circumstances;

- each plot of land shall be given a distinctive number and its number and name shall be recorded;
- names of each of the Rotuman owners and whether the land is *hanua ne kainaga*, *hanua pau* or *hanua ne 'on tore*, or it shall be recorded that such land is unowned; and
- if the land is subject to a lease for a term exceeding one year, the names of the lessor and lessee and the term of lease shall be recorded, and, if it is a lease of part of the land, sufficient particulars to show clearly the part.

Clause 8(11) at the end of the Commission's proceedings of recording the ownership of land it may immediately deliver its decision to the parties concerned or may adjourn to a date it deems appropriate for the purpose of considering its decision and shall thereafter deliver its decision to concerned parties.

Clause 8(12) states that in any inquiry, the Commission has the same powers as those vested in magistrates to summon and examine on oath any person to give relevant evidence, and to ensure the attendance of all claimants to any land being inquired into, and all persons having interest in the title of such land.

Clause 8(13) the Commission shall make an adequate record of the evidence in all cases.

Appeals

Clause 9(1) requires that anyone aggrieved by any decision of the Commission may, within 90 days of the delivery of the decision, give notice of their intention to appeal which shall— a) be signed by the appellant or the appellant's duly authorised agent, to the DO; and b) contain the grounds of appeal.

Clause 9(2) the DO shall forward all appeals, including his or her written report, to the Commissioner responsible for the Central and Eastern Division, who is satisfied that the appeal is not frivolous, recommend to the Minister the appointment of an Appeals Tribunal.

Appeals Tribunal

Clause 10 (1) provides for the Minister (after the process of Clause 9(2) above), in consultation with the Deputy Secretary responsible for Rotuma, appoint a Tribunal which shall consist of— (a) a Chairperson; and (b) two other members of the Rotuman community who are well versed with the customs of Rotuman land tenure.

Clause 10 (2) provides for the Tribunal to hear and determine appeals from the decisions of the Commission and such determination by shall be final.

Clause 10(3) for the purpose of determining an appeal, the Tribunal shall have the powers to hear further evidence, provided that these conditions are satisfied— (a) the evidence could not have been obtained with reasonable due diligence for use at the inquiry before the Commission; and (b) if the evidence under paragraph (a) is such that, if obtained, would be reasonably likely to affect the decision of the Commission.

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Register of Lands

Clause 11 (1) establishes the Register of Lands.

Clause 11(2) As soon as practicable after—

- if there is no dispute, the settlement of the boundaries by the Commission;
- if there has been a dispute, the dispute has been determined or a compromise has been approved by the Commission, and where no appeal has been filed; and
- if an appeal has been filed, the determination of the appeal by the Appeals Tribunal,

the Commission have the boundaries of all lands surveyed, and a plan for the boundaries of each plot be prepared on the title of the land and recorded in the Register of Lands, and the boundaries and their dimensions, the number given to the land in accordance with clause 8(10)(b) and the name of the owner of the land shall also be recorded.

Clause 11(3) the Commission shall deposit a copy of the Register of Lands, and whenever an updated copy of the Register with the Office of the Registrar of Titles where it shall be kept in safe custody.

Clause 11(4) the Register shall be made available to the public for inspection during official working hours.

Clause 11(5) allows a copy of the Register or an extract be obtained from the Commission on payment of prescribed fees.

Unowned land

Clause 12(1) All lands determined by the Commission to be unowned shall vest in the Council in trust for Rotumans who— (a) are registered in the PEFR; and habitually reside in the district where such land is situated, and such land shall not be deemed as land owned by the Council.

Clause 12(2) If unowned land is claimed at a later date by an individual or a **kainaga**, such claim must be—
(a) supported by evidence of lineal connection to the *fuag ri* that owns that particular plot of land; and
(b) submitted to the DO who shall inform the Council of the existence of the claim.

Clause 12(3) the individual or *kainaga* must accompany their claim with evidence showing or outlining their family tree which has been agreed upon and signed by the individual or *pure* of the *kainaga*.

Clause 12(4) the DO shall refer the claim to the Commission to inquire and ascertain whether or not the claim has merit and is made in good faith.

Clause 12(5) the Commission shall deliver its decision to the concerned parties and the decision may be appealed against and the appeal shall be processed in accordance with clause 9.

Clause 12(6) the decision of the Appeals Tribunal shall be final.

Clause 12(7) all monies derived from such unowned land shall be paid into the Rotuman Development fund to be used for the purposes of that fund.

Estate or interest conferred by registration

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Clause 13 (1) Registration of any land in the Register as *hanua ne kainaga*, *hanua pau*, *hanua ne 'on tore*, *hanua togi* or unowned land shall vest in the persons registered as owners of such land (or in the case of unowned land, in the Council as the trustee under clause 12(1)), including rights, privileges, powers and obligations in relation to such land as this Bill or as are incidental to Rotuman customs in so far as customs are not inconsistent with the provisions of this Bill.

Clause 12(2) Registration of a lease in the Register shall vest in the lessee the land comprised in the lease for all the interests described therein together with expressed rights and privileges attached and subject to all expressed liabilities therein, and together with and subject to all rights, liabilities and limitations as laid down in relation to leases by the *Land Transfer Act (Cap. 131)*.

Rights conferred by registration

Clause 14 protects the rights of landowners under this Bill subject to provisions under clause 32, and shall be held by such landowners free from all other interests and claims whatsoever, but subject to—

- leases registered on the Register of Lands; and
- the following rights and interests which are not registrable under this Bill— (i) rights of way, rights to water and other easements; (ii) leases for a term not exceeding one year; (iii) rights of occupation by virtue of subdivision under Rotuman customs, as provided for in clause 21(1)(b); (iv) rights enabling a person to take part of the soil or produce of the land owned by another subsisting at the commencement of this Bill.

Part 4—Dealings

Registered land only to be dealt with in accordance with this Bill

Clause 15 Subject to the provisions of the *State Acquisition of Lands Act (Cap. 135)*, the *Forest Decree 1992*, the *Petroleum (Exploration and Exploitation) Act (Cap. 148)* and the *Mining Act (Cap. 146)* all lands registered under this Bill will only be dealt with in accordance with the provisions of this Bill.

Written consent of District Officer

Clause 16(1) Subject to the provisions of this Bill, any selling, leasing, exchanging, partitioning, subdividing of registered land must be done with the consent of the DO in writing.

Clause 16 (2) The DO prior to granting consent to the other forms of dealings on *hanua ne kainaga* must be satisfied that the consensus of the *pure* and majority of the *kainaga* residing in Rotuma has been obtained.

District Officer may examine witnesses on oath

Clause 17 provides for the DO to summon people in regards to registered land, it gives the DO the powers of a Magistrate under the *Magistrates' Courts Act (Cap. 14)*.

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Restrictions on dealing with land

Clause 18(1) prohibits the alienation of registered land, provided that nothing shall prevent such land from being alienated to the State or compulsorily acquired by the State under the *State Acquisition of Lands Act (Cap. 135)*.

Clause 18(2) land registered as *hanua ne 'on tore* or *hanua ne kainaga* shall not be leased to non-Rotumans, other than the State, and any such lease shall be for a term not exceeding 21 years.

Clause 18 (3) land registered as *hanua ne 'on tore* or *hanua ne kainaga* shall not be mortgaged or charged, and, except as permitted under this Bill, shall not be otherwise encumbered, whether by Rotuman or non-Rotuman owners.

Clause 18 (4) any instrument (contract) purporting to deal with land contrary to this section shall be null and void.

Dealings to be effected in the prescribed forms and presented for registration

Clause 19(1) lands under this Bill may be dealt with by a document in the prescribed form, or in default of prescription in such form as the DO shall require.

Clause 19(2) the dealing shall be presented to the DO for registration and the registration shall be completed by registering the transferee as owner of the land transferred and filing the document appropriately, provided that a subdivision of *hanua ne kainaga* or *hanua ne 'on tore* among the members of the family community owning such land, under clause 21(1)(b) shall not require it to be registered.

Clause 19(3) No part of the land comprised in any title shall be transferred unless such land shall first have been subdivided and new titles shall have been opened in the Register in respect of each subdivision.

Survey on subdivision

Clause 20. No dealing which effects a subdivision of any registered land shall be registered unless such survey and demarcation of boundaries have been carried out in relation to such land as may be prescribed or as may be ordered by the DO

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

Clause 21 (1) prescribes how landowners deal with *hanua ne kainaga*, which are:

- by leasing in the manner provided in this Bill;
- by subdivision among the members of the *kainaga* in accordance with Rotuman customs provided that no such subdivision shall confer upon any individual Rotuman any interest greater than a life interest therein and that no such interest shall be alienable as such; or
- by granting easements (i.e. right to use or access land)

Clause 21(2) makes it lawful for the owners of *hanua ne 'on tore* to deal with *hanua ne 'on tore* by granting easements.

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Clause 21(3) prohibits dealings that are made without the written consent of the *pure* or *'on tore* as the case may be, and of the majority of the adult members of the *kainaga* or *'on tore* resident in Rotuma.

Clause 21(4) any contract affecting the dealing shall be signed by the *pure* or *'on tore*, as the case may be.

Power and method of dealing with *hanua togi*

Clause 22(1) prescribes how land dealings can be conducted by *hanua togi* (subject to Subsection 2). These are:

- by sale or gift of such land as *hanua togi*;
- by disposition as *hanua togi* intended to take effect on his or her death, as provided under clause 29(1);
- (c) by leasing in the manner provided for in this Bill; or
- (d) by granting easements.

Clause 22(2) if the dealing involves the permissible sale of land, the owner shall first offer the land for sale to the original landowning *kainaga* and subsequently to another purchaser only if the original landowning *kainaga* refuses the offer to purchase the relevant land.

Clause 22(3) the instrument affecting the dealing shall be signed by the owner of *hanua togi* and witnessed by an independent adult who shall add his or her name and address.

Power to deal with unowned land

Clause 23 (1) allows the Council to authorize the DO in writing to deal with (Commission approved) unowned land on the Council's behalf in any of the following ways: (a) by leasing it in the manner provided in this Bill; (b) by granting easements; or (c) after consultation with the Council, by giving it as *hanua pau* or *hanua ne kainaga* to any Rotuman or *kainaga* who the Council is satisfied is in need of land.

Clause 23(2) Subject to subsection (1), the document affecting the dealing of land shall be signed by the DO.

Creation of leases

Clause 24(1) Subject to clause 18(2), land under this Bill may be leased to any person for any term subject to the lease conditions.

Clause 24(2) a lease for a term exceeding one year shall be in the prescribed form and shall be completed by registration of the lease as an encumbrance on the title of the lessor.

Termination of leases

Clause 25(1) provides for the DO to cancel a lease upon proof to his or her satisfaction of the termination of a registered lease.

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Clause 25(2) A lease shall be surrendered by— (a) stamping the word “SURRENDERED” with the date of surrender on the original lease document; and (b) signature of the person authorised under this Bill to execute the lease and of the lessee.

Clause 25(3) the interest of the lessee ends with the surrender of the lease

Part 5 – Transmission on birth or death

Transmission of *hanua ne kainaga*

Clause 26 (1) provides for the transmission of *hanua ne kainaga* through both the paternal and maternal lineages in the following ways — (a) in the case of paternal lineage, as to legal rights; and (b) in the case of maternal lineage, as to the consent of majority of the male members in the *kainaga*.

Clause 26(2) states that with the death of a member of a land-holding *kainaga* or on the birth of a child to a male member thereof, the nearest relative of the deceased member or of the child shall – (a) inform the DO and the name of *hanua ne kainaga* concerned; and (b) furnish him/her with such proof and particulars prescribed or in default of prescription as the DO shall require.

Clause 26(3) requires the DO to delete or add the name of a person in the Register of such *hanua ne kainaga*, after due process.

Clause 26(4) provides for the father of a newborn or other persons to register both the paternal and maternal lineage of the child’s *kainaga* with the Commission and inform the DO in writing of the registration.

Transmission of *hanua ne kainaga* to Council on failure of owners

Clause 27 provides that if the Commission has determined that there are no remaining members of *kainaga*, the land shall become unowned land and be held in trust by the Council.

Transmission of *hanua ne ‘on tore*

Clause 28(1) *Hanua ne ‘on tore* shall be transmitted through both the paternal and maternal lineages.

Clause 28(2) provides that when a member of a land-holding *‘on tore* or when a child is born to a member, the nearest relative of the deceased member or of the child, shall—(a) inform the DO and of the name of the *hanua ne ‘on tore* concerned; and (b) provide him/ her with such proof and particulars that shall be prescribed or that the DO shall require.

Clause 29 (3) provides powers to the DO to delete or add members of a *hanua ne ‘on tore* in the Register of Lands in case of death or birth of a member.

Clause 29(4) *Hanua ne ‘on tore* shall vest as *hanua togi* in the last survivor of the first three generations of the *‘on tore*, if it has not previously vested in one person as *hanua togi* under subsection (5).

Clause 29(5) Notwithstanding subsection (4), if the membership of any *hanua ne ‘on tore* is at any time reduced to one person, the land shall vest in that person as *hanua togi*.

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Clause 29(6) requires the DO to make all amendments to the Register to give effect to subsections (4) and (5).

Transmission of *hanua togi*

Clause 29(1) provides for a *hanua togi* owner who wants to dispose of the whole or any part on his or her death as *hanua togi* to deposit a document to the DO outlining this and the DO will record this document as having been deposited and the land it disposes of. The DO cannot enter any other part of the contents of such document on the Register of Lands or disclose these to any member of the public during the lifetime of the depositor.

Clause 29(2) If the owner of such *hanua togi* disposes of the whole or any part thereof during his or her lifetime, the DO shall cancel or amend the entry made under subsection (1) accordingly.

Clause 29(3) requires that on the death of *hanua togi* owner, his/her nearest relative shall inform the DO and provide proof and required information and the DO if satisfied shall treat the *hanua togi* of which he or she was the registered owner at the time of the person's death as follows—

- if a document has been deposited under this section and such document names one individual Rotuman living at the death of the deceased, the person shall register the land referred to in the deposited document in the name of such person as *hanua togi*; and
- in respect of any *hanua togi* of which a transmission cannot be effected under paragraph (a), the person shall ascertain whether—
 - the deceased has left any descendant or descendants;
 - if the deceased has left one descendant, he/she shall register such land as *hanua togi* in the name of that person;
 - if the deceased has left more than one descendant, he/she shall register such land as *hanua ne 'on tore* in the name of such persons; or
 - if the deceased has left no descendants, he or she shall register such land in the name of the Council as unowned land held in trust.

Creation of new *hanua pau* prohibited

Clause 30 prohibits the creation of any form of new *hanua pau* at the commencement of this Bill.

Adopted children

Clause 31 states that to avoid doubt, a legally adopted child shall be deemed to not be a child of his or her adopter.

Part 6 – Miscellaneous

Appeals to Commissioner responsible for Central and Eastern Division

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Clause 32 (1) provides for anyone dissatisfied with the decisions of the DO in regards to land deals or transmission of land to make an appeal and has to notify his/her intention to appeal in writing within 30 days of the decision or within a period as the DO may for good cause allow. The appellant must state in his/her grounds of appeal.

Clause 32(2) requires the DO to submit a report of the facts of the case together with his/her observations and any relevant notes of evidence and documents to the Commissioner responsible for the Central and Eastern Division. The Commission shall consider the matter and if satisfied that there is a case to answer shall recommend to the Minister the appointment of a Tribunal in accordance with Clause 9.

Clause 32(3) makes the decision of the Tribunal to be final and be carried into effect by the DO.

Maintenance of boundary marks

Clause 33(1) requires landowners to properly maintain all land boundary marks which are prescribed or which are ordered to be set up by the Commission or the DO under this Bill.

Clause 33(2) allows the DO to order which of adjoining owners shall be responsible for the care and maintenance of boundary marks.

Offences

Clause 34(1) makes it an offence for any person—

- claiming to own lands, fails to mark out the boundaries, or to cut away undergrowth if so required, or to point out the boundaries to the Commission or to a Commissioner if so required, contrary to clause 8(3);
- fails to comply with any direction by the Commission or a Commissioner or the District Officer to mark out the boundaries of land, contrary to clause 8(10)(a);
- being responsible for the care and maintenance of a boundary mark, allows it to fall into disrepair or to be destroyed or removed, contrary to clause 33(1); or
- defaces, tampers with, destroys, injures or removes any boundary mark or counterfeits any boundary mark,

Anyone committing these offences is liable in the case of an offence under paragraph (a), (b) or (c) to a fine not exceeding \$100 or to a term of imprisonment not exceeding 2 months or to both, and in the case of an offence under (d) to a fine not exceeding \$200 or to a term of imprisonment not exceeding one year or to both.

Clause 34(2) any person convicted for an offence here is liable to pay any costs incurred in the rectification of his or her act or omission.

Clause 34(3) Any person who willfully interferes with the Commission or a member of the Commission while engaged in taking evidence for an inquiry held under section 8 or who interrupts the proceedings or otherwise misbehaves during the holding of any such inquiry commits an offence and shall be liable to a fine not exceeding \$200 or to a term of imprisonment not exceeding 2 months or to both.

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Rights of State preserved

Clause 35 provides that this Bill does not affect any right, title or interest of the State in, upon or over any land in Rotuma.

Regulations

Clause 36 gives powers to the Minister may make Regulations to give effect to the provisions of the Act, including the following—

- prescribing the manner in which the PEFR and the Register are to be kept and the form and manner in which dealings in land are to be effected;
- prescribing any other form required for the purpose of carrying out the provisions of this Bill;
- prescribing the requirements for survey and the demarcation of boundaries in connection with dealings with land, and different requirements may be prescribed for different kinds of dealing;
- prescribing fees to be paid done under this Bill;
- prescribing any other matter which it is required or permitted to prescribe or which is necessary or convenient to prescribe under this Bill.

Clause 37 repeals the *Rotuma Lands Act (Cap. 138)*.

Gender analysis

According to the most recent Census, there were 10,335 Rotuman people in 2007, of which around 2,000 lived in Rotuma. 51% are male and 49% female, which is in line with the rest of the population of Fiji.

Clause 26 of the Bill deals with transmission, stating that:

26.—(1) The **hanua ne kainaga** shall be transmitted through both the paternal and maternal lineages in the following ways—

- (a) in the case of **paternal lineage**, as to legal rights; and
- (b) in the case of **maternal lineage**, as to the consent of majority of the male members in the kainaga.

And clause 28 states:

28.—(1) **Hanua ne 'on tore** shall be transmitted through **both the paternal and maternal lineages**.

In the previous Act, clause 23 stated:



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23. (1) Subject to the provision of subsection (2) of clause 4 and subsection (2) of clause 27, **hanua ne kainaga** shall be transmitted **only through the male line**.

And clause 25 stated:

25.- (1) **Hanua ne 'on tore** shall be **transmitted through both the male and the female line**.

Further information

- **Annexation of Rotuma**, Letters Patent declaration the annexation of Rotuma by Queen Victoria – http://www.paclii.org/fj/legis/fj-uk_act/lpaor1880370/
- **Terms of Reference** - Review of Legislations Affecting the General Welfare of the Island of Rotuma, Development Co-operation and Facilitation Division, Prime Minister's Office, 2009. http://www.rotuma.net/os/NewsArchive/Archive2009/terms_of_reference.pdf
- **Rotuma website:** <http://www.rotuma.net/>
- Final Draft of the Rotuma Acts to be Before Cabinet Soon' Fiji Government Press Release, 25th January 2011 <http://www.fiji.gov.fj/Media-Center/Press-Releases/Final-Draft-of-the-Rotuma-Acts-to-be-Before-Cabinet-Soon.aspx>

Anthropological research:

- Howard A (2011) 'Land Issues on Rotuma' *Pacific Studies*, Vol. 34, Nos. 2/3—Aug/Dec. 2011, pp.157 - 174. E-copy http://www.rotuma.net/os/howsel/41land_issues.pdf
- Howard A (1963) 'Land, Activity Systems, and Decision-making Models in Rotuma' *Ethnology* Vol.2, 1963, pp 407-440, <http://www.rotuma.net/os/howsel/3activitysystems.html>
- Howard A (1963) 'Land Tenure and Social Change in Rotuma' *Journal of the Polynesian Society* Vol 73,1964, pp 26-52, <http://www.rotuma.net/os/howsel/5landchange.html>

Disclaimer

This briefing was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Annex A - Definitions used in the Bill

These are the definitions of terms used in the Bill, which are found in Clause 2 (Interpretation)

adult – means a person who is 18 years of age or over.

child – a person who has not reached the age of 18 years.

Commission – means the Rotuma Lands Commission established under Clause 7.

Council – has the meaning given to it under the *Rotuma Act 2015*.

dealing – means any transaction of whatever nature by which land is affected under this Bill.

district – has the meaning given to it under the *Rotuma Bill 2015*.

District Chief – has the meaning given to it under *the Rotuma Bill 2015*.

District Officer – has the meaning given to it under the *Rotuma Bill 2015*.

fuag ri – means house mound or house site registered as such in the PEFR.

hanua ne kainaga – means land held by a *kainaga*, the members of the *kainaga* holding the land in undivided ownership.

hanua ne 'on tore – means land which is vested on intestacy in the first, second and third generations of descendants of a deceased owner of *hanua pau*, as *hanua ne 'on tore* when there is no single individual Rotuman in whom the land vests as *hanua pau*, such descendants taking life interests in undivided shares in such land, and the last survivor of them taking the land as—

- (a) *hanua pau* immediately prior to the commencement of this Bill; or
- (b) *hanua togi* under this Bill;

hanua pau - land which is vested in a single individual Rotuman by sale or gift with the intention of creating *hanua pau*.

hanua togi – land sold to a purchaser who becomes the owner of the land or land that was initially *hanua ne 'on tore* under section 28, as the case may be.

kainaga – means a family community of Rotumans.

land – includes land covered with water, any estate or interest in land including any improvement other than a mortgage or charge.

lease – includes a sub-lease;

lessee – includes a sub-lessee;

Minister – means the Minister responsible for Rotuma

on tore – means descendants;

PEFR – means *Puk ne 'Es on Famör Rotuma* .

person – means a natural person.

prescribed – means prescribed in Regulations.

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pure – means the acknowledged head of the *kainaga*.

Register of Lands – means the register of titles and plans that records the ownership of lands duly surveyed in Rotuma.

repealed Act – means the *Rotuma Lands Act (Cap. 138)*.

Rotuman – has the meaning given to it under the *Rotuma Bill 2015*

Rotuman Development Fund – means the Rotuman Development fund continued under Section 14 of the *Rotuma Bill 2015*.

transmission – with its grammatical variations, means the passing of land from one person or persons to another or others by inheritance or other operation of law and includes a disposition of *hanua pau* on death, but does not include compulsory acquisition under the *State Acquisition of Lands Act (Cap. 135)*.