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THE ROTUMA BILL NO. 6 OF 2015: WHAT IS AT STAKE FOR ROTUMA?

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The Rotuma Bill No. 6 of 2015: What is at stake for Rotuma?

There have been stirrings on social media about plans by the Fijian Government to table the Rotuma Bill¹ in Parliament in 2018. The Bill has been under consideration by the Parliamentary Standing Committee on Social Affairs (the Committee) since 2016² and is intended to replace the current *Rotuma Act*.³ The Rotuman Land Bill⁴ has also been under consideration by the Committee and both have been controversial and widely opposed by the Rotuman Community with 85 percent of the voting population of Rotumans on the island reportedly supporting recommendations for the withdrawal of the Bills.⁵ This in brief summarises the changes proposed under the Rotuma Bill⁶ and provides a brief analysis of what these changes will mean for Rotuma and Rotumans. The proposed Bills will change Rotuma's relationship with Fiji: from one where it has special autonomous administrative arrangements with the Fiji government, to one where it effectively becomes another island *in* Fiji and *under* the control of the Fijian government.

Summary of Proposed Changes

The Rotuma Bill (2015) and Rotuma Lands Bill (2015) were produced by a Review Committee appointed in 2010 to review the *Rotuma Act* and the *Rotuma Lands Act* (the 'Rotuma Acts'). According to the Fijian Government, this review came at the request of Rotumans themselves.⁷ However, there are also claims coming from within the Rotuman community that the Committee lacked credibility due to a lack of consultation with the Rotuman people on the consequences of the proposed changes to the Acts.⁸ The International Labour Organisation has also requested further information from the Fiji Government on the consultation process in relation to the *Rotuma Bills* to determine whether the protection of the rights of indigenous peoples are being adequately protected.⁹ The proposed changes to the *Rotuma Act* represent fundamental changes to

¹ Fiji Government, *Bill No. 6 of 2015* (Rotuma Bill)

² Parliament of the Republic of Fiji, 'Pending Bills', available at: <http://www.parliament.gov.fj/pending-bills/> (accessed 18 March 2018)

³ *Rotuma Act 1958* (Cap. 122) (*Rotuma Act*)

⁴ Fiji Government, *Bill No. 7 of 2015* (Rotuma Land Bill)

⁵ Fiji Times Online, 20 January 2017, 'Bills Rebuff', available at: <http://fjtimes.com.fj/story.aspx?id=385999> (accessed 20 April 2018)

⁶ Our working paper on the Rotuman Land Bill is forthcoming.

⁷ Fiji Government, Press release, January 2011, available at: <http://www.fiji.gov.fj/Media-Center/Press-Releases/Final-Draft-of-the-Rotuma-Acts-to-be-Before-Cabinet-Soon.aspx> (accessed 18 March 2018)

⁸ Joint FRA Council, *Submission to the Standing Committee of Social Affairs on the Rotuma Bill No 6 and Bill No 7*, 4

⁹ International Labour Organisation, 'Direct Request (CEACR) – adopted 2017, published 107th ILC session' (2018), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3179428 (accessed 9 May 2018)

Rotuma's relationship with Fiji, Rotuman governance bodies, and the participation of Rotumans in both the Rotuman and Fijian governance systems.¹⁰

The most fundamental change is to the definition of Rotuman itself, as a geographical entity. Also of significance, is the removal of section 3(3) of the *Rotuma Act* that allows Rotumans to decide on whether Fijian legislation will apply to Rotuma and if so, to what degree.¹¹

Changes to the structure of the Rotuman governance bodies are also proposed, bringing them under the control of the Fijian government. The 'Bill Summary' produced by the Parliament of the Republic of Fiji provides the following list of differences between the *Rotuma Act* and the Rotuma Bill:

- removal of the District Officer's Court;¹²
- alterations to the membership of the Council of Rotuma;¹³
- a new 'Forum of the Rotuman People' is created, with some appointments being made by the Minister responsible for Rotuma;¹⁴
- the Rotuma Development Fund is repealed and then re-established and administered by the Forum;¹⁵
- the creation of a Tribunal appointed by the Minister responsible for Rotuma to determine disputes over the election of District Chiefs;¹⁶
- the addition of provisions to discipline and dismiss District Chiefs;¹⁷ and
- the power to make Rotuma Regulations is removed from the Council and transferred to the Minister.¹⁸

An understanding of the significance of these proposed changes to Rotuman governance can only be attained once the Rotuma Bill is analysed within the overall framework of the Fijian legal system. In particular, constitutional provisions that once entrenched protections for Rotuman autonomy in local governance disappeared during the transition from the 1997 Fijian Constitution to the 2013 Fijian Constitution.

¹⁰ see Hannah Johnson, *Bill Summary: Rotuma Bill 2015 – No. 6 2015* (2016) Parliament of the Republic of Fiji, available at: <http://www.parliament.gov.fj/wp-content/uploads/2017/03/Rotuma-Bill-summary.pdf>

¹¹ Section 3(3) *Rotuma Act*

¹² Part II, *ibid.*

¹³ Part III, *Rotuma Act*, see Part 2, Rotuma Bill

¹⁴ Part 3, Rotuma Bill

¹⁵ Part 5, *ibid.*

¹⁶ Clause 11, *ibid.*

¹⁷ Clause 12, *ibid.*

¹⁸ Section 16, *Rotuma Act*, see clause 23, Rotuma Bill

1. The Current Constitutional Framework

Rotuma was formally ceded to Great Britain in 1881,¹⁹ and was subsequently incorporated into the Colony of Fiji.²⁰ Its unique legal status within Fiji was recognised in the *Rotuma Act 1927*,²¹ which contained provisions for autonomous governance arrangements on Rotuma through the Council of Rotuma.²² This unique legal status was also constitutionally recognised and protected under Fiji's Independence Constitution²³ and then transferred into the subsequent two constitutions.²⁴ These protections were then abrogated, along with the 1997 Constitution, in 2009.

The 2013 Constitution is significantly different in its protection of Rotuman autonomy. Whilst it recognises Rotumans as distinct people (referred to together with iTaukei and Banabans) in the Preamble,²⁵ the provisions that entrenched the *Rotuma Act* and *Rotuma Lands Act* in previous constitutions no longer exist.

For the Rotuman community, questions relating to the representation of the community in the parliament of Fiji are linked to broader questions about the status of Rotuman people within the state. With the removal of reserved seats based on ethnicity and the restructuring of parliament into a single chamber in the 2013 Constitution, Rotuman desire for separate political representation in Fiji's parliament has been quashed.

Instead, a 50 multi-member single national constituency is established and in order to qualify for a seat in parliament, political parties and independent candidates must attain a five percent threshold of total votes cast.²⁶ These provisions do not augur well for indigenous minorities such as the Rotuman community, as the five percent threshold makes it difficult for a small community to garner the votes needed for a seat in parliament. This is particularly of concern given that Rotumans in previous elections have preferred to vote for candidates who were independent candidates.²⁷

The 2013 Constitution therefore creates a new constitutional framework that places Rotuma within it, without its previously constitutionally entrenched self-governance

¹⁹ Letters Patent, Annexation of Rotuma Island, available at: http://www.paclii.org.fj/legis/fj-uk_act/lpaor1880370/

²⁰ Josua Namece, Parliament of Fiji, 'Bill Summary: Rotuma Land Bill 2015 – No.7 of 2015' (2016) available at: <http://www.parliament.gov.fj/wp-content/uploads/2017/03/Rotuma-Lands-Bill-summary.pdf>

²¹ Later amended in 1958, which remains as the current *Rotuma Act 1958*

²² Part III, *Rotuma Act*

²³ Preamble and section 68, *The Independence Order and Constitution of Fiji 1970*

²⁴ Preamble and sections 21, 78 and 156, *Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990* (Decree No.22); Preamble and sections 6 and 185, *Fiji Constitution (Amendment) Act 1997*

²⁵ Note the Preamble is not legally enforceable.

²⁶ Section 53(3), *Constitution of the Republic of Fiji 2013*

²⁷ Kylie J. Anderson, 'From Marginalisation to Mainstream? Rotuma and the 2006 Elections' in Jon Fraenkel and Stewart Firth (ed), *From Election to Coup in Fiji: The 2006 campaign and its aftermath* (2007) 185-203.

provisions. When this is analysed in Fiji's context, the significance of these changes for Rotumans comes to light.

2. The Operation of these Changes in Context

The *Rotuma Act* can be replaced in one fell swoop through a simple majority vote in the Fijian Parliament in favour of the Rotuma Bill (even with no Rotumans sitting in the Fijian Parliament). This would have dramatic implications for Rotuman resources, autonomy, governance, and political representation. The current President of Fiji, Jioji Konrote, is in fact Rotuman. Konrote formerly acted as the Minister for Employment, Productivity and Industrial Relations. However, upon his election to Fiji's Presidency, there are no longer any Rotuman members of Parliament. As mentioned above, the provisions protecting the *Rotuma Act* from any changes by the Fijian governments, no longer exist under the current Constitution. The President has no vote in Parliament, nor any decision-making powers over potential amendments to the bill. He must only give his assent to the bill upon the Parliament passing it and has no discretion whether or not to do this.²⁸ Interestingly, the President has publicly spoken out in support of the bills.²⁹ Even if the Rotuma Bills were tabled under a new government after the 2018 elections, the electoral provisions under the 2013 Constitution described above, have the practical effect of denying effective and meaningful Rotuman political representation and leave Rotuma without the opportunity to even cast a vote on the Bills.

The territory of Rotuma is significantly reduced with its altered definition under the Rotuma Bill. Under the *Rotuma Act*, Rotuma is defined as 'the island of Rotuma and its dependencies, that is to say all islands, rocks, reefs and fisheries lying between the one hundred and seventy-fifth degree and the one hundred and eightieth degree of east longitude from the meridian of Greenwich'.³⁰ This territory has also been described as the 'Rotuma archipelago' and 'Rotuma and its dependencies'.³¹ Rotuma is simply defined as 'the islands of Rotuma' under the Rotuma Bill; all reference to marine resources (reefs, fisheries etc.) is removed. Complex issues arise relating to the legal status, rights and ownership of Rotuma's vast marine resources and fishing grounds, particularly when read within the current constitutional framework. For instance, Section 28 states that Rotuman land will remain with the customary owners. However, it is unclear if this reference to 'land' includes marine resources and fishing grounds. Furthermore, Rotuman ownership of Rotuman 'land' is subject to state acquisition³² and ownership of all minerals 'in or under any water or land, are owned by the State'.³³ Owners of land or areas of water with customary fishing rights are entitled to a 'fair

²⁸ Section 48, *Constitution of the Republic of Fiji 2013*

²⁹ Fiji Sun Online, July 14 2015, 'Konrote Slams Kepa's Rotuma Petition' Available at: <http://fijisun.com.fj/2015/07/14/konrote-slams-kepas-rotuma-petition/> (accessed 20 April 2018)

³⁰ Section 2, *Rotuma Act*

³¹ United States Department of State, *Limits in the Seas: No. 101 Fiji's Maritime Claims* (1984) 5

³² Section 27, *Constitution of the Republic of Fiji 2013*

³³ Section 30, *ibid*

share' of the royalties at a rate determined by 'written law',³⁴ which could be through an Act of Parliament, but also by Decree, Promulgation or subordinate law.³⁵ Connecting these constitutional provisions leads one to speculate on the motivation behind reducing the definition of Rotuma to simply the 'islands of Rotuma'.

Worth noting here is the requirement under the International Labour Organisation Convention No. 169 (ILO C169) on Indigenous and Tribal Peoples³⁶ that any special measures taken by governments in relation to indigenous peoples 'not be contrary to the freely-expressed wishes of the peoples concerned'.³⁷ Likewise, policies should not be adopted without the 'participation and co-operation of the peoples affected'.³⁸ The Fiji Government has also endorsed regional policies that support and empower community-based management and rights over coastal fisheries.³⁹ A reduction in community rights over coastal fisheries management would be contrary to these policies, and their requirements, as well as those of the ILO C169, could potentially be sidestepped in relation to Rotuma's marine resources if definitions of 'Rotuma' were to no longer include those resources.

Rotuma's autonomy and self-governance is further diminished by the removal of section 3(3) in the *Rotuma Act*. It states 'all Acts when applied to Rotuma shall be construed to apply only so far as the circumstances of the islands and its inhabitants permit'.⁴⁰ This clause allows Rotuma to decide on which Fijian legislation will apply to Rotuma, and if they do, to what extent. The removal of this provision means that all Fijian legislation will automatically become applicable without any consideration for whether the laws are suitable in Rotuma's context, nor is there any option to reject the laws. Furthermore, any Rotuman regulations will likely be invalid if found to be inconsistent with Fijian legislation. The autonomy that Rotumans have over Rotuman affairs is intrinsically linked with section 3(3), such autonomy would be effectively extinguished by the removal of section 3(3).

The proposed changes to Rotuma's governance structures under the Rotuma Bill will likewise erode Rotuman autonomy, self-governance and the integrity of the Rotuman governance institutions. The provisions relating to the membership of the 'Council of Rotuma' (Council) and the newly created 'Forum of the Rotuman People' (Forum) confer powers of appointment on the 'Minister' responsible for Rotuma,⁴¹ which has

³⁴ *ibid*

³⁵ Section 163, *ibid*, the latter do not require support from the Parliament to become law.

³⁶ International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, Ratified by Fiji in 1998

³⁷ Article 4(1), *ibid*.

³⁸ Article 5, *ibid*.

³⁹ *see* FFA and SPC, 'Future of Fisheries: A Regional Roadmap for Sustainable Pacific Fisheries'; Pacific Islands Forum, 'Leaders Regional Roadmap for Sustainable Pacific Fisheries'; Melanesian Spearhead Group, 'Roadmap for Inshore Fisheries Management and Sustainable Development 2014-2023'.

⁴⁰ Section 3(3) *Rotuma Act*

⁴¹ Clauses 4 and 7, Rotuma Bill

the potential to enable ‘political appointments’ and places the ‘independence of the Council’⁴² at stake. Furthermore, in the cases of disputes arising regarding the appointment, disciplining, and dismissal of chiefs, the Minister is also responsible for appointing a Tribunal for the purpose of adjudicating chiefly disputes. Tribunal members are appointed by the Minister, on the recommendation of the Commissioner responsible for the Central and Eastern Division of Fiji,⁴³ and this same Tribunal has powers to discipline and dismiss chiefs,⁴⁴ and resolve disputes over the appointment of Chiefs.⁴⁵ Additionally, the management of the Rotuman Development Fund (RDF), is transferred from the Council to the Forum, however, the Forum powers of administration over the RDF are subject to directions made by the Minister.⁴⁶

The proposed level of Ministerial involvement in Rotuman governance is unprecedented, yet it extends further into the one of the Council’s core functions: its power to make laws (in the form of regulations) for Rotuma. Under the Bill the Council is reduced to ‘considering matters affecting Rotuman people’,⁴⁷ which is in stark contrast to making regulations ‘to be obeyed by all members of the Rotuman community’.⁴⁸ The power to make regulations is instead transferred to the Minister, albeit following consultation with the Forum (though it should be noted he/she also appoints members to the Forum).⁴⁹

Therefore, the Bill not only removes Rotuma’s ability to choose which Fijian laws apply to Rotuma, it also gives the Fijian government, through the ‘Minister’, the exclusive power to make local laws for Rotuma.

3. Points of Rotuman Contention

The advent of the bill led to the Rotuman community airing disagreements on multiple forums. Various individuals and groups made submissions to the relevant Parliamentary Standing Committee. Some of these submissions were shared on the Rotuma Website Forums.⁵⁰ Some of the changes aforementioned in this paper that were deeply contentious to Rotumans were;

- i.) The proposed changes to the definition of Rotuma
- ii.) The changes to provisions relating to the disciplining and removal of district chiefs.

⁴² Joint FRA Council, *Submission to the Standing Committee of Social Affairs on the Rotuma Bill No 6 and Bill No 7*, 7

⁴³ Clauses 11(5), Rotuma Bill

⁴⁴ Clause 12, Rotuma Bill provides that the disciplining or removal of a District Chief will be determined by the Tribunal, whose decision is final.

⁴⁵ Clause 11, Rotuma Bill

⁴⁶ Clause 16, *ibid.*

⁴⁷ Clause 5, *ibid.*

⁴⁸ Section 16, *Rotuma Act*

⁴⁹ Clause 23, Rotuma Bill

⁵⁰ Rotuma Website, 2018, ‘Rotuma Bill 2015 and Rotuma Lands Bill 2015’ Available at: <http://www.rotuma.net/os/Forum/Forum56.html> (Accessed 20th May 2018)

iii.) The lack of consultation relating to the tabling of the bills.

On the point of the lack of consultation, one of the parliamentary submissions made to the Fiji Parliamentary Standing Committee for Social Affairs stated: “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”.⁵¹ This particular submission was widely shared as a template on Rotuman social media forums, with the authors of the submission encouraging Rotumans to use the template ‘to use for their own submissions, adapt as they like or read for further detail and understanding of the concerns raised by the bills’.

Conclusion

The Rotuma Bill proposes significant changes to Rotuma’s relationship with Fiji and if enacted in its current form, there is much at stake for Rotuma. As discussed above, Rotuma risks losing part of its territorial integrity, ownership and rights over its marine resources. Its current degree of self-governance is significantly reduced and autonomy effectively extinguished. The same could be said for the independence of Rotuma’s governance institutions.

Rotuma’s relationship *with* Fiji would change from one where it has special autonomous administrative arrangements with the Fiji government, to one where it effectively becomes another island *in* Fiji and *under* the control of the Fijian government. Overwhelming Rotuman opposition to the Rotuma Bills and calls for their withdrawal are yet to be addressed by the Committee or Fijian Government and the coming elections provide little opportunity for Rotuman representation in a new government to have hope of addressing these issues.

The UN Committee on the Elimination of Racial Discrimination highlights the importance of seeking the prior and informed consent of indigenous groups with regards to matters that impact their rights, ways of life, and identity.⁵² With the nature of the Rotuma Bill having the potential to have a profound impact on Rotuman governance, and custom, further meaningful consultation with the Rotuman community is imperative for the Fiji Government to fulfil its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,⁵³ and the ILO C169, and demonstrate its commitment to regional policies supporting community-based rights and management of marine resources.

⁵¹ Ruyter Zd and Sosefo R. (2015) Submission on Rotuma Bill #6 of 2015 and Rotuma Lands Bill #7 of 2015 (“The Bills”). Rotuma Website.

⁵² Committee on the Elimination of Racial Discrimination, (2012) *Concluding observations on the eighteenth to twentieth periodic reports of Fiji, adopted by the Committee at its eighty-first session* (6-31 August 2012). UN Doc. CERD/C/FJI/CO/18-20

⁵³ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195