

ROTUMA

Report of the
Rotuma Legislation Review Committee
2010

Fatiaki Misau / FIU MALO
Jone Naeqe Nakautoga

Fatiaki Jekope Misau
Jone Naeqe Nakautoga
Wesley Malo

**The Prime Minister Commodore Josia Voreqe Bainimarama,
CF(Mi) CSTJ, MSD, jssc, psc**

Dear Prime Minister

**REPORT OF THE ROTUMA LEGISLATION
REVIEW COMMITTEE**

We respectfully submit to you our unanimous Report.

We consider it a great honour and privilege to be appointed members of the team to review the two legislations that have a direct impact on the lives of the Rotuman people.

In discharging our mission we held extensive consultation with the stakeholders and have now completed the task entrusted to us to the best of our ability and in accordance with our Terms of Reference. We have done so with much care and sensitivity and thoroughness as we could muster.

Signatures appear at the end of the Report which now follows.

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1. INTRODUCTION

The review of the two legislations (Rotuma Act and Rotuma Lands Act) affecting the lives of the Rotuman people has been a subject crying for attention for many years. Various administrations have had their attention drawn to it but it has always been held over until a day when there was more time. The Rotuman people is most grateful to the government of the day that the question has now been tackled.

We are not competent to express the opinion that the amendments proposed in this report are all that are required, but we have no doubt that they will improve the position to a very great extent. We however, hold the view that after the new provisions and structures have been implemented and sufficient time allowed to objectively assess the strengths and weaknesses of the provisions, that a review be considered and, given the information now available such an exercise will not be onerous.

✓ By individual contracts dated 29th June 2009 the office of the Prime Minister appointed Fatiaki J Misau as Chairman of the Review Committee, Ratu Jone Naeqe Nakautoga and Major Tiu Malo to be its other members.

The Committee was initially required to submit its report to the Prime Minister not later than 31 December 2009. By letter dated 30 December 2009, the time was extended to 31 January 2010. The full texts of our letters of contracts and our Terms of Reference are produced at Appendix "C".

2. LOCATION

"There sits fair Rotuma in gorgeous beauty, unknown outside the tropics as an emerald isle on a sapphire sea. The shallow water enclosed by the coral reef presents a great variety of green tints; beyond is the deep ocean blue, while the perennial verdure of the island and the glowing azure of the oft-times cloudless sky present to the eye of the beholder such a blending of colour as the earth can scarcely duplicate."

Alan Howard and Jan Rensel (ISLAND LEGACY) quoting
from
The Reverend William Allen, "Rotuma", 1895

Rotuma lies about 528 km North of Fiji. It is situated close to the meeting point of the conventional boundaries assigned to the Polynesian, Melanesian and Micronesian peoples.

Rotuma and the off-shore islands were divided into several districts. They were the formal geographical areas of social and political importance. The districts are **Noatau**, **Oinafa**, **Itu'ti'u**, **Pepper** and **Itu'muta**. The island is about 14.4 km long and 5 km wide at its widest, it narrows to an isthmus about 200 metres across, which connect two main parts of the island. The land area is 4,387 hectares. There are a number of off-shore islands, none of them is permanently inhabited.

3. CESSION TO GREAT BRITAIN

It is not generally appreciated or understood the unique position that Rotuma and Rotumans enjoy in Fiji. Such an understanding and appreciation would be vital for any meaningful accommodation of Rotuman aspirations. In this connection it is useful to look back into the circumstances surrounding the cession of Rotuma to Great Britain and how Rotuma came to be part of the colony of Fiji.

- 3.1 The following is quoted from "**Correspondence relating to the Cession of Rotuma, Part II**" copies of which are available at the National Archives in Suva. In a letter from the then Governor of Fiji, Arthur Gordon, to the Secretary of State for the Colonies on 30 October 1879.

"No. 1

3.1.1 **THE GOVERNOR OF FIJI TO THE SECRETARY OF STATE FOR THE COLONIES.**

Nasova, Fiji, 30th October, 1879.

- (a) I have the honor, in continuation of my despatches noted in the margin, to report that since those despatches were written, the three principal chiefs of Rotuma have paid a visit to Fiji. I enclose an extract from a local newspaper, which contains a fair account of their first interview with me.
- (b) After this formal and public reception, I had of course, other meetings with them of a more confidential character. They stated themselves to have come with the knowledge and at the desire of the other signatories of the petition forwarded in my dispatch No. 115, of the 12th October; and that their mission was one undertaken to follow up their letter to Mr Des Voeux, of the 19th January, 1879. They urged the immediate assumption of authority over them on the part of

Great Britain, and the appointment of an English Magistrate to rule them. They enquired, somewhat anxiously, whether any further steps taken on their part would facilitate the accomplishment of their wishes. They were also deputed, they said, to confer with me generally as to their future obligations and duties in the event of their offer being accepted by Her Majesty.

(c) They informed me that the step they had taken in requesting Her Majesty to assume sovereignty over them was no hasty or inconsiderate one; that they had been thinking about it for the last five years; very seriously ever since the cession of Fiji and, to some degree, even before that event; whilst their last "war" had quite determined all parties among them that their only chance of escape from future calamities was to be found in absorption into the Colony of Fiji.

(d) The Chiefs having expressed a wish to manifest their entire surrender of themselves to Her Majesty more explicitly than they had yet done, I drew up a form for their signature, consisting of a few words adapted from the Deed of Cession of Fiji, and containing an absolute gift of themselves and their island to the Queen. After being here a few days, during which they had ample opportunity, of which they fully availed themselves, of communication with the Native population, they begged me to add to this sentence a request that they might be ruled by the same laws as those by which the Natives of Fiji were governed, or laws similar to them. This was done, and the paper, of which I have the honor to enclose a copy, was signed by them."

3.1.2 The correspondence from the Deputy Commissioner in Rotuma, Mr A J L Gordon leading up to the signing of the Deed of Cession records:

"No. 7.

MR A J L GORDON, C.M.G., to the HIGH COMMISSIONER

Noa'tau, Rotuma, 14 November, 1879.

(a) I have the honor to report that, according to the agreement mentioned in my letter No. 1, of the 11th instant, all the chiefs of this island met me here this morning, with the exception of Manhaff, the Chief of Itumutu, who pleaded illness as an excuse for his absence, at the same time sending a minor chief as his substitute.

(b) The meeting was in every way a satisfactory one, and I have the honor to enclose the offer of cession which had been signed by Maroff, Albert and Manhaff, and to which I have now obtained the signatures of the remaining Chiefs of Rotuma.

.....
I have the honor to enclose, for your Excellency's information, a copy of the address made by me on this occasion.

I have, &c.,
ARTHUR GORDON,
Deputy Commissioner.

To His Excellency the High Commissioner for the Western Pacific, &c., &c.,
&c

3.2

DEED OF CESSION

3.2.1

ENCLOSURE 1

"We the chiefs of Rotuma, with the knowledge and assent of our respective tribes, and in accordance with their desire, do, on our own behalf and that of

our respective tribes, hereby cede and surrender absolutely, unreservedly and unconditionally to Her Majesty the Queen of Great Britain and Ireland, Empress of India, the possession of and full sovereignty over all ports, harbours, roadsteads, streams and waters, and all foreshores and all islets and reefs adjacent thereto: praying that Her Majesty will be pleased to extend to us such laws as now govern her Native subjects in the Colony of Fiji, or such other laws as in Her Majesty's wisdom she may see fit to make and appoint for our Government and for the maintenance of peace and good order."

.....

3.3

ENCLOSURE 2

ADDRESS to the CHIEFS OF ROTUMA, at NOATAU, on the 14th NOVEMBER, 1879.

CHIEFS,

I am glad to see you all here today.

Those of you who have lately visited Fiji know that it was the desire of Sir Arthur Gordon that you should all meet me here on my arrival amongst you. And the reason for this was twofold:-

1st. That I should be able to satisfy myself, and report to him as to whether it was truly the wish of all you chiefs to sign your names to the petition already forwarded to the Queen of England; and whether you fully understood the words and meaning of that petition; and, secondly, that, if I

found that the true wish and desire of you all was expressed in that petition, that I should then ask you to make those wishes more clear. In that petition, you have asked the Queen to "take" you; but this is not sufficient: what she would wish to know is whether you would "give" yourselves to her, and it will then be for Her Majesty in her wisdom to decide whether she will grant your prayer.

It is one thing for the Queen to take you, - it is another for you to give yourselves to the Queen.

If any one among you does not understand what I have said, let him now speak and I will explain.

(Here the chiefs signified that they fully understood what had been said).

I will now read to you again your first petition that has already been sent to the Queen.

(Here the petition was read, and at the conclusion of it was asked separately - "Is this your desire? and have you signed it of your own free will?"

Answered in every case in the affirmative).

I will now read to you a paper already signed by three of your number in Fiji. (Here the Offer of Cession was read in Rotuman, and each chief was asked separately:- "Is this clear to you? Do you desire to sign this paper? Is it the wish of your people that you should do so?"

Answered in each case in the affirmative.

Signatures to the Offer of Cession were then made and witnessed).

It is well. I am now satisfied that it is the true desire of the Chiefs and people of Rotuma to give themselves, and their island to the Queen of Great Britain, and I shall lose no time to make known to Sir Arthur Gordon the proceedings of this day; and he will at once convey the same to Her Majesty the Queen."

3.4 **Rotuma was officially ceded to Great Britain on 13 May, 1881.**

3.5 These letters quoted show and confirm what the Rotumans already know and accept, that:

- (a) Rotuma was ceded as a separate and distinct island nation to Great Britain;
- (b) Notwithstanding that cession their forefathers and all their lands, seas and people to be absorbed into the colony of Fiji;
- (c) The laws governing Fiji, where appropriate for the maintenance of peace and good order of the Rotuman people, would apply to them.

3.6 That "special" relationship with the Fijian people has endured the test of time in peace and war.

4. **HISTORICAL BACKGROUND ON BOTH LEGISLATIONS UNDER REVIEW**

4.1. **ROTUMA ACT [CAP 122]**

(a) The Attorney General when moving the Government of Rotuma Bill on 31 May 1927 said inter alia:

"If the House passes this Bill ... several drastic ^{alterations} alternations will be made in the law governing Rotuma."

b) The chief change proposed was relative to the jurisdiction of the Resident Commissioner at Rotuma who would be shorn of most of the autocratic powers which he possessed. In indictable cases he would try them and then would have to forward the full notes of the evidence with his own recommendation to the Chief Justice who would, on considering the matter, decide what would be the proper decision.

c) The said Bill was passed by the Legislative Council and became Ordinance No. 9 of 1927.

d) An amendment to Ordinance No. 9 of 1927 was put to the Legislative Council in 1958. The Commissioner Eastern Division in moving the Rotuma (Amendment) Bill on 31 March, 1958 said:

"The object of this Bill is to modernize the administration of Rotuma, which has remained substantially the same since Rotuma was ceded in 1880."

The Commissioner Eastern further added:

"The Bill proposes to achieve this by changing the constitution of the Council of Rotuma and also making it a statutory body instead of a Council formed by regulations, as it is at present."

e) Previously the Council of Rotuma comprised of the leading chiefs of the seven districts in Rotuma and seven members nominated by the District Officer, one from each of the seven districts. The function of the Council then was purely advisory.

f) The proposed reform in composition was for the seven leading chiefs of the seven districts to remain because of their traditional positions but instead of having the other seven members nominated, it was proposed to introduce a system of election by which males over the age of 25 from each district would elect by secret ballot one person who was normally resident in that district. The person standing for election must be a male and at least 25 years of age. On this gender discrimination the Commissioner Eastern said

males

1958

"The present Council of Rotuma is not allowed to vote or have any say in the Council at the present time."

g) The District Officer however was to remain the Chairman of the Council of Rotuma with the Senior Assistant Medical Officer; an ex-officio member with no voting rights. The new composition of the Council was a compromise between the old and the new and it was more an evolutionary step rather than a revolutionary one.

h) The said Bill was passed by the Legislative Council on 31 March 1958 and became Ordinance No. 4 of 1958 (An Ordinance to Amend the Rotuma Ordinance).

i) The Rotuma Act (Cap. 122) to-day is the culmination of a series of minor amendments made to the 1958 Ordinance in 1962, 1964, 1966, 1968 and 1970. Since then there has not been any amendments proposed nor any serious attempts at reviewing the legislation seriously pursued.

1958 - minor amendments
62/64/66/68/70

4.2 ROTUMA LANDS ACT [CAP 138]

Since 1970 no amendments
now relevant

- a) In February 1959 the then Attorney General (Hon. A.M. Greenwood) together with the then Commissioner Eastern visited Rotuma to discuss the proposed Rotuma Land Bill and also to seek the approval of the Council of Chiefs. According to records of the debate of the Legislative Council, the Chiefs and people of Rotuma expressed doubts on certain sections of the Bill. However, after further discussion between the Chiefs and their people a compromise was reached and later drafted in the Bill.

b) In moving the Bill to the Legislative Council at the April 1959 session the Attorney General stated:

"The first reason for this Bill is that the Rotumans have asked for it and have been asking for it for years for the reason that the land system there is in a state of confusion, the boundaries are uncertain, there are many disputes and that is holding up the development of

their land in Rotuma.... as I have said already it is a long needed measure."

c) The first native member (Hon. Ratu K.K.T. Mara) when contributing to the debate voiced the fear expressed by the Rotumans living in Fiji of excluding them from the decision making process. However, due to insufficient response when the Bill was published it was considered that the majority of Rotumans have accepted after the Council of Rotuma had given its approval.

d) The Bill was passed by the Legislative Council on 8th April 1959 and became Ordinance No. 13 of 1959.

4.3 In 1960 a ~~delegation went to Rotuma to explain~~ the Rotuma Lands Ordinance ~~to the people and to establish the Rotuma Lands Commission~~. The delegation returned when the people rejected the ~~system of registration under the kainaga (mataqali) of the father only~~ from the commencement of the Ordinance.

1960
got
Rot
Lands
Comm.

"After the Ordinance had been passed and a Lands Commission appointed in accordance with Part II thereof, the Rotuman people came to view some of the provisions of the Ordinance as a threat to their traditional rights, with the consequence that when finally faced with the Commission they responded with an attitude of resentment and non-co-operation."

Daniel Fatiaki, LEGAL ASPECTS OF ROTUMA LAND TENURE

- 4.4 Further attempts by Government have not been successful to date. A submittee puts the situation in perspective thus:

"The legislation is enacted during an era of Colonial Rule by a Colonial Administration that was ill-advised and equally insensitive to the wishes of the Rotuman community who voiced strong opposition to the proposal and concept at that time."

- 4.5 Previous administrations' attempts to review the Rotuma Act (Cap. 122) and the Rotuma Lands Act (Cap. 138) could not be pursued to finality for reasons not properly explained to the Council of Rotuma and the Rotuman people in general and as such conclusions as to why it was not done were abound and one of the loudest being the lack of commitment of the powers that be.

5. THE REVIEW COMMITTEE'S APPROACH

- 5.1 Under our Terms of Reference, the Committee is required to assess and determine:

- (a) Whether provisions of the Rotuma Act are now obsolete and limit the ability of the Rotuma Island Council to adequately provide for the good governance and welfare of Rotumans;
- (b) Whether the land tenure system of Rotuma is able to ensure adequate protection for landowners and improve economic development opportunities; and

- (c) The need for the introduction of land dispute resolution mechanisms given that these are currently non-existent in existing legislations.

5.2 The Members of the Committee first assembled in Suva on 29 June 2009. To assist us in pinpointing our task and explaining it to the Rotuman people, we adopted the following **Mission Statement** based on our **Terms of Reference**:

"The Mission of the Rotuma Legislation Review Committee appointed by the Prime Minister's Office is to review the Rotuma Act (Cap. 122) and the Rotuma Lands Act (Cap. 138) and produce a report by 31 December 2009 recommending new arrangements that would assist in establishing and maintaining a situation in Rotuma that would be conducive to security, good governance and the maintenance and upholding of the rule of law."

5.3 The Rotuma Act and Rotuma Lands Act recognize and give effect of law to the customs of the Rotuman people governing the holding and use of land, fishing rights and chiefly titles, and the governance of the island.

5.4 The contexts in which people making submissions saw custom as important concerned matters to do with respect for chiefly leadership, the conduct of ceremonies and other protocol, rather than those affecting legal rights and duties.

5.5 We consider that this approach should continue to be followed if it is desired to apply custom as a matter of law to other aspects of the lives of Rotumans. The rejection of Ordinance 13 of 1959 by the people of Rotuma and the widening gap of the relationship of the District Chiefs and its seven district representatives in the present Council of Rotuma must be prevented from festering. However whilst the application of custom by statutory authority would provide certainty about the matters that are to be governed by custom, great care must be taken to avoid freezing custom at a particular time. Custom should be allowed to retain its capacity to adjust to changing circumstances, as it invariably does over time.

5.6 The Review Committee also considered it prudent that time be spent analyzing its "Terms of Reference", and the two legislations to be reviewed before the public consultation process begins. As a consequence the Committee considered it useful to the entire process if the Terms of Reference and some definitions in the two legislations be first translated into the Rotuman language and distributed widely to the Rotuman people, both in Fiji and Rotuma. The Committee was able to do those translations but with some difficulty given the limitation of the Rotuman language with only eighteen (18) letters in its alphabet, against texts that are in English and quite legalistic in content.

5.7 The scope of this report covers those areas of the Rotuma Act and the Rotuma Lands Act that, in our view, need to be amended or deleted and areas that need new provisions altogether. The other parts of the

two legislations that are not **interfered with** means that in our
↑
view those provisions are still very relevant and ought to be retained.

5.8 Our recommendations took account of all available sources of information, the large number of submissions we received from the Rotuman people, both written and oral, the comparative material we gathered in the course of our own reading and careful study of the two legislations under review. No one source has been preferred to any other.

5.9 ~~It~~ It came out loud and clear during the public consultation process of the peoples ignorance of the provisions of the two legislations. This, in our view, illustrates that the two legislations have never become widely known, in spite of the peoples keen interest in the composition and functions of their institution of government.

6. **Public Consultation**

6.1 The review of the two legislations was widely publicized in both the print and audio-visual media urging the Rotuman people to participate in the exercise. A schedule of the public consultation process was prepared and released, a copy of the schedule is at **Appendix C**. A total of 30 written and 103 oral submissions were received at the close of the public consultation process.

6.2 The views of the Rotuman people freely expressed during the public consultation exercise can be summarized into four main categories:

- (a) that some weighting be given to customs and tradition as the unifying influence that safeguards the identity of the indigenous population;
- (b) that the chiefs of Rotuma to have their own institution and be bestowed with the responsibility of being the repository of customs and tradition;
- (c) that in the process of land registration Rotumans are to be registered on both maternal and paternal lineage;
- (d) that communal land (**hanua ne kainaga**) be given the necessary protection from further fragmentation and that any unclaimed land found be vested with the Council of Chiefs of Rotuma but shall not be the property of the Council.

7. **All references to the former Council of Rotuma in the two Acts shall, by virtue of the new provisions proposed in this Report, become the rights and obligations of the "FORUM OF THE ROTUMAN PEOPLE" (FORUM) effective from the commencement of the revised editions of the Acts.**

A.

ROTUMA ACT [CAP. 122]

1. PART I - PRELIMINARY

1.1 With the new provisions recommended in this Report it has become necessary to introduce a new set of terminologies to reflect those changes. Some of the major changes include the establishment of a separate body for the chiefs of Rotuma and the renaming of the existing Council of Rotuma to reflect the wider spectrum of representation. Of the various names proposed by the Rotuman people and also the chiefs themselves by which this new body be called, we consider that the name "Council of Chiefs of Rotuma" (Tauna' 'on gagaj ne Rotuma) is appropriate. Part III of this Report contains detailed explanation on the choice of name. Another major structural change is the formation of a new institution to replace the existing Council of Rotuma. Again of the various names submitted by the people by which this institution is to be called we consider that the name "Forum of the Rotuman People" (Tauna' 'on Famör Rotuma) is appropriate. Again Part III of the Report contains detailed explanation on the choice of name.

1.2 "Rotuman" - On who is a Rotuman, the existing provision states that:

"a Rotuman means any person of Rotuman or part-Rotuman descent. If any dispute arises as to whether a person is or is not Rotuman the Council shall decide, but any person aggrieved by the

Council's decision may appeal to the Minister whose decision shall be final."

- 1.2.1 Strong views have been expressed that the present definition is very limited and that the issue is more than simply being Polynesian. The Rotumanness of a person must not be arbitrarily decided but must be based on a more solid foundation. It has been suggested that the question of whether the person "is or is not" should be clearly linked to a way of life. ¹ That the person must be able to trace his/her links to the land, ² adhere and identify to a language and a way of life and ³ able to trace his/her Rotuman ancestry.

legally adopted person?

- 1.2.2 Other views have been expressed that the current appeals process which makes the Minister the final appellate body in the process ought to be removed. The view is that the **kainaga** (mataqali) is the body most qualified to state whether the person is one of theirs or not. If the person concerned is accepted by the members of the **kainaga**, the person may appeal to the Council of Chiefs at Rotuma whose decision shall be final.

1.3 "Rotuman community" - The current definition states:

" - the indigenous inhabitants of Rotuma and also any Fijian resident on Rotuma".

The definition has been described as exclusive of the larger Rotuman population living outside of Rotuma and also insensitive to other

aces that reside or will reside on the island in future. It is considered that an all inclusive definition is appropriate and also a positive move towards bringing the Rotuman people together, an important move given the pace and impact of globalization to-day.

RECOMMENDATIONS

In this Act unless the context otherwise requires –

1. "Chairperson" means the Chairperson of the "FORUM OF THE ROTUMAN PEOPLE" (Tāuna' 'on Famōr Rotuma) established under this Act.
2. "COUNCIL" means the "COUNCIL OF CHIEFS OF ROTUMA" (Tāuna' 'on Gagai ne Rotuma) established under this Act.
3. "FORUM" means the "FORUM OF THE ROTUMAN PEOPLE" (Tāuna' 'on Famōr Rotuma) established under this Act.
4. That the definition of a Rotuman be expressed as a way of life rather than simply confined to the percentage of blood content. The person must participate in things, matters, events affecting the Rotuman community. In addition, the person must be able to trace his/her links to the land, identify to the Rotuman language and able to trace his/her Rotuman link to the 'fuag ri'.

5. That the meaning of "Rotuman Community" be inclusive of the larger Rotuman population residing in Fiji and elsewhere and also to embrace the other races that are presently on the island or will reside there in future.

2. PART II – DISTRICT OFFICER'S COURT

2.1 The Act establishes a District Officer's Court of which the District Officer is ex-officio, a magistrate with the same jurisdiction in civil and criminal cases as a second class magistrate. The District Officer may also try charges of indictable offences unless punishable by death. He is required to do so as nearly as possible in the same manner as if the trial were before a judge sitting alone in the High Court. After the conclusion of the evidence and the address if any of the accused, he remits the case, with notes of evidence, to the Chief Justice who considers the case and decides on the verdict. If that is **guilty** the Chief Justice decides on the sentence. The verdict and sentence are then transmitted to the District Officer who reads it to the accused in open court.

2.2 In the Sir Paul Reeves Commission Report, **TOWARDS A UNITED FUTURE**, that Commission expressed the view that that system of bringing justice to Rotuma was justifiable when the only transport between that island and the rest of Fiji was by schooner, but that is not adequate now that there is a regular air service to Rotuma. The **Beattie Commission** expressed the view that the District Officer's Court, combining in the one person executive and judicial functions,

is undesirable in legal principle. That Commission suggested that it would be in the interests of the people of Rotuma to have the same access to the regular court system as other people in Fiji and that the Rotuman people in the island should be consulted about such a change.

- 2.3 We took up the issue with the present Council of Rotuma, the chiefs of the seven districts of the island and some sub-chiefs and senior citizens. The general view expressed was that with regular means of transportation now available the judicial function in Rotuma should now come directly under the main stream judicial system as in other parts of Fiji and the District Officer to concentrate on his executive function. The process should however be such that the people can access professional legal advice and representation.

RECOMMENDATION

6. It has been argued that the present system of bringing justice to Rotuma is no longer justifiable now with a regular air service to Rotuma available. Also combining in the one person executive and judicial functions is undesirable. We agree with the arguments advanced and recommend that Rotuma should now be subjected to the regular court system as do other parts of Fiji. The process should however be such that the people can access professional legal advice and representation.

3. PART III – THE COUNCIL OF ROTUMA

3.1 Section 12(1) of Cap. 122 established the Council of Rotuma. The provision stipulates that Council to consist of:-

- (a) The chiefs of the seven Rotuma districts;
- (b) One representative from each of the Rotuma districts elected in accordance with the provisions of the Act;
- (c) As advisory members without any voting powers, the District Officer, the most senior Medical Officer, and the most senior Agricultural Officer resident on Rotuma;

3.2 The qualification of the candidate who wishes to stand from a district and that of the voter is simply the age of twenty one years.

3.3 The duties of the Council, as stated in Sec. 15 of the Act shall be:

- (a) To consider all questions relating to the good government and well being of the Rotuman community in the island as may be directed by the Minister or may seem to them to require their attention;
- (b) To administer the Rotuma Development Fund established by this Act....

- (c) The Council is empowered to make regulations on a host of subject matters relating to the peace, order and good government of the Rotuman community.

3.4.1 For sometime the seven district chiefs have been advocating the formation of their own assembly to be known as the Tauna' ne Gagaj 'Es Itu'u (Council of District Chiefs). Briefly the change proposed by the seven district chiefs would result in the removal of the elected representatives of the seven districts to a new forum specifically mandated by them, to handle development matters only and be called the Rotuma Development Council (RDC). The chiefs further proposed that their Council is to have executive authority over the RDC. They wish to reserve to them the power to appoint the chairperson of the RDC and the other members and also the power to exact disciplinary measures against members of the RDC for non-performance.

3.4.2 Two of the reasons advanced by the chiefs in support of their proposal were:-

- (a) When the Council of Rotuma was reconstituted in 1970 allowing one representative from each of the seven districts, elected by the people, in accordance with the Act to be members of the Council together with the seven district Chiefs, the Chiefs and the elected representatives were on equal status. That arrangement has badly affected the chiefly system in that the respect for chiefs ^{was} slowly diminishing.

(b) The Council of Rotuma has been deeply politicized by the elected representatives and ^{was} therefore hindered development and progress.

3.5 In a small island situation as Rotuma, the proposal of the chiefs made to Government in May 2008 became public knowledge almost immediately after its presentation and, as only to be expected, the **coconut wireless** immediately went into over-drive mode ^{and also} disseminating the views of the chiefs to the people adding to its own slant and emphasis.

3.5.1 Some reaction to the proposal by the Chiefs was against the way their views were formulated and **secretly** submitted to government without any consultation with their respective districts. Some viewed the proposal with grave misgivings because they thought the chiefs were not equipped to administer the affairs of Rotuma on their own. They saw the proposal as an attempt by the Chiefs to restore their status and power. The general feeling was their loss of status and power stems largely from their taking on the role of paid civil servants rather than traditional leaders whose mana comes from their faithfully carrying out their traditional obligations as chiefs. If they think they have lost the respect of their people they should look to themselves first and to the quality of leadership they have been providing in their districts to find a satisfying solution.

3.6 We agree that it is logical for the chiefs to have a Council of their own and be concerned with matters that are strictly their responsibility such as those that impact on custom and tradition, such issues as traditional protocol during ceremonies, customary processes of resolving disputes within the **vanua** and general matters relating to their roles as traditional leaders. We do not, however, consider it the right thing to do in this day and age for the chiefs Council to be empowered to the level where they have absolute power and control. The era of **chiefs and their subjects syndrome** is long gone and is therefore not an acceptable option to-day, to do so would be the best recipe for a situation most unpleasant to happen.

3.7 Whilst we support the formation of a Council exclusively for the chiefs of the seven districts, we consider it important that the name of the new Council must properly reflect the status of the membership. The chiefs have proposed that their new forum be called TAUNA 'OH GAGAJ 'ES ITU'U - Gagaj 'es itu'u was described by A.L. Parke, who had served as District Officer Rotuma in 1964, to simply mean district chief.

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In our view the name proposed by the chiefs is a misnomer, so is the meaning advanced by A.L. Parke. Gagaj 'es itu'u literally means the chief that owns the itu'u, Gagaja (chief) 'es (in this context means own-as to own something) itu'u (district). The obvious question that arises is, "He owns what?" The proposed name connotes lordship in a feudalistic sense over a district which consist of land-holdings and people. In the Rotuman customary land tenure

system, land is communally owned by the various **kainaga** (mataqali) within the geographical boundary of a district. Members of the **kainaga** holding their land in undivided ownership and the acknowledged head of the **kainaga** is accorded the position of pure (overlord) of the land. So the question of ownership, both of the land and people, is not the exclusive domain of the district chief.

- 3.9 We consider the name TAUNA' ON GAGAJ NE ROTUMA (Council of the Chiefs of Rotuma) as a more meaningful name as it properly describes the status of the membership and the decorum within which the affairs pertaining to the forum are discussed and decided upon.
- 3.10 We also consider it a move in the right direction if the level of traditional chiefs immediately below that of district chiefs (the faufisi) be made members of the chiefly Council, as part of their upbringing and training experience so that when they are eventually elevated to the position of district chief they are at least familiar with the protocol and etiquette of the position and the Council. In addition we consider it wise for the Minister to nominate two members from the wider Rotuman community who have had substantial career in any aspect of national or international life whether in the public or private sectors and who are also registered in the register of land owning units (kainaga) in Rotuma.
- 3.11 The District Officer Rotuma, as Government's most senior representative on the island and one who can advise the chief's Council of the policies and programmes of Government be also a member of the Council.

3.12 The Council shall appoint a chairman from its membership and also may make rules regulating its proceedings and the mode of conducting its business. Decisions of the Council shall be made by a majority vote of those present and voting and in the case of an equality of votes, the chairman shall in addition to a deliberate vote have also a casting vote.

3.13 The quorum of the Council shall be not less than nine, of whom at least four shall be District Chiefs.

3.14 Nominated members shall hold office for such period as may be specified in the notice of appointment and shall be eligible for re-appointment.

3.15 It shall be the duty of the Council to –

The proposed section of the Council of Rotuma regulations

for Rotuma to be re-constituted and given a new

*They need
to know
their culture
1st.*

(a) consider any matters that impact on custom and tradition, such issues as traditional protocol, customary processes of resolving disputes within his districts and general matters relating to their roles as traditional leaders in their vanua and the island and the Rotuman people;

(b) undertake any other duties or functions imposed on it by the provisions of any Act.

3.16 Before making any recommendations on any matter, the Council may appoint any person or committee consisting of a chairman and of such members of the Council or of co-opted members from outside the Council as it may deem suitable, to consider such matter and report back thereon.

3.16.1 Before taking any decision or making any recommendations on any matter, the Council shall decide whether or not to refer such matters to the District Councils (Tauna' ne Itu'u) or the FORUM for their consideration and recommendation.

to whom?
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3.17 Like the Great Council of Chiefs ^{of Fiji} the Council of Chiefs of Rotuma shall meet at least once in every year at such time and place as the Minister may from time to time determine.

3.18.1 The present composition of the Council of Chiefs of Rotuma at Section 12 of the Act needs to be re-examined in order to reflect more accurately the demographic spread of the Rotuman population and the new functions. It is a known fact that when the legislation was conceived in 1882 and the subsequent amendments made thereafter, almost the entire Rotuman population was domiciled in the island with the exception of a handful of seafarers on trading vessels plying our waters. The legislation therefore focused only on the island and those domiciled therein at the time.

3.18.2 The demography has since taken a very sharp dramatic change and the Rotumans residing in Fiji far outnumber the island population. According to the 2006 Census Report, of the total population of 10,335 Rotumans, only 1,852 of them live in the island while the remaining 8,483 are scattered over Fiji with a heavy concentration in the urban centres. A submittee summed up the position thus:

17.92 (18)
82.05 (F)
10000

"It is my humble opinion that the review of the legislation is both timely and apt ... as these legislations were enacted during Fiji's colonial era and as to be expected, some of the provisions contained therein are deemed archaic, obsolete and irrelevant.... any additions, amendments or deletions should reflect the views and wishes of the Rotuman people."

3.19 After analyzing the various submissions received we are persuaded to consider a structure that is inclusive so that no sector of the Rotuman community can feel marginalized or be disenfranchised. In a written submission a submittee stated:

"The membership of the Council of Rotuma needs to be revised ... seven representatives from an island population of about 2 1/2 thousand as against zero representation from a Rotuman population of about 7000+ in Fiji, is most unbalanced."

3.20 We consider the provisions in the Fijian Affairs (Provincial Councils) Regulations where representation from specified closely settled areas are entertained, to be an arrangement worth emulating and should be grafted to the Rotuma Act. We are also satisfied that some sectoral representation ought to be looked at, particularly

influential groups within the community that have, time and again, proved their effectiveness in the wider community work, such as the women's groups.

3.21 Of the various names proposed by the Rotuman people by which the new look body should be called, we consider (**TAUNA' ON FAMÖR ROTUMA**) **FORUM OF THE ROTUMAN PEOPLE** properly reflects the new scenario and also embraces the principle of government of the people, by the people, for the people.

3.22 It shall be the duty of the **Forum** --

Minister

(a) to consider all such questions relating to the good government and well-being of the Rotuman community in the island as may be directed by the Minister or may seem to them to require their attention.

Themselves (b)

to consider other issues that may impact on the Rotuman people generally.

RDP

(c) to administer the Rotuma Development Fund established by this Act and to carry out all such functions as may be required by law or necessary or desirable in connection with such Fund.

3.23 The Forum may make Rotuma Regulations as prescribed at Section 16 of the Act.

3.24 **Section 13 - Meetings of Council (now the FORUM)**

3.24.1 Section 16(1) of the Fijian Affairs (Provincial Councils) Regulations stipulates that:

"Each Provincial Council shall meet twice in every year at such times and places as shall be fixed by the chairman of such Provincial Council"

3.24.2 Section 23(1) further stipulates that Provincial Councils shall appoint committees to deal with questions of finance, health, education and agriculture, and appoint such other standing or special committees to deal with such other questions as such Council may consider appropriate. On the frequency of Provincial Council meetings Sect. 24 of the Regulations states:

"Each Provincial Council shall, not later than 31 March in each and every year, prepare and submit to the Minister a report upon its activities for the year ending on the 31 December then preceding."

3.24.3 Section 26 further states that:

"Each Provincial Council shall, not later than 21 October in each and every year, prepare and submit to

the Minister a detailed estimate of the revenue and expenditure of the Council for the year commencing on 1 January then next following; and no expenditure may be incurred by the Provincial Council except –

- (a) in accordance with the estimates approved by the Minister; or
- (b) as may receive the special sanction of the Minister."

3.25 Based on the above provisions the Provincial Councils meetings have always been scheduled for May (to discuss development issues) and October (to finalise the budget).

3.26 If the Provincial Councils in the maritime division such as Lau and Lomaiviti, with their many islands, most of which are larger than Rotuma and scattered over a wider area of open waters and with their respective population counts far greater than that of Rotuma, can operate effectively within the perimeters of the regulation governing their work, we see no reason why this cannot be the ***modus operandi*** in Rotuma.


3.27 The provision of Sect. 13(3) of the Rotuma Act states that:

"Members of the public shall not be admitted to meetings of the Council except at the express invitation of the Council."

Strong views have been expressed against this provision. It is felt that the provision is archaic and discriminatory and an infringement of individual rights and also runs counter to the principles of accountability and transparency. If Parliament, the highest court in any democracy, has public galleries within its chambers for the public to be able to observe their elected representatives at work, then the present provision should be removed and attendance be allowed subject of course to availability of space.

3.28 Section 14 of the Rotuma Act is open to various interpretations in terms of the language which the minutes of meetings of the Council to be written in. One assumes that, because a copy of the minutes is to be forwarded to the Minister, the intention is for the minutes to be written in English.

At
3.29 ~~It~~ Provincial Council meetings the entire proceedings is conducted in the dialect of the Province concerned and the minutes of the meeting written in the vernacular. We consider this practice very appropriate in sustaining the purity of the language in an era greatly influenced by technological advancements that have a communication code of their own. As language is a means by which a group of people is identified, we consider it pertinent that the Rotuma Act dictates that the minutes of the meeting of the FORUM be written in Rotuman and translated to English. If in the interpretation of any parts of the minutes there exists an apparent difference in the English version and the one written in Rotuman, ~~the~~ Rotuman version prevails.

 Permit the minute a
~~to~~ re-examine the actual
meaning thereof
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- 3.30 Any issue to be tabled before the FORUM that ~~is of~~
customs and tradition must first have the concurrence of four (4) of
the seven (7) district chiefs in the FORUM before the issue could be
discussed and finalized by the FORUM.

RECOMMENDATIONS

COUNCIL OF CHIEFS OF ROTUMA

7. **The district chiefs to have their own assembly called Tauna on
Gagaj ne Rotuma (The Council of Chiefs of Rotuma) and to be
hereafter referred to as the COUNCIL. The members of the
COUNCIL shall be the seven district chiefs and their seven
* 'faufisi' (chief next to the district chief in ranking order).**
8. **The Minister to nominate two members of the
COUNCIL from the wider Rotuman community who are
respectable people in the society who have had a
distinguished career in any aspect of national and
international life whether in the public or private sectors and
who are also registered in the register of land owning units
(kainaga) as stipulated in the Rotuma Lands Act (Cap. 138).**
9. **The District Officer Rotuma, as Government's ~~and~~
representative on the island and one who ~~can~~
COUNCIL on Government's policies and ~~program~~
an ex-officio member.**

10. The COUNCIL shall appoint a chairman from its membership and also may make rules regulating its proceedings and the mode of conducting its business.

11. Decisions of the COUNCIL shall be made by a majority vote of those present and voting and in the case of an equality of votes, the chairman shall in addition to a deliberate vote have also a casting vote.

12. The quorum of the COUNCIL shall be not less than nine, of whom at least four shall be District Chiefs.

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7
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1 — 12 (9)

13. Nominated members of the COUNCIL shall hold office for such period as may be specified in the notice of appointment and shall be eligible for re-appointment.

14. (1) The COUNCIL shall be concerned with:

(a) matters that impact on custom and tradition, such issues as traditional protocol, traditional processes of resolving disputes within the 'vanua' and general matters relating to their roles as traditional leaders;

(b) undertake any other duties or functions imposed on it by the provisions of any Act.

(2) Before making any recommendations on any matter, the COUNCIL may appoint any person or committee consisting of a chairman and of such members of the COUNCIL or of co-opted members from outside the COUNCIL as it may deem suitable, to consider such matter and report back thereon.

(3) Before taking any decision or making any recommendations on any matter, the COUNCIL shall decide whether or not to refer such matters to the District Councils (Tauna' ne Itu'u) or the FORUM for their consideration and recommendation.

15. (1) The Council shall meet at least once in every year at such time and place as the Minister may from time to time determine.

(2) Members of the public shall not be admitted to meetings of the COUNCIL except at the express invitation of the Council.

FORUM OF THE ROTUMAN PEOPLE

16. The Council of Rotuma as it was previously known shall now be called the FORUM OF THE ROTUMAN PEOPLE TAUNÁ' 'ON FAMÖR ROTUMA hereinafter referred to as the FORUM and to comprise of twenty members as follows: the seven district chiefs, the seven elected representatives representing each of the seven districts; four members from closely settled areas (Suva - 2, Nadi, Nadroga, Navua - 1, Lautoka, Ba, Tavua, Vatukoula, Ra - 1), a member representing women's organizations, the District Officer, Rotuma.

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2
4 S-2
N/VV-1
LBTV-1
* 1 woman
LAD.
* youth

17. It shall be the duty of the FORUM -

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7
4 - Suva 2
N/VV-1
LBTV 1
woman 1

- (a) to consider all such questions relating to the good government and well-being of the Rotuman community in the island as may be directed by the Minister or may seem to them to require their attention;
- (b) to consider other issues that may impact on the Rotuman people generally;
- (c) to administer the Rotuma Development Fund established by this Act and to carry out all such functions as may be required by law or necessary or desirable in connection with such Fund.

18. The FORUM may make Rotuma Regulations as prescribed at Section 16 of the Act.

19. The FORUM shall meet twice in every year at such times and places as shall be fixed by the chairperson as follows: not later than 31 March in each year and every year prepare and submit to the Minister a report upon its activities for the year ending on 31 December then preceding and again not later than 21 October in each year and every year prepare and submit to the Minister a detailed estimate of the revenue and expenditure of the FORUM for the year commencing on 1 January then next following.

20. The FORUM shall appoint committees to deal with the questions of finance, health, education and agriculture and may appoint such other standing or special committees to deal with such other questions that the Council may consider appropriate.

21. That, subject to the availability of space, members of the public may attend any plenary session of the FORUM.

22. That the minutes of every meeting of the FORUM and those of the various Committees to be appointed written in the Rotuman language and be signed by the chairperson who shall forward a copy to the Minister. If in the interpretation of

minutes there exists an apparent difference in the English version and the one in Rotuman, the Rotuman version prevails.

23. Any issue to be tabled before the FORUM that may impinge on customs and tradition must first have the concurrence of the four (4) of the seven (7) district chiefs in the FORUM before the issue could be discussed and finalized by the FORUM.

3.30 Section 18 - Election of District Chiefs

3.30.1 Before we look into the Election of District Chief, it is considered important that we first look at the role, or what is perceived to be the role, of the District Chief.

3.30.2 The oral history of Rotuma revealed that the ultimate source of prosperity was the spirit world and the chiefly 'mosega' (chiefly family) whose responsibility it was to appoint the one to be the district chief from amongst its own often claimed able to trace descent to the atuā he'o (spirit of the district). The belief was also that it was the responsibility of the district chief
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to act as intermediary with their traditional god in that world. If the link was strong the district would be richly blessed in terms of human fertility and the abundance of the produce from the land and the sea.

3.30.3 A.L. Parke in ROTUMA (Custom, Practice and Change) quoting from Gardiner stated:

not absolute

"The power of the **gagaja** (district chief) in his district was not arbitrary; he was assisted by a council of possessors of the **ho'aga** names, which might reverse any action of his. Conflicts between the chief and his council were rare so long as his decisions were in accordance with, and he did not infringe, the Rotuman customs.

He was called upon to decide disputes about land between **ho'aga** or within a **ho'aga**, if its **pure** could not settle it' disputes between individuals of different **ho'aga** were referred to him.

He would call out the district for fish driving, war or any work in which all were interested ... Anyone receiving the **ho'aga** name had to be recognized by him on their election before they could take it. As a set-off to these, he received to ~~some~~ extent first fruits and a present of food from each of the parties to any suit, which might be held before him in district."

3.30.4 Today, in addition to those expectations quoted, he customarily organizes activities in his district as an arbitrator in disputes. He is honoured by special ceremonies. He does not, unless he is appointed **kamaga**, exercise any powers of allocation. With the advent of Christianity the **adan** became the sole intermediary with their god in the

overshadowed by the Christian belief that all have the right of direct access to the Creator upon the fulfillment of pre-determined conditions. The district chief is a member, by virtue of his traditional position, of the existing Council of Rotuma, which body is bestowed with statutory powers to consider issues relating to the good government and well being of the Rotuman community in the island.

3.30.5 Despite the changes that have taken place in terms of infrastructure development, education and the ever mind boggling advancements in technology, there still exists the belief that the district chief is still endowed with awe-inspiring mana if he is faithful in carrying out his traditional obligations as chief.

3.31.1 We have tried to illustrate the tremendous sway a district chief has over the lives and livelihood of the people of his district and how he can utilize that sway to persuade his people to accept the importance of traditional values in the sustenance of harmonious co-existence in the district and indeed for the entire island and the Rotuman people in general.

The chiefs should therefore be encouraged to be more pro-active and lead their people to look at issues challenging them and to take decisions at district council levels, within the perimeters allowable in law, to address those issues.

3.31.2 Rotumans are devout Christians and the call has been made that spiritual and religious teaching in the village situation and the school system be encouraged. There is, however, a worrying trend and that is the influx of **new churches** making a beach-head as though the inhabitants are still walking around wearing only grass skirts with their faces heavily smeared in war paint. The matter at issue is that the teachings and practices of these new comers run counter to cultural and traditional norms and is causing confusion and anxiety amongst the villages and it is feared that one day may lead to unpleasant consequences. This is a situation where district chiefs should be very proactive and together with the sub-chiefs use their traditional positions and influence in resolving the challenge before them.

3.31.3 Whilst the freedom of worship must remain sacrosanct we feel that some measure of control need to be enshrined in the statutes to avoid any offensive situation from eventuating. The measure of control may only entail the statute acknowledging the importance of native custom and tradition in the harmonious co-existence of the people. A case in point was the emergence of a situation after the 1987 coup whereby a minority group of marshal arts exponents formed themselves into a cult and arrogantly and disrespectfully disputed the viability and credibility of Rotumas chiefly system. That situation almost flared into open confrontation but for the timely intervention of the State. Such a situation must be prevented from recurring.

3.32 Responsibility of the "mosega" in the selection process

- 3.32.1.1 The district chief should, by custom, be elected by members of the chiefly families (**mosega**) in the district from among those members of each **mosega** in turn. During the election process
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no commoner is allowed to either participate or stand for election and also no **mosega** should retain for its members the position which should be rotated from **mosega** to **mosega** in turn. There have been cases where the chiefly families could not agree as to which **mosegas** turn it was to put up the candidate and in those cases the state, very reluctantly, had to intervene to prevent any unpleasant consequences.

*"The political powers of the district chief were not based on the supernatural but rather on ~~the fact that he was awarded~~ an **as togi** from which he derived his authority. It was not the fact of his blood alone which gained him this title. It was the choice of his **mosega** based on certain generally accepted principles. Since he could be selected for the **as togi** and since the holding of the title was tied up closely with his appointment as district chief, he could be deposed if he got*

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*too far out of line. This was done through the chief's **mosega** who had the right to take away his title, and hence the basis of his authority, and allocate it to another."*

[ROTUMA (Custom, Practice and Change) by Aubrey L. Parke]

3.32.2

The current provision of the Act is also rather confusing because, whilst in one breadth the Act espouses the observation of custom in the election of the chief, Sect. 18(1), in another Sect. 18(2) it provides that: "***The Minister may in his discretion remove from office any District Chief.***"

We feel that in both situations custom must be observed and all avenues be exhausted to resolve the situation at the district level. The assistance of the state, through the District Officer, may be sought for an amicable solution but must not make the final call on the appointment and removal of a district chief. The Minister, we feel, should not be involved at all in the manner stipulated in the legislation, to do so would make a mockery of the Rotuman customs and tradition and, as a submittee puts it:

"So long as the situation does not develop and endanger peoples civil life we shall allow custom to continue, a solution must be found within custom rather than running to the courts to find a solution."

3.32.3(a)

If however a point is reached where customs and traditions seem unable to resolve the impasse which is necessary to make adjustments to customs and traditions in the interest of current needs and practicalities. The District Officer should then submit a report on the situation to the Commissioner Eastern Division. If the Commissioner is satisfied that all attempts at resolving the situation in accordance with customs and tradition has been exhausted and a solution not forthcoming, the Commissioner should recommend to the

Minister to appoint a Tribunal, consisting of a chairman and two other members of people well versed in native customs and tradition, to enquire and determine which mosegas turn it was to put up a candidate for the position and any such determination by the Tribunal shall be final.

- (b) For the purpose of clarity and also to prevent the possibility of any willful procrastination sapping in, the whole process from the beginning up to the point where the District Officer is required to submit his report to the Commissioner Eastern Division of the existence of an impasse, must be completed within a period of ninety (90) days from the date the chiefly position falls vacant.

3.33 A district chief continued as district chief until he died, retired of his own free will, or was persuaded to retire, or was removed from office by the Governor under sub-section 12(2) of the Rotuma Ordinance 1958. Before the 1958 Amendment of the Rotuma Ordinance there was no specific statutory procedure for the removal from office of a district chief. The Rotuma Act (Cap. 122) has now given the Minister statutory powers to remove a district chief in his discretion, Sect 18(2) refers.

3.34 There were recorded cases where district chiefs were either suspended or removed from office for impropriety by the colonial administrators. A few of such cases were at the insistence of the people. In the recent past the Minister did not

have to use his statutory powers to remove a district chief and the District Officer or the people of the district dealt with situations which led to the resignation of district chiefs.

3.35 Our view is that in a situation where a district chief is guilty of impropriety, which offence would be sufficient grounds for the Minister to exercise his statutory powers to remove a district chief, that in such a situation all the chiefly mosegas be convened and persuaded to effect appropriate remedial/disciplinary measures which may even include removal from the position. The exercise of statutory powers by the Minister should be on the advice of the chiefly mosegas after all customary and traditional processes have been exhausted and proved ineffective. The process of appointing a Tribunal referred to in the election of district chief at 3.32.3^{(a) and (b)} should be adopted.

RECOMMENDATIONS

24. That the Rotuma Act recognizes the importance of customs and traditions in the sustenance of harmonious co-existence in the village situation.
25. District Chiefs shall continue to be elected with Rotuman customs as hereinafter

26 (a) In the event that the chiefly mosegas could not agree as to which mosegas turn it was to put up the candidate the District Officer's assistance was to be sought for an amicable solution to be reached. If a resolution was not possible the District Officer should report the situation to the Commissioner Eastern Division who, after he has satisfied himself that custom has been exhausted and a solution was not possible, recommend to the Minister to appoint a Tribunal, consisting of a chairman and two other members of people who are well versed in native custom and tradition to enquire and determine which mosega it was to put up the candidate and such determination by the Tribunal shall be final.

(b) For the purpose of clarity and also to prevent the possibility of any willful procrastination sapping in, the whole process from the beginning up to the point where the District Officer is required to submit his report to the Commissioner Eastern Division of the existence of an impasse, must be completed within a period of ninety (90) days from the date the chiefly position falls vacant.

27. The disciplining or the subsequent removal of a District Chief for any action that has brought disrepute to the high office. Other acts of impropriety, it shall be the collective responsibility of the chiefly mosegas to decide on the appropriate action to take. The process leading up to the

and
26(a)(6)

appointment of a Tribunal at Recommendation No. 25 above should be adopted if the chiefly mosegas were unable to bring about a resolution. Again the decision of the Tribunal shall be final.

3.36 Section 19 - Election of Representative

3.36.1 To qualify to vote in the election of the representative for the district in which such Rotuman habitually resides the only criteria stipulated is **of the age of twenty one or over**. The same qualification is prescribed in respect of the person who wishes to stand as a candidate for election for such district. We feel that the above prescription is too basic and hardly able to sieve the wheat from the tare and that a new set of rules be put in place to at least ensure that the candidate is a person of good character and standing in the district.

3.37 We consider that similar provisions as in Sect. 55 of the 1997 Constitution be stipulated as the qualification requirements for both classes of people – candidate and elector and that in addition to the age, residential and good character qualifications, be the requirements for both the prospective candidate and the persons registered in the Register of Descendants (PEFR) as provided in the Lands Act (Cap. 138).

4. PART IV - ROTUMA DEVELOPMENT FUND

4.1 The Rotuma Development Fund established pursuant to Section 21 of the Act continues to remain established and the other existing provisions of Sections 22, 23, 24, 25 and 27 also remain applicable and that all references to the former Council of Rotuma in these sections are references to the **FORUM**.

5. PART V - ROTUMA AGRICULTURAL AND INDUSTRIAL LOAN FUND (Section 28)

5.1 It is important to continue having such a funding arrangement to help individuals in the island launch into small scale economic development projects given Rotumas geographical distance from Fiji where such lending facilities are available. We however consider it advisable that a condition of accessing the fund be imposed, such that one must have had the necessary basic training in the running of a small business before one may access the fund.

6. PART VI - GENERAL

6.1 The provision of Section 29 which states that the Rotuma Development Fund and the Rotuma Agricultural and Industrial Loan Fund shall "be audited from time to time as the Minister responsible for Finance may direct ..." must be noted that that provision was made at the time when transportation to the island was very irregular and

far apart. Now with a regular air service that provision seem archaic and inconsistent with modern financial and accounting practices. Audit of both Funds must be a regular annual event for obvious reasons.

RECOMMENDATIONS

28. We recommend that a person shall be entitled to be registered as an elector in accordance with Sect. 19 of the Act if he satisfies the registration officer that at the date of application for registration –

(a) *he/she is a Rotuman of or over the age of 18 years,*

(b) *he/she is able to understand and speak the Rotuman language,*

(c) *he/she has been resident in the district in which he/she applies to be registered as a voter for a period of more than six months in the aggregate out of the immediately preceding one year,*

(d) *he/she is registered in the register of landowners of the district he/she applies for registration as a voter.*

29. A person shall be qualified to stand for election as a candidate to represent a district if at the date of nomination as a candidate the person –

- (a) *has his/her name in the electoral roll for the district which he/she seeks to represent,*
- (b) *has been resident in such district for a period of more than 12 months in the aggregate out of the two years immediately preceding such nomination,*
- (c) *he/she is able to read and write in the Rotuman language,*
- (d) *for the purpose of avoidance of doubt women shall not be debarred from being candidates for election merely by reason of their sex.*

The remaining provisions of Sect. 19 remain unchanged.

30. That the following new disqualification provision in respect of the electors be put in place –

- (i) *no person shall be entitled to vote in any election if he/she is under sentence of imprisonment, by whatever name called, at the date of election,*
- (ii) *he/she is a person of unsound mind within the meaning of the Mental Treatment Act.*

30. That the following new disqualification provision^S be also put in place in respect of the candidates for election –

1. No person shall be entitled to be a candidate for election if he/she:

(i) is an undischarged bankrupt,

(ii) is under the sentence of imprisonment, by whatever name called, at the date of election,

(iii) has within the period of two years immediately preceding the election, been released from prison after serving a term of imprisonment of more than six months,

(iv) is a person of unsound mind within the meaning of the Mental Treatment Act,

(v) is an officer or servant of the Council paid out of the funds of the Council.

31. That the provisions of the law for the time being in force in connection with election petitions relating to elections to the House of Representatives shall apply *mutatis mutandis* for the election of candidates to the "FORUM OF THE ROTUMAN PEOPLE" under this Act.

REGULATIONS

We share the views expressed in the various submissions made during the public consultation process that some of the existing Regulations need rehashing in view of the new development programmes currently being undertaken and the modern lifestyle of the people today, some need to be deleted altogether as they are no longer relevant and some need additions or deletions made to them because circumstances have changed or new ones emerged. Our comments on the existing Regulations are therefore as follows:

(a) ROTUMA (BURIAL) REGULATIONS

We recommend that this Regulation be re-constructed to fall in line with the provisions of Sections 3, 4 & 5 of the Inquest Act (Cap. 46) where the police is involved when a report is received that a sudden or unnatural death has occurred.

(b) ROTUMA (EMIGRATION) REGULATIONS

This Regulation contravenes the principles of human rights and the freedom of movement and should be repealed and we recommend accordingly.

(c) ROTUMA (DESTRUCTION OF TREES) REGULATIONS

"Useful trees" as listed in Section 3 are trees that act as water and wind breakers along the coast-line and, for obvious reasons, the existing protection should remain and be strictly observed.

There is also the need to increase the scope of "useful trees" such that an adequate water shed is maintained. The need to do this has become prominent with the current move to intensify agriculture to support the export trade with Tuvalu and elsewhere. This move will change the landscape from subsistence cultivation to intensive commercial farming and will result in the forest cover becoming the main casualty.

The other cause of indiscriminate felling of trees is the search for fuel to stoke the kilns at copra-driers. The people should be required to use coconut husks as the main source of fuel with wood fuel as a supplement. Felling of trees for this purpose and also the felling of the indigenous forest in non-arable lands for whatever purpose, must, for control purposes, require a permit specifying the areas from which the trees are to be cut and the volume. The permit to be issued by the District Officer on the recommendation of the Agricultural Officer after the concurrence of the 'kainaga' concerned has been obtained.

RECOMMENDATIONS

1. The list of "useful trees" be enlarged to include poi, mori, fao, faorau, vi and mahogany.

2. The felling of trees on arable land for the purpose of expanding existing farm holdings or for the opening up of new farm lands, is subject to the issuance of a permit by the District Officer so that an effective water shed is maintained. The District Officer will be guided by the recommendation of the Agricultural Officer ~~✱~~ after the concurrence of the 'pure' (head) of the 'kainaga' (mataqali) land has been obtained.

3. The felling of trees for fuel purposes and the felling of the indigenous forest in non-arable land for whatever purpose also ~~✱~~ requires the issuance of a permit such as described at 2 above.

(d) ROTUMA (GAMBLING) REGULATIONS

This Regulation is considered too restrictive almost to the point of being primitive. The Rotumans on the island who have been to Fiji have seen at the Hibiscus Carnival and other such festivals the operation of a multitude of games of chances, and to restrict such festival joys and attractions in Rotuma is a bit hard to digest. Perhaps the rules ought to be relaxed to allow such festival niceties to be enjoyed by the people when they decide to hold their island kind of festivals and such be subject to the issuance of the relevant permit by the authority concerned.

We recommend that the existing Regulation be re-constructed to allow the operation of games of chances at fund raising occasions subject to the issuance of the appropriate permit by the relevant authority.

(e) **ROTUMA (CONTROL OF STOCK) REGULATIONS**

In the Regulations the term "pigs" does not include young pigs of less than six months of age. The obvious question is: "How can the villager know that the animal is less than six months of age if the animal is big in size and the villager has only seen it for the first time?"

Also the provision that the villager "who kills a pig as above sanctioned" shall make inquiry as to the ownership of the slain pig, is open to gross abuse. The search for the owner should at least be narrowed down to a definite geographic location such as the village of the person who slew the animal and also the village nearest to his.

Other animals quoted at Sect. 6 should, if there is no gazetted pound in the vicinity, be properly and securely tethered and a report made to the Agricultural Officer who will assess the extent of the damage made to an property and the owner of such property may recover the damage from the owner of the animal.

RECOMMENDATIONS

1. That for the purpose of this Regulation the term "pigs" shall include old and young pigs regardless of age and this definition to also include goats, horses and cattle.

2. That Sect. 4 of the existing Regulations be re-written to require the villager who kills a pig "as above sanctioned" to make inquiries in his own village and the one next to his of the owner of the pig that has been killed.

(f) ROTUMA (PUBLIC HEALTH) REGULATIONS

These Regulations (Parts I, II & III) were submitted to Rotuman Medical Officers who had served in Rotuma in that capacity for their views and comments. The original Regulations are reprinted with the various comments received built into it and highlighted.

We recommend the adoption of the revised Regulations.

Regulations of Sept. 1939 [in force 8th March, 1940], 8th Dec, 1960 [in force 21st April, 1961], 23rd May, 1964 [in force 13th Nov., 1964], 2nd Sept., 1966

Made by the Rotuma Council and approved by the Legislative Council

Short title

1. These Regulations may be cited as the Rotuma (Public Health) Regulations.

Part I - Dwelling-House

Houses to be above ground

2. The floor level of every dwelling-house shall be not less than one foot above the ground. (*Substituted by Regulations 28th May, 1964.*)

Flooring of houses

3. Every dwelling-house shall be provided with either a wooden floor or a concrete floor upon which coral or shingle has been laid. In the case of a coral or shingle covered floor, coconut leaves and mats shall be used as additional covering.
(Substituted by Regulations 28th May, 1964.)

Refuse not to be used for filling

4. No refuse shall be used in filling in any house foundation.
(Amended by Regulations 28th May, 1964.)

Kitchen

5. Every dwelling shall be provided with kitchen accommodation which, if separate from the dwelling-house, shall not be less than twelve feet long and eight feet wide with walls not less than five feet high.

(Amended by Regulations 8th December, 1960, and 28th May, 1964.)

Land to be kept clean

6. It shall be the duty of the owners or occupiers of land within any village at all times to keep such land clean and free from weeds, rubbish and offensive matter.

Latrine

7. Every dwelling-house shall be provided with a latrine and no latrine shall be erected within thirty feet of any dwelling-house or road or in any other place to which the medical officer may object. No latrine may be constructed on a beach except with the express prior approval of the medical officer. **Toilets**

should have easy access to hand washing facilities either within or within one to two metres from the toilet facilities.

Specification for latrine

8. Each latrine shall have a floor area of not less than twelve square feet being provided with a removable pan or being built over a pit over which a concrete slab or wooden seat adequately covered and fly-proofed shall be placed. **Every new septic system should be checked and certified by the Medical Officer/Health Inspector prior to use.** (*Substituted by Regulations 28th May, 1964.*)

Specifications of dwelling-houses

9. ~~Every~~ dwelling-house shall have at least two doors and two windows and shall be not less than twenty-four feet long and fifteen feet wide with walls not less than five feet high. (*Substituted by Regulations 28th May, 1964.*)

Erection of dwelling-houses

10. ~~No person shall erect a dwelling-house without the prior approval of the chief of the district in which it is proposed that the dwelling-house shall be erected and before approval shall be given by such chief to the proposed erection, he shall consult with the medical officer.~~ (*Substituted by Regulations 28th May, 1964.*)

Penalty

11. Any person who fails to carry out any order so given to him or who fails to comply with any of the provisions of this Part shall be liable on conviction to a fine not exceeding fifty dollars and in default to imprisonment for any period not exceeding one month.

Part II – Sanitation

Food plantations

12. There shall be no food plantations within any village.

Bush and scrub

13. All bush and scrub shall be cleared for a distance of at least twenty yards, round every village.

Space round dwelling-house

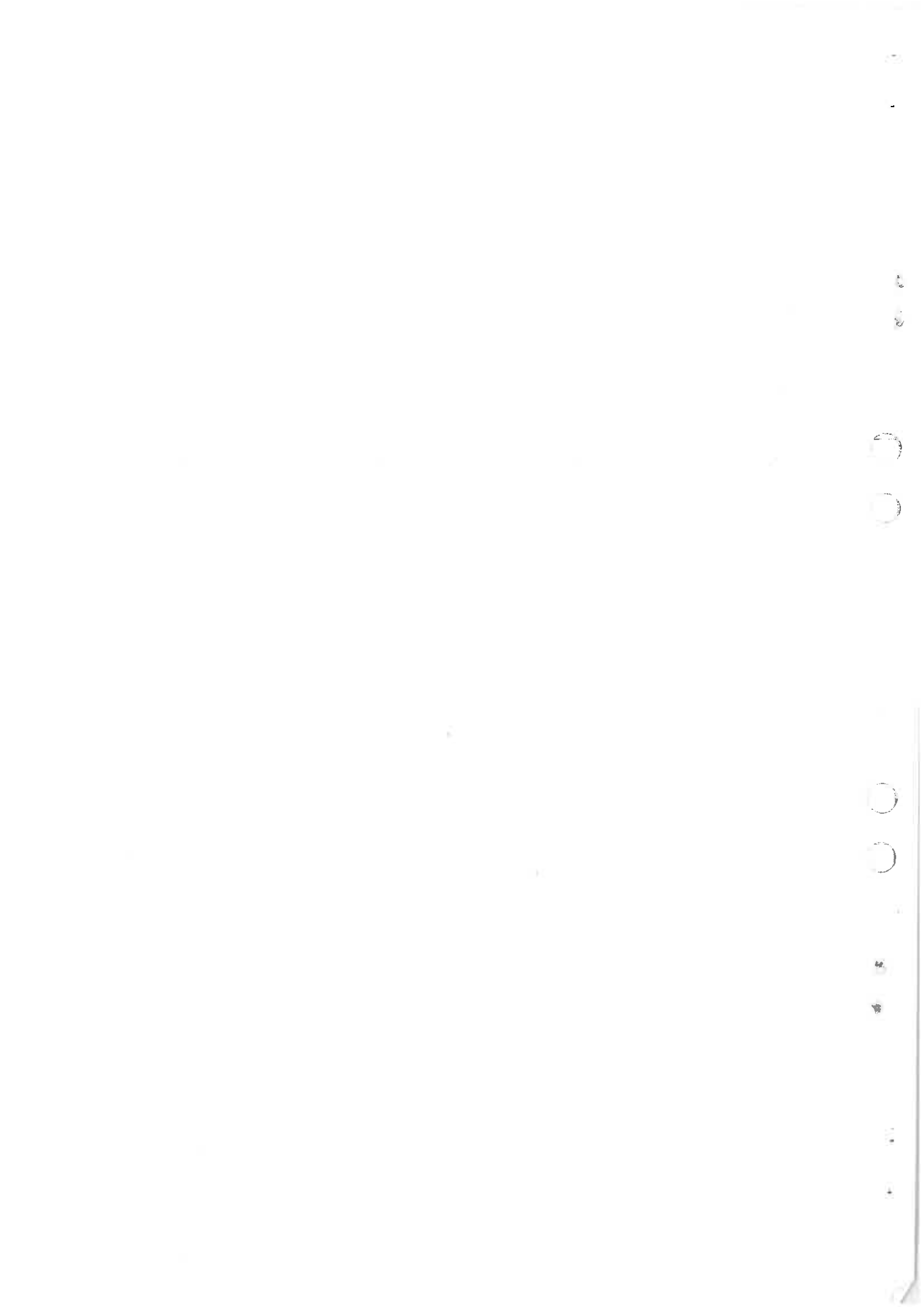
14. There shall be a free and unobstructed space between the sides and backs of all dwelling-houses of not less than twenty feet.

Guttering

15. All houses ~~roofed with material other than~~ thatch shall be provided with guttering which shall be so constructed that water can flow freely into the down-pipes. Gutters and down-pipes shall be kept in good repair and free from ~~obstruction~~.

Mosquito control

16. Every owner of premises on which is situated any barrel, tank or cistern, or other receptacle for the collection or storage of water shall fit such receptacle with a sufficient cover or screen so as to prevent the ingress of mosquitoes and shall at all times maintain the said barrel, tank, cistern or other receptacle in a clean condition to the satisfaction of the District Officer or Medical



Notification of infectious disease

20. All infectious diseases shall be at once notified, in the case of a sick child by the parent or guardian and in the case of a sick adult by the householder in whose house the illness occurs or by any other adult inmate of the house, to the medical officer, who shall inform the District Officer. **It is mandatory for the medical officer to immediately activate the process of informing his superiors in Suva of any public health events of international significance such as outbreaks and biological threats.**

Isolation of person suffering from infectious disease

21. The District Officer or medical officer shall have power to order the isolation or removal to hospital of persons suffering **or suspected** from any infectious disease and no person so isolated or removed to hospital shall leave or be taken from the place where he has been isolated or leave the hospital or be taken from it unless ordered to do so by the medical officer. **The District Officer or the medical officer shall have the authority to investigate, isolate or quarantine any persons affected by an infectious disease by virtue of a high clinical suspicion of a threatening medical disease.**

Isolation of person who has been in contact with infectious disease

22. Any person who has been in contact with a person suffering from any infectious disease or who is known to have rendered himself liable in any other way to infection by any infectious disease shall, if so ordered by the medical officer remain in his town or in such place as the medical officer may direct for such period not exceeding fourteen days as the medical officer may direct.

Destruction of infected house or article

23. The District Officer or medical officer may order the removal, disinfection or destruction of houses or anything therein that has been exposed to infection. **Similarly the District Officer or medical officer may restrict the movements of people whether affected by the disease or free from disease but highly at risk from a threatening disease.**

Children with disease

24. ~~No~~ person, being the parent or having the care of a child who is or has been suffering from infectious disease **or suspected case or a contact** shall permit ~~the child~~ attend school unless the child has been certified to be free from infection by the medical officer.

Body to be removed for burial only

25. ~~If any~~ person shall die from any infectious disease in any hospital or place of isolation for the sick, the body shall not be removed from the hospital or place of isolation aforesaid, except for the purpose of immediate burial, without the authority of the medical officer in charge. **Option without consent of immediate burial in cases of severe infectious diseases.**

Restriction on custom

26. When a person dies from an infectious disease, the custom of kissing or handling the body and physical contact with the deceased personal belongings which must be disposed of, is prohibited.

Burial to be without delay

27. There shall be no delay in the burial of bodies after death from infectious disease. The District Officer or medical officer shall have power to order the immediate burial of bodies of persons who have died from infectious disease and to direct where such bodies shall be buried. Any person who, being responsible for the burial of any such body, refuses or neglects to comply with any such order as aforesaid shall be guilty of a breach of these Regulations.

Quarantine of area

28. The District Officer or medical officer may order any locality or district to be quarantined or isolated if in his opinion the spread of any infectious disease can thereby be checked and any persons entering or leaving such locality or district against the orders of the District Officer or the medical officer shall be guilty of a breach of these Regulations.

29. Any person who knowingly commits a breach of any of the provisions of this Part shall be liable on conviction to a fine not exceeding **two hundred** dollars or in default of payment to imprisonment for any period not exceeding four months.

ROTUMA (MAINTENANCE) REGULATIONS

Perhaps the only change that needs to be effected here is to fix the quantum of the penalty to a more realistic level that will serve as a deterrent. **We recommend a fine not exceeding fifty dollars.**

(h) **ROTUMA (TRESPASS) REGULATIONS**

The amendments required are the deletions of the word Minister from all sections of the Regulation and where appropriate replaced by 'the District Officer' and 'Her Majesty' be deleted and substituted by 'the State'.

(i) **ROTUMA (COCONUT PLANTATION) REGULATIONS**

Our view is that to entertain such a Regulation tantamounts to excessive legislation. The planting of new trees and the regular clearing of the undergrowth are activities that need not be legislated upon. The people at district and at 'hoaga' (grouping of families) meetings be made to accept that they owe it to themselves and their future generations to plant and maintain their 'kainaga' (mataqali) coconut

We prefer that this new approach be adopted. If anything, it should be considered an embarrassment if such a Regulation is allowed to be the order of things.

We accordingly recommend the deletion of this Regulation.

(j) **ROTUMA (PRIMARY SCHOOLS) REGULATIONS**

The need for this Regulation is now overtaken by the new education legislation and therefore **we recommend its deletion.**

NEW REGULATIONS

Although it is outside our Terms of Reference to introduce a set of new legislations and, also since the powers to do so under the Rotuma Act is bestowed solely on the then Council of Rotuma now the Forum of the Rotuman People, we however feel obliged to bring to the attention of Government and the Forum in particular the need to introduce, as a matter of urgency, a new regulation to control the use of pesticides so that some degree of protection is effected on the environment, particularly the contamination of the artesian water source. This move is important now that Rotuma has been declared a port of entry and will soon launch into commercial agro-based undertakings with Tuvalu, Kiribati and elsewhere in the region and for the first time the arable land of the island will be subjected to intensive farming and the use of pesticides will be the order of the day.

On the question of Bio-security and Environment protection, we consider those issues adequately covered in the Environment Management Act 2005 (No. 1 of 2005) and its subsequent regulations of 2007.

Without prejudice to the provisions that it is the Forum of the Rotuman People that introduces new Regulations, we have taken the liberty of putting together a draft regulation to control the use of pesticides for the consideration of the Forum.