

Strategic Action Programme
for the International Waters of the
Pacific Small Islands Developing States

Review of Legislation and Regulation

National Assessment
of Environment, Natural Resources and
Relevant Related Legislation and Regulation
in Solomon Islands

2003



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Preface

The International Waters Programme (IWP) is a 5-year programme for 14 participating Pacific Island Countries; Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

It is funded by the Global Environment Facility (GEF), implemented by the United Nations Development Programme (UNDP) and executed by the South Pacific Regional Environment Programme (SPREP). The objectives and broad activities of the IWP are described in a Project Document that was signed by SPREP and UNDP in February 2000.

The IWP has two main components: an oceanic component which focuses on the management and conservation of tuna stocks in the western central Pacific and a coastal component that focuses on integrated coastal watershed management. The coastal component involves the implementation of 14 pilot projects that address sustainable resource management and conservation issues in the coastal zone. This document refers to the coastal component of the IWP.

The stated objective of the coastal component of the IWP is to “address root causes of the degradation of international waters in coastal regions through a programme focused on improved integrated coastal and watershed management”.

The pilot projects will support action at the local community level to address priority environmental concerns within participating countries relating to:

- Marine and freshwater quality;
- Habitat modification and degradation; and
- Unsustainable use of living marine resources.

The pilot projects will seek to strengthen capacity and provide lessons for best practice and appropriate methodologies for sustainable resource management and conservation in four focal areas relating to:

- Marine protected areas;
- Sustainable coastal fisheries;
- The protection of freshwater resources; and
- Community-based waste reduction.

Opportunities to develop pilot projects that integrate one or more IWP focal areas will be explored during initial discussions on the selection of pilot projects.

Acknowledgment

The preparation of this report benefited from assistance from Mr. Kenneth Bulehite, National Coordinator for the International Waters Program, Solomon Islands. I wish to thank him for his kind assistance. A big thank you also goes out to those who have given their time and provide me with information. Without them this report would not have been made. They are: -

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I am also deeply grateful for the GEF, UNDP and SPREP funding which made this project possible.

John Haurae
Legal Consultant

Executive Summary

The term "environment" in the Environment Act, (No 8 of 1998), is defined as *"all natural and social systems and their constituent parts, and the interaction of their constituent parts, including people, communities and economic, aesthetic, culture and social factors"*. Human activities impact its natural and social environment in many ways. Where the activity involves the use or exploitation of its natural resources the impact could have negative effect on its natural environment. The use of its natural resources grows with its human population and hence the impact on the environment.

With the increased population growth and the human activities, more particularly in the commercial sector, the need to take measures to protect its natural environment is becoming more important and urgent.

Sustainable management of our natural resources is perhaps the only way to ensure that future generations enjoy the natural resources that most of us now take for granted. Social and economic activities need to be regulated if sustainable management is to be realized. One of the ways to regulate our activities is through legislation which imposes upon us responsibilities and obligations to control what we should and should not do and how to do it. As technologies change, so is the need to change our behavior in how we relate to these changes. These will inevitably require changes to our legislation to accommodate these developments. There are currently laws in Solomon Islands which directly or indirectly relate to the natural environment and the natural resources.

This report will examine some of this legislation in accordance with the TOR to determine their effectiveness in protecting Solomon Islands natural environment as it exploits its natural resources. Most are pre-independence legislation which, in many respects might need significant changes to accommodate recent advances in commercial and social activities. Listed below are the legislation which will be reviewed in this report, and in accordance with the TOR. It may well be the case that in light of this review, significant inadequacies in the law would be identified, hence the necessity to enact new legislation to cure any such inadequacies.

- (i) The Constitution
- (ii) Environment Act, (No 8 of 1998)
- (iii) Wild Birds Protection Act, (Cap 45)
- (iv) Wildlife Protection Act, (No 10 of 1998)
- (v) Fisheries Act, (No 6 of 1998)
- (vi) Fisheries (United States of America) (Treaty), (Cap 39)
- (vii) Continental Shelf Act, (Cap 94)
- (viii) Mines and Minerals Act, (Cap 42)
- (ix) Petroleum (Exploration) Act, (Cap 44)
- (x) Ports Act, (Cap 161)
- (xi) The Shipping Act, (No 5 of 1998)
- (xii) Forest Resources and Timber Utilisation Act, (Cap 40).
- (xiii) National Parks Act, (Cap 149)
- (xiv) River Waters Act
- (xv) Environmental Health Act, (Cap 99)

- (xvi) Land and Titles Act, (Cap 133)
- (xvii) Town and Country Planning Act
- (xviii) Local Government Act, (Cap 117)
- (xix) Provincial Ordinances

Conclusion

Good and sustainable management of the natural resources of Solomon Islands are not entirely dependant on legislation. Good laws must be accompanied by effective implementation. Effective implementation can only be achieved with adequate resources, both human and financial. Most of the important legislation dealing with natural resources are fairly recent and are not in need of any major review.

The Environment Act needs to be brought into operation. It is the only legislation whose primary goal is the protection of our environment, all other legislation are supplementary. The Protection of Wildlife Act also needs to be brought into operation. Solomon Islands is a party to numerous international Conventions dealing with wildlife, for instance the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Membership of international bodies entails not only benefits but also obligations. Without these legislations in place proper management of resources would not be possible.

1 Introduction

Geographical Location

Solomon Islands comprises about 100 islands including six main islands- Choiseul, Guadalcanal, Isabel, Makira, Malaita, and New Georgia- located in 1,800 kilometers north-east of Australia between 5 degrees and 12 degrees south latitude and between 155 degrees and 177 degrees east longitude.

The Islands have an equatorial climate with high humidity- sometimes reaching 90% saturation- but modified by trade winds from the sea. The temperature is a fairly consistent 28-30 degrees centigrade throughout the year and rain falls in short, heavy bursts all year round, although the months between November and April are known as the rainy season.

The population carried out roughly every ten years, the latest having an EU- funded project in 1999, of which the results were released in early July, 2001. This counts the Solomon Islands population at 410,000 people, compared to an estimated 426,000 people in 1997, before the so-called "ethnic tension" began. The annual population growth was then 3.5% and although it has shrunk to 2.8% now, still amongst the highest in the world¹.

¹ *Linette Smit and Patrick Ryan, Solomon Islands Trade Directory, 2002, 27 Edition*

2 Scope of Consultancy

Background

International Waters Programme – Solomon Islands is part of the 5-year programme International Waters Programme (IWP) for 14 participating Pacific Island Countries², which is funded by the Global Environment Facility (GEF), implemented by the United Nations Development Programme (UNDP) and executed by the South Pacific Regional Environment Programme (SPREP). International Waters Programme is a programme, which is extend far inland and far out to sea; covers all systems includes oceans, large marine ecosystems, enclosed and semi enclosed seas and estuaries, as well as rivers, lakes ground water systems and wetlands with trans boundary drainage basins or common borders. The ecosystem and habitants associated with these waters are essential parts of the system.

The principal focus of the IWP is community-based activities associated with the conservation and preservation of freshwater, community-based waste management and the sustainable use of coastal resources.

OBJECTIVE

To review environment, natural resources and all related legislations and regulations in Solomon Islands.

SCOPE OF WORK & TASKS

The consultancy will be undertaken in two Phases.

Phase 1

Provide a comprehensive review of current legislation covering environmental and natural resources (marine and terrestrial) and other legislation, which has a bearing on such resources. The review will include the objectives of relevant legislation, its administration, its regulatory and planning provisions as well as a summary of the functions of bodies established by the legislation.

Phase II.

On the basis of the report prepared for Phase 1 instructions will be provided to the consultant in respect of additional work, which may include:

- Identify any overlaps, conflicts and gaps in the current legislation. This section should recommend for particular areas of conflict to be addressed.
- Identify potential in the legislation to support the Government in respect to the responsible management of the environment and the sustainable use and conservation of natural resources.
- Identify barriers to the effective implementation of existing legislation to achieve the above potential.

² Cook Islands Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

- Profile environment and natural resource-related Bills; analyze the status of consideration of each Bill and assess prospects for its enactment and entry into force.
- Identify any proposed reviews of legislation and explain the intent of such reviews.

REPORTING REQUIREMENTS

The consultants /group will be required to provide a comprehensive report containing a list of current legislation covering environmental and natural resources (marine and terrestrial) and other legislation, which has a bearing on such resources, include the objectives of relevant legislation, its administration, its regulatory and planning provisions as well as a summary of the functions of bodies established by the legislation and various issues stipulate in phase ii of the scope of work.

Time Schedules

The time schedule for the consultant to complete the task is five weeks from the signing of the contract agreement between the National Coordinator and Consultant. Five weeks shall be scheduled as follows:

- Phase 1 will be completed within a 2-week timeframe.
- Phase II will be completed within a 3-week time frame.

3 Constitution

3.1 The Constitution

The Constitution is the supreme law in Solomon Islands. All forms of legislation in Solomon Islands have their legitimacy in the Constitution. The Constitution provides the legal basis for the enactment of laws by establishing and vesting in the National Parliament the power to make laws for Solomon Islands, (*sections 46 and 59*). Any law which is inconsistent to any provision of the Constitution; to extend of such inconsistency is null and void and of no effect.

Relevant to this report, the preamble of the Constitution declares that the natural resources of Solomon Islands are vested in the people and government of the Solomon Islands. This declaration is significant in that adopts the common law concept where the State owns the natural resources, in particular the mineral resources, and the perception that natural resources, including mineral resources are owned by the people. Natural resources related legislation reflects this position. Section 2(1) of the Mines and Mineral Act, for instance provides that *"all minerals of every description in or under the all lands of whatsoever ownership or tenure or in whatever possession or enjoyment they may be, are and shall be deemed always to have been, vested in the people and the Government of Solomon Islands"*. A similar provision is also found in the Petroleum Act.

Section 8 of the Constitution provides for the protection from deprivation of property. It however, provides for situations where property may be acquired. For instance property may be acquired under section 8 (2) (vii) for the purpose of carrying out any work relating to soil conservation or of conservation of other natural resources. Where property is taken under this section or any other law, the owner is entitled to adequate compensation. In the context of management of our natural resources, this provision has no bearing. Exploitation of natural resources are mostly done or carried out for commercial purposes hence are dealt with in more detail in the relevant legislation. Furthermore it does not in any way affect or erodes ownership of the resources. The Constitution gives recognition to customary law hence recognizes customary ownership of customary land. As has been highlighted in this study, it is the ownership of the resources that needs to be addressed and transferred to the persons having customary rights over the land.

4 Environment

4.1 The Environment Act, (No 8 of 1998).

This Act was passed in 1998 and published in the Gazette on the 26th October, 1999, as gazette notice No 53 of 1999. Unfortunately this Act has not yet come into force. In spite of this, the passage of the bill in Parliament was in itself a substantial step in its efforts to manage its environment.

Objectives of the Act

The objectives of this Act as summarized in its long title stipulate, "An Act to make provisions for the protection and conservation of the environment, the establishment of the Environment and Conservation Division and the Environment Advisory Committee. The Act defines the environment as *"including all natural and social systems and their constituent parts, and the interactions of their constituent parts, including people, communities and economic, aesthetic, cultural and social factors"* (section 2). The objectives should be read within this broad definition. The objectives of the Act are stipulated as:

- (a) to provide for and establish integrated systems of development control, environmental impact assessment and pollution control;
- (b) to prevent, control and monitor pollution;
- (c) to reduce risks to human health and prevent degradation of the environment by all practical means, including the following means:
 - (i) regulating the discharge of pollution to the air, water and land;
 - (ii) regulating the transport, collection, treatment, storage and disposal of wastes;
 - (iii) promoting recycling, re-use and recovery of materials in an economically viable manner; and
- (d) To comply with and give effect to regional and international conventions and obligations relating to the environment.

Where there is an inconsistency between this Act and the provisions of any other Act, the provisions of this Act shall prevail.

Administration

The responsibility for administering this Act lays with the Director, hence the establishment of the Environment and Conservation Division is established under the Act. The powers and functions of the Director are clearly spelt out in the Act. They are:

- (a) managing and controlling the affairs of the Division;
- (b) advising the Minister on matters concerning any aspects of the environment and in relation to any of the functions, powers and responsibilities of the Division;
- (c) promote coordination among Ministries and government divisions;
- (d) revise and amend the national environmental strategies and programme as necessary
- (e) develop, coordinate and facilitate implementation of national policy concerning environmental planning, environmental impact assessment and pollution control;
- (f) monitor and advise on international developments in environmental matters and to ensure the fulfillment of obligations of Solomon Islands under the relevant international and required treaties and conventions;

- (g) devise a comprehensive community participation policy concerning all aspects of the Division's work, and facilitate the implementation of such policy;
- (h) conduct and promote environmental research, environment education and environmental quality objectives; and
- (i) carry out such other acts as he thinks necessary to properly discharge the functions and generally for carrying out the objects of the Act.

The Minister, in consultation with the Director, has power to give direction on matters of policy to the Division. This will ensure that government policies are given effect to by the Division. An Environmental Advisory Committee is also established with well defined powers and functions. This Committee is to be appointed by the Minister. The functions and powers of the Committee shall be to advise the Director or the Minister as the case may require, on any matters connected with environment and conservation referred to it by the Minister for advice, and to conduct or perform any task assigned to it under the provision of the Act. It is not a requirement of the Act that members of the Committee have special skills or qualification, however, the Minister in making appointment may take these factors into consideration.

The administration of the Act is done in two stages:

- (a) The Advisory Committee or the Director advises the Minister on matters of policy relating to environment as the Minister may require. They are also involved in planning; and
- (b) The Division is responsible for the daily operations of the Act. The Director or the Inspectors who are appointed under the Act ensure that any development to which approval has been given is carried out in accordance with the Act.

Regulatory Procedure

The procedure for obtaining approval to carry out a prescribed development (*prescribed developments are listed in the Second Schedule*) is stipulated in the Act and the Director has power to either approve or reject any application for approval to undertake a prescribed development. The procedure is as follows:

- (a) Application to undertake a prescribed development or further extension of an existing development is made to the Director in the prescribed form. In considering whether or not to grant an approval, the Director, the Division and the relevant public authority shall have regard as far as practicable to the effect such development or expansion shall have on the environment.
- (b) Within fifteen days after receipt of the application the Director must advise the applicant to submit a development environment report and an environmental impact statement. In the case where the developer is a foreign investor, a certified copy of the Investment Board's Certificate of Approval must be attached to the application. Where the application is made in respect of an existing development and a development application has not been submitted, the Director may require the applicant to provide a development application or a public environment report.
- (c) No prescribed development is to be undertaken without the consent of the Director and no consent shall be given unless the relevant information are provided in accordance with the Act.
- (d) The contents of the environment report describing the proposed development to be made public. Any person whose interest is likely to be affected by the development may raise objection to the Director who shall examine the grounds, if any, for such

objections. The Director may upon receipt of an objection require the applicant to either consent to the application, require the applicant to prepare an environmental impact statement or refuse consent to the prescribed development. The Director will take into consideration all the relevant factors before making a decision.

- (e) The environmental impact statement must be published and any person whose interest is, or is likely to be affected may raise objection with the Director. On receipt of an objection, the Director may either grant consent to the development with or without conditions or refuse consent. Where consent is granted, the development must be carried out in accordance with the development consent.
- (f) Any person who is aggrieved by the decision of the Director may appeal to the Advisory Committee and if he is further aggrieved by the decision of the Advisory Committee, appeal to the Minister.

There is also provision dealing with the control of pollution. It prohibits the discharging of noxious substance, wastes into the environment. There is a separate procedure whereby application could be made to the Director for a license to discharge waste, etc into the environment. The Acts also provision to commence legal action against offenders and penalties are imposed.

Subsidiary Legislation

No subsidiary legislation.

Recommendation

The first recommendation is to bring the Act into force. Considering the importance of and the urgency of the need to protect the environment, the first step is to have the legislative mechanism in place. Once the Act comes into operation the Director then in the position to start implementing the Act. Preparing an Environmental Report under section 8 would be a good starting point. This report would profile the status of various environmental programs or activities in the country. Section 6(d) envisages the development of national, provincial and local environmental plans and the Division is required to assist the relevant bodies in the development of such plans.

The supremacy provision of section 4 over the provisions of any other Act, except the Constitution, will certainly affect the operation of other Acts. In this regard the Director will have to exercise good judgement taking into current Government policy relating to commercial development. The power of the Director under section 9 ensures that in the exercise of his powers the Director is required to consult the Minister. There has to be a balance between the need to protect the environment and carrying on commercial development.

The provisions of the Act are general, and there might be difficulty in implementing it in the present form. Regulations are therefore needed to deal with the various parts of the Act. Application procedure for obtaining a development consent under Part III needs to be spelt out by regulations with the relevant forms and fees, etc,. The Division, under section 6 is required to assist in developing legislation for systems of environmental planning at the national, provincial and the local level. There is also need to develop regulations to deal with the control and prevention of pollution in both the industrial and non-industrial sectors. From a practical stand point it may be appropriate to start with the more urgent regulations first and move on the rest later. Section 55 is the making regulations section.

Staffing and other resources are a major hindrance to full and effective implementation of the Act. With present level of staffing very little would be achieved.

The provisions of this Act may overlap with some provisions of the Town and Country Planning Act, in particular Part IV which deals with development of land. Under the Town and Country Planning Act, there is a procedure whereby any person wishing to carry on any development on any land must seek the permission of the Board. It also talks about Local Planning Scheme. There is however, no requirement for the Board to take into consideration any environmental concerns when preparing, reviewing a Local Planning Scheme or consideration of an application to develop land. The Town and Country Planning Act obviously do not apply to customary land. Although the provisions of the Environment Act prevail over those of the Town and Country Planning Act, there is needed to make necessary legislative changes to ensure uniformity between these two Acts.

4.2 The Wildlife Protection and Management Act, (Cap 10 of 1998)

Status of the Act

This Act is yet to come into force.

Objectives of the Act

The objectives of the Act are to provide for the protection, conservation and management of wildlife in Solomon Islands by regulating the export and import of certain animals and plants. Under this Act Solomon Islands is obliged to comply with the provisions of the Convention on International Trade in Endangered Species and wild fauna and flora, (CITES). The Act does not apply to all the animal species or fauna in Solomon Islands, in particular to species or fauna that are declared to be native animals and plant species used for traditional activities or purposes.

Administration

This Act is administered by the Minister, the Director of Environment and Conservation, a Chief Inspector, and other Inspectors. The Chief Inspectors and other Inspectors are appointed by under the Act. An Inspector has power under the Act to board and inspect any vessel, aircraft, vehicle or premises for the purposes of the Act, and to arrest any person and to take any actions to effect any such arrest. The Minister may by order declare a management program that is being or is proposed to be, or has been carried out, as an approved management programs for the purposes of the Act. The Act spell out what should be contained in the management program, for instance it should contain the manner of taking and collecting of animal or plant specimens for breeding, propagation, growing or exporting for scientific or commercial purposes. It also gives the Minister power to make regulations relating to the manner in which the registers of approved management program are to be kept, fees and other charges that persons or organizations whose names are entered on the register are required to pay, etc.

The Director may, by notice published in the gazette, declare an institution, zoological organization or person engaged in animal or organization to be an approved person for the purpose of taking and holding any specimens or for the export or import of such specimen. An application by any person to be declared an approved person is made to the Director.

In regulating the export or import of plant or animal specimen, the Act prohibits any export or import of plant or animal specimen without the relevant permit. The procedure for application for a permit is set out in the Act. The export of live animals from Solomon Islands is also dealt with in the Act and a separate permit is required. The Director has to discretion to permit the export or import of specimen that id prohibited under the Act in

exceptional circumstances. A register of scientific organizations is kept by the Director. The Act requires that any person exporting or importing a plant or animal specimen is required to produce the relevant permit to the Customs or Quarantine authorities.

Possession of illegally obtained specimen is an offence and a penalty is prescribed. The Act also requires that any person, (not being a person who is a permanent resident in Solomon Islands) importing into Solomon Islands any household goods, where those household goods include a specimen, must declare such specimen. In enforcing any provisions of the Act, the Inspectors have power to forfeit any equipment, materials used in the commission of the offence.

The Act contains two schedules. Schedule 1 contains the lists of animals and plants that are prohibited from exports, whilst Schedule 11 contains the lists of animals and plants that are regulated.

This Act when it comes into force will repeal the Wild Birds Protection Act.

Subsidiary Legislation

No subsidiary legislation.

Recommendation

This Act should be brought into operation. Solomon Islands is a party to important international conventions dealing with wildlife, for instance the Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES). Membership of these international bodies entails not only benefits but also obligations.

4.3 Wild Birds Protection Acts

This Act is repealed by the Wild Life Protection and Management Act (Cap 10 of 1998)

4.4 Protection of Wrecks and War Relics. (Cap 150)

This Act makes provision for the securing, and protection of wrecked vessels and aircraft and war relics lying in Solomon Islands from interference by unauthorized persons and to control the export of war relics.

Administration of the Act

The Act is administered by the Minister. Where he is satisfied with respect to any site in Solomon Islands, including any site in Solomon Islands waters a vessel or aircraft is lying wrecked or is a site upon which lies, or may prove to lie, a substantial quantity of war relics, etc, he may by notice published in the gazette, designate an area round such sites as a restricted area. War wrecks and war relics are strictly protected and no person shall enter a restricted area, remove any wreck or war relics without the licence granted by the Minister. The export of war relics is also restricted. No war relics may be exported out of Solomon Islands without the written consent of the Minister.

Subsidiary Legislation

Orders establishing restricted areas.

Recommendations

None

5 Fisheries

5.1 Fisheries Act, (No 6 of 1998)

This Act which repeals the old Fisheries Act is now in force. Recent developments both in the regional and the international levels, (*Solomon Islands is a party to numerous regional and international fisheries instruments or arrangements*), mainly in the tuna fishery had made it necessary to enact new legislation to accommodate these developments. Nearly all these regional and international fisheries instruments place greater emphasis of the need to manage the marine resources to ensure long term sustainability. These instruments impose obligations on their respective parties to adopt these management measures in their national legislation. It is hoped that by adopting these measure in national legislation and bilateral and multilateral cooperation between the parties the marine resources will be protected.

Objectives of the Act

The main objective of this Act is to ensure the long-term conservation and sustainable utilization of the fisheries resources of Solomon Islands for the benefit of the people of Solomon Islands. The legislation provides that for the purposes of this Act the Minister shall exercise in relation to fisheries such powers and functions as provided under this Act. It further provides that in exercising these powers the Minister shall have regard to-

- (a) the principle that Solomon Islands fisheries resources shall be managed, developed and conserved so as to ensure through proper conservation and management measures that the maintenance of those resources are not endangered by over-exploitation and are utilized at a level that ensure their optimum sustainable yield;
- (b) the principle that the marine biodiversity, coastal and aquatic environments of Solomon Islands shall be protected and managed in a sustainable manner;
- (c) the application of the precautionary approach to the conservation, management and exploitation of fisheries resources in order to protect the fisheries resources and preserve the marine environment;
- (d) the sustainable utilization of Solomon Islands fisheries resources so as to achieve economic growth, human resource development, employment creation and a sound ecological balance, consistent with its national development objectives;
- (e) principle of sustainable yield, and allowable catch which may be supported or adopted nationally or internationally from time to time;
- (f) any relevant international obligations or bilateral or multilateral agreements which Solomon Islands is a party to, or applicable rules of international law, relating to the exercise of jurisdiction by Solomon Islands within its waters;
- (g) any customary rights holders over or in relation to any area within Solomon Islands waters; and
- (h) Any fisheries management and development plans made in accordance with this Act.

Administration

In order to achieve the objectives of the Act a comprehensive management plan must be in place, both at the provincial level and national level. The Director is required to prepare and keep under review a management and development plan. The Director is obliged to assist the provincial governments with their management plans.

A Fisheries Advisory Council is established in the Act. Its main function is to advise the Minister on any matter relating to conservation, protection and development of fisheries in Solomon Islands and such other matters as the Minister may require its advice. More specifically the Council shall advise the Minister on fisheries management and development plans and proposals for fisheries development and research projects to be funded under the Fisheries and Development Fund. Members of the Council are appointed by the Minister.

The Director is responsible for the daily operation of the Fisheries Division. His functions include appointing of authorized officers whose powers includes boarding, inspection, arresting, and seizure of fishing vessels. The Director is also responsible for receiving and issuing of fishing licenses.

Provincial Governments can also make Ordinances for the regulation of fisheries within its provincial waters. Ordinances may *inter alia* provide for measures for the development of fisheries in the provincial fisheries waters, approval of fisheries development projects, the registration or recording of customary fishing rights and all matters relating to fisheries in the provincial waters, provided that Ordinances are not inconsistent with the Act or any regulations made under. Each provincial government shall be responsible for the proper management and development of the reef, inshore and fresh water fisheries within its provincial waters. The Province may also appoint authorized officers to implement the provisions of the Act.

Customary fishing rights is recognized by the Act, and any commercial fishing undertaken in waters subject to customary fishing rights shall be subject to such rights.

Foreign fishing vessels that may fish in Solomon Islands fishery waters under a bilateral or multilateral arrangement. In this respect the Minister may, with approval of Cabinet enter into arrangements or agreements with Pacific Islands States or other distant water fishing nations or with any competent regional fisheries agency. When an authorization is given under such an arrangement, the terms and conditions of such arrangements shall apply. The Director is responsible to ensure that these vessels comply with the relevant arrangements and the provisions of this Act.

Regulatory Procedure

The Fisheries Management Plan is perhaps the starting point in any fisheries development in Solomon Islands. The Plan must ensure that the objectives of the Act are not compromised in anyway. The Plan shall -

- (a) identify the fishery and its characteristics, including its current state of exploitation;
- (b) specify its objectives to be achieved in the management of the fishery
- (c) specify the management and development strategies to be adopted for the fishery, and the limitations, if any, to be applied to the issues of licenses in respect of the fishery;
- (d) identify any possible adverse environmental effects of the operation of fisheries activities in the fishery, together with proposals for the management of those effects'
- (e) specify the information and other data required to be given or reported for effective management and development; and
- (f) Take into account any relevant traditional fishing methods of principles.

In preparing the Plan, the Director is required to consult other relevant government authorities or bodies, including customary groups, private organizations or where

practicable, the appropriate fisheries management authorities of other States in the region, with the view to ensuring the harmonization of their respective management and development plans.

Management and conservation of the fisheries resources are administered through a licensing regime and the Director is responsible for drawing up Licensing Guidelines. The Act prescribes various types of licenses which could be issued to various types of fishing vessels of other related activities. Related activities include test fishing operation, sports fishing, and fish processing establishment.

Local fishing Vessel license may be issued to a local fishing vessel by the Director upon successful application. A foreign fishing vessel licence may be issued to a foreign fishing vessel by the Director upon the successful application. These licenses are issued with specific terms and conditions which the licensee must comply with and the Director may impose such other terms and conditions where he thinks fit. Any person aggrieved by the refusal of the Director to issue or renew a license may, within thirty days appeal to the Minister.

Fishing with explosives and driftnet fishing are prohibited in Solomon Islands. Part III of the Act deals with enforcement of the provisions of the Act which includes prosecution of offenders. The Minister has wide powers to make regulations regarding to all aspect of fisheries.

Subsidiary Legislation.

The Fisheries Regulations: These regulations prescribe the various classes of licence forms and fees. The harvesting of certain marine species is also regulated whilst others enjoy total protection.

The Fisheries (Foreign Fishing Vessels) Regulations:

These regulations prescribe the terms and conditions for foreign fishing vessels fishing in Solomon Islands fishery waters.

The Fisheries (Local Fishing Vessels) Regulations:

These regulations make provisions for the master of a local fishing vessel to comply with the terms and conditions of the licence.

The Fisheries (Prohibition of Importation of Live Fish) Regulations:

Under these regulations the importation of live fish into Solomon Islands is prohibited. The Director may however, in writing authorize the importation of live fish

Recommendations

The Fisheries Act is a modern piece of legislation which takes into account recent developments in the fisheries, especially the tuna fisheries. It is a fulfillment of Solomon Islands obligations under the Law of the Sea Convention to which Solomon Islands is party. Under the Law of the Sea Convention Solomon Islands is obliged to take measures to ensure the sustainable harvesting of the fisheries resources. The Act therefore reflects these obligations.

The Act sets out the basis for conservation and sustainable management of the fisheries; and that is having in place a fisheries management and development plan, both at the national and provincial level. These plans shall be prepared by the Director with the Fisheries Advisory Council. The Act spells out that in preparing the management plan consideration shall be given to traditional fishing methods and principles. This provision

recognizes the importance that subsistence fishing method and principles have to Solomon Islanders. It is therefore consistent that such methods and principles are taken into account.

The only management plan was prepared in the year two thousand and it has not been reviewed, although it is a requirement. Presently no Provincial Government has any management plan. In the absence of any management plans for the Provinces, it is difficult to determine the state of any fisheries resources in the Provincial waters. It is recommended that the management plan be reviewed and steps be taken to assist the Provincial Governments prepare their management plans. Technical assistance should also be given to the Provincial Governments to enact ordinances for the management of their fisheries. Whilst coastal fisheries is a devolved function, lack of resources has prevented the Provincial Governments from implementing any carrying out any work. This has resulted in the involvement of the national government and other non- government organizations in some coastal fisheries. In order for the Provincial Governments to effectively manage their respective inshore fisheries adequate resources both technical and financial should be provided by the National Government.

Jurisdiction over coastal waters needs to be settled. Whilst Solomon Islanders claim rights (ownership) over coastal waters and the lagoons, the legal status of the claim is yet to be settled. In the Solomon Islands, the land and the sea below the high water mark are generally regarded as government land. Customary marine tenures are recognized in the sense that traditional fishing rights are protected under the Act, so that reef owners can control who fishes in their customary waters. The understanding between fishing companies (Solomon Taiyo Ltd) and bait fish ground owners, whereby the fishing company pays royalty to the bait fish ground owners for the amount of bait taken from their reefs is consistent with customary practices which treats the reefs and the lagoons as land. Having said this, groups have claim exclusive use of an area of sea, beach or lagoon. Outsiders are excluded and may only fish with the permission of the group. Land covered by the sea, however, is not seen as land, hence the Local Court cannot determine ownership of those land. The High Court held that any rights short of ownership which sprang from ownership of adjoining land could be decided by the Local Court³.

From a fisheries perspectives I do not see any serious problem. Problems may arise however, in the case where minerals are found in the coastal waters. As the seabed is not regarded as land, landowners are denied entitlements such as compensation for access or royalties. There is need to review this and to see whether the sea beds in the coastal waters could come under the definitions of land and the Local Court to exercise jurisdictions over it.

There is need for the legislation to give equal attention to inshore fisheries as it does for the tuna fishery. Whilst tuna fishery is important to Solomon Islands in terms of its importance to the national economy, the fisheries that most Solomon Islanders are involved in are the inshore fisheries. This could be done by having the relevant regulations in place to harvest and manage the inshore fisheries. Any management plan must have local input, and participation by the local population is essential to the success of any such plan. Draft regulations dealing with aquaculture will soon come into force. These regulations deal with the management of seaweed and other aquaculture fisheries.

³ *Allardyce Lumber Co Ltd v Laore, 1989, Solomon Islands Law Reports 5*

The fisheries regulations need to be strengthened. Currently the Minister has power to revoke any order restricting or banning the harvesting of certain species. It is recommended that such powers can only be exercised after consultation with the Director whose approval must be given.

Lack of resources has been identified as the key problem to full implementation of the Act, especially in its extension work in the Provinces. Lack of relevant information about inshore fisheries makes it impossible to formulate plans or make decision on the basis of sustainable management.

5.2 Fisheries (USA) (Treaty) Act, Cap 39.

This Act basically is a legislation to adopt the Treaty on Fisheries between the Government of Certain Pacific Islands States and the United States as part of Solomon Islands domestic laws. The Treaty was signed in April 1987 and entered into force on 14th June 1988. It was negotiate to find ways of accommodating the United States position at the time, which did not recognise the sovereign rights of coastal States over highly migratory fish stocks in the EEZ. The United States position prevented it from negotiating access agreements bilaterally unless there was in place a regional agreement regulating tuna management to which it is a party

Under the Treaty, United States fishing vessels have access to the "Treaty Area". (*the "Treaty Area" is defined the Treaty, but basically it is the EEZ of the parties*). The Treaty imposes on the United States a duty to ensure that its vessels comply with the provisions of the Treaty and the licences granted thereunder and Pacific Islands States who are parties may enforce the provisions of the Treaty and the terms and conditions of licences.

Annex 1 to the Treaty provides for:

- (a) the application of national laws to US fishing vessels;
- (b) prohibition of use by the vessels to fish for other species, for instance the southern bluefin tuna, or other fishing method;
- (c) regulating transshipment of catch; and
- (d) Prohibition of fishing in the closed area.
- (e) reporting requirements;
- (f) enforcement; and
- (g) The requirement to have observers on board these vessels.

The parties shall meet once each year for the purpose of reviewing the operation of the Treaty.

Administration

The Treaty is administered and managed by the FFA on behalf of the Pacific Islands States. FFA also provides technical assistance to Pacific Islands States where necessary.

Recommendation

Nil

6 Mining

6.1 Mines and Minerals Act, (Cap 42)

The Act starts by expressly stating that ownership of the minerals in Solomon Islands vests in the people and government of Solomon Islands. Section 2 states *“All minerals of every description in or under all lands of whatsoever ownership or tenure or in whatsoever possession or enjoyment they may be, are and shall be deemed always to have been, vested in the people and government of Solomon Islands”*. This provision combines both the common law position of ownership of minerals and the customary notion of ownership of land as including anything on the surface and underneath the land.

Objectives of the Act

The objectives of the Act are to provide for the development of mining in Solomon Islands by prescribing appropriate procedures for the grant on licences, permits or leases, for the establishment of the Minerals Board to regulate and control mining.

Administration

The Act is administered by the Director of Geology who is the principal advisor to the Minister on all matters relating to geology. He is assisted by Inspectors of mines and other officers who are appointed under the normal public service appointment procedures. His powers are:

- (a) to advise the Board on the technical aspects of reconnaissance, prospecting and mining operations so as to ensure that Solomon Islands receives the greatest benefits obtainable from the exploitation of its mineral resources;
- (b) to receive application for permits, licences and leases and to submit such applications to the Board for the Board's consideration;
- (c) to negotiate, as directed by the Board and in consultation with the holders of mining leases, with land owners for surface access rights;
- (d) to conduct or authorise inspections of any gold dealing, reconnaissance, prospecting or mining operations in order to ensure that such operations are carried out in accordance with the provisions of the Act, the regulations and the terms of any licence, permit or lease;
- (e) to authorise persons other than holders of permits, licences, or leases to export samples for purposes of scientific research or such other purposes as he may deem fit; and
- (f) to keep maintain registers, information and records relating to gold dealings, reconnaissance, prospecting or mining in such manner as the Minister may require.

A Minerals Board is also established by the Act whose functions of the Board are:

- (a) to advise the Minister on the issue of permits, licences or lease in respect of gold dealing, reconnaissance, prospecting and mining operation to be carried out in terms of the Act;
- (b) to take such measures as it deems necessary or appropriate to inform landowners or land holding groups affected by the operations to be carried out, in terms of the permits, licences or leases, as the case may be;
- (c) to assist respective holders of, or applicants for permits, licences and leases to negotiate with landowners and landowning groups in order to enable such holders to

- gain access to affected land and carry out reconnaissance, prospecting or mining operation;
- (d) to assist landowners or landowning groups to determine surface access fees and other payments in terms of the Act;
 - (e) to assist in the determination of compensation for damage that may become payable pursuant to the Act; and
 - (f) To take such measures as it deems necessary or appropriate to establish trust funds for the benefit of land owners or land holding groups referred to in sections 24 and 34 of the Act.

Regulatory Procedure

In order to actually carry out any mining operation in Solomon Islands, three stages are involved. They are:

- (a) The first stage involves the applicant obtaining a reconnaissance permit. In applying for this permit the applicant must satisfy certain requirements, such as adequate financial resources, and the programme is adequate for reconnaissance. This application which is made to the Director must contain certain relevant information and these are clearly spelt out in the Act. The holder of a Reconnaissance Permit is also obliged to and these are clearly spelt out in the Act.
The holder of a Reconnaissance Permit is also obliged to perform certain functions.
- (b) A holder of a Reconnaissance Permit or any other person may apply for a Prospecting Licence. The Application must contain certain information which are spelt out in the Act. The Board may alternatively call for tenders if it deems desirable. If the Board is of the opinion that the application is acceptable, it shall advise the Minister accordingly. The Minister shall inform the applicant in writing, (the "letter of intent"). Upon receipt of the letter of intent from the Minister, the applicant shall, in consultation with the Director take necessary measures to enter into negotiation with the relevant land owners with view to acquiring access agreement with the land owners. Once an access agreement is signed, the Prospecting Licence will then be issued. A Prospecting Licence has terms and conditions which the holder must comply with.
- (c) A holder of a Prospecting Licence who has made a commercial discovery may apply to the Minister through the Director for a Mining Lease. The Act provides the details regarding application for a Mining Lease and the information that the applicant must provide with the application. One of the requirements is that the application shall provide an environmental assessment, with a detailed programme for tailings and waste disposal, the progressive reclamation and rehabilitation of the land disturbed by mining, and the monitoring and minimisation of the effects of such mining on air, land and water areas. A Mining Lease will not be granted unless the Minister, *inter alia*, is satisfied that there is adequate protection of the environment within the and outside the mining area. Whilst it would be credible to have an environment impact assessment report done by an independent person the Act does not specifically provide for this.

A Mining Lease once granted must be registered and shall be valid for a period not exceeding twenty five years and may be renewed for a further period not exceeding ten years. A Mining Lease may only be transferred, assigned, mortgaged, dealt with or disposed of with the approval of the Board and the Act provides guidelines as to the grounds or basis

on which such approval may be given. The Act stipulates the rights and obligations of a Mining Lease holder, except that these rights are subject to other laws relating, *inter alia*, to the protection of the natural environment and the control of natural water supplies, etc.

The holder of a Mining Lease shall pay royalties to the government. Although a royalty payment is ultimately paid to the land owners, as a matter of law, the Government as the owner of the mineral receives the payment.

Two other related activities that are dealt with under the Act are alluvial mining and gold dealing. The application procedure for these two activities is similar. As in other cases holders of alluvial mining permits and gold dealers licence have certain rights and obligations. Their obligations strictly relate to recording and keeping of information relating to their respective activity.

Subsidiary Legislation

Mining Regulations

These regulations represent a modern approach to exploration, permitting, licensing and the grant of mining leases. In the absence of general legislative requirements in relation to environment impact assessment, the Act and the regulations include at least the minimum environmental protection provisions that could be expected.

Recommendations

This is one sector which has great potential in Solomon Islands. It also has the potential of inflicting unrepairable damage to the environment if its exploitation is not managed properly. This Act has not stand the test of time, in that, except for the gold mining by Gold Ridge Mining, very few activities have taken place.

The Act requires applicants for a prospecting licence to state their intention regarding environmental protection, (*section 20(1)(j)*); the Director may require a holder of a prospecting licence to carry out specified works to rehabilitate any roads, stream, beds, banks or ,and damaged as a result of his prospecting; and the holder is further required to report on measures he has taken to protect the environment both within and outside the prospecting area, (*section 27(5)(k)*).

Mining for minerals is a prescribed development under the Environment Act and environmental concerns can better be dealt with under the Environment Act. The provisions specifying that an environmental assessment must be done could certainly be tightened up. In the regulations, it could at least be expected that the form and the contents of the environmental impact statement for the proposed mining operations be included. This however, may not be necessary if the Environmental Protection Act provides for it.

The issue of ownership of minerals is critical to proper and sustainable management of these minerals. As mentioned earlier provision dealing with ownership combines both the common law and customary law concepts of ownership. Difficulties in getting an access agreement or a prospecting licence have a lot to do with the perception that customary land owners have regarding ownership of the minerals beneath their customary land. Customary land owners believe that ownership of customary land includes or should include any minerals that lay in that land. This belief should form the basis for further investigation into formulation of a new concept whereby ownership of minerals vests in the persons or tribes having customary rights over the land. A case could be made out in support of this concept. First this concept is consistent with traditional customary land ownership. Secondly giving ownership of minerals to the relevant customary land owners would give them a sense of

ownership and will exercise responsibility when dealing with their mineral resources. The Government can play an advisory and regulatory role in ensuring that proper procedures are followed and that proper professional and technical advice are given to the landowners. The Mines and Minerals should be amended to vest ownership of minerals in the customary land owners on whose land the minerals are found. The same should also apply to the Petroleum Act.

6.2 Petroleum (Exploration) Act, (Cap 44)

Objectives of the Act

This Act is in many ways similar to the Mines and Minerals Act. Its objects are to make provisions for the exploration of petroleum existing in its natural state in strata in Solomon Islands. It states that the Minister shall be responsible for petroleum exploration and development in Solomon Islands.

Administration of the Act

The day to day administration of the Act is done by the Chief Inspector of Petroleum and the Petroleum Advisory Board. The Act provides that the Board shall advise the Minister on such matters, relating to the administration of the Act as are referred to it by the Minister

Regulatory Procedure

A Petroleum Prospecting Licence shall not be granted to a corporate body unless that corporate body is a company, in terms of the Companies Act, a corporation which has been registered as a foreign company under the Companies Act or a corporation incorporated under an Act (other than the Companies Act) in force in Solomon Islands. A Petroleum Development Licence shall not be granted to a body corporate unless it is a company incorporated in Solomon Islands or a corporation incorporated by or under an Act, (other than the Companies Act) in force in Solomon Islands.

The Minister is required to publish in the gazette a Model Petroleum Agreement and petroleum entered into between the government and the applicant must conform, as far as possible to the Model Agreement. The Act provides the matters that must be included in the petroleum agreement. Applications for petroleum prospecting licence or a petroleum development licence may be made to the Minister through the Board. If the Minister is satisfied that the applicant has sufficient technological knowledge, experiences and financial resources to carry out the petroleum prospecting and development operations, he may, on the advice of the Board, grant to the applicant licence to prospect for or develop petroleum as the case may be.

The Act provides for the details that are to be included in the licence including:

- (a) identification of block or blocks to which the licence relates;
- (b) state the conditions on which the licence is granted; and
- (c) Such other conditions as the Minister may impose.

Where petroleum is discovered, the licensee shall immediately inform the Minister of such discovery with the details of the discovery. The Act confers upon the Licensee certain rights, for instance the right to carry on prospecting and development operation in the development area.

The Minister may, by notice in writing serve on a person, give to the person directions, consistent with good oil field practices. This ensures that development operations conform to the Act and any regulations thereunder. It is an offence not to comply with such directions. The Minister also has power to request further information, where the Minister has reason to believe that that person is in a position to provide such information. It is an offence to refuse to provide the information requested by the Minister.

The Act also provides for the payment of royalty to the Government. The Minister has power to take certain action for non payment of royalty.

Subsidiary Legislation

No subsidiary legislation.

Recommendations

Recommendation in respect of the Mines and Minerals Act apply. Environmental concerns can be dealt with under the Environment Act.

6.3 Continental Shelf Act (Cap 94)

Objectives of the Act

The objectives of this Act are to make provisions for the protection, exploration and exploitation of the Continental Shelf of Solomon Islands, the prevention of pollution in consequence of works in connection with the Continental Shelf. The continental shelf is defined as the seabed and the subsoil of those submarine areas adjacent to the coasts of the islands of Solomon Islands but beyond the territorial limits of Solomon Islands, to a depth of two hundred meters below the surface of the sea, or, beyond that limit, to where the depth of the super adjacent waters admits of exploitation of the natural resources of those areas.

Under International law Solomon Islands exercise sovereign rights over the continental shelf for the purposes of exploring it and exploiting its natural resources⁴. The rights are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal state. This Act restates customary international law.

In exploration or exploitation of any resources in the continental shelf, the Minister may, for the protection of any installation, etc, in any designated area prohibit any ship from entering such designated area. The criminal law will apply in respect of any act committed on or under any installation or within five hundred meters of such installation. Any person who discharges any oil from a pipeline or as a result of any operations in the continental shelf is guilty of an offence.

Subsidiary Legislation

The Continental Shelf (Designation of Areas) Order

Under this Order certain parts of Solomon Islands are designated as areas in which Solomon Islands exercises its sovereign rights in relation to exploration and exploitation of the natural resources in the continental shelf.

Recommendations

⁴ Article 76 of the United Nations Law of the Sea Convention, 1982 to which Solomon Islands is a party

Solomon Islands investigates the nature of its continental shelf in order to determine whether the outer limits extends beyond 200 nautical miles, if so the provisions of the Law of the Sea Convention, (Annex II, Article 4- which provides for a ten-year limits of the Continental Shelf should be noted). There is also need to define the definition "continental shelf" in section 2 to reflect the full extent of Solomon Islands' continental shelf claim within the limits imposed by the Convention.

Any exploration carried out on the continental shelf will be classified as "prescribed development", hence will be covered by the Environment Act.

7 Maritime

7.1 Ports Act (Cap 161)

Objectives of the Act.

The objectives of the Act are:

- (a) to provide and operate in the ports and such facilities as appear to the Authority best calculated to be in the public interest;
- (b) to maintain, improve and regulate the use of ports and port facilities to such an extent as may appear to the Authority expedient in the public interest; and
- (c) To provide for the ports the approaches to such ports, and the territorial waters of Solomon Islands such pilotage services and such lights, marks and other navigational services and aids as appear to the Authority best calculated to serve the public interest.

Administration

The Minister may by Order, declare any place in Solomon Islands to be a port and the provisions of this Act apply only to these declared ports. The Act establishes an Authority which is charged with the responsibility of administering the ports. The powers and the functions of the Authority, ("the Board") are spelt out in the Act. These functions, *inter alia* include:

- (a) acquiring, constructing, manufacturing, maintaining or repairing anything required for the purposes of the Authority;
- (b) carry on the business of carrier by land or sea, stevedore, wharfinger, warehouseman or lightman or any other business recommended as desirable as desirable for the purposes of the Act;
- (c) control the erection and use of wharves in any port or its approaches;
- (d) reclaim, excavate, enclose or raise any part of the land vested in them; or
- (e) Engage in any other activity, whether similar to otherwise heretofore specified or not, which may be sanctioned by order of the Minister.

Under the Act, the Authority may make rules for the maintenance, control and management of any port. Below is a list of selected matters which the Authority may make rules:

- (a) regulating traffic within the limits of a port or the approaches to a port;
- (b) regulating the berths and stations to be occupied by ships and the removal of ships from the berth, station or anchorage to another berth, station or anchorage, and the time within which such removal shall be effected;
- (c) regulating ships whilst taking in or discharging ballast or cargo;
- (d) regulating traffic, preventing obstruction and keeping order on piers, jetties and wharves , and for ensuring the safety of piers, jetties and wharves and any cargo thereon;
- (e) regulating the use of fires and lights and the signals to be used and measures to be taken in case of fire in a port by day or night;
- (f) regulating, whether by way of prohibition or otherwise, the floating of timber, casks or other objects in any port or the approach to any port and the casting or

- depositing of any dead body, ballast, rubbish or other thing into any port or the approach to any port; or
- (g) Prescribing the duties of masters of ships carrying explosive or dangerous cargo, and of person engaged in or supervising the shipping, unshipping, landing and transport of any such cargo.

Other functions of the Authority include making orders establishing pilotage districts and the approaches to any port or in territorial waters, licensing of pilots, pilotage boards and duties of the boards. Under these orders ships entering a port shall be under the control of the Authority. Under the direction of the Minister, the Pilotage Board may hold inquiries into allegation of misconduct in a port. An appeal against the decision of a board may be made to the Minister

Subsidiary Legislation

Declarations of Port Limits

Under these Orders, the ports of Honiara, Gizo and Noro are declared to be ports for the purposes of the Act. The limits of these ports are also specified.

The Port Rules

These rules deal with administrative details of a port, but relevant to this report are provisions in the rules dealing with dangerous and explosive goods. Rule 42 for instance provides that the master of a ship must declare to the Authority before berthing the quantity, nature, packing, state of packing and location on the ship of any dangerous or explosive goods. The Authority may refuse entry of such vessel into any port if it appears to the Authority that the state of packing is poor, damaged, leaky or otherwise hazardous. Rule 49 prohibits, except with the written permission of the Authority, the discharge of wastes, etc into a port, it also deals with pollution of ports. The Authority may, where it incurs any costs in cleaning up, dispersing or otherwise dealing with any such offence, recover such cost from the offending person. The erection of any wall, wharf, jetty, landing, building, etc, whether permanent or temporary is prohibited unless authorized by the Authority. Although the rule does not specify basis for this rule, safety and environmental considerations will be taken into account. The rule imposes a fine of \$1,000.00 and a daily fine for each day that the offence continues.

The Ports By-Laws

These By-Laws deal with storage of cargoes and warehouses in ports, clearance of goods, control of traffic in the port area, and general conduct and movement of people in the port area.

The Ports (Pilotage District of Honiara) Order

This Order establishes the Honiara pilotage district.

The Ports (Pilotage District of Noro) Order

This Order establishes the Noro pilotage district.

The Ports (Pilotage) Rules

These rules provide for the training, certification and appointment of pilots to operate in ports.

Recommendations

The Ports Act is one of the old pieces of legislation and needs to be reviewed. Currently there are only three ports in Solomon Islands, namely Honiara, Noro and Gizo. Commercial activities over the years have not grown which has mitigated any inadequacies in the legislation. Currently there are no measures, legislative or otherwise, in place to deal with oil tankers should an accident occurred. The location of the fuel depot so close to the port and the commercial center of the town is in itself a cause for concern. Relocation of these depots should be a priority. There are provisions relating to loading of dangerous goods. The Port Rules makes it an offence to discharge, pump or cast into any waters within the Port limits any refuse, gas, petroleum oil, etc. There is however, no expressed provision imposing any penalty or fine on the offender. It is appropriate that a fine be imposed and the offender be required to meet the cost of any clean up work.

Because of the volume of cargoes that are brought into the country which is comparatively small, foreign boats do not dispose of their ballast waters in Solomon Islands; however, appropriate legislation should be made to prohibit this. Ballast water could contain foreign organisms which could be harmful to our marine life.

The establishment of a quarantine port in Solomon Islands, especially in Honiara is recommended where vessels coming into the country could be quarantined. Again legislation is necessary to administer quarantined boats.

7.2 Shipping Act (No 5 of 1998)

Objectives of the Act

This Act repeals the Shipping Act, (Cap 163). The objectives of this Act is to consolidate, and amend the law relating to shipping and seamen and to control the registration, safety and manning of ships, and give effect to certain international maritime conventions.

Administration of the Act

The administration of this Act is done by the Superintendent and other marine officers who are in the final analysis accountable to the Superintendent. Whilst the Minister may have some form of powers, they are only exercised on by the Minister on the advise of the Superintendent. With regards to shipping the Act requires that all vessels owned by a qualified person, or by persons each of whom is a qualified person register in Solomon Islands. The term "qualified person" is defined in the Act. Part III of the Act deals with this aspect of the Act. Certain vessels are exempt from this requirement. A Register of all vessels registered under this Act is kept by the Registrar of Vessels. The Registrar of Vessels shall receive, verify and record all information and documents required to be recorded under the Act. Where a vessel is registered, the Registrar of Vessels shall issue a Certificate of Registry in respect of that vessel.

The Registrar of Vessels has power to verify all information and to deregister any vessel if he has reason to believe that the Register does not contain accurate information in respect of any particular vessel.

Numerous international maritime conventions are adopted as part of Solomon Islands national laws. With regard to safety, the Collisions Convention, the Load Lines Convention,

the Safety Convention and the Tonnage Measurement Convention, the STCW Convention and the MARPOL 73/78 are adopted. This part is administered by the Principal Surveyor who is responsible for carrying out Solomon Islands obligation under these Conventions relating to Flag State control and Port State control. The Principal is assisted by surveyor of vessels. The powers of the Surveyor are prescribed in the Act, it includes the power to issue or cancel or suspend a Safety Certificate. The Minister may by regulation adopt any of these Conventions with such modifications as the Minister shall deem necessary, taking into account any peculiar to Solomon Islands.

With regard to hazardous cargo, or other dangerous goods, the master of the vessel shall inform the Principal Surveyor of his intention to load, carry, discharge or handle such hazardous cargoes. The Principal Surveyor may take any action necessary to ensure safety of human and other marine life and the environment. In this respect the provisions of the International Maritime Dangerous Goods (IMDG) Code has the force of law in Solomon Islands. The Superintendent of Marine may detain any vessel which he reasonably believe is unsafe and the Principal Surveyor shall notify the owner of the reason for such detention.

A master of a vessel is required to inform the Principal Surveyor of any casualty or incident at sea or where a vessel is in a position of great peril from danger of wrecks or collision, fouls or damage to a pipeline cable. Where there is an occurrence of any of the above the Superintendent of Marine may cause a preliminary investigation into the casualty or incident to be carried out by a person appointed by him, a Marine Inquiry, or both. A report of the preliminary investigation will be handed to the Superintendent of Marine who will then forward it to the Minister. The Minister if he decides to hold a Marine Inquiry, appoint a Marine Inquiry Board.

The Act has provisions protecting the safety, comfort health and well-being of passengers. The Principal Surveyor may notify the master of the vessel of such situation and such vessel shall not be engaged in the carriage of passengers.

By adopting the STCW Convention the training and certification of competency of seamen, including pilots must comply with the Convention. A separate part in the Act deals with the employment and welfare of seamen. It spells out the terms and conditions applicable to seamen employed under the Act.

To ensure the safety of vessels travelling within Solomon Islands waters, the Act provides for marine navigation aids. The Superintendent of Marine is responsible for establishing, maintaining, operating, altering and removing of any marine navigation aid. It is an offence to temper with the marine navigation aid.

When a vessel is wrecked, stranded or in distress the Receiver of Wrecks, which is the Superintendent of Marine, will proceed to such place and take command of the vessel with a view to preserve the vessel, the cargo and the lives of the people on board the vessel. After taking possession of the wreck the Receiver will publicly advertise the description of the wreck and the fact that he has taken possession of the wreck. If no owner establishes his claim before the expiry of one year after the Receiver has taken possession thereof, the Receiver shall sell the wreck. The Receiver does have the power to notify the owner, if he is of the opinion that the vessel is likely to become an obstruction or hazard to navigation. If the owner fails to act, the Receiver may take any necessary action to have the vessel removed.

Where the Receiver is satisfied that, because of anything contained within a wreck, it is in a condition which makes it a potential danger to life, property or the environment, and the wrecked vessel ought to be protected from unauthorized interference, the Receiver shall advise the Minister, who shall by notice published in the gazette, declare that area to be a

prohibited area. The Act provides the details in dealing with the wrecked vessel, and in this respect the International Convention on Salvage, 1989, has the force of law in Solomon Islands.

The remaining parts of the Act deal with maritime rights and liabilities, arrest, forfeiture and forced sale of vessels and legal proceedings which are not directly relevant to this report.

Subsidiary Legislation

Shipping (Dangerous Goods) Regulations

These regulations deal with the loading, carriage, packaging and storage of dangerous goods on board a vessel. Goods which are classified as dangerous are listed in the regulations. It imposes on the skipper of the vessel to notify the master or owner of the vessel. Packages containing dangerous goods are to be clearly marked on the outside with a label indicating the nature of and identity of the goods. Except in accordance with the regulations, explosives are prohibited on board any passenger vessel.

Shipping (STCW) Regulations

Under these regulations the STCW is adopted and the provisions of the Conventions are applied accordingly.

Recommendations

The Act adopts most IMO Conventions. Except for the STCW Convention, Solomon Islands is not a party to the rest of the Conventions. The International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL 73/78) is an example. The adoption of the STCW as regulations under the Shipping Act is a significant step. MARPOL should be treated similarly with the necessary modification.

There is need to increase the fines in the regulations. The fine under the Shipping (Dangerous Goods) Regulations is \$100.00 or six months imprisonment.

8 Forestry

8.1 Forest Resources and Timber Utilization Act (Cap 40)

After numerous amendments to this Act, it is hard to actually identify the objectives of the Act. One might not be too far off to say that the objectives of the Act are to regulate the timber industry in Solomon Islands. To achieve this objective a licensing mechanism is established so that the Government can regulate and exercise control over the industry.

Timber harvesting in Solomon Islands is a regulated industry. No timber harvesting will be undertaken in Solomon Islands without a relevant valid licence issued by the Commissioner of Forest.

Administration of the Act

The Commissioner of Forest Resources administers the Act. The Act prescribes the procedure for obtaining a licence. There are two types of licences which may be issued under the Act. The one that is most used is the Timber Licence authorizing the felling and removal of trees either for milling or for export. The procedure in obtaining this licence is set out in the Act. Since most of the logging operations are carried out on customary land great efforts have been made to involve those persons claiming rights over the land in the negotiation process.

The process commences with an application to the Commissioner of Forest for the Commissioner to grant his consent to negotiate with the relevant Provincial Government Executive, and the owners of the customary land. If the Commissioner of Forest grants his consent then the Provincial Government will fix a meeting for the purposes of identifying the persons who have rights under custom and are willing to dispose of their timber rights. A Timber Agreement will then be entered into between the applicant and the persons having rights over the area. The Commissioner of Forest will be advised of the outcome and where a Timber Agreement has been signed, he will issue a Timber Licence. There are provisions dealing with rights of any aggrieved party, times, etc. An aggrieved party may appeal to the Customary Lands Appeals Court. The Act also provides a Standard Logging Agreement and in many cases, if not all, the Timber Agreement is a *verbatim* or a modified version of the Standard Logging Agreement.

Another licence which may be issued under the Act is the Milling Licence. This Licence authorizes the operation of timber mills in Solomon Islands.

The Government imposes a Timber Levy on all exported logs. The rate of the levies varies from species to species.

The Act makes provisions for state forests; these are forests on public land as opposed to customary land. The Minister may, where he is satisfied that for the purpose of conserving water resources in Solomon Islands it is necessary or desirable to protect the forest or other vegetation in any rainfall catchment area, declare such area or part of it to be forest reserve. In making such declaration he may specify what rights and the extent to which such rights may be exercised in the forest reserve.

The Act has two schedules to it. Schedule 1 provides a list of protected trees. Schedule 2 by reference amends Parts V and X of the Lands and Titles Act

Subsidiary Legislation

The Timber (Levy and Mill Licensing) Regulations

These regulations provide the application procedure for a milling licence and a licence to operate a mill.

The Forest Resources and Timber Utilisation (Prescribed Forms) Regulations

These regulations contain all the relevant forms. It also has the Standard Logging Agreement.

The Forest Resources and Timber Utilization (Appeals) Regulations

These regulations set out the appeal procedure where an aggrieved party appeals against the decision of Provincial Executive at a Timber hearing. The appeal is made to the Customary Lands Appeals Court.

The Forest Resources and Timber Utilization (Fees) Regulations

These regulations spell out the fees payable under the Act.

The Forest Resources and Timber Utilization (Protected Species) Regulations

These regulations provide a list of tree species which are protected under the Act. Some species are receiving total protection; others are only protected from export.

Recommendations

This is a piece of legislation that has attracted discussions over the years, particularly from the industry and the Government. The reason I guess is due to the Government's over dependency on this resource for its revenue. Total revenue of log export amounted to \$77.7 million dollars which is 67% of the total revenue. (CBSI Quarterly Report, Vol. 14 September, 2002). Against this background the Government, in particular, the Forestry Division as regulatory body, is always placed in a compromising position when it tries to regulate the industry. The Standard Logging Agreement which must be signed between the Licensee and the land owners does have environment protection provisions; however, these are hardly used. If it is to be retained in the new forestry bill, it should be strengthened and completely redrafted, to make it easier to understand.

A new draft forestry bill is being drafted and it is intended to be brought before Parliament soon. The bill is a comprehensive piece of legislation. It provides for a National Forestry Policy and a Provincial Forestry Policy. These two documents will form the basis for the management of the resource. It is not clear what these two policy documents should contain. It is important that the bill spells out what should go into the policy documents and environment issues should in be included. One of the effective management tools is the control over the number of licence that could be issued in any one year. Emphasis should also be placed in forestry plantation, rather than concentrating on the natural forests. Where forestry plantation is encouraged it should be accompanied by incentives such as provisions of seedlings or technical assistance, or exemption from or reduced export duties or other tax concessions. Forestry plantation is a long term investment and customary land owners who are willing to engage in should be assisted in every way possible. A proper managed forestry plantation will take in account environmental concerns and conservation and management measures put in place will be easy to manage as opposed to what is happening now. The new bill should have the long term view that harvesting of natural will be phased out and to be replaced by well managed forestry plantation.

Lack of resources has been identified as a hindrance to proper management of the forest resources.

8.2 Proposed Forestry Act 2003

An Act to Provide for the improved management of the forest resources of Solomon Islands; and to repeal the Forest Resources and Timber Utilisation Act (Cap.40) and the Forests Act 1999 and for other matters incidental and consequential.

8.3 National Park Act, (Cap 149)

The Act provides for the creation of national parks in Solomon Islands. This is done by the Minister making a proclamation declaring certain area to be a national Park. The Minister may purchase or acquire any land for the purpose of a national park. Rights of residence in Parks are restricted and there is a ban on hunting (other than fishing), carrying arms and making fires. Queen Elizabeth II Park near Honiara was declared a National Park in 1965, but today it exists in name only.

The administration of the Act vests with the Minister and Park Rangers. These Park Rangers are appointed by the Minister. Park Rangers are empowered to ensure that national parks are well looked after. A permit may be issued by Permanent Secretary to the Ministry of Youth and Cultural Affairs. A permit issued under this Act restricts the permit holder to do only certain things.

Subsidiary Legislation

Declaration of National Park

Queen Elizabeth Park. Under this declaration the location and the boundary of the park are defined.

Recommendations

This Act is no longer appropriate to the circumstances in Solomon Islands.

9 Health and Water Quality

9.1 Environmental Health Act, (Cap 99)

The Environmental Health Act is a short Act which sets up the administration and structure of community health in Solomon Islands.

Administration of the Act

The Minister of Health is responsible for administration of environmental health services. The Minister may delegate this administration to the Provincial Government and the Honiara City Council which are designated as Enforcement Authority. There is provision in the Act that if the Enforcement Authorities do not perform their duties under the Act, then the Minister can arrange to have their functions carried out by others, and require the Enforcement Authority to reimburse the Ministry for the cost of doing so. The Enforcement Authority is given power to make its own by-laws under the Act to facilitate the efficient operation of environmental health services. The Enforcement Authority is required by the Act to carry out a program of health education and publicity in accordance with directions given by the Minister.

Enforcement of the Act

The Enforcement Authorities are given power to instigate their own prosecution in their area. Any fines levied against offenders are able to be kept by the Enforcement Authority, which may also recover any costs it incurs in remedying any public health nuisance (plus a 5% penalty) from the owner of the offending premises.

Before launching a prosecution, the Enforcement Authority must give the person an opportunity to remedy the breach. If this "abatement notice" is not complied with or if the convention is likely to recur, the offending person may be summoned to appear in Court.

There are a range of defenses available to persons prosecuted under the Act. For example, it is a defence to a charge of accumulating or deposit of offensive matter for the defendant to prove that the accumulation or deposit was necessary for the carrying on of his or her business, that it has not been accumulated for longer than was necessary to carry out the business, and that the "best practicable means" have been taken to prevent the accumulation being prejudicial to the health of people in the neighborhood.

Similarly it is a defence against contravention of the Regulations relating to dust, fume, and smoke. Effluvia or effluent for the defendant to prove that the "best practicable means" have been taken for preventing or counteracting the effect of the dust, fume, etc. Where a company is charged under the Act or its Regulations, the company secretary, manager, or company director may be summoned before a court and held liable for the company's contravention and its consequences.

Subsidiary Legislation

The Environmental Health (Public Health Act) Regulations

The Public Health Act, (No 2 of 1970) was repealed. It was contemplated that a new Public Health would be enacted. This did not happen, resulting in saving some parts of the Act. These regulations consist of Parts III to XII and section 2 of the repealed Act. These regulations deal with public health issues and how to deal with them when they occur.

Administration of the Regulations

The regulations empowers the Minister and the Under Secretary of the Ministry of Health and Medical Services to take specific measures to prevent the occurrence of a public health disease or where such disease had already occurred, to take measures to contain and prevent the spread of the disease. The Minister establishes "local authorities" which are the Executive of the Honiara City Council and the Executive of the Provincial Assemblies, plus any others, which can include area councils Area Councils. The Minister also establishes public health areas. Any such areas can be made exempt from some or all of the provisions of the regulations.

The duty of every local authority is:

" to take all lawful, necessary, and, under its special circumstances, reasonably practicable measures for preventing the occurrence or dealing with any outbreak or prevalence of any infectious, communicable or preventable disease, to safeguard and promote the public health and to exercise the powers and perform the duties in respect of the regulations..."

The local authorities appoint their own medical officers and health inspectors to perform these duties. The Minister exercises a general power of supervision and inspection over the local authorities and a Chief Health Inspector and other Health Inspectors are to be appointed by the Minister.

The regulations impose a duty on the head of a family or other persons in authority in a household to notify the local authorities of the outbreak of any notifiable disease. These include malaria, typhoid, dengue and aids. The Minister and the Permanent Secretary have specific powers to help them prevent and suppress notifiable diseases. These include the power to forbid the discharge of sewage, etc to any water course, stream or lake.

Numerous activities are defined as nuisances which are likely to be injurious or dangerous to health. These nuisances include dirty premises, streets, stream, toilets, dustbins, refuse tips which are offensive; a contaminated water supply, any noxious matter or waste water discharged from premises onto any street or into any water course, any accumulation of rubbish dangerous to health; overcrowded premises, any unclean factory or business premises or those containing an offensive smell, smoke from a chimney which is offensive or dangerous to health; a disused septic tank or toilet; or "any act, omission or thing, which is, or may be , dangerous, or injurious to health"

Every local authority has a duty to take necessary and reasonably practicable measures to maintain its areas at all times in a clean and sanitary condition. When a local authority or health inspector becomes aware of a nuisance, a notice to remove the nuisance must be served. There is a set procedure where the owner or person causing the nuisance fails to comply with the notice, the local authority or the health inspector shall cause a complaint relating to such nuisance to be made before a court. The court may by summons require that person to appear before it. The regulations spells out the actions that the court may take including the imposing of penalties and fines on the person that fails to comply with any order of the court.

The regulations also deal with offensive trades, (*offensive trades are defined in the Second schedule of the regulations*). It is an offence for any person to carry on any offensive trade on any premises without the written consent of the local authority and the Director.

In an attempt to prevent the breeding of mosquito larvae, the regulations have provisions dealing with mosquitoes. It requires the public to take preventative measures to

stop the breeding of mosquitoes. A penalty is provided for those who do not comply with such measures. All breeding places of mosquitoes in or around any dwelling are deemed to be a nuisance. The owner or occupier of any premises or land must ensure that all things such as tins, bottles which are likely to collect and retain water and facilitate the breeding of mosquitoes are cleared from within 50 meters of any dwelling. All water tanks, septic tanks, and other water collecting tanks must be covered and screened from mosquitoes. It is even an offence for an owner or occupier to have mosquito larvae in or on the land or premises he or she owns or occupy.

Where the local authority receives a certificate from a health inspector or a doctor to say that any premises used for living are in such an unwholesome condition as are prejudicial to health, the local authority has power to require the premises to be cleaned. There is similar power to require a person to wash and their clothes to be washed.

The regulations require that every building where people intend to live must have a proper and sufficient supply of wholesome water for the domestic use of those who live there. In addition, every local authority is obliged to take all necessary steps to ensure that all those who live in a rural public health area have access to proper and sufficient supplies of drinking water. The local authority has power to require the owner or occupier of the building which does not have a proper drinking water to provide it within a certain period. If the requirements are not complied with, the local authority may close the building. In addition the local authority has power to restrict or close a polluted water supply. The regulation requires every occupier of premises to keep drinking water tanks clean.

The regulation makes local authority responsible for constructing, repairing and maintaining all public sewers and public drains within its area. The local authority however, is not responsible for any public sewers or drains vested in the Provincial Government. The local authority is also required to provide and maintain sufficient public toilets for the community. Important provisions in the regulations seek to prevent sewage and other contamination of water supplies and the deposit of rubbish on beaches and foreshores. It is also compulsory for every residential building to have its own rubbish bin.

The regulations also deal with food and drugs. Basically the treatment of food, especially in its preparation regulated. No substance that is likely to affect the quality of the food, from a health perspective, must be added to the food. A health inspector or a health officer has power to inspect food or drugs that are intended for consumption, they also have power to take food or drug samples for testing or analysis. The regulations also deal with labeling and advertising of food and drugs. False labeling or advertising of food and drugs is an offence. Equal attention is also given to imported food.

Similar provisions deal with vessels where health inspectors have power to enter or board and inspect any vessel to remove any nuisance. There is also provision dealing with buildings and housing. Inspectors are empowered to enter and inspect any building whether the building is completed or still under construction.

Recommendation

The main difficulty with this Act is the Department of Health's capacity to implement it due to insufficient resources. Public awareness campaign is an effective tool in educating the public about public health matters.

10 Water Resources

10.1 Rivers Waters Act (Cap 135)

Objectives

The objectives of the Act are to provide for the control of river waters and for the equitable and beneficial use thereof. The Act however, only applies to areas that are specifically designated. Six areas have been designated.

Recommendations

River waters is a very important resource not only for domestic use but also for economic use. It is a resource which requires proper management. The current Act is not comprehensive and does not address the issue of management in detail. A new legislation should include management and environmental issues. A difficulty however, could arise as most rivers are situated on customary lands. The issue of ownership as opposed to the right of use, which is a public right,(the common law position) needs to be settled. The practice that is now becoming more an more acceptable is for the Government to pay large sums of moneys as lease payments to customary land owners from whose land the water source is located. The claim is based entirely on the notion that the water is owned, it is not based on any sound principle of law. By sound principle of law, ownership needs to be supported by evidence.

Water as a substance all over which one has little control; it is not always easy to prove ownership. This however, does not diminish the merits our customary land owners claim over water source. The precedent has been set and as more and water sources are being used more and more claims would be made. The Government has now reached a stage where it has to formulate a policy and supported by legislation for the use of this resource.

Presently the Government can utilize the provision of the Land and Titles Act to compulsorily acquire water sources in the public interest. This however, seems highly unlikely considering the sensitivity of any such actions and the seemingly lack of political will by the Government to address this issue. Even when the land where the water source is located is compulsorily acquired, customary owners be receiving rents if they were made lessors. This approach could result in proper management of the water source and realistic and reasonable rental arrangement. In the situation where nothing is in place, customary land owners are more likely to take advantage of the vacuum that exists, and that seems to be the case now.

Both water and land, (customary land) must be dealt with together at the same time, as Solomon islanders treat both entities as one.

10.2 Proposed Water Resources Act 2001

This Act has the following purposes:

- (a) To provide for the integrated management of the water resources of the Solomon Islands.
- (b) To promote the most efficient, fair and beneficial use of natural water.
- (c) To ensure that natural water resources are available for sustainable use for the benefit of all present and future Solomon Islanders.
- (d) To provide for the protection of natural watercourses and water catchments.

(e) To provide for the control of activities occurring over or beside waterways or watercourses.

11 Land Administration

11.1 Lands and Titles Act, (Cap 133)

This is one of the pre-independence legislation which has gone through lot of changes; in fact there have been thirteen amendments to the 1968 Lands and Titles Act. The reason I suppose is obvious, in that land in Solomon Islands context encompasses the spiritual and cultural lives of the Solomon Islanders as opposed to the common law concept, whereby land is treated as a commodity. Most of the problems that we now have today relating to land are, in my view the result of the misunderstanding by those concerned to appreciate the two concepts. In Melanesia as in other Pacific cultures, the land represents at once a spiritual relationship and one which indicates group and individual identity. The importance of land cannot be underestimated. The following, written in relation to Vanuatu, is also true of Solomon Islands: *"The clan is its land just as the clan is its ancestors. Each man must have some place, some land which belongs to him, which is his territory. If he does not control any land, he has no roots, status or power"*⁵

In Western legal thought, property in land is also complex. It is not so much the ownership of the physical elements as the expression of the relations between the people in relation to the land. Property in land can be divided into "bundles" of rights. For example, one person can own the rights to the products of the land, while the Crown owns the rights to the minerals underneath it. In customary tenure in the Pacific, such "bundles" are also understood: *"Customary tenure was characterized by a multiplicity of different rights. These included rights to clear and cultivate land, to build houses, to hunt, to pick fruit, to fetch water and to have access to particular localized sources such as salt or potting clay. Some were held by individuals and others by the whole group. Several people might have different rights over the same piece of land; rights to trees and to ownership of the land where they were planted could be held separately. Areas held collectively included those reserved for ceremonial and sacred purpose"*⁶

Under this Act, customary land, which is defined as *"meaning any land (not being registered land, other than land registered as customary land, or land in respect of which any person becomes or is entitled to be registered as the owner of an estate pursuant to the provisions of part III) lawfully owned, used or occupied by a person or community in accordance with customary usage, and shall include any land deemed to be customary by paragraph 23 of the Second Schedule to the repealed Ordinance."*, (section 2) a person, including the Crown, can by operation of law convert customary land into a registered land, whereby that person has a registered interest in that land. More than 80% of all lands in Solomon Islands are customary land.

Land is defined as *including land covered by the water, all things growing on land and buildings and other things permanently fixed to the land but does not include any minerals (including oils and gases) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface*, (section 2). This definition restates the common law position relating to ownership of minerals, oils or gases. The Mines and Minerals Act and the Petroleum Act expressly state that ownership of minerals or petroleum vest with the State.

⁵ *Bonnemaison 1984.*

⁶ *Eaton, 1985:8.*

The Act is administered by the Commissioner of Lands and is assisted by the Registrar of Titles and other lands officers. The duties and powers of the Commissioner of Lands include advising the Minister on any matters concerning land policy. He holds and deals in any land for and on behalf of the Government and, subject to any general or special direction from the Minister, execute for and on behalf of the Government any instrument relating to and interest in land.

There is also provision in the Act whereby the Commissioner of Lands may apply to be registered as the owner on behalf of the Government of the perpetual estate in such land below the mean low water mark; and between the points of mean high water and mean low water. The Act prescribes the procedure to follow where an application is made by the Commissioner of Lands. An amendment was made in or about independence time where the Minister could designate any area as a land settlement area. This amendment was seen as necessary as there was a need to resettle people from over populated islands to less populated islands. Again the procedure to achieve this is spelt out in the Act. The Act also provides for compulsory acquisition, whereby land, mainly customary land maybe acquired for a public purpose, the procedure for compulsory acquisition, including an appeal procedure, is also spelt out.

Provision is made for Land Registry where all records of land registry are kept. All transactions relating to any land are recorded and kept in the Land Registry. As a matter of Government policy after independence, with effect from 31st December, 1977, any perpetual estate registered in the name of a person who is not a Solomon Islander shall automatically convert to a fixed-term estate of 75 years. It further states that only the Commissioner of Lands, beside Solomon Islanders, may hold perpetual estate in any land. The Act provides the procedure of registration of interest in land and the power of the Commissioner of Lands to grant or transfer any interest in land. The Commissioner of Lands also has the power of forfeiture and registration of leases where such lease exceeds a period of two years. The Act establishes rights and obligations by lessor and the lessee.

A new development of land law is the establishment of the Customary Lands Appeal Courts which has jurisdiction to hear appeals from the Local Courts relating to dispute involving customary lands.

Subsidiary Legislation

Under various Warrants the Customary Appeals Courts are established in Solomon Islands.

The Land and Titles (Evidence) Regulations

These regulations provide for rules governing evidence. For instance it prescribes the types of evidence which may be accepted by the Register when registering an interest in the land registry.

The Land and Titles (General) Regulations

These provide for the forms to be used and the procedure for registering an interest, it also prescribes the various types of fees.

Recommendations

This Act needs to be reviewed but not for environmental reasons. It seems that certain provisions of the Act are now irrelevant, Part IV, for example. For the purposes of this report, this Act does not have a direct impact on the environment. Even if it does, there are other legislation which would deal with it.

The issue of customary land however, needs to be reviewed with the view to putting in place an effective mechanism to deal with all matters pertaining to customary land. Proper management of resources depends very much on the manner in which customary land is managed. Proper management of customary land will only be effective if it is backed by legislation. Management will not only include the use of land, but will also include determination of ownership claims. Currently there is no legislation which deals with customary land in a comprehensive manner; rather we have the Local Courts Act and part of the Land and Titles Act which deal disputes relating to customary land. The Local Court Act at section 12, provides that *"no Local Court shall have jurisdiction to hear and determine any customary land dispute unless it is satisfied that-*

- (a) the parties to the dispute had referred the dispute to the chiefs;*
- (b) all traditional means of solving the dispute have been exhausted; and*
- (c) no decision wholly acceptable to both parties has been made by the chiefs in connection with the dispute".*

A finding by the chiefs under this section is not binding on either party (ies). A party who is aggrieved by the chiefs determination may file an Unaccepted Settlement Form or the other party may file an Accepted Settlement Form. Where either or both of the forms are filed the Local Court will sit to determine the dispute. There is need to strengthen and increase the role that the chiefs play, that is the decision of the chiefs should be recognized in a court of law and should be binding in as far as the parties to the dispute are concerned. In order to do this recording of all customary land must be recorded with their respective genealogies, tribes and clans. Each ethnic or language groups should be responsible for this task. For instance, the 'Are 'Are chiefs should be responsible for the recording of all customary lands in 'Are 'Are with the respective land owning tribes or clans. Once this is done legislation can be made either at the national or provincial level to incorporate these lands with their respective owning tribes or clans. The legislation should also establish a body which is not only going to be an advisory body but will also be responsible for the management of these lands, including the power to hear land dispute, where it is satisfied that a serious error has occurred in the recording. This constitution of this body should include chiefs and community leaders. Provisions will be made to make it difficult for any person to bring a complaint to the body. Each ethnic or language group should have its own legislation that would be tailor made to suit each ethnic group. This approach is actually empowering the traditional chiefs not only to manage customary lands within their area of control but also empowers them to exercise judicial powers in determining ownership.

It is overwhelmingly difficult to have a single legislation for the whole country. Customs and practices relating to land ownership differ from one ethnic group to the other, how slightly the difference might be. It will require more time and resources.

This approach will have consequential amendments on the Local Courts Act, the Lands and Titles Act and section 112 of the Constitution.

12 Local Government

12.1 Local Government Act, (Cap 117)

This Act establishes the local government system as a second tier system of government to the national government system. All local councils were administered under this Act until the adoption of the Provincial Government system. Provinces are now administered under the Provincial Government Act, whilst the Honiara city is now administered under the Honiara City Act. Certain subsidiary legislation however, continues to apply in relation to Honiara city and the provincial governments.

Subsidiary Legislation

The Local Government (Elections) Regulations; the Local Government (Election Petition) Rules and the Local Government (Registration of Voters) Regulations

These regulations deal with the conduct of election of members to the City Council and the Provincial Assemblies; and sets out the grounds and procedure for lodging a petition after an election.

The Local Government (Basic Rate) Regulations, the Local Government (Exemption from Basic Rate) (Honiara) Regulations, the Local Government (Special Rate) Regulations

These regulations make provisions for the various aspects of basic rates in Honiara.

The Local Government (Rating of Land) Regulations

These regulations deal with valuation of land in Honiara and other Town Councils in the Provincial Assemblies.

Cemeteries By-Laws

Under these by-laws, the Council, with the Minister designates any land which is vested in the Council as a cemetery. It deals with all aspects of burial of a dead person, including the minimum size for a grave, fees, and graves generally. A register of names of persons buried within the cemetery must be kept.

Building By-Laws

These by-laws deal with all aspects of buildings in Honiara and other town Councils in the Provincial Assemblies. From the planning stage to the completion stage the Council ensures that the constructions of buildings in Honiara, for instance, comply with the building by-laws.

Parks and Recreation By-Laws

Under these by-laws the Honiara Town Council may designate any land in the area of the Council to be a public park, garden, recreation ground or an open space. Recreation parks are for the use by the public although the Council do exercise control over it.

The Honiara (Ice and Aerated Water Factories) By-Laws

These by-laws apply to any areas or premises where aerated water is produced. Aerated water is defined as every kind of effervescent liquid prepared for human consumption and sold in bottles, siphons, casks, or other vessels, and shall include non-effervescent syrups,

cordials and other soft drink beverages. A Medical Officer a Health Inspector has powers to inspect premises where aerated water is produced, etc. They also have power to seize, remove or destroy, etc any aerated water or ice unfit for human consumption.

Owners of manufacturing premises must comply with the provisions of this regulation to the satisfaction of the Medical Officer. These premises must be kept clean at all times and the equipment used in the manufacture of aerated water must be clean and sterilized.

The Honiara Market By-Laws

These regulations provide for the management of markets in Honiara. It gives power to the Market Master to take necessary action to ensure the proper functioning of the markets.

The Honiara Bakery By-Laws

Similar to the Ice and Aerated Water Factories By-Laws, these By-laws deal with bakeries. It empowers a Medical Officer to inspect bakeries and may take samples of any bakery products, etc. The construction of premises for the purpose of producing bread must also comply with the provisions of these by-laws.

The Honiara (Refuse Disposal) By-Laws

These by-laws deal with the collection and disposal of rubbish. It imposes upon every owner of a premise to have at least one receptacle for reception of rubbish, etc.

Recommendation

This Act provides adequate provisions for the protection of the environment. Inadequate resources however, have been the main hindrance to effective implementation. There is no inconsistency with other legislation which guarantees the smooth administration of the Act.

13 Development and Planning

13.1 Town and Country Planning Act, (Cap 154).

Administration

In addition to the Environment Act, the Town and Country Planning Act is the primary legal mechanism for the regulation of planning matters at both the national and provincial level. It is potentially the basis for a much broader system of environmental planning and protection. Although the Act covers "Country", it is generally applied only in relation to urban areas. There is little in the way of formal planning outside of urban areas in Solomon Islands.

The Act is administered through the Physical Planning Division of the Ministry of Lands. The Act was amended in 1982 to devolve the physical function to the Provincial Assemblies and the Honiara Town Council. Under the amendment, each province is intended to have its own Town and Country Planning Board. The Minister in charge of town and country planning appoints up to nine Board Members acting on the advice of the Provincial Executive. Membership of the Board must thus be controlled by the Provincial Premier and the Executive.

As well as being responsible for the preparation of a Local Planning Scheme, the Board has wide powers to control development of land in its area. Development is defined in the Act. The Board do not have any power over customary lands.

The definition of the term "development" is important because it is only activities that come under this definition that requires the consent of the Board. Development is defined as the carrying out of building, engineering, mining or other operations in, over or under any land, or the making of any material change in the use of any buildings or other land.

There are however, six exceptions to this definition, they are-

- (a) interior alteration to a building;
- (b) making roads;
- (c) street works;
- (d) development of land adjacent to a house;
- (e) the use of any land for the purpose of agriculture, livestock keeping, fishing and forestry; and
- (f) Other developments as may prescribed by Regulations by the Minister.

The fact that the Act excludes agriculture and fishing from the definition of "development" is a significant restriction. Another major restriction is the exclusion of customary land from the requirements of the Act.

The Board in no requirement for the Board to take into consideration environmental factors when exercising its powers nor does it require the Board to consult with other bodies whose interests are likely to be affected by its decision.

The powers of the Minister are prescribed and one of them is his power to give general direction to the Board. This standard provision is to ensure that Government policies are carried out. The Act spells out the procedure when application is submitted to the Board. There is a right of appeal from the Board to the Minister.

Subsidiary Legislation

The Town and Country Planning (Tree Preservation) (Honiara) Regulations

This regulation prohibits the felling of trees in Honiara, except in accordance with the provisions of the Act and these regulations. It sets out the procedure for application for permission to fell a tree. The application is made to the Board and where the applicant is aggrieved by the decision of the Board, he may appeal to the Minister. Where permission is given, the felling of the tree must be carried out in accordance with the provisions of the regulations.

The Honiara Country Planning Regulations

Under this regulation the procedure for application for development in any zone is spelt out. It also prescribes the application fee.

Recommendations

This Act needs a total review to bring it to accord with the Environment Act. The functions of the Town and Country Planning Board as they relate to the environment should be performed by the Environment Division. The reason is that whilst the Town and Country Planning Act apply only to urban areas, the Environment Act applies to the whole country. Also under the Town and Country Planning Act, there is no indication in the Act of precisely what environmental and planning matters must be borne in mind when the Board is considering an application. Furthermore there is no requirement in the Act for consultation with other relevant authorities or bodies whose interests may be affected by a development.

The regulations under the Local Government Act could be expanded to include some of the provisions of the Town and Country Planning Act.

14 Provincial Ordinances

14.1 Western Province

The Western Province Resource Management Ordinance 1994

The objects of this Ordinance are spelt out in section 2, which basically provides for the protection, conservation and management of all resources in the Western Province. The Ordinance gives a customary land owning group the power to make its own policy statements and plans regarding the resources within its customary land. The Provincial Executive or a person designated by it shall keep a register of all the policy statements and policy. There is need to specify what should be contained in the policy statements and plans. In its present form it is not clear what the contents of the policy statements and plans should be. This is important especially when these policy statements are made by land owners, many of whom are not adequately qualified. Without a clear policy statement it would be difficult to implement these policies. The Ordinance further places restriction on the taking of prohibited species or resources.

Customary land owners may request the Executive to make Resource Order by filling the appropriate form. Any customary land that is covered by a Resource Order is subject to the management regime that is prescribed in the Ordinance. There is also prohibition of any activities that are likely to have adverse effect on the environment. A Resource Management Fund is also set up in the Ordinance.

Ordinances must not be inconsistent with national legislation. Policy statements and plans must be consistent. If there is an inconsistency, the national legislation shall prevail. The definition of "customary land" in the Ordinance extends to include "reef waters and lagoons". The definition of customary land under the Land and Titles Act does not include "reef waters and lagoons". This is an inconsistency and if contested in the Courts the definition in the Land and Titles Act will prevail.

Certain marine species that are listed in Schedule 1 are also subject to the Fisheries Act where the Minister has powers to make regulations protecting such marine resources. With regards to the penalties, there is an inconsistency in the way the penalties are imposed. As it is an offender may be required to pay a fine under both legislation for the same offence. This has to be rectified and the Ordinance must be amended to so as to be consistent with the Fisheries Act. The same applies to the Wildlife Protection and Management Act when this Act comes into force.

The Western Province Coastal and Lagoon Shipping Ordinance 1991

This Ordinance controls marine pollution and is designed to protect the coastal waters and lagoons in the Western Province. A fine is imposed of up to \$1,000.00 on the master of a ship which discharges polluting materials into the sea. The Court may require the offender to pay for any clean up work.

The Western Province Public Nuisance Ordinance 1991

This only provisions relating to the environment is the ones dealing with littering. It imposes a fine of up to \$100.00 or one month imprisonment.

Simbo Megapode Management Area Ordinance 1990

This ordinance declares certain areas to be protected area in which certain activities are restricted to protect the habitat of megapodes. Even the harvesting of the megapodes eggs

is also restricted. These areas are on customary land so the management is in the hands of the customary land owners. Under this Ordinance a Management Committee is established to manage the protected area. Basically persons wishing to visit the site must obtain a permit from the Committee. Visitors are not allowed into the sites during the closed season.

14.2 Guadalcanal Province

Wildlife Management Area Ordinance 1990

This Provincial Ordinance gives the Executive power to declare any area in Guadalcanal a wildlife management area. Prior to making any declaration, the Executive is required to consult with the relevant landowners, authorities responsible for the environment and conservation and the national government. The Ordinance sets out the procedures and matters that need to be taken into consideration when making a declaration. It also ensures landowners participation. For instance, landowners are required to set out the boundaries of the area to be declared and to make the rules governing management of the area.

14.3 Isabel Province

Wildlife Sanctuary (Amendment) Ordinance 1991

This amendment amended the Wildlife Sanctuary By-Laws passed under the Local Government Act, 1980. This ordinance established the Arnavon Wildlife Sanctuary which consists of four islands and their reefs. Under this ordinance the islands are not allowed for visitors except the wardens of the sanctuary and people having customary rights over the islands. Any person who wishes to live on the islands may do so for limited purposes, including investigation or study of wildlife, travel, photography, transacting lawful business, scientific research or collecting firewood or copra. A permit must be obtained for any of these.⁷

14.4 TEMOTU PROVINCE

Environment Protection Ordinance 1989

Under this Ordinance the Provincial Executive is empowered to declare an area in the Province that is used by a "protected species" to be a protected place. Where an area in a customary land, the consent of the relevant landowners must be obtained before any such declaration. The landowners are involved in the management of the area; such as demarcating the boundaries and informing the public, especially those in the surrounding areas of the declaration. A penalty is imposed on any person trespassing into the protected place. Members of the police force are empowered to enforce the ordinance.

14.5 MAKIRA PROVINCE

Preservation of Culture and Wildlife Ordinance

This ordinance gives the Provincial Executive of the Makira province the power to declare an area to be a protected area in which the "soil, any vegetation or other remains" is protected. A penal provision is included to say that any person disturbing them is subject to a fine of up to \$100.00. The ordinance further prevents the importation into the Province

⁷ Ben Boer, 1992

of toads, outlaws the killing of duck, or killing of any fish by means of diving with a spear or a spear gun within one mile radius of Ulawa. The killing of eagles is also banned.

15 Summary

Good and sustainable management of the natural resources of Solomon Islands are not entirely dependant on legislation. Good laws must be accompanied by effective implementation. Effective implementation can only be achieved with adequate resources, both human and financial. Most of the important legislation dealing with natural resources are fairly recent and are not in need of any major review.

The Environment Act needs to be brought into operation. It is the only legislation whose primary goal is the protection of our environment, all other legislation are supplementary. The Protection of Wildlife Act also needs to be brought into operation. Solomon Islands is a party to numerous international Convention dealing with wildlife, for instance the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Membership of international bodies entails not only benefits but also obligations. Without these legislations in place proper management of resources would not be possible.

Customary land which comprises over eighty per cent of all the land in Solomon Islands needs to be addressed. Relevant issues are ownership of land and water, recording, and land use. The current legal system charged with the responsibility of dealing with customary land dispute is inadequate and is causing more confusion. The problem should be addressed at source. Ownership of coastal reefs, lagoons and the shoreline need to be resolved.

Review of legislation is an ongoing process. As circumstances change and new technologies are introduced, legislation needs to be reviewed to accommodate these. Implementing Ministries or departments should be able to pinpoint the changes that are needed.