PAPUA NEW GUINEA

Environment Legislation (provisional review) and Miscellaneous Issues

Conservation of PNG’s natural resources and the environment is enshrined in the fourth goal of the Constitution.

_We declare our fourth goal to be for Papua New Guinea’s natural resources and environment to be conserved and used for the collective benefit of us all, and to be replenished for the benefit of future generations._

This commitment is supported by the following legislation:

- **The Fauna (Protection and Control) Act (1982)** provides for the conservation and management of PNG fauna, particularly through the establishment of Wildlife Management Areas (WMA), administered by local interest groups through a Wildlife Management Committee. The Act provides for the protection of fauna through the declaration of protected fauna (dugong and leatherback), protected areas, wildlife management areas and sanctuaries. The Minister is obligated to consult landowners and local government prior to declaring an area as a WMA under terms that are more demanding than those required for the establishment of conservation areas under the _Conservation Areas Act_, reflecting the application of WMA to private land. The intent of WMAs is for the management and protection of fauna whereas Conservation Areas and National Parks can be created for aesthetic and cultural values. Under the Act, the Conservator of Fauna may, on application, grant permits for approved scientific or zoological organisations to take protected fauna.

- **The Conservation Areas Act (1978)** provides for the establishment of Conservation Areas by the Head of State. The Minister responsible, in response to approaches by individuals or interest groups, may declare a conservation area by gazette. A Management Committee, representing landowner and local interests, may be established to manage the area through the development and implementation of management plans and the provision of direction to local rangers. Though drafted in 1978, the Act has not been implemented. A National Conservation Council, provided for under the Act, has not been established.

- **The National Parks Act (1982)** provides for the establishment, on State-owned or leased land, for national parks for the preservation of particular scenic, scientific or cultural significance. As the legislation does not make specific reference to marine habitats, it is uncertain if this legislation can be applied to marine conservation areas. Although these three Acts provide several possibilities in relation to area-based
conservation mechanisms, none align effectively with the hierarchical arrangement of six levels of protection proposed by the IUCN (VanHelden, 2001). An effort was made to improve PNG’s protected area legislation under the AusAID DEC Strengthening Project through which it was proposed to integrate conservation provisions distributed across numerous Acts and regulations and to relate any changes with the Organic Law on Provincial and Local-level Administrations (Whimp, 1995). Apparently this was never proposal was never implemented. Instead efforts were made to revise existing legislation. The AusAID Project concluded that developing and enacting legislative change in the area of conservation will require significant time and resources. A critical review of the existing arrangements for establishing conservation areas was completed by VanHelden (2001).

- The Crocodile Trade (Protection) Act (1982), and its associated 13 regulations, promotes the sustainable utilization and conservation of crocodiles in PNG through controlling buying, exporting and farming of crocodiles and cocodile skins.

- The Fisheries (Torres Strait Protected Zone) Act (1978) implements the provisions of the Torres Strait Treaty between PNG and Australia, defining areas of responsibility for each party in relation to fisheries and fisheries management in the Torres Strait and providing for reciprocal issuance of licenses for each country to fish in the other’s jurisdictional zone within the Treaty Area.

- The National Seas Act (1977) demarcates the boundaries of PNG’s territorial waters.

- The Dumping of Wastes at Sea Act (1981) provides for the prevention of pollution of the sea by dumping of waste and other matter which may create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate use of the sea. Regulations provide for permitting waste discharge and designate enforcement offices, within the OEC and Department of Transport.

- The Environmental Planning Act (1978) establishes mechanisms for State control over the exploitation of natural resources. It authorizes the OEC to develop and implement guidelines for developers to prepare environmental plans. Development consent is contingent of the approval of environmental plans unless exemption has been applied for and granted. The main sector environmental plans are applied is reported to be the forestry sector.

- The Environmental Contaminants Act (1978) provides for the control of discharges of any substance or form of energy, including heat and noise, into the environment that could “adversely affect its beneficial use”. It provides that no unlicensed person may discharge a pollutant into the environment unless in accordance with a license issued by the Minister or unless exempted by the Minister on the recommendation of the Environmental Contaminants Advisory
The Act also provides for the control of the importation and distribution of hazardous substances and allows the Minister to declare statutory protected areas. The *Environmental Contaminants (Pesticides) Regulation* declares pesticides as hazardous under the Act.

- The *Water Resources Act (1992)* provides the basis for Government regulatory powers over water use, drainage, diversion, and damming of waterways with the limitation that customary rights of water use by residents are not adversely affected. Waste disposal on land, swamps and in water bodies extending to the EEZ boundary can be regulated under the Act.

Whimp (1998a) argues that the above three Acts, which are the main government regulatory facilities for controlling development activities, have been ineffectively applied since the late 1970s. She identified the problems as relating to the lack of an effective legislative basis for on-going regulation and for responding to non-compliance.

In an effort to address these shortcomings, a new Environment Bill was drafted during 1998. The Bill (approved by Cabinet in 2000 but yet to enter into force) and its associated four sets of Regulations (Permit regulations, Environment Board Regulations, Requirements for EIA Regulations and Fees Regulations) attempts to integrate the three previous systems of legislation relating to environmental planning, contaminants licensing and water resource management. Additional Regulations concerning hazardous contaminants and noise control are yet to be drafted.

The main features of the Bill are improved definition of the functions of the Environment Board and the use of Statutory Environment Policies. Legally binding Policies covering any component of the environment (e.g. water, air and marine), the use of the environment (e.g. forestry) and management of the geological sector (e.g. watershed management). The Policies, supported by Operational Procedures, include the identification of the beneficial values of the environment so that development activity can be measured against impacts on the identified values of the environment.

The most critical Environment Policy in need of development in 2000 was identified as an Environment (Water) Policy.

The new Bill also envisages a major role for communities in monitoring development projects. This was provided for on the basis that existing resources within the OEC are insufficient to effectively monitor all development projects being promoted throughout the country. It is proposed that community monitoring groups be led by groups active and working in communities, such as NGOs and that they be supported by OEC staff from the environment monitoring section and the Social Monitoring Unit.

Additional environment legislation includes:

- The *International Trade (Flora and Fauna) Act (1983)* implements PNG’s
obligations to control and regulate the export and import of certain species of fauna and flora in accordance with the Convention for International trade in Endangered Species (CITES). Penalties for exporting wildlife without permit are provided for under the *Customs Act*.

The Act establishes procedures for the establishment of protected areas. This provides for watershed management for which an area can be declared under the Act.

- The *Fisheries Management Act (1998)*, repeals earlier legislation, including the *Continental Shelf (Living Resources) Act (1978)*, in relation to sedentary marine resources, establishes the National Fisheries Authority and gives broad power to the Minister to regulate fishing activity. Regulations under the Act address destructive fishing practices and establish management rules within PNGs EEZ.

The purpose of the NFA, as stipulated under the Act, is:

- To manage and protect the fisheries resources and the marine, coastal and aquatic environment of PNG, to ensure their present and future conservation and replenishment,

- To develop the resources of the country on a sustainable basis, in such a way as to maximize the benefits due to the country, its citizens and the domestic private sector,

- To utilize these resources in a manner which is consistent with the national developmental objectives of achieving economic growth, social betterment, human resource development, employment creation and a sound ecological balance,

- To encourage subsistence and small scale fishing operations which will provide opportunities for fishing communities to generate income, obtain food and improve their nutritional standards, and

- To upgrade and strengthen the administrative and technical capacities of fisheries institutions so that they can better manage the fisheries resources of the country and effectively plan and execute fisheries development projects.

- The *Export (Fish) Regulations Act* regulates the export of seafood under the *Customs Act* and the *Commerce (Trade Descriptions) Act* with respect to labeling, condition of processing premises, process worker hygiene, etc. The National Fisheries Authority is currently upgrading its activities in this area through the promotion of Hazard Analysis and Critical Control Point (HACCP) systems including the establishment of a Certification and Audit Branch within NFA.

- The *Lands Act (1996)* gives title to land, which includes water. The Act contains an ambiguity in relation to marine areas as the Act does not define “land”.
A major issue in relation to management areas is boundary delimitation. Although the *Lands Settlement Act* and the *Land Groups Incorporation Act* can be used to describe land areas there is no capacity within either Act to register marine areas. The *Customary Lands Registration Bill* and the *Provincial Lands Registration Bill* may offer some scope to address this deficiency.

Although of little assistance in terms of identifying true landholders, the only formal system for landowner organisation and representation currently available in PNG is the *Land Groups Incorporation Act* which establishes a process for customary groups to become formal, legally-recognised bodies. However, Whimp (1998b) argues that this Act is no longer applied for the purposes that it was intended and is in need of revision.

Under the *Organic Law on Provincial and Local Level Governments* *(1997)* provincial governments are empowered to establish procedures and systems for the protection of the environment and resources.

Additional legislation for which details were not obtained include:

- *Whaling Act* *(1974)*
- *Prevention of Pollution of the Sea Act* *(1981)*

PNG is signatory to the following international conventions concerning environmental and natural resource matters:

- International Convention for the Prevention of Pollution of the Sea by Oil
- International Convention for the Prevention of Pollution from Ships *(MARPOL)*
- International Convention on Oil Pollution Preparedness, Response and Co-operation *(OPRC)*
- International Convention on the Conservation of Nature in the South Pacific
- International Convention for the Protection of the Natural Resources and Environment of the South Pacific *(SPREP Convention)*
- International Convention on Biological Diversity
- International Convention on Wetlands of National Importance *(RAMSAR)*
- Framework Convention on Climate Change

This list requires confirmation and updating.