

## SOLOMON ISLANDS

### Environment Legislation (provisional review) and Miscellaneous Issues.

The only comprehensive review of environmental legislation in Solomon Islands was completed in 1992 (Boer 1992). While this summary draws on that review for the legislation that has remained unchanged since 1992, Solomon Islands law has undergone significant revision in previous decade. In relation to environmental issues this includes the following recent legislation:

- The Environment Act 1998,
- The Wildlife Protection and Management Act 1998,
- The Forestry Act 1998,
- The Fisheries Act 1998, and
- A National Tuna Management Plan produced under the Fisheries Act.

Solomon Islands legal system is largely based on British legal concepts, reflecting colonial ties that were released in 1978 when Solomon Islands achieved Independence under the *Solomon Islands Independence Order 1978*.

The Constitution of Solomon Islands recognizes traditional systems of governance. The preamble of the Constitution provides that:

the natural resources of our country are vested in the people and government of Solomon Islands.

The Constitution provides that customary practice, consistent with the Constitution or an Act of the Solomon Islands Parliament, is part of the law of Solomon Islands. Article 75 of the Constitution provides that:

Parliament shall make provisions for the application of laws, including customary laws.

In making provision under this practice, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.

“Current customary usage” is a common term throughout Solomon Islands legislation. It provides for customary rules to apply in any area of law where legislation does not specifically provide for the area in question or where legal precedents of the court do not override those rules. In Solomon Islands, “current customary usage” is defined in the *Land and Titles Act 1978* as:

the usage of Solomon Islanders obtaining in relation to the matter in question at the time when that question arises, regardless of whether that usage has obtained from time immemorial or any lesser period

The Constitution provides for Parliament to divide Solomon Islands into provinces. In making provision for provincial government, Parliament is to consider the role of traditional chiefs in government. Although the practical application of this provision is unclear, the *Local Courts (Amendment) Act 1985* does acknowledge the role of chiefs in mediation of customary land disputes.

The intent of the Constitution to devolve certain responsibilities to the Provinces in relation to the environment is provided for in respect of:

- *Trade and industry*: local licensing of professions, trade and business.
- *Cultural and environmental matters*: local crafts, historical remains, protection of wild creatures.
- *Transport*: coastal and lagoon shipping, provision, maintenance and improvement of harbors, roads and bridges.
- *Agriculture and fishing*: animal husbandry, protection, improvement, maintenance of freshwater and reef fisheries.
- *Land and land use*: codification and amendment of customary law, registration of customary rights including customary fishing rights, physical planning.
- *Local matters*: including waste disposal and cleaning services, public conveniences, public nuisances, cemeteries, parks and recreational areas, markets and the keeping of domestic animals.
- *Local Government*: the making of bye-laws for Area Councils and other bodies such as Town Councils.
- *Rivers and Water*: control and use of river water, pollution of water, provision of water supplies.

The Office of the Ombudsman, established under the Constitution, and responsible for the *The Ombudsman (Further Provision) Act 1980*, and the Leadership Code (*The Leadership Code (Further Provisions) Act 1979*), also established under the Constitution, provide the basis for ensuring that Solomon Island law is applied as intended and that public officers act responsibly and in the national interest.

### **Proposed Constitutional Amendment**

Under the Townsville Peace Agreement the Solomon Islands Government was mandated to introduce a form of government system that would give autonomous political status to the people of Solomon Islands to manage their own affairs. In response, the Ministry of Provincial Government and Rural Development arranged a Premier's Conference at Buala to canvas views on options for a new system of government and appointed a Task Force to review the 1987 Constitutional Review Committee Report and make recommendations to Cabinet on the most suitable Homegrown State Government System to be adopted in Solomon Islands.

The result, produced with the assistance of Constitutional Lawyer provided by the British Government is the *Constitutional Amendment (Creation of the Federation) Bill 2001*. The Bill proposes the establishment of Solomon Islands as a "Sovereign Democratic Federal

Republic”. If passed into law, the Agreement and Pledge in the preamble to the Constitution is to be revised to include:

- “We shall recognize and adopt Solomon Islands traditional systems and structures of good governance”, and
- “We shall recognize the basic traditional principles and practices pertaining to traditional land tenure systems in Solomon Islands in all their diversity”

The Bill proposes to establish a Federal System of Government comprising:

- A President of the Federal Republic,
- A Federal Government,
- A Prime Minister elected by members of the Federal Parliament,
- A Parliament consisting of 11 members or “such greater numbers as Parliament may prescribe”,
- A Cabinet consisting of the Prime Minister and members of Parliament,
- A minimum of nine and a maximum of 12 State Governments headed by a Governor, and
- A Congress of Governors (to elect the President, advise on appointments of public officers, advise on law).

The Bill is yet to be considered by Parliament.

## **Land**

The *Land and Titles Act 1978* defines “land” as:

“Land covered by water, all things growing on land and buildings and other things permanently fixed to land but does not include 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 working”.

The same Act has a complex definition for “customary land” which in effect means that any land registered under the Act, but which is owned by a person or community according to custom, is customary land. If customary land becomes registered as customary land, it is legally regarded as customary land.

The definition of “land” and “customary land” vests ownership substances in or under land in the State. The same definitions make it clear that any products of land (for example trees) are owned by landowners.

In relation to marine tenure, customary fishing rights are protected under the *Fisheries Act (1998)*.

Local Courts, established under the *Local Courts Act 1973*, rule on a range of matters including disputes over customary land. Appeals from Local Courts over customary land are referred to Customary Land Appeals Court established under the *Land and Titles Act* by the Chief Justice. A Customary Land Appeals Court has been established in each of the nine Provinces.

## **Environment**

The *Town and Country Planning Act (1979)* is the principal mechanism for managing development, environmental planning and protection at the national and provincial levels in both urban and rural areas. Although the Act is administered through the Physical Planning Division of the Ministry of Lands, Agriculture and Fisheries, following a 1982 amendment, the physical planning functions was transferred to the Honiara Town Council and Provincial Assemblies.

“Development” administered by the Act is defined as:

“building, engineering, mining and other operations in, over, or under any land, or the making of any material change in the use of any buildings or other land”.

Among exemptions, deemed not to be “development”, include forestry and fishing.

The *Investment Act (1990)* provides a limited degree of control over the potential impact of foreign investment in Solomon Islands. This is achieved through a requirement that the Foreign Investment Board refer investment proposals to appropriate government ministries, Provincial Governments or the Honiara Town Council, as appropriate to seek their approval in relation to a development application and it’s compliance with the requirements of “relevant or qualifying law. The extent that this process is practiced is reported to be minimal.

The 1991-2000 Solomon Islands Tourism Development Plan incorporates a requirement for environmental impact assessment in compliance with guidelines included in the Plan. In addition, the *Western Province Environmental Management Ordinance (1991)* provides a broad instrument for environment regulation, including a requirement that developers intending to operate in the Province produce an Environmental Impact Assessment.

The *Environment Act (1998)*, passed by Parliament, but pending entry into force subject to its gazettal, incorporates a formal mechanism for the control of development, environmental impact assessment and on-going review and monitoring of development projects. The other significant Part of the Act concerns the control of pollution and waste. The Act imposes a requirement that the Director of the Division of Conservation and Environment submit a report on the state of the environment to the Minister who shall present it to Parliament.

Other functions of the Division include:

- Protect, restore and enhance the quality of the environment of Solomon Islands, having regard to the need to promote sustainable development;
- Develop, establish and administer systems of prevention and control of pollution in both the industrial and non-industrial sector;

- Develop national standards to promote sustainable development and to monitor those standards through environmental auditing;
- Assist in developing legislation for systems of environmental planning at national, provincial and local level, and the development of national, provincial and local environmental plans;
- Collaborate with relevant public authorities in assisting in the conservation and management of world heritage properties;
- Promote the participation of the community in decision-making;
- Ensure freedom of access to information on environmental matters, in particular to ensure that the community has access to relevant information about hazardous substances arising from, or stored, used or sold by any industry or public authority;
- Set compulsory standards for environmental improvements;
- Conduct public education and awareness programmes about the environment;
- Promote the study of the environment through research, surveys, listing and classification.

For the purposes of promoting sustainable development, the Division shall, as far as possible, be guided by the following:

- the precautionary principle, that lack of scientific certainty should not be used as a reason for not acting to prevent serious or irreversible environmental damage or degradation;
- fairness for future generations in that the present generation should ensure the health, diversity, and productivity of the environment is maintained or enhanced for the benefit of future generations;
- conservation of biological diversity and ecological integrity; and
- improved valuation and pricing of environmental resources.

Research in Solomon Islands is regulated under the *Research Act (1982)*. Under this Act, permission to undertake research is subject to the approval of the “research Application Committee”. It is not clear if the Committee is still active.

## **Fisheries**

The principal fisheries legislation is the *Fisheries Act (1998)*. Associated legislation includes the *Fishery Limits Act (1997)*, the *Delimitation of Marine Waters Act (1988)*, which establishes Solomon Islands claim to its 200 mile exclusive economic zone and defines the various fishery zones within, the *Declaration of Archipelagic Baselines Act (1979)* and the *Fisheries (United States of America Treaty) Act (1988)*.

The objective, as stated in the *Fisheries Act (1998)* is:

“Fisheries management and development...to ensure the long term conservation and utilization of the fishery resources of Solomon Islands”.

The Act highlights sustainable resource use and the application of a precautionary approach to resource management. The Act establishes a Fishery Advisory Council to advise the Minister on matters relating to conservation, development and management of fisheries.

Regulations, developed under obsolete fisheries legislation (*Fisheries Act 1972*) remain applicable under the Act. The regulations include:

- Fisheries regulations (1972)
- Fishing (Foreign Fishing Vessels) Regulations (1981), and
- Fishing (Local Fishing Vessels) Regulations (1981) and amendments.

The *Fisheries Act (1998)* requires the Director of Fisheries to:

“Prepare and keep under review a management and development plan of fisheries in Solomon Islands”.

The Tuna Fishery Management Plan passed by Cabinet in 1999 introduces new concepts and processes to support the responsible management of fisheries in Solomon Islands which has implications for the existing Act.

The Fisheries Act also requires each provincial government to prepare a plan for the development and management of fisheries within its provincial waters.

## **Water**

The River Waters Act (1969), the Forest Resources and Timber Utilisation Act (1991), the Town and Country Planning Act (1979), the Water Supply Act (1981) and the Rural Water Supply Regulations (1987) form the basis of legislation relating to the management of water. In an attempt to strengthen the framework for water management and conservation a *Water Resources Bill* was prepared during 2001.

The Act will have the following purposes:

- To provide for the integrated management of the water resources of the Solomon Islands.
- To promote the most efficient, fair and beneficial use of natural water.
- To ensure that natural water resources are available for sustainable use for the benefit of all present and future Solomon Islanders.
- To provide for the protection of natural watercourses and water catchments.
- To provide for the control of activities occurring over or beside waterways or watercourses.

Once gazetted, the Act will establish a Water Resources Advisory Board, which, in association with the Minister and the Director of Water Resources, will be responsible for general matters relating to the administration of the Act.

The Act also identifies the Ministry responsible for water resources as being responsible for controls for the use and development of water catchments and riverbanks. Such control may be exercised through regulations, orders, and instructions prescribed by the Minister.

Logging, mining and extraction of sand and gravel in water catchments, river banks and river beds may be restricted by the Ministry according to the requirements of catchment management and conservation. Such restrictions may only be compensated if they amount to functional dispossession or transfer of ownership.

The Act also addresses pollution of water where "waste" is defined to include any matter that, when added to or mixed with any natural water, will contaminate the water so as to change the physical or chemical condition thereof in such a manner as to:

- Make the water unclean, noxious, or impure; or
- Be detrimental to the health, safety, or welfare of persons using the water; or
- Be poisonous or harmful to animals, birds, or fish around or in the water; or
- Make the quality of such natural water below quality standard acceptable for human consumption in Solomon Islands

## **Pollution**

Until the *Environment Act* was passed by Parliament in 1998 (although still not gazetted in 2001), Solomon Islands legislation was weak in terms of pollution control. The relevant legislation was the *Environment Health Act (1980)*. In addition, a *Public Health Bill* drafted in 1990 included comprehensive provisions for community health, the control of "nuisance" activities, the protection of water supplies and drain and waste disposal. Boer (1992) recommended the draft Bill be re-drafted and simplified. It is not known if this occurred.

## **Forestry**

The *Forests Act (1999)* is another new piece of legislation passed by Parliament in June 1999 and not gazetted. The Act provides for the sustainable harvesting and management of the forest resources in Solomon Islands and repeals the *Forest Resources and Timber Utilisation Act (1991)*.

The objectives of the Act are:

- To ensure proper management of Solomon Islands forest resources in an efficient, effective and ecologically sustainable manner;
- To promote the development of a sustainable commercial timber industry so as to ensure the maximum benefit to the present and future generations of the people of Solomon Islands, and

- To protect and conserve forest resources, habitats and ecosystems including the maintenance of ecological processes and genetic diversity.

A Commissioner of Forests and a Solomon Islands Forestry Board are established by the Act. One of the functions of the Commissioners is the preparation and regular review of a national timber Industry Policy. Although this apparently has never been done, A Code of Practice for Timber Harvesting was produced by the Forestry Division in 1996.

The aim of the Code is to ensure forests are harvested with minimum adverse impact. It theoretically balances the need for protection of environmental values with safety and commercial considerations. Implementation of the standards described in the Code are designed to ensure that important resources and values are recognized and protected during log harvesting operations and that benefits of logging to communities, to industry and to the nation are optimized.

The objectives of the Code are:

To define practices and provide guidelines that:

- Safeguard terrestrial and aquatic environments within the logged area and downstream,
- Protect soil and water resources,
- Protect sites which have cultural, historic or archeological value,
- Maintain a healthy and productive forest, and
- Promote safe logging operations.

The Code includes the following guidelines:

- Protect the environment and promote forest development consistent with the principles of sustainable development,
- Recognize and respect the rights and knowledge of resources owners,
- Protect sites of cultural, historical, archeological, geomorphological, biological or spiritual significance,
- Promote conservation measures for flora and fauna,
- Maintain forest regenerative capacity and species diversity,
- Promote the growth of merchantable timber,
- Ensure that all harvested merchantable timber is accurately scaled, removed and accounted for,
- Ensure the health and safety of forest workers,
- Optimize the economic return from the forest, and
- Ensure that forest owners receive a fair return from harvesting of their resources.

Included among the roles and responsibilities of logging operators to promote sustainable logging operations, services to communities supposedly include:

- assisting to educate and train resource owners in the wise management of forest resources, and

- make the values and needs of communities known to government, managers and users.

## **Biodiversity Conservation**

Solomon Islands currently has only weak systems for the conservation of biodiversity and for the regulation of trade in wildlife. As the *Environment Act (1998)* only has provisions for environmental impact assessment and pollution control, Solomon Islands relies on dated legislation, such as the *National Parks Act (1954)* for the protection of wildlife, habitats and ecosystems. Only one park, the Queen Elizabeth II Park near Honiara, has been declared – but exists in name only.

Five sanctuaries have been declared under the *Wild Birds Protection Act (1914)* but, according to Thistlethwaite (1990), do not function as protected areas at all. The sanctuaries are:

- Dalakalong Bird Sanctuary,
- Kolombangara Forest Reserve,
- Mandoleana Bird Sanctuary,
- Oema Bird Sanctuary, and
- Tulagi Bird Sancturay.

Numerous Provincial Ordinances give the executive in the respective Provinces authority to declare protected areas and/or species. These include:

- Guadalcanal Province Wildlife Management Area Ordinance (1990),
- Makira Province Preservation of Culture and Wildlife Ordinance (1984),
- Temotu Province Environmental Protection Ordinance (1989),
- Santa Isabel Province Wildlife Sanctuary Amendment Ordinance (1991) which established the Anarvon Wildlife Sanctuary, and
- Western Province's Policy on the Environment.

## **International Agreements**

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

- International Convention on the Prevention of Marine Pollution by dumping of Wastes and Other Matter (The London Dumping Conention)
- International Convention on Biological Diversity, 1992
- South Pacific Forum Fisheries Agency Convention, 1979
- International Convention on the Conservation of Nature in the South Pacific (Apia Convention)
- United Nations Convention on the Law of the Sea
- Convention for the Prohibition on Fishing with Long Driftnets in the South Pacific 1989.
- International Convention for the Protection of the Natural Resources and Environment of the South Pacific (SPREP Convention)
- International Convention on International trade in Endangered Species of Wild

## Fauna and Flora (CITES)

This list requires confirmation and updating.