

## TUVALU

### **Review of environment-related legislation**

On the basis the work of the International Waters Programme will be in four principal areas; marine protected areas and sustainable coastal fisheries, the protection and conservation of freshwater and the management of community-based waste, a pilot project established under the Tuvalu national component of the International Waters Programme has the potential to interact with several Government ministries responsible for various legislation.

In an attempt to understand public service responsibilities for the administration and management of activities in these four focal areas, a brief review of current legislation, including responsibilities for its implementation, was undertaken during the first visit of the International Waters Project Coordination Unit to Tuvalu in June 2001. The resulting summary, presented here, was assisted by a review of environment legislation (Pulea and Farrier, 1994), undertaken as part of SPREP's National Environment Management Strategy (NEMS) Project.

The Laws of Tuvalu Act (1987) describes the laws of Tuvalu as being the Constitution of Tuvalu (1986), essentially derived from British colonial law, customary law (being the customs and usages that exist from time to time) and the common law of Tuvalu (comprising the relevant rules derived from English common law and equity). The common law of Tuvalu has little to say in respect of the environment.

The power to make law in Tuvalu is vested in the Parliament. Any Member of Parliament may introduce legislation to Parliament in the form of a Bill. Once approved by Parliament and the Head of State Bills become Acts. The High Court is responsible for determining questions of constitutional interpretation. At Independence in 1987, all Ordinances were re-designated Acts.

Local government councils for the eight islands of Tuvalu were established under the provisions of the Local Government Ordinance. A Council's area of authority covers the land, lagoon and three miles of the territorial sea. This is subject to provisions in other legislation relating to ownership or rights over land, foreshore, marine life and mineral deposits.

A President of the Council is elected by the Maneapa which is defined as "the traditional assembly of elders" according to local custom. In addition to maintaining "order and good government", in respect of areas of international waters, and subject to the final approval of the Minister responsible, Councils may enact bye-laws relating to:

- Fishing,
- Livestock,
- Agriculture,
- Hunting,
- Building sites and building quality,

- Land management,
- Sanitation, rubbish, waste and pollution, and
- Artifacts

Responsibility for the environment is not consolidated in one piece of legislation in Tuvalu, rather it is sectorally structured with no effective mechanism for effective co-ordination on environmental issues among the numerous Government departments with responsibilities for environmental issues.

Tuvalu is party to the following international environment conventions:

- Convention for the Protection of the Ozone Layer (1985)
- Convention on Climate Change (1992)
- Convention for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) [London Dumping Convention]
- Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (1989)
- South Pacific Forum Fisheries Agency Convention (1979)
- International Convention for the Prevention of Pollution from Ships (1973) and its 1978 Protocol
- United Nations Convention on the Law of the Sea (1982) (signed by Tuvalu but not ratified – check?)
- South Pacific Nuclear Free Zone Treaty (1985)
- Convention on Biological Diversity (signed by Tuvalu in 1992 but not ratified)
- The Niue Treaty between Tonga and Tuvalu on Co-operation in Fisheries Surveillance and Law Enforcement (1993)
- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986) and related Protocols [SPREP Convention]

In 1997, Parliament introduced new legislation to progressively repeal the Local Government Act including regulations and bye-laws. The new Act, the Falekaupule Act (1997), gives council elders (Falekaupule) more responsibility for the affairs of each island by incorporating island elected councils, Kaupule, as an agent or executive arm of the Falekaupule. Under the Act, Kaupule may employ their own staff, rather than having Government officers working for them. They are also given more financial resources than had been the case in the past. The Act retains certain powers for the Minsiter so that a degree of uniformity can be maintained in matters such as salaries and rates.

The Act retains the existing composition of Kaupule i.e. six members elected by voters on each island. The post of President is titled Pule o Kaupule and the holder is tasked with liaising with the Minister on one hand and the head of the Falekaupule on the other. Two important new provisions of the act are:

- An annual Falekaupule Assembly for all adults on the island, not limited to elders. This considers an annual budget, and

- The requirement for an annual development plan for each island. This is the basis for which development funds are made available from both the Government and external sources.

### *Land*

Land tenure in Tuvalu is based on customary law and land can be used, leased, transferred and inherited only in accordance with the Native Lands Ordinance (1957) and the Tuvalu Lands Code (1962). Written and unwritten customary law that supports the “sub-division of plots on the basis of inheritance through which both males and females are entitled to inherit” principally determines the land tenure system.

Under the Laws of Tuvalu Act 1987, customary law can be determined and applied in the case of i) native land, and ii) the produce of native land. This Law does not affect the power of the Local Government Councils, under the Local Government Ordinance, to amend customary laws when making bye-laws.

The Native Lands Ordinance provides that native land cannot be disposed of to anyone who is not a native except in accordance with the Ordinance. This does not prohibit the alienation of native land to the Crown, Local Government Councils or a society registered under the Co-operative Societies Ordinance. Titles to native lands are registered with the Native Lands Commission. Disputes are resolved by the Lands Court, which are established by each Island Council with jurisdiction over all native land matters and the determination of customary fishing rights.

Land can be held:

- i) *Kaitasi* by a group or a family on one estate and listed under the head of the family with all family members listed as entitled to eat from that piece of land and its *pulaka* pits. When the land is sub-divided among family then it is *Vaevae*.
- ii) Communally and controlled by the Local Government Council. Village land

### *Economic Development*

Economic development in Tuvalu is directed by National Development Plans, the latest for which is the Kateenga which theoretically served the period 1995 to 1998. The Kateenga aimed to achieve:

- i) Maximum development potential for the land and its resources,
- ii) To control coastal erosion and protect the land from encroachment from the sea, and to reclaim land, where possible,

Although the Local Government Ordinance does not create a planning authority, Local Government Councils have wide powers to act as planning authorities under the Falekaupule Act.

## ***Agriculture***

Agriculture production in Tuvalu is limited by small total land areas and the fact that most land holdings are reserved for family units – *kaitasi*. Coconut production has decreased in recent years and livestock (pigs and goats) have not been actively promoted because the Department of Agriculture is reported to be of the view that livestock poses a threat to hygiene in addition to causing damage to soil and root crops. The importation of animals, including animal litter, fodder and other things that have come in contact with the imported animals is controlled by the Minister for Agriculture under the Importation of Animals Ordinance (1919).

Additional support for protecting Tuvalu from imported pests and diseases is found in the Livestock Diseases Act (1984), the Plant Ordinance (1977) and the Prohibition of Plants Importation Order (1979). In addition to administering this legislation, the Minister of Agriculture may draft supporting regulations to address specific issues of concern. In addition, the Pesticides Act (1990) controls the importation and use of pesticides. The Act provides for a Pesticides Committee, appointed by the Minister, and an Office of the Registrar of Pesticides.

## ***Maritime***

The Marine Zones (Declaration) Ordinance (1983) demarcates Tuvalu's fishery limits inclusive of an exclusive economic zone, the territorial sea, archipelagic waters and a contiguous zone. Subject to the rules of international law, this Ordinance contains broad powers to make regulations in relation to activities within the fishery limits.

## ***Fisheries***

The Fisheries Ordinance (1978), as amended in 1978, 1987, 1990 and 1991, omits any reference to "conservation", focusing instead on the economic development efforts in the sector, with the omission of internationally accepted standards in relation to sustainable development.

The President however, with the advice of Cabinet, may make regulations relating to the "conservation and protection of all species of fish" through a variety of means including i) closed seasons, ii) size limits, iii) limiting destructive fishing practices and iv) closed areas. In some instances, regulations have been enacted to protect a particular resource, as in the case of the Fisheries (Trochus) Regulations (1990). Other legislation, such as the Wildlife Conservation Ordinance (1975) offers limited protection to other species considered endangered (coconut crabs and turtles).

Some local Island Councils have enacted bye-laws to control fishing albeit with the primary objective of protecting customary use rights from commercial exploitation. Although it is uncertain to what extent these bye-laws are currently enforced, examples include the Nui Island Council (Control of Fishing) Bye-Law (1985) relating to mesh size for nets and the use of powered vessels for fishing and the Nukulaelae and Niutao Island

Council (Control of Fishing) Bye-Laws of 1984 and 1990 respectively relating to fishing methods.

### ***Coastal Issues***

Although problems associated with the development and excavation of coastal areas are recognized in the Foreshore and Land Reclamation Ordinance (1969) (as amended), a 1993 workshop convened under the auspices of the NEMS identified coastal erosion, sand and coral dredging and coastal pollution as issues of critical concern.

The Ordinance vests ownership of the foreshore and the seabed (subject to any public rights of navigation, fishing and access and any other private rights that may exist), in the Crown. The Ordinance prevents the removal of sand, gravel, mud, coral and other substances from the foreshore without a license from the Island Council. The license stipulates obligations associated with activity in the foreshore. Whether or not this includes a requirement for an environmental impact assessment is uncertain.

The Minister responsible for the Foreshore and Land Reclamation Ordinance (1969) has the power to make the following regulations:

- Prohibit the defiling or wasting of water, and
- Prevent pollution and protect the living resources of the sea.

The Mineral Development Licensing Ordinance (1978) also provides guidance in respect of drilling, excavation and surface and sub-surface techniques that may be used for mining. Under the Ordinance prospecting or mining for any minerals, except by license and except in the case of a Tuvaluan engaged in a customary practice, is prohibited.

In relation to harbours, the Harbours Ordinance (1957) prohibits the removal of any stone, shingle or earth or other material from within the limits of any harbour without the written authority of the harbour master.

### ***Conservation and Resource Management***

The Prohibited Areas Ordinance (1957) allows the Minister responsible to declare any island within Tuvalu or the first three miles of its territorial waters to be prohibited areas. Apart from difficulties associated with enforcing this, under this legislation it is only possible to designate whole islands – not parts of islands or seabed as a prohibited area.

The Closed Districts Ordinance (1936) enables the Minister responsible to declare closed districts that may be part of an island. Closed districts are distinguished from closed areas in that closed districts remain open to the natives of the closed district and those normally resident there, under license, and Government Officers.

The Wildlife Conservation Ordinance (1975) allows the Minister responsible to declare any area a wildlife sanctuary and to declare any area within a sanctuary to be a closed area, where even entry without a license is forbidden. There are apparently currently no provisions dealing with the protection of habitat.

In Tuvalu there are two categories of protected birds and animals outside wildlife sanctuaries. The Minister responsible can declare birds and animals to be either fully or partially protected. Partial protection means that the animal or bird in question can be protected by seasonal closure in which hunting or collecting is prohibited. Wildlife wardens, including voluntary wardens, can be appointed to enforce the legislation.

However, the legislation is confusing in terms of its application. In relation to turtles, for example, the Wildlife Conservation Ordinance prohibits the hunting of wild turtles without a license whether or not they are within a wildlife sanctuary, but only when they are on land. Turtles can be lawfully taken from the sea – the Fisheries Ordinance makes no reference to them.

The Conservation Areas Act (1999) authorizes the responsible Minister to declare any part of Tuvalu a conservation area. Conservation areas are established for the purpose of protecting, conserving, preserving and promoting the living resources and environment of the declared area. The Minister may declare a conservation area following receipt of a recommendation from the Kaupule to that effect. Upon formal declaration of the conservation area, the Kaupule concerned is then responsible for the development of bye-laws to support management of the conservation area.

The Kaupule is responsible for management and monitoring of the conservation area and are empowered to make bye-laws for implementation of provisions of the Act within their area of jurisdiction. Kaupule are also empowered to establish a conservation area trust fund to support management of the conservation areas within their jurisdiction. To promote national uniformity of the management of conservation areas, the Minister is also empowered to make regulations in respect of conservation areas.

The Conservation Areas Act makes it an offence to release any polluting or hazardous substances into a conservation area or to kill or harvest any living or non-living resource within such areas.

### ***Water and Hygiene***

Water and sanitation are two areas where there is considerable concern that existing legislation is inadequate in terms of protecting the supply of quality water and preventing contamination from human or animal effluent.

Under the Water Supply Ordinance (1967), the Minister responsible can declare any area to be a water reserve in order to ensure adequate and pure water supplies. It is an offence to do anything that will pollute the water source and the Authority's permission is required to erect a structure or dig a pit that may threaten ground water quality. It is uncertain if any water reserves have been declared?

Except for septic tank systems with soak away pits on Funafuti and Vaitupu, none of the islands have a centralized sewerage system. It is uncertain where responsibility for sanitation facilities rests – with Island Councils or with the Public Health Unit (under the

Public Health Regulations). The location of wells close to dwellings is of increasing concern in respect of contamination of groundwater.

Under the Public Health Regulations, first enacted in 1926, all premises and land must be kept clean and rubbish either burnt or consolidated for daily collection (although, in practice, daily collection is reported not to occur). Local Councils, under the Local Government Ordinance, are responsible for the provision of sanitary services associated with rubbish and the prohibition of acts detrimental to the sanitation of an area. On Funafuti no dumping area has been formally designated and waste is often dumped in borrow pits at the request of landowners seeking to reclaim land.