



South Pacific Regional Environment
Programme

Regional Environment Technical
Assistance (RETA) 5403

**Strengthening Environment
Management Capabilities in Pacific
Island Developing Countries**

Solomon Islands

Review of Environmental Law

by Ben Boer

1992

With assistance from the Asian Development Bank,
IUCN - The World Conservation Union and the
Australian Centre for Environmental Law

USP Cataloguing-in-Publication Data

South Pacific Regional Environment Programme
Review of Environmental Law in the Solomon Islands.
(Strengthening environment management capabilities
in Pacific-Island developing countries)

1. Environmental law - Solomon Islands I. South
Pacific Regional Environment Programme. Regional
Technical Assistance Project II. Title III. (Series)

344.046099593
ISBN 982-04-0051-1

Prepared for publication by the Australian Centre for
Environmental Law, Faculty of Law, University of Sydney,
Australia.

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IUCN
The World Conservation Union

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NETRASH CENTRE FOR ENVIRONMENTAL LAW



FOREWORD

This Review of Environmental Law in Solomon Islands has been implemented as an important component of the Regional Environment Technical Assistance (RETA) Project. The RETA project has been developed to address environmental issues in a number of Pacific countries. It has been funded by the Asian Development Bank and carried out with technical assistance from IUCN - the World Conservation Union. The RETA project is an important regional initiative, which reflects the need for careful management of the Pacific environment.

Pacific Islanders have lived in close harmony with their island environments for thousands of years and are well aware of its importance to their way of life. Pacific peoples face the complex challenge, in common with many other countries of the world, of integrating economic development with the need to protect the environment. This is the primary aim of sustainable development, and must be addressed if the Pacific way of life is to survive.

The introduction of appropriate legislation represents one important means by which sustainable development can be achieved in the Pacific. A fundamental first step is the identification and review of existing environmental legislation in each Pacific country.

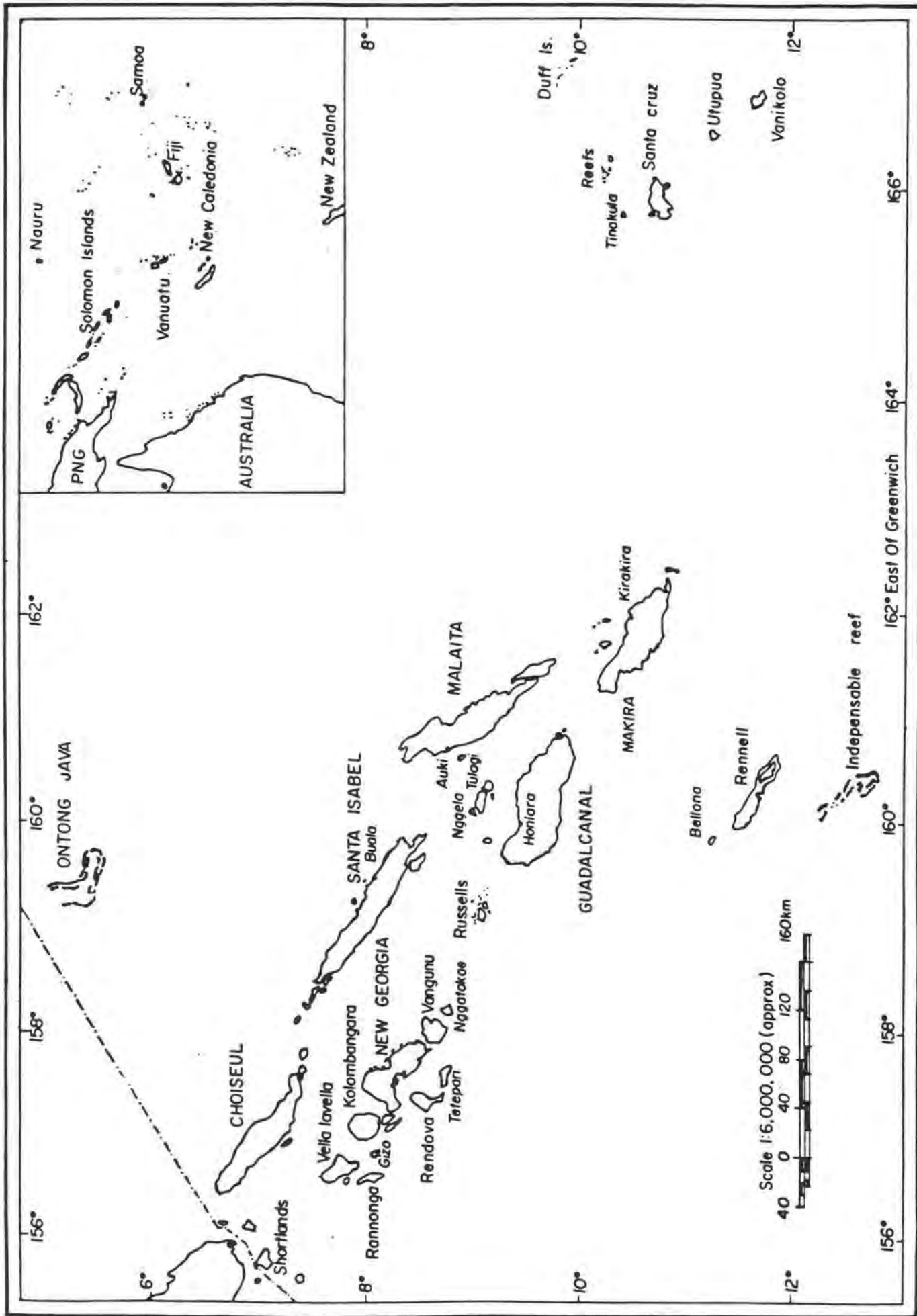
The Review of Environmental Law of Solomon Islands contained in this publication is indeed timely. It has identified the major laws relating to the environment and to natural resource management. This law has then been examined in terms of its effectiveness in addressing the major environmental issues existing in the country. The research has had a particular focus on the development of practical recommendations that build on the findings of the Review.

This Review is an important step along the road to improved environmental management in the Pacific region. It is important to build on this base and to ensure that environmental law reflects the unique needs and circumstances of each Pacific country. It is also important that this law reflects, and where appropriate, incorporates, customary laws and practices that relate to environmental protection.

This Review forms part of a series of five Legal Reviews; the other countries reviewed are the Republic of Marshall Islands, the Federated States of Micronesia, Cook Islands and the Kingdom of Tonga.

This and the other four Legal Reviews have been supported by the Environmental Law Centre of ICUN - the World Conservation Union. I would like to thank the Centre for its financial and technical assistance. I would also like to pay tribute to Professor Ben Boer who prepared this Review, and who was responsible for coordinating and editing the five Reviews. In addition, the work of Ms Elizabeth Harding, who prepared the Reviews of Environmental Law in the Republic of Marshall Islands and the Federated States of Micronesia, and Ms Mere Pulea, who prepared the Reviews of Environmental Law in Cook Islands and the Kingdom of Tonga, should be recognised here.

Vili A Fuavao
Director
South Pacific Regional Environment Programme



CONTENTS

FOREWORD	
SUMMARY	(i)
LIST OF RECOMMENDATIONS	(iii)
ACKNOWLEDGEMENTS	(viii)
CHAPTER	
1 ENVIRONMENTAL LAW AND SUSTAINABILITY	1
2 INTERNATIONAL ENVIRONMENTAL CONVENTIONS	8
3 CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE	13
4 LAND TENURE IN SOLOMON ISLANDS	21
5 ENVIRONMENTAL PLANNING AND ASSESSMENT	30
6 WATER MANAGEMENT AND WATER QUALITY	36
7 POLLUTION	41
8 ENVIRONMENTAL HEALTH	44
9 BIODIVERSITY CONSERVATION	49
10 CULTURAL HERITAGE CONSERVATION	56
11 FISHERIES	66
12 AGRICULTURE	77
13 FORESTRY	79
14 MINING AND ENERGY	99
15 TOURISM	103
16 GENERAL CONCLUSIONS	106
ANNEX	111
Preliminary Drafting Instructions for a Solomon Islands Environment Act	
REFERENCES	113

SUMMARY

This review of the law relating to environmental management in Solomon Islands is part of the Regional Environment Technical Assistance (RETA) Project. The project has been coordinated by the South Pacific Regional Environment Programme and is supported by the Asian Development Bank, the World Conservation Union and the Australian Centre for Environmental Law.

The Review is written in the light of recent international deliberations on the global environment, and takes into account the documents arising out of the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992. In particular, it attempts to be consistent with the recommendations of *Agenda 21*, a set of principles and programmes agreed on by governments at UNCED.

The Review begins with an overview of sustainable development and its implementation through environmental law, in the context of the international debate concerning environmental matters.

The various regional and global conventions affecting the country are briefly examined. It is recommended in particular that Solomon Islands sign the *Convention on the International Trade in Endangered Species* as soon as possible. It is noted that the World Heritage Convention was recently signed by Solomon Islands, and a recommendation is made to pass legislation implementing the Convention forthwith.

The Review canvasses the constitutional structure of Solomon Islands and in particular takes into account the customary law and practices which are constitutionally entrenched. The vital role of the Ombudsman in environmental matters is also emphasised.

The Review takes into serious account the question of land tenure and the need to consider customary ownership when government wishes to take environmental initiatives.

The Review tentatively suggests a procedure for identifying primary and secondary rights holders in land and protecting their interests, through the introduction of a statutorily-based Land Commission.

Subsequent chapters of the Review canvass the following substantive areas:

- environmental planning
- environmental impact assessment
- water quality and management
- water, land, air and noise pollution
- environmental health
- conservation of biodiversity
- conservation of cultural heritage
- off-shore and onshore fishing
- agriculture
- forestry
- mining and energy
- tourism

Each of these chapters briefly covers the elements of the relevant legislation, examines any difficulties with its administration and makes recommendations for reform.

The chief recommendation of the Review is the enactment of a comprehensive *Environment Act*. Ideally, such an Act would cover:

- the setting up of a National Environment Board or Council;
- the appointment of a Director of Environment;
- a new scheme of environmental planning to replace the *Town and Country Planning Act*;
- the introduction of environmental impact assessment requirements;
- comprehensive provision for pollution control;
- the protection of natural and cultural heritage and of traditional artifacts;
- effective mechanisms for enforcement.

It must be said however that enacting new legislation though significant, will not be sufficient, the administrative objectives and structures to implement it must also be overhauled. Ideally, the new legislation should itself establish administrative structures where none presently exist, to ensure that the legislation is properly administered. Equally, the shape and contents of modern environment protection legislation in Solomon Islands must be geared to the traditions and needs of the country.

A good philosophical and practical basis for this legislation is *Agenda 21*, referred to above. *Agenda 21* emphasises the need to integrate environmental and developmental concerns at the policy, planning and management levels. To achieve this integration, it promotes the setting up of effective legal and regulatory frameworks and the use of various economic instruments. It also sets out the need to develop workable programmes to review and enforce compliance with the laws, regulations and standards that are adopted. It states that an element of this should be the setting up of training programmes in environmental law.

In enacting legislation such as that suggested in this Review, Solomon Islands will be at the forefront of Pacific Island Developing Countries concerning the development of mechanisms to promote environmental management. The legislation should improve the ability of the nation to sustainably develop its environment and to meet the needs of the people both at present and into the future.

The Review makes a range of other recommendations which are found in the following pages. The recommendations are referred to by number in the text and are reproduced at the end of each relevant chapter.

The Annex to this Report contains a set of preliminary drafting instructions for an *Environment Act*. The drafting instructions incorporate a range of ideas derived from discussions with many people during the course of the research and writing of this Report, some of the ideas found in the provincial environmental legislation already in place, as well as the draft environmental legislation produced by two separate legal consultants over the past three years.

The concluding chapter to this Review briefly canvasses the need to set up a new administrative structure. Various options for administrative structures are spelled out in more detail in the Solomon Islands *National Environment Management Strategy*, which is the main output of the RETA project (RETA 1992). The Strategy should be read in conjunction with this Review.

LIST OF RECOMMENDATIONS

These recommendations are also recorded at the end of each Chapter. The page numbers noted below refer to the passage in the text relevant to the recommendation.

CHAPTER ONE

Comprehensive Environmental legislation

1. That integrated environmental legislation be drafted in plain legal language to cover environmental planning, environmental impact assessment, pollution control, pesticide use, and natural and cultural heritage protection, preferably within one *Environment Act*. In any new legislation enacted, the customary law and practices of Solomon Islanders relating to environmental management should be taken into account (page 3).

Legal advisers

2. That a concerted effort be made by both the Provincial and National Government authorities to recruit suitable lawyers to enable each Province to have its own Legal Adviser (page 4).

CHAPTER TWO

International conventions

3. That Solomon Islands signs the *Convention on International Trade in Endangered Species* as soon as possible (page 11).
4. That Solomon Islands enacts legislation for the implementation of the *World Heritage Convention* as soon as possible. Such legislation should ensure that arrangements are made for management of World Heritage properties and, in particular, to include participation in decision making and income sharing by the relevant customary landowners (page 11).

CHAPTER THREE

Ombudsman

5. That the *Ombudsman (Further Provision) Act 1980* be reviewed and amended to bring it into line with comparable legislation in other countries (page 19).

Leadership code

6. That the *Leadership Code (Further Provision) Act 1979* be more rigorously enforced (page 20).

CHAPTER FOUR

Land tenure

7. That a programme of education and consultation be launched through newspapers and radio on how the land tenure law works, what problems there are with it, and to canvass proposals for reform (page 28).

8. That a Land Commission be established by a *Land Commission Act* to replace the Customary Land Appeal Court System (page 28).

CHAPTER FIVE

Town and country planning

9. That comprehensive Regulations under the *Town and Country Planning Act 1979* be passed to ensure that environmental and customary matters are addressed when applications for development are being considered (page 31).
10. That enforcement provisions in the *Town and Country Planning Act 1979* be strengthened. In particular, provision for a Stop Notice, allowing immediate stopping of work, should be included in the legislation (page 32).
11. That Ministerial powers in the *Town and Country Planning Act 1979* be clarified and spelled out in Regulations (page 32).
12. That allowance should be made for appeals from the Minister's decision on a development application (page 32).

Environmental impact assessment

13. That all local and foreign development activity requiring approval under the *Investment Act 1990* be subject to an appropriate level of Environmental Impact Assessment, supervised by the Ministry of Natural Resources (page 33).
14. That a representative from the Environment and Conservation Division of the Ministry of Natural Resources be added to the Investment Board (page 33).
15. That all existing and proposed development which affects or is likely to affect the environment be subject to Development Application procedures and an appropriate level of Environmental Impact Assessment (page 35).
16. That a new Division within the Ministry of Natural Resources or a new Agency be created, to, among its other responsibilities, administer the Environmental Impact Assessment provisions of the proposed *Environment Act* (page 35).

Research Act

17. That consideration be given to devolution of the functions under the *Research Act 1982* to the Provinces and a relaxation of the provisions in the *Provincial Government Act 1981* so as to allow the Provinces to consult with the National Government, for the purposes of obtaining the services of overseas agencies to assist with environment protection in the Provinces (page 35).

CHAPTER SIX

Water management and water quality

18. That Provincial Executives be encouraged to exercise their powers to declare water catchment reserves in forests in order to protect watersheds (page 38).
19. That new comprehensive water legislation be implemented on the basis of the Solanes Report 1988 (page 40).

CHAPTER SEVEN

Pollution

20. That comprehensive provisions controlling water, air and noise pollution be drafted for Solomon Islands and preferably, incorporated into the suggested *Environment Act* (page 41).

CHAPTER EIGHT

Environmental Health

21. That the *Public Health Bill 1990*, after suitable amendment and simplification, be enacted, and implemented in stages. Consideration should be given to moving specific pollution control provisions to a separate *Pollution Act*, or incorporating them into the suggested *Environment Act* (see page 48).
22. The staged implementation of the new community health legislation must be accompanied by appropriate publicity in newspapers and by radio (page 48).

CHAPTER NINE

Biodiversity conservation

23. That the Solomon Islands Government introduce a protected areas system for Solomon Islands either through the proposed *Environment Act* or through a separate *Protected Areas Act* (page 53).
24. That the Solomon Islands Government enact a *Wildlife (Import and Export) Regulation Act* as a matter of urgency (page 55).

CHAPTER TEN

Cultural heritage conservation

25. That a National Heritage Policy be developed in consultation with the Provinces (page 60).
26. That a comprehensive heritage conservation education programme be established to ensure that all Solomon Islanders continue to be aware of their cultural heritage (page 60).
27. That provincial cultural heritage Ordinances be made consistent with each other, and that National Heritage provisions be introduced into the proposed *Environment Act*, setting up a Register of National Heritage. These provisions or a separate national Heritage Act could cover both cultural and natural heritage of national and world significance. This system could be administered in the short term by the National Museum, with a view to establishing a Solomon Islands Heritage Commission in the longer term (page 65).
28. That a National Heritage Fund, attracting funds from foreign sources interested in conserving the heritage of Solomon Islands, be established in order to finance the development of the National Heritage Policy, the education programme, the Register of National Heritage, the work of the National Museum and the legislative mechanisms recommended above (page 65).

CHAPTER ELEVEN

Fisheries

29. That further study and data collection in relation to the inshore fishery be initiated (page 67).
30. That Regulations under the *Fisheries Act* be updated, particularly in relation to penalties and, to take into account the provisions for limitation and the banning of the collection and export of endangered marine species in the proposed 1991 amendments to the Regulations (page 68).
31. That a Multi-Fishery Policy be drafted by the Ministry of Natural Resources in collaboration with the Provinces (page 72).
32. That a register of customary fishing rights be established under the Fisheries Regulations (page 73).
33. That a register of fishing rights agreements between customary reef owners and fishing operators be established under the Fisheries Regulations (page 73).
34. That comprehensive new fisheries legislation be drafted and enacted by the Solomon Islands Government, and that the basis for the new fisheries legislation be the Food and Agricultural Organisation Fisheries Legislation Report. Assistance from the Forum Fisheries Agency should be requested in this task (page 74).
35. That a special Fisheries Management and Development Fund be established, as recommended by the Food and Agricultural Organisation Fisheries Legislation Report (page 74).

CHAPTER TWELVE

Agriculture

36. That all Agriculture Division Officers engaged in fieldwork be specifically trained in environmental management as it affects agriculture (page 77).
37. That the *Environment Act* suggested by this Report include provisions for assessing the environmental impact of the use of existing and new pesticides (page 78).
38. That the use of pesticides be regulated by the enactment of a *Pesticide Act*. Alternatively, that the *Pharmacy and Poisons Act 1941* be comprehensively updated, and to include the importation, manufacture and use of all pesticides (page 78).

CHAPTER THIRTEEN

Forestry

39. That new comprehensive forestry legislation covering both existing and proposed forestry activities, based on the Fingleton Report, the suggestions made in this Report, the terms of the Convention on Biological Diversity, and the Forestry Principles agreed to at the United Nations Conference on Environment and Development, be drafted and enacted as a matter of urgency (page 80).
40. The Standard Logging Agreement, if retained as part of the new *Forestry Act*, should be strengthened and completely redrafted, to make it easier to understand; Plain English drafting principles should be used (page 86).

CHAPTER FOURTEEN

Minerals and petroleum

41. That in the absence of provisions for environmental impact assessment incorporated in an *Environment Act*, the *Mines and Minerals Act* be amended to include specific requirements as to the form and content of environmental impact statements for all proposed mining operations (page 101).
42. That the suggested *Environment Act* cover the environmental impact assessment of all proposed petroleum operations (page 102).
43. That an *Energy Act* for Solomon Islands be drafted and enacted as soon as possible (page 102).

CHAPTER FIFTEEN

Tourism

44. That new legislation be drafted to control the development of tourism in Solomon Islands (page 104).
45. That all Provinces develop a Policy on Tourism compatible with the National Policy on Tourism; an appropriate model would be the draft Tourism Policy of Western Province (page 105).

ACKNOWLEDGEMENTS

I am indebted to the following people who have contributed to this Review by way of discussion, and supply of legislative and other materials:

Walton Abuito, Deputy Head of Policy Evaluation Unit, Office of the Prime Minister
Bob Addison, Director of Geology, Geology Division, Ministry of Natural Resources
Transform Aqerau, Ministry of Foreign Affairs and Trade
Abraham Baeanisia, Solomon Islands Development Trust
Catherine Cole, Cultural Affairs Adviser, Western Province (until 1992)
Gordon Darcy, Director of Energy, Energy Section, Ministry of Natural Resources
Sam Gaviro, Commissioner for Forests, Ministry of Natural Resources
Ranjit Hewagama, Legal Draftsman, Attorney-General's Department
John Haurae, Assistant Legal Draftsman, Attorney-Generals Department
Henry Isa, Conservation Unit, Ministry of Natural Resources
Frank Kabui, Attorney-General
Annette Lees, Deputy Chief Executive, Maruia Society, Nelson, New Zealand
Steve Likaveke, Chief Planner, Physical Planning Division, Ministry of Agriculture and Lands
Robert Moses, Planner, Western Province
Hon John Muria, Acting Chief Justice, High Court of Solomon Islands
Bridget Nichols, Legal Officer, Western Province, (until 1990)
Patterson Oti, Ministry of Provincial Government
Frank Pororara, Ombudsman
Walter Ramo, Permanent Secretary, Ministry of Natural Resources, (until 1992)
George Scott, formerly Chief Surveyor of Solomon Islands
Bernard Telei, Environment Unit, Ministry of Natural Resources
Victor Totu, Heritage Officer, Guadalcanal Province
Hon. Gordon Ward, Chief Justice, High Court of Solomon Islands, (until 1992)
Albert Wata, Chief Fisheries Officer, Ministry of Natural Resources

Special thanks must go to Tanya Leary, RETA Local Consultant, based at the Ministry of Natural Resources, for her infrastructure support, her insights into many aspects of the Review's subject matter, her organisation of interviews, her detailed comments on the draft Review and for her sense of humour.

David Sheppard, RETA Team Leader, must be whole-heartedly thanked for his devotion to the myriad tasks with which he has been faced during the RETA project, and, in particular, the demands put onto him by the consultants conducting the legal reviews. David gave unstintingly of his time and expertise with many suggestions on the Review draft. Both his professionalism and his enthusiasm are to be admired.

Bob Thistlethwaite, who researched and prepared the *National Environment Management Strategy* for Solomon Islands is also owed a debt of gratitude for his many insights and excellent suggestions, as well as for his amiable support and collegiality.

In-country assistance for this Review was provided by lawyer Milena Bellini. I am grateful for her contributions and for her support throughout the project.

John Delany, formerly Legal Adviser to Western Province, has worked closely on various parts of this Review as a Research Associate. His practical grasp of many of the legal issues was particularly helpful, and I am indebted to him for his many suggestions and contributions.

Word processing of the various stages of the Review was carried out in their usual professional way by Judy Blackburn, Pauline Moore and Mary Yall, of the Faculty of Law, University of Sydney. Production of the final document was by arrangement with the Australian Centre for Environmental Law in the Faculty of Law, University of Sydney.

CHAPTER ONE

ENVIRONMENTAL LAW AND SUSTAINABILITY IN SOLOMON ISLANDS

A Solomon Islander is a unique Melanesian, and whatever laws or regulations are passed should be made to suit the Melanesian lifestyle. Court procedures and/or forms of punishment should also be Melanesian, but with modifications, taking into account the merits of particular circumstances. Too often both expatriates and Melanesians (especially politicians) make the same mistakes over and over again by trying to implant or impose foreign laws and concepts on Melanesians and expect them to adhere to such changes with a wave of the magic wand (Billy Gatu 1977:98).

* * * *

Many societies have rules rooted in legal tradition that require the sustainable and efficient use of natural resources. The obligation of stewardship is a feature of westernised legal systems. In nations following the common law tradition, the doctrine of waste requires owners of land to use it sustainably. Elsewhere, customary law systems demand strict rules governing the allocation and use of resources. There is, therefore, an existing legal culture into which our generation's obligations towards the world's resources can be set.

New laws should not be passed unless they fit into this existing setting, and can be enforced. Every legal instrument should be assessed for its practicality, in terms of its context, the resources available to implement and enforce it, and its acceptability to the society concerned.

The role of local authority legislation should not be underestimated. While national standards should, wherever possible, be set and adhered to (and should themselves reflect internationally-agreed rules), both federal and unitary states should accept that stricter environmental protection measures may be enacted at sub-national and local level. Local authorities should be encouraged to use their own powers to protect their environment, especially when community involvement in the formulation and implementation of the measures makes them more effective (IUCN 1991).

1.1 Introduction

This Review examines the legal regulation of environmental matters in the Solomon Islands at national and provincial levels. It is part of a series of reports prepared under for the Regional Environment Technical Assistance (RETA) project. The RETA project was largely funded by the Asian Development Bank (ADB) and was carried out through the South Pacific Regional Environment Programme (SPREP). The Legal Reviews have been funded through the World Conservation Union (IUCN) input to the RETA and coordinated through IUCN's Environmental Law Centre in Germany. The RETA was directed to the development of a National Environment Management Strategy for Solomon Islands, coordinated through the Ministry of Natural Resources. Other reports in the series relate to the Kingdom of Tonga, Cook Islands, the Republic of the Marshall Islands and the Federated States of Micronesia.

The Review is written in the light of the international debate on environmental matters, particularly focussing on some of the issues raised by the Brundtland Report *Our Common Future* (WCED 1987), the World Conservation Union's, *Caring for the Earth* (IUCN 1991) and by Conventions and agreements arising out of the United Nations Conference on Environment and Development in 1992. The lessons of this environmental debate are that environmental issues are to be addressed at the same time as development issues. They should go hand in hand, if the long term sustainability of natural and social systems is to be achieved.

1.2 Sustainable Development Strategies

The report of the World Commission on Environment and Development, *Our Common Future* (WCED 1987, also known as the Brundtland Report), spells out the basic strategies which countries should implement to ensure that their environments are adequately conserved and protected.

The *Brundtland Report* defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." (WCED 1987:43). Sustainable development thus calls for an integration of economics and ecology, rather than that economic and environmental needs are put in opposition to each other. Sustainable development actually is an age-old concept derived from traditional conservation practices of human beings from the earliest stages of human civilisation.

Despite the general use of the term, sustainable development is widely misunderstood and often inappropriately applied. Some groups representing development interests refer to the concept as if it means only sustainable *economic* development.

The Chairperson of the World Commission on Environment and Development, Gro Harlem Brundtland, has explained the concept of sustainability in this way:

There are many dimensions to sustainability. First it requires the elimination of poverty and deprivation. Second, it requires the conservation and enhancement of the resources base which alone can ensure that the elimination of poverty is permanent. Third, it requires a broadening of the concept of development so that it covers not only economic growth but also social and cultural development. Fourth and *most* important it requires the unification of economics and ecology in decision making at all levels (Brundtland 1987: 175).

One of the important documents agreed to at the United Nations Conference on Environment and Development in 1992 was *Agenda 21*. This document is a comprehensive statement of principles and programmes to achieve global sustainability in the 21st century. In particular, Chapter 8 of *Agenda 21* "Integrating Environment and Development", recommends the enactment of new environmental legislation to assist in the integration of environmental and economic needs and aspirations.

This Review is written with an awareness that although Solomon Islands faces many environmental problems, the government also has many pressures on it to ensure that its economic situation is improved. Solomon Islands is in this sense at a turning point: will there be a headlong plunge into development of the country's resources in order to address its economic aspirations, with little regard for the environment, or will that development take place in a measured and considered way, in the light of notions of ecological, social and cultural sustainability?

1.3 Customary practice and customary ownership

One of the difficulties of ensuring that environmental issues are adequately addressed in the Solomons, as elsewhere in the Pacific, is how to accommodate traditional or customary practices, when there is also pressure for formal regulation of environmental matters to be put into place. The history of environmental regulation in Solomon Islands from earliest times needs to be borne in mind, especially since there are many traditional management practices used by people in rural areas, which may well shape the direction of the legal reforms required in environmental regulation and practice.

This Review attempts to take into account the actualities of the environmental situation in Solomon Islands. Little effective planning exists at local or national level, and most development decisions are taken on an ad hoc basis rather than on the basis of a coordinated national development plan. Also, development decisions are often taken independently of

environmental considerations. The vast majority of the people live in rural areas, with insufficient recourse to formal education. This means that the necessary changes to develop an effective environmental awareness among the people may take a long period to become effective. Further, the provision of basic services such as sewerage and safe drinking water, needs to be kept in mind as a primary consideration, among the many changes that may be required.

It is possible, though not always desirable, to adequately reflect customary law and knowledge in written laws enacted through a formally constituted legislature. There are a number of examples where this has been done both in national and in provincial legislation in Solomon Islands. However, any new legislation enacted at national level to address environmental issues should be drafted in such a way as to be capable of taking into account local customs and practices relating to the exploitation and conservation of resources. Provinces and Area Councils should be able to address local issues through Regulations and by-laws which are consistent with the national legislation.

1.4 The need for comprehensive environmental legislation

Solomon Islands has no comprehensive environmental legislation at the national level. Some provinces have passed legislation to regulate environmental matters. On the whole, this legislation falls short of what is required in terms of modern environmental regulation. The Sector Reports prepared for the NEMS Seminar (Ministry of Natural Resources 1991c) indicated concerns about the adequacy of the present legislation governing the sectors, particularly in relation to the environment. Major reviews of some of the environment-related legislation have been undertaken in the past few years. The Environmental Health, Fisheries and Forestry legislation has been recently examined through outside agencies, and two drafts of environment legislation have been generated by two separate consultants.

The main recommendation of this Review is the drafting and enactment of a comprehensive *Environment Act* (see Recommendation 1).

1.5 Main National Acts of Parliament relating to the environment.

Environmental Health Act 1980
Fisheries Act 1972
Forests and Timber Utilisation Act 1969
Land and Titles Act 1970
Mines and Minerals Act 1990 and Regulations 1991
National Parks Act 1954
North New Georgia Timber Corporation Act 1979
Ombudsman (Further Provision) Act 1980
Petroleum Act 1987
Protection of Wrecks and War Relics Act 1980
Provincial Government Act 1981
River Waters Act 1978
Solomon Islands Tourist Authority Act 1970
Town and Country Planning Act 1979
Wild Birds Protection Act 1914
Draft Fisheries Bill 1987
Draft Forestry Bill 1990
Draft Public Health Bill 1990

Draft Environment Bills are:

Environmental Management Bill (Harding 1990)
Environment Bill (Lipton 1992)

1.6 Main Provincial Ordinances relating to the environment. (See full list in the References).

The main ordinances are as follows:

Central	No environmental legislation
Choiseul	No legislation of its own, but <i>Western Province Ordinances</i> continue to operate
Guadalcanal	<i>Wildlife Management Area Ordinance 1990</i> <i>Protection of Historic Places Ordinance 1985</i>
Isabel	<i>Preservation of Culture Ordinance 1988</i> <i>Isabel Province Wildlife Sanctuary (Amendment) Ordinance 1991</i>
Malaita	No environmental legislation
Makira	<i>Preservation of Culture and Wildlife Ordinance 1984</i>
Temotu	<i>Preservation of Culture Ordinance 1989</i> <i>Environmental Protection Ordinance 1989</i>
Western Province	<i>Business Licence Ordinance 1989</i> <i>Building Ordinance 1991</i> <i>Coastal and Lagoon Shipping Ordinance 1991</i> <i>Preservation of Culture Ordinance 1989</i> <i>Public Nuisance Ordinance 1991</i> <i>Simbo Megapode Management Area Ordinance 1990</i> <i>Draft Environmental Management Ordinance 1991</i>

(*Amending Acts not noted; a full list appears in the References at the end of this Review*).

Many of these statutes are referred to and analysed in subsequent chapters.

1.7 Attorneys-General and Legal Advisers

At national level, legal advice is given by the government by the Attorney-General's Department. No legal officers are specifically designated to advise on environmental matters.

No Provincial Governments have Attorneys-General. The Provincial Governments of Malaita, Temotu and Western have Legal Advisers. In the Provincial Reports on the Environment produced for the National Environmental Management Seminar under the RETA (Ministry of Natural Resources 1991b), a number of provinces identified the lack of a Legal Adviser as hampering the development of policy and legislation, and thus a substantial limitation on achieving environmental goals. The lack of human resources to enforce existing legislation was seen by a number of provinces to be a matter of some concern.

The Provincial Legal Adviser positions (like those of the Public Solicitor) have often been filled by volunteer solicitors from New Zealand, the United Kingdom and Australia. The National government pays a local salary and either it or the Provincial government provides housing. The price for Solomon Islands to obtain such professional human resources is a relatively small one, and is perhaps an opportunity which should be further exploited. All the Provinces should be encouraged to work through the Ministry of Provincial Government in Honiara to obtain their own Legal Adviser. The government could request the volunteer agencies in New Zealand, United Kingdom and Australia to recruit suitable solicitors so these eight positions are filled on a continuing basis (see **Recommendation 2**). It would be of further benefit if these lawyers could be used to carry out some counterpart training of Solomon Island law students in their university

vacations, or train selected government lawyers for a period, particularly in the field of environmental regulation.

1.8 The scope of environmental law

For the purposes of this review, the area of environmental law is taken to encompass a broad range of elements of government policy and private sector endeavour. In line with many other countries, environmental law is thus taken to cover environmental planning (physical planning), pollution control and environmental health, environmental and social impact assessment, resource management and conservation, and the protection of natural and cultural heritage. Environmental law has close links with a number of other areas of law, and can be seen to tie some of these other areas together in various ways. Thus constitutional law, administrative law, tort law (especially negligence and nuisance), property law and criminal law are all relevant to a proper study of environmental law. In addition, to gain an adequate appreciation of environmental matters, some familiarity with various areas of the natural sciences, especially ecology, as well as the social sciences, such as anthropology, geography, sociology and political science, is desirable. Sources of environmental law include legislation, judge-made law (i.e. common law precedents and those derived from the interpretation of legislation) administrative orders, policy directives and administrative practice (see Fowler 1984).

1.9 The role of Environmental Law

The central role of environmental law needs to be recognised in ensuring sound environmental protection and management, particularly concerning the implementation of the National Environmental Management Strategy (SPREP, ADB and IUCN 1992) for Solomon Islands.

In its response to the Brundtland Report, the World Conservation Union is worth quoting in full in relation to the role of environmental law:

Establishing norms and procedures with respect to resource issues is at least as important as increased funding. There is indeed a need to critically scrutinise the body of law available to nations in the field of resources and environmental concerns. The essential and crucial purpose of such an exercise is to ascertain whether the basic elements of a comprehensive body of environmental law are available. Mechanisms to prevent and control pollution of the soil, air and waters; mechanisms to prevent over-exploitation of living resources that are used; and mechanisms to control or allocate land uses are all required, along with legal devices inducing positive resource management.

It is too often forgotten that these basic requirements are often only partially met, if they are met at all. In achieving or improving the existing national instruments, the following considerations should be kept in mind:

Recognise basic rights and responsibilities. The duty of the State to take measures regarding environmental conservation for the benefit of present and future generations must be recognised as a matter of principle in national law. As a means of assisting in the realisation of this duty, the rights of individuals to have access to environmentally relevant information as well as to have access to legal remedies and means of redress must also be insured.

Create cross-sectoral links. Legal mechanisms must be established to permit ecological dimensions to be considered at the same time as the economic, trade, energy, agricultural and other dimensions. Achieving this is only possible if a number of legal strategies are used to that effect, such as providing for: public participation in the decision making process; consultation or participation of the environmental agencies in this process; requirement of environmental impact assessment.

Be imaginative with enforcement assistance. While there is no effective substitute for a strong national agency for many environmental problems, in virtually all countries means of enforcement are scarce and trained personnel insufficient. Compliance with environmental law requires, however, a high degree of monitoring and enforcement. Maximum use should be made of voluntary assistance, such as that of conservation groups, to assist in enforcement actions when individuals or associations can genuinely claim to possess the necessary expertise.

Consider ecological damage. When preventive measures have failed, it is imperative that a system of remedies be in place which takes into account not only the economic damage but also the ecological damage. A particularly important shortcoming in present legal systems is the failure to develop a coherent theory of liability to compensate for damage caused to the environment. Most national laws still insist upon a legally recognisable interest which has been adversely affected, but wildlife or other elements of the biosphere are not often recognised as being the subject of such rights. Few legal systems accept ecological damage as being recoverable, often due to uncertainty as to how it should be assessed. In the international field, however, the costs of environmental restoration have recently been used as a yardstick and this development may herald a new departure.

Do not spoil what you already have. Customary law should be given appropriate recognition in national legislation. In many countries which have gained independence during the past few decades, an understandable urge for modernisation has led to sweeping social changes, which have been reflected in legislation. Frequently, these have involved transplanting foreign models in what appears now to have been a rather doctrinaire fashion. Among the casualties of this process have frequently been counted long-established customary laws which in many cases embodied traditional wisdom about the sustainable management of land, particularly pastures and forests; examples include legislation which vests the ownership of all trees in the state or some public body, with the result that no incentive remains for private individuals to replant.

Implement a cross-media or ecosystem approach. An integrated vision will also require a cross-media approach to problems rather than a sectoral one, which often shifts problems like pollution from one environmental medium to another. In the same vein, use of living resources should be regulated, taking into account both the resource considered, and the effects of this use upon other species which have an ecological relationship with the harvested species (e.g. prey species) and on the ecosystem as a whole. These two elements point to the necessity to establish regulatory mechanisms which are area or ecosystem based, rather than tackling single elements in parallel (IUCN 1989).

1.10 International obligations

Another aspect of this review concerns the duties and obligations placed upon Solomon Islands as a signatory to major international conventions, treaties and agreements, including the instruments generated through the United Nations Conference on Environment and Development in 1992. These are the *Convention on the Conservation of Biological Diversity*, the *Convention on Climate Change*, the *Rio Declaration on Environment and Development*, *Agenda 21* and the *Forestry Principles*.

1.11 Administrative Arrangements

This review has also attempted to ascertain whether the relevant legislation that exists is actually being implemented. Without some appreciation of what happens in practice this review would be of much less use. To this end, interviews have been carried out with officials in a number of

relevant government sectors. The material obtained in these interviews has been integrated where possible into the analysis of the relevant legislation in each chapter.

1.12 Recommendations for Chapter One

1. That integrated environmental legislation be drafted in plain legal language to cover environmental planning, environmental impact assessment, pollution control, pesticide use, and natural and cultural heritage protection, preferably within one *Environment Act*. In any new legislation enacted, the customary law and practices of Solomon Islanders relating to environmental management should be taken into account (page 3).
2. That a concerted effort be made by both the Provincial and National Government authorities to recruit suitable lawyers to enable each Province to have its own Legal Adviser (page 4).

CHAPTER TWO

INTERNATIONAL ENVIRONMENTAL CONVENTIONS

2.1 Introduction

This chapter considers the various international conventions, treaties and agreements which the Solomon Islands Government has signed, as well as the instruments which the government should give consideration to signing if it is to meet its obligations to the international community.

2.2 Human rights, development and environment protection

If the right to development is a human right, then the right to manage and conserve natural resources for present and future generations and the right to benefit from the common heritage of humankind can also be declared human rights. The promotion of these rights as human rights could lead to reform in existing policies and practices and provide better redress for those whose rights are affected. If relief cannot be found under existing procedures, then relief could instead be found through structures that provide for human rights (see Pulea 1988:36).

Principle 21 of the *Stockholm Declaration* (proclaimed at the United Nations Conference on the Human Environment in 1972) states:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for future generations.

It is now becoming more widely recognised that human rights include not only the right to development, but the right to a clean and healthy environment, adequate to meet both the basic needs of people, but also to meet their spiritual cultural and social needs, this has been expressed in Principle One of the *Rio Declaration* as follows:

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

2.3 Conventions which affect Solomon Islands

2.3.1 *Convention for the Protection of the Natural Resources and Environment of the South Pacific, Noumea 1986 (the SPREP Convention)*

The *SPREP Convention* was adopted in 1986, together with protocols on cooperation in combating pollution emergencies and on the prevention of pollution by dumping. It came into force in 1990. The preamble to the Convention is summarised as follows:

The Convention recognises the threat to the marine and coastal environment, posed by pollution and by the insufficient integration of an environmental dimension into the development process

The parties therefore saw the need for cooperation between themselves and with international, regional and sub-regional organisations, to ensure a coordinated and comprehensive development of the natural resources of the region

The Convention notes that existing international agreements about the marine and coastal environment do not cover all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region

The Convention seeks to ensure that resource development will be in harmony with the maintenance of the unique environmental quality of the region and the evolving principles of sustained resource management

It therefore encourages the parties to conclude bilateral or multilateral agreements, including regional or subregional agreements, for the protection, development and management of the marine and coastal environment. (See Preamble to the *SPREP Convention*, 1986).

The Convention covers pollution from boats, land-based sources, sea-bed activities, air-borne sources, disposal of wastes, the storage of toxic and hazardous substances and the testing of nuclear devices. It also covers mining and coastal erosion (Articles 6 to 13). It puts an obligation on member countries to take all appropriate measures to protect and preserve rare and fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat in the convention area. They are thus obliged to establish protected areas such as parks and reserves and prohibit or regulate any activity likely to have adverse effects on species, ecosystems or biological processes.

It can be noted that the *SPREP Convention* applies only to the marine environment and has no specific application to land as such. However, land-based activities attached to the marine environment are covered. Article 3 allows any Party to add areas under its jurisdiction "within the Pacific Ocean", which means that land could be included in the future.

The *SPREP Convention* is the most significant regional convention operating in the South Pacific in terms of the broad duties it places on countries in relation to the marine environment.

The provision that countries shall "endeavour to establish laws and regulations for the effective discharge of the obligations prescribed in this Convention" (Article 5(5)), is of particular significance for Solomon Islands, given the lack of adequate legal regulation of environmental matters in the country.

2.3.2 *Convention on Conservation of Nature in the South Pacific, Apia 1976 (the Apia Convention)*

The *Apia Convention* was drafted in 1976 but did not come into force until 1990. It is of limited effect. The Convention stresses the creation of protected areas, and the continued existence of national parks, restricting their exploitation for commercial profit "except after the fullest examination". Similarly under Article 3(3), the hunting, killing, capture or collection of specimens, including eggs and shells of flora or fauna in national parks is prohibited "except when carried out by or under the direction or control of the appropriate authorities or for duly authorised scientific investigations". The problem of providing "full examination" or "direction and control of the appropriate authorities" is particularly acute in Solomon Islands, where relevant government departments are inadequately staffed to carry out these functions.

Under Article 6, customary use of areas and species is allowed in accordance with traditional cultural practices. Under Article 7(ii) the parties shall "wherever practicable" conduct research relating to the conservation of nature. They are also obliged under Article 7(v) to "examine the possibility of developing programs of education and public awareness relating to conservation of nature". The Convention contains no provisions relating to management plans, community participation or consultation with affected interests when protected areas are being established or discarded.

Various weaknesses of the Convention are being addressed by the "Action Strategy for Protected Areas" arising out of the 1985 Third Parks Conference in Noumea. In general, the establishment of national parks for the purposes of nature conservation has not worked well in the Pacific; the situation relating to national parks and protected areas in Solomon Islands is addressed in Chapter 9. Carew-Reid (1989) argues that eventually the *Apia Convention*, the *SPREP Convention* and its protocols, the Action Plan and the Action Strategy should be meshed into

one regional legal framework with clearly defined lines of authority and communication. In the 1990s, the South Pacific Regional Environment Programme, with its newly-won independent status, will move more rapidly to achieve this goal. The Regional Environment Technical Assistance Project of which this legal review is a part is already a manifestation of these aspirations.

2.3.3 *South Pacific Forum Fisheries Convention, 1979*

Sixteen countries in the Pacific region are participating members of the *Forum Fisheries Convention*. The Convention recognises the need for effective cooperation for the conservation and optimum utilisation of the highly migratory species of the region and establishes the Forum Fisheries Agency to give strength to the union of the member countries in all matters connected with fishing in the Pacific. The headquarters of the Forum Fisheries Agency are in Honiara.

The Forum Fisheries Agency carries out the following functions for the benefit of member countries:

- (a) it collects, analyses, evaluates and disseminates statistical and biological information about all marine resources, particularly the highly migratory species;
- (b) it collects and disseminates information concerning management procedures, legislation and agreements from throughout the world;
- (c) it collects and disseminates information on prices, shipping, processing and marketing of fish;
- (d) it provides, when requested, technical advice and information, assistance in the development of fisheries policies and negotiations and assistance in the issue of business licences, the collection of fees or surveillance and enforcement of national fisheries legislation; and
- (e) it seeks to establish working arrangements with other international organisations, in particular the South Pacific Commission.

The expertise available to Solomon Islands from the Forum Fisheries Agency in establishing the sustainable exploitation of its fishery cannot be underestimated. (See paragraph 11.11 of Chapter 11 below).

2.3.4 *Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, 1989*

This Convention provides in Article 2 that

each party undertakes to prohibit nationals and vessels documented under its laws from engaging in driftnet fishing activities within the Convention area.

The Convention extends to obliging each State party to prohibit the import of fish products caught using a driftnet and restricting port access to driftnet fishing vessels.

2.3.5 *The United Nations Law of the Sea Convention, 1982*

Fiji, the Federated States of Micronesia and Marshall Islands have ratified this Convention. Solomon Islands and another ten Pacific Island States have signed the Convention, but have not yet ratified it. This means that they have not yet taken on any obligations under the Convention. In any case, the Convention itself is not yet in force, due to an insufficient number of ratifications.

This Convention sets out detailed provisions for the use of the world's oceans and seas. It is intended to promote the establishment of

a legal order for the seas and oceans which will facilitate international communication and will promote peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their

living resources and the study, protection and preservation of the marine environment (*Law of the Sea Convention, Preamble*).

The Convention creates Exclusive Economic Zones (EEZ) up to 200 nautical miles from the coasts of signatory countries, except where countries, such as island countries, are closer together. In that case, the EEZ is split between them.

From the point of view of the Pacific countries, the Exclusive Economic Zones are of great significance, giving jurisdiction to many of these countries over vast areas of ocean. Solomon Islands is no exception, with jurisdiction over some 1,340,000 square kilometres of ocean. (Carew-Reid 1989:11)

2.3.6 *Convention on International Trade in Endangered Species 1973*

The *Convention on International Trade in Endangered Species (CITES)* includes a range of provisions to control trade in endangered species of flora and fauna. It places specific obligations on countries which have signed the Convention to ensure that strict controls are put in place on a national level.

Solomon Islands has a number of rare and endangered species of wildlife within its borders. Some of these species have been subject to international trading, both with official permits and, apparently, without permits. It is recommended that as one step to addressing the problem of export of endangered species, Solomon Islands sign this Convention (see **Recommendation 3**). A further step is the enactment of appropriate legislation (see Chapter 9).

2.3.7 *Convention for the Protection of the World Cultural and Natural Heritage, 1972*

Some 124 countries are signatories to the *World Heritage Convention*. Until 1992, none of the South Pacific countries were signatories. A total of 358 places of "outstanding universal value" for the cultural and natural heritage are now on the World Heritage List. The Solomon Islands Government decided to apply for membership in July 1990, (UNCED Report 1991:34) and information booklets were prepared. Solomon Islands became the first South Pacific island country to accede to the Convention, on September 10, 1992. The initial proposals are to apply for listing of Rennell Island and Morovo Lagoon (Ministry of Tourism and Aviation 1991a, b and c).

The signing of this Convention may well prove to be of vital importance for Solomon Islands, both in terms of ecological and economic benefit. However, experience in other countries indicates that in order for the integrity of World Heritage sites to be safeguarded, adequate management strategies need to be formulated. In Solomons Islands, the integrity of some potential World Heritage sites could be destroyed unless adequate management arrangements are made. Management strategies should be developed to take into account the demand for resources, the benefits and disadvantages of tourism and the need for conservation. Such strategies should ideally be developed with close involvement of local customary landowners. There should be a guarantee in the arrangements for management of any World Heritage site for customary owners to benefit from the tourism income generated through visiting World Heritage sites. In order to ensure that the World Heritage Convention is adequately implemented at a domestic level, it is suggested that appropriate legislation be passed as soon as possible. A *World Heritage Properties Conservation Bill* was prepared in 1992 (see **Recommendation 4**).

2.3.8 *Convention on the Conservation of Biological Diversity 1992*

The *Biodiversity Convention*, signed at Rio in 1992, is dealt with in Chapter 9.

2.4. Recommendations for Chapter Two

3. That Solomon Islands signs the *Convention on International Trade in Endangered Species* as soon as possible (page 11).
4. That Solomon Islands enacts legislation for the implementation of the *World Heritage Convention* as soon as possible. Such legislation should ensure that arrangements are made for management of World Heritage properties and, in particular, to include participation in decision making and income sharing by the relevant customary landowners (page 11).

CHAPTER THREE

CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE

3.1 Relevant Legislation

Constitution of Solomon Islands
Land and Titles Act 1978
Leadership Code (Further Provisions) Act 1979
Ombudsman (Further Provisions) Act 1980
Provincial Government Act 1981
Solomon Islands Independence Order 1978

3.2 Constitutional structure

Solomon Islands became independent of Britain by virtue of the *Solomon Islands Independence Order 1978*. As might be expected, the Constitution and the rest of the legal system is based on British legal concepts. However, the way it has developed since independence has given it a distinctly Melanesian flavour, particularly in relation to land matters.

The preamble to the Constitution declares that

all power in Solomon Islands belongs to its people and is exercised on their behalf by the legislature, the executive and the judiciary established by this Constitution;

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

The preamble also contains a commitment to ensure the participation of the people in the governance of the affairs of the country and to provide, within the framework of national unity, for the decentralisation of power.

Section 114 of the Constitution provides for the country to be divided into provinces, and the National Parliament is charged with making provision for the government of the provinces.

The *Provincial Government Act* was enacted in 1981 after much debate (which continues today) about the division of power between the National Government and the provinces (see Larmour 1985:79-87). A good deal of legislative power has been devolved to the provinces through this legislation. (See 3.5 below).

3.3 Sources of law

The sources of law in Solomon Islands are: the statutes of the National Parliament; the Ordinances passed under devolved power in the Provinces; by-laws of Area and Town Councils; the applicable legislation of the British Parliament; the common law and principles of equity derived from the United Kingdom; the rules of precedent developed in Solomon Islands, and customary law of Solomon Islands.

3.4 Customary law

3.4.1 Customary law and environment

Within the formal British-based legal system of Solomon Islands there has been a degree of acceptance of customary procedures, with specific recognition given in the Constitution and in a range of statutes. There has been no attempt to introduce a more general statute to address customary matters. In the field of environmental conservation and resource management there appears to be a general need to recognise customary land ownership and the importance of

customary matters generally (see UNCED Report 1992:29 and 38). There also needs to be a recognition that for conservation purposes, particularly in relation to endangered species, customary practices require a certain degree of regulation, especially where customary ownership problems hinder the regulation or protection of natural resources (eg turtle protection in the Arnarvon Islands and difficulties in extending the protected areas system). On the other hand, traditional owners sometimes have little opportunity to participate in decisions affecting the utilisation of their resources (for example, customary reef owners and TAIYO tuna fisheries). (UNCED Report 1992:38, quoting Wilson Liligeto).

3.4.2 Meaning of customary law

The question of incorporating customary concepts and practices into Western legal frameworks has occupied some attention in the Pacific (Eaton 1985; Pulea 1985; Thomas 1989). Pulea provides a comprehensive overview of customary law concepts in the Pacific relating to the environment. She indicates that customary law cannot and ought not to be inflexibly defined and that the term should be broadly interpreted. She uses the term "customary law" generically, and one whose source is found in both written and unwritten forms:

The range does not only cover customary practices but patterns of behaviour and social norms, the violation of which invokes coercive procedures. In some countries, customary law and practices are codified. Where no codification exists, customary law for any particular area becomes even more difficult to define, as wide ranging variations consisting of a variety of different principles, norms and rules are known to exist in one small area or community. On the other hand, custom may not be a set of rules but a process or way of solving or providing alternatives to problems. Some of the rules or ways of solving problems state wide and general principles of morality and public policy and constitute a framework for justice. Not only are customary laws changing today, they are subject to different kinds of changes (Pulea 1985:2).

Former Solomon Islands Chief Justice Daly, in discussing the transfer of customary concepts into Western legal thinking, stated in 1981:

...the problem is how can one express customary concepts in the English language? The temptation we all face, and to which we sometimes give in, is to express these concepts in a similar manner to the nearest equivalent concept in the law received in the Solomons from elsewhere, that is the rules of common law and equity. The result is sometimes perfectly satisfactory in that the received legal concept and the Solomon Islands custom concept interact to give the expressions a new meaning which is apt to the Solomon Islands context....

However, other concepts of received law have not developed a customary law meaning and can produce difficulties of some complexity. This is particularly so when the customs concepts which they are said to represent are themselves undergoing modification to fit them to the requirements of a changing Solomon Islands which is now concerned not only with the use of land for subsistence farming but with the sale of timber on land and enclosure of land for cattle and so on.

For this reason it is to my mind a great development of the system of dealing with customary land that we now have a Customary land appeal court. That Court, through the experience of the majority of its members in the custom concepts and the legal experience of the magistrate member, has the ability to participate in the welding of customary concepts and the English language in a way which will not overlay the custom with inadequately modified expressions which in time could result in the custom giving way to inappropriate and possibly undesirable concepts of received land law (*Lilo and Others v Ghomo*, Solomon Islands Law Reports 1980/1981 233-234).

It can be noted that a decade later, the Customary Land Appeal Court is not so enthusiastically regarded; see e.g. Chetwynd 1991; and Chapter 4 below).

3.4.3 Customary law and the Constitution

The Constitution of Solomon Islands provides that customary law is part of the law of Solomon Islands. However, customary law does not apply if it is inconsistent with either the Constitution or an Act of the Solomon Islands Parliament. Article 75 provides:

- (1) Parliament shall make provision for the application of laws, including customary laws.
- (2) In making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.

On the other hand, customary law can override rules of common law and equity. Section 76 provides that the rules of the common law and equity have effect as part of the law of Solomon Islands unless they are inconsistent with the Constitution or an Act of Parliament, if they are inapplicable or inappropriate in the circumstances of Solomon Islands, or, in their application to any particular matter, they are inconsistent with the relevant customary law.

Clause 3 of Schedule 3 of the Constitution further provides, in relation to the application of customary law:

- (1) Subject to this paragraph, customary law shall have effect as part of the law of Solomon Islands.
- (2) The preceding paragraph shall not apply in respect of any customary law that is, and to the extent that it is, inconsistent with this Constitution or an Act of Parliament.
- (3) An Act of Parliament may:
 - (i) provide for the proof and pleading of customary law for any purpose;
 - (ii) regulate the manner in which or the purposes for which customary law may be recognised; and
 - (iii) provide for the resolution of conflicts of customary law.

It is clear that the drafters of the Constitution had impressed upon them the importance of custom, especially in regulating land and its use. The challenge now is to construct a land management system which allows for a transition from a subsistence-oriented culture to one which is a mixture of subsistence and a cash economy, in the context of development pressures coming from within as well as outside the country. The matter of customary law in relation to land is taken up further in Chapter 4.

3.4.4 Current customary usage

The term "current customary usage" is a term found in various Solomon Islands statutes. It allows customary rules to apply in any particular area of law where a statute does not specifically provide for the area in question, or where legal precedents of the court do not override those rules. As Forster has written in relation to customary law in Vanuatu, customary law in effect represents the "common law" of the country, "from which legislation or judicial decisions based

on non-custom precedent represents a departure; customary rules in this sense thus represent a kind of 'default value' among sources of law" (see Forster 1991:10).

Current customary usage is defined in relation to land in the *Land and Titles Act 1978*:

"current customary usage" means 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 (s 2).

This simply means the method or way things are done or decided by Solomon Islanders at the time when a land use question arises; it does not matter whether things were done differently in the past.

Customary matters are referred to in various national Acts and Provincial Ordinances relating to environmental matters. The customary aspects of this legislation are referred to where relevant in later chapters of this Review.

3.5 National and Provincial governments - devolution

The Constitution provides for Parliament to divide Solomon Islands into provinces. In making provision for the government of the provinces, Parliament must also consider the role of the traditional chiefs in that government. The extent to which this requirement has been adhered to is not clear. The only role spelled out for the chiefs by the legislation seems to be that of mediator in customary land disputes under the *Local Courts (Amendment) Act 1985*. (See paragraph 13.4.7 of Chapter 13 below).

From the point of view of environmental regulation, the most important sections of the *Provincial Government Act 1981* are those regarding the devolution of functions from the central government to the provinces. The Minister for Provincial Government may, with the consent of the Provincial Executive, and after consultation with other relevant Ministers, make "devolution orders". These orders declare any matters specified in Schedule 4 of the Act to be matters within the legislative competence of the Provincial Assembly. In addition, an order can transfer to the provinces a range of statutory functions formerly dealt with by the National Government.

The legislative competence which may be transferred to a Province under its devolution order is as follows (only the details of functions relevant to the environment are included):

Trade and Industry: local licensing of professions, trade and business

Cultural and Environmental Matters: local crafts, historical remains, protection of wild creatures; the Wild Birds Protection Act (except in relation to bird sanctuaries); the Protection of Wrecks and War Relics Act 1980 are not included.

Transport: coastal and lagoon shipping, provision, maintenance and improvement of harbours, roads and bridges

Finance

Agriculture and Fishing: animal husbandry, protection, improvement, maintenance of fresh-water and reef fisheries

Land and Land Use: codification and amendment of customary law about land, registration of customary rights in respect of land, including customary fishing rights, physical planning (except in a local planning area within the meaning of the *Town and Country Planning Act*, or in relation to development areas under that Act)

Local Matters: including waste disposal and cleaning services, public conveniences, public nuisances; cemeteries, parks and recreation grounds, markets and the keeping of domestic animals

Local Government: the making of by-laws for Area Councils and similar bodies, such as Town Councils

Housing

Rivers and Water: control and use of river water, pollution of water, provision of water supplies

Liquor

The statutory functions of the Minister or other officials under National Government legislation which may be exercised by the Provincial Executive under its devolution order are as follows (only the details of those functions that are relevant to the environment are included):

Cultural and Environmental Matters: the functions given to the Minister under s 14 of the Wild Birds Protection Act in relation to the establishment of bird sanctuaries

Transport

Agriculture and Fishing

Land and Land Use

Rivers and Water: the functions given to the Minister under the *River Waters Act*

Forestry: the Minister's power to make Regulations in relation to approved timber agreements affecting customary land, the licensing of mills, and the reservation of forests to conserve water resources

Public Holidays

Liquor

Although legislative competence and the various statutory functions in these areas are nearly all devolved to the provinces, the actual extent of devolution is not easy to ascertain. Devolution of power depends very much on the policy of the particular National Government in power, and on the level of resources available to the Provincial Governments to implement the powers given to them. Presently these governments are still almost entirely dependent upon National Government funding. The low level of funding available has apparently been the prime reason why devolution has not worked effectively to date.

3.6 The Ombudsman

3.6.1 Ombudsman and the Constitution

Article 96 of the Constitution establishes the public office of the Ombudsman. The functions of the Ombudsman are to:

- (a) Inquire into the conduct of members of the Public Service, the Police Force, the Prison Service, Provincial Governments and other such public agencies as Parliament prescribes, in the exercise or abuse of their office or authority;
- (b) Assist in the improvement of the practices and procedures of public bodies;
- (c) Ensure the elimination of arbitrary and unfair decisions;

- (d) Perform additional functions conferred by Parliament.

The Ombudsman has no power over the Governor-General or the Director of Public Prosecutions. Further, the Ombudsman has no power to question the decision of any Judge, Magistrate or Registrar in the exercise of their judicial functions.

The Constitution attempts to place the Ombudsman above political influence. Every year the Ombudsman must make a report to Parliament, which may draw attention to any defects in the administration or defects in any law which appear to the Ombudsman to exist.

3.6.2 *The Ombudsman (Further Provision) Act 1980.*

This Act adds to the existing provisions in the Constitution relating to the Ombudsman. The Act is in accord with the Constitution except for an unusual provision in Section 7(3) which states:

the Ombudsman shall not conduct an investigation in respect of any complaint in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister in person in the exercise of his own deliberate judgement.

This seems to mean that a citizen may not be able to have the Ombudsman investigate a complaint of injustice if the decision causing the injustice is made personally by a Minister. Such a provision is unusual to say the least, in comparison with similar legislation in other countries.

3.6.3 Power of the Ombudsman

The Ombudsman is given power to refer matters back to public officials where he or she is of the opinion that any official action was:

- * contrary to law;
- * based wholly or partly on a mistake of law or fact;
- * unreasonably delayed; or
- * otherwise unjust or manifestly unreasonable (s. 16 *Ombudsman (Further Provisions) Act 1980*).

The Ombudsman must report his or her opinion and reasons to the officer, department or authority concerned and make recommendations to rectify the situation. The Ombudsman must send a copy of these reports to the Prime Minister and any other Minister concerned. This provision applies where the Ombudsman has decided that:

- * the investigated matter should be given further consideration;
- * the omission should be rectified;
- * any decision should be cancelled, reversed or varied;
- * any practice or any law on which the Act, omission, decision or recommendation was based should be changed; or
- * that reasons should have been given for the decision, or some other steps taken.

This mechanism for referring the investigated matter back to the officials is of practical importance in terms of feedback and avoidance of error. The official receiving the report may be given a specified time in which to respond to the Ombudsman's requests.

The Director of Public Prosecutions can instigate a prosecution of any person who wilfully fails to furnish information or produce documents validly requested by the Ombudsman or his or her staff.

It seems clear that the *Ombudsman (Further Provision) Act 1980* should be comprehensively reviewed (see **Recommendation 5**).

3.6.4 The role of the Ombudsman in Environmental Protection

The office of the Ombudsman has already proved that it has a significant role in government which can directly and indirectly assist environmental protection in Solomon Islands. It is important that the laws and procedures laid down by Parliament to protect the environment are carried out faithfully and properly by the officials charged with their implementation. For example, various Ombudsman's Reports to Parliament in recent years demonstrated the glaring inadequacies of present law and practices in the forestry sector (see further Chapter 13).

The complaint procedure to the Ombudsman is a way of ensuring that public officials conduct themselves and their administration according to the law. It is an important constitutional safeguard. The mere presence of this safeguard and the placing of the office of the Ombudsman above the political process should in itself assist proper government administration. It would seem important that the Ombudsman's Reports be more widely distributed, especially to outlying communities, so that the office acts as an effective check on any wrongdoing or excesses by government officials or politicians.

3.7 Leadership Code

3.7.1 Leadership Code and the Constitution

Chapter VIII of the Constitution provides for a Leadership Code for community leaders in Solomon Islands. The Code is intended to set out guidelines for public officials in the conduct of their official duties. Article 94 of the Constitution makes it compulsory for all public officials both in their official and private lives not to:

- * place themselves in a position which means, or could mean, a conflict of their interests;
- * place themselves in a position in which the fair exercise of their public or official duties might be compromised;
- * demean the office or position they hold;
- * allow their integrity to be called into question; or
- * endanger or diminish respect and confidence in the integrity of the government.

The Code further provides that officials must not use their office for personal gain. Further, they must not enter into any transaction or engage in any enterprise or activity which might be expected to give rise to doubt about whether that official is carrying out official duties properly and in accordance with the Code.

The Code also requires officials to ensure as far as they lawfully can that their spouses and children and other persons for whom they are responsible also conduct themselves in a proper manner.

3.7.2 *Leadership Code (Further Provisions) Act 1979.*

This Act makes further provisions expanding on those contained in the Constitution. The main requirement is for all public officials to lodge with the Leadership Code Commission a list of

their business interests and activities every two years. This is wide-ranging and extends to spouses, children and certain others.

Unfortunately in terms of the good administration of government in Solomon Islands, these statutory provisions do not appear to be complied with in practice by some public officials.

3.7.3 The Leadership Code Commission as an Environmental Protection Mechanism.

The Code can function in the same way as the office of the Ombudsman, in ensuring that public officials respect the law and carry it out faithfully. This is one way by which compliance with environmental laws and practices can be ensured.

It is clearly not desirable for public officials to have financial interests in activities which they are duty-bound to regulate. Foreign developers are known to seek out and obtain the business involvement of key public officials or politicians in order to facilitate the running of a business venture in Solomon Islands. It is obviously not in the public interest that this be allowed to occur. Serious consideration should be given to increasing the efficiency and effectiveness of the present provisions of the Leadership Code Commission so as to protect the integrity of all government officials and to ensure that they keep the respect of the public, so that the laws passed by Parliament are able to be carried out effectively (see Recommendation 6).

3.10 Recommendations for Chapter Three

5. That the *Ombudsman (Further Provision) Act 1980* be reviewed and amended to bring it into line with comparable legislation in other countries (page 19).
6. That the *Leadership Code (Further Provision) Act 1979* be more rigourously enforced (page 20).

CHAPTER FOUR

LAND TENURE IN SOLOMON ISLANDS

4.1 Relevant legislation

National

Commissions of Inquiry Act (Cap 31)

Constitution 1978

Customary Land Records Bill 1990

Land and Titles Act 1978

Local Courts Act 1973

Mines and Minerals Act 1990

Petroleum Act 1987

4.2 Land tenure and environment protection

As in many other Pacific countries, the customary land tenure system and traditional land use practices in Solomon Islands have been the basis for management and use of fauna and flora. Traditional practices include seasonal bans on hunting and fishing, tambus (prohibitions) on the killing and eating of particular species and the exclusion of outsiders from communal territory (see Eaton 1989:47). These practices do not necessarily arise out of any particular conservation ethic, but more likely come from a straightforward desire to ensure sustainable and continued use of natural resources into the future.

This chapter examines some of the land tenure provisions of the relevant legislation in order to lay the basis for analysing the environmental protection mechanisms found in subsequent chapters. It also looks at the question of registration of land tenure and suggests alternative ways of solving land disputes. The matters of land tenure and dispute resolution are seen to be vital in terms of exploring ways in which conservation objectives can be achieved through cooperation with landowners:

Since land rights are a structural feature of the Solomon Islands, any attempt to regulate the use of natural resources, including water, should first address the issue of land tenure, including limitations to customary ownership. (Zoleveke 1979 as quoted in Solanes 1987:6)

4.3 Land ownership

Some 87 per cent of land in Solomon Islands is held under customary ownership, much of which is not registered under the *Land and Titles Act*. The balance of the land is mainly held by the government. The *Constitution* of Solomon Islands limits land ownership to Solomon Islanders:

The right to hold or acquire a perpetual interest in land shall vest in any person who is a Solomon Islander and only in such other person or persons as may be prescribed by Parliament (s 110).

A Solomon Islander for the purposes of this part of the *Constitution* is as defined in the *Land and Titles Act*:

"Solomon Islander" means a person born in the Solomon Islands who has two grandparents who were members of a group, tribe or line indigenous to the Solomon Islands (s 2 *Land and Titles Act* and s 113(2) of the *Constitution*).

Any other person who Parliament allows to hold land can only hold it as a fixed-term interest. The *Land and Titles Act* limits fixed-term interests to 75 years.

4.4 Definition of land and the division of property rights

4.4.1 Customary tenure

The way in which land is defined is important in terms of who can own it, precisely what is owned, what the land produces and who can live there or use it in other ways. In Melanesian and 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 (Bonnemaison 1984).

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 people in relation to the land. Property in land can be divided into various "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 characterised 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 localised 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 purposes (Eaton 1985:8).

4.4.2 Primary and secondary rights

In Solomon Islands, these various rights are often characterised as "primary rights" and "secondary rights". Primary rights can mean collective ownership comprising the right to use, dispose of (in the sense of lease or exchange) and the right to sell the products of the land. Secondary rights can mean a limited form of collective ownership comprising the right to collect the products of the land or use the land as a garden. Other uses must be with the consent of the primary land owner. The secondary right can be a temporary right granted by families and tied to family membership, and can sometimes be granted to strangers.

4.4.3 Meaning of "landowner"

The case of *Fagui & Another v Solmac Construction Co Ltd* (Commissioner D.R. Crome, High Court of Solomon Islands, Civil Cases Nos 44 & 45 of 1982) refers to these rights in the context of considering the meaning of "landowner" in a logging dispute:

It is well established that in custom, land is owned not by a person, but by a line or family or tribe. Other persons, families, lines or tribes may have secondary rights in the land. [This includes] rights to grow crops, make gardens, take the fruit of trees, even to take the trees themselves to make canoes or houses, and so on. The permission of other lines having interests in neighbouring lands may be required, in custom, before a line can develop its own land in case that development affects adjoining land in any way. There are chiefs or big men, but they may only behave in a customary way, and if they give away or sell interests in customary land against custom it is possible that not only will the dealing be void but the chief may lose his right to be chief.

The word "landowners" in the context of customary land is one which can only be used in a loose and imprecise sense, and I have no doubt that the Company has,

by the constant reference to the word, been lulled into a false sense of security in its venture (at 108).

4.4.4 Meaning of "land"

In the *Land and Titles Act*, "land" includes

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.

4.5 Definition of Control over customary land

Meaning of "customary land"

The *Land and Titles Act* defines "customary land" in an unnecessarily complex way:

"customary land" means 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 land by paragraph 23 of the Second Schedule to the repealed Ordinance.

This means in effect that any land that is not 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 can legally still be regarded as customary land.

The meaning of paragraph 23 of the Second Schedule of the repealed Ordinance, referred to in the definition, is that any land that was set aside for occupation for Solomon Islanders before 1969, is also customary land, as long as continuous occupation can be proved since the date on which the land was set aside (see *Land and Titles Act*, note to s 2).

The definition of "land" and "customary land" do not include the minerals or any other substances in or under land which is mined by any process. The ownership of these elements remains in effect with the government. This means that decisions made in relation to customary land by the customary landowners are limited by the provisions of the mining and petroleum legislation. In other words, landowners cannot make decisions by themselves about these resources either in relation to their own exploitation of them or by others. However, they do have specific rights to exclude people from prospecting and mining under the *Mines and Minerals Act 1990*. Thus, if a landowner refuses to grant access rights to the surface of the land, the mining company cannot obtain a mining licence. In addition, landowners are able to be represented on the Minerals Board whenever an application is being considered in relation to their land (see further Chapter 14 below).

The definitions of land and customary land make clear that any products of the land such as trees and other vegetation are within the domain of the landowners. Thus any exploitation of forest resources or other vegetation on customary land can only take place with the consent of the landowners. Decisions about the use of land for purposes such as tourism and similar uses are also made by the landowners. Negotiations and bargaining over the use of the resources often takes place between the landowners and a company wishing to exploit a resource in relation to forestry. Those negotiations must take place in accordance with specific rules laid down by the forestry legislation.

4.6 Marine tenure

In the traditional system, marine tenure exists in the sense that a group may claim exclusive use of an area of sea, beach or lagoon. Outsiders are excluded and may only fish with the permission of the group. This may be restricted to certain times of the year and be conditional on some form of payment, gifts or a proportion of the catch. Rights to gather shells and other products are safeguarded in a similar way (Eaton 1985:12).

In Solomon Islands, as in many other countries, the land and sea below the high water mark are generally regarded as government land. Customary marine tenures are recognised in the sense that traditional fishing rights are protected in the *Fisheries Act 1972*, so that reef owners can control who fishes in their customary waters, and agreements can be made about the purchase of marine products (see further Chapter 11 below).

In certain situations, the common law position about ownership of the sea can be replaced by customary rights: *Allardyce Lumber Co Ltd. v Laore* High Court of Solomon Islands, 1989 Solomon Island Law Reports 5. The High Court has exclusive jurisdiction to determine whether any land is customary land (*Land and Titles Act* s 231(2) and s 232(1)). However, in the *Allardyce* case, Ward CJ held that the definition of land in the *Land and Titles Act*, which includes land covered by water, does not include the seabed:

It is clear that the essence of the definition is the word land and that is used as the opposite to sea. Thus areas covered by lakes or rivers may be included as land whilst the tidal stretches of rivers will not. Similarly, if a man excavates his land and allows the sea to flood the excavated area, it does not, by that, cease to be land.

The Court held that the reefs involved in that case, being areas *permanently* covered with water, were not within the definition of land, and thus could not be customary land. The Local Court could not therefore rule on the ownership of the reefs. However, the High Court held that any rights short of ownership, being rights which sprang from ownership of the adjoining land, could be decided by the Local Court.

4.7 Local Courts and customary land

Local Courts are established under the *Local Courts Act* by warrant from the Governor-General. The Local Court deals with a wide range of matters, including disputes over customary land. Appeals from Local Courts over customary land are to Customary Land Appeal Courts (see below; see also, Campbell 1977).

4.8 The Customary Land Appeal Courts

Customary Land Appeal Courts may be established by warrant of the Chief Justice pursuant to the *Land and Titles Act*. Such courts have jurisdiction over the area or areas of the Local Court as the Chief Justice decides. The Customary Land Appeal Court provisions are found in the *Land and Titles Act*, ss 231, 231A, 231B.

Customary Land Appeal Courts have been established in every province. A Customary Land Appeal Court is required to consist of a President, a Vice-President and not less than three other members. In order to ensure that there is a person on the court with legal qualifications, at least one of the members of the court must be a Magistrate. The Chief Justice has discretion to decide the length of the appointments of members of the Customary Land Appeal Courts.

For all purposes relating to land, this court has all the powers of a Local Court. The court is unable to sit unless there is a quorum of five members present.

It is significant to note that no legal practitioner is permitted to appear before a Customary land appeal court. The reason for this appears to be that a legal practitioner may unnecessarily

complicate issues before the court with non-customary legal argument, which would normally be inappropriate and irrelevant to the consideration of substantive customary law matters.

4.9 Appeals to and from the Customary Land Appeal Court

Any person who is aggrieved by a decision of a Local Court in relation to customary land may appeal to a Customary Land Appeal Court within three months of the date of the Local Court's decision or order. The exception to this is a determination as to whether any land is customary land (see *Land and Titles Act* s 231(1)).

The Customary Land Appeal Court may substitute its own decision for the Local Court's decision and may make any order as seems just in the circumstances.

Any person who is aggrieved by a decision of the Customary Land Appeal Court may lodge a further appeal to the High Court of Solomon Islands within three months. This appeal may be on two grounds. The first ground is whether the decision of the Customary Court was wrong in point of law. The Act provides that the expression "point of law" does not for this purpose include a point of *customary* law. In other words, the Customary Land Appeal Court has sole jurisdiction over points of customary law. This makes a good deal of sense, as the whole purpose of the Customary Land Appeal Court is to ensure that customary law is explained and interpreted in accordance with the knowledge of members of that court who by their links with the community and the land are seen as the custodians of that law. (It is not necessary for the Magistrate who is a member of the Customary Court to be a custodian of the relevant customary law.) The second ground of appeal is where there is a failure to comply with any procedural requirement of any written, non-customary law.

4.10 Regulations in relation to Customary Land Appeal Courts

The Minister for Lands may make regulations which apply to the Customary Land Appeal Court in relation to two matters. The first concerns the challenging of any member of the court by any party to proceedings before it. This would allow a party to challenge, for example, a member of the court who had a financial, property or personal interest in the proceedings, or a member who was closely connected with a party who had such an interest. (see *Land and Titles Act* s 235(1)(a)(v)). The second aspect on which the Minister can make regulations is in relation to the preservation and duplication of records and their inspection by the public.

4.11 Customary Lands Records Bill 1990 and similar schemes

4.11.1 Registration of customary land

In the document *Land: Proposal for a Government Policy*, (no date, presumably 1990) it is stated that it is intended to introduce satisfactory legislation to stabilise customary land "in all of its cultural essences; a law to underpin the whole heart of Solomon Islands cultural identity". In pursuance of this policy on land, a *Customary Lands Records Bill* has been drafted "to provide for the recording of customary land holdings; to empower land holding groups to appoint representatives to deal with recorded customary land holdings, the establishment of an office of National Recorder of customary land and records offices in the provinces..." (preamble to the Bill).

The Bill sets up an administrative mechanism on both a national and provincial basis to process claims for the recording of customary rights and demarcation of the extent of the boundaries of the customary land of any customary landholding group. The area must first be declared by the Minister as a Customary Land Record Area for the purposes of the legislation.

In the Objects and Reasons, appended to the Bill, it is stated:

At present there is no legislation which provides for the registration of customary land. This situation has resulted to a great extent in hampering the development

of the economy of Solomon Islands. It is therefore considered appropriate that legislation be introduced to resolve the complexities of customary land titles, whilst protecting and permitting customary dealings in land.

This Bill therefore seeks to:

- * provide for registration of customary land boundaries;
- * make provision for recorded land boundaries to be conclusive evidence of the boundaries and the land holding groups entitled to primary rights;
- * make provision for the appointment of group representatives authorised to deal with such recorded land on behalf of the land holding group

4.11.2 Primary and Secondary rights under the *Customary Lands Records Bill*

Once recorded, the primary rights of the landholding group cannot be defeated except in accordance with the proposed Act. "Primary rights" is defined to mean "the right to carry out any act on the land concerned without reference to any other person". "Secondary rights" is not defined in the Bill, but is assumed to mean by implication that the rights of a secondary rights holder are subject to the rights of the holder of the primary rights; see further, 4.4.2 above. "Person" is defined to include a landholding group.

Once entered in the record, the land holding group may apply to the Registrar of Titles to have their primary rights registered in accordance with the *Land and Titles Act*. The Bill also makes provision for secondary rights to be protected and recorded. Agreements may be entered into by representatives of the land holding group with any other person to use all or any part of the land or to lease all or any part of the land. Such leases may be recorded under the Act.

4.11.3 Malaita Provincial Plan

It would appear that there is some support for the recording and registration of customary lands. One example of such support is found in the Malaita Provincial Plan 1988-1992, where the registration of customary lands is identified as part of a development strategy for the province. The objective is stated to be the reduction or elimination of land disputes and to clarify ownership of land in order to facilitate development efforts, especially in rural areas

by creating a Provincial policy in agreement with tribal chiefs leading to registration of all customary lands and genealogies in a central Provincial registration office. (Malaita Provincial Plan 1988:69).

However the support for such a strategy is not universal and there are some who, despite the present problems and uncertainties over land tenure, are opposed to the imposition of a new system of registration of customary land and customary land rights.

4.11.4 Fijian system.

Interest has been expressed by Solomon Islands in the Native Land Trust Board (NLTB) of Fiji. (e.g. *Solomon Star* 29 November 1991). In Fiji, 83 per cent of the land is owned by indigenous Fijians. The NLTB administers all customary lands for the benefit of the indigenous people of Fiji. Of this land, part is reserved exclusively for use by Fijians. Other areas can be leased through the NLTB. Crown land and freehold make up the remainder (see further, Eaton 1985:59). Although that system is unlikely to be directly transferable to Solomon Islands, it has features which could be adapted to suit the needs of this country, in relation to both development and conservation. New Zealand is another Pacific Islands jurisdiction which has a system of customary land ownership (Maori land) incorporated into a land registration system similar to that in Solomon Islands.

4.11.5 Registration of land and conservation practices

In considering the *Customary Land Records Bill*, in particular in relation to its potential to contribute to good conservation practice, it is perhaps wise to bear in mind the writings of various scholars in the Pacific who have explored the issues of putting law into code form and registration, and have commented on some of the results of registering customary lands; see in particular Crocombe 1988 and 1989:105, Eaton 1985, Pulea 1985.

4.12 A Land Commission

An alternative scheme for recording of customary land is tentatively suggested here. This scheme incorporates elements of the above and involves the establishment of a Land Tribunal or Commission set up in a similar way to Commissions of Inquiry under the Commissions of Inquiry Act. This alternative is derived from a paper written by a former Chief Magistrate and Registrar of the High Court of Solomon Islands, Mr David Chetwynd (see Chetwynd 1991). The term "Commission" has been substituted here for Chetwynd's "Tribunal". Such a Commission could be established for each province, replacing the Customary land appeal court system presently in place. Chetwynd suggested that such a body would operate outside the formal court system and involve a good deal of public participation.

The essence of the Chetwynd scheme is as follows (the language and process have been modified and expanded slightly):

1. The Commission Chairperson would be appointed by the Judicial and Legal Service Commission. Members of the Commission would be appointed by the Chairperson, probably from the pool of members of Customary Land Appeal Courts and Local Courts.
2. A large area within a province would be selected, and advertisements and notices would be published advising of hearings. (The advertisements and notices would need to be broadcast widely through Solomon Islands, as many landowners do not live on their land, or in the same province as their land).
3. Anyone wishing to make representations would attend and be heard. All representations, oral and in writing would be recorded. Despite difficulties of giving details, genealogies would be an essential part of the evidence. The evidence would not be formal in the sense of hearings in a court of law.
4. The Commission could question any person in relation to their evidence, or about anyone else's evidence.
5. Maps and aerial photographs could be part of the evidence. Previous cases regarding the land in question could also be referred to, but not in the sense of those cases being precedents binding on the Commission.
6. Once the hearings were concluded for the area, a written report would then be circulated. This would include summaries of the evidence, views and recommendations of the chiefs, and maps and photographs. The publication of details of genealogies would require the consent of the relevant landowners.
7. A further public meeting would be held at the conclusion of a reasonable period, to obtain further views and where necessary to correct the initial report. Any disputes that were still evident at the second round of hearings could be addressed through a process of mediation in order to ensure that all parties were comfortable with the decision. A small team of mediators would need to be trained specifically for this task. The aim of the second hearing would be to arrive at a consensus between any parties in dispute.

8. After the second round of hearings, a comprehensive Final Report would be prepared by the Commission. This would include details of who the primary landowners were, what rights were held by them and by any secondary owners; maps, photographs, genealogies, boundaries, tambu sites, gardens, plantations etc would all be included.
9. The Final Report could not normally be appealed against. Two reasons are put forward for this: Firstly, if the participation of the public has been full and adequate, and mediation processes have been properly carried out, it is unlikely that a new round of hearings would come to a different decision. Secondly, to give a right of appeal would place the process back into the ordinary legal system, and the Commission's decision would acquire the flavour of a court decision, a result which is intended to be avoided by this alternative process.

However if it appears that any injustice was done through lack of communication, and that this injustice could be adequately be shown, the matter could be reopened at the discretion of the Commission.

10. The Final Report would need to be subject to judicial review to correct procedural or administrative errors.
11. Implementation of the Final Report could follow one of several options. The first would be the formation of Land Management Committees. These Committees would comprise chiefs and other important and respected people of the area, whose primary function would be to oversee the use and proper management of the land, in accordance with the rights of the owners and various rights holders as found in the Final Report.

Any disputes would be referred to the Land Management Committee in the first instance. Disputes which could not be resolved at a local level would be referred to the Land Commission for a hearing, following a similar pattern to the original process, but on a smaller scale. Mediation would once again be an essential part of this process. The Committee would not normally be able to go against the wishes of the landowners.

The Land Management Committee would also have the responsibility of receiving and managing any income from the land under its care, and hold monies in trust for the various landowners. Trust monies should be subject to special accounting rules, with qualifications of trustees being spelled out. This would be particularly important where major development is proposed for the area, which would result in income for the landowners.

The second option, which could be combined with the first, could be the registration of the various property interests according to a scheme similar to that found in the *Customary Land Records Bill* (referred to in 4.11, above).

12. Once a number of major areas had been processed by the Land Commission, it is conceivable that the environmental planning, management and assessment processes suggested elsewhere in this Report and in the National Environment Management Strategy could be integrated with the Land Management Committee scheme outlined here.

This Chetwynd proposal is one alternative. Modified or different proposals incorporating a more rigid court case-based process or perhaps a more flexible mediation-based process could also be considered (see **Recommendations 7 and 8**).

4.13 Recommendations for Chapter 4

7. That a programme of education and consultation be launched through newspapers and radio on how the land tenure law works, what problems there are with it, and to canvass proposals for reform (page 28).
8. That a Land Commission be established by a *Land Commission Act* to replace the Customary Land Appeal Court system (page 28).

CHAPTER FIVE

ENVIRONMENTAL PLANNING AND ASSESSMENT

5.1 Relevant Legislation

National

Investment Act 1990

Research Act 1979

Town and Country Planning Act 1979

Provincial

Western Province

Draft Western Province Environmental Management Ordinance 1991

Western Province Building Ordinance 1991

By-laws

Honiara Town Council Building By-laws

5.2 Introduction

This chapter examines the legislation, administrative directions and practice relevant to physical planning and environmental impact assessment. The scope for achieving an integrated approach to environmental planning and assessment is explored, and suggestions are made on how to achieve this objective through legislative change and administrative reorganisation.

5.3 *Town and Country Planning Act 1979*

5.3.1 Administration

At the present time, the *Town and Country Planning Act 1979* is the primary legal mechanism for the regulation of planning matters at both 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 Agriculture and Lands. The Act was amended in 1982 to devolve the physical planning 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 Boards can thus be controlled by the Provincial Premier and 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. However, "development" is restrictively defined (see below). The Board does not have jurisdiction over customary lands.

5.3.2 Definition of development

The precise definition of the term, "development" is important, because it is only development as defined in the Act that requires consent from the Town and Country Planning 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.

However there are six exceptions which are deemed not to be "development". They are:

- * interior alterations of a building;
- * making roads;
- * streetworks;
- * development of land adjacent to a house;
- * the use of any land for the purposes of agriculture, livestock keeping, fishing and forestry;
- * other developments as prescribed by Regulation by the Minister.

The Act thus excludes the Board from being concerned with agriculture, fishing and forestry developments in its Province or Council area. This is a major restriction.

5.3.3 Control of development of land

The Minister may order that the development control provisions of the Act apply to any area of Solomon Islands. However, the application of the Act is severely limited by the fact that it does not apply to customary lands. Thus it cannot apply to some 87 percent of the land in Solomon Islands.

There is no indication in the Act of precisely what environmental and planning matters must be borne in mind when a Town and Country Planning Board is considering an application. There is no requirement in the Act for other public bodies to be consulted, although this does occur informally on occasion. All of these matters may be addressed in Regulations. However, no Regulations have been drafted to date (see **Recommendation 9**).

5.3.4 Ministerial powers

The Minister administering the Act (presently the Minister for Agriculture and Lands) has a range of powers. He or she may give a Town and Country Planning Board any general or special directions about the exercise of any of its functions or the performance of any of its duties (s 5). The Board is obliged to comply with any directions given. There is no mechanism for resolving disputes between the Minister and the Board. The Minister also has final decision making powers in relation to appeals from decisions of a Town and Country Planning Board. (See 5.3.7 below).

5.3.5 Enforcement notices

Where development has been carried out without the planning permission required under the Act, or against the conditions of the Board, an enforcement notice may be issued. Such a notice can be issued up to four years after the development has been carried out. The enforcement notice may specify what steps must be taken to restore the land back into the condition it was in before the development took place, or for complying with any specified conditions. The notice may require the demolition or alteration of any buildings or works, the discontinuance of any use or the carrying out of any building or other operations. The enforcement notice can only take effect at the expiration of a minimum of 28 days after service of the notice. When an appeal is made to the Local Court against the enforcement notice, the operation of the notice is suspended pending the determination of the appeal. If the appeal is dismissed, or the

enforcement notice is varied, another 28 day period is allowed before the notice again becomes effective.

These provisions give Planning Officers very little power to halt development that is being carried out contrary to the Local Planning Scheme. The strength of the enforcement notice provision can usefully be compared with the Stop Notice provision found in the Building Ordinance enacted by Western Province. That provision gives power to an authorised officer to serve a Stop Notice on a Permit Holder, the builder or the owner of the land on which a building is being constructed. This Stop Notice requires building construction to stop immediately, and also acts as an immediate suspension of a building permit, where such a permit has been issued (see **Recommendation 10**).

5.3.6 Appeals from the Board to the Minister

Appeals from the decisions of a Board lie direct to the Minister (s 19). The Minister may allow or dismiss the appeal, or reverse or vary any part of it, whether or not the appeal relates to that part of the decision. The Act provides that the Minister may deal with the application as if it had been made to him or her in the first instance. The Minister's decision is final and conclusive. The Act provides that it cannot be questioned in any proceedings whatsoever (s 19(5)) (see **Recommendations 11 and 12**).

5.4 *The Investment Act 1990*

5.4.1 Application

The *Investment Act 1990* repealed the *Foreign Investment Act 1979*. It is noteworthy that the new Act covers both foreign and *local* investors.

Some countries use their constitutional powers over foreign investment to ensure that appropriate measures are taken for the protection of the environment through development proposals put forward by foreign investors. The way that this is usually done is for environmental impact assessment policy and legislation to be triggered whenever a significant development proposal is received from a foreign investor.

The *Investment Act 1990* already includes a trigger to allow such an environmental impact assessment process to be set in train. Section 5 provides that on receipt of an investment proposal from a foreign investor, the Investment Board must give notice to the appropriate Ministries, relevant Provincial Governments or the Honiara Town Council, as the case may be, and seek their approval in relation to the application. The relevant bodies are required to ensure that the investment proposal complies with the requirements of the "relevant or qualifying laws". On receipt of confirmation that the proposal does comply with any relevant or qualifying laws, the Board may approve the proposal, and grant a certificate of approval.

5.4.2 Investment and environment

Although the Act does not include any direct requirements to take into account environmental matters. Such a requirement could be specifically included in the *Investment Act*. Many overseas investors are well acquainted with the need to comply with the environmental laws of the countries in which they invest, and an increasing number have company policies to ensure that they comply precisely with the requirements, as they see it as of benefit in a number of ways.

The first and most important reason for a company to take environmental considerations into account is because it is good business practice to apply the strictest international standards possible, in order to indicate to countries and communities in which they wish to invest that they are good "corporate citizens".

The second is one of potential legal liability if the activities of the company result in damage to human health or to property. It is particularly in relation to activities which involve the

importation and use of toxic and hazardous chemicals that such potential liability can exist. If through the negligence of a foreign company operating in Solomon Islands, land or waterways become contaminated, and people or property are injured or damaged, even years afterwards, that company can be held liable. In legal actions in recent years in the United States, Japan and several European countries, vast sums of money have had to be paid out by foreign and local investors to clean up hazardous waste dumps and industrial sites, as well as providing compensation to individuals or to families.

The *Environment Act* proposed by this Review can address the activities of foreign and local investors by simply requiring all proposals for development from investors to have an environmental impact assessment (EIA) at the appropriate level (see **Recommendation 13**).

The *Investment Act 1990* does not specify precisely who the Minister may appoint to be a member of the Investment Board. In the light of the above discussion, it may well be wise to specify this more precisely. An officer of the Environment and Conservation Division of the Ministry of Natural Resources would be an obvious inclusion. Such a member would be able to advise directly on whether or not environmental considerations ought to be taken into account in the Board's consideration of particular proposals (see **Recommendation 14**).

5.5 Tourism and Environmental Impact Assessment

The sector that has perhaps the most advanced policy on Environmental Impact Assessment (EIA) is that of tourism. The Solomon Islands Tourism Development Plan 1991-2000 has an extensive section devoted to the processes of EIA in relation to both small and large tourism developments (Ministry of Tourism and the South Pacific Tourism Council 1991: 167-172). The plan has also developed guidelines for EIA.

In discussing EIA, the Ministry of Tourism states:

All projects should be subject to some form of environmental scrutiny during the planning stage and if it is felt that they have the potential to cause environmental damage, they should be required to submit an environmental impact statement as part of the project feasibility report (at p 173).

The Report notes that there is no environmental impact legislation in Solomon Islands at present, and recommends that such legislation should be enacted. A further important point in this context is that once an environmental impact statement is submitted, a key component in the assessment phase of that statement is the need for public involvement, to allow the community to express its concerns, and to allow the developer to address those concerns before social tensions and conflicts arise (at p 173).

The Tourism Development Plan includes a comprehensive set of guidelines on EIA. Those guidelines indicate that EIA should be viewed as an integral component of the project cycle, not as an extra to it. Tourism is discussed further in Chapter 15 below.

5.6 *Western Province Environmental Management Ordinance 1991 (Draft)*

5.6.1 Environmental Impact Assessment

The draft Western Province Environmental Management Ordinance has not yet been passed by the Provincial Assembly. In the absence of national environment legislation, this draft Ordinance is the broadest instrument for environmental regulation in Solomon Islands. Certain elements could be used as a model for national environment legislation or for other provincial Ordinances. It is at once broader and more specific than the two Bills produced at national level so far (Harding 1990; Lipton 1992). The part of this Ordinance dealing with pollution is dealt with in Chapter 7 below. This section sets out the environmental planning and assessment aspects of the Ordinance.

5.6.2 Provisions of the Ordinance

The *Western Province Policy on the Environment* and Part III of its draft *Environmental Management Ordinance 1991* provides a good example at Provincial level of a simple and straightforward form of environmental impact assessment.

- * The draft Ordinance requires developers in Western Province to produce a brief written preliminary statement to the Provincial Executive so it can decide whether the proposed development activity is one which will require environmental impact assessment. If the Executive decides that an Environmental Impact Assessment (EIA) Report is necessary on the likely effects on the environment of the proposed development activity, the developer must produce a report in the form set out in the Ordinance.
- * The EIA Report must be clear and concise and able to be understood by ordinary Solomon Island people. It must not be unduly technical, and neither misleading nor confusing. The Report must not leave out any relevant information. Detailed technical and scientific information must be set out in an attachment to the report.
- * There is provision for the Executive to obtain assistance from an outside consultant in assessing the EIA Report.
- * Local people are made aware of the EIA Report by the requirement that it be displayed on public notice boards throughout the Province. The public are asked to consider the Report and a meeting is then convened by the Local Area or Town Council at which the development proposal is discussed in public. The Council then records the views of the meeting, makes recommendations and sends these to the Provincial Executive and the Ministry of Natural Resources in Honiara. The Ministry must consider the Council's report on the EIA Report and any consultant's report and gives its views and recommendations to the Executive.
- * The Executive also receives advice on the EIA Report from its own Planning, Health and Environment divisions, and it then assesses all the information given to it.
- * The Executive has power to:
 - * disallow the proposed development activity;
 - * approve the proposed development activity;
 - * approve the proposed development activity subject to conditions;
 - * require a supplementary Environmental Impact Assessment Report from the developer.
- * The Executive also has the important power of being able to control the development because of the requirement of all developers and businesses to have a business licence.
- * These draft legislative provisions were foreshadowed in the Province's comprehensive Policy on the Environment, which has among its policy goals and objectives:

The protection, preservation and conservation of the natural resources of Western Province...; and to

Achieve a controlled and orderly development of Western Province which enhances the quality of life for individuals, the community, the Province and the nation.

The provisions of Western Province's draft Ordinance provisions about Environment Impact Assessment Reports provide a good model for adoption in new central government legislation. However, in order to ensure that such provisions are adequately administered, it would be necessary to establish a new government Agency or Division, either within the Ministry of Natural Resources or outside it. Such a body should have both the expertise and the resources to implement the environmental impact assessment provisions (see **Recommendations 15 and 16**).

5.7 Research Act 1982

Under this Act special permission is required from a central government agency called the "Research Application Committee" before a person may carry out research work in Solomon Islands. "Research" is widely defined and covers the work involved in obtaining the environmental survey and data collection necessary for environmental impact assessment procedures.

As the law stands, the Provincial authorities cannot solicit and obtain the services of bona fide overseas agencies or experts to do this work for them without first obtaining central government approval. The *Provincial Government Act 1981* (s 35(6)) has a similar effect. While there are sensible reasons to screen so-called "experts", modification of these requirements should be considered so that the Provinces have the power to select and invite outside research assistance to provide information on environmental surveys and data collection. The overall control of immigration and visa provision to foreigners of course needs to remain with the National Government (see **Recommendation 17**).

5.8 Recommendations for Chapter Five

9. That comprehensive Regulations under the *Town and Country Planning Act 1979* be passed to ensure that environmental and customary matters are addressed when applications for development are being considered (page 31).
10. That enforcement provisions in the *Town and Country Planning Act 1979* be strengthened. In particular, provision for a Stop Notice, allowing immediate stopping of work, should be included in the legislation (page 32).
11. That Ministerial powers in the *Town and Country Planning Act 1979* be clarified and spelled out in Regulations (page 32).
12. That allowance should be made for appeals from the Minister's decision on a development application (page 32).
13. That all local and foreign development activity requiring approval under the *Investment Act 1990* be subject to an appropriate level of Environmental Impact Assessment, supervised by the Ministry of Natural Resources (page 33).
14. That a representative from the Environment and Conservation Division of the Ministry of Natural Resources be added to the Investment Board (page 33).
15. That all existing and proposed development which affects or is likely to affect the environment be subject to Development Application procedures and an appropriate level of Environmental Impact Assessment (page 35).

16. That a new Division within the Ministry of Natural Resources or a new Agency be created, to, among its other responsibilities, administer the environmental impact assessment provisions of the proposed *Environment Act* (page 35).
17. That consideration be given to devolution of the functions under the *Research Act 1982* to the Provinces and a relaxation of the provisions in the *Provincial Government Act 1981* so as to allow the Provinces to consult with the National Government, for the purposes of obtaining the services of overseas agencies to assist with environment protection in the Provinces (pages 35).

CHAPTER SIX

WATER MANAGEMENT AND WATER QUALITY

6.1 Relevant Legislation

National

Forest Resources and Timber Utilisation Act 1991
River Waters Act 1969
Rural Water Supply Regulations 1987 (draft)
Town and Country Planning Act 1979
Water Supply Act 1981
Water Bill

Provincial

Western Province

Coastal and Lagoon Shipping Ordinance 1991

6.2 Introduction

The question of water management and water quality needs to be urgently addressed. The relevant legislation is out of date and largely inappropriate to present day needs. Although various attempts have been made to introduce new legislation in recent years, no new legislation has been enacted. A United Nations Report (Solanes 1988) found that although the country has several water-related laws, they do not provide a coherent framework for water management and conservation. It stated that the framework needed to be updated and coordinated through the enactment of comprehensive legislation.

6.3 *River Waters Act 1969 and Water Supply Act 1981*

The main legislation, the *River Waters Act 1969*, is meant to "provide for the control of river waters and for the equitable and beneficial use thereof..." (preamble). However, the Act only applies to areas that are specifically designated. Only six areas have been designated under the legislation since its enactment (Mataniko and White Rivers, Mbalisuna, Ngalimbui, Lungga, Mamara, Guadalcanal). No further areas have been designated since 1984.

The word "river" is defined as including:

any watercourse whether natural or artificial and any dam, lake, pond, swamp, marsh or other body of water forming part of that watercourse (s 2).

The definition does not include groundwaters or surface waters other than rivers or parts of rivers.

6.4 Other national legislation relevant to water management

6.4.1 Local Planning Schemes under the *Town and Country Planning Act 1979*.

A Local Planning Scheme under Part III of this Act may include special areas or zones set aside as water catchment areas. The Scheme can specify what development, if any, is allowed to take place in such a reserved zone. Section 29 of the Act allows this to happen without compensation having to be paid. However, Section 7 excludes customary land from that land which the Minister is permitted to declare as a "Local Planning Area".

6.4.2 *Forest Resources and Timber Utilisation Act 1991*

Under Section 13 of the *Forest Resources and Timber Utilisation Act*, areas of forest may be reserved in order to conserve water resources. The Provincial Executive under a devolution order has this power because of Schedule 5 of the *Provincial Government Act 1981*. A declaration of an area as a water catchment reserve also specifies the extent to which any rights may be exercised in the area. Thus the right to cut trees may be restricted or banned altogether. Declaration of such areas is endorsed in Western Province's Policy on the Environment (see **Recommendation 18**).

6.4.3 *Fisheries Regulations*

The *Fisheries Regulations* contain provisions prohibiting pollution of the sea. (See paragraph 11.3.4 of Chapter 11 below).

6.5 **Watershed management**

6.5.1 Logging

Since the present system of customary ownership and related rights is flexible and evolving, any attempt at water legislation should identify the legal limitations to be faced by every landowner (including customary owners) on behalf of development and conservation of water and related land resources. (Solanes 1988:3)

When enmeshed within Western production methods and market structures, lands held in common can be subjected to unwarranted degradation, either for the benefit of extractive activities, a few local business people, or both. Thus, neither efficiency nor equity or conservation are encouraged. The logging-related problems of watershed conservation illustrate this well enough.

Clauses 4 and 7 of the Standard Logging Agreement (see paragraph 13.3.6 of Chapter 13 below) could be used for imposing and justifying measures for watershed management.

6.5.2 Offences

Under the *River Waters Act*, unless a permit is issued, a person is guilty of an offence if he or she:

- * diverts water from a river;
- * fells any tree so that it falls into a river or river bed;
- * obstructs or interferes with a river or river bed;
- * builds any bridge, jetty or landing stage over or beside a river;
- * damages or interferes with the banks of any river.

These provisions do not apply in relation to diversion of water for domestic purposes and although widely drawn, it is important to remember that they only apply in areas to which the Act applies (See 3.1 above).

6.5.3 Permits to divert water

Permits to divert water can be granted under the *River Waters Act*. There is a limitation on the grant of the permit, in the sense that regard must be had to the existing use of the water; such uses are to be safeguarded "as far as appears practicable".

6.6 Solanes Report

On any analysis, the *Rivers Waters Act* needs up-dating. The Solanes Report contains recommendations for new legislation relating both to river waters and to water supply. In summary its recommendations are that:

- * the legislation should attempt to identify the legal limitations to be faced by every landowner (including customary owners) on behalf of development and conservation of water and related land resources;
- * in relation to customary lands, a process of regulation of land and water resources should be accompanied by an educational campaign explaining the reasons and needs justifying regulatory action, and its convenience to public needs and the long-term environmental and socio-economic viability of Solomon Islands;
- * future legislation should follow the *River Waters Act* in not raising the question of ownership. The policing power of the State should be used where necessary to allow for the issue of permits;
- * new legislation should regulate surface and groundwater resources and must recognise existing uses;
- * permits should not be required for domestic purposes;
- * the *Water Supply Act 1981* only applies to Honiara; new legislation on drinking water supply should be nationally applicable and enforceable
- * river waters legislation should be enforceable everywhere in the territory of Solomon Islands according to the criteria of the enforcing authorities, and not only in special areas;
- * joint regulation and administration of water supply and sanitation (sewerage) should be introduced. The *Public Health Act* and the *Water Supply Act* should be integrated;
- * restrictions on private ownership: the legal system of the Solomons includes precedents and cases of restrictions to private domain and ownership in relation to water protection and water-related services. New and comprehensive legislation can be based on these precedents and should include at least the following: condemnation and expropriation, creation of servitudes and water rights, right of temporary occupation, and zoning on behalf of the development and conservation of water resources;
- * the protection of water resources are at present scattered throughout several Acts. These Acts should be unified;
- * new legislation should aim not only at health objectives, but at the protection of water as such;
- * new legislation should authorise direct intervention by the enforcing authorities when emergency conditions or critical situations so require. (see e.g. s 50 *Public Health Bill 1990* (see Chapter 7 below));
- * declaration of controlled forests should be assimilated to zoning legislation, within a policy of paying compensation only in exceptional circumstances (see s 29 *Town and Country Planning Act*);

- * rules on protection of water resources should apply first and foremost to the provincial and national governments of Solomon Islands;
- * sanctions and penalties must be unified.

A draft Water law for Solomon Islands is contained in the Solanes Report. The original draft and comments on it are the subject of the *Water Act* (Draft) March 1991 (DePledge 1991). A new *Water Act* setting up a Water Authority has recently been passed by Parliament but is not yet in force. It seems resources to carry out the new law have yet to be allocated to the new Authority (see Recommendation 19).

6.7 Western Province Coastal and Lagoon Shipping Ordinance 1991

This Ordinance is enacted to "protect the coastal and marine environment of Western Province". Apart from outlawing marine pollution, (see paragraph 10 of Chapter 7 below) the Ordinance restricts the speed of vessels in lagoons to six knots. In addition vessels must

proceed at a speed which will not cause undue or unnecessary damage to the coastal environment and coastal property.

These provisions are designed to prevent the wakes of larger vessels damaging the reefs and shorelines.

6.8 Recommendations for Chapter Six

18. That Provincial Executives be encouraged to exercise their powers to declare water catchment reserves in forests in order to protect watersheds (page 38).
19. That the new comprehensive water legislation be implemented on the basis of the Solanes Report 1988 (page 40).

CHAPTER SEVEN

POLLUTION

7.1 Relevant Legislation

National

Constitution of Solomon Islands
Environmental Health Act 1980
Environmental Bills 1990 and 1991
Mines and Minerals Act 1990
Public Health Bill 1990
River Waters Act 1969

Provincial

Western Province

Coastal and Lagoon Shipping Ordinance 1991
Draft Environmental Management Ordinance 1991
Public Nuisance Ordinance 1991

7.2 Introduction

With the exception of Western Province, there is no specific legislation or policy dealing with water, land, noise or air pollution at national or provincial level in Solomon Islands. However, there are provisions in various pieces of legislation and draft legislation which deal with pollution. The *Environmental Health Act 1980* has some reference to pollution matters. Its proposed replacement, the *Public Health Bill 1990* refers more directly to pollution, but only water pollution is specifically mentioned. On the other hand, the *Mines and Minerals Act 1990* has quite explicit and stringent provisions in relation to pollution. Those provisions are dealt with in chapter 14. Given the disparate nature of pollution control provisions, it seems obvious that some consolidation is required (see **Recommendation 20**).

7.3 Constitution of Solomon Islands

The *Constitution* (Article 8) contains provisions for the taking, possession and compulsory acquisition of property when it is in a dangerous state or injurious to health (presumably only human health). Thus where it appears to be desirable to stop polluting activities affecting land or water, the area could conceivably be taken over by the government to be managed and conserved.

7.4 Water Pollution

The Fisheries Regulations, dealt with in Chapter 11, provide for offences in relation to pollution of the sea.

7.5 *Public Health Bill 1990*

The legislative history of this Bill is somewhat obscure. It seems to be intended as a re-enactment of the original *Environmental Health Act* discussed in Chapter 8.

7.6 *River Waters Act*

This Act is discussed in Chapter 6. The Act contains no specific provisions in relation to pollution.

7.7 Western Province Environmental Management Ordinance (draft) 1991

Western Province has published a broad-ranging and comprehensive Policy on the Environment, covering most aspects of environmental protection and management, including air, water and ground pollution. The draft Western Province Environmental Management Ordinance, based on the policy, has not yet been passed by the Provincial Assembly. In the absence of national environmental legislation, the draft Western Province Ordinance is the broadest instrument for environmental regulation in the country. However, despite the Policy and the title of the Ordinance, the only aspect of pollution covered by the Ordinance at this stage is water pollution. Given the breadth of the Policy, and the needs of the Province, there is little doubt that the draft Ordinance should be expanded to cover other aspects of pollution.

Part 4 of the draft Ordinance covers water control, use and conservation. A wide range of activities is prohibited under the provisions, including the discharging, depositing or discarding of any waste into a river or lake. The fine is up to \$1000 or imprisonment up to six months, with a further \$100 for every day the offence continues. The Act provides for a Stop Notice in relation to any activity under this Part, which allows an Authorised Officer to order the activity to cease immediately.

Other provisions of this draft Ordinance are dealt with in Chapter 5 on Environmental Planning and Assessment and Chapter 9 on Biodiversity Conservation.

7.8 Littering

The *Western Province Public Nuisance Ordinance 1991* is primarily directed to the regulation of liquor consumption in public places. Its only provision relating to pollution relates to littering. The Ordinance makes it an offence to litter any public place. Offences attract a fine of up to \$100 or imprisonment for up to one month. The Honiara Town Council has also recently enacted anti-litter by-laws.

7.9 Western Province Coastal and Lagoon Shipping Ordinance 1991

This Ordinance controls marine pollution and is designed to protect the coastal waters and lagoons of Western Province. It defines marine pollution as:

the introduction by persons directly or indirectly of substances or energy into the marine environment, which includes estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

Section 4 of the Ordinance makes it an offence:

to drop, throw overboard or discharge in coastal waters any litter, rubbish, refuse, garbage or any useless or unwanted materials or equipment or oil or any other hazardous products or chemicals including but not limited to petrol and bilge water or any other matter or thing causing or likely to cause marine pollution.

However it is not an offence to dump or discharge biodegradable materials such as food or sewage into provincial waters. The discharge of sewage could hardly be banned at this time, despite its serious pollutant effects, since provincial towns including Gizo have no alternative sewage treatment or discharge system, and many households and business premises discharge raw sewage into the sea adjacent to where canoes land and where children swim.

The Ordinance makes the master or owner of a ship which discharges polluting materials liable to a \$1000 maximum fine. In addition, on conviction the court may require the offender to attend to or pay for remedial action to abate the marine pollution. This is an important power

which, for example, enables the authorities to require shipowners to pay for the costs of cleaning up a serious oil spill. It would be wise for the national environmental legislation to incorporate similar provisions.

In addition to the master and shipowner, a passenger on board a ship or canoe can be guilty of the offence of causing marine pollution.

The Ordinance gives the Provincial Executive power to impose conditions on, or suspend or cancel the Business Licence of, a suspected marine polluter. Such a provision should act as a deterrent to businesses which may lose their licences for polluting the seas in Western Province.

This Ordinance has apparently already had a good effect, with passengers and crew of the regular ferry from Honiara to Western Province refraining from the previous practice of throwing cans and rubbish overboard. This has been achieved with a concerted effort and publicity campaign. The Provincial Secretary wrote to all shipowners operating in the Province advising them of the new Ordinance and of the penalties for contravention. Just as importantly, arrangements have been made for Provincial officers to provide rubbish bins to enable the offloading of rubbish from the ships when they reach ports in Western Province.

7.10 Tourism Policy and pollution

It is significant to note that the Government's tourism policy (Ministry of Tourism and Aviation, et al 1991:72) notes the need for legislation to control pollution if Solomon Islands is to attract tourists.

7.11 Pollution in provincial waters

The draft Fisheries Ordinance for Makira Ulawa Province empowers the provincial authorities to protect provincial waters from pollution. (This draft Ordinance is part of the Moore Report referred to in Chapter 11, below). Clause 17 prohibits dumping of "wastes or polluting matter" into any river, lake, lagoon or other body of water in such a way that it destroys, endangers or alters the ecology of the water. It also controls shoreline activities likely to pollute the adjacent waters.

7.12 Recommendation for Chapter Seven

20. That comprehensive provisions controlling water, air and noise pollution be drafted for Solomon Islands and preferably, incorporated into the suggested *Environment Act* (page 41).

CHAPTER EIGHT

ENVIRONMENTAL HEALTH

8.1 Relevant Legislation

National

Environment Health Act 1980
Pharmacy and Poisons Act 1941
Public Health Act 1970 (as amended)

8.2 Introduction

Public health in Solomon Islands is a serious matter. Throughout the country malaria is a very significant community health problem. Rather than being under control, the incidence of malaria is on the increase. Malaria can be contracted by even the most healthy person, its effects are swift and can be deadly. In the more populated areas, particularly those with inadequate sanitation or clean water supplies, other serious health problems affect the community at large.

8.3 *Environmental Health Act*

8.3.1 Administration

The *Environmental Health Act 1980* is a short Act which sets up the administration and structure of community health in Solomon Islands.

The Minister of Health and Social Services is responsible for administration of environmental health services. The Minister may delegate this administration to any of the eight Provincial Assemblies or to the Honiara Municipal Authority. The provincial authorities are called 'Enforcement Authorities' under the Act. There is provision in the Act that if the Enforcement Authorities do not perform their duties, then the Minister can arrange to have their functions carried out by others, and require the Enforcement Authority to reimburse the Ministry for the costs 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 Authorities are required by the Act to carry out a programme of health education and publicity in accordance with directions given to them by the Minister.

8.3.2 Prosecutions under the *Environmental Health Act 1980*

The Enforcement Authorities are given the power to instigate their own prosecutions 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 contravention is likely to recur, the offending person may be summonsed to appear in court.

There are a range of defences available to people prosecuted under the Act. For example, it is a defence to a charge of accumulating a 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 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 neighbourhood.

Similarly it is a defence against contravention of the Regulations relating to dust, fumes, smoke, effluvia or effluent for the defendant to prove that the "best practical means" have been taken

for preventing or counteracting the effect of the dust, fumes etc. Where a company is charged under the Act or its Regulations, the company secretary, manager or any company director may be summonsed before the court and held liable for the company's contravention and its consequences.

8.4 The Public Health Bill 1990

8.4.1 Need for enactment

The community health law has been comprehensively revised and drafted into new proposed legislation called the *Public Health Bill 1990*. This Bill may in places be too comprehensive and complicated. It must be remembered that any new legislation must be capable of being successfully implemented, given the existing institutional and administrative structures available. It may be more desirable to move the pollution control provisions of this Bill to a separate *Pollution Act*, or incorporate them into the suggested *Environment Act*.

However, it would be unfortunate if the essential and more important provisions were not properly implemented and enforced only because existing resources had to be spread too thinly to cover too large an area of jurisdiction.

As a separate but related matter, it would be desirable to revise and simplify the *Pharmacy and Poisons Act 1941* and its Regulations and incorporate them and their existing administrative resources under the new public health legislation.

Because the issue of public health is a very serious problem in Solomon Islands, the main provisions of the *Public Health Bill 1990* are summarised here, with a view to strengthening its provisions and encouraging its enactment.

8.4.2 Administration

The Minister in Honiara establishes "local authorities" which are the Provincial Executives of the Provinces and the Honiara Town Council, plus any others, which can include Area Councils. The Minister also establishes public health areas. Any such area can be made exempt from some or all of the provisions of the proposed Act.

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 public health ...

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.

8.4.3 Notifiable Diseases

The Bill imposes a duty on the head of a family or other persons in authority in a household to notify the local health 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.

8.4.4 Nuisance

Numerous activities are defined as nuisances which are liable to be injurious or dangerous to health. These nuisances include; dirty premises, streets, streams, 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; an 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 "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. These provisions are similar to those in the *Environmental Health Act 1980*.

The penalties under this Bill are presently too low. The fines need to be substantially increased to provide for the situation where a business neglects or wilfully refuses to comply with an environmental health requirement that may be causing a public nuisance. The possibility of a fine with a maximum of \$200 is unlikely to deter a business from continuing a public nuisance. Much higher maximum fines are necessary. This Bill should give the Magistrate power to impose fines in excess of the Magistrate's usual jurisdiction, as the *Magistrate's Court Act* allows.

8.4.5 Offensive Trades

"Offensive Trades" under the Bill include manufacture of fertiliser and soap which can only be carried on with the written consent of the local authority and the Minister. The list of offensive trades could be considerably expanded.

8.4.6 Mosquitoes

In an attempt to prevent the breeding of mosquito larvae, the Bill includes several clauses requiring the public to take preventative measures and provides a penalty for those who do not. 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 and bottles which are likely to collect and retain water and facilitate the breeding of mosquitoes are cleared from within 50 metres of any dwelling. All water tanks, septic tanks, and other water collection 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 they own or occupy.

8.4.7 Dirty Premises

Where the local authority receives a certificate from the health inspector or a doctor to say that any premises used for living are in such an unwholesome condition as to be 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 cleaned.

8.4.8 Protection of Water Supplies

The Bill requires 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 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 proper drinking water to provide it within a certain period. If the requirement is 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 Bill requires every occupier of premises to keep drinking

water tanks clean. It is an offence to wilfully pollute any water course, stream, lake, pond or reservoir.

8.4.9 Drains and Waste Disposal

The Bill makes the local authority responsible for constructing, repairing and maintaining all public sewers and public drains within its area. The proviso to clause 53 says that the local authority is not responsible for public sewers or drains vested in the Provincial Government. However, since the local authority almost invariably will be the Provincial Executive, this does not make sense. Clause 70 of the Bill requires the local authority to provide and maintain sufficient public toilets for the community. Clauses 75, 76 and 78 are important environmental provisions which seek to prevent sewage and other contamination of water supplies and the deposit of rubbish on beaches and the foreshores. Clause 83 of the Bill makes it compulsory for every residential building have its own rubbish bin.

8.4.10 Food and Drugs

Part X of the Bill contains comprehensive but rather complicated consumer protection provisions relating to the healthy preparation and sale of foods.

8.4.11 Vessels

Part IX of the Bill contains provisions to allow the medical authorities to board and inspect ships and remove nuisances injurious to the public health.

8.4.12 Buildings and Housing

Both existing and new housing under construction are regulated under Part XII of the Bill. The local authority must as part of its duty take practicable measures to prevent and remedy all existing uses of housing and construction which may be injurious to the health of those people who live in the building. A person intending to build a house must give a copy of the plans to the local authority for approval. There are various other provisions such as the requirement that every building must provide proper access from a house to a street so as to dispose of rubbish from the house. There are also powers for the health inspector to close the premises and for the local authority to order demolition of the building if the health hazard is serious enough. Provisions are anticipated for regulating overcrowding in housing and defective premises by defining them as a nuisance. (See 3.4 above).

8.4.13 General Provisions

There are wide powers for the Minister to make Regulations under the Bill. Importantly, provisions of the *Environmental Health Act 1980* relating to liability of secretaries, managers and directors of companies, individual liability and recovery of costs and expenses from offenders on prosecutions are retained in the Bill.

8.5 Criticism of the *Public Health Bill 1990*

This comprehensive legislation may be too ambitious for Solomon Islands, given the level of resources available to the authorities at this time. However, the lack of resources should not obscure the need for many of the provisions in the Bill. It would be best to implement the Bill in stages as resources become available. However, proper attention should be given to making the resources available either by a re-allocation of present government spending or by ensuring that adequate foreign aid projects are directed to this vital area.

8.6 Drafting

There are some improvements that could be made to the Bill as it stands, and the following comments are offered in the hope that some present difficulties with the Bill may be overcome so that its implementation may be made easier.

Referring to the Provincial Executives administering the health requirements as "local authorities" seems inappropriate. To call them "provincial health authorities" instead would assist the public to understand their role and function.

The language used in the Bill is often unnecessarily complex, legalistic and inappropriate for Solomon Islands. For example Section 42(1)(b) talks about the removal of wallpaper. There is not much wallpaper in Solomon Islands. Other phrases are quite unsuitable e.g. "verminous persons"; "every building within its curtilage". The use of plain legal language and non-sexist terms would be helpful and appropriate.

It is unfortunate in this new draft legislation that parts of the *Environmental Health Act 1980* still apply. In Solomon Islands copies of the legislation are hard to obtain, and it is a mistake to have new seemingly comprehensive legislation referring to and keeping alive the provisions of an old Act. It would be far better to incorporate the provisions of the old Act in the new Bill so that one document contains all the law about environmental health.

8.7 Conclusion

In order to combat malaria and tackle other community health problems more effectively, a new Act along the lines of the *Public Health Bill 1990* is highly desirable (see **Recommendation 21**). However, consideration must be given to the level of resources available to the Ministry in Honiara and the other authorities in the Provinces before imposing comprehensive new responsibilities and duties on the authorities and the public. Staged implementation of the legislation would seem to be warranted in accord with the level of resources that can realistically be provided. The most important parts of the legislation need to be identified and given priority in such a staged implementation process. To implement laws without the resources available can have the bad effect of bringing the law into contempt and disrespect. Since this new legislation will have widespread effect in the community, wide publicity will be needed to inform people about it both before and after its provisions become law (see **Recommendation 22**).

8.8 Recommendations

21. That the *Public Health Bill 1990*, after suitable amendment and simplification, be enacted, and implemented in stages. Consideration should be given to moving specific pollution control provisions to a separate *Pollution Act*, or incorporating them into the suggested *Environment Act* (page 48).
22. The staged implementation of the new community health legislation must be accompanied by appropriate publicity in newspapers and by radio (page 48).

CHAPTER NINE

BIODIVERSITY CONSERVATION

9.1 Relevant Legislation

International

Convention on the Conservation of Nature in the South Pacific, 1976

Convention on the Protection of the Natural Resources and the Environment of the South Pacific 1986

Convention on the Conservation of Biological Diversity 1992

Convention for the Protection of the World Cultural and National Heritage 1972

National

National Parks Act 1954

Wild Birds Protection Act 1914

Provincial

Guadalcanal

Wildlife Management Area Ordinance 1990

Santa Isabel

Wildlife Sanctuary (Amendment) Ordinance 1991

Temotu

Environment Protection Ordinance 1989

Western Province

Environment Management Ordinance 1991 (draft)

Simbo Megapode Management Area Ordinance 1990

9.2 Introduction

Solomon Islands has at present no system for the conservation of biodiversity, although it has one of the most diverse ranges of species in the Pacific (Leary 1991; Tourism Council of the South Pacific 1990:13). This Chapter suggests that a system of Protected Areas be established through negotiation between landowners, the Provinces and the National Government in order to more adequately conserve the country's rich biological heritage.

The *Convention on the Conservation of Nature in the South Pacific* and the *Convention on the Protection of Natural Resources and the Environment in the South Pacific* though relevant to biodiversity conservation, are dealt with in Chapter 2, and are not further referred to here.

9.3 *Convention on the Conservation of Biological Diversity, 1992*

The *Convention on the Conservation of Biological Diversity* was recently introduced at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. The Convention places obligations on signatory countries to ensure that biological diversity is conserved, by the introduction of legal and institutional mechanisms at a national level.

An important provision of the *Biodiversity Convention* which has relevance in Solomon Islands is the proposed imposition of legal responsibility upon other nations for the environmental impacts that private companies from those nations have in countries in which they invest. This may allow the Solomon Islands' government to exert some pressure through diplomatic channels to monitor and prevent environmentally damaging activities of foreign business activities in Solomon Islands.

Of equal importance to the sustainable development of Solomon Islands is the provision which requires compensation to developing countries for the extraction of genetic materials from that country. There currently appears to be no control to prevent foreign businesses in the biotechnology trade from extracting and exporting for overseas analysis and use, flora and fauna from Solomon Islands which could be of enormous commercial value. A system to monitor and police this export business so that the economic benefits accrue to Solomon Islands is warranted. Perhaps appropriate legislative provision could be incorporated in new wildlife management legislation currently planned for Solomon Islands, which is referred to later in this Chapter.

9.4 *World Heritage Convention, 1972*

The *World Heritage Convention* is dealt in Chapter 2. It is sufficient here to recall that it applies to both natural and cultural heritage and that signatories to this Convention have a specific obligation to look after World Heritage properties under their control. Signatories are thus obliged to establish appropriate management bodies, enact adequate legislation and set up educational programmes to further the cause of heritage conservation. The *World Heritage Convention* has a good deal of potential to ensure that biodiversity is conserved within world heritage areas nominated in Solomon Islands. Solomon Islands will be in a better position to protect these areas once it enacts the draft World Heritage Properties legislation referred to in Chapter 7.

9.5 *National Parks Act 1954*

This Act allows the declaration of areas as National Parks. The land may be purchased by the government or compulsorily acquired for this purpose. 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 it exists today in name only.

9.6 *Wild Birds Protection Act, 1914*

Under the Wild Birds Protection Act 1914, the following are protected: Dalakalong Bird Sanctuary, Kolombangara Forest Reserve, Mandoleana Bird Sanctuary, Oema Bird Sanctuary and Tulagi Bird Sanctuary.

Protected areas occupy less than 0.2% of the Solomon Islands land area. An accepted international standard percentage of land area for reservation of national parks is a minimum of 5%. Despite their designation as protected areas, most of the areas mentioned do not always function as such (Thistlethwaite 1990:4). Indeed, it seems that they generally do not function as "protected areas" at all.

9.7 *Guadalcanal Province Wildlife Management Area Ordinance 1990*

This Provincial Ordinance gives the Executive power to declare any area in Guadalcanal as a Wildlife Management Area. The Executive can only do this after consultation with local landowners, and with the environmental and conservation authorities of the National Government and with the written consent of the landowners. The Executive must be satisfied that the area to be protected in this way requires management rules for the protection, maintenance, improvement or propagation of any named species of plant or animal which uses the area. The Ordinance makes the landowners responsible for setting out the boundaries of the management area and for putting up notices saying that it is a special area for conservation. The

owners are also allowed to make their own rules for the management of the area. These rules must be made only after consideration of customary management practices and in consultation with fisheries, forestry, agricultural or Ministry of Natural Resources officers. The Ordinance provides for these rules to become Regulations under the Ordinance. There is a maximum \$500 fine for breach of these Regulations. The primary responsibility for enforcing this law lies with a "Special Constable" appointed by the Provincial Executive.

This legislative framework, although simple, provides a useful model for such protected areas. However it would be useful for rules to be enacted as Regulations to assist the landowners on what may be appropriate. In addition any Special Constable would need to be taught the basics of detection work, gathering evidence and prosecution in the Magistrate's Court. This Ordinance should be amended to provide for the Magistrate's Court to have jurisdiction to impose heavier fines.

9.8 *Makira Province Preservation of Culture and Wildlife Ordinance 1984*

This Ordinance gives the Provincial Executive of 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 person disturbing them is subject to a \$100 fine or imprisonment. In addition the Ordinance prevents the importation into the Province of toads, outlaws the killing of any wild duck, or killing any fish by means of diving with a spear or speargun within a one mile radius of Ulawa. It also bans the killing of eagles.

9.9 *Temotu Province Environmental Protection Ordinance 1989*

This Ordinance allows the Temotu Province Executive to declare any area used by a "Protected Species" as a habitat or breeding ground to be a Protected Place. Where local landowners are involved, they must give their consent to the designation of the area. They are responsible for setting and marking the boundaries and giving notice to people that the area is in fact protected. A person commits an offence if he or she undertakes any activity which results in adversely disturbing or damaging the Protected Species within the Protected Place or who disturbs the nest, eggs, offspring or habitat of a Protected Species there. The job of policing and prosecuting offenders is left to the police, unlike the Special Constable appointed under the Guadalcanal Province Ordinance for Protected Places referred to above.

9.10 *Santa Isabel Province Wildlife Sanctuary (Amendment) Ordinance 1991*

The *Isabel Province Wildlife Sanctuary (Amendment) Ordinance 1991* repealed the Wildlife Sanctuary By-laws originally passed under the *Local Government Act* in 1980. The By-laws establish the Anarvon Wildlife Sanctuary, which consists of four islands and their reefs. Under the By-laws, other sanctuaries can be created in Santa Isabel Province by declaration of the Provincial Assembly.

The only people allowed to live in the sanctuary are the warden of the sanctuary and the people who ordinarily live there or who have customary rights over the land there. Any other person who wishes to live in the sanctuary may only 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 these purposes.

9.11 *Western Province Policy on the Environment*

This policy endorses the formation of protected areas in Western Province. It calls for the formation of wildlife, forest, and marine reserves and sanctuaries which "have intrinsic value for education, preservation of species and habitats and natural resources..." and which "are flexible and can be created to provide different kinds and degrees of protection to adapt to local environmental demands and objectives". However, none have as yet been established in the province.

9.12 *Simbo Megapode Management Area Ordinance 1990*

The "Simbo Megapode Management Area" under this *Western Province Ordinance* is a type of protected area in which activities are restricted to protect the habitat of the megapodes. Trees must be preserved, dogs controlled and megapode egg harvesting restricted. The area is customary land and applications for permits to a Management Committee of the customary owners is required before outsiders, including tourists, may enter the megapode fields. The tour operators are not allowed to bring tourists to the fields during the closed season between 1 August and 30 September. The customary landowners collect a small fee for tourist visits and act as guides to the fields. Unfortunately local land disputes have meant that the Management Committee has not functioned as planned.

9.13 Protected areas

9.13.1 Western model not suitable

A national park system along the lines of countries such as Australia and New Zealand is not a workable model for the achievement of biodiversity conservation objectives in Solomon Islands. As the vast majority of Solomon Islands land is customary ownership, "National Parks" on the Western model, where the government owns all of the land in the area, is not appropriate, except for areas already directly under the control and ownership of the Solomon Islands government. An alternative system is thus required to achieve the same objectives.

9.13.2 Functions and benefits of protected areas

The functions and benefits of protected areas systems have been pointed out in the recent publication *Caring for the Earth*. They are worth quoting at length:

A system of protected areas is the core of any programme that seeks to maintain the diversity of ecosystems, species, and wild genetic resources and to protect the world's great natural areas for their intrinsic, inspirational and recreational value.

A protected area system provides safeguards for:

- * natural and modified ecosystems that are essential to maintain life-support systems, conserve wild species and areas of particularly high species diversity, protect intrinsic and inspirational values, and support scientific research;
- * culturally important landscapes (including places that demonstrate harmonious relationships between people and nature), historic monuments and other heritage sites in built-up areas;
- * sustainable use of wild resources in modified ecosystems;
- * traditional, sustainable uses of ecosystems in sacred places or traditional sites of harvesting by indigenous peoples;
- * recreational and educational uses of natural, modified and cultivated ecosystems.

Protected areas can be especially important for development when they:

- * conserve soil and water in zones that are highly erodible if the original vegetation is removed, notably the steep slopes of upper catchments and river banks;

- * regulate and purify water flow, notably by protecting wetlands and forests;
- * shield people from natural disasters, such as floods and storm surges, notably by protecting watershed forests, riverine wetlands, coral reefs, mangroves and coastal wetlands;
- * maintain important natural vegetation on soils of inherently low productivity that would, if transformed, yield little of value to human communities;
- * maintain wild genetic resources of species important in medicine;
- * protect species and populations that are highly sensitive to human disturbance;
- * provide habitat that is critical to harvested, migratory or threatened species for breeding, feeding, or resting;
- * provide income and employment, notably from tourism.

All governments and national conservation agencies should evaluate, and if necessary extend, their protected area systems to ensure that they are adequate to maintain species diversity under likely future climatic conditions. To do this, the systems must allow for change in species' distribution. They will be most likely to achieve this, if the systems:

- * protect the diversity of physical environments;
- * include as wide a topographic diversity and altitude range as possible in each protected area;
- * ensure that protected areas are linked to other areas by corridors of suitable habitat along which species can disperse (*Caring for the Earth: A Strategy for Sustainable Living* 1991).

9.14 Protected Areas and World Heritage listing

The protected areas system suggested above could be adapted to ensure that World Heritage properties nominated to the World heritage List by the Solomon Islands Government were adequately managed and conserved. Any World Heritage properties listed could automatically come under the provisions of the Protected Areas legislation, or could be added by Schedule or Regulation.

9.15 Protected Areas Legislation

It is recommended that legislation for the establishment of protected areas be enacted to address the conservation of important ecosystems and environments, in order for Solomon Islands to be consistent with international standards, as found in *Caring for the Earth* and the *Biodiversity Convention*. This legislation must be tailored to the unique conditions of Solomon Islands. Where land or water is in customary ownership and control, title to designated protected areas should remain with the customary owners. Agreements should be reached with customary landowners to ensure that neither the ecosystem integrity or the customary uses of the land and waters are compromised. The difficulties of negotiation and enforcement such as that found with Standard Logging Agreements for the exploitation of forests would need to be specifically avoided by a carefully drafted legislative framework. A protected areas system, as expressed in a *Protected Areas Act*, or as a specific part of a new *Environment Act* suggested in this Review, could be integrated with the protected areas legislation already found in some of the Provinces. To complement the protected system suggested here, it would seem to be essential to ensure

that the National Museum or some other suitable body is given statutory backing, in order to give it the authority to be involved in the enforcement of aspects of the protected area system (see further Chapter 10); see also Tourism Council of the South Pacific 1990:15). (See **Recommendation 23**).

The legislation would need to ensure that landowners participate in the allocation and management of protected areas. Emphasis should be placed on the interests of the landowners in protection of their lands, for reasons of catchment protection, sustainable access to forest products, including timber, and non-timber products such as honey, nuts, pharmaceutical extracts, nature tourism and so on.

The legislation could provide for the establishment of landowner trusts to manage forests for various values. Where income is lost by closing off areas from logging, compensation should be provided. This compensation could take the form of village improvements, educational opportunities, business licences for alternative cash income, or cash payouts. The landowner trusts would manage the compensation package.

The legislation could provide for multi-zoned conservation areas, so that core areas could be entirely protected, with buffer areas being managed for sustainable logging, hunting or, where necessary gardening. An essential component of long-term forest protection would seem to be the development of landowner-designed management plans.

The legislation should also ensure that ownership of the land is consistent with customary practice. Thus, rather than options such as leasing land for protected areas, conservation covenants could be negotiated, involving government and the landowners, either individually or through Area Councils. One model for such arrangements could be the Memorandum of Agreement between the Fijian Native Lands Trust Board and a group of customary landowners. The Agreement provides that in return for protecting their forests, landowners receive assistance for a nature tourism project in their forest. Such an arrangement means that ownership of the forest stays with the customary owners.

A further provision could be the establishment of a national Protected Areas Board. Such a Board would draw together the landowner representatives of each major protected area, relevant community organisations concerned with conservation and National and Provincial Government conservation officers. The Board could advise the National and Provincial Government on general policy, management and administration of protected areas and assist landowners in forestry protection. The Board would also be able to establish guidelines for appropriate compensation packages.

Provision for protected areas could also be specifically included in Standard Logging Agreements, in addition to the protection provisions already included. The Standard Logging Agreement would need to be modified to ensure that royalties from the area as a whole were equitably distributed both to landowners whose lands are logged as well as to landowners whose lands are designated and managed as protected areas. The forestry legislation would need to be amended to accommodate such arrangements. (Some of section 9.15 is based on comments made by Annette Lees in a personal communication.)

9.16 The Wildlife Trade

There is at present no legislation in Solomon Islands to regulate the trade or export activities of traders in wildlife. The wildlife trade from Solomon Islands is a relatively big business with the beneficiaries being largely foreign interests. Among the wildlife exported are frogs, geckos, skinks, lizards, snakes, butterflies, coconut crabs, crocodiles, turtle shells and parrots. Most of the exports go to the United States of America. Solomon Islanders as not seem to derive any significant benefits from this trade.

These problems and the need for them to be addressed by urgent legislative reform were the subject of a joint government, SPREP and Traffic (Oceania) Report. See *'Survey of Wildlife*

Management in Solomon Islands (Leary 1990). The recommendations arising from this Report were endorsed by Cabinet in 1991 and appropriate legislation to regulate the wildlife trade is now a priority. Draft legislation has been drawn up to provide for the regulation of trade and export of wildlife. It should be enacted as a matter of urgency (see Recommendation 24).

9.17 Recommendations for Chapter Nine

23. That the Solomon Islands Government introduce a protected areas system for Solomon Islands either through the proposed *Environment Act* or through a separate *Protected Areas Act* (page 52).
24. That the Solomon Islands government enact a *Wildlife (Import and Export) Regulation Act* as a matter of urgency (page 53).

CHAPTER TEN

CULTURAL HERITAGE CONSERVATION

10.1 Relevant Legislation

International

World Heritage Convention

National

Land and Titles Act 1978

Provincial Government Act 1981

Protection of Wrecks and War Relics Act 1980

Town and Country Planning Act 1979

Provincial

Guadalcanal Province

Protection of Historic Places Ordinance 1985

Makira Province

Draft Provincial Fisheries Ordinance

Preservation of Culture and Wildlife Ordinance 1984

Santa Isabel Province

Preservation of Culture Ordinance 1988

Temotu Province

Environment Protection Ordinance 1989

Preservation of Culture Ordinance 1989

Western Province

Coastal and Lagoon Shipping Ordinance 1991

Draft Environmental Management Ordinance 1991

Preservation of Culture Ordinance 1989

Public Nuisance Ordinance 1991

Simbo Megapode Management Area Ordinance 1990

10.2 Introduction

10.2.1 Meaning of cultural heritage

Cultural heritage is a concept closely tied to custom. It refers to traditional connections between people in relation to land and family, tribes places and objects. It is all the things that we inherit from our ancestors and that which we would want our children and their children to inherit. It can include tambu sites and other special places, specific objects, artifacts and other things of a material kind as well as intangible heritage. It can also include combinations of human made and natural objects or places.

Intangible heritage refers to the preservation of the non-material aspects of a community's culture. These can include traditions, celebrations, dances, songs, skills, attitudes and ways of thinking. These elements are often seen as being just as important as the preservation of material manifestations of the culture, particularly in terms of the way in which their retention can contribute to social cohesion. An example of looking after the intangible heritage is found in the Malaita Provincial Plan, which includes in its development objectives: "to promote harmony and unity" among the diverse peoples of Malaita Province. To achieve this, the following strategies are spelled out:

by encouraging the preservation and respect of the vast variety of different and unique traditions, customs and cultures within the Province;

by reducing the number of Area Councils and encouraging improved working relationships between distinct areas;

by promoting cultural exchange among diverse and separate groups;

by encouraging tribal chiefs, political leaders and youth organisations to work together to preserve and take pride in traditional customs through workshops and other programmes such as language, skills, dances, songs, attitudes and ways of thinking (Malaita 1988:69).

The intangible things can of course be expressed in material ways, by writing them down, recording them on audio tape, video tape and film, or making representations of them in paintings, sculpture or carving. Some of these things can be easily protected by law, whilst others are more difficult to protect by these means.

10.2.2 Inadequate legislation

In Solomon Islands, there is a great deal of cultural heritage of all of these kinds. At present no national scheme for the conservation of cultural heritage exists. There is a patchwork of national and provincial government laws which go some way to achieving a basic heritage framework. There is no general heritage legislation applying at either national or provincial level. The legislation that does exist is, with a few exceptions, largely unenforced. There is no single body to coordinate heritage activities, except the National Museum, which commonly plays some role in the implementation of legislation such as the *Protection of Wrecks and War Relics Act 1980*, at national and provincial levels. The National Museum presently comes under the Ministry of Home Affairs. However, there is no specific legislation for the establishment and operation of the museum itself. Although a draft Act is held by the National Museum, it has not been made public at this point. Even those things that are easy to protect by legal means are not adequately protected. Very few financial or human resources are put into cultural heritage protection. Some provinces have developed policies on cultural preservation, elements of which are reflected in the provincial legislation (see for example, Guadalcanal Province Policy on Cultural Preservation and Development; Western Province Policy on Culture). The policies and practice in these two provinces is wider than the legislation, partly for the reason that, as indicated above, certain aspects of culture and custom cannot be easily protected by legislation.

In this chapter, some of the environmental management legislation is included in the analysis, to the extent that it covers cultural matters.

10.3 *The Convention for the Protection of the World Cultural and Natural Heritage*

The broad outline of the *World Heritage Convention* has been dealt with in Chapters 2 and 9. Solomon Islands, having acceded to the Convention in 1992, now has specific legal obligations to protect its cultural and natural heritage, both through the enactment of appropriate legislation as well as the setting up of administrative mechanisms and education and training schemes, for protection and management of natural and cultural heritage sites and places.

10.4 *Protection of Wrecks and War Relics Act 1980*

This Act restricts access to and interference with ships, aircraft and associated objects which were brought into Solomon Islands by or for the use of combatants in World War Two. The Act allows the Minister to designate any area around the site of an aircraft or vessel as a restricted area. Whole areas, for example all of Western Province and Choiseul, have been designated restricted areas (see Legal Notice 63/91). Offences in relation to restricted areas include tampering with, damaging, or removing any part of an aircraft or vessel, or any object formerly contained in an aircraft or vessel, or any other war relics. Excavation, diving or salvage operations for the purposes of exploration or removing objects, or depositing anything which obliterates or obstructs or damages any part of a wreck, are also offences. However, the Minister may issue a licence for any of these activities. Licences can only be granted where people are judged to be competent and equipped to carry out excavations or salvage operations in a manner appropriate to the historical importance of any wreck or war relics. A literal interpretation of the Act may well mean that any diving on a wreck is outlawed. However in practice this important tourist activity is not generally restricted.

Areas judged to be dangerous to life or property, (such as munitions dumps and mines), which should be protected from unauthorised interference, can be designated as prohibited areas. The export of any wrecked vessel, aircraft or war relic without the consent of the Minister is also an offence. The existence of this legislation has been essential to prevent foreign entrepreneurs from purchasing World War II memorabilia (for example, aircraft in Shortland Islands) from local people and exporting them out of Solomon Islands.

This legislation is generally satisfactory and seems currently to be enforced, though not vigorously. However, because there have been prosecutions under the Act, stories of them seem to have been passed around and in this way the public seem to have become aware of the Act's provisions.

10.5 *Town and Country Planning Act 1979*

The *Town and Country Planning Act* has been examined in Chapter 5. Here it is looked at in relation to its specific potential to provide for the conservation of cultural heritage, and in particular, the environment of the villages and towns where people live.

It can be noted that the object of the Act is to ensure that land is developed and used in accordance with properly considered policies directed to promoting the welfare of the people. The promotion of the welfare of people is stated as including the preservation or creation of an environment "proper for their needs". It thus seems clear that the framers of the Act wished to ensure that preservation of the environment was an important consideration in formulating planning policies. In the urban context, the welfare of the people can include the preservation of a cultural environment, as expressed in buildings and streets, which are part of the heritage of Solomon Islanders. In the rural and village context, it can include the preservation of landscape and human-influenced environments which are also part of the heritage of Solomon Islanders. It is important to bear in mind that the *Town and Country Planning Act* can only affect non-customary land, and that the Physical Planning Division can only *advise* customary landowners, but cannot *require* them to act in any particular way in terms of development and conservation issues. In other words, the Local Planning Scheme, which is the main planning mechanism under the Act, can only be made for non-customary land. As noted previously, this is a severe restraint in terms of achieving the potential of the Act as a whole.

Conventional Western models of building regulations that restricts building operations and require permits for additions are not particularly appropriate for a Pacific Island community. The critical shortage of housing in places such as Honiara and Gizo would seem to outweigh the need to ensure high quality house construction standards along Western lines. In any case, any legislation which unnecessarily restricts the construction of traditional leaf houses can be criticised as running counter to the traditions of Solomon Island people. The same could be said in relation to Building Ordinances and by-laws in the principal townships.

The Act provides that the purpose of Local Planning Schemes includes being able to "protect features or areas of social, historical, scenic or architectural importance". When Local Planning Schemes are being drawn up at provincial level, specific provisions could be inserted into local plans to cater for the increased awareness of the importance of heritage preservation for the life of the community.

The inadequacy of enforcement notices under the *Town and Country Planning Act*, referred to in Chapter 5 above, is particularly important in relation to preservation of the built heritage. If for example a heritage item protected in a Local Planning Scheme, being the subject of conditions in a development permit, was being destroyed, damaged or altered, the only way in which this could be stopped is through an enforcement notice which can only take effect 28 days after it is issued. Damage to heritage items can occur in a much shorter period of time.

10.6 Preservation Orders under the *Land and Titles Act*

The *Land and Titles Act* allows the Minister to make preservation orders over any land that is considered to be of heritage value. For these purposes, the Act does not distinguish between registered land and land held under customary tenure. Section 227(1) of the Act provides:

Whenever the Minister is of the opinion that the preservation of any land is a matter of public interest, by reason of the historic, architectural, traditional, artistic, archaeological, botanical or religious interest attaching thereto he may make a preservation order placing the land under his protection.

The section further provides that such an order must specify the land to which it applies, and shall prohibit all acts affecting that land, which in the opinion of the Minister injure the public interest. The public interest here means "by reason of the historic, architectural, traditional, artistic, archaeological, botanical or religious interest" attaching to the item.

The Commissioner of Lands is obliged to give the Registrar of Titles a copy of the preservation order along with any other required information. Where the land is registered land, the Registrar must enter the effect of the preservation order on the land register. Contravention of a preservation order is an offence which attracts a fine of up to \$100 or imprisonment for up to three months. The fine cannot be regarded as adequate, either as a punishment or a deterrent, particularly when a corporation is involved.

Preservation orders are of potentially great significance. However, the way in which the provisions are drafted rather limits that potential. The following matters could be seen as defects:

- * the definition of the grounds for making the order is somewhat narrow; it could include additional categories such as "anthropological", "ethnographical", "scientific" or "zoological";
- * the section only covers "land", not objects not affixed to or associated with the land; this is understandable given the context in which the provisions are found; i.e. in the *Land and Titles Act*. The *Preservation of Culture Ordinances* at provincial level could be used to address this deficiency;
- * the word "land" is not specific enough here; the sidenote to the section refers to "places"; though the sidenote is not legally part of the Act, the word "place" is arguably more appropriate than the more general word "land";
- * the making of preservation orders is entirely at discretion of the Minister;
- * there is no procedure for nomination of the item by members of the public or by interested groups;

- * apart from the offence of contravening a preservation order, there is no mechanism for the protection of the land;
- * the registration of the order is only on the land register; there seems to be no indication of what effect it has; there does not seem to be any consideration of whether this interest is a "registered interest" in the sense meant by Part VII of the *Land and Titles Act*; it appears unlikely that it would constitute such an interest.;
- * although it seems possible to make a preservation order over unregistered land, normally, customary land, there seems to be no process of negotiating with the customary owner in relation to the order;
- * there is no definition of what preservation actually means; the word "conservation", being wider, and covering preservation, is normally used in legislation of this kind; there is also no indication of what the words "placing under his protection" means in practice;
- * it is not clear how these provisions fit in with other legislation, in particular the *Town and Country Planning Act* and the *Forestry Act*;
- * it is not clear whether the provisions can cover marine areas;
- * there is no "action-forcing" device to ensure that land subject to a preservation order is actually protected by the Minister.

It would appear to be highly desirable for the provisions of the *Land and Titles Act* relating to heritage to be carefully reviewed and revised. A national heritage policy and in the longer term, a registration scheme for national heritage should be devised and embedded in National Heritage legislation. In addition, in order for such a heritage conservation scheme to work, an education programme for heritage conservation as well as a proper funding mechanism would seem to be necessary (see **Recommendations 25 and 26**).

10.7 *Guadalcanal Historical Places Ordinance 1985*

10.7.1 First heritage statute

In this section the effect of this Ordinance is set out in some detail. Subsequent Ordinances in the other provinces are compared with this Ordinance in later sections of the chapter.

This Ordinance was the first statute passed in Solomon Islands in relation to heritage protection. It had however been preceded by a Provincial by-law in the Guadalcanal Provincial Assembly ((Establishment of Protected Areas) By-law 1981, made under the *Local Government Act* which was repealed by the Ordinance)).

The immediate goals of this Ordinance are:

- * To provide landowners and the Guadalcanal Cultural Centre with a means to legally protect sacred, traditional and archaeological sites;
- * to require development companies to pay for the survey of all such sites and their physical marking on the ground;
- * to institute a scale of penalties that would act as a deterrent to damage;
- * to adequately define areas protected under the legislation; and

- * to allow provision for the improvement of the legislation without recourse to protracted legislative processes (Roe and Totu 1990).

10.7.2 Scope

Under the Ordinance a "protected place" means:

a site associated with human activity in the past and of historical, cultural or archaeological significance, declared as a protected place in accordance with section 4 of this Ordinance.

10.7.3 Declaration and registration of protected places

The Provincial Assembly can declare any place to be a protected place by simple resolution. However, no such declaration can be made without the written request or consent of the bona fide representatives of the relevant landowners. The Provincial Executive is to maintain a Register of Protected Places. The Register must define the boundaries of the place as accurately as possible.

The Provincial Executive may itself declare places to be protected places, in circumstances where immediate action is required. The Assembly must approve any emergency declaration at its next meeting.

Anyone who undertakes any activity, inside or outside the protected place, which results in adversely disturbing or damaging the place, or results in the removal, destruction or defacing of the monuments or marks at the site, is guilty of an offence. However, the Ordinance provides that it is not an offence:

- * to exercise customary rights within the protected place or to use the place for its customary purpose (e.g. burial grounds, shrines);
- * to use protected places such as caves as a temporary shelter in an emergency;
- * or to carry out activities necessary for the preservation of the place, or to prevent damage to historical or archaeological remains within it;
- * or for qualified and authorised persons to carry out excavation work within it.

Places can be deregulated by Assembly resolution on application by the landowners who require places for resettlement purposes.

10.7.4 Obligations on developers

The Ordinance provides that any developer, prior to undertaking development activity must, under the direction of the Executive, undertake a site survey to identify, locate and mark all sites of historical, cultural or archaeological significance. For the purposes of the section, "development activities" means the "carrying out of building, engineering, mining, logging and other operations in, on, over or under land, and shall include undertakings by government bodies".

The developer is obliged to pay all costs associated with the survey and marking. All sites located are to be treated as protected places until the landowners have been consulted and the Assembly has considered a resolution in relation to the place.

Revenues from fines are put into a Protected Places Fund, to be used only for the purposes of meeting costs associated with surveys, marking and maintenance of both declared and protected areas.

10.7.5 Comment on Guadalcanal legislation

As noted by Roe and Totu (1990), the Ordinance stresses protection rather than documentation. Given the resource restraints under which the Guadalcanal Cultural Centre operates, this is no doubt an appropriate approach. To date it has some 600 sites on the Register of Protected Places. However, the Centre receives more requests than it has time or finances to handle (NEMS 1991a).

To make the legislation more effective, the definition of "Protected place" could be broadened, the role of the landowners clarified, particularly in terms of identifying and protecting places, and the obligations on developers to consult with landowners could be made clearer. It is also clear that fines need to be increased substantially to act as a real deterrent.

The role of the Cultural Centre could also be spelled out, both in terms of consultation with landowners as well as in enforcing the legislation. This could be done under provincial Regulations passed under the Ordinance.

10.8 *Makira Province Preservation of Culture and Wildlife Ordinance 1984*

10.8.1 Scope

The *Makira Province Preservation of Culture and Wildlife Ordinance* provides for the prohibition of sale, except under certain circumstances, of traditional artifacts, the declaration of protected areas and the prohibition of acts in relation to certain species of fauna. The term "traditional artifacts" is defined as

any article of personal adornment, any household utensil, any fish hook or fishing equipment, any ornament, any ritual object, any musical instrument, any weapon or statuette fashioned from wood or stone, any local or custom money in any form or any tool, made by a Solomon Islander for traditional purposes; but shall not include articles made specifically for export or sale as curios.

The term "protected areas" is not defined, but might be taken to mean much the same as "protected places" in the Guadalcanal ordinance.

The provision in relation to wildlife refers to the import of toads, a prohibition on killing of wild ducks, the use of spears or spear guns in the killing of fish in one mile radius of Ulawa, and a prohibition of killing any eagle without the authority of the Provincial Assembly. Contravention of this Ordinance attracts a fine of up to \$50 and/or imprisonment for up to three months.

10.8.2 Comment on the legislation

By any measure, this legislation is inadequate, both in terms of its scope, the level of penalties and its drafting. It is noted that the legislation has never been used (National Environment Management Strategy 1991a).

10.9 *Santa Isabel Province Preservation of Culture Ordinance 1988*

This Ordinance is of similar effect to the Makira, Temotu and *Western Province Ordinances* on the same subject. Minor differences are found in the definitions of "protected place" and "traditional artifact", and in the levels of fines that can be imposed. There is no information presently available as to whether the Ordinance is being implemented.

10.10 *Temotu Province Preservation of Culture Ordinance 1989*

10.10.1 Scope

This Ordinance follows a similar pattern to that in Makira Province, but is a more modern piece of legislation, being well drafted and more clearly written.

"Protected place" is defined in the same way as in the *Guadalcanal Protection of Historic Places Ordinance*.

"Traditional artifacts" is defined in much the same way as in the *Makira Ordinance*, but with some significant additions: it includes:

any article traditionally or customarily used or intended for use in Temotu Province as personal or other adornment, as a household utensil, as money, as fishing or hunting equipment, as a weapon, tool or musical instrument and any statuette or figure fashioned from wood, clay or stone and any skull or bones or ritual object but does not include any article specifically made for sale as a curio. The Executive, by Regulation, may designate specific items as traditional artifacts, which designation shall be conclusive, but shall not by its silence, exclude items which are otherwise within this definition (s 2).

10.10.2 Declaration and registration

The Temotu Provincial Assembly may by resolution declare any place to be a protected place. As in Guadalcanal, such a declaration cannot be made without the written request or consent of the bona fide representative of the owners of the relevant land. The owners of the site are then obliged to carry out marking of the boundaries in order to give reasonable notice to people operating in the area of the existence of that place. The Executive is obliged to establish and maintain a Register of Protected Places, in the same way as in Guadalcanal, except that the Register must include maps marked with the places protected. The Register must be available for inspection at certain times. Emergency powers are granted to the Executive to declare protected places. Any such emergency declaration must be approved by the Assembly at its next meeting. Offences under this Ordinance are much the same as in Guadalcanal. However, the penalties are substantially higher, no doubt due to the legislation being passed some years later than that of Guadalcanal.

10.10.3 Responsibility on developers

The *Temotu Ordinance* places quite specific obligations on developers to consult the Register, and to carry out inspections of the land to identify, locate and mark on maps all sites which appear to be, or are said by the landowners to be, of historical, cultural or archaeological significance. On receiving a report from the developer, the province must inform the landowners of the contents of the report. They are then given 21 days to give their consent to registration of any sites as protected places. If they consent, those places automatically become protected places, and will attract the protection given by the Act.

However, if the landowners do not respond within the 21 day period, or if they do, but do not give their consent to registration of the site as a protected place, the developer is entitled to proceed with the development. None of the sites may thereafter be declared as a protected place without the consent of the developer. This is a somewhat harsh provision as far as the landowners are concerned. There may well be circumstances where the landowners do not wish to have a site identified and registered, because they wish to keep its existence and location secret. There is no provision under the Act to cover this situation.

10.11 *Western Province Preservation of Culture Ordinance 1989*

10.11.1 Scope

The *Western Province Preservation of Culture Ordinance* was preceded by the Western Council (Establishment of Protected Areas) By-laws 1978 and the *Western Province Protection of Historic Places Ordinance 1986*, which were repealed by this Ordinance. It has many similarities with the Temotu Province Ordinance of the same name. However, its definition of "development activity" is somewhat wider than that found in the Guadalcanal, Isabel, Makira and Temotu Ordinances:

any undertaking or operation or works which modifies, disturbs or alters in any substantial way any land in Western Province, including, but not limited to, excavation activities, building activities, roading activities, engineering activities, logging activities, blasting activities, mining activities or agricultural activities.

The other definitions and the mechanisms of registration and enforcement are much the same as in the Temotu Ordinance. There are some differences between this and other Ordinances in relation to requirements for survey of sites. This Ordinance clearly has more detailed and stringent requirements, particularly with regard to the use of a professional archaeologist in any excavations that need to be carried out.

10.11.2 Orders

Another difference is in relation to the power of the Provincial Executive to make an order. As in other Ordinances, surveys can only be undertaken with the consent of and in consultation with the landowner, and under the supervision of an authorised officer. The report may be accompanied by a written request from the landowner for an Order. However, in Western Province, once a report is placed before the Provincial Executive, the Executive may make an order declaring a place to be a protected place, whether or not a written request for such a declaration has been received from the landowners. In the other provincial Ordinances, no such order can be made unless there is a request or consent from the landowner. There is no information available as to whether any orders have been made without the consent of the landowners.

10.11.3 Level of fines

A further difference between the *Western Province Ordinance* and those of other provinces is the level of fines and terms of imprisonment. The *Western Province Ordinance* provides for fines of up to \$10,000 depending on the offence, with terms of imprisonment of up to two years. This would place the determination of the matter within the jurisdiction of the High Court. In addition, the *Western Province Ordinance* provides for the imposition of a penalty of up to \$5000 to be paid to the Preservation of Culture Fund established under the Act. This provision is a refinement of the Guadalcanal fines system. (In that system, all fines collected under the Act are paid into a Protected Places Fund.)

An additional provision found only in the *Western Province Ordinance* is the power of the Executive to require the development activity to cease immediately until the section has been complied with, in circumstances where the developer has not carried out a survey as required. In addition, the landowners may make a private agreement with the developer to protect a place. Where this occurs, it seems that the developer commits no offence if a survey is not carried out.

10.12 Conclusion

The Ordinances as presently drafted provide a very basic scheme of heritage conservation in the Provinces. Some of the features of the Ordinances are quite satisfactory, while others suffer from drafting difficulties. The Western Province Ordinance clearly has some of the best features

of all them. It would seem to be desirable to attempt to make all of these Ordinances consistent with each other. Perhaps a Model Cultural Heritage Ordinance could be drafted, providing for identical definitions, registration and enforcement mechanisms. The basic framework could be adopted by all the provinces that wished to have one.

Regional variations, addressed to particular provincial needs, could be addressed in Regulations under the standard Ordinance. Alternatively, provisions for the conservation of National Heritage could be included in the suggested *Environment Act*, or placed in a separate *National Heritage Act*.

It is in any case clear that a national policy on cultural heritage conservation should be developed, whatever legal mechanisms are adopted at national and provincial level to implement it (see **Recommendations 27 and 28**).

10.13 Recommendations for Chapter Ten

25. That a National Heritage Policy be developed in consultation with the Provinces (page 60).
26. That a comprehensive heritage conservation education programme be established to ensure that all Solomon Islanders continue to be aware of their cultural heritage (page 60).
27. That provincial cultural heritage Ordinances be made consistent with each other, and that National Heritage provisions be introduced into the proposed *Environment Act*, setting up a Register of National Heritage. These provisions or a separate national Heritage Act could cover both cultural and natural heritage of national and world significance. This system could be administered in the short term by the National Museum, with a view to establishing a Solomon Islands Heritage Commission in the longer term (page 65).
28. That a National Heritage Fund, attracting funds from foreign sources interested in conserving the heritage of Solomon Islands, be established in order to finance the development of the National Heritage Policy, the education programme, the Register of National Heritage, the work of the National Museum and the legislative mechanisms recommended above (page 65).

CHAPTER ELEVEN

FISHERIES

11.1 Relevant Legislation:

National

The Fisheries Act 1972 as amended in 1977;
The Fisheries Regulations 1972 as amended in 1973, 1977, 1989, (1991 draft);
The Fisheries (Local Fishing Vessels) Regulations 1981 as amended;
The Fisheries (Foreign Fishing Vessels) Regulations 1981 as amended;
The Fisheries (Prohibition of Importation of Live Fish) Regulations 1973;
Delimitation of Marine Waters Act 1978;
Fishery Limits Ordinance 1977 as amended;
Continental Shelf Act 1970 as amended;
 (Draft) *Fisheries Act and Regulations 1987* and model Provincial Ordinance

Provincial

Western Province

Business Licence (Amendment) Ordinance 1989;
Coastal and Lagoon Shipping Ordinance 1991;

Santa Isabel

Wildlife Sanctuary Ordinance 1982 as amended in 1991

11.2 Introduction

Solomon Islands has a vast fisheries resource. The controlled exploitation of the fisheries represents one of the country's most promising prospects for sustainable development and self-sufficiency. The marine environment is also of vital importance for the growth and development of the Solomon Islands tourist industry. But perhaps the sea and its marine resources are of most value to Solomon Islanders themselves as the traditional local environment by which they have lived for generations. The Solomon Islands population is largely settled on the coast, and the reefs which fringe many of the islands are of importance not only for the abundance of food they provide, but also because shells and other marine products are able to be collected for traditional uses as well as a source of income for local people.

The fishery can usefully be divided into distinct sectors, the inshore and the offshore fishery. There is a large variation in the management and control of the fishery in these two sectors. The concentration of effort by the authorities to date had been in the offshore fishery. This is understandable as this is where the larger volume of fish are likely to be caught and where the financial returns are the greater.

Solomon Islands has some 1.3 million square kilometres of sea under its jurisdiction in its Exclusive Economic Zone (Carew-Reid 1989:11). This abundant fishery, with some 180-200 species, is of high interest to foreign fishing ventures, in particular Japanese and Taiwanese. In 1988 37,841 tonnes of fish valued at \$84.6 million were exported overseas. This accounted for almost half of the total annual export earnings of Solomon Islands. (Forum Fisheries Agency 1990:124).

While present earnings from the fishery resource are regarded as large by Solomon Islands' standards, by international standards the current earnings are small. It is perhaps because the great value to foreign interests of the exploitation of their inshore and offshore fishery is not realised that licenses for commercial vessels are relatively cheap and easy to obtain. If its value

were fully realised foreign fishing ventures would perhaps be more closely scrutinised, and sustainable use of the resources insisted upon by the government.

The offshore fishery has been the subject of study by the South Pacific Commission. It appears that the current total allowable catch of 75,000 metric tonnes is within the limits recommended to allow sustainable use of the offshore fishery. Unfortunately much less is known about the inshore fishery of Solomon Islands. The comments in this chapter are thus directed primarily at the inshore fishery. As the inshore fishery suffers from a lack of survey or scientific information on marine habitats and marine fauna and flora, it is very difficult to plan inshore sustainable management of the resource (see **Recommendation 29**). A recent overview of the marine resources environment is contained in *Solomon Islands State of the Environment Report* (Leary 1991). The report points to the delicacy of the long term viability of the commercial exploitation of the country's inshore fishery.

11.3 Existing Legislation: National

11.3.1 *Fishery Limits Ordinance 1977*

This legislation fixes the fishery limits of the Solomon Islands at 200 nautical miles.

11.3.2 *Delimitation of Marine Waters Act 1978*

Section 6 of this Act provides for jurisdiction by Solomon Islands over its 200 mile Exclusive Economic Zone within which it has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of those waters. The Act sets the territorial seas of Solomon Islands at 12 miles from land.

11.3.3 *The Fisheries Act 1972*

The Food and Agricultural Organisation of the United Nations (FAO) assisted with the drafting of the original *Fisheries Act*, which was needed at the time to control the activities of commercial fisheries and processing operations established under joint ventures with the government. FAO assisted again in 1977 with an amendment to the Act extending its jurisdiction to all waters within the new 200 mile limit.

Administration of the Act is carried out by Fisheries Officers. A Principal Fisheries Officer is charged with promoting the development of fisheries and ensuring that the fisheries resources are 'exploited to what appears to him to be the maximum reasonable extent consistent with sound fisheries resources management'. The Act allows for a Fisheries Advisory Committee to be set up, but this has not been done as yet.

Both local and foreign fishing vessels are licensed annually under the Act. (See 11.5 below). Sanctions exist in the legislation for contravention of the licensing requirements. The maximum penalty for contravention of the provisions by the master, owner and charterer of a foreign fishing vessel is a fine of \$250,000.

Other sections of the Act support these licensing provisions, for example, giving power to the Fisheries Officers to stop and search fishing vessels. As is normal with such legislation, the court is given power to forfeit the catch and gear of a convicted offender.

Some obviously unacceptable fishing methods (eg using explosives) are prohibited. In addition the Act empowers the Minister to make Regulations for such things as:

- the conservation and protection of species
- the establishment of closed seasons
- limiting the catch of any species
- prohibiting all fishing in particular areas
- prohibiting catching certain species in particular areas

- restricting size of nets, types of gear or methods of fishing
- regulating fish exports

11.3.4 *The Fisheries Regulations*

In practice these Regulations are the most important part of the legislative system from an environmental point of view. However, the Regulations are hard to follow because of the many amendments without a reprint of the Regulations being available. The Regulations set size limits for crayfish, trochus shell, coconut crabs, crocodiles and turtles. They also prohibit the disposal of offal in the sea within one nautical mile of land.

Construction, equipment and sanitation standards are set for fish processing establishments. For example there is a requirement that no refuse or offal is to be disposed of into the sea in such a way as to cause pollution near a populated area or where local fishing operations are usually carried out.

The Regulations prohibit fishing within 500 metres of low water mark or within one nautical mile of a village. However, this does not apply to baitfishing. Foreign fishing vessels are not allowed to fish on any submerged reef without the prior written permission contained in an agreement with the customary reef owners, Area Council and Provincial Government. This Regulation contemplates that money be paid for permission to fish on submerged reefs.

11.3.5 *Proposed 1991 Amendment to Fisheries Regulations*

As a result of environmental concern within the Ministry of Natural Resources over the serious depletion of stocks of crayfish, turtles, trochus shell, coconut crab, pearl oyster and coral, a 1991 amendment to the Regulations was drawn up. Unfortunately, the Regulations have not yet been put into force, as it appears that the stock depletion is not considered serious enough to ban the export of under-size crayfish and trochus shell when balanced against the financial implications of an export ban. The figures to show the level of benefits from the export of these species are not readily available. However it appears that the likely benefit to Solomon Islands from the export of such species would be small for local catchers or shell gatherers. The government also imposes a 10% tax on what the exporter states is the value of the export. The return on these activities for Solomon Islands will be even less if the fishing company and exporter have been granted tax concessions by the Investment Board.

If such marine species are depleted, the financial repercussions for Solomon Islands can be serious. However, the controlled long term development of such resources has the potential to reap millions of dollars for the Solomon Islands community.

The maximum monetary penalty for breach of the Regulations is set at \$100. The 1991 draft Regulations have not increased this amount. It is suggested that it should be increased to a maximum of, say, \$5,000 if commercial operators are to be deterred from breaking the law. The Magistrate's Court must be given specific jurisdiction to impose any penalties which are set beyond its ordinary jurisdiction (see **Recommendation 30**).

11.4 **Existing Legislation: Provincial**

11.4.1 **Provincial powers**

Provinces derive their legislative competence from the terms of their devolution orders. Under the *Provincial Government Act 1981* the Provinces may legislate for "Protection, improvement and maintenance of fresh-water and reef fisheries", and "Registration of customary rights in respect of land including customary fishing rights".

In addition the Executive of the Province may provide fishing services for the Province under the *Provincial Government Act*. Under section 3 (3) of this Act the area of each Province extends seaward for 3 nautical miles from the low-water line of each island in the Province.

11.4.2 Business Licences

As a result of this legislative competence most of the Provinces have some sort of provisions controlling fishing activities. Potentially the most worthwhile are their Business Licence Ordinances. For example under the *Western Province Business Licence (Amendment) Ordinance 1989*, Western Province has the power to allow or disallow any particular fishing business. Only those businesses which are run in conformity with the policies of Western Province and comply with all Solomon Islands and Provincial laws can be given a licence to operate.

An effective sanction against fishing of endangered species is available to the Provinces by increasing the licence fees for trading in such species. For example the cost of a licence for "turtle trading" in Western Province has recently been increased to \$1,000 per year and "crayfish trading" at \$800 per year. However, these fees are in practice no deterrent for foreign based exploiters of the resource, who are likely to be making many thousands of dollars every year from the business, with little likelihood of having to pay any other form of taxation to Solomon Islands on their business activities.

11.4.3 Offences in Western Province

The *Western Province Coastal and Lagoon Shipping Ordinance 1991*, restricts the speed of shipping in harbours and lagoons to 6 knots. It is designed to protect the coastal environment from the wakes of large ships as well as being a safety measure for smaller vessels. Marine pollution of the sea is outlawed by this Ordinance. However it does not apply to land-based polluters, nor to discharge of sewage into the sea. Sewage discharge is very difficult to restrict even though sewage pollution is a major problem in many areas. For example, Gizo, the second largest town in the Solomon Islands, has no better sewage disposal facility than discharge into the sea. Marine pollution under this Ordinance does however apply to chemical or oil spillages from ships. The maximum fine is \$1,000, which is low by international standards.

11.4.4 *Santa Isabel Wildlife Sanctuary (Amendment) Ordinance 1991*

This Ordinance establishes a wildlife sanctuary on four islands in Isabel Province and makes all Fisheries Officers responsible for their protection and management. Rights of residency are restricted in the wildlife sanctuaries. (See paragraph 9.9 of Chapter 9 above).

11.5 Licences for Fishing Vessels

Licenses for local fishing vessels can be obtained through written application to the Licensing Officer and upon payment of a prescribed fee which is at present \$250 per year. To be "local", a fishing vessel must be registered in Solomon Islands and owned by persons domiciled and resident in the country, or owned by a Solomon Islands company having its principal place of business in Solomon Islands.

Foreign fishing vessels may be granted a permit by the Licensing Officer subject to approval by the Minister. Fees for foreign fishing vessels are \$1000 per full year.

However these licensing provisions and fees do not apply to the major foreign fishing operators who operate under bilateral fishing access agreements. However, it can be noted that Solomon TAIYO vessels are classed as local vessels.

11.6 Licences under Bilateral and Multilateral Agreements

11.6.1 Bilateral agreements

The fishing industry in Solomon Islands is dominated by the activities of foreign fishing vessels operating in the Exclusive Economic Zone outside the 12 mile limit.

Before foreign interests are given access to this fishery a government-to-government agreement first needs to be negotiated. The two existing access agreements are with Japan and Taiwan. After establishment of the access agreement between governments, a further agreement is negotiated between the foreign fishing industry and the Solomon Islands Government. In the case of Taiwan, the Solomon Island's agreement is with the Kaoshiung Fisherman's Association. Payments to the Solomon Islands Government under this agreement include a lump sum of US\$70,000, enabling 20 vessels to operate, a permit fee of US\$500 and a permit activation fee of US\$15,000. In the case of the Japanese access agreement, no lump sum is payable, but payments are obtained by the Solomon Islands Government on a per vessel, per trip basis. This regime is authorised under the *Fisheries Act* in Section 7 (3), which allows the Principal Licensing Officer, with the Minister's approval, to require additional fees and royalties as well and to impose conditions on permits for foreign fishing vessels.

11.6.2 Multilateral Treaty

Solomon Islands is signatory to and participant in the Multilateral Treaty between the USA and South Pacific Forum Countries. Every year some US\$12 million has been distributed between the participating countries. This is made up of an economic development fund, an industry fund, a technical assistance fund, and a grant. Recently, an agreement was reached whereby Pacific Island countries would be paid US\$180 million by the United States over a 10 year period.

About US\$2.5 million from the technical assistance fund is annually distributed equally between the 16 member countries (except Australia). In addition, each country receives approximately US\$66,000 from the economic development fund. The bulk of the fund is then divided among the signatory countries on a percentage basis according to where the fish are caught.

In order to protect existing fisheries and to avoid conflict with locally based fishing operations, the Fishing Agreements contain provisions for limiting access areas.

11.7 Conventions, Treaties and Agreements on Fishing

11.7.1 *Law of the Sea Convention*

The United Nations Convention on the *Law of the Sea* has been signed but not yet ratified by Solomon Islands. The Convention itself is not yet in force. This Convention requires States within their Exclusive Economic Zones to:

- determine allowable catch of living resources;
- avoid over-exploitation by insisting upon proper conservation and management measures; and
- ensure that the population reduction of harvested species does not result in irreparable depletion of dependent species.

Upon the coming into force of the Convention, and ratification by Solomon Islands, the government will need to enact national legislation to cater for these and other convention requirements.

11.7.2 Other

Solomon Islands is signatory to the following fishery Conventions and Treaties -

The South Pacific Forum Fisheries Agency Convention 1979

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; Related Protocols 1989; the Convention has been signed but not yet ratified by Solomon Islands.

The Lome Conventions 1975, 1980, 1985, 1990; (these relate to the EEC countries negotiating a fisheries access treaty with the Forum Fisheries Agency).

Multilateral Treaty on Fisheries with the United States of America 1988.

Nauru Agreement Concerning Cooperation in Fisheries of Common Interests 1982.

11.8 Inadequacies under the present legislation

11.8.1 Inadequate plans and direction

Fisheries management and development planning of the inshore fishery are currently inadequate in the Solomon Islands. It is encouraging to see that the Sector Report of the Fisheries Division has as its second objective "to establish a management system for the development of the fisheries resource through wider participation of Solomon Islanders". (National Environmental Management Seminar 1991:15). Currently the only development policy in existence for fisheries is for the skipjack and yellow fin tuna offshore fisheries industry. However, the Fisheries Division is currently working on developing a policy for all other fisheries.

11.8.2 Lack of information

The main impediment to putting an environmentally sound inshore fisheries development system in place is a basic lack of knowledge of which fish can be exploited without the resource being depleted. The danger is that without this information, and the planning that will be possible when the information is to hand, parts of the fisheries may be depleted forever. It is obvious that foreign exploiters will take the best and most expensive species at the start while few controls are in place. It is therefore imperative that the gathering of data is carried out urgently in order to plan for sustainability of the inshore fishery.

As can be seen from *Solomon Islands State of the Environment Report (Leary 1991)*, little scientific work has been carried out on the health or otherwise of the environment in which fish live and breed in the Solomon Islands, such as reefs, lagoons, mangroves and seagrass beds. This Report, in examining the various species of marine fauna and flora, shows that there has been little inventory of numbers and annual catch.

11.8.3 Unclear role of National and Provincial Governments

While the Provincial Government has its own marine jurisdiction and some legislative powers under the *Provincial Government Act 1981*, the Provinces have little formal technical expertise in fisheries management. The expertise that does exist in the Provinces is that of the fisheries officers employed and paid by central government and seconded to the Provinces.

As in a number of other spheres of government in Solomon Islands, there is an unclear chain of command and responsibility for these seconded officers. Their employer is the Ministry of Natural Resources in Honiara, and their responsibilities to the Province are not well defined. Since the fisheries officers are often stationed many hundreds of kilometres from their employer, there is little or no supervision of them. In practice, the Provincial Secretary is also unlikely to be able to supervise them adequately. In addition, there are major communications problems between the fisheries officer at a provincial post and other fisheries personnel in Honiara. The fisheries officer stationed in the Province may have to accept that calls to Honiara for assistance at times go unheeded. The only mode of regular communication may be by mail or radio telephone.

As a result of this system of employment (which is not confined to fisheries), liaison and cooperation between central government and the provincial governments is often fragmented. Because of the way the system operates, information held by fisheries officers in the Ministry of

Natural Resources in Honiara does not always filter through to the decision makers in the Province, who are the Provincial Secretary and the Executive.

The local fisheries officer normally works outside the day-to-day scrutiny of the Provincial Secretary and generally runs a local fisheries outlet. These outlets are often built with foreign aid money and designed to allow purchase of fish from local fishermen and sale to the public. Many are not working to their full capacity, partly because of technical problems such as storage.

Devolution of power to Provincial Governments as far as the inshore fishery is concerned may assist better management. Each province has its own individual needs in terms of fisheries management, customary practices and administrative structure, and it may thus be easier to assess and understand local needs at this level. However, to ensure a coherent national policy in environmentally sound fisheries management and development, a national framework of legislation is necessary. It should set national standards while allowing for individual provinces to enact their own inshore fisheries Ordinances (see Recommendation 31).

The Provincial Government could be responsible for preparing management plans for fisheries within provincial waters. However, a National Fisheries Policy should guide the development of management plans at the provincial level. In turn, the provincial Fisheries Divisions must be given the financial means to implement the national policy. Technical assistance from the Fisheries Division of the Ministry of Natural Resources will need to be available for provincial needs.

11.8.4 An Increase in Provincial Business Licence Fees

If the Provincial authorities knew what species were freely available to be exploited, and which species needed to be protected, they could more easily control fishing through their allocation of provincial business licences. The potential also exists for the province to earn substantial revenue from the allocation of these business licences. Currently the money being derived by the provinces from fisheries under the provincial business licences is rather limited. For example in Western Province the multi-million dollar international joint venture fishing operation of Solomon TAIYO pays under \$10,000 a year to the Province. A dramatic increase in the fees would seem to be warranted (see the discussion as regards forestry in paragraph 13.5.3 of Chapter 13). It would be appropriate for some if not most of the money collected to go back into fisheries management, especially for data collection and enforcement of fisheries laws.

11.8.5 Inadequate Controls on Inshore Fishery

The present system allows a foreign national with little or no concern about preservation of the fishery environment to organise local people to harvest species identified as endangered by the Ministry of Natural Resources. The foreign national will buy the catch at a price set by the foreigner and arrange to have the catch sold to commercial outlets in Honiara or arrange for export. It is likely that little or no income tax is derived by the Solomon Islands government from such business operations. No fishing licence fees have been required, although a small business licence fee may need to be paid to the Province and the local fishermen themselves will have received some payment. From such payment for the sale of marine products the buyer is required by Section 33A of the *Income Tax Act* to deduct and pay to the Commissioner a 10% resident withholding tax. This is unlikely to occur in practice. There may also be a 10% export tax on what the exporter states is the value of the catch. It is hard to see what substantial benefits are gained by Solomon Islands from allowing such a business activity to continue.

It seems obvious that allowing such business activities to take place are potentially devastating for the future economic well-being of the country. This is an example of fisheries "development" which does not appear to be good for Solomon Islands, and a reason why the legislation must be revitalised and systems and controls put in place. Solomon Island authorities will then be able to choose who will derive the primary benefits from the country's valuable inshore fishing resource. At the moment the main beneficiaries seem clearly to be foreign interests.

11.8.6 Customary Fishing Rights

The Act does not provide for the exercise of customary fishing rights as such. However, the Fisheries Regulations require owners of fishing vessels to enter into agreements with the customary reef owners before fishing operations are allowed. It would be useful if procedures could be provided to find out which persons or groups are the owners, with a mechanism for the settlement of disputes and procedures for negotiation between the customary reef owners and the fishery operators. The *Provincial Government Act 1981* (Schedule 4 no. 6) gives legislative competence to the Province to register customary fishing rights. It could be that once various reef owners in the Province have established their tenure, their rights could be registered along with some inventory of the fishing rights agreements entered into, so as to assist collective bargaining to financially assist the reef owners in their negotiations with foreign fishing operations (see **Recommendations 32 and 33**).

The Regulations do not require local fishermen using canoes to obtain permission to enter into agreements with the reef owners before they fish there, but accepted customary practice is to ask permission of the reef owners. Small scale fishing by local people, often at night, encouraged by foreign fishing operators using boats that travel from one area to another to collect and store the fish are becoming an increasing problem for local reef owners.

In addition, the potential exists for further problems where absentee reef owners are not consulted, and who learn to their dismay that their customary fishery may have been seriously depleted in their absence. The more recently settled Gilbertese and those Solomon Islanders who may have moved to an area from another province would appear to have only a restricted right to take marine resources from the area adjacent to where they are settled. An appropriate solution may be that they should be restricted to using the resource for their personal use. However in some areas, divers using non-traditional fishing methods encouraged by foreign entrepreneurs, may have been responsible for the depletion of the pearl oyster beds with little benefit accruing to the customary reef owners. To allow such exploitation to continue without it being able to be controlled by the authority of national laws may pose a threat to the continuation of the present harmonious relationship between local communities in Solomon Islands.

11.8.7 Development of the Inshore Fishery

Little or no controls are exercised in practice over inshore fishing operations in Solomon Islands. The unscrupulous developer may not only be given a free run, but may also be encouraged by lack of proper controls. The prevailing rule seems to be that *any* development is to be encouraged, and as noted previously, because there is a lack of hard information about the possible depletion of the fishery resource. In the absence of clear evidence that a particular fishery development will cause harm to the sustainability of the resource it is understandable that the development is not restricted.

11.8.8 No System of Sustainable Management

Because there is little information about the inshore fishery it is currently not possible to formulate plans or make commercial decisions on the basis of sustainable management. While a developer could be asked to provide some type of environmental impact assessment, there is little expertise within the Ministry of Natural Resources or at the Provincial level to scrutinise that assessment. It appears that the gaps in knowledge and expertise and lack of environmental impact assessment will be filled in the short term by outside agencies. It would seem important that the knowledge gap and lack of human resources be rectified as soon as possible because the country will be in a much better position to increase its revenue from both inshore and offshore fishing when proper systems and controls are put in place.

Any fears that legitimate developers and new investors will be discouraged by imposition of new controls and increased revenue gathering are probably unfounded. Those fears may stem from a

lack of appreciation of the real worth of the fishing resource of Solomon Islands to foreign fishery interests.

11.9 FAO Fisheries Legislation Report

It is perhaps this concern by the authorities that foreign fishing ventures and investors will be discouraged from further development of the fishery that the comprehensive revision of the fisheries legislation carried out in 1987 has not yet been implemented.

Much of the work required for new legislation has already been done in the Food and Agriculture Organisation (FAO) Report to the Solomon Islands government, which canvasses the inadequacies of the present legislation and the way these can effectively be remedied. The Report contains comprehensive comments on the existing legislation and proposes a draft *National Fisheries Act* and Regulations and provincial Ordinances to complement the national legislation.

The Report does not need to be commented on here other than to thoroughly endorse it and recommend its early implementation. Some minor modification will be necessary to allow it mesh in with other environmental protection legislation recommended for Solomon Islands, particularly in the area of environmental impact assessment (see **Recommendation 34**).

11.10 Fisheries Management and Development Fund

As recommended by the FAO Report, a special fisheries management and development fund should be created;

...into which would be paid a certain percentage of fees and other charges deriving from foreign fishing operations, and of fines levied for fisheries offences, as well as monies appropriated by Parliament or donated by foreign donors. The fund could be used to finance fisheries development projects in Provincial waters, the preparation of fisheries management plans by Provincial Governments and research projects on such matters as the impact of commercial fishing operations on artisanal and reef fisheries. In a sense the fund would be similar in concept to reforestation taxes in the forestry sector (FAO 1987:6).

The Multilateral Treaty between the United States of America and South Pacific Forum countries (see paragraph 11.6 above) would be one source of money to put into such a fund. It would indeed be unfortunate if this money was diverted into central revenue as appears to have occurred with the reforestation levy (see **Recommendation 35**).

11.11 Assistance available from Forum Fisheries Agency

The headquarters for the Forum Fisheries Agency are conveniently based for Solomon Islands in Honiara. The personnel of the Agency have a high level of expertise in all aspects of the fishing industry, especially as it affects South Pacific countries.

The FFA would appear to be especially qualified to advise on and undertake the review and revision of national legislation. The Agency has practical insights and unsurpassed experience in almost all aspects of fisheries in the region. Calling on this experience, the FFA has developed improved legislative provisions in a number of ways including:

- structuring more precise and comprehensive definitions such as 'fish' 'fishing' etc;
- giving licensing provisions more flexibility so that a number of fisheries-related activities which may occur in the future are covered;
- extending and strengthening the powers of enforcement officers;

- the development of model evidentiary provisions to facilitate the taking and acceptance of evidence under certain circumstances and to incorporate technological advancements in navigation (e.g. satellite systems) and enforcement transponders or mechanical observer devices; and
- more generally to ensure comprehensive coverage of all aspects of fisheries to allow for future development.

A number of Pacific countries have already benefited from the Agency's advice and assistance in the review and drafting of legislation. The process of harmonisation would be advanced if the Agency were to play a similar role in assisting with Solomon Islands legislation.

11.12 Conclusion

The Solomon Islands still has an abundant fishing resource. Its coral reefs, warm waters and inshore fishery resources are an unsurpassed tourist attraction. The abundance of fish in Solomon Islands waters can be compared to the lack of availability of fish in many developed countries where the fishery has been depleted and the marine environment ruined by over-fishing and pollution.

The value and desirability of fish as a source of protein for the people of Western and Asian countries is increasing. The market demand for fish in these countries cannot easily be met. As storage, processing and transport improvements take place in Solomon Islands, the fishing resource will increase in value. If carefully managed, the Solomon Islands fishing resource can last forever. However, the fish will only continue to breed if the resource is managed in a way which allows that to happen. Sustainable development of the fishery is therefore absolutely vital to the future economic well-being of Solomon Islands.

A simpler and more effective legislative base needs to be established to ensure that conservation measures are taken to comply with ecological and environmental requirements. This is one of the stated aims of the Fisheries Division of the Ministry of Natural Resources. It would seem that the longer new legislation is delayed, the longer the revenue-earning capacity of the fishery resource will take to achieve its full potential. Under the existing legal framework, there appears a real danger of the inshore fishery being irreparably harmed.

11.13 Recommendations for Chapter Eleven

29. That further study and data collection in relation to the inshore fishery be initiated (page 67).
30. That Regulations under the *Fisheries Act* be updated, particularly in relation to penalties, and to take into account the provisions for limitation and the banning of the collection and export of endangered marine species in the proposed 1991 amendments to the Regulations (page 68).
31. That a Multi-Fishery Policy be drafted by the Ministry of National Resources in collaboration with the Provinces (page 72).
32. That a register of customary fishing rights be established under the Fisheries Regulations (page 73).
33. That a register of fishing rights agreements between customary reef owners and fishing operators be established under the Fisheries Regulations (page 73).
34. That comprehensive new fisheries legislation be drafted and enacted by the Solomon Islands government, and that the basis for the new fisheries legislation be the Food and Agricultural Organisation Fisheries Legislation Report. Assistance from the Forum Fisheries Agency should be requested in this task (page 74).

35. That a special Fisheries Management and Development Fund be established, as recommended by the Food and Agricultural Organisation Fisheries Legislation Report (page 74).

CHAPTER TWELVE

AGRICULTURE

12.1 Relevant Legislation:

National

Agriculture and Livestock Act as amended in 1970, 1972 and 1979.

Agricultural Quarantine Act 1982 as amended in 1985

Pharmacy and Poisons Act 1941 as amended

Income Tax Act 1965

12.2 Introduction

More than 80% of Solomon Islands population live in rural areas and obtain the bulk of their diet from subsistence production systems. Apart from eating fish and imported rice, the diet of the great bulk of the population is made up of locally grown products. Coconut and root crops along with whatever vegetables can be grown in this hot climate are the staple food of Solomon Islanders. Consequently the quality of the soil for this subsistence agriculture is important.

As the population increases, there is increasing pressure on the land to fulfil its role as the basis of traditional food sources for Solomon Islanders.

12.3 Land degradation

The intensification of agriculture and increasing population density has resulted in shorter fallow periods for the land in some areas. In the past, land has been left for 15 years or so, but now has to be used far more frequently. This results in degradation of the soil which is a serious long term environmental problem. In addition, logging operations also cause soil erosion, soil compaction and loss of soil fertility. The removal of forest cover interrupts the natural process of nutrient recycling and composting of the soil.

12.4 Agriculture Division

The Agriculture Division, and its Extension Service to the Provinces, has as its main objective the promotion of income-generating agricultural activities. The Division's Officers, while they may have some general knowledge of conservation measures, are generally not trained or directed towards environmental management in their duties. The Division acknowledges this in its part of "Sector Reports on the Environment 1991". (National Environmental Management Strategy Seminar 1991b) (see Recommendation 36).

12.5 Taxation Incentives

There are various incentives in the *Income Tax Act* to encourage agricultural production in Solomon Islands. There are opportunities for deductions for capital expenditure in the Second Schedule and particularly generous deductions concerning improvements to plantations and livestock facilities in Part II. A sensible but apparently little used provision is contained in paragraph 10 of the First Schedule which allows an agricultural development co-operative society to be exempt from income tax. Another incentive exists under section 37 which allows a set-off against taxable income for export duty paid for producers of copra and rice. The use of these provisions could be extended to ensure that incentives were given for agricultural practices which were shown to be environmentally sustainable.

12.6 Pesticides and Chemicals

DDT has been widely used in the past and continues to be used along with Malathion and Fenitrothion for anti-malaria spraying. As yet there has been no assessment of their impact on the environment; (*Solomon Islands State of the Environment Report 1991:60*) (see **Recommendation 37**).

It is reasonable to assume that there would be significant traces of these chemicals in water and in food produced in areas where spraying has taken place. There is no easy answer to the use of pesticides to control malaria, which, as noted in Chapter 8, is a very real and serious health problem in Solomon Islands. It may be unrealistic to expect Solomon Islanders to want to ban the spraying of chemicals used to kill malaria-carrying mosquitoes even when they are aware that the chemicals may harm the environment and cause other health problems. In the view of some, the eradication or at least lessening of the incidence of malaria with the use of chemicals to kill mosquitoes may have to take priority over their side-effects of pollution of agricultural products and possibly humans, at least until malaria is under better control. Other means of malaria control and prevention need to be investigated to see if the incidence of the disease can be reduced without the use of harmful pesticides.

12.7 Pharmacy and Poisons Act 1941

This Act sets up a 'Pharmacy and Poisons Board'. The Board's inspectors have wide powers in relation to pharmacists or licensed sellers of poisons or medicines to ensure that they are complying with the Act. A licence is required for the import of any poison. Poison includes such substances as 1080 pesticide. No doubt there are many new pesticides since the last amendment to the poisons list, which was made in July 1981. There are restrictions on the sale of poisons but this Act is really directed at preventing poisons getting into the wrong hands, rather than directed at the prevention of such substances polluting the environment. The Act is long, complicated and somewhat outdated. More simplified legislation would seem to be warranted. New legislation could set up a simple administrative structure to regulate the import, sale and use of pesticides. Such an administrative structure could perhaps be economically incorporated under the provisions of new environmental health legislation as suggested in paragraph 8.3.1 of Chapter 8 above (see **Recommendation 38**).

12.8 Conclusion

The continuation of small scale subsistence agriculture is vital to the traditional dietary needs of the bulk of the population. There would appear to be a need for more training and direction of the Agriculture Division Officers about the need to stress conservation measures when teaching agricultural methods to local people.

As the population increases there will be more pressure on availability of the land for agricultural purposes. The implementation of wise conservation measures which enable the same land to be used without soil degradation will be increasingly important.

12.9 Recommendations for Chapter 12

36. That all Agriculture Division Officers engaged in fieldwork be specifically trained in environmental management as it affects agriculture (page 77).
37. That the *Environment Act* suggested by this Report include provisions for assessing the environmental impact of the use of existing and new pesticides (page 78).
38. That the use of pesticides be regulated by the enactment of a *Pesticide Act*. Alternatively, that the *Pharmacy and Poisons Act 1941* be comprehensively updated, and to include the importation, manufacture and use of all pesticides (page 78).

CHAPTER THIRTEEN

FORESTRY

13.1 Relevant Legislation:

National

Income Tax Act 1965

Forest Resources and Timber Utilisation Act 1969, (amended 1972, 1977, 1984, 1987, 1988, 1989, 1990, 1991).

- (Protected Species) Regulations 1990,
- (Prescribed Forms) Regulations 1978, Amendment 1985,
- (Appeals) Regulations 1985,
- (Form of Agreement) Regulations 1986.

Forestry Bill 1989

Land and Tides Act 1970

Local Courts Act 1973

Magistrates Courts Act Cap 3

North New Georgia Timber Corporation Act 1979, (amended 1980, 1984)

Timber (Levy and Mill Licensing) Regulations 1970.

Provincial

Guadalcanal

Guadalcanal Province Business and Hawkers Licencing Ordinance 1985

Western Province

Preservation of Culture Ordinance 1989

Western Province Business Licence (Amendment) Ordinance 1989

13.2 Introduction

Forests, land and people in the Solomon Islands are inseparably linked together. The forests are a vital part of the country's cultural heritage and contribute to the welfare and economic development of the people. The environment and ecological stability of the islands is conditioned by a protective covering of forest on the higher land, along rivers, coasts, and in many other sensitive areas. Our national survival depends on what we do with our forests. (Forest Policy Statement approved by the Solomon Islands Parliament, 1989, Ministry of Natural Resources 1989).

The logging of indigenous forest is the most pressing and serious environmental issue facing the Solomon Islands. The activities of logging companies and the rate of logging have aroused much public concern and controversy for some years. In the 1990's the indiscriminate logging of large tracts of indigenous forest by foreign-controlled companies has continued. The economic and social benefits of logging for the Solomon Islands seem to be highly questionable. While the National Government collects royalties and logs are "exports" for the country, it seems obvious that this natural resource is being made available to foreign interests at a substantially undervalued rate. In addition, the social cost to local communities from logging operations on customary lands appear to outweigh attendant financial or other benefits in most cases.

The life of the accessible timber resource (ie that which is technically and economically feasible to log) has been estimated to be perhaps as little as 15 years if the maximum allowable cut under existing timber licence agreements is taken. (*Solomon Islands State of the Environment Report*, Leary 1991:15). However, more exact figures will not be known until the National Forest Resources Inventory is completed (anticipated in 1993).

Logging by foreign companies is often the subject of controversy and concern to Solomon Islanders. Land disputes, timber rights disputes, associated social problems, and local disillusionment with logging are widespread. This has been recognised by the Forestry Division itself, (Ministry of Natural Resources 1991a, Forestry Division *Annual Report* 1989).

Sustainable management of the forestry resource requires a tight legislative framework and effective administration and enforcement of the Act and its Regulations. At present this does not exist. New forestry legislation is essential (See Recommendation 39). Because of the importance of forests for Solomon Islands, the discussion of the present situation, the applicable law and suggested reforms are dealt with in some detail.

13.3 Existing Legislation

13.3.1 Outmoded Forestry Laws

Despite a series of amendments over the past decade, the *Forest Resources and Timber Utilisation Act* has not outgrown its colonial flavour. It is an Act directed primarily at exploitation of the forest resource, rather than one of sustainable management. The Act has been amended eight times without being reprinted. As a result it is very difficult to piece together the amendments and make sense of it. The Act came into force in 1970 "to control and regulate the timber industry". It provided for a Conservator of Forests to grant licences to fell trees and operate timber mills on government land. The authorities were given power to impose a timber levy and declare government-held land as State Forests, or "controlled" to conserve water catchment areas. The Act provided for licences to be issued for the felling of trees subject to any condition which the Conservator (now Commissioner) imposes. Various offences and penalties were provided for and included a regulation-making power to better carry out the provisions and purposes of the Act.

13.3.2 The 1977 Amendment

This first major Amendment was to set up a regime to regulate forestry on customary land. The Commissioner of Forests had first to give consent to allow the developer to carry on negotiations. The local Area Committee (now Council) was given the task of deciding whether those proposing to grant the developer the timber rights were all the persons lawfully entitled to grant those rights. Importantly, Section 5C(1) provided that the Area Committee must include in its membership "persons having particular knowledge of customary land rights in the area affected". This requirement no longer applies; see 13.4.3 below.

After inquiry into the identity of the legitimate owners of timber rights and the decision of the Area Committee, an aggrieved person was given one month to appeal to the Customary Land Appeals Court, the decision of which was final. The decision was conveyed from the Area Committee or from the Appeal Court to the Conservator and on to the Minister who was then able to grant the developer a licence. This system for granting timber rights on customary land still exists today, albeit in a modified form.

13.3.3 The 1984 Amendment

The 1984 amendment provided for Area Councils to decide timber rights on customary land. The amendment provided for the Provincial Executive to participate in the process by first settling with the developer the profit sharing of the venture and the Province's involvement with the venture's management.

Various environmentally sound provisions were incorporated into the Amendment. The developer had to agree to conserve river catchment areas, prevent soil erosion, preserve the environment and tambu (sacred or secret) and historical sites, as specified by the Commissioner of Forest Resources. The power to make Regulations was extended to require developers to replant trees, prohibit the felling of protected trees, prevent wastage of timber and ban logging

within 50 metres of a water-course or 400 metres above sea level. Regulation-making power was given to establish forest sanctuaries on customary land as well as on government land for the purpose of conservation of flora and of fauna. The Amendment also significantly increased penalties; for example, a maximum fine of \$3,000 was imposed for wasting timber by carrying out operations outlawed in the Regulations.

13.3.4 The 1990 Amendment

In July 1990, new but rather complicated procedures were set for the acquisition of timber rights on customary land. These procedures are very important in practice and are set out in detail below.

The developer who wants a logging concession applies on a special form to the Commissioner of Forest Resources to negotiate with the Provincial Executive, the Area Council and the customary landowners.

If and when the Commissioner consents, the Area Council must hold a meeting with the Provincial Executive, the customary landowners and the developer. The legislation does not say how this meeting is to be funded.

At this meeting the Area Council, in consultation with the Provincial Executive, must talk with the customary landowners and the developer and decide:

- whether or not the landowners want to sell their timber rights to the developer;
- whether the proposed sellers represent all the legitimate owners of the timber rights ;
- the nature of the timber rights proposed to be sold;
- profit sharing between the developer and the landowners;
- the Provincial Executive's participation in the developer's logging venture.

(See 13.3.7 below for other compulsory procedures set out in the Regulations).

Any agreement reached at the discussions at this Area Council meeting must be recorded. A copy of any agreement is then sent to the Commissioner along with the Area Council's recommendation with "particular reference to" the amount of profit sharing, if any, that the developer has agreed on, and its recommendation as to the extent of the Provincial Executive's involvement in the venture.

If agreement is reached at the discussions, the developer is required to "carry out such investigations as are necessary to identify and describe the forest resources on the land and any areas which should be excluded from the application on grounds of environmental or social values". The legislation is silent on what "as are necessary" means, and it does not say that investigations need to be recorded in writing, or given to anyone. No "environmental" or "social" standards are set. There is no penalty set for a developer who does not comply with this provision.

Any person who does not agree with the decision of the Area Councillors about who the rightful timber rights owners are, or over what timber rights are to be granted to the developer, has one month to appeal to the Customary Land Appeal Court. There is no provision for late appeals, and the Customary Land Appeal Court decision is final.

The Area Council delivers its decision to the Provincial Executive, which sends it on to the Commissioner and to the developer. The Commissioner must then recommend to the Provincial Executive that it grants approval to the developer but only after the Commissioner is satisfied that the agreement granting the timber rights is in the prescribed form, has been completed in the prescribed manner and any appeal has been disposed of. The prescribed form in the Regulations is a Standard Logging Agreement which has many good features designed to safeguard the customary landowners and the environment (see 13.3.7 below).

The Provincial Executive, on receiving the Commissioner's recommendation, "may" complete another certificate in prescribed form approving the agreement. The Provincial Executive then sends it back to the Commissioner who must tell the developer and the customary landowners and sellers of the timber rights that the agreement has been completed.

13.3.5 Other provisions of the 1990 Amendment

The Minister is given power to make Regulations for

- the disposal of waste products
- the protection of the environment
- the manner and nature of reforestation so as to protect the timber industry
- prohibiting or regulating the taking of any specified timber from any customary land
- the amount of timber required to be processed by the developer.

The only Regulations in force under this amendment are the *Protected Species Regulations* of 1990. These prohibit felling or removing mangroves, ebony or ngali nut trees from any land for the purpose of sale. However, a licence may still be granted which allows a developer to cut and fell these species. For example, the Regulations do not prevent clearing mangroves, when it is not intended to sell them. The Regulations further state that Rosewood, Ironwood, Kauri, Walnut, Canoe Tree and Rattan are not allowed to be exported until they have been processed unless the developer's licence specifically allows it to export them.

The developer, the Provincial Executive, the Area Council and the customary landowners are given the right to obtain advice from the Commissioner or officers about timber rights. The High Court in Honiara is given exclusive jurisdiction to hear disputes about agreements entered into between the developers and the customary landowners. An "enforcement officer" and a forest officer are given permission to enter customary land to perform their functions under the Act. Finally, all logging licences and timber rights agreements granted prior to 5 July 1990 are validated by the 1990 Amendment. This provision effectively took away any right to challenge the quantity or conditions of any licence prior to the date of the Amendment.

For the reasons set out in paragraphs 13.4 and 13.5 below, there are still serious problems with the forestry laws despite this recent Amendment.

13.3.6 Standard Logging Agreement concerning timber on customary land

The *Forests and Timber (Prescribed forms) (Amendment) Regulations 1985* provides that "agreements for the sale of timber rights in customary land must be in the form set out in Form 4 of the Schedule to the Regulation". (See Regulation 2). The Standard Logging Agreement provisions and procedures in the Regulations are thus compulsory.

13.3.7 The provisions of the "Standard Logging Agreement" are required to be incorporated in the developer's agreement with the landowners; they are presented here in summary form:

- (4) The logging company must ensure that all its employees are aware of their obligations under the *River Waters Act 1969* particularly concerning removal of obstructions and restoration of damaged areas.
- (5) No felling of trees within 50 metres of a main water course or within 25 metres of any minor water course.
- (6) All chemicals and pollutants are to be stored a safe distance from water courses; no sewage, rubbish, etc. may be discharged into any water course.
- (7) Sites from which sand and gravel have been extracted to make roads must be restored.

- (8) There must be selective felling of large trees on slopes above 20 degrees, and no felling of trees on slopes steeper than 30 degrees.
- (9) No logging may take place above an altitude of 400 metres unless a special exemption is granted.
- (10) All road construction is to be carried out in accordance with a plan attached to the Agreement. Any further feeder roads that are necessary must be constructed so as to minimize damage to the environment.
- (10) No roads may be made by bulldozing until after the trees in the path of the bulldozer are chain-sawed and harvested.
- (11) Wherever possible roads to connect villages within the logging area to the primary road network should be built and at no cost to the village.
- (12) The logging company is responsible for the up-keep of the roads during logging. Where possible the logging company must leave stockpiles of gravel at strategic points for road repairs expected to be necessary during the 10 years after logging has been completed.
- (13) All bridges are to be constructed in accordance with specifications attached to the Agreement. One metre diameter logs must be used and the stringers and heavy decking must all be made of hardwood timbers. Suitable hardwood timbers for future maintenance of the bridges must be left adjacent to every bridge along main roads and access roads to villages.
- (14,15) Construction of culverts using logs with earth and fill is banned. Topsoil must be removed and stockpiled from the land used for yarding or storage of logs. The topsoil must be restored to the area when operations in the area are complete.
- (16) All merchantable logs must be measured, marked and their site of origin recorded and other detailed records kept for inspection by landowner's representatives and government inspectors.
- (17) All merchantable logs must be taken out of the bush by the developer within three months of felling.
- (18) Certain species of trees must not be felled. These are Ngali nut, Buti, Baleho, Mango, Sago Palm and Togoma.
- (19) Where two adjacent areas are owned by different people or clans, the logging company must plan its operations so that as far as possible logging in both areas should not take place at the same time.
- (20) Strict management control must be exercised by the company over the equipment operators so that there is no excess of bulldozing of tracks through the bush.
- (21) The company must carry out reforestation of at least one third of the land it logs. The area selected for reforestation must be agreed and specified after discussions between the company, the Commissioner of Forest Resources and the Provincial authorities. The logging company must prepare a detailed plan of its proposed reforestation operations and have that approved by the Commissioner before the agreement is signed.
- (22) The logging company must "minimise damage" to bush products used by landowners for building purposes and domestic needs.
- (23) No felling of trees is allowed to take place within 100 metres from the edge of any village area except in order to construct road access to the village.

- (23) The logging company must immediately dismiss any employee who does not observe local customs, or who trespasses or commits any offences in village areas or behaves in a drunken or offensive manner.
- (24) One month prior to logging any area, the logging company must identify and clearly mark tambu sites. The sites must be recorded on the logging company's maps and copies must be provided to the Provincial authorities and to the landowners (the company must also pay compensation for any damage to tambu sites).
- (26) The company must ensure that its employees do not hunt or fish on the reefs or in rivers or make gardens without the prior permission of the landowners. When permission is given it must only be for the personal use of the employees.
- (27,28) Only the employees of the logging company and their immediate families may live in the logging area. Priority for employment must be given by the logging company to people who traditionally live in the area covered by the logging agreement. The logging company may only recruit skilled people from outside the area after the company has first established that no suitable workers are available from among local people.
- (29) Minimum wages for unskilled labourers, overtime and benefits etc. must be specified in the agreement.
- (30) Compensation for trees and crops damaged by the operations of the logging company must be paid for in accordance with the Schedule attached to the Agreement [the 1985 set rates in the schedule are very low].
- (31) Royalty payments must be paid by the logging company to representatives of the landowners on a monthly basis in accordance with a set formula incorporated in the Agreement.
- (32) Every month the company must produce a monthly detailed statement giving production figures for the last month broken down into the species, grades, volumes, area of origin and sales figures etc. These must be then given to the local representatives of the landowners and to the Commissioner of Forest Resources.
- (33) "Wherever possible" all timber sales by the logging company must be to buyers who have no connection whatever with the logging company.
- (34) Every month the company must produce to the local landowners' representatives and to the Commissioner of Forest Resources, the latest monthly statement of production and sales minimum price guidelines, issued either by the Papua New Guinea Government or by an independent and reputable firm of timber agents.
- (34) The royalty payments must be made to the local representatives of the landowners when they are all gathered together in public at a time and place advertised by public notice one week in advance of the time of payment. The representatives must all sign for the royalty payments. At this time the representatives must see the monthly statements. If the representatives accept the calculations the representatives must sign a receipt for a given percentage of the royalty and the other percentage must be deposited in a nominated bank account. Payments must not be made unless all the representatives are present, and if they are not all present the logging company must deposit the total royalty into the nominated bank accounts.
- (35) A detailed system of measurement and grading of logs is set out in the Agreement and if there is a dispute over measurement or grading the Minister of Natural Resources shall conclusively decide the issue. (But see 13.4.5 below).

- (36) The local Representatives of the timber rights owners have as their nominees all Forestry Officers of the Ministry of Natural Resources plus all Public Solicitors and their Provincial Secretary. These people are given the powers to monitor and enforce the terms of the Agreement on behalf of the local landowners.
- (36) The Agreement is "enforceable in the High Court of the Solomon Islands". (see 4.5 below).
- (37) Any dispute between the land owners and the company over interpretation of the terms of the Agreement must be submitted to mediation by a specified local Landowner's Association. If this fails to produce agreement the Minister of Natural Resources must decide the issue and his or her decision is final. (But see 4.5 below).
- (38) If the logging company is in breach of its obligations under this agreement the representatives of the timber rights owners may serve one month's formal notice on the logging company through the Public Solicitor acting as their agent. If they do this and the company does not remedy the situation it must immediately suspend all its operations until its obligations under the agreement have been met.
- (39) The rights and obligations under the agreement may not be assigned (given) by the logging company to any other party except with the prior written consent of the landowners.

13.3.7 Negotiable terms in Standard Logging Agreement

Schedule I to the Standard Logging Agreement adds overall conditions which are a precondition for any logging. Paragraph 3 says that all clauses of the Standard Logging Agreement must be completed and none may be deleted. However five of its clauses are open to negotiation. These are

- (18) Exclusion of species may be negotiated. However the landowners cannot agree to let the logging company take species protected under the *Forest Resources and Timber Utilisation (Protected Species) Regulations 1990*.
- (21) Reforestation is open to negotiation. This means the landowners and not the authorities may in effect decide how much if any reforestation takes place on customary land.
- (31) Despite the requirements laid down in the Standard Logging Agreement, rates of pay and wages and conditions need not be specified in the Agreement.
- (31) The stated percentage rate of royalty payments (12.5%) may be varied up or down; (see Schedule F of the Standard Logging Agreement)
- (34) The logging company and the landowners can agree to a system of royalty payments without the safeguards incorporated in the Standard Logging Agreement.

13.3.8 Compulsory procedures under the Standard Logging Agreement

Schedule I also sets out a compulsory procedure that the logging company must follow when negotiating with the landowners. This includes making copies of the 5 year plans and road plans available to each landholding group. The company must tell the local land and timber rights owners, the Forestry Division and the Province of its plans, intended timing and the terms and conditions of the agreement which the logging company proposes to enter into. All this must happen before any agreement is signed or binding. The negotiations must be carried out in public, with the landowner's legal adviser and representatives from the Province and the Forestry Division present.

Schedule I is part of the Standard Logging Agreement and is required to be attached to every logging agreement. The Standard Logging Agreement, if retained, should be completely redrafted to make it easy to understand; Plain English drafting principles should be used (see **Recommendation 40**).

13.3.9 Powers of Provincial Executives under the forestry legislation

Under s 28 (4) of the *Provincial Government Act 1981* the statutory functions of the Minister of Natural Resources may be transferred to the Provinces in four important areas of the *Forest Resources and Timber Utilisation Act*. They are:

- The licensing of timber mills under Part III
- The declaration of forests as controlled forests so that rainfall catchment areas are reserved to conserve water resources under Part VI (see paragraph 6.4.2 of Chapter 6 above)
- The power to make Regulations for the better carrying out of the provisions and purposes of the system of obtaining agreements affecting customary land under Part IIA
- The power to make Regulations under Section 33.

Although it appears that these powers have been given to Provinces under the terms of their devolution orders, no Regulations appear to have been passed by the individual Provinces. This appears to be because the Provincial authorities have not been aware of their powers at times when they may have wanted to regulate the activities of logging companies where the Ministry of Natural Resources in Honiara has not done so.

13.4 Inadequacies of the present legislation

13.4.1 Logging on customary land

Logging on customary land is the essence of forestry in the Solomon Islands. As noted previously, some 87% of Solomon Islands is customary land, and over 90% of large scale commercial forestry, takes place on customary land (UNCED 1992:24).

13.4.2 The Role of Area Councils

The Area Councils are given the all-important task of making the major and often difficult decision of whether or not to allow a developer to log on customary land. The Area Councillors are the third tier of elected government officials in Solomon Islands, ranking after National and Provincial government members. The Area Councils are created by and beholden to the Provincial Assemblies and its Executives. The Area Councils rely on the Provincial government for their funding and in all matters are subordinate to it. These elected officials are charged, for example, with deciding the participation of the superior body, the Provincial Executive, in the logging venture, as 5C(3)(e) of the Act provides.

13.4.3 Knowledge of customary land rights no longer required

The important prerequisite contained in the 1977 Amendment (see paragraph 13.3.2 above) that those deciding timber rights have a particular knowledge of customary land rights in their area, has now been taken out of the legislation. The elected officials on the Area Council may not necessarily have any particular knowledge of customary land rights in their area, yet they have to decide important land rights questions.

In addition, the 1977 requirement for the notice of the timber rights hearing requiring persons to attend the hearing if they considered those granting the timber rights were not the right people to do so, was deleted from the legislation.

13.4.4 Lack of experience and expertise in Area Councils

Questions such as who are the customary landowners and who are the people lawfully entitled to grant timber rights, and whether those people are the same, are often extremely complicated and difficult.

It is well established that in custom, land is owned not by a person, but by a line or family or tribe. Other persons, families, lines or tribes may have secondary rights in the land. Rights to grow crops, make gardens, take the fruit off trees, even to take the trees themselves to make canoes or houses, and so on. The permission of other lines having interests in neighbouring lands may be required, in custom, before a line can develop its own land in case that development affects adjoining land in any way (*Fugui v Solmac* High Court Civil Cases No 44 & 45 of 1982 at p 8).

Experience and expertise in custom concepts combined with legal experience as found in the Customary Land Appeal Court would appear to be necessary to decide customary land cases (see comments of Daly CJ, in *Lilo v Ghomo* Customary Land Appeals Court, Case No 14 of 1981). To give this task to elected politicians on the Area Council seems inappropriate.

13.4.5 Jurisdiction of High Court of Solomon Islands

Clause 37 of the Standard Logging Agreement on customary land contained in the 1985 Regulations says that all disputes between landowners and the logging company over interpretation of the terms of the Standard Logging Agreement must be submitted to the local Landowner's Association for mediation. If this fails to produce agreement, the dispute goes to the Minister of Natural Resources, whose decision is final.

The 1990 Amendment to the Act changed this. Section 5J now provides that the High Court of Solomon Islands has "original" jurisdiction to hear and determine any cause or matter arising out of or relating to an approved agreement. The section says this provision overrides any other contrary law and that only the High Court has this jurisdiction. The provision in the 1985 Regulations has not been specifically repealed. However, it is important to understand that the 1990 Act prevails over the 1985 Regulations.

When disputes arise under the logging agreement, the local landowners must go to the High Court to seek redress instead of being able to use the local Magistrate's Court. Access to of the High Court in Honiara is too difficult, despite the ability of the Court to go on circuit. This clearly disadvantages the landowners and assists the developer since the developer will inevitably be represented in Honiara either by one of its officers or by its lawyers.

Distances are often great and communications with Honiara from the Provinces is often difficult. The Provincial Police Commander must instruct the Attorney-General's lawyers in Honiara to conduct prosecutions since they must all be done in the High Court. It is therefore not surprising that there appear to be no prosecutions of offenders under the legislation. The practical problems of launching a prosecution are enormous and would be unnecessarily expensive for the prosecution and its witnesses. There seems no reason why the Magistrate's Court situated in each Province should not be given criminal and civil jurisdiction to decide disputes arising out of logging agreements. The *Magistrate's Court Act* allows for the Magistrate to have such increased jurisdiction, provided the relevant legislation confers that power.

13.4.6 Rights of local landowners not fully protected

While some customary landowners may welcome logging on their land, the legislation does little to assist those customary landowners who do not consider that they will benefit from the development. Nor does it assist landowners who would wish to vary arrangements agreed to. The logging company is not prevented from canvassing support and currying favour among local supporters before and during the inquiry process. The requirements of bringing notice of what is likely to occur to the attention of the local people is inadequate, as is the public notice of the

Area Council's decision. The customary landowner who disagrees has only one month to lodge an appeal to the Customary Land Appeal Court. With difficult communication systems, this time period would not normally be adequate. There is no provision for late appeals.

The possible serious injustices that can occur under the *Forest Resources and Timber Utilisation Act* were highlighted by the Chief Justice in *Tovua and others v Meki Earthmovers Solomon Ltd and Others*, High Court Civil Case No. 141 of 1989. The Chief Justice pointed out that as the law stands at present it would be possible for one member of a tribe to enter into an agreement to take and use the royalties without consultation with, or the knowledge of those other members of the tribe who live in other isolated parts of the land but are still entirely dependent on the land. The High Court lamented the current state of the legislation and urged Parliament to change the law so as to protect the rights of customary landowners. He stated: 'We are dealing with operations now that require and yield large sums of money and which can have permanent and often extremely damaging effects on large tracts of land on which many people may rely for their livelihood'. The Chief Justice pointed out that the 'trustees' or representatives of the landowners or timber right owners were not told by the legislation how to perform their duties or what to do with the royalties which were to be paid to them.

The Court further stated:

Parliament may feel that there is a need for legislation to ensure those matters are considered before any agreements are made in relation to timber and that, once the representatives are identified, their duties are clearly stated in relation to consultation with the people they represent over the actual terms of the agreement before they are settled and their continuing duties as trustees whilst the timber is being extracted.

13.4.7 Conflicting provisions of *Local Courts (Amendment) Act 1985*

This Act says that all customary land disputes must initially be referred to the local chief or traditional leaders recognised by the parties. Only after such referral and after all traditional means of solving the dispute have been exhausted, is the dispute referred to the jurisdiction of the Local Court. These enlightened provisions incorporating a Melanesian type dispute resolution system are ignored when a developer wants to log the land the parties are arguing about. It seems to be a pity that these sensible land dispute mechanisms are not used in relation to logging.

Section 231 (1) of the *Land and Titles Act* provides that a Local Court has exclusive jurisdiction in all matters and proceedings of a civil nature affecting or arising in connection with customary land. Section 8C of the *Local Courts Act* defines a customary land dispute as 'a dispute in connection with the ownership of, or of any interest in, customary land or the nature or extent of such ownership'. The correct legal resolution of these conflicting provisions would seem to be that where there is disputed ownership of timber rights on customary land it must be determined under the *Local Courts Act* and not by the Area Council under the *Forest and Timber Utilisation Act*. However this is not what appears to happen in practice.

13.4.8 Non-compliance with Forestry Regulations.

If all the compulsory requirements of the Standard Logging Agreement were carried out on logging sites throughout Solomon Islands and the negotiation provisions were tightened up, there would be fewer problems. It would seem that the fine print of the Standard Logging Agreement is not widely understood in local communities or by the landowners. There is also an apparent lack of enforcement by the authorities. Just as seriously, the compulsory provisions in the 1985 Regulations are often not incorporated in the logging company's agreement with the customary landowners. Some agreements inspected in the course of this Review have had the mandatory wording of the Regulations changed or deleted to the advantage of the logging company. It is the logging company which invariably types the agreement. It may be assumed

that those logging companies which have incorporated unlawful deletions and additions in their logging agreements are responsible for them.

While it may be unrealistic to expect the landowners to have a copy of the 1985 Regulations containing the Standard Logging Agreement wording and carefully compare it with the wording of the Agreement typed by the logging company, the Commissioner of Forest Resources must be satisfied that the agreement has been duly completed in the prescribed form manner before a recommendation can be made to grant approval to that agreement, (see s 5F(c)).

13.4.9 Termination of Logging Agreements

One of the clear inequities of the Standard Logging Agreement is the lack of adequate provision for termination of the Agreement by the landowners. It is a basic rule of contract law that agreements may be terminated when one party fails to carry out the originally agreed bargain. In the case of the Standard Logging Agreement there is an inbuilt bias in favour of one party, being the logging company. If the logging company fails to fulfil its side of the bargain then the landowners *may* require it to cease operations until it remedies the situation. The agreement *should* say that if the logging company fails to fulfil its part of the bargain within a certain time (say 2 months) then the landowners have the option of terminating the agreement or letting the agreement run and claiming damages for the breach. However the Standard Logging Agreement does not restrict the contractual rights of the logging company. In fact the logging company is given the right to terminate its operations at any time without penalty simply by giving one month's notice even though there is no breach of the Agreement by the landowners. These termination provisions of the Agreement appear to be grossly unfair on the landowners and give the logging company an unnecessary commercial advantage.

A recent example of the inequity of these provisions is that of one logging company which effectively ceased its operations because it ran out of money and was seriously in default of its obligation under the Standard Logging Agreement and Provincial laws. It would have been of advantage to the local landowners who were not deriving any royalties to terminate their agreement with this company and renegotiate another agreement for the sale of the balance of the trees they owned. Instead of this happening however, the shares in the company were purchased by other foreign business interests, effectively by-passing the normal timber rights hearing processes. Even though clause 39 of the Standard Logging Agreement tries to prohibit such unagreed assignments, such a transaction appears to be quite legitimate under the existing legislation provided it is only the shares in the logging company which change hands, not the timber rights owned by the logging company.

13.4.10 Environmental safeguards not compulsory

Although there is scope for making provision to preserve the timber resource, and to protect the surrounding environment of the logging operation, in practice logging operators do not seem to comply with all the protective mechanisms laid down in the Regulations and Standard Logging Agreement. It would appear that the forestry authorities should be given more power in relation to reforestation and exclusion of species on customary land.

13.4.11 No environmental impact assessment statements

There is no proper provision for an environmental impact assessment in any accepted sense in the present legislation. Section 5C(v) of the Act, which provides that the developer must carry out investigations to define what areas it should not log on environmental or social grounds, is clearly inadequate. An undefined environmental and social survey which is neither scrutinised nor questioned and is carried out by a logging company motivated by profit, cannot realistically be expected to show the impact of the development on the environment. In addition, the requirement comes too late in the process, since the investigations are only required after agreement has been reached with the timber rights owners. The owners may not have wanted to dispose of their rights if they had known of the full environmental and social impact of the logging operation before they had reached the agreement with the logging company. Moreover

the legislation does not say that the developer must tell the landowners the result of the investigations. Indeed, there is no need for the developer to formalise its investigations in a written report or give it to the Commissioner. The provision appears to be mere window dressing.

Section 5C(v) can be compared with Part IV of Western Province's *Preservation of Culture Ordinance 1989*, which sets out a proper regime and system for an impact report in relation to historical, cultural and archaeological places prior to any development activity taking place. It is interesting to note however that even this regime with its sanctions of heavy penalties has not been complied with by at least one logging company operating in Western Province.

13.4.12 No sustainable management system

Importantly, the legislation does not reflect any attempt at sustainable management of the forestry resource. For example, there are no requirements for the Commissioner to refuse a developer consent to negotiate with customary landowners when the resource may be running out. Indeed, there are no criteria to guide the Commissioner in deciding whether or not to let the developer start negotiating with the customary landowner in the first place.

13.5 Further problems with current practice under the existing laws

13.5.1 The developer's relationship with the Area Council

The logging company generally identifies the timber it wants to log on customary land. It then follows the well-trodden path through the Investment Board, interviews with the Provincial Premier and Provincial Secretary. After obtaining consent of the Commissioner of Forest Resources to negotiate, it focuses on the all-important meeting of the Area Council. At this meeting local politicians will in effect decide whether the logging company gets the go-ahead to operate its logging business.

In practice Form 2 (under the Regulations), is sent by the Forestry Division in Honiara to the Secretary of the Local Area Council. The Secretary then arranges a special Area Council meeting. At this meeting the Councillors are to decide the identity of all the landowners and those who are lawfully entitled to grant the timber rights.

To convene a meeting of the Area Council normally incurs expenses for the Provincial government, and the number of meetings the Area Council may hold are therefore restricted. For example, Area Councils in Western Province may sit only four times a year under the Province's Area Council Ordinance unless special permission is obtained from the Provincial Executive. The Area Councillors and the Secretary and Treasurer are all entitled to travelling and sitting allowances and the forestry meeting may be scheduled to take more than a week, which will mean substantial payment of these allowances. However, the forestry legislation does not provide for funding of this crucial meeting of the Area Council. Since the logging company wants the meeting, it arranges to pay the Area Council for the meeting to be convened.

Normally the logging company will have already been in close touch with the Area Council Secretary, and perhaps some of the Area Councillors, to ensure an early hearing, and to arrange the money to enable the Area Council to be convened and the Councillors to be paid their travel and sitting allowances.

There may well be some danger that such a system encourages corruption of public officials. The system must be seen to be impartial. To have the logging company directly paying for the meeting of the decision making body may well be regarded as inappropriate.

13.5.2 A conflict of interests for the Provincial Authorities

The legislation provides for the participation of the Provincial Executive both in the decision-making process and as a business participant in the logging venture. (Section 5C (3) and (4)). To allow such involvement can allow the proper role of government to be compromised. Often

the Provincial Executive and the investment arm of the Province will be made up of the same people. The result may be a direct conflict of interests for these Provincial officials.

Matters such as the protection of the environment and sustainable use of the forest cannot be expected to be given top priority by Provincial officials when the Province itself is a business partner in the logging venture. Of course, all the Provinces are in need of money for essential services and the Provincial official may well feel that generating money for the Province out of its participation in the logging venture is a more pressing need than preserving the forests for future generations; the aim should be to have both.

The role of the National and Provincial Governments should be clearly defined. Through the Commissioner for Forestry Resources, It holds authority over the logging company, it is the enforcer of the forestry laws and protector of the environment. Neither the Provincial government nor government officials should be allowed to be financially involved in the business activities of logging companies. The Provincial government cannot in reality be expected to bring or encourage a prosecution against a logging company in breach of the forestry laws, if the Provincial government itself is a partner in the operation.

In any case, even though the Provincial government may be a partner in the joint venture, it is likely to be powerless to control the operations of the logging venture. This is because the Provincial government will have only a minority interest. The Western Province Investment Secretariat, for example, which is the business arm of the Western Province government, is restricted to a 49% interest in any venture in which it participates.

13.5.3 Provincial Business Licences and Forestry Operations

It would appear desirable for the Provincial governments to benefit financially from logging operations in their respective Provinces. However, for the reasons outlined above, involvement in the venture itself is not recommended. The answer may lie in the Provinces benefiting from logging operations by deriving much larger annual fees under their Business Licence Ordinances from the logging operations taking place in their Province. There would be then no need for the Provincial governments to become involved in complicated joint ventures and there would be no resulting conflict of interest for the Provincial government.

In any event, a joint venture between an international logging company and the Provincial government may be of questionable value for the Province. This is because "profits" in which the Provincial government might share may not be forthcoming, as the joint venture company affairs can easily be legitimately manipulated to avoid making a profit at the end of the financial year.

On the other hand a business licence tax system would enable the Province to budget in advance for its revenue from logging. Importantly, it would also enable the government to keep a healthy distance from the logging company so that it could monitor and enforce the forestry laws and ensure that the customary landowners and the local community continued to receive a fair deal throughout the logging operations.

Section 36A of the *Income Tax Act* 1965 treats business licence fees paid to Provinces as a tax credit to be used instead of paying income tax on profits to the National Government. Therefore, only those logging companies not making a taxable profit could legitimately complain about the suggested increase in Provincial business licence fees for logging operations. The benefits to Solomon Islands of the non-profit operations of any such company must be questionable.

The 1990 Amendment to the *Guadalcanal Province Business and Hawkers Licensing Ordinance*, which increases business licence fees, seems a step in the right direction, but a uniform approach by all the Provinces is needed. At the moment, business licence fees for forestry operations vary from Province to Province for no apparent reason.

13.5.4 Other involvement of Provincial Laws

Provincial Business Licences can be used by the Provinces to regulate logging activities in their Province in the sense that annual business licences are required for the logging companies to operate in the Province. For example, the requirements of the *Western Province Business (Amendment) Ordinance 1989* are that the logging company has complied with all policies and laws of Western Province and all other laws of Solomon Islands. However the current practices of logging companies operating in Western Province requiring and being granted business licences conflict with the provisions in paragraph VI (D) 3 of the Western Province Policy on the Environment. In particular, paragraph (h) requires 'environmental impact reports to be submitted with every proposal and the development modified or rejected to accord with that report'. Despite this Policy having been approved by the Western Province Government, the policy is not being put into practice. In particular, two recent logging company applications on Vella Lavella have not been required to submit environmental impact reports.

13.5.5 Monitoring of Operations

As well as the lack of an effective system of obtaining a licence, more problems arise as the logging gets underway. There is no effective legislative or administrative mechanism to control what the logging company does. This is because logging invariably occurs in isolated areas where communication with the authorities and the ability to obtain legal advice are often extremely difficult. The result is that the logging company is able to control disputes with local people when they arise, and landowners, who own the resource, are virtually powerless under the present system.

The Timber Control Unit Project with the Forestry Division is presently "Timber Inspectorates" in the Provinces. These will hopefully improve the ability of the Forestry Division and local landowners' to monitor the amount of logs taken as well as other aspects of logging operations. However, in the meantime, there is no effective counting of logs taken by the companies. There is widespread suspicion that the government revenue from royalties has been underpaid for a number of years. In addition, the Reforestation Levy applied to licences is inadequate, considering the actual cost of reforestation. There is very little reforestation on customary land. To make matters worse, all of the levy appears to have been placed in the Solomon Islands Government's for its general expenditure. clearly, such levies should be placed in a consolidated fund in a special account to be managed for the benefit of Forestry Division operations.

13.6 Taxation laws and Forestry

Various incentives exist in the *Income Tax Act* for the activities of logging companies. As well as the usual business incentives, under Section 14(c) there are numerous deductions for capital expenditure which may be made prior to assessing taxable income. In addition, in assessing profits, a company which has purchased, a timber concession is allowed to deduct the price it paid for the timber rights it purchased from the amount of its annual profits on which income tax is assessed.

Under Section 33A the logging company is required to withhold a resident withholding tax of 10% from the royalties it pays to the landowners or timber rights owners, and pay that 10% directly to the Commissioner. This 10% is the total tax payable by any resident body or persons and any individual Solomon Islander whose total income, including the royalties, is less than \$10,000 in a particular year.

13.7 Summary of Present Position

13.7.1 A system that does not work.

The legislation contains provisions which could provide safeguards against an unscrupulous logging company or a seller of invalid timber rights. However, in practice, because of the lack of an effective system the activities of logging companies at both national and local levels,

combined with lack of staff to administer it, the present legislation does not work to achieve sustainable forestry management. No local Provincial Officers have specific power or particular expertise to deal with forestry matters. This is of particular concern in Western and Choiseul Provinces, where some 70% of Solomon Islands commercial logging takes place. Similarly, the Area Councils are even more ill-equipped to negotiate or deal with an experienced commercial logging company. Hopefully the establishment of Provincial Timber Inspectorate Units in the Provinces under the guidance of the Forestry Division will be an important contribution to addressing these serious problems.

13.7.2 Complicated and inaccessible Laws

The forestry legislation is complicated. It is difficult to obtain a copy of the Act and all its various amendments and regulations. The *Provincial Government Act*, the *Land and Titles Act* and the *Local Courts (Amendments) Act 1985* all have a bearing on the *Forest and Timber Utilization Act*. At present, it is virtually impossible for an ordinary member of the public to find out what all the law is for forestry in Solomon Islands.

13.7.3 Enforcement of the law

There seems to be little enforcement of the existing forestry legislation. A legislative system that leaves compliance with forestry regulation largely to the whim of foreign logging companies cannot hope to protect the environment and achieve sustainability of the resource. Such a situation is not of much benefit to Solomon Islands.

13.8 Draft Convention on the Conservation and Wise Use of Forests

As a result of recommendations from the 1990 meeting of the Intergovernmental Panel on Climate Change (IPCC) and other initiatives in relation to the United Nations Conference on Environment and Development (UNCED), the Centre for International Environmental Law (now the Foundation for International Environmental Law and Development, London) prepared a draft international convention on the Conservation and Wise Use of Forests.

Although the suggested draft Convention has no official status with relevant international environmental organisations, it contains some very useful provisions. In general it seeks to provide common global systems for preserving the full range of forest values and ensuring conservation of forests and their wise use for sustainable development.

As the draft Convention recognises:

Forests are prime environmental, social and economic assets, providing benefits which are of significance locally, nationally and globally. Yet forest degradation and destruction is prevalent in all regions of the world and the distribution of forest benefits is inequitable, with many groups of forest-dependent people suffering in particular. Throughout the world, forests continue to be undervalued, the full range of benefits they provide not being fully taken into account in policies and economic decisions.

The draft Convention recognises that countries like Solomon Islands have limited ability to tackle forestry problems even if they wish to do so, much proposes international cooperation and aid to developing countries to protect indigenous forests and the people who are dependent on the them. (Foundation for Environmental Law and Development, 1991).

13.9 The Forestry Principles agreed at the Earth Summit

The *Forestry Principles* are a code of conduct agreed at the United Nations Conference on Environment and Development in June 1992 (the Earth Summit), on the management, conservation and sustainable development of all types of forests. They are a non-binding statement of global consensus for the management, conservation and sustainable development of all types of forests. These principles are of particular relevance to the various timber

producing countries in the Pacific, and in particular to Solomon Islands, which has a substantial forest cover.

The principles encourage governments to promote and provide for community participation in development, implementation and planning of national forests policies, and urges that all aspects of environment protection and social and economic development relating to forests should be integrated and comprehensive. Consistently with the Rio Declaration, the principles state that the identity, culture and rights of indigenous people and their communities, as well as other communities and forests dwellers, should be recognised. The full participation of women in all aspects of forestry management and development is also actively promoted.

The principles also provide that specific financial resources should be made available to developing countries to establish conservation programs for forests, in particular to stimulate economic, social and substitution activities.

13.10 FAO Report on Forestry Legislation

13.10.1 A national *Forestry Act*

The Food and Agriculture Organisation Report on Forestry Legislation in Solomon Islands (Fingleton 1990) is the result of a comprehensive examination of the requirements for a national *Forestry Act*.

A draft *Forestry Bill* and *Regulations* are included in the Report. It is based in part on the government's Forestry Policy Statement of 1989. This proposed new comprehensive forestry law aims to satisfy the six fundamental principles of the government's forest policies, which are:

- (1) protection of the nation's forests, water supplies, soils, animals and plants and the forest areas of cultural importance;
- (2) sustainable use of the forest resources to maintain their value into the future;
- (3) basic needs of people from the forests must be met - food, water, firewood, building materials, medicines and recreation;
- (4) development of the forest industry so as to give an increasing supply of forest products, income, tax revenue and business and employment opportunities for Solomon Islanders;
- (5) participation in decision-making about forests and management between different levels of government and between government and the customary landowners;
- (6) distribution of the benefits from forests and the responsibility for maintaining and improving these forest resources (Forest Policy Statement 1989).

13.10.2 Participation of the Provinces

Although comprehensive draft legislation was prepared in late 1989, a political decision appears to have been made to devolve to the Provinces the power to pass forestry legislation. It now appears that devolution of forestry management is unlikely to take place, at least in the short term.

Although the principle behind such a move may be praiseworthy, such a fragmented approach of dealing with this major natural resource of the Solomon Islands is unlikely to work. It seems vital that the national government should legislate in this all-important area, as well as provide the money and other resources to make the legislation effective.

The Provinces rely on the National Government funding for most of their revenue. The Provinces collect small amounts from basic rates and business licences but are not allowed to impose taxes or deal with foreign governments to solicit aid funds. Thus financially dependent on the National Government, the Provinces have no resources, expertise or hard cash to implement and/or administer a legal framework covering forestry. Adequate forestry legislation will require a reasonably high level of expertise by those responsible for its administration. Solomon Islands will need all the experienced people available in the forestry area to make their

systems work. Proposals such as that contained in the 1989 SICOPSA Paper (SICOPSA 1989) to pay the Provinces a percentage of royalties derived from logging companies will not be enough to fund proper management of the forests at Provincial level. An attempt to set up eight different systems in the Provinces, some of which have only limited administration facilities, will not be adequate to address the real and serious social and environmental problems that exist in the forestry area.

The Provinces, their Area Councils and the local people need to have specific mechanisms for participation in the new forestry regime, but they cannot be expected to implement and be responsible for what is essentially the responsibility of central government.

13.10.3 The draft Forestry Bill

The draft Forestry Bill 1989 (see 13.10.1 above) seeks to cure many of the problems with the present legislation. The Bill suggests that the present system of the Area Council deciding timber rights should be done away with. However, it is replaced by a seemingly equally cumbersome procedure whereby a Forests Board decides whether a developer is allowed to negotiate with the customary landowners for logging rights. While there are many welcome and excellent features to the draft legislation, it is not flawless. For example, having to pay \$10,000 for the opportunity to negotiate with the customary landowners may mean in practice that there will not be much of a response to the Board's public advertisement for the chance to negotiate. The maximum fine for negotiating without the Board's approval is \$1000, and unless there is a dramatic improvement in prosecutions, the commercial risk not to pay the Board the \$10,000 may be worth it for the developer. This part of the draft Bill needs to be reconsidered.

The criteria for allowing logging development activity to take place is intended to be consistent with the Forestry Sector Plan. The Minister (undefined) is charged with developing this plan in consultation with the public and then gaining Cabinet approval. Such a Forestry Sector Plan is an essential first step in sustainable management of forestry and is an important backbone to the legislation.

Environmental protection mechanisms in the draft Bill are found both in the declaration of Conservation Areas and controls imposed on any logging operation. These controls impose sensible logging restrictions on all licences granted under the new legislation. However, it may be even more important to impose these restrictions on existing licence holders. Again these controls are not compulsory in the draft Bill and a licence may allow, for example, logging within 50 metres of a water course. This should be rectified so that this may only be allowed by a licence if the authorities are satisfied on reasonable grounds that no significant environmental damage will result.

The offences for contravention of the Bill are rather vague. The offences and penalties could be better set out and more explicit in order to encourage compliance. The system of penalty units suggested in paragraph 12 of Chapter 10 above should be incorporated in such new legislation. In addition, the Magistrate's Courts must be given specific criminal and civil jurisdiction so that the Act can be administered and enforced effectively throughout Solomon Islands.

Although the draft Bill allows for competition between developers (which it can be presumed will benefit the resource owners), the provisions could be strengthened to ensure that more than one developer competes for logging rights on customary land every time any developer wants to obtain a logging concession. It might be advisable, given the current lack of environmental impact assessment, to encourage developers to compete with one another for timber rights on the grounds of improved environmental safeguards. In other words, a developer could enhance its chances of being the successful applicant by proposing various measures whereby it protected the environment during logging operations by introducing forestry management plans based on principles of sustainability.

The draft Regulations under the draft Bill are a big improvement on what presently exists but they could be further improved. Since the Regulations make the system work in practice they

are very important. For example, a rejection form under Clause 23(vi) may be just as important as the approval form. The present developer's Application for Approval to Negotiate Form could be filled out by an unscrupulous developer by giving misleading or insufficient information. Its format could be improved to prevent this. In addition consideration should be given as to whether the application should include a Statutory Declaration and a specific criminal offence be created for giving false or misleading information in the application.

While there is no specific provision for environmental impact assessment reports, clause 24 of the draft Bill provides for a Forest Investigations Officer to conduct investigations and consult the customary landowners with a view to making a written report to the Board on what areas need to be excluded from the forestry operations. Serious consideration should be given to whether such a provision is sufficient. This report does not show the impact on the environment of the logging operation. Rather, it is restricted to excluding areas from the logging operations which will obviously be "unduly" affected by logging. The tasks of the Forest Investigations Officer seem rather daunting as he/she is not only required to present this report, but also prepare comprehensive genealogies as are necessary to identify and describe the groups that are recognised by the prevailing custom as owning the land in question. With the pressure for the development to take place, this latter onerous task also required, it is very likely that the Forest Investigations Officer will not have the time nor resources to put together a comprehensive report showing the likely impact on the environment of the logging operation. In order to ensure that the genealogies are adequately done, as well as the environmental impact report, the application fee required from the proposed developer should reflect the real costs of this preliminary work.

The aspect of environmental impact assessment is an example of why any new forestry legislation must mesh neatly and fully with other environmental protection legislation planned for Solomon Islands.

13.11. Summary and Conclusions

13.11.1 The need for reform

Forestry law reform is urgent. Unless the present unsatisfactory system of logging in Solomon Islands is rectified there is a very real danger of the valuable forestry resource being severely depleted. This potential environmental and economic disaster for the country must be averted with the assistance of a comprehensive new legislative framework whereby the resource can be managed sustainably.

13.11.2 Drafting new forestry legislation

The following points could be noted in relation to the drafting of the new legislation:

- (1) The legislation must not only control future logging concessions granted to foreign logging companies, it must also regulate and control *existing* forestry operations. One logging company should not be allowed to benefit over another simply because it gained its concession when the law was still being developed. The existing logging companies would seem to have enjoyed enough commercial benefits already and it is time to bring them into line with acceptable and fair forestry and logging requirements.
- (2) The legislation must be drafted against the very real background of the exploitation of a relatively scarce commodity, where profit seeking multinational companies, generally with little environmental concerns wish to cut as much timber as they can as quickly as they can, and where the resource is owned by a largely undeveloped and commercially inexperienced island community.
- (3) The new law needs to abolish the present unsatisfactory system for obtaining timber rights on customary land. In particular it needs to stop developers imposing themselves on commercially inexperienced landowners and coercing them into selling their forestry

resource often at a gross under-value. The legislative system needs to provide for a fairer system of protecting the many rights of the customary landowners and local communities who depend on the forests. It must encourage and allow for a fair deal to be struck between the developers and the customary landowners or timber rights owners. Not only must the customary owners be given technical and legal assistance prior to entering into any agreements with the developer, they should also be given access to all the information. The new legislation must insist that the developer provides comprehensive information on all environmental and social impacts of the proposed forestry operation to the government forestry authorities in Honiara.

- (4) All forestry development must proceed only in accord with a comprehensive Forestry Sector Plan. Since large tracts of forest are already being logged under existing licences, existing licensees should be made to comply with the new Forestry Sector Plan.
- (5) The new legislation must ensure that after licences are granted, they are continually and closely monitored by the forestry authorities. The legislation needs to be strictly enforced to discourage unscrupulous developers and to encourage responsible developers.
- (6) Emphasis needs to be given to the drafting of the Regulations as well as the Act itself. It is essential that a workable and simple system is spelt out. Comprehensive forms need to be drafted so as to make it very clear what is required of the developers and to avoid misleading information being given to the authorities. The developer, and not the forestry authorities, should have a task of doing the bulk of the administration of the logging operations, unlike at present, where scarce government forestry resources are taken up obtaining information which could be more efficiently produced by the developers themselves. The energy of the forestry authorities must be directed towards a pro-active monitoring role with logging activities. This will only be achieved if the legislative system is designed so that the authorities are presented with all the information they need, including such essential information as annual logging plans and detailed inventories.
- (7) The new legislation must cater for reserves or Protected Areas of forest and the protection of water courses, tambu sites and traditional sites of local people who live in and by the forests, as well as protection of the environment.
- (8) The legislation should provide for a workable environmental impact assessment system, ideally administered under a separate *Environment Act*. It is important that the developer is given the task of carrying out the environmental impact assessment. The report should be submitted as part of the application for a logging licence. The developer should meet all expenses, including the cost of hiring consultants. If the developer carries out this initial task it saves the government money and the use of the government's own scarce human resources. Government staff will still need to assess the adequacy of the environmental impact statement.
- (9) The legislation must provide for the proposed developer to have a post-logging plan and for a reforestation plan to be approved by the forestry authorities prior to obtaining a licence. This should be an essential prerequisite of the developer's initial logging proposal. It is important that the developer actually carries out the reforestation and is not given the option, as is the situation at present, of paying a monetary amount instead which can easily be used for other purposes. Apart from the issue of sustainability, reforestation encourages employment of Solomon Islanders, which would be of economic and social benefit to the country.
- (10) The legislative system needs to be designed so as to encourage as far as possible competition between developers. At the moment there is little or no competition between logging companies. Competition should ensure that a better deal is offered to the local customary landowners. Logging companies would come to realise that to win a

timber rights contract they will have to show (perhaps in their environmental impact statement) how they plan to protect the environment. In this way, well-drafted legislation can be self-policing to a certain extent - again taking away some of the burden from the forestry authorities.

- (11) Sufficient resources must be allocated to the national and local forestry authorities so that the legislation may be properly administered by competent trained personnel. The law needs to be made simple and readable by persons having the minimum of formal education. The law also needs to be made accessible to ordinary Solomon Islanders. It must be distributed outside Honiara throughout the Provinces to community and church groups, schools etc.
- (12) The new legislation should conform to the aspirations of the Forestry Principles.
- (13) The legislation needs to be enforced so that the law and all national and local forestry authorities who are required to administer it are respected. Since forestry and the activities of logging companies are so important in Solomon Islands and since large amounts of money are often involved, it is appropriate that the Solomon Islands police force with its prosecution experience be given the power of enforcement. The Magistrate's Court should be given criminal and civil jurisdiction to deal with offences and disputes regarding timber rights agreements. Where possible, environmental and forestry officers from national and Provincial governments should work with the police in the enforcement process.
- (14) Finally, the new legislation must mesh with other environmental management laws planned for the Solomon Islands. The new legislation needs to be administered, funded and controlled by national government but with scope for the Provinces to take an active role in its implementation.

13.12 Recommendations for Chapter 13

39. That new comprehensive forestry legislation covering both existing and proposed forestry activities, based on the Fingleton Report, the suggestions made in this Report, the terms of the Convention on Biological Diversity, and the Forestry Principles agreed to at the United Nations Conference on Environment and Development, be drafted and enacted as a matter of urgency (page 80).
40. The Standard Logging Agreement, if retained as part of the new *Forestry Act*, should be strengthened and completely redrafted, to make it easier to understand; Plain English drafting principles should be used (page 86).

CHAPTER FOURTEEN

MINING AND ENERGY

14.1 Relevant Legislation

Mines and Minerals Act 1990
Mines and Minerals Regulations 1991 (draft)
Petroleum Act 1987
Petroleum Regulations

14.2 Introduction

This chapter deals with the environmental implications of mining operations, petroleum drilling and energy use. Both the mining and petroleum legislation has undergone recent revision. There is currently no legislation governing energy use and conservation.

14.3 Mining

14.3.1 Administration

The Mines and Minerals Act 1990 was enacted in May 1990 but is yet to be brought into operation pending the gazetting of Regulations under the Act. The Act is administered by the Ministry of Natural Resources through the Geology Division.

14.3.2 Reserved and protected areas

The Mines and Minerals Act 1990 provides that except with the consent of the owner or occupier, reconnaissance, prospecting and mining are prohibited in or on any village, place of burial, tambu or other site of traditional significance, inhabited house or building, any cultivated land or land rendered fit for planting and habitually used for the planting of crops. Town land under the Land and Titles Act also cannot be subject to these operations except with the consent in writing of the owner of the "surface rights". A state forest or controlled forest cannot be subjected to mining unless the permission of the Commissioner for Forest Resources is obtained, subject to any conditions that may be imposed. Land used for public purposes also cannot be mined.

14.3.3 Ministerial powers

The Minister may, on the advice of the Minerals Board, take any measures as may be necessary:

to protect the health and safety of persons;

for conservation purposes with a view to preventing waste; or

to minimise damage to any mineral deposit, land, air, water, vegetation or animal life; or

to protect sites of archaeological, historical or geological significance (s 6(f) *Mines and Minerals Act*).

14.3.4 Prospecting licences

Before a person can obtain a prospecting licence, a wide range of conditions have to be met (see generally Part IV *Mines and Minerals Act*). Among other things, the application must include a proposed programme for the acquisition of the surface rights from the landowners. If this access cannot be obtained, the application fails. If it is obtained only in relation to part of the land, the application must be amended accordingly. In addition, the intentions of the applicant in relation

to environmental protection must be set out (ss 20-21). The prospecting licence itself, when issued, must set out the programme for environmental protection.

During the term of the prospecting licence, the licence holder is obliged to backfill all excavations and not leave any part of the area unsafe. The Director of Geology may require the licence holder to carry out rehabilitation works in relation to roads, stream beds or banks or land damaged as a result of prospecting.

The mining lease application obliges the applicant to provide an environmental assessment with a detailed programme for tailings and waste disposal, progressive reclamation and rehabilitation of lands disturbed by mining, monitoring and minimisation of effects of mining on air, land and water areas (s 31(1)(h)).

14.3.5 Mining Leases

Before a mining lease is issued, the Minister must be satisfied, among other things, that the mining plan provides for adequate protection of the environment, both inside and outside the mining area.

In carrying out the mining, the leaseholder is obliged to carry out the mining plan as specified in the lease:

using appropriate technology and effective equipment, machinery, methods and materials, with due diligence, efficiency and economy, in accordance with sound conservation, technical and engineering practices generally used in the mining industry. (Section 44 (1)).

Alluvial miners have specific environment protection obligations applying to their permits. They must backfill all excavations and not leave any part of the area in an unsafe condition. In addition, they must not pollute or interrupt or adversely affect the flow of any water (section 54 (1) (b) and (c)).

14.3.6 Contravention of the *Mining Act*

Section 71 (1) allows the Minister on advice of the Minerals Board to suspend or cancel a permit, licence or mining lease when the holder breaches any provision of the Act or regulations, or breaches any of the provisions of the permit, licence or lease.

The Minister can make regulations under the *Mines and Minerals Act* for the conservation of mineral resources, disposal of waste products and the protection of the environment, providing for the nature and adequacy of restoration plans, the health and safety of persons employed and for the prevention of nuisance (section 80 (i), (j), (k), (l) and (n)).

14.3.7 The Minerals Board

The Minerals Board is constituted under the Act through appointment by the Minister (s 10 and Schedule to the Act). Of the nine members, one must be a representative of the Environment and Conservation Division of the Ministry of Natural Resources. In addition, when an application for a permit, licence or lease is being considered, the Minister must appoint representatives of the relevant Provincial Government and the landowners.

14.4 *Mining Regulations 1991* (draft)

The draft *Mining Regulations 1991* elaborate on the duties required to be performed by the mineral rights holder. In relation to environmental matters, these include (Part VI):

that no reconnaissance, prospecting or mining be carried out within a distance of 25 metres from any place of burial, tambu or other site of traditional significance, and 100 metres away from any inhabited house or building.

In the exercise of mineral rights, holders shall carry out operations with due diligence, efficiency and economy and in accordance with good technical and engineering practices generally used in the mining industry so as to:

- (a) conserve and avoid the waste of the mineral deposits of Solomon Islands;
- (b) result in minimum ecological damage or destruction;
- (c) control the flow and prevent the escape of contaminants, tailings and other matter produced in the course of such operations;
- (d) prevent avoidable damage to trees, crops, buildings and other structures;
- (e) avoid any actions which could endanger the health or safety of persons; and
- (f) avoid harm to fresh water, marine and animal life.

14.5 Comment on the *Mines and Minerals Act* and Regulations

The *Mines and Minerals Act* and its 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 environmental impact assessment, the *Mines and Minerals Act* includes at least the minimum environmental protection provisions that could be expected. The provisions specifying that an environmental assessment must be done could certainly be tightened up. In the Regulations under the Act, it could at least be expected that the form and contents of an environmental impact statement for proposed mining operations be included.

However, if the government decided to go ahead with the environmental legislation presently under consideration, it may be unnecessary to change the *Mines and Minerals Act*, or its Regulations to any extent. A new Environment Act could simply specify that all applications for exploration licences, alluvial mining permits and applications for mining leases be subject to the requirements of the Environment Act, and undergo a specified level of environmental impact assessment, depending on the potential environmental effect of the application under consideration (see **Recommendation 41**).

14.6 The *Petroleum Act 1987*

The *Petroleum Act* has a limited range of provisions to achieve environment protection aims.

The Act allows the Minister to gazette a Model Petroleum Agreement which may include requirements in relation to conduct of operations in such a way as to avoid pollution and ecological damage.

The *Petroleum Regulations* authorised under section 41 allow the Minister to make Regulations which can cover a range of environmental matters, including: the safe conduct of operations, and the health and welfare of people; the protection of the environment, including the prevention of pollution, and the preservation of living and non-living resources.

The draft *Petroleum Regulations 1991* cater for a range of environmental matters. Contractors are obliged to carry out their operations in such a manner as to ensure that there will be no "unnecessary" interference with the conservation of living resources of the sea, so that they result in minimum ecological damage or destruction; control the flow and prevent the escape or avoidable waste of petroleum; prevent damage to on-shore lands, and to trees, crops, buildings and other structures; and avoid any actions which could endanger the health or safety of people.

Contractors are obliged under the Regulations to control and clean up any released petroleum or other materials and to repair to the maximum feasible extent any damage resulting from

operations, with all costs to be borne by the contractor. If the contractor does not take prompt action, the clean up repair etc can be undertaken by the Ministry, at the expense of the contractor. These provisions appear to be adequate to cater for environment protection requirements for petroleum development in the immediate future. However, as with mining, it would be desirable to include specific requirements for environmental impact assessment in this legislation or for the proposed *Environment Act* to cover this sector (see **Recommendation 42**).

14.7 Energy use and conservation

The Energy Division of the Ministry of Natural Resources has a draft Energy Policy relating to energy project planning, the management of large scale energy sector projects and the coordination of small scale energy inputs into rural development.

As noted above, at present there is no legislation in relation to energy use and conservation. The Division has an Energy Conservation section whose objects include introducing energy-saving measures and substitution of indigenous fuels for imported fuels. One proposed energy programme, the Komarindi hydro-electric scheme, had an environmental impact study done in relation to it, but without any statutory controls or requirements attached.

The Energy Division has prepared a Project Application for an Energy Act for Solomon Islands. This legislation is intended give a legislative mandate for the Energy Division so that it has the authority to ensure security of energy supplies and the promotion of efficient energy use on a national basis. The specific objectives of the proposed Act are to give one government institution the responsibility of setting energy policies and standards, which will control the generation, distribution, pricing and consumption of energy resources (both conventional and non-conventional) within Solomon Islands. It is clear that there is some need for the coordination of energy policy, within a coherent framework binding on all government and non-government sectors. The present approach of energy pricing and standard setting being done by various departments with no particular coordination cannot lead to good energy conservation. Specific legislation to establish an appropriate framework seems to be an important initiative from the point of view both of economic efficiency and conservation objectives (see **Recommendation 43**).

14.8 Taxation Incentives

Part III of the Second Schedule of the **Income Tax Act** allows specific deductions for capital expenditure from profits from mining operations. Capital 'expenditure' is widely defined.

14.9 Recommendations for Chapter Fourteen

41. That in the absence of provisions for environmental impact assessment incorporated in an Environment Act, the *Mines and Minerals Act* be amended to include specific requirements as to the form and contents of environmental impact statements for all proposed mining operations (page 101).
42. That the suggested *Environment Act* cover the environmental impact assessment of all proposed petroleum operations (page 102).
43. That an *Energy Act* for Solomon Islands be drafted and enacted as soon as possible (page 102).

CHAPTER FIFTEEN

TOURISM

15.1 Relevant Legislation

Income Act 1965

Solomon Islands Tourist Authority Act 1970, (amendments 1970 and 1971)

Solomon Islands Tourist Authority Regulations

15.2 Introduction

The present annual number of foreign tourists to Solomon Islands is in the order of 12,000. Many adventurous tourists would seem to be attracted to the largely untouched lifestyles of many Solomon Islanders with their genuine warmth and hospitality as well as to the natural beauty of the landscape and marine life. Divers and those who come to remember the fighting here in the Second World War make up a great many of the tourists. Except in Honiara, the normal tourist hotel facilities are few. However, Solomon Islands may have an excellent tourist potential in further expanding its present fragmented system of small town and village-based tourist accommodation. It seems that many overseas visitors are more interested in visiting the islands and villages than staying in a large hotel in the capital. Such small scale development, if carefully managed, may allow an increase in tourism without many of the undesirable effects tourism has had on society and on the environment in other countries.

A Tourist Authority was created in 1970 having as its main objective the orderly development of tourism. One of its functions is to advise and assist persons wanting to establish tourist facilities. Tourist facilities must be licensed under the Act by the Authority. The government Tourism Policy calls for an overhaul of the existing legislation and for a new *Tourist Development Act*. Such legislation is also called for in a report by the Tourism Council of the South Pacific (1990:12-15).

15.3 Tourist attractions

Solomon Islands has many areas of unsurpassed natural beauty. It is crucial to the future of the tourist industry that these areas remain intact and not developed for short term gain. Tourism has the potential for economic benefits for Solomon Islands in the long term.

Some parts of Solomon Islands such as Morovo Lagoon and Rennell Island have already been recognised as among the most beautiful parts of the world and have been proposed for World Heritage listing. It is important that great care is taken to preserve all such areas. This may involve the exercise of tight controls over all tourist developments to ensure that no tourist activity is allowed to take place without a full assessment of what the medium and long term effects of the development will be on local people and their environment. (Environment impact assessment for tourism developments is essential; see paragraph 5.5, Chapter 5, above). The Ministry of Tourism and Aviation (1991 a, b and c) has as part of an education awareness programme produced three booklets related to World Heritage listing for areas in Western Province.

15.4 Nature tourism (Ecotourism)

Nature tourism is defined as tourism that promotes and depends on the natural and cultural features of a country, with a tendency to be low-key, making use of existing features rather than building alien structures. It aims to attract tourists who have respect for indigenous people and cultures, as well as for the environment. Lees argues that nature tourism, if done well, can bring benefits of sustainable development to village people, building on skills already present in communities, such as building traditional huts for visitors, and knowledge of forests, seas and the environment generally (Lees 1990:75-77). The system of protected forest areas is seen by Lees

to be an essential part of nature tourism, to sure that the natural resources on which it depends are not damaged or destroyed by other land uses (Lees 1990:77).

The potential for nature tourism in Solomon Islands seems to be very good. However, as argued in Chapter 3, the question of customary land ownership presents a barrier to both conservation and development activities. There is no legislative framework at present that can adequately provide for the various mechanisms that need to be put in place before such a system will work. A protected forest system, or a more broadly-based Protected Areas system, suggested in Chapter 9, will require a carefully crafted negotiation process to ensure the close involvement of landowners and the provincial governments in the development of an adequate legislative framework (see **Recommendation 44**).

15.5 Tourism at the Provincial level

Western Province is the only province with a well developed Tourism Policy, albeit one which is still a draft. Its guiding principles are:

- Tourism should be developed in a controlled, orderly and sensitive manner.
- Tourism should be developed gradually to:
 - minimise disruptive and adverse social, cultural and environmental impact.
 - enable the Province to monitor and assess the social, cultural and environmental impact of tourism and if necessary, review its policies or their implementation.
- Tourism development should be based on the inherent natural, cultural and historical features of Western Province.
- Tourism development should be on a small to medium scale and should be of high quality.
- Tourism must be appropriate to and compatible with the local culture and environmental setting.
- The Western Province tourism policy should complement but not conflict with the National Tourism Policy.
- Tourism development should be considered in an integrated way and not in isolation as it necessarily links and interrelates with many Provincial services and divisions.
- Tourism should be kept in balance with other sectors of the Western Province economy.
- Tourism development should be sensitive and sympathetic to and in accordance with the wishes of customary landowners, and should be to their best economic and social benefit.

Western Province has a "Tourism Association" in Gizo set up by local tourist operators which tries to coordinate the activities of the private operators and cooperate with the Provincial authorities over tourist-related matters.

All Provinces are able to control tourism by the use of their Business Licence Ordinances. The Provinces have the means to discourage those types of tourist developments they do not want by either not allowing a licence or setting very high licence fees for particular tourist business activities. Only those tourist operators that a Province wants are in effect allowed to operate. It would be a pity if high technology tourist facilities found in other countries such as the use of jet skies, were allowed to operate in Solomon Islands. Tourist development, like all foreign and local investment development needs to be carefully controlled, not only to ensure that the money generated from tourism ends up in Solomon Islands and not overseas, but also because

the wrong type of tourist development can harm the environment and the cultural and social interests of the local people.

It is essential for local people to be involved with decisions on whether tourist development should be allowed to take place in their area. Western Province's draft Policy makes it a requirement for the local Area Council to give its approval to any tourist development proposal taking place in its area. Such requirements should ideally be found in all Provinces. (see **Recommendation 45**).

15.7 Tourist Investment Incentives

A Solomon Islander or a Solomon Islands company may apply to the Commissioner under Section 11A of the *Income Tax Act* 1965 for an exemption from paying tax on income up to \$100,000 spread over a ten year period in order to establish tourist enterprise. This 1991 amendment is to be welcomed if it has the effect of promoting small scale tourist business by Solomon Islanders. It gives local people similar advantages to those enjoyed by foreign investors.

Under Section 11C of the *Income Tax Act*, generous tax advantages and incentives are given to encourage large-scale tourist developments. For example, as well as a 50% depreciation for capital expenditure, there is a 150% tax deduction for expenses incurred on 'overseas promotion'.

Careful scrutiny of proposed foreign tourist activity would seem to be warranted, to ensure that the real benefits of tourism stay in Solomon Islands and are not diverted offshore.

15.8 Recommendations for Chapter Fifteen

44. That new legislation be drafted to control the development of tourism in Solomon Islands (page 104).
45. That all Provinces develop a Policy on Tourism compatible with the National Policy on Tourism; an appropriate model would be the draft Tourism Policy of Western Province (page 105).

CHAPTER SIXTEEN

GENERAL CONCLUSIONS

Devolution of the functions and powers to legislate for environment to the provinces and Honiara Town Council are again being discussed. Evidence in Solomon Islands overwhelmingly demonstrates the need for a national framework and institutional capability for Environment and Conservation. If devolution is to proceed it is essential that a national capability be maintained which could coordinate activities and provide advice to the provinces as well as meet regional and international commitments, and carry out more specialised functions which could not be duplicated in eight provinces (Leary 1991:55).

16.1 Introduction

In a country with some 330,000 people, spread over a vast area, with an inadequate administrative infrastructure at national and provincial level for the protection of the environment, but with many environmental problems in common, it makes little sense for each province to enact its own environment legislation. On the other hand, it is important to recognise that each province has its own individual demands and needs in terms of environmental management, customary practices and authority structures. It should accordingly be possible for legislation to be drafted which sets national standards for environment protection and conservation, with Ordinances and Regulations consistent with a national Act to be drafted to address the individual concerns of the provinces.

If, despite these arguments, national legislation was found to be unacceptable, it would be possible, but more complex and expensive, for uniform environmental Ordinances to be passed by the Provincial Assemblies.

Under either of these options, by-laws could also be passed to address environmental matters at village level. Whatever model is chosen, formal legal consistency between the provinces would be desirable and not difficult to attain. What would be more difficult is to attain consistent implementation of the environmental laws.

16.2 The trend of modern legislation in Solomon Islands

This review of legislation and policy on environment in Solomon Islands indicates that while there is a great deal left to be done, there is already a steady momentum which has built up over the past several years, at both national and provincial level, to enact strong and comprehensive legislation. There is also a good deal of enthusiasm among those working in the various sectors for the drafting of adequate laws. Some of the recent statutes examined at provincial level indicate that there is a real commitment to environmental issues and the conservation of natural resources. The older legislation requires very substantial overhaul. It must also be said that the administration of the present legislation suffers badly from lack of staff and other resources.

16.3 Environmental Planning and Protection Legislation

The drafting of environmental legislation for the Solomons is a matter of great public importance. It should be an expression of both the will of the people and of the government, in terms of how the environment is to be looked after for the future, as well as in the present difficult economic times.

The United Nations Conference on Environment and Development, which took place in Brazil in 1992, (the Earth Summit), was an important meeting for countries around the world. The Country Report for Solomon Islands to that Conference shows that presently there is an inadequate legislative framework for resource management and environment protection (UNCED:1992). It became very clear during discussions at the National Environment

Management Strategy Seminar in Honiara in November 1991 that there is an urgent need to ensure that national legislation is drawn up. This review of all relevant legislation at national and provincial level confirms and emphasises that perception.

It is not just a matter of whether there is a specific threat from a particular development activity such as logging, gold mining or foreign fishing. It is a matter of whether the Solomon Islands, in keeping with the mainstream of the international community, both in the developing and in the developed world, can put into place the administrative agencies and legal mechanisms which will give it the ability to sustainably develop its environment and to meet the needs of the people both at present and into the future.

Clearly, the shape and contents of modern environment protection legislation has to be geared to the traditions and needs of the country. However, as environmental problems do not recognise national boundaries, it is possible to spell out some principles which are as basic to any scheme of environment protection and resource management in any country.

16.4 Universally accepted environmental law

16.4.1 *Caring for the Earth*

The recently published *Caring for the Earth* (in effect the second World Conservation Strategy, the first being published in 1980) (IUCN, UNEP and WWF 1991) states that governments should ensure that their nations are provided with comprehensive systems of environmental law, covering as a minimum:

- land use and development control
- sustainable use of renewable resources, and non-wasteful use of non-renewable resources
- prevention of pollution through imposition of emission, environmental quality, process and product standards designed to safeguard human health and ecosystems
- efficient use of energy, through the establishment of energy efficiency standards for processes, buildings, vehicles and other energy consuming products
- control of hazardous substances, including measures to prevent accidents during transportation
- waste disposal, including standards for minimisation of waste and measures to promote recycling
- conservation of species and ecosystems, through land-use management, specific measures to safeguard vulnerable species and the establishment of a comprehensive framework of protected areas.

Caring for the Earth goes on to say that national legal systems should provide for:

- the application of the precautionary principle, [see below] and use of best available technology, when standards for pollution prevention are set
- use of economic incentives and disincentives, based on appropriate taxes, charges and other instruments
- the requirement that all proposed new developments and new policies should be subject to environmental impact assessment

- the requirement that industries and government departments and agencies be subject to periodic environmental audit
- effective monitoring, permitting, detection of infringements and adjustment of regulations where necessary
- granting public access to environmental impact assessments, environmental audit data and monitoring results, and to information about the production, use and disposal of hazardous substances (IUCN, WWF and UNEP, 1991:68)

16.4.2 The Precautionary Principle

The precautionary principle refers to a duty to take measures that anticipate, prevent and attack the causes of environmental degradation where there is sufficient evidence to identify a threat of serious or irreversible harm to the environment, even though there is not yet scientific proof that the environment is being harmed.

The implication of this duty is that developers must assume from the fact of development activity that harm to the environment may occur, and that they should take the necessary action to prevent that harm. The onus of proof should be on developers to show that their actions are not harmful to the environment.

16.5 Solomon Islands Environmental Laws

Applying these principles to Solomon Islands and taking account of local economic concerns and cultural and environmental factors, the following elements for adequate environmental legislation might be as follows:

- (1) An integrated system of economic and environmental planning for resource management and industrial development.
- (2) A comprehensive scheme of environmental and social impact assessment, including monitoring, for both private and public sector development, and all governmental policies which have a potential impact on the environment.
- (3) A pollution control scheme covering water, land, air and noise for the whole country.
- (4) A heritage protection scheme which covers the natural, cultural and non-physical heritage, including objects, with the protection of potential World Heritage items being specifically provided for.
- (5) Public participation in all aspects of environmental decision making, ensuring involvement of Provincial Governments, minority groups, and recognition of customary laws and practices.
- (6) Effective enforcement mechanisms for environmental protection, including open standing provisions to allow any person to bring an action to remedy or restrain a breach of any environmental legislation. Enforcement mechanisms should ideally be able to be applied, both in the courts as well as at the very local level, through the authority of the chiefs. For example, forms of punishment such as Community Service Orders, related in some way to the environmental offence, might be far more effective than fining someone, or putting them in gaol (these could also be called an Environmental Service Order). Under such an order the convicted offender may be ordered to work a specified number of hours for a charitable or community cause or organisation, especially one related to environmental concerns. Carrying out of the work would need to be supervised or at least monitored by the enforcement authority through the local police or court official. Prior to sentencing the offender would need to be given the opportunity to discuss with a court official the work he or she is able to perform. The court official

would need to report to the Magistrate or Judge on these discussions and make any appropriate recommendations or suggestions for an appropriate Community Service Order at the time of sentencing.

16.6 Process of enactment

Environmental protection and resource management legislation should be easily understood, capable of being enforced, and respected by the people at every level. The people must identify with and "own" their legislation, in much the same way as the people should "own" and relate to any National Environmental Management Strategy that is to be implemented. Ideally, a broad range of people should be involved in commenting on any legislation which is put forward. Ideally an adequate draft should be produced and endorsed by Cabinet in principle, be widely distributed, with opportunities provided for all sectors of the community to forward their comments to a central point for collation and analysis. A specific period for comment and discussion should be set, before the legislation is reconsidered by the Cabinet.

To address the orderly development and conservation of the country's natural and cultural resources on a nationally consistent basis, the following matters could be included in an integrated Act:

- establishment of an Agency or other body to administer the legislation
- establishment of an Environment Council to advise on national environmental policy
- environmental planning (i.e. physical planning)
- water, land, air and noise pollution
- development control and environmental impact assessment for all development projects and government policies
- cultural heritage conservation.
- natural heritage conservation
- endangered species protection

If the Solomon Islands Government wished to address some of these aspects individually, it would be possible to draft a package of coherent and interrelated legislation to achieve this end. However, a single piece of legislation, whilst longer, would address environmental matters more holistically. An integrated Act would need to be written in plain legal language, so that it can be understood at village level as well as by the planners and administrators. Given the difficulties associated with obtaining copies of legislation and explanatory materials, binding all of these major environmental elements together in one Act would seem to be the most rational approach.

The Annex to this Review contains a set of preliminary drafting instructions for an Environment Act. The drafting instructions are based on the above principles, and incorporate a range of ideas derived from discussions with many people during the course of the research and writing of this Review. They incorporate some of the ideas found in the provincial environmental legislation already in place, as well as the draft national legislation produced by two separate consultants (Harding 1990 and Lipton 1992) over the past two years.

16.7 Administration

16.7.1 National Environment Agency

It seems to be clear that if an Environment Act were to be properly implemented, there would be a need for the creation of a new body, possibly outside the present Ministry of Natural Resources. One option would be the creation of a National Environment Agency staffed by a Director and officers derived from a range of relevant government Divisions and Ministeries. It would be advised by an Environment Council composed of representatives from relevant government departments and provincial governments, to ensure that national and provincial interests are catered for. It would also be appropriate for non-government interests from both the commercial and conservation sectors to be represented.

Alternatively such an Agency would in the short term, take the place of Environment and Conservation Division and kept within the Ministry of Natural Resources.

16.7.2 Ministry of Environmental Planning and Conservation

An alternative scenario would be, for a new Ministry of Environmental Planning and Conservation to be introduced. Such a Ministry would subsume various relevant Divisions presently located in other Ministeries. These might include the present establishment staff of the Environment and Conservation Division, the Physical Planning Division of the Ministry of Agriculture and Lands and the Policy Evaluation Unit in the Prime Minister's Department. Other units or Divisions might also be included.

It is appreciated that the Government might find it difficult to summon the resources required to establish such a Ministry, as funds may not readily be available from within the Solomon Islands national budget. Options to overcome the funding obstacles might include: the obtaining of bilateral aid for an establishment period of say, five years, the setting up of a South Pacific Environment Fund through SPREP, perhaps in partnership with the Global Environment Facility administered by the World Bank, on which the Solomon Islands Government and other South Pacific governments might draw for the specific purpose of ensuring that such agencies are adequately established and serviced.

Further options for administrative structures are spelled out in the National Environment Strategy prepared for Solomon Islands under the RETA project (RETA 1992).

ANNEX

Suggested Drafting Instructions for a Solomon Islands *Environment Act*

These drafting instructions are not to be regarded as exhaustive. The scope of the Act would need to be thoroughly discussed by officials within the relevant government Ministries and Divisions.

The Act should be drafted in plain legal language, to ensure as many people as possible understand its provisions.

Although the recommendation is to enact a comprehensive *Environment Act*, it is recognised that the various parts suggested below may need to be enacted separately, or in stages. Those parts are indicated by an asterisk.

1. The Act would bind the Crown.
2. The Act would cover both public and private sector development.
3. The Act would prevail over all other legislation relating to environment conservation and resource development.
4. The Act would include a broad definition of "environment" to include all natural ecosystems and human communities, taking into account social, cultural and economic concerns.
5. The Act would define "development" very broadly, to include all major investment proposals, both local and foreign.
6. The Act would establish a consistent framework based on principles of ecologically sustainable development, applicable to all conservation and resource development initiatives and for environmental planning at national, regional and local level.
7. The Act would institute a comprehensive system of development control and environmental impact assessment to cover all existing and proposed development, by the public and private sector, including foreign investors.
8. The Act would include provisions for the monitoring and environmental auditing of all present and future development activity.
9. The Act would provide for a national system of pollution control, to be administered at provincial level, for water, land, air and noise pollution.
- *10. The Act would establish a Register of National Heritage, covering cultural heritage and natural heritage; cultural heritage would be defined to include structures, human-modified environments, objects, and intangible heritage such as skills, ceremonies and dance.
- *11. The Act would establish a Protected Areas System throughout Solomon Islands, to be coordinated centrally but administered locally with involvement of relevant villages and landowners.
- *12. The Act would provide for the conservation of endangered species, both in terms of habitat protection as well as the control of sale and export.
- *13. The Act would establish a National Environment Planning and Assessment Board, which would include members of all major resource sectors, representatives from the Environment and Conservation Division of the Ministry of Natural Resources, and

representatives from relevant conservation and industry interests. The Board would be responsible for advising the government on all environmental matters in which the government is involved. It would recommend policies to be adopted, monitor the performance of all government agencies in relation to environmental matters, and recommend strategies for enforcement of the environmental legislation.

14. The Act would include both criminal and civil enforcement, with provision for "any person" to bring an action to remedy or restrain a breach of the legislation.

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Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matters, 1973.

Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989.

Convention for the Protection of the Natural Resources and Environment of the South Pacific and Related Protocols (SPREP Convention) 1986.

Convention on the Conservation of Biological Diversity, 1992.

Protocol Relating to Intervention in Cases of Marine Pollution by Substances other than Oil, TS 1984, No 5.

South Pacific Nuclear Free Zone Treaty

South Pacific Forum Fisheries Agency Convention

2. SOLOMON ISLANDS LEGISLATION

NATIONAL LEGISLATION

This list includes all national and provincial legislation, Regulations and amendments as well as recent Bills directly or indirectly related to environmental matters in Solomon Islands. It does not include Provincial Assembly by-laws made under the Local Government Act; these are mentioned in the text where relevant. The list is up-to-date as far as available records have allowed. If readers find any omissions or inaccuracies, please notify the author.

Agriculture and Livestock Act 1980

Agricultural Quarantine Act 1982

Commissions of Inquiry Act (Cap 31)

Continental Shelf Act 1970 as amended

Delimitation of Marine Waters Act 1978

Customary Land Records Bill 1990

Environmental Health Act 1980

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Solomon Islands Tourist Authority Regulations

Solomon Islands Independence Order 1978

Town and Country Planning Act 1979: Amendment 1982

Town and Country Planning Regulations 1980, 1986 (tree preservation) 1988 (Honiara)

Water Bill

Water Supply Act 1981

Wild Birds Protection Act 1914

Wild Birds Protection Regulations

PROVINCIAL LEGISLATION

GUADALCANAL PROVINCE

Wildlife Management Area Ordinance 1990

Business and Hawkers Licensing Ordinance 1985 (as amended)

MAKIRA ULAWA PROVINCE

Business Licence Ordinance 1984 (as amended)

Preservation of Culture and Wildlife Ordinance 1984

Draft Provincial Fisheries Ordinance

SANTA ISABEL PROVINCE

Business Licence Ordinance 1984 (as amended)

Preservation of Culture Ordinance 1988

Wildlife Sanctuary By-laws

Wildlife Sanctuary (Amendment) Ordinance 1991

TEMOTU PROVINCE

Business Licence Ordinance 1985

Environmental Protection Ordinance 1989

Preservation of Culture Ordinance 1990

WESTERN PROVINCE

Business Licence (Amendment) Ordinance 1989 (as amended)

Building Ordinance 1991

Coastal and Lagoon Shipping Ordinance 1991

(draft) *Environmental Management Ordinance* 1991

Preservation of Culture Ordinance 1989

Public Nuisance Ordinance 1991

Simbo Megapode Management Area Ordinance 1990

3. BOOKS, ARTICLES ETC.

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About the Reviews of Environmental Law

The National Environment Management Strategies which have been developed over the past two years in a number of Pacific countries have highlighted a wide range of environmental problems. They have also indicated the urgent need for administrative and legal responses to these problems.

The Reviews of Environmental Law have been carried out as part of the National Environment Management Strategy process. Each of the legal consultants has endeavoured to ensure that there has been broad input from relevant organisations and individuals in the Reviews. This input has been invaluable.

The Reviews indicate that there are many common problems faced by each country, related to the development of adequate legal frameworks for the conservation of the natural and social environment and the proper allocation of natural resources. They clearly indicate that some major initiatives in environmental law are required in each country, both in terms of the need to draft new legislation as well as in the implementation and enforcement of existing legislation. Also clear is the need for environmental legal education initiatives specifically aimed at administrators of the environmental legislation.

Each of the Reviews has made extensive suggestions for reform of the law relating to the environment. With more modern environmental legislation and improved enforcement measures, combined with the initiatives set out in the National Environment Management Strategies and related documents, the goal of sustainable development will become easier to achieve.



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