REGIONAL STUDY ON PACIFIC ISLANDS FORESTRY LEGISLATION

by
Jim Fingleton
Legal Consultant

FAO LEGAL PAPERS ONLINE #30

June 2002

FAO Legal Papers Online is a series of articles and reports on legal issues of contemporary interest in the areas of food policy, agriculture, rural development, biodiversity, environment and natural resource management.

Legal Papers Online are available at http://www.fao.org/Legal/pub-e.htm, or by opening the FAO homepage at http://www.fao.org/, and following the links to the FAO Legal Office Legal Studies page. For those without web access, email or paper copies of Legal Papers Online may be requested from the FAO Legal Office, FAO, 00100, Rome, Italy, dev-law@fao.org. Readers are encouraged to send any comments or reactions they may have regarding a Legal Paper Online to the same address.

Table of Contents

1. INTRODUCTION

This paper reviews the forestry legislation in six Pacific Islands countries: Tonga, Samoa, Fiji, Papua New Guinea, Solomon Islands and Vanuatu. It was produced in preparation for a proposed regional workshop that FAO is planning to organize to discuss the issues and challenges for forestry legislation in the South-west Pacific, and to identify possible options for government decision-making to improve the legislation.

FAO has had a long involvement in forestry law reform and, mainly under its Technical Cooperation Programme, has provided assistance to most of the above countries in reviewing their forestry and related legislation. Based on a survey conducted by FAO's Development Law Service of the forestry laws and law reform processes around the world, a first volume was produced reviewing forest laws from the American, Asian and Pacific regions (FAO 1998), and a second volume was published covering Africa and Europe (FAO 2001b). In a note headed "Major Trends in Contemporary Forest Law: Some Observations in Light of FAO Experience", the Development Law Service concluded:

> "Increasingly, such laws reflect the growing worldwide push towards more consideration of non-timber values of forests, such as biodiversity functions, sustainability concerns and social interests. The general trend has been towards broadening management objectives, strengthening environmental measures and assessments, improving planning tools, promoting local and private forestry, and increasing opportunities for public participation in forest management." (FAO 2000: 6)

These general developments in forestry legislation are also evident in the Pacific Islands countries examined here. The forestry legislation currently in force ranges from the early *Forests Act* 1961 of Tonga through to the very recent *Forestry Act* 2001 of Vanuatu. While Tonga and Samoa are still operating under old-fashioned forestry legislation, Fiji, Papua New Guinea, Solomon Islands and Vanuatu have all replaced their main forestry laws in the last decade. In all four cases FAO provided assistance to governments in reviewing the state of the country's law on forestry and related subjects, and proposing replacement forestry legislation. In two cases (Fiji and Vanuatu) the proposed legislation was adopted, and in the other two cases it was not, but other legislation was.

One feature of this evolution in forestry laws is that the legislation has become longer and more complex, as greater attention is paid to such matters as forestry sector planning for sustainable management, and the effective involvement of the customary owners of land and timber in decision-making on forest management. Another matter which the more recent forestry legislation has had to accommodate is the rapid opening-up of native forests to commercial exploitation, as the conservative forestry regimes of the colonial period were abandoned after independence in pursuit of increased revenue for governments and customary owners.

It is important to mention some limits on the scope of this paper. First, the focus of the paper is legislation, not policy. While legislation should be an effective vehicle for carrying the policy forward, it is beyond the scope of this paper to review each country's forest policy, or how far the legislation reflects or implements its forest policy.[1] At the same time, it *is* the purpose of this paper to review each country's

[1] Reviews of the forestry legislation in each country were normally preceded by recommendations for a new forest policy, made by a forestry consultant.

forestry legislation, and if, for example, part of an Act is called "Forestry Sector Planning", then an assessment can be made about the effectiveness of those legal provisions for carrying out their purpose of forestry sector planning. The paper will, therefore, conclude with the author's suggestions of areas for possible improvement of the forestry legislation in the six countries.

A second limit on the scope of this paper is that it deals with forestry and, while brief mention is made of relevant environmental laws, no attempt is made to canvass all the other laws which have an impact, to a greater or lesser extent, on forests and forestry operations. The range of such laws is very wide: a country's land laws and land tenure systems have obvious implications for forestry, as do any laws on physical or land use planning. Then there are the country's constitutional laws and system of government –possibly provincial and local governments, courts and land dispute settlement arrangements. Business laws will also have an impact on forestry –controls on foreign investors, corporations law, industrial law and so on. Then there are revenue laws –taxes, customs, duties and charges. The forestry legislation must fit into a background of general laws covering these and other topics, bringing them into play as appropriate, complementing them and avoiding overlaps and inconsistencies. The reviews of forestry legislation, carried out in the six countries and listed in the References below, discuss the relevant laws which form the background to forestry in each country, but those laws will not be dealt with in this paper. Their existence should not, however, be forgotten.

Finally, space limitations mean that most attention in the following treatment will be given to the principal forestry law itself –the Act passed by the country's legislature. In each case, the main Forestry Act is brought into fuller implementation by Regulations, Orders, Rules and other statutory implements, which set out the forms to be used, fees to be paid and other administrative details. These forms, etc., can have major practical importance in helping people to comply with the Act's requirements, and the fact that they are not reviewed in this paper is not to be taken as disregard of their importance.[2]The present paper begins with an examination of the current state of the forestry legislation in each of the six countries, showing the background of the legislation and the reforms made since their independence. Next, the different approaches taken to a list of key forestry issues by the various laws will be described and analysed. The key issues are:

i) forestry administration;
ii) forestry planning;
iii) access to the forest resource;
iv) licensing of forestry operations;
v) environment protection;
vi) forest revenue and reforestation;
vii) enforcement;
viii) miscellaneous matters.

[2] Another constraint here is the relatively limited field work on which the paper is based. However, the author, a lawyer who specializes in land tenure and natural resource law, has carried out various assignments on forestry and related legislation in five of the six countries covered by the paper. The assignments were the following:

- Tonga: Review of Tonga's Agriculture and Forestry Legislation (FAO 1994);
- Samoa: Technical Report on Watershed Legislation (FAO 1991);
- Papua New Guinea: Legal Review and Analysis of Existing Logging Projects (World Bank 1993);
- Solomon Islands: Forestry Legislation in Solomon Islands (FAO 1989, 1990);
- Vanuatu: Assistance in Forestry Legislation (FAO 2001).

Finally, the paper will discuss the issues and challenges for drawing up forestry legislation in the South-west Pacific, and suggest possible options for government decision-making to improve the legislation.

2. BACKGROUND OF THE CURRENT FORESTRY LEGISLATION

Independence came to Western Samoa in 1962, followed by Fiji (1970), Papua New Guinea (1975), Solomon Islands (1978) and Vanuatu (1980). The Kingdom of Tonga was never colonised. All of the first five countries replaced their colonial forestry legislation after independence. This part of the paper will examine the current state of the forestry legislation in each country, and reforms made since independence.[3]

Tonga

The *Forests Act* (Chapter 126) was enacted in 1961, and has not been amended since. It is a short law, and makes very basic provision for the setting aside of unalienated land as forest reserves, reserved areas intended for afforestation or village forest areas. Further provisions for the protection, control, management and use of these three forest categories were to be spelt out in regulations, but the only ones ever made were the *Forest Produce Regulations* of 1979, which deal only with the export of certain timbers. The Act provides a power to issue licences to take or purchase forest produce and the *Land (Timber) Regulations* 1967 enable permits to be issued for taking timber from Crown land.

The *Parks and Reserves Act* (Chapter 89) of 1976 allows a Parks and Reserves Authority to declare (with the Privy Council's consent) any area of land to be a park or reserve, whereupon Regulations can be made for its protection and maintenance, and the Authority is given a range of management powers.

The Forestry authorities in Tonga have recognised for at least a decade that the *Forests Act* of 1961 no longer provides an adequate basis for implementation of Government forestry policies and programs. An FAO Report to the Government in 1994 said that the Act had "apparently been of little use, and [did] not suit the Forestry Division's needs in meeting its brief to promote the multiple roles of forests" (FAO 1994:14). The same report noted a lack of co-ordination between the Ministries responsible for forestry and for environmental management (*ibid*:10). In 1996, an FAO consultant prepared a draft Forest and Wildlife Protection and Management Act (FAO 1996), but so far this has not been enacted.

Samoa

The colonial power for Western Samoa before its independence in 1962 was New Zealand, and Samoa's forestry laws closely reflect the practice there. In the first place, the *Agriculture, Forests, and Fisheries Ordinance* 1959 follows the New Zealand practice of establishing the responsible Government department, listing its functions, providing for the appointment of its departmental head and other officers, specifying the powers of the responsible Minister, and providing for committees, annual reports, and so on.

[3] The current state of the forestry legislation in each country is as the author understands it to be, taking account of any amendments made to the original laws. It is difficult sometimes, however, to know whether amendments have been made, and further checks will have to be carried out in advance of the proposed FAO workshop.

When, after independence, the *Forests Act* 1967 was enacted, it was based closely on the equivalent New Zealand legislation of 1949. The Act establishes the Forestry Division, and lists its functions which include the management of all State forest land, and the development, management and utilisation of forests on land which has been leased or licensed to the Government for forestry purposes. Closely following New Zealand precedents, the Act makes provision for grant of licences, leases and permits for forestry operations, rights in forest produce (which is presumed to be the property of the State, until the contrary is proved), offences, and the administration of private forests. An owner of customary land may apply for a licence or lease over the land to be granted for forestry purposes, either to the Minister of Forests or to any other person. Other parts of the Act deal with protection against fire, and declarations of protected land for forestry purposes.

The *Forestry Regulations* 1969 cover such matters as tree-felling methods, permits, royalties and fees, marking and checking of forest produce, timber exports and the licensing of sawmills. The *Lands and Environment Act* 1989 introduced substantial new law on environment protection and conservation. Detailed provision is made for the preparation of management plans for the protection, conservation and management of (among other things) indigenous forests, but this law only applies to those parts of Samoa which have been specified by Order. Finally, the *National Parks and Reserves Act* 1974 provides for the declaration of national parks and reserves, but only over public land –i.e., land vested in the State that is free from customary or freehold title.

Samoa's forestry legislation, based largely on New Zealand precedents which are half a century old and of doubtful suitability to the cultural circumstances of Samoa, is probably in need of review. It should also be noted that the forestry legislation of New Zealand has been substantially amended in the last decade.

Fiji

The *Forest Act* (Chapter 150), enacted in 1953 and in force at Fiji's independence in 1970, was replaced by the *Forest Decree* 1992. The previous *Forest Act* established a number of different classified areas –reserved forests, nature reserves, protected forests and silvicultural areas– which could be created by Ministerial declaration over land held under different forms of land tenure. For each classified area certain forestry activities were forbidden, but in each case licences could be issued authorising those activities. Further provisions on licences were set out in the *Forest Regulations* of 1955 and subsequent amendments.

An FAO Report to the Government in 1992 identified major problems with this forestry legislation, including that the forest categories were inadequate for Fiji's current needs, that it was difficult to identify the rules which applied to each forest category, and that the law lacked a coherent structure for forest planning and management (FAO 1992: 28-31). The report contained a draft Forest Act and Forest Regulations, which were the basis for the *Forest Decree* 1992. Notably, however, the Decree left out the parts dealing with national forestry planning and agreements for joint management of forests, contained in the draft Act.

The Decree is relatively brief, as current forestry legislation goes (39 sections). It sets up a Forestry Board, whose main task is to advise on preparation of the National Forestry Plan. Nothing is said, however, about the legal status of this document. The felling of timber,

extraction of forest produce and clearing of land is prohibited with respect to different categories of land unless authorised by the Conservator of Forests, usually by way of a licence. The Decree thus preserves the basic methodology of the previous Act (see above). Certain consents are required before a licence is issued, depending on the land category. In the case of native land, for example, the prior consent of the Native Land Trust Board is required. Before a timber licence is issued, a logging plan prepared by the applicant must be approved by the licensing officer, specifying various matters (e.g., annual allowable cut, roads layout, reforestation requirements). Certain customary rights are preserved over native land.

The *Forest Decree* is, in most respects, a continuation of the previous forestry regime. While the forest categories and applicable rules have been clarified, the mechanisms advocated by the FAO to improve forestry planning were omitted from the final version of the law.

Papua New Guinea

The colonial *Forestry Act* (Chapter 216) was replaced after independence by the *Forestry Act* of 1991. The previous Act provided for the Government to acquire timber rights by purchase from the customary owners, and then allocate logging rights to operators under a licence or permit. Timber licences were usually confined to short-term operations (up to two years), while major forestry operations were carried out under timber permits, issued for a period up to ten years on terms and conditions specified by the responsible Minister. Felling trees on any land without a timber permit, licence or other form of authority was an offence. The *Forestry Regulation* made more detailed provision for timber permits and licences, and set out procedures for their suspension and cancellation. It also provided a third method for gaining access to the timber on customary land –a timber authority, to allow the purchase of forest produce for domestic use.

In 1971, the Government's monopoly over access to timber rights was broken, with enactment of the *Forestry (Private Dealings) Act* (Chapter 217). Under this Act, application could be made to the Minister for Forests for declaration of an area as a Local Forest Area, whereupon the customary owners could sell their timber to any person by following the procedure set out in the Act. Basically, this meant getting a declaration by a prescribed authority of who was entitled to dispose of the timber as the customary owners, and the Minister's approval of the dealing. The *Forestry (Private Dealings) Regulation* set out the powers and duties of the agent appointed to act on the customary owners' behalf, and required the operator to forward monthly returns to the Department of Forests.

The *Forest Industries Council Act* (Chapter 215) established that body to promote the interests of the major forest industries in PNG, giving it various functions in the grading and marketing of forest products. All major forest products operators (i.e., those engaged in the logging, milling or marketing of major forest products) had to be registered under the Act, and operate in accordance with the conditions of their registration, as well as pay a levy to the Forest Industries Council. The *Forest Industries Council Regulation* made further provision for registration and the levy.

An FAO Report to the Government in 1987 set out a draft Forest Policy Statement for PNG, and a draft Forestry Act to replace the *Forestry Act* and *Forestry (Private Dealings) Act* (FAO 1987). The *Forestry Act* passed in 1991 is a very different law from that proposed in the FAO Report. It is a very long and complicated piece of legislation, which was substantially amended two years after its enactment by the *Forestry (Amendment) Act* 1993, and has been

amended twice more –in 1996 and 2000. At the time of writing, further amendments are being considered.

The main provisions of the Act will be examined in more detail below, but the following are its basic features:

- Administration: the PNG Forest Authority is established, which is managed by the National Forest Board, assisted by Provincial Forest Management Committees for each of PNG's 19 provinces and specialist advisory committees, and staffed by the National Forest Service. This Authority replaced the Department of Forests and Forest Industries Council.

- Planning: forest resources can only be developed in accordance with the National Forest Plan, which has three separate components –
  - National Forestry Development Guidelines;
  - a National Forest Development Programme;
  - Annual Statements of Allowable Cut Volumes.

  Each Provincial Government must also draw up a Provincial Forest Plan, comprising –
  - Provincial Forestry Development Guidelines;
  - a Provincial Forest Development Programme.

- Access to the forest resource: the main method for acquisition of timber rights is the Forest Management Agreement with the customary owners. Only the PNG Forest Authority can enter into such Agreements, and the customary owners must normally be incorporated as land groups before entering into the Agreement. Two other acquisition methods are by Timber Authority and Licence.

- Allocation of cutting rights: having acquired the timber rights, the Board is required to carry out a Development Options Study, and then prepare Project Guidelines which are used to advertise the forestry project and seek expressions of interest from registered forest industry participants. The customary owners must be consulted during the preparation of the Project Guidelines. Once project proposals are submitted they are evaluated and a bidder identified for further negotiations. After negotiations the Board considers the draft Project Agreement and, if satisfied, executes the Agreement and the successful bidder applies for the grant of a Timber Permit. Operations under the Permit cannot begin until a Project Statement, Five-Year Working Plan and Annual Logging Plan have been lodged, and any performance bond paid.

- Forest finance: the Act provides for introduction of a new system for forest royalties, levies and other charges.

- Existing forestry projects: the new Act repeals the old *Forestry Act* and *Forestry (Private Dealings) Act*, as well as the *Forest Industries Council Act.* The Act preserves in place the agreements, permits and licences entered into or granted under the repealed legislation, but it gives the Board the power to vary the terms and conditions of those documents so as to bring them into conformity with the requirements of the new Act.

The *Forestry Regulation* 1992 made provision for the registration of forest industry participants and consultants, and later Regulations made further provision for the National Forest Plan, timber resource acquisition and allocation, and the new revenue system, as well as for the forms to be used under the Act.

Some Provincial Governments in PNG have attempted to introduce their own forestry laws, but the Supreme Court has ruled that a provincial law providing for control of forestry operations in a province would be inconsistent with the national *Forestry Act*, and therefore invalid under PNG's constitutional arrangements (World Bank 1993:9).

Papua New Guinea has a comprehensive set of conservation and environment protection laws, including the *Environmental Planning Act* (Chapter 370). Any application for a timber permit under the *Forestry Act* must be accompanied by an environmental plan approved under that Act.

Solomon Islands

The *Forest Resources and Timber Utilisation Act* (Chapter 90) is the pre-independence *Forests and Timber Ordinance* 1969 as altered by amending legislation. In 1999 the National Parliament passed a new *Forests Act* which would have repealed the previous law, but before it could be brought into operation the Government fell in a *coup d'état*, and the interim government resurrected the *Forest Resources and Timber Utilisation Act*, with minor amendments. The main features of that Act are:

- Trees can only be felled for sale under either a logging licence or a mill licence;
- A logging licence can only be issued over customary land if the Standard Logging Agreement has been entered into with the customary owners;
- Trees felled under a mill licence must be milled;
- Protective provisions apply to rainfall catchment areas, land required for flora or fauna conservation and land liable to soil erosion.

The *Timber (Levy and Mill Licensing) Regulations* 1970, *Forests and Timber (Prescribed Forms) Regulations* 1978, as amended in 1985, and *Forests and Timber Appeals Regulations* 1985 made further provision for carrying out the Act.

A further law to mention is the *North New Georgia Timber Corporation Act* of 1979, as amended. This Act set up a separate forestry regime for some 40,000 hectares of natural forest at North New Georgia in the Western Province of Solomon Islands, under which:

- a corporation was established as trustee of the customary owners;
- ownership of the timber rights were transferred, by law, to the corporation;
- the corporation was empowered to issue logging licences directly to a logging company.

Attempts have been made to introduce environment protection legislation, but at present the only applicable law is scattered through other legislation.

An FAO Report to the Government in 1989 reviewed the above legislation, and concluded:

> "The present forestry legislation –a plant warped by the winds of change and host to a variety of indigenous and exotic graftings– has lost all form and useful function. It is beyond further surgery, and requires complete replacement." (FAO 1989: 3)

A draft Forestry Act and set of Forestry Regulations were submitted by FAO to the Government (FAO 1990), but no action was taken by the Government of the day to implement them. In 1999, however, a *Forests Act* drafted under AusAID assistance was passed by the National Parliament but, as mentioned above, this law was not brought into force, and the old discredited legislation outlined above was revived.

It is, however, worth outlining the *Forests Act* 1999, as it is intended that it will be reviewed and re-introduced to Parliament in future. Its main features are:

- Administration: the Solomon Islands Forestry Board is established, with representation from government, the forest industry and customary owners. Its functions are mainly consultative and advisory, however, and the Commissioner of Forests is mainly responsible for the issue of licences, supervising the acquisition of timber rights and monitoring harvesting. Provincial Governments must be consulted in the course of forestry planning for their provinces, and they have a role in timber rights acquisitions and the issue of timber licences.

- Planning: the Act lays down a set of forestry conservation and management principles to guide planning for the forestry sector, and provides for –
  - a National Forest Resource Management Strategy;
  - a National Timber Industry Policy;
  - a Code of Practice for timber harvesting and forest management;
  - annual State of the Forests reports for each province;
  - determinations of Potential Forest Uses, for areas of forest proposed for logging.

- Access to the forest resource: the only method for acquisition of timber rights is a Forest Access Agreement with the customary owners, who are identified by a series of steps set out in the Act. Proposals for the acquisition of timber rights from the customary owners may only be made by persons authorised to do so by the Commissioner of Forests.

- Allocation of cutting rights: timber harvesting for sale of forest products must be authorised by a Timber Harvesting Licence, being either –
  - an Ordinary Timber Harvesting Licence;
  - a Local Timber Harvesting Licence, to allow customary owners to log their own land and mill the timber in Solomon Islands;
  - a Community Forestry Scheme Licence, to allow small-scale logging and processing of timber from customary land.

  Provision is also made for Land Clearing Permits, required for any land clearing other than for domestic gardens.

- Timber processing, marketing and export: timber may only be processed for sale under a licence, and provision is made for the grant to a holder of a timber processing licence of a timber supply quota, entitling the holder to compulsorily purchase timber from timber harvesting licensees at determined prices. The Commissioner of Forests is also empowered to fix timber prices, and to direct any person who seeks permission to export timber to sell that timber to another person at a price higher than the price

specified in the export application. Timber can only be exported in accordance with an authority granted by the Commissioner.

- Forest finance: the Act provides for –
  - a Forest Development Levy, to be paid into the Forest Fund for the purpose of forest resource development to ensure sustainability;
  - a Timber Harvesting Levy.

- Existing forestry projects: licences in force under the *Forest Resources and Timber Utilisation Act* and *North New Georgia Timber Corporation Act* are treated as Ordinary Timber Harvesting Licences under the new Act, provided that timber rights in the land concerned have already been acquired. All licensees are required to renew their licences within six months of the commencement of the Act, and new conditions can be imposed to bring the licences into conformity with the new Act.

Once again, it should be remembered that the new Act is not yet in operation, so all forestry operations in Solomon Islands are proceeding under the old discredited law.

Vanuatu

Formerly the Anglo-French Condominium of the New Hebrides, upon Vanuatu's independence in 1980, work began on legislation to replace the *Joint Regulation to Provide for the Control of Forestry* of 1964. An FAO Report to the Government in 1981 included a draft Forestry Act (FAO 1981), which formed the basis of the *Forestry Act* 1982 (Chapter 147). This Act was amended a number of times, as were the *Forestry Regulations* of 1984. In the year 2000, FAO was asked again by the Government to review the forestry legislation, by which time the Act and the Regulations had been supplemented by the following Orders:

- *Forestry (Control of Mobile Sawmills) Order* 1996*;*
- *Forestry (Management and Control of Sandalwood Trade and Exports) Order* 1997*;*
- *Forestry (Vanuatu Code of Logging Practice) Order* 1998*;*
- *Forestry (Restriction on the Importation of Mobile Sawmills for Use on the Selected Islands of Vanuatu) Order* 1999*;*
- *Forestry (Restriction on the Felling of Sandalwood) Order* 1999.

The main method for acquiring timber rights under this legislation was by entering into an Agreement for Utilisation Operations with the customary owners. The Act also provided for the Government to enter into joint ventures with the customary owners and a timber licensee, but this option was never used. Provision was also made for Forest Plantation Agreements, under which the Government would plant trees on customary land, but this system fell into disuse. A person who already holds a timber licence could apply for a permit to cut up to 100 trees on land not subject to an Agreement for Utilisation Operations.

The main method for allocation of timber rights was a timber licence. In 1997 the Act was amended to require timber licensees to enter into a Memorandum of Agreement with the Minister, specifying obligations relating to processing facilities, road construction, infrastructure development, employment, minimum royalties, environmental control, reforestation and dispute resolution. Other methods of allocation were 100-tree permits, mobile sawmill timber licences, coconut timber licences and sandalwood licences. In 1998, a Code of Logging Practice was introduced, applying a range of controls to all timber licensees.

The *Forestry Act* 2001 repealed the previous Act, but it kept in force the Regulations and Orders made under that Act, adapted as necessary. Licences, permits, etc., made under the previous Act were continued in force as if they were made under the new Act. The main features of the new Act are:

- Administration: the Forests Board of Vanuatu is established. Its main task is to supervise negotiations for entering into Timber Rights Agreements under the Act, and the Secretary General of the concerned local government council sits on the Board when it is considering agreements from that local government region.

- Planning: the Act lays down some general principles of forestry administration, and sets out the steps for preparation of the Forestry Sector Plan. This Plan, prepared in a consultative manner with the relevant government agencies, local government councils and the forest industry and reviewed on a regular basis, is the basic framework for forestry management in Vanuatu, and forestry operations cannot be approved outside its requirements.

- Access to the forest resource: all commercial forestry operations will require an agreement with the customary owners –either a Timber Rights Agreement, a Timber Permit or a Forestry Lease. The Act sets out the steps involved in negotiating a Timber Rights Agreement, starting with an application for approval to negotiate and then working through consultations and investigations, the declaration of indigenous groups, arrangement of negotiations, and the execution and approval of an Agreement. Such Agreements are only necessary for major logging operations, and for small-scale operations a Timber Permit can be issued. Where an investor wishes to engage in reforestation, the Act provides for grant of a Forestry Lease by the customary owners, for a maximum period of 75 years.

- Allocation of cutting rights: all commercial forestry operations will also require a licence –either a Timber Licence, Mobile Sawmill Licence, Sandalwood Licence or Special Licence. Some matters apply to all licences –certain environmental conditions, a ban on licence transfers, and requirements for surrender and variation of licences. Provision is also made for suspension and cancellation of licences. The Code of Logging Practice applies to all commercial forestry operations.

- Environment protection: if requested by customary owners to do so, the Minister may declare an area of forest which has particular scientific or social significance to be a Conservation Area. While such a declaration is in force no logging can be carried out in the Area. Other restrictions apply to all forestry operations, to protect rivers, beaches, steep land, rainfall catchment areas and particular species of trees. Further provision is made to protect forests from fire damage.

- Reforestation: provision is made for a Forestry Project Fund. All licensees must pay a forest management charge, all or part of which may be refunded where the licensee has met reforestation requirements. Payments may be made out of the Fund for forestry management, conservation and development purposes.

At the time of writing, work is proceeding on a new set of Forestry Regulations. Attempts have been made to introduce environment protection legislation in Vanuatu, but at present the only relevant law is scattered though other legislation.

The other law to mention is the *Forest Rights Registration and Timber Harvest Guarantee Act* 2000. This Act, passed as a result of private lobbying, created a special forestry regime for certain land, allowing transferable forestry rights in the land to be granted to any person. Timber planted on such land may be harvested without the need for a timber licence under the general forestry legislation. The main purpose of the Act is to set up the basis for trading in carbon credits.

Before examining how the various laws deal with a list of key forestry issues, an overview of the evolving forestry legislation in the six countries shows some major trends emerging:

(a) Forestry legislation is becoming longer and more complex, in the attempt to make more comprehensive provision for the multiple roles of forests;

(b) Planning has become a central activity –long-term planning for the forestry sector itself to ensure protection and sustainable management, and also use of management plans as important tools for control of individual forestry operations;

(c) Customary owners of the forest resource are now recognised as key parties in forest management and development, and legal provision is being made for their recognition and ongoing involvement in decisions over their resource;

(d) There is greater recognition of the value of involving key stakeholders, including provincial and local governments, forest industry bodies and environmental NGOs as well as the national government agencies and forest resource owners, in the decision-making process over forest management

3. APPROACHES TAKEN TO KEY FORESTRY ISSUES

As remarked above in the Introduction, FAO experience shows that some major trends are emerging in the development of forestry laws around the world –a broadening of management objectives, the strengthening of environment protection, improvement of planning tools, promoting small-scale forestry and increasing the public's participation in forest management. This worldwide trend is reflected in the new forestry legislation recently introduced in four of the Pacific Islands countries examined here –Fiji, Papua New Guinea, Solomon Islands and Vanuatu. Where the island nations of the Pacific differ from elsewhere, however, is in the extent to which the ownership under custom of lands, forests and other natural resources is safeguarded by their Constitutions. As most of the natural forest resource is located on customary land, this means that customary owners are essential parties in arrangements for access to the forest resource, and the forestry legislation must be framed around that central fact. Another common feature of the forestry scene –at least, in those countries with a substantial natural timber resource– is that large-scale logging operations are almost exclusively carried out by foreign operators or, more usually, the locally-registered subsidiaries of foreign companies.

These particular features have a strong influence on how the forestry legislation for these countries is drafted –what sort of operations need to be controlled, how legal access to the forest resource is gained, the balancing of power between the different stakeholders, and how

best to ensure that the forest resource is conserved and managed sustainably. While the treatment given to these matters varies in the countries studied, there is a general pattern in their recent forestry legislation which recognises certain issues as the key matters which must be addressed in a modern and workable forestry law.[4] A number of these key forestry issues are commonly found in forestry legislation elsewhere and, in a general way, they are inter-related, and must be brought together rationally so that the law forms a comprehensive and sensible whole. This part of the paper will, therefore, review the forestry legislation from the six countries, examining how the following "key" forestry issues have been addressed:

i) forestry administration;
ii) forestry planning;
iii) access to the forest resource;
iv) licensing of forestry operations;
v) environment protection;
vi) forest revenue and reforestation;
vii) enforcement;
viii) miscellaneous matters.

In the following treatment, the Sections referred to are from the main forestry law in each case, i.e. –

- for Tonga, the *Forests Act* 1961;
- for Samoa, the *Forests Act* 1967;
- for Papua New Guinea, the *Forestry Act* 1991;
- for Fiji, the *Forest Decree* 1992*;*
- for Solomon Islands, the *Forests Act* 1999;
- for Vanuatu, the *Forestry Act* 2001.

Any amendments have also been taken into account.

i) Forestry administration

The forestry laws in all six countries make some provision for a Forestry Service, and the functions and powers of its officers. In the case of **Tonga**, the provision is minimal: the term "forest officer" is defined to include any officer of the responsible Department, or any person upon whom the powers of a forest officer are conferred by the responsible Minister, and then forest officers are given basic powers to investigate forestry offences and take other punitive action (Secs. 2, 9). In **Samoa**, a separate law sets up the Department of Agriculture, Forests, and Fisheries, provides for the appointment of its Director, gives it general powers to promote the conservation, production and development of forests, and then gives the Minister and Director all power necessary to perform the functions of the Department *(Agriculture, Forests, and Fisheries Ordinance*, Secs. 3, 4, 5, 9-11). The *Forests Act* itself sets up the Forestry Division of the Department, provides for the appointment of the Chief Forest Officer and other officers, sets out the functions of the Forestry Division and then gives general management powers to the Minister, which may be delegated to the Chief Forest Officer (Secs. 3, 4, 8-10).

[4] This pattern possibly dates from the Forestry Act drafted by the present author for Solomon Islands under FAO assistance in 1989.

The Acts in the other four countries all provide for the creation of a Forestry Board, but its membership and functions vary between the countries. The Forests Board of **Vanuatu** is the smallest, having three members –the Director of Forests, Director of Lands and Head of the Environment Unit– with provision for the administrative head of a concerned local government council to sit on the Board in certain circumstances (Sec. 6 and Sched. 1). The Board's main task is to supervise negotiations for entering into Timber Rights Agreements with customary owners under the Act, but it is also given an advisory role to the Minister (Sec. 7). The Board's membership and the requirements for conduct of its meetings are set out in a schedule to the Act. **Fiji's** Forestry Board is the largest, with ten members –the Conservator of Forests, the Permanent Secretaries of Primary Industry and of Town and Country Planning, representatives of the Native Land Trust Board and the Land Conservation Board, and five persons from the private sector representing land owners, forest owners, forest users, the forest industry and the public interest (Sec. 4). The Board's role is advisory, particularly with respect to the preparation and revision of the National Forestry Plan (Sec. 4).

The **Solomon Islands** Forestry Board has nine members –the Secretary of the Ministry responsible for forestry, the Commissioner of Forests, the Governor of the Central Bank, an official appointed by the Finance Ministry, an Investment Board appointee and representatives of customary owners, timber permit holders, the Forest Industries Association and NGOs (Sec. 5 and the Schedule). The Board's role is to encourage discussions about forestry issues between the stakeholders, and advise the Minister on formulation of the National Timber Industry Policy and National Forest Resource Management Strategy, and on priorities for forestry research (Sec. 5). The National Forest Board of **Papua New Guinea** also has nine members –the Managing Director of the National Forest Service, the Departmental Heads of the Departments responsible for planning and for environmental matters, representatives of the Chamber of Commerce and Industry, the PNG Association of Foresters, Provincial Governments, the PNG Eco-Forestry Forum, forest resource owners and the National Council of Women (Sec. 10). The Board's role is to carry out the functions, manage the affairs and exercise all the powers of the PNG Forest Authority (Sec. 9). These include advising the Minister on forest policy and legislation, preparing and reviewing the National Forest Plan, supervising the National Forest Service, negotiating Forest Management Agreements with customary owners and selecting the operators for logging operations (Sec. 7).

This Board acts very like the board of directors of a company, reflecting the trend towards corporatisation of government agencies which PNG has followed in recent years, with World Bank support.[5] PNG's *Forestry Act* also provides for a planning body at provincial level. Each of the 19 provinces has a Provincial Forest Management Committee with six members –a provincial government official, an officer of the National Forest Service, and representatives of local government, land-owning groups (two representatives) and NGOs (Sec. 22). These Committees are responsible for a long list of tasks, including assisting in the preparation of Forest Plans and Forest Development Programs for the province, making recommendations to the National Forest Board on Forest Management Agreements and Timber Permits, supervising forestry extension services, overseeing the distribution of benefits to landowners and assisting in the settlement of land disputes (Sec. 30).

[5] See Filer *et al*. (2000) for a detailed account of the World Bank's efforts to influence PNG's forest policy and legislation.

In **Solomon Islands** and **Vanuatu**, the Acts lay down a set of principles which apply to decision-making by the Minister and senior officers or bodies carrying out forestry administration functions and powers. In **Vanuatu,** the law refers to requirements for sustainable management, development and protection of the forests and protection of their diversity, recognition of the rights of customary owners and respect for any international treaty obligations (Sec. 4). In **Solomon Islands**, the law adds to these the further requirement that the forests be conserved, managed and exploited in accordance with "the precautionary principle" (Sec. 4).

The **Fiji, PNG** and **Solomon Islands** laws make special provision for appointment of forestry committees as required (Secs. 5, 32 and Sec. 6 of the Schedule, respectively), but in **Vanuatu** this is taken to be part of the Board's general power to carry out its functions (Sec. 6).

ii) Forestry planning

The early forestry legislation provided for different classes of forests (e.g., forest reserves, protected forests, areas intended for afforestation, State forest land) and gave the forestry authorities the task of protecting, managing and controlling exploitation of the nation's forest resources. The laws introduced from around 1990, however, with their emphasis on sustainability of production and the multiple benefits of forests, included tools for long-term planning for the forestry sector. These planning instruments varied considerably between the four countries (Fiji, PNG, Solomon Islands and Vanuatu) –in what they contained, how they were prepared, what their legal effects were, and so on. Preparation of suitable forestry plans depends in each case on certain technical information being available, in particular an inventory of the nation's forest resources. At the lower levels, provision might be made for provincial or area forestry planning instruments, and management plans of different kinds are required for the conduct of forestry operations in concession areas.

The **Fiji** law makes the simplest provision for forestry planning, requiring only that the Forestry Board "meet as necessary to advise on the preparation and revision of the national forestry plan" (Sec. 4(3)). The draft legislation on which the *Forest Decree* was based made more elaborate provision, requiring the National Forestry Plan to be prepared in a consultative manner, based on an inventory of Fiji's forest resources, and also providing for the preparation of management plans for designated forest areas (FAO 1992). Logging licences would have been circumscribed by these planning instruments. Instead, while the Decree still calls for preparation of the National Forestry Plan, nothing is said about its contents, the method of its preparation, or its effects.

The next forestry planning system in level of complexity is **Vanuatu**'s. Here, the Act first sets out the purpose of the Forestry Sector Plan, being "to provide the basis for rational and effective management of the forestry sector", with the aims of maintaining sustainable yields, effective regulation of forestry operations, protection of the environment, sacred sites and wildlife, meeting the basic needs of ni-Vanuatu, effective participation in decision-making and meeting the local demand for timber and other forest products (Sec. 9). Next, follows the contents of the Forestry Sector Plan –descriptions of the different categories of forest land, of the other relevant physical, social and economic factors, and of the forestry operations suitable for each forest category; specification –for each island or part of an island– of the forest categories present and the kind and level of forestry operation suitable to promote the planning aims already listed (see above); and a statement of the order of priority for each kind

of forestry operation, to allow a rational allocation of the government's administrative resources (Sec. 10).

The Forestry Sector Plan is first prepared in draft form by the Director of Forests, who then consults with a range of officials and bodies on the Plan's contents and publicises the Plan for public comment, and then finalises the Plan and submits it to the Minister (Sec. 11). The Minister must then submit the Plan to the Council of Ministers, who can either approve the Plan or refer it back to the Director with a proposal for its amendment (Sec. 12). If it is referred back, the Director can either amend the Plan as proposed, or report to the Minister on why the proposed amendment is undesirable. The matter then goes back to the Council of Ministers, who has the final say on the Plan's contents. Once the Forestry Sector Plan is approved it is laid before the Parliament, and copies sent to local governments and made available to the public (Sec. 13). Provision is also made for variation of the Plan, and for its periodic review (Sec. 14). As will be seen below, the Plan forms the basic framework for forestry management in the country, and forestry operations cannot be approved outside the Plan's requirements.

The **Solomon Islands** law provides for a number of planning instruments –a National Forest Resource Management Strategy, a National Timber Industry Policy, and annual State of the Forests reports for each of the seven provinces. Whereas the National Forest Resource Management Strategy sets out the Government's policy for conservation and management of the nation's forest resources (Sec. 14), the National Timber Industry Policy sets out the Government's policy for development of the timber industry (Sec. 12). Both documents are approved by Cabinet (with or without modification), having first been prepared by the Commissioner of Forests with the appropriate consultation and referred to the Forestry Board for its consideration (Secs. 11, 13, 15).

The contents of the Timber Industry Policy include the priorities for granting licences, the domestic requirements for timber and any export restrictions or local processing quotas, the quotas on licences, any preferences for local companies in granting licences and the standard licence conditions (Sec. 12). The contents of the Forest Resource Management Strategy include the categories of forest use, the criteria for each category, zones within the country to which different categories apply, annual allowable cuts for the whole country or particular areas, and the methods for sustainable harvesting and for reforestation (Sec. 14).

The Solomon Islands law also provides for each Provincial Government to provide an annual State of the Forests report, setting out its "policy" regarding compliance with the Act, what reforestation measures it has taken, and any recommendations it has on forestry matters (Sec. 10). A further planning instrument is a Determination of Potential Forest Uses, which the Commissioner may make over any area of forest specifying the forest uses for which the area is suitable (Sec. 19). There is a consultative process laid down for making these Determinations, which begins with an application from the Provincial Government concerned (Sec. 20). These planning documents act as restrictions on the grant of logging licences, which can only be granted "in accordance with" the Timber Industry Policy and Forest Resource Management Strategy, and only on land where a Determination of Potential Forest Uses has been made (Secs. 24, 25).

The most elaborate system for forestry sector planning is found, as usual, in **PNG**, where provision is made for a National Forest Plan and Provincial Forest Plans in each of the 19 Provinces. The National Forest Plan, to be based on "a certified National Forest Inventory",

consists of the National Forestry Development Guidelines (prepared by the Minister in consultation with the National Forests Board and endorsed by the National Executive Council), the National Forest Development Programme, and a statement of the annual allowable cut for each province for the following year (Sec. 47). Provincial Forest Plans consist of Provincial Forestry Development Guidelines and a five-year "rolling forest development programme" (Sec. 49). The Guidelines provide an overview of the role of forestry in the province's economy, set out broad objectives and predictions over the long term (40 years) and medium term (10 years), showing how forestry is expected to contribute to the economy, and must be renewed every three years (Sec. 49). Provincial Forest Plans are submitted to the Board, which checks them for consistency with the National Forestry Development Guidelines and ensures that any inconsistency is removed (Sec. 50).

When timber rights have been acquired by the PNG Forest Authority (the only body capable of large-scale acquisitions), further planning instruments come into play. The first step is for the Board to arrange for a Development Options Study, aimed at assessing the potential for development in the project area, possible environmental and social impacts, how the customary owners may best participate in development, and so on (Sec. 62). On the basis of the Study, Project Guidelines are prepared in consultation with the customary owners and the Provincial Government concerned, which are the basis for evaluating applications for a timber permit and setting permit conditions (Sec. 63). The forestry project is advertised (Sec. 64), and project proposals are evaluated against the National Forestry Development Guidelines and other relevant policies and guidelines (Sec. 67).

Before turning to the next topic, it might be remarked that forestry planning systems –simple or elaborate– are only as good as the inputs they receive, that is, the technical information on the country's forest resources and the skilled personnel available to carry out the planning. Systems which are too ambitious are unlikely to produce their intended planning benefits.

iii) Access to the forest resource

In most Pacific Islands states, the great majority of the forest resource is on customary land, so access to that resource involves negotiations with the customary owners. In some countries, however, provision is also made for access to forest resources on State land and privately-owned land.

Tonga has a land tenure system which stands out from other Pacific Islands in that all land is vested in the Crown. Most of the country's land has, however, been allotted to private landholders. While the forests law intends a licensing system to be set up, the Regulations which were supposed to provide for forest management were never made –despite passage of the law over 40 years ago. The law's main application is to "unalienated land", and so it has little relevance to the allotted lands which make up most of the country. The forestry law in **Samoa**, based on New Zealand precedents of doubtful application, concentrates its attention on "State forest land", being all freehold or customary land acquired by the Government for forestry purposes, or public land set aside as State forest land (Secs. 13, 14). Forest produce is presumed to be the property of the State until the contrary is proved (Sec. 32). Owners of customary land must apply to the Government, asking for a licence or lease for forestry purposes to be granted either to the Government or another person (Sec. 65). When a licence or lease for forestry purposes has been granted, the land comes within the definition of "forest

land" (in Sec. 2), and the Director is responsible for preparing working plans for its management (Sec. 12).

In contrast to these very basic provisions in the early forestry laws, the laws dating from around 1990 make more careful provision for gaining access to the forest resources on customary land. In the case of **Fiji**, however, reliance is mainly placed on the special role of the Native Land Trust Board, in which all customary land is vested and which administers it on the customary owners' behalf. The law provides for grants of logging licences over different categories of land, and then requires "prior consent" of certain parties for each category. Thus, a licence may only be granted over native land with the consent of the Native Land Trust Board, over State land with the consent of the Director of Lands and the lessee of the land (if any), and over private land with the consent of the owner (Sec. 10).

In the case of **Papua New Guinea**, the main method for gaining access to forest resources is by a Forest Management Agreement entered into by the PNG Forest Authority with the customary owners (Sec. 58). In general, the owners must be incorporated under the *Land Groups Incorporation Act* before the Agreement can be executed, but provision is made for agents to execute the Agreement in certain circumstances, if incorporation of land groups is "impractical" (Sec. 57). The requirements for Agreements are set out, including specification of the monetary and other benefits to be received, the estimated volume of timber involved, the duration of the Agreement, a map and a certificate as to the identity of the customary owners and their willingness to enter into the Agreement (Sec. 58).

There are two other methods of gaining access to the forest resource, first by a Timber Authority for relatively small-scale logging (up to 5,000 cubic metres per annum), where the harvested timber is processed in PNG or where the logging is for the purposes of an agricultural or roadmaking project (Sec. 87), and secondly by a Licence, which is intended to enable a person acting as a contractor or consultant to a logging operator to be licensed by the Board to carry out forest industry activities (Sec. 91).[6] In order to deal with attempts to avoid the requirements of the forestry law by dressing up logging operations as agricultural or roadmaking projects, a very elaborate set of requirements was added by the *Forestry (Amendment) Act* 2000 for processing applications to carry out agricultural or other projects which involve the clearance of more than 50 hectares of natural forests, and roadmaking projects for roads greater than 12.5 kilometres in length (Secs. 90A-E).

In **Solomon Islands**, the main method for gaining access to forest resources under the new forestry law is by a Forest Access Agreement, which must be entered into for logging on any unregistered customary land (Sec. 68). The main steps in acquiring the timber rights are –

i) After a Determination of Potential Forest Uses has been made for an area of unregistered customary land, the Commissioner of Forests gives notice calling for the customary owners to lodge a Statement of Customary Ownership of the area (Sec. 71);

ii) The customary owners then hold a meeting and, "in a manner consistent with the custom of those owners", appoint customary representatives to act on their behalf and execute the Statement of Customary Ownership (Sec. 73);

iii) The Statement of Customary Ownership is then executed by the customary representatives, setting out the wishes of the customary owners in relation to logging their

[6] This intention is expressed in the Explanatory Notes accompanying the Forestry (Amendment) Bill 1993, which introduced the amended provision. The wording of Sec. 91 in fact goes much further.

land and identifying "the group which claims to be the customary owners" and the custom applying to the disposal of the forest access rights (Sec. 75);

iv) The Statement is publicised in the area, and any disputes as to ownership of the land are dealt with through the normal land dispute settlement system, with any necessary amendment then being made to the Statement (Secs. 76-78);

v) The Commissioner then calls a meeting of the customary owners, to select which of the permitted forest uses (if any) they wish to proceed on their land, and what kind of project (i.e., run by themselves or by an outside company) they want to have (Sec. 79);

vi) If an outside company is chosen, the Commissioner then advertises the fact that the forest rights are available to be acquired (Sec. 82);

vii) The Forest Access Agreement is executed by the customary representatives (Sec. 83);

viii) The Agreement must then be approved by the Provincial Government for the area concerned (Sec. 84).

The new forestry legislation in **Vanuatu** provides for three kinds of agreement for access to forest resources –a Timber Rights Agreement, Timber Permit and Forestry Lease (Sec. 15). For all large-scale commercial logging operations a Timber Rights Agreement is required, the main steps being –

i) The Forests Board, if asked to do so by the customary owners, calls for applications to negotiate for the acquisition of timber rights in their land (Sec. 16);

ii) Applications to negotiate are submitted to the Board which considers whether the proposed project is consistent with the Forestry Sector Plan, whether the applicant is qualified to conduct the project, and whether the administrative resources will be available to oversee the project, in which case it refers the application to a Forest Investigation Officer (Sec. 18);

iii) That Officer consults local authorities and conducts investigations among the customary owners, and then reports to the Board on whether they are willing to negotiate for the sale of their timber rights to the applicant, in which case the Board gives its approval to negotiations taking place (Sec. 19);

iv) The Forest Investigation Officer then consults and investigates further, and reports back to the Board on a list of matters, being:

- the boundaries of the land;
- the forest resource on the land;
- the area which must be excluded from forestry operations (for protection of the environment, watercourses, sacred sites, rights of way, etc., and to meet the needs of the customary owners); and
- the indigenous groups recognised as owning the land and timber rights under custom.

For each group of customary owners, the Officer must record certain details –the group's name, qualifications for membership, its controlling body, how the group makes decisions, who settles disputes within the group, etc. (Sec. 20);

v) The Declaration of Indigenous Groups is made public, and any objections are processed through the normal land dispute settlement system, with any necessary amendment then being made to the Declaration (Secs. 22, 23);

vi) The Board then arranges for a Negotiating Team to assist the customary owners with their negotiations for the sale of their timber rights (Sec. 24);

vii) The Timber Rights Agreement is executed by each group's controlling body, in accordance with the way the group makes decisions (Sec. 26);

viii) The Agreement is then checked by the Forests Board, and approved if all the requirements have been satisfied (Sec. 27).

The law also provides for the issue of Timber Permits, in cases where the volume and value of the timber is not high enough to justify the effort and expense of negotiating a Timber Rights Agreement. If the customary owners agree, the Director of Forests issues a Permit on their behalf and sets the terms and conditions, including royalties payable to the owners (Sec. 29). The maximum period of a Timber Permit is one year. The third kind of agreement is a Forestry Lease, which may be granted by the customary owners of land to a person for planting and harvesting a crop of trees. A Forestry Lease must be entered into under the general land legislation, and has a maximum term of 75 years (Sec. 30).

The foregoing treatment shows the careful attention which must be given in the Pacific Islands to the rights of customary owners. In two countries reliance is placed on legal bodies empowered by other legislation to make decisions over customary land –Fiji's Native Land Trust Board, and Incorporated Land Groups in PNG. In the cases of Solomon Islands and Vanuatu, quite detailed provision had to be made in the forestry law itself for identification of the customary owners and the process for negotiating agreements for the sale of their timber rights.

iv) Licensing of forestry operations

Apart from an agreement with owners of timber rights giving access to the forest resource, the other instrument usually required is a licence issued by the government to carry out the particular forestry operations. Not all forest activities are subject to government control, and it is usual to exempt the felling of trees by customary owners for their own domestic use, for example, from the requirement for a licence.

The forestry law in **Tonga** provides for licences to be issued for the right to acquire forest produce, but the regulations intended to provide for licences and permits were never made. In **Samoa**, the felling or removal of trees or other forest produce from forest land "without lawful authority" is an offence (Sec. 48). "Forest land" is defined to mean State forest land, or other land (including customary land) which is the subject of a forestry licence or lease (Sec. 2). The law further provides that no tree on or from freehold or customary land "may be sold or otherwise exploited for the commercial production of timber or other forest produce" except under a licence (Sec. 24). Licences may be granted by the Minister of Forests over State forest land, under standard terms and conditions covering payment of royalties and non-transfer of the licence without the Minister's consent (Sec. 22).

In **Fiji** the forestry law provides for a licensing officer to issue a licence authorising the felling and extraction of timber and other forest produce from various categories of land (Sec. 9), subject to certain consents being given in advance (Sec. 10). Licences are subject to conditions based on the requirements of "good logging practice", and other terms relating to payment of royalties, a logging plan, processing facilities, payment of bonds, non-transfer of the licence, and its suspension and revocation for breach of the licence conditions (Secs. 13,

14, 16-19). The law further provides that felling or extracting timber, taking forest produce or clearing land without authority under the Act is an offence (Sec. 28), but this does not apply to persons exercising hunting and gathering rights under custom on customary land, or cutting or removing timber or other forest produce for house-building, communal village construction or domestic firewood (Sec. 21).

In **PNG**, under the new forestry law which came into operation in the early 1990s the PNG Forest Authority has a virtual monopoly on acquisition of timber rights, and it then arranges for the allocation of cutting rights. After execution of a Forest Management Agreement with the customary owners, the Forest Authority then arranges for a Development Options Study to be carried out, Project Guidelines are prepared, the project is advertised, proposals are evaluated, a Project Agreement is executed and finally a Timber Permit is granted to the successful bidder (Secs. 61-77). At different stages in this process the customary owners, Provincial Forest Management Committee, National Forest Board, Minister for Forests and, in certain circumstances, the National Executive Council are all involved. A Timber Permit must specify the allowable cut, rate of royalties, levies and charges, and the provision which must be made for roads, bridges and other infrastructure (Sec. 73). Elsewhere in the Act requirements are laid down for a Project Agreement (Sec. 72), Project Statement (Sec. 100), Five-Year Working Plans (Sec. 101) and Annual Logging Plans (Sec. 102), and general provisions are made for extension of Timber Permits, their transfer, amendment or surrender, and suspension and cancellation (Secs. 78-86). Provision is also made for grants of Timber Authorities (Sec. 87-90) and Licences (Secs. 91-97) in certain circumstances.

It was seen above that, in Tonga, licences are only required in the case of commercial forestry operations, while in Fiji licences are required for any felling of trees or extracting of forest produce, but exceptions are made for certain customary or domestic operations. The way non-commercial forestry operations by the customary owners is treated in PNG is more complicated. In the first place, "forest industry activities" are defined to mean only "commercial" forestry activities (Sec. 2). Then, the term "forest industry participant" is defined to mean any person engaging in those commercial forestry activities where the forest produce concerned exceeds a certain volume (500 cubic metres) or –in the case of sandalwood, timber or rattan– exceeds a certain value (K 20,000) in a calendar year (Sec. 2). The Act then provides that forest industry participants may only carry out such commercial forestry activities under a Timber Permit, Timber Authority or Licence granted under the Act (Sec. 55), and it is an offence for them to do so otherwise (Sec. 122(1)). There is another offence of felling and removing trees and forest produce without lawful authority, but this applies only to customary land the subject of a Forest Management Agreement, Timber Authority, or Timber Rights Purchase area under the previous forestry law (Sec. 122(2)). What is apparently *not* an offence is for any person to engage in non-commercial forestry activities on customary land, or to engage in commercial activities below the volume (500 cubic metres) and value (K20,000) limits.[7]

In **Vanuatu**, the approach is taken of confining the requirements for a licence to "commercial forestry operations", which are defined as felling trees or removing timber for the purpose of their sale or the sale of their products, but not where such felling or removal by the customary owners is for sale to ni-Vanuatu "in accordance with current customary usage" (Sec. 3). All commercial forestry operations require a licence, of which there are four kinds –a Timber

[7] There is a provision in PNG's land legislation that any person who, without authority, fells a tree on customary land is guilty of an offence.

Licence, Mobile Sawmill Licence, Sandalwood Licence or Special Licence. There are a number of provisions which apply to all licences (the Code of Logging Practice, environment protection measures, a ban on licence transfers, provisions on surrender, variation, suspension and cancellation of licences, and bonds –Secs. 33-43). The law then provides for grants by the Director of Forests of a Timber Licence (Sec. 44), Mobile Sawmill Licence (Sec. 46), Sandalwood Licence (Sec. 47) and Special Licence in special circumstances –e.g., to prevent waste after a cyclone or clearing for agriculture (Sec. 48). The Act also provides for review of a decision by the Director not to grant or renew a licence (Sec. 49).

In **Solomon Islands**, the basic provision is that no person shall harvest or remove any timber from any land except under a licence, or for domestic purposes, traditional purposes or purposes which do not involve the sale of the timber or any product of the timber (Sec. 23). To do so is an offence (Sec. 23(4)). There are three kinds of licence –an Ordinary Timber Harvesting Licence, a Local Timber Harvesting Licence, and a Community Forestry Scheme Licence. The Ordinary Timber Harvesting Licence allows harvesting by the licensee or its agent or contractor (Sec. 24), but the Local Timber Harvesting Licence is confined to persons who are customary owners of the land concerned, it is limited to a maximum of one year and 200 cubic metres of timber, and the timber must be processed in Solomon Islands (Secs. 26, 27, 33). A Community Forestry Scheme Licence can be granted to a person or body who is supervising a Community Forestry Scheme, it allows harvesting of a maximum of 2,000 cubic metres per annum from the land of the Scheme participants, and the timber must be processed in Solomon Islands (Secs. 28, 34). Land Clearing Permits are required for any land clearing other than for domestic gardens, but no timber produced by clearing can be sold without a licence (Sec. 38, 39).

A number of the laws make special provision to ensure that the contractors or other agents of logging companies are covered by the controls imposed by licences. In **PNG**, such persons must register as either a forest industry participant or a consultant and they must obtain a licence to engage in forest industry activities (Sec. 91). In **Vanuatu**, the effect of a licence is to authorise the licensee, the licensee's employees and any person nominated in the licence as agent or sub-contractor of the licensee, to conduct the forestry operation, and any acts or omissions by the agent or sub-contractor are acts and omissions of the licensee (Sec. 32). A licensee who wishes to replace an agent or sub-contractor must apply for a variation of the licence (Sec. 36(2)). The **Solomon Islands** law only allows sub-contracting in the case of Ordinary Timber Harvesting Licences, and the sub-contracting arrangement must be submitted to the Commissioner of Forests for approval (Sec. 36). Provision is made for the Commissioner to issue guidelines or standard model agreements for such sub-contracting (Sec. 37).

v) Environment protection

In the older forestry legislation, the main way of dealing with environment protection was to impose protective regimes over declared areas of forest. Thus in **Tonga** the forestry law provides for the declaration of "forest reserves", and for regulations to be made relating to the protection, control and management of forest reserves, and prohibiting their occupation or clearing, or the hunting of animals there or lighting of fires (Secs. 3, 4). Unfortunately, to date no such regulations have ever been made, and the scope of forest reserves is confined to land which has not been leased or otherwise alienated. **Samoa**'s forestry law has a part dealing with "protected land". The Head of State, acting on Cabinet's advice, may declare any land to

be protected for a purpose of forestry –which includes climate protection and soil and water conservation– for a period up to five years (which can be renewed) (Sec.59). Upon such a declaration, the owner of the land is not allowed to cultivate the land or fell trees (except for traditional or domestic purposes) without the Minister's consent (Sec. 61). In addition to these areas brought under protective regimes, it was always open to the forestry authorities to impose conditions on licences or other concessions safeguarding watercourses, coastlines and other environmentally sensitive areas. Samoa's forestry law also has a part on protection of forests against fire (Secs. 39-46).

Fiji's forestry law adopted in 1992 provides for preparation of a national forestry plan, but says little else about planning for environment protection. Certain land may be declared to be "forest reserves", to be managed as permanent forest for both protection and production, or "nature reserves", to be managed "for the exclusive purpose of permanent preservation of their environment, including flora, fauna, soil and water" (Secs. 6,7). The Decree also has a part dealing with fires (Secs. 23-27).

In **Solomon Islands**, the new forestry sector planning system provides for zoning of the country according to the different categories of forest use set out in the Forest Resource Management Strategy (Sec. 14), and, at the lower levels, for the potential forest uses of particular areas to be determined by the Commissioner of Forests in advance of any grant of forestry concessions (Secs. 19, 25). In addition to use of these planning documents for protection of forest areas, a part of the Act provides specifically for Forest Reserves, which can be declared by the Minister to protect the forest in any rainfall catchment area (Sec. 91). These are declared in a consultative manner, with provision made for compensation to be paid for rights lost as a result of the declaration (Sec. 92). It is an offence to fell trees (except for domestic uses), clear or cultivate land, reside on or graze livestock on any Forest Reserve (Sec. 94).

In **Papua New Guinea** environment protection is handled in a similar way, although most reliance is placed on PNG's comprehensive environment protection laws. The Act itself makes little specific provision for environment protection, and the division of the Act dealing with forest protection only relates to protecting forests from fire (Secs. 52, 53). Under the original National Forestry Development Guidelines released in 1993, each of the 19 Provincial Governments is responsible for zoning of forests in the province, one of the categories being Protection Forest –for protection for ecological, cultural or environmental reasons (p. 4). The only body able to acquire timber rights after commencement of the Act is the PNG Forest Authority, and the first step it must take before allocating cutting rights is arranging for a Development Options Study to be carried out, to assess among other things the possible environmental impact of the forestry project (Sec. 62). After evaluation of the project, the applicant for a timber permit is required to submit an environmental plan approved under the *Environmental Planning Act* of PNG.

Vanuatu also deals with environment protection as a central concern of forestry sector planning under its forestry law and, in keeping with its National Forest Policy, the Forestry Sector Plan must describe the different categories of forest land in the country, and show the distribution of forest categories on each island (Secs. 9, 10). The Government's most senior environmental officer is consulted on the contents of the Plan as it affects protection of the environment (Sec. 11). Forestry operations cannot be approved outside the Plan's requirements (Sec. 32 (2)). During negotiations for a Timber Rights Agreement, the areas

which must be excluded from forestry operations for flora and fauna reserves, environment protection and protection of watercourses must be identified and described (Sec. 20), and the Agreement can only be approved if adequate provision has been made for these matters (Sec. 27).

The new forestry law in Vanuatu also has a special part on environment protection. One division of this part deals with Conservation Areas, enabling the Minister, upon the request of the customary owners, to declare an area of forest which has particular scientific or social significance or other special value to be a Conservation Area (Sec. 50). While such a declaration remains in force, no logging can be carried out in the Area (Sec. 51). The declaration can be cancelled on the request of the customary owners (Sec. 52). The second division sets out restrictions which apply to all forestry operations –to protect rivers, beaches, steep land, rainfall catchment areas and particular species of trees (Secs. 53, 54). These restrictions are implied conditions in every licence (Sec. 33). The third division of this part provides for protection of forests from fire (Secs. 55, 56).

vi) Forest revenue and reforestation

Forest revenue can come from a number of sources –sales from government forests where they exist, fees for licences, etc., forest-related taxes, fines and other penalties for forestry offences. Sometimes all these receipts from forestry are simply paid into the nation's consolidated revenue, but on other occasions provision is made to earmark some or all of this money for a particular forestry purpose. Where, for example, a logging licensee is required to pay a charge to cover the cost of replacing the timber resource, it makes sense for that money to be dedicated for the purpose of reforestation, and for a special reforestation fund to be set up. This can lead to conflict with Treasury officials, who might prefer all forest receipts to go into consolidated revenue, and for the Forestry Service to bid for funding for its operations annually through the budgetary process, like other government agencies have to do.

Tonga's forestry law allowed for regulations to be made prescribing fees and royalties to be paid, and for the payment of grants or bonuses "out of public revenue for the encouragement of forestry" (Sec. 4), but no such regulations have been made. In **Samoa**, the regulation-making power was used to prescribe fees and royalties for extracting forest produce, but the moneys are presumably paid into consolidated revenue. Leases of forest land may be granted for any purpose of forestry, including the establishment of forests (Sec. 25). **Fiji** also makes minimal provision in its forestry law for reforestation. Logging plans are required to specify any reforestation requirements (Sec. 14(2)).The planting of trees and their management and harvesting are made subject to "applicable standards under this Decree" (Sec. 12), and licences to log planted timber are exempt from the payment of royalties (Sec. 12(3)).

Papua New Guinea's forestry law calls for the establishment of a "forest revenue system which shall form the basis for prescribing royalties and other forest charges" (Sec. 119). The Minister fixes and reviews the royalty rate payable under timber permits (Sec. 120), and can fix levies to pay for the PNG Forest Authority, forest management and development, provincial development and follow-up development (Sec. 121). By the National Forestry Development Guidelines, an elaborate formula for the calculation of a stumpage charge is laid down, and provision is made for distribution of stumpage between the customary owners, consolidated revenue and the Forest Owners' Investment Trust (pp. 17-20). There is also a formula for funding the PNG Forest Authority, with provision for various incentive payments and penalties (pp. 19-20). Reforestation is not specifically dealt with by the forestry law, but

according to the Guidelines the financing and management of reforestation is "primarily … the responsibility of the private sector", including the Forest Owners' Investment Trust (p. 11). The normal legal instruments of a Forest Management Agreement and Timber Permit are to be the main mechanisms for the establishment and management (including harvesting) of forest plantations (p. 10).

The approach taken to reforestation in **Solomon Islands** is different. Provision is made for a Forest Development Levy to be imposed, payable by timber harvesting licensees into a Forest Trust (Sec. 56). The Trust is established for the management and development of forests in the country –the Forest Development Levy and half of the revenue derived from licence fees and penalties for forestry offences are to be paid into the Trust, and money may be paid out of the Trust for tree planting and reforestation (Sec. 9). The Timber Harvesting Levy, on the other hand, can be paid into either consolidated revenue or the Forest Trust, as specified in the order imposing the levy (Sec. 57).

Vanuatu took a similar approach, but extended it further. The forestry law establishes the Forestry Project Fund "for the purpose of reforestation and to assist with funding the full range of activities of the Department responsible for forestry" (Sec. 57). The holder of any licence under the Act must pay a Forest Management Charge, equivalent to half the royalty paid to the customary owners, but reducible where the licensee has complied with reforestation requirements (Sec. 60). This Charge and any application and licence fees are paid in to the Forestry Project Fund (Sec. 58), while payments out may be made for a long list of purposes, including reforestation, forestry research, extension, information and training, and the administration of timber licences, control of commercial forestry operations and collection of information on forest resources and their utilisation (Sec. 59). Payments may also be made out of the Fund to a local government council or community group for any of these activities (Sec. 59(5)). The law also makes provision for grant of a forestry lease by the customary owners for tree planting (Sec. 30), and a special licence can be issued for harvesting forest plantations (Sec. 48).

vii) Enforcement

The provisions for enforcement are, of course, vital for the effectiveness of any law. The most common mechanism for enforcement is penalties for breach of the law's requirements, and all of the forestry laws reviewed here provide for offences and penalties in one form or another. In **Tonga**, as well as providing for particular forestry offences (Sec. 10), the forestry law also provides the general offence of contravening or failing to comply with a provision of the Act (Sec. 14). This approach is frowned upon nowadays, as tending to cause uncertainty over what conduct amounts to an offence.

The forestry law in **Samoa** gives an idea of the kinds of offences usually involved in forestry legislation –making false entries or returns (Sec. 47), unlawful cutting or removal of forestry produce (Sec. 48), offences with respect to animals on forest land (Sec.50), offences with respect to forest officers (Sec. 51), and counterfeiting marks or brands, cultivating forest land or constructing roads in forest land without authority (Sec. 52). In addition to penalties for offences under the forestry law, it is usual to add a requirement to pay compensation for any damage caused, and a power for the court to order confiscation of all forest produce, and all tools, boats, vehicles or equipment, etc., used in committing the offence.

Penalties vary, of course, with the seriousness of the offence. Sometimes a maximum penalty is set for all offences, and it is left to the courts to work out what is appropriate in each case. **Fiji** adopts this approach, setting a maximum of F$10,000 or imprisonment for twelve months or both for all forestry offences (Sec. 29). In **Papua New Guinea, Solomon Islands** and **Vanuatu**, however, a maximum penalty is set for each offence. PNG has five levels of penalties –K100,000, K50,000, K5,000, K2,000 and K1,000, with corresponding imprisonment terms ranging from five years to one year (Secs. 122-26). **Solomon Islands** provides different levels of penalty for individuals and corporations in certain cases –$500,000 and five years imprisonment for individuals, and $2,000,000 for corporations (Sec. 99(5)). **Vanuatu's** penalties range from a maximum of VT1,000,000 for conducting a commercial forestry operation without a licence (Sec. 70) to VT50,000 for leaving a fire unattended near a forest (Sec. 56).

Some of the laws make provision for compounding of offences –that is, allowing the offence to be settled for a lower penalty by agreement, without going to court. While this may save time and expense (similar to an "on-the-spot" fine), there are risks involved, including the opportunity for corruption. In **Solomon Islands**, only the Commissioner of Forests may compound offences, and only in cases of less serious offences (e.g., failing to scale or grade timber properly) (Sec. 110). To facilitate the prosecution of forestry offences, **Vanuatu** has allowed the Director of Forests, with the approval of the Public Prosecutor, to authorise a Forest officer to prosecute offences under the Act (Sec. 70 (14)). Another device sometimes used to facilitate prosecutions is a reversal of the burden of proof. It is a general principle of law that the burden lies on the prosecution to prove that an offence has been committed, and it is not necessary for the accused to prove his or her innocence. Sometimes, however, it is acceptable to shift the burden of proof –e.g., where the facts of the case are most likely to be known only to the accused. Thus in **Solomon Islands** for example, it is provided that a person charged with the offence of felling timber in a forest reserve is presumed not to be exercising permitted customary rights "until the contrary is proved" (Sec. 94 (2)). What this means is that people would have to prove they did have those customary rights, rather than the prosecution having to prove that they didn't.

Another aid usually provided to assist enforcement of forestry laws is wide powers of inspection. In **Vanuatu**, for example, a Forest officer is entitled to enter and inspect any land, vessel or building (other than a private dwelling), inspect any records, timber or other forest produce, and require a person to execute a statutory declaration relating to matters known to that person (Sec. 62).

With forestry operations, a major tool for enforcing compliance with the law's requirements is the power to suspend and cancel the licences or other instruments under which the operations are being conducted. Such action, of course, has major commercial implications for the operators, who are likely to take care to avoid it. An illustration of how this matter is handled is provided by **Vanuatu's** recent forestry law. If the Director of Forests believes that a licence term is not being complied with, the first step is to serve a Notice of Non-Compliance on the licensee, specifying the term which has been breached and the period for rectifying the non-compliance (Sec. 37). If the licensee fails to rectify the matter in the time specified, the Director may suspend the licence and serve a Notice to Show Cause why the licence should not be cancelled. All operations under the licence must cease, and if the licensee fails to explain why the licence should not be cancelled the Director may then cancel the licence. Because of the seriousness of a licence cancellation, an avenue is provided for appeal to a

court against the cancellation (Sec. 38). In **Fiji,** breach of a licence term is also treated as an offence (Sec. 28).

Finally, mention should be made of performance bonds as further mechanisms to ensure that licence terms are met, and that all necessary payments (royalties, taxes, etc.) are made. So as not to cause financial hardship, it is usual to allow bonds to take the form of a bank guarantee rather than actual money. **Vanuatu** has a provision allowing exemptions to be given to the requirement for a bond in cases where the licensee has a proven record of compliance with licence terms and payments, or where the scale of the forestry operations does not justify the effort and expense of securing a bond (Sec. 41).

viii) Miscellaneous matters

The preceding key forestry issues are central matters to be addressed by a country's forestry law. Other matters are, perhaps, not so central or complex, but they are still important in fleshing out the law, and so will be listed here with examples from among the six countries.

a) Processing and marketing

The old practice was to make special provision for sawmilling licences, etc., but now it is more usual to make appropriate provision for timber processing in the logging licence or other concession. In **Vanuatu**, for example, a timber licence must set out any requirements for the operation of a sawmill (Sec. 44(6)). Vanuatu also makes special provision for a Mobile Sawmill Licence (Sec. 46). **Solomon Islands**, on the other hand, makes special provision for a Timber Processing Licence, but small-scale operators can process timber under a Local Timber Harvesting Licence or Community Forestry Scheme Licence (Sec. 41).

Timber marketing has been an area dogged by transfer pricing, and some countries have taken steps to overcome these abuses. The forestry law in **Papua New Guinea,** for example, gives the State an option to purchase logs compulsorily from timber permit holders at the market price (Sec. 115). A similar provision is made in **Solomon Islands**, so that persons can be licensed to compulsorily purchase timber from timber harvesting licensees at determined prices, for processing in the country (Sec. 59). **Vanuatu**, by contrast, has adopted a ban on log exports as a way of handling these abuses (see below).

b) Export controls

Most countries try to encourage local industries and "value-adding" to timber by placing restrictions on the export of forest produce. In **Vanuatu**, the export of logs and flitches is, with a few exceptions, prohibited (Sec. 61). In addition, the export of any other class of timber or forest products, or timber or forest products in any condition, can be prohibited or made subject to an export permit. **Papua New Guinea** has mainly tried to discourage exports of round logs by taxation measures, but its Act enables the Minister to declare any species or class of timber to be banned from export, or to require the Minister's permission for export (Sec. 134). The **Solomon Islands** forestry law has a provision empowering the Commissioner of Forests to direct a person who has applied for authority to export any timber to sell that timber to another person at a price which is higher than that specified in the export application (Sec. 63).

c) Codes of Logging Practice

The South Pacific Forum, under pressure from the Australian Government, in 1994 endorsed a "regional code of conduct" for sustainable forest management, and member countries have been progressively implementing its requirements. In **Vanuatu** the Code of Logging Practice was implemented by an Order in 1998 setting out the practices and standards for logging and forest management, including for environment protection, planning for commercial forestry operations, the timber harvesting and removal processes and road construction methods, selection of silvicultural regimes, supervision, the licensing of specialist forest operators, and so on. By the forestry law, the Code of Logging Practice applies to all commercial forestry operations in the country, and penalties up to VT1 million may be imposed for breach of the Code (Sec. 43). In **Solomon Islands**, the forestry law requires the Minister to make regulations prescribing a code of practice for timber harvesting and forest management (Sec. 16), but so far no such regulations have been made.

d) Regulations

As with any legislation, the forestry law allows the legal requirements for less important matters (forms, fees, procedures, etc.) to be laid down in "subordinate legislation", usually in the form of Regulations. Such laws are mostly made by the Minister, and must be tabled in the Parliament where they can be debated and disallowed. Previous law-making practice was to rely heavily on the power to make Regulations, and the early forestry laws of **Tonga** and **Samoa** contain long lists of subjects –some of them having major policy significance– on which Regulations can be made. It should be remembered, however, that the country's legislature is its main law-making body, and the power of the executive (Ministers, etc.) to make laws should be confined to more administrative matters. This has been the practice with the more recent forestry laws of **Papua New Guinea**, **Solomon Islands** and **Vanuatu**.

The Regulation-making power does, however, fulfil a useful function, in allowing procedures, forms and the other details of a law's implementation to be kept separate from the main Act. The Act itself can thereby be kept more compact and less cluttered, making it easier to understand the basic principles and legal rights and duties. Another advantage is that Regulations, etc., are easier to amend than the Act itself when a change becomes necessary, because Parliament does not have to pass an amending Act, but this again emphasises the need to confine Regulations to administrative-type matters.

If Regulations are made which go beyond the power given in the Act to make them, then their validity can be challenged. For this reason, it is usual to give the power to make Regulations in pretty general terms, and then to list particular subjects on which Regulations may be made. In **Vanuatu**, for example, the Minister is empowered to make Regulations prescribing all matters that are "necessary or convenient to be prescribed for carrying out or giving effect" to the Act, and then a list of five particular matters follows upon which regulations may be made –standards for timber grading, a code of practice for timber preservation, advisory or research bodies, management of Conservation Areas, and penalties for breach of the Regulations (Sec. 71). By contrast, **Solomon Islands** follows its general regulation-making power with a list of 24 particular matters (Sec. 115), while **Papua New Guinea** lists 37 (Sec. 135). **Fiji** follows a middle course, with 15 particular matters listed (Sec. 38).

In addition to these lists, the forestry laws usually include within their general text requirements that applications, etc., must be made "in the prescribed form", together with

payment "of the prescribed fee", and that timber licences, etc., must be "in the prescribed form", and must contain "such terms, conditions and restrictions as may be prescribed". It can easily be seen that Regulations prescribing such matters can be of major practical significance to the people affected by them (e.g., timber licensees), and considerable care is needed in drafting them to make sure that they are reasonable and workable.

e) Indemnities

It is usual to provide a protection to officers who are simply carrying out their duties from legal action being taken against them. For example, in **Solomon Islands** the forestry law provides that no proceedings shall be brought against the Minister, Commissioner of Forests or other listed officials "for any matter or thing done by him in good faith in the performance of his duties or the discharge of his functions under this Act" (Sec. 114).

f) Reporting

Some forestry laws require annual reporting by the Chief Forestry Officer or Forests Board, while the keeping of records by timber licensees, etc., is obviously very important to enable their operations and compliance with licence requirements to be monitored. **Vanuatu** requires licensees to keep accurate records, and to submit to the Director of Forests reports on volumes of timber harvested, outputs of sawmills and prices, and other statistics or information required by the Director, while the Director must report annually on the conduct of all commercial forestry operations, the volume and value of timber extracted, what reforestation has been carried out during the preceding year, and the current status of the Forestry Sector Plan (Sec. 68). The forestry law also provides that logging licences are public records, and must be made available to members of the public (Sec. 68(3)).

g) Transitional provisions

Four of the countries studied here replaced their forestry legislation after 1990. In **Fiji's** case, much of the previous forestry system was retained in the new law, but the new forestry laws of **Papua New Guinea, Solomon Islands** and **Vanuatu** brought in major changes, in particular to forestry administration and planning, methods of timber rights acquisition and the licensing of forest operators. In these cases, a major question was how to handle the ongoing forestry operations which had been set up under the old legislation which was now replaced.

The approach taken in **Vanuatu** was the simplest, reflecting the fact that the level of forestry operations under the replaced legislation was nowhere near as extensive, or as disastrous, as in Solomon Islands or Papua New Guinea. The forestry law simply provides that a licence in force under the old Act shall continue in force as if it had been granted under the new Act "so far as it is not inconsistent with any provision" of the new Act (Sec. 72). So any inconsistencies between the licence and the new Act are struck down, and all the new requirements –on compliance with the Forestry Sector Plan, environment protection, suspension and cancellation of licences, etc.– apply to the old licence.

A more elaborate approach was taken in **Solomon Islands**, where existing logging licences were saved and treated as Ordinary Timber Harvesting Licences under the new Act, but the licensees were required to apply within six months for their licences to be continued or else they were terminated (Secs. 119, 120). Where licences were continued, within three years of the Act commencing the Commissioner of Forests could impose new conditions in relation to

harvesting, export and saw-milling volumes so as to bring the licence into line with the National Timber Industry Policy and National Forest Resource Management Strategy, and the proposed "Code of Practice" will apply to all such licences (Sec. 121).

Most complex of all was the treatment given to existing logging concessions in **Papua New Guinea**. First, all timber permits granted under the old *Forestry Act* were given "full force and effect" as if the old Act had not been repealed (Sec. 137). Secondly, all concessions granted under the old *Forestry (Private Dealings) Act* were deemed to be timber permits granted under the new Act. Thirdly, the Forest Board was given the power to require variations to be made to such "saved" permits if it was of the opinion that a term or condition is "at variance with the provisions of this Act" (Sec. 137(2)). The Act sets out a procedure for this case-by-case adaptation of existing logging concessions to the requirements of the new Act, and the Board is able to grant a "grace period" to give time for existing concession-holders to comply (Sec. 137(3)). During this grace period, the provisions of the new forestry law do not apply. These arrangements allow for a long drawn-out transitional period, during which all existing operations have to be reviewed and variations negotiated. Meanwhile, the discredited old system stays largely in place.

4. CHALLENGES FOR FORESTRY LEGISLATION IN THE REGION

In this final part of the paper, the attempt is made to identify the main areas which experience shows have been the most challenging in drafting forestry legislation for the Pacific Islands, and to suggest possible improvements in the existing legislation. As mentioned in the Introduction, the main purpose of this paper is to provide background material in preparation for an FAO regional workshop to discuss the issues and challenges for forestry legislation in the South-west Pacific, and no doubt other improvements will be suggested during that workshop. For purposes of the present discussion, the main issues have been grouped under four main headings:

i) a workable forestry planning system;
ii) meaningful involvement of the customary landowners;
iii) effective controls on logging companies;
iv) post-logging land use.

Once again, it is important to remember that a forestry law does not stand alone, but must work together with a wide range of other laws (on land tenure and land use, environment protection, the system of government, taxation, etc.) which have an impact on forests and forestry operations. A workable forestry law depends on workable laws in these other areas, and deficiencies in those areas (e.g., in the land tenure laws) really have to be dealt with by reforms there, rather than by forestry law reform.

i) A workable forestry planning system

In the preceding treatment, we saw that countries in recent years have put great emphasis on long-term planning for the forestry sector, not only to achieve sustainable management of the resource, but also to recognise the multiple roles of forests. A number of legal mechanisms have been included in the forestry laws of the six countries studied, to put in place planning systems which take into account the different roles of forests, the stakeholders who have an interest in those roles, and each country's system of government. All of the countries operate under representative democracies, with Parliaments as the paramount law-making bodies, and an executive arm of government responsible for day-to-day decision-making. The key person

in the executive on forestry matters is the Minister responsible for forestry, so the first aspect to be considered is the role which forestry laws give to the Minister.

a) The Minister's role

The Minister is at the top of the forestry decision-making system and, in the best of all worlds, the Minister would act on the advice of the forestry professionals in the bureaucracy, and only make decisions in the national interest. Ministers are also, however, politicians, and inevitably their decisions are influenced by their own personal views and interests. Control over forestry and the rich revenues involved is a fertile ground for abuse of a Minister's power, and safeguards are usually included in forestry laws to ensure that the Ministers' powers are exercised responsibly. These safeguards have not always been successful.

Two of these safeguards appear in Vanuatu's new forestry law, the first being a requirement that certain of the Minister's powers under the Act can only be exercised "on the advice of the Council of Ministers". This means that the Minister must first submit the matter to the consideration of his or her Ministerial colleagues, and can only act in accordance with their advice. The second safeguard is to set out a list of "principles" which govern the Minister's (and others') decision-making under the Act. Solomon Islands also took this approach, laying down eight principles for forestry conservation and management.

But not all matters can be referred to the Minister's colleagues, and even the Minister cannot spend time on all the forestry decisions which must be made. The old practice was for most of the decision-making functions in an Act to be given in the Minister's name, and then to give the Minister wide power to delegate the exercise of those decision-making functions to others. Samoa's *Agriculture, Forests, and Fisheries Ordinance* of 1959 is an example of this old approach. More recently, the drafting practice has been to confine the Minister's powers to only those matters which are sufficiently serious as to require the Minister's personal attention, and for other powers to be given to the head of the Forestry Service, or other responsible officers. The risks involved in a wide power of delegation are illustrated by the original provision in PNG's forestry law, allowing the Minister, after consultation with the Forest Board, to delegate "to any person all or any of the powers and functions of the Board" under the Act. This power, which would effectively remove the Board from decision-making, was greatly reduced by an amendment in 2000, after much pressure from the World Bank (Filer *et al*. 2000: 16, 54).

Another modern mechanism aimed at responsible decision-making is to provide for boards of experts and other interested parties to be given planning powers, but reports show the difficulty of keeping Ministers at arm's length from operational decisions in which they have an interest.[8] In addition, the "stacking" of boards with ministerial nominees is a risk which must be guarded against in the legislation. At the end of the day, however, abuse of political power is something which can only be handled politically, and the integrity of any system depends on the effective control of corruption and abuse.

b) Inputs to planning

A planning system is, of course, only as good as the material and expertise which goes into it. In one case (PNG), provision is made in the forestry law for preparation of a forest resource

[8] For example, *The Sydney Morning Herald*, April 13-14, 2002, p. 33.

inventory as the basis for planning, but other countries leave this to be handled administratively. In PNG, the law calls for a "certified National Forest Inventory" to be prepared before preparation of the National Forest Plan, but it may be more prudent to allow the planning to proceed on the best data available, and later upgrade the plan, rather than to hold up matters till a high-quality inventory has been completed.

Forests are only one natural resource, and forestry is only one primary industry. Many interests are involved in the protection, development and sustainable management of forests and regulation of the forest industry, and a recent device used to gain inputs to forestry planning by the stakeholders is to set up a special board with representation from the main interest groups. The largest such body in the region is Fiji's Forestry Board, with ten members representing, in addition to forests, primary industry, land use planning, conservation, the Native Land Trust Board, land owners, forest owners and users, the forest industry and the public interest. Both PNG and Solomon Islands have nine members on their boards. The problem with such bodies is that they can be unmanageable –difficult and costly to call together for meetings, and too big to allow agreements to be reached.

A different consultative approach is taken in Vanuatu. Instead of using the Forests Board as the main planning body, the Act puts the Director of Forests in charge of preparing the Forestry Sector Plan, but it requires the Director to consult with the various agencies and the general public in finalising the Plan. The agencies which must be consulted represent land use planning, the environment, the forest industry, local governments, the National Council of Chiefs and the National Council of Women.

In PNG and Solomon Islands a special role is given to Provincial Governments in the forestry planning system. In fact, in PNG the National Forest Plan is basically a collection of the 19 Provincial Forest Plans, each of which is subject to the National Forest Board's approval. In Solomon Islands, perhaps the most important planning instrument is the Determination of Potential Forest Uses, which is made by the Commissioner over any "area of forest". Logging licences can only be granted after such a Determination has been made. While these approaches acknowledge the importance of decentralised decision-making and forestry planning at the local level, they suffer from the serious weaknesses in institutional capacity and support common in Pacific Islands countries outside of their capitals.

There is a direct connection between the outputs from the planning system and the inputs necessary to produce those outputs. The planning outcomes will be examined below, but the simple point here is that the more demanding the planning outcomes are, the more demanding will be the inputs required in terms of expertise, data and funds. The necessity to keep demands at a realistic level, given the serious limitations in institutional capacity in these countries, is again clear.

c) Planning outcomes

Of the four countries with recent forestry laws providing for a forestry planning system, the intended planning outcomes are:

- Vanuatu: a Forestry Sector Plan;
- Fiji: a National Forestry Plan; and
  Area Management Plans;

- Solomon Islands: a National Forest Resource Management Strategy;
  a National Timber Industry Policy;
  Provincial Annual State of the Forests Reports; and
  Determinations of Potential Forest Uses;
- Papua New Guinea: a National Forest Plan, consisting of –
  - National Forestry Development Guidelines;
  - a National Forest Development Programme;
  - Provincial Annual Statements of Allowable Cut Volumes; and

  Provincial Forest Plans, consisting of –
  - Provincial Forestry Development Guidelines;
  - a Provincial Forest Development Programme.

PNG's planning system is very ambitious, and doubts must be raised over whether it is realistic. Although the Act was passed a decade ago, Provincial Forest Plans have still not been completed for all the 19 provinces, and those which have been completed require review and updating. A recent independent review funded by the World Bank found that the Provincial Forest Management Committees lacked the training, resources, access to advice and access to logging projects necessary for them to carry out their planning functions. Although Solomon Islands' planning outcomes are more modest, lack of funds is preventing preparation of the planning documents which are essential for the Act to work. Furthermore, without Determinations of Potential Forest Uses being made around the country, problems have arisen in formulating the National Forest Resource Management Strategy.

The challenge is to design a planning system which will provide the basis for nationwide management of the forest resource, but which can be developed and implemented within the country's administrative and financial capacity. It is better to have low quality planning which is achievable –and can be upgraded if capacity is improved– than to have a demanding planning system which cannot be implemented.

A final point to mention is that, in all four countries, the main planning outcomes have to be submitted to the nation's Cabinet for final approval. The forestry laws in each case lay down a process allowing for some modification of the planning documents (e.g. by the Minister), but at the end of the day it is Cabinet which makes the final decision. This is as it should be, considering the high importance and multi-sectoral nature of forestry planning.

ii) Meaningful involvement of the customary landowners

As mentioned earlier in this paper, a distinguishing feature of forestry in the Pacific Islands is the fact that most of the natural forest resource is located on customary land, held under customary tenures which are given strong legal protection. Customary owners are essential parties in arrangements for access to the forest resource, and the forestry laws of the last decade make detailed provision for their involvement in forestry planning, benefit-sharing and on-going resource management decisions. The evidence so far, however, shows major dissatisfaction with the results. Problems often start with the difficult matter of landowner identification.

a) Identifying the customary owners

Under the many and varied customary land tenure systems of the South Pacific, one common thread is that the ownership of land, trees and other natural resources is communal. This presents practical difficulties in negotiating agreements for access to those communally-owned resources, and a wide range of measures have been tried, not just in the Pacific but all around the world, for affording legal recognition to customary groups.[9] In Fiji, for example, the expedient was adopted during the colonial era of establishing a statutory body, the Native Land Trust Board, as the representative of customary owners, with statutory powers to deal in land on their behalf. This body has a large staff, and it operates a decentralised system of estate management including the oversight of forestry agreements. Despite its paternalistic overtones, this system remains the basis of Fiji's approach to customary land management, and large areas of both production forest and plantations are held under this system.

Around the time of independence, PNG introduced a special law for the legal recognition of indigenous groups, and in the preceding treatment we saw that the forestry law calls for land group incorporation under this Act before the execution of a Forest Management Agreement with the customary owners. In the cases of Solomon Islands and Vanuatu, however, neither country has a law for customary group recognition, so arrangements had to be included in the forestry law itself to enable agreements to be negotiated with forest resource owners. The arrangements are detailed and time-consuming, especially in Vanuatu's case, but this is a reflection of the importance and sensitivity of the task of identifying customary groups, and preparing them for effective decision-making over the management of their most important resources. The Vanuatu law calls, for example, for preparation of group genealogies as an initial step, which is essential for understanding the group's scope and membership. The Solomon Islands law, by contrast, places its main reliance on "customary representatives" of the landowning groups. Experience shows that there are risks with this approach, and that care must be taken to ensure that representatives only act in accordance with the wishes of the groups they are supposed to be representing.

A practical matter related to identification of landowning groups is identification of the group boundaries within a forest area. Provision should be made for these to be effectively recorded at an early stage, to avoid later disputes (e.g., over royalty distribution). On the subject of disputes, in Vanuatu there is a requirement for each landowning group to identify "the dispute settlement authority for resolving any disputes within the group", and again, this can have important practical significance as the forestry operation proceeds.

b) The role of the customary owners

Previously, customary owners only had a passive role in forestry operations on their land, once they had signed over the timber rights. Possibly this is still the case in Fiji, with the Native Land Trust Board making all the management decisions on the owners' behalf and distributing rent and royalties to them. Elsewhere, the practice has evolved of giving customary owners a more active role in the ongoing management of their resource. This involvement even starts at the forestry sector planning stage, with provision being made for landowner representatives on the main planning body, as in Fiji, PNG and Solomon Islands. When it comes to planning a particular forestry operation, there are requirements in the laws of PNG, Solomon Islands and Vanuatu for consultations with the resource owners.

[9] For a review of the measures for legal recognition of indigenous groups, see Fingleton 1999.

As to their role during negotiations of timber rights agreements, Vanuatu has included the preliminary step of inquiring whether the customary owners actually want to negotiate an agreement for the sale of their timber rights. In Solomon Islands, one early matter which the owners must decide is whether they want to enter into negotiations with an outside logging company, or they prefer to conduct the forestry operations themselves. The previous forestry law in Vanuatu had special provision for joint ventures between landowners and logging companies, but none was ever made. The new Act makes no special provision, but there is nothing to prevent landowners from setting up a company to become an owner-operator, or to enter into a joint venture with an operator. Vanuatu also provides for small-scale operations –mobile sawmills and sandalwood– to be confined to ni-Vanuatu, and similar provision is also made in Solomon Islands.

The PNG Forest Authority has a monopoly on acquisition of timber rights under the forestry law introduced in 1991, but the elaborate provisions for a Development Options Study, Project Guidelines and Project Proposal leading up to a Project Agreement would allow landowners to build up their participation in the actual project to the extent they desire. PNG continues to suffer major problems, however, as a legacy of the forestry laws repealed in 1991, many of them stemming from arrangements for landowner participation which were inappropriate (to say the least).

For meaningful involvement in negotiations, the customary owners must have the necessary information and advice. In PNG, a lot of effort has been put into developing landowner awareness and support services, but lack of understanding is still recognised as a serious problem there. A special law had to be passed, in 1993, to allow the fairness of forestry dealings under the previous legislation to be investigated. To guard against these ills, Vanuatu's new forestry law requires the Forests Board to arrange for a negotiation team to assist the customary owners in their negotiations. The team is made up of a Forest officer, a "suitably qualified and acceptable" adviser, a land use planning officer, and an officer from the relevant local government council. The negotiation team must be supplied with all the necessary technical information, it must act in accordance with the landowners' instructions, and its negotiation expenses are covered by the fee to be paid by the party which has applied to negotiate with the landowners.

In a major timber project, the customary owners' participation is likely to be ongoing, covering matters like monitoring of performance, receipt and distribution of moneys and planning for post-logging land use. To facilitate this involvement, Vanuatu has provided for a Management Committee to be appointed from among the membership of the landowners. Such representative bodies can be useful, but as with all representatives, safeguards must be in place to ensure that they are fully accountable for their actions.

c) <u>The benefits package</u>

Logging operations usually have a massive impact on a forest and its resident communities, but the widespread experience of Pacific Islanders has been overwhelmingly negative in terms of compensation for the losses suffered. With the collapse of government services and infrastructure in rural areas, the sad fact is that rural communities have become highly vulnerable to the promises of development which logging companies offer. In many cases, these inducements extend beyond money to the kind of infrastructure and services which would normally be provided by the state. In 1989, Justice Barnett observed in the *Commission*

of Inquiry into Aspects of the Forestry Industry in PNG that "the main benefits for the people from a timber permit operation would be the side benefits promised by the foreign company and included in the Permit Conditions, such as roads, bridges, sawmills, agricultural projects and reafforestation." (Interim Report No.4, Vol. 1, p. 26).

While there is a general desire to make forestry operations contribute to wider and more lasting development, there are major problems with allowing operators to include infrastructure requirements like schools, health clinics, airstrips, wharves, townships and housing (all of which were promised in PNG) in agreements with the customary owners. These assets are only valuable if they are part of a government planning system, covering standards, staffing and ongoing funding. Too often the outcome reflects what Barnett found in the New Ireland Province of PNG: "The contract promises had proved to be a worthless sham designed to win the permit and permit large scale log exports." (*ibid*: 60).

Although the problems were revealed more than a decade ago, sham agricultural and roadmaking projects were still being approved in PNG until recently, when it was plain for all to see that they were just disguised forestry operations. The abuse was so bad that the *Forestry Act* had to be amended in 2000, to make special provision for large-scale conversions of forest to agricultural use and roads.

The benefits package for the customary owners is basically a matter for negotiation, which again emphasises the importance of their receiving appropriate information and professional advice. The main legal mechanism for ensuring that the package is reasonable is the clauses in the agreement for purchase of the timber rights, so careful attention must be given to the contents of the form prescribed for use in all such agreements. In Solomon Islands, the prescribed terms and conditions in the Forest Access Agreement may only be altered if advice is given by the Attorney-General that the customary owners have agreed to the alteration and they will not be "unfairly compromised" by it. To guard against exploitation of customary owners on the matter of royalties, Vanuatu allows minimum log royalties to be fixed by Ministerial order.

iii) Effective controls on logging companies

The main controls on the forestry operations should be set out in the timber licence or other form of logging concession, and these need to be adequately supported by the enforcement provisions in the forestry law itself. These matters are discussed below, but there are two preliminary points relevant to the subject of controlling forestry operations. The first point is that regulation outside of the forestry subject is highly relevant, particularly in the areas of foreign investment controls, company law and industrial safety. In screening a company which has applied for approval to negotiate a timber agreement with the customary owners, for example, it should not be necessary for the Forestry authorities to investigate the company's acceptability as a foreign investor. It is important, of course, to know that it is acceptable, but that matter should be investigated by the appropriate body, and investment controls (reporting, and dealing with transfer pricing, etc.) should be implemented under the appropriate law. Similarly, environment protection controls should mainly be the responsibility of the government agency set up for this purpose and given the appropriate functions, powers and resources.

This raises the second preliminary point on the subject of controls. It is counterproductive to set up any regulatory system which cannot be enforced, and a key requirement for

enforcement is having adequate resources. The country's Forestry Service, of course, requires sufficient personnel and funds to carry out its functions, but the same applies to other government agencies with a role in forestry. An illustration is provided by PNG, where the forestry law requires preparation of an environmental plan as a necessary step in the evaluation of a forestry project proposal. This plan must be approved under the *Environmental Planning Act*, but a major concern is that the body responsible for implementing that Act has been downgraded from a Department to an Office, and its funding cut. Forestry operations should not be licensed if the administrative resources are not available to oversee them adequately, and this rule applies not just to the Forestry Service but to the other concerned arms of government as well.

a) Licence conditions

Just as the timber rights purchase agreement should cover all the main concerns of the customary owners, the timber licence should cover all the main matters of concern to the protection, development and sustainable management of the forest resource. Some matters (e.g., post-logging land use) are of common concern to both, and should be covered in both documents, but as far as possible each document should concentrate on the main issues, and in the case of the licence the main issues relate to control of the logging operation. Having said this, the way to interrelate the two documents is to include a condition in the licence which requires that all the terms and conditions of the timber rights purchase agreement must be complied with by the licensee, and include a condition in the agreement that all the terms and conditions of the timber licence must be met.

Another general point is to make sure that timber licences do not go beyond the parameters of the forestry sector plan. The plan, with its scientific basis and consultative preparation, would be undermined if timber licences could authorise forestry operations which exceeded sustainable yield requirements, for example. It is essential, therefore, to provide along the lines of the Vanuatu forestry law that a licence provision which authorises forestry operations which are inconsistent with the provisions of the Forestry Sector Plan "is, to the extent of the inconsistency, void and of no effect".

Among the specific conditions applying to a licence, many are now included in Codes of Logging Practice which Pacific Islands nations are progressively introducing. Vanuatu introduced its Code by order in 1998, and a provision in the Act states: "The Code of Logging Practice applies to all commercial forestry operations in Vanuatu and such operations are to be conducted in accordance with the Code." (Sec. 43(1)). All the requirements of the Code (for management plans, environment protection, harvesting methods, construction of roads and other infrastructure, licensing of the specialist forest operators, etc.) are made automatic conditions in the licence. In a similar way, major environment protection requirements (e.g., regarding watercourses, foreshores, steep land and water catchment areas) should be automatic conditions in every licence.

b) Enforcement aspects

The standard methods of enforcement of licence conditions are, as seen above, a combination of penalties for forestry offences, compensation requirements, confiscation of illegal forest produce and the vehicles and equipment used, suspension and cancellation of timber licences, and forfeiture of performance bonds. These are powerful instruments, and care must be taken not to infringe basic human rights and commercial interests without good reason and due

process. People can always take their complaints to the courts, but sometimes it is desirable to provide a right of review or appeal against an administrative action. On the other hand, penalties must be sufficiently high as to discourage the illegal behaviour. People are quite happy to break a law, if the rewards (e.g., from illegally logged timber) are greater than the penalty.

A particular aspect of enforcement which has caused major problems in the Pacific Islands is transfers of licences. A logging licence is an authority to a particular licensee to use someone else's property and, as such, it should not be transferable. There is no point in checking a licensee's suitability to carry out a complex logging operation if the licence can then be transferred to someone else. In the circumstances of the Pacific Islands such transfers are even more unacceptable, as while the customary owners might agree to the particular person they have dealt with carrying out the forestry operation, they might not accept someone else. Although all the forestry laws in the region have contained a ban on the transfers of licences, logging companies have been very inventive in finding ways around the ban.

The simplest device of all is a company takeover. If the licence is issued to Company X, all that is necessary is for Y to buy all the shares in Company X. The licence stays in the name of Company X (i.e., there has been no "transfer" of the licence), but the nature of the company has, of course, changed completely. On the ground, suddenly the landowners find a mob of complete strangers cutting down their trees. To avoid this abuse of the system, it is important to make it absolutely clear that any share transfers, agencies or sub-contracting agreements, or other devices which would have the practical effect of a transfer of the licence, will be treated as a transfer of the licence. The most careful safeguards against illegal licence transfers are contained in Vanuatu's new forestry law, and an attempt to transfer a licence illegally can lead to its immediate cancellation.

iv) Post-logging land use

A vital matter for the customary owners and the national interest is what happens to forest lands after they have been logged over. Although the necessary follow-up action takes place late in the scheme of things, the question of what is the most appropriate post-logging land use should be addressed at an early stage, and certainly before logging of a forest area commences. Land use planning, including what the land is suitable for and the wishes and needs of the customary owners, should be integrated into the planning for the forestry sector, as in Vanuatu where the forestry law specifically provides for a land use planning input during preparation of the Forestry Sector Plan. During the negotiation of a Timber Rights Agreement, a land use planner is included in the 4-person negotiation team which assists the customary owners, and a key matter to be addressed in the Agreement is the post-logging land use.

While it is usual to expect that forest lands will stay under forestry, reforestation is not necessarily the best post-logging land use. Where, however, reforestation is involved, it must be recognised that a more secure form of tenure is required to underpin the necessary long-term investment. And the licensee who carried out the logging may not be the appropriate body to undertake reforestation. One of the most challenging areas of Pacific Islands forestry is designing a system to underpin reforestation on customary land. The most successful results have been achieved in Fiji, where large areas have been planted up under pine and mahogany. It is noteworthy, however, that making the necessary land tenure arrangements is greatly facilitated in Fiji by the existence of the Native Land Trust Board, with its wide powers to

enter into lease agreements on the customary owners' behalf. The leasing arrangements elsewhere in the Pacific have been largely unproductive, not just for the purposes of reforestation. Progress in this area depends on progress in land law reform.

5. CONCLUSION

Forestry is, by its very nature, a complex subject, and therefore forestry legislation tends to be rather complex. In the Pacific Islands, this complexity is increased by factors like the remoteness of the forest resource, the fragile nature of tropical rainforests and the diversity of the stakeholders. The forestry law must suit the needs and circumstances of villagers in remote forests, and at the same time stand up to challenges by expert litigation lawyers engaged by foreign logging companies to promote their interests. Furthermore, the forestry law must be drafted so as to fit into the country's system of government, its planning and budgeting arrangements, as well as a wide range of other legislation covering land tenure and land use, environment protection, business laws and revenue laws.

The forestry legislation itself is, however, the main vehicle for achieving the policy aims of forest protection, development and sustainable management. Results will depend mainly on the efficiency and effectiveness of the system for regulating forestry activities, which is set out in the forestry law. The forestry subject is complex and sensitive, but a workable system depends on people being able to understand it and use its processes with confidence in the legal outcomes. It must be said that some of the recent forestry legislation studied above seems unnecessarily complicated, and efforts should be made to streamline it.

Laws are only as good as their administrators, and it is a sad fact that many of the recent problems in Pacific Islands forestry stem from abuses by Ministers and senior officials in performing their statutory functions. Laws cannot legislate for good behaviour. But what legislation must do is take account of a country's administrative realities. The greatest problems are faced in those countries where forestry operations have been licensed which far exceed the capacity of the government to supervise them. The problems in these countries will never be solved until their forestry operations are reined in, to match the funds and personnel available to supervise them properly. Administrative capacity should be legislatively installed as a fundamental issue in forestry sector planning, and a forestry operation should never be approved if the resources are not available to supervise it.

LEGISLATION REVIEWED

Tonga

Forests Act 1961 (Chapter 26)

Samoa

Agriculture, Forests, and Fisheries Ordinance 1959
Forests Act 1967

Fiji

Forest Decree 1992

Papua New Guinea

Forestry Act 1991
Forestry (Amendment) Act 1993
Forestry (Amendment) Act 1996
Forestry (Amendment) Act 2000

Solomon Islands

Forests Act 1999

Vanuatu

Forestry Act 2001

REFERENCES

FAO. 1981. *Forestry Legislation in Vanuatu*, Rome

1987. *Report to the Government of Papua New Guinea on Forest Policy and Legislation*, Rome.

1989. *First Report to the Government of Solomon Islands on Forestry Legislation*, Rome.

1990. *Final Report to the Government of Solomon Islands on Forestry Legislation*, Rome

1991. *Technical Report to the Government of Western Samoa on Watershed Legislation*, Rome

1992. *Fiji Forestry Legislation*, Rome.

1994. *Review of Agriculture and Forestry Legislation (Tonga)*, Rome.

1996. *Review of Forestry and Related Legislation and Proposals for its Revision (Tonga)*, Rome.

1998. *Trends in Forestry Law in America and Asia*, Legislative Study No.66, Rome.

2000. *Major Trends in Contemporary Forest Law: Some Observations in Light of FAO Experience*. Development Law Service, Rome.

2001a. *Vanuatu. Assistance in Forestry Legislation*, Rome.

2001b. *Trends in Forestry Law Africa and Europe*, Legislative Study No. 72, Rome.

Filer, C. *et al*. 2000. *The Thin Green Line: World Bank Leverage and Forest Policy Reform in Papua New Guinea*, NRI Monograph 37, National Research Institute, Port Moresby.

Fingleton, J. 1999. *Legal Recognition of Indigenous Groups*, FAO Legal Paper Online # 1, Rome (http://www.fao.org/legal/pub-e.htm).

World Bank. 1993. *Legal Review and Analysis of Existing Logging Projects. Forest Management and Planning Project (PNG)*, Port Moresby.