

**A REVIEW OF NATIONAL ENVIRONMENTAL LAWS
THAT SUPPORT OR UNDERMINE THE CUSTOMARY
LAWS AND TRADITIONAL PRACTICES OF
INDIGENOUS PEOPLES AND LOCAL COMMUNITIES
IN THE LANDS, SEAS, TERRITORIES AND
RESOURCES OF THE SOLOMON ISLANDS**

Written by James Clifford Meimana and Holly Jonas

Contributions by Calvin Ziru and Martha Manaka

December 2015



**NETWORK FOR INDIGENOUS
PEOPLES SOLOMONS (NIPS)**

TABLE OF CONTENTS

A. Overview	2
1. Introduction	2
2. Threats and Challenges	3
3. Focus and Aims of the Review	4
B. Review of Select National Environmental Laws that Support or Undermine Indigenous Peoples and Local Communities	5
1. Land	5
2. Protected Areas	6
2.1. <i>Protected Areas Act 2010</i>	7
2.2. <i>Protected Areas Regulations 2012</i>	8
3. Rivers	10
4. Forests	11
5. Fisheries	14
6. Mining	16
C. Brief Analysis & Conclusions	19
1. Laws that Actively Undermine or Fail to Support Indigenous Peoples and Local Communities	19
2. Laws that Support or Explicitly Recognise Indigenous Peoples and Local Communities	20
3. Interactions between the Laws	21
4. Discussion	22

A. OVERVIEW

The Network for the Indigenous Peoples-Solomons (NIPS) undertook a review of the Solomon Islands' national environmental legal framework in relation to the customary laws and traditional practices of indigenous peoples and local communities. The review analyzes select national laws and their interactions with indigenous peoples' and communities' customary laws and practices. It identifies some of the major legal threats to the lands, seas, territories, and natural resources of indigenous peoples and local communities, with a particular focus on how they are either supported or undermined by national environmental laws and related institutions. In doing so, the review aims to contribute to a better understanding in the Solomon Islands of the broader national context within which indigenous peoples and local communities are living and depend upon for their sustenance, survival and well-being.

1. Introduction

At the time of independence 36 years ago, the population of the Solomon Islands was about 190,000 people. As of 2015, the national population exceeds 500,000. With a population growth rate of 2 per cent (%) per year and a rapid drop in the rate of infant mortality, it is predicted that within the next ten years, the country will reach 700,000 people. The latest demographic data shows that more than 70% of the population is less than 30 years of age, less than 10% of whom are in paid employment. This trend strongly suggests that future living standards of Solomon Islanders shall be dependent more on their access to and utilisation of their tribal lands than on participation in the mainstream economy.

The Solomon Islands is situated in the Western Pacific. It is an island archipelago comprising a double chain of 6 large islands (Choiseul, Santa Isabel, New Georgia, Guadalcanal, Malaita and Makira) and many smaller ones, totaling 997 islands. The country has a total land area of 28,785 square kilometers (km²) and an exclusive economic zone that covers 1,340,000 km². The total internal waters within the 12-mile zone are 0.3 km². The Main Group Archipelago (excluding outer islands) lies between latitudes 5°S and 12°S and longitudes 152°E and 163°E and is orientated northwest to southeast, stretching about 1700 km between Bougainville, at the eastern tip of Papua New Guinea, to the northern-most islands of Vanuatu.

Box 1: Geographical location of the Solomon Islands

In the Solomon Islands, as in other Melanesian countries, land is an entity that is integral to the people and paramount to their identity as a community and society; land has a direct relationship with the status and well-being of a people and is often the first measure of wealth, power and authority. Land laws are therefore a fundamental means by which rights and recourses are determined and protected. Approximately 87% of land in the Solomon Islands is under customary ownership, with the remaining area divided between government land (8%) and registered land under perpetual and fixed-term estates (5%). Rules related to the ownership and uses of customary land are not codified and they vary between cultural groupings and within the provinces.

The Solomon Islands' biodiversity is part of one of the world's most renowned centers of marine biodiversity. It is recognised as part of the Coral Triangle along with five other countries in the region, and thus is of global importance. However, threats to the country's biodiversity continue to exist, although more recently and despite its many national weaknesses, the Solomon Islands has pursued various efforts to arrest these threats.¹

¹ Solomon Islands Government, 2011. *Fourth National Report to the Convention on Biological Diversity*. Ministry of Environment, Climate Change, Disaster Management and Meteorology: Honiara.

Equally important is the high biodiversity often found within indigenous peoples' and local communities' conserved territories and areas (also known internationally as ICCAs). Traditional and present-day systems of stewardship rooted within indigenous worldviews and cultural practices facilitate the conservation, restoration and connectivity of ecosystems, habitats, and particular species. ICCAs have many benefits and contribute significantly to the integrity of ecosystems, cultures and human well-being not just in the Solomon Islands, but also around the world.² However, they are under increasing threat from both internal and external factors, some of which are discussed below. These threats are compounded by the lack of appropriate valuation and recognition of and support for ICCAs, particularly in domestic laws and policies.³

2. Threats and Challenges⁴

This review is located within a broader context of legal, political, economic, social and other factors that culminate in external threats to the lands, territories and resources upon which indigenous peoples and communities depend in the Solomon Islands. The first overarching threat is brought about by modernisation, development and urbanisation in conjunction with unsustainable patterns of resource production and consumption. Recent and rapid urbanisation and modernisation have undermined traditional practices and governance systems in rural areas, which are the cornerstones of social and cultural unity and sophisticated customary systems of caring for territories and resources. Over the past two decades in particular, there has been an increasingly high rate of rural-urban migration of both the young and old in search of employment and other opportunities. However, this has put pressure on limited infrastructure in urban areas and led to a rise in urban unemployment, which contributed in part to the period of ethnic tensions from 1999-2003.

As a young developing country, it is a common endeavor of every administration of the Solomon Islands' government to strive for economic growth through various industries. This is primarily done through the extraction of natural resources, namely, forestry, fisheries, agriculture and, more recently, mining. The latter industry in particular has grown over the past few decades into the dominant contributor to the Solomon Islands' economy. However, these aspirations have had an adverse impact on the Solomon Islands from a human rights and environmental perspective. The second threat is thus the increasing prevalence of industrialised extraction of natural resources. These industries undermine the rights and livelihoods of indigenous peoples and communities as they generally occur on or near customary territories, lands and seas; they also contribute to over-exploitation, pollution and habitat and species loss.

Broader research on legal and institutional aspects of recognising and supporting conservation by indigenous peoples and local communities in several countries around the world shows that a third major threat is the lack of effective legal recognition of their rights and responsibilities; this includes the rights to self-determination and self-governance, customary laws and traditional institutions, and to use, access and protect their territories, lands, waters and natural resources. Indigenous peoples and local communities faced and continue to face marginalisation from colonial and post-independence legislative and judicial systems and state-centric decision-making processes. They are often excluded from meaningful participation in governmental and non-governmental development, conservation and welfare programmes, instead being relegated

² Borrini-Feyerabend, G., and others, 2010. *Bio-cultural diversity conserved by Indigenous peoples and local communities – examples and analysis*. Companion document to IUCN/CEESP Briefing Note No. 10, CENESTA: Tehran.

³ Jonas, H., A. Kothari, and H. Shrumm, 2012. *Legal and Institutional Aspects of Recognizing and Supporting Conservation by Indigenous Peoples and Local Communities: An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities*. Natural Justice and Kalpavriksh: Pune and Delhi.

⁴ This section is drawn from Jonas et al, 2012, with additions specifically pertaining to the Solomon Islands.

to the role of ‘beneficiaries’. Importantly, these factors (among others) actively undermine indigenous peoples’ and communities’ abilities to respond to the first two categories of external threats.

3. Focus and Aims of the Review

As a first step towards a detailed understanding of the legal and institutional aspects of recognising and supporting conservation by indigenous peoples and communities in the Solomon Islands, this review considers the current national framework of environmental laws, specifically those relating to land, protected areas, rivers, forests, fisheries, and mining. Its scope is limited to these key environmental laws in the first instance, though the lead author plans to expand the scope in the future to consider additional national and provincial laws, jurisprudence and latest legislative developments.

The aim of this review is to clarify the current state of legal recognition of the rights of indigenous peoples and local communities in the Solomon Islands in relation to their customary laws and traditional practices on their lands, seas and territories. It also seeks to understand the most important legal measures and mechanisms in different settings, and the impact of natural resource exploration, regulation and extraction (including logging, waterways, and mining) as well as conservation (including protected areas and fisheries) on the rights and traditional practices of indigenous peoples and local communities.

In addition to identifying environmental laws in the Solomon Islands that provide and protect indigenous peoples’ and communities’ rights, it also identifies interactions between laws and which ones may be accorded greater weight and prevalence at the national level. Overall, the review is intended to assist indigenous peoples and local communities and trusted support organisations to understand their rights in the Solomon Islands in relation to their customary laws and traditional practices.

B. REVIEW OF SELECT NATIONAL ENVIRONMENTAL LAWS THAT SUPPORT OR UNDERMINE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

1. Land

An estimated 87% of land in the Solomon Islands is customarily owned. In addition to laws governing crown land and recognition of customary land ownership in the Constitution, there are presently two national legislations relating to custom and customary land: the Land and Titles Act (Cap 133) (Revised Edition 1996) and the Customary Land Records Act (Cap 132) (Revised Edition 1996). Registered lands⁵ are regulated by the **Land and Titles Act (Cap 133)**. This Act recognises customary land rights to an extent, but only in accordance with custom as determined by a court of law. Section 239 states that the manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with the current customary usage applicable thereto, and all questions relating thereto shall be determined accordingly. However, in order for a tribe or clan to confirm or establish their rights as the true customary landowners, the custom itself must be determined in a court of law. The courts may – for the purposes of ascertaining any current customary usage – refer to any books, treaties, reports (whether published or not), or other works of reference, and may accept any matter or thing stated therein as *prima facie* evidence of the usage in question unless and until the contrary is proved. Given the challenges with physical and procedural accessibility of courts and provision of accepted evidence, the percentage of people who have attempted to confirm or establish their rights in a court of law is likely much lower than those who claim they have customary rights.



Figure 1: Mangroves and gardens on mainland Sulufou, Malaita (credit: Aydah Gwaena Akao)

The **Customary Land Records Act (Cap 132)** provides for the recording of rights to customary land. This legislation focuses primarily on the current usage of the customary practices recognised by legislation and details the processes of registration of land and resolving customary land disputes. Despite being passed by Parliament, the Act remains an unreliable

⁵ The ownership of land below the high water mark is not specified in the Land and Titles Act. There have been conflicting High Court decisions about whether land below the high water mark can be customary land and the Court of Appeal has not yet ruled on this matter.

piece of law, as it has not yet entered into force. The office that was established in the 1990s for its administration was burned down during the ethnic tensions and still has not been reestablished. Therefore, the land recording that has been done to date has not occurred formally under the Act.

Anecdotal evidence suggests that there are increasing numbers of land disputes within and between individuals and communities and between communities and the private and public sectors. Provisions relating to land dispute resolution are contained in both of these Acts as well as the Local Courts (Amendment) Act 1985. None of these, however, are comprehensive enough to bring about lasting and conclusive solutions to land disputes. Land disputes arising at the recording stage must be addressed effectively, first by making the owner of the land known to the dispute parties during a chief's hearing. If there is no proper conclusion and either or both of the parties are not satisfied with the decision, it may be escalated to the local court. Failure to address disputes at the recording stage (in essence, during the chief's hearing) means that they will remain well into the occupancy stage. Thus, disputes could potentially be subject to a lengthy process of being processed in the local court, customary land appeal court and high court until all parties are satisfied with the decision of each.

Overall, the Land and Titles Act only focuses on the issues related to registered land (including processing thereof) and the resolution of customary land disputes. It does not contain any specific provisions pertaining to the local governance or stewardship of land or the possibility of indigenous peoples' self-declaration of conservation areas within customary lands.

2. Protected Areas

One of the government's primary objectives has been to ensure biodiversity conservation and management are properly legislated at the national and provincial levels and integrated into sectoral plans, policies and programmes. Although many national and provincial laws already cater for various aspects of biodiversity (including the Fisheries Act, Environment Act, Wildlife Management and Protection Act, and Forest Resources and Timber Utilisation Act, among others), a Protected Areas Act 2010 and Protected Areas Regulations 2012 were passed by Parliament specifically to govern and provide for the management and protection of protected areas. According to the Environmental Law in Solomon Islands Review 2015, no protected areas have yet been created under the Act, although a considerable number of applications have been submitted to the Ministry of Environment.

In addition to state-determined protected areas, indigenous peoples and local communities have their own traditional mechanisms for determining and enforcing protection and conservation of certain areas and resources based on practices developed over many generations and centuries (see Box 2).

Indigenous peoples and local communities in the Solomon Islands have practiced traditional methods of environmental stewardship and management for centuries. The main customary methods of conservation methods in the Solomon Islands include:

- **Sacred sites:** unlegislated sites with restrictions on movement, allowing entrance only to certain people or customary priests;
- **Social prohibition:** restrictions on consumption of certain species by some groups, either continuously or during certain times of the year; and
- **Ongoing prohibitions:** restrictions on the areas within which some groups can harvest resources.

Box 2: Main customary methods for conservation among indigenous peoples and local communities

However, the Protected Areas Act does not explicitly recognise such practices or grant indigenous peoples and communities the power to declare, govern and manage their own protected and conserved areas. The Protected Areas Regulations 2012 go much further than the Act in recognising the rights, tenure and interests of customary owners and local communities, and allowing for communities and other management arrangements overseeing existing community conservation programmes to be recognised and continue as management committees (for the purposes of the Act and Regulations). These supportive provisions are the closest to providing full recognition of indigenous peoples' and community conserved areas among all of the reviewed national laws. For this reason, the Act and Regulations are considered in more detail in the sections below.

2.1. Protected Areas Act 2010

According to **Part 3, Section 10(1)** of the Protected Areas Act, the Minister may declare an area as a protected area if it:

- (a) Possesses significant genetic, cultural, geological or biological resources;
- (b) Constitutes the habitat of species of wild fauna and flora of unique national or international importance;
- (c) Merits protection under the Convention Concerning the Protection of World Cultural and Natural Heritage; or
- (d) Requires special measures to be taken to conserve biological diversity.

Sub-section (a) thus provides for protected areas to be declared on the basis of significant cultural resources, which leaves open the possibility of areas of cultural importance such as sacred sites to be declared as protected areas.

The Minister's declaration of a protected area must be on the recommendation of the Director, who shall in turn conduct meetings and consultations with the owners of the area or other people who may be affected by the proposed declaration, evaluate the biodiversity significance of the area, verify the rights and interests in the area, evaluate the conservation, protection and management options, and publish a public notice in a widely circulated newspaper on the area to be declared, among other things (Section 10(2)). Any person may object to or support the proposed declaration within a public notice period of not less than 30 days (Section 10(3)). The owner of any area, including any NGO managing a conservation area, may apply for it to be declared as a protected area (Section 10(4)). Before declaring a protected area, the Minister must ensure that (*inter alia*) the area's boundaries are accurately identified or otherwise demarcated and surveyed and consent and approval have been obtained from people with rights or interests (Sub-sections 10(7)(b)-(c)). The latter provision provides an important safeguard for indigenous peoples and local communities, including customary landowners, especially where there are concerns with protected areas overlapping with traditional territories and resources and potentially impeding customary and subsistence practices.

In **Part 2** of the Protected Areas Act, **Section 4** establishes a **Protected Areas Advisory Committee** with the following members to be appointed by the Minister, taking into account experience and skills in resource and conservation management: a chairperson, a deputy chairperson, four representatives of non-governmental organisations (NGOs), and four other members. It is quite positive to have such strong representation of NGOs and, although it is not explicitly provided, it is technically possible that representatives of indigenous peoples and communities could fill one or more of the remaining four seats.

The functions of the Advisory Committee include, *inter alia*, advising on the implementation and monitoring of the Act's objects (Section 3), developing and monitoring a national biodiversity strategy and action plan, formulating a code of conduct for NGOs in collaboration with them, advising the Minister on implementation of the Convention on Biological Diversity and any other matter relating to the Act (Section 5). The powers of the Advisory Committee include, *inter alia*,

assisting in the implementation and enforcement of the Act, inspecting any declared protected areas, negotiating and advising on matters related to permits, and requiring permit holders and NGOs to provide reports on relevant activities (Section 6). The Advisory Committee may – with the Minister’s approval – delegate its functions or powers to provincial governments or other organisations or persons (Section 7). The Advisory Committee may also appoint management committees, consisting of the protected area owners, government officers and any other persons to manage one or more protected areas (Section 12(1)). Again, although indigenous peoples and communities are not explicitly referenced, it is technically possible that they could constitute ‘persons’ under the latter two provisions and be delegated the functions or powers of the Advisory Committee or appointed to protected area management committees.

Biodiversity or bioprospecting research is prohibited except with a permit issued by the Advisory Committee (Sections 16 and 17). Of particular importance for indigenous peoples and communities is Section 18(5), which states that the Advisory Committee shall not approve any application for such a permit involving customary land or customary fishing areas unless it is satisfied that: (a) the written consent of the owners of those areas is attached to the application; (b) there is an agreement with the owners about right of access, acquisition of resources, technology transfer, monetary benefit or compensation; and (c) the applicant has submitted a plan outlining the research and methods and a monitoring and auditing system to verify all activities. Notably, the Protected Areas Act was gazetted before the Nagoya Protocol on Access and Benefit Sharing was adopted by the Conference of the Parties to the Convention on Biological Diversity, but the former still contains useful provisions in support of indigenous peoples and communities.

Part 6 (Enforcement and Other Offences), Section 19 provides for the Minister to appoint government officers or any other persons as inspectors to enforce the Protected Areas Act. Although it does not explicitly refer to indigenous peoples and communities, there is no reason why such persons could not be appointed to this role. It would usefully grant communities legal authority to enforce the Act’s provisions, including those concerning customary land and customary fishing areas, thus providing another layer of protection in addition to customary laws.

While the Protected Areas Act provides for engagement between the government and NGOs in the determination and management of protected areas and leaves open the possibility of indigenous peoples and communities in various matters under the Act, it fails to explicitly recognise the rights and roles of customary owners and communities in these processes. These matters are usefully elaborated in the Protected Areas Regulations 2012, including in a dedicated section on protected areas under customary tenure.

2.2. Protected Areas Regulations 2012

Part 2 of the Protected Areas Regulations 2012 sets out the classification and prescribed categories of protected areas, including nature reserves (Regulation 5), national parks (Regulation 6), natural monuments (Regulation 7), resources management areas (Regulation 8), and closed areas (Regulation 9). Each of these Regulations references in some way customary owners, local communities and/or cultural or livelihood considerations. Part 2 also details the classification of world heritage sites (Regulation 10) and management principles for protected areas (Regulation 11). Part 6 (Regulations 31-32) contains fairly progressive provisions about overriding principles for management and decision-making, including the precautionary approach and inter-generational equity (Regulation 32(1)), which are well-known principles in international environmental law.

Of particular importance in the Regulations are **Part 4 (Management Plans and Strategies)**, as the management plans provide the basis for consultation with customary owners, communities, chiefs and other traditional leaders, and zoning for allowed and prohibited activities; and **Part 5 (Governance and Management)**, including appointment of

management committees, which explicitly provides for nominations of local communities and customary owners of protected areas. Under Part 5, the relatively concise but critically important **Regulation 28 (Recognition of Existing Management Arrangements)** states that where a protected area that has been the subject of an ongoing community conservation programme managed by a community or organisation prior to the area being declared under the Act, the overseeing community, organisation or management arrangement may be adopted and continue to function as the management committee for the purposes of the Act and Regulations. This Regulation goes much further than the Protected Areas Act in allowing existing community conservation programmes to be recognised as protected areas and to continue functioning, rather than requiring the establishment of a new management committee. This has significant potential for customary owners and local communities with effective protection and conservation measures who wish to gain additional recognition and protection under state law.

In addition to Regulation 28, the most expressly supportive provisions are those in **Part 8 (Protected Areas under Customary (Customary) Tenure)**. Further elaborating on Section 10 of the Protected Areas Act 2010, Regulation 44 requires consultations within the landowning tribe and with neighbouring tribes and communities and a signed written agreement and map of the intended boundaries before any application for a protected area declaration is made to the Director or on behalf of customary owners. Regulation 45 grants customary owners of protected areas the option to convert such areas into registered titles or estates under the Land and Titles Act (Cap 133). In this sense, community declaration of a protected area may enable them to secure land titles. Regulation 46 stipulates that any benefit, right or obligation relating to the protected area must be a common benefit, right or obligation of the landowning tribe and all of its members, and states that any unilateral decision made by a single member of the tribe without general consensus or endorsement is invalid. Finally, Regulation 47 provides a legal basis for the protection of customary owners' interests, though with notable limitations. It states that:

- (1) A management committee for a protected area under customary ownership shall protect the collective interest of customary owners, without compromising the biodiversity conservation objectives of the Act and Regulations; and
- (2) Sub-regulation (1) *does not* mean that (a) every decision-making process of the management committee is subject to the final or collective endorsement of the customary owners, (b) customary owners can interfere unnecessarily or unreasonably with the management committee's normal functions and roles, and (c) the primary objectives can be compromised or jeopardised (emphasis added).

The latter Regulation in particular thus gives significant authority and discretion to the management committee, underscoring the importance of the Regulations on governance and management in Part 5.

Part 11 (General Prohibitions) usefully prohibits industrial or commercial extraction of timber, logs, non-timber forest products and minerals within a protected area or within no more than one kilometer of its defined boundaries (Regulation 61(1)), while still allowing for limited non-commercial extraction of timber for housing needs of owners of the area (Regulation 61(2)). If an indigenous community has managed to declare a protected area on their own terms, these prohibitions provide an additional layer of protection against unwanted industrial and commercial activities.

Regulation 62 prohibits the taking of any organism, species or other form of flora and fauna from a protected area with only a few exceptions, one of which is if the management committee allows such taking by members of a local community "strictly for traditional purposes" (Regulation 62(2)). This kind of strict protection could be advantageous in relation to unwanted external activities, but could also undermine customary practices and livelihoods.

Regulation 63(1) lists several other activities that are prohibited, except where authorised by the protected area management committee or management plan. Some of the restricted activities (for example, release of effluent and sewage, extraction of soil, sand or other material, defacing of any cultural object or monument with biodiversity and cultural significance, and significant alteration of the natural flow of waterways) provide additional welcome layers of protection, which would be useful for protected areas in customary lands or fishing areas. However, some other restricted activities listed under Regulation 63 (including agriculture and gardening, building houses, cutting of any plant or tree, and hunting or killing of any animal) could significantly impinge upon indigenous peoples' and communities' customary rights and uses of resources, if not authorised by the management committee or management plan. The same concern applies to Regulation 50, which prohibits in marine protected areas the harvesting of fish or other aquatic resources for commercial or subsistence purposes during spawning seasons. This again underscores the importance of the Regulations in Part 4 on management plans and Part 5 on governance and management.

Part 7 (biological prospecting and research) of the Regulations further elaborate on Sections 16 and 17 of the Protected Areas Act. The provisions relevant to indigenous peoples and local communities include: the requirement of the Director to consult owners of the area(s) specified in an application and determine the interests and rights in the area (Regulation 33(3)); cancellation or suspension of a permit if the agreement with owners of the relevant area has been terminated (Sub-regulation 37(1)(c)); the possibility of partnership arrangements between communities, tribes or customary owners and international organisations or institutions (Regulation 39); and the possibility of additional fees or charges being imposed by customary owners (Regulation 40). These provisions are relatively supportive and also suggest that any related agreements take into account guidelines issued by the Convention on Biological Diversity (Regulation 43(4)), which gives an additional layer of protection under international law.

3. Rivers

As a nation of low-lying islands, the conservation and wise use of freshwater resources is of critical importance not only for the environment but also for the health and well-being of Solomon Islanders. The relevant legislation that deals with freshwater is the **River Waters Act (Cap 135)** (Revised Edition 1996). It defines a river as including “any watercourse whether natural or artificial and any dam, lake, pond, swamp, marsh or other body of water forming part of that watercourse” (Section 2).

The main weakness of the Act from an environmental perspective is its overriding emphasis on productive use, not conservation. It does not provide any rights to indigenous peoples and local communities in decision-making processes or in relation to any of the provided activities concerning river waters. The Minister of Mines, Energy and Rural Electrification has primary decision-making power, for example: to prohibit the construction or siting of any building, structure or erection in any river's flood channel or anywhere else that it may affect the flow of a river (Section 4); to grant permits to divert water from any river such as through the construction of dams and weirs, while safeguarding any existing uses of water as far as is practicable and consistent with the Act (Section 7); and to suspend any permit or easement granted under the Act without prior notice and without assigning any reason (Section 11). In addition, ‘inspectors’ are empowered to enter and inspect any land or premises (other than a dwelling house) at any reasonable time in order to ascertain whether the Act's provisions and related permit conditions are being complied with (Section 3), for the purpose of securing data or drawing maps and plans that may be required for permit or easement applications under the Act (Section 13). These provisions could be interpreted as having conservation objectives, but the Act does not refer in any part to environmental considerations or rationales.



Figure 2: Clear freshwater streams in Hageulu, Santa Isabel (credit: James C. Meimana)

One of the only provisions that may be of direct use to communities is **Section 16 on appeals**, which provides for any person “who claims he is entitled to be compensated under the Act and has not been so compensation, or who is dissatisfied with the amount of compensation awarded to him” may appeal to the Magistrate’s Court where the claim does not exceed \$500 and to the High Court in all other cases. However, this is limited only to financial compensation and does not take into account the possibility of compensation in the form of land, restoration or rehabilitation of damaged rivers or surrounding areas.

Notably, the River Waters Act only applies to rivers declared by the responsible agency (currently the Ministry of Mines, Energy and Rural Electrification) to be subjected to the Act. To date, only six rivers in Guadalcanal and, most recently, the Ma’alu River in North Malaita province have been declared as such. Thus, this Act has limited operation across the country because it only applies to these specific rivers. It is unclear why the Act has not been implemented more widely in practice, but it is reasonable to assume that it will be in the future in light of national policies to expand physical infrastructure and electrification.⁶ The Act’s lack of consideration of indigenous peoples and communities – including their customary land rights, river and water conservation practices and right to provide or withhold free, prior and informed consent to activities in or near their territories – is a significant oversight that could lead to conflicts and negative impacts at the local level.

4. Forests

The Solomon Islands has some of the richest forests in the world. Indigenous peoples and local communities depend upon this rich diversity for a range of cultural, subsistence and livelihood needs, including food, medicine, and building materials. The Forest Resources and Timber Utilisation Act (Cap 40) (Revised Edition 1996) is the primary national legislation pertaining to forests. This Act is primarily focused on productive use of forests and is overall very unsupportive of indigenous peoples and communities.

⁶ For example, see: Ministry of Development Planning and Aid Coordination, 2011. *National Development Strategy 2011 to 2020*. Government of Solomon Islands: Honiara.



Figure 3: *Tubi* or ironwood trees, which are protected under Schedule 1 of the Forest Resources and Timber Utilisation Act (credit: James C. Meimana)

Part III comprises 11 Sections on **approved timber agreements affecting customary land**. It accords primary responsibility and power to provincial governments and to the Commissioner of Forest Resources. Any person wishing to acquire timber rights on customary land must obtain the consent of the Commissioner to negotiate with the relevant provincial government, area council and customary landowners (Section 7). The area council is responsible for holding a meeting with the provincial government, customary landowners and applicant to determine (*inter alia*) whether the landowners are willing to negotiate the disposal of their timber rights to the applicant, the nature and extent of timber rights to be granted (if any), the sharing of profits with landowners, and the participation of the provincial government in the venture (Section 8(3)). Only after agreement of these matters will the applicant carry out investigations to identify forest resources and any areas with environmental and social values that should be excluded from the application (Section 8(5)). Notably, there is an inherent conflict of interest in mandating the applicant him/herself to identify such areas; this should be done independently in collaboration with the affected communities and before (not after) any negotiations, as the findings should necessarily inform the communities' position. Overall, the Act does not specify what timber rights (Section 6) are enjoyed by and thus at the disposal of customary landowners and rights holders. It also fails to clarify the terms and conditions for any timber rights granted by customary landowners to an applicant, for example, if they are to be granted on a temporary or permanent basis and if the customary landowners still have access and use rights for customary purposes. These omissions leave open significant scope for customary landowners' rights to be undermined in the application and negotiation process.

The Act does, however, mandate the Commissioner to reject an application where no agreement is reached between the applicant and customary landowners (Section 9), though concerns still remain that customary landowners will not have access to sufficient information or leverage in the negotiation process, especially since provincial governments have vested commercial interests in the approval of such applications.

Other sections of the Forest Resources and Timber Utilisation Act also undermine indigenous peoples' and local communities' rights. For example, **Part VI (State Forests)** vests ultimate power in the Minister to declare as a state forest any public land, land in which the Government holds a freehold or leasehold interest in land, or land leased by or on behalf of the government (Section 20(1)). Section 22 sets out a number of punishable offences within state forests,

including activities likely to be undertaken by indigenous peoples and communities who may not be aware of such a declaration. Neither provision references customary rights or requires consultation with or consent of customary landowners or rights holders before declaration of a state forest.

Similarly, **Part VII (Forest Reserves)** empowers the Minister to declare as a forest reserve for the purpose of conserving water resources any area of forest or other vegetation in any rainfall catchment area, and to specify in the same notice what rights and the extent to which such rights may be exercised in the reserve (Section 24). Before declaring any area as a forest reserve, the minister must satisfy the requirements stipulated in Section 25, including publishing a notice of the intention to do so (Sub-section (a)); affording people likely to be affected an opportunity to make representations (Sub-section (b)); and conducting enquiries as needed to ascertain existing rights in the area, the extent to which exercise of such rights could be permitted without prejudice to the purposes of a forest reserve, and where exercise of such rights could not be permitted, what alternative arrangements or compensation could be made (Sub-section (c)). Mirroring Section 22 on State Forests, Section 27(1) sets out a number of punishable offences in forest reserves, most or all of which are likely to be undertaken by indigenous peoples and communities who may not be aware of such a declaration. Section 28 allows for the issuance of permits authorising any of the acts listed in Section 27(1), but it requires an application and payment of a prescribed fee. In addition to the distinct possibility that a government notice of a proposed forest reserve may not reach all of the potentially affected communities, the provisions on offences and permits undermine and restrict customary rights to access and use forests.

Part VIII (Procedures and Penalties) sets out additional offences and penalties, including in state forests and forest reserves, many of which effectively criminalise customary use and livelihood practices in forests.

A particularly concerning provision is Part IX, **Section 43 (Acquisition of timber rights in customary land)**, which stipulates that Section 241 of the Land and Titles Act (Restrictions on disposition of customary land) does not prohibit or invalidate the acquisition by a non-Solomon Islander of “any right to cut and remove any trees growing on customary land, or of any right of access to or over customary land for the purposes of cutting or removing trees” on such land. This appears to accord priority of timber rights of non-Solomon Islanders over Solomon Islanders’ rights pertaining to disposition of customary land.

Another concerning provision is **Section 44(1)**, which empowers the Minister to make regulations to (*inter alia*) declare any land, whether it is state forest or customary land, as a sanctuary for the purpose of conservation and to prohibit felling of any tree or removal of any timber from it (Section 44(1)(s)). However, the same provision states that customary land can only be declared as a sanctuary if it is acquired according to Part V of the Land and Titles Act. Furthermore, Schedule 2 of the Forest Resources and Timber Utilisation Act sets out amendments to Part V (and Part X) of the Land and Titles Act, including: the addition that acquisition of customary land for declaration as a sanctuary first requires prior negotiations with the landowners and access of the owner to independent legal advice (Section 1(b) of Schedule 2); and the substitution of Section 84 of the Land and Titles Act with text on the right of customary landowners to purchase estate in land (Section 7 of Schedule 2). On the one hand, the provisions allowing for customary land to be declared as a sanctuary are concerning given they have the potential to severely restrict and even criminalise customary uses of such forests. However, there are at least some safeguards such as prior negotiations and access to independent legal advice. Further research is needed to assess the practical implications of these provisions.

Finally, the Act fails to include any legal recognition of indigenous peoples’ ownership, stewardship, governance or management of forests. For example, it does not provide for customary landowners and rights holders to self-declare as community forest reserves forests

that they are already conserving through customary laws and other effective means. Notably, in communities in various provinces, the chiefs and elders uphold their own rules such as refraining from cutting trees close to rivers and streams used for washing and drinking. Thus, despite not being recognised in the national law, communities still practice their own customary laws concerning forests. However, it is not clear for how many more generations such practices will continue without formal legal recognition and support, especially given the somewhat draconian approach to allowing timber agreements on customary land and to declaring and enforcing state forests and forest reserves.

5. Fisheries

Fish and other marine resources are the cornerstones of livelihoods and local economies in the Solomon Islands. Nearly 90% of Solomon Islanders live near coastal areas and catch fish for consumption as well as sale. Income and employment are provided by a variety of marine invertebrates, including the trochus shell, green snail, coral, mud crab, and black button. The Ministry of Fisheries and Marine Resources is the government agency responsible for the regulation of fishing in the Solomon Islands, which is primarily done through the **Fisheries Management Act 2015**.

The relatively progressive objective of this new Act is “to ensure the long-term management, conservation, development and sustainable use of Solomon Islands fisheries and marine ecosystems for the benefit of the people of Solomon Islands”

(Part 2, Section 4). Its principles (Part 2, Section 5) include, *inter alia*, managing all natural living resources for the benefit of present and future generations (sub-section (a)); the precautionary approach (sub-section (e)); protecting the ecosystem as a whole, the general marine and aquatic environment and biodiversity fisheries waters (sub-sections (f) and (g)); recognising customary rights and ensuring access for customary fishing (sub-section (m)); and taking into account the interests and participation of artisanal and subsistence fishers in management (sub-section (n)).

This Act provides important legal recognition of customary rights and uses of marine resources across the country. In **Part 1, Section 2**, customary rights are defined as the rights that indigenous Solomon Islanders establish over customary areas of fisheries waters by virtue of historical use and association with such areas, and through acknowledgement of such rights by traditional leaders. Artisanal fishing is defined as fishing by indigenous Solomon Islanders in the waters where they are entitled by custom or law to fish where the fish are taken in a manner that is small-scale, individually operated and exclusively for household consumption, barter or local market trade. Artisanal aquaculture is similarly defined for fish produced by indigenous Solomon Islanders.

Under **Part 3 (Administration), Section 14** states that provincial governments have primary responsibility for the conservation, management, development and sustainable use of fisheries resources within their respective provincial waters and are empowered to make Ordinances regulating fisheries under the powers devolved to it (pursuant to Schedule 3 of the Provincial Government Act 1997) and ensuring consistency with the national Fisheries Management Act.

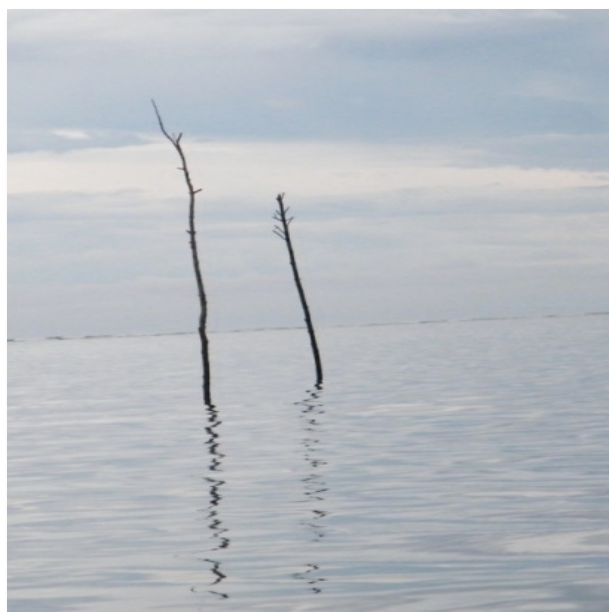


Figure 4: Poles indicating taboo over reef in Sulufou, Malaita (credit: Aydah Gwaena Akao)

Such ordinances can only be applied to the waters of the respective provincial governments. This devolution of power and governance provides another opportunity for legal recognition of customary rights and uses at the provincial level.

Part 4 of the Fisheries Management Act usefully provides for **Fisheries Management Plans** (Section 17) and **Community Fisheries Management Plans** (Section 18). The former can be prepared at national, provincial and community levels (Section 17(1)). A community-level Plan is subject to approval of the Provincial Executive and a management committee representing the customary rights holders (Section 17(2)(c)). Community Fisheries Management Plans can be drawn up by or on behalf of customary rights holders for customary rights areas and may provide for matters set out in the **Second Schedule** (see Box 3) without limitation. A Community Fisheries Management Plan applies to a clearly demarcated area that does not extend beyond the customary rights of the relevant community or the outer edge of the (fringing) reef and provincial waters in which such rights are exercised (Section 18(2)). Notably, Section 18(7) provides explicit legal recognition for community-defined measures, stating that Community Fisheries Management Plans' management measures and licensing and enforcement powers and authorities shall have the legal effect of a by-law once they are adopted by the Provincial Assembly and published in the Gazette.

The **Second Schedule** (referred to in Sections 17 and 18 of the Fisheries Management Act) focuses on **fisheries management plans** and includes a number of useful provisions and protections for indigenous peoples and local communities. The preparation of national, provincial and community fisheries management plans requires consultation with customary rights holders where a plan applies to waters subject to customary rights (Section 1). The description of the fishery (Section 3) shall include (*inter alia*) a risk assessment of threats to the fishery resource, including adverse environmental, biological, social, cultural or economic effects (Sub-section (d)) and any customary rights (Sub-section (f)). A community fisheries management plan may provide for: technical assistance from the government and NGOs (Section 9); commitment by the relevant community, customary owners of fisheries resources and fishing rights to manage the fisheries in the designated area only in accordance with the plan (Section 10); and the establishment of community Marine Protected Areas and Marine Managed Areas (Section 11). Each Community Fisheries Management Plan shall be accompanied by written consent of the relevant customary rights holders (Section 13). If a Community Fisheries Management Plan's management measures, powers or authorities are shown to be ineffective, the Director, Provincial Executive and relevant community shall consult with a view to revising the Plan (Section 15).

Box 3: Community-relevant provisions of Schedule 2 of the Fisheries Management Act 2015

Section 19 empowers the Minister to declare a national Marine Protected Area⁷ or **Marine Managed Area**⁸. If any part of an area proposed for such declaration includes any area where there are customary rights, it requires agreement of the relevant community rights holders (Section 19(4)(b)). Section 20 empowers the Director (with the Minister's approval) to enter into agreements with any customary rights holders for coordination and cooperation.

Section 21 is particularly significant in its explicit and strong support for **customary rights**, stating that they "shall be fully recognised and respected in all activities falling within the scope of this Act" (Sub-section (1)). Furthermore, it prohibits the use of vessels other than those used for customary fishing to engage in fishing, otherwise enter or cause destruction to an area subject to customary rights (Sub-section (2)). Contravention of this prohibition or breach of

⁷ Marine Protected Areas are areas where protective, conservation, restorative or precautionary measures have been instituted in order to protect and conserve marine species, habitats, ecosystems or ecological processes, and that do not form a 'protected area' under the Protected Areas Act 2010 (Part 1, Section 2 on interpretation).

⁸ Marine Managed Areas are regulated to preserve their natural states and protect marine life while allowing for harvesting of marine species (Part 1, Section 2 on interpretation).

customary rights may lead to conviction or compensation of the rights holders, respectively (Subsections (3) and (4)).

One potentially concerning provision is **Section 31**, which empowers the Minister (on the advice of the Director and in consultation with the Minister responsible for the environment) to declare **protected or endangered species of fish**. However, it does not explicitly require such declaration to be based on indigenous or traditional knowledge. In addition, any person who takes, lands, sells, deals in, transports, receives, buys, possesses, imports or exports any protected or endangered fish or fish product commits an offence and is liable to a fine and/or imprisonment upon conviction. Although this may be necessary from an environmental conservation point of view, it is highly unlikely that many indigenous peoples and local communities will be aware of which species are declared as protected or endangered in the Gazette. Read on its own, this provision could potentially undermine customary rights, though it is presumably subject to Section 21 (above).

In various provisions throughout the Act, reference is made to applicable international law, which arguably provides an additional layer of legal recognition of and support for customary rights and fishing practices. Overall, the Fisheries Management Act is relatively progressive, particularly in its recognition of customary rights in fishing and aquaculture. However, it appears to restrict customary rights only to management and use and does not extend its explicit recognition to ownership or governance of marine resources. Regardless, it has gone much further than other Acts in its recognition of customary rights and uses, which is to be commended.

6. Mining

The Solomon Islands is rich with gold and other economically valuable minerals such as copper and nickel, although the country has had little mineral sector investment to date. The **Mines and Minerals Act (Cap 42) 1996** discusses the mining cycle (which includes the stages of reconnaissance, prospecting and mining) and the approvals required in each stage. Minerals are defined under the Act as “any substance found naturally in or on the earth formed by or subject to geological process”, excluding petroleum (Section 3). The Act and the Mines and Minerals Regulations 1996 focus largely on mineral tenure, while environmental, social and fiscal aspects dealt with in separate pieces of legislation. The Department of Mines and Energy (within the Ministry of Mines, Energy and Rural Electrification) is the government agency responsible for administration and regulation of the mining sector. The Minerals Board primarily administers mineral rights and advises the Minister for Mines on the issuance of mineral permits, licenses and leases (Section 11). The Ministry of Environment, Climate Change, Disaster Management and Meteorology also plays an important role in overseeing compliance of mining developers with the regulatory framework’s environmental requirements.

One of the weaknesses of this Act is the lack of full clarity about who owns the minerals. Many landowners think they are the rightful owners, pursuant to customary laws, which presents the possibility of conflicts with state law. Section 2(1) of the Mines and Minerals Act and the Schedule of the Constitution respectively state that minerals and natural resources are vested in both the people and the government of the Solomon Islands. Despite these provisions, the Mines and Mineral Act also states that the government has the exclusive right to deal with and develop the country’s mineral resources (Section 2(3)). From one perspective, this means that both the people and the government have ownership of the resource. Another view is that it refers primarily to the people, since that is whom the government represents. This critical aspect of the law would benefit from legislative amendment or clarification to prevent conflicts and challenges in court.⁹

⁹ These introductory paragraphs are drawn from: Fardin, J. (no date) *Mining Law and Agreement Making in Solomon Islands*. Landowners’ Advocacy and Legal Support Unit, Public Solicitor’s Office. Solomon Islands Government: Honiara.

In the 2005 High Court case of *Knight v Attorney General*, the plaintiff was convicted of purchasing gold from person who did not have a gold dealer's license, in contravention of Part VII of the Mines and Mineral Act. The plaintiff argued that the gold belonged to her. The defendant argued that neither the villager nor the plaintiff had legally acquired title to the gold, and accordingly the crown retained ownership thereof. Chief Justice Palmer interpreted Section 2(1) of the Act as meaning that the ownership of mineral vests with the crown.

Box 4: The High Court case of *Knight v Attorney General*

A somewhat unexpectedly supportive provision empowers the Minister for Mines to designate certain land as reserved or protected, including villages, burial sites, houses, *Tambu* (sacred) places, and cultivated land, and prohibit any proposed mineral projects, unless written consent of the owner or occupier for such projects is provided (Section 4).

The first phase of the mining cycle – generally referred to as ‘exploration’ – is split into two parts under the Mines and Minerals Act. The first is **reconnaissance (Part III)**, which is defined as intentionally searching for minerals using geophysical, geochemical, photo-geological surveys or other remote-sensing techniques and related surface geology (Section 3). In this process, the consent of the landowners is not required for the granting of the reconnaissance permit. However, in Part III, Section 17, a reconnaissance permit holder must obtain landowner consent before it enters any land to carry out reconnaissance. The Act does not say what process a permit holder must follow to obtain such consent or in what way or form the consent must be communicated. However, the Mines and Minerals Regulation 1996 provides some guidance on these matters, including that every holder of a reconnaissance permit shall submit a report to the Director in such form as he may prescribe, not later than thirty days from the end of each calendar quarter during which the holder has conducted any activities under such permit; the report must summarise such activities and state the results of any photo-geological, geophysical or geochemical surveys and other required information.

Prospecting (Part IV) includes a more substantive form of exploration tenure. Prospecting is defined as ‘intentionally to search for any mineral and includes determining the extent of any mineral deposit and its economic value’ (Section 3). Concerning landowner consent, a procedure must be followed before a company can sign a surface access agreement. Part IV, Sections 19 and 20 set out criteria for an applicant (prospecting company) to receive a letter from the Minister, which must be in consultation with the Director of Environment and Conservation Division. The criteria include the identification and record of the names of each of the landowners, land holding groups, and people and groups within the prospecting area; commencing negotiation; making arrangements for the payment of surface access fees; and compensating for damage in consultation with the landowners. The Director of Mines must also arrange meetings in principal villages in the proposed areas to explain various specified issues related to the permit. Any objection to a prospecting license must be lodged with the Minister for Mines within 30 days from the date of meeting. Neither the Act nor the Regulations specify what process must be followed if an objection is lodged; this is a gap in an otherwise useful provision.

The definition of **mining (Part V)** is to intentionally extract any mineral and includes milling, processing, concentrating, beneficiating, smelting or refining and incidental operations. Landowner consent for a mining lease is sought at the same time as it is for access rights for prospecting. This means that the landowners or indigenous peoples who enter into a surface access agreement with a company should have provided consent for both the prospecting and mining stages before the prospecting license is granted. However, in practice, surface access agreements negotiated at the prospecting stage rarely, if ever, also cover the mining stage, due to the many differences between the two stages.

A critical component of the mining cycle is **mine closure and rehabilitation**, but the Solomon Islands has not yet had experience with this in practice and it is only covered in

disparate sections of the Act and Regulations. For example, there are provisions requiring removal of structures and machinery within 90 days of a prospecting permit's expiry (Section 29(1)) and a detailed programme within an environmental assessment for "progressive reclamation and rehabilitation of lands disturbed by mining" (Section 31(1)(h)(ii)). The Act also empowers the Minister for Mines to make regulations providing for restoration plans (Section 80(k)). Such provisions do not appear to address social or cultural issues.

In summary, consent of the landowners is required in the first stage of the mining cycle before a reconnaissance permit holder can access the land. Landowners' consent is also required concurrently for the prospecting and mining stages, though this tends not to happen in practice. Objections to prospecting licenses may also be lodged, although there is no specificity about procedures to be followed thereafter. Overall, there is a need for better implementation of supportive provisions, greater clarity in the law about the ultimate owners of the minerals in light of differences between provisions in the Constitution and Mines and Mineral Act and in case law, and amendment to more comprehensively provide environmental and social safeguards in the stage of mine closure and rehabilitation.

C. BRIEF ANALYSIS & CONCLUSIONS

The Solomon Islands have some of the highest levels of both terrestrial and marine biodiversity in the world. With an estimated 87% of the country's land under customary ownership, there is a significant overlap between this extraordinary biodiversity and indigenous peoples' and communities' territories and areas. This relationship is underpinned by customary laws and practices and traditional knowledge systems developed over centuries of occupation, use, conservation and protection.

However, the introduction of British colonial and then post-independence laws has led to many conflicts and inconsistencies with customary laws, including in the context of environmental matters. In an attempt to better understand the relationship between these types of laws, the present review has identified provisions in select national environmental laws (concerning land, protected areas, rivers, forests, fisheries and mining) that either support or undermine indigenous peoples and local communities, most often referred to in Solomon Islands law as customary landowners and rights holders (Part B). The main findings are summarised below, along with a brief analysis of the (potential) interactions between the laws and discussion of the implications and future directions.

1. Laws that Actively Undermine or Fail to Support Indigenous Peoples and Local Communities

The laws pertaining to customary land include the Land and Titles Act 1996 and the Customary Land Records Act 1996. The Land and Titles Act in particular serves as a sort of 'doorstep' for settling land ownership and rights before any development such as logging and mining can take place on the land. However, the process for a tribe or clan to confirm or establish their rights as the true customary landowners forces them to subscribe to procedures under state law that undercut those under custom. The Land and Titles Act requires the custom itself to be established in a court of law on the basis of evidence in books, treaties, reports and other works of reference. This effectively makes customary land law subservient to state land law and forms of evidence; anything that is not documented in the stated written forms (for example, oral histories, folklore and traditional boundary markers) cannot be used to establish custom. In addition, provisions intended to address land dispute resolution in both land Acts are not comprehensive enough to bring about lasting and conclusive solutions to disputes. The Land and Titles Act also fails to provide for the possibility of customary landowners and rights holders self-declaring protected or conserved areas within their customary lands. Such a provision would usefully enable indigenous Solomon Islanders to legally enshrine their conservation aims while securing land title. Thus, even attempting to secure state recognition of customary land – the foundation of indigenous peoples' identity and social structure – already subjects customary law to foreign regulation and procedures.

One of the laws reviewed – the Forest Resources and Timber Utilisation Act 1996 – actively undermines indigenous peoples' and local communities' rights and conservation efforts, including by allowing timber agreements on customary lands with little protection; empowering the Minister to declare state forests without consultation or consent of customary landowners or rights holders; criminalising activities commonly practiced by indigenous peoples and local communities in forests; and according priority of non-Solomon Islanders' timber rights over Solomon Islanders' rights pertaining to disposition of customary land. The Act also fails to include safeguards such as the right to be consulted and provide or withhold consent to proposed timber agreements; does not specify what timber rights are enjoyed by and at the disposal of customary landowners and rights holders; and neglects to recognise customary ownership, stewardship, governance or management of forests (for example, through self-declared community forest reserves). The Act does, however, include marginally supportive provisions such as empowering the Commissioner of Forest Resources to reject an application where there is no agreement

between the applicant and customary landowners; limited requirements to be fulfilled before the Minister declares an area as a forest reserve; and certain safeguards before the Minister can declare customary land as a sanctuary for the purpose of conservation.

More benign than the Forest Resources and Timber Utilisation Act but certainly not benevolent is the River Waters Act 1996. It also has an overall emphasis on productive use of rivers and water, though does not contain as many provisions that actively undermine indigenous peoples and communities; in fact, it does not refer to indigenous peoples and communities at all. The relevant Minister has overriding decision-making power, but this also includes the power to prohibit construction of any building or structure anywhere that may affect the flow of a river. The Minister may also grant permits to divert water, but must safeguard existing uses of water. Although the Act currently has limited operation across the country, it is expected to have increasing importance in light of national policies to expand physical infrastructure and electrification. Although the River Waters Act is not as actively unsupportive as the Forest Resources and Timber Utilisation Act, it also fails to consider indigenous peoples and communities explicitly in any provision, which is a significant oversight that could easily lead to conflicts in the future.

Finally, one of the laws reviewed – the Mines and Minerals Act 1996 – is generally unsupportive of indigenous peoples and local communities by virtue of its overall focus on productive commercial use of mineral resources and overarching power resting with the government, but it also contains a number of safeguards for community concerns against that backdrop. One of the main weaknesses of this Act is the lack of full clarity about who owns minerals in the Solomon Islands; it has been suggested that this critical aspect would benefit from legislative amendment or clarification. Another significant gap is the lack of comprehensive regulation of mine closure and rehabilitation and environmental and social issues therein. More generally, the Act provides for three main phases of the mining cycle. Landowners' consent is required in some form in each stage, namely: consent for a reconnaissance permit holder to enter any land to carry out reconnaissance; consent before a company can sign a surface access agreement for prospecting (with a number of criteria for doing so); and consent for a mining lease, which is supposed to be sought at the same time as consent for prospecting access rights. A somewhat unexpectedly supportive provision empowers the Minister for Mines to designate certain lands (such as villages, burial sites, houses, *Tambu* places, and cultivated land) as reserved or protected, thus prohibiting any proposed mineral projects.

2. Laws that Support or Explicitly Recognise Indigenous Peoples and Local Communities

Indigenous peoples and local communities have a wide range of traditional mechanisms for protecting and conserving certain areas and resources based on customary laws and practices. However, these have yet to be legally recognised by the government. The state-recognised protected area still reigns supreme, but recent developments show significant improvement and promise. Of the laws reviewed, the Protected Areas Regulations 2012 and Fisheries Management Act 2015 are by far the most progressive and explicitly supportive of indigenous Solomon Islanders, customary landowners and customary rights holders. The Protected Areas Act 2010 also contains a number of useful provisions, though it doesn't go as far as its 2012 Regulations.

To begin with, before a protected area can be declared by the Minister, the Protected Areas Act 2010 requires public notice of the proposed declaration, consultations with owners of the proposed area and others who may be affected, clear demarcation of boundaries and consent and approval from people with rights or interests. These are relatively supportive provisions that provide important safeguards for protected areas that may be established in areas overlapping with customary territories and resources (typically a flashpoint for conflict between communities and government). The Protected Areas Act also provides for Protected Areas Advisory Committees

(with strong representation of NGOs) and appointment of inspectors to enforce the Act. Although these provisions do not explicitly refer to indigenous peoples and communities as candidates for either role, there is sufficient flexibility in the wording to argue that there is no reason why they could not be appointed to both. However, it would be better if the Protected Areas Act explicitly recognized: a) indigenous peoples and communities as potential candidates for Advisory Committees and inspectors; and b) indigenous peoples' and communities' rights to declare, govern and manage their own protected and conserved areas.

The Protected Areas Regulations 2012 go much further than the Act in recognising the rights, tenure and interests of customary owners and local communities, and allowing for communities and other management arrangements overseeing existing community conservation programmes to be recognised and continue as management committees for the purposes of the Act and Regulations. These supportive provisions are the closest to providing full recognition of indigenous peoples' and community conserved areas among all of the reviewed national laws.

The Fisheries Management Act 2015 recognises customary rights and uses, artisanal fishing and artisanal aquaculture and places both the environment and people at the heart of its objective and principles. Among its many supportive provisions are those on Community Fisheries Management Plans (which includes explicit legal recognition of community-defined management measures and enforcement powers) and those explicitly recognising and respecting customary rights "in all activities falling within the scope of this Act" (Section 21(1)). The main drawback to this Act is that it appears to limit its recognition of customary rights only to management and use and does not extend its explicit recognition to ownership or governance rights.

3. Interactions between the Laws

Some of the laws reviewed contain explicit references to others. For example, Schedule 2 of the Fisheries Management Act 2015 stipulates (*inter alia*) that a Fisheries Management Plan shall take into account and ensure consistency with any relevant protected areas declared under the Protected Areas Act 2010. In addition, Marine Protected Areas and Marine Managed Areas declared under the Fisheries Management Act are only done so in areas that are not designated as protected under the Protected Areas Act 2010.

Other laws can be interpreted as establishing implicit linkages with others. For example, under the River Waters Act 1996, the Minister of Mines, Energy and Rural Electrification has overriding decision-making power to (*inter alia*) prohibit the construction or siting of any building, structure or erection in any river's flood channel or anywhere else that it may affect the flow of a river. This could be interpreted as protecting against reconnaissance, prospecting and mining activities under the Mines and Minerals Act 1996 that may affect rivers.

Second, under the Protected Areas Regulations 2012, Regulation 63(1) identifies significant alteration of the natural flow of waterways as one of its prohibited activities (except where authorised by the protected area management committee or management plan). This could be a useful safeguard against inappropriate developments affecting rivers and watercourses, whether under the River Waters Act or under another relevant law such as the Mines and Minerals Act or the Forest Resources and Timber Utilisation Act. However, the relationship between these laws is not clear; for example, it remains to be seen if the Protected Areas Regulations 2012 would take precedence over the others or vice versa where more than one applies to same area.

A third and final example is found in the Protected Areas Regulations 2012, where Part 11 usefully prohibits industrial or commercial extraction of timber, logs, non-timber forest products and minerals within a protected area or within no more than one kilometer of its defined boundaries, while still allowing for limited non-commercial extraction of timber for owners of the area. If an indigenous community has managed to declare a protected area on their own terms, these prohibitions provide an additional layer of protection against unwanted industrial and

commercial activities. This implies that the Protected Areas Regulations would take precedence over the Mines and Minerals Act if a prospecting or mining application was submitted in or near a protected area. However, this is not explicitly stated and perhaps should not be presumed; in other countries such as the Philippines, the mining legislation readily takes precedence over laws on protected areas and indigenous peoples' rights.¹⁰

It is clear that the Acts interact with each other, in some cases in through a necessary chain of events (for example, settling of land title before mining) and in other cases, by virtue of conflicts, gaps or inconsistencies between them (for example, the recognition and protection of sacred sites in the Mines and Minerals Act and the lack of the same in the Forest Resources and Timber Utilisation Act). These interactions can have significant implications for indigenous peoples' and communities' rights and the resilience of their customary laws and conservation practices.

4. Discussion

The laws that actively undermine or are more generally unsupportive of indigenous peoples and local communities were deemed as such because they: a) allowed extraction of natural resources or other exploitation of customary lands without appropriate protections and safeguards; and/or b) criminalised or failed to provide positive recognition or support for customary rights and conservation practices. Conversely, the laws that generally support or explicitly recognise indigenous peoples' and local communities' rights were deemed as such because they: a) provided safeguards to prevent outsiders' extraction of natural resources or other exploitation of customary lands; and/or b) provided positive recognition or support for customary rights and conservation practices.

Overall, each of the laws reviewed was neither fully supportive nor fully undermining of customary landowners and rights holders. Even the 'best' laws (the Protected Areas Regulations 2012 and the Fisheries Management Act 2015) had certain provisions of concern. Similarly, even the 'worst' laws (particularly the Forest Resources and Timber Utilisation Act) contained one or more potentially supportive provisions or safeguards against exploitation. In this sense, it is important to review each law in its entirety as well as its interactions with other laws to truly understand its importance and usefulness in relation to indigenous peoples and local communities.

To a greater or lesser extent, all of the Acts gazetted in 1996 (those concerning land, river waters, forests and mining) adopt a sort of neo-colonial and exploitative approach to indigenous peoples and communities. The laws gazetted within the past five years (those concerning protected areas and fisheries) have a much more progressive approach in line with leading international law and standards. This underscores the importance of regular judicial review, amendment and reform of legislation in order to remain in step with the most current regulatory frameworks, standards and guidance concerning indigenous peoples and the environment.

More research and analysis is needed on the extent to which indigenous peoples' and communities' rights and the wide diversity of customary laws and conservation practices are recognised and supported in the Solomon Islands. This should include, for example, reviewing the remaining environmental laws and latest legislative developments, international law (including the UN Declaration on the Rights of Indigenous Peoples, which has yet to be endorsed or enshrined at the national level), relevant jurisprudence, and practical implementation of both supportive and unsupportive provisions. The authors acknowledge that this review is an initial attempt to shed some light on these important facets of the law, though it is hoped that it contributes to the body of work on critical legal studies in the Solomon Islands.

¹⁰ Pedragosa, S., 2012. *An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities. Report No. 16: The Philippines*. Natural Justice in Bangalore and Kalpavriksh in Pune and New Delhi.