

Water Resource Management Act No. 04/14

Legislative Review



STRETEM ROD BLONG JASTIS
VANUATU LAW AND JUSTICE PARTNERSHIP



**Australian
AID**



**VANUATU
LAW
COMMISSION**

Water Resources Management Act

LEGISLATIVE REVIEW

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AID** 



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FOR REVIEW REPORT

The need for reform in Vanuatu was one of the driving factors for the establishment of the Vanuatu Law Commission as much of the laws had remained relatively unchanged from pre-independence and post-independence. The Water Resource Management Act as well as the Water Supply Act is two legislations that deal with one fundamental element that is an integral part of our daily lives, as such water, water is life with that comes the responsibility for all human beings to be responsible for the safety and supply of water for the Republic of Vanuatu.

In 2012 the Vanuatu Law Commission received a request from the Department of Geology and Mines. The reasons provided in the request were the legislation was out-dated.

The Vanuatu Law Commission considered and approved for reviewing the Act and the office of the Secretary began the task of preparing for the review. The office prepared an Issues Paper on the topic and started its first phase of the review by inviting stakeholders to a workshop in 2013 where different considerations were presented to the stakeholders to invoke thought when making their submissions on their views of what needed to be changed in the legislation. I would like to show a bit of what was in the Issues paper from the Water Resource Management Act;

“Vanuatu is comprised of eighty islands, with sixty five of these islands inhabited. The total population of the country in the last census was approximately 234,000. The majority (75%) of the people live in rural areas and the main urban centres are Port Vila and Luganville on Santo Island.

One of the Millennium Development Goals that Vanuatu has set out to achieve is to halve the proportion of people without sustainable access to safe drinking water and basic sanitation, by 2015”.

So you see Vanuatu has come a long way since independence in 1980, and with all developments, will arise challenges and the main challenge for Vanuatu through its Water Resource Management Act is to provide more detailed recommendations to provisions within the Act to be able to better monitor, regulate and manage water resources around Vanuatu.

Therefore, it is with great pleasure that I would like to present this report

regarding the review of the Water Resource Management Act 9 of 2002. This report contains the findings and recommendations on what areas within the legislation will need reform.

I would like to take this opportunity to thank the Ministry of Justice and Community Services and Stretem Rod Blong Jastis (AusAid) project without your support this would not have been possible as well as to the Government of Vanuatu for giving us this opportunity, and to all stakeholders and the people out in the communities and provinces that were consulted. This report would not have been possible without you.

Bertha Pakoasongi
Secretary of the Law Commission

Abbreviations

Art	Article
AMA	<i>Aquaculture Management Act 2003 of Tonga</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
DGMWR	Department of Geology, Mines and Water Resources
EMCA	<i>Environmental Management and Conservation Act of Vanuatu</i>
LLA	<i>Land Leases Act of Vanuatu</i>
LRA	<i>Land Reform Act of Vanuatu</i>
MMA	<i>Mines and Minerals Act of Vanuatu</i>
TPDA	<i>Towing Planning and Development Act Western Australia</i>
WRMA	<i>Water Resource Management Act of Vanuatu</i>
WAA	<i>Water Act 2000 of Australia</i>
WPZ	Water Protection Zones
NGO	Non-Government Organizations

EXECUTIVE SUMMARY

In 2012, the Vanuatu Law Commission received a request to review the *Water Resources Management Act*. This is the first time that this Act is to be reviewed since its commencement in 2003 and follows the Vanuatu National Water Strategy 2008-2018 that was issued by the Department of Geology, Mines and Water Resources and the Ministry of Lands.

After consultations in the provinces, including community consultations in the provinces on Efate, Aniwa, Epi, Ambrym, Santo, Loh and Maewo, the main messages to the VLC were that the water supply system needs a lot of improvement especially in the rural areas, with regards to its delivery, sanitation, quality, the management of water resources and the importance of committees working together.

The VLC also had regard to Vanuatu's international obligations. Even though Vanuatu has not ratified the Convention on Economic, Social and Cultural which recognises the right that every human has to water, it is a member of the General Assembly. On 28 July 2010, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights.

As a result the VLC has completed this review of major parts of the *Water Resources Management Act*. Parts of other laws, which were also identified as generally outdated and difficult to use, are part of a general recommendation that laws affecting all water resource management issues in Vanuatu should be improved.

This review found wide support for there to be free access to water, regardless of customary ownership over lands that any source of water may pass through. Many people still respected their traditional values and rules especially regarding land ownership but they felt that when it came to accessing water, customary landowners should not have total ownership over it. The VLC recommends that while the provisions of the Water Resource Management Act on ownership of water are currently acceptable, Vanuatu should uphold its obligations to the conventions it has ratified with regard to the right to water.

The consultations also showed that the people were in general consensus that all the rivers should have their zones or buffers defined

and provided for under the current Act. Due to the various number of uncontrolled activities that occur daily on and near the rivers, people felt that certain activities should be restricted so as not to contaminate the quality of the river. The VLC recommends that river buffer zones should be established along with a list of restricted activities that should not be carried out in those areas.

Many people were also in favour of provincial committees being set up to manage and overlook each province's water supply and water resources. Currently, there are rural communities in each village that manage their own water supply but while they are legally recognized, their functions and powers are not really provided for under the current act. Furthermore, there is no clear structure for the water supply system especially in the rural areas. As such, there is a big gap between the 'grass roots' level and the national level. The VLC recommends that Provincial Water Resources Advisory Committee should be established. A further recommendation is that a clear structure should be defined for the water supply system.

During the consultations, many people also stated their support for there to be better enforcement over the Water Protection Zones of water sources. Under the current Act, there are enforcement provisions but there has been failure to follow up on these provisions. The villagers and stakeholders stated that water quality and hygiene are closely linked so that the risk of contamination or pollution of natural water needs to be strictly regulated. The VLC recommends that there must be enforcement and surveillance provisions for Water Protection Zones in both rural and urban areas and responsible authorities should be appointed to carry out these enforcements. In addition, a list of restricted activities should be provided for Water Protection Zones. There should be severe penalties and fines given to those who breach these provisions.

The VLC has also provided detailed recommendations and drafting instructions for these new amendments to the current and has also suggested review of a number of related laws.

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The current Water Resources Management Act has been effective in Vanuatu for over 10 years. It is an Act that provides for the proper management and conservation of Vanuatu's natural water resources by regulating the use and works that can be done with the water resources and the establishment of the committees to help overlook the management of these water resources. This Act commenced on the 10th of March 2003 and while it is a fairly recent legislation compared to its counterpart, the Water Supply Act which has been effective for over 50 years in Vanuatu, it does have some limitations which poses difficulty to authorities to effectively implement the law fully. Since its commencement, this Act has yet to be amended. The request that was sent in by the Director of Geology, Mines and Water Resources on the 28th day of November 2012, is the first attempt that has been made at an amendment to the Act. The request was sent based on the current gaps and difficulties faced by the Department in executing its responsibilities.



The limitations in the current law are:

- The ownership of water and in particular, the type of rights customary landowners has as opposed to the general public's right to water. The current Act does not specify just what rights a landowner may have in regards to water situated on his land and where the landowner may continue to enjoy the water right but so long as he or she is not a hindrance to accessing water by others. There is also the relating issue of compensation of water sources found on customary land, except for areas where the establishment of Water Protection Zone is warranted.
- The current Act does not provide proper definitions for river buffer zones in specifying what activities are permitted and what is not permitted, thus leaving it open for the general public to carry a variety of activities near rivers, regardless of whether it is dangerous or not to the health of the general public.
- The National Water Advisory Committee was originally established to provide evidence to the Director of the department responsible for the management of water, on matters relevant to the protection,

Introduction

management and use of water. Currently its membership is limited to 5 members but considering the number of islands and the vast water resources available, this limited membership needs to be expanded to cater for Vanuatu's geographical situation.

- While there is a National Water Advisory Committee, it has a low profile and meets infrequently. This means that there is a gap between the National level and the local community level, especially in the rural areas. Thus a similar body as that of the National Water Resources Advisory Committee would be beneficial and be provided for at the provincial level.
- There is also a lack of drinking water quality standards and its monitoring and enforcement, which has a direct impact on the health of the general public.
- While there are 2 Declared Water Protection Zones, it is severely lacking in regards of enforcement and surveillance. This renders the whole concept of having a Water Protected Zone ineffective, thus it should be addressed.

In addressing these issues, the Vanuatu Law Commission undertook consultation of this review on ten islands. These islands are Tanna, Aniwa, Epi, Ambrym, Santo, Loh (Torres), Vanualava, Ambae, Maewo and Efate. Seven communities were visited. This report considers Vanuatu's obligations internationally, nationally and traditionally and recommendations made are based on findings made in the communities, provinces and with stakeholders in Luganville and Port Vila.



Ownership of water – water right

Background

Water right can be seen as the right to use water. It may refer to the right of a user to use water from a water source, e.g. a river, stream, pond or source of ground water. In areas with plenty of water and few users, a system of owning water and having rights to water are generally not complicated. However, in other areas

where there are not a lot of water sources for the water users, such systems are often the source of rising conflicts both legally and physically.

The answer to the very basic question of whether one can own water varies amongst different countries in the Pacific and other international countries in the world. Some countries have a general provision of a legislation which directly deals with the ownership of water and water rights whilst some have an indirect provision or provisions to address the issue. Others do not have anything at all in their domestic and international laws to address the issue of owning water.

There are many factors which contribute to answering such a question and one of course is the variation of both national and international laws that are applicable in the different countries. Generally, water rights are based on the water law that applies in a particular country and, at their most basic, are classified as land-based or use-based rights. Some water rights are based on land ownership whereas the other right do not relate to land and instead rely on whether the water user has legal access to the water source.

The issue of who owns water is unclear in Vanuatu although Vanuatu has ratified a few international conventions which recognize the right to water such as the CEDAW¹ and CRC². The 2010 UN general assembly resolution called upon states and international organizations to provide financial resources help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

Currently, Vanuatu does not have any specific provision in any of its domestic laws that specifically address the issue of ownership of water. Vanuatu's Constitution states that Ni-Vanuatu indigenous custom owners collectively own all land in the country in perpetuity. The *Water Resources Management Act* on the other hand, gives the state power over Vanuatu waters. It may partly be the answer as it applies to all water in Vanuatu by section one and 'water' is then defined very widely in section two. Then section three gives the Minister power over use of water and section four preserves custom rights to water except where the Act says otherwise. Sections 6, 7 and 8 place the power to the director responsible for water for any application for the right to use water, for work and limitation on the right to use water.

The *Mines and Minerals Act* 1986 provides the Minister with the power to make regulations with respect to water rights and the use of water.³ However, these provisions have yet to be utilized. In addition, if any lease made under the Land Leases Act grants the right to use any water, the lessee is entitled to use any water on, adjacent to or under that land and must apply to the Director for the right to use water for any other purpose. Furthermore, there is no proper definition of the term water right, what this right entails and the limits associated with these rights.

In Australia, access to and use of water is governed by statutory rights administered by state and territory governments. There are different types of water rights and their properties, including tradeable water rights or water products. Water access entitlement or water right is defined under the

¹ Art,14(2) (h): "to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication"

² Art.24(2) (c): "to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risk of environmental pollution".

³ *Mines and Minerals Act* 1986 [Vanuatu], section 88(2)(w)

Australian National Water Initiative as a perpetual or ongoing entitlement to exclusive access to a share of water from specified consumptive pool as defined in the relevant water plan. The different water rights included river right, stock and domestic right, water delivery right, irrigation right and native title right. While the other rights are tradeable, the native title right is not tradeable.

Compensation and water rights

Compensation is a way of getting repaid or receiving something as an equivalent for your services. It is a typical Melanesian style where compensation always becomes an issue over land dealings or water dealings situated on land owned by some individuals or groups. Land owners always want to be compensated for any happenings that are taking place on their land, which give rise to a lot of issues and is of great concern.

The answer to the question of whether land owners may receive some form of compensation for any water source, rivers or streams situated on their land varies across the region. Some may agree with the idea of compensation while others may not agree.

In Vanuatu, there is no specific domestic water law or any other law which allows compensation to land owners for allowing water sources or use of water on their land to other people. The *Land Leases Act* however refers to the issue of compensation (in some of the provisions in the Act) but particularly compensation with regards to the issues concerning land. The old *Land Reform Act* [Cap123] under part 6A caters for compensation of land to custom owners in line with the *Land Leases Act*, however now has been repealed. The recent amended *Land Reform (Amendment) Act* No. 31 of 2013 is silent when it comes to the issue of compensation of land or anything on land to customary land owners.

The legal position in Western Australia in relation to compensation is provided for under its Town Planning and Development Act 1928. This provides that claims for compensation can arise only where a property is injuriously affected by the making of a town planning scheme. It further provides that land is not deemed to be injuriously effected unless the town

planning scheme permits development on that land for no purpose other than a public purpose or prohibits wholly or partially any use at all of that land.⁴ This includes land that is declared as a Water Protection Zone. Two methods of compensation have been identified and these are direct payments to landowners and indirect payments to landowners.⁵

WHAT PEOPLE SAID

Ownership of water and water rights

- *A lot of people during the consultation supported the idea that water belongs to the custom owners of the land.*
- *Some say that water should be solely owned by the state.*
- *Water belongs to the land owners if situated on their land.*
- *If people want access to water then they must ask permission from the custom owner.*
- *Water is life*
- *We cannot stop people from using water if they are in need of water.*
- *Water is meant to be free for anybody to use therefore it shouldn't be blocked by anyone.*

Water rights and compensation

- *A lot of people want to be compensated for their land if water source on their land is to be used publicly.*
- *A lot of people said that if the water source on their land is to be used to supply water like the Tagabe water source, then they must be compensated.*
- *Others said that the law shouldn't allow for Compensation.*
- *People will make false claim over land to receive compensation*
- *Compensation for water to custom owners shouldn't be a lot in the law.*

⁴ Western Australian Planning Commission 'Statement of Planning Policy No. 4.1- State Industrial Buffer Policy' http://www.planning.wa.gov.au/dop_pub_pdf/spp4_1.pdf (Accessed 07/03/2014)

⁵ Above n1.

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the right to water in the International Conventions such as CEDAW and CRC that Vanuatu has ratified must be upheld.
2. That the provisions of the Water Resource Management Act with regard to ownership of water are currently acceptable.
3. That a new section 9 be inserted into the Water Resource Management Act to deal with the issue of compensation when it comes to water dealings and the use of water.
4. That the new section must disregard compensation to custom owners when it comes to use of water.

DRAFTING INSTRUCTIONS

New section 9. Compensation and water use

1. There shall be no compensation made to any;
 - (a) custom owner or owners;
 - (b) private individual;
 - (c) tribes; and
 - (d) any group of people,for any water source, river, stream, pond used by the state or any person.

2. Subject to subsection 1, the government may determine an amount payable to the custom owner of the land where water source is situated if it is satisfied that;
 - (a) the water source provides water to general public in Port Vila or Luganville;
 - (b) and not any other place apart from the two places mentioned above.

In determining the amount of compensation, the government must take into account matters that it considers relevant.



River Buffer Zones

Background

The preservation and establishment of buffer zones have many environmental benefits. Buffer zones act as a filter for water flowing into the water sources which reduce water pollution⁶. The current *Water*

Resource Management Act of Vanuatu provides for water protection zones but does not provide specific definitions of river buffer zones and a standard measurement scale that requires for the establishment of such zones. However, it does provide under section 27 that water protection zone can be in the urban areas or in the rural areas⁷. The current Act does not specify how the zones should operate, what activities are permitted and which are prohibited.

In the region, Samoa, Tonga and Papua New Guinea have laws which provide general provisions for the establishment of buffer zones. For instance the *Aquaculture Management Act 2003* of Tonga provides the Minister of Fisheries with the consent of the Cabinet can declare any area to be buffer zones by Notice in the Gazette identifying and describing that area⁸. The Notice also contains the list of prohibited activities which must not be carried out in the buffer zone areas. The *Aquaculture Management* law also provides for the Secretary of Fisheries to issue any methods of identification, demarcation and marking of the buffer zones⁹. The Tongan laws also establish a designated committee and advisory committee to be

CHAPTER TWO

⁶ The University of Vermont 'Vermont Legislative Research Shop' *Waterfront Buffer zone*, 1 <http://www.uvm.edu/~vlrs/Agriculture/bufferzones.pdf> (Accessed 6/02/2014)

⁷ Water Resource Management Act 2006 (Vanuatu) http://www.paclii.org/vu/legis/consol_act (Accessed 6/02/2014)

⁷ Above, n2

⁸ Aquaculture Management Act 2003 (Tonga) http://www.paclii.org/to/legis/num_act/ama2003233/ (Accessed 6/02/2014)

⁹ Above, n3

responsible for the buffer zones¹⁰. In Australia, the *Water Act 2000* defines River Buffer zones as being within the high banks or a stream or lake, as well as imposing limited controls on the land outside these features¹¹.

The general provisions in the laws of Australia, Samoa and Tonga which defines and establishes the buffer zones of rivers, streams and lakes are not provided for in the *Water Resource Management Act* of Vanuatu. In Vanuatu, Section 54 (a) of the *Forestry Act* provides that commercial forestry operations must not be conducted in the buffer zone areas around watercourses as set out in the Code of Logging Practice¹². Section 13 of the *Environmental Management and Conservation Act* of Vanuatu provide the construction of single family residential building in an approved residential area must be at least 30 meters away from any river or stream¹³. While it is legally provided for in the *Forestry and Environmental Management and Conservation Acts*, in practice, it is not enforced by health environmental law enforcement officers or water officers. Therefore the lack of detail and specific legislative provisions for buffer zones of rivers, streams or lakes make it difficult to monitor and enforce issues relating to contamination of rivers, lakes or streams in both rural and urban areas in Vanuatu.

WHAT PEOPLE SAID

Definition of River Buffer Zone

- *Currently, the Water Resource Management Act does not provide for a specific definition of buffer zones of rivers, lakes or streams. A general consensus from the people is that the water laws of Vanuatu should include provisions which define and establish buffer zones.*

¹⁰ Above, n3

¹¹ *Water Act 2000* (Australia) http://www.austlii.edu.au/au/legis/nsw/consol_act/wma2000166/ (Accessed 6/02/2014)

¹² *Forestry Act 2006* (Vanuatu) http://www.paclii.org/vu/legis/consol_act/ (Accessed 6/02/2014)

¹³ *Environmental Management and Conservation Act 2006* (Vanuatu) http://www.paclii.org/vu/legis/consol_act/ (Accessed 6/02/2014)

Regulated activities

- *The water laws must also provide for the types of prohibited activities that should not be carried out in the buffer zone areas, such as commercial forestry operations, clearing of bushes, washing or fishing, hunting and other related harmful activities.*
- *The people in the communities and villages that were consulted support that the Water Resource Management Act must provide for the penalty and punishment for damaging the buffer zone areas such as penalty fine for minor offences and imprisonment sentences for major offences and repeat offenders.*

Enforcement of Buffer Zones

- *Currently, there is no legislative provision that gives power to law enforcement officers to carry out enforcement of buffer zones. The people support that the water laws must give power to the village chief, water committee, health environmental law officers, environmental compliance officers, water officers and police to enforce the law regulating the buffer zones and other offences.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the *Water Resource Management Act* must include specific provisions to define and establish buffer zones for rivers, lakes and streams in both rural and urban areas.
2. That the *Water Resource Management Act* must include a list of prohibited harmful activities that should not be carried out in the buffer zone areas, with its penalty fines for minor offences and imprisonment sentences for major offences and repeat offenders.
3. That the *Water Resource Management Act* must recognize and give power to water committees, village chief , health environmental law officers, environmental compliance officers, water officers and police to enforce the laws regulating the buffer zones and other offences in the national water legislation.

DRAFTING INSTRUCTIONS

THE Vanuatu Law Commission have been looking at the laws of other south Pacific regional countries as an example and make these following drafting instructions to take in the above recommendations:

After Section 26-**Water Protection Zone can be urban or rural**, add the following new sections;

27 Identification and Demarcation of Buffer Zones

- (1) Subject to Subsection (2), the Director must in writing declare any area to be a development of buffer zone of river, stream and lakes for all or any of the following purposes:
 - (a) Improving water quality by trapping or removing sediment and chemicals from runoff as these pollutants lead to destruction of aquatic ecosystems;
 - (b) Stabilizing stream banks and prevent soil erosion;
 - (c) Conserving or protecting any water resource used or intended for water supply;
 - (d) Maintaining a habitat for fish and other aquatic organisms;
 - (e) Improving the outward appearance of stream corridors;
 - (f) Providing habitat and contiguous travel corridors for wildlife;
 - (g) Filtering impurities from water making the water fit for community consumption and agricultural purposes;
 - (h) Promoting the protection, management or use of water in rural and urban areas;
 - (i) Dealing with any emergency which may affect water supply.
- (2) A declaration or identification under subsection (1) must:
 - (a) Apply to lands adjacent to rivers, streams, lakes and wetland;
 - (b) Apply to lands at the margins of municipal reservoirs;
 - (c) specify the boundaries of the Buffer Zone;
 - (d) specify the measurement of width and length of the Buffer zone;
 - (e) assign a name to the Buffer Zone;
 - (f) state the purposes for which the Zone is constituted;
 - (g) contain such other relevant provisions or information as the

Director considers necessary.

- (3) A declaration must only be made if:
 - (a) the Director is satisfied that all reasonable steps have been taken to inform any local government or municipal council, Rural Water Committee or landowner about the Zone and the reasons for the proposed declaration; and
 - (b) the provincial government or municipal council, rural water committee or landowner agree to the proposed declaration; and
 - (c) compelling reasons exists to declare the Zone despite the failure to obtain the agreement of a provincial government or municipal council, rural water committee or landowner; and
 - (d) appropriate alternative arrangements are made, as necessary, for customary and or domestic uses such as washing and swimming areas.
- (4) For the purpose of subsection (1), the Minister and Director must cooperate with the traditional land owners and may facilitate public awareness and issue directives concerning lands to be set aside for buffer zoning. The land set aside must be:
 - (a) Registered at the Department of Land as a public land for that purpose;
 - (b) Registered and published in the gazette as a protected zone area; and
 - (c) included in the buffer zone management plan.
- (5) A declaration must be published in the Gazette.
- (6) The Director may vary any declaration by notice published in the Gazette.

28 Buffer Zone Management Plan

- (1) The responsible department of water may prepare existing and or propose management plan of buffer zone areas including proposed management techniques, monitoring and evaluation.
- (2) Subject to subsection (1), must be prepared by a team of:

- (a) Qualified environmental professionals;
 - (b) Development planners;
 - (c) Policy implementers;
 - (d) Traditional authorities; and
 - (e) Other relevant stake holders.
- (3) The buffer zone management plan must reflect the environmental and water safety planning.
- (4) Subject to the *physical planning Act*, there is to be no physical planning within the buffer zone areas or any proposed management plan of buffer zones.

29 Compliance of Restricted activities within the buffer zone areas

- (1) The buffer zones management plan must include a list of restricted activities such as and not limited to:
- (a) Clearing or grubbing of existing vegetation;
 - (b) Logging activities;
 - (c) Grading or striping of soil;
 - (d) Filing or dumping of waste;
 - (e) Use, storage, or the application of pesticides, herbicides, and fertilizers; and
 - (f) List of prohibited activities under the Code of Logging Practices under the Forestry Act.
- (2) The Minister may by Order make regulation of list of restricted activities endorsed by the water department.
- (3) The rural water committee, other environmental and water compliance officers and other relevant stake holders must enforce and regularly monitor the buffer zones.

30 Offences and Penalties

- (1) Any person who:-

- (a) undertake any activity that is prohibited or restricted under Section 29 and or Section 26;
- (b) assaults, obstructs, resists, delays, hinders, refuses entry, and intimidates any authorised officers under Section 28 (2) in performance of relevant duties;

commits an offence and is liable upon conviction to a fine not exceeding 50,000VT or imprisonment for a period not exceeding 1 year or both.

- (2) In the case of any subsequent conviction for the same offence to a fine not exceeding 100,000VT, or to imprisonment for a period not exceeding 2 years or both.

- Amend section 27 to include 'buffer zone', by inserting;

27 Water protection and Buffer zones can be urban and rural

For avoidance of doubt section 26 and section 27 applies to both rural and urban areas.

- Amend section 28 to include 'buffer zone', by inserting;

28 Public education Programme

If a Water Protection and or a Buffer Zone is declared, the Director must:

- (a) put in place a programme of public education and consultation for the purpose of increasing local understanding of the reasons for declaring the Zone; and
- (b) for the purpose of advising and assisting the Director in managing the Zone, establish either:
 - i. a rural water committees as provided under section 19; or
 - ii. a provincial water advisory committee or group; and
 - iii. Team of qualify professional under section (28) (2).

EXPANSION OF NATIONAL WATER ADVISORY COMMITTEE (NWRAC) AND THE ESTABLISHMENT OF PROVINCIAL WATER ADVISORY COMMITTEE



Background

Under sections 15, 16 and 17 of the *Water Resources Management Act*, the Minister has the responsibility to appoint members of a National Water Resources Advisory Committee. The Director of the Department of Geology and Mines is the chairperson of this Committee and the Minister may appoint up to 5 additional members on the recommendation of the Director. Currently, the committee has representation from the DGMWR, Department of Health, Port Vila Municipality, SHEFA Province, UNELCO, Department of Forestry, Meteorology Services, Public Works and NGOs¹⁴ and this exceeds the number provided for under the Act.

The Committee's task includes providing advice to the Director on matters relevant to the protection management and use of water, overseeing the proper planning and development of urban and rural water supplies. It must operate in such a way as to ensure co-ordination of water resource management activities and so such other tasks as are agreed with the Director. The Committee is the nation's peak water body and the main mechanism for

¹⁴ "Sustainable Integrated Water Resources and Wastewater Management in Pacific Island Countries: National Integrated Water Resource Management Diagnostic Report Vanuatu", 2007, Draft SOPAC Miscellaneous Report 648

Chapter Three

cross-sectoral coordination of the sector towards the Integrated Water Resource Management.¹⁵ The Committee has a low profile and meets infrequently.

In Vanuatu's National Water Strategy, ideally, there is supposed to be a water advisory committee from each province represented on the National Water Resources Advisory Committee. However, Vanuatu currently does not have any legally established bodies or committees to overlook the water resources management in the rural areas. The installation of rural water supply systems is normally financed by bilateral donors through the Government Investment Program. Projects are designed by the Rural Water Supply Section in the Department of Geology, Mines and Water Resources.

However, the Department of Geology, Mines and Water Resources' capacity is limited to providing six projects per year. This means that donor agencies and non-government organizations fill the gap by providing rural water infrastructure through individual schemes outside these government arrangements. The ongoing maintenance and operation of rural water supply systems is undertaken by communities and, in theory, is financed by user fees collected by the village water committees, although the success of this arrangement varies from village to village.

In Australia, the different states are responsible for their own water supply and management. The institutional arrangements for service provision vary among States and Territories. For example, in parts of Queensland and Tasmania, the local government is responsible for the provision of water services whereas New South Wales, Victoria and Southeast Queensland, there are separate municipal retail service providers and state bulk service providers that cover large parts of each state. In Papua New Guinea, each province has its own Provincial Government and it is required to establish the basic minimum needs for the development of the urban and rural area of their respective provinces relating to a lot of factors, one of which is safe and accessible water.

¹⁵ Above n1

WHAT PEOPLE SAID

Establishment of a Provincial Water Resources Advisory Committee

- *The rural areas, especially the villages, face problems with having their concerns over their water supply, heard by the proper authorities. There needs to be a form of legal body or authority that looks after water resources, water supply and its management in the outer islands. At the moment, while there are local water committees, they are not legally recognized and do not have a proper body or authority to report to.*
- *Due to the lack of a clear structure of a water supply system in the rural areas, it was found that there were some non government organizations that did not consult with any Government departments but just went ahead and established their water projects on the islands.*
- *Village water committees should report to provincial committee. The National Water Resources Advisory Committee is only to be consulted with on urgent matters.*
- *Due to the number of islands that make up a province, it was felt that there should be a representative from each island on the Provincial Water Resources Advisory Committee. The Committee should be fair with community representatives and not just Government officials.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the law should recognize the establishment of the Provincial Water Resources Advisory Committees.
2. That the term 'local water committee' be replaced to 'rural water committee' to provide a clearer structure of a water supply system in the rural areas.
3. That these village water committees should include youth, women, chiefs, church and health representatives. These committees are then to report to the Provincial Water Resources Advisory Committee.
4. That the law should provide and define a proper and clear structure to cater for water delivery and management in the rural areas. The local water committees are to report to the recommended Provincial Water Resources Advisory Committee, who will report directly to the head office/department and National Water Resources Advisory Committee in Vila.

DRAFTING INSTRUCTIONS

1. Insert and provide for the establishment of the Provincial Water Resource Advisory Committee.

19. Provincial Water Resources Advisory Committee

- (1) A Provincial Water Resources Advisory Committee is to be established in each province.
- (2) The Provincial Water Resources Advisory Committee must:
 - (a) oversee the proper planning and development of the water supplies of the province it is responsible for; and
 - (b) operate in such a way as to ensure co-ordination of water resource management activities; and
 - (c) provide reports and advice to the Director and the National Water Resource Management Committee
 - (d) do such other tasks as are agreed with the Director and National Water Resource Management Committee.

20. Composition of the Provincial Water Resources Advisory Committee

- (1) The Minister is to appoint the Chairperson of each Provincial Water Resources Advisory Committee on the recommendation of the Director and the National Water Resources Advisory Committee.
- (2) The Minister may also appoint additional members on the recommendation of the Director and the National Water Resources Advisory Committee.
- (3) In determining the composition of each Provincial Committee, the Minister, Director and National Water Resources Advisory Committee must take into consideration the merits of any candidates with respect to:
 - (a) the relevant technical, legal and commercial water issues that are

to be addressed; and

(b) the needs of water consumers, including utilities and the commercial sector; and

(c) the need to ensure that the fullest possible co-operation and co-ordination on water resources issues.

21. Appointment and term of members

(1) The Minister is to determine, on the recommendation of the Director, the terms and conditions of appointment of the additional members of the Provincial Water Resources Advisory Committee.

22. Meetings of the Provincial Water Resources Advisory Committee.

(1) The Provincial Water Resources Advisory Committee is to meet at any date as the Chairperson determines, but must meet at least 6 times in any year.

2. Change the term 'local water management committees' and insert 'rural water committees'

22. Rural water committees

(1) A landowner or group of landowners can establish, and the Director can promote, a rural water committee for any water resource on or under land for the purpose of implementing:

(a) Water supply conservation measures; or

(b) a management scheme.

(c) Any other way works and policy endorsed by the Provincial Advisory Committee.

(2) A rural water committee must register with the Department for the purpose of:

(a) establishing any water management scheme or works; or

(b) applying for assistance from the Director in the assessment, conservation or management of any water resources.

23. Composition of rural water committees

(1) Subject to section 22(1), in determining the composition of the committee, consideration must be given to the merits of any candidates with respect to:

(a) educational background

(b) social standing within the community

(c) experience and knowledge of their environmental surroundings.

3. Insert and provide for the clear structure of water delivery system in the rural areas under the Part 4:

25. Structure of water delivery and management system in rural areas

(i) The rural water committees are to report to the Provincial Water Resource Advisory Committee on any matter concerning water supply or water resource management.

(ii) The Provincial Water Resource Advisory Committee in each province is to report to the responsible department and National Water Resource Advisory Committee on the overall water supply services and water resource management in its particular province.

Water Protection Zones

BACKGROUND

The *Water Resource Management Act* provides for the declaration of water Protection Zone in both urban and rural areas. The current Act also states the purposes of establishing a



water protection zone which are; conserving, or protecting, promoting and managing any significant water resource that may be used or will be used for water supply¹⁶. The Protection Zone is vital for any emergency that may affect the quality and quantity of water supply. It is the responsibility of the Director to declare the protection zones¹⁷. While the Act provides for the declaration of a Water Protection Zone, it does not cater for the enforcement and regular surveillances. This leaves a gap in the Act, as while a Water Protection Zone may be declared, it will be less effective if there is no enforcement and implementation measures to ensure a constant monitoring of the zones. The lack of enforcement provision in the Act leaves the Water Protection Zone unprotected from human activities within the Zones.

In addition, the provision of Water Protection Zone in the Act does not include any provision of restricted harmful activities that should not be carried out within the Water Protection Zone area. A provision should be included in the Act to protect and prevent any harmful activities that will contaminate and pollute the source of water supply.

¹⁶ *Water Resource Management Act 2006 (Vanuatu)*

¹⁷ See above, n1

Currently, there is only one gazetted area in Vanuatu that has been declared as a Water Protection Zone namely the Matnakara Water Protection Zone. This Matnakara Water Protection Zone protects the quality and quantity of the Tagabe River in Port Vila¹⁸. In addition, a Water Protection Zone is also being established for Luganville but has yet to be gazetted¹⁹.

In the Pacific Region, A lack of Water Protection laws in PNG has also had serious impacts on river and water quality there, especially in the years when mining and timber-logging was not limited by waste control and environmental protection laws²⁰.

In other countries, Australia has adopted the approach of Water Protection Areas or Zones to ensure that adequate water remains within the river system to maintain river health and water quality. The lack of any consistent laws or policies for water protection in Australia has resulted in a high intensity of land use; increased nutrient and sediment loads; and loss of riparian vegetation²¹.

Furthermore, in South Australia there are specific laws providing special environmental protection²². In Western Australia land may be taken by the State to protect water sources and supplies for communities and villages – subject to payment of compensation. Changes in land use which carry a risk of degrading or reducing the quality of water resources, or pollution of the water supply must be approved by a court. The principles of risk avoidance and risk minimisation are applied before any development or change in the use of land is permitted, including dam building and clearing of vegetation²³.

The Laws of Australia provide enforcement and measures to enforce the Water Protection Zones to avoid and control harmful activities that degrade

¹⁸ Declaration of Matnakara Water Protection Zone (Tagabe River) (Cap 281) Vanuatu.

¹⁹ SOPAC 'Sustainable Integrated Water Resources and Wastewater Management in Pacific Island Countries- National Integrated Water Resource Management Diagnostic Report Vanuatu' (2007) <http://www.sprep.org/att/IRC/eCOPIES/Countries/Vanuatu/29a.pdf> (Accessed 4/03/2013)

²⁰ Papua New Guinea Constitutional & Law Reform Commission - *Review of Environmental and Mining Laws Relating to Management and Disposal of Tailings*, Issues Paper 6, February 2013

²¹ Mascher, S – *Protecting Water Quality in Western Australia*, (1996) Western Australian Law Review, Vol 26 p 401

²² Smith, S – *Water Reforms in New South Wales: An Update* – NSW Parliamentary Library Research Service, Briefing Paper no 12/2002

²³ Mascher, S, n6 above

the quantity of water resource and contaminate the supply of water. The *Water Resource Management Act* of Vanuatu should have enforcement provisions and measures to ensure that all water resources in Vanuatu should be gazetted and protected. The Act should also provide for a Water Protection Zone managing plan which will include a list of prohibited harmful activities that should not be carried out within these protection zones.

WHAT PEOPLE SAID

Enforcement & Surveillance provision

- *During consultations there was widespread support, especially outside Port Vila, to have legally enforceable protection zones around rivers, streams and water sources, of at least 50 (and up to 200) metres.*
- *The communities and relevant stakeholders consulted, supports the idea to have Rural Water Committees and Provincial Committee, with the assistance of chiefs and police officers to regularly monitor, carry out surveillance and enforce the Water Protection Zones in the rural areas.*
- *Stronger water protection enforcement provision is needed to address the situation.*

Restriction of harmful activities within the Protection Zone

- *There was general consensus from the villagers and stakeholders that water quality and hygiene were seen as closely linked so that the risk of contamination or pollution of natural water needs to be strictly regulated.*
- *Water protection zones can be divided up for example, zone 1 zone 2 and zone 3.*
- *The Activities that contaminates and pollutes the natural sources of water must not be carried out within the water protection zone area, such as;*
 - *cutting or clearing trees and vegetation,*
 - *giving animals and stock access to water sources, and*
 - *locating houses, gardens or toilets*

Penalties & Punishment

- *Majority of the stakeholders suggest that performing any restricted activities within these protection zones were seen as serious breaches which must be resolved quickly or punished by heavy penalties on those owners under strict new laws.*
- *The Water Resource Management Act must impose penalties for breaching the water protection zone's laws and regulations.*
- *There should be a minimum punishment for individuals and a higher penalty for companies, other commercial enterprise and charitable organizations.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the Water Resource Management Act must include enforcement and surveillance provisions for Water Protection Zones in both rural and urban areas.
2. That the Water Resource Management Act must specifically provide for the enforcement authorities responsible for the enforcement of the Water Protection Zones in both rural and urban areas
3. The Act must provide a list of harmful activities that should not be carried out in the Water Protection Zones.
4. The Water Resource Management Act must specify and detail penalty provisions to punish breaches of water protection zones.

DRAFTING INSTRUCTIONS

Amend Section 26 of the Act, and add these following new Subsections:-

(6) The Director must provide enforcement mechanism and procedures for the enforcement and protections of Water Protection Zones in rural and urban areas.

(7) The Director and or the Department of Water must:-

- a. Carry out research on harmful activities that degrade the quantity and contaminates the quality of water;
- b. provide a list of harmful activities that should not carry out within the Water Protection Zone;
- c. advise the Minister to make regulations to regulates these restricted harmful activities; and
- d. Put in place a programme of public education on these harmful activities to protect the Water Protection Zones.

(8) Any causes or destruction of the Water Protection Zones and or any breaches of the Water Protections—regulations and policy will be prosecuted under the Act.

After Section 28-Public education Programme, Add this new section

(30) Regulations

(1) The Minister may by Order make regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this part of this Act.

(2) Without limiting the generality of subsection (1) the Minister may in such Order provides for:

- a. Enforcement measures and procedures of Water Protection Zones and Buffer zone areas;
- b. Lists of restricted harmful activities within the Water Protection

Zones and Buffer zone areas;

- c. Penalty fine for breaching such Order; and
- d. Any other measures or work proposed to be taken for the protection of Water Protection Zones and Buffer zone areas;

Other Laws and Issues

BACKGROUND

During the consultation, it became apparent that there are other laws and Regulations that also deal with the management of water resources issues in Vanuatu. Some of the issues addressed in the review also addressed in other relevant legislation which need to be consistent with the new Water Resource Management Act. This other legislation and Regulations includes; Water Supply, Forestry, Environment, Mines and Minerals, Utilities Regulatory Authority, and Matnakara Regulation.

Chapter 1 of the review shows many spoke of the ownership of water and the rights to use water should be limited to activities that are permitted and which are prohibited with this right. However section 88 (2) (w) of the Mines and Mineral Act of 2006, which provides the Minister the power to make regulations with respect to water rights and use of water does not specify in detail in such regulations to include provision for limitation of the rights entailment to perform activities which are permitted and which are prohibited. A similar provision to specify and detail the entitlement of water rights and rights to use water in the regulations as in the new Water Resource Management Act will provide a more consistent approach to protect water from contamination.

The other related laws to the Water Resources Management Act also do not cater for river buffer zones. This includes the Forestry Act and the Environmental Management Conservation Act. Chapter 2 of this review recommends that there should be a provision for the definition and the establishment of the buffer zones of rivers, lakes and streams. In addition, neither of these legislations caters for the enforcement and protection of these buffer zones. There is also a recommendation that this is to be provided for in the Water



Chapter Five

Resource Management Act.

It is also recommended for the Water Resource Management to provide specific and detail provisions of harmful activities that are prohibited in the buffer zone areas. Some of these harmful activities includes commercial forestry operation which have been prohibited under the Forestry Act and the construction of residential building for settlements to be 30 metres away from lakes, rivers and streams also been prohibited by the Environmental Management Conservation Act. These provisions of prohibited harmful activities in the Forestry Act and Environmental Management Conservation Act should be consistent with the new provision in the Water Resources Management Act to protect the buffer zone areas to enhance better water quality.

The Utilities Regulatory Act (URA) provides safety inspection of regulated services which includes the supply of water. The Act provides for the inspector to inspect any plant, premises and equipment that connects with the supply of regulated services. In any suspected emergency event, the inspector may seek assistance of police force in carrying out the inspection. This is to ensure a safety supply of services fit for human consumption. Under the Water Resource Management Act, Decentralization and Local Government Region Act and the Declaration of Matnakara Water Protection Zone (Tagabe River) Regulation has recognised the creation and declaration of water protection zones areas but missing out to provide for constant enforcement and surveillance of these protection zones. If similar provisions to the URA Act were included in the Water Resource Management it would provide a more effective and consistent approach to enforce the water protection zones.

It is recommended in Chapter 4 of the review that all water supplies in the rural and urban areas need to be define and gazetted to prevent further settlement and farming within the water catchments. If the new provisions of the Water Resource Management Act includes similar provisions in Declaration of Matnakara Water Protection Zone (Tagabe River) Regulation which regulates the water protection zones of Tagabe river would provide a consistency in the establishment of protections of water, rivers, streams and lakes.

In the same way, the Declaration of Matnakara Water Protection Zone (Tagabe River) Regulation must include enforcement and surveillance provision to protect the Tagabe river. This provision should be consistent with the recommendation in Chapter 4 of the review.

WHAT PEOPLE SAID

Other legislation and Regulation dealing the issues of water resource management

- *Most of the villages and communities have village and island by-laws which the communities supported that these by-law and policies should cover the rights to use water.*
- *These villages laws should made it clear to all people and communities that all water and source of water are property of the State, the Republic of Vanuatu. This means that no one has the ownership right over any water attached to a private or public land.*
- *During the consultation, the villages and communities supported that other legislation and regulations should recognise and give effect to the village by laws to enforce and regulates water rights and punish any breaches of the laws.*
- *The other laws and the by-laws should include the list of harmful activities that must not carry out within the protection zones.*
- *The other laws and by-laws and policies should provide consistent approach to ensure a more effective enforcement and surveillance on the water protection zones and the buffer zone areas.*
- *The other relevant laws, villages and island by-laws and policies should all incorporate consistent provisions and approach to declare and defines water protection zones and buffer zones of all water supplies and water catchments in urban areas and outer islands of Vanuatu. These laws should ensure the zones are gazetted.*

Enforcement and punishment

- *The other relevant laws and regulations should recognise the penalties and fines provided and imposed by the village by-laws.*
- *There was general support from the communities and villages that breaches of minor water offences such as infringement of other*

people's water rights, minor damages to the water protection zones and buffer zones should be punish under the village by-laws. Most serious offences and repeated offenders will be punished under the water laws and other related legislation.

- *There should be a consistent application of penalties and punishment in all other laws regarding the issues of water resource management within the country.*

RECOMMENDATIONS

THEREFORE, the Vanuatu Law Commission makes the following recommendations:

1. That the Water Resource Management Act should be amended to provide interaction with other legislation and Regulations.
2. That the law should provide for the establishment of village by-laws and recognize and gives effect to such by-laws to regulate water resource management issues including; water rights, infringement of water rights, ownership of water and enforcement of water protection zones and buffer zones.
3. That the law should declare, define and gazette water protection zones and buffer zones for all water supplies and catchments in urban areas and outer islands.
4. That the law should be amended to provide a consistent application of penalties and punishment in all other laws regarding the issues of water resource management.
5. That a general review of other laws be done to ensure consistency and clarity in their application to water protection zones, river buffer zones, ownership of water and water rights to use water. The laws and Regulation under consideration are:
 - a. Water Supply Act CAP 24
 - b. Forestry Act CAP 276
 - c. Environmental Management Conservation Act CAP 283
 - d. Mines and Mineral Act CAP 190
 - e. Utilities Regulatory Act 2007
 - f. Villages by-laws and island by-laws
 - g. Declaration of Matnakara Water Protection Zone (Tagabe River) Regulation



This review was done to assist the work of the department responsible for water and other responsible authorities that work with the Water Resources Management Act. It is clear that the Water Resources Management Act needs to be significantly revised.

Due to the current gaps and difficulties posed by the current Water Resources Management Act, there is significant support for

CONCLUSIONS

changing the Act to address these issues. In brief, these issues include the types of rights that landowners should have, the definitions of river buffer zones, the expansion of the National Water Resources Advisory Committee, the establishment of the Provincial Water Advisory Committee which gives more recognition to the role and importance of rural water committees and also Water Protection Zones. After carrying out the review, it became clear that the above mentioned must be dealt with in the new amended Water Resources Management Act in order to better manage and conserve the natural water resources of Vanuatu for the benefit of this generation and the future ones.

Other laws that connect to the Water Resources Management Act will also be affected should the current law be amended. These laws have been taken into consideration in the course of this review.

The Vanuatu Law Commission hopes this review has covered all aspects that need to be addressed. It is the sincere hope of the Law Commission that the recommendations in this review will assist the Department responsible in its efforts to better manage and conserve Vanuatu's natural water resources, in both rural and urban areas.

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1.	Andre Latyru	Projects Manager, Ministry of Public Utilities
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APPENDIX I

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24.	Michiel Adams	Malvatumauri Representative, Malvatumauri Torba
25.	Manthow Collon	Nurse, Vaimali Health Center, Epi
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29.	Peter Korisa	Research & Planning Officer, National Disaster Management Office
30.	Philippe Molager	Technical Executive, UNELCO
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32.	Reynolds Surmat	Secretary General, Torba Provincial Headquarter
33.	Rosita Taleo	Intern, World Vision- Penama Livelihood Project

34.	Simon Boe	Former Country Director, World Vision
35.	Samuel Namuri	Director, Ministry of Public Utilities
36.	Uravo Nafuki	Environment & Social Officer, Public Works Department
37.	Vivian Tari	Project Officer, World Vision-Penama Livelihood Project
38.	Waenia Community	Epi Island

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STRETEM ROD BLONG JASTIS

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