

ABROGATION OF THE RIGHTS OF CUSTOMARY LAND OWNERS BY THE FOREST RESOURCES AND TIMBER UTILISATION ACT

by

JC Corrin*

The *Forests and Timber Act*¹ was passed in 1969, repealing the *Forests Act* of 1960.² By an amendment in 1984³ the Act became known as the *Forest Resources and Timber Utilisation Act*.⁴ The purpose of the Act, as stated in the Long Title, is:

To consolidate and amend the law relating to Forest Resources and Timber Utilisation and to control and regulate the timber industry and for matters incidental thereto and connected therewith.⁵

Since its passing, the 1969 Act has been amended several times,⁶ the first significant amendments being made in 1977, by the *Forests and Timber (Amendment) Act* 1977.⁷ This introduced a distinction between the procedures which must be followed when seeking a licence to fell on customary land and when seeking a licence in other cases.⁸ Where customary land is involved, it provided that, before any such grant was made, an agreement had to be entered into by the applicant with those persons entitled to grant timber rights.⁹

A new Part IIa was added to the Act¹⁰ setting out a procedure directed at identifying the people entitled to grant timber rights. Under the 1977 Act the area council¹¹ were obliged to call a public meeting of persons residing within its area to consider the application for timber rights and the proposed agreement between the applicants and the persons intending to grant timber rights. It also required the area council to call a meeting of the area committee¹² to consider the application, taking into account any representations made at the public meeting. The area committee was then to issue a certificate setting out the persons entitled to grant timber rights and stating whether timber rights in the form of the application, or in a modified form, should be granted.¹³

Unfortunately, the 1977 Act did not refer directly to "landowners" or "landowning rights", but only to "timber rights". However, in 1978, when forms were gazetted on which applications under the new identifying procedure were to be made, these referred to landowners, rather than to owners of timber rights.¹⁴

In 1984 Part IIa was extensively revised by the *Forest and Timber (Amendment) Act* 1984.¹⁵ Unfortunately, this amendment did not clarify the relationship between landowning groups and persons entitled to grant timber rights. In fact the situation was aggravated by the introduction of confusing references to landownership. Sections 5b and 5c were amended to read as follows:

* Barrister & Solicitor, Solomon Islands.

1 Cap 90.

2 No.8 of 1960.

3 No.6 of 1984.

4 Section 2.

5 As amended by no.6 of 1984, s.2(b).

6 Amending Act Nos.16 of 1977, LN331 of 1982, 6 of 1984, 8 of 1987, 9 of 1989, 7 of 1990 and 5 of 1991.

7 No.16 of 1977.

8 Section 3.

9 No.16 of 1977, s.2. Subsection 5(3), which was introduced by this section, was subsequently further amended and renumbered 5(1) by no.16 of 1984.

10 Section 3.

11 As defined in s.2 of the *Local Government Act* Cap.14.

12 As defined in s.33 of the *Local Government Act* Cap.14.

13 Section 3, which added a new s.5c to the principal Act.

14 *Forests and Timber (Prescribed Forms) Regulations*, LN42/78.

15 Act no.6 of 1984.

- 5b(1) Any person who wants to carry on business in Solomon Islands as a timber exporter or sawmiller and who wishes to enter into an agreement whereunder:
- (a) he acquires timber rights on customary land; and
 - (b) in consideration of that acquisition, he agrees to:
 - (i) give to the appropriate Government, for payment to the owners of that customary land, such quantum of share in the profits of his venture; and
 - (ii) to allow the appropriate Government such representation in the management of that venture, as may be settled under s.5c,
 shall first obtain the consent of the Commissioner of Forest Resources to negotiate with the appropriate Government and the area council on behalf of such owners of the customary land, and thereafter make an application in that behalf in the prescribed form and manner to the Commissioner of Forest Resources.
- (2) Upon receipt of an application under sub-section (1) the Commissioner of Forest Resources shall forward a copy thereof to the appropriate Government and to the appropriate area council.
- 5c(1) After receiving a copy of an application forwarded to it under s.5b an area council whose membership shall include persons having particular knowledge of customary land rights in the area affected by the application shall:
- (a) fix a place within the area of its authority, and days, not being earlier than two months, or later than three months, after the day on which such copy is received:
 - (i) for a meeting with the appropriate Government and the applicant, in consultation with them, and settle at that meeting the quantum of share in the profits of the venture of the applicant, and the terms of the representation of the appropriate Government in the management of that venture; and
 - (ii) for a meeting of the area council to consider such application and to determine the matters specified in sub-section (4):
 Provided that where the area council fails to secure the settlement referred to in subparagraph (i), no further action prescribed in this section shall be taken and the area council shall recommend to the Commissioner of Forest Resources the rejection of the application, and the application shall be rejected by him accordingly;
 - (b) if it secures such settlement forthwith given in such manner as it shall consider most adequate and effective to the public within the area of its authority and, in particular, to persons who reside within such area and appear to it to have an interest in the land, trees or timber in question, notice of:
 - (i) such application;
 - (ii) the parties to, and terms of, the proposed agreement; and
 - (iii) the time and place fixed for the relevant meeting under paragraph (a)(ii).
- (2) Any notice given under sub-section (1)(b) shall require any person who has reason to believe that the persons intending to grant timber rights under the proposed agreement are not the persons, or all the persons, as the case may be, lawfully able and entitled to grant such rights to attend the meeting referred to in the notice and at such meeting to state to the area council the particulars of such belief and the reasons for it.
- (3) At the time and place referred to in any notice under sub-section (1)(b) the area council shall meet and consider the application to which the notice relates. In considering the application, the area council shall hear any representations made to it in response to the requirement provided for in sub-section (2) and shall take into account those representations and all other matters relevant to the application known or believed by the area council to be true.
- (4) Upon the conclusion of its considerations under sub-section (3), an area council shall

issue a certificate setting out:

(a) the quantum of share in the profits of the venture of the applicant for payment to the owners of the customary land, and the terms of representation of the appropriate Government in the management of that venture on behalf of those owners, as settled with the appropriate Government and the applicant; and

(b) its determination as to:

(i) whether the persons proposing to grant the timber rights in question are the persons, and are all the persons, lawfully able and entitled to grant such rights, and if not, who such persons are; and

(ii) whether such timber rights in any modified form, may be granted, giving particulars of such modification, if any.

(5) After giving such certificate, the area committee shall give notice thereof in the prescribed form and in a similar manner to that in which it gave notice of the relevant application under sub-section (1).

(6) The Clerk to an area council shall cause any certificate issued by it under this section forthwith to be forwarded to the Commissioner of Forest Resources.

Provided that such certificate shall be so forwarded through the appropriate Government.¹⁶

The amended Act fell to be considered in *Allardyce Lumber Company Limited and Bisili & Nine Others v. Attorney-General, Commissioner of Forest Resources, Premier of the Western Province and Paia*.¹⁷ That case involved the timber rights in an area known as Kazakuru Right Hand Land in New Georgia, in the Western Province of Solomon Islands. The first plaintiff claimed that it had entered into a valid, approved agreement for timber rights with the second plaintiffs, who were claimed to be the persons entitled to grant timber rights. It sought various declarations relating to the validity of the agreement and, *inter alia*, an Order of Mandamus that the Commissioner of Lands grant a timber licence to it in respect of Kazakuru Right Hand Land.

The fourth defendant counterclaimed on the basis that the second plaintiffs were not the customary landowners of the area in question and sought orders restraining them from asserting title to the land or interfering in its development.

The Chief Justice considered the Act, as amended in 1984, and pointed out that a new requirement had been added. The procedure was still clearly to acquire timber rights on customary land, but the applicant also needed:

1. to agree to give some share in the profits to the appropriate Government for payment to the customary landowners; and

2. to allow the appropriate Government to be represented in the management of the venture.

If the applicant was willing to agree to that, he had to obtain the consent of the Commissioner to negotiate, not with the landowners, or the persons entitled to grant timber rights, as had been the case previously, but with the appropriate Government and the area council, who were to negotiate on behalf of the landowners.¹⁸

Once that permission to negotiate was obtained and forwarded to the area council and the appropriate Government, the area council had to fix a time and place for two meetings:

1. the meeting at which the area council, appropriate Government and the applicant settled profit sharing and the terms of representation of the appropriate Government in management; and, if those matters were settled satisfactorily,

2. The meeting at which the area council heard the representations of interested parties, after having given adequate notice to them.

¹⁶ *Ibid*, ss.9 and 10.

¹⁷ Unreported decision of High Court of Solomon Islands, 18th August, 1989.

¹⁸ Note the ambiguity in s.5b(1)(b) above, which could be interpreted to mean that the applicant was to negotiate on behalf of the customary landowners. This possible interpretation was rejected by Ward CJ in the *Allardyce* case, *ibid* at 14.

It was at the latter meeting that the area council determined whether the persons proposing to grant timber rights had the right to do so, and whether the rights so granted required any modification. It then issued a certificate setting out the matters in s.5c(4), which had to be publicised in the same way as the notice of the meeting itself and forwarded to the Commissioner of Forest Resources through the appropriate Government.

Section 5d provided for an appeal from the decision of the area council to the Customary Land Appeal Court, which had to be made within one month from the date of determination. Assuming there was no appeal or the appeal had been disposed of, the next step was for the Commissioner to check that the agreement for timber rights was in order and, if so, recommend to the Minister that approval be given.¹⁹

At that stage the Minister had a discretion whether to grant a certificate certifying that ss.5b to 5f had been complied with, although the Act was silent as to how that discretion should be exercised. The applicant then had to fulfil another formality, which was to obtain a licence to fell trees and remove timber from the Commissioner.²⁰

Returning to the facts of the *Allardyce* case, the point which is of relevance to this discussion was raised by the fourth defendant. He contended that ownership of land was the important factor under the Act, and that only the true landowners could grant timber rights. The Chief Justice held that whilst he had some sympathy for this view given the references to "landowners" in the 1984 amendments, and the Forms prescribed under the Act,²¹ the purpose of Part IIa was to ascertain persons entitled to grant timber rights and approve an agreement whereby the applicant acquired those rights from them. Those persons were not necessarily the same persons as the landowners. His Lordship stated that:

ownership of customary land and ownership of timber rights are not the same thing. Frequently the same people are involved because the ownership of the land will usually have included the rights to the timber on the land but many people who do not have ownership rights to the land have rights over the timber.²²

The Chief Justice summarised the extraordinary result of the 1984 amendments as being that two separate agreements had to be entered into by the applicant:

1. an agreement with the persons entitled to grant timber rights; and
2. an agreement with the appropriate Government and the area council acting on behalf of the landowners, for a payment of a share of profits to the landowners and for representation in management by the appropriate Government.

On the Chief Justice's construction of the legislation, in order to reach the agreements referred to above, two meetings had to be held. Landownership rights were relevant to the first meeting, under s.5c(1)(a)(i), relating to profit sharing and government representation, as their interests had to be represented by the area council. However, the second meeting, which could only take place if the first meeting reached a satisfactory settlement between the parties, involved the identification of those entitled to grant timber rights, who might be completely different people from the landowners.

He concluded that, when the provisions were read in that way, and he felt sure that it was the only way in which they could be read, it was "clear that the right to grant the timber rights and the identification of the people with that right is entirely separate from any mention of landowners".²³

Thus, whilst the landowners whose interests were being represented at the first meeting might

19 Section 5e.

20 Section 5.

21 Regulation 5 and Schedule 4 as amended by LN97/85, made under s.5g of the principal Act, renumbered by no.7 of 1990 as 5h.

22 *Supra*, n.17 at 19.

23 *Ibid* at 20.

be the same persons as those entitled to grant timber rights, or include some of the same persons as those entitled to grant timber rights, or include some of the same persons, equally they might be completely different persons. Once the former's profit share was determined in the first meeting, apart from the landowner's right to be notified of the grant of the area council's certificate²⁴ and their right to appeal against the determination of the area council,²⁵ landownership was no longer of relevance to compliance with Part IIa, which was solely concerned with timber rights. Accordingly the fourth defendant's counterclaim failed.

Here, Allardyce had entered into an agreement with the ten survivors of the twelve persons named by the area council as the persons entitled to grant timber rights.²⁶ Provided the other formalities in the Act had been complied with, that would have been enough and Allardyce would have been entitled to the declarations sought, irrespective of whether those named persons were the landowners. In fact, the Chief Justice found that it had failed to hold the first meeting with the area council and appropriate Government and to settle the required matters. Accordingly, the plaintiff's application also failed.

The Act came under scrutiny again in *Tovua, Labu, Anisi, Bosali and Kona v. Meki, Ilala, Didi, James, Chaku, Pasi, Tawiha, Ocha and Earthmovers Solomons Limited*.²⁷

In that case the applicants claimed that royalty monies payable for logs extracted from Chaunadaho Land should be paid by the logging company, Earthmovers Solomons Limited, to them rather than the other respondents. Their basis for this assertion was that in a decision of the Customary Land Appeal Court they had been awarded sole rights to Chaunadaho Land. That Customary Land Appeal Court decision was an appeal from a decision of the Local Court, which had made a decision on the matter in dispute, which was a boundary within Chaunadaho Land. The Local Court found in favour of Labu, and this decision was upheld by the Customary Land Appeal Court, which dismissed the appeal. Unfortunately, the Court went further, and recorded the following in its judgment: "So, we dismiss the appeal, but for the sake of clearness make the following decree. Francis Labu and his clans have the sole right to Chaunadaho Land".

In *Tovua's* case the ninth respondent, with the consent of the other parties, raised as a preliminary point, one of its grounds of defence, which was that it was legally obliged by the *Forest Resources and Timber Utilisation Act* to pay the royalty money to the persons duly approved by the area council. Thus, irrespective of whether the applicants were in fact the customary landowners, there was no ground for ordering them to do otherwise.

The Chief Justice summarily disposed of the judgment in the Customary Land Appeal Court in the following words:

... the final so-called decree was not a binding part of the court decision; at best it was obiter and at worst it was totally without foundation and worthless.

He pointed out that this did not mean that the applicants did not have sole or other rights in Chaunadaho Land, but that there was no evidence on which to found that conclusion. More importantly for the purposes of this discussion, the Chief Justice went on to state that, in any event, the point in issue in the case was not land ownership, but timber rights. He summarised the position under the Act as follows:

The *Forest Resources and Timber Utilisation Act*, as amended, sets up a procedure whereby anybody wishing to acquire timber rights over customary land can identify the people with whom to deal. The procedure identifies persons to represent the group as a whole. Once the procedure has been followed, the people named by the Area Council are the only people entitled to sign an agreement to transfer those rights and they are clearly,

24 Section 5c(5).

25 Section 5d.

26 By virtue of the *Trustee Act* 1925 (UK), applied in Solomon Islands pursuant to Schedule 3, s.1 of the constitution, the powers of two or more trustees may be exercised by the survivor or survivors of them.

27 Unreported decision of the High Court of Solomon Islands, 3rd November, 1989.

as the parties to the agreement, the people to whom the royalties would be paid.²⁸

There was no suggestion that the procedure under the Act had not been complied with, and no appeal had been lodged. Accordingly, the respondents were found to be the persons to whom the company was obliged to pay royalties, and as the Chief Justice summarised the position "that, as the law stands at present, is an end to the matter".²⁹

Notwithstanding, his Lordship went on to comment on the submissions of counsel for the applicants, who had raised the matter of primary and secondary ownership. It is well established in Solomon Islands that customary law embodies this distinction. In *Tagotada v. Reinunu*,³⁰ Freeman CJ gave a useful summary of the general pattern of these two main classes of rights in customary law:

Primary ownership (or first right) allows the owner to control all new or commercial development on the land. He may not interfere with the existing houses, gardens, fruit or nut trees of a secondary owner. On the other hand, the holder of second rights must not start anything new without the consent of the first owner. He may no doubt make minor extensions to his house or gardens for day-to-day living purposes. But to plant a tree is as serious a matter as starting a commercial development; if the planter succeeds in showing he had the landowner's permission, the tree and its fruit will belong ... to him and his heirs for as long as it stands. To cut down a tree (whether forest or cultivated) is equally serious.

Counsel for the applicants in *Tovua's* case pointed out that to suggest that tribes with secondary rights, which included such things as harvesting and gathering food and cutting wood to build custom homes, were able to sell the timber rights was unrealistic. This would mean that they were able to extract the most valuable commodity from the land, take the royalties for themselves and leave the primary landowners with a wasteland.

Whilst commenting that he could not agree more with this submission, the Chief Justice felt bound to apply the law as it stood. The procedure, which had been designed not so much as to protect the landowners, but to protect the investor and enable him to identify a limited number of representatives, and thereafter to protect him against claims from others, left the way open for people with the most tenuous claims to become the principal beneficiaries of logging royalties.³¹

Given the provisions in the Act for a public meeting to be held within the area in which the proposed logging will take place, and the obligation to give notice to persons who reside in the area and appear to have an interest in the land, trees or timber, the suggestion that persons with "the most tenuous claims, or even no claims at all" could become principal beneficiaries may seem rather far fetched. However, his Lordship recognised that many people may live in isolated parts of the land, and might therefore only come to know about the sale of the timber when the first heavy machinery moves in.

His Lordship also referred to his judgment in the *Allardyce* case, and his finding that representatives held the land under a constructive trust, and had a fiduciary duty. However, there was nothing in the act to say how those duties were to be performed. Thus, he pointed out that the following questions were unresolved:

1. If a trustee is a representative of only one of a number of tribes who have rights over the land in question, is he to share the royalties with his tribe only or with all the tribes who also have representatives named by the Area Council or with those that have no representatives or with both or does he, in fact, have to share them at all?
2. Has he any responsibility, in a case where he has secondary rights only, to the owner of the land from which he is extracting the timber?

28 *Ibid* at 3.

29 *Ibid*.

30 [1984] SILR 24 at p.25.

31 *Supra* n.27 at 3 and 4.

His Lordship stated that the court could give no answers to those questions and that they were mentioned in the hope that Parliament would take steps to deal with the problem by legislation.³²

It seems clear that the Chief Justice's exhortations regarding amendment were directed to clarifying the position of the customary landowners and their relationship with the grantors of timber rights, if not to make sure that they were one and the same people. Parliament passed legislation in 1990,³³ amending the *Forest Resources and Timber Utilisation Act*. Even though it would appear that the amending legislation was passed as a result of the *Allardyce* case, it was not the type of legislation which the Chief Justice appeared to have had in mind.

The 1990 amending legislation did obviate the requirement for two meetings. It provides that only one need be held with the area council, the appropriate Government, and the customary landowners and the applicant. That meeting is to be used to discuss all the matters which were previously dealt with at the two separate meetings. The application may only be approved by the area council where agreement is reached between the customary landowners and the applicant. Further participation of the appropriate Government may form the subject of discussion, but is not compulsory.

However, the relationship between customary landowners rights and the rights of the grantors of timber rights has not been clarified. Section 5c(3) now lists the first two things to be discussed at the meeting as:

- (a) whether or not the landowners are willing to negotiate for the disposal of their timber rights to the applicant;
- (b) whether the persons proposing to grant the timber rights in question are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are.

It is unclear whether the persons referred to in (a) are the same as those referred to in (b). The amending Act improves the position in relation to appeals by making the time run, not from the date of the area council's decision, but from the date of the giving of the public notice thereof.³⁴ It also puts a duty upon the applicant, after agreement has been reached, to carry out investigations to identify and describe the forest resources on the land and any areas which should be excluded from the application on grounds of environmental or social values.³⁵ Surprisingly there is no mention of any right to participate in this exercise by either the customary landowners or the grantors of the timber rights.

Most objectionably, the amending Act introduced a new s.51,³⁶ sub-clause (1) of which read as follows:

51(1) For the avoidance of doubt it is hereby declared that:

- (a) any licence granted under Part IIa of the principal Act prior to coming into operation of this amending Act shall be deemed to have been validly, properly and lawfully granted notwithstanding that the provisions of that Part in force at the time of such grant may not have been complied with in every particular or requirement;
- (b) any agreement for timber rights in the prescribed form in respect of which a certificate of approval has been issued under s.5f of the principal Act prior to coming into operation of this amending Act shall be deemed to be an approved agreement validly, properly and lawfully granted under the corresponding provisions of this Act, notwithstanding that the provisions of ss.5b and 5c of Part IIa of the principal Act in force at that time may not have been complied with in every particular or requirement; ...

³² *Ibid.*

³³ No.7 of 1990.

³⁴ Section 2, introducing a new s.5e(1).

³⁵ Section 2, introducing a new s.5c(5).

³⁶ Section 2, subsequently renumbered s.3 of Act No.7 of 1990 by s.3(a) of Act No.5 of 1991.

As can be seen, this clause only validated Licences and Agreements granted or in respect of which a certificate of approval was issued prior to the amending Act coming into force. By virtue of s.1 of the amending Act, it was deemed to have come into force on 13th January, 1978. Therefore the new s.51 only saved licences issued and agreements approved before that date.

To remedy this unintended result, the *Forest Resources and Timber Utilisation (Variation of the Date of Commencement) (Amendment) Act 1991*³⁷ was passed. This varies the date of commencement of the 1990 amending Act to 5th July, 1990.³⁸ Thus the validating provisions are allowed to operate to save licences and agreements in existence prior to that date, which were granted without full compliance with Part II and Part IIa of the principal Act.

Therefore, *prima facie* the amending legislation operates to save the agreement which was the subject of the litigation in the *Allardyce* case. This would, in the writer's opinion, be a most unfortunate result, and takes no account of the fact that the position may have altered since the area council identified the persons entitled to grant logging rights. As pointed out by the Chief Justice in that case:

There is no guarantee the position will be preserved. By the time of any possible future application under s.5b, the Area Council may for some good customary reasons consider some other person has the right to represent the people who have died.

Further, if as alleged in the *Allardyce* case, the customary landowners were not one and the same as those persons named by the area council, they were deprived of rights over their own land without even the benefit of compensation. Moreover, in this particular case the customary landowners had in the interim, passed a resolution that their land would not be used for commercial logging for at least ten years, preferring to manage the resource themselves in a sustainable way.

On detailed examination it can be seen that s.51 of the 1990 Act is not as far reaching as it would first appear, and will not cure all defects. For example, it will only validate an Agreement which is in the proper form and in respect to which a Certificate of Approval has been issued under s.5f, to the extent that "particulars" or "requirements" under ss.5b and 5c of Part IIa have not been complied with.

There are three interesting points arising from this:

1. The selection does not appear to validate a defective certificate, but only a defective agreement.
2. Only defects in following procedure under ss.5b and 5c are regularised.
3. Only non-compliance with "particulars" and "requirements" are regularised. Thus it is arguable that only technical errors will be cured. Non-compliance which is so serious as to mean that the sub-sections have not been complied with at all, would not be cured, but would result in the agreement being void.

It could therefore be argued, and indeed currently is being contended,³⁹ that the 1990 Act would not operate to validate an agreement in a case such as *Allardyce* as, amongst other things, the failures involved went beyond failures to comply with a "particular" or "requirement".

Even if the 1990 Act did cure all defects in the procedure followed by an applicant relying on its provisions, there is the question of whether such validating legislation is constitutional. Section 8(1) of the Constitution protects people from deprivation of property. This includes deprivation of interests in or rights over property of any description, and would no doubt include timber rights. The section says such property shall not be compulsorily acquired unless four conditions are fulfilled:

³⁷ No.5 of 1991.

³⁸ Section 3(b) also deleted the words "For the avoidance of doubt" and replaced them with "for the purposes of this Act" and deleted the erroneous reference to Part IIa in paragraph (a) and replaced it with "Part II", being the Part under which licences were in fact issued.

³⁹ *Beti and Others v. Allardyce Lumber Company Ltd and the Attorney-General*, High Court of Solomon Islands civil case no.45/92.

1. the acquisition is necessary or expedient in the interest of defence or some public interest; and
2. there is reasonable justification for the causing of hardship to those deprived of their property; and
3. provision is made for reasonable compensation; and
4. provision is made for an application to the High Court to determine the legality of the acquisition and the reasonableness of compensation.

None of these conditions would be likely to be fulfilled in the case of validation of an approved agreement or licence.

The relationship between s.8 and the acquisition of timber rights has been considered by the High Court before, in the case of *Fugui and Another v. Solmac Construction Company Limited and Others*.⁴⁰ In that case the first respondent, without being the holder of a valid licence under the *Forests and Timber Act*,⁴¹ entered onto land and in the course of clearance operations destroyed trees which the applicants claimed they had a right to crop. The applicants therefore applied by motion for redress under the Constitution, relying on the provisions of s.8.

Whilst Crome CJ held that the right to crop produce was "property" or an "interest in or right over property" and so fell within the ambit of s.8(1), he found that "compulsory acquisition" referred to acquisition under a statute or regulation. In this case, although the first respondents had originally appeared to be claiming that they had a valid licence under the Act, they later admitted that this was not the case. Ironically, this deprived the applicants of a remedy under the Constitution, as it was held by Crome CJ that although any interference by the company with the applicant's rights might be actionable at common law, it was not compulsory acquisition under s.8(1), as it was not done under a statute or regulation.

That case is obviously distinguishable from the situation where a company is asserting a valid licence by virtue of the application of the 1990 and 1991 amending Acts to the position.

The outcome of the application in the case of *Beti and Others v. Allardyce Lumber Company Limited and the Attorney General*⁴² in which the validity of the 1990 amending legislation is being challenged, will obviously be of great interest. In any event it is beyond doubt that the Act is still in need of amendment or preferably replacement by a totally new scheme of legislation. As stated in the *Allardyce* case the law has been left in a totally unsatisfactory state "following a series of apparently haphazard and sometimes ill-conceived amendments".⁴³

Revision cannot be done in isolation, but needs to be approached in the context of customary land rights generally. The significance of primary and secondary rights need to be accounted for, and indeed it is these very concepts which appear to have led to a divergence between timber rights and landownership. Failure to properly accommodate concepts of customary land law in the legislation has led to ridiculous results, such as those highlighted by counsel for the applicants in *Tovua's* case.⁴⁴ As stated by Ward CJ in the concluding part of his judgment:

Commercial logging of an area is such a devastating event that the exercise of that single right may destroy many other rights. Thus the legitimate sale of those rights may restrict or totally destroy other rights, primary and secondary, held by people living on the same lands such as harvesting rights and the right to establish gardens or use the streams.⁴⁵

In this area, perhaps more than any other, customary law and received law are at odds and confrontation and harboured grudges of injustice will continue until the position is remedied. The difficulty in resolving this conflict is well summarised in the words of Daly CJ:

40 [1982] SILR 100.

41 Cap 90, as it stood prior to the 1984 amendments.

42 *Supra* n.39.

43 *Ibid* at 11.

44 *Supra*, n.27.

45 *Ibid* at 4.

[these difficulties] ... arise, in my view from what is always a problem in dealing with customary land cases in the modern Solomon Islands. That problem is how can one express customary concepts in the English language? The temptation which we all face, and to which we sometimes give in, is to express these concepts in a similar manner to the nearest equivalent concept in the law received by Solomon Islands from elsewhere, that is the rules of common law and equity. The result is sometimes perfectly satisfactory ... However other concepts of received law have not developed a customary law meaning and the use of those expressions which denote those concepts can produce difficulties of some complexity. This is particularly so when the custom concepts which they are said to represent are themselves undergoing modification to fit them to the requirements of a changing Solomon Islands which is now concerned not only with the use of land for subsistence farming but with the sale of timber ...⁴⁶

Recently, the Prime Minister of Solomon Islands' statement to the United Nations Earth Summit pointed to the unique environmental concerns of South Pacific countries, and the fact that "the sea, the land, the rivers, the forests etc are our resources. Our villagers depend on these resources for their daily subsistence".⁴⁷

In addition to commenting on the effect of global environmental problems on these resources, the Prime Minister drew attention to the country's programme for economic reform, which had the objective of making Solomon Islands less dependent on aid, and hence less dependent on others to determine its destination. He pointed out that such strategies must achieve a balance between development and environmental concerns, "in other words development must be sustainable". It was recognised that such sustainable development was costly and required a high level of understanding and co-operation between the resource owners and the resource users.

It is to be hoped that the pursuit of sustainable development will include a review of the *Forest Resources and Timber Utilisation Act*, and protection of landowners who do not wish to have their land commercially logged, but prefer to manage their resource in a more environmentally protective way.

⁴⁶ *Lilo and Another v. Ghomo* [1980/81] SILR 229 at 233 to 234.T

⁴⁷ Transcript of the address of Prime Minister SS Mamaloni, *Solomon Star*, 19th June, 1992 at 16.