

Metamorphosis of the Sustainable Development Bill

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Background

The National Environment Strategy (NES), which was endorsed by Cabinet on 20 April 1993 identified environmental management capability being poorly developed and regarded this as the nation's most critical environmental issue. The environmental management capability was weak in policies, laws, institution, and administration.

Fiji has at least 54 pieces of laws which have some provisions relevant to environment protection and resource management. These are administered by at least 14 different ministries, statutory bodies or other agencies. Most of the laws have been found to be old and ineffective in a modern environmental management context, or suffer from a lack of enforcement through inadequate staffing, lack of technical resources and funding, or through administrative failures.

On 31 January 1995, Cabinet approved the drafting of a new comprehensive and integrated environmental legislation as an urgent priority. It was envisaged that a suitable legal framework would address both, the sources of environmental problems and its effects, as well as to tackle new types of environmental problems. The intention was to develop an enabling legislation for the Department of Environment. The idea was to also establish a natural resource management system that will ensure the conservation and sustainable usage of the resources, and to enable other organizations, ministries or departments to carry out environment management work in their areas of responsibility.

In 1995, the Asian Development Bank initiated the *Environmental Awareness, Legislation and Database Technical Assistance* project in Fiji. The environmental legislation component of the project was intended to assist the Government in implementing selected rec-

ommendations and projects identified in the NES.

The Government began the process of producing a single coherent piece of legislation that incorporated provisions in the existing legislation that were relevant to environment protection and management. The objective was to develop an integrated and consolidated Environmental and Resource Management Legislation.

The new legislation was to establish a legal framework that would enhance and improve the powers of existing resource management ministries, departments and agencies, as well as creating suitable co-ordination and enforcement mechanisms. The legal framework was to be established for:

- (i) environmental impact assessment;
- (ii) pollution and waste management;
- (iii) integrated coastal, water and land management; and
- (iv) wildlife conservation and protected areas management

The approach taken called for wide consultation and participation by many stakeholders. The stakeholders were involved in the review of existing environmental and resource management-related legislations, the evaluation of current institutional capacity within various government ministries and agencies, and the identification of outstanding issues and resolutions. These stakeholders were from government departments, the private sector, NGOs, and the public.

Sustainable Development Bill

In 1996, the Department of Environment completed the legal drafting of Fiji's new Sustainable Development Bill (SDB). The result was a draft Bill that contained 19 Parts and 22 Schedules. The provisions within the draft Bill was as follows:

- *Preamble*: outlined the scope of the Bill
- *Preliminary*: outlined the date of commencement etc
- *Administration*: established the National Council for Sustainable Development, environmental management units, environmental registry, environmental trust fund, tribunal, powers and functions of the Department of Environment, powers and functions of the inspectors, and regular assurance audits.

- *Environment Impact Assessment*: established the Environmental Impact Assessment Unit, and provided its powers and duties.
- *Climate Change and Ozone Depletion*: established the Climate Change and Ozone Depletion Unit, and defined its powers, duties and responsibilities.
- *Pollution and Waste Management*: proposed the establishment of a National Waste Management Committee, and policies on integrated waste management
- *Management of Wastes*: prohibited the unauthorized disposal of waste, established procedure for the issuing of waste management licenses for collection, transport and disposal of waste, and provided for the procedures for the disposal of derelict motor vehicles.
- *Marine Pollution*: provided for the organizational structure to respond to oil spill, the implementation of national oil pollution contingency plan, and prohibited dumping of wastes from ships and aircrafts.
- *Management of Hazardous Substances*: regulated the import, export, transportation, storage, selling or disposal of any hazardous substances or wastes.
- *Water Quality Management*: contained the framework for the policies and procedures for Water Quality Management and water quality criteria.
- *Air Quality Management*: outlined procedures for the formulation and implementation of a policy on air Quality Management, and established air pollution standard for motor vehicles.
- *Environmental Management*: required any industrial or commercial facility to negotiate an appropriate Code of Environmental Practice based on ISO-14000.
- *Resource Management*: established a unit responsible for Resource Management, and provided for the formulation and implementation of natural resource management plan.
- *Integrated Coastal Resource Management*: established Coastal Resource Management Committee, and provided for its functions and duties.
- *Fisheries Conservation and Management*: empowered the min-

ister responsible for fisheries to effectively manage fisheries in terms of conservation and utilization.

- *Sustainable Forestry Management*: required the Department of Forestry to establish forestry resource inventory, and resource management plan.
- *Energy Conservation*: Established Energy Conservation Unit within the Department of Energy to formulate and implement government strategy and action plan with regard to conservation of energy.
- *Biodiversity, Conservation and National Parks Management*: established a conservation and National Parks Authority within the Department of Environment, and provided for the implementation of international agreements in the areas of biodiversity protection, conservation and habitat management.
- *Penalties and Enforcement*: Established a variety of offences under the Act, and defined the penalties to be imposed.
- *Repeals and Savings*: Listed the provisions and sections within existing legislation that were to be repealed, replaced or amended.

Rejection of First Draft of SDB, 1996

The initial draft of the SDB was structured in such a way that it integrated a number of statutes resting with other Ministries and agencies. Whilst the integrated approach was considered ideal, it was realised that it was fraught with practical problems and difficulties in the administration and enforcement of the Bill.

The first draft of the SDB was considered to be complex in format as it included both the substantive and procedural provisions. As procedures and regulatory measures change over time, it was felt that the procedural and regulatory measures be developed through other instruments such as regulations, and that the Bill should essentially be a framework Bill which establishes environmental principles, power and authority and the functions which fall squarely within the responsibilities of the Department. Where provisions overlapped with the responsibilities of other Departments, they were to be excluded from the draft Bill.

The government then found the draft Bill to be too cumbersome and too ambitious in scope. It was never introduced in the Parliament. Instead, a smaller Bill was drafted with the blessing of the Government in 1998. The Department of Environment reviewed the above-mentioned sections of the initial draft and provided the drafting instructions for the First Parliamentary Counsel.

Following consultations between the Department of Environment and the First Parliamentary Counsel, revisions to the Bill began. The revised SDB was drafted by the Solicitor-General which retained the following parts from the initial draft:

- Part I – Preliminary;
- Part II – Administration;
- Part III – Environmental Impact Assessment: Some changes were made to Part 111 to make it relevant to Fiji's situation. Devolution of powers to process EIA was given to the existing Approving Authority. EIA also applied to government projects.
- Part IV – Codes of Environmental Practice: The content from initial draft on Environmental Management was retained with a name change.
- Part V – National Resource Management; and
- Part VI – Offences and Penalties.

A revised version of SDB was approved by the new Government on 28 September 1999. This Bill was tabled in the Parliament at its October sitting for the First Reading. Comments on the SDB from Members of Parliament varied. Some members thought the Bill would hinder development with too many controls. Some members thought the Bill was being rushed and needed more time for awareness and consultations. Some members saw the need for such a legislation to control pollution and protect Fiji's natural environment.

The SDB was eventually referred to a Joint Sector Standing Committee on Natural Resources and Economic Services on 16 February, 2000 for its consideration. Taking into account the oral and written submissions received, the site inspections of selected problem areas and its own deliberations, the Committee made recommendations and amendments to the SDB.

The Committee was to have tabled its report at the next sitting of

Parliament commencing 15 May 2000, but could not do so due to the events of 19 May 2000. The Bill lapsed.

Post-Coup Developments

Since 2001, when a new government came to power, the Bill went through further revisions. It was referred to the Ministry of Fijian Affairs under section 11 of the Fijian Affairs Act. More consultations took place with the Provincial Councils. The outcome of the consultation led to further amendments and additions.

On 4 April 2003, Cabinet approved that the 1999 SDB should be the basis for a new SDB. It also accepted certain amendments proposed to the 1999 version of the SDB based on the comments received from the stakeholders. As a result of the recommendations, the SDB underwent name change. It became the *Environment Management Bill* (EMB)-2004. This decision was based on the fact that there are three dimensions of sustainable development- social, economic and environmental. It was recommended that the Department of Environment focus on the environmental component of sustainable development. The Ministry of National Planning took over the responsibility for the economic and social components of sustainable development.

Environment Management Bill – 2004

The EMB contains 7 parts and 3 Schedules. It does not seek to repeal or amend any existing law, but it provides for inspectors appointed under this Act (if enacted) with the power to enforce certain other Acts which relate to environmental matters. Other parts of the original Sustainable Development Bill could be added to in due course, or enacted separately as required.

The Structure of the **Environment Management Bill-2004** is as follows:

- *Part I – Preliminary:*
- *Part II – Administration:* This Part contains the duties and responsibilities of the Department, Environment Units, Approving authorities, Environment Management Committees and a Resource Management Unit. This also follows a grouping approach.

- *Part III – Environmental Reports and Plans*: This part provides for all reports that are required under the Bill. Thus the Natural Resource Inventory, National State of the Environment Report, National Environment Strategy and the National Resource Management Plan is contained in this part. This is a logical approach in terms of groupings.
- *Part IV – Environmental Impact Assessment*: same
- *Part V – Pollution Control and Waste Management*: This introduces a permit system for any facility that pollutes. This system replaces the Code of Environment Practice, which was found in the original Bill.
- *Part VI – Offences and Penalties*; and
- *Part VII - Miscellaneous*

Further amendments and additions to the SDB, 1999 include:

- The creation of the *National Environment Council* (NEC) that shall be the advisory body to Cabinet on Resource Management Policy. This replaces the National Council for Sustainable Development. The Council will coordinate the formulation of environment management policies.
- The requirement on environment impact assessment be binding on the State as well.
- The *Codes of Environment Practice*, which imposes an international system of environmental management, the ISO-14000 series of environment management system, will be replaced with declarations, enforcement orders, stop work notices that will ensure environmental compliance according to the permits issued. It was realized that the ISO-14000 series is a voluntary mechanism used by the developing countries for trading of environment friendly goods to gain market access. In the case of Fiji, the objective of that provision was primarily to control wastes and pollution rather than for trade purposes.
- Amendments to the Natural Resource Management Plan to address concerns raised by landowners that the Plan would over-ride their rights to decide on the use of their resources. The EMB proposes that the Plan is to provide guidance on

- sustainable use of their natural resources.
- A new part to the Bill to address pollution and waste management, in particular solid waste and chemical waste.

The Environment Management Bill is scheduled to be tabled in the Parliament during 2004.

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