

Principles for Effective Local Government Legislation

Lessons from the Commonwealth Pacific

Graham Sansom

Series Editor: Munawwar Alam



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Commonwealth Secretariat Local Government Reform Series 4

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Foreword

Principles for Local Government Legislation: Lessons from the Commonwealth Pacific is the fourth title in the Commonwealth Secretariat Local Government Reform Series. This series offers guidance on various aspects of local government reform to public sector policy-makers, senior managers at central and subnational levels, as well as students and researchers in public administration with an interest in local government issues. Each volume distils contemporary thinking and international good practices from around the Commonwealth.

Research is an important component of the Secretariat's governance work. Policy investigations contribute to informed decisions taken by policy-makers. Our policy research in local governance outlines choices for member governments rather than presenting categorical solutions. We also endeavour to provide cutting-edge evidence for the design, implementation and review of public policies that contribute to broader development goals.

The current debate over the type and scope of decentralisation, to a large extent, revolves around country-specific structural and managerial issues. In recent times, decentralisation has seldom been smooth sailing. Local government reforms pose new challenges in governance and public administration. Decentralised local governments often need to perform new and more complex tasks that are sometimes politically sensitive.

This publication addresses developmental issues in the Commonwealth Pacific through analysis of local government laws that form the basis of formal institutions. The Commonwealth Pacific represents all three ethno-geographic groupings – Melanesia, Micronesia and Polynesia. However, there are vast differences between and within countries in terms of socio-economic and political cultures and traditional governance. Across the Pacific, local councils take a variety of different forms, ranging from traditional village structures to fully-fledged municipalities. Whatever form local government takes, however, an appropriate legislative and regulatory framework is essential to ensure that councils can effectively address the needs of their communities. We believe politically informed understanding of the legal basis of grass-roots institutions should lead to a positive developmental change.

Our aim is to strengthen local government reform strategies and processes, so that Commonwealth governments can make more informed policy choices about decentralisation. The Secretariat will continue to support Commonwealth member governments by advancing knowledge of these and other public sector reforms. Though this research in no way is 'prescriptive', we sincerely hope that it will assist the policy community in the Commonwealth Pacific, and beyond, to improve formal

institutions of local governance, and thereby contribute towards consensus-building and a sustainable national vision for development.

Max Everest-Phillips

Director

Governance and Institutional Development Division

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Preface

This report summarises research undertaken over the period May 2007 to late 2009, updated through some further work and discussions during 2010 and again in early 2012. With the exception of Samoa, it does not cover developments since the beginning of 2011.

The research was conducted in consultation with the Commonwealth Local Government Forum (CLGF), the Commonwealth Secretariat, university and development partners, and representatives of local and national governments across the South Pacific. It was largely funded by the Commonwealth Secretariat, but also supported through my work with the CLGF Pacific Project and by the Centre for Local Government at the University of Technology, Sydney, Australia.

The idea for the research sprang from discussions with Professor Graham Hassall, then with the University of the South Pacific in Suva; and Terry Parker, then regional adviser to the CLGF Pacific Project. Their input is gratefully acknowledged.

Many people throughout the Pacific subsequently contributed information, ideas and insights into the workings of local government legislation, and gave generously of their time. Special thanks go to those colleagues who commented in detail on the draft text: Terry Parker again; Afamasaga Toleafoa, an esteemed Samoan chief, former senior diplomat, social commentator and researcher; and Rebecca Bigg-Wither, former legal adviser to Honiara City Council. The final document owes a great deal to their advice, but of course any outstanding errors or omissions are my responsibility.

Sincere thanks are also due to Dr Munawaar Alam of the Governance and Institutional Development Division of the Commonwealth Secretariat. He not only secured funding for the project, but also offered continuing encouragement and showed enormous patience as delays in finalising the report mounted up. Dr Alam has been a great advocate for more local government research across the Commonwealth.

Finally, I particularly want to record the assistance and friendship of John Leigh. John played a crucial role in the CLGF project to build the capacity of Honiara City Council, first as a financial adviser and later as acting city clerk. He died after a short illness in June 2011 – far too young and with much still to contribute, but having achieved a great deal.

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Sydney, January 2013

Abbreviations and acronyms

AUD	Australian dollar
AusAID	Australian Agency for International Development
CLGF	Commonwealth Local Government Forum
FLGA	Fiji Local Government Association
GDP	gross domestic product
HCC	Honiara City Council
LGC	Local Government Committee (Fiji)
LGRC	Local Government Review/Reform Committee (Fiji)
LLG	local-level government
MHA	Ministry for Home Affairs (Solomon Islands)
MP	Member of Parliament
MWCSD	Ministry for Women, Community and Social Development (Samoa)
NZAID	New Zealand Agency for International Development (now NZ Aid Programme)
PNG	Papua New Guinea
PUMA	Planning and Urban Management Agency (Samoa)
TAP	Technical Advisory Panel (CLGF Pacific Project)
UGMAP	Urban Growth Management Action Plan (Fiji)
UNDP	United Nations Development Programme
UPAP	Urban Policy Action Plan (Fiji)

Chapter 1

Introduction

1.1 Rationale

This project was conceived as a piece of ‘action research’ linked to the Commonwealth Local Government Forum (CLGF) Pacific Project – a capacity building programme for local government in nine Pacific island countries.¹

At the November 2006 meeting of the project’s Technical Advisory Panel (TAP) for the Pacific Project, a number of participating countries indicated that they were undertaking, or about to undertake, reviews of legislation governing the operations of local government. Across the region local governments take a variety of different forms, ranging from traditional village structures to fully-fledged municipalities operating along similar lines to local councils in Australia and New Zealand.

Whatever form local government takes, it is important that democratic principles are applied to the maximum possible extent, and that the councils are as effective and efficient as possible in addressing the needs of communities. These objectives are encapsulated in CLGF’s Aberdeen Agenda (2005), a set of principles for local democracy and good governance adopted in 2005 by Commonwealth Heads of Government (see section 4.1). An appropriate legislative and regulatory framework, together with supportive policies, is essential for this purpose.

Delegates to the TAP meeting advised that there was considerable room for improvement in local government legislation, and several countries had sought support from the Pacific Project to review and strengthen their existing frameworks. The intent of the research was therefore to:

- review existing legislative frameworks across a range of different countries and institutional settings;
- identify examples of successful practice and areas for improvement;
- provide a ‘menu’ of principles, concepts and provisions that can be incorporated into new or revised local government acts and regulations;
- work with selected countries to update their legislative frameworks; and
- share experience gained throughout the region.

Three countries were selected as case studies: Fiji, Solomon Islands and Samoa. The action research was to be undertaken in conjunction with work being carried out by CLGF and its partners as part of the Pacific Project. In the event, this was only partly achievable in Solomon Islands and not at all in Fiji and Samoa. This was due to delays in CLGF activities beyond its control and, in the case of Fiji, a military coup and resulting major changes in government policy towards local

government.² However, in all three cases practice-focused research was undertaken in consultation with the relevant government agencies, and research findings are believed to reflect the realities of the policy environment. In Fiji, it was possible to discuss legislative and related issues with the Local Government Review/Reform Committee established by the interim military-backed government, and to follow some of the subsequent implementation of the reform package. Also, the research encompasses the findings of two mid-term reviews of relevant capacity building projects: the CLGF Pacific Project and the Honiara City Council Institutional Capacity Building Project.

1.2 Project goals

The project goals were:

- to assist Pacific island countries in their efforts to update local government acts and regulations so that local councils can operate as efficiently and effectively as possible in accordance with democratic principles; and
- to identify examples of successful practice and provide a ‘menu’ of principles, concepts and provisions that can be incorporated into new or revised local government acts and regulations.

1.3 Methodology

The project was designed in eight stages:

1. A preliminary review of relevant literature and existing local government legislative frameworks in some of the participating countries, to compare existing provisions and identify examples of successful practice and possible improvements
2. Preparation of a draft ‘menu’ of principles, concepts and provisions that can be incorporated into new or revised local government acts and regulations to promote effective and efficient local government
3. A regional workshop (which took place in Suva, 2007) to discuss the draft ‘menu’ and prepare a provisional set of ‘good practice’ principles taking into account associated issues or constraints in the Pacific context
4. Initial case studies of selected countries to review the practical relevance of the ‘menu’ and principles
5. A further regional workshop (in Apia, 2008) to review the results of the country studies and more recent developments across the region as a whole, and to agree a revised set of principles
6. Follow-up research in the three selected countries
7. Documentation of key findings and completion of a draft final report for discussion with research partners
8. Finalisation and dissemination of results across the region.

As noted above, the three case study countries were Fiji, Solomon Islands (Honiara City Council) and Samoa. These were selected on the basis that:

- they were readily accessible to the author and offered the potential for multiple visits, linked to other activities;
- legislative and/or system reviews were planned in conjunction with CLGF projects; and
- they provided examples of very different legislative frameworks: one of the Pacific's best developed 'systems' of local government, but operating within tight legislative constraints and ministerial oversight (Fiji)³; an 'enabling' act with relatively little ministerial oversight (Honiara); and reliance on an essentially traditional system of local governance with minimal legislation, but with emerging pressures for change (Samoa).

Case studies of one of the small island states (Kiribati, Tuvalu or Cook Islands) and of Papua New Guinea (the Pacific's largest local government system) would have been valuable, but were logistically impossible within time and budget constraints. However, some broader issues and lessons from all nine of the Commonwealth countries that participate in the CLGF Pacific Project have been captured in the overview material.

While the focus of this research rests firmly on legislation, it must be emphasised at the outset that legislation cannot be effective without supportive policy frameworks. Policy issues are thus considered alongside legislation in each of the case studies, and some conclusions about the limits to legislation and the role of policy are presented in the final section.

Chapter 2

Context

2.1 Regional overview

As indicated in section 1.1, this report deals with the nine Commonwealth countries that participate in the CLGF Pacific Project to strengthen local government and governance. Table 2.1 provides an overview of those countries in terms of population numbers and social and economic development – the latter as evidenced by urbanisation, adult literacy and gross domestic product (GDP).

There are striking variations from one part of the region to another. The Melanesian states of Papua New Guinea (PNG), Solomon Islands and Vanuatu retain very large rural populations and have correspondingly low levels of literacy and (with the exception of Vanuatu) per capita GDP, but solid economic growth in recent years. However, the sheer size of PNG's population makes it easily the largest economy in the region, with the highest absolute number of urban dwellers. Fiji, at the geographic and cultural crossroads of the region, is second only to the New Zealand protectorate of Cook Islands in terms of urbanisation and GDP per capita, although its economy has suffered in recent years due to political instability. Like all the Micronesian and Polynesian countries, Fiji also enjoys a very high level of adult literacy. Except for Kiribati, those small island states have relatively high per capita GDPs, but economic growth is patchy. On the whole, growth rates in most of the

Table 2.1 Socio-economic characteristics of Pacific island countries

	Population ^a	Urban population ^a	Literacy ^a	GDP per capita ^a	GDP growth rate %	
	'000	%	(% adult population)	(US\$)	2006	2007
PNG	5,800	13	57	695	3.7	4.5
Solomons	521	17	30	513	5.3	5.0
Vanuatu	213	23	34	1,472	5.5	4.7
Fiji	840	52	93	3,098	3.4	-2.3
Kiribati	90	49	93	633	0.9	–
Tuvalu	11	–	95	1,346	3.0	2.5
Tonga	102	34	99	2,087	1.9	0.0
Samoa	181	22	99	2,030	4.6	3.1
Cook Islands	20	70	94	7,549	1.8	3.2
All Pacific					3.1	4.5
<i>Caribbean</i>					8.3	5.4
<i>Africa</i>					5.5	6.3

^a2004 data

Source: AusAID (2006, 2008)

nine countries do not compare well with those of the wider Pacific region, or the Caribbean and Africa.

The generally low levels of urbanisation across the region are reflected in the dominance of village settlements over towns and cities. Hassall and Tipu (2008: 9–10) have compiled a preliminary stocktake of the different forms of settlements and local government, presented in Table 2.2. They note that:

Whereas the distinction between ‘rural’ and ‘urban’ environments is generally understood, clear legal definitions of the ‘city’, ‘town’ and ‘village’ do not necessarily exist in the legislation of Pacific island countries. What is clear, however, is that references to a village in the majority of cases imply a native settlement that has been recognised as such. In the cases of a city and town, it is usually the case for some kind of legal declaration to be made under the relevant law. The town of Apia in Samoa is an exception to the rule. There is no town authority or municipality. Apia town comprises a number of traditional villages that as such are governed under the Village Fono⁴ Act of 1990. Issues affecting the urban area as a whole are generally matters for central government agencies, but there is no overall authority.

2.2 Decentralisation

Over the past two decades moves to decentralise government roles and responsibilities have been common across developing countries. Decentralisation has been strongly promoted by major donors as a means to promote greater efficiency, effectiveness, responsiveness and accountability in service delivery, as well as a vehicle for strengthening democracy and community engagement in the processes of government – and hence ‘good governance’ in general. Whether these moves have proved or are proving successful is a matter for debate (see Box 2.1), but they

Table 2.2 Types of settlement and local governments

	Fiji	Vanuatu	Solomon Islands	Papua New Guinea	Kiribati	Nauru	Samoa	Tonga	Tuvalu	Total
Provinces/divisions	14	6	9	20	–	–	–	5	–	49
Districts	–	–	–	89	6	14	11	24	0	144
Cities	2	0	1	3	0	0	0	0	0	6
Towns	9	2	1	50	3	0	0	0	1	66
Villages ^a	1,175	2,149	–	–	–	–	247	167	9	–
Local-level governments	–	8	11	299 ^b	23	–	247	–	8	–

^a Given that there are no figures provided for four countries, this row has not been tabulated so as to not give a wrong impression of the number of villages

^b The 299 local-level governments in Papua New Guinea comprise 26 urban municipalities and 273 councils. Local-level governments are themselves divided into wards. In PNG’s case, there are 6,003 wards. Wards are made up of villages and hamlets

Source: Hassall and Tipu (2008: 9–10)

Box 2.1 Schoeffel's 'Sceptical Propositions' regarding decentralisation

1. The conditions that create governance problems at the top are the same lower down, so the same problems occur (corruption, excessive patronage, capture of power and resources by elites).
2. Cutting the pie up into smaller pieces doesn't make the pie any bigger (if national government and the economy are not productive, then splitting resources among more governments may result in further decline).
3. People often don't want what is good for them (local people may not make decisions in their best overall, long-term interests, and funds may be wasted on projects of little developmental value).
4. Fundamental changes are needed before government can achieve development goals at any level (if systems and attitudes are fundamentally flawed, decentralisation will not help).
5. Local government can be strengthened without much devolution of state powers to smaller geographical units (strengthening semi-traditional village governance can complement rather than replace the role of central agencies at modest cost).
6. To improve conditions at the local level, the priority must be to strengthen and improve the efficiency of centralised national bureaucracies (enhanced management capacity in central agencies is essential for effective oversight and support of local governments).

Source: Schoeffel (2003)

continue to be pursued to varying degrees and in various forms across most Pacific countries.

Decentralisation can take a variety of forms. It may simply involve delivery of services through regional offices or agencies of central governments ('deconcentration'), without any significant devolution of service delivery or decision-making (political) authority to sub-national governments. It may focus on the establishment of provincial governments that either enjoy a large measure of autonomy or remain subject to strict central control. Or it may mean creation or strengthening of a system of community- or district-level local governments, again with more or less autonomy. The precise goals and structure of any programme of decentralisation and/or strengthening of local government need to be made clear at the outset (Turner 2003), and matched to available resources. For example, Saldanha (2005: 9) observes that: 'Papua New Guinea has a substantially decentralized government that makes financial and technical demands well beyond the capacity of the nation'. The same is almost certainly true of all Pacific island countries attempting to provide 'substantial decentralized government', but at least in the case of those countries that consist

of dozens of far-flung islands, there may be no alternative – irrespective of a lack of resources for effective administration and service delivery.

Hegarty (2009) discusses the failure of decentralised government in PNG and Solomon Islands. At independence in 1975 and 1978 respectively, both countries introduced three-tier systems of government: national, provincial and local, although with quite different allocations of authority. However, local governments ‘quickly became very much the “poor cousins” of the higher levels of government’ (ibid: 102). Decentralisation ‘reforms’ in PNG in 1995 reduced the powers and service-delivery capacity of local governments, while in Solomon Islands local-level Area Councils created at independence were largely ignored at the national level and then abolished in 1997.

Hegarty goes on to detail the weak state of local government in the two countries. He quotes the views of Gelu (2008) that very few of the 303 local-level governments in PNG operate effectively, and of Cox and Morrison (2004) that since the abolition of Area Councils in Solomon Islands a ‘gap’ has developed between provincial administrations and local communities, exacerbated by the closure of many provincial sub-stations due to financial cuts associated with the period of ‘ethnic tension’ from the late 1990s. Similarly, Lawrence and Allen (2008) report wide separations and disjunctions between communities and the formal structures of government: access to government services was seen as low, police involvement slight, and conflict resolution left to chiefs and churches. Visits by members of parliament to their constituencies, beyond their home area, were rare. Also, donors are reported to have expressed frustration at the absence of local government authorities or a workable decision-making structure through which they could disburse relief funds following the 2008 tsunami in Solomon Islands Western Province.

Richardson (2009) provides an overview of the decentralisation experience in the small island states of Kiribati and Tuvalu. In both cases decentralisation policies have sought to tackle the difficult task of improving governance and service delivery on small and widely dispersed outer islands. Those policies have been driven by a combination of the steady drift of population to the capital islands of Tarawa (Kiribati) and Funafuti (Tuvalu); an enduring attachment to the island lifestyle; the fact that a majority of members of national parliaments still come from outer island constituencies; and the promotion of decentralisation by international financial institutions and donors. However, as in PNG and Solomon Islands, ‘there are significant items on the international decentralisation “menu” that have been inappropriate for both countries ... Responsibilities have not been matched with sufficient finances and this has resulted in poor service delivery and diminished confidence by local communities in the ability of local governments to deliver’ (ibid: 125).

2.3 Issues in local governance

In general, ‘formal’ elected local government in the Pacific – as opposed to some traditional systems of local governance (see below) – is only weakly developed. While some countries have established quite elaborate legislative frameworks (see section 3),

Haley (2008: 9) observes that: ‘... local governments throughout the Pacific tend to be constrained by limited technical capacity, moribund public service infrastructure, political interference, a paucity of local leadership and very limited financial resources’.

Shah and Shah (2006: 2), in a review of the evolving roles of local governments in developing countries, argue the need for a framework of local governance that is:

- responsive – doing the right thing, delivering services consistent with citizens' preferences;
- responsible – doing the right thing the right way, working better but costing less; and
- accountable – to citizens through a rights-based approach.

They further propose that good local governance is not just about providing a range of local services, but must extend to democratic participation, quality of life and environmental sustainability (ibid: 2).

However, in contrast to this vision, Haley (2008: 10) finds that: ‘... citizens in many Pacific countries do not expect or necessarily want their governments or elected officials to be responsive to the wider community needs – only to their needs and desires. Indeed, many see the state as something to be used, if not plundered ... and this means very little accountability is ever demanded by communities’. She goes on to suggest that: ‘... desire and demand for better governance in a Pacific context often remains little more than a demand for better service delivery’ (ibid: 19).

A key issue here is the need for citizens to have sufficient knowledge and understanding of their rights and entitlements. ‘In order to hold governments accountable, people need to understand the role of elected officials, how governments are meant to operate, and the law and how it relates to them ... and they need to have access to the media and information about government performance’ (Haley: 10). The CLGF Pacific Project has responded to this need by placing considerable emphasis on local leadership training (Peek and Sansom 2008).

A number of commentators have highlighted the limited involvement of women in political governance as a key factor that needs to be addressed. For example, Saldanha (2005: 17–8) argues that women exert extensive positive influences on governance through their roles in child rearing and education, economic activity, and maintaining cultural and community values, and that these roles need to be formalised and strengthened. He proposes that governments should adopt policies, strategies and budgets that reflect the contributions women can make, and that women should be guaranteed representation in parliaments, local governments and at senior levels of the public service.

Moves to reform local governance must have regard to the Pacific’s widely differing socio-cultural contexts and political history. As Larmour (2005: 3) observes: ‘The best model of political governance for a Polynesian country, characterized by common linguistic and cultural heritage and a tradition of deference to leaders, may be quite different to that which will work in a Melanesian country, where there is a huge

diversity of languages and cultures, and where leadership is more contested'. Various authors quoted by Haley (2008: 6) highlight international experience that shows:

- countries facing similar governance challenges may need to deal with those challenges in quite different ways;
- governance reform is a political, not just a technical exercise;
- reforms must be appropriate to local circumstances in terms of contexts, capacities and resources; and
- imported approaches are only as good as their adaptability to local context and capacity.

Significant variations in systems of local government and the legislation under which those systems operate are therefore to be expected and are often desirable.

2.4 Local government and civil society

Saldanha (2005: 5) draws a distinction between the *supply* side of political governance as opposed to the *demand* side. Efforts to improve governance often focus on the supply side, seeking to strengthen institutions such as the electoral system, parliament, local governments, the public service etc. By contrast, demand-side strategies seek to enhance civil society organisations and community understanding of people's rights and entitlements in order to promote widespread and concerted calls for better performance on the part of political leaders and public institutions.

In recent years, donors to several Pacific countries have sought to pursue demand-side strategies as a significant element of their aid programmes. A good example is AusAID's *Pacific 2020* strategy. Haley (2008) reviews recent comparative research on these efforts to build demand for better governance, drawing the conclusion that: 'Demand for good governance seems to emerge as a by-product of a robust and vibrant civil society and, as such, derives from broader civil society capacity strengthening and confidence building' (ibid: 19). She also notes that: '... promoting community demand for better governance through civil society strengthening is a slow, complex, incremental, iterative and reflexive process that is dependent upon extensive relationship building and investment in social infrastructure' (ibid: 19–20).

Notwithstanding these notes of caution, Saldanha (2005:19) proposes that civil society organisations must be encouraged to hold government accountable, starting at the local government level. 'At the local government level where the interface between the community and government is most intense, voicing demands for better service delivery, for more effective law and order, and for transparency in decision-making and budget allocations is a useful way to make government more accountable'.

This approach tends to assume, of course, that civil society organisations themselves are accountable and efficient, which may not always be the case. A related issue is that when local government itself is weak or non-existent, civil society organisations may themselves become frontline service providers. Hegarty (2009) provides an overview of the extent to which thousands of community-based organisations and groups

have become active across a wide and diverse range of service delivery activities in both PNG and Solomon Islands. These include churches (which play a key role throughout the Pacific), national-level non-government organisations, community-level associations, women's groups and village self-help committees.

While the rationale and objectives of these groups are varied, most are focused on improving the livelihoods and socio-economic conditions of the rural populace, as well as the preservation of local *kastom* and 'ways of life'. Increasing numbers are accessing donor funding, thereby requiring some degree of formal organisation. However, the absence of effective local government leaves these groups without a structured and robust operating framework, making them vulnerable to the vagaries of patronage politics and associated maladministration. Reliance on civil society organisations, either to hold local government accountable or as primary service deliverers, has significant limitations as a result.

2.5 Local government and traditional governance

Finding an appropriate relationship between traditional governance – principally in rural areas – and modern systems of local government is a key issue across the Pacific. There is widespread agreement that different cultural traditions and systems must be respected, but also acknowledgement that the relationship with newer forms of 'western' democratic local government can be a difficult one. The 'Auckland Accord' adopted at the 2007 Commonwealth Local Government Conference (CLGF 2007: 4) stated that:

Sites of competing authority at the local level are damaging to community well-being. The Aberdeen Agenda⁵ underscores the importance of inclusive governance with local government acting as first among equals. Effective co-operative governance frameworks that suit the local conditions enable traditional and democratic systems to operate side-by-side or be complementary in the attainment of local development ... It is essential to have a clearly defined legal framework as ... the basis for effective co-operation in the local governance context. A sustainable and structured framework for dialogue is needed to ensure genuine communication and provide a peaceful dispute resolution mechanism.

Saldanha (2005: 5) argues that the quality of political governance across the Pacific can be improved by, among other things, strengthening local government's integration with customary or traditional community leadership. He suggests that in Polynesia 'some degree of effective integration of political and customary structures has been achieved and perhaps this explains the relative stability of local leadership' (ibid: 9), citing Samoa in particular. While acknowledging some of the disadvantages of 'big man' or *matiai* leadership (relying on customary chiefs) and *wantok* (loyalty to kinship group) culture, he also argues that community respect for local leaders, plus the limited resources available for governments to service rural areas, make it sensible to use traditional systems where appropriate (ibid: 17).

Several systems of local government in Pacific countries incorporate traditional village structures. Those structures can provide a valuable building block, but over time they

can also become obstacles to necessary change and modernisation – fully including women in local governance, for example – and their legitimacy may be questioned. There is also a risk that established elites will unfairly capture additional power and resources created by new systems of local government. Richardson (2009: 125) suggests a lesson from the Kiribati and Tuvalu experience could be that while ignoring traditional institutions and leaders is a recipe for weakening local governance, giving them widespread powers may also be problematic.

Storey's (2005: 3) concerns about governance of rapidly developing peri-urban areas are also relevant here, as urban growth spills over on to customary land, or alternatively is constrained because such land is not made available to accommodate much-needed housing or other urban uses. He comments as follows:

They are in practice 'grey areas' of 'negotiated territory', overtly urban in terms of their economic function and, often, of their physical form. Yet they are still rural, for municipal councils are kept at arms length, the state frequently has limited legitimacy and village-based structures of leadership and social organisation often continue. This mix of urban lifestyles and aspirations with rural social structures and customary leadership is often volatile for while forms of customary social control operate, not all members of a settlement will have a kin or even ethnic connection to the society at the centre.

All this suggests that local government legislation might perhaps seek to 'modernise' traditional structures to the extent necessary to ensure effective democratic governance capable of addressing today's pressing issues such as urbanisation, or establish an overarching framework within which new systems of local government and traditional arrangements can work in sufficient harmony. However, Richardson (2009: 125) cautions that while there is scope for Pacific island countries to learn from each other in harmonising traditional and modern systems, '... the country-specific complexities of this issue make generic international models (which generally focus on modern institutions) less relevant'.

2.6 The urban challenge

A particular challenge for local governance across much of the Pacific is that of rapidly growing urban and peri-urban areas, often characterised by squatter settlements. Storey (2005: 1) has summarised the key issues as follows:

- land shortages and conflicts, where traditional systems come into contact with modern ones;
- rapidly increasing informal settlements, and a lack of affordable and relevant private housing;
- incomplete, inadequate, and failing infrastructure and services;
- growing inequality and poverty, with employment predominantly in the informal sector;
- worsening environmental conditions, with both organic and toxic waste presenting significant and growing threats to health;

- increasing crime and violence undermining attempts to create urban unity; and
- inadequate institutional capacity and human resources to deal with issues.

He goes on to argue (*ibid*: 4) that:

... existing forms of governance are inappropriate for peri-urban areas and their future. The models that are available – managerial, neoliberal/entrepreneurial and customary – all have something to contribute, but none gives a complete answer. Peri-urban growth creates a key problem of governance: who is responsible for management of growth (housing, services, land use, environment etc.)? The central state may have putative power, but this is often weak and contested at the local level (by customary landowners or local power brokers, for example); city councils are usually poor and urban expansion now extends well beyond their limits; and local rural systems of governance are proving incapable of handling major urban issues.

Hassall and Tipu (2008: 10) discuss the case of Fiji as an example of the ‘escalating challenge’ of peri-urban development. Squatter settlements have proliferated around the urban centres of Suva-Nausori (72 settlements with 8,687 households), Nadi (19 settlements with 1,208 households), Labasa and Lautoka (15 settlements each), and Ra and Sigatoka (10 settlements each). Urban drift has been aggravated by the demise of the sugar industry, with many farmers migrating to towns and cities to seek employment. These developments raise the complex issue of how and whether town boundaries should be expanded in recognition of the need to provide services to new settlements.⁶ Some 83 per cent of the nation’s land is still under indigenous communal ownership. Urban development has already consumed most state and freehold land, so that future urban growth will require access to adjoining areas owned by Fijian clans. As explained by Storey (2005, quoted above), this poses major challenges for both effective urban governance and community relations.

The key point here seems to be that several existing systems of Pacific local government, although established quite recently, have failed to come to terms with this critical issue for the region. In other words, the design of those systems is not ‘fit for purpose’, at least in one crucial respect. However, this does not necessarily mean that the local government system itself must be changed. Governments may well decide that urban problems are better tackled by other means, such as special purpose agencies: Samoa has a Planning and Urban Management Agency that, among other things, provides a framework for urban governance in the capital, Apia. What does appear essential is that the expected role of local government in addressing the issue of urban expansion is made clear, and that both legislative provisions and allocation of resources match that role.

2.7 Local government finance

As Hassall and Tipu (2008: 31) point out, adequate funding is essential for effective – and it might be added, stable – local government. Data are limited and in some cases of questionable accuracy, but in general it appears that local government across the

Pacific lacks a sound financial base. A possible exception is Honiara City Council, as discussed in chapter 6.

Data provided by Hassall and Tipu has been used to construct Tables 2.3 and 2.4., which show respectively sources of revenue available to local governments and expenditure per capita in 2007. Conversions to Australian dollars are those made by Hassall and Tipu or were calculated using contemporary exchange rates.

Table 2.3 suggests that local governments across the Pacific have access to a fairly wide range of revenues. In practice, however, own source revenues are often constrained by central government policies and regulations, by the limited capacity of small and poor communities to pay, and by inadequate financial management. Thus dependence

Table 2.3 Local government sources of revenue

Country	Central government transfers	Own source revenues
Cook Islands	Grants and subsidies	Rates, various fees and charges, fines, trading enterprises
Fiji	Very limited; no general revenue grants	Property rates, various fees and charges
Kiribati	Administrative and capital grants, some seconded staff	Rates ('rate, tax, duty or toll'), various fees and charges
Papua New Guinea	Revenue-sharing grants, special purpose payments, some salaries	Property rates, various fees and charges
Samoa	Various special-purpose payments, salaries of <i>Pulenu'u</i> and women's representatives	n/a
Solomon Islands (Honiara)	General and special-purpose grants (fairly consistent), some salary payments	'Basic rate' (head tax), property rates, business licenses, various fees and charges, trading enterprises
Tonga	Salaries of district and town officers	n/a
Tuvalu	Payments from investment trust funds (local governments make contributions)	Rates ('community development tax'), various fees and charges, trading enterprises
Vanuatu	Variable transfers, some salary payments	Property rates, business licenses, various fees and charges, fines (by-laws infringements), trading enterprises

Source: Author, based on Hassall and Tipu (2008)

Table 2.4 Local government expenditure per capita, 2007

Country	Lowest AUD	Highest AUD	Average AUD
Fiji	\$31	\$363	\$105
Kiribati	\$23	\$285	\$46
Solomon Islands (Honiara)			\$48
Tuvalu	\$98	\$646	\$238
Vanuatu	\$17	\$113	\$42

Source: Author, based on Hassall and Tipu (2008)

on central government grants and subsidies is generally high, and local discretion to make expenditure decisions correspondingly low.

The expenditure data in Table 2.4 again highlight the weakness of local government in the Pacific and its limited range of functions. In particular, per capita expenditure tends to be relatively low in the larger urban centres, although Suva in Fiji (178 Australian dollars [AUD]), and Port Vila (AUD113) and Luganville (AUD80) in Vanuatu, are exceptions among the countries shown. Tuvalu stands out as having relatively high levels of local expenditure, apparently as a result of the success of the country's system of trust funds (Hassall and Tipu 2008: 23–24).

2.8 Central-local relations

In general, local government in the Pacific is subordinate to central government (Hassall and Tipu 2005: 27). This is particularly evident in terms of financial dependency, as outlined above, and close ministerial oversight of council activities. In most countries local by-laws and the level of taxes and charges are subject to ministerial approval; key staff may be appointed by or seconded from central government (e.g. Solomon Islands, Vanuatu, Kiribati); ministers may appoint additional members to elected councils (e.g. Vanuatu, Fiji, Solomon Islands), although these are usually non-voting members; and in the absence of constitutional protection the very existence and continuation of local government is subject to national determination – exemplified in 2008 by the complete abolition of local government (not just dismissal of elected councillors) in Rarotonga, Cook Islands, through the repeal of the Rarotonga Local Government Act.

Another issue in some countries is the relationship with local members of national parliaments. In the case of Kiribati and Honiara City Council, for example, local members of parliament (MPs) are *ex officio* members of councils. Also, MPs may exercise control over development programmes (or have their own constituency funds) and use this power in a way that tends to weaken local government. Writing about Papua New Guinea, Allen and Hasnain (2010: 14) have observed that:

[Local governments] have been increasingly marginalised from planning and financial decision-making processes at both provincial and district levels. They have also been starved of funding to perform their basic planning and service delivery functions ... The 89 open electorate MPs and their associated electoral and administrative units – the districts – have eclipsed or overshadowed all other forms of local political activity.

Few countries have arrangements for regular discussions between representatives of local government and national ministers or their agencies. Samoa is an interesting exception, where there are frequent meetings of the village *Pulenu'u*⁷ and women's representatives with senior officials of the responsible national ministry. In Kiribati and Tuvalu political leaders and senior staff from island councils meet periodically in the capital with central government leaders and officials, but this is somewhat *ad hoc* and made difficult by the logistics of travel between far-flung islands.

Fiji and Papua New Guinea are the only countries that have had national local government associations. Both have received considerable support from the CLGF Pacific Project, and have in various ways demonstrated the potential value of associations in representing local governments' interests and enhancing their performance. However, the dismissal of elected councils in Fiji in 2009, coupled with the withdrawal of Commonwealth support for government capacity building programmes, and persistent difficulties with membership fees and administration in the case of PNG, mean that at present there is little substance to these associations in either country.

Chapter 3

Current Legislative Frameworks

This chapter identifies the principal pieces of legislation reviewed during the course of the research, and provides a brief description of each of the nine country systems of local government, based on that legislation.

3.1 Defining local government

Given the widely differing cultural and political frameworks of Pacific island countries, defining ‘local government’ is not straightforward. Hassall and Tipu (2008: 8) suggest that the term refers to the tier or tiers of government below that of national government. However, there are at least three difficulties with such a definition:

1. in those countries where traditional forms of governance continue to play a major role and have been recognised in legislation, notably Samoa and to a lesser extent Tuvalu and Tonga, the concept of a ‘tier of government’ perhaps implies a more ordered, ‘western’ system than actually operates;
2. in the case of Fiji, the system of semi-traditional government covering customary Fijian lands is regarded quite differently and managed separately from the ‘western’ system of municipal government that operates in urban areas; and
3. in neither PNG nor Solomon Islands are provincial governments described as ‘local’: they are seen to occupy a ‘higher’ level.

Nevertheless, formalised systems of what could reasonably be described as ‘local government’ cover a substantial proportion of the country or its population in all Commonwealth Pacific island countries except Solomon Islands, where Honiara City Council is currently the only recognised local government body (CLGF 2011: 184). In most cases, these systems have been created or consolidated under legislation passed or substantially amended during the past two decades.

Local government is recognised in the national constitutions of Kiribati, Papua New Guinea, Solomon Islands (City of Honiara only) and Vanuatu.

For the purposes of this report, local government is defined to include:

- all local-level governments and the National Capital District Commission in PNG;
- Honiara City Council in Solomon Islands;
- provincial and town councils in Vanuatu;
- municipal councils in Fiji;
- local and island councils in Kiribati and Tuvalu;
- village *fono* and to some extent the Planning and Urban Management Agency in Samoa;

Table 3.1 Legislation reviewed

Cook Islands	Rarotonga Local Government Amendment Act 1998 Outer Islands Local Government Act 1987
Fiji	Local Government Act 1972 (as amended) Local Government (Amendment) Act 2006
Kiribati	Local Government Act 1984 (as amended)
PNG	Organic Law on Provincial Governments and Local-level Governments Local-level Governments Administration Act 1987
Samoa	Village Fono Act 1990 Internal Affairs Act 1995 Planning and Urban Management Act 2004
Solomon Islands	Honiara City Act 1999 Local Government Act 1964 (as amended)
Tonga	Fonos Act 1988 District and Town Officers Act 1988
Tuvalu	Falekaupule Act 1997
Vanuatu	Decentralisation and Local Government Regions Act 1994 Decentralisation and Local Government Regions Amendment Act 1997 Municipalities Act 1980 (as amended)

- island councils in Cook Islands; and
- *fono* and district and town officers in Tonga.

Accordingly, Table 3.1 sets out ‘core’ local government legislation reviewed as part of the project. In the case of Samoa, the Planning and Urban Management Act has been included given its importance to governance of the capital, Apia, which as noted earlier has no municipal government and is managed through a combination of direct administration by national agencies and, in some but not all areas, traditional or semi-traditional village *fonos*. These arrangements are discussed in some detail in chapter 7.

During the research, reviews of legislation were under way or envisaged in Cook Islands, where local governments on the capital island of Rarotonga had been abolished and the Outer Islands legislation is to be amended; Fiji; Papua New Guinea; Solomon Islands (Honiara); and Tuvalu. Kiribati recently completed its review, leading to extensive amendments to the act.

3.2 Country systems

The following sub-sections provide a brief comparative outline of local government systems. They draw particularly on the *Commonwealth Local Government Handbook* (CLGF 2009, 2011) and the work of Hassall and Tipu (2008).

3.2.1 Cook Islands

Local government in Cook Islands is now limited to islands other than Rarotonga. Island councils operate under the Outer Island Local Government Act of 1987, amended in 1993. Local government councils on Rarotonga used to be constituted under the Rarotonga Local Government Act of 1997, but the act was repealed in 2008

Table 3.2 Local government populations in Cook Islands

Island council	Area (km ²)	Population
Te-au-o-tonga ^a	67.1	5,445
Pauikura ^a		4,343
Takitumu ^a		4,365
Aitutaki	18.3	2,194
Mangaia	51.8	654
Atiu	26.9	572
Mauke	18.4	393
Mitiaro	22.3	219
Manihiki	5.4	351
Penrhyn	9.8	251
Rakahanga	4.1	141
Pukapuka	1.3	507
Nassau	1.3	71
Palmerston	2.1	63

^a Now abolished

Source: Hassall and Tipu (2008)

and local government functions transferred to central agencies. This decision reflected both concerns about the capacity and performance of local councils, and political factors, including the relationship between councils and members of parliament.

Local government remains in place on the outer islands, but their populations are generally very small and their councils have limited capacity to deliver services, notwithstanding some significant responsibilities, for example in public health and economic development.

3.2.2 Fiji

Fiji has a quite separate legislative and administrative system for municipal councils in urban areas, as opposed to provincial councils and semi-traditional village governance for customary Fijian land. There is no provision in the constitution for municipal local government, which is established by the Local Government Act 1972 (as amended) and operates in accordance with that act and more than 30 others.

There are 12 municipal councils with populations ranging from less than 2,500 to nearly 87,000. Councils are closely supervised by the Ministry of Local Government and Urban Development, which must approve (among other things) annual budget estimates, resolutions to increase fees or charges or to create new fees and charges, and loan applications that exceed 5 per cent of a council's recurrent estimated revenue (Hassall and Tipu 2008: 12). As noted previously, in early 2009 the Fijian government replaced all elected councils with appointed administrators. This followed a Committee of Inquiry, but was contrary to its recommendations on the matter.

The municipal system in Fiji is discussed in more detail in chapter 5.

3.2.3 Kiribati

In Kiribati, local government is enshrined in the 1979 constitution and implemented under the Local Government Act of 1984, revised in 2006. This establishes a series of island councils plus two urban councils on the capital island of Tarawa and one on Christmas Island (*Kiritimati*). Over recent decades there has been gradual devolution of powers, with the aim of engaging and empowering people at the local level to take charge of their own development. In reality, however, functions are shared between central and local government and central government retains a close oversight of councils. For example, the powers of the minister set out in the Local Government Ordinance 1966 and the Local Government Act 2006 provide for approving by-laws and assisting local councils in drafting by-laws, undertaking internal audits and compiling final accounts for the Auditor General's scrutiny.

Another important feature on some islands is ongoing tension between elected local government and traditional leaders, who sometimes undermine the efforts of councils.

Table 3.3 Local governments in Kiribati

Province	Number of authorities		Population	
	Urban	Rural	Total	% Rural
Northern ^a	2	6	60,198	35
Central	Nil	5	10,731	100
Southern	Nil	7	12,754	100
Northern Line Islands	1 ^b	2	8,850	42
TOTAL	3	20	92,533	34

^a Includes capital island of Tarawa

^b Christmas Island (*Kiritimati*)

Source: CLGF 2009

3.2.4 Papua New Guinea

Papua New Guinea (PNG) has a complex system of provincial, district and local-level governments (LLGs), as well as wards for communities and villages. Local government is formally recognised in the constitution, and created under an organic law. There are 20 provincial governments and 89 district councils. Under the districts are 299 local-level governments (26 urban and 273 rural), which in turn comprise 6,003 wards (typically hamlets and villages). Although traditional 'chiefs' exist in many Papua New Guinea communities, they are not guaranteed a role in the local government system.

Table 3.4 shows the distribution of local government bodies across Papua New Guinea's 20 provinces. It suggests that local government is predominantly focused on rural communities and concerns rather than urban ones, although there are a number of substantial town and city local governments with the potential to play a significant role.

Table 3.4 Local governments in Papua New Guinea

Province	Number of urban LLGs	Number of rural LLGs	Total population (rounded)	% Urban
Bougainville	1	–	175,000	15.0
Central	–	13	184,000	4.7
Chimbu	2	18	260,000	3.9
Eastern Highlands	2	22	433,000	8.5
East New Britain	2	16	220,000	11.8
East Sepik	1	25	343,000	10.4
Enga	1	15	259,000	1.7
Gulf	1	9	107,000	10.5
Madang	1	18	365,000	14.2
Manus	1	11	43,000	17.6
Milne Bay	1	15	210,000	6.9
Morobe	3	30	539,000	26.4
National Capital ^a	1	–	254,000	100
New Ireland	1	8	118,000	9.4
Oro	1	8	133,000	14.5
Sandaun	1	16	186,000	8.3
Southern Highlands	3	29	546,000	2.6
Western	3	11	153,000	18.3
Western Highlands	1	14	440,000	6.2
West New Britain	1	10	186,000	14.8

^a Development Commission

Source: CLGF 2009

3.2.5 Samoa

Samoa retains an essentially traditional system of local governance, based on regular meetings (*fonos*) of chiefs (*matai*, the heads of extended families) in around 300 villages. Village governance is administered in accordance with the Village Fono Act 1990 and the Internal Affairs Act 1995. The Ministry for Women, Community and Social Development is responsible for local government matters, mainly through its Internal Affairs division, but a number of other departments also have working relationships with villages. Each village appoints one of its chiefs as a representative (*pulenu'u*) to liaise with the central government and undertake a range of largely administrative duties set out in the Internal Affairs Act.⁸

There are also women's representatives to provide a link between central government and the important women's committees in the villages. The Samoan system is examined in more detail in chapter 7.

3.2.6 Solomon Islands

Solomon Islands' constitution provides for sub-national government at the provincial level, but not local government as such, except for the capital city of Honiara. A review of the constitution has been under way that may ultimately strengthen the

position of the provinces within a ‘federal’ structure. Area councils established in the provinces under the Local Government Act were abolished in 1997; there have been calls to restore local government in rural areas, but it is unclear whether the constitution review will lead to action on this issue.

The capital city of Honiara has a rapidly growing population of around 70,000 and is not contained within a province. It is administered under the provisions of the Honiara City Council Act 1999, which can fairly be described as a ‘modern’ local government act comparable to those applying in Australia or New Zealand. Councillors are democratically elected, but there are also ex officio and appointed members. The Minister for Home Affairs oversees various aspects of the council’s operations, but within clearly defined limits. He or she is further empowered by the Honiara City Act to suspend or dissolve the council in the event of maladministration or corruption. Dissolution of the elected city council has taken place several times, most recently from 2004 to 2006.

A case study of Honiara City Council is presented in chapter 6.

3.2.7 Tonga

Local government in Tonga may be in a state of transition. Under the Fonos Act and District and Town Officers Act of 1988, local government activities are limited to the calling of town, district or village meetings (*fonos*) and to the election and work of district and town officers. The latter are popularly elected every three years and are tasked with a range of local administrative duties (e.g. the recording of births and deaths), reporting on public health, promoting rural development and convening *fonos*.

Fonos may also be called by senior government figures (*‘grand fonos’*) or by local nobles on their estates. There are penalties for non-attendance.

In 2007, on the initiative of a local noble (chief), Tonga’s first village council was established at Lapaha. This was and remains an informal structure, although it has been supported by the district officer and can build on the provisions of the *Fonos* Act. More recently, two further village councils have been established at Ma’ufanga and Nukunuku. These developments may represent the beginning of wider changes: the Tongan government has also expressed interest in establishing a town council for the capital Nuku’alofa.⁹

3.2.8 Tuvalu

In Tuvalu, island councils are now administered in accordance with the *Falekaupule* Act of 1997. This act seeks to blend traditional governance with ‘modern’ elected local governments. The latter, known as *Kaupule*, consist of six elected members plus a secretariat, and provide a limited range of local services. They are accountable to the *Falekaupule* (traditional island meetings), which are the primary social institution and sovereign power in the islands with the right to oversee local affairs. Effectively, the *Kaupule* are their executive arm.

Table 3.5 Local government populations in Tuvalu

Island	Area (km ²)	Population
Funafuti	2.79	4,492
Nanumea	3.87	664
Nanumaga	2.78	589
Niutao	2.53	663
Nui	2.83	548
Vaitupu	5.60	1,571
Nukufetua	2.99	586
Nukulaelae	1.82	393
Niulakita	0.42	35

Source: Hassall and Tipu, 2008

3.2.9 Vanuatu

Vanuatu's constitution provides for local government and decentralisation, for the division of the country into local government regions, and for each region to be administered by a council on which shall sit representatives of customary chiefs. The two towns – Port Vila (the capital) on the island of Efate and Luganville on Espiritu Santo – are administered by municipal councils, while rural communities are served by provincial councils. The councils of Port Vila and Luganville operate under the Municipalities Act, while provincial councils are established by the Decentralisation and Local Government Regions Act.

Local government is overseen and tightly controlled by the Ministry of Internal Affairs. In the case of municipalities, the minister – among other things – makes orders regarding their composition and elections, approves the appointment (and dismissal) of the municipal clerk and approves (and may amend) the budget and by-laws. Similarly, each provincial council has a central administration headed by a Secretary-General, who is a public servant appointed by the national government. Executive power rests with the Secretary-General rather than the elected president. Provincial councils consist of a mix of elected members and members appointed by the minister. The latter must include representatives of chiefs, women, youth and churches.

Table 3.6 Local government populations in Vanuatu

Province or municipality	Area (km ²)	Population
Torba (Torres Islands, Banks islands)	865	7,774
Sanma (Santo, Malo)	4,136	25,446
Penama (Pentecost, Ambae, Maewo – in French: Pénama)	1,204	26,503
Malampa (Malakula, Ambrym, Paama)	2,772	32,738
Shefa (Shepherds group, Efate – in French: Shéfa)	1,505	24,841
Tafea (Tanna, Aniwa, Futuna, Erromango, Aneityum)	1,628	28,915
<i>Port Vila Municipality</i>	–	29,729
Luganville Municipality	–	10,734

Source: Hassall and Tipu (2008)

The minister also has the authority to suspend a council and appoint commissioners as its replacement. Port Vila Council was suspended in 2005, followed by Luganville in 2006, amid claims of misappropriation of public funds. Also in 2006, the Sanma provincial council was dissolved on the basis of continued absence of councillors from meetings, and allegations of mismanagement and corruption.

Chapter 4

Towards Principles for Effective Legislation

4.1 Sources and ideas

If decentralisation of government is to achieve the intended benefits noted in section 2.2 then, among other things, local government legislation must be framed in a way that facilitates the desired move towards ‘good governance’.

These issues were discussed at the Regional Symposium held in Suva in December 2004, which launched the CLGF Pacific Project (Commonwealth Secretariat 2005). Recommendations put forward during the symposium (although not all formally adopted) included the following:

- central government should ensure that there is an appropriate policy, legislative and financial environment in place to facilitate effective local government;
- legislation must clearly define decentralisation and local government;
- local government should have a clear mandate and should plan and evaluate its performance;
- local government needs access to a range of revenue sources and should explore alternative revenue options;
- councillors should represent all sectors of society and reserved seats should be used to facilitate representation;
- the representation and participation of women in local government should be actively developed;
- full participation by all stakeholders in local government is essential;
- the community should be empowered through awareness campaigns and training, particularly voter education;
- councillors should be expected to declare any interests and this could be achieved by introducing codes of conduct;
- the local government should be responsible for employing all staff in the organisation; and
- there should be an officially recognised dialogue between central and local government, and traditional, provincial and central government officials should co-operate in the interests of local communities.

Subsequently, the Commonwealth Local Government Conference held in Aberdeen, Scotland, in March 2005 adopted the *Commonwealth Principles on Good Practice for Local Democracy and Good Governance*, which highlight similar themes (see Box 4.1).

Box 4.1 The Aberdeen Agenda: Commonwealth Principles on Good Practice for Local Democracy and Good Governance

- **Constitutional and legal recognition for local democracy:** local democracy should enjoy constitutional and legal recognition.
- **The ability to elect local representatives:** citizens should be able to elect their local representatives in conditions of political freedom.
- **Partnerships between spheres of government:** there should be cooperation and partnership among local, regional/provincial and national spheres of government.
- **Defined legislative framework:** local democracy should ensure local government has appropriate powers in accordance with the principle of subsidiarity.
- **Opportunity to participate in local decision-making:** all citizens should be able to participate actively in the local democratic process.
- **Open local government – accountability:** local government should be accountable to the community it serves.
- **Open local government – transparency:** the local decision making process should be open and transparent.
- **Openness to scrutiny:** the work of the executive should be subject to scrutiny.
- **Inclusiveness:** the process of local decision-making must reflect the social, economic, environmental and cultural needs of the entire community.
- **Adequate and equitable resource allocation:** in order to respond to the needs of the local community.
- **Equitable service delivery:** the distribution of services should reflect the diverse needs of the local community.
- **Building strong local democracy and good governance:** commitment to continuous capacity development of democratic local government.

Source: CLGF (2005: 6–9)

The principles were later endorsed at the 2005 Commonwealth Heads of Government Meeting.

In 2007, the Commonwealth Local Government Conference held in New Zealand added to this set of principles by adopting the ‘Auckland Accord’ on *Delivering Development through Local Leadership*. This also highlighted:

- the value of strong local leadership and a clear strategic direction;
- delivering high-quality services within a clear performance management framework;
- enhancing the legitimacy and integrity of local decisions;

- building partnerships at the local level with other government agencies, civil society and the private sector;
- increasing scope for innovation and creativity;
- more efficient use of local resources;
- encouraging networking between local governments and the sharing of knowledge;
- the importance of recognition and respect for cultural traditions and systems, and their relationship to elected local government;
- promoting improved inter-government relations, and an appropriate distribution of powers and resources; and
- the need for central government to provide an enabling environment.

The final two points are discussed at length in a paper by Sir Peter Barter, former Minister for Inter-government Relations in Papua New Guinea (Barter 2004). He argues strongly that the relevant national agencies must have the capacity to ensure effective monitoring, supervision and support of local governments. He also cautions against excessively complex, multi-layered systems of local government, but at the same time suggests that powers and responsibilities may need to vary from one local government to another according to its capacity. In terms of inter-government relations, a key issue concerns the role of national MPs relative to local government. In PNG and some other countries, MPs are *ex officio* members of local councils: this may facilitate links with central government, but at the same time MPs may wield disproportionate influence due to their command of financial resources.

4.2 A ‘menu’ of principles

Based on the review of current practice and issues in the region presented in chapters 2 and 3, and the sources and ideas described above, a preliminary ‘menu’ of principles that could be applied *where appropriate* to new or amended local government legislation in the Pacific was formulated for discussion at the regional workshop held in Suva in late 2007. This is presented in Table 4.1, which also includes illustrative examples of current practice across the region.

The over-riding purpose of such principles is to ensure that local government systems are ‘fit for purpose’: that together with the activities of central governments they will meet the needs of local communities as effectively and efficiently as possible within the resources available. It also needs to be made clear that a set of principles is just that: they are not to be read as tightly defined criteria or benchmarks. Circumstances differ considerably between countries, so there is certainly no ‘one size fits all’ solution. Moreover, the operations of local government will usually be covered by a range of legislation and not all elements need be included in the local government act itself.

Discussions at the Suva workshop, and a year later in Apia (following initial fieldwork) led to some minor adjustments to the ‘menu’ (notably an additional principle that laws should be consistently applied), but as a starting point for further development the menu remained essentially unchanged.

Table 4.1 A 'menu' of principles

Principle	Explanation	Practice examples
Democracy	Citizens should elect local governments in conditions of political freedom and universal suffrage	Several countries use national electoral roll; Fiji excludes illegal occupants
Legal protection	Local governments should enjoy some form of constitutional recognition or legal protection against arbitrary intervention, dismissal or dissolution	PNG councils cannot be abolished/amalgamated without the approval of the National Executive Council and Provincial Assembly; PNG act protects free speech; Fiji and Vanuatu acts require full inquiry before government intervention
Autonomy	Local governments should be primarily accountable to local communities and should be able to make local laws	PNG councils have autonomy subject to observing provincial and national interests; most acts have provisions for by-laws, usually subject to ministerial approval; Solomon Islands and Tuvalu ministers' powers to disallow by-laws are very limited; Fiji's act provides a 'power of general competence' over and above specific provisions
Leadership	Legislation should enable strong local leadership, while requiring councils to adopt a clear strategic direction	Popular vote for mayors in Cook Outer Islands; mayors in several countries have executive powers; Fiji minister can dismiss mayors; PNG councils must prepare five-year development plans and corporate plans; Tuvalu councils must prepare and implement development plans
Simplicity	Acts should be easy to read, interpret and apply, and local government systems should avoid unnecessary layers or too many different types of sub-national/local government	Several acts are complex and/or rely heavily on making of by-laws, standing orders etc. by individual councils – making their actual operation unclear
Clarity	Legislation should clearly state the purpose and mandate (powers and responsibilities) of local government	In Kiribati, the minister issues a 'warrant' specifying precisely what functions each council shall have; several acts include a standard list of functions; the Honiara act includes a list of functions that may be transferred from central agencies
Relevance	The powers and responsibilities of local government should be formulated to respond effectively to the key issues confronting local communities (unless those issues are being addressed adequately by other means)	

(Continued)

Table 4.1 (Continued)

Principle	Explanation	Practice examples
Sufficiency	Local government should have revenue-raising powers and access to other financial resources that are sufficient to meet its responsibilities	PNG Organic Law requires that councils be adequately resourced and specifies minimum grants; PNG councils have access to revenue from mining; Honiara has access to a particularly broad range of local revenues and considerable discretion in how rates and charges are applied; Vanuatu councils have a broad power to make by-laws for rates and taxes (but subject to ministerial approval); annual budget approval processes <i>have potential</i> to ensure revenue matches functions
Effectiveness	Local government should be expected to operate efficiently and effectively, and to deliver good-quality services through sound planning and management	PNG Monitoring Authority should monitor efficiency and effectiveness and set development standards
Equity	The distribution of services should reflect the diverse needs of the local community	PNG councils must implement youth and women's programmes
Support	Provision should be made for central governments to provide clear policy and management guidance, plus support for capacity building	No clear examples in acts reviewed
Oversight	Central governments should monitor and evaluate the work of local councils and ensure independent audits	PNG has a National Monitoring Authority; PNG councils must submit an annual report to the minister and provincial administrator; the PNG minister may appoint advisers to councils; Vanuatu has government regional executive officers; most acts require ministerial approval of budgets and independent audit; in PNG and Fiji, auditors' reports are tabled in parliament and may go beyond simple financial audits, e.g. to examine contracts, performance in general; some acts require government appointment of each council's chief executive and chief finance officer; Honiara has an Employment Board appointed by the minister to oversee staffing practices

(Continued)

Table 4.1 (Continued)

Principle	Explanation	Practice examples
Representativeness	Electoral systems should ensure as far as possible that councillors represent all sectors of society (including in particular women, young people and the disadvantaged)	Most acts divide council areas into wards to allow local representation; most also allow councils or the minister to appoint additional non-elected councillors or advisers, but generally no criteria are stated; the Vanuatu minister may appoint chiefs, women, youth and church representatives (all non-voting); PNG councils must appoint representatives of workers, employers and women (with voting rights); Tuvalu councils must have a women's community worker
Inclusiveness	Local governments should reflect the social, economic, environmental and cultural make-up of the entire community	
Transparency	Procedures for council meetings should be clearly defined and the decision-making process should be open and transparent	Various acts set out meeting procedures and/or require councils to adopt standing orders to cover defined issues – ministerial approval may be required
Probity	Codes of conduct should be enforced to prevent corruption or undue influence in decision-making, to ensure that proper complaints procedures are implemented, and to require sound financial management	Honiara must follow 'internationally accepted accounting practices'
Participation	Councils should be required to consult local communities on key issues and to formally consider submissions and feedback received	Tuvalu development plans must be prepared in consultation with the community; PNG act requires ward development committees; Vanuatu by-laws must be exhibited for public comment; Kiribati makes explicit provision for members of the public to address the council; some acts require council minutes, accounts etc. to be available for public inspection at any time
Empowerment	Communities should be enabled to hold their councils accountable through awareness and training programmes	Tuvalu councils must 'mobilise the people for development efforts'

(Continued)

Table 4.1 (Continued)

Principle	Explanation	Practice examples
Networking	Provision should be made for sharing of knowledge and resources between local governments	Various acts provide for joint committees of two or more councils; PNG district administrators co-ordinate support services of local governments; Tuvalu councils may share staff
Partnerships	Legislation should enable local partnerships for planning and service delivery between councils, other government agencies, civil society and the private sector	Several acts permit appointment of committees with external members and delegated powers
Dialogue	Formal mechanisms should be in place for a regular policy dialogue between local and central governments, particularly regarding changes to roles and functions	Local MPs are ex officio members of councils in several countries; Solomon Islands minister can order exchange of information between HCC and central agencies; PNG provincial assemblies must include a local government representative; PNG has district planning and budgeting committees chaired by the MP
Improvement	Councillors and staff should be required and enabled to undertake regular training to improve practices and performance	PNG Monitoring Authority should monitor performance and training and development needs
Innovation	Legislation should provide flexibility to enable local governments to respond creatively to changing needs and circumstances	Several acts enable councils to take whatever action might be necessary (subject to legality) to discharge their functions effectively; some make provision for review and adjustment of council boundaries
Cultural respect	Local government systems should reflect cultural values and traditions, while addressing the other principles	PNG Organic Law requires recognition of traditional rights; Samoa and Tonga rely heavily on traditional <i>fonos</i> ; some other acts make provision for traditional leaders to be represented on councils; Tuvalu councils are the ‘executive arm’ of island assemblies

Chapter 5

Case Study: Fiji

5.1 Context

The republic of Fiji consists of 332 islands, many very small, covering a total land area of more than 18,333 km². The two major islands are Viti Levu, on which the capital Suva is situated, and Vanua Levu to the north east. The country has an estimated population of around 900,000. It is a multi-ethnic society, with constitutional protection given to indigenous Fijians and the Fijian culture. The head of state (president) must be an indigenous Fijian, and is normally appointed by the Great Council of Chiefs.

Fiji is a parliamentary democracy, but has experienced a number of military coups, the most recent in 2006. The parliament was suspended and the military-backed government has indicated that it does not intend to hold fresh elections until 2014. Following an inquiry, elected local councils were also dismissed in early 2009 and administrators appointed (see below).

5.2 System of local government¹⁰

Fiji has several types of local governance. In urban areas, there is a 'western' system of municipalities comprising two cities and ten town councils: this system is managed by the Ministry of Local Government.¹¹ In largely rural areas with predominantly indigenous populations there are 14 provincial councils, overseen by the Ministry for Provincial Development, Indigenous and Multi-Ethnic Affairs. The outlying northern Dependency of Rotuma has its own island council, established under the Rotuma Act of 1978. In addition, there is a parallel system of 'local authorities' appointed under the Public Health Act to manage urban and rural sanitary districts. These are answerable to the Central Board of Health for functions that include building control, lodging houses, nuisances and offensive trades, as well as more typical aspects of public health regulation. In urban areas the 12 previously elected municipal councils are the designated local authority for this purpose. In rural areas the 17 appointed local authorities are also responsible for town planning.

This discussion will focus on urban local government established under the Local Government Act of 1985. The average population of urban councils is about 20,000, ranging from a little more than 1,000 to around 80,000. However, most such councils also have a substantial peri-urban population, living just outside the incorporated area but using urban facilities (see Table 5.1). This reflects rapid urbanisation, with about half the total population of Fiji now living in urban or peri-urban areas. However, the contribution of urban local government to GDP in 2001 was only 6.5 per cent.

There is no recognition of local government in the national constitution: this was considered by the 1997 Constitution Review Commission, but it took the view

Table 5.1 Characteristics of Fiji municipalities

Local government	Area (km ²)	Population (town)	Population (peri-urban)	Total urban population
Ba	327	6,775	8,960	15,735
Suva	2,048	75,225	10,953	86,178
Lami	680	10,474	9,749	20,223
Nadi	577	11,871	30,841	42,712
Nasinu	4,500	75,719	11,051	86,770
Nausori	167	24,630	22,181	46,811
Lautoka	1,607	44,143	8,599	52,742
Levuka	67	1,143	3,147	4,290
Sigatoka	127	1,542	7,904	9,446
Tavua	100	1,076	1,373	2,449
Labasa	360	7,550	19,900	27,450
Savusavu	800	3,372	3,628	7,000

Source: Provisional Results, 2007 Population and Housing Census, available at: www.statsfiji.gov.fj (accessed 4 February 2013)

that it would not be appropriate to expressly recognise local government (i.e. urban municipal government), nor to guarantee local government autonomy. However, it did recommend a review of the Local Government Act, which led to a package of amendments passed in 2006 and resulted in some strengthening of local government's role and functions.

5.2.1 Local government structures

The 12 urban councils all have the same legal responsibilities and operate as a single tier answerable directly to the national government. Establishment of new councils or changes to boundaries are determined by the Minister for Local Government, who may seek advice from the Local Government Committee.¹²

Prior to the replacement of councillors by administrators in 2009, local elections were conducted on the basis of wards, with between three and five councillors per ward. The national Electoral Commission determined the number of councillors that constitute a council, and the number of councillors per ward, but the minister could set the minimum number of councillors in total. Results were determined by a 'first-past-the-post' system, and unlike national elections, voting was not compulsory. Councillors were elected for a term of four years (although the interim government has indicated it will reduce the term to three years). In addition to councillors, the minister could appoint non-voting advisory members to councils.

In 2005, only some 13 per cent of councillors were women, although this was a higher proportion than that of women in the national parliament and in Pacific local government generally.

The mayor and deputy mayor were elected or re-elected annually from among and by the councillors, and could be re-elected for further one-year terms. The mayor presided at meetings and undertook such executive functions as were allocated

under the Local Government Act. In particular, the mayor had the power in cases of emergency to take (or stop) action in order to ensure provision of an essential service or maintain public safety. The mayor was part-time. The council recommended a mayoral allowance, which must be approved by the minister.

Councils conducted their business through standing or special committees. They could delegate to a committee any of their powers and duties other than those to borrow money, set a rate, make by-laws, execute a contract or institute an action. Typically, committees covered finance, public health, town planning, traffic and public transport, and works. All committees other than the Finance Committee could include non-voting members appointed from outside the council, but at least two-thirds of members had to be councillors.

Councils (administrators) may also establish joint committees with other local authorities. In this context, 'local authority' includes any municipality established under the provisions of this act, any provincial council established under the provisions of the Fijian Affairs Act, any company or other legal entity and any local authority within the meaning of the Public Health Act (section 30(3)). These provisions offer wide-ranging scope for joint ventures and public-private partnerships, subject to the council's capacity to contribute.

Staff are recruited directly by councils, which also set salary levels, except that for the town clerk/chief executive and any other senior officers earning above defined limits, whose salaries are determined by the national Higher Salaries Commission. In addition to the town clerk, councils must employ a building surveyor and a health inspector. Typically, councils also seek to employ specialist engineering and finance and administrative staff, but recruiting suitable professionals can be difficult.

The Local Government Act and other acts make some provision for informing and consulting local communities. These include:

- publicising proposals for boundary changes, with objections being heard at public hearings organised by the Local Government Committee;
- publication by the council in a local newspaper of its balance sheet, and a statement of income and expenditure, together with the report of the auditor;
- inspections of property valuations entered in the rate book; and
- public notification of planning schemes and proposals for changes to land use (re-zoning).

Some councils have also taken special initiatives to involve the public in particular programmes (e.g. in Suva City for health promotion, and in Lautoka City for traffic management).

5.2.2 Role and functions

All municipal councils have the same legal responsibilities. Under section 88(1) of the Local Government Act a council has the power to: 'do all such things as it lawfully may and as it considers expedient to promote the health, welfare and convenience

of the inhabitants of the municipality'. However, that power is heavily constrained by the limited financial resources available to councils, and by the need to obtain ministerial approvals, e.g. for the provision of 'public utility services' including public transport, for public works and for housing schemes. It is worthy of note, given the growth of peri-urban settlements, that such services, works and schemes may extend beyond municipal boundaries.

In similar vein, section 126 of the act provides that a council must provide services to Fijian villages located within its municipality, and may, subject to the approval of the Fijian Affairs Board and the minister, make by-laws concerning: the manner in which Fijian villages may be incorporated in the municipality; how service fees are to be levied on those villages; and minimum building standards. Many municipalities have Fijian villages within their boundaries or in adjoining peri-urban areas. Some 83 per cent of all land is owned by indigenous Fijians, and urban development has now reached the point where available state and freehold property is largely developed, so that future urban growth will have to take place on those communally owned native lands.

As a general rule, local councils also undertake construction and maintenance of roads, parks and drainage systems, refuse collection and disposal, health and environmental protection, and economic promotion and tourism. In addition, councils have functions under numerous other acts, notably the Public Health Act 1985, the Town Planning Act 1978, the Sub-divisional Land Act 1978 and the Land Transport Authority Act 1998.

In 2007, the aggregate expenditure of the 12 urban councils was about 37 million Fiji dollars (F\$; CLGF 2009: 69). Principal sources of revenue were property rates and market fees and rentals. Income from business licences, and in the larger urban centres parking fees, is also significant. There is a high level of outstanding rates.

Councils may levy a general rate not exceeding 10 per cent of the unimproved value of land, and special or local rates not exceeding 5 per cent. However, large areas of land – including among others unleased native lands and any area so designated by the minister – are non-rateable. Moreover, councils are required to transfer to central government 5 per cent of revenues from business licences.

In 2007, under the Urban Policy Action Plan, the national government offered grants to councils on a 50:50 matched basis from a 'Challenge Fund' for local infrastructure projects that benefit the poor. F\$500,000 was allocated but this scheme was then discontinued due to lack of funds. Councils' ability to meet their share of the cost of projects from recurrent revenues was limited, and their capacity to borrow is restricted by the need to obtain ministerial approval for loans exceeding 5 per cent of total recurrent annual revenue.

There has been a growing trend for councils to contract out services such as waste removal, street cleaning and other maintenance activities to the private sector. Also, under the government's public enterprise reform programmes, begun in the 1990s, some public enterprises have been partly or fully privatised, and some local services, such as electricity supply and fire fighting, have been consolidated into national operations.

5.2.3 Oversight and scrutiny

Local councils are subject to detailed oversight and close scrutiny by the Minister for Local Government. Table 5.2, taken from the Local Government Act itself, lists various sections of the act under which ministerial approval is required. However, it is not comprehensive: for example, important requirements for the minister to approve by-laws for construction of roads and streets, and to dedicate land for roads and streets, have been omitted.

Among other things, councils are required to submit for approval:

- annual budget estimates and variations to those estimates;
- monthly financial statements and activity reports;
- annual financial statements and the auditor's report;
- resolutions to increase fees or charges or create new fees or charges;
- proposals to provide public utilities or undertake public works;
- proposals to acquire or dispose of land, including some leases;
- proposed by-laws, including by-laws setting minimum construction standards for roads;
- loan applications that exceed 5 per cent of the annual recurrent estimated gross revenue of the council (applications exceeding 15 per cent also require the approval of the Minister of Finance); and
- a report containing a summary of the proceedings and activities of the council during the preceding year.

In addition, the minister may instruct councils to prepare by-laws and has unfettered powers to make regulations to give effect to the provisions of the act. S/he may also prohibit or suspend works or other activities carried out by a council if, in his/her opinion, those works or activities are likely to cause serious injury or annoyance to the public (section 129).

Subject to receiving an adverse report from an inspector, and the findings of a subsequent committee of inquiry, the minister has the power to dismiss a council and appoint administrators (two or more). Additionally, the minister may suspend or dismiss the mayor if s/he is satisfied after due enquiry that the mayor has been guilty of misconduct or is unable to perform his/her duties or has acted in a manner prejudicial to the interests of the municipality.¹³

5.2.4 Inter-government relations

The Local Government Act is silent on the issue of inter-government relations, other than the oversight powers of the minister. Until the recent suspension of elected local government, there was a developing relationship between the ministry and the Fiji Local Government Association, which provided a useful mechanism for information

Table 5.2 Supervisory powers of the Fiji Minister for Local Government

Section	Role of the minister
19 (2)	Shall cause copies of the annual statement and reports to be laid before parliament
40 (1) (b)	Approve loan or loans not exceeding in the aggregate 15 per cent of the recurrent estimated gross revenue of the council
40 (1) (c)	Approve loans or overdraft in any other case in consultation with the minister responsible for finance
43	Approve investment made by the councils
44 (c)	Approve contribution by the councils in any charitable purpose within the meaning of the Charitable Trusts Act
46 (2)	Receive in the month of November a copy of the estimate of the income and expenditure of councils for the next succeeding year
46 (3)	Receive and where appropriate approve at any time during the year, a revised or supplementary estimate
47 (2)	Direct the manner be which the accounts and records of the councils are to be kept
48	Approve the transfers from the general account to meet deficiencies in the separate accounts
49	Approve the transfer from separate account in the general account
51	Appoint the auditor of the councils
65 (1)	Approve the appointment of a valuer or assistant valuer by the councils
73A (2)	By order vary the maximum amount of discount which may be allowed by councils
80	Approve the write-off arrears of rates and interest on grounds of hardship
81	Approve the promotion, establishment and maintenance of public utility services including public transportation, or any public works, which in the opinion of the councils may be necessary or beneficial to the municipality and contribute to the cost of such public works
91 & 93	Give consent for the acquisition and disposal of land by agreement
92	Give consent to let any land in the possession of the councils for terms exceeding ten years
123	Make regulations for fixing the maximum amounts payable for financial loss, travelling and subsistence allowances and for other general or specific purposes
124	Serve order upon councils to make such by-laws as are specified in the order and to amend or revoke any such by-laws
129	Suspend or prohibit any order of resolution by councils which is likely to cause serious injury or annoyance to the public
130 & 131	Appoint an inspection and/or committee of inquiry to investigate the affairs of councils
131A	Prescribe actions, reduce grant and dissolve the councils or default
132	Disallow expenditure incurred without proper authority based on reports of the inspection or auditor or surcharge councillors or person responsible
138	Receive certified copies of minutes or records of proceedings of meetings and confirmed minutes within seven days after the date of confirmation

exchange and co-ordination. Membership of the association is voluntary, and the association is funded by member contributions and grants. Its main functions are to:

- provide opportunities for municipal councils constituted under the Local Government Act to be consulted on matters of mutual interest;
- disseminate information concerning local government matters and provide a common educational centre for all municipal councils;
- foster and promote common enterprise between constituent councils;
- watch over and protect the interests, rights and privileges of members and take action in relation to any subject or legislation affecting any member;
- promote legal opinions, prosecute or defend test cases or engage in any other legal proceedings in respect of matters of general interest to members and generally to promote the efficient functioning of local government so far as it affects the municipalities in Fiji;
- encourage the formation of joint committees under section 30 of the Local Government Act to deal with matters of mutual interest to municipal councils;
- affiliate with international, national and local organisations in order to promote local government; and
- raise the standard of local government service.

5.3 Agendas for reform: the 2006 amendments

As noted earlier, issues concerning the future of local government, and particularly the question of constitutional recognition, were considered in the mid-1990s by the Constitution Review Commission (Fiji Constitution Review Commission 1996). The Commission endorsed the concept of local government in the following terms (ibid: 627):

A local form of government allows the people of an area, linked by a community of interest or a common dependence on services or amenities, to identify themselves as an integrated community and thereby manage their common interests and dependence in an orderly and meaningful way.

The commission found that while the constitution did not expressly establish or require local government, a number of its provisions did recognise the existence of various forms of local authority. It noted that local government representatives had sought not only a provision to recognise or mandate local government, but also to give it more autonomy from the tight control of central government, which the commission acknowledged was considerable (ibid: 630). The commission concluded, however, that its primary focus should be on national unity and that there was no known threat to the continued existence of municipalities. Interestingly, it observed that the provisions in the Local Government Act enabling the establishment of district councils in rural areas had not been used, and this would indicate that having autonomous local government is not a major concern of the Fijian people – although

it did propose that, in principle, the government should examine replacing existing advisory councils in rural areas with elected bodies having a statutory basis (ibid: 631–2).

The commission also found against proposals that there should be reserved seats on elected town and city councils for indigenous Fijians. It argued a case for moving away from ethnicity as a basis for political organisation (ibid: 631–2).

Ultimately, the commission recommended a: ‘broad and comprehensive review of all local government arrangements in Fiji, to be carried out by an independent and broadly representative body’ (ibid: 633). This was to include an examination of the Local Government Act, ministerial supervisory powers, electoral arrangements and appropriate democratic systems of local government for rural areas.

Such a review never took place, although some aspects of local government service delivery were addressed in the context of the government’s broader economic reforms, and minor amendments to the Local Government Act were passed in 1997. Ultimately, a further but still modest package of changes to the Act was introduced in 2006. According to the Local Government Amendment Bill 2006: Explanatory Note, these aimed chiefly:

- to provide an appeal mechanism to the advice of the local government committees, before the minister makes a subsidiary legislation in the form of order (sic) to define or alter the boundary of a municipality;
- to extend the term of municipal council (sic) from three to four years;
- to remove rating of native lands that are not leased or licensed to any person and villages within a municipality;
- to clarify that the Supervisor of Elections will conduct local government elections and the preparation of the rolls;
- to clarify that council (sic) can enter into business enterprises with private companies and other statutory bodies; and
- to make changes to other provisions in order to strengthen the operation of those provisions.

The note might also have made clear that the amendments further *compelled* councils to provide services to Fijian villages within their boundaries, while leaving it to the minister to approve levying of service charges for that purpose. However, it also replaced total ministerial discretion over the form of financial statements with a requirement to comply with the Fijian Accounting Standards.

The limited scope and strategic intent of the 2006 amendments was perhaps unsurprising given the political instability that had afflicted Fiji for much of the previous decade. Indeed, Fiji experienced its most recent military coup in December of that year. Nevertheless, it does appear to reflect a disconnect between the state of local government legislation and the emerging policy environment, particularly on issues relating to urbanisation.

In 2007, the Fiji Local Government Association (FLGA), assisted by United Nations advisers, published a White Paper on urban development policy. This drew on corporate strategies prepared by all 12 urban councils, and:

- summarised the evolution and expected future of Fiji's cities and towns;
- estimated the cost of essential infrastructure, equipment (including IT) and training; and
- called for greater co-operation between councils and for a concerted national and regional effort to tackle emerging problems (Khan 2007: 15–25).

The White Paper was prepared during a period of considerable activity in the field of urban policy in both the Pacific generally and Fiji in particular. This activity included:

- regional workshops and forums on urban management;
- formulation and later revision of a Pacific Urban Agenda;
- funding of urban development projects by AusAID and NZAID, including endowment of the previously mentioned Challenge Fund in Fiji;
- a national policy document, the Urban Policy Action Plan, covering some peri-urban areas on the main island of Viti Levu; and
- involvement of the Commonwealth Local Government Forum through its Pacific Project, including support for the FLGA secretariat and conferences, training programmes and other capacity building projects (ibid).

While such initiatives were not dependent on extensive changes to the Local Government Act or other legislation, it was becoming clear that systemic issues in local government, especially the weak financial position of councils, would need attention if the challenges inherent in rapid urbanisation were to be met successfully, and that at least in some respects current legislation was an inhibiting factor. This crystallised in the major review of local government conducted in 2008.

5.4 Agendas for reform: the 2008 review

The military-backed government that assumed power in December 2006 highlighted the importance of public sector reform. In July 2008 cabinet initiated a review of local governance and the Minister for Local Government was tasked to set up a committee of inquiry. He subsequently established a Local Government Review/Reform Committee (LGRC).

Underlying this review were criticisms or allegations concerning: poor performance of local councils with regard to inadequate service delivery and provision of infrastructure (notably roads and drainage); mismanagement, inefficiency and high overheads resulting in less funds being available for capital works; nepotism; misuse of council property; undue political influence in management decisions; failure to expand functions and undertake income-generating commercial projects; and lack of co-operation with national government (Davidson 2009).

The LGRC's terms of reference were broad and even included the option of abandoning the current system of local government. They were (LGRC 2008: 6–7):

- to review and examine the current local government legislation and to determine whether such legislation can be amended and/or repealed and replaced by alternate legislation that will be more responsive to the demands of ratepayers and the interim government;
- to examine the role, functions and responsibilities of each municipal council under the act;
- to examine the role, functions and administrative effectiveness of the Department of Local Government under the Local Government Act;
- to review the current institutional, structural, financial and administrative workings of municipal councils;
- to evaluate the financial performance of municipal councils, in particular the ratio of funds expended on capital projects against operating costs;
- to examine ways in which service delivery to ratepayers can be better enhanced;
- to evaluate all operational aspects of municipal councils, including matters such as rate collection, human resources, provision of amenities, social services, environment management etc.;
- to examine and assess how the local government machinery can be best shaped to promote good governance and the well-being of ratepayers, with a view to building modern regional cities and towns in line with established principles of urban development;
- to examine the procedure and criteria for the election/appointment of councillors/administrators, and to identify a fairer and more democratic model of election and representation;
- to assess the Urban Policy Action Plan (UPAP) and Urban Growth Management Action Plan (UGMAP), and their adoption in any proposed local government machinery; and
- To determine whether an urban planning authority or regional authorities would be better able to perform the role and functions of current municipal councils.

Significantly, the first three terms of reference all referred specifically to the adequacy, appropriateness or application of current legislation.

The LGRC started work in August 2008 and was required to complete its report by the end of November – a rushed schedule. It held public meetings around the country and met with all municipalities, a sample of rural local authorities, government agencies and other key stakeholders. Written submissions were invited and around 200 received.

A major submission was made by the Fiji Local Government Association. It emphasised the problems faced by councils in terms of limited revenues and professional staff;

reiterated the need for effective measures to address urbanisation; and highlighted the adverse effects of the fragmented (between 25 and 30 acts) – and in a number of cases outdated – legislation under which municipalities were required to operate. Some of the association's principal proposals were to:

- establish a consolidated 'Municipal Act';
- transfer rural local authorities from the Public Health Act to the Local Government Act, and progressively make them elected district or town councils (this would also facilitate action to deal with the issue of peri-urban growth);
- transfer the (heavy) cost of elections to central government and enhance voter registration and education;
- extend the term of mayors to two years;
- ensure that committee meetings dealing with major issues (e.g. capital works, rates and charges) are open to the public;
- ensure that each council have a code of conduct for both councillors and staff (provisional code for councillors already prepared by FLGA);
- improve the use and quality of by-laws, e.g. for land subdivision;
- improve management standards and provide more staff training;
- promote greater use of local rates to fund infrastructure works;
- allow use of improved or annual (rental) property values for rating as alternatives to unimproved capital value;
- allocate councils a percentage of fuel tax and wheel tax revenues to improve infrastructure maintenance;
- increase resource sharing among councils;
- recognise the differing capacities of councils (larger versus smaller populations and budgets) to discharge their statutory and service delivery functions;
- strengthen the Department of Local Government and improve inter-government relations; and
- progress implementation of the Urban Policy Action Plan (UPAP) and Urban Growth Management Action Plan (UGMAP), including through councils' own strategic and town planning processes.

More than half of these proposals involved amendments to the Local Government Act, and in the case of the first, a substantial re-write plus incorporation of part or all of several other acts.

The LGRC endorsed the need for legislative change. It noted that the efficiency and effectiveness of local government is very much dependent upon required changes in a number of acts:

The legislation under which local government in Fiji operates, the Local Government Act (Cap 125), is considered to be generally workable, in that it has served local government for over 35 years. It is in the application that it was revealed that the legislation does need some major revisions and incorporation of provisions of other legislations for which local government is responsible. The committee believes that the Local Government Act should be repealed and a new legislation, the Municipal Authorities Act (or similar), be prepared by retaining the applicable components of the existing legislation and incorporating relevant provisions or, if appropriate, the entire legislation of related acts. The committee has identified, based on submissions made and detailed analysis, many amendments that should be incorporated into the new legislation in order to provide a more enabling legislative environment under which councils can operate.

(LGRC 2008: 12)

While so much is demanded and expected of the local municipalities by the central government, the rate payers as well as the public, at the same time, it is also important that more sharing of power is practised to enable the municipalities to be more autonomous, capable of running on their own rather than having their contribution stifled by outmoded and outdated legislation.

(ibid: 32)

The LGRC proposed that the various departments or agencies that administer acts relating to local government should form a co-ordinating mechanism to ensure that legislation is harmonised, compatible, relevant and effective (ibid: 32), and that changes in relevant provisions of the Local Government Act and related acts be consolidated to provide effective development and management of urban areas to enhance delivery of services. It also made a number of specific recommendations that would involve amendments to the Local Government Act. These appeared to be aimed at strengthening the role, operational autonomy and financial position of municipalities, while increasing accountability and organisational effectiveness. In some respects they echoed the approach taken in recent years in to local government legislation in New Zealand and Australia.

Specific proposals included:

General

- A new section 2 of the Local Government Act be included that would (inter alia): state the purpose of local government; provide a framework and powers for local authorities; promote accountability of local authorities to the central government and the electorate or the public; and provide for municipalities to play a broad role in the promotion of the social, environmental and cultural well-being of communities.
- Local authorities should be given greater freedom to determine their own priorities, make policies and by-laws, set rates, fees and charges etc. The minister's power of oversight under the act should be limited to raising loans, overdrafts, municipal

boundary changes, changes in the composition of the council, sale of council properties and investment. The minister's powers to investigate and deal with allegations of malpractices should be maintained, although such investigation should be carried out by an independent body.

- Rural local authorities should be re-named district councils, with their functions and service delivery similar to municipalities.

Elections

- The voting age should be lowered to 18 years (plus a number of other recommendations aimed at improving the electoral system).
- The system of democratically elected councillors should remain in place, but the minister should be empowered to appoint a representative of traditional landowners having an interest in the city or town.
- The mayor should be elected by popular vote.
- Registered political parties should not be permitted to contest local government elections.

Council and committees

- In the interests of more efficient decision-making, but still maintaining adequate representation, the numbers of elected councillors per municipality should be reduced.
- The council and committee structures of municipal councils should be reviewed and rationalised to improve efficiency in decision-making.
- Committee meetings of the councils which deal with major issues like budgeting, capital projects, rates, fees, charges and drafting of by-laws should be open to the public.
- A code of conduct for municipal councillors and senior officials should be developed and enforced.

Staffing

- Council staff should have their own code of employment similar to the Civil Service General Orders.
- In future, the position currently known as town clerk/chief executive officer should be referred to as city or town manager, with clear responsibilities for the operation of the council and implementation of councils' decisions.
- City/town managers should no longer 'hold office at the pleasure of the Council', but be employed under performance-based contracts for a term of no more than three years, with the option of renewal.
- There should be a clear division of responsibility between the council, councillors and the city/town manager and staff.

Accountability

- Councils should be required to develop a simple, strategic, integrated community plan for the municipality to guide and inform planning, management and development.
- All municipal councils should develop and implement a community engagement and communications strategy.
- The Office of the Auditor General should retain responsibility for audits of municipal councils, and the power of the minister to direct otherwise should be removed.

Rating

- The Local Government Act should be amended to empower municipal councils to collect outstanding rates more effectively.

These proposals echo a number of the points raised by the FLGA, and also appear to draw extensively on recent trends in New Zealand and Australian local government. Whether many of them could be implemented satisfactorily in Fiji, given the lack of resources at both local and national levels, is a matter for debate (see below).

The LGRC also had much to say about the need for improved financial management, including: better use of councils' rating base and reviews of fees and charges; the scope for additional revenue sources, such as development levies and a wheel or fuel tax; regional co-operation and resource sharing among councils; and strengthening of the national Ministry for Local Government to provide greater support, including implementation of the UPAP and UGMAP. For the latter purposes, and to ensure effective implementation of the overall package, it recommended establishment of an urban and regional authority within the ministry that would consolidate relevant functions and skills.

Above all, the LGRC strongly supported continuation and enhancement of the system of elected local government. It stated that (ibid: 11):

It is considered imperative that the institution of elected local government ... remains in place despite any issues related to performance or operations of individual Councils. There are mechanisms available under the Local Government Act and other legislations (sic) for dealing with allegations or instances of inefficiency, wastefulness or corruption by Councils. The institution itself should not be compromised in such cases.

But the government saw things differently. In January 2009 it dismissed all elected councillors and replaced them with appointed special administrators in order to speed what it saw as essential reforms. The town clerks were re-employed by the ministry, and central control over councils thus strengthened. While it accepted 98 of the LGRC's 131 recommendations, the government opposed both lessening of ministerial controls and strengthening of the ministry to support councils. It established a Local Government Committee to progress implementation of 38 priority recommendations: these focused strongly on financial management and rating, reflecting in particular

the government's concerns about the high level of uncollected rates. Priority was also given to improving councils' operations through measures such as strategic planning, performance monitoring and codes of conduct; and to urban planning systems, including implementation of the UPAP and UGMAP (Davidson 2009).

However, progress was slow. By December 2009 the Local Government Committee had only met three times and lacked experienced staff support, apart from an Australian volunteer adviser who has since been withdrawn. While the response to the government's reform package by the special administrators and council staff was reported to be positive, lack of funds and human resources continued to be a major constraint: central government was unwilling to commit funds to assist councils, and practices such as compulsory early retirement of public servants and council staff deprive the sector of necessary expertise. In addition, there are numerous cross-cutting and potentially conflicting agendas and co-ordination among the key players remained weak (*ibid*).

5.5 Lessons for effective legislation

The Fiji experience highlights the importance of context. As both the FLGA and LGRC acknowledged, the Local Government Act itself is quite a good piece of legislation that has been kept reasonably up-to-date. Further amendments are desirable in the areas recommended by the LGRC report, but in themselves the deficiencies in the act are not a fundamental obstacle to successful operation of the system of urban local government – although they do create certain inefficiencies and impediments.

What has emerged quite clearly over recent years is that the system is failing – first, because it lacks a sound framework of national policy, and second, because it is complex and demanding of resources that are simply unavailable. Some of the key issues identified in this research are as follows.

- Maintaining stable and effective local government is extremely difficult or impossible in a climate of political instability at the national level, and when the responsible national ministry is grossly ill-equipped to manage and support a complex system. This difficulty is magnified when the legislation requires numerous councils constantly to refer matters to the national minister for decisions, particularly basic administrative steps such as adopting estimates of income and expenditure, or deciding on capital works. Amendments to legislation such as those proposed by the LGRC could address excessive oversight, but the underlying contextual problem would remain.
- The essential challenge is that of coping with rapid urbanisation, and in that regard focusing efforts on a limited number of urban authorities is probably a sound approach. However, urban local government cannot function adequately when its boundaries and revenue base bear little relation to the extent of the urban and peri-urban areas to be managed, and when there is a lack of mechanisms to ensure co-ordination with adjoining authorities established under a multiplicity of different systems. In Fiji this problem is exacerbated by the ethnic dimension involved, which affects both the external boundaries of municipalities and the

management of some areas (Fijian villages and unleased native lands) within those boundaries. Changes to legislation (but above all, considerable political courage) are needed to tackle these issues.

- Revenues available to councils fall well short of what is required to undertake their functions properly, especially provision and maintenance of infrastructure, and to attract, retain or train needed professional staff. This situation results from a narrow revenue base, limited capacity to tap that base effectively (e.g. through special and local rates and by collecting all rates due), too many exemptions from payment of rates, lack of central government support, inefficiencies and poor financial management. Some of these issues do require amendments to legislation, as indicated by the LGRC.
- Resources are stretched unnecessarily by the operation of multiple systems of local government – including the parallel local authorities established under the Public Health Act – and by the special treatment afforded to indigenous settlements. The *concept* of integrating these systems advanced by both FLGA and LGRC appears logical, but as the LGRC pointed out, this would require new management and oversight structures at the national level and a considerable injection of resources. As noted above, the narrower focus of the current Local Government Act system makes a lot of sense in an environment of scarcity.

At the time of writing, it appeared evident that for the foreseeable future there would be a lack of will to address these contextual issues, and this will limit what can be achieved by reforms within the Local Government Act system alone. In that case, the government's decision to focus on a relatively modest package of improvements to administrative processes and financial management in the urban councils seemed appropriate. However, on current indications even this may not be achievable within available resources.

Chapter 6

Case Study: Honiara City Council

6.1 Context

Honiara is the capital city of Solomon Islands, a country of many islands spread over 1,450 kms from Bougainville (Papua New Guinea) in the north to Vanuatu in the south, and covering an area of some 29,000 km². At the 2009 Census, the national population was about 516,000. There are more than 70 different local languages and dialects. GDP per capita is among the lowest in the region (see Table 2.1, above).

Solomon Islands is divided into nine provinces, each centred on a main island. Honiara is located on the northern coast of the island of Guadalcanal, and surrounded by the province of the same name. It has one of the highest urban growth rates in the Pacific region, estimated at 4 per cent per year. The city's population is estimated at around 80–90,000, including perhaps 20,000 in informal settlements.

Honiara is a melting pot of the diverse ethnic groups that make up the country. There are indigenous peoples from all provinces (Malaitans being particularly numerous), expatriates and a large Chinese community. As a result, there is little genuine local identity or ownership of the city: 'although people may reside in Honiara, and may have for all their lives, their roots remain in their home village or province' (Parker 2010: 133).

Solomon Islands has experienced economic and social problems since the early 1990s. Economic growth has barely matched the increasing population. As elsewhere in the developing world, people have been attracted to the city by the prospect of employment, but there is a high rate of unemployment, especially among young people. Honiara's rapid growth has resulted in extensive squatter settlements, including some overspill into adjoining areas of Guadalcanal Province. At the same time, the growth and relative prosperity of Honiara has been a source of jealousy elsewhere in the country, with many people believing that a disproportionate share of national wealth has been expended in the national capital.

These various economic and social issues culminated in the severe ethnic tensions and fighting, which began in 1998 and escalated during 1999 and 2000, resulting in loss of life and violations of human rights, internal displacement of people, closure of major companies, severe downturn in exports and private business activities, restrictions on movement, collapse of government functions and breakdown of law and order.

Peace was restored through several initiatives, notably the intervention of the Regional Assistance Mission to Solomon Islands (RAMSI) in 2003 under the auspices of the Pacific Islands Forum. This intervention combined policing and strengthening of the justice system with an ongoing programme to build the institutional capacity of national and provincial government. However, in April 2006 riots again broke out in Honiara

after the election of a new prime minister, who was perceived to be ‘in the pocket’ of sectoral economic interests. This resulted in the targeted burning of businesses in the Chinatown district. The root causes of the riots were attributed by a Commission of Inquiry to, among others, inequitable access to land, failure of government to deliver development to settlements in Honiara, inadequate service delivery and bad governance (Government of the Solomon Islands 2009: 2).

The 18 April 2006 civil unrest and riot in Honiara took place against a backdrop of infrastructure weakness and non-delivery of essential government services to the people from all over the country who, by accident or desire, have made Honiara their home. In search of a better prospect in education, health and employment, these people have settled in distinctive original provincial or island ethnic settlements in and around Honiara in near-squalor conditions, because government services were not reaching them.

High hopes and expectations of a better life compared to the rural areas from where they had migrated had not materialised, as many could not find employment. The poor access roads into the settlements, the lack of proper sewerage, water supply and electricity, high costs of school fees, lack of adequate health facilities and the high incidence of drunkenness were some of the daily woes settlement dwellers had to deal with, often with no government support. It was in the context of this daily hardship that settlement dwellers were highly vulnerable to exploitation and manipulation, and the national elections for a new Solomon Islands Parliament in early April 2006 became the catalyst for them to let out their anger and frustration against the government, in particular, and society in general (ibid: 8).

The Commission of Inquiry also concluded that, ‘there had been major failings within the Honiara City Council to coordinate, organise and deliver development in the Honiara settlements’ (ibid: 43).¹⁴ In fact, the elected council had been dissolved by the Minister for Home Affairs in 2004 and replaced by an appointed authority. This followed evidence of corruption and maladministration, reflecting in part the disruption and damage caused by the ethnic tensions.

Even earlier, in 2003, the national government had recognised the need to strengthen Honiara City Council as an essential component of the reconciliation and rebuilding process, and made a request to the Commonwealth Secretariat for technical assistance. This task was passed to the Commonwealth Local Government Forum (CLGF), which then undertook an investigation and project design process resulting in the Honiara City Council Institutional Capacity Building Project. This was a five-year (2006 to 2011), broad-based technical partnership aimed at supporting the council and its stakeholders to improve institutional and basic service delivery capacity and thus to respond more effectively to the challenges of urbanisation, population growth and mounting social, economic and environmental pressures. It was funded largely by the New Zealand Agency for International Development (NZAID).¹⁵

The goal of the project was *to bring about substantial improvements in quality of life for all citizens of the City of Honiara through sound city management, improved local services,*

planned urban development and good governance. Activities were grouped under four themes:

- Strengthened council management capacity and processes
- Improved quality and delivery of essential services
- Co-ordinated and well-planned urban development
- Good governance and local democracy

A newly elected council took office in August 2006, shortly after the project commenced. While progress was slow in the early years of the new council's term, more recently a number of major improvements in governance and service delivery have been made through both project support and the council's own efforts. Notably, the council's revenues have grown dramatically as a result of successful measures to collect a much higher proportion of available taxes, fees and charges, and to stamp out corrupt practices. If these improvements are maintained, the council will have significant capacity to make a real difference to quality of life in the city and to play a substantial role in the overall system of government.

6.2 Establishment and operation of the city council

Solomon Islands is a unitary state – a constitutional monarchy – with a national government and nine subsidiary provincial governments. Prior to independence there was a system of local government across the country, operating under the provisions of the 1964 Local Government Act. However, this system was effectively abolished in 1997 at the behest of the provinces, leaving only one town council (Noro).

Sub-national government is recognised in the Solomon Islands constitution, which requires the national parliament to make laws providing for the government of the provinces and for a Honiara City Council (but not local government elsewhere). Consistent with this requirement, the Honiara City Council was established by, and operates under, the Honiara City Act 1999 (which dissolved the former Honiara Town Council and largely, if not completely, supersedes the Local Government Act as it relates to Honiara).¹⁶ The act is administered by the Minister for Home Affairs. It makes provision for regulations to be made by the minister, and for ordinances to be made by the council and approved by the minister. The minister may also transfer additional functions under national legislation to the council, in accordance with a schedule to the act.

The act sets out the specific powers and functions of the council, but as an extension of those powers and functions also confers what might be termed a 'power of general competence' in the following terms:

21. (5) In the discharge of its functions it shall be the duty of the City Council to generally promote the health, welfare and convenience of the inhabitants of the area of its authority and to maintain order and good government in such area; and for these purposes the City Council may, within the limits of the functions so

conferred, either by its own officers or by duly appointed agents, do all such things as are necessary or desirable for the discharge of such functions.

32. (1) Subject to the preceding sections of this Part, the City Council has the power to do all things necessary or convenient to be done for, in connection with or incidental to, and may do anything which is not otherwise unlawful for, the purpose of performing its functions.

For all practical purposes the city council is equivalent to a provincial assembly. Its act is national legislation administered directly by a national minister (but of home affairs rather than provincial government). Moreover, it has a larger population and budget than all but one or two provinces, and undertakes similar functions. These include not only 'municipal' infrastructure and services provided under its act, but also significant functions 'devolved' to it (in like manner to the provinces) under other national legislation. For example, it is the 'education authority' for Honiara under the Education Act; the 'enforcement authority' and 'local authority' for Honiara under the Environmental Health Act; and is responsible for providing primary health care in Honiara under the Health Services Act. The council also nominates¹⁷ members of and provides administrative support to the Honiara Town and Country Planning Board; while the mayor nominates, and the council supports, members of the Honiara Liquor Licensing Board (again, along the same lines as provinces). The city clerk also performs various minor functions similar to those of a provincial secretary under a further range of national legislation, and has the same standing within the public service.

The council has its own revenue-raising powers (including a head tax or basic rate, property rates, business licences and fees for service), and also receives a monthly subvention from national government. It employs more than 400 staff in its service delivery operations (Parker 2010: 133). As in the provinces, most senior management positions, including the city clerk, have normally been seconded from Solomon Islands government service. However, as a result of the CLGF project and improvement in the council's revenues, this system is changing, with the employment of senior expatriate and locally engaged staff directly by the council.

As noted above, the council's affairs are overseen by the Ministry of Home Affairs. The minister must approve the council's standing orders and ordinances (including annual appropriation ordinances, incorporating the budget) – but ordinances can only be rejected if they exceed the council's legislative competence, not simply because the minister disagrees with their content. The minister prescribes the salaries and allowances to be paid to councillors, while those of the mayor are determined by the Members of Parliament (Entitlement) Commission.

The minister also has power to appoint some of the councillors and to suspend or dissolve the council if: 'it appears to the minister that a situation has arisen in which there is a failure of the administrative machinery resulting in non-compliance with the provisions of this Act' (section 52). However, the minister has otherwise limited statutory powers to intervene in the operations or governance of the council, which thus enjoys a high degree of autonomy.

The ministry's resources are severely stretched due to the breadth of its responsibilities and lack of suitably skilled and experienced staff. This tends to create a vacuum within which any questionable governance practices within the city council may not be scrutinised sufficiently, and little or no guidance is provided. Similarly, the ministry has at times lacked the necessary capacity for prompt completion of essential administrative tasks, e.g. arranging for the approval and gazettal of ordinances, including those necessary to revise and collect council rates. It also appears to have difficulty providing or supporting effective working relations between the city council and the wide range of government agencies with which it needs to collaborate from time to time.

The City Council is audited by the national Auditor General. Section 108 of the constitution appears to provide for audited reports of the council (and anyone else audited by Auditor General) to be given to the speaker for laying before parliament. However, the Honiara City Act requires only a report *to the council itself* (which must then be made public).

The council comprises 20 members – 12 elected, 4 ex officio and 4 appointed by the minister. The 12 elected councillors represent single member wards under a 'first past the post' system; the ex officio members are the premier of Guadalcanal province and the three local members of national parliament; while one of the appointed members must also be from Guadalcanal (by convention, the speaker of the provincial assembly). Elections must be held every four years. Councillors elect the mayor from among the *elected* members,¹⁸ and the minister then appoints the deputy mayor on the advice of the mayor. The mayor cannot be challenged during the first 18 months of his or her term.

The act provides for the minister, on the mayor's advice, to appoint at least seven 'standing committees'. The mayor assigns: 'executive powers, functions and responsibilities for the administration of any department of the council' (section 19(2)) to each of those committees, except that making ordinances, making and levying rates, borrowing or lending money and approving annual estimates must be handled by the full council. In consultation with the mayor, standing committees may establish further ad hoc committees.

The council must employ a chief executive officer (the city clerk) and other staff needed for the efficient discharge of its functions. It *may* also appoint a deputy chief executive. The city clerk is responsible for day-to-day management of the council's activities and implementation of policy, including control of staff. However, the act leaves the door open for councillors to become involved in staff recruitment, although this function is currently delegated to the city clerk. The act also allows the elected council to delegate responsibilities *directly* to individual staff, potentially by-passing the city clerk. These provisions could be seen to encourage undue political interference in management, and potentially to enable corrupt practices.

6.3 Review of the Honiara City Act

From the outset of the CLGF capacity building project there was recognition of the need to review some elements of the Honiara City Act. The report of the 2005 Technical Partnership Mission to Honiara noted that: 'CLGF was requested to provide

secretarial and technical support to the Committee appointed by the Minister for Home Affairs to review the Honiara City Act, 1999, and related tasks. The Committee was established soon after the Council was dissolved and the Competent Authority appointed...’ (Technical Partnership Mission 2005: 18).

The report went on to argue that action needed to be taken on a number of fronts to restore public confidence in the electoral process for the city council and to provide for good governance. It suggested, for example, that the make-up of the council should reflect the ‘provincial balance’ in the origins of Honiara residents, that there should be a special focus on participation of women and other groups in civil society (youth, business etc.), and that residential qualifications for voting should be strictly applied.

The official Terms of Reference for the Act Review Committee spelled out the issues to be addressed in similar terms:

Honiara is our national capital and as such is host to our highest law-making body, the National Parliament...The importance of Honiara cannot be over-emphasised.

The ... Honiara City Council is the government institution empowered with the public duty to promote health, welfare and development, afford convenience, and maintain order and good governance for the inhabitants of Honiara. To date, the performance of this Council over these duties has been inadequate...

The Council has been dissolved five times over the past twenty-seven years... There is clear evidence of “good governance” being compromised...

There is immediate need to review the City Act. The Act lends itself much opportunity for misrepresentation and corrupt practices...There is a strong belief that provisions in the Act (Part II) pertaining to the electoral system and qualifications for elected membership of the Council have contributed directly to the lack of quality leadership of the Council...

The Standing Committees of the Council have been prone to exercising their delegated executive powers, functions and responsibilities beyond their scopes and objects. Examples have been the improper allocation of land and the unfair and unprocedural awarding of contracts...

Audited reports and Treasury experience indicate that political interference from Councillors and the Mayor without adherence to financial instructions play a huge role in the continuous disastrous financial position of the Council...

The secondment of the City Clerk to the Council must be provided for in strong terms, such as to disable any “private” appointment of the Clerk outside of Public Service projections and appointments. This must directly relate to the independence of the Clerk in the detail administration of the Council.

The Terms of Reference thus required the committee to:

1. Review the membership and composition of the Honiara City Council
2. Review the tenure and terms of the mayor and all political representatives to the city council

3. Review the standing committee system, as applied in the city council
4. Review the representational and electoral structure and process of the city council
5. Review the qualification and disqualification criteria for membership of the city council and also review the eligibility criteria of voters in Honiara
6. Review the terms, tenure and the appointment base of the Honiara City Tender Board
7. Review the policing of Honiara City and the structuring of the police service for the city such as to be compatible with the legal chain of command in the police force¹⁹
8. Review the Honiara City financial system – inclusive of the financial instructions and the related checks and balances
9. Review the method of recruitment of the key officers of the city council
10. Draw up the tenure for this committee and insert the related expenditure budget and allowances.

Despite the strong emphasis given to reviewing the act in 2004–05, and subsequent provision of resources to facilitate this process as part of the CLGF project, little was done. Once an elected council had been returned in 2006, and progress began to be made in improving governance and operations through various project activities, the impetus to reform the act was lost. Additionally, there were differences of opinion with sections of the national public service as to how the Review Committee should proceed, and a concern that the exercise could get out of control or become so extensive as to swamp the resources available.

However, the issue was revisited by CLGF personnel and advisers in 2008, and given some further consideration in the Mid-Term Review of the CLGF project conducted in 2009. The Mid-Term Review (Sansom and Whitaker 2009: 34) noted that:

A potential third challenge is political: how to sustain recent progress in bringing about better governance and management practices within HCC [Honiara City Council] in the event of a change in Lord Mayor and reduced commitment to good governance amongst Councillors. Elections are due in August 2010 and anecdotal evidence suggests that to date few voters are aware of the improvements that have been made to HCC and the benefits that will eventually flow from maintaining current policies and practices into the medium term. There is a risk that the Project's success in helping HCC generate massive increases in revenue simply makes the council a more attractive target for those seeking personal gain through improper decisions and dealings.

There appear to be two strands to managing this challenge:

- voter education and awareness programmes in the lead-up to next year's elections, highlighting the role played by HCC and why good governance is fundamental to improved service delivery; and

- enhanced oversight by MHA [Ministry of Home Affairs] coupled with amendments to the Honiara City Act to minimise the risk and impact of poor governance, and to facilitate timely and appropriate intervention if required.

Strategies on both fronts need to be pursued more vigorously over the remainder of the Project...

An internal CLGF project document produced in late 2008 suggested a number of key areas in which the Honiara City Act should be amended to address important governance issues (Sansom 2008). It suggested that rather than pursuing a comprehensive review of the act, efforts should focus on ‘... a manageable, carefully targeted package of measures likely to gain the support of Council itself and other key stakeholders’, together with a limited consultation process.

The potential amendments canvassed in the document largely covered the same issues as those raised in 2004–05, but with some additions. These additions were notably in the areas of accountability to the community; relations with the national government; broadening representation on the council; limiting the number and discretion of standing committees; reducing the likelihood of frequent and disruptive challenges for the position of mayor; protecting the city clerk against undue political interference in day-to-day management and also against unwarranted dismissal; improved corporate planning and ‘strategic’ financial management; and strengthening ward committees as a vehicle for community engagement and ‘neighbourhood governance’. Overall, the aim was to reduce the scope for maladministration.

Suggested amendments included, for example:

- the possibility of including a ‘charter’ setting out the council’s duty to operate efficiently and effectively in the public interest and to deliver adequate and equitable services (similar to one in the New South Wales Act in Australia);
- requiring an annual report detailing the activities and achievements of the city council during the previous year;
- establishment of a Honiara City Co-ordination Committee to include the prime minister/deputy prime minister, minister for home affairs, mayor, deputy mayor, premier of Guadalcanal, and other ministers and members of parliament, as appropriate, to promote co-ordinated planning and administration of Honiara as the capital city;
- requiring an independent inquiry or independent report to the minister prior to suspension or dissolution of the council;
- removing ex officio seats on the council for members of parliament and the premier of Guadalcanal, and increasing to no more than eight the number of appointed members, with criteria for their appointment – e.g. to represent women, young people, ethnic groups that are significantly under-represented by the electoral process, persons with expertise in local government etc.;
- a limit of no more than four standing committees plus an executive committee, and removing the reference to standing committees assuming executive functions;

- a popularly-elected mayor, but with no change to current powers or to the provisions for appointment of a deputy mayor;
- prohibiting any motion to remove the mayor within six months before the due date for council elections;
- removing the elected council's power to appoint staff other than the city clerk and deputy city clerk (although the council could reasonably expect to be consulted on the appointment of senior staff), and giving the city clerk responsibility for appointing all other staff;
- providing that before the city clerk or deputy can be dismissed, the council must commission an independent report into the stated reasons for dismissal and consult the permanent secretary of the ministry;
- providing that the council may delegate powers and functions to the city clerk, who may in turn make delegations to other staff;
- requiring the budget estimates to be accompanied by a three- or four-year corporate plan that sets out the council's goals, objectives and proposed activities and achievements over that period, plus a detailed operational plan for the following financial year;
- providing that a transfer of land may not be registered if the sale or lease of land has not been properly authorised by the full elected council;
- new provisions for appointment of ward committees (e.g. number of members, nominations to be considered by the council as a whole) and their functions (e.g. advise the ward councillor and propose projects to be funded from the Ward Development Grant); and
- specifying the maximum total amount of Ward Development Grants (e.g. as a percentage of total estimated expenditures) and requiring that an equal grant be allocated to each ward.

At the time of writing, no further action had been taken to implement these or other amendments. Various discussion papers had been prepared and some specific proposals put forward, but pressure of day-to-day business, turnover in the position of city clerk, and political and legal challenges to the mayor, all caused delays. As a result, the council was still operating under an act that is clearly deficient in several important areas.

6.4 Town planning and building control

In the context of a rapidly growing and changing Pacific city, one of Honiara City Council's most important areas of responsibility relates to town planning and building control. These responsibilities generated some of the most complex and enduring challenges for the CLGF capacity building project.

Land use planning is carried out under the provisions of the Town and Country Planning Act 1996. This act is administered by the Ministry of Lands. The act

establishes a Town and Country Planning Board for the city, which is responsible for preparation of a local planning scheme and determination of development applications. The board is appointed by the minister in accordance with the advice of the council, and comprises a chairman plus between five and eight other members. The act does not specify eligibility for or categories of membership, but typically the board includes councillors, an architect, an engineer and community representatives.

The act also gives the minister extensive powers to regulate and guide the land use planning and development control system, including approving planning schemes, 'calling-in' applications for determination and determination of appeals against decisions made by the board. However, administration of the board, including staff support and payment of its operating expenses – notably members' allowances and any compensation awarded as a result of board determinations – is the responsibility of the council. This financial exposure has been a matter of ongoing concern, together with the failure of the Ministry of Lands to second sufficient and suitably qualified town planning staff to the council's Physical Planning Division, which services the board (although this failure largely reflects an absolute shortage of such professionals in Solomon Islands).

By contrast, building regulation is solely the prerogative of the council under the provisions of the Honiara Building Ordinance 1960, which now forms part of the Honiara City Act, administered by the Ministry of Home Affairs. Importantly, preparation, updating and administration of the Building Ordinance can be carried out by the council with little or no scope for ministerial intervention or power of veto, provided the council acts legally in all respects. Any required approval of changes to the ordinance and/or secondment of professional staff from the national public service to assist the council with building regulation is a matter for the Ministry of Home Affairs, not Lands.

However, most forms of development require both development and building applications, and cannot proceed without the latter. The waters are further muddied by the mixing of town planning and building control staff and functions within the council's Physical Planning Division, and by a practice of referring building as well as development applications to the Town and Country Planning Board – largely it would seem in order to gain access to the architectural and engineering expertise of board members.

Thus while the board and the city council are entirely separate legal entities, this intermeshing of appointment powers, memberships, staff, functions and matters to be taken into account in decision-making, has led to ongoing confusion about requirements for development and building approval, and the roles and responsibilities of those involved in approval processes. In particular, it is widely believed that the board is an arm of the council, and that granting of planning approval by the board (or minister) means that a development can automatically proceed.

All this creates serious weaknesses in a key area of local government administration, especially in the context of rapid urbanisation. There is limited guidance and control of development, and no platform for the more far-reaching strategic urban planning needed to address critical social, economic and environmental issues.

6.5 Lessons for effective legislation

In at least two respects Honiara City Council represents a special case in urban governance in the Pacific. First, following the disastrous effects of the ethnic tensions at the turn of the century, the council's capacity and institutional integrity has been largely rebuilt with concerted external support from the CLGF project. Second, the council operates under an atypical piece of Pacific local government legislation that gives it both a potentially strong financial base and a large degree of political and administrative autonomy in the discharge of its municipal functions.

The experience of the CLGF project has highlighted both the strengths and weaknesses of the Honiara City Act. Some of the key lessons for this research are as follows:

- Any legislation operates in a specific cultural and historical context. In the case of the Honiara City Act that includes: the complex structure and divided loyalties of ethnic groups that make up Solomon Islands population; the *wantok* system of loyalty to one's extended family, sometimes in contravention of what others might regard as ethical behaviour and good governance; some overt corruption; and the institutional damage wrought by ethnic tensions. Changing the governance culture and improving day-to-day administration of Honiara City Council's affairs proved difficult, although the previous mayor and city clerk achieved considerable success in their stated intention to root out corruption and malpractice, and may have created a platform for lasting reform.
- The broad range of revenue sources available to the council under the act facilitated action by advisers engaged under the CLGF project, which produced a massive increase in revenue that could underpin enduring expansion of the council's operations and services to the community.²⁰ However, financial management needed considerable further improvement to ensure wise use and proper administration of the substantial additional resources now available, and this required strengthening of relevant provisions of both the Honiara City Act and the Financial Management Ordinance, particularly to tighten expenditure control. A tendency remained to undertake ill-conceived and/or over-expenditure in response to political and cultural pressures. For example, some and perhaps most councillors had an expectation that they will receive payments and allowances comparable to national politicians, but this is beyond the city's financial capacity and fails to recognise the difference between local and central government systems.
- A number of provisions of the act militated against sound administration. The provisions for numerous standing and ad hoc committees, coupled with councillor allowances for attending meetings, could generate unnecessary 'work' and costs. Moreover, executive powers given to some standing committees (e.g. for land dealings) increased the scope for corruption. There was no requirement for corporate planning. The Executive Committee (chairs of standing committees) could play a stronger role in overseeing and co-ordinating the council's affairs, but currently lacks legal status. The role and powers of the mayor may need to be defined more precisely.
- The city clerk's position is somewhat ambiguous and subject to both heavy administrative demands and immense political and cultural pressure. His or

her ability to manage the council's administration without undue political interference or fear of unjust dismissal needed to be reinforced, and the relationship with the mayor clarified. Some 'protection' is provided if the city clerk is engaged under the government's preferred arrangement of secondment from the public service, but then the position can only be paid at under secretary level, which makes it difficult to attract and retain applicants of sufficient calibre. The Honiara City Act clearly allows the council to make an independent appointment, and this was used to appoint an expatriate as part of the CLGF project, but it remains to be seen whether a local appointee situated outside the public service structure could withstand the political and cultural pressures involved and uphold necessary ethical and administrative standards.

- These concerns about the status of the city clerk also reflect a lack of provisions in the legislation to provide adequate separation of roles between the political body of the council and its management, and to ensure adequate oversight by the responsible ministry (Home Affairs). In most countries there is extensive supervision of local authorities by central government agencies, with a range of options for national or provincial ministers to intervene where necessary to correct deficiencies in governance, and to set standards or benchmarks for performance. This situation does not apply to Honiara City Council, where the only legal avenue for intervention available to the minister for home affairs is to dismiss the elected council. The problem is compounded by the lack of resources in the ministry to monitor the council's activities and offer advice and guidance when required. The Mid-Term Review of the CLGF project commented as follows (Sansom and Whitaker 2009: 26):

Enhanced oversight with a capacity for specific interventions (e.g. to ensure the HCC committee system is working properly, or that there is no undue political interference in day-to-day management by the City Clerk) could bring significant benefits and help create a more stable operating environment. It is also important to acknowledge the national government's legitimate interest in the affairs of the council, given the city's strategic economic and social importance within Solomon Islands and substantial government funding of its operations.

- The act is commendable for the way in which it enables the council to play a broad role in the system of government. However, neither it nor other related acts provide a robust framework for productive working relations between the council and national government agencies in key areas of shared responsibility such as education, health and infrastructure. Again, this is due in part to the limited resources, broad range of responsibilities and somewhat peripheral position in the national government of the Ministry of Home Affairs. As noted earlier, the provinces report through a separate ministry, and although the Mayor of Honiara now sits with the provincial premiers in some inter-government meetings, the experience of the CLGF project suggests that the need to engage fully with the city council and to forge national policies for the city can be overlooked. For example, there was no clear locus of responsibility within the national government for

strategic urban planning, including implementation within Honiara of the Pacific Urban Agenda to which Solomon Islands is a signatory under the Pacific Plan.

- The provisions for appointed members of the council could offer a valuable opportunity to ensure a reasonable level of representation of women, minority or disadvantaged groups, the business sector etc., but this opportunity had not been realised to any great extent. Similarly, the arrangement for four ex officio members, including representatives of Guadalcanal Province and local members of the national parliament, did not appear to be contributing to effective inter-government relations. They rarely if ever attended council meetings, and liaison with them could probably be maintained more effectively in other ways.
- Care is needed to ensure that closely related pieces of legislation – such as those covering local government, building and planning – are well matched and provide a workable policy and regulatory framework. This is particularly important in managing urban growth and development, which as noted earlier represents perhaps the greatest challenge facing Pacific local government.

Chapter 7

Case Study: Samoa

7.1 Context

Samoa comprises two major islands and seven small islands, five of which are uninhabited, with a total area of some 2,830 km². The country's population is approximately 180,000, and most people (around 70 per cent) still live in predominantly rural areas. The main island of Upolu houses the capital city, Apia, and about three-quarters of the total population. Nearly all the remainder live on the second major island, Savaii. Apia is home to about 40,000 people, but the urban boundary is difficult to define and Apia's influence spreads across much of adjoining north-west Upolu. Together, these two areas account for half the population, reflecting sharp increases over the past two decades due to internal migration.

Samoa's population is relatively young, with the majority less than 30 years of age. While urban drift is not yet as pronounced as in other parts of the Pacific, parts of Apia and adjoining areas are showing signs of pressure on the natural environment, and on infrastructure and services such as education and health. In addition, migration overseas or to Apia and adjoining semi-urban areas of Upolu by those seeking better access to schools, employment and services, has a major impact on families left behind in the rural villages. There have been significant reductions in subsistence agriculture and other rural production, and although the emerging tourism industry plays a valuable role in providing employment opportunities in some rural areas, there is high dependency on remittances from relatives living in Apia and overseas, especially New Zealand.

Over the last decade or two Samoa has undertaken a sustained programme of public sector reform and capacity building as part of a strategy to improve the country's economic performance and global competitiveness. This has contributed significantly to improved economic and social well-being, with the economy growing on average by around 3 per cent per annum. However, Samoa's village sector, which continues to represent a large part of its economy and natural resources, has performed poorly and its contribution to the national economy has steadily declined in both relative and absolute terms. Governance principles and practices at village level have remained largely unchanged in spite of national moves towards modern public administration, and have generally failed to respond to the challenges and opportunities involved in Samoa's increasing links to the global economy.

7.2 System of local government

Local government is not mentioned in the Samoan constitution, and Samoa does not have a system of elected local governments, in contrast to the Westminster-style national parliament. At the time of independence in 1962 a conscious decision was

made not to 'modernise' local government. A District and Village Government Board had been established in 1954 as a first step to bring custom-based village authorities more into line with a modern state system, but this failed through lack of support from both the then New Zealand administration and Samoan leadership and was abandoned in 1958 (Afamasaga Toleafoa 2012: 16). As a result, the new state was based on democratic principles and law, while local government was anchored in the *fa'a samoa* (custom, inherited values and traditional way of life).

Local government is thus a function of the traditional village structures of the *fono* (council meeting) of *matai* ('chiefs' or heads of extended families, who may be men or women). There are approximately 280 villages across Samoa, including some 30–40 'non-traditional' urban villages in the capital, Apia. Village councils have relatively few service delivery responsibilities, and much service provision and regulation is carried out directly by central government departments. Local governance is also partly in the hands of the Planning and Urban Management Authority (PUMA), which is responsible for land-use controls and for promoting strategic planning and co-ordinated action in relation to the sustainable use of land and natural resources, including in particular development of the urban area of Apia.

The two principal pieces of local government legislation are the Village Fono Act 1990 and the Internal Affairs Act 1995. The Ministry of Women, Community and Social Development (MWCSD) is responsible for the administration of these laws through its Division of Internal Affairs and Rural Development.

The purpose of the Village Fono Act is to empower *fono* in accordance with local custom. Section 3(3) specifically validates: 'the past and future exercise of power and authority by every Village Fono with respect to the affairs of its village in accordance with the custom and usage of that village...' This reliance on custom is underlined by the fact that no written records are required, and *fono* are specifically empowered to impose punishments for 'village misconduct', defined by tradition. However, any person adversely affected by a decision of a *fono* (including a decision as to punishment) has the right of appeal to the Land and Titles Court, which is the busiest court in the country with a massive backlog of cases. In recent years there have been a number of court rulings in favour of individual rights over traditional village authority, which has created tensions and further challenges for the system.

The only specific powers conferred on *fono* by the act, apart from that of punishment, are in the areas of village hygiene and economic development. Section 5(2) gives *fono*:

- a. the power to make rules for the maintenance of hygiene in the village;
- b. the power to make rules governing the development and use of village land for the betterment of the village; and
- c. the power to direct any person or persons to do any work required to be done pursuant to rules made in accordance with the powers granted or preserved by paragraphs (a) and (b) of this subsection.

The Internal Affairs Act was passed in 1995. At the time there was a separate Ministry of Internal Affairs, but in 2003 this became a division within MWCSD. The act envisaged a wide-ranging role for the original ministry, including:

- to consider proposals and formulate policies for the recognition and organisation of village authority in each village based on Samoan custom and tradition;
- to provide such guidance and advice as the *fono* may request in the preparation, development and implementation of local government, and undertake or facilitate awareness and education programmes explaining the need for local government and village authority;
- to review from time to time the needs, functions and efficiency of local government institutions and recommend appropriate courses of action;
- to prepare for recommendation to the minister by-laws proposed by *fono*;
- to advise the minister on matters pertaining to the conduct, finance, business and control of any local government activity, and recommend such regulations as may be necessary or expedient for giving effect to the provisions of the act;
- to provide such technical services as may be required for the administration and purposes of the act in accordance with local government and village authority standards; and
- to formulate policies and guidelines for social and economic development in the villages, to process requests and manage funds for development projects, and to provide such technical and advisory services for social and economic projects, and to organise and promote competitions among the villages to stimulate increases in productivity.

The act also provided for the ministry to advise the minister on the appointment of *pulenu'u*²¹ and *tofi-ole-malo*. These are the individuals nominated by each village to act as its representative and provide a point of liaison with the national government. The term *pulenu'u* is used for traditional villages, and *tofi-ole-malo* for non-traditional villages in urban areas (see below). Appointments are for three years, but individuals may be re-nominated. The positions are paid and may be occupied by any *matai*, male or female (but the overwhelming majority are male). They are sometimes called 'village mayors', but although some of the duties of *pulenu'u* resemble those of mayors, use of the term is misleading as power within each village remains with the collective *fono* and high chiefs. However, *pulenu'u* are expected to be an important and respected adviser to the *fono*, and to present the case for – and bring about – effective working relationships with government agencies. The Division of Internal Affairs and Rural Development remains their central contact and organises regular briefings and discussions for *pulenu'u*²² from all parts of Samoa.

The act specifies a wide range of duties for *pulenu'u*, including to:

- promote harmony and encourage the maintenance of law and order in the village;
- ensure the free flow of communication between the *fono* and the government;

- prepare births, deaths, and *matai* title certificates, and maintain records of village activities;
- encourage health and sanitation activities, report any new pests and diseases evident in or about the village, and encourage village cleanliness and beautifications;
- promote development projects that are economically viable as well as culturally and environmentally sensitive;
- ensure that access roads in and about the village are properly maintained;
- organise a traditional network in the village to prevent vandalism in respect of street lights, traffic lights, road signs, pipe lines, and village and public facilities;
- report to the police the use by any person of dynamite or chemicals for fishing;
- assist government officials in conducting surveys, research and debt collection in the village; and
- render at all times such assistance as the government may need in the successful implementation and, completion of its projects, either locally or nationally.

In 2004, the Samoan government decided there should also be a *sui-ole-malo*²³ or 'government women's representative' in every village. They are intended to play a parallel role to that of the *pulenu'u* in terms of liaising with government agencies through the MWCSO on issues relating to women and children. However, as yet not all villages have a women's representative, there is continuing lack of clarity on their role vis-à-vis *pulenu'u* (as well as a degree of conflict and/or competition in many cases), and concern that they are paid substantially less.

The act also makes provision for the establishment of two executive committees, one for the islands of Upolu, Manono and Apolima, and one for Savaii. Each was to comprise a member of parliament as chairperson, and a number of members to be determined and appointed by the government. The intended role of the committees in broad terms was to consult with *pulenu'u* concerning the needs of villages and co-ordinate their activities; monitor the performance of *pulenu'u*; solicit the assistance and co-operation of the *fono* in implementing government policies and programmes; consult with non-governmental organisations that are actively participating in projects of interest to the ministry; ensure that law and order is maintained; and encourage culturally sensitive support networks in the development of villages. In practice, however, the role of these committees (or whether they operate effectively at all) is unclear (Afamasaga Toleafoa 2012: 20).

7.3 Traditional village governance

Village governance is evolving and practices may vary considerably from place to place and over time. Generalisations are therefore problematic, but in broad terms typical arrangements are outlined below (see Amosa 2010).

As noted earlier, the *fono* is the supreme authority in the village. It consists of men (mostly) and women who hold *matai* (chiefly) titles. Every family in the village is

represented in the *fono* through its *matai*. Some families may have more *matai* than others, depending on their size: this is at the discretion of the paramount chief of the family and his/her family members.

There is also an *auauma* or women's committee, which advises the *fono*. Again, every family is represented and women with a *matai* title may sit on this committee as well as the *fono*. However, traditionally wives of *matai* have been excluded, as they can advise members of the *fono* – their husbands – directly. The *auauma* has a number of specific roles in addition to providing advice. These include maintaining peace and harmony, producing wealth (principally in the form of fine mats and artefacts), health and education. In recent times there have been moves to place the women's committee on a more independent footing, with an expanded role in service delivery and more direct links to central government, including via the *sui-ole-malo*.

The *aumaga* – or young men without a chiefly title – serve the village council and to some extent the women's committee if there is a need. Their role is to provide labour, particularly for construction work and the provision of food through farming or fishing.

7.3.1 Forces for change

The idea, if not always the practice, of the *fa'a samoa* remains strong, especially in rural villages. However, traditional village governance is experiencing a number of intense forces of change (Afamasaga Toleafoa undated). These include:

- population growth and economic change from a subsistence to a commercial economy, with many people now living away from their home villages, either in Apia or overseas, but still maintaining an involvement in village affairs and bringing new perspectives to bear;
- the proliferation of *matai* titles due to population growth and increasing demand for the status they confer, leading to creation of new titles and splitting of existing titles as a means of resolving succession disputes;
- a resulting decline in the quality of title holders and tradition of performing service to the village (*tautua*) as a means of obtaining a title;
- the increasing influence of 'western' ideas of democracy and the rule of law, exemplified by rulings of the Land and Titles Court against the traditional exercise of village power and in favour of gender equity and religious freedom;
- the sheer impracticality of some traditional practices, such as imposing evening village curfews in busy urban areas or in villages along major traffic routes;
- the emergence of partisan parliamentary politics at national level, which has weakened some of the 'commanding heights' of *fa'a samoa* and the *matai* system; and
- implementation of a public service reform agenda focused on, among other things, a merit-based system and 'western' concepts of efficiency and effectiveness.

Afamasaga Toleafoa (undated) notes that despite these evident pressures, relatively little has been done until now to address the issues involved or bring village governance in line with the other institutions of state. Rules and practices vary considerably from one village to another, even when fundamental rights are at stake. Disruptive disputes within villages and between villages and the government are common. Gender issues are increasingly contentious: some villages have a ban on female *matai* being members of the *fono* and, as noted above, there are often tensions around the role of the government women's representative.

Afamasaga Toleafoa (undated) concludes as follows:

... *matai* closely guard their customary authority and power, despite widespread incursions everywhere by the trappings and practices of modernity. But ... there is every reason to expect that governance at village government level will, sooner or later, also come under government's good governance agenda. The need for economic growth and respect for human rights and the rule of law are compelling enough reasons for addressing governance at village level.

That means that *matai* village councils, in spite of their customary underpinnings, will be expected to conform as well to standards of governance expected of other institutions of state...

But for such a development to succeed, however, a clear distinction will need to be drawn between *fa'amatai's* governance role at the village level on one hand, and its position as a repository of Samoa's culture and distinctive way of life on the other. Improving the level and quality of governance is a necessity to meet the changing needs of communities today, and of Samoa as a modern state...

There is no call on the other hand to change Samoa's *matai*-based culture and way of life as a result of making an improvement in *fa'amatai's* governance performance. The challenge, therefore, is how to improve *fa'amatai's* governance role at the village level where it applies today, without changing or destroying its cultural significance.

Afamasaga Toleafoa's conclusions point to a subtle but far-reaching agenda for modified forms of governance, and perhaps for complementary legislative change. Various avenues for change are considered below.

7.4 Urban governance

Urban growth in and around Apia is bringing further pressures to bear on local governance. Apia is a blend of traditional villages that have become part of the urban area, non-traditional villages and some newly developed areas with little or nothing by way of effective local governance. The non-traditional villages are settlements where arrangements similar to those of traditional villages have evolved over a lengthy period, usually under the influence of local churches and *matai* who have moved into the area. They thus enjoy fairly stable local governance, and have been recognised by the national government with the appointment of *tofi-ole-malo* and *sui-ole-malo*.

However, some more recently developed areas suffer the consequences of an absence of effective arrangements. Vaitele, for example, is one of the largest and fastest growing suburbs of Apia, with a population increase of more than 300 per cent during the last decade to more than 5,000 people. This growth reflects the availability of government land to accommodate the new residential development needed to house people moving in from rural areas. As a consequence, the Vaitele ‘village’ area is 75 per cent non-traditional and has suffered from a lack of services and social cohesion, with disturbing levels of crime, unemployment and social dislocation. The population is dominated by young people and there is little opportunity to pursue subsistence or cash-crop farming. Vaitele is also physically separate from other urban villages and distant from many of the services an urban centre like Apia usually provides (UNDP 2006).

This situation presents significant challenges for the national government. First, it cannot rely on systems centred around the *fa’a samoa* to build consensus on the area’s needs, maintain social harmony and respect for social values, and provide or facilitate basic services. Second, it is already experiencing difficulty in providing adequate infrastructure and services within a rapidly expanding urban area. Lack of adequate planning has resulted in unco-ordinated utility service and infrastructure provision, often seeing poor sequencing of development and poorly designed systems. Moreover, in a situation of tight budgets, initiatives to correct problems or gaps in service delivery are mostly reactive and based on poor information, rather than being well planned.

The establishment of PUMA and the land-use planning framework under the 2004 Planning and Urban Management Act offered an opportunity to address these issues. The agency is headed by a board chaired by the minister, and includes five government and five community representatives. The board’s functions include:

- to promote strategic planning and co-ordinated action in relation to the sustainable use of land and natural resources;
- to ensure that the operation of this act and the performance of the functions of the agency are co-ordinated with the exercise by any other agencies of related functions and powers;
- to liaise with and assist other ministries and agencies to meet the objectives of this act; and
- to assist with the co-ordination of the provision of infrastructure and services by ministries and public authorities for the benefit of the community.

Additionally, two of the objectives of the act, which the board is required to pursue, are:

- to enable land use and development planning and policy to be integrated with environmental, social, economic, conservation and resource management policies at national, district, village and site-specific levels; and
- to create an appropriate urban structure and form for the development of Apia and other centres, so as to provide equitable and orderly access to transportation, recreational, employment and other opportunities.

A vehicle and framework for effective urban management has thus been created, but limited resources (especially trained professional staff) within the agency and deficiencies in co-ordination with other government departments are hampering progress. Nevertheless, the 2004 Planning and Urban Management Act and establishment of PUMA may be seen to represent a significant advance in the Pacific context, one which might well be replicated by other countries for their major urban centres. The act provides an integrated planning system that can work with and assist village-level governance, potentially empowering communities with a rights-based and participatory decision-making system that can help manage complex matters of urban governance and resource use. However, some of those steeped in traditional village governance may well see this as a threat of pervasive central government intervention. Equally, it is taking time for government agencies to appreciate the value of a more co-ordinated approach – for example, one between PUMA and MWCSO to support and enhance urban village governance.

7.5 Emerging agendas

Three major initiatives have been under way to address local governance issues in Samoa.

7.5.1 Ministry capacity building

A major institutional strengthening programme has been undertaken for MWCSO. This included a particular focus on local governance and the functioning of the Internal Affairs and Rural Development Division. The overall vision for the ministry, drawn from the government's Community Sector Plan for the Development of Samoa was: *Improved village governance, economic and social development*. The adopted mission was: *To strengthen effective and efficient delivery of community development services and local governance*, and a key goal was that local governance should enhance the social and economic well-being of all communities (Government of Samoa undated).

Some of the plan's objectives and strategies of direct relevance to the current system of local governance and forces for change discussed earlier were as follows:

- Helping communities to build greater cohesion:
 - improve community planning to address infrastructure and environmental protection needs;
 - promote and integrate customary and community-based justice; and
 - support dialogue between traditional leaders, the church and community-based organisations in the development of cultural and church-based programmes in support of community well-being.
- Advancing gender equality and supporting a greater role for women in society:
 - promote the participation of women in politics, customary and community organisations and the private sector.

- Valuing vulnerable members of our society and giving them equal opportunities to fully participate:
 - promote the place of youth in local governance structures.

7.5.2 Samoa Village Governance Strengthening Project

The Samoa Village Governance Strengthening Project was initiated in 2009 by the CLGF Pacific Project in close consultation with MWCSD. Its purpose is to provide technical advice and support to the ministry to develop a ‘Village Governance Policy’ and implementation plan that will form the basis for sustained governance capacity strengthening at the village level into the future. This reflects a growing view that in order to meet the challenge of an ‘improved quality of life for all’ set out in the Strategy for the Development of Samoa, village government must inevitably be drawn into the government’s agenda for improved public administration at all levels.

Reflecting his analysis of forces for change discussed earlier, Afamasaga Toleafoa (2006) suggested the kind of strategy that might be adopted:

... to retain the existing village *fono* as the governing body but to progressively introduce a more business-like approach and management skills to village government, initially through the offices of *pulenu’u* and other institutions that serve the village *fono*. This is achieved by bringing these offices more closely under the direction and supervision of the Internal Affairs Division...

By this process, the management capacity of village government can be raised via improved selection of key personnel such as *pulenu’u* and *sui ole malo*, supervision and management support, and introduction of resources and working procedures more in line with the needs of modern government and the rest of the public sector.

The village *fono* itself will retain its traditional form and underpinnings. But this does not exclude the incorporation and use of improved working procedures and processes, especially when administering matters of economic and social development and law and justice, which must be in line anyway with principles and standards set down by relevant statute.

Such an approach could capitalise on several of the as yet little used provisions of the Internal Affairs Act 1995.

A *Draft Strategy to Strengthen Governance at Village Government Level in Samoa* (Afamasaga Toleafoa 2012) was finally completed in early 2012, and has been incorporated into MWCSD’s Community Development Sector Plan (Afamasaga Toleafoa personal communication). It notes that the need to strengthen village authority capabilities has been identified in successive national development strategies and in the Public Administration Sector Plan 2007–11. The objective is thus to enhance the decision-making and management capabilities of village *fono*, so that they can operate effectively alongside other government agencies and institutions and contribute to the achievement of national objectives. It is proposed that this be

achieved by a long-term programme of awareness raising and capacity building in good governance and improved administration, including:

- a series of seminars in each of the 42 parliamentary constituencies, bringing together leaders from all the villages in the district to discuss the need for reform and plans for strengthening village government;
- enhancing the role, capacity and performance of *pulenu'u* and *sui-ole-malo*;
- strengthening the Division of Internal Affairs and making fuller use of the relevant provisions of the Internal Affairs Act;
- a review of the role and operation of the two executive committees;
- workshops with village *fono* leaders and stakeholders on Samoa's system of government, on Samoa's constitution and legislation, on government's national plans, and on democratic principles of governance and management;
- restructuring village *fono* decision-making processes to reflect democratic good governance principles and best practice; and
- training for village *fono* leaders and stakeholders in using the new governance and management structures (Afamasaga Toleafoa 2012: 18–22).

7.5.3 Vaitele pilot study

The third strand of activity was a pilot study of Vaitele, exploring aspects of non-traditional governance in urban areas and in particular the contribution that could be made by the preparation of a Sustainable Management Plan under the provisions of the Planning and Urban Management Act. This project was carried out by PUMA in conjunction with the United Nations Development Programme (UNDP 2006). Its goal was:

To provide a model approach to urban governance that assists Pacific communities safeguard their social well-being, cultural identity, physical and environmental resources and stimulates opportunities for economic development.

Specific objectives were to:

- develop an approach to urban and environmental planning that assists with the pursuit of economic development, the protection of cultural systems and enhancement of the local ecology;
- develop an approach to urban and environmental planning that accords with the benefits of traditional village governance, but assists with particular challenges from massive population increase and vulnerabilities beyond the usual resources of communities;
- produce a model strategic land use/environmental planning policy that targets urban development and environmental management, and respects rights-based principles of community empowerment, equity, participation and ownership.
- provide a road-map for the development of institutional capacity to balance the protection of the environment with the pursuit of economic development to reduce poverty and improve the quality of life of communities; and
- develop and commence implementation of a Sustainable Management Plan (SMP).

However, the extent to which the project would seek linkages with, and build upon, established village governance practices was unclear. Also, as noted earlier, an evident key issue was whether there would be effective co-ordination between PUMA and MWCSO.

7.6 Lessons for effective legislation

In various ways the Samoan case highlights the limits to legislation, and the scope to provide appropriate local governance quite effectively through largely traditional systems in societies where those systems remain strong, productive and essentially benign, and provide an adequate level of accountability, transparency and inclusiveness. Samoa offers an interesting contrast with Kiribati and Tuvalu, where more concerted efforts have been made to introduce modified 'western-style' systems of local government alongside, or in the case of Tuvalu integrated with, traditional structures. In both of those countries it has proved difficult to achieve the desired blend of 'old' and 'new'.

It is also noteworthy that Samoa's Internal Affairs Division has had considerable success in providing guidance and oversight of village governance, notwithstanding limited formal implementation of its act. The division's successes have come from working with and through the traditional system, and not going against the grain or overtly promoting worrying change. However, the act's provisions for appointment of *pulenu'u* and *sui-ole-malo*, and their role in maintaining contact with central government and promoting government initiatives, have undoubtedly contributed to the division's achievements.

Nevertheless, recent moves to strengthen MWCSO, formulate a policy and strategy to enhance and 'update' village governance, and use Vaitele as a pilot study for new directions in urban governance and planning, all suggest a renewed awareness of the need to extend administrative reform to the local level as part of the drive to improve the nation's economic and social well-being (Afamasaga Toleafoa 2006). At the time of writing there were no official proposals for legislative change, although reviews of the Village Fono Act 1990 and the Lands and Titles Act 1981 have been foreshadowed (Afamasaga Toleafoa 2012: 12). Perhaps a carefully constructed 're-interpretation' of the traditional frameworks and processes will prove sufficient. As outlined earlier, the traditional system is evolving in any event, and given continuing strong belief in the *fa'a samoa*, 'guided evolution' without heavy-handed legislative intervention might well be the best course.

On the other hand, it is difficult to see how some additions or amendments to the Village Fono Act can be avoided if the objectives of the government's Community Development Sector Plan are to be achieved and, as Afamasaga Toleafoa (2006 and 2012) suggests, improved working procedures and a more business-like approach to village governance are to be promoted. In this regard, the recently completed draft strategy to strengthen village governance also envisages making more extensive use of existing provisions of the Internal Affairs Act. At the same time, the growing pressures of urbanisation may well demand a different or substantially modified system of local government – perhaps based on an extended role for PUMA – to deal with the complex challenges facing Apia and its surrounding region.

Prior to Samoan independence, Prof JW Davidson argued for a 'legally recognized system of local government, in subordination to the central government' (quoted in Afamasaga Toleafoa 2006). He put forward two related arguments. First: 'by creating a link between the two levels of political activity, it would encourage the growth of a more sophisticated attitude towards central government'; and second: 'by facilitating a more effective harnessing of local loyalties, it would make possible a substantial improvement in social and development services'. Those comments resonate with recent developments and challenges. Measured legislative change may prove to be an essential component of a successful response.

Chapter 8

Synthesis and Conclusions

This concluding chapter draws together the key lessons from the three case studies, considers the limits to the role legislation can play in bringing about better local government and governance, and finally sets out a revised set of key principles for effective legislation.

8.1 Lessons from the case studies

While by no means fully representative of Pacific island countries as a whole, the three case studies provide a wealth of material to flesh out the issues and ideas set out in chapters 2–4. In particular, the key lessons drawn from each combine to highlight the following critical factors to be taken into account in legislating a system of local government.

8.1.1 Clear role definition

The over-riding consideration is to be clear on what role local government is expected to play, the principal needs and issues it is expected to address, and how it should fit into the broader system of government. This sounds obvious, but it is an evident deficiency to varying degrees in each of the three case studies. Neither the Fiji Local Government Act nor the Honiara City Act has any statement of purpose or objectives (beyond simply establishing local government). The Samoa Village Fono Act aims: ‘to validate and empower the exercise of power and authority by Village Fono in accordance with the custom and usage of their villages...’, but provides little or no guidance on what is to be achieved. The same applies to the Samoan Internal Affairs Act, which seeks to: ‘provide for the promotion of the well-being of villages...’.

Thus with the exceptions of maintenance of custom and promotion of village well-being (itself undefined) in Samoa, it is impossible to know whether local government in the three countries is playing the role intended for it and how it should relate to other government agencies, other than in certain defined areas of service provision or regulation. This leads inevitably to uncertainty and is inimical to often-espoused policies of decentralised governance, as well as effective inter-government relations. In particular, it leaves open the vital question of the role local government should play in tackling the pressing issues of urban growth (see below).

Fiji’s 2008 Local Government Review/Reform Committee (LGRC) did address this issue, variously proposing a new section of the Local Government Act to set out the purpose of local government – that municipalities should play a broad role in the promotion of social, environmental and cultural well-being of communities, with a stronger focus on urban management issues, and that they should enjoy greater autonomy in local decision-making. In putting forward these proposals, it echoed

recent moves in New Zealand and Australia, and also to some extent the broad remit and considerable autonomy of Honiara City Council. However, such an approach begs the question of whether local governments in small Pacific countries can harness sufficient resources to play a wide-ranging role (see below).

8.1.2 Democracy and representativeness

Legislation in both Fiji and Solomon Islands has sought to establish ‘western-style’ democratic local government, with regular elections and universal suffrage, although its geographical coverage is limited. Both acts also contain provisions for additional appointed members of (or in Fiji ‘advisers’ to) councils that could help ensure adequate representation of women and minority groups – but the available evidence suggests that in neither case have those provisions been applied effectively for that purpose. Samoa offers a complete contrast: reliance on a traditional system that in several crucial respects offers open, representative and accountable governance, but without elections and with some significant qualifications in terms of the role of women and untitled men.

The Pacific experience raises important questions about the true nature of democracy that on the one hand go beyond the scope of this study, but on the other need to be considered in framing principles for effective legislation. In particular, these questions include whether and how principles for effective legislation should incorporate several elements of CLGF’s Aberdeen Agenda for local democracy:

- **constitutional and legal recognition for local democracy:** local democracy should enjoy constitutional and legal recognition;
- **the ability to elect local representatives:** citizens should be able to elect their local representatives in conditions of political freedom;
- **opportunity to participate in local decision-making:** all citizens should be able to participate actively in the local democratic process; and
- **inclusiveness:** the process of local decision-making must reflect the social, economic, environmental and cultural needs of the entire community.

Constitutional recognition of local government – as opposed to simply legal recognition through local government acts – can be a vexed issue. As discussed in section 5.3, Fiji’s Constitution Review Commission strongly endorsed the role of local government and believed it to be an entrenched feature of the system of government, but decided against constitutional recognition: it appeared to be concerned about the potential implications for national unity and relations between Fiji’s different ethnic groups. In Solomon Islands, Honiara City Council enjoys a constitutional mandate, but evidently broader recognition of local government would be seen to challenge the prerogatives of the provinces. In Samoa, constitutional recognition of village government would likely be seen as superfluous, given its deep roots in the *fa’a samoa*, recognised by the Village Fono Act. By contrast, local government is mandated by the Papua New Guinea constitution, but seems to occupy a weak and somewhat tenuous position.

Similarly, it is debatable whether ‘western-style’ elections are always the best way to produce the breadth of representation and level of inclusiveness sought by the Aberdeen Agenda. If local decision-making processes are genuinely inclusive, having an elected council at the apex of those processes may be less important, provided the peak body enjoys some other form of genuine social legitimacy, as in Samoa. At the same time, inclusiveness could be enhanced by appointing ‘representatives’ of various social and interest groups to councils, as in Fiji and Honiara. The Fiji Local Government Review/Reform Committee endorsed having at least some appointed members of councils to supplement elected representatives.

8.1.3 Social context

The need to respect cultural differences and avoid ‘one size fits all’ imposition of western models of local government is now generally accepted. However, what the case studies show is that much more thought needs to be given to precisely how systems and legislation should be tailored to social context, notably the impact of ethnic differences and sometimes conflict, as well as customary practices such as *wantok* loyalties. Unless handled effectively, these factors can and do undermine sound governance and the achievement of desired levels of service delivery, economic development etc. In concert with sound policy frameworks, legislation can be used to establish a system of checks and balances that reflects cultural realities and ensures necessary standards of good governance.

The case study of the Honiara City Act offers valuable learning in this regard. Seemingly mundane aspects of local government such as council committee systems can raise all sorts of complex issues in particular cultural environments. By the same token, there are ample opportunities to build anti-corruption measures into legislation, notably in areas such as separation of powers between elected members and senior management; budgeting, expenditure control and audit; the way senior staff are appointed and their performance monitored; and so on. Adequate oversight of council operations by central government is also vital (see below).

8.1.4 Integrating systems

The situation in Fiji shows how responding to cultural factors by creating multiple institutions and ‘rival’ systems of local administration can become counter-productive. Where it is simply not possible to have a single system of local government, effective linkages between different pieces of legislation and legislative provisions are needed to facilitate necessary co-operation and co-ordination between different systems and institutions. But this need for co-ordination adds to pressure on limited resources.

In both Samoa and Honiara, this need for integration – or at least effective cross-referencing – is also evident with respect to the parallel operations of local government and land-use planning systems. Improved outcomes in terms of both local governance and urban management require clearly articulated links between the relevant acts and the agencies responsible for their implementation.

8.1.5 Urban growth management

Planning and management of expanding urban areas is a central issue across much of the Pacific, but one that generally has not been addressed effectively in local government legislation. This is clearly evident in all three case studies, and relates closely to the previous point about the need to integrate systems. In Honiara, the absence of a legislative framework for strategic urban planning and effective stakeholder involvement in that process was a serious deficiency, accentuated by the confused arrangements for local planning, development control and building regulation under the Town and Country Planning Act and Honiara City Act.

In Fiji, the division between the system of municipalities and that for adjoining native lands, coupled with local government's limited access to funds and the lack of an effective central government role, has stymied effective urban management. The 2008 LGRC report drew attention to the need for improved policy and co-ordination to address urban growth issues, and this was identified by the government as a priority for the subsequently established Local Government Committee, but it appears that little if anything has been done – no doubt due in large part to lack of resources.

In Samoa, the establishment of the Planning and Urban Management Agency was an important step forward – and one that some other countries might do well to emulate, but at the time of writing had not been accompanied by effective measures to integrate its activities with the system of local governance.

8.1.6 Resources

Pacific island countries are mostly quite poor (in a monetary sense), and in general it is unrealistic to expect well-resourced local governments by international standards. This again highlights the importance of identifying and focusing on the primary roles local government is expected to play, which must represent a realistic match with likely availability of resources – both financial and human (required skills). In most cases this points to a limited range of functions and modest objectives, and this needs to be reflected in legislation to avoid unrealistic expectations.²⁴

However, the case study of Honiara shows that in urban areas at least it is quite possible to create local governments that are reasonably well resourced and have significant capacity to play a major role, provided that legislation grants them sufficient means to tap available sources of revenue. There may well be some competition for revenues between local and central government, but again the Honiara experience suggests that a broad mix of devolved revenue-raising options can generate substantial resources for both levels of government, even in poor countries. The critical agenda then becomes one of spending funds wisely and efficiently, and minimising maladministration and corruption. As noted above, legislation can also facilitate that agenda, as can effective oversight and support.

8.1.7 Capacity for oversight and support

Especially in emerging systems of local government, *proactive and supportive* oversight by central agencies is essential. With the appropriate legislative provisions it can

prevent corruption and maladministration and promote good governance and sound management. Central agencies are also more likely to have the resources or contacts with donors to promote and establish required training and capacity building programmes. However, in both Fiji and Solomon Islands it was clear that the capacity and/or powers of the relevant national ministry are out of alignment with their intended role and what needs to be achieved. In Fiji, the ministry was grossly under-resourced to carry out all the oversight and approval roles assigned to the minister, and thus becomes simply a blockage in the system. Nor did it have the administrative and professional capacity to promote good governance. In the case of Honiara, the ministry lacked both the resources to be supportive and, more importantly, the legislative mechanisms to monitor the council's operations and ensure probity in its affairs.

In Samoa, by contrast, the MWCSO seems to have been better resourced and through the Internal Affairs and Rural Development Division has provided considerable support to village governance. The provisions of Internal Affairs Act, although rarely invoked explicitly, appear to offer a useful framework for a facilitative approach without demanding excessive paperwork.

8.1.8 Inter-government relations

None of the case studies revealed robust legislative provisions to facilitate working relations between local and central governments, apart perhaps from the appointment of the *pulenu'u* and women's representatives in Samoa. Also in Samoa, the provisions of the Internal Affairs Act establishing executive committees could provide a useful platform for inter-government relations, but these did not appear to have been implemented.

There is no legislated arrangement in Fiji to discuss policy matters or co-ordinated programme delivery, although prior to the removal of elected councils the local government association was beginning to play a valuable role in that regard and building a productive relationship with the ministry. In the case of Honiara, local members of parliament may sit on the council and join a 'co-ordinating committee', but the role and wider membership of that committee is unspecified and it had not been established. There is further provision for agency agreements between the Honiara City Council and government departments or instrumentalities with respect to specific services, but no guidance on the content or structure of such agreements.

The cases of Fiji and Honiara also highlight the need for horizontal as well as vertical relations: urban municipalities in Fiji need to be able to deal effectively with their rural counterparts; Honiara needs to work with the surrounding province of Guadalcanal. The Honiara City Act includes a potentially useful provision for the Guadalcanal premier to sit on the city council, but the opportunities this offers had not been exploited.

8.1.9 Local government and traditional governance

The three case studies do not shed much light on ways to bring about effective links between local government and traditional governance. In Honiara, traditional governance issues simply do not feature in the workings of the City Council; while at

the opposite end of the spectrum, local government in Samoa is overwhelmingly based on traditional village governance practices, or in the case of Apia's urban villages, a transplanted version of those practices.

The issue of linkages between the two systems has received more attention in Fiji, but as noted earlier, within a context of separation between 'western' local government in larger urban areas and traditional governance (or modified forms of it) across the mostly rural hinterland. The Constitutional Review Commission of 1996 considered the possibility of reserved seats on municipal councils for indigenous Fijians, but found against such a proposal. However, the LGRC report of 2008 did recommend that the minister should be able to appoint a representative of traditional landowners to councils – although its terms of reference had made no mention of relations with traditional governance. The recommendation perhaps reflected a recent amendment to the Local Government Act requiring municipal councils to provide services to Fijian villages located within their boundaries.

8.2 The limits to legislation

Legislation can only do so much: attempts to cover all aspects of local governance and all possible eventualities in local government acts inevitably lead to extremely lengthy and complex documents that are difficult and costly to administer – which, as noted earlier, needs to be avoided in developing countries where resources are scarce.

It is therefore important to focus on key issues and processes. The Honiara City Act is commendable in this regard, with a mere 73 sections plus only a few schedules. It is, of course, supplemented by a number of ordinances (by-laws) and other legislation, but overall Honiara appears to have a manageable legislative package.

The same applies to village governance in Samoa, but for different reasons, namely the reliance on custom.

In the case of Fiji, the Local Government Act itself has 141 sections, and there is a great deal of subsidiary legislation. In addition, municipalities have functions or are regulated under around 30 other acts.

Excessive use of legally drafted by-laws to implement basic administrative steps (such as approval of budgets) and minor regulations has emerged as a problem in several Pacific island countries. Processing of by-laws can be delayed due to lack of resources and expertise in central ministries, referrals to legal agencies and a shortage of qualified lawyers.

To be administered effectively and productively, legislation needs to be informed and complemented by robust policy frameworks. These tend to be in short supply across the Pacific islands. Instead, there is often excessive reliance on detailed prescription through by-laws and requirements for ministerial approval of what could be routine administrative decisions within a legislated framework for probity and good governance. Again, the arrangements in Honiara are commendable for the lack of ministerial involvement in routine administration, but as discussed earlier the act may be seen to fall short in terms of deterring corrupt practices.

Fiji offered some useful examples of policy frameworks, notably the Urban Policy Action Plan (UPAP) and Urban Growth Management Action Plan (UGMAP), but in both cases implementation has been weak. In Samoa, the government's Community Sector Plan provided a valuable starting point for further work to strengthen village governance, and the CLGF-supported project to formulate a governance strategy focused more on policy development and capacity building than legislation. Similarly the Vaitele pilot study was designed to add policy direction to existing legislative frameworks. These projects could provide valuable lessons and models for others to apply to their own issues.

A key factor that legislation can influence to some extent but cannot deliver is popular demand for good governance. This relates to the discussion in section 2.4 on demand-side strategies pursued by some donors, especially in working with civil society organisations. The difficulty with this approach, to repeat Haley's (2008: 10) comment, is that: '...citizens in many Pacific countries do not expect or necessarily want their governments or elected officials to be responsive to the wider community needs – only to *their* (emphasis added) needs and desires...and this means very little accountability is ever demanded by communities'.

On a more positive note, however, what legislation can do is *create opportunities* for better and more responsive governance by making local governments more open and accountable. This can be achieved by requiring councils to inform and consult with communities on important issues; to undertake longer-term planning that seeks to engage local people in discussion about the range of factors that combine to promote enhanced well-being; and to make decisions in public. The CLGF Pacific Project has been associated with some successful work in this field, and a 'community visioning' exercise has been proposed as part of the next phase of the Honiara institutional strengthening project.

In general terms, both the Fiji and Honiara acts are weak on community consultation and engagement, in contrast to the traditional processes in Samoa, and there is considerable scope for legislation to do more. The Honiara City Act makes provision for area or ward committees, but fails to provide any guidance on their structure, role and operations. This issue also relates to the discussion on how best to achieve more representative and inclusive local governments, and the potential use of appointed members of councils – both to ensure that the interests of a broad range of community groups are taken into account and to provide regular points of contact with civil society.

8.3 Ten key principles

Based on discussion at the two regional workshops and with a wide range of colleagues across the Pacific, the findings of the case studies and the analysis set out in the previous sub-sections, the draft 'menu' set out in Table 4.1 has been consolidated into ten key principles for effective legislation. These are presented in Table 8.1. The focus is on establishing a robust basic framework within which the detail of specific functions and processes can be elaborated, and which provides a platform for related planning, policy development and programme management.

Table 8.1 Key principles for effective legislation

Principle	Explanation
Fit for purpose	<p>Legislation should:</p> <ul style="list-style-type: none"> • clearly state the purpose, mandate and role of local government • identify key challenges and establish frameworks to address them • be suited to the local context and culturally appropriate • as far as possible, avoid excessive layers or multiple systems of local governance • avoid undue complexity and match processes and expectations to likely availability of financial and human resources
Democracy and representation	<ul style="list-style-type: none"> • There should be elections under universal suffrage or a generally accepted traditional equivalent • Appointed councillors or reserved seats may be used to ensure adequate representation of all sectors of society • Local governments should be protected against arbitrary dismissal or dissolution
Local empowerment	<p>Local governments should be:</p> <ul style="list-style-type: none"> • principally accountable to local communities through elections and/or regular community engagement and reporting (including through traditional assemblies where appropriate) • encouraged to exercise strong local leadership in consultation with other community leaders • able to determine local priorities • given scope to make local laws, subject to necessary oversight and provision for appeals
Probity	<p>Legislation should:</p> <ul style="list-style-type: none"> • ensure appropriate ‘separation of powers’ between elected councils and management • avoid concentration of executive (and especially expenditure) authority in the hands of a few individuals • preclude undue political interference in the appointment of staff • include specific provisions for the proper appointment and, where justified, dismissal of the chief executive (or equivalent) • require open and transparent decision-making and independent audits • provide effective complaints procedures • as required, incorporate other administrative procedures and checks and balances to minimise scope for malpractice
Oversight and support	<p>Legislation should provide for:</p> <ul style="list-style-type: none"> • an appropriate and adequately resourced central agency to monitor local government operations and assist or intervene where necessary, but without excessive involvement in day-to-day management • capacity building support • independent inquiries into alleged malpractice

(Continued)

Table 8.1 (Continued)

Principle	Explanation
Capacity and sustainability	Legislation should: <ul style="list-style-type: none"> • provide access to adequate local revenues and other resources matched to the designated role, functions and priorities of local government • ensure sound asset and financial management • promote continuous improvement, including ongoing training and professional development for both councillors (or equivalent) and staff
Efficiency, effectiveness and equity	Legislation should: <ul style="list-style-type: none"> • prescribe an appropriate form of corporate or service planning (including community consultation) to match resources to agreed targets and priorities • require equitable service delivery to all parts of the local government area and all sectors of society (consistent with plans and priorities) • enable service delivery partnerships with related organisations (subject to necessary safeguards)
Community engagement	Legislation should: <ul style="list-style-type: none"> • require community consultation on key issues and major policy decisions • make provision for long-term development planning with broad community involvement
Inter-government co-operation	Legislation should include mechanisms to facilitate: <ul style="list-style-type: none"> • regular policy dialogue and joint action between local and central governments • co-operation between adjoining or closely related local governments in planning and service delivery
Clarity and consistency	Legislation should be: <ul style="list-style-type: none"> • as brief as possible, avoiding excessive reliance on regulations, by-laws etc. that require further legal drafting • easy to interpret • consistently applied • cross-referenced with other principal acts to form a coherent package • clearly linked to associated policy frameworks

Notes

- 1 Cook Islands, Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.
- 2 A comprehensive review of local government in Fiji was undertaken by a review and reform committee in the second half of 2008, with the government later deciding to replace all elected municipal councils with appointed administrators for an indefinite period.
- 3 This refers to the situation at the time the project commenced, prior to the dismissal of elected councils in 2009.
- 4 *Fonos* are district, town or village meetings.
- 5 'Principles on Good Practice for Local Democracy and Good Governance' adopted at the Commonwealth Local Government Conference held in Aberdeen, Scotland, in March 2005.
- 6 The Urban Fijian Programme Unit within the Ministry of Fijian Affairs has to address, as part of its remit, the issues surrounding the inclusion of Fijian villages within the boundary of a municipality.
- 7 Often called 'mayors', but in fact representatives appointed by village councils to deal with central government.
- 8 *Pulenu'u* are often described as 'village mayors', but this is misleading as they lack local executive authority and can only advise the *fono*.
- 9 Presentation by Tongan representative to 2010 meeting of CLGF Pacific Project Technical Advisory Panel.
- 10 This section draws heavily on the *Commonwealth Local Government Handbook* pp. 66–71 (CLGF 2009).
- 11 Various other components have been added to the ministry from time to time, e.g. urban development, housing and environment.
- 12 Under s4 of the act, the committee shall be appointed by the minister and shall consist of a chairman, who shall hold office for a period of five years, and not less than two other members appointed for any particular enquiry.
- 13 These provisions were all rendered inoperative following the replacement of councils with Special Administrators in early 2009.
- 14 It should be noted, however, that many of the areas of concern identified by the Commission are in fact primarily national government responsibilities, with the council playing at most a supporting role.
- 15 The project is currently under review, with the likelihood of an extension – although perhaps in a different form.
- 16 There is some uncertainty regarding the relationship between the two acts, due in part to lack of clarity in drafting.
- 17 Actual appointment is made by minister for lands, but in accordance with council's advice.
- 18 There is some doubt as to whether the appointed councillors may take part in electing the mayor.
- 19 Honiara City Council has its own 'enforcement officers', chiefly to enforce by-laws, and there has been some confusion of roles and responsibilities with the national police force.
- 20 This could be seen to counter Schoeffel's (2003) proposition that decentralised governance tends simply to cut the 'pie' of available resources into smaller pieces.
- 21 Since 2010 *pulenu'u* have been officially termed *sui-o-le-nu'u* ('village representative').
- 22 Henceforth *pulenu'u* includes *tofi-ole-malo*.
- 23 Now known as *sui-tamaitai*.
- 24 Availability of resources may, of course, increase over time, and likely improvements in the foreseeable future need to be taken into account in setting legislative parameters.

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