

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.