

## 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
<b>Democracy</b>	Citizens should elect local governments in conditions of political freedom and universal suffrage	Several countries use national electoral roll; Fiji excludes illegal occupants
<b>Legal protection</b>	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
<b>Autonomy</b>	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
<b>Leadership</b>	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
<b>Simplicity</b>	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
<b>Clarity</b>	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
<b>Relevance</b>	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
<b>Sufficiency</b>	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
<b>Effectiveness</b>	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
<b>Equity</b>	The distribution of services should reflect the diverse needs of the local community	PNG councils must implement youth and women’s programmes
<b>Support</b>	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
<b>Oversight</b>	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
<b>Representativeness</b>	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
<b>Inclusiveness</b>	Local governments should reflect the social, economic, environmental and cultural make-up of the entire community	
<b>Transparency</b>	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
<b>Probity</b>	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'
<b>Participation</b>	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
<b>Empowerment</b>	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
<b>Networking</b>	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
<b>Partnerships</b>	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
<b>Dialogue</b>	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
<b>Improvement</b>	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
<b>Innovation</b>	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
<b>Cultural respect</b>	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