

## Chapter 8

# Synthesis and Conclusions

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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.<sup>24</sup>

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	Legislation should: <ul style="list-style-type: none"> <li>• clearly state the purpose, mandate and role of local government</li> <li>• identify key challenges and establish frameworks to address them</li> <li>• be suited to the local context and culturally appropriate</li> <li>• as far as possible, avoid excessive layers or multiple systems of local governance</li> <li>• avoid undue complexity and match processes and expectations to likely availability of financial and human resources</li> </ul>
Democracy and representation	<ul style="list-style-type: none"> <li>• There should be elections under universal suffrage or a generally accepted traditional equivalent</li> <li>• Appointed councillors or reserved seats may be used to ensure adequate representation of all sectors of society</li> <li>• Local governments should be protected against arbitrary dismissal or dissolution</li> </ul>
Local empowerment	Local governments should be: <ul style="list-style-type: none"> <li>• principally accountable to local communities through elections and/or regular community engagement and reporting (including through traditional assemblies where appropriate)</li> <li>• encouraged to exercise strong local leadership in consultation with other community leaders</li> <li>• able to determine local priorities</li> <li>• given scope to make local laws, subject to necessary oversight and provision for appeals</li> </ul>
Probity	Legislation should: <ul style="list-style-type: none"> <li>• ensure appropriate ‘separation of powers’ between elected councils and management</li> <li>• avoid concentration of executive (and especially expenditure) authority in the hands of a few individuals</li> <li>• preclude undue political interference in the appointment of staff</li> <li>• include specific provisions for the proper appointment and, where justified, dismissal of the chief executive (or equivalent)</li> <li>• require open and transparent decision-making and independent audits</li> <li>• provide effective complaints procedures</li> <li>• as required, incorporate other administrative procedures and checks and balances to minimise scope for malpractice</li> </ul>
Oversight and support	Legislation should provide for: <ul style="list-style-type: none"> <li>• 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</li> <li>• capacity building support</li> <li>• independent inquiries into alleged malpractice</li> </ul>

*(Continued)*



**Table 8.1 (Continued)**

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