

CUSTOMARY LAW AND COMMUNITY-BASED FISHERIES MANAGEMENT ACROSS THE SOUTH PACIFIC REGION

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I. INTRODUCTION

The last two decades have seen the emergence of the concept of sustainable development, which now dominates international legal discourse and marks a shift in attitude towards both development and the environment.¹ In this context, environmental protection and biodiversity conservation can no longer be considered in isolation from other concerns. However, the task of successfully balancing social issues, the conservation of biodiversity and economic development is a daunting one for many of the small island developing states (SIDS) of the South Pacific. While the translation of broad aspirational principles into successful action is problematic, it is clear that solutions are required which address both societies and ecosystems.

Achieving biodiversity conservation and sustainable use of marine resources is perhaps more important for the Pacific island states than elsewhere. This is because marine biodiversity provides the local people with their main source of food and livelihood. Conventional top-down approaches to marine management have been imposed with only limited success, and it has now been recognised that bottom-up, participatory mechanisms are preferable.² In many islands of the South Pacific there is evidence of positive conservation outcomes founded upon community-based environmental management (CBEM) of marine biodiversity. But community-based initiatives need to be supported by legal frameworks to facilitate and strengthen them as well as to address specific issues of legitimacy and enforcement. While recognising the need for a legal framework, there is little guidance available to the law and policy-makers who are charged with drafting effective laws to facilitate marine governance. This paper will consider the legal frameworks that support CBEM in the region and, in particular, the role of customary law. The experiences of the Fiji Islands, Samoa and Vanuatu are investigated here as they may be of assistance to other SIDS seeking to establish similar cross-cultural environmental law regimes.

II. THE CONTEXT OF COMMUNITY-BASED ENVIRONMENTAL MANAGEMENT

Sustainable development has generated an immense volume of literature.³ It has been discussed and critiqued at length, with the focus ranging from definitional issues to its underlying ethical basis. What has become apparent through such discussion is that these matters are perhaps less important than how the key principles are implemented and translated into practice. It is becoming increasingly evident that, while transboundary environmental degradation

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1 Marie-Claire Cordonio Segger and Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (2004) 95.

2 See, eg, Dilys Roe et al, *Evaluating Eden: Exploring the Myths and Realities of Community-Based Wildlife Management* (2000).

3 For a comprehensive listing of the literature on sustainable development, see *Literature on Sustainable Development* <www.hku.hk/cupem/swcp/html/literature/cliterature.htm> at 6 November 2009. See also Centre for Sustainable Development, University of Westminster and Law School, University of Strathclyde, *Sustainable Development: A Review of International Literature* (2006) <<http://www.scotland.gov.uk/Resource/Doc/123822/0029776.pdf>> at 6 November 2009.

is recognised as a global issue, environmental indicators are continuing to worsen⁴ and international environmental law and policy alone cannot solve the problem.⁵ There is a need to rethink sustainable development, to find new ways to implement its principles, to evaluate ‘progress’ and to continue to adapt and improve strategies and policies. It is in this context that bottom-up approaches have gained support, including strengthening local governance institutions and identifying legal frameworks that support CBEM. This is particularly important for countries in the South Pacific with large Indigenous populations and historically strong traditional institutions and customary laws.

Furthermore, most of the SIDS of the South Pacific are composed of groups of islands, over which the population is dispersed.⁶ State-based fisheries and environmental legislation have generally failed to maintain or conserve marine biodiversity in the region.⁷ This is due in part to a lack of technical and financial resources at the national level. But it also reflects the fact that most of the Indigenous people of the islands continue to live at least a partially traditional lifestyle. Top-down laws will not be effective in such circumstances unless they are supported by the local people. Given the limited national resources, self-monitored and community-based approaches seem preferable to costly formal compliance mechanisms.⁸ Customary laws and traditional practices have guided South Pacific communities for generations, and local institutional arrangements are deeply rooted in their culture.⁹ As western-style legislation has been ineffective, there has been an increasing interest in customary fishing rights and traditional marine tenure in the South Pacific since the 1980s.¹⁰

The South Pacific peoples are noted for their beliefs in the interconnectedness of land and sea areas.¹¹ This has led to traditional communities managing natural resources and ecosystems in an integrated way.¹² It has also been noted that South Pacific communities were aware of the limited nature of marine living resources.¹³ This may in part be due to the heavy dependence the Indigenous peoples placed on marine resources for protein, promoting ‘lifestyles focussed on fishing’,¹⁴ combined with the restricted size of productive reef areas around the islands.¹⁵ While not all Indigenous practices were sustainable, a wide variety of mechanisms were employed which effectively conserved marine resources.¹⁶ It has been noted that, in the South Pacific, traditional natural resource management (NRM) practices pre-dated and worked at least as

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- 4 Klaus Bosselmann, ‘Rio+10: Any Closer to Sustainable Development?’ (2002) 6 *New Zealand Journal of Environmental Law* 297, 298.
 - 5 Matthew F Jaksa, ‘Putting the “Sustainable” Back in Sustainable Development: Recognizing and Enforcing Indigenous Property Rights as a Pathway to Global Environmental Sustainability’ (2006) 21 *Journal of Environmental Law and Litigation* 157, 179.
 - 6 This is the case, for example, in Fiji.
 - 7 Leon Zann and Veikila Vuki, *The Status and Management of Subsistence Fisheries in the South Pacific* (1998) 1, 2.
 - 8 Johan Colding and Carl Folke, ‘The Taboo System: Lessons about Informal Institutions for Nature Management’ (2000) 12 *Georgetown International Environmental Law Review* 413, 421.
 - 9 *Ibid* 423.
 - 10 Tim Adams, *The Regulation of Fiji’s Fisheries 1987–1992* <www.spc.int/coastfish/Reports/ifrp/fijilaw.htm> at 6 November 2009.
 - 11 Edvard Hviding, ‘Both Sides of the Beach: Knowledges of Nature in Oceania’ in Helaine Selin (ed), *Nature Across Cultures: Views of Nature and the Environment in Non-Western Cultures* (2003) 260.
 - 12 *Ibid* 257–9.
 - 13 Robert E Johannes, ‘Traditional Marine Conservation Methods in Oceania and Their Demise’ (1978) 9 *Annual Review of Ecological Systems* 349, 350.
 - 14 Hviding, above n 11, 257–8, 248.
 - 15 Johannes, ‘Traditional Marine Conservation Methods in Oceania and Their Demise’, above n 13, 349–50.
 - 16 In particular, destructive fishing practices are recorded by Johannes: *ibid* 355.

— CUSTOMARY LAW, COMMUNITY-BASED FISHERIES MANAGEMENT ACROSS SOUTH PACIFIC effectively as measures introduced in more recent times.¹⁷ The introduced mechanisms took the form of rules regarding the use and allocation of communal natural resources, informed by traditional ecological knowledge (TEK).¹⁸ During periods of colonial rule the traditional practices of these peoples were ignored and many were dispossessed of their traditional lands and marine areas. More recently, attention has again turned to these traditional communities and their knowledge, practices and laws as conventional western legal mechanisms have been largely unsuccessful at halting biodiversity loss.

III. THE LEGAL LANDSCAPE IN THE SOUTH PACIFIC

The recent success of CBEM and sustainable livelihood projects in the South Pacific region provides strong evidence to support local approaches to sustainable development and good environmental governance. However, the societies of the South Pacific region are diverse and their members represent multiple pluralities — of opinions, lifestyles and indeed laws. The legally pluralist nature of South Pacific states creates a challenge to law- and policy-makers.¹⁹ Customary law reflects the cultural norms of Indigenous people in a way that western laws cannot. In some instances, customary legal mechanisms may well be operating more effectively in the area of natural resource management than the state law, but in none is it the only form of legal regulation. Despite an initial interest in the integration of the plural legal systems at independence, the intervening decades have seen a lack of political will to advance the position of customary law. But '[i]f customary law is to remain significant and viable it faces immense challenges',²⁰ the first of which relates to its status in relation to the dominant legal system. It is clear that formal recognition of customary law would elevate its status and bolster often flagging support for traditional rules and enforcement mechanisms. Formal, national acknowledgement of customary law as a source of law also shows respect for Indigenous communities and their legal systems.²¹ The recognition of customary law in the South Pacific finds theoretical support in the concept of legal pluralism, principles of human and Indigenous rights, and also environmental justice. However, it remains problematic and a consideration of all the issues cannot be undertaken here.

Where community projects based upon traditional common property regimes exist, they can be supported by the dominant legal system, subsist in spite of national law or be created by such legislation.²² Set out below is a consideration of three different approaches taken in the South Pacific: in the Fiji Islands CBEM projects are purely voluntary; in Samoa the local governance institution has been re-empowered; and in Vanuatu the local protected areas have been formally recognised under legislation. Each of these will be explored and analysed in an

17 Johannes, 'Traditional Marine Conservation Methods in Oceania and Their Demise', above n 13, 356; P Chambers, 'Aquatic and Marine Biodiversity' in Darrell Posey (ed), *Cultural and Spiritual Values of Biodiversity* (1999) 400.

18 Fikret Berkes, 'Rethinking Community-Based Conservation' (2003) 18(3) *Conservation Biology* 621, 625.

19 For the purposes of this paper, legal pluralism can be defined as a situation where more than one normative order operates in the same socio-political realm: Franz von Benda-Beckmann, 'Citizens, Strangers and Indigenous Peoples: Conceptual Politics and Legal Pluralism' in Franz von Benda-Beckmann, Keebet von Benda-Beckmann and André Hoekema (eds), *Natural Resources, Environment and Legal Pluralism* (1997) 9 *Law & Anthropology Yearbook* 1.

20 Kenneth Brown, 'Customary Law in the Pacific: An Endangered Species' (1999) 3 *Journal of South Pacific Law* 1, 1 <http://www.vanuatu.usp.ac.fj/journal_splaw/articles/Brown1.htm> at 6 November 2009.

21 Jennifer Corrin Care, 'Customary Law and Women's Rights in Solomon Islands' (2000) 51 *Development Bulletin* 20.

22 A P Lino Grima and Fikret Berkes, 'Natural Resources: Access, Rights-to-Use and Management' in Fikret Berkes (ed), *Common Property Resources: Ecology and Community-Based Sustainable Development* (1989) 33, 51–2.

effort to identify the legal tools that assist in the conservation and the achievement of broader sustainable development outcomes.

IV. LEGAL FRAMEWORKS FOR COMMUNITY-BASED ENVIRONMENTAL MANAGEMENT

A. Fiji

Indigenous Fijians had, and to a great extent still maintain, a profound connection with their marine areas.²³ As with most of the South Pacific island communities, Indigenous Fijians have traditionally had a land and marine tenure system embedded in their culture.²⁴ Under customary law, land was held by the traditional owners on a communal stewardship basis.²⁵ This tenure system also incorporated a complex system of ownership of coastal waters and adjacent fishing grounds (*qoliqoli*).²⁶ These marine tenure areas were governed by customary law and informed by traditional ecological knowledge. Marine resources collected from *qoliqoli* have historically been the main source of protein for the Indigenous people, with any excess from the harvest being sold.²⁷

Fijian native land rights are complex but in summary it is clear that since 1880 the vast majority of traditional lands have been held communally by the Indigenous population.²⁸ However, marine tenure has never been granted the same status as land.²⁹ Article 6(b) of the *Constitution (Amendment) Act 1997* (Fiji) (Constitution of Fiji) preserves the ownership of

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- 23 Aliferati Tawake and Silika Tuivanuavou, 'Community Involvement in the Implementation of Ocean Policies: The Fiji Locally Managed Marine Areas (FLMMAs) Network' in Anne Caillaud et al (eds), 'Tabus or Not Taboos: How to Use Traditional Environmental Knowledge to Support Sustainable Development of Marine Resources in Melanesia' (2004) 17 *SPC Traditional Marine Resource Management and Knowledge Information Bulletin* 14, 26.
- 24 Batiri Thaman and Bill Aalbersberg, 'Initiating Integrated Coastal Management (ICM) in the Fiji Islands' (Paper presented at the Coastal Zone Asia-Pacific (CZAP) Symposium, Brisbane, Australia, 5–9 September 2004) 2.
- 25 Ibid. Although in some limited circumstances individual ownership was possible: Don E Paterson, 'Some Thoughts about Customary Land' (2001) 5 *Journal of South Pacific Law* 17, 22.
- 26 Kenneth Ruddle, *A Guide to the Literature on Traditional Community-Based Fishery Management in the Asia-Pacific Tropics* (1994) 47–51. The *qoliqoli* vested in the community and extended in a wedge shape beyond the low water mark to the outer reef slope and included coastal waters as well as all rivers, creeks and lakes: A Ravuvu, *The Fijian Way of Life (Vaka I Taukei)* (1983) 75; Joeli Veitayaki and G Robin South, 'The Constitution and Indigenous Fisheries Management in Fiji' (1998) 13 *Ocean Yearbook* 462.
- 27 Bill Aalbersberg, Alifereti Tawake and Toni Parras, 'Village by Village: Recovering Fiji's Coastal Fisheries' in United Nations Development Programme et al, *The World Resources 2005 — The Wealth of the Poor — Managing Ecosystems to Fight Poverty* (2005) 144.
- 28 Don Paterson and Stephen A Zorn, 'Fiji' in M A Ntuny (ed), *South Pacific Islands Legal Systems* (1993), 57; Pepe Clarke and Charles Taylor Gillespie, *Legal Mechanisms for the Establishment and Management of Terrestrial Protected Areas in Fiji* (2008) 2. The NLTB notes that 87% of land in the Fiji Islands is held under customary title: Native Lands Trust Board Fiji Islands <<http://www.nltb.com.fj/>> at 6 November 2009.
- 29 Although, in 2006, prior to the most recent military coup, a Bill was tabled in the Fiji Islands Parliament providing for the transfer of the *qoliqoli* from state ownership back to the traditional owners, albeit with legal control and management vesting in a statutory body: Qoliqoli Bill 2006 (Fiji), introduced into Parliament on 23 August 2006. This Bill, if passed unaltered, would put the *qoliqoli* in a similar position to customary land in Fiji.

Fijian land according to Fijian custom.³⁰ However, this only relates to dry land and does not extend to traditional fishing grounds or marine areas.³¹ Under the common law, the Crown has title to the foreshore and seabed of coastal waters by prerogative right.³² Nevertheless, these *qoliqoli* have been surveyed and registered by the Native Fisheries Commission³³ and under the *Fisheries Act* [Cap 158] (Fiji), the Indigenous group with customary rights to the *qoliqoli* is recognised.³⁴

The lack of recognition of customary law continues to be an area of weakness in the Fiji Islands. At the time of independence in 1970, the Constitution of Fiji did not provide generally for the recognition of customary law. Under the *Constitution of Fiji 1990* (Fiji), ss 16(3)(d) and 100(3) specifically provided for the recognition of customary law. However, this lasted for only seven years and Fiji is now one of only two Pacific island states³⁵ whose Constitution offers no formal recognition of customary law. However, s 186 provides that the Parliament must make provision for the application of customary laws and dispute resolution according to Fijian processes and, in doing so, must have regard to the customs, traditions, usages, values and aspirations of the Fijian people.

There are many examples of CBEM projects in Fiji and across the South Pacific. However, unlike other areas, Fiji has been particularly successful in networking individual projects through the Locally Managed Marine Areas Network (LMMA Network). The LMMA Network is a learning network involving practitioners³⁶ in various locations around the world³⁷ utilising common strategies and evaluation mechanisms to improve the success of community-based marine conservation.³⁸ One of the advantages of the LMMA Network approach is that it utilises existing agencies and effectively distributes project work amongst them with the agreement that they will each use the same training, monitoring and assessment criteria. Expertise is retained

30 *Constitution (Amendment) Act 1997* (Fiji) section 6:

The people of the Fiji Islands recognise that, within the framework of this Constitution and the other laws of the State, the conduct of government is based on the following principles: ...

(b) the ownership of Fijian land according to Fijian custom, the ownership of freehold land, and the rights of landlords and tenants under leases of agricultural land are preserved ...

31 For a consideration of the meaning of 'land' in the context of the South Pacific (and the Solomon Islands, in particular) see Sue Farran, 'South Pacific Land Law: Some Regional Challenges, Cases and Developments' (2001) 32(4) *Victoria University of Wellington Law Review* 953; Kenneth Ruddle, 'The Context of Policy Design for Existing Community-Based Fisheries Management Systems in the Pacific Islands' (1998) 40 *Ocean & Coastal Management* 105, 115.

32 Kent McNeil, *Common Law Aboriginal Title* (1989) 104. When the courts have been asked to address the issue of ownership of the *qoliqoli*, they have been unequivocal that the state owns the foreshore and seabed, by operation of the Deed of Cession or the *Crown Lands Act* [Cap 132] (Fiji): See *Tokyo Corp v Mago Island Estate Ltd* [1992] FJHC 76 and *Attorney General for Fiji v Mocolutu* [2002] FJHC 264.

33 Ministry of Indigenous Affairs (Fiji), *Native Lands and Fisheries Commission* <<http://www.fijianaffairs.gov.fj/NLFC.html>> at 6 November 2009. There are 410 registered *qoliqoli* areas.

34 In essence, the *Fisheries Act* [Cap 158] (Fiji) provides that the Commissioner must consult with *qoliqoli* owners when deciding whether to issue a fishing permit, although no right of veto is given to local communities: *Fisheries Act* (Fiji) s 13(2). This issue will be discussed further below.

35 The other being Tonga: Jennifer Corrin Care, 'The Status of Customary Law in Fiji Islands after the *Constitutional Amendment Act 1997*' (2000) *Journal of South Pacific Law* 37, 50.

36 The variety of participants includes individuals and organisations such as local communities, traditional leaders, government representatives, non-government organisations, academic scientists and researchers: LMMA Network, *2004 Annual Report* (2005) 2.

37 Fiji is only one of the countries involved in the LMMA Network. The countries that currently form part of the Network include the Fiji Islands, the Solomon Islands, the Philippines, Palau, Indonesia, Papua New Guinea and the Federates States of Micronesia (Pohnpei): *ibid* 4.

38 *Ibid* 2.

within the network and the project work shared. Fiji was central in the establishment of the LMMA Network and is 'arguably the birth site of the overall Network.'³⁹

The LMMA Network system utilises two key elements: the 'Social Contract' and the 'Learning Framework'. All members sign the LMMA Network Social Contract, by which they commit to work together to achieve the goals of the Locally Managed Marine Areas (LMMA). The Learning Framework is central to the LMMA system. It is a 'monitoring guide that outlines specific factors and methods to measure biological, socioeconomic and governance conditions that may influence the success of LMMA work'.⁴⁰ It sets out common parameters and standardised procedures for the collection and analysis of data.

Essentially, the Fijian Locally Managed Marine Areas (FLMMA) system involves using the local community to develop a marine management plan for the project site.⁴¹ Thereafter, the local community is responsible for the implementation, monitoring and enforcement of the management plan. This may be through a village-based environmental or fishing grounds management committee.⁴² The management plan usually incorporates traditional knowledge and conservation practices combined with modern scientific knowledge and monitoring methods. Tools that are used include limited harvesting restrictions for particular species and behavioural controls such as specific gear or equipment bans. These tools are implemented using customary legal mechanisms such as *tabus*⁴³ and more modern methods such as government controls. Customary legal enforcement mechanisms are also involved; examples include the declaration of short- and long-term *tabu* areas, banning of destructive fishing methods and the issuing or reduction of fishing licences. The FLMMA approach also includes raising awareness, capacity building, the establishment of sustainable livelihoods, the interaction of local community with the Fijian Great Council of Chiefs and international interaction with other LMMA network members in other countries.⁴⁴

Today, the Fiji Islands have by far the most project sites in the overall LMMA Network.⁴⁵ Rather than simply aiming to achieve conservation or environmental goals, the system is designed to balance conservation, sociological and economic outcomes. Importantly, the sociological factors include identification and establishment of alternative sustainable livelihoods. This has been broadly recognised as a key indicator of the long-term sustainability of any community conservation project.⁴⁶ The LMMA implementation in Fiji has led to increased marine biodiversity and a corresponding reduction of poverty in areas where rural livelihoods depend on marine resources.⁴⁷ Equally important, the LMMA process has improved

39 Ibid 22. There are six main organisations that make up the FLMMA: The World Wildlife Fund, the Fiji Country Programme, the Institute of Applied Science Programme of the University of the South Pacific, Foundations of the Peoples of the South Pacific, the International Marine Alliance and the Ministry of Fisheries and Forests. For every project, one of these organisations will take the lead; Blaise Kuemlangan, *FAO Fish Code Review No 7: Creating Legal Space for Community-Based Fisheries and Customary Marine Tenure in the Pacific: Issues and Opportunities* (2004) 18.

40 LMMA Network, *2007 Annual Report: Toward a New Vision* (2008) 6.

41 As of 2007, 3430 people had been trained in Fiji: *ibid* 13.

42 This committee utilises the traditional village governance institutions, although it has been recognised that collaboration with an outside organisation (such as University of the South Pacific Institute of Applied Sciences) is beneficial: LMMA Network, *2004 Annual Report*, above n 36, paras 4-50.

43 These are traditional governance mechanisms involving bans on fishing in certain areas or harvesting specific species.

44 Tawake and Tuivanuvou, above n 23, 22; Aalbersberg, Tawake and Parras, above n 27, 144.

45 Since the establishment of the first marine conservation area in 1990, the approach has grown in strength and numbers to over 217 LMMAs covering 10,460 square kilometres of ocean and involving 347 villages: LMMA Network, *2007 Annual Report*, above n 40, 5.

46 See generally, Roe et al, above n 2.

47 Tawake and Tuivanuvou, above n 23. It was reported that between 1998 and 2002, household incomes were augmented by 35%: *ibid* 27.

— CUSTOMARY LAW, COMMUNITY-BASED FISHERIES MANAGEMENT ACROSS SOUTH PACIFIC community solidarity as well as regional and national policy. The system has bolstered support for traditional practices and customary laws through their incorporation into the village-based management and action plans. Strong community leadership and compliance with customary laws at the village level have been key success factors.⁴⁸ This success can be attributed, in part, to the strength of the customary laws and practices of the Fijian people, which have endured notwithstanding colonial rule and political turmoil.⁴⁹

Despite their successes, enforcement of FLMMMA management plans remains problematic. There continue to be many issues such as renewed community pressure on marine resources, including subsistence needs and livelihoods, the reopening of *tabu* areas, and other external resources pressures such as tourism. Furthermore, the improved stocks inside the restricted areas have attracted the attention of poachers.⁵⁰ Fishing is much easier in areas where the resources are plentiful. In most cases, the marine areas cannot be adequately monitored by the government as they are too numerous and widespread to police when only limited resources are available. Greater power needs to be given to decentralised local communities, allowing them to enforce village-based rules against violators.⁵¹ Standing to sue has also been a major problem, with the *mataqali*⁵² lacking legal recognition and the tenure system not providing for the enforcement of individual land rights.⁵³

The FLMMAs have no formal legal status in Fiji, but they are supported by the government. After the results of marine area monitoring programs were reported to the Fijian government, the Fisheries Department formally accepted the FLMMMA model.⁵⁴ The Fisheries Department is now conducting resource assessments of all 410 *qoliqoli* areas and helping to develop management plans. But it can be seen that the lack of a formal legal foundation does weaken the FLMMMA system. This illustrates the importance and value of legal frameworks to support CBEM projects.

48 LMMA Network, *2005 Annual Report: A Focus on Lessons Learned* (2005), 16–21.

49 It could also be argued that the presence of the University of the South Pacific Institute of Applied Science (USP-IAS) at Fiji has also been significant. Access to technical information and scientific resources has helped to bridge the gap between environmental marine science and Indigenous communities and their traditional ecological practices. The implementation of the LMMA Network system has led to increased community awareness of biodiversity issues and greater participation in its protection. The USP-IAS has been involved in further community-based management research such as the pilot integrated coastal management project along the Coral Coast: Thaman and Aalbersberg, above n 24.

50 Annette Muehlig-Hofmann, 'Local Marine Resource Management: The Role of Fijian Villagers in Co-Managing a Small-Scale Fishery' (Paper presented at People and the Sea III, Amsterdam, The Netherlands, 7–9 July 2005) 5–6 <http://www.marecentre.nl/people_and_the_sea_3/papers/Stream%202/Panel%204/modified-Muehlig-Hofmann_Paper_Panel2_4.pdf> at 6 November 2009; Tawake and Tuivanuavou, above n 23. See also The World Bank, *Summary Report. Voices from the Village: A Comparative Study of Coastal Resource Management in the Pacific Islands* (2000), 5.

51 There is some evidence of violent conflict where villagers try to enforce community-based rules: LMMA Network, *2006 Annual Report: Enhancing LMMA Effectiveness through Continued Learning* (2007) 15; Joeli Veitayaki, 'Fisheries Resource-Use Culture in Fiji and its Implications', in Antony Hooper (ed), *Culture and Sustainable Development in the Pacific* (2000) 116, 124.

52 Mataqali are the sub-clan or lineage in the traditional hierarchical kinship system in Fiji: Kenneth Ruddle, *A Guide to the Literature on Traditional Community-Based Fishery Management in the Asia-Pacific Tropics*, above, n 26, 47.

53 In addition, the reluctance of the judiciary to penalise offenders has also been noted: LMMA Network, *2006 Annual Report*, above n 51, 15.

54 In 2002, 15 officers were trained in the FLMMMA approach. Since then, five government departments have become LMMA members — Fisheries, Fijian Affairs, Environment, Tourism and NLTB: Aalbersberg, Tawake and Perras, above n 27, 147.

B. Vanuatu

As with other Melanesian countries, the ni-Vanuatu⁵⁵ placed cultural importance in nature, including 'a fundamental belief in the spiritual connections between themselves and the rest of the natural world'.⁵⁶ The Indigenous people were and still remain heavily dependent upon natural resources for subsistence although they rely less upon marine resources for protein than elsewhere in the South Pacific.⁵⁷ It has been noted that in Vanuatu the traditional ecological knowledge and customary management mechanisms are directed more at improving the harvesting of marine resources than conserving them.⁵⁸ However, it is clear that both direct and indirect conservation occurred in Vanuatu in the past.⁵⁹

Vanuatu has a strong constitutional position, recognising both customary law and marine tenure. The *Constitution of Vanuatu* 1980 (Vanuatu) (Constitution of Vanuatu) provides that laws existing at independence continue in force until repealed.⁶⁰ Article 95(3) provides that '[c]ustomary law shall continue to have effect as part of the law of the Republic'. Further support is provided by art 47(1) which states that where 'there is no rule of law applicable ... a court shall determine the matter according to substantial justice and whenever possible in conformity with custom'.⁶¹

The Constitution of Vanuatu also provides that all land belongs to the Indigenous customary owners and their descendants,⁶² and that only they can have perpetual ownership of land.⁶³ While the Constitution of Vanuatu does not define 'land', the *Land Reform Act* [Cap 123] (Vanuatu) states that it includes 'land under water including land extending to the sea side of any offshore reef'.⁶⁴ Similarly the *Land Acquisition Act* [Cap 215] (Vanuatu) states that "'land" includes any estate, any interest in or benefit to land, all things growing on land, houses, buildings, improvements and all other things on land, land beneath water, the seabed extending to the sea side of any offshore reef but no further and the subsoil thereof'. This means that,

55 Indigenous natives of Vanuatu are known by this name.

56 Francis R Hickey, 'Traditional Marine Resource Management in Vanuatu: Worldviews in Transformation; Sacred and Profane' in Nigel Haggan, Claire Brignall and Louisa Wood (eds), *Putting Fishers' Knowledge to Work* (2003) 117, 125.

57 Ibid 118. This is supported by the current position and the most recent figures in this regard: Food and Agriculture Organization of the United Nations, *Fishery and Aquaculture Country Profile: Vanuatu* <http://www.fao.org/fishery/countrysector/FI-CP_VU/en> at 6 November 2009. This notes that, in 2003, fish protein was only 14% of total protein supplied.

58 Hickey, above n 56, 117.

59 For example, species or sites declared as sacred, periodic bans such as occurred following the death of a chief and other ceremonies all had the effect of protecting elements of the natural environment and its resources: Russell Nari, 'Merging Traditional Resource Management Approaches and Practices with the Formal Legal System in Vanuatu' in Anne Caillaud et al (eds), 'Tabus or Not Taboos? How to Use Traditional Environmental Knowledge to Support Sustainable Development of Marine Resources in Melanesia' (2004) 17 *SPC Traditional Marine Resource Management and Knowledge Information Bulletin* 14, 15.

60 *Constitution of the Republic of Vanuatu* 1990 (Vanuatu) art 95.

61 Although the *Constitution of the Republic of Vanuatu* 1990 (Vanuatu) contains several references to 'custom', only one reference is made to 'customary law'. It is not defined, which has led to some confusion as to its application. In contrast, the word 'custom' is defined in the Schedule to the *Interpretation Act* [Cap 132] (Vanuatu) as 'the customs and traditional practices of the Indigenous peoples of Vanuatu'; See also Kenneth Brown, *Reconciling Customary Law and Received Law in Melanesia: The Post-Independence Experience in Solomon Islands and Vanuatu* (2005) 73-96.

62 *Constitution of the Republic of Vanuatu* 1990 (Vanuatu) art 73.

63 *Constitution of the Republic of Vanuatu* 1990 (Vanuatu) art 75. However, as Brown points out, the reality is that much land remains in the hands of the former owners as the customary owners either cannot afford to develop or there is disagreement regarding traditional ownership: Kenneth Brown, *Reconciling Customary Law and Received Law in Melanesia*, above n 61, 71.

64 *Land Reform Act* [Cap 123] (Vanuatu) s 1.

unlike most other South Pacific island states, the Indigenous people of Vanuatu do have legal ownership of the seabed and subsoil out to the edge of offshore reef areas. However, under customary law the ownership of marine areas extended out as far as fishing or diving could be exploited⁶⁵ — from the shoreline to the outer reef slope, and in some cases offshore areas.⁶⁶ The original boundaries were related to where the ancestors had landed.⁶⁷ Therefore, whilst the Constitution of Vanuatu returned customary land (including the seabed and subsoil) to the Indigenous people it is not necessarily the case that this ownership aligns with customary law.

Along with many other South Pacific nations, the government of Vanuatu realised that centralised management of fisheries and marine areas was unlikely to succeed⁶⁸ and was prohibitively expensive.⁶⁹ It moved early to facilitate community-based approaches to marine management.⁷⁰ It is with this background that the *Environment Management and Conservation Act 2002* [Cap 283] (Vanuatu) (EMCA) came into force in 2003.⁷¹ Although it was originally designed to be a comprehensive legislative framework covering all aspects of environmental protection and preservation, in its present form the EMCA deals with only three areas in detail: environmental impact assessment (EIA); bioprospecting; and community conservation areas (CCAs). For the purposes of this paper, I will consider only the CCA provisions of the EMCA.

The EMCA provides for the protection and registration of any area as a CCA, provided that the site possesses unique genetic, cultural, geological or biological resources;⁷² is the habitat of species of wild fauna or flora of unique national or international importance; or merits protection under the *World Heritage Convention*.⁷³ Therefore, it appears that any site can become a CCA, whether it is a land or marine area, custom-owned or state-owned. In establishing a CCA the director (of the department responsible for the environment) negotiates with custom landowners to identify a suitable site.⁷⁴ Thereafter, the director may consult with and provide assistance to the custom landowners, chiefs and other interested parties to review and assess the nature of the CCA, to accurately identify the area to be included, to verify the rights and interests in land that is to be included, and to identify and evaluate the conservation, protection and management options proposed.⁷⁵ If the proposed area is of significance to biodiversity, it may be registered by the director as a CCA.⁷⁶ Most importantly, an appropriate conservation, protection or management plan must be developed prior to registration to ensure that the conservation objectives are achieved.⁷⁷ The director can then register the area as a CCA which is entered into the Environmental Registry along with other protected areas, and the landowners are issued

65 Howard Van Trease, 'The History of Land Alienation' in Peter Larmour (ed), *Land Tenure in Vanuatu* (1984) 15.

66 Robert E Johannes, 'Government-supported, Village-Based Management of Marine Resources in Vanuatu' (1998) 40 *Ocean & Coastal Management* 165, 173.

67 Peter Taurakoto, 'Customary Rights to Reefs and Landings' in Peter Larmour (ed), *Land Tenure in Vanuatu* (1984) 14, 14.

68 Johannes, 'Government-supported, Village-Based Management of Marine Resources in Vanuatu', above n 66, 166.

69 Hickey, above n 56, 120.

70 Johannes, 'Government-supported, Village-Based Management of Marine Resources in Vanuatu', above n 66, 166.

71 The *Environmental Management and Conservation Act 2002* (Vanuatu) was assented to on 31 December 2002 and commenced on 10 March 2003.

72 Under *Environmental Management and Conservation Act 2002* (Vanuatu) s 2, biological resources include 'genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity'.

73 *Environmental Management and Conservation Act 2002* (Vanuatu) s 35.

74 *Environmental Management and Conservation Act 2002* (Vanuatu) s 35.

75 *Environmental Management and Conservation Act 2002* (Vanuatu) s 36.

76 *Environmental Management and Conservation Act 2002* (Vanuatu) s 37(1).

77 *Environmental Management and Conservation Act 2002* (Vanuatu) s 37(2)(d).

with a certificate of registration.⁷⁸ However, if the agreed management plan is not implemented, then the CCA can be deregistered.⁷⁹ A committee may be formed, comprising of landowners responsible for the implementation of the management plan, which the director can assist with.⁸⁰ A landowner can seek to modify, amend or cancel a management plan by application to the director, but, again, there is a consultation period with that landowner and other interested parties.⁸¹ The EMCA provides that it is an offence to contravene any term or condition of a registered CCA.⁸²

Clearly, the benefit of this system is the formal recognition of community-based conservation areas. This approach allows the community to play a significant role in determining the form of the conservation plan, thereby taking into account traditional landholders' issues.⁸³ It permits active conservation management whilst providing for sustainable livelihoods. There is no loss of control over the land as the chiefs and custom owners still make decisions about the CCA. Community education and participation is the key feature of the CCA scheme. A further advantage of the CCA is that it allows the incorporation of traditional knowledge and practices into conservation and management plans, strengthening them and facilitating their long-term retention. Although customary law is recognised under the Constitution of Vanuatu, this approach also protects other important elements of cultural heritage (including traditional knowledge and practices).

The development and implementation of the conservation and management plans are collaborative and inclusive. The system is designed to leave primary responsibility with the community, but with the government providing assistance. However, this is dependent upon national resources which are limited in Vanuatu. Furthermore, the EMCA does not contain a detailed mechanism for implementation. The wording is general and does not provide specific regulatory mechanisms. From a western perspective, this leaves it open to some criticism. However, the main weakness of the system is enforcement. While the EMCA provides that it is an offence to breach the CCA, it is unclear as to whether this is directed at the CCA owners or outsiders entering the CCA. As enforcement is chiefly through the village, there must be continuing respect for village rules. Furthermore, in Vanuatu the village governance structure has no legal authority against outsiders. While landowners may attempt to enforce the plan, there are no powers to pass by-laws or regulations giving effect to them. For example, there are no powers for villagers to arrest those who contravene provisions of the CCA.

However, at this stage it remains to be seen how widely the existing EMCA and particularly the CCA provisions will be utilised. The main problems likely to be encountered in the implementation of this legislation are a lack of funding and resources.⁸⁴ The real advantage to this system is the combination of government technical, legal and practical assistance together with local traditional ecological knowledge, marine management mechanisms and village manpower. But in the absence of government resources there appears to be little benefit to communities from registering their CCAs.⁸⁵

78 *Environmental Management and Conservation Act 2002* (Vanuatu) s 37(3).

79 *Environmental Management and Conservation Act 2002* (Vanuatu) s 40.

80 *Environmental Management and Conservation Act 2002* (Vanuatu) s 39.

81 *Environmental Management and Conservation Act 2002* (Vanuatu) s 38.

82 *Environmental Management and Conservation Act 2002* (Vanuatu) s 39(f).

83 David Farrier, 'Emerging Patterns in Environmental Legislation in Pacific Island Countries' (2003) 7(1) *Journal of South Pacific Law* 5, 8. Professor Farrier notes that this is rare for Pacific Island jurisdictions, the exception being the *Rarotonga Environment Act 1994–1995* (Cook Islands).

84 It has been noted that the EMCA remains largely unimplemented: Yoli Desmond, Tom Tavala and Marie Tiana Hakwa, *Review of Environmental Legislation and Policies in Vanuatu* (2004) 36.

85 This appears to be the current position. See, eg, IUCN/CEESP/TILCEPA, *Indigenous and Community Conserved Areas and National Legislation: Support or Hindrance?: Vanuatu* <http://www.iucn.org/about/union/commissions/ceesp/topics/governance/icca/ceesp_icca_legislation/> at 6 November 2009.

C. Samoa

Indigenous Samoans have a profound connection with land and marine areas. Despite the small size of Samoa's inshore reefs and lagoons, they have provided sustenance for Samoans since the islands were first settled.⁸⁶ Due to the small size of the populated islands and the dependency of the local population on harvests from the sea, it became necessary for the villages to develop traditional conservation measures. These took the form of placing limits on harvesting by instituting bans or restrictions over areas where stocks had declined or were threatened. The penalties for breaking these customary laws were a monetary or produce fine, or in some cases physical punishment.⁸⁷ In addition, taboos prohibited villagers from hunting certain marine life during specific periods corresponding with the breeding season, during migratory travels or where a particular species had been over-harvested. At present, for the most part, villagers continue to live a mainly traditional lifestyle which has assisted in preserving many traditional customs and practices.

Today Samoa is an independent democratic nation in which the Indigenous people comprise the majority of the population. It is not clear whether customary law is a general source of law,⁸⁸ particularly in circumstances where it has been displaced by legislation. Under art 114 *Constitution of the Independent State of Samoa 1960* (Samoa), all 'existing laws' prior to Samoan independence remain in force until they are repealed or amended.⁸⁹ However, since 1960 there is little doubt that customary law has achieved greater functional recognition. In particular traditional Samoan practices relating to land use, land division and village institutions have been retained.⁹⁰ Under customary law, the waters adjacent to a village were also considered part of the land controlled by that village. Residence in the village also conferred customary fishing rights.⁹¹ These rights also included responsibilities to manage and regulate fishing.⁹² However, under the *Constitution of the Independent State of Samoa 1960* (Samoa), the land below the high-water mark is public land owned and controlled by the government of Samoa.⁹³

Significantly, the tribal hierarchical structures have been acknowledged under the *Village Fono Act 1990* (Samoa).⁹⁴ This Act was passed to 'validate and empower the exercise of power and authority by the village *fono* in accordance with custom and usage of their villages'.⁹⁵ In

86 Leon Zann, *The Inshore Resources of Savai'i, Western Samoa: Coastal Inventory and Fisheries Database* (1996) 4.

87 Cedric Schuster, *Tradition Matters* (1998) <<http://www.ourplanet.com/imgversn/95/schuster.html>> at 6 November 2009.

88 For example, the *Constitution of the Republic of Vanuatu 1990* (Vanuatu) includes a specific reference to customary law but the *Constitution of the Independent State of Samoa 1960* (Samoa) is not so explicit.

89 'Existing laws' are defined in art 111 of the *Constitution of the Independent State of Samoa 1960* (Samoa) and include customary law as well as German, British and New Zealand laws in force as at that day.

90 Today, approximately 81% of Samoan land on the two main islands (*Savai'i* and *Upolu*) is held by traditional owners: Samoa Department of Statistics, *Environment Indicators* <http://www.spc.int/prism/wstest/Environment/land_own.htm> at 6 November 2009.

91 Kenneth Ruddle, *A Guide to the Literature on Traditional Community-Based Fishery Management in the Asia-Pacific Tropics*, above, n 26, 108.

92 Ibid.

93 *Constitution of the Independent State of Samoa 1960* (Samoa) art 104(1).

94 Traditional social structures and institutions in Samoa include the *aiga*, *matai* and *fono*. Each village has a *fono* that 'controls community order and organisation and provide direction for village development including particular types of land use': Tu'u'u leti Taule'alo, Sooiolo David Fong and Patea Malo Setefano, 'Samoan Customary Land at the Crossroads — Some Options for Sustainable Management' (Paper presented at the 2002 National Environment Forum, Samoa, No 4, 2003) 1. Each extended family unit (*aiga*) is headed by a *matai* who is the holder of traditional title to land and responsible for family matters. The *fono* is the council of *matai*: Ibid.

95 *Village Fono Act 1990* (Samoa) preamble.

accordance with custom and usage of the village, power is given to the *fono* to punish anyone who fails to obey any direction set by the *fono*.⁹⁶

By devolving responsibility for local issues to the village councils the *Village Fono Act 1990* (Samoa) gave local communities greater control over their natural resources. In one sense this was a step in the right direction because the legislation gave villages a high degree of autonomy. But the power of the customary village authority and therefore the effectiveness of customary law had been eroded over time. Furthermore, the state government lacked the resources to manage fisheries and enforce regulations along the coastline where most of the villages were located.⁹⁷ Early studies, by Zann, for example, identified a continuing decline in fisheries.⁹⁸ It was recognised that the cooperation of coastal communities was needed in circumstances where the *fono* was a well entrenched governance institution and customary marine fishing rights were being exercised.⁹⁹ Therefore, a co-management system was established resulting in a number of Village Fishery Management Plans (VFMPs).

Villages are assisted by the government and NGOs to establish VFMPs. The approach taken is inclusive and participatory with the *fono* and other stakeholders developing the plans to control their customary marine resources. Local *matai* representatives are selected (along with representatives of other stakeholders such as women and untitled men) to form a Fisheries Management and Advisory Committee (FMAC) for each specific *fono*.¹⁰⁰ The FMACs are encouraged to identify key problems, identify the causes, suggest solutions and take suitable action.¹⁰¹ Initial research is undertaken to determine the status of the fishery and appropriate management tools including customary laws and traditional practices.¹⁰² The FMACs, in conjunction with the government, develop VFMPs that empower the *fono* to manage their own resources.¹⁰³ Villagers control the process by deciding what issues need to be addressed and what measures could be adopted; however, the Fisheries Department also plays an important facilitative and advisory role in this process.¹⁰⁴ Nevertheless, the process remains village-based and involves capacity building to allow villages to better manage their own resources.¹⁰⁵

However the *fono* could not enforce their village-based rules on people resident outside the village. This led the Samoan government to amend the fisheries legislation to permit village-based fishery by-laws, enforceable at the state level, to be passed.¹⁰⁶ These by-laws are subsidiary legislation and therefore must not be inconsistent with national laws. Under the *Fisheries Act 1988* (Samoa), by-laws have been passed which the *fono* have the power to enforce. In the first instance, the by-laws are enforced within the village. If this is unsuccessful, the *fono* can take

96 *Village Fono Act 1990* (Samoa) ss 5(3), 6. The 'fono' is the traditional

97 Government of Samoa, *World Summit on Sustainable Development Assessment Report* (2002) 45.

98 Zann and Vuki, above n 7, 6–7; Zann, above n 86, 4. Zann concluded that Samoa's reefs were some of the most degraded in the Pacific due to a combination of over-fishing, destructive practices, loss of habitats (particularly nursery grounds), and a lack of planning and management tools adopted by local communities.

99 Government of Samoa, *World Summit on Sustainable Development Assessment Report*, above n 97, 45.

100 Michael King and Ueta Fa'asili, 'Community-Based Management of Subsistence Fisheries in Samoa' (1999) 6(2) *Fisheries Management and Ecology* 133, 133.

101 .Ibid.

102 Zann and Vuki, above n 7, 7.

103 Marine resource policies are developed including maximum harvesting rates, controlling catches and setting aside sites for protection of species and their breeding grounds and recovery zones.

104 The Fisheries Division offers advice and training but not physical resources such as boats or money: UNESCAP–DRPAD, 'Integrating Environmental Considerations into the Economic Decision-Making Process: Modalities for Environmental Assessments — Fishery Resource Developments in Samoa' (1999) <<http://www.unescap.org/drpad/publication/integra/modalities/samoa/4sm000ct.htm>> at 6 November 2009.

105 Including being responsible for enforcement and punishment of offenders.

106 See *Fisheries Act 1988* (Samoa) s 3 and, in particular, ss 3(6)–(8) regarding enforcement.

the matter to the Fisheries Division and then to the state court system. The by-law provisions effectively decentralise the enforcement of marine environmental laws. This is a critical feature in a country where most of the population is split between two islands and living in dispersed villages. By empowering local communities to protect the inshore waters adjacent to their villages, communities are committed to the monitoring and enforcement of these rules.¹⁰⁷

In addition, NGOs working in the country have sought to assist communities to establish marine protected areas (MPAs) in Samoa. The Samoa Marine Protected Areas Programme (Samoa MPA Project) is an example of an NGO-led initiative in which local communities have been empowered to protect and manage coastal marine biodiversity effectively and to achieve sustainable use of marine resources. This has been achieved by establishing community-based MPAs.¹⁰⁸ The project involved management planning, management and sustainability. District committees were established including *matai* of the villages. Management plans have been drafted by the committees in collaboration with government, utilising resources provided by international organisations. The management plans for these areas include provision for ecotourism, cultural heritage protection, general fishery and coastal management, aquaculture and no-take zones.¹⁰⁹ Project staff have assisted with capacity building by training local people, increasing public awareness and disseminating educational material. The local people are now involved in community-based monitoring programmes.¹¹⁰ The project commenced in the year 2000 and all villages continue to be actively involved in their MPAs.¹¹¹

V. CONCLUSION

A comparative analysis of the above legal frameworks indicates that Fiji has the weakest legal support for CBEM. Fijian law does provide for customary communal land tenure, albeit with statutory control, but this tenure system does not yet extend to marine areas. This has resulted in a stratified system whereby the state legally owns the inshore marine waters (contrary to customary law), but recognises customary fishing rights. The tension between customary law and the imposed western legal system is likely to have a profound effect upon the long-term sustainability of any community-based marine management project which incorporates traditional practices and customary laws. While there is no constitutional recognition of customary law and no formal acknowledgement of the FLMMA, the LMMA Network remains strong and has achieved some of the most positive outcomes in terms of the conservation of biodiversity and establishment of sustainable livelihoods.

In contrast, both Samoa and Vanuatu have legal recognition of customary law but have taken two different approaches to CBEM. In Samoa, three marine conservation mechanisms have been adopted which empower villages to care for their local environment and reinvigorate traditional practices and customary laws. Samoa has reinvigorated the traditional village governance institution and linkages to traditional institutions like the *aiga*, *matai* and *fono* have added to the country's political stability.¹¹² However, decision-making is based upon consensus which is inclusive and participatory but can hamper development decisions.¹¹³ This has resulted in the slow progress of the development of community-based management plans. In Vanuatu, while

107 Ueta Fa'asili and Iulia Kelekolio, 'The Use of Village By-Laws in Marine Conservation and Fisheries Management' (Information Paper 17, First SPC Heads of Fisheries Meeting, Noumea, New Caledonia, 9–13 August 1999) 5.

108 MNRE, *Samoa's Marine Protected Area MPA Project* <http://www.mnre.gov.ws/biodiv/popup_pgm.cfm?pgm=4> at 6 November 2009.

109 The no-take zones represent about 10% of the total MPA area: *Aleipata and Safata Marine Protected Areas*, <http://www.mnre.gov.ws/biodiv/documents/Newspaper/030824_Aleipata%20&%20Safata%20Marine.pdf> at 6 November 2009.

110 MNRE, *Samoa's Marine Protected Area MPA Project*, above n 108.

111 *Aleipata and Safata Marine Protected Areas*, above n 109, 1–3.

112 Taule'alo, Fong and Setefano, above n 94, 2.

113 UNESCAP-DRPAD, above n 104; see also Taule'alo, Fong and Setefano, above n 94, 2.

there is a general recognition of customary law, there is no specific state-based legislation which recognises traditional practices in relation to fisheries. However, the EMCA permits the formal declaration of community conservation areas. Other approaches have been taken in other parts of the region.¹¹⁴ Samoa and Vanuatu both provide valuable examples of how CBEM projects, involving traditional practices and customary laws, can be reconciled with the dominant legal system.

Sustainable development necessarily requires the integration of environmental, cultural, social and economic considerations. CBEM projects provide an example of this integration at work, involving local communities in biodiversity conservation and the establishment of sustainable livelihoods. These projects are therefore at the interface of socio-cultural and environmental concerns. The recent interest in CBEM is a trend that will not go away. Most importantly, it respects and recognises the important role that Indigenous peoples have to play in addressing the multi-faceted environmental concerns involving the marine environment. The law can assist community-based initiatives by providing legislative provisions which recognise Indigenous rights to land and resources and which create a favourable environment for their success.¹¹⁵ If CBEM is to be 'scaled up' to address regional and ecosystem level goals, then these approaches must be integrated with national and regional aims for the development of the coastal zone.

Perhaps the greatest lesson that may be learned from the above analysis is that there is no perfect model legal framework to support CBEM. The best way forward may well be the development of a 'toolbox' of legal options. Although the realisation of landscape-scale environmental management is particularly problematic in the context of the culturally diverse communities of the South Pacific SIDS, much can be learnt from sharing current practice and experience and this must now be facilitated on a regional basis.

114 For example, in Tonga there is a clear legislative mechanism for devolution of power to manage marine areas to local custodians: E Techera, 'Survey of legal measures related to Indigenous Community Conserved Areas (ICCAs) in Tonga, Samoa, Vanuatu, Papua New Guinea, Solomon Islands, and Fiji: Tonga' in Hugh Govan et al, *Status and Potential of Locally-Managed Marine Areas in the South Pacific: Meeting Nature Conservation and Sustainable Livelihood Targets through Wide-spread Implementation of LMMAs* (2009) 117.

115 Fikret Berkes, 'Rethinking Community-Based Conservation', above n 18, 626; see also Kuemlangan, above n 39.