

of the Australian Government, Samoa developed a programme for the establishment of village fisheries management plans. Through this programme, the government encouraged participation by the *fono* (council of chiefs) and other users (i.e. untitled men and women's groups) in decision making. Separate meetings allowed for a free flow of discussions, and a representative from each group was selected to form the Fisheries Management and Advisory Committee (FMAC). The overall objective was to develop a Fisheries Management Plan to enable villages to manage their resources.

The process of developing a Fisheries Management Plan can take from three months to over a year, from the plan's initial introduction to its formal adoption. Decisions regarding both critical issues and solutions are made by villagers. The establishment of fish reserves (which are declared taboo for a period of time) is one management option; with the villagers being responsible for enforcement. As was done traditionally, villagers impose penalties for law-breakers, including fines of pigs, chickens or money. This system worked well for villagers initially, but proved difficult to enforce when offenders were outsiders (non-village people). Clause 104 of the constitution stipulates that all lands lying below the high water mark are public, meaning that outsiders can fish within the village coastal zone, including in taboo fish reserves. Villagers thus found it difficult to impose their fines

on members of another village. To overcome this problem, the government introduced village-level fisheries bylaws. The bylaws are village specific and often include activities that cannot be carried out within the village coast. To date, 83 villages are participating, with 62 villages agreeing to set up fish reserves as part of their Management Plan. This network of 62 reserves provides a good conservation strategy for Samoa's marine resources.

The fisheries bylaws are subsidiary to national legislation; hence they must not contravene any provisions of national laws. The bylaws continue to rely on government support especially when there is a dispute between parties (e.g. between the *fono* and an offender from another village). In this case the village will take their complaint to the Fisheries Division, which then takes the matter to the formal court system.

Lessons learned

Engaging the traditional decision makers (chiefs) ensures that decisions and undertakings are effectively implemented at the village level; the rich knowledge and experience of these two groups ensure that informed decisions are made. The bylaws strengthen villages' ability to manage their resources, and some customs that may have been lost (e.g. fishing harvesting methods) become revitalised.

Case Study 5

Traditional law and the environment in the Solomon Islands

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Traditional laws and conservation practices

Pre-western contact

Despite the diverse and heterogeneous nature of the Solomon Islands, the basic principles behind the different tenure systems and resource management regimes were generally similar. Land and adjacent coastal areas such as coral reefs and lagoons were owned under a kinship group (tribe, clan or line) ownership system⁶.

Traditional management of resources was usually done through the customary tenure system. The main customary conservation practices were:

1. Sacred sites: movement into and within these sites was usually restricted to certain people or customary priests only. These sites then automatically served as unofficial protected sites;
2. Social prohibitions: prohibitions or restrictions on the consumption of certain species by some social groups (these could be continuous or limited to certain times of the year); and
3. Serial or sequential prohibitions, which rotated areas and limited access to some groups for harvesting resources.

The most commonly practiced were the system of temporary closures, or sequential prohibitions or limited access on harvesting of resources.

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6. Coral reefs, lagoons and adjacent coastal areas are usually seen as an extension of the land.

What remains today?

As a result of change in beliefs, perceptions and expectations, prohibitions relating to sacred sites and social groups are no longer observed. These social changes have also resulted in the demise of the traditional leadership system, and the rapid erosion of traditional law and management systems; research is needed to ascertain their current status.

Challenges in documenting traditional law include:

- The secretive nature of such knowledge. This results in people jealously guarding their knowledge and being very reluctant to divulge such information. (Traditional knowledge and information are only passed to heirs or a few immediate family members and relatives.)
- Solomon Islanders' lack of capacity and resources to record this knowledge in their own or a foreign language, such as English.

Interface between traditional and governmental laws: Issues and challenges

The Constitution (section 75 (1)), the Provincial Act 1981 s.3 (7) and the Fisheries Act (No 6 of 1998) all recognise customary laws. Indigenous people are defined, however, as "rights holders" rather than "owners"; therefore, under the law they hold rights but do not own land. The concept of ownership derives from early laws in the late 19th century, where it was asserted: "crown ownership of the foreshore and the seabed is a common law principle". A court case in 1951, in which an indigenous Solomon Islander accused a westerner of taking trochus illegally, changed this view of land tenure. The court awarded the decision to the indigenous man and, therefore, recognised customary ownership of the reef. Another case involved a dispute over customary ownership of land below the high water mark. In this situation, a native owner opposed a timber company, which was alleged to have damaged marine resources during the processes of shipping logs. The court (in 1989) found against the plaintiff, finding that he failed to prove the existence of customary rights over the area, and that the disputed area was seabed and not land.

The Western Province Resource Management Ordinance was instituted in 1994 to provide for the proper management of resources and to empower customary owners in the management of lands. Part III of this ordinance (Customary Land Resources Management Orders, CLRMO), which refers to this empowerment, is an attempt to blend and synergise modern and traditional

law, while seeking to retain the flexibility of the former. The CLRMO process involves the community as well as local governments and, although it still faces some challenges, it is the first step towards a successful "collaboration" between customary and governmental laws.

Boundaries, enforcement, penalties and conflict resolutions

Boundaries of areas owned under customary law are marked by rocks, trees, streams, rivers and, most important of all, sacrificial alters and/or other sacred sites. Such areas are not restricted to land but also include sea areas, reefs and island shelves.

Customary laws are enforced through the community social structures. Traditionally, conflicts were resolved by discussions and dialogues between elders and chiefs, and penalties for disobeying traditional laws may have included public shaming, flogging or banishment. Today, it is difficult to impose penalties on dissidents who disobey traditional laws, especially those relating to resource management, with the result that people who disobey these rules normally go unpunished. Hopefully, the CLRMO can help to resolve this issue, with conflicts resolved through the courts system (from local courts to the Appeals Court).

Lessons learned and recommendations

Principles of customary marine tenure and resource management in the Solomon Islands are similar to other Melanesian countries discussed in this report;

- The breakdown in social structures and values has resulted in the breakdown of the traditional management systems. The effective management of resources in the future will require recognition and empowering of traditional laws by the national government. A hybrid between modern and traditional law, and science is required. However, even though legal frameworks or structures exist for empowering traditional resource owners to manage resources, awareness needs to be developed about such legal or governance structures. For various reasons (including disagreements and land disputes), it may not be easy for communities to take advantage of such structures.
- Equitable sharing of benefits from resources is an important part of resource management.