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ACCOMMODATING RESOURCE AUTONOMY ASPIRATIONS OF TRADITIONAL INSTITUTIONS WITHIN SOLOMON ISLANDS’ DECENTRALISED GOVERNANCE STRUCTURE

Submitted by

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In memory of my long gone chief mentor
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**Statement of Authorship**

Except where reference is made within the text hereof, this thesis contains no material published elsewhere or extracted in whole or part from a thesis or dissertation by which I have qualified or been awarded another degree or diploma. No other person’s work, either published or unpublished, has been used without due acknowledgement in the main text of the thesis. Similarly, this thesis has not been submitted for the award of any academic qualification in any other university or tertiary
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**Summary**

This thesis examines through a case study the legal and governance issues facing coastal resource governance in the region. Of particular interest is the power sharing arrangement and decentralised governance structures within states that impinge on the use and control over coastal resources. By examining the mechanics of resource governance and accompanying legislative framework, the task involves identifying opportunities presented by current decentralisation or devolution laws that provide the basis, if any, for transforming traditional management institutions into legally incorporated bodies that can undertake resource management functions within formal structures.

Dictated largely by the conditions of the scholarship, the scope of the thesis is predetermined, thus, focusing on a pilot community in Solomon Islands chosen for purposes of a pilot study into coastal fisheries and legislative empowerment by the *International Waters Project* (IWP).\(^1\) *Butubutu Babata*\(^2\) of Chea in the Marovo Lagoon, Solomon Islands, will provide the case study for analysis, thus, the focus of this thesis. A key task involves examination of the role, functions and existing structure of the *Butubutu* as developed under its *kastomary* marine tenure (*KMT*) system. Determining its *KMT* system’s role and functions within Marovo society will help identity specific elements of relevance that may be incorporated into a newly developed management regime pursued under the framework of decentralised resource governance. In a nutshell, the thesis intends to provide discussion and analysis of the

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1. The scholarship was funded under the *International Waters Project* with strict conditions attached, the most notable of which is the topic and scope of research, both of which MUST be in line with the focal area of the sponsor.
2. *Butubutu Babata* literally means Babata tribe, as *butubutu* is the local (Marovo) vernacular for tribe, or clan.
legal and institutional aspects of transforming a traditional institution, viz. Butubutu Babata, into a formally incorporated autonomous body that exercises inter alia regulatory and management powers currently vested in the state.

The basic approach is to examine the issues inherent within the interface between kastom and kastomary marine tenure, conservation and community economic development. In retrospect, the thesis is developed on the basis of qualitative, and to some extent, quantitative research. And given the aspirations and future development plans of the Butubutu, it is also exploratory notably when the need to negotiate grey areas, both legal and institutional, remains a precondition to realising the resource management autonomy aspirations of the same. Further, the thesis is developed through literature review of both primary and secondary material, opinions and views, and face to face consultation during onsite research. Additional input into development of the research framework derives from the author’s own experience as a rural coastal dweller in the country of research and close association with coastal fisheries matters – thus, the source of any general observations throughout discussions and analysis. It is worth highlighting at this juncture that funding constraint has impacted on the scope and depth of this thesis. This is further compounded by the lack of existing literature on resource governance and autonomy in the region.

Chapter One provides discussion and analysis of the current legal framework for decentralisation in Solomon Islands. It concludes with the finding that that basic legislative framework for decentralisation of resource governance can be established in the Provincial Government Act 1997 and the Fisheries Act 1998. Chapter Two studies the current structure of the Butubutu and identifies defects that need to be rectified and modified so as to be commensurate with the changing socioeconomic interest of the community. Chapter Three studies the Butubutu’s proposed organisational structure and recommends legislative enactment
for establishment of a trust body unto which all management powers are
to be vested. This is geared towards achieving wider community
participation in all decision-making processes, and the fair and equitable
distribution of profits. Chapter Four studies in detail the myriad of
issues inherent in the territorial and legal jurisdiction of the management
body. In terms of the need for a defined territory, the research has found
that kastom is vague in its rules governing the demarcation of
boundaries in open stretches of water. Chapter Five discusses the
Butubutu’s enforcement regime, and proposes the transfer of formal
enforcement powers to be exercised by the community under auspices of
the incorporated trust. Chapter Six provides discussion on the economic
viability and sustainability of the Butubutu initiative. Thus, it looks at
mechanisms for ensuring long-term sustainability that is premised or
dependent on two fundamental factors: self-financing mechanisms for
operational costs and meeting the economic interest, thus, motivation, of
the community. The thesis wound up with a conclusion that evaluates
the findings in the respective chapters and proposes a future direction
for coastal resource management not only for the Butubutu but for
costal communities in the Pacific Islands generally.

**Abbreviations:**

BBDT   Butubutu Babata Development Trust
CBM    Community-Based Management
CED    Community Economic Development
IWP    International Waters Programme
KMT    Kastomary marine tenure
MPA    Marine Protected Area
PIC    Pacific Island Country
RMC    Resource Management Committee

**Keywords:**

autonomy, Butubutu Babata, decentralisation, empowerment, kastomary
marine tenure, legislative enactment, micro level, ordinance, provincial
government, puava, resource governance, trust board
INTRODUCTION

I Evolving Coastal Resources Management: An Overview

Contemporary fisheries management approaches are largely centralised, government-driven, and, in most instances, profit-oriented. Far from doubt, such approaches stand as a contributing factor to the multitude of problems facing management of the fisheries sector throughout the globe. In most littoral states, the collapse of marine resources is attributed primarily to the dynamics of the cash economy compounded by the failure of management approaches to counteract the influences of the same. Such a problem has a more profound effect on coastal communities when it comes to inshore or coastal fisheries as it is upon that sector that locals have depended for income and food security. In societies in which KMT systems have existed, commercialisation and the infiltrating arms of the global market has rendered coastal communities and resource owners somewhat powerless in establishing or enforcing their rights to exploited resources. Jasper Nielsen et al have highlighted for instance that ‘[g]lobalisation, which is the integration of local markets and the subsumption of political and social processes under international economic forces, often leads to exclusion rather than new opportunities for [resource owners and] fishing communities’.\(^3\) Global efforts to combat the rising problems facing fisheries management have been manifested in various international arrangements. One that bears notable relevance for purposes of discussion herein is the FAO Code on responsible fisheries.

Assuming their territorial and economic sovereignty over marine resources by virtue of the United Nations Convention on the Law of the Sea of 1982 (UNCLOS), coastal states take on the obligation, moral or otherwise, to manage their resources responsibly. Such obligation

includes recognising the traditional rights of communities to coastal resources. Translating the rights and responsibilities over marine resources entrenched in UNCLOS and the inherent obligation of state towards coastal communities, the FAO Code of Conduct stipulates:

Within areas under national jurisdiction, States should seek to identify relevant domestic parties having a legitimate interest in the use and management of fisheries resources and establish arrangements for consulting them to gain their collaboration in achieving responsible fisheries.

Elaboration of what constitutes a domestic party can be derived from article 7.6.6 of the Code of Conduct which provides that

[when deciding on the use, conservation and management of fisheries resources, due recognition should be given, as appropriate, in accordance with national laws and regulations, to the traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fishery resources for their livelihood.]

In view of the global consensus on the need for recognition of traditional practices, needs and interests of indigenous people, the question therefore is how far have coastal states advance the interests of traditional resource owners within their resource management structures?

Given the unique geographical circumstances of Pacific Island Countries (PICs), dissecting the myriad of issues inherent in the foregoing question will present very interesting debate. For one reason, dynamic KMT systems are prevalent throughout the Pacific, thus, rendering coastal fisheries management a rather complicated area as will be demonstrated in the ensuing discussions.

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5 Ibid.
II Butubutu Babata and KMT Systems in Solomon Islands: A Case Study of a Traditional Resource Management Institution

The 20th century marks an exponential rise in fisheries resource extraction in Solomon Islands, much occurring since the advent of commercialisation of what were once treated as resources the utilisation of which are within the domain of a subsistence lifestyle. This changing trend has a profound effect on one of the most pristine lagoons in the world located in the western part of the country – the Marovo Lagoon. Many researchers and authors\(^6\) have described the Lagoon as a natural wonder abound with ecological riches and beauty. With its extensive coral reef system, the Lagoon stretches approximately 100km from its southeastern entrance off Ngatokae Island to Jela on New Georgia’s northern tip.\(^7\) It comprises 12 major islands – of which the largest are New Georgia, Vangunu and Nggatokae - and an estimated 200 islets spreading over a shelf area of about 700 kilometres square.\(^8\) The most notable feature of the Lagoon and one that continually attracts most international conservation groups and NGOs is its biomass.\(^9\) Thus, the Lagoon ‘shelters prime examples of almost all of the Pacific’s prime biomass, [such as] vast mangrove swamps, sea grass beds, extensive coral reefs, and some of the region’s largest remaining tracts of intact forest’.\(^10\) One need not search that far to establish documentary evidence of the Lagoon’s wealth:

Having an abundant and diverse marine and terrestrial resource base and so far relatively low population densities, Marovo is

---

\(^6\) Such as novelist James Michener.

\(^7\) Edward Hviding, ‘Marine Tenure and Resource Development in Marovo Lagoon, Solomon Islands: Traditional Knowledge, use and management of marine resources, with implications for contemporary development’ (Consultancy Report to the FFA, 1988) 11.


\(^9\) Renowned conservation groups such as WWF, Seacology, The Natures Conservancy and IWP-SPREP have continually concentrated most of their activities or projects within and beyond the margins of the Lagoon.

known as one of the “richer” areas of Solomon Islands, and Marovo people often talk about the affordances of ‘good things’ *(tingitonga leadi)* as their “wealth”.11

The above observation by anthropologist Edward Hviding12 can easily be established with a study of the Lagoon, its inhabitants and natural wealth. As of date, there were no concrete findings to the contrary that disprove the common description of Marovo Lagoon. But this is not to say the Lagoon and its constituent local communities were at present remaining insulated against external influences. Changes are inevitable, and it is only a matter of time before Marovo communities will start experiencing drastic changes to the Lagoon environment and its natural riches.

Influenced by western concepts and an infiltrating cash economy, communities in Marovo established a sound history of marine resource exploitation dating back to their days of early contact with European traders. For instance, early contact was recorded as far back as 1844 when Captain Cheyne traded tomahawks for turtle shell with the locals of neighbouring areas. But of significance was the local’s contact with Lieutenant Sommerville of the Royal Naval vessel, *HMS Penguin*, who spent considerable time from 1893-94 doing ethnographical studies of life in the Lagoon.13 Integration into the cash economy was triggered through involvement with the bech-de-mer trade commencing in the late 1800s as well as the copra industry which flourished in the early 1920s. Until recently, the latter was the mainstay of the Lagoon’s rural economy, bolstered with the establishment of a cooperative in 1933.14 Remnants of that plantation economy can still be seen today in present day Marovo

12 Hviding was based at Chea Village during the 1990s doing anthropological research towards his PhD.
13 Hviding acknowledged this encounter as one that ‘*signaled an impending “sea change” through the advent of British colonialism*’. Hviding, above n 11, 94.
with the operation of four copra buying centres throughout the Lagoon, viz. Mahoro, Kieru, Bunikalo, and Chubikopi on the east coast of Marovo Island. The drive for cash has taken its toll on marine resources of the Lagoon, and is more intense in the central parts of the Lagoon in which the urge and desire to exploit the commercial specie of one’s marine puava is more widespread.

Plate 1

Marovo Lagoon in the New Georgia Group, Western Province

With the growth of trade and interaction with “outsiders”, changes to traditional lifestyle in Marovo were inevitable. It is thus evident that ‘[p]eople in Marovo are no longer satisfied with a wholly subsistence lifestyle, and the exploitation of marine resources is now particularly important in terms of income and food security’.¹⁵ This is a common trend in the Pacific as established by most researchers. Dalzell and Schug have confirmed for instance that ‘[i]ncreases in the fishing pressure on

coastal fishery resources have resulted from changes in village lifestyle that creates economic pressures to increase production to satisfy higher material aspirations’.\textsuperscript{16} In light of this quest for change, the issue then is the ability of traditional management institutions to cope with the pressures of the cash economy. It needs to be noted at this juncture that approximately 85\% of land and marine estates in the country are held under kastomary tenure systems which were built around a subsistence lifestyle. But with emergent new threats, the erosion and or evolution of traditional rules, as was common throughout the country, have been witnessed over the years with much being dictated by circumstances faced by local communities including those in Marovo Lagoon. Thus, as observed in a recent study, the changes found in the Lagoon ‘are the result of…inter-island contact and socio-political transformation, much of which resulted from the encroachment by Europeans’.\textsuperscript{17} A fair summary of the numerous observations therefore, in Hviding’s description is that ‘[c]hanging relationships between people and land and sea environments and among groups and categories of people regarding the access to and use of these environments thus are focal processes in the history of 19\textsuperscript{th} and 20\textsuperscript{th} century Marovo’.\textsuperscript{18} And it is this history of resource use and exploitation and the opportunities presented therein for development and redefinition of management institutions in Marovo that will be central to this research.

Whilst experiences from other Pacific societies will be highlighted (where relevant) herein, this research focuses on the legal and management issues underpinning initiatives undertaken by a specific community within Marovo Lagoon – Chea Village. Established in 1958


\textsuperscript{17} Ibid, 17.

\textsuperscript{18} Hviding, above n 11, 136.
on the northern side of Marovo Island, Chea is a typical medium-size Lagoon village with an estimated population of 200 villagers divided into 25 households. The village affiliates to the Seventh Day Adventist (SDA) Church, and is occupied exclusively by members of the **Butubutu Babata** which has a strong hereditary chiefly system that remain intact for 11 successive generations since the time of its founding father, paramount Chief Tutikavo. By definition, a *butubutu* is an indigenous subgroup which controls pursuant to Marovo tenure system a *puava* or estate comprising both land and waters of the Lagoon. In total, 15 *butubutu* have controlled approximately 90% of the Lagoon from the east to the west. Membership of a *butubutu*, which is either through matrilineal or patrilineal descent, thus entitles one by virtue of *kastom* to ownership and user rights to and over resources. And such rights are so intrinsically attached to resources of a marine puava with which rights holders interact almost on a daily basis. To any Marovo *butubutu*, a marine puava is symbolic of its cultural heritage and identity, and *Butubutu Babata* is no exception. Similarly, a marine puava, whilst giving a group its cultural identity, is also the source of wealth both in traditional and modern times. Hviding’s description thus best sums that interconnectedness between the *butubutu* and the Lagoon:

In a place like Marovo, with a long tradition of fishing and seafaring, much of the history and sense of identity of a butubutu is bound up with the barrier reef and lagoon areas, particularly for the coastal people. For them, the marine puava is the source of group identity...people construct and reconstruct culture and identity through experiencing and interpreting the signs in the seascape.... At the heart of Marovo marine tenure, thus, is what is perceived as a long-standing, continuous tradition, indeed the

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19 Both the location on which the village is located and Lagoon are traditionally known as *Patu Laiti* and *Ulusaghe* respectively, but it is no coincidence that the island as is commonly referred to since the 1900s gave the Lagoon its present name.
20 See Kinch, above n 15, 21.
21 See Hviding, above n 7.
22 Hviding, above n 11, 315.
foundation of kastom, which associates defined groups of people with certain territories of barrier islands, reefs and sea.

Over the years Butubutu Babata has undertaken the task of reasserting its control over its marine puava through the adoption of a resource policy framework incorporating both traditional and modern management measures. This is a community initiative that has been pursued over the last 20 plus years.

Realising the increasing pressure on its abundant but exploitable resources, efforts were taken as far back as the early 1980s to organise the affairs of the Butubutu under the control and management of a corporate body of persons headed by Paramount Chief Herrick Ragoso who is traditionally referred to as the bangara. This new development was triggered in part by the setting up in 1982 of the Marovo Lagoon Resource Management Project within which Chea community actively participated. The project was then affiliated to the now defunct Marovo Butubutu Development Foundation which has in turn connections to the Marovo Area Council and the Council of Chiefs. The Chea Village Community constitution was thus adopted in May 1983, stating in its objectives that the community aspires to ‘cooperate with the Marovo Lagoon Resource Management Project to fulfil its objectives within Chea Community and overall Marovo communities’. An interesting feature is that the constitution maps out the hierarchical or organisational structure of the village:

The Chea Village Community shall have a structure consists [sic] of the Chief’s Spokesman appointed by the Chief, the Chief’s

---

23 Bangara is a traditional term for a hereditary leader of a butubutu.
24 Local councils of chiefs throughout the country do no operate under any enabling legislation although the functions of chiefs were recognized in the 1978 Constitution and subsequent legislation.
25 The term “Community” was used in the Village constitution instead of “Committee”.
27 Ibid, part I (b).
Secretary, the appropriate village committees, the traditional and legal advisors, and the elders committee.

The management of the butubutu’s marine resources was thus intended to be brought under this structure. By virtue of the constitution, the following special committees were established: (i) Elders Committee\textsuperscript{28}, (ii) Village Committee\textsuperscript{29}, and (iii) Finance Committee\textsuperscript{30}. The constitution similarly encapsulates regulations based on \textit{kastom} and tradition. These sets of rules were meant to regulate village activities including the use of natural resources existing within the butubutu’s territory or \textit{puava}.\textsuperscript{31} In attempting to keep up with changing circumstances, the constitution was later reviewed and amended in 1991, a development that was followed with the formulation of the \textit{Chea Village Community Resource Policy Statement}.

Progressive steps were taken by the Community in 2002 and 2003 respectively when it formulated two separate documents that provide further elaboration on resource-use policies and rules. In July 2002, the Community adopted a set of principles as set out in \textit{General Policy Directives on Community Development Foundations}. It similarly adopted in January 2003 its strategies contained in \textit{Policies and Plans for the Use and Management of Resources}. The Community’s rationale and objectives as reflected in the specified documents are broad:\textsuperscript{32}

\textsuperscript{28} Part VI: ‘There shall be an Elders Committee of five members whose function is to deal with matters of a disciplinary and retrieval nature referred to them by the Village Committee. The members of the Elders Committee shall consist of the Chief’s spokesman, a church representative/retired mission worker, a traditional advisor, a representative of the Area Council or a village organizer or any other members appointed by the Chief’.

\textsuperscript{29} Part VII: ‘There shall be a village committee known as “Chea Village Committee” whose function is to oversee and implement village activities which shall be in accordance with the Chief’s jurisdiction’.

\textsuperscript{30} Part VIII: ‘In the case where fund is accumulated, a Finance Committee shall be appointed consisting of 5-7 members whose job is to draw the yearly budget of operation. The Finance Committee shall include the Chairman of the Village Committee, the Chief, Chief’s Secretary, Village Committee Treasurer and a representative of the Advisory Board’.

\textsuperscript{31} \textit{Puava} refers to a defined territory of land and sea controlled by a \textit{butubutu}. For purposes of this research, the term will be used in reference to the \textit{Butubutu Babata’s} marine territory.

First and foremost, the tribe has to be constituted and equipped with sound policies to direct the courses of action. Secondly, it has to lay the framework for income-generating projects and businesses. Thirdly, it has to declare its land and sea resources and where possible to re-settle its people. Fourthly, to ensure the preservation of good customs and traditions that are unique and supportive to a prosperous co-existence of the people.

Community goals and aspirations were all captured in its vision statement, which testifies to the intent of its leaders in\(^{33}\)

[m]obilising the Babata tribe in looking for a socio-economic order that will bring [with] it wealth, well-being and happiness and the empowerment to live a autonomous and self-sufficient entities, where clan members co-exist through mutual respect for customs and orderly existence and acceptance of unique resources and a way of life as it strive along with life in its continuity.

The adoption of the above drives interest in further formulation of the Development Plan 2003-2007 for Chea, which, unfortunately, remains a concept or at best, in skeletal form at the time of this research. But the interest itself was driven by the arrival in 2003 of the International Waters Project (IWP)\(^{34}\) which chose Chea and Mbili Passage,\(^{35}\) to be its pilot project sites. Whilst the Project’s specific focus in Marovo Lagoon is the management of the beche-de-mer fishery,\(^{36}\) community interest and needs goes far and beyond that of a single fishery, thus, requires a comprehensive approach that captures all aspects of fisheries management at the local level. This entails equal emphasis on the governance structure and existing legal framework apart from

\(^{33}\)Ibid, 2.
\(^{34}\)Funded under the Global Environment Facility (GEF), the Project is administered in the region by SPREP whilst implemented in Solomon Islands by the Dept of Environment & Conservation.
\(^{35}\)Mbili Passage is also another neighbouring community in Marovo Lagoon.
\(^{36}\)Beche-de-mer being the target species is mainly because it is the most commercially viable whilst simultaneously threatened species in the Lagoon.
scientifically-oriented goals as often pursued by most environmentally-related non-governmental organisations (NGOs) and even institutions such as IWP. In view of the uneven approach by IWP as seen against the backdrop of underlying problems faced by Chea community, this research is thus geared towards addressing those broader resource governance and management issues deemed central to achieving the overall goals of the community.

Addressing legal issues remains central to the Butubutu’s future resource management plans. For one reason, the community, facilitated by IWP, now embarks on establishing and managing what are generically known as marine protected areas (MPA) within their puava. The IWP-funded Project mainly focuses on targeted areas which are relatively small in size and impact when compared to the entire area of the butubutu’s maritime estate and its socioeconomic potential. In implementation of the project, the Butubutu has closed to all forms of fishing a portion of Vaenimoturu barrier reef, located approximately five (5) km off the Coast of Marovo Island, as a protected area. But the smallness of such selected sites raises questions as to the scale and magnitude of success and impact when drawn against the development aspirations of Butubutu Babata. For it was clear in its vision statement that the community, in pursuing management of its natural resources, develops the agenda of ‘[m]obilising the Babata tribe in looking for [a] socioeconomic order that will bring wealth…and…empowerment to live as [an] autonomous and self-sufficient entity[.]’ In this context, small MPAs will not necessarily meet the ultimate goals of the Butubutu. During the author’s field trip to Chea and thus consultation with Butubutu Babata in January 2006, discontentment with the IWP approach was expressed. It was highlighted inter alia that the benefits from the small pockets of MPAs were dismal and would be short-lived, thus, failed to fully address the development aspirations of the community. And without doubt, the tenure and scale of activities under the IWP project rendered the same as

37 Babata Tribe Chea Village Community, above n 32, 2.
offering little guarantee as regards the sustainability of benefits, if at all, to the community. Even the critical issue of sustainability of such benefits remains questionable. In this vein, the problem is attributed to identifiable factors such as (i) relative small size of the total area of the MPA, (ii) narrowly focussed on a single fishery, ie. beche-de-mer, (iii) limited project duration or tenure, (iv) lacks a holistic or comprehensive approach to resource management issues, and (v) lacks a phased out exit strategy that would allow for continuity even after expiry of the project. A fundamental defect is the failure to instil sustained motivation within the community. An alternative proposal to compensate for shortfalls of the current IWP approach is thus warranted.

A viable option includes protecting through legislative means the Butubutu’s maritime estate in its entirety and thereby converting it into either a marine park or conservation area that will provide a window for eco-development opportunities in the future such as ecotourism. Such marine park should be zoned into ‘restricted take’ and ‘no take’ areas so as to cater for both the dietary needs of the community whilst simultaneously providing attraction should an eco-resort is established. The rationale is that such an option will achieve both the conservation and socioeconomic goals of the community – an objective the achievement of which is not guaranteed at this stage under the IWP project. The impacts of the project, insofar as conservation and socioeconomic objectives are concerned, are at best minimal as the benefits yielded so far and prospects of further successes are of negligible magnitude and remote respectively. Thus, pursuing the alternative option proposed above is a must. And pursuing it would entail looking at issues that revolve around the legal empowerment of Butubutu Babata as an autonomous institution that functions within the framework of local-level governance and the country’s decentralisation structure. Optimism was evident within the community when the option was put forward and unanimously endorsed during consultations. This level of optimism speaks volumes of Butubutu Babata’s aspirations not only to achieve
short-term conservation goals, but similarly to set in motion the momentum for revolutionising coastal fisheries management in Solomon Islands through adoption of a community-based management (CBM) system. Optimism was at its peak at the time of research and when successful, the Chea initiative will become a milestone in demonstrating the effectiveness of utilising and developing traditional marine tenure institutions in pursuing socioeconomic goals. The question that one faces is what legal and institutional changes are needed to achieve Butubutu Babata’s socioeconomic goals? This fundamental question sets the parameters of the research which are defined below.

![Plate 2](image)

*Plate 2*

*Vaenimoturu* Reef MPA, located 5km off Chea Village, covers a total area of approximately 1.5km².
The adoption of a decentralised political structure immediately after independence in 1978 was a decisive moment for the future of Solomon Islands. Not only was it timely and ideal for the unity of a much fragmented and largely diverse country, but the system similarly acknowledges the country’s geopolitical circumstances in which internal ‘regionalism’ built around the concept of ‘wantokism’ was the *modus operandi* in the pre and post independence era. This is inevitable for a country made up of 100s of islands unevenly spread out over an oceanic area of more than a million square kilometres. Scattered, isolated and remote, rural communities on the other eight (8) provinces have held a feeling of alienation from the reaches of a central government that is cocooned within its administrative headquarters on Guadalcanal with virtually all government machinery.

A rationale and aim of the provincial government system therefore is to ensure that the formal arms and functions of government reach out or trickle right down to rural communities; a category technically referred to herein as those at the *micro level* of governance. On face value, decentralisation offers one of the best alternatives to entrenching greater democracy in resource governance. Unfortunately, this has not been the case since independence. Community participation within formal governance structures is at best minimal and confined precisely to the electoral process. According to Kaua and Sorre, ‘the system dictates that political and economic power remains with the Central Government and spill-over benefits of such power-sharing spreads to Provincial

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38 Nielsen et al, above n 3, 3.
In effect the ultimate power to decide on and promulgate legislation governing resource-use and policy vests in the arms of government with little contribution, if any, on the part of resource owners. There is thus little room for direct participation by resource owners within the process starting from policy formulation to the translation thereof into enforceable laws. The omission of resource owners from this fundamental process fails to reflect the objective goals of decentralisation in any country that pursues reform to its resource governance structure. For any such country, the overall aim will always be ‘to increase resource user participation in decisions and benefits by restructuring the power relations between central state and communities through the transfer of management authority to local-level organisations’. The primary test for a successful transfer of management authority is the extent to which the three elements of resource management are ingrained within the management process. Thus, it must be ascertained the degree to which local communities participate in (i) the setting of management objectives, (ii) defining and providing knowledge base for management, and (iii) implementation. Failing the test manifests the need for reform and new strategies for decentralisation. As in the modern world, resource use and exploitation is always conditioned and influenced by political and power relations within a state. This is a relationship that must be spelt out in Solomon Islands if decentralisation and autonomy is to mean anything to the vast rural populace.

This chapter explores the potential for developing and expanding the current decentralised government system with the aim of establishing

41 Nielsen et al, above n 3, 3.
semi-autonomous institutions at the community level for purposes of resource management. Central to discussions and analysis will be the legal framework necessary for decentralisation and the eventual phasing out of resource management powers from the national and provincial governments to aspiring community-based or traditional institutions such as Butubutu Babata. Discussion and analysis will focus on determining the most relevant power source in terms of legislation and the appropriate government organ with legislative competence necessary to accommodate the aspirations of the Butubutu. Focusing in particular on Butubutu Babata’s initiative is vital for gauging the potential successes or short-falls decentralisation at the micro-level. Thus, as a well-organised tribal institution with a written constitution, the Butubutu initiative will set precedent and become the reference case for future decentralisation exercises within Marovo Lagoon and the country generally. But before indulging in this exercise, the statement by Blaise Kuemllangan provides useful insight into the intricacies of decentralised management:43

Community-based regimes in jurisdictions with decentralised governance will need to deal with the complexities of decentralisation and decentralised laws. Questions abound as to the extent of conservation management legislative powers and functions to be exercised by provincial and local level governments, and whether these government entities have the capacity resources to implement such functions.

Valid in all respects, the above provides a critical starting point to discerning the complexities of the decentralised system of governance adopted by the country. Of great importance is the extent to which local level autonomy and the powers of resource owners is factored into that decentralisation process as supposedly reflected in the legal framework. Insight into the issues underlying such complexity can thus be achieved

through a dissection of the legal framework for decentralisation, as will be covered below.

II INSTITUTIONAL DECENTRALISATION

Solomon Islands, upon independence, adopted a 3-tiered government system designed by the British colonial administration. By operation of the system, the Central Government sits at the top layer, followed by Provincial Assemblies and then Area Councils. Whilst the top two layers remain functioning, the bottom layer died a natural death at the dawn of the new century. This section will provide discussion and analysis of the constituent laws of decentralisation in the country.

A Tier One – National Parliament

The Solomon Islands Constitution 1978 sets out the basic framework of how the country is governed, in particular, the basic institutions of government. In so doing, it establishes under section 46 the national legislature ‘which shall consist of a single chamber and shall be known as the National Parliament of Solomon Islands’. Deriving its powers principally from the Constitution, Parliament is the supreme law-making institution of the country, thus, empowered to ‘make laws for the peace, order and good government of Solomon Islands’. In providing for the political structure of the country, section 114 provides that ‘Solomon Islands shall be divided into…provinces’. In the process, Parliament is vested with authority to facilitate decentralisation through legislative enactments, thereby ‘prescribing the number of provinces…[and] making provision for the government of…the provinces and consider the role of chiefs in the provinces’. It is thus unequivocal that provincial governments were the creatures of Parliament which has the ultimate

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44 See Kaua and Sore, above n 39.
45 The Constitution of Solomon Islands, s 46.
46 Ibid, s 59.
47 Ibid, s 114.
48 Ibid.
power to establish and abolish the same. On face value, it is a form of decentralisation within which the national Parliament imposes its will on provinces unilaterally.

Whilst the Constitution defines the power relation at the macro level, that is, empowering Parliament to incorporate provinces, it is rather silent on any decentralisation or power-sharing at the micro level. In other words, guidance as to the structure that a province should adopt to integrate local communities within the formal governance system or structure was absent. However, this should not be equated to political apathy or inertia as in-depth study might prove this as a reasonable approach given the cultural diversity of the provinces coupled with the technicalities of defining governance institutions below the provincial assembly level.

But a tenable argument to this situation is that reference to the application of kastomary law and the role of chiefs under sections 75 and 114 respectively suffices for purposes of establishing recognition of traditional institutions. These are the very institutions that have been given recognition by the colonial administration which has ushered in legal pluralism and allowed the same to flourish. Kastomary law was recognised and allowed to operate unfettered by the colonial administration except to the extent of inconsistency with written laws or statutes. The Constitution of 1978 thus emboldens the status of kastomary law within Solomon Islands’ legal system by according it full recognition, thereby maintaining continuity from what was practiced under the colonial administration. The problem though remains that in the 85 years of colonial rule, the status of traditional authorities and institutions has never been elevated any higher within the formal governance structure. Mere recognition was the best the colonial administration could offer. Unfortunately, this status quo has remained unchanged even after almost 30 years of independence.
In light of the trend, both legal and institutional within the last 20 or so years of independence, the question that needs to be thrown to the fore is: *is mere recognition sufficient to grant traditional institutions such as Butubutu Babata greater power and authority to function as semi-autonomous bodies within the formal structure of a province?* In a nutshell, the gap between formal government institutions and traditional bodies such as *Butubutu Babata* remains wide; a situation aggravated by a relationship that is vaguely defined, if at all. The pressing need therefore is a closure of the gap and a definition of the relationship between traditional or community institutions and the provincial and national governments.

Despite the absence of a prescriptive provision in the Constitution that addresses power relations at the micro level, section 75 is nonetheless a basis for further defining the role and status of traditional or community institutions within the provincial governance structure. The Constitution provides that ‘*Parliament shall make provision for the application of...customary laws...[and] In making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands*.’\(^\text{49}\) It must be stressed that *Butubutu Babata* derives its traditional powers to manage its puava by virtue of kastomary law, and as such, qualifies as a corporate body to be incorporated into the formal resource governance structure pending Parliamentary action in discharging its duty under section 75, and by implication, section 114. But whilst such legislative action remains pending owing to political inertia, the initiative by the *Butubutu* can be seen as an *aspiration* by a traditional institution to take a greater or proactive role in marine resource management at least within a formal framework. The legal hurdle faced by the *Butubutu* in terms of enforcement power in pursuing their endeavour only signifies the need for empowerment and devolution of certain powers from the Western Provincial Administration, and even the State. In a nutshell, the

\(^{49}\) Ibid, s 75.
presence of such hurdles only testifies to the fact that mere recognition of *kastomary* law and rights is inadequate to safeguard resources under *kastomary* ownership. What is central to this search for a solution is a ‘formalisation’ of the status of traditional institutions such as *Butubutu Babata* (powers and functions inclusive) within a western-oriented decentralised governance structure. In other words, there needs to be further decentralisation within provinces to ensure the process is complete and integrative of local communities and tribal groups. What then is the extent to which Parliament has discharged its duty under sections 75 and 114 of the Constitution by legislating for decentralisation at the micro level? This will be considered below.

**B Tier two – Provincial Assemblies**

Parliamentary action to define the organic structure of the Country as required by section 114 of the Constitution was realised in the adoption of the *Provincial Government Act 1981* which was later repealed by the *Provincial Government Act 1997*. Thus, by enacting the 1997 Act, Parliament is deemed to discharge its duty under the said Constitutional provision by prescribing the provinces in the country and providing for their government. *Western Province* of which Marovo Lagoon is an integral part is one of the country’s current nine (9) provinces.\(^{50}\)

In providing for their governance, the provinces are administered by provincial assemblies composed solely of elected representatives. Thus, section 7 of the Act provides that ‘*there shall be a Provincial Assembly for each province*’. Whilst the executive power of the Provincial Assembly is vested in the Premier and his Ministers (collectively known as the Provincial Executive), most law-making functions at the provincial level rests with the Assembly.\(^{51}\) Accordingly, in the absence of

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\(^{50}\) The rest of the provinces are *Central Islands Province, Choiseul Province, Guadalcanal Province, Isabel Province, Makira-Ulawa Province, Malaita Province, Rennel-Bellona Province, and Temotu Province*.

limitations imposed by Parliament, it can be inferred that a Provincial Assembly has powers to legislate for decentralisation at the micro level. This is premised on the argument that given the vast degree of diversity in the country, Provincial Assemblies are in a much better position to deal with governance matters within their defined spheres of influence. This raises at this junction the question of whether Parliament is the appropriate institution to be embroiled in the technicalities of translating sections 75 and 114 of the Constitution, notably provisions dealing with the application of *kastomary* law and the recognition of the role of chiefs, into area or issue specific legislation acceptable to all the nine(9) provinces. Given the divergent circumstances of the country, cultural and geographic for instance, devolution of responsibilities on the part of Parliament is warranted, thus the enactment of the *Provincial Government Act*. But has the Act achieved the desired level or extent of decentralisation necessary to readily accommodate initiatives of traditional corporate bodies such as that pursued by *Butubutu Babata*?

On face value, the Act concentrates on defining power relations between Parliament or the national government, and provincial assemblies - thus, decentralisation at the macro level. But even if it falls short of venturing into defining power relations at the micro level, that is, between Provincial Assemblies and community-based corporate institutions, it can nonetheless be argued that the *Provincial Government Act 1997* has provided the basic framework for decentralisation beyond Provincial Assemblies. This can be inferred from provisions conferring upon a Provincial Assembly the power to make laws for the government of the province. Section 32 of the Act provides that ‘*laws may be made for a province by Ordinance of the Provincial Assembly*’. In defining the scope of such law-making power, section 33 provides:

> A Provincial Assembly has power to make laws only if and to the extent that they relate to matters within the legislative competence of the Assembly or they are merely incidental to or consequential on other provisions, and those provisions relate to matters within the legislative competence of the Assembly.
Reviewing the case of *Butubutu Babata*, the issue therefore is whether the empowering of traditional corporate institutions is within the legislative competence of the Western Provincial Assembly. A guide to solving this crucial question is to determine the relevant matters or affairs within the competence of the Assembly as may be devolved by Parliament through the Minister responsible for Provincial Government. By virtue of the schedule to section 28(3) of the Act, the Minister may by Devolution Order declare matters such as the ‘[e]stablishment of corporate or statutory bodies for the providing of provincial services including economic activity’ to be within the legislative competence of a Provincial Assembly. Arguably, the provision is wide in scope to capture bodies including pre-existing traditional institutions that can operate effectively so as to be empowered within the defined framework of decentralisation. If such reference is given a fair and liberal interpretation to achieve the purposes of decentralisation, then there is strong proposition that the provision is inclusive and not otherwise. Adopting such interpretation would render the case of *Butubutu Babata* as falling within the legislative competence of the Western Provincial Assembly.

**C Tier three – Area Councils**

The third level of government that is purported to be closest to local communities is Area Councils, established by warrant under the Local Government Act and respective Provincial Ordinances. By virtue of section 3(1) of the Act, ‘[t]he Minister may by warrant under his hand establish such Councils as he may deem necessary or expedient for the purposes of local government’. When establishing a Council, the Minister by warrant is required to

(a) specify the name of the Council and the date it shall be established; (b) prescribe the device of the seal of the Council; (c)

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52 Ibid, sch 4, para 12.
54 Ibid, s 4(1).
define the limits of the area of the authority of the Council; (d) provide for the number of members; and (e) specify the functions of the Council.

Butubutu Babata, or Chea in simple, is under the territorial jurisdiction of the Marovo Area Council. To facilitate implementation of the warrant of the Minister issued under the Local Government Act, the Western Provincial Assembly has enacted the Western Province Area Council Ordinance 1989 which is more or less a translation and adaptation of certain provisions of the principal Act to suit local circumstances. The issue crucial to the aspiration of Butubutu Babata therefore is whether the Marovo Area Council has the legislative competence to accommodate the former’s interest in establishing itself as a semi-autonomous institution within the formal decentralisation framework. In general, the importance of this question stems from the fact that as local government institutions, the exercise of powers conferred upon them if any, and the extent to which they can exercise such powers sends a significant message to the rural populace of which they are part. For what is central hereto is the need for decentralisation to manifestly reach out to rural communities through divestment of responsibility, greater autonomy and control over natural resources, and active participation within the formal structures of decentralised governance. Are all these guaranteed under the Local Government Act?

The law-making powers of a Council are found in section 50 of the Act, which states, ‘a Council may from time to time make and having made, amend, vary or cancel by-laws, having the force of law in the area of authority of the Council, for the carrying into effect and for the purposes of any function conferred upon it by virtue of this or any other Act....’ Having established the law-making powers of Councils, what then are the functions for which such bylaws are to be made? And what would have been the implications for the interest of Butubutu Babata? Paragraph 6 of the Schedule to section 45 of the Act prescribes the protection and
conservation of fisheries as a function for which bylaws may be made by a Council. Equally important is paragraph 27 of the Schedule which requires a Council ‘to promote conservation of the environment including flora and fauna’. The identified provisions of the Local Government Act thus provide the basic framework upon which the interest of the Butubutu can be pursued.

![Diagram of Decentralisation Structure of Solomon Islands]

**Fig. 1**

Basic Decentralisation Structure of Solomon Islands

### III ALTERNATIVE ROUTES FOR EMPOWERING BUTUBUTU BABATA

#### A Direct Intervention of Parliament by virtue of the Constitution or Act of Parliament

This option is premised on the argument that Parliament does have the power to bypass the Western Provincial Assembly and the Marovo Area Council in providing legislation with specific application to
Butubutu Babata. Section 32(6) of the Provincial Government Act provides the basis for Parliamentary intervention as it declares that the ‘Act does not affect the powers of Parliament to make laws for any province’. Additionally, Parliament can do so by virtue of its supreme law-making powers under the Constitution, in particular when fulfilling its duties under sections 75 and 114. Both provisions require legislative enactments for the respective recognition of chiefs and the application of kastomary law. Butubutu Babata qualifies to be rendered such Parliamentary treat given its hereditary chiefly system and the continuous operation of kastomary marine tenure that governs its puava. Combined, both factors give greater weight to the Butubutu’s aspirations of attaining formal recognition as a traditional corporate body with autonomy over resources within its puava.

B Enactment of Ordinance by Provincial Assembly

This appears the most viable option for reasons including practicality and keeping within areas of responsibility of government institutions. Thus, by operation of the decentralisation process, the ultimate duty to provide for matters devolved by Parliament rests with the Provincial Assembly. Section 32 of the Provincial Government Act stipulates that ‘laws may be made for a province by Ordinance of the Provincial Assembly’. But a preliminary issue is whether empowering Butubutu Babata through enactment is within the legislative competence of the Western Provincial Assembly. This is raised in the light of the qualification imposed by s.33 of the Provincial Government Act which provides:

55 s.75 provides: Parliament shall make provision for the application of…customary laws…[and] in making provision under this section, Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands.
56 s.114 provides: Parliament shall be law…consider the role of traditional chiefs in the provinces.
A Provincial Assembly has power to make laws only if and to the extent that they relate to matters within the legislative competence of the Assembly or they are merely incidental to or consequential on other provisions, and those provisions relate to matters within the legislative competence of the Assembly.

The decentralisation system operates in such a mode that a Provincial Assembly can only translate into working programs what is devolved to it by the Minister for provincial government through instruments of devolution. This process of devolution is facilitated by the availability of a prescriptive list in the Provincial Government Act. The matters prescribed in the schedule to s.28(3)\(^{58}\) of the Act are those to which a Provincial Assembly has legislative competence. Those that will be of focus owing to relevance for purposes of the Butubutu are (i) ‘improvement and maintenance of fresh-water and reef fisheries’\(^{59}\), (ii) ‘registration of customary rights in respect of land including customary fishing rights’\(^{60}\), and (iii) the ‘establishment of corporate or statutory bodies for the providing of provincial services including economic activity’\(^{61}\). All these matters were devolved to the Western Provincial Assembly in various devolution orders since Devolution Order No.55 was first issued in 1984 authorising amongst others, the exercise of legislative function in enacting Provincial Ordinances.

The ‘[e]stablishment of corporate or statutory bodies for the providing of provincial services including economic activity’ as permitted under paragraph 12 of Schedule 4 can be given a fair and liberal construction so as to allow adaptation to accommodate the interest of Butubutu Babata. The essence of that provision is that it allows for any such corporate body to perform certain services which fall within the functions of a Provincial Government. What then are those provincial

\(^{58}\) sch 4.
\(^{59}\) sch.4, para 5.
\(^{60}\) sch 4, para 6.
\(^{61}\) sch 4, para 12.
services that can be performed by Butubutu Babata should it be transformed into a corporate body?

Section 35(5) of the Provincial Government Act stipulates that ‘subject to the provisions of any enactment (wherever made or passed), a Provincial Executive may provide services for the province in respect of any of the matters mentioned in Schedule 6’. The general category of services listed in the said Schedule that can be performed by the Butubutu though on a more restricted scale in terms of restriction to its puava include conservation of the environment and fishing. These two areas clearly fall within the scope of the initiative of the Butubutu as currently pursued and reflected in its resource management policy framework. But a further enlightenment of the scope of a province’s function can be attained by a cross-reference to section 9 of the Fisheries Act, which stipulates that ‘each provincial government shall be responsible for the proper management and development of the reef, inshore and freshwater fisheries within its provincial waters’. In the light of the foregoing, it must therefore be argued that enactment for the transformation of Butubutu Babata into a corporate body is within the legislative competence of the Western Provincial Assembly. Eventual implementation of this possibility by the Assembly will signal a new era in the history of decentralisation in the country since independence.

But even if the Butubutu does not qualify under paragraph 12 of Schedule 4, it can nonetheless fall back on paragraph 6 of the Schedule which empowers the Provincial Assembly to enact an Ordinance for the ‘registration of customary rights in respect of land including customary fishing rights’. The Assembly only need to go a step further beyond mere registration by empowering and transforming the Butubutu into a corporate body with management and law-making powers in respect of its puava and the rights registered in respect thereof.

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63 Sch 4, para 6.
Absolute decentralisation in Solomon Islands is yet to become a reality especially when villages or communities remain mere spectators or bystanders without active participation within the process. Thus, the establishment of such village-based corporate institutions is the only means of capturing community participation within the decentralised governance process. Moving in that direction will mark a new twist in particular in the sector where it matters most – natural resources. Implementation of a decentralised governance structure is necessary in a country in which approximately 90% of land and coastal marine resources are still within jurisdiction and control of traditional institutions.

In the exercise of its law-making powers under s.32 of the Provincial Government Act\(^6^4\), the Western Provincial Assembly certainly has the legislative competence to establish and transform by Ordinance Butubutu Babata as a incorporated body under the Act. Given the extent to which the Butubutu has progressed in re-organisation, and formulation of its own resource-use policies, the institution has been well-conditioned to take on any role and status conferred through legislative enactment. The motivation currently present within the Butubutu provides an opportune time to embark on a satellite project that will rigorously test the benefits or otherwise of extreme decentralisation within the resource management sector. It is anticipated that the outcome of the endeavour will certainly be the gauge for a future national programme of ‘micro-level’ decentralisation.

Whilst the Provincial Government Act provides the primary source for action to further decentralise and devolve powers, the Western Provincial Assembly is not constrained by the lack of a broader power base under which it can legislate. There are other specific Acts of Parliament under which the Assembly can exercise subsidiary powers.

\(^6^4\) s 32 provides: ‘laws may be made for a province by Ordinance of the Provincial Assembly’.
Of significance to the Butubutu’s initiative is the Fisheries Act 1998. By virtue of s.10(1) of the Act, “each Provincial Assembly may make Ordinances not inconsistent with this Act or any regulations made under this Act, for the regulation of fisheries within its provincial waters”. In further defining the scope of the powers of the Provincial Assembly, s.10(3) of the Act further provides:

Ordinances made under this section may provide for…the registration or recording of customary fishing rights, their boundaries and the persons or groups of persons entitled under those rights;...the establishment and protection of marine reserves;...regulating and prohibiting the destruction of mangroves;...[and] prescribing penalties for offences against any Ordinance or bylaw made under this section, not exceeding two thousand dollars for an offence against any Ordinance and one thousand dollars for an offence against a bylaw.

Section 10 of the Fisheries Act is more precise and strikes at the core of the objectives of the Butubutu. Similarly, it concurs to a certain extent with the Provincial Government Act as to the jurisdiction of a Provincial Assembly. Thus, both statutes empower a Provincial Assembly to legislate for the registration of customary fishing rights. However, as legislation with specific focus, the Fisheries Act has in principle surpassed the Provincial Government Act in prescribing specific issues which were not adequately addressed in the latter, but remain crucial to the Butubutu’s initiative. Most important of those issues are boundary delineation,\(^{65}\) the establishment and protection of marine reserves\(^ {66}\) and the level of penalties that can be meted out to offenders.\(^ {67}\) The Fisheries Act thus provides the most comprehensive basis upon which the Western Provincial Assembly can legislate for the Butubutu’s cause. But that is not to say that the Assembly cannot realise the Butubutu’s aspirations under the Provincial Government Act. Both statutes can yield the same

\(^{65}\) s10(3)(a).
\(^{66}\) s10(3)(h).
\(^{67}\) s10(3)(k).
result by empowering the *Butubutu* with all necessary powers to effectively manage its *puava*, whilst similarly defining its power relations with the Western Provincial Government and other corporate institutions within the Province such as the Marovo Area Council.

An alternative to enactment of an Ordinance is to revert instead to the *Western Province Resource Management Ordinance 1994*, which provides for the formulation of plans and policies for resources on customary land\(^68\) and the declaration by the Provincial Executive of resource orders.\(^69\) Since both mechanisms require however the participation of the Marovo Area Council to varying degrees, the non-existence of the Council at the time of research and the little prospect of its revival within the immediate future questions the practicality of this option. Moreover, the *Resource Management Ordinance* does not provide any legal basis for the autonomy aspirations of the Butubutu, let alone its incorporation into the overall decentralisation structure. Accordingly, the Ordinance provides no guarantee to achieving micro-level decentralisation that includes resource management functions – a key objective that underpins the whole *Butubutu* initiative. Its omission from in-depth analysis in ensuing chapters is thus based on practical considerations as briefly advanced above.

**C Area Councils**

Political developments and financial constraints faced by the national Government led to the Minister for Provincial Government exercising his powers under s.125 of the Local Government Act\(^70\), and

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\(^{68}\) *Western Province Resource Management Ordinance 1994* (Sol Is-WP), s 5.
\(^{69}\) Ibid, s 12.
\(^{70}\) S 125 provides: ‘The Minister may, on being satisfied that it is necessary to do so, by order, suspend or restrict the operation of any or any part of the provisions of this Act in respect of any or any part of the area of authority of any Council established under section 3 for such period as may be specified in such order’.
s.30(a) of the *Provincial Government Act*\(^ {71} \) in indefinitely suspending Area Councils throughout the country in 1998. Thus, being inoperative since, this option will not be worth considering in detail for practical reasons. Time is of the essence to the *Butubutu*’s initiative, and prospects of the Marovo Area Council being reinstated within the next 12 months are as yet remote. Nonetheless, for purposes of providing a comprehensive analysis of options, discussions below will still highlight the relevance or otherwise of utilising the Marovo Area Council, merely on the assumption that it may be revived in the immediate future.

**IV CONCLUSION**

Exercise of legislative competence by the Marovo Area Council would appear the most appropriate option should *tier-three* of the decentralisation hierarchy is revamped to dictate the order of events at the micro level. However, the legal framework thus far fails to provide any specific guideline that facilitates adherence to the political and administrative hierarchy of the decentralisation process. In other words, there is present within the legal framework an overlap of legislative responsibilities between all three tiers of government. Thus, whilst Parliament can by virtue of the Constitution legislate for *kastom* and all related matters, so are Provincial Assemblies and Area Councils pursuant to various Acts of Parliament. The situation facing the *Butubutu* is thus interesting as all three levels of government are equally competent to address the community’s aspirations under the existing legal framework.

But given the locality of the community, practicality should be the guiding principle in determining the most appropriate tier of government

\(^{71}\) s 30(a) provides: ‘A devolution order in respect of a province may include provision for any provision of the Local Government Act to cease to have effect in the province subject to such savings as may be specified in the order...’
to advance the Butubutu’s cause. Applying such guide, Parliament would be eliminated as *inter alia* the rigorous and time-consuming law making processes of the institution makes it an impractical and ‘last resort’ choice. Additionally, the remoteness of the community from the seat of the national government and Parliament similarly renders it the least preferred choice. This therefore leaves the Western Provincial Assembly and the Marovo Area Council as the most appropriate tiers of government to legislate for the Butubutu’s cause.

Revisiting the Butubutu’s constitution, it is no coincidence that specific reference was made to the Marovo Area Council and the Western Provincial Assembly. This acknowledges the overarching powers of these two institutions of government over most affairs of the community. In incorporating the body, the constitution stipulates that ‘*the Chea Village Community shall be established and operated within the framework of Marovo Area Council and the Marovo traditional society*’.72 Similarly, in adopting the constitution, an aim of the Butubutu is to ensure that practices of the community are in line with bylaws of the Marovo Area Council and the Western Provincial Assembly.73 Despite purportedly confining within the framework of the Marovo Area Council, such a desire does not augur well with the Butubutu’s autonomy aspirations. Similarly, its socioeconomic objectives require a more radical approach so as to render them realisable. Structure-wise, co-existing with the Marovo Area Council as equal partners (and not within its framework) may even be more practical and appropriate other than being a mere subsidiary or offshoot of the Council. Accordingly, the determinant issue is whether the Marovo Area Council, acting within its legislative competence, can devolve powers that are broad in scope so as to readily accommodate the Butubutu’s socioeconomic objectives. It must be reiterated that this issue is central to the resource governance autonomy aspirations of the Butubutu which, if were to be achieved, should not be constrained by devolved powers that are of limited scope and application.

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73 Ibid, part II (f)
Micro-level decentralisation is most effective when resource management autonomy is conferred with the corresponding power to make bylaws, including those for the raising of revenue and imposition of penalties of whatever form. What must be avoided is the possible resultant situation in which the Butubutu is merely implementing what is being enacted for it by the Marovo Area Council. The power to formulate its own bylaws remains a must within the decentralisation process. But whilst the capacity to make bylaws is the overall aim, the real test comes with the scope of such bylaws which tend to reflect the defined law-making powers or jurisdiction of the Butubutu. This issue must be given proper consideration if the Butubutu elects to abide by its constitution and remain within the framework of the Marovo Area Council.74

Having been established by warrant and facilitated by Ordinance75 of the Western Provincial Assembly, the situation will be that the scope of the Marovo Area Council’s powers, as is common of all Area Councils, is already limited. Thus, if the Butubutu were to source its powers from the Marovo Area Council, whatever powers received will merely be residuary and nominal, thus of limited scope. This in effect means that most things purported to be done by the Butubutu will be beyond the scope of its powers, thus a major hindrance to advancing its goals and interest to any new heights. One such constraint for instance is the limited powers to make bylaws with higher deterrent penalties, as demonstrated below. As caution, being conferred merely with residual powers is contrary to the purpose of autonomy sought by the Butubutu which is to attain inter alia the power to lower or raise the standard, terms or rates for instance of fees or penalties for which it has promulgated bylaws.

A classic illustration of the scope of bylaws, thus, law-making powers of the Butubutu, is the capacity to impose fines that are deterrent in nature. It must be noted that the issue of pecuniary penalties is

74 Part I(b) of the constitutions provides: ‘The Chea Village Community shall be established and operated within the framework of the Marovo Area Council…’
75 Western Province Area Council Ordinance 1989 (Sol Is-WP).
essential both for purpose of deterrence of infringements and revenue-raising powers of the Butubutu. Focusing on the imposition of fines as a mechanism for drawing revenue to possibly subsidise monitoring costs, the provision of the Local Government Act is rather discouraging. Unless and until it is amended, the ceiling has been set so low in the Local Government Act that no room is left for the Marovo Area Council to set realistic fines if it were to legislate for autonomy to the benefit of the Butubutu. Section 50(1) of the Local Government Act imposes a mere $100\textsuperscript{76} maximum fine and a three month maximum imprisonment term. These penalties are grossly inadequate in light of prevailing circumstances characterised by factors such as a weakening currency, higher prices for most marine resources found within the Butubutu’s puava,\textsuperscript{77} high income-earning capacity, increased poaching, and high monitoring costs. In other words, these penalties are not high enough to provide an effective deterrent to the unregulated exploitation of the Butubutu’s marine resources. Socio-economic factors must therefore be given adequate consideration to ensure the success of the initiative. Similarly, the scope of the powers devolved to the Butubutu must be commensurate with the community’s objectives and socioeconomic goals as reflected in its resource policy statements. One therefore needs only to be reminded of the vision of the community which is to mobilise ‘the Babata tribe in looking for a socioeconomic order that will bring wealth, well-being and happiness and...empowerment...as autonomous and self-sufficient entities...\textsuperscript{78}’ It is thus evident that an underlying objective of the whole Butubutu initiative is to attain a certain form of resource autonomy that, whilst ensuring protection of their environment and resources, will facilitate the pursuit of their long term socioeconomic goals. Accordingly, devolved powers that constrain or restrict the pursuit of the Butubutu’s socioeconomic goals drawn against the backdrop of a modern cash economy will render decentralisation at the micro level a failure.

\textsuperscript{76} One hundred Solomon Dollars, which is the equivalent of US$13 at current rates.
\textsuperscript{77} For instances, high value specie of bech-de-mer such as peanutfish, curryfish, and stonefish.
\textsuperscript{78} Babata Tribe Chea Village Community, above, n 32, 2.
Given the foreseeable difficulties or inadequacies associated with any enactment by the Marovo Area Council, the best solution therefore is to pursue realisation of provisions of the *Fisheries Act*. This choice is made on the rationale that legislative competence of the Western Provincial Assembly under the Act is specific to fisheries and related matters, thus, central to the *Butubutu’s* initiative. The scope of the legislative competence of the Western Provincial Assembly is wide, as it involves enacting Ordinances for ‘the registration or recording of customary fishing rights, their boundaries and the persons or groups of persons entitled under those rights...the establishment and protection of marine reserves...regulating and prohibiting the destruction of mangroves;...[and] prescribing penalties....’  

This provision has set out in principle a basic guideline to what needs to be addressed in the Ordinance, and as such is more reflective of the intricacies of *kastomary* marine tenure in the country.

But a significant development in the *Fisheries Act* which may be taken as facilitative to the revenue-raising powers of the Butubutu is the higher level of fines that may be incorporated into an Ordinance or bylaw. Thus, the Western Provincial Assembly can enact an Ordinance ‘prescribing penalties for offences against any Ordinance or bylaw...not exceeding two thousand dollars for an offence against any Ordinance and one thousand dollars for an offence against a bylaw’. The clear distinction between fines against an Ordinance and bylaw respectively is testimony of the purported hierarchy of decentralisation even within the natural resource sector. Thus, whilst the Western Provincial Assembly can impose higher fines by way of an Ordinance, a subordinate body purportedly established by enactment of the Assembly, such as the *Butubutu*, can impose lower fines under its own bylaws. The crucial point is that the power to make such bylaws derives from the Ordinance enacted by a Provincial Assembly.

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80 Ibid, s 3(k).
By reason of the foregoing discussions and analysis, it is therefore concluded that the aspirations of Butubutu Babata can be accommodated through enactment of the Western Provincial Assembly. Even if the Marovo Area Council is identified as the appropriate organ from which powers are to be devolved to the Butubutu, such is not an option as Area Councils throughout the country remained suspended and defunct as at the time of research. The financial cost of running the same is just too high for the National Government to continuously finance, thus less guarantee of their revival in the immediate future.

The legislative competence of the Assembly in relation to matters at the centre of the Butubutu’s initiative can be established in both the Provincial Government Act and the Fisheries Act. Whilst the Provincial Government Act addresses the autonomy aspirations of the Butubutu, the Fisheries Act will similarly be crucial for the granting of marine resource management powers. And given the precise nature of the scope of law-making powers of the Provincial Assembly under the Fisheries Act, it is desirable that a new form of resource autonomy involving the Butubutu should be pursued and developed under auspices of the said Act.
Organisational Restructuring within the New *Butubutu* Resource Management Regime: An Introduction

I Overview

During IWP-sponsored consultations with *Butubutu Babata* in late January 2006, 81 it was proposed that the resource autonomy aspirations of the community be approached under two subsets:

(i) marine resources within its puava extending outwards to the *toba* 82; and

(ii) Land-based resources on Marovo and Vangunu Islands.

Such an approach is necessary as the Butubutu’s resource management policy framework applies to both land and sea resources, thereby reflecting the three territorial claims of the *Butubutu*. It was thus specified that the policies will govern the utilization of resources existing within those areas over which the *Butubutu* claims kastomary ownership: 83

**Area 1**  
*Butubata land* bounded on all sides by a kastomary boundary line running from *Kataghotoghoto* to *Jangana*, *Toa Kiki* and *Toa Gete*, *Tagire* and to *Palingutu* on the weather coast of Marovo Island;

**Area 2**  
The outlying sea area of the barrier reef starting from *Kataghotoghoto* on Chea mainland going out eastward to *Kemu* Island in the barrier reef and in a north westerly

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81 Consultations were held in Chea from 30 January to 1st February.
82 Local vernacular for ‘barrier reef’.
direction to *Ebolo* Passage, and then returning south westerly to *Kara* Stream on the island of Vangunu; and,

**Area 3**

*Rarae Land* situated on the northwest coast of Vangunu Island, bounded by a kastomary boundary running from the entrance of *Kalivara* stream and going inland along the ridge to *Jalero* Mountain and along *Kara* stream to the point where it returns east following the coast to *Kalivara* stream.

Since no survey is done as yet for purposes of recording under the *Customary Land Records Act 1994*, it remains indeterminate the total combined area of the Butubutu’s terrestrial and marine puava. Estimates nonetheless put it at approximately 300-400km².

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**Plate 3**

Three Claims of *Butubutu Babata* under Marovo Kastom: (1). *Babata* land within which Chea Village is located on Marovo Island; (2). marine *Puava* comprising the barrier reef and outlying islets; and (3). *Rarae* land on the northwest of Vangunu Island
What is evident is that the Butubutu’s kastomary estates exist in different locations with the two land claims on Marovo and Vangunu Islands respectively. Whilst Areas 1 and 2 are adjoined on the northern coast of Marovo Island as the principal settlement site of the Butubutu, Area 3 is somewhat separated from the rest by pockets of kastomary claims by the neighbouring butubutu Kalekogu and Olovotu. As a maritime claim, Area 2 remains of significance to the cultural identity of the Butubutu. But in today’s modern cash economy, its significance is seen more or less in terms of its economic potential for driving forward the socioeconomic goals of the community. Any threat to the resources within Area 2 is thus a threat to socioeconomic stability of the Butubutu. This provides rationale for concentrating attention and action on managing the marine puava. However, that is not to say that Areas 1 and 3 would be totally disregarded. In fact the opposite would be true and will most likely be the case. The granting of management autonomy to the Butubutu by legislative enactment will in effect confer wider powers the exercise of which would allow for spill over effects to Areas 1 and 3.

This can be achieved through bylaws and a precise definition of the territorial jurisdiction of the new legal entity.

Keeping within bounds of the author’s research focus, it was thus resolved during the consultation that for the medium term primary emphasis should be placed on Area 2 being the most threatened and vulnerable. For obvious reasons, that portion of the Butubutu’s puava holds the bulk of it resource reserve. And given its significance to the socioeconomic aspirations of the Butubutu, it is thus imperative the resource policy framework be pursued to another level through translation of principles into actionable items. But whilst the focus is on developing an Area 2-specific enactment, adequate room must similarly be allowed to address issues arising in the future pertaining to Areas 1 and 3, for instance by way of subsequent bylaws. Reverting to the onsite research consultations, much discussion was focused on issues for incorporation into the purported enactment. As it transpired then, a
filtering process was inevitably adopted purposely to determine what needs to go in and what is to be left out of such empowering enactment.

This chapter will first present an overview of the *Butubutu’s* existing resource management structure, and secondly, explores alternatives of developing a new organisational framework within which the *Butubutu* will function in the future. The aim is to develop a new structure that integrates the relevant and strongest elements of the existing framework together with modern concepts of decentralised organisations. In the ultimate, such restructuring is geared towards strengthening through legislative enactment the *Butubutu* institutions that are most relevant and worth retaining in a modern Marovo society. The concluding parts of the chapter will thus focus on a evaluation of options as to the proposed form and structure of the body that will exercises powers within the *Butubutu’s puava* under the new resource management regime.

Distinct from previous discussions, this chapter marks the beginning of a series of inter-related ensuing chapters dedicated to examining the practical issues underlying the autonomy aspirations of *Butubutu Babata*. Thus, it introduces the real issues and hurdles that will need to be addressed in the Ordinance for enactment by the Western Provincial Assembly. In other words, analysis from henceforth will focus on dissecting the nitty-gritty that underpins the *Butubutu’s* autonomy aspirations and resource management powers and functions. Central to such analyses will be fundamental issues that will form the core of the autonomy process as purported to be addressed by way of legislative enactment. The issues clustered under subheads include (i) the regulatory powers, functions and structure of the *Butubutu’s* management authority, (ii) territorial jurisdiction of the management authority, (iii) monitoring and enforcement, and (iv) self-financing mechanisms for ensuring long-term sustainability of the endeavour. As earlier highlighted, the purpose is to analyse and map out all the factors
that need to be addressed in the enactment to ensure the new regime functions effectively upon implementation. As an overarching principle, the enactment introducing the new management regime should be one that is (a) practical to implement, (b) does not radically and drastically alter the very fabric of Marovo tenure system, (c) allows for transition and not disruptive of normal order of living within the Butubutu, and (d) one that provides guarantee of a functioning new legal and governance entity. All segments and inherent issues will thus form the core of discussions and analysis in this and all ensuing chapters.

II THE BUTUBUTU BABATA MICRO-LEVEL GOVERNANCE STRUCTURE

It is unimaginable how chaotic it would be if each member of the approximately 200 Butubutu members exercises the same management powers regardless of status or kastomary rules of authority. Whilst the Butubutu is given autonomy within defined parameters, the body to exercise management powers needs to be specifically defined and well-structured so as to be functional and effective. To give legitimacy to the establishment of such institution, regard must also be had to the extent to which Butubutu members, regardless of status or certain disqualifying factors\textsuperscript{84} can participate in the decision making process. There is also the inherent need for accountability within the new regime. But to pursue a new regime may logically mean building on the current Butubutu structure as its foundational basis. However, deficiencies can only be rectified by identifying the loopholes present within the existing structure as set out in the 1991 constitution.

A Existing Structure of Butubutu Babata

Chea Village, being home to Butubutu Babata, is acknowledged as a well-organised community with a rather strong local-level governance

\textsuperscript{84} Such as being female or a youth so as to be excluded from decision-making processes.
structure. There certainly is visible evidence of a coordinated system of resource management that functions by way of self-styled community bylaws made by different institutions within the Butubutu structure. As per the 1991 Butubutu constitution, the following positions and committees were recognised or incorporated into the constitution: 1. Tribal Chief, 2. Elders’ Council, 3. Village Committee, 4. Others such as Finance Committee and Advisory Board.

1 Tribal Chief

Given the patrilineal hereditary chiefly system that governs the Butubutu for successive generations, the constitution further reaffirms the traditional functions of the Chief whilst similarly buttressing his position and influence. In the introduction to its resource policy statement, the Chief is referred to as the backbone of the Butubutu. Thus, the Chief has an unwritten responsibility to fend for his tribe. He has to ensure that his tribe is settled in shelter, food and clothing. He has to ensure that his tribe prospers and is secured within a land on which to settle. He has to work closely with other tribes in Marovo to guarantee a good life for his people.

As succession is through male descent, Chief Herrick Ragoso succeeded his late father, Chief Kata Ragoso who was the first chief to make Chea his place of abode. It was the latter who was largely responsible for reorganising the Butubutu which culminated in the adoption of the

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86 Despite the bylaws making reference to enforcement by local courts, it remains uncertain as to their status and enforceability in a court of law given the absence of legal authority and power to promulgate the same. In this connection, the process of decentralization of legislative competence must be borne in mind.
87 Babata Tribe Chea Village Community, above n 32, 1.
The Chief wields so much power by virtue of the Butubutu’s constitution. But that is no coincidence, as the constitution is intended to be based largely on Marovo tradition and kastom. By virtue of the constitution, the Chief has sole authority over the Butubutu’s puava, which are effectively those identified as Areas 1 to 3 above. As such, the ultimate power over the puava’s resources vests in the Chief by virtue of both kastom and the constitution. Even the inter-tribal relations and diplomacy are also conducted by the Chief. For instance, in the event of disputes with other tribes, the constitution provides:

On any land and sea matters of a controversial nature involving another community, the Chief will deal, consult and discuss with his counterpart of another tribe/community to resolve the case in question. It is the responsibility of the village committee chairman to report any cases of this nature to the Chief.

In the discharge of his functions, the Chief is assisted by the Secretary, Spokesman, the Elders Council, and Village Committee. But whilst the Spokesman and members of the Elders Council are appointed by the Chief, there is absence of similar reference in the constitution as to the Secretary or the Village Committee, and Finance Committee. Nonetheless, the matter of appointments to the Village Committee was addressed by way of regulations appended as a schedule to the constitution. But this is in no way a defect or flaw that impinged on or

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88 Ibid.
89 Ibid, 8.
90 The Chea Village Community Constitution 1991, part v(a). Refer to Plate 3.
91 Ibid, part v(c).
92 The current Chief’s Secretary is Wilson Liligeto, a former civil servant who is instrumental in drafting most of the Butubutu’s documents.
93 Alrick Jimuru being a respected elder is the current spokesman or Chief’s herald.
94 Part I (c) of the Chea Village Community Constitution 1991 provides: ‘The Chea Village Community shall have a structure consists [sic] of the Chief’s spokesman appointed by the Chief....’
hinders the effective functioning of the Butubutu. For one obvious reason, in rural Solomon Islands it is practice and how things function that matters most, not the written rules. Practically, recourse will only be had to written rules nowadays in the event of disputes or confusion over responsibilities. As adherents of an oral tradition that greatly influenced the past of traditional societies, the word as spoken and practiced by those of status or authority within a community dictates how things function. The absence of authority within the Butubutu constitution will not in practice preclude the Chief from exercising what are otherwise regarded as inherent powers of the same by virtue of much-valued kastom. Accordingly, the Chief is always seen as the symbol of remedy to defects and gaps within the Butubutu constitution.

2 Elders Council

By virtue of the constitution, the Elders Council consists of five members ‘whose function is to deal with matters of a disciplinary and retrieval nature referred to them by the Village Committee’. Membership of the Council is pre-determined, as it consists of the ‘Chief’s spokesman, a church representative or retired mission worker, a traditional advisor, a representative of the Area Council or a village organiser, and any other members appointed by the Chief’. In terms of functions and powers, there is substantial contradiction between the constitution and the resource management policy framework adopted by the Butubutu. Whilst the Council in practice performs considerable tasks and wields so much power as the Chief’s principal governing body, such is not reflected in the constitution, which merely restricts the Council’s functions to disciplinary and related matters. Evidence has shown that the Council in consultation with the Chief was responsible for the formulation of the policy statement on resource use adopted in January 2003. Thus, ‘

95 Whilst the correct term in the constitution is ‘Elders Committee’, all subsequent references in various Butubutu documents use ‘Council’ in place of committee. The author will thus keep to the popular preference of terms as used by the subjects of research.
97 Ibid, part vi(b).
Elders Council on instruction from the Chief makes this statement about its policy for the care and use of the land and sea resources.... This is a classic example of the influential role of the Council in managing affairs of the Butubutu.

Recent developments have even testified to the significance of the Council which has taken the initiative of purporting to promulgate a set of village bylaws covering the areas of health, village conduct, water supply, village development, environment and culture, and small business. By virtue of its enacting provision, the ‘bylaws...shall come into force upon receiving the approval of the Chea Elders Council and Chief.’ Whilst the legality of such bylaws remains uncertain, the reference nonetheless demonstrates the significant role of the Council if it were to be legally empowered within the proposed regime.

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**Fig. 3**

*Butubutu Babata Organisational Structure as per the Chea Village Community Constitution 1991*

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98 Babata Tribe Chea Village Community, above n 83, 1.
3 Village Committee

Comprised of a maximum of 13 but not less than seven members, this is the only committee the composition and procedures of which are regulated by regulations.\textsuperscript{100} As per the constitution, the committee functions `to oversee and implement village activities which shall be in accordance with the Chief’s jurisdiction'.\textsuperscript{101} That general guideline in the constitution has been further elaborated in the regulations. Thus, the Village Committee’s duties includes overseeing matters relating to (i) church affairs, (ii) women’s interests, (iii) law and order, (iv) water supply, (v) village health, (vi) wharf and roads, (vii) sport and recreations, (viii) environment, tourism and culture.\textsuperscript{102}

Distinct from the Elders Council, the appointment of Village Committee membership is done by an ad hoc nominating committee of three members appointed by the incumbent Village Committee.\textsuperscript{103} Thus, for once the Chief is totally left out of the process although he maintains his status as an \textit{ex officio} member together with three advisors.\textsuperscript{104} But the process to any reasonable person appears very peculiar as even the nominating committee is itself nominated by the existing village committee. In other words, it is a peculiar situation portrayed by a process of mutual reciprocity with each appointing the other.

4 Others

Other committees or bodies within the current \textit{Butubutu} structure that bear some relevance to this research are the Finance Committee, and Advisory Board. Despite being created by the constitution, for practical reasons these two bodies were non-existent at the time of research. But in any event, it can be inferred that the \textit{Butubutu} has

\textsuperscript{100} \textit{The Chea Village Committee Regulations 1991}, part c(1).
\textsuperscript{101} \textit{The Chea Village Community Constitution 1991}, part vii(a).
\textsuperscript{102} \textit{The Chea Village Committee Regulations 1991}, part b.
\textsuperscript{103} Ibid, part c(8).
\textsuperscript{104} Ibid, part c(4).
already foreseen the non-necessity of having a Finance Committee operating immediately upon adoption of its constitution, as the formation and composition of such committee is contingent upon funds being accumulated in the intervening years. However, should a Finance Committee is to be established, then the constitution is unequivocal in prescribing membership of between five to seven members which should include ‘the Chairman of the Village Committee, the Chief, Chief’s Secretary, Village Committee Treasurer and a representative of the Advisory Board’.105

B Evaluating the Shortfalls of the Existing Butubutu Structure

With a population of just above 200 heads, it is fair to say that the Butubutu is somewhat reasonably governed, or even over-governed given the multiple committees established by the constitution. With the exception of the Village Committee, the constitution is rather equivocal on defining a clear mandate of the domineering Elders Council. This is despite the one fact that the Council, through its activities and various references in the Butubutu’s policy documents, displays characteristics of being the supreme decision-making body in close collaboration with the Chief. Even most decisions taken by the Chief were done in consultation with the Council, thus, a manifestation of the former co-sharing much of his powers with the latter. To varying degrees, the Council derives much of its powers over certain matters directly from the Chief, and not necessarily the constitution. A classic example is its formulation and subsequent adoption of management policy statements governing resource use within the Butubutu’s puava over which the Chief has ultimate authority as reaffirmed in the constitution.106 Thus, although established by the constitution, there is verifiable indication that the Council, as loosely defined, predates the constitution and has been operating along traditional lines of authority since. Assuming legitimacy

106 Refer to part v(a) of the Constitution.
through ostensible chiefly endorsement, it has become the norm for the Council to function beyond the confines of the constitution - the latter being not reflective of the realistic situation. What this portrays is that whilst attempting to incorporate modern concepts and ideas of micro level governance into its structure, kastom remains the dominant force within the current Butubutu structure. Thus, traditional political power over the Butubutu’s puava remains intact to date.\(^\text{107}\) In view of this incontestable fact, it needs to be asked at this juncture whether traditional political power promotes better and effective resource management. Additionally, would the systematic encroachment into the spheres of traditional political power produce different results from what is attained under the present structure? These fundamental questions form the substance of the ensuing discussions in this thesis.

Further, juxtaposed against the backdrop of a silent constitution in terms of functions and powers, the Elders Council appears the most active and highly regarded body within the Butubutu. Its operation at times outside of ambits of the Butubutu constitution always gets automatic approval and ratification of the Chief. As earlier highlighted, the Council is the mouthpiece and above all the implementing agency of the Chief and legitimacy for its actions derives from the same regardless of the constitution which narrowly defines its functions. The level of support and respect it mustered within the community speaks volumes of how the Council can be instrumental in realising the autonomy aspirations of the Butubutu. Its current functional status thus presents it as a potential candidate for modification and elevation within the new management regime. What is needed is a gradual relinquishment or hand over of certain aspects of traditional political power to the Elders Council, thereby providing avenue for modernising the Butubutu’s resource management structure.

Furthermore, a rationale for pursuing micro-level autonomy is to ensure the attainment of a more democratic resource governance system characterised *inter alia* by accountability and effective community participation within decision-making processes.\(^{108}\) Application of this rationale at least intra-communally would show that the existing *Butubutu* structure falls short of fully accommodating the features of a democratic resource governance system. The test for instance in gauging the success or otherwise of community participation within the management process is the extent to which each Chea household contributed to decision-making and the like. But before such test is applied, one needs only to review the *Butubutu* constitution and its structure to determine if there is any guarantee of effective participation by all *Butubutu* households. Scrutinising provisions of the constitution would reveal that there is no such guarantee as all powers relating to management of the *puava* and its resources revolve around the Chief. But that is not unexpected as the current structure as consolidated in the constitution seeks to reaffirm *kastom* and the status of the Chief. At this juncture, it is worth asking one simple question: in the light of changing circumstance, is it really necessary or appropriate to continually alienate or exclude ordinary *Butubutu* members from the decision-making process?

It has become a rhetoric nowadays that the best form of decentralising resource management is to develop mechanisms that would encourage wider community participation in decision-making processes.\(^{109}\) In other words, at the community level decisions should be taken by all resource users and those whose interest are affected by such decisions. As a valid reminder, it is one thing acknowledging the democratic process surrounding resource management being well-defined between national or local governments and community-based organisations, but quite another to see the reception and application of

\(^{108}\) See e.g. Nielsen et al, above n 3, 4.

\(^{109}\) See e.g. Michael King and Ueta Fa’asili ‘Community-Based Fisheries Management’ (Working Paper No.8, Secretariat of the Pacific Community, 2001) 1.
such process within recipient organisations. This is an issue that needs proper consideration in the case of the Butubutu, as it lacks rationale pursuing autonomy that may result in most powers being concentrated in an individual merely out of respect for kastom.

The current Butubutu structure is not totally flawless nor is it near perfect. Even the constitution of committees is a matter reserved for predetermined persons or holders of office. As demonstrated above, the appointments of members of the Elders Council, Village Committee and Finance Committee are matters within the sole discretion of the Chief or other special ad hoc committees. There is thus no open process allowing for the election of committee members by all Butubutu kinsfolk at perhaps at general meetings. Even decisions affecting the interest of Butubutu members were made without any participation by the ordinary kinsfolk. Two significant groups forming the bulk of Butubutu membership were systematically left out of the process as there is no women or youth representation in the committees.

Further, the alienation of youths poses a threat to the success of management measure devised by higher authorities in the village such as Elders Council resolutions. And in fact within the Butubutu’s puava, there is indication of a mild protest by youth as evidenced by the rising ignorance of faith-based principles and kastom. Although currently at a negligible extent, continuously ignoring or down-playing it will render it a grave problem in the future. In reference to faith-based principles for instance, it is SDA Church doctrine that the harvesting or consumption of invertebrates is forbidden. However, it has been found that youths who were alienated from church are constantly in breach of such rules, as there is approximately 10 youths involved in the exploitation of bech-de-mer.\textsuperscript{110} The dwindling of marine resources of commercial value within the Butubutu’s puava has forced the Elders Council to adopt management policies with the endorsement of the Chief that apply to

\textsuperscript{110} Kinch et al, above n 15, 42.
both invertebrates and vertebrates regardless of existing church doctrine. The youths were thus caught in this shift of perception and management policy.

Additionally, the issue of gender equality and fair representation is one that fails to take much recognition within the current structure. It is thus worth highlighting that membership within the current structure and participation within its processes is predominantly male. In this vein, the currently structure is exclusively monopolised by men at the expense of the womenfolk who are equally competent of participation within the same. This situation is compounded by the absence in the constitution or committee rules of any safeguards or mechanisms (such as a quota system) that operates to guarantee the participation of women in decision-making. This is in clear disregard of the fact that there is a well-organised women’s group operating in Chea comprising approximately 40 members. Although basing their activities around church programs, incorporating the group into the Butubutu structure or at least allowing for group representation in the committees would be ideal for achieving gender balance within the Butubutu’s decision-making processes.

Furthermore, the multiplicity of committees within such a relatively small community provides an environment for the duplication of functions and overlapping responsibilities. By Solomon Islands’ community standards, Chea is relatively small but highly structured rendering it the most sophisticated village that has no parallel in the whole of Marovo Lagoon, not least to the author’s knowledge. To demonstrate its unparalleled situation, one needs only to look at the decision-making process which is steadily replete with a multitude of actors ranging from personalities to committees. Thus, at the helm is the Chief, assisted by the Spokesman, Secretary, Advisory Board, committee Chairpersons, Elders Council, Village Committee, Finance and Administration Committee, and other ad hoc subcommittees that are
established from time to time such as the Nominating committee. Given the quest for resource autonomy, is a wholesale adoption of such a structure vital to the successful operation of a new *Butubutu* resource management regime? Or is there need to centralise resource management functions and powers? If preference is for the latter, how can it be achieved?

In the course of onsite research thus consultations between the author and the *Butubutu*, the consequences of which would result in a constructive departure from the existing structure. It was acknowledged that there is need to centralise the management of the *Butubutu*’s marine *puava* and its resources under a single body that is legally incorporated, let alone possessing the powers to promulgate enforceable resource management bylaws. This augurs with the resource autonomy aspirations of the *Butubutu*, as the management of a resource can be better regulated and coordinated under control of a centralised body that operates in partnership with government agencies within a formal framework. The shape and composition of such management body will be the focus of discussions and analysis in the ensuing chapters.

III Inadequacies of *Kastomary* Marine Tenure System in Marovo Lagoon

Certain resource management tabus practised in the Solomon Islands and some other parts of the Pacific raise questions as to the validity of the argument for wholesale adoption of *KMT* systems within the formal framework of coastal fisheries management. Notable are those tabus that are attached to traditional belief systems such as the closure of reefs to observe the death of a chief of a reef-owning tribe in Vanuatu or the occasional closure of sacred reef areas by shark-
worshipping tribes in Solomon Islands.\textsuperscript{113} Reservations to the strength or otherwise of such KMT systems are premised on the contention that not all management measures are from the outset aimed at the conservation of resources.\textsuperscript{114} Similarly, even in societies within which KMT offers incentives for resource management, the bottom-line will nonetheless remain that such incentives are not directly linked to conservation objectives. Rather, incentives operate as a token of appreciating \textit{inter alia} the adherence to traditional tabus or acknowledging one’s respect or reverence of sacred beliefs. As end product, incentives offered under KMT often fail howsoever attractive they may be to a traditionalist. It was demonstrated by Johannes that ‘although customary marine tenure provides the incentive to manage marine resources wisely, not all [resource] owners do so’.\textsuperscript{115} And given the dynamism of the cash economy, any incentive existing in a form other than cash or monetary benefit is doomed to fail. Unfortunately, such situations have been manifested in the erosion of traditional management authorities\textsuperscript{116} as incentives offered under KMT fail to measure up to the attractions and dynamism of the cash economy.

Drawing attention to the marine tenure system under which the Butubutu functions, it must be argued that its traditional conservation measures are more or less consequential to practices aimed at fulfilling other non-ecological functions, the most notable being traditional belief systems. The traditional taboos practiced by Butubutu Babata are of two main forms, (i) the \textit{hope chinaba} which literally means fishing taboo applying to all species except tuna, and (ii) the \textit{hope valusa} (tuna fishing taboo). Reflecting the Butubutu’s belief system, both forms of taboo are


\textsuperscript{115} Ibid.

\textsuperscript{116} Such as the case in Tokelau, as observed by Gilett, Toloa and Palesio in R Gilett, F Toloa and M Palesio, ‘Traditional Marine Conservation in Tokelau: Can it be Adapted to Meet Today’s Situation?’ (Paper presented at the Workshop on People, Society, and Pacific Islands Fisheries Development and Management, Noumea, August 1991) 20.
non-secular in nature and protected by the powers of fearsome ancestral spirits.\textsuperscript{117} Given this underlying objective, it can be posited that conservation \textit{stricto senso} is more of a by-product than a targeted outcome. In Marovo generally, the prohibition of certain species or restricted access to certain sea areas for religious purposes has no \textit{strict} conservation objective. As such, the resultant effect of taboos which sees stock abundance within areas subject to closures must not be attributed to a conservation ethics which is virtually non-existent. It thus remains debatable the level of ecological attachment that traditional Marovo societies have with their natural environments or resources. It was observed by Johannes, for instance, that ‘\textit{Pacific Island fishers’ actions were not always ecologically wise [as] their fishing taboos did not always have conservation as their objective, nor did their explicit conservation measures always work}’\textsuperscript{118} This observation applies in its entirety to the practices of the \textit{Butubutu}.

The key point therefore is that most of the management measures under Marovo KMT systems are not underpinned by conservation objectives. Conservation is rather consequential only to measures taken primarily to fulfil non-conservation activities and objectives such as the observation of traditional belief systems. Given such inadequacy, it is imperative that new concepts of resource management be adopted albeit using the existing \textit{Butubutu} structure as the basis upon which such can be developed.

\textbf{IV Making the Choice for a New Legal Entity: General or Special Empowerment?}

Any action taken by the Western Provincial Assembly in legislating for the \textit{Butubutu}’s initiative will need to be guided and driven from below to manifest community input in the process. In other words, the community must define the shape and structure of the legal entity unto

\begin{footnotesize}
\begin{enumerate}
\item Hviding, above n 11, 290.
\item Johannes, above n 114.
\end{enumerate}
\end{footnotesize}
which the Butubutu will entrust all resource management powers upon enactment and implementation. This initiative, upon being implemented, will stand out as a novelty in the region as it is distinct from those already pursued in other island countries in the region.\textsuperscript{119} In the case of Fiji and Samoa, local communities operate as implementing agents of the national government although bylaws were formulated through a joint-consultative process between the two parties. In essence, the distinction emanates from the possibility that the Butubutu will be empowered through legislative enactment as an autonomous legal entity capable of promulgating bylaws under its own authority. This would stand in contrast to the system in Samoa and Fiji whereby bylaws, although formulated by the community, are promulgated by the government. The ultimate in the case of the Butubutu is autonomy in all stages and processes of resource governance and management. The crucial issue therefore, for purposes of this research, is the structure to be adopted to better reflect a strengthened and modernised traditional institution equipped to take on the challenges of resource management under an autonomy arrangement.

The process of determining the required structure has already begun since the consultations. But whatever forms proposed for the new management body, the most relevant would be one that suits the autonomy objective of the Butubutu. What then is that autonomy objective?

It is well established that one of the objectives and aspiration of the Butubutu is to attain through legislative means autonomy over its

much-valued marine resources as reflected in its resource use policy framework. Thus, as a general policy statement, the Butubutu’s quest is to look ‘for a socioeconomic order that will bring wealth…and…empowerment to live as [an] autonomous and self-sufficient entit[y]…[having] mutual respect for customs…[and its] unique resources’. Since first adopting its constitution in 1983, Butubutu Babata has never lost sight of its desire to attain through legal process the right and power to make its own bylaws enforceable in any court of law. With that autonomy objective well-established, the issue then is the legally instituted body that should exercise legal authority over the Butubutu’s marine puava and its constituent resources.

There are two options that can be pursued. Such options relate to the scope of powers which will in effect define the nature of the body to be legally empowered. The first is for a general empowerment which will give the incorporated body broad powers and functions the exercise of which will capture almost every aspect and matters of interest to the Butubutu. Thus, instead of limiting its powers and functions solely to resource management within the Butubutu’s marine puava, the body by virtue of legislative enactment will equally be competent to deal with other numerous issues. For instance, the incorporated body will be empowered to deal with governance issues, business and investment, education, land-based development, and eco-tourism ventures, to name but a few.

Option 1 certainly has its strengths, one of which is that powers and functions of the incorporated body will not be limited or restricted, thus, wide in scope to accommodate all areas of interest to the Butubutu. However, the practical aspect of this option entails a lot of complexities as on the legal front alone the exercise of autonomy over numerous areas besides natural resources would inevitably lead to a series of infractions to existing legislation or Acts of Parliament. But this is not to say that

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120 Babata Tribe Chea Village Community, above n 32.
this option cannot be achieved in the long term as the opposite is possible on the basis of a phase by phase empowerment of the Butubutu under specific legislation and for specific purposes. Realising this option would entail addressing each Act of Parliament individually but on a consistent and coordinated basis.

The second option is for a special empowerment, with the incorporated body’s powers and functions precisely defined and confined to the regulation and management of the Butubutu’s natural resources. This will fall in line with the scope of the research which aims inter alia to define an incorporated body that may exercise exclusive management powers over the Butubutu’s resources. But note however that if this option is to be preferred, implication will be that certain committees and aspects of the current structure may still be retained albeit outside of the structure defined in the ordinance. For instance, the Village Committee may still need to function to regulate those other matters not falling within the scope of the functions of the newly incorporated body. But as long as such committees keep within their spheres of influence, then there is little or no room for an overlap of functions. On that note, all that will be required is a surrender to the new body such functions and duties that relate to the management of resources within Areas 1, 2, and 3. An early aide to such incorporated body is the resource management policy framework which will be essential in the process of translating policies into actionable programs and bylaws.

Examining these two options against the backdrop of an existing structure, the autonomy objectives or aspirations of the Butubutu will be better served by a body that, whilst empowered to make bylaws regulating the use of resources, can similarly do the same for other sectors of interest to the community. This is to ensure continuity of attention (at least within the framework of a Provincial Ordinance) to

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121 Such as the regulation of land-use and water supply in Area 1.
122 Refer to Plate 3 for an illustration of the said areas.
sectors that are still at the centre of Butubutu activities and programs undertaken under the current structure such as land-use, welfare, church, water supply and sanitation, transportation, education, infrastructure, conservation and business. *Option 1* is congruent with the holistic approach to resource governance as it provides the basis for legal authority under micro level autonomy to address inter-related areas that would impinge on resource governance in the future. Thus, *Option 1* will be further analysed in *Chapter 3*. 
Overview

Given the preference for the centralisation of all Butubutu affairs under the management of a single body, the idea of an incorporated trust or committee emerged to be the most desired. Thus, the consensus is for the entrusting of all resource management powers in a body that is legally incorporated bearing the name of the Butubutu and assuming such defined powers as relinquished by the Chief. The rationale is to avoid growing individualisation which is becoming a threat to the Marovo tenure system.

This chapter looks at the form of trust or management body to be legally incorporated. Thus, whilst setting out the structure of the incorporated body, it will similarly address the multiple issues of size of the trust board, qualification or eligibility for membership, the process of appointing trustees, tenure of office, procedure and meetings, and fair representation. Preliminary discussion or analysis will revolve around the concept of trust and trustee and the implications of the same on established Marovo kastomary tenure system.

Growing Individualisation and a Misconception of the Trusteeship Concept: A Lesson for Butubutu Babata

The rise of commercialisation in Marovo Lagoon has introduced the problem of individualisation which has in turn threatened the very fabric of the Marovo kastomary tenure system built on the principles of communalism or collective rights. Whilst isolated events of such greed have occurred in the past, the problem becomes exacerbated by the bait
In which different butubutu throughout the Lagoon leased their marine puava to the State-controlled Soltai Fishing & Processing Ltd for purposes of netting bait fish stocks. Most, if not all bait fish access agreements were negotiated with the fishing companies by chiefs or individuals acting as trustees of their respective butubutu. And with such assumed status, the purported trustees signing the access agreements with the fishing companies have most often failed to share the royalties with their fellow butubutu kinsfolk. As demonstrated by Hviding, ‘[a] number of trustees however have come to see themselves as sole owners of the bait ground, having themselves signed the contract with the company…[and] keep[ing] most or all of the royalties for their own use’.124 In any event, it is the legal status assumed upon the signing of the contracts coupled with the misconceived terminology used in the agreements, such as “reef owner” that paves the way for the setting in of individualism thus disputes within the bait ground system.

Although not party to any bait fish access agreement, Butubutu Babata is not immune to the influences of the cash economy and its associated individualisation or trusteeship problem. In this connection, whilst optimism is high for the legal establishment of a board of trustees, the Butubutu needs to be guarded against the pitfalls of adopting a foreign concept the application of which may promote the interest of a few thus polarising the community. In the light of changing socioeconomic circumstances, even the role of the Chief may have to be subjected to a local or customised system of checks and balances so as to avoid any situation similar to that permeating the bait ground trade. There is tendency within the community to refer to the Chief as the trustee of the Butubutu without any signs of acknowledgement of the

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123 A network of defined bait grounds established since the late 1970s to facilitate the pole-and-line operations of the State-controlled tuna companies: Solomon Taiyo Ltd and National Fisheries Development. Agreements were negotiated between the companies and customary owners for access to bait fish stocks within the Lagoon subject to the payment of royalties disbursed according to an agreed formula. Such royalties were paid to a named trustee of each butubutu that owns a bait ground covered in the access agreements.

124 Hviding, above n 11, 347.
lurking dangers in waiting should the Chief is to assume such status through legal instruments just as experienced with the *bait ground* system.

Such reference to the Chief as *trustee* may have been done innocently in recognition of and respect for the existing *Butubutu* traditional hierarchy as reflected within the current structure. But the ignorance or innocence of the subjects of the Chief should not be treated with complacency or given the benefits of acquiescence, as the misunderstanding of the *trusteeship* concept and its application to *kastomary* tenure systems need rectification. It is therefore only proper to ask at this juncture whether such a concept of *trustee* exists in Marovo *kastom* or Solomon Islands’ traditional societies generally; more particularly in the area of *kastomary* land or marine tenure. Hviding, in his many works on Marovo society, has observed that no such concept exist in the Lagoon’s tenure system. What he had observed instead is that ‘*[t]he customary system of marine tenure in Marovo gives everyone with recognised Butubutu membership the right to benefit from the marine puava through harvesting resources for subsistence and commercial purposes*’.\(^{125}\) Given the presence of such well-established *kastom*, it is therefore correct to conclude that the adoption of the *trusteeship concept* is more of an approach geared towards facilitating the commercial goals underpinning the *bait ground* system. As for any commercial venture, business expediency is facilitated by dealing with individuals other than entire groups to ensure for instance convenience, speedier transactions and less hassle. For instance, it was observed by Paterson that\(^{126}\)

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{[t]he use of agents and trustees to make decisions about the use of customary land has the advantage that an individual person or a small group of people can usually examine a matter in more}
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\(^{125}\) Ibid.

\(^{126}\) Don Paterson, ‘Current issues relating to customary land: national and personal heritage or hereditas damnosa?’ (Paper presented at the Legal Developments in the Pacific Islands Region Conference, Port Vila, 19-20 October 2000) 47.
detail and reach an agreement more easily and more quickly than a large body of people.

With factors such as speedier conclusion of agreements having a bearing on the negotiation of the bait ground access agreements, introduction of the trusteeship concept was thus inevitable. In the ultimate, the system operates to enrich the few trustees at the cost of the ordinary butubutu kinsfolk. It is thus well summed by Hviding that ‘in the new formalised bait ground system...the tendency is that just a few individuals (the trustees) monopolise the right to take profit from the area, in terms of receiving bait royalties’. Such sentiments received support in the observations of Paterson in which he raised the danger that “the individual or the small group may make decisions and take action that are more in their own personal interests than those of the body as a whole, or may make decisions that are unwise or improvident”. Such admonition was not only made by academics and researchers, but also by courts which have echoed similar sentiments when faced with cases of such nature.

In its determination of cases pertaining to various interests in kastomary land, the High Court of Solomon Islands was equally concerned by the growing use and notable lack of understanding of the trusteeship concept as originally developed in England. In what appears to be a caution against invoking the concept too readily to kastomary land, the Court warns of the lurking dangers of using the trusteeship concept in the context of a tenure system so different to those for which the concept was developed by the equity courts in western legal systems. Thus, whilst acknowledging that some elements of kastom may have equivalent concepts in English law introduced to the country, the same is not true of the trusteeship concept. Muria CJ, as he then was, in Kasa

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127 Hviding, above n 11.
128 Paterson, above n 126.
and *Kasa v Biku and Commissioner of Lands* had in no equivocal terms stressed that\(^{129}\)

The concept of trust is not known in customary law and hence, the use of such expression when describing a relationship between the parties in a customary land dispute must be carefully guarded. Not only that the parties have resorted to the trust concept in support of their cases at times but the Courts too, have the tendency, whether consciously or unconsciously, of adopting and applying the concept as applied under received law. Blindly adopting legal and equitable principles under received law must be avoided where such concepts do not apply or cannot accommodate the fundamental principles of customary law jurisprudence.

Muria CJ’s admonition of the misconception re-echoes and reaffirms the sentiments earlier expressed by Daly CJ in *Lilo and Another v Ghomo* in which His Lordship expounded:\(^{130}\)

I must say something generally about the difficulties that have arisen...from what is always a problem in dealing with Customary Land Cases in modern Solomon Islands. That problem is how can one express customary concepts in the English language? The temptation which we all face, and to which we sometimes give in, is to express these concepts in a similar manner to the nearest equivalent concept in the law received by Solomon Islands from elsewhere, that is the rules of common law and equity. The result is sometimes perfectly satisfactory in that the received legal concept and the Solomon Islands custom concept interact to give the expressions a new meaning which is apt to the Solomon Islands context.

Having made that general observation, Daly CJ continued:\(^{131}\)

\(^{129}\) Unreported, High Court of Solomon Islands, Muria CJ, 14\(^{th}\) January 2000, 3.

It is thus with the use of the word "trustees" which has arisen in this case. This word is used in Solomon Islands in the customary land context in a different way to its use in relation to the principles of equity elsewhere. However other concepts of received law have not developed a customary law meaning and the use of expressions which denote those concepts can produce difficulties of some complexity. This is particularly so when the custom concepts which they are said to represent are themselves undergoing modification to fit them to the requirements of a changing Solomon Islands...

What the above demonstrates is that whilst traditional leaders are often viewed as trustees of tribal property or kastomary land, their powers and obligations do not arise out of a situation the equivalent of a trust stricto senso; neither express nor constructive. As such, the trust principles as developed in equity do not govern the relationship between a chief and his fellow kinsfolk. In retrospect, it is inconceivable at least in the context of kastom in Marovo and Solomon Islands generally for members of a tribe to enforce their rights, purportedly as beneficiaries under the rules of common law and equity against a tribal head popularly seen as a trustee. This state of things or status quo remains the accepted convention or norm within local communities and its infraction will bring with it adverse consequences such as rejection within the community. But this is not to say that judicial intervention is not available to those seeking redress, as, subject to the nature of trust instruments or arrangements of that effect, proceedings can be brought in the country’s High Court for such purpose. As explained by Paterson, “[t]he principles of equity and the legislation relating to trustees that exist in all countries do allow for proceedings to be brought in the High Court or Supreme Court to exercise control over trustees....”132 Paterson’s view however has its limitations in Solomon Islands as the status of a trustee in the context of customary land remains ever more unclear as demonstrated in the Kasa and Lilo cases respectively. If unresolved by the courts in the foreseeable

131 Ibid.
132 Paterson, above n 126.
future, the situation is deemed perpetuated by operation of Schedule 3 of the 1978 Constitution which renders the principles of common law and equity subordinate to local kastom within the hierarchy of laws.\textsuperscript{133}

Reverting to the admonition by the High Court in the above cases, it must be highlighted that adoption of the trusteeship concept in the context of commercial undertakings involving customary land must be done with caution, utmost care and clarity. Thus, the Court’s approach in the Kasa and Lilo cases provides a good lesson to be learnt as well as availing useful guidance to any aspiring traditional institution such as Butubutu Babata that attempts to reform itself in the collective pursuit of socioeconomic objectives. Application with utmost regard to the High Court’s admonition would entail taking a cautious approach towards defining the relationship between trustees and the ordinary Butubutu kinsfolk. Similarly, the role of the Butubutu Chief within the new arrangement will need to be carefully considered. If a radical departure from kastom is not intended, then the process of adaptation of the trusteeship concept through legislative enactment must as much as possible avoid incorporating alien idioms that bears no resemblance to the Marovo tenure system. To keep the Butubutu guarded against a misconceived application of the trusteeship concept, prescriptive drafting would thus be needed so as to ward off its undesirable elements considered alien even to an evolving kastomary law and society. In simple, the law must be clear in stating that although the terminology used derives from received English law thus borrowed terminology, it is not the intention of the Butubutu to entertain a wholesale adoption of trust principles as developed in equity. In this vein, the Butubutu trust should be characterised by modified principles being the product of a hybrid or cross-pollination between kastom and the received principles of

\textsuperscript{133} Para.2(1) of Schedule 3 to the Constitution provides:

\textit{Subject to this paragraph, the principles and rules of the common law and equity shall have effect as part of the law of Solomon Islands, save in so far as...(c) in their application to any particular matter, they are inconsistent with customary law applying in respect of that matter.}
equity. The rationale for this hybridisation is to cater inter alia for a Butubutu structure that is strengthened and more relevant to modern socioeconomic circumstances.

III Proposed Organisational Structure

The aim is to adopt a structure that revolves around an incorporated trust board with the power to appoint special committees for the performance of specific functions. The option of a trust is driven by the need to push forward the Butubutu into the realms of economic development without having to hang on to “the old ways” of doing things. Similarly, the option will ensure an orderly flow of powers and benefits to all members as opposed to the concentration of the same in a few individuals. Ultimately, potential problems of individualism will be avoided at the outset and associated symptoms arrested before the same could develop to the extent of getting well-established within the Butubutu. From a development perspective, an incorporated tribal trust appears more attractive to donor agencies in particular when development proposals are submitted for funding and the like.

Achieving the foregoing will entail incorporating a trust governed by a board of trustees with the latter exercising the power to delegate certain of its responsibilities to specially-appointed committees. However, whilst delegation may be required, the final authority to make or endorse decisions must remain with the trust board. In other words, whilst day to day operational activities may be carried out by committees, such must occur under the guidance and control of the trust board.

For purposes of this research, the special committee of interest is the Resource Management Committee (RMC) which must be given specific recognition with a mandate in the Ordinance. This would require the RMC to be incorporated simultaneously with the trust board, for instance, by means of a schedule to the Ordinance, with its specific
functions and powers defined in the same. There needs to be clarity in identifying the RMC as a subsidiary body of the trust board although with certain limitations in the appointment process. As demonstrated below in Fig. 4, the RMC is to comprise of five members, one of whom is the chairman appointed by the trust board upon recommendation of the Committee. To counter current practice characterised by male dominance of all committees within the Butubutu structure,\textsuperscript{134} it is recommended that two positions be reserved for appointment by the trust board immediately after elections. This should act as a mechanism for ensuring gender balance within the new structure in the event no female is elected to the RMC. It can be noted that the current trend and biased perceptions towards females within the Butubutu provides little guarantee for the elevation of the status or role of women within its structures. Accordingly, adoption of the new system within the appointment process should provide the opportunity for effecting changes to the status quo should and when considered necessary by the traditional leaders.

\textbf{Fig. 4}

\textit{Organisational Structure of the Butubutu Babata Development Trust}

\textsuperscript{134}Membership of the Elders Council, Advisory Board, and Village Committee are exclusively male.
The incorporation of kastomary owners into a corporate body by way of legislation is not a new concept in the region, as such has been provided for in countries such as Cook Islands,\textsuperscript{135} New Zealand\textsuperscript{136} and Papua New Guinea.\textsuperscript{137} Care, Newton and Patterson have identified this method as an alternative form of managing tribally-owned land or estates\textsuperscript{138}, and perhaps more preferable to the system of trusteeship established through means other than special legislation. Thus, by operation of this alternative,\textsuperscript{139}

custom owners ...[are] incorporated by legislation into a corporate body, and for the powers of that corporation to be exercised by a small management committee. The committee may be authorised by the legislation to act by a majority, and it will then be easier for it to operate.

Whilst the alternative form was already practiced in certain countries as shown above, its introduction to the Butubutu Babata initiative will mark a novelty in Solomon Islands. No tribe has ever pursued such an option in the management of its resources. But in any event, this is a vacuum created by political inertia and the lack of foresight by political leaders. With the exception of the Winston Churchill Memorial Trust\textsuperscript{140} and the Church of Melanesia Trust Board,\textsuperscript{141} most trust bodies currently operating in the country were established merely by trust deeds registered under the Charitable Trust Act.\textsuperscript{142} But none is a tribally-based body incorporated precisely as a micro-level institution within the decentralisation framework. For the whole rationale of the Butubutu

\textsuperscript{135} Land (Facilitation of Dealings) Act 1970.
\textsuperscript{136} Maori Affairs Amendment Act 1967.
\textsuperscript{137} Land Groups Act [Cap 147].
\textsuperscript{139} Ibid.
\textsuperscript{140} See Winston Churchill Memorial Trust Act 1966 (Sol Is).
\textsuperscript{141} See Church of Melanesia Trust Board (Incorporated) Act 1976 (Sol Is).
\textsuperscript{142} Charitable Trust Act 1964 (Sol Is).
initiative is to attain some form of resource autonomy at least within the decentralised government framework and thereby gaining much recognition from both the national and Western Provincial Governments respectively. Its purported establishment within the overall decentralisation framework thus gives the Butubutu distinctive features compared to other trust bodies already operating in the country.

Incorporation of the Butubutu Babata Development Trust (BBDT) will be through legislative enactment of the Western Provincial Assembly. This is to maintain and comply with the hierarchy of the decentralisation structure and the inherent law-making processes. The Assembly will need to exercise its powers\textsuperscript{143} under both the Provincial Government Act 1997 and Fisheries Act 1998 to ensure the broad objectives of the Butubutu are comprehensively addressed and accommodated under a single Provincial Ordinance, cited for instance as the Butubutu Babata Development Trust Ordinance. Exercising the combined powers of the Assembly will ensure that whilst the Provincial Government Act addresses the autonomy objective of the Butubutu, the Fisheries Act will similarly provide the legal basis upon which resource management powers within the Butubutu’s marine puava can be exercised by the RMC.

The enacting provisions of the ordinance will need to be precise as to its purpose and what it intends to establish. As to the latter, the ordinance will need to establish the trust, define its purpose, establish and incorporate a board of trustees, and empower the board to appoint committees where it considers necessary. For instance, in establishing the trust, a provision commencing with the following line would suffice: “There shall be and there is hereby established a trust which shall be called the Butubutu Babata Development Trust”. The ensuing provisions should then address numerous issues including the following: (i) establishment and incorporation of board of trustees, (ii) defining the

\textsuperscript{143} Refer to the diagram in Fig. 2, ch 1.
purpose and objects of the trust, (iii) vesting of Butubutu property, (iv) trust fund, (v) powers of the board of trustees, and (vi) meetings.

The powers of the Board to appoint and empower committees is central to this research, as the objective is to concentrate focus on the resource management functions of the board and the delegation thereof to the RMC. Thus, there should be specific reference to the RMC in the ordinance with the latter’s powers defined in a schedule to the ordinance which should similarly contain resource management bylaws to be administered by the Committee. For instance, in providing powers for the appointment of committees, there should be a provision to the following effect “The Board may appoint such committees as it may consider necessary for the carrying out of its functions, including a resource management committee which shall exercise such powers as prescribed in the schedule”. An entire schedule should thus be dedicated to the RMC, addressing issues such as its composition, powers and functions, and jurisdiction. The head of the RMC should be a secretary, and not a chairman so as to avoid being confused with the chairman of the trust board. This structure should equally apply to all other committees appointed by the board. There will thus be a number of secretaries reflecting the various committees established by the board, such as a secretary of finance and administration, secretary of culture and kastom, secretary of church affairs, secretary of sports, secretary of village infrastructure, and so forth.

V The Board of Trustees

The Board of Trustees should be incorporated as a body corporate with its own seal, possess perpetual succession and the right to sue and be sued in its own name on behalf of the Butubutu. This would ensure that the board exercises unlimited powers insofar as matters and issues affecting the interest of the Butubutu are concerned but subject of course to the scope of its autonomy.
This section below will provide discussion on various issues of importance to the establishment and operation of the trust board. Thus, discussion will focus on (i) the composition and membership of the board, (ii) the process of appointment to the board, (ii) eligibility for appointment, and (iv) the tenure of trustees.

A Composition of the Board

The approach is to create a board the composition of which would reflect the combination of both traditional and non-traditional authorities. Thus, whilst kastom will be the basis for determining membership of the trust board, changes should also be introduced to allow for a slight departure from the strict application of kastom rules, for instance, in the case of female representation in decision making. The trust board is to comprise of seven trustees, namely, the Butubutu Chief, Secretary to the Chief, Spokesman, three elected trustees, and one appointed trustee.144

At the helm of the board is the chairman who ought to be the Butubutu Chief, assuming such position as of right. In other words, assuming the chiefly title according to Marovo kastom will automatically entitle the title holder to the position of board chairman. It is thus imperative that the Butubutu traditional leader must be given a significant role within the new structure to bestow, among others, legitimacy to the newly incorporated body. Since most decision-making powers and functions under the current Butubutu structure revolves around the Chief, a departure from such established system may appear undesirable and will be subject to outright rejection by a community that holds high respect and esteem for its traditional head. Given the hereditary system of succession to the chiefly title, there is absolutely no

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144 Refer to Fig.4 above.
problem in identifying the rightful claimant to the office of board chairman.

In further buttressing the position whilst similarly modernising the roles of the Chief, two positions within the current *Butubutu* structure that remain instrumental in carrying out the delegated responsibilities of the former needs to be given recognition, thus incorporated into the board. The positions of Secretary to the Chief and the traditional herald or Spokesman are both significant ranks within the Chief’s traditional court and have come to symbolize the traditional authority of the *bangara* in modern day Marovo. Accordingly, the traditional court of the Chief needs to be given recognition and perpetuated under the new structure. Evidence proves that both positions have been instrumental in organising tribal matters on behalf of the Chief ever since the adoption of the first *Butubutu* Constitution in 1983. Spanning a period of over 20 years, these two positions now form an integral part of the *Butubutu’s* traditional authority and must be accorded equal legal recognition. At this juncture, it is worth highlighting that the key role played by the two positions and the corresponding respect accorded to the same within the community bespeaks of the evolving nature of Marovo *kastom*. In other words, with the exception of the spokesman, the position of secretary does not originate out of nor recognised by Marovo *kastom*. However, given the immense power and responsibilities wielded by the duo over the years, the two positions have rose to prominence, thus, merits *ex officio* membership of the board. And with legislative enactment of the trust, reference to the two positions in the Ordinance will in effect give permanence to the same including recognition of the Chief’s traditional powers to appoint successors in the event of vacancy. In the ultimate therefore, *kastom* still plays a crucial part in the constitution of the trust board.
With three trustee positions occupied merely by virtue of status within the current structure, the balance should then be left to an open election process within which all Butubutu members will participate. This is to ensure a democratic process counter-balances the non-democratic rules of kastom purportedly employed in the trust, let alone, given legal effect in the ordinance. Accordingly, three trustees are to be appointed through a normal election process which should preferably be held during a general meeting chaired by the Chief or either of the two ex officio trustees. The elected trustees thus represent the voice of the ordinary Butubutu kinsfolk within the trust board. Additionally, the rationale for allocating space for three elected trustees is to provide an opportunity for females or less represented sectors within the community to have their say in the composition of the trust board not only in terms of their votes but similarly in exercising their rights to contest the elections. It is thus anticipated that the allocation for three elected trustees presents an opportunity for the fair representation of women within the highest decision-making body of Butubutu Babata. However, should such guarantee fails, then the remaining option in ensuring gender equality within decision-making processes of the Butubutu is to create a fall-back provision. That provision should compel the Chief to rectify disparities within the board in terms of composition and the need for fair and equitable representation.

Empowering the Butubutu Chief to appoint the final trustee to complete the numerical composition of the trust board operates to serve two purposes. Firstly, it ensures that the Chief in exercising his traditional authority does have at least a direct hand in the composition of the board. In simple, it operates to signify the fact that the trust is established on the basis of existing kastom practiced by Butubutu Babata, symbolised by the continuous practice of and respect for a traditional hereditary chiefly system. To remove the composition of the trust board entirely from the hands of the Chief is tantamount to abandoning or overlooking the very institution upon which the trust is
purportedly established. Secondly, the appointment reserved for the Chief acts as a guarantee in the event the board, after elections, is unevenly represented. Thus, in the event all elected trustees are male, the Chief should be duty-bound to ensure fair representation for women when exercising his right to appoint the remaining and only appointed trustee. The current *Butubutu* structure does not have any such mechanism, hence the monopoly of all decision-making processes of the community. With the prescribed composition of the trust board providing for three elected trustees and an appointed trustee, there is every prospect for womenfolk to eventually make it into the board upon its incorporation in the near future.

B  Appointment through Election

Opposed to the system currently employed in appointing members to the Elders Council, Village Committee, or Finance Committee, the desire is to depart from such a system and adopt one that is transparent and guaranteeing of wider community participation in the appointment process. Thus, to ensure three trustees are appointed through a transparent and democratic process,\textsuperscript{145} all *Butubutu* members reaching a certain age should part-take in the election process to appoint a certain proportion of the Board. The process should be initiated through a number of options. The first is for the Chief to nominate a number of persons not less than four in total. The list is then tabled at a general meeting to be voted on by all members of the *Butubutu* eligible to participate in the process. Decided through elimination, the three candidates receiving the highest number of votes are deemed elected. Below is an illustration.

\textsuperscript{145} See eg. Nielsen on democracy in resource co-management systems. Nielsen et al, above n 3.
Voting Scenario I

The Chief nominates 10 candidates identified as A, B, C, D, E, F, G, H, I, and J. Five are male and the other five female. Upon voting by members of the Butubutu, A receives 3 votes, B 6 votes, C 8 votes, D 10 votes, E 12 votes, F 9 votes, G 9 votes, H 15 votes, I 16 votes, and J 17 votes. As per the rule, the first three candidates with the highest number of votes are deemed elected. Accordingly, candidates H, I and J are deemed elected to be trustees having received the highest number of votes.

In the event there is a tie between two candidates receiving the third highest number of votes, a new ballot is warranted purposely to decide the ultimate winner of the two. Below is an illustration.

Voting Scenario II

Of eight candidates identified as A, B, C, D, E, F, G, and H, the highest numbers of votes are received by B with 18 votes, D 16 votes, F 15 votes, and H 15 votes. Whilst candidates B and D are deemed elected, there is no clear third winner owing to a tie between F and H with 15 votes each. A new ballot is therefore needed with F and H as the only contestants to determine the clear third winner.

An alternative option to the Chief initiating the process is to call instead for nominations from the floor with voting to proceed as soon as the list of candidates reaches four or more. The rule for determining the winners will remain the same as demonstrated in the above scenarios.

Where it turns out no female is nominated or elected under either option, such deficit is to be addressed through the Chief’s exercise of his
power of appointing a trustee. It is thus imperative that the Chief's power of appointment should be guided in principle by certain guidelines incorporated into the ordinance to avoid an arbitrary exercise of discretion. As a traditional figurehead, there is little guarantee that the Butubutu Chief is prepared to give leeway for changes to the decision-making structure that are perceived radical or anti-kastom. Accordingly, initiative for change and adaptation will need to be jump-started through legislative enactment.

C Eligibility to be a Trustee

Given the BBDT is centred on tribal puava being the very foundation of Butubutu Babata, the same must be guarded against external elements that might hijack the whole Butubutu initiative through membership of the trust board. An operating environment characterised by deep suspicion of an outsider will not be conducive to a functioning trust. Thus, eligibility to be a trustee should be strictly confined to membership of Babata through consanguinity either by virtue of patrilineal or matrilineal descent. As the trust is created for purposes of managing all affairs of the Butubutu the most important of which is its puava, it is imperative that the kastom rules of corporate group descent be consolidated and maintained. And given its new endeavour in pursuing its socioeconomic objectives under the shadow of autonomy, the management of its resources should be seen as providing an impetus for re-visiting its family tree and sociocultural relationships and alliances, both within and without. Hviding did observe for instance that for any Marovo butubutu, ‘the management of ostensibly material resources is closely linked to the management of social relationships and cultural identity’. His observation well summed the practical situation prevalent in Marovo Lagoon. The point therefore is that there should be a

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146 In the introduction to its management policies, the community re-emphasised that ‘there is a very strong relationship between Babata tribe and Babata land which embraces the whole social structure of the tribe and the question of authority and ownership of Babata land’. Babata Tribe Chea Village Community, above n 83.
147 Hviding, above n 11, 385.
prescriptive provision detailing the rules of eligibility for trusteeship. And to capture the Butubutu’s kinship ties throughout the Lagoon or Province, the requirement for eligibility should not be location-specific by focusing only on Chea village. Rather, such rules should allow for those with blood ties to the Butubutu but settling in other locations and islands to be deemed eligible for appointment as trustees.

The current constitution is not that prescriptive as to the issue of membership of the Butubutu and of the various committees it established, but nonetheless provides some basic or principled guidance as to who should be involved in its decision-making institutions. The ordinance should thus translate the general guiding principles in the Butubutu constitution into detail rules of eligibility for becoming a trustee. Whilst the Chea Village Committee Regulations prescribes eligibility for membership as restricted to ‘a resident of Chea village’, such must not be taken on face value as applicable to the trust board. Both bodies are so distinctively different in terms of scope, functions and powers and cannot be considered as equals so as to adopt the Village Committee rules for purposes of determining eligibility for trusteeship of the trust board.

In view of the above, it may be worth mentioning a few crude rules of eligibility to include the following: (i) the person must be born to a man or woman of Babata heritage, (ii) must be at least of a certain age as prescribed in the ordinance, and (iii) be of sound mind. Provision should similarly be made permitting women marrying into the Butubutu to be eligible for appointment as a trustee. However, as a predominantly patrilineal society intent on being protective its kastom and resources, the same privilege may not be afforded to men marrying into the Butubutu. There are currently cases of males from other islands marrying into the Butubutu and residing in Chea. Some have now occupied

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One such case is a male from the author’s island of Malaita who got married to a woman from Chea and finally made the place his adopted home. It was confirmed to the author during on-site
positions within the current structure, in particular the less influential village committee which, quite appropriately, is restricted from dealing with land or related matters of the Butubutu. Whilst such practice is permissible under the current structure, the same must not be permitted to permeate the composition of the trust board for reasons earlier highlighted.

D Tenure of Trustees

Until such time the ordinance establishing the BBDT may be repealed, there is every prospect of its perpetual existence as from birth. Thus, certain figures should be granted every right to dedicate much of their lives to the well-being and management of the trust. To reflect the kastom basis upon which the trust is to be founded, it is proper that the Butubutu chief and the two members of his court – Secretary and Spokesman – should be given life tenure as trustees. Allowance should nonetheless be made for cases such as voluntary resignation and incapacity.

The three elected trustees and the one appointed by the Chief should be prescribed a standard term of tenure within the range of three to five years, with all trustees eligible for re-appointment. Thus, a provision to this effect would suffice: “Subject to subsection x, each trustee shall hold office for a period of five years from the date of being elected and shall be eligible for re-election”. Subsection [x] should then specify the life tenure of the ex officio trustees, namely, the Chief as board chairman, his spokesman and secretary, followed of course by supplementary provisions outlining the events which may bring to end each trustee’s tenure. Similarly, a provision for the removal of any of the three elected trustees and one appointed by the Chief should also be provided. It is

research that the Malaitan (name withheld) referred to was an active participant and instrumental in most village or Butubutu activities.
recommendable that any such removal should be done by resolution of
the Butubutu at a specially convened meeting.

VI Resource Management Powers and Functions

Whilst prescribing all such other powers of the trustees, including
the power to hold and dispose of property on behalf of the Butubutu, all
powers relating to the management of resources within the latter’s puava
should be stated as delegable to the RMC created by way of schedule to
the ordinance. Thus, whilst retaining the overall power to act on behalf of
the Butubutu, there should be room for delegation to special committees
established by the trust board as subsidiary bodies of the same. One
such power delegable to the RMC is the one to prescribe bylaws and
rules applicable to the harvesting or trade of natural resources within the
Butubutu’s puava, in particular, commercial species found in Area 2\textsuperscript{149}
which is its marine puava. This power will be the subject of discussions
in Chapter Six.

The functions and powers of the RMC should be set out in a bylaw
that focuses precisely on Area 2. Such bylaw should prescribe a set of
prohibitions to be enforced by the RMC. Guidance as to the nature of
such prohibition is already provided in the resource management policy
framework (see Appendix B), which sets out a number of rules to be
followed by community members in utilising resources within the
Butubutu’s marine puava. Such basic rules will need to be adapted and
modified to render the same applicable to outsiders once promulgated as
bylaws. Apart from the more generic meaning of the term outsiders, its
application in the context of Marovo marine tenure is quite distinct as
‘outsiders are usually defined as people from “other sides” and are sub-
classified according to their ties, through kinship or otherwise, to the group
whose area they wish to enter’.\textsuperscript{150} By Marovo tradition, people classified

\textsuperscript{149} Refer to ch 2 for a description of the areas.
\textsuperscript{150} Hviding, above n 11, 296.
as such are always expected to seek permission from the *bangara* of the *butubutu* controlling the sea area prior to carrying out any fishing or other related activity.  

The enforcement of bylaws with legal sanction will not necessarily threaten the relationship, if any, between *Butubutu Babata* and *outsiders*, as in Marovo Lagoon it is normal for any such group to traditionally enforce ‘*a diverse set of potential regulations on the activities of outsiders in the seas and reefs of the group’s marine puava’*.  

**VII Accountability and Transparency within Decision-Making Processes**

Participation within decision-making processes of the new structure by adult members of *Butubutu Babata* will need to be guaranteed through the enabling ordinance, even if a slight deviation from some established rules of *kastom* is foreseeable. The current system of decision-making within the *Butubutu* structure does not provide any mechanism for the equal participation of all community members. In other words, it is not at all transparent in the sense that the majority of *Butubutu* members do not have a say in most decisions made for instance by the Chief or Elders Council. Evolving into an incorporated institution mandated to pursue the socioeconomic goals of the *Butubutu*, it is imperative that transparency is maintained within all decision-making processes of the *Butubutu* to keep track inter alia of all developments within the BBDT including the distribution of benefits. As to the latter, Anderson et al suggested for instance that the drive for economic benefits and the accompanying competition for cash within communities will tend to result in a demand for increased accountability and transparency within decision-making processes.  

Further, although the trust is built on *kastom* as its foundational base, its internal processes will need to adapt to new ways of

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151 Ibid, 301.
152 Ibid.
incorporating wider participation in decision making. To restrict that privilege to the upper echelon of the Butubutu hierarchy will mean running the risk of inadvertently alienating the majority from contributing towards decisions and actions that would affect them as an integral part of that traditional corporate entity. Lest no-one takes cognizance of it, the baitground system experience associated with Taiyo Gyogyo operations in Marovo Lagoon provides a good lesson from which Butubutu Babata should learn and avoid. The problem of individualisation experienced with the baitground system can be attributed to the lack of mechanisms allowing for wider internal consultation and participation in decisions leading to the eventual signing of baitground access agreements by a few butubutu representatives. With the passage of time, the alienation of the majority of butubutu members from decision-making evolved into one of depriving members of the butubutu of entitlements to royalties received from Taiyo Gyogyo. As demonstrated by Hviding: 154

A number of trustees, however, have come to see themselves as sole owners of the bait ground, having themselves signed the contract with [Taiyo]...[and] keep[ing] most or all of the royalties for their own use. This is a situation which parallels well-known processes of formalisation and individualisation in customary land tenure....

The observation by Hviding draws support from various researchers including Dalzell and Schug, who, in their general observation of Pacific Island societies, remarked: 155

[Given the ideology of competitive individualism that is gradually infiltrating island societies, one might expect that customary marine tenure systems may be more exclusionary or privatised...[and] the competition for cash has likely contributed

154 Hviding, above n 11, 347.
155 Dalzell and Schug, above n 16, 14.
to the erosion of traditional principles of reciprocity and redistribution while discouraging conformity and compliance with kinship obligations.

Could all the above observations be taken to prove the strong assertion by Johannes that *kastomary* tenure systems were not designed to cope with the stresses that accompany the introduction of money economies to indigenous Pacific Island societies? The assertion could not be easily discounted as it ultimately bears merit and weight. To provide a brief diagnosis of the causes of the stress on *KMT* systems, a number of common factors can be identified. Firstly, the inexorable integration of once purely subsistence societies into the cash economy has resulted in a radical shift towards greater reliance on cash. Thus, for coastal communities, the exploitation of marine resources remains central for purposes of income and food security. Competition for cash has thus resulted in the erosion of kinship obligations valued under *KMT* systems. But this is inevitable, as in any island society entrapped in the cash economy each family is expected to fend for itself. And in that cause, strict adherence to the traditional principles of reciprocity, let alone redistribution, is considered unnecessary and repugnant to contemporary lifestyle. The commercial exploitation of marine resources on an individual basis to meet family needs has become the norm of survival within the cash economy, and will rarely be criticised, if at all, within the community. Secondly, the problem of competition for cash is further exacerbated by a population boom within coastal communities in the Pacific. Thus, whilst the abundance or availability of a commercial species is on the decline, the number of competitors for that resource will most likely be on an exponential increase. Thirdly, in Melanesian societies which are more or less egalitarian, it is difficult for an individual considered a tribal leader to effectively exert authority and control over all members of a tribe, let alone surrounding communities. This has

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157 See e.g. Kinch et al, above n 15.
158 See e.g. Dalzell and Schug, above n 16, 14.
created a vacuum within which all members of a coastal tribe can claim the right and unilateral approval to exploit resources without the need to account to any higher authority. Worse still, income earned from such resources will not be subjected to the traditional principles of reciprocity, redistribution and conformity with kinship obligations. In effect, the introduction of a laissez-faire system of resource exploitation together with the cash economy is facilitated by pre-existing conditions within coastal egalitarian societies.

Rectifying the stress on KMT systems or at least mitigating its adverse effects with the aim of eliminating inter alia the laissez-faire approach towards resource exploitation in most societies would entail having in place new approaches and mechanisms. Whilst a wholesale re-strengthening of KMT institutions and authorities is the most identifiable option, its practical implications and benefits remain of a limited nature. Nonetheless, adaptation and modernisation of traditional structures through legislative means with legally-sanctioned rules\textsuperscript{159} would add new dimension and teeth to the powers of traditional authorities. Additionally, elimination of egalitarianism\textsuperscript{160} and the laissez-faire approach through development of new hierarchical structures within communities in the pursuit of socioeconomic development would at least provide guarantee for the fair distribution of benefits. In this vein, the reorganisation of traditional entities is necessary for purposes of fast tracking the process of adaptation to modern socioeconomic circumstances. Focusing on Butubutu Babata as a traditional entity with an operating or functioning structure, the need is not one of elimination of egalitarianism, but rather the definition of mechanisms that would procure long-term community motivation and support for the existing resource management regime.

\textsuperscript{159} This might also include offences enforceable in law courts.

\textsuperscript{160} Used here in the sense that an ‘open system’ of resource exploitation within a coastal tribe or community is practiced, the effect of which results in nobody having an obligation towards other members of the tribe or community. Thus, resources are harvested by tribal members at liberty and according to one’s own capability.
With a functioning structure or at least, *Butubutu Babata* is already a step ahead. However, an area that needs improvement is that of wider community participation which needs to be addressed within the new *Butubutu* structure. The objective is to avoid alienating the majority of the *Butubutu* membership in most decision-making processes. Avoiding the baitground system situation would thus entail having in place a legal requirement or obligation for certain or most decisions of the trust board and RMC to be subject to resolution at general meetings of the *Butubutu*. This is to ensure accountability and transparency in fundamental decisions affecting the collective interest of the *Butubutu*. A classification of matters or issues into categories which *would* and *would not* be subject to resolution by all members of the *Butubutu* would be the basis to start. For instance, any matter pertaining to the lease of part of the *Butubutu*’s terrestrial *puava* should be considered as fundamentally important, thus the subject of a negative or affirmative resolution of all members. Likewise, the investment, loaning or distribution of *Butubutu* monies may also be classified as fundamentally important, thus, subject to the same treatment. The ordinance will need to be precise as to those categories. As the ultimate, it is vital for purposes of this *democracy* mechanism that the category of matters for which a resolution by *Butubutu* members is needed should not be restrictive but rather inclusive. This is to ensure that *Butubutu* members participate as much as possible in all decisions and resolutions made by BBDT.

Further, wider community participation will not put stress on the resource management system in terms of processes or otherwise. Nor will it undermine or usurp the role of the Trust Board. On the contrary, wider participation will relieve inter alia the Board of the burden of having to make difficult decisions. Leaving such matters to be decided by resolution of the *Butubutu* will absolve the Board from fault or liability in the event of losses or failures. Similarly, it would operate to ensure that the Board is always accountable to the community, and functions as the implementing agency of *Butubutu* resolutions and decisions.
Four

TERRITORIAL JURISDICTION FOR MARINE RESOURCE MANAGEMENT

I Overview

When it comes to the management of natural resources of the Butubutu’s marine puava, one of the most contentious issues is the territorial jurisdiction of the trust, thus, RMC, which must be clearly demarcated. Failing that, there will potentially be problems or disputes arising between Butubutu Babata and other neighbouring butubutu or groups which have kastomary claim to parts of the Lagoon and reefs. Such groups will include butubutu Kalekogu and Olovotu settling at Sasaghana and Chubikopi on Marovo Island, and the Repi people on Vangunu (refer to Plate 2 above). Quarrels over access to rich fishing grounds of the Lagoon were common in the 1980s and 90s when commercialisation was on the rise. Whilst most such quarrels and disputes occurred merely as a consequence of the failure to seek prior permission for access, some were nonetheless more fundamental in nature and relate to puava boundaries.\footnote{See eg. Hviding, above n 11, 331.}

Butubutu Babata will not be immune from such situations of dispute when its incorporated trust becomes operational. Legislative enactment that incorporates its traditional authority into a trust with powers bearing ultimate legal weight will be a novelty in Solomon Islands, let alone, Marovo Lagoon. Thus, much of its activities will be the subject of much debate within various quarters of Marovo society, and may even raise suspicion or jealousy from other neighbouring or competing butubutu. To effectively fortify itself within its geospatial sphere of influence, the Butubutu’s maritime boundaries must be clearly defined prior to any moves of giving legal effect to the same. Furthermore, given the increasing commercialisation of marine resources, the
demarcation of boundaries is vital for purposes of enforcement of the Butubutu’s resource management bylaws. Aswani and Hamilton, in their study of marine tenure in the neighbouring Roviana Lagoon, acknowledged that the only way to ensure the success of MPA-like management systems is effective demarcation of territorial boundaries.\textsuperscript{162} As a common trend in modern-day Marovo, the respect for butubutu boundaries is on the decline with trespassers identified from both within and without Marovo society. As a group blessed with a rich fishing ground that lies some five kilometres off the coast of Marovo Island,\textsuperscript{163} Butubutu Babata or rather its marine puava has often fallen prey to such voracious fishermen. Thus, integration into the cash economy introduces problems that impinged on the issue of maritime boundaries in Marovo. Hviding observed for instance that\textsuperscript{164}

\begin{quote}
commercial fishing further promotes the crossing of boundaries, owing to an increased wish to enter into more pristine areas further away from readily accessible toba reefs where stocks of fish and commercial shells may be subject to localised depletion.
\end{quote}

With high time for enforcing its own resource management bylaws within sight, the territorial jurisdiction of Butubutu Babata acting through the RMC must be clearly defined with no room for boundary overlaps. The Butubutu needs to effectively reassert its customary fishing rights and authority over resources of the marine puava as recognised and protected under s.12 of the Fisheries Act which stipulates that ‘commercial fishing in waters subject to customary fishing rights may be carried out subject to such rights’.\textsuperscript{165}

\textsuperscript{163} The island on which Chea village, the primary settlement of Butubutu Babata, is situated.
\textsuperscript{164} Hviding, above n 11, 295.
\textsuperscript{165} Fisheries Act 1998 (Sol Is), s 12.
This chapter looks at the contentious issue of boundaries of *Butubutu Babata’s puava* within which resource management functions of the RMC can be discharged. In the course of tackling this chapter, occasional reference will be made to researchers and writers whose works are most relevant to issues raised as well as the geographical scope of this thesis in general. The area of focus in this chapter is **Area 2** (refer to **Plate 3**) which is the *Butubutu’s marine puava*. Discussion of maritime boundaries will raise a myriad of issues including the rules of Marovo *kastom* for determining boundaries and the proof thereof; the need for precision and certainty; reaching agreement with neighbouring groups sharing boundaries with *Butubutu Babata*, method for setting hypothetical boundaries where certainty is unattainable, and the mechanism for giving legal effect to boundaries once determined. Determination of this boundary issue is fundamental to the functions of the RMC, as lacking a clearly defined territory will create a legal loophole, thereby impeding efforts to effectively enforce bylaws and management measures against outsiders and poachers alike.

II **Fencing Coastal Waters of the Pacific: Implications for Butubutu Babata**

A **Boundary Disputes as a Legacy of the Oral Tradition**

Shifting towards formalising the management of marine resources most often counts as a breeding ground for ownership disputes between competing coastal tribes. Johannes, Ruddle and Hviding observed for instance that ‘*customary marine tenure can be a source of friction between rival groups of fishermen arguing over boundaries or who has what rights within bounded fishing areas.*’ In most cases, it is the exercise of the right, found in *kastom* or affirmed through legislative enactment, to exclude or prohibit *outsiders* from encroaching into or carrying out...

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activities within maritime areas considered as closed, protected, restricted or regulated that is often the source of such inter-tribal or party disputes. But the trend in disputes in some areas shows that any resource management initiative underpinned by demarcation of boundaries to theoretically capture encroaching poachers, let alone neighbouring fishermen is bound to breed resentment. In most cases, the disputes tend to be caused by overlapping boundaries.

The closing of areas upon implementation of a management initiative involves determining the lateral extents of such closures. Unfortunately, most kastomary marine tenure systems in the Pacific are amorphous in providing no clear guidance as to how the issue of boundary demarcation is to be approached in the event of disputes. This often resulted in the same being left in suspense for indefinite periods. Parties that were overambitious in reaching settlement would however be compelled to agree in principle to a boundary merely to keep the peace and advance other tribal interests. Circumventing this complicated issue without court intervention would always require effective inter-tribal diplomacy and the will to reach agreement. Unfortunately, such diplomacy and consensus promoted and revered in traditional societies have now failed to withstand the pressures of the cash economy. As consequence, most boundary disputes arising within the last 20-30 years have to be resolved by law courts.

Whilst setting of a boundary between adjacent reef-owning groups with at lease some precision is always conceivable and achievable, this is not the case with the seaward outer-most limits\textsuperscript{167} of sea estates. In Solomon Islands for instance, no existing rules providing certainty to the outer-most boundary can be found under KMT. Without doubt, this problem must have been characteristic of most KMT systems in the other countries. The above situations demonstrate that KMT systems in some Pacific Island countries have their own downsides attributable to

\textsuperscript{167} ‘Outer-most’ as referring to limits of that area of a sea estate which faces the open sea.
numerous factors including boundary complications – an inherent issue that is complex and abstract. But what then are the most basic features used to define maritime territories subject to management under kastomary marine tenure systems, or even some insight into the general principles in kastom as to the lateral extent or outer limits of maritime estates. For instance, Johannes has identified boundaries under kastomary marine tenure as extending from mangrove swamps and shoreline, across reef flats and lagoon, to the outer reef slope. This can be correlated with the findings of Iwakiri which confirmed that in certain cases, the demarcation of marine boundaries were influenced by the location of physical marine features, such as patch reefs, reef holes and reef passages. In Solomon Islands for instance, Sulu has similarly identified similar characteristics, whereby

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

It was similarly recognised in Marovo that ‘[e]ach named puava is delimited by boundaries in the form of mainland rivers, estuaries, reefs, islands and passages through the barrier reef...[and] are further marked and validated by ancient shrines’. Note however that the identification and description of these natural features and objects is an oversimplification of what is otherwise a complex phenomenon. The coastal

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170 I Iwakiri, ‘Mataqali of the sea: a study of the customary rights on reef and lagoon in Fiji, the South Pacific’ (1983) 4 Memoirs of Kagoshima University Research Center for the South Pacific 133.
171 Sulu, above n 113.
172 Kinch et al, above n 15, 53.
features of islands, lagoons and reef systems in the Pacific are such that clear demarcation of boundaries is always a difficult exercise. This is a problem established and prolonged by island cultures which convey such knowledge from one generation to another predominantly through an oral tradition. And lest one forgets, the fact that kastomary law thrives through oral tradition raises continuous academic debate as to the authenticity of some of practices, let alone rules of evidence recognised by the courts and legal system of most Pacific Island countries. Recent legislative efforts aimed at addressing the formal pleading of traditional evidence in courts has been recorded in some countries, such as Papua New Guinea and Solomon Islands. The **Customs Recognition Act 2000**\(^{173}\) of Solomon Islands will be further discussed in part B of this chapter.

The problem of overlapping boundaries is even more acute in Pacific Island societies in which there are multiple rights-holding groups resulting in a patchwork of sea estates spreading along the coast. It was observed that ‘many Pacific Island countries are characterised by a patchwork of customary marine tenure area along the coast, each having different sets of rules controlling access to or use of resources’.\(^{174}\) This situation is characteristic of Melanesian societies in which rights-holding groups are numerous and scattered.\(^{175}\) But what is more concerning, in particular with reference to coastal fisheries management in Melanesian societies, is the extent of diversity of rules regulating access and use. If fisheries within a single area are to be managed uniformly as a common biological resource, then such divergent approach under customary marine tenure systems undermines the need for consistency in managing a biological resource with common characteristics. Thus, the practice in the region demonstrated by the sporadic use of *closed areas* within the same coastal waters but with different rules was indication that traditional management measures do not necessarily have any underlying conservation ethic. It must therefore be contended that

\(^{173}\) This Act is entirely a copy & paste replication of the *Customs Recognition Act* of PNG.

\(^{174}\) Johannes, Ruddle and Hviding, above n 166, 15.

\(^{175}\) See e.g. Anderson, Mees and Cowan, above, n 153.
conservation is more or less a by-product of closed areas, as the measure is often targeted towards cultural and socio-political factors.

In general, boundaries of areas held under customary marine tenure were set by consensual oral agreements built on trust and reciprocity. Or in the case of disputed boundaries, temporary settlements are reached through inter-tribal diplomacy employed to defuse tensions that could potentially escalate into full-scale tribal confrontations and rivalry. However, the tendency to always set boundaries by consensus, throws support to the contention that the circumstances then existing during times of the original discoverers or claimants to maritime territories were such that disputes over boundaries were a rarity. This is attributed primarily to small human populations which were relatively low then, resulting in situations whereby marine resources are always considered to exceed the dietary needs of humans, hence, less room for users to compete for available resources. Moreover, the cash economy was then non-existent, thus, the competition for cash was a non-issue. But the foregoing does not extinguish however the possibility of distortion in the history relating to tribal boundaries as passed orally from generation to generation. Present day disputes over customary land ownership and boundaries protrude as clear testimony to this imperfection within historical accounts of how, when, why, how and where boundaries are set. This issue of imperfect traditional evidence will be dealt with briefly in section B below.

B The Dilemma of Resolving Conflicting Kastomary Evidence

What is more worrying though is the application of such oral tradition in the resolution of boundary disputes in courts in the Pacific, which, as yet, show no signs of divorcing the colonial hangover but

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176 In most Melanesian societies such as the author’s own on the island of Malaita in Solomon Islands, disputed boundaries are often settled by tribal warfare. In such societies, victorious parties would most often conquer additional territory and define the new boundary.

177 See eg. Johannes, above n 156.
remaining steadfast instead to a colonially introduced adversarial system of dispute resolution. The risks involved are always great whenever evidence of kastom is presented in court. For instance, Johannes, Ruddle and Hviding observed that178

> once resources are at the issue in courts, informants may be tempted to describe traditional boundaries and traditional rights within them in a manner more in keeping with the interests of their village or clan than with tradition.

In the event of contradicting evidence as to kastom, how are courts guided in accepting which of the evidence presented is most probably closer to the truth?

Some countries have taken the initiative to provide guidance to the courts through enacting Acts of Parliament specifically for the recognition or pleading of kastom. Others have done so through judicial approaches in the development of their local common law. The Customs Recognition Act 2000179 of Solomon Islands is manifestation of one such Parliamentary initiative. By virtue of s.3 of the Act, ‘questions as to the existence of any customary law and the nature of such customary law in relation to a matter, and its application in or relevance to any particular circumstances, shall be ascertained as though they were matters of fact’.180 The provision is further translated into guiding principles in s.5 which provides that for the proof of kastom, ‘a Court is not bound to observe strict legal procedure or apply technical rules of evidence and shall admit and consider such relevant evidence as is available (including hearsay evidence and expressions or opinion) and otherwise inform itself as it thinks proper’.181 Whilst of great assistance to the courts, the Act will not necessarily solve the problem of conflicting evidence in particular when both competing parties based their evidence on the basis of oral

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178 Johannes, Ruddle and Hviding, above n 166, 5.
179 Despite its passage, the Act is yet to be gazetted and brought into effect.
180 Customs Recognition Act 2000 (Sol Is), s 3.
181 Ibid. s 5.
tradition. In all respect, the Act further consolidates the tradition by accepting hearsay evidence to be produced in court for the proof of kastom. Thus, instead of limiting in some way the tendency to advance evidence that constructively is meant to maintain or support the interest of one’s village or clan than with kastom and tradition, the Act instead perpetuated situations of kastorary evidence tendered with bias.

Courts in some countries in the region permitting the pleading of kastom in the higher or mid-level courts have taken the initiative ahead of parliamentary action to establish some certainty or at least to this contentious area of kastorary law – the proof of kastom. One such notable case of demystifying this grey area is the Supreme Court of Vanuatu’s approach in a land case which was heard on appeal from the Island Court. Being a kastorary land appeal case, the Supreme Court, in *Malas Family v Songoriki Family*\(^\text{182}\) adopted the test first formulated by Lord Denning in *Twimahene Adjeibi Kojo II v Opanin Kwadwo Bonsie & Others*\(^\text{183}\). The Adjeibi Kojo test is that in the event there is a conflict between traditional evidence,

\[\text{one side or the other must be mistaken, yet both may be honest in their belief. In such a case, demeanour of witnesses is little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence and seeing which of the two competing histories is more probable.}\]

Accepting the principle set in the *Malas Family Case* in relation to the proof of kastorary ownership of land, the Supreme Court further affirmed in the land appeal case of *Family Sope Imere v Family Nikara*\(^\text{184}\) application of the principle in the Island Court. In affirming the Island Court’s ruling, the Supreme Court in effect adopts the application and adaptation of the Adjeibi Kobo test by the former which states that in

\(^{182}\) [2003] VUSC 70.
\(^{183}\) (1957) 1 WLR 1223, 1226-7.
\(^{184}\) [1986] VUSC 12.
cases of conflicting traditional evidence, ‘the best way to test custom history or tradition is to refer back to the happenings of the recent years as presented in the evidence, and consider one of the history given in court which that would most probably be close to the truth’. This latter principle would thus allow for an inference on the part of the adjudicator of the most probable true account of history. This can be arrived at by determining the strength of the link between the dual factors of recent events as presented in evidence and history.

Despite the enactment of the Customs Recognition Act 2000, there is no such landmark case as yet in Solomon Islands due to obvious reasons. For one, matters of kastom pertaining to kastomary land rights and traditional evidence for the proof thereof are prohibited by law from being entertained in the higher courts, viz., the High Court and Court of Appeal. Thus, the Court of Appeal in Steven Veno & Gordon Young v Oliver Jino & Ors stated:185

> It is clear that customary land disputes do not fall within the jurisdiction of the High Court to determine except to the limited extent to which an appeal, on a pure question of law or concerning procedural requirements lies to the High Court from the decision of the CLAC.

The courts that exercise exclusive jurisdiction over matters of kastom are the local courts established by the Local Courts Act and the customary land appeal courts (CLAC) established by virtue of the Land & Titles Act. Since no precedent is set as yet by the High Court, no legally binding principle has been developed to date to provide guidance to the lower courts when facing the issue of proof of kastom in particular when conflicting traditional evidence is produced. Thus, the issue of proof of kastom relating to boundaries, both terrestrial and maritime remains unsettled in the country. The implication of this issue to the Butubutu boundaries remains significant in the event demarcation of the same will

185 [2006] SBCA 22.
lead to boundary disputes with other neighbouring butubutu of central Marovo. Despite the harmonious relationship enjoyed to date by the Butubutu with its neighbours, disputes associated with development-driven initiatives are common in Solomon Islands. And given the disturbing experiences with the baitground system and tourism industry in Marovo, the Butubutu’s development endeavours cannot be considered as insulated against such possibility.

III Historical Developments in Boundary Demarcation in Marovo Lagoon

The initiative to demarcate boundaries between reef-holding butubutu of Marovo was prompted by the baitground system introduced into the Lagoon in the 1970s by the tuna fishing company, Taiyo Gyogyo. According to Hviding, ‘negotiations between representatives of the tuna companies and of the local groups, termed “reef-owners”, [led to] boundaries for each bait ground throughout the country…[being] drawn on maps in the early 1980s’. And given its extensive coral reef system, Marovo Lagoon is naturally the repository of much needed bait fish for the pole-and-line tuna industry. Maps of the Lagoon were thus traversed with baitground boundaries that were largely based on kastom and traditional practice. As consequence, the signing up by most butubutu to the baitground system through the acts of some self-styled trustee has resulted in much of the Lagoon being littered with hypothetical lines, thus creating a network of de facto boundaries. Those butubutu refusing to sign up to the baitground system, such as Butubutu Babata, were in the process left with boundaries the specifics of which, if at all, were maintained merely through oral tradition. Not being the subject of

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186 Marovo Lagoon is the hub of the tourism industry in Solomon Islands, but most tourism projects only took shape after long drawn-out land disputes, which can be described as both inter- and intra-butubutu.
187 Hviding, above n 11, 346.
188 Reference to the boundaries as de facto is made in the sense that they were not properly delineated and registered under any a statute, thus, may still be the subject of future boundary disputes.
any formal or industrial processes, such boundaries were not rendered any form of de facto recognition by external entities.

IV Demarcating the Boundaries of Butubutu Babata’s Marine Puava

Efforts to formalise the Butubutu’s boundaries (Areas 1, 2, and 3 inclusive) is a self-driven initiative not meant to facilitate any pending large-scale development. Rather, it is an approach that forms an integral part of the Butubutu’s reorganisation within the framework of its adopted constitution and resource management policies. Given the economic potential of Area 2, the functions of the RMC will first and foremost focus on the management and protection of its resources. But to ensure a successful venture, the outer-limits of the Butubutu’s marine puava must be circumscribed. Area 2 is defined in the Butubutu’s Plans and Policy Statements as comprising

the outlying sea area of the barrier reef starting from Kataghotoghoto on Chea mainland going eastward to Kemu Island in the barrier reef and in a north westerly direction to Ebolo Passage and then returning south westerly direction to Kara stream on the Island of Vangunu.

Although not specifying the boundary linking Vangunu to Marovo Island in the south, the natural boundary would run from the mouth of Kara Stream to a point near Sasaghana (see Plate 4 below). Further, apart from the many islands and islets contained therein, the Butubutu’s marine puava is thus described as having ‘several lagoonal characteristics, with shallow patch reefs with deep reef slopes on the windward side of these chains of islands’. Interestingly, the description of Area 2 above in the Policy Statement reflects the mode of relating vital information about boundary limits through oral tradition, and is rather too general at the cost of specificity. A proper and effective

\[189\] Babata Tribe Chea Village Community, above n 83, 1.
\[190\] Kinch et al, above n 15, 54.
demarcation would need to go beyond mere general directions by providing more information as to where the imaginary lines would run.

The natural features that take prominence in the description of the Butubutu’s marine *puava* are the barrier reef, islands, passages, and stream. Such natural appurtenances of land feature prominently in boundary demarcation in Marovo society and even most parts of the country. Below is an illustration of **Area 2** as comprising all the islands, islets, reefs and waters bounded on all sides by the imaginary dotted lines. The following islands and islets situated out on the *toba* (outer barrier reef) and in the Lagoon centre are thus within **Area 2**, starting from Kemu Island on the eastern end, moving north westerly and thence southwards: Kemu, Vaenimoturu, Variparui, Patusuvulu, Petu, Karikana, Mateana, Embolo, Rurukanga, Solokoe, Leivichi, kaka, Pulanga, Kuila, Ghireghire and Kahaina.

![Plate 4](image)

**Plate 4**

**Area 2 bounded on all sides within dotted lines**
Whilst it is theoretically plausible to draw boundary lines with the use of geodetic coordinates in open waters and the high seas, the same cannot be said of a marine *puava* within the Lagoon. The seascape is too complex, characterised by numerous natural features including clusters of islets spreading out across the span of the Lagoon, barrier and fringing reefs, passages, anchorages and headlands. Establishing certainty to boundary lines will be an arduous task, further complicated by *kastom* rules of marine tenure prevalent in Solomon Islands which do not readily recognise the concept of a delineated boundary evidenced in writing, as the same is known merely *by word of mouth*.

The rule of exclusivity\(^{191}\) under *KMT* systems in Marovo is predominantly object-based. That is, it mostly centres on reefs, islands and partly submerged objects, but remains amorphous as to the stretch of waters between and beyond islets or reefs facing the open sea. This is only to be considered against the backdrop of a legally sanctioned enforcement regime to which certainty of boundaries is vital for ensuring the successful prosecution of poachers. In this connection, any doubts as to the precise boundaries of *Area 2* will create a loophole that can be exploited by poachers to escape prosecution. Reverting to the rule of exclusivity however, reference to boundaries are thus dictated by the presence of physical objects the permanency of which are subject to natural forces such as cyclones, earthquakes, and tidal waves that have most often reshaped the seascape of certain areas. And it is no coincidence that Solomon Islands is never short of legends about disappearing\(^ {192}\) islands and reefs that once were regarded in one way or another as features determining the boundaries of sea estates that shaped the relationships of past coastal generations. If such legends could be proved, then it goes to show that most present maritime

\(^{191}\) As in referring to the right of a butubutu to exclude others for instance from fishing within its *puava*.

\(^{192}\) Even most of the islets out on the barrier reef of Marovo Lagoon used as boundary marks are by appearance and soil structure geologically new, thereby raising questions as to whether such islets predate the first generations that supposedly set the boundaries, hence passed on that vital information to successive generations through oral tradition.
boundaries of kastomary sea estates are not what they were 100-200 years ago.

V Maritime Zones and the Status of Kastomary Waters in Solomon Islands

In reflection of its subsequent ratification of the United Nations Convention on the Law of the Sea, Solomon Islands by virtue of the Delimitation of Marine Waters Act 1978 has claimed internal waters, archipelagic waters, territorial waters, and a 200-nautical mile exclusive economic zone. The Continental Shelf Act 1970 has earlier established the claim of the country to a continental shelf and the minerals thereof which are vested in the crown. To be precise as to its jurisdiction over fisheries resources, a fishery limit of 200-nautical miles was similarly established by the Fishery Limits Act 1978. The territorial sovereignty of Solomon Islands was thus established as extending beyond its land territory and over its 12-nautical mile territorial seas. The issue for consideration is whether the acquisition of sovereignty over maritime zones by the State under international law impedes the application of kastom, thus kastomary ownership of coastal waters.

The legal regime in Solomon Islands governing maritime zones, whilst purporting to reflect international law principles for the exercise of sovereignty over territorial waters, does not in any way restrict the application of kastomary marine tenure in such waters. The recognition accorded by the Constitution, the Provincial Government Act 1997 and the Fisheries Act 1998 affirms the operation of kastomary marine tenure and its associated plethora of rights accruing to kastomary owners. In this connection, the statement of Ward CJ in Allardyce Lumber Co v Laore.

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193 s 3.
194 s 4.
195 s 5.
196 s 6.
197 Delimitation of Marine Waters Act 1978 (Sol Is) s 9.
in respect of s.9 of the Delimitation of Marine Waters Act stands as a strong reminder that is valid in all respects:

The concept of sovereignty referred to in section 9 and under international law is far wider. It is a term that embraces the independence of a state in relation to all others and to the paramount powers it exercises over its internal affairs. To suggest any individual claim to ownership of the sea conflicts with that sovereignty is to take it out of context... International law and the Common law demand rights of free passage and of fishing in areas of sea and this generally applies to areas of sea and tidal waters whether owned by the State or granted to an individual. That also applies to Solomon Islands. However, I feel that the court may still be satisfied by evidence that some customary rights can exist over the sea and such customary rights can supplant the common law position.

The current legal framework for decentralisation is testimony to the recognition given to kastomary waters as the Provincial Government Act 1997 provides for a Province to exercise territorial jurisdiction over its land territory to an outer-most limit of three nautical miles measured from the low-water line of each island comprised in the Province.\textsuperscript{199} Section 9 of the Fisheries Act stipulates that ‘each provincial government shall be responsible for the proper management and development of the reef, inshore and freshwater fisheries within its provincial waters’.\textsuperscript{200} Commonly referred to as provincial waters, it is no coincidence that such a legal approach is adopted as that regime of waters comprises principally of sea estates claimed under KMT systems operating throughout the country. By virtue of the Provincial Government Act 1997 and the Fisheries Act 1998, the legislative competence of a Provincial Assembly applies over its provincial waters. It is therefore legally tenable to argue that legislating for the Butubutu initiative will not necessarily infringe any national laws, as the kastomary rights of the same are

\textsuperscript{199} Provincial Government Act 1997 (Sol Is) s.3.
\textsuperscript{200} Fisheries Act 1998 (Sol Is) s.9.
within the territorial jurisdiction, thus legislative competence of the Western Provincial Assembly. However, the remaining issue that needs to be properly addressed in the enabling Ordinance is the right of transit or innocent passage through such waters; being a principle of customary international law reflected in the *Delimitation of Marine Waters Act 1978.*

VI Reaching Agreement with Neighbouring Groups

A precondition to the formalisation of the *Butubutu’s* maritime boundaries is to ensure agreement or understanding of some sort is reached with the neighbouring butubutu with which it shares the eastern and western boundaries. Such an approach is not only a display of respect for *kastom* but it similarly legitimises the *Butubutu’s* initiative through endorsement of boundaries on the part of those neighbouring butubutu. But the ultimate rationale for this approach is to address the inevitable situation of uncertainty of boundaries that will in effect impinge on enforcement and monitoring. Such uncertainty is mainly present in the central eastern and central western boundaries, depicted as *A* and *B* below in Plate 5.

Providing certainty to boundaries *A* and *B* would entail concluding written agreements with those butubutu having customary rights over the adjacent waters, for instance, the *Repi* people to the east. Such agreements, though confining to *kastomary* practice as much as possible, will need to devise some new mechanism for determining boundaries with some accuracy. Since boundaries *A* and *B* run over open lagoonal waters, *kastomary* practice will be of little assistance, as most fishing and related activities, being the precursor to establishing the right of exclusivity after long usage, are confined to the sheltered reefs of the marine *puava* and *toba* generally.

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201 s 10.
A literal interpretation of the demarcation set out in the Resource Policy Framework provides the presumption that boundary A will run in a straight line from the mouth of Kara stream on Vangunu to Embolo Passage. The same will be said of boundary B which is presumed to run in a straight line from Kataghoto to the fringes of Chea to the eastern side of Kemu Island. If such is the case, then it would be possible for both boundaries to be delineated in coordinates so as to achieve precision. A hydrographical survey is thus required to facilitate that process of delineation. With boundaries A and B specified in coordinates, the same should then be incorporated into the inter-butubutu agreements governing both boundaries.

Plate 5
Potential Areas of Uncertainty are Boundaries A & B
VII Outer Limits Beyond Reef Fringes

One of the most vaguely defined issues in kastomary marine tenure, not only in Marovo but throughout the Solomon Islands, is that of the outer limits of sea estates. The term “outer limits” is used here as referring to that boundary facing the open sea. Unless the contrary can be proved, the general presumption in kastom is that the outer limits of a sea holding group’s territory cannot go beyond the fringes of its reefs or islands. However, such presumption is subject to established practice and usage which may entitle a group to claim kastomary fishing rights over open waters beyond the fringes of reefs over which they claim exclusive possession. As this juncture, it is worth emphasising that maritime boundaries under KMT systems in Solomon Islands are object-based as highlighted earlier. Thus, unless proved to the contrary, boundaries rarely include mid-ocean delimitations or floating boundaries that run right through open waters. For in the case of the latter, kastom only recognises fishing or other rights that could be of two forms: (i) a general exclusive right which recognises the right to fish for all types of specie, whether pelagic or otherwise, that populate such stretch of open waters, and (ii) a special exclusive right which recognises one’s right over a specified species, such as one with totemic value. Judicial approach towards this fundamental issue is encouraging as since the case of Hanasaki v OJ Symes, which first recognised ownership rights to reefs per kastom, the High Court in the more recent case of Allardyce Lumber Co Ltd v Laore held that it was prepared to afford recognition to kastomary claims over areas of the sea if evidence of rights to the same could be produced to its satisfaction.

Of those various researchers documenting Marovo kastom, Hviding provides the most basic insight into this issue by finding that for

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202 And most probably in all other Pacific Island countries in which marine tenure is, in most respects, object-based.
203 See eg. Dalzell and Schug, above n 16, 15. See also Anderson, Mees and Cowan, above n 153.
204 Unreported, Judicial Commission for the Western Pacific, Charles JC, 17 August 1951.
205 Above, n 198.
any butubutu, its *puava* in the most extensive case would run from ‘*the peaks and ridges of the mainland upper mountains to the open sea outside the barrier reef*’. Whilst providing some basic guidance, there is nothing to suggest the outer-most extent of that right over open waters. Thus, it remains amorphous the question of how far into the open sea a butubutu can stake its claim. Useful for its purpose in *kastomary* marine tenure, that *kastom* applying to open seas might be subject to criticism as being repugnant to maritime practice in modern times. For instance, growing commercialisation and shipping might warrant the regulation of such open waters by the State or provinces. But in the context of the Butubutu’s autonomy aspirations, it is exactly the tendency to claim rights over open seas beyond reefs that causes problems when sea territories need to be delineated with precision or at least.

![Diagram](image)

*Plate 6*

**Outer Limits of Boundary C**

To remedy the ambiguous situation with *Boundary C*, an option is to legally provide a specific measurement in distance for determining the outer limit. The low water mark of the barrier reef should be used as the baseline shown in straight lines from which such distance (e.g. 20km) is
to be measured. The extended boundary should thus run northwards in straight perpendicular lines to the established baseline at both the eastern and western most points.\textsuperscript{206}

Further, it needs to be raised the implications of an extended boundary on fishing vessels licensed to fish in Solomon Islands’ waters under the current licensing regime. By virtue of sections 14(7)\textsuperscript{207} and 16(9)\textsuperscript{208} of the \textit{Fisheries Act 1998}, the acquisition of fishing licences does not grant licensed fishing vessels, both local and foreign-flagged, automatic access to provincial waters. The endorsement of the relevant provincial government is needed for both categories of vessels. The policy underpinning this legal restriction is driven primarily by the presence of exclusive \textit{kastomary} rights in all provincial waters. The effect of sections 14 and 16 of the \textit{Fisheries Act} is that the National Government is restricted from issuing licences in respect of provincial waters. Thus, by logical construction, the issuing of fishing licences in respect of the \textit{Butubutu’s} marine \textit{puava} is beyond the jurisdiction of the National Government. As for an extended \textit{Boundary C}, apart from Taiyo catcher boats,\textsuperscript{209} the issue of foreign fishing vessels is at best a non-issue at present as confirmed by members of the \textit{Butubutu} during the Chea consultations. In other words, members of the \textit{Butubutu} have had no sightings or past experiences with foreign fishing vessels accessing the waters adjacent to their \textit{toba}. But this in no way discounts the possibility of foreign fishing vessels transiting such waters in the foreseeable future. For one reason, the expansion of the tuna cannery and industry would see more of such vessels transiting Western Provincial waters for purposes of offloading and transhipment of catches at the Noro

\textsuperscript{206}The eastern-most point is Kemu Island whilst the western-most is Embolo Island.

\textsuperscript{207}Local fishing vessels.

\textsuperscript{208}Foreign fishing vessels.

\textsuperscript{209}Since the Western Provincial Government is a minor shareholder in the Taiyo company, the latter’s fishing vessel licences always get instant endorsement of the Provincial Government. Subject to negotiations, an extended \textit{Boundary C} may likely result in the Western Provincial Government divesting such power of endorsement to the \textit{BBDT}. 

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facilities.\textsuperscript{210} It is anticipated that with a formalised management regime with regulatory powers, potential problems with such category of fishing vessels will be minimised or averted.

Reverting to the delimitation of \textit{Boundary C}, the baseline can be established by linking with a straight line all outer most points of all the outer most islands of \textbf{Area 2}, namely, \textit{Kemu, Vaenimoturu, Variparui, Patusuvulu, Karikana, Mateana,} and \textit{Embolo}. Depending on the negotiated distance, the hypothetical boundary defining the outer limits of \textbf{Area 2} therefore is, for instance, 20km from every seaward point on the above islands. Funding and training permit, use of a pocket GPS\textsuperscript{211} might be necessary for ascertaining this hypothetical boundary in the course of monitoring, surveillance and enforcement.\textsuperscript{212} In any event, if it can be shown that the use of geodetic datum is still a practical option, then this should be pursued with the relevant authorities.

\section*{VIII Securing and Formalising the \textit{Butubutu} Boundaries through Registration}

One of the most fundamental needs for ensuring an environment conducive for operation of the BBDT is the security of tenure in relation to its \textit{puava}. And given boundary disputes are commonly associated with \textit{kastomary} land in contemporary Solomon Islands, registration of the \textit{Butubutu}'s boundaries remains vital for ensuring the trust’s resource management functions are discharged unencumbered. There are several alternatives for realising this issue.

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{210}] Noro town is the operational base of \textit{Soltai Fishing & Processing Ltd}, thus, hosts the only tuna cannery in Solomon Islands.
\item[\textsuperscript{211}] Global Positioning Satellite System.
\item[\textsuperscript{212}] Unfortunately, there is yet to be developed for inshore fisheries a miniature of the \textit{Vessel Monitoring System} (VMS) used in the offshore industrial fishery, notably, tuna in the case of Pacific Island countries.
\end{itemize}
\end{footnotesize}
The first is by virtue of the *Customary Land Records Act 1994* - a special piece of legislation passed by Parliament specifically for the recording of *kastomary* land-holding groups, their boundaries and all related matters. Section 9(1) of the Act provides:

Any customary land holding group or any person, who claims an interest in any customary land may apply to the Land Record Office in the province for the recording of such primary rights and the demarcation of the extent of the boundaries of such customary land.

Whilst the *Butubutu*’s terrestrial *puava* identified as *Areas 1* and *3* automatically falls within the definition of customary land by virtue of the *Land and Titles Act*\(^{214}\), *Area 2* by virtue of Marovo *kastom* effectively qualifies to be similarly recognised as *kastomary* land. For one obvious reason, Marovo *kastomary* tenure system draws no fundamental distinction between “land” and its adjoining coastal waters. But in any event, the principle recognising in general this common *kastom* in

\(^{213}\) *Customary Land Records Act 1994*, (Sol Is) s.9(1).

\(^{214}\) Cap.93.
Solomon Islands was already set in the case of Combined Fera Group v Attorney-General in which the High Court held that the seabed, thus by implication the submerged reefs, is capable of forming native
kastomary land through claims of ownership, use and occupation. Thus, in Marovo for instance it was demonstrated by Hviding that a butubutu’s

\[\text{puava}\]

consists of a named area of land and, in may cases, barrier reef, islands, and lagoon, defined by a set of boundaries....[and] when speaking of \textit{puava} as the territory of a butubutu the term embraces “land” in the widest sense, including submerged land – reefs and sea – as well as dry land. A \textit{puava} in this sense includes the entire area associated with a butubutu as ancestral estate, and all the “things” or affordances therein; in the most extensive cases from the peaks and ridges of the mainland upper mountains to the open sea outside the barrier reef.

Howsoever \textit{kastomary land} is defined in statute law the fundamental principle of \textit{kastomary} tenure remains unmovable. The inalienability of land from its adjoining coastal waters (all inclusive) is unfounded in western legal systems as can be noticed with pre-independence land legislation in Solomon Islands. The pre-independence \textit{Land & Titles Regulations 1959}, and the \textit{Land & Titles Ordinance 1964} distinguishes between \textit{dry} land and its adjoining coastal waters, thus, defines land in its narrowest sense. Given the approach of the High Court in the \textit{Fera Group} Case coupled with Hviding’s findings and the amended definition in the current \textit{Land & Titles Act}, it can be concluded that the \textit{Butubutu’s marine puava (Area 2)} qualifies for recording under the \textit{Customary Land Records Act 1994}.

\[\text{215} \text{[1997] SBHC 55.}\]
\[\text{216} \text{Hviding, above n 11, 151.}\]
\[\text{217} \text{Viz. the original Land & Titles Regulations 1959, and the Land & Titles (Amendment) Ordinance 1964, now replaced by the current Land & Titles Act (Cap.93).}\]

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The CLR Act marks a novel development in the history of land tenure in the country by introducing concepts more akin to the Torrens system. Most notable is the concept of indefeasibility of title once recorded, as s.15 of the Act stipulates:

> When the record is finalised... the primary rights of the land holding group referred to in the record shall not be liable to be defeated except as provided by the provisions of this Act and shall be held by the customary land holding group, together with all privileges and appurtenance belonging thereto, free from all other interests and claims whatsoever but subject to the leases, charges and other encumbrances and to conditions and restrictions (if any) affecting the rights shown or referred to in the Record.

This provision would operate to the ultimate benefit of BBDT, as effective recording of its boundaries, notably Area 2, will give it all the legally-recognised right thus freedom to manage its resources unencumbered. In any event, the Butubutu needs to be well-secured as far as its territorial jurisdiction is concerned.

Further, if recording is not ample to provide the ultimate safeguard to a kastomary group’s estate, the Act further makes provision for the registration of primary rights to kastomary land. Thus, by virtue of s.19(1) of the Act, ‘[a]ny customary land holding group whose primary rights are entered in the record may apply to the Registrar of Titles in the prescribed form to have their recorded primary rights registered.’ It is highly recommendable that given the socioeconomic objectives underpinning Butubutu Babata’s initiative, the same should go through both process of recording and registration. Reasons for this recommendation will be further discussed in Chapter Seven below.

The alternative option to the above approach is to address the issue of boundary demarcation and subsequent registration under

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218 Customary Land Records Act 1994, (Sol Is) s.15.
auspices of the *Fisheries Act*. And since the BBDT is to be incorporated by way of legislative enactment of the Western Provincial Assembly, it is only logic and proper that the territorial limits of the *Butubutu’s puava*, notably **Area 2**, should also be addressed in the one single Ordinance. There certainly is legal basis for this option, as s.10(3)(b) of the Fisheries Act empowers each Provincial Assembly to enact Ordinances for ‘the registration or recording of customary fishing rights, their boundaries and the persons or groups of persons entitle under those rights’.[219] This provision specifically addresses maritime zones claimed under *kastom* and is preferable to the more generally worded provision of the *Customary Land Records Act*, at least insofar as the *Butubutu’s marine puava* remains the prime focus. Addressing the boundary issue through Ordinance will also cater for incorporation into the same of agreements governing boundaries **A** and **B** as schedules. This will give legal effect to the said agreements whilst in turn rendering the defined boundaries legal certainty and security the result of which is almost equivalent to registration.

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I  Overview

Enforcement of *Butubutu* bylaws will be central to the entire initiative, let alone the management of the resources of its marine *puava*. The incorporation of the BBDT and provision for appointment of the RMC has to be accompanied by a legally-recognised enforcement scheme that demonstrates *inter alia* the level of autonomy exercised by *Butubutu Babata*. Pending implementation, a striking feature of the *Butubutu* initiative that will set precedent in Solomon Islands is the legal authority attained to make and enforce its own bylaws. This will mark a radical departure from the traditional functions of the State characterised by enforcement of laws by and through State agencies, such as the police or those on Government payroll.

Discussion in this chapter will focus on enforcement and compliance issues that will be central to the implementation and operation of the *Butubutu* initiative. Scope of discussion and analysis will be confined to Area 2 being the territory within which most, if not all the resource management functions of the RMC will be performed. The overarching issues for discussion will include the appointment of enforcement officers, their powers of arrest and seizure, territorial jurisdiction, and forms of penalties.

II  The *In-Situ* Management Concept and its Application in the Region

The concept of *in situ* conservation and management is traditionally defined, albeit strictly, from a bio-ecological angle, thus, its preoccupation with the scientific intricacies of bio-resources and natural
habitats. However, borrowing and adapting such terminology for application to the context of fisheries resource management, one would find it interesting to discover that the human element receives little attention. But when it comes to identifying the essential components of natural resource management, the human element is indispensable. This concept of in-situ management is used in this thesis to emphasise the need for a shift towards redefining the role of communities within the whole resource management equation. Thus, in situ will be used as referring to management of naturally-occurring resources by local communities (managers) who are themselves located or resident within the area, locality or ecosystem of which the resource is an integral part. Central to this concept is the status of resources owners and users within contemporary management regimes and formal structures. Thus, it must be distinguished from existing initiatives such as in Fiji and Samoa in which local communities do play some role, albeit of a limited extent, in the enforcement of bylaws but without being accorded autonomy (through legislative enactment) within the resource governance structure.

Concerned primarily with micro level governance, the focus in this chapter is not only on participatory management involving local communities at least to some level of recognition either nationally or regionally. Rather, and more importantly, focus is on the extent to which micro level resource governance is or ought to be carried out in a country with a legislative framework that caters for top-down decentralisation and devolution of powers and functions. In simple, to what extent are resource owners and local communities integrated or incorporated into formal structures of resource governance? Taking a retrospective assessment, the concept of in-situ management as defined for purposes of this thesis has not been fully developed in the region at

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220 The concept focuses on the need to maintain and manage a resource within its natural habitat and within the community or ecosystem of which it is part. See e.g. R K Arora and R S Paroda, Preserving for Posterity Intensive Agriculture (1985).
221 That is, the extent to which the role and contribution of local communities in resource management are recognised by their governments as well as external institutions or bodies.
least to an appreciable level. Using the Fiji initiative\(^{222}\) for instance as benchmark in gauging the progress or otherwise of micro level resource governance programmes in the region, one need not go that far to reach conclusion that current initiatives such as in Fiji and Samoa do not fully qualify, if at all, as examples of exclusive decentralisation and resource governance autonomy. In a way, current initiatives such as in Fiji and Samoa are more or less programs of governments meant to rectify their (government) failures in coastal waters. The local communities are therefore rendered as implementing agents of government without much power as would have been enjoyed under a resource autonomy arrangement. Thus, in any such community, the limited power granted displays the characteristic of window dressing under the guise of community-based management.

\[ \text{RESOURCES (Ecological)} + \text{MANAGERS (Human)} = \text{RESOURCE MANAGEMENT} \]

**Fig. 5**

*The Resource Management Equation*

Contemporary practice in fisheries management is characterised by a system whereby resources are supposedly managed by government administrations that are spatially removed from the resources. The end result is that enforcement of national laws is mostly done by government officers who are resident in urban or semi-urban centres with little or no contact with the resources under management.\(^{223}\) This situation is compounded by such officers’ diminutive knowledge of the circumstances of the rural or outlying areas or ecosystems within which the resources exist. Accordingly, Dalzell and Schug have observed for instance that such a situation often resulted in ‘regulations implemented by

\(^{222}\) This is carried out under the *Fiji Locally Managed Marine Area Network* (FLMMA).

bureaucrats residing in urban administrative centres [that] are often based on an incomplete understanding of the ecological and social realities of outlying communities’. Hviding, in echoing sentiments that support the comments of Johannes, stated that ‘a government that puts forth legislation to weaken the status of customary marine tenure in order to promote scientific management of fisheries disposes of it service it gets free and assumes responsibilities it is ill-equipped to handle’. Whilst this may point in part to the existing problem, the ultimate failure of the current system of resource management lies in the lack of resources to enforce such regulations, namely, deficiencies in manpower and financial resources. Adams, Dalzell and Polunin, for instance, highlighted that

budgets available to South Pacific fisheries administrations are often marginal and usually insufficient... These shortages of qualified and experienced fisheries staff coupled with limited financial resources mean that management of coastal fisheries in much of the South Pacific is based on intuition rather than on collected observations and experience.

This observation is representative of the natural resource sector that falls under the mandate of government agencies or administrations. And given this continuous failure, most researchers have acknowledged the pivotal role that can be played by local communities in rectifying the problems faced by government administrations in discharging their legal obligations in the management of natural resources. Pauly thus acknowledged for instance that

224 Dalzell and Schug, above n 16, 10.
225 See R E Johannes above n 156, 361.
226 Hviding, above n 11, 386.
staffing and funding constraints will tend to make it difficult for the fisheries departments of small tropical countries to fulfil their mandates, and this has led to high expectation for arrangements wherein the fishing communities are involved in the management process...

The foregoing demonstrates that the ecological element within the resource manage equation needs to be complemented by the human element (see Fig. 5 above) as both are inextricably linked. However, upon the birth of a state, the application of this pact under contemporary fisheries management systems implemented by the same has resulted in the human element being re-defined to encompass only agents of the state. In that process, resource owners and local communities were left out of the formal structures and processes of the state; the latter legitimising its jurisdiction and mandate by law to deal with natural resources within its sovereign territory.

Additionally, the human element within the management equation needs to be re-defined to ensure the re-integration of resource owners and local communities therein. For lest it is ignored, in-situ resource management has long existed in traditional societies until the advent of the cash economy and the birth of states. That was when resource owners were systematically usurped of their traditional management functions as the same are purportedly transferred to the state under newly devised formal management structures. A reorientation and adaptation of the in situ management concept is thus warranted. And in this process, two fundamental factors will provide legitimacy to the argument for reorientation of the in-situ management equation in the context of formal legislative structures. First is the geospatial dimension which looks at the spatial territory or natural habitat inhabited by aquatic life, and secondly, the demographic dimension which focuses on the concentration and availability of human populations within the

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229 This is meant to refer to state departments and officers being part of the government bureaucracy.
coastal territory that provides habitat to the resources under management. Thus, the former focuses on location whilst the latter looks at manpower, its capacity and availability. This will be briefly explained in the diagram below.

![Diagram of In Situ Resource Management](image)

**Fig. 6**

*In Situ Resource Management*

As of date, the most common approach towards coastal fisheries management in Pacific Island countries is characterised by those in *Location B* (government agencies) being mandated to enforce regulations in *Location A* purportedly for the management of marine resources in the latter. Adapting the *in situ management* concept would require the monitoring and enforcement of regulations in *Location A* to be done also by the coastal community in the same.

Location and available manpower combined, the *in-situ management* approach is premised on the fundamentals of practicality. Moreover, that practicality is to be determined by the extent to which a given *resident* human population can enforce laws and regulations as and whenever required without being constrained by the problematic factors of finance, manpower and logistics that continue to plague government enforcement agencies. The underlying rationale of the adapted *in situ* approach is that there needs to be a reasonable degree of ease, convenience, promptness and cost-effectiveness in the discharge of monitoring, enforcement and management functions. Not only should enforcement be done as occasion requires but it should similarly be carried out on a regular and timely basis at the least cost. In any event, it
is worth noting that enforcement of regulations under contemporary resource management administrations is crisis-driven.\textsuperscript{230} In other words, intervention by the state by virtue of its legislative powers can only be seen in the event of a crisis facing a resource, for instance, the imposition of a ban or moratorium to salvage a threatened species from eventual extinction or otherwise.\textsuperscript{231} Similarly, the enforcement of regulations against offenders would only be initiated upon voluntary reporting of breaches by local communities. Hence, it is misleading to regard the discharge of compliance and enforcement functions by government agencies as a routine and consistent exercise done in the interest of effective resource management.

Sharing the same coastline with the marine resources the subject of compliance and enforcement powers of government agencies (see Fig. 6 above), local communities satisfy the proximity criterion which puts them in a more strategic position to fulfil one of the essential requirements of the \textit{in-situ management} approach. Being proximate to the resource, resident local communities offer the most cost-effective solution or remedy to the numerous problems faced by government enforcement agencies. For instance, manpower needs and transportation costs often faced by government agencies in the discharge of their compliance and enforcement functions do not necessarily find parallels in local communities participating in community-based resource management (\textit{in situ}) initiatives.

Furthermore, the level of attachment to a resource being the subject of regulations enforced by government enforcement agencies is also dictated \textit{inter alia} by proximity to the resource itself. It is widely


\textsuperscript{231} A classic example is the ban by the Solomon Islands Government on the export of dolphins, triggered by public outcry and a massive campaign by international environmental and animal rights groups. Without any such reaction, no moratorium would likely be in place. Unfortunately, the ban was now declared null and void by the High Court in July 2007.
accepted that marine resource-dependent communities feel more attached to such resources than non-resident enforcement officers. Although subjective, local communities have the motivation to carry out fisheries management functions more effectively.\(^{232}\) This equally applies to enforcement of laws and regulations. Such motivation can be established through the widely held view that Pacific Islanders treasure their natural wealth as an inalienable part of their very existence as a people. Thus, a natural resource is perceived as inalienable from any Pacific island community which has coexisted with such resource for generations. It was correctly pointed out by Johannes, Ruddle and Hviding that\(^{233}\)

\[\text{[t]he physical, economic and spiritual life of island communities is thus often centred on their natural resource assemblage and the resource space containing it. This focus is sometimes so central to island villagers’ conceptions of themselves that alienation of their natural resources and tenured marine areas is, to them, unthinkable.}\]

Given the presence of that traditional *bond*, it must be said that the environment is always conducive for further enhancement of the link between coastal communities and coastal marine resources. Whilst respecting that traditional *bond* however, communities will similarly need to understand their new responsibility in the context of changing ecological and socioeconomic circumstances. In this contention, contemporary coastal communities are faced with pressing issues that were never experienced by their predecessors such as increasing populations and an infiltrating cash economy, to name a few. These changing circumstances are primary attributes to eroding cultures and weakening resource management structures under *KMT systems* - thus, the source of breakdown of community ownership of resource

\(^{232}\) See eg. King and Fa’asili, above n 109.
\(^{233}\) Johannes, Ruddle and Hviding, above n 166, 3.
management. But note further that in most instances, such breakdown of community ownership is attributed to other extraneous factors other than fisheries. It was observed by Kearney that ‘[i]n many cases the clan structure was weakened for reasons not related to fisheries and the management lost its authority’. Such reasons vary from country to country in the region but are nonetheless underpinned by some commonalities. It was acknowledged that in Tokelau, for instance, that ‘there have been difficulties with the traditional marine conservation system...[and] the most serious is a general reduction in the authority of the Council of Elders which results in less effective management of marine resources’. It is without doubt that when such unfortunate situations do arise, as currently experienced throughout the region, it will always be the case that local communities lost control of their capacity to manage resources responsibly. And with that lost of controlling worsening, there is then the tendency for communities to be deceived by the belief that government agencies will effectively manage the resources for the use of the former. Kearney for instance highlighted that in such situations

[l]ocal communities were no longer masters of the destiny of the resources they exploited and in many cases were forced to exploit even fragile stocks before somebody else did. Where local community control of the exploitable resource has been superseded the “commons” have suffered the same “tragedy”.

To reverse the trend, the inherent traditional attachment once held by local communities with inshore resources needs to be revived and strengthened through legislative empowerment and the transfer of management powers under a formal framework of resource autonomy and decentralised governance. The socioeconomic interest and

\[\text{Ibid.}\]
\[\text{Gillett, Toloa and Palesio, above, n 116, 20.}\]
\[\text{Kearney, above n 235.}\]
aspirations of resource owners must similarly take priority under such framework so as to drive motivation for the responsible management of resources. In this connection, the reorientation and reorganisation of traditional entities is vital for purposes of re-strengthening both their management values and structures to withstand the stresses introduced by the cash economy. The ultimate therefore is to provide the avenue for resource owners to re-discover their resource management values whilst similarly providing impetus for adaptation of such values to suit today’s circumstances. Once momentum is set for reorganisation and adaptation, mechanisms that would procure long-term community motivation and support for the new formal resource management structure must be developed.

Far from doubt, the revival of such lost connection and attachment represents the best alternative to successfully tackle the challenges facing coastal fisheries management in the region. In any event, the economic opportunities offered through direct participation in fisheries management by coastal communities are numerous. Such opportunities underlain with incentives can be seen as the catalyst to re-enhancing coastal fisheries management within an overarching decentralised resource management framework. In other words, new opportunities in modern day fisheries will motivate local communities to be more management-conscious, thus, re-strengthening the bond between the resource and people.

Reverting to the essence of the proximity argument, it can therefore be contended that the physical proximity of a people to fisheries resources already provides the ideal environment for enhanced community participation in coastal fisheries management. Given the

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238 The term ‘responsible management’ adds new dimension to resource management as ownership under KMT systems does not always guarantee effective management. Driven by the competition for cash, ownership can also be synonymous with the absolute right to exploit unrestrained. This is a key area which empowering legislation must meticulously address with the imposition of strict duties upon resource owners being the recipients of transferred powers.
existence of that traditional bond between people and resource, not much effort will be required to re-awaken the local community’s consciousness and perceptions of cultural and socioeconomic significance to inshore resources. Better still, with people and the resources occupying the same spatial territory, the task is already made easier as earlier highlighted. The impetus needs to be created through legislative processes to drive motivation within communities in which motivation and the sense of responsible resource ownership were lost or eroding. This reintroduces to the fore the need to reorient and adapt through legislative means relevant KMT resource management concepts to suit modern socioeconomic circumstances.

III Butubutu Ordinance and Bylaws: the Enforcement Regime

Whilst the Butubutu has a resident population of more than 200 heads, it remains questionable whether each and every individual should be equally empowered to enforce its bylaws. To follow that path however would mean potentially creating a future environment for chaos and disorganisation. There should be some legal control on the question of who should exercise powers as an enforcement agent of the BBDT. In this connection, enforcement should not be subject to an open system but must be strictly regulated so as to avoid an approach of laissez-faire. To avoid potential problems, the trust board should be empowered to appoint authorised officers for purposes of enforcing the enabling Ordinance and all bylaws made thereunder.

A Appointment of Enforcement Officers

A preliminary issue that needs addressing is that of authorised officers appointed under the Fisheries Act 1998. It is imperative that the Ordinance make reference to such officers as equally empowered to enforce, where practicable, provisions of the Ordinance. By logical

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239 As somewhat satisfactorily described by Johannes, Ruddle, and Hviding in their work; See above n 166.
construction, such is legally permissible as the legal competence to enact the Ordinance is sourced both from the *Fisheries Act* and *Provincial Government Act 1997*. However, for purposes of enforcement, the *Fisheries Act* takes precedence as its enforcement provisions and mechanisms therein can be further refined and customised in the Ordinance. Alternatively, certain *Butubutu* enforcement officers should also be appointed as authorised officers under the *Fisheries Act* but with their powers exercisable only within the territorial jurisdiction of the *Butubutu*. The most applicable provision is s.10(2) of the *Fisheries Act* which states that ‘[t]he Provincial Executive of a province may appoint by notice published in the Gazette an authorised officer for the purposes of enforcing the provisions of this Act in that Province’.

It needs to be reiterated that the marine resource autonomy aspirations of the *Butubutu* can be pursued under the *Fisheries Act*. In that vein, by virtue of the *Interpretation and General Provisions Act 1978* ‘[a] reference in subsidiary legislation to “the Act” is a reference to the Act under which the subsidiary legislation is made.’ This provision is adapted by s.32(7) of the *Provincial Government Act 1997* which stipulates that reference to an Act in various provisions of the *Interpretation and General Provisions Act* including s.63 also includes reference to an Ordinance of a Provincial Assembly.

Moving on to the proposal for appointment of *Butubutu* enforcement officers under the Ordinance, a provision to the following effect would suffice: *There shall be appointed by the Board for purposes of this Ordinance such number of authorised officers who shall exercise such enforcement powers as set out herein.* Upon being appointed, authorised officers are deemed employees of the BBDT and where funding permits, may be entitled to some form of remuneration. Further, qualification for appointment as an authorised officer should be clearly defined in the Ordinance. However, since the autonomy objective is butubutu-based, it

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240 *Fisheries Act 1998* (Sol Is), s 10(2).
241 *Interpretation and General Provisions Act 1978* (Sol Is) s.63(3).
is preferable that compliance and enforcement functions should be reserved for members of Butubutu Babata. Recruitment outside of the Butubutu should only be done in exceptional cases. For instance, there might be a need to remedy manpower shortfall in the future when the BBDT becomes fully operational and venturing into numerous development activities within its defined territories. But perhaps the most important exception is the need to maintain long cherished traditional ties with neighbouring communities, namely, those settling at Chubikopi and Sasaghana villages on Marovo Island (refer to Plate 3 above). The interest of both communities will need to be taken account by making provision for the recruitment of their members should and whenever the need arise. Afterall, soliciting respect for Butubutu bylaws would entail providing for some form of participation by neighbouring communities within implementation processes of the BBDT. Hviding’s comment is a very strong reminder in this respect, as ‘regulations announced by a butubutu are, of course, only effective insofar as they are enforced, and respected by people from other groups’.243

Enforcement officers monitoring Area 2 of the Butubutu’s puava mainly for detecting violations of bylaws should be clearly identified either by way of uniforms or some form of documentation such as an identity card (ID card) or tag. The option of ID cards or tags would be most practicable given the cheap cost and technology involved in producing the same. The rationale for such identification is to avoid cases of dubious characters impersonating enforcement officers with the aim of preying on unsuspecting trespassers or violators potentially with a deceitful intention of extorting fines and compensation from the same.

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242 Members of both communities have also used Area 2 regularly basically for subsistence fishing.

243 Hviding, above n 11, 330.
B Enforcement Powers to Search Arrest Seize Detain and Forfeit

Attaining resource management autonomy does not give autonomic legal recognition to the powers of enforcement officers to perform certain acts that would otherwise constitute fundamental breaches to the legal rights of others. And without the legal basis for the exercise of such powers, the discharge of compliance and enforcement functions will be utterly worthless, and so will be the entire resource management initiative. Given this possible scenario, the powers of enforcement officers to do certain acts without incurring personal liability, howsoever restrictive such acts may be of alleged offenders’ liberty, must be clearly defined in the Ordinance.

Additionally, the powers of Butubutu enforcement officers should be strengthened with a mechanism through which appointments under the Fisheries Act as advanced under section (A) immediately above are automatically recognised as appointments with equal effect for purposes of the Ordinance. This option will correspond to the appointment of officers of the BBDT as authorised officers under s.10(2) of the Fisheries Act but with jurisdiction limited only to Western Provincial waters. The option ensures that any potential legal problems with transiting foreign fishing vessels that may arise in the future are pre-accommodated. However, from a strictly legal point of view, the appointment of a BBDT enforcement officer under s.10(2) gives full powers to effect arrest of a transiting foreign fishing vessel within waters of the province. Making allowance for utilising services of fisheries enforcement officers of the state is therefore meant to complement the role of BBDT officers, whilst similarly catering for situations when state officers have to be called in to alleviate shortfalls within the Butubutu’s enforcement functions.

The powers considered most crucial to the Butubutu initiative include the power to stop and search vessels and crafts suspected of

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244 Most or all such personal rights and freedoms are entrenched in the country’s Constitution.
being used in the commission of offences within the waters of Area 2, as well as in Western Provincial waters when requested. Such should also include the ultimate power to arrest without a warrant. The procedures for seizure and detention of both local and foreign fishing vessels should basically be the same, as the source of powers to give effect to such provisions derives from the *Fisheries Act 1998* and replicated in the *Butubutu* ordinance.

In defining the powers of BBDT enforcement officers in the ordinance, a provision to the following effect would suffice for this purpose:

1. An enforcement officer shall have the power to stop board and search any vessel, boat or craft suspected to transporting any marine life or product thereof in contravention of this Ordinance.

2. Where an enforcement officer has reasonable grounds to believe an offence has been committed contrary to provisions of this Ordinance, such officer may, without a warrant, arrest any person suspected of committing such offence.

As the power to formally charge arrested offenders vests in police officers and agents of the State, *subs. (2)* illustrated in the above example would need to be adapted accordingly. For purposes of simplicity and practicality, an option is to insert after “such offence” words to the following: “and, without unnecessary delay, handover such person to a police officer or take the same to the nearest police station”. This additional provision is meant to reflect the current situation in Marovo Lagoon in which accessibility to State enforcement services is at best poor. For instance, the nearest police post is at Seghe, a Government

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245 It is inconceivable for enforcement officers to promptly obtain a police or bench warrant to effect arrest on the spot when going out on surveillance or patrol of the marine *puava*. 
substation located approximately 20km to the west of Chea. Travel time is approximately 30 minutes by motorised canoe, thus, by local standards not readily accessible for speedy or timely handovers without causing stress to the arrested person. Without the availability of a motorised canoe, time taken to reach Seghe by foot via Patutiva would be more than quadrupled. But in any event, given its lagoonal geography there is no prospect of a modern super highway linking all of the villages in the immediate future. An additional factor constituting a major component of the enforcement arms of the State is the judiciary. Unfortunately, there is absence of the judiciary in Seghe or anywhere in Marovo, as the only resident magistrate servicing Western Province can only be found in Gizo; the Western Provincial Headquarter located some 90km northwest of Marovo Lagoon.

Whilst the ultimate effect of an arrest impinges primarily on the rights and liberties of natural persons, the same may not be said of objects or material things used to facilitate the commission of an offence, such as fishing and diving gear, equipment, boats, and vessels. Conventional practice in the enforcement field, particularly in the resource management sector, is characterised by owners being deprived of property or the use thereof, either temporarily or permanently.246 Where it is temporary, the corresponding term is the power to seize and detain, whilst the power to forfeit applies when an owner of property is deprived permanently by operation of law. At the preliminary stages during which arrest is made but prior to court prosecution, the power to seize things used in the commission of an alleged offence is vital for purposes of securing statutory fines. The Butubutu may wish to incorporate both concepts of temporary and permanent deprivation into its enforcement regime. As such, enforcement officers need to be empowered to seize material or equipment used at the time of alleged

246 This is most common in the offshore fisheries sector in which fishing vessels together with their equipment and cargo are detained pending court proceedings. However, in compliance with the UN Convention on the Law of the Sea, most, if not, all Pacific Island countries’ fisheries legislation incorporate mechanisms for the release of detained vessels upon the payment of reasonable bonds as security.
offending to be kept pending the resolution of the matter either through court process or other form of settlement.\textsuperscript{247} For that purpose, an empowering provision to the following effect might suffice: “An enforcement officer making an arrest may seize and detain any vessel, boat, canoe, equipment or other instrument believed to be used in the commission of such offence, and shall issue a receipt for such seizure”. Additional provisions should detail inter alia the purpose of such detention and how the same can be released to owners.

Whilst the power to seize safeguards the acts of an enforcement officer in physically seizing for instance equipment used by the offender at the time of arrest, the power of forfeiture is a penalty provision that comes after and needs to be separate from sentencing. Operation of forfeiture provisions would thus apply to empower the BBDT to dispose of such equipment at the direction for instance of the board chairman. It is recommendable that the exercise of that power be subject to a court order so as to protect the BBDT from civil suits for recovery of forfeited property or equipment by other interested parties. Accordingly, the court must be given express jurisdiction to make such order upon conviction of the offender. On the same note, in reaffirming respect to the status of the Butubutu Chief, express provision must similarly provide for the exercise of discretion by the same in deciding the manner in which forfeited property or equipment are to be disposed of. This is to ensure the Chief acts with legal authority.

Furthermore, whilst the power to arrest in relation to statutory offences (as opposed to criminal offences) vests primarily in authorised (enforcement) officers, for purposes of practicality it is desirable that some legal recognition be rendered to the general membership of the Butubutu permitting the same to apprehend offenders. The right to apprehend ensures that ordinary Butubutu members can stand-in for

\textsuperscript{247} Out-of-court settlement is highly recommended for such rural-based initiatives given the difficulties of accessing State enforcement services.
enforcement officers in the event of the latter’s non-availability when an
offence is allegedly committed within the territory of the Butubutu. It is
imperative that the right to apprehend must be clearly distinguished
from the power to make formal arrest. Accordingly, a provision to the
following would suffice:

*Any ordinary member of the Butubutu may apprehend any person suspected of committing an offence against provisions of this Ordinance but must immediately deliver such suspect to an enforcement officer who shall make formal arrest.*

Whilst the BBDT enforcement officers may by virtue of s.10(2) of the
Fisheries Act possess the jurisdiction to exercise their functions beyond
the limits of Area 2 and outwards within provincial waters, this will not
be the same for ordinary Butubutu members. The latter’s powers to
arrest, for practical reasons, should only be confined to Butubutu waters.

C Presumption of Evidence

A substantive issue that should similarly be addressed in the
Ordinance is that of evidence to be tendered in court to secure conviction
of offenders. It is likely that actual prosecution in court will be done by
trained police officers or prosecutors, and the same will have to rely on
primary evidence collected by BBDT’s enforcement officers. In the
absence of any legal training to equip enforcement officers with some
crude knowledge on evidentiary issues, problems will arise in relation to
the quality of evidence tendered. This is most probable in cases of marine
life being removed from Area 2, drawn against the backdrop of poorly
defined territorial boundaries and the multiplicity of kastomary sea
estates bordering the area. To avoid this potential pitfall, there needs to
be incorporated into the Ordinance a presumption that any marine life
found aboard a craft or vessel or in the possession of a person at the time
of arrest within Area 2 is presumed to have been harvested or removed in the course of committing the offence for which arrest is made. The determinant factor for invoking that presumption is that such marine life must be found in the possession of the arrested person within Area 2. Adopting such evidentiary presumption will operate to relieve in part what would otherwise be an onerous burden for prosecutors to discharge. Moreover, it operates to close any conduits through which poachers might escape.

IV Alternative Forms and Degree of Penalties

The end-product of the Butubutu’s enforcement regime should be built on two forms of punishment: (i) conventional penalties sanctioned and imposed by courts, and (ii) compensation per out-of-court settlement. These two forms will be briefly discussed below.

A Punishment through Court Process

The two most traditional forms of court-meted punishment employed in resource management legislation in Solomon Islands are fines and imprisonment. The use of courts in the meting out of punishment in respect of penalties prescribed under bylaws may need to be adopted to give legal teeth to the Butubutu’s enforcement regime. But in prescribing penalties in the enabling Ordinance, the Butubutu needs to be guided by the limitations prescribed in applicable over-riding Acts of Parliament. And since decentralisation and autonomy aspirations of the Butubutu are to be pursued under auspices of the Provincial Government Act 1997 and Fisheries Act 1998, both statutes are deemed the most appropriate or principal guides in the prescription of penalties. The Interpretation and General Provisions Act 1978 is an additional aide in the

248 Such provisions are mostly found in fisheries legislation, such as the Fisheries Act 1998 of Solomon Islands. For instance, s.47 of the Act provides: ‘Any fish found on board any fishing vessel used in the commission of an offence under this Act or in respect of which any such offence has been committed, shall, unless the contrary is proved, be presumed to have been caught in the commission of such offence’.
prescription of penalties for offences under bylaws. Thus, a bylaw made under an Ordinance may provide for a penalty not exceeding one hundred dollars or a maximum imprisonment term of three months.²⁴⁹

In keeping within legal limits, determining the ceiling for monetary fines is crucial. The Fisheries Act for instance is unequivocal as to the level of fines that can be prescribed in an Ordinance or bylaw made thereunder. Thus, in empowering a Provincial Assembly to legislate, s.10(3)(a) of the Act stipulates that ‘Ordinances made under this section may provide for...prescribing penalties for offences against any Ordinance or bylaw made under this section, not exceeding two thousand dollars for an offence against any Ordinance and one thousand dollars for an offences against a bylaw’.²⁵⁰ No identical provision is found in the Provincial Government Act 1997, thereby leaving room for potentially setting arbitrary levels of fines. The same applies to maximum imprisonment terms to which there is a great level of inconsistency from Province to Province. The standard limits set in the Interpretation and General Provisions Act which are rather nominal and non-deterrent on face value, were, on justifiable policy reasons, overlooked as Provincial Assemblies were intent on setting higher levels of penalties to be commensurate with modern socioeconomic circumstances.

Furthermore, there needs to be some classification in the Ordinance of fines applying to different categories. In this connection, it is imperative that fines applicable to natural persons or individuals should be different and lower than those applicable to bodies corporate. Capturing the latter entails having to deal with legal technicalities, let alone discharging the burden on the part of the prosecution or BBDT to impute a body corporate for acts constituting a breach of the Ordinance or Butubutu bylaws. To negotiate this potential hurdle, acts or omissions constituting a breach by a body corporate must be well-defined. The

²⁵⁰ Fisheries Act 1998 (Sol Is), s.10(3)(a).
basis for addressing this complex issue in the Ordinance is to first define the link between acts or omissions of employees, agents, or servants of bodies corporate and the express or ostensible authority under which such persons act at the material time.

The jurisdiction of courts to deal with offences must be clearly defined, guided in principle by the monetary jurisdiction of courts in the country. It is desirable that offences be dealt with both in the Magistrates court and the Marovo local court. Unfortunately, the latter has been defunct and remained inoperative for the last five years owing to financial constraints faced by the Government. This has made the Butubutu’s accessibility to courts even far more remote, as local courts are the only judicial institutions with localised territorial jurisdiction\textsuperscript{251} and more accessible to rural communities in the past.

\textbf{B Out-of-Court Resolution of Breaches to Ordinance and Butubutu Bylaws}

This approach proves the most practical alternative to traditional systems of enforcement through court processes. Moreover, it is most appropriate for rural-based autonomy institutions, such as Butubutu Babata, that do not enjoy the privilege of readily accessing State enforcement services with reasonable ease and at less cost.

The practical circumstances in Marovo Lagoon manifests the difficulties of readily accessing the police and courts for purposes of the Butubutu’s enforcement regime, thus merits the employment of this alternative option underpinned by a system of \textit{on-the-spot} fines and compounding of offences. For practicality reasons however, this option must not be seen as displacing in entirety punishment through court processes. Rather, it should only take priority and applied in situations whereby an offender has admitted at the material time guilt of his or her

\textsuperscript{251} \textit{Localized territorial jurisdiction} in the sense that a local court has a specific geographical area in a province within which it can exercise its jurisdiction to hear cases.
own volition. In other words, resort to prosecution in court will still remain the bottom-line of the Butubutu’s enforcement regime in all cases of dispute and denial of wrongdoing by an apprehended offender.

The option of on-the-spot or administrative fines and the compounding of offences do not require any complex or time-consuming procedures. All that is required is admission of guilt on the part of the offender and his or her willingness to pay such sum not exceeding the maximum fine prescribed for the offence committed. As incentive for the promotion of this option, the Ordinance should incorporate a mechanism that discharges the offender from prosecution upon payment of the agreed compensation being accepted by BBDT. The thrust of this proposition is that the acceptance of monetary compensation renders an offence compounded - thus operates as a defence to future prosecution.

The power to compound an offence should be vested in the Chief, being head of the trust and traditional custodian of Butubutu resources. However, as a matter of practicality, such power may need to be delegated to enforcement officers in certain circumstances, such as the non-availability of the Chief at the material time. A provision to the following effect would suffice for purposes of this option:

_Notwithstanding anything to the contrary, where an offender has voluntarily admitted committing an offence in contravention of this Ordinance and has expressed in the prescribed form his willingness to pay compensation in final settlement of the breach, the Chairman of the trust may accept from such offender on behalf of the trust compensation not exceeding (amount in dollars)._ 

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252 Or alternatively, “the Chief”.
253 Or alternatively “the Butubutu”.
It is imperative that an offender’s intention to invoke this provision must be evidenced in writing, thus the requirement for the completion of a prescribed form. Supplementary provisions thereto should similarly address issues such as agreed deadline for full payment, re-possession of detained equipment or property used in commission of the offence, and re-offending by the same person whose acts constitute an offence earlier compounded.

C Commission of Offence by Butubutu Members

Given the current problem of youths alienating themselves from church doctrine relating to the exploitation of marine resources within the Butubutu’s marine puava, it must not be ruled out the possibility of breaches to Butubutu bylaws and Ordinance by community in the foreseeable future. Accordingly, there needs to be in place a community self-regulatory mechanism to ensure “rogue” elements within the Butubutu do not freely act with impunity. In this connection, bylaws must equally apply to members of the Butubutu, albeit subject to a varied system of penalties. The option therefore is to subject “internal” offenders to some form of punishment by way of special fines and compellable engagement in community service. For instance, a provision to the following effect might suffice:

Any member of the (Community or Butubutu) breaching this Ordinance or the bylaws made hereunder (shall or may), instead of being prosecuted, be summoned before the (Chief or Chairman) and ordered to pay such fine as considered reasonable or do community service for such period not exceeding (days, weeks or months), or to both such fine and community service.

254 See Kinch et al, above n 15, 62.
The determination of fines or the period of community service should be at the discretion of the Chief, but in any case the exercise of such discretion should be guided in principle by a set of written guidelines so as to avoid arbitrariness.

V Enforcing Environmental Offences: Establishing Liability through Causation

The resource management powers of the Butubutu must simultaneously be exercised with the power to protect the habitat within which its marine resources exist, namely Area 2 (marine puava). As such, the prescription of offences should similarly take into account the need to deter individuals or companies from engaging in developmental activities that will cause pollution to the waters and environment of Area 2.

To date, the biggest threat to Marovo Lagoon and its coral reef network comes from land-based pollution sources, most notable of which is logging on the mainland of Vangunu and New Georgia. There are currently three logging companies operating within the vicinity of Area 2, with another 11 companies operating in other areas within Marovo Lagoon (see below).255 Kinch et al established through anecdotal evidence that ‘marine life around Chea had been affected by the siltation and oil spill from logging barges and during recent bech-de-mer surveys, Mbili Passage bech-de-mer divers raised a similar concern’.256 The Environment Act 1998, quite surprisingly, is dead silent on the rights of kastomary owners to compensation in the event of pollution caused to areas held under kastomary tenure. In whole, the Act provides no recognition of traditional entities inhabiting natural habitats and environments which it purports to regulate. In effect, it lacks provisions providing basis for the decentralisation of legislative powers to micro level institutions for purposes of environmental protection. However, that is not to say that no

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255 Kinch et al, above n 15, 36.
256 Ibid.

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protection is afforded to natural habitats within *kastomary* areas as ss.35 and 49(2) of the Act could still be of limited application for purposes of the *Butubutu* initiative. Thus, whilst s.35 is a general restriction against causing of pollution from waste to the environment, s.49(2) purports to impose prescribed discharge standards on vessels. By virtue of s.49(), ‘*no person shall sail or conduct a vessel capable of discharging any matter into the environment unless the vessels complies with the prescribed discharge standards*’.257

Weak environmental legislation is manifested in the proliferation of the destructive logging industry in Marovo as demonstrated in *Fig.7* below. This deplorable situation stands in marked contrast to the pristine but fragile nature of Marovo Lagoon. Thus, instead of being protected because of its unique environment and habitat, Marovo Lagoon is gradually becoming the hub of one of the most environmentally-destructive industries in the Pacific and world over.

<table>
<thead>
<tr>
<th>Name of Licensee</th>
<th>Island</th>
<th>Locality</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Voge Timber Export</td>
<td>Vangunu</td>
<td>Arovo and Gae</td>
</tr>
<tr>
<td>2 Lupa Development Co</td>
<td>Nggatokae</td>
<td></td>
</tr>
<tr>
<td>3 Geruana Sawmilling</td>
<td>Vangunu</td>
<td>Geruana</td>
</tr>
<tr>
<td>4 Kongungaloso Timber Co Ltd</td>
<td>Nggatokae</td>
<td>Kongungaloso</td>
</tr>
<tr>
<td>5 Kuvotu Development</td>
<td>Vangunu</td>
<td>Kuvotu</td>
</tr>
<tr>
<td>6 Solfeed Milling Enterprises</td>
<td>New Georgia</td>
<td>Vahole</td>
</tr>
<tr>
<td>7 Peokana Alekeru</td>
<td>New Georgia</td>
<td>Hetaheha</td>
</tr>
<tr>
<td>8 Leeroy Joshua</td>
<td>Vangunu</td>
<td>Bareke, Tadove</td>
</tr>
<tr>
<td>9 Silvania Products</td>
<td>Vangunu</td>
<td>Lot 16 of LR515</td>
</tr>
<tr>
<td>10 JP Enterprises</td>
<td>New Georgia</td>
<td>Seghe</td>
</tr>
<tr>
<td>11 Nama Deveopment</td>
<td>Vangunu</td>
<td>Nama</td>
</tr>
<tr>
<td>12 Lagoon Eco Timber</td>
<td>Vangunu</td>
<td>Tirobuma,Chenana</td>
</tr>
<tr>
<td>13 Bulo Enterprises</td>
<td>Nggatokae</td>
<td>Mbili Passage</td>
</tr>
<tr>
<td>14 Metro Pacific</td>
<td>Miriana</td>
<td>Mbili Passage</td>
</tr>
</tbody>
</table>

*Source: IWP-Solomon Islands 2005*

*Fig. 7* Logging Companies Operating within Marovo Lagoon

257 *Environment Act 1998 (SI).*
Given the issues of distance and proximity, capturing the perpetrators operating on Vangunu and New Georgia entails a careful approach towards the issue of causation in the Ordinance. An option to negotiating the potential difficulties with establishing causation is to address the offence on the principle of strict liability. For instance, a provision to the following effect might provide the basis for addressing this complex legal issue:

*Any person engaging in any activity or development that results in waste effluent sewage seepage runoff or bilge water causing pollution, destruction, damage or threat to the marine ecology of Area 2 commits an offence.*

Whilst the above addresses pollution from land-based sources, transiting vessels and boats should equally be obliged to observe the environmental standards set for Area 2. Thus, the provisions of s.49(2) of the Environment Act 1998 should be further translated into simple offences within the Butubutu ordinance. This approach is particularly important given the presence of the domestic shipping route through the Butubutu’s marine puava (refer to Plate 4 above). Higher penalties should therefore apply to owners or operators of ships from which waste is discharged into the waters of Area 2.
MAINTAINING SUSTAINABILITY OF THE BUTUBUTU INITIATIVE THROUGH MOTIVATION AND SELF-SUSTAINING MECHANISMS

Discussion hereunder will look at the means, financial and otherwise, for ensuring the long-term sustainability of the entire initiative. Thus, the principal issue of sustainability will be discussed on the basis of two fronts: (i) the need to sustain community enthusiasm, optimism and motivation in the long term, and (ii) financial mechanisms of sustaining the operation of the BBDT and its enforcement regime. Central to the former is the socioeconomic aspirations of the Butubutu and how such can be successfully pursued within the framework of resource autonomy. The hypothesis is that conservation objectives, strictly defined, will not necessarily guarantee the success or sustainability of the Butubutu initiative, as influences of the cash economy in Marovo Lagoon warrants the need for incorporation of socioeconomic factors into the new management regime.

I A New Direction in Simultaneously Pursuing Socioeconomic Development and Resource Conservation

Revitalising kastomary institutions is certainly not the only effective means of rehabilitating exhausted inshore resources or achieving the development aspirations of Butubutu Babata through exploitation of the resources of its puava. Moreover, pursuing strictly conservation or ecological goals will not necessarily muster the required support from coastal communities deemed essential for the success of a community-based management system. The author therefore argues that economic activities involving utilisation of inshore resources have to be allowed to occur but at an ecologically and economically sustainable rate through regulated management measures. Practically, conservation stricto senso is needed at the initial stages to rehabilitate threatened...
stocks. In this course of rehabilitation, reef systems subjected to destructive resource extraction practices will be allowed to replenish and regenerate.

The ensuing discussions will focus primarily on the need to sustain community enthusiasm, optimism and motivation in the long-term. Thus, it introduces to the fore the need to reconcile development (economic factor) with conservation (ecological factor) through the sustainable utilisation and commercialisation of marine resources. In the course of discussion in the latter part of the chapter, mechanisms for attaining the socioeconomic objectives of the Butubutu within the overall framework of management and conservation will be identified.

The Butubutu’s resource management initiative will stand every chance of long-term success if economic objectives are translated into specific mechanisms that operate as motivating factors. The socioeconomic benefits underlying such mechanism must be realisable and visible so as to maintain the interest of Butubutu members in the initiative. For instance, Tokrisna et al, in their experience of a community-based management system in Thailand\textsuperscript{258} have found that the effective involvement of local communities in such systems can be maximised if benefits to be derived from the same are visible, quick and proportionate to their respective contributions.\textsuperscript{259} King and Fa’asili have made a similar observation of Pacific Island countries by reiterating that “the prime need is not for education but for motivation and support...[which] depends on the availability of economically viable alternatives to the present unsustainable and destructive fishing practices”.\textsuperscript{260} The catch phrase is “economically viable alternatives”, and in the context of Marovo Lagoon, coastal fisheries present the

\textsuperscript{258} As a country bordering the sea with a tropical climate inhabited by both interior and coastal communities, Thailand shares a lot of similarities with Solomon Islands.
\textsuperscript{260} King and Fa’asili, above n 109, 6.
opportunity for deriving economic benefits by communities such as Butubutu Babata. In this connection, it is without doubt that coastal fisheries offer Marovo communities one of the only direct means of income generation to support their ever-increasing money-driven lifestyles dictated by modernisation and development.  

A new direction for attaining economically viable alternatives for local communities such as Butubutu Babata is through adoption of the bottom-up approach. This introduces to the fore the concept of community economic development (CED), a phrase popularly used to describe inter alia the extent of decentralising economic development with emphasis on local communities. The concept of CED thus promotes the bottom-up approach whilst integrating local communities and resource owners in all stages of resource management commencing from policy formulation and decision-making to implementation. The bottom-line of such approach is the entitlement of resource owners to stake larger claims in benefit sharing. With such forming an intrinsic element of the concept, CED can therefore be seen as an approach for ensuring wealth derived from the exploitation of natural resources benefits first and foremost local communities and resource owners.

By definition, CED is a “community-based and community-directed process that explicitly combines social and economic development and is directed towards fostering the economic, social, ecological and cultural well-being of communities and regions”. In a country in which development and economic policies are mainly dictated by the Central Government, adopting the approach will entail a paradigm shift in Solomon Islands. But its strength lies in the fact that CED “is founded on the belief that problems facing communities...[such as] environmental

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261 See Hviding, above n 11. See also Adams, above n 230.
degradation, economic instability and loss of community control – need to be addressed in a holistic and participatory way”.263

Theoretically, the approach envisaged in CED will instil a new sense of entrepreneurship necessary to expand the country’s private sector in the long term. Thus, although fisheries could be used as the pilot sector, such entrepreneurship, upon being well-established proves vital for ensuring the active participation of rural-based communities in economic development activities involving other natural resource sectors. Additionally, the economic benefits and spin-offs of coastal resource commercialisation under autonomy arrangements will similarly instil a new level of consciousness within resource-owning coastal communities. From an economics angle, the sustainability of a commercialised fishery and its related enterprises and profits is dependent on the ecological limits of the fishery. The reorientation of attitudes264 supposedly upon realisation of that limit will drive the urge to apply concerted efforts through participation within new management initiatives, purposely for the long-term sustainability of an income-generation source. Thus, a resource of commercial value that is subject to a strict sustainable management regime will mean sustained profits and income-generation in the long term. As interplay of economics and bio-ecology, the choice therefore is one between profit-maximisation at ecological cost, thus, depletion and short-lived profit making, or one of profit-maximisation within the ecological capacity and elasticity of the resource. The latter provides the ultimate guarantee to a sustained enterprise, thus, income-generation deriving from the commercial harvesting of marine resources on a sustainable basis.

Whilst participation within and the success of the Butubutu initiative may be driven by concerns for its marine puava and resources

263 Ibid.
264 The irresponsible and reckless attitude towards coastal resource management is undeniably endemic within Solomon Islands coastal communities, including customary resource owners. Even within Butubutu Babata, traces of this attitude can still be noticed, particularly with youths.
thereof, it must be argued however that such finding is inconclusive in the context of contemporary socioeconomic circumstances facing the community. In other words, ecological considerations alone will not necessarily muster support nor guarantee the long-term sustainability of the Butubutu management regime in as far as community participation is concerned. Previous studies of Pacific Island communities have proved this to be a common occurrence. The motivation thus required must be one that is materialistically attainable and importantly, sustainable, to ensure the long-term success of maximum community participation. What must be acknowledged is that with the influences of the cash economy leading to an increase in the need for cash to support external linkages, effective community participation can be achieved if economic benefits are inherently present within the management system to be adopted. Kuemlangan has stressed for instance that ‘communities involved in community-based fisheries management should be the net benefactors of the alternative management approach so that there can be reinvestment of resources, including community time and effort, into the CBFM approach.’ Thus, where benefits ‘are visible, quick and proportionate to individual or collective contributions’, effective participation of community members is guaranteed. What this entails is that socioeconomic considerations will play a more prominent role within a community-based management system. It must be re-emphasised that the success and long-term sustainability of the Butubutu initiative is to a large degree dependent on how well socioeconomic interests of members are taken onboard in the course of implementation. How can this be done? The practical options are twofold. The first option is for the BBDT to directly engage in the harvesting of resources within Area 2 with proceeds from the same distributed equally or equitably between the Butubutu’s 25 households or units. This option is the most practicable at

265 Babata Tribe Chea Village Community, above n 83, 6.
266 See eg. King and Fa’asili, above n 109, 6.
267 Kuemlangan, above n 43, 20.
268 Tokrisna, Boonchuwong and Janekarnkij, above n 259.
269 Nielsen et al, above n 3, 2.
270 Equitable distribution of benefits is an important factor in this respect.
the formative stages and deemed desirable when the BBDT ordinance is initially put to the test. Alternatively, the BBDT by virtue of its licensing powers entrenched in the ordinance, may issue harvesting permits under a micro-licensing system to private external companies or persons. This second *sub-option* may not go down well with the 25 units, thus, not recommendable. For one reason, *Butubutu* members ought to directly participate in the harvesting of resources under the new management regime.

The second option is for the BBDT (or RMC for that matter) to issue quota allocations by species with a fixed number of permits to individual households within the *Butubutu* – for instance, five permits with 500kg of trocus shell per permit. Such an approach will see the BBDT imposing both input and output control measures. Taking on the shape of a formalised micro level prototype *rights-based* or *ecosystems-based* management system, this approach of quota allocation will ensure that the ecological state of a species is ascertained through stock assessment surveys or otherwise before a total harvestable or allowable catch is set for a given period. Quota allocations are then calculated on the basis of that total allowable catch and distributed to families designated as corporate units, with each unit holding a quota for that given period. Owing to priority consideration being paid to bio-ecological considerations, a quota must not be allowed to accumulate or roll-over to the next allocation period. Thus, the same must be used up within the period against which it is given or be rendered invalid or unusable upon expiry. However, to procure motivation on a sustained basis as well as affording some fairness to quota holders, some mechanism should be created for such quotas to be redeemable to the BBDT. Thus, by operation of this mechanism, a family unit that wishes not or fails to utilise its quota may surrender it for value or otherwise to the BBDT before its expiry.
Alternatively, under such buy-back mechanism, a harvestable quota may be transferred by one unit to another subject to internal arrangement between the transferor and transferee. In such cases of transfer, endorsement of the BBDT must be obtained to ensure a proper record of actual or most benefiting and less benefiting family units under the quota system is maintained for future allocation purposes. Chea currently has 25 households or units, thus, for purposes of benefits being evenly spread out, it is required that a distribution scheme be devised to regularise the rotation of quotas between units. In this vein, unless proved otherwise by stock assessment surveys, biological and conservation factors would restrict all 25 units from being issued quotas for use within the same period or simultaneously. Having a retrospective view of the second option, what would be the impact or implications of a right-based management system on the Butubutu and its KMT system?

Briefly, introduction of a rights-based management system, albeit radical in nature, will pose no threat to communal interest of the Butubutu or its KMT system. What must be envisaged is that the Butubutu needs to be exposed to contemporary systems of resource management so as to keep up inter alia with new trends in fisheries management around the globe. Ecosystems-based or a rights-based management system adds new dimension to management of the global fisheries sector, and its application is timely for the Butubutu. Moreover, a regularised rights-based management system will operate to ensure that benefits from Butubutu resources are evenly spread out within the community and not concentrated in a few individuals. This, in a way, will operate to prevent the problem of individualisation or proliferation thereof as already experienced with the baitfish fishery undertaken in the Lagoon. But the most significant impact will be the

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271 See Kinch et al, above n 15, 21.
272 This system of fisheries management is proactively advocated by most regional and international bodies such as FAO.
273 ‘Regularized’ as referring to the allocation of quotas to family units on a rotational and periodic basis.
274 For more insight into this topic, see Hviding, above n 11, 347.
new sense of appreciation of the intrinsic link between economics and bio-ecological factors. As the total allowable or harvestable stock is dependent on a scientific or anecdotal assessment of a commercial species to determine its status or abundance, participating units will ensure that effective management is carried out in order to produce for instance sizeable quotas when such are due. Thus, the interest of the community is for better economic returns on a long-term sustained basis provided the ecological limits of the resource remains central to total harvestable stock determinations.

II The Butubutu Trust Fund and Related Powers

Whilst no trust fund has been formally established under the current Butubutu structure, the 1991 constitution nonetheless provide for the appointment of a Finance Committee ‘in the case where fund is accumulated’.\(^{275}\) This is a contentious issue for purposes of operation of the new management regime, and as such, it is thus imperative a trust fund be established and administered under the new arrangement. Being the principal source of funding for the BBDT, the powers of the latter to derive revenue for purposes of the trust fund needs to be defined. But in any event, such powers must be wide in scope. Establishing the trust fund in the Ordinance, a simple provision to the following effect will suffice:

\[\text{There shall be and it is hereby established a Butubutu Babata Development Trust Fund for the conservation management and development of natural resources of the Butubutu for the benefit of its members.}\]

Should the fund be established specifically for the conservation management and development of resources within Area 2 (marine puava), the above provision should be altered to reflect such intention. However, keeping the provision wide in scope as proposed above is recommendable.

for purposes of extending conservation and management functions to
Areas 1 and 3 in the future. As for purposes of this research, the
above proposition should be read and understood in the context of Area
2.

Having established the fund, a supplementary provision should
then prescribe the sources from which revenue is to be derived and paid
into the fund. Some of the most identifiable heads of income include
those to be discussed below, namely, fines compensation fees and
proceeds from things forfeited and sold under the Ordinance, returns
from investments made by the BBDT, and such other moneys donated or
appropriated to the fund by other institutions or donors.

Whilst the sources from which funding is to be derived may be
numerous, heads of expenditure out of the fund must be specific,
limited, and restrictive. In other words, the powers of the trust board to
expend moneys out of the fund must be strictly controlled and regulated.
If trust principles are to be inter-married with kastom, then greater
attention must be drawn to the former which is already a step ahead in
terms of clarity and specificity. For instance, in the english case of
Learoyd v Whiteley, the court expounded that ‘as a general rule the law
requires of a trustee no higher degree of diligence in the execution of his
office than a man of ordinary prudence would exercise in the management
of his own private affairs’. To facilitate the achievement of this
objective, mechanisms must be prescribed for ensuring accountability
and transparency in the use of the fund. Moreover, the abuse of trust
power is one of the most contentious and litigious issues in trust law.
Even court processes in most jurisdictions have been inundated with
litigations surrounding this issue. As the general principle in law, a

276 Refer to Plate 3 above. It is anticipated that given its economic potential and untouched status,
Area 3 will also be the subject of active regulated management in the not-too-distant future.
277 Such as the Provinical or National Governments, regional or international organizations, and
business houses.
278 (1887) 12 AC 727.
279 See also Cowan v Scargill & Ors [1984] 3 WLR 501.
trustee must not act in breach of trust\textsuperscript{280} or her fiduciary duties and must similarly refrain from benefiting from her position as a trustee.\textsuperscript{281} For a breach of the same will render the trustee personally liable to the beneficiaries for any loss suffered as consequence of such breach.\textsuperscript{282} Being an institution incorporated through legislative enactment, it is imperative that \textit{check and balance} mechanisms must be employed to guide operations of the BBDT. Thus, although established on the basis of the \textit{Marovo kastom}, the powers and obligations of the BBDT must be guided by rules deriving from a cross-pollination of \textit{kastom} and trust law principles aimed at yielding accountability and transparency. Whilst more of a measure of precaution for future situations, the approach will nonetheless pre-empt the dangers or threat posed by traditional community leaders who are susceptible to the temptations of greed and cash enrichment. Studies earlier carried out in the Pacific Islands have identified the presence of this element within local communities. Thus, a World Bank study has found out for instance that many communities, besides reluctance, often lack mechanisms to prevent their traditional leaders from engaging in private commercial interests which conflict to varying degrees with their traditional responsibilities towards their kinsfolk.\textsuperscript{283}

In view of the above analysis, it is highly recommended that such accountability mechanisms are prescribed in the Ordinance or bylaw to specifically regulate management of the trust fund. Such mechanisms may include subjecting a decision made by the trust board relating to major expenditures out of the fund to a negative resolution by

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\textsuperscript{280} \textit{Breach of trust} is defined as an improper act, neglect or default on the part of a trustee in regard to his trust, either in disregard of the terms of the trust, or the rules of equity; \textit{Osborne’s Concise Law Dictionary} (8\textsuperscript{th} ed).

\textsuperscript{281} \textit{Keech v Sanford} (1726) \textit{Sel Ca t King 61}.

\textsuperscript{282} Numerous cases have dealt with the issue of assessment of liability on the part of a trustee, e.g. \textit{Bartlett v Barclays Bank Trust Co Ltd (No.2)} [1980] 2 \textit{All ER 92}.

all members of the *Butubutu* of voting age. Similarly, the authority of the Chief both as traditional head and trust board chairman may need to be curbed insofar as use or expenditure out of the fund is concerned. But in any case, application of the negative resolution approach constructively subjects any decision made by the board or chairman regarding expenditures out of the trust fund to the collective voice of the *Butubutu*. The whole rationale of this approach therefore is accountability and transparency through collective decision-making. In other words, contentious matters must be subjected to a transparent process of decision-making, thereby absolving individual trustees from personal responsibility for any for losses or liability arising out of actions taken pursuant to decisions made by collective resolution of the *Butubutu* membership. Discussion will now focus on the different heads of income sources and powers of the trust board in relation thereto.

### A Fines and Compensation

Unanimity was reached during consultations with members of the *Butubutu* for moneys paid for breaches of the Ordinance and bylaws made thereunder to be remitted to the trust fund instead of being retained by the State. The issue arises out of s.60 of the *Interpretation and General Provisions Act* which stipulates that ‘*a fine or penalty imposed by, or under the authority of, an Act shall be paid into the Consolidated Fund*’. Note that compensation or settlements out-of-court (refer to p 106 above) is a non-issue as the grey area only relates to fines meted out through the court process. It is posited that employment of State enforcement arms, namely, the police and courts in the process leading to the meting out of penalties does not automatically disentitle the *Butubutu* from the same. Afterall, the provision of such enforcement services is the common duty of the State to its citizens.

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284 It is recommended that vote be carried out at an extraordinary meeting attended by all adult members of the *Butubutu* of voting age.

Returning to the core argument however, as far as resources of Area 2 are concerned, the legal basis for retention by the Butubutu of fines meted out by courts can be established through construction of the Fisheries Act 1998. Section 12 of the Fisheries Act stipulates that ‘[c]ommercial fishing in waters subject to customary fishing rights may be carried out subject to such rights...[and] when it is proved that customary fishing rights have been breached the court may order compensation to be paid to the customary fishing rights holders’. The Fisheries Act is of specific application to a subject matter, thus, should be taken to override the rather general nature of the Interpretation & General Provisions Act. On face value, the above provision arguably is made on the presumption that such fishing rights, as opposed to ownership rights, were merely recognised but not the subject of any specific legislative enactment at the national or provincial level. The Butubutu initiative goes beyond mere fishing rights as it focuses in principle on exclusive ownership of Area 2. Moreover, its ownership rights will be the subject of a Western Provincial Ordinance, thus, a specific legislative enactment that goes beyond mere recognition of a general nature. The argument therefore is that the compensation payable by virtue of s.12 of the Fisheries Act can be translated into fines prescribed in the proposed Ordinance, thus receivable by the Butubutu being the body administering the Ordinance. On the same note, the ordering of compensation by court is not at all that different from the imposition of a fine by court. It is just a matter of choice of terminology. But the gist of the whole argument can alternatively be built on the autonomy objective of the Butubutu as will be pursued within the framework of decentralisation. In this connection, it is the Butubutu that is responsible for the administration of the Ordinance and subsequent bylaws, not the State, thus, should be entitled to all fines prescribed thereunder. Should however none of the above arguments holds water, the option therefore is for an amendment to s.60 of the Interpretation & General Provisions Act providing for exceptions to the general rule. The other option is for the word “fine” to

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286 Fisheries Act 1998 (Sol Is), s 12(1) & (3).
be clearly defined as compensation payable to the *Butubutu* whose *kastomary* rights are deemed to have been breached by infringements of the offences prescribed. As a last resort, the word should be omitted altogether from the Ordinance and bylaws as an easy solution to what would otherwise be an unnecessary but avoidable legal hurdle.

### B Fees for Resource Use

Fees or other forms of charges for the commercial exploitation of resources within **Area 2** should form a major component of the trust fund. In this connection, the BBDT should be empowered to issue permits to interested parties for the harvesting of resources with **Area 2** subject to the payment of prescribed fees or charges. Sections 14(7) and 16(9) of the *Fisheries Act* render fishing licenses issued by the National Government invalid in provincial waters unless endorsed by the relevant Provincial Government. The effect of these provisions create the legal basis for the devolution of such endorsement function by the Western Provincial Government to the BBDT which can then transform such endorsement powers into a *mini*-licensing system.\(^{287}\) To whatever extent commercialisation is to be pursued under that licensing system, it must be highlighted however that the power to raise revenue from the *Butubutu*’s marine resources should be guided by biological factors such as the state of a harvested species. In this connection, the utilisation of resources within **Area 2** should be subject to a well-administered quota system.

Furthermore, the outward extension of **Boundary C** (refer to **Plate 7** above) provides additional economic potential for the purpose of raising revenue. Realistically, the extension would confer upon the BBDT jurisdiction over shoals of pelagic species, in particular island bonito (*Euthynnus affinis*)\(^ {288}\) targeted by *Taiyo* pole-and-line catcher boats.

\(^{287}\) See discussions under Part VII of Chapter 5.

\(^{288}\) This species is mainly found in coastal waters closer to islands and reefs, thus the name *island bonito* used by Solomon Islanders to distinguish it from the offshore pelagic tuna species such as
Elders of Chea have confirmed to the author during consultations\textsuperscript{289} that Taiyo catcher boats at certain times frequented the waters off the edges of the barrier reef normally within a distance of 500m. And their presence during those times proves no mystery, as beyond the edges of the Butubutu’s marine puava is present shoals of free-roaming island bonito, attracted to the untouched reservoir of baitfish that as a spill-over effect populated that adjacent open waters. As one of the few remaining butubutu within the central part of the Lagoon refusing to sign any baitfish access agreement with Taiyo, Butubutu Babata’s sheltered waters and the stretch immediately beyond the barrier reef remains a key attraction to island bonito and other pelagic species such as trevally (\textit{Carinx spp}). The ecological linkage between specie in the sheltered area and open waters of the extended area is fundamental and can be proved with food web explanations. In elaboration, larger fish beyond edges of the reef flat feed on smaller or larvae from spawning fish within the sheltered waters. This is confirmed by the abundance of larger specie of fish, both pelagic and demersal, just beyond edges of the reef flat. In any case, the situation experienced with the Butubutu’s open waters must be taken to confirm the fears underpinning the growing opposition by many Marovo fishermen and butubutu leaders in the 1980s. As documented by Hviding:\textsuperscript{290}

Their arguments run along the lines that small fish are eaten by bigger fish, which in turn are caught and eaten by people. If too much baitfish is taken by tuna boats...then there will not be enough food for the big fish, which will either die or run away to areas where baitfishing is not done.

The last line of the argument as underlined bears more weight in the light of prevailing ecological circumstances in Marovo Lagoon evidenced

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\textsuperscript{289} Consultations were held in Chea from 30 January to 1 February 2006.

\textsuperscript{290} Hviding, above n 11, 348. Emphasis added.
at least by the *Butubutu* experience with its adjacent open waters. And given this *biological fortune*, the option therefore is for the *Butubutu*, subject to giving legal effect to an extended *Boundary C*, start charging fees on Taiyo catcher boats for fishing access within the extended waters of *Area 2*. Quite technical it may sound, but can easily be realised and achieved.

In light of the above, expanding the economic potential of *Area 2* would entail an extension of *Boundary C*. Subject to the availability of logistics and resources for effective monitoring and surveillance of the extended area, the *Butubutu* might consider commencing negotiations with the Western Provincial Government for an outwards expansion of *Area 2* right to the limits of the adjacent Provincial boundary. Section 3 of the *Provincial Government Act 1997* currently sets that limit at three nautical miles.\(^{291}\)

Economics aside, the corresponding benefit for such extended jurisdiction is that shifting attention to the extended zone will relieve pressure on the resources within the *Butubutu’s* sheltered waters insofar as commercialisation of its resources is concerned. In other words, management measures under a formal structure that closed off the sheltered waters to all forms of fishing will result in a shifting focus to resources traversing the edges of the reef flat and beyond. Being compelled to shift focus away from the sheltered waters and all traditionally-fished specie therein, diversification of fishing techniques and *taste* will occur, thereby relieving pressure and stress on the resources of the sheltered waters. In this connection, whilst rehabilitation of the sheltered waters might be an ongoing endeavour, the *Butubutu* in that course should divert its economic interest to the commercialisation of tuna and other deep-sea species within the extended waters. The ultimate therefore is that conservation is actively

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\(^{291}\) *Provincial Government Act 1997*, s 3(3) provides: *[T]he area of each province shall extend seaward for three nautical miles from the low-water line of each island comprised in the province...*
carried out in the sheltered waters whilst economic development is being simultaneously pursued in the extended waters until such time when stocks in the sheltered waters have excessively recovered to or beyond a satisfactory level. The latter situation would then warrant the periodic commercialisation of stocks, such as bech-de-mer, within the Butubutu’s sheltered waters.

Plate 8
Dual Benefits of Extending Boundary C

C Returns from Investments and Other Form of Revenue

The BBDT should be empowered to invest monies received from sources discussed above in such ventures as agreed by resolution of the Butubutu membership. Thus, the returns from approved investments should constitute part of the trust fund. However, it is of prime importance that BBDT powers to invest must be exercised with diligence and care so as to avoid situations of lost investments. In this vein, the legal principle in the Cowan Case remains a fundamental guide which must be adopted for purposes of operations of the BBDT. Thus, it was articulated in that case that292

in the case of a power of investment...the power must be exercised so as to yield the best return for the beneficiaries, judged in relation to the risks of the investments in

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292 Cowan v Scargill & Ors, above n 279.
question and the prospects of the yield of income and capital appreciation both have to be considered in judging the return from the investment.

The rule in the Cowan Case is an extrapolation of the rule first established in In re Whiteley, which requires that trustees in the exercise of their powers must ‘take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide.’ A catchword within the rule is that of moral duty owed by a trustee towards beneficiaries of the trust. However, incorporation of the BBDT through legislative enforcement will not only impose moral duties on the trustees, but more importantly, the establishment of a legal duty that evolves out of a traditional one.

Further, it is anticipated that establishing the Butubutu initiative through legislative enactment would give the same much publicity, thereby driving interest from institutions with a vested interest in resource conservation and management, environmental protection and rural economic development. Accordingly, a subhead should be created permitting for voluntary donations from such institutions or bodies to constitute part of the trust fund.

III Sustaining the Butubutu Enforcement Regime through Application of the Cost Recovery Principle

Operational costs associated with monitoring and surveillance activities will put a constraint on the financial resources, if any, of the BBDT. Operational or transaction cost is regarded as ‘cost that will arise when...[community-based organisations] exercise ownership right to

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293 (1886) 33 Ch D 347, 355.
294 Such initial costs might include fuel and tanks, fibre-glass canoe, out-board-motor engine, binoculars, pocket GPS, and such other equipment as used by fisheries observers in the tuna fishery.
resources and enforce their exclusive right’. The continuous enforcement of that exclusive ownership right thus entails sustaining the enforcement regime of the Butubutu. in this connection, there has to be mechanisms to ensure the initiative is economically viable. Kuemlangan recognised for instance that ‘economic viability of a community-based fisheries management initiative is vital to the acceptance and survival of CBFM in any jurisdiction’. The question therefore is what mechanisms can be employed to ensure the initiative is economically viable? This remains an important issue in particular if the cost of resource management far exceeds the earning capacity of the BBDT.

Whilst a fine and compensation may count as restitution for the effort put into detection of the offence, normal day to day monitoring and surveillance that lands no offender in court or leads to the same being the subject of a settlement agreement will render the whole enforcement exercise a waste of funds and effort. To offset potential deficits in the enforcement budget, additional fees should be charged on legally-licensed users of resources within Area 2 on the basis of the cost recovery principle. In other words, the cost of monitoring fishing activities within Area 2 should be met by those permitted or licensed to extract commercial species from the said area. Tapping such additional funding from those who benefited from the utilisation of Area 2’s resources will assist the BBDT in financing its monitoring, surveillance and enforcement regime.

295 Tokrisna, Boonchuwong and Janekarnkij, above n 235, 6.
296 Kuemlangan, above n 39, 36.
297 An equivalent to the system of “observer fees” charged on boat operators within the offshore tuna industry.
CONCLUSION

Much has been discussed and discerned in the foregoing analyses in the hope of producing a comprehensive study of the practical issues underlying the aims and scope of this research. Thus far, the objective gets clearer and points to the need for exploring viable alternatives and avenues for adoption of new resource management structures for contemporary coastal resource management. In this discourse, arguments have been advanced either to substantiate or discount the validity or otherwise of options thrown to the fore. Finally berthing, it must be concluded that howsoever subtle arguments and analysis may be presented throughout this thesis, the message is clear and simple: the wholesale revitalisation of KMT institutions to their original forms will not necessarily relieve the stress and pressure on coastal resources nor will such approach solve the problems faced in the management of the same. On the practical front, there is little guarantee in such an approach advocated by some researchers and institutions that call for more recognition and wholesale adoption of KMT values and institutions. It must be appreciated that contemporary socioeconomic circumstances necessitate the development of new resource management structures and methods that are dynamic in nature to counter or measure up to the pressures of the cash economy. Evidence of disintegrating KMT institutions has been gathered over the years, and points to a common trend – KMT systems have been subjected to inexorable stress that resulted in their failure to withstand the pressures of the cash economy. This is attributed to numerous factors identified by Johannes and Ruddle as including demographic

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298 Two schools have developed over the years: (i) those that advocate the total revitalization of KMT institutions with minimal or no changes to its internal structures and management tools, etc. under the theme of co-management, and (ii) those that acknowledged the failures of KMT systems and oppose a wholesale approach towards the revitalization of KMT systems. This latter group advocates new methods such as rights-based or ecosystems-based management approaches towards the marine resource sector.

299 See e.g. Dalzell and Schug, above n 16, 10.

300 Johannes, above n 166.
changes and urbanisation, modernisation and economic development, contemporary government policy and legal change, and national policies for economic sectors other than fisheries. The adversities of such factors on KMT systems therefore bring to question the relevance of such institutions in contemporary fisheries management. Nielsen et al have argued that

[t]he problems the fishing communities are facing are therefore not a result of an absence of management institutions, but rather the result of the inadequacy of these institutions to deal with recent developments. Revitalisation of such existing institutions will therefore not lead to solutions to the problems. They may have lost their significance exactly because they were set up to solve other problems and are thus inadequate to deal with the present situation.

The above contention by Nielsen et al draws criticism of the argument for more legal recognition of kastom and KMT institutions. Note that in certain PICs such as Solomon Islands, the argument for more legal recognition is fraught with flaws and obscurity as the existence and functions of such institutions have been duly recognised in various statutes, the most important of which is a country’s constitution. The need therefore is not for more recognition, but rather the salvaging of gradually eroding KMT institutions and the translation of recognised rights into actionable programs under auspices of a legal framework for resource autonomy and micro level decentralisation. In other words, blanket recognition of kastomary rights is insufficient to render the same functioning in a dynamic and competitive socioeconomic environment. The intricacies of the contemporary socioeconomic environment are of stark contrast to the traditional economies within which kastomary rights have once flourished.

302 Nielsen et al, above n 3, 3.
The Butubutu Babata initiative provides a critical study into ways in which kastom rights appertaining to a KMT system can be adapted and modified to suit contemporary circumstances. Not only does the case study provide an example of the adaptability of traditional institutions, but it similarly shows that status of the same can be elevated higher within formal governance structures where the legislative basis for decentralisation and institutional autonomy does exist. A concerted effort manifested in eventual legislative empowerment provides the way forward, as mere recognition without translation of kastomary rights into legally sanctioned rights and duties produces little impact, hence, is an attribute to the many failures of KMT systems thus far. In any case, adaptation proves necessary as the only or most effective mechanism of re-strengthening such institutions, thus, avoiding redundancy in their functions and values.  

In this era of modernised resource management systems developed to counter new problems faced with management of resources, the functions and internal structures of traditional resource management institutions should or out to adapt to reflect inter alia shifting socioeconomic, political and bio-ecological circumstances at the micro level. After all, the rights inherent in KMT systems in the region are not at all rigid or inflexible as they seem to appear. Given the collective will to take initiative in pursuing changes, a coordinated approach in redefining or refining through legislative means such rights is imperative so as to render them operative in what is otherwise a contrasting contemporary socioeconomic environment. To that end, it is worth reiterating that the modernisation of KMT institutions may even require the relinquishment of certain powers, privileges and authorities that were once confined or concentrated in few traditional figureheads or chiefs. As earlier raised, this is a process that will entail the redefinition, extension, or even curtailment of existing kastomary rights in the quest

303 See e.g. Nielsen et al, above n 3.
of satisfying the material needs of all members of a coastal community.\textsuperscript{305} In view of its development aspirations, \textit{Butubutu Babata} will have little choice if it were to pursue or realise its socioeconomic goals.\textsuperscript{306}

Further, in the pursuit of its goals, the existing hierarchical structure of the \textit{Butubutu} must be redefined to ensure the incorporation inter alia of wider community participation. Such goal will be approached on two fronts: (i) management and exercise of powers and duties by a corporate body of persons as opposed to an individual, and (ii) the participation of every household within decision-making processes. The creation of corporate management bodies is vital for replacing traditional practice in which management powers are most often vested in single traditional leaders.\textsuperscript{307} In this advent of changing socioeconomic, political and ecological circumstances, wider community participation in decision-making processes is not a choice but rather the only way out. The rationale for this approach is multi-pronged. Firstly, the success of a community-based management initiative depends to a large extent on wider community participation. It therefore follows that in the light of the effects of the cash economy, such wider community participation is procured through mechanisms that drive motivation and enthusiasm. Unquestionably, such motivation is not achieved through mere educational awareness within communities, but rather, through factors that advance the socioeconomic interest of communities. As noted by King and Fa’asili, ‘\textit{the prime need is not for education but for motivation and support...[which] depends on the availability of economically viable alternatives to the present unsustainable and destructive fishing practices}’.\textsuperscript{308} The gist of that argument is premised on economics, not mere education. Secondly, in this era of changing village lifestyle and

\textsuperscript{305} For more discussion on this topic, see e.g. J Turner, ‘Sea change: adopting customary marine tenure to commercial fishing. The case of Papua New Guinea’ in G R South et al (eds), \textit{Traditional Marine Tenure and Sustainable Management of Marine Resources in Asia and the Pacific} (1994).

\textsuperscript{306} See Babata Tribe Chea Village Community, above, n 32, 1.

\textsuperscript{307} See e.g. Paterson, above, n 126, 48.

\textsuperscript{308} King and Fa’asili, above, n 109, 6.
increased competition for cash to satisfy higher material aspirations, the need for reorganisation of traditional institutions is certainly on the rise. Most wanting is the need to *reorganise* and *selectively* revitalize through legislative means to ensure the equitable distribution of benefits in the wake of increased individualism. A product of changing village lifestyle and competition for cash is the emergence of growing independence of families and individuals at the cost of reciprocity, redistribution and compliance with traditional kinship obligations. This independence, according to Nielsen et al, often ‘*lead[s] to a demand for increased accountability and transparency in decision-making*’.

Given the *Butubutu* is not insulated against most or all of the problems demonstrated above, it is imperative the mechanisms for accountability and transparency must form a cardinal part of its decision-making processes.

Furthermore, the need for a fair and equitable distribution of resources and benefits is vital for purposes of sustainability of the *Butubutu’s* resource management initiative. In this context, community participation, motivation and sustainability, forms a crucial tripartite as all three factors for effective coastal resource management are inextricably linked. *KMT* systems are, in this regard, not without criticism as the traditional power structure within such systems often operate to prevent the fair and equitable treatment of participating members of a community or tribe. Willmann, for instance, noted that traditional power structures, rules and behaviour tend to discriminate against certain groups or individuals in a community, and nowhere is this more evident than in *kastom* rules relating to the distribution of benefits. In traditional Melanesian societies in which the *big-man*

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309 Selective revitalization is meant to support the proposition that only certain identifiable components and rights within *KMT* institutions should be revived and incorporated into legislative enactments for community empowerment in contrast to a wholesale adoption and incorporation of *KMT* rules and *kastoms*.
310 See e.g. Dalzell and Schug, above, n 16, 14.
311 Nielsen et al, above n 3,15.
system\textsuperscript{313} was practiced, distribution of wealth is interconnected to the competition for power and status.\textsuperscript{314} However, a big-man in effect is not obliged to distribute his accumulated wealth in the interest of fairness and equity, but rather for socio-political objectives and values.

The current \textit{Butubutu} structure provides little guarantee thus, offers no practical solution to effectively address this area of fairness and equity. Such defect only goes to buttress the proposition for redefinition of its traditional power structure and the need for incorporation of new mechanisms that promote a fair and equitable distribution of benefits across all households. This proves the only way forward for mustering and sustaining community support in the long term. At this juncture, it is worth highlighting that an important category whose interest must be fully accommodated for the long term interest of the \textit{Butubutu} is the youth category. For one reason, this category is the most vulnerable to changing village lifestyle and attractions of the cash economy, and can easily abandon the whole initiative with the \textit{departure} of the more environmentally-conscious \textit{older generation}.

Much discussion has been focussed on jurisdictional issues. This is an exercise which purports to ascertain with minimum certainty the geospatial and legal spheres within which the BBDT can exercise management and enforcement powers. As is common with any resource management regime (both offshore and inshore), the issue of jurisdiction is always a very complicated area.\textsuperscript{315} However, drawn against the backdrop of international law rules entrenched in UNCLOS, there is little or no complication for the obvious reason that the \textit{Butubutu} initiative is

\textsuperscript{313} The system is the equivalent of the chiefly system prevalent in Polynesian societies, albeit distinct on the basis that status is acquired or achieved rather than inherited.
\textsuperscript{314} By virtue of the system, one acquires status as \textit{big-man} through accumulation of wealth, and the forging of inter-tribal relationships through voluntary distribution of the same.
\textsuperscript{315} A classic example of an offshore management regime is the indeterminate western boundary of the area falling under jurisdiction of the Western & Central Pacific Fisheries Commission established by the \textit{Convention for the conservation and management of highly migratory fish stocks of the western central Pacific}. 

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safely ensconced within the territorial waters of the country.\textsuperscript{316} Complications only arise when the geospatial territory and enforcement powers of the \textit{BBDT} needs to be defined with certainty. In terms of territory, the issue is compounded by the existence of a patchwork of sea estates bordering the \textit{Butubutu's puava} but with vaguely defined boundaries. This is caused largely by \textit{kastom} rules governing boundary demarcation that are amorphous or too general. In attempting to negotiate this hurdle, two approaches have been suggested: the first is through negotiated boundary agreements with each \textit{butubutu} that owns an adjacent \textit{puava}, whilst the second is the setting of a hypothetical boundary for the outermost limit of the area facing the open sea. The latter envisages a pre-determined distance from a fixed baseline upon which the outermost limit is established.

Finally, fundamental to the whole \textit{Butubutu} initiative is the need for its long term sustainability. This raises to the fore questions surrounding its economic viability and self-sustaining mechanisms. Kuemlangan had highlighted for instance that ‘\textit{economic viability of a community-based fisheries management initiative is vital to the acceptance and survival of CBFM in any jurisdiction}’\textsuperscript{317} To manifest decentralisation and resource autonomy at the micro level, it is imperative that community-based management initiatives are not dependent or exclusively reliant on external funding for their operational sustenance. In practice, operational costs will arise when a community-based organisation, by virtue of legislative empowerment, commence exercising its management and enforcement powers.\textsuperscript{318} Thus, funds will be needed to finance inter alia projects and more importantly, monitoring and enforcement programs. As such, avenues must be established through legislative means for communities to raise funds in order to meet any or all expenses involved in the operation of a resource management

\footnotesize{\textsuperscript{316} See the position of the High Court of Solomon Islands in \textit{Allaryce Lumber Co v Laore [1990] SBHC 46}.\textsuperscript{317} Kuemlangan, above, n 43, 36.\textsuperscript{318} See Tokrisna, Boonchuwong and Janekarnji, above n 259.}
initiative. In terms of the *Butubutu*, sustainability of its initiative will not only depend on a successful self-financing enforcement program, as it similarly depends on community motivation and participation.\textsuperscript{319} The latter focuses on the socioeconomic interest of the community, which must be satisfied in order to drive home motivation.\textsuperscript{320} This therefore entails that revenue raised must serve the dual purpose of operational cost and economic interest of members. The only qualification as regards the latter is the need for fair and equitable sharing of benefits derived from the resources under management. A successful community-based management initiative operated under the formal framework of decentralised governance and micro level resource autonomy will testify to the effectiveness of this approach in the Pacific Islands. The *Butubutu* initiative is a test case in Solomon Islands and perhaps the region. But its success will prove that the way forward for coastal resource management is not through wholesale revitalisation of *KMT* institutions, but rather the redefinition of the same under the formal framework of decentralised management and resource governance.

\textsuperscript{319} See e.g. King and Fa’asili, above n 109.
\textsuperscript{320} ibid.
# Appendix I

## THE CHEA VILLAGE COMMUNITY CONSTITUTION 1991

### Part I  Establishment of Chea Village Community

(a) The Chief and people of Chea village, Babata tribe of Marovo Island have agreed to establish a Community called “Chea Village Community”.

(b) The Chea Village Community shall be established and operated within the framework of the Marovo Area Council and the Marovo traditional society.

(c) The Chea Village Community shall have a structure consists of the Chief’s spokesman appointed by chief, the Chief’s secretary, the appropriate village committee, the traditional and legal advisors and the elder’s committee.

### Part II  Aims and Purpose

(a) Establish a community, based on Marovo society with the traditional knowledge on environment, its resources and culture.

(b) Through its village committee, oversee and implement village activities within the community’s area of usage and chief’s authority.

(c) Initiate village based projects to enable local residents to participate in building up village economy.

(d) To cooperate with the Marovo Lagoon Resource Management Project to fulfil its objectives within Chea community, and overall Marovo communities.

(e) To encourage reviving of traditional knowledge on resource management practices of Marovo and to assist restore and preserve Marovo culture, tambu places and sacred groves.

(f) To ensure practices of business in the community and the surrounding area are inline with the Chea community bylaws, the traditional laws and customs of Marovo, the bylaws of the Marovo Area Council and Western Provincial Assembly.

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321 To maintain as much as possible its originality, this version is unedited excepted where specified.

322 Repealing the Chea Village Community Constitution 1983.
To uphold the Christian principles and the doctrines of the Seventh-Day Adventist Church within Chea Village Community.

Part III  Community’s Area of Usage, Symbol and Identification

1 Area of Usage: The area of which an individual member of the community, or the community shall operate or make garden or usage are:-
   (a) Babata land within the boundary starting from Kataghotoghoto to Jangan, Toa Kiki and Toa Gete, Patubichere Tagire and to Palingutu on the weather-coast of Marovo Island.
   (b) The outlying Toba starting from Kataghotoghoto going out eastward to Kemu Island and going north westerly direction to Embolo Passage and then returning south westerly direction to Kara river on the island of Vangunu.
   (c) Rarae land on the north west side of Vangunu Island starting from Piongo Kalivara to Piongo Kara and going inland following the ridge to Jalero mountain to Kalivara Piongo.

2 Symbol and Identification
   (a) Symbol: The symbol of Chea Village Community is “Ragoso” leaf and the community shall have the community letter-head with the wordings “Chea Village Community” in capital letters on the top end of the letter head.
   (b) Identification: The community shall have an official common seal bearing the name “Chea Village Community Marovo Island”.

Part IV  Resources and Environment

The people of Chea Village Community shall enjoy the maximum benefits of its surrounding environments and its resources. It is therefore in script in this constitution that this community recognises the importance of resource and environmental protection and at the same time maintain cash income through sustainable developments.

Part V  Land Matters

(a) All land usage of Marovo where Chea community operate are customary. The Chief has the sole authority over land and sea area referred to in Part III (1)(a), (b) and (c).
Individual members of the community have not authority and powers to discuss and dispute land issues with a member of the community or another community unless otherwise instructed to do so by the Chief.

On any land and sea matters of a controversial nature involving another community, the Chief will deal, consult and discuss with his counterpart of another tribe/community to resolve the case in question. It is the responsibility of the village committee chairman to report any case of this nature to the Chief.

**Part VI**  
**Elders Committee**

(a) There shall be an Elders Committee of five members whose function is to deal with matters of disciplinary and retrieval nature referred to them by the village committee.

(b) The members of the Elders Committee shall consist of the Chief's spokesman, a church representative/retired mission worker, a traditional advisor, a representative of the Area Council, or a village organiser and any other members appointed by the Chief.

**Part VII**  
**Village Committee**

(a) There shall be a village committee known as “Chea Village Committee” whose function is to oversee and implement village activities which shall be in accordance with the Chief’s jurisdiction.

(b) The village committee operation shall be guided by the village committee regulation as set out in this Constitution.

(c) There shall be a chairman of the village committee appointed by the nominating committee.

**Part VIII**  
**Village Community Fund (Finance)**

(a) In the case where fund is accumulated, a Finance Committee shall be appointed consisting of 5-7 members whose job is to draw up the yearly budget of operation.

(b) That finance committee shall include the chairman of the village committee, the Chief, Chief’s Secretary, village committee treasurer and a representative of the Advisory board.
(c) That an account be opened with a bank that is easily [accessible] to the village.

(d) That there shall be four signatories of which any two can sign the withdrawal.

(e) The Chief’s secretary may, on behalf of the community and the Finance Committee, request aid and financial assistance on any of the approved community projects.

(f) The treasurer shall give a report on the community’s financial position of income and expenditures to the members of the community at the end of each financial year. The financial year being from January to December of each calendar year.

Part IX Offences to this Constitution

All residents and visitors of Chea village shall RESPECT, OBEY and ABIDE within the Constitution of Chea Village Community. Any offences to this Constitution shall carry the fine of $20 to Chea Village Community.

Part X Repeal and Savings

1. The Chea Village Committee Constitution 1983 is hereby revoked and amended by this Constitution.

2. The Marovo Area Council and Western Provincial Ordinance and bylaws shall be in force within Chea Village Community on such matters the constitution of Chea Village Community does not cover.

CHEA VILLAGE COMMUNITY REGULATIONS 1991

Part A Identification

1. The name of this committee shall be called “Chea Village Committee”.

2. This committee shall also be known as “The Chief’s Committee” (deals directly and acting under the authority and endorsement of the village Chief).

3. The committee shall operate within the boundary as delegated and endorsed by the Chief.

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323 Unedited version of original.
Part B  Objectives and Aims

The purpose of the committee is to oversee and implement village activities which shall be in accordance with the Chief’s jurisdiction (see schedule for job description).

Part C  Composition and Election

1. Number of Members:
The total number of membership of the committee shall not be more than 13 and not less than 7 or that seen fit by the Chief.

2. Qualification
   (a) A resident of Chea village
   (b) Those nominated and elected by the community
   (c) Those with sense of responsibility
   (d) Those seen fit by the Chief
   (e) Those endorsed by the Chief.

3  Disqualification
   (a) A non-resident of Chea village
   (b) Those not nominated by the village community
   (c) Those who lack responsibility
   (d) Those seen unfit and for other reasons not endorsed by the Chief.

4  Ex Officio Members
   The Chief and three advisors. They are eligible to cast vote

5  Other members
   Refer to those who are indigenous of Chea village but who reside elsewhere because of their profession. Other members must be invited by the chairman and secretary of the committee.

6  Quorum
   The committee shall proceed if half the number of members plus one attended.

7  Term of Office
(a) The term of office of a member of the village committee shall be two years or as directed by the Chief.
(b) Members can be re-elected.
(c) A member may resign his or her seat by writing to the Chief via the chairman of the committee.
(d) Any committee member who fails to perform according to expectation or fails to carry out his or her duties accordingly, may be asked to step down at the discretion of the Chief.

8 Procedure of Election: Village Committee Election
(a) On any Village Committee election, the existing village committee shall appoint a nominating committee two months prior to terms expires for the purpose of nominating new members.
(b) The nominating committee shall consist of 5 members.
(c) The nominating committee shall select and appoint the new members for the Village Committee.
(c) The nominating committee shall also be responsible for the appointment of a new chairman and new secretary.

Part D Area of Responsibility
Refer to Part A(3) of this Regulations

Part E Limitation of Authority
1 The Village Committee shall have no say over land matters. All land matters comes directly under the jurisdiction of the village chief.
2 The Village Committee shall have not say over land property or part of land property and those which involve land disputes and land or sea issues, ie. Buruburuani, kotukouani, poi vanua (house sites), new settlements, land adjacent to sea, reefs, toba, fishing area, fishing rights or any other entity that only the village chief has the sole authority.
3 The Village Committee chairman should refer any land cases to the Chief as specified in Part V(a) and (b) of the constitution.

Part F Meetings and Procedures of Meeting
1 Meetings
(a) The Village Committee shall meet once a month, preferably at the end of the month.
(b) The secretary shall call the meeting at such mentioned time above and when necessary and when circumstance and urgent needs arise.

(c) The secretary shall be responsible to call meetings.

2 Procedures
(a) The meeting shall be opened with a short devotion and prayer.
(b) There shall be a chairman who shall preside over all meetings.
(c) In the absence of the chairman, the secretary takes the chair.
(d) In the case of (c), the committee shall choose an acting secretary.
(e) Minutes must be kept by the secretary.
(f) Matters for agenda must reach the secretary a week before the meeting.
(g) The committee should give room to discuss other matters that may arise.
(h) A copy of the minutes of each meeting should be distributed to each committee members and a copy should be sent to the Chief.
(i) The committee must take a vote on all things discussed.
(j) In the case of disagreement on the decision of the committee, the Chief's decision is final.
(k) In the case of a tie of vote of the committee, the Chief's vote is final.

A detail description in reference to Part B: Objectives and Aims

JOB-DESCRIPTION

The following are the duties of the Committee members:

1 Church Affairs
To look after church members, church activities or any other roles that may be connected to church affairs. Such person may also act as the liaison officer for the church and community.

2 Women’s Interest
To make sure that women are not neglected and forgotten in community activities. Also are responsible for the olos and disabled of the village.
3 Law and Order
To work closely with the village organiser. To ensure that law and order is maintained in the village, report criminal cases and representing the Village Committee in any court cases concerning a member of the Chea community.

4 Water Supply
To keep the water supply operational. To maintain and check water level and strength of water siphon. At dry season to check usage of water at all water tap.

5 Village Health
To implement health principles. To promote Western Provincial Assembly Health Department’s basic health ideas. To keep village clean and to see all residents abide by the village health bylaws.

6 Wharf and Roads
To organise work in making new roads according to the village plan and maintain wharf and roads of the village. In particular pursue the construction of the new village wharf.

7 Sports and Recreation
To maintain the playing field in good order. Organise sports and recreation so as to maintain a good standard of sports men and women in the community.

8 Environment, Tourism & Culture
To ensure the Marovo culture is not lost. Engage in Marovo dictionary and other environmental issues affecting the residents of Chea community. Also to ensure tourism developments are in line with Marovo society.

9 Transport
To ensure the transport system of the community offers the best services. To maintain the community outboard motor.

10 Education
To liaise with the School Committee of Hinokole School and to ensure the community supports the development of the new classrooms.
11 Finance, Foreign Affairs and Lands
To ensure the village finance operated according to planned programmes. To ensure the community’s financial standing is healthy. To make foreigner coming into the village are treated friendly. To ensure that foreign vessels are not allowed to anchor around the islands without due permission from the Chief. To ensure the community’s area of usage are not disturbed, and to report to the Chief of any disturbances.

12 Projects and Industry
To lead project activities whether community or village. To initiate other industries so as to receive income for the community. The projects which may be relevant are the community chainsaw operation, carving industry, building of the village museum and other small projects and industries as approved by the Village Committee.

13 Community Garden
To organise working groups within Chea community to make community gardens for the purposes of marketing for funds. Also to assist in other major projects such as school and church building project. Money raised from the community garden will go to help these two major community projects.

Appendix II

The Chea Village Community Bylaws 1991

Bylaws to provide for the conduct of Chea village residents and visitors. To provide for the control of business and management of resources within the specified area of Babata Land of Marovo Island.

1 Village Health
1.1 That all residents of Chea village are required to build toilets with slabs.
1.2 It is not allowed to throw rubbish along the beachfront of the village. All rubbish must be buried or burnt to avoid flies and mosquitoes.
1.3 That any chickens reared should be kept in the fence at all times. All chicken fence must be 20 years away from a dwelling house. Chicken must not be allowed to let loose and roam around the village.

324 In the quest of maintaining originality, this version is unedited.
1.4 That health principles be observed at all times by the residents and visitors of Chea village.
1.5 No dogs are to be kept or reared in Chea village.
1.6 All residential houses must be kept clean with all hedges trim and flowers planted around the houses.
1.7 The water front of Chea village shall not be used as a toilet place.
1.8 Penalties: Any person found guilty of any of these village health bylaws shall be charged with a fine of $5 on each account to the community, and the relevant Ordinance of Western Province.

2 Law and Order
2.1 Home-made crackers and guns are not allowed within Chea village and within the area of which the Chief has the authority.
2.2 It is not allowed for any persons to use dynamite or explosives of any form to kill fish within the area specified in Part III (a), (b) and (c).
2.3 That there shall be no noise in the village premises after 10pm each night.
2.4 That no person is allowed to go into another neighbours house and area and make unnecessary noises in the odd hours of the evening.
2.5 It is not wanted for a person to cause trouble and fighting in the village for any reasons so as to cause disturbance in the community.
2.6 No persons are allowed to consume liquor in Chea village.
2.7 No stealing form garden, fruits, canoes and other essential personal items shall be entertained in Chea village.
2.8 Penalties: Any persons found guilty of any of these bylaws shall be charged with a fine of $5 on each account to the community in the first instance. Further occurrences of the same offence shall be referred to the police for court prosecution.

3 Water Supply
3.1 That no persons or visitors of Chea Village shall cause to disturb the Duvaha water source by jumping in the water reservoir or to cut the trees and bushes immediately above Duvaha water source.
3.2 No persons other than the one appointed and authorised by the Village Committee shall be responsible to maintain the water supply time table for the village.
3.3 All standpipes base should be kept clean from mosquito [breeding] place.
3.4 Penalties: (a) any person found guilty of any of these bylaws shall be charged with a fine of $5 on each account to the community. (b) Any persons found to cause damage to the water supply through his/her misbehaviour and careless attitude shall be charged with a fine of $5 to the community and be asked to meet the cost of parts and repairs.

4 Village Development and Improvement
4.1 That there shall be no more planting of coconut trees on the new blocks allocated on Kalelupa on weather Coast of Marovo Island.
4.2 It is not allowed for anybody to erect residential houses in any part of the Kalelupa area unless permission is granted by the Chief.
4.3 That building of residence houses in Chea Village must be according to the master plan as approved by the Chief.

Appendix III

Draft Chea Village Community Bylaws 2006

Bylaws to provide for the code of conduct of Chea Village residents and visitors. To provide for the control of business and management of resources within the specific area to Babata (Kalelupa) Land of Marovo Islands.

1 Title and Commencement
These bylaws may be cited as the Chea (Community) Village Bylaws and shall come into force upon receiving the approval of the Chea Elders Council and the Chief.

2 Interpretation
“Agent” means any persons and committees appointed by the Chief;

“Authorised Person” means any Area Constable, Police Constable, Village Organiser, Village Chief, Chief’s Secretary, Chief’s Spokesman, Area Clerk, Chairman of Village Committee or any person appointed by the Elders Council for the purpose of these bylaws;

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“Chicken” means a hen or rooster not less than three months old;
“Chea Community” means the members of Babata Tribe and residents of Chea Village who are residing within the Babata Land boundary of Chea Village as defined in Schedule 1 of these bylaws;

“Cultural Property” means old village sites, tambu sites, grove, traditional currency, sacrificial sites and includes any skull and sacred place and object;

“Dog” means a dog male or female not less than six months old;
“Dynamite” means an explosive whether home-made or purchased;
“Liquor” means a home-made brew and includes drinks toxic or alcoholic in nature;
“Kalelupa” means the weather coast of Marovo Island which includes the Babata land boundary from Kataghotoghoto, Jangana, Toa Kiki, Toa Gete, Patubichere, Tagire and to Palingutu, all as defined in Schedule 1 of these bylaws;
“Owner” means the occupier of any premises in which or adjoining which livestock is kept.

3 Health Bylaw
(1) All houses or residence of Chea Village must have proper toilet house with slabs or built-in toilets.
(2) All residential houses and their surroundings must be kept clean, beautified and maintained at all times.
(3) Do not throw rubbish along the beachfront of the village. All rubbish including tins and plastics must be buried or burnt to avoid flies and mosquitoes.
(4) Chicken reared must be kept in a fenced enclosure at all times. Every such enclosure must be twenty yard from dwelling houses.
(5) Principles of good health must be observed at all times by the residents and visitors of Chea Village.
(6) Any dog reared and kept in Chea must be clean, safe from spreading disease. Every dog must be tagged for owner’s identification. The owners of the dog shall pay an annual fee of $10 to the community.
(7) Do not use the seafront of the village for toilet. It is required for all residents to build proper toilet facilities and sanitation.

4 Offences
Any person who breaches any of the provisions of this part of the bylaw is guilty of an offence and is liable in a local court of $10 and as a form of restitution and compensation pay the sum of $5 to the community.

5 Village Conduct bylaw
   (1) Do not make homemade guns and crackers in Chea Village.
   (2) Do not use dynamite or explosive as a mean of harvesting fish for food or for commercial purpose.
   (3) Do not produce and sell locally made homebrew, consume liquor and smoke marijuana in Chea Village.
   (4) No person shall cause disturbance, trouble or fight in the village whether under the influence of liquor or otherwise.
   (5) In accordance to tradition and custom, do not make loud noises whether shouting or loud music in the village after 10pm each night.
   (6) Girls should not wear men’s trousers in the village but should be properly dressed. If men’s short is worn, it must be covered with a lavalava.
   (7) Do not steal in the village or in another person’s gardens.
   (8) Any person who caused bodily harm either by hand, knife or an object to another person must pay compensation.
   (9) Do not swear in public.
   (10) It is not allowed for a person to spoil, take something or pull out things others have planted.
   (11) Do not row over land, all land disputes and issues must be referred to the Chief.
   (12) Residents of Chea Village who plans take their wantoks or in-laws who are not a member of Babata tribe or Chea community must first inform the Chief and the Elders Council before taking or inviting such person into Chea Village. The secretary of the Village Committee must keep a list of registry of all these persons. This does not include tourists and project personnel coming under any existing MOU with Chea community.

6 Offences
Any person who breaches any of the provisions of this part of the bylaw is guilty of an offence and is liable to a fine in a local court of $50 and as a form of restitution and compensation to pay $25 to the community.
7 Water Supply Bylaw
(1) No persons including visitors of Chea Village shall disturb the Duvaha water source by clearing, build houses or cut trees immediately above or below and within the distance of 100 meters radius from the source.
(2) The Chea community water supply committee shall be responsible to main the village water supply. It is illegal to install standpipes without the permission of the village water supply committee.
(3) Any persons who damages any part of the water supply commits any offence and is liable to a fine set out in section 18 of the Western Province Rural Water Supply Ordinance 1994.

8 Offences
Any person who breaches any part of the provision of this bylaw is guilty of an offence and is liable to a fine in a local court of $50 and as a form of restitution and compensation to pay $25 to the community.

9 Village Development Bylaw
(1) Every Sundays are community days.
(2) On every Sunday morning all members of the community shall assemble in the community hall for a short devotion and announcements of the week’s activities.
(3) On all community days all residents of Chea Village are required to attend to their appointed duties of the day. No other work shall be done on community days except those which are approved by the Village Committee.
(4) No person is allowed to erect residential houses in any part of Kalelupa area without permission of the village chief or his agent.
(5) Residence building in Chea Village must be according to the master plan of the village. Any trees crops and object that is in the way of village development programme in accordance with the master plan such as roads, buildings, water supply pipes and other objects obstructing the village plans shall be removed.
(6) No public games are permitted on Wednesday and Friday afternoons.
(7) A normal hire charge of $50 per day shall be charged on the use of the community playing field for the purpose of fundraising and other competition. All requests to use the playing field on any major events and fund raising shall be made through the village sports sub-committee.
A nominal hire charge of $100 shall be charged on the use of the community erovo by other organisation.

10 Offences
Any person who breaches any part of the provisions of these bylaws excluding bylaws 7 and 8 is guilty of an offence and is liable to a fine in a local court of $25 and in a form of restitution and compensation pay $10 to the community.

11 Environment and Culture Bylaw
(1) No residents of Chea Village or visitors shall touch or remove any traditional artefacts from any taboo sites, groves and sacrificial sites within the boundaries of the Kalelupa area of Marovo Island.
(2) No cultural property shall be destroyed, defaced or removed from its original place without the express authority from the Village Committee.
(3) It shall be an offence to sell or offer for sale any of the traditional artefacts, skulls and old war relics.
(4) All yachts anchoring within the Kalelupa area of Marovo Island shall pay an anchorage fee of $10 to Chea community.
(5) Scuba diving and the use of under-water breathing devices shall not be used as a method of harvesting marine resources for food or for commercial purpose.
(6) The following custom sites and historical human activities are declared as protected areas: Toa Kia (buli te Lagiti), Raparapa, Bara Adaoni, Toa Kiki, Ngadoani Veala, Lovu PaBabata, Vari buto, Pejara Pa Hobo, and Toa Gete. No gardening clearing and felling shall be done within 10 yards around the area.
(7) Subject to any right, privilege or Resource Orders issued under the Western Province Resource Management Ordinance 1994, and the Chea community resource use policy statements, all resource development activities within the land boundary in Schedule 1 to this bylaw must adhere to the relevant policy statements and plans submitted under section 5 of the Western Province Resource Management Ordinance 1994 and in accordance with the current policy statements on the use of resources of the community.
(8) No residents of Chea Village or any persons having the knowledge of location of MPAs shall remove destroy or disturb the MPA that has been established under an approved program with a relevant MOU in place.
Land and marine resource use within the vicinity of established MPA by the members of the community must be in accordance to the existing community resource management plan to allow resource development and sustainability.

12 Offence
Any person who breaches any part of the provisions of these bylaws is guilty of an offence and is liable to a fine in a local court of $50 and in a form of restitution and compensation to pay $25 to the community.

The offences under this bylaw shall be in addition to the provisions of the Western Province Preservation of Culture Ordinance 1989 or any Ordinance or being Orders enacted thereafter.

13 Small Businesses

1. Subject to the relevant Western Province business licence Ordinance, no businesses of any form shall be operated in Chea Village without first submitting an application to the chairman of the Village Committee.

2. On receiving the application the secretary to the Village Committee shall consult the Chief for endorsement then shall cause to present the application to the committee to consider the nature of the business applied for. If the committee consider the business appropriate to operate in Chea Village, the copy of the approval shall be sent to the Area Council/Western Provincial Office for the purpose of business licence fee under the Western Province Business Licence Ordinance.

3. It shall be an offence to operate a business in the village without the endorsement of the Chief and the approval of the Village Committee.

4. It is illegal to operate a bar outlet on the Kalelupa side of Marovo Island within the jurisdiction of Babata tribe.

14 Offence
Any person who breaches any part of the provision of these bylaws is guilty of an offence and is liable to a fine in a local court of $10 and as a form of restitution and compensation to pay $5 to the community.
It shall be lawful for an authorised person being duly appointed to enforce these village bylaws and to make such enquiry as that officer thinks fits to ascertain whether any breach of these bylaws have been committed.

Schedule 1: The Babata land within the boundary starting from Kataghotogho to Jangana, following the ridge to Toa Kia, Toa Gete and to Patubichere and then in an arc bearing direction through Tagire towards the west or northwest to Palingutu on the (Kalelupa) weather coast of Marovo Island.

Appendix IV326

General Policy Directives on Community Development Foundations

Foreword

The Babata tribe is a distinctive tribal grouping on Marovo Island, Western Province. Due to sporadic marriages with other island folks as a result of headhunting forages and other travels the tribe also has connected itself to come parts of the Western region, notably Bava Island off Vella la Vella mainland, Rendova, Kolombangara and Ranoga. Some members of the tribe also have connection to other races and countries from marriages.

The tribe’s name derived itself from a distinctive land owned by an undisputed personality, Paramount Chief Tutikavo, who was regarded as the first owner of the land and who was the apical ancestor of Babata tribe. Tutikavo, a direct descendant of Memubule and Eropago who got his paramountcy from his mother, Eropago. Since the time of Paramount Chief Tutikavo, there were 11 successive reigning chiefs up to the present chief, Herrick Ragoso, from the hereditary chiefly system of Babata tribe. The successive chiefs had resided and lived in their stronghold in the hinterland of Marovo Island until the reign of Chief Kata Ragoso (Snr) making his place of residence at Chea Village. There present Chief Herrick Ragoso was duly appointed by his late father, Chief Kata Ragoso and reaffirmed by the tribe on 26 November 1996. They all now live in Chea Village.

326 Unedited version of original.
The current chief is assisted by the secretary, his spokesman, the Elders Council and the chairman of the Village Community (elders council). This is the backbone of the tribe. He has an unwritten responsibility to fend for his tribe. He has to ensure that his tribe is settled in shelter, food and clothing. He has to ensure that his tribe prospers and is secured within a land on which to settle. He has to work closely with other tribes in Marovo to guarantee a good life for his people. Sorting out the above issue inter alia is not an easy task and Chief Herrick is faced with difficulties, trials and errors. However, he is aided by other important people (palabatu) of the tribe to run the welfare of the tribe and community.

It took many years for the successive chiefs and tribal leaders to establish the tribal community of Chea Village. Not until 9 May 1983, a general meeting was called and Chea Village Community was formally established with a written village constitution to regulate the village activities. It was based on tradition and custom.

For Chea Village Community/Babata tribe to be successful in its endeavour, the Elders Council has to formulate the tribe’s development policies. The Elders Council is therefore faced with an enormous task.

First and foremost, the tribe has to be constituted and equipped with sound policies to direct the courses of actions. Secondly, it has to lay the framework for income-generating projects and businesses. Thirdly, it has to declare its land and sea resources and where possible to resettle its people. Fourthly, to ensure the preservation of good customs and traditions that are unique and supportive to a prosperous co-existence of the people.

**Statement of Intent**

**Vision**

Mobilising the Babata tribe in looking for a socioeconomic order that will bring in wealth, wellbeing and happiness and that empowerment to live as autonomous and self-sustained entities, where clan members coexist through
mutual respect for customs and orderly existence and acceptance of unique resources and a way of life as it strive along with life in its continuity.

Mission

1. To use every possible way and means available to realise our visions and goals.
2. To educate our people on the meaning and implications of our clan mobilisation.
3. To create institution, strategies and condition that would be supportive to the road to our prosperity.
4. To actively seek the cooperation and support of our governments to support our tribe.
5. To encourage continuous consultation between our own people and other clans, institution, business organisations so as to ensure a smooth transition as we earnestly strive to lift the wellbeing of our people.

Guiding Principles

1. Persistence and patience to be exercised in search for the goal.
2. Peaceful means to be employed until exhaustion.
3. Consensus through consultation.
4. Stand firm to the end for what we believe is right and just.
5. Speak as equal with other clans.
6. Strive to be stronger and successful day by day.
7. Abide by the Christian principles of the Seventh-Day Adventist Church.

A Development Foundation

Recent findings substantiated the all time common knowledge of the need to carry an objective to develop, promote and maintain the socioeconomic advancement of any group or organisation of people. Development can not succeed unless the people are closely involved in thinking, planning, execution and monitoring. There is much more information that we need to know about our resources and we need to know the many options of developing them as well as the effects it will have on our people and our cherished custom and traditions. It is up to the leaders of the tribe to look into all the opportunities.
Our policy framework for development will follow five things – customs, community (tribe), resources, labour and capital.

1 **Customs**
   (i) Good customs will be respected and supported.
   (ii) Our customs will have a place in modern development.
   (iii) Urgent attention will be given to the expression of custom through language, arts, music, dance and other traditional skills and artefacts.
   (iv) Christianity has become our custom. That too will be respected.

2 **Community**
   (i) The community of the tribe and its customary practices will be respected and fully consulted about development that will affect them.
   (ii) The tribe must accept some responsibility for their own development and their leaders must not isolate themselves from their people.
   (iii) Development projects must be planned and understood by the tribe so as not to cause members of the community to break up.
   (iv) Clear lines of distinction must be drawn up between responsibility of the community and the church to avoid overlapping of powers.

3 **Resources**
   (i) Careful examination of what resources there are, how they can be used, and what must be done to protect these resources so that they are not spoiled.
   (ii) That the environment in which we live and which give us the resource for development must be protected.

4 **Labour**
   (i) Labour employment must be seen to be an opportunity for education, experience, knowledge, vision but these people must be groomed back into the community and village atmosphere.
   (ii) Our tribe will monitor our own people who are and will be alienated from their village due to labour and education. These people must be controlled to maintain their knowledge and love for their own tribe and its custom.
5  **Capital**

(i) Proper and balanced advice to members, group and communities or clan receiving large capital for the proceeds of the sale of their resources.

(ii) Extended knowledge of international market prices.

(iii) Instil in the minds of our people that money is not everything. Without money our people can still develop their surroundings.

**B  Policy Objectives and Strategies**

The primary goal is the transformation of rural life and activities in all their economic, social, cultural, institutional, environmental and human aspects. Particular emphasis is that focus on eradication of poverty and impoverishment, including nutritional improvement, to attain growth, equity, redistribution of wealth and people’s participation.

1  **Targets**

(i) Formulate objectives and goals for economic and social development of the tribal community.

(ii) Establish targets for achieving increased self-reliance especially in financial matters.

(iii) Formulate policies and programmes to exploit our resources and in so doing expand employment opportunities and increase productivity and income for farmers fishermen and self-employed women groups.

(iv) Fix time bound targets for the provision of good living conditions.

2  **Commitment and Resources**

(i) Development and increase created resources and wise use and sustainability of natural resources.

(ii) Increase the rate of mobilisation of efficiency of use of resources for rural development including discouraging the under-use of land, reefs and other productive resources.

(iii) Removing disincentives such as land and marine disputes over resources.

(iv) Provide for active encouragement in the organisation of self-reliance and self-help projects using human and material resources.

(v) Arrange for control and management of such resources with due regard to the needs of the tribal community.
3 **Tribal Community and People’s Participation**

(i) Support the decentralisation of decision-making processes within the framework of national policy and promote local government sponsored the institutions.

(ii) Promote and support the formation of people’s organisation based on communalism etc. to strengthen the participation of the rural prior to decision making implementations and evaluation of rural development programmes.

(iii) Encourage group farming, joint-venture farms, cooperatives and other forms of group, tenure, to assure the tribal community the benefits of the expansion of infrastructure, research, employment and better utilisation of inputs and technical skills.

4 **Land Consolidation and Reorganisation of Land Tenure**

(i) Strengthen our efforts to consolidate fragmented and dispersed land and reef settlement schemes and development activities to improve productivity and management putting special emphasis on the interest of tribal members.

(ii) Improve ceilings on individual land claims and deal with development in accordance with this policy.

(iii) Acquire and reclaim water areas and wastelands, reefs and marine environment for aquatic developments.

(vi) Strengthen and maintain traditional land and reef tenure system and land use and use its foundation if modern development is to compromise it.

5 **Settlement of Unoccupied Lands and Islands**

(i) Promote settlements on tribal land and island and provide the necessary support to ensure their success.

(ii) Ensure that such schemes have technical and economic viability and are supplemental to existing development projects in already settled areas.

(iii) Encourage the formation of developmental organisation of the intended beneficiaries of land and tenure reforms.

6 **Integration of Women**

(i) Recognise the vital role that women play in socioeconomic life
(ii) Expand knowledge and statistical data on all aspects of women’s roles in rural activities.

(iii) Ensure educational opportunities and provide special incentives for increased enrolment.

### 7 Access of Input/Services Markets and Research

(i) Support the adjustment of pricing policies to promote increased and more efficient use of purchased agricultural and fisheries inputs.

(ii) Design programmes for an increased flow of inputs from the government to subsistence farmers and cooperatives.

(iii) Establishment of market centres, common facilities and transportation of farm and fisheries products.

(iv) Review existing priorities in research and extension services in relation to rural development and improvement of location specific technologies.

### 8 Education and Training

(i) Continue to support the relation of the curricular and syllabi of schools to daily life and work as well customs.

(ii) Strengthen programmes of non-formal and education giving emphasis to nutrition, farm land, cooperatives and farm management.

(iii) Promote grass-root education and training in relation to rural economic enterprise.

(iv) Strengthen custom and traditional knowledge on tribal matters.

(v) Increase interaction and communication with development partners.

### CONCLUSION

Babata tribe is just like any other tribal community. It has people including women and children which is increasing at an alarming rate. Its expansion cannot match the inert land available to the tribe. Very soon there will be overpopulation which will eat up the dividing resources available. We can foresee a great black dooms-day of hungry and angry people, crying and fighting each other for what is edible and liveable. It is blessed for us who know and foresee this impounding disaster to find ways and make room for the alleviation of pain and hunger. Thus, it is fitting for Babata tribe and its community leaders to make a move out of any catch-22 situation for our future.
There is merit starting off a substantive debate and choice-making by drawing up policy directives towards development while listening attentively to suggestions and ideas from expertise of culture, morals, as well as the advent of industrialisation and globalisation. This document is commended to all the members of Babata tribe and the Chea Village Community.

Appendix V

Policies and Plans for the Use and Management of Resources

Plans and Policy Statements

1 Statement from the Chea Village Community Constitution
On establishing the Community in 1983 the people of Babata Tribe decided to include in their constitution a statement on resource use as follows:

Resources and Environment

“The people of Chea Village community shall enjoy the maximum benefits of its surrounding environments and its resources. It is therefore inscribed in this constitution that this community recognised the importance of proper use of resources by implementing a community Resource Management Policy Statement and environmental protection awareness while at the same time maintains cash income through sustainable developments.

A Resource Management Policy and plan shall be drawn in accordance to section 5 of the Western Province Resource Management Ordinance 1994. A resource order request shall be made pursuant to section 12 of the Western Province Resource Management Ordinance 1994 to ensure the protection of the community’s resources and environment.”

1.1 General Principles
The Elders Council on instruction from the Chief makes this statement about its policy for the case and use of the land and sea resources, which their people
(those living today and those yet to be born) inherit from their ancestors. Working together as a community helps the leaders of the Babata Tribe to carry out their traditional work of caring for land and sea resources and deciding which resources are to be used, how they can be used, and who is to use them. This policy statement will be implemented and carried out within the following jurisdiction:

(a) Babata land within the customary boundary starting from Kataghotogho to Jangan, Toa Kiki and Toa Gete, Patubichere, Tagire and to Palingutu on the weather coast of Marovo Island.

(b) The outlying sea area of the barrier reef starting from Kataghotogho on Chea mainland going out eastward to Kemu Island in the barrier reef and in a north westerly direction to Ebolo passage and then returning south westerly westerly to Kara Stream on the island of Vangunu.

(c) Rarae Land situated on the northwest coast of Vangunu Island, bounded by a kastomary boundary running from the entrance of Kalivara stream and going inland along the ridge to Jalero Mountain and along Kara stream to the point where it returns east following the coast to Kalivara stream.

It is from these land an sea areas that members of Chea community take food for good health, materials for building and medicines to cure illnesses. Some of the resources of these areas are also for money, which is needed to pay for the many things needed for life today in contemporary Marovo society.

Chea community understands the need for the Solomon Islands to use and develop its resources so that it can become a strong and respected country by its citizens. They must also have good information about their land and sea areas so that they can make good decisions for their people, including future generations.

The Chea Village Community works under the guidance of the Chea Elders Council which has the responsibility to ensure that the activities undertaken in the village and surrounding areas in Babata land and Rarae are within the constitution of Chea Village and approved by the Chief. We, the members of the Elders Council knew about custom and about land and sea areas for which we
are responsible. However, we recognise that new ideas are needed today because many things have changed. Solomon Islands is an independent country and has to make business by exchanging some of its natural resources for money from overseas. Chea community has been long helping in this. Some outsiders come at times to “sweet talk” our people into kinds of development that they do not understand.

The Elders Council has people who have worked outside, who better understand how government works and what laws and legislation are available to assist the community. Some members also have travelled in area of the country where logging is done where roads are built, mineral prospecting are carried out and new forms of agriculture introduced. They are able to see what development is good for us and what is not good. We use their knowledge and understanding when we make decisions about the land and seas of the Chea Village Community.

We, the members of the Chea Community believe that the waters of our streams and our lagoon, the soils of our land and the air we breathe should always be kept in good condition. We are determined too that our children and their descendants should always be able to live a healthy life from the land and sea, which we have borrowed from them.

1.2 Mission Statements
The mission statements for our community and tribe are to live a healthy life, free of disputes. This means that we have decided to make sure that there is always enough land and sea available for food and materials for our people before we begin to talk about what part of our area might be used for commercial development. We also decided that our land and seas are not to be used for large unplanned development. This kind of development will not benefit the members of the community. We can judge how much the land and sea will give without pain. We have learned that the big companies that take logs and minerals cause much pain to the land and to the people. We have always believed in self-help. The money earned from this has helped us and it has helped our country. We are proud of this effort and we will continue to work hard to do things ourselves on the land and in the sea which we know so well.
1.3 Culturally-based
Our culture is closely tied up with our land and sea and how we use them. Our policy for management of our land and sea resources is written so as to preserve our environment and resources which is based very much on our tradition and culture.

2 Strategies and Plans for the Use of Our Land and Sea Resources
In this section, we have the strategies and plans for the use of the land and sea resources which we have the customary rights to control. These rights come to use from our ancestors and we will pass them to our children and not give them to any people or companies. We trust that our provincial and national governments will always respect these rights. We know that Western Province Resource Management Ordinance 1994 and its environment policy recognised these rights. We need the help of both governments to have our rights protected under their laws.

The strategies and plans written here for the use of our land sea areas will help government and others to know what we can do to help national development. They will also show what help we need to keep our land and sea areas in good condition so that they can bring good for our people and for the country always forever and not just for today.

In the past, our people had some ability to plan for the use of resources, particularly in food production from garden. The number of people to feed then was not as great as it is today. And since they did not need money at that time there was no need to use land for cash crops like coconut and cocoa. Now it is different and because we now have many children and because they will need food and somewhere to grow crops to sell, we must have better planning.

3 Land Resource and Environment

3.1 The Use of our Forests and Land
We have a strong feeling for our forests and land. From them we take wood, medicines and various plants and animals for our use. Then there are plants and animals which we do not use but which have a right to have life in our forests. Some of these have custom values for us. Our forests are also important.
Our policy for the use of our forests and land resources:

(1) Extracting of logs by large-scale operations should be minimized and to be controlled in our forest within Babata and Rarae land in the northwest of Vangunu Island.

(2) Small scale tree cutting and milling can be allowed but only if it is planned well and the work is done carefully so that the soil is not damaged.

(3) The introduction of wild birds, lizards, snakes and other animals of the bush for pets to be kept on Babata and Rarae land is allowed. Animals and bird species that are harmful should be restricted and to be controlled.

(4) The taking of wild animals for scientists to use for studies which help us to know our forests better is allowed but these must not be sold by the scientists.

(5) The taking of wild animals for sale is not allowed.

(6) The area including and around Toa Kia, Toa Kiki, Toa Gete, Varibulu, Ngadoani veala, Lovu pa Babata, Raparapa and Bunibuni birthplace are protected. Cutting of trees or clearing of bushes for garden or removal of historical items within 10 years is not allowed.

(7) Traditional edible fruit trees such as boe, wild tige and other wild plands and fruits are to be protected from future generation’s use.

(8) Marketable softwood and hardwood (such as rihe, naginagi, and kivili) are allowed to be taken but in a more manageable manner and the process of replanting is encouraged in order to have available stock.

(9) The trees and plants for building houses are allowed to be collected sustainably so that adequate stock for future use remains.

(10) The island of Vaenihope is protected. No cutting of trees or clearing of bushes is allowed. No removal of items is allowed.

(11) The cutting of trees, clearing for garden and houses within the radius of 100 yards from Duvaha water source is not allowed. This is to allow the trees in the area to hold water for our water supply.

(12) The Elders Council will identify certain areas in the islands of the barrier reef for the purpose of replanting kerosene wood trees for carving and handicrafts. This is to allow the stock of kerosene wood readily available for the local carving industry.

(13) The Elders Council will identify areas in the islands of the barrier reef to be reserved for recreation and picnic sites.
In some places, because the numbers of people are growing quickly, they are already short of land for gardens. We do not want to have that problem. Our policy, strategies and plans for agriculture are to help us to keep our soils strong, our people well-fed and to make possible for us to keep producing crops for sale.

Because of the population pressure, the Chief of Chea Village wants to have land use plan for Babata and Rarae Land to help people to do their own gardens and projects. However, to do this, it means that proper land use plan and management must be put in place so that these projects are kept going. In the land use plan we will also be able to make the areas which are good for different uses and mark the areas which should be kept as they are now and not changed. All this will help to keep Babata land good for our children and those who come after them.

Our policies for agriculture are:

1. Soils must be cared for on Babata and Rarae Land.
2. In accordance with custom, before starting a commercial agriculture project a person must first ask the Chief’s permission to use the land and later on the approval of the Chief, mark the boundaries of the land to be used. They must also work a good plan and the Chief must approve this before they can start.
3. No coconuts are to be planted on Babata and Rarae Land for commercial purposes. Those existing ones are only to be used for domestic purposes.
4. Cattle, goat and pig rearing are restricted on Babata land. The grazing of these animals requires large areas of land.
5. Agriculture projects which are geared toward rainforest conservation and for economic enhancement achieved through sustainable use of resources and for promoting local community development are encouraged on Babata and Rarae Land.
6. All agricultural projects which are intended to be undertaken within Babata land will be screened and approved by the Elders Council according to the approved land use plan.
7. The Rarae land has been divided into blocks of land for the members of Butubutu Babata to work and plant gardens for food or for commercial purposes.
4 Marine Resources and Coastal Environment

4.1 Mangroves
In the past we did not think much about our mangrove areas. We knew that they were good areas for fishing that is all. Now we have learned that there are many interesting things happening in mangrove areas that make them so important for the fishing in our lagoon and around our reefs that we want them to be preserved.

Our policy for mangrove areas:
(1) The clearing of mangroves is forbidden except where the Elders Council allows it, such as for houses and places to bring canoes in. clearing of mangroves alongside plantations does not help the coconuts and is to be restricted.
(2) It is all right to make careful use of mangroves for firewood and other things but the sale of mangroves is also restricted.

4.2 Use of our Lagoon and Ocean Resource
It is important that our lagoon and ocean areas should always be in good condition, lean and unpolluted. It is also important that our people should always be able to get good food from these areas. We can only accept development in these areas if it does not go against these two principles:

(a) Our sea areas are connected to those of our neighbours
(b) We do not have a say in what happens in their areas.

However, we depend on them to keep their areas clean too. If they do not, then pollution may come from their areas into ours. We want to work together with our neighbours to make sure that we all can have clean and productive sea areas.

The Policy for our Lagoon and Ocean Resources:
(1) No fishing by dragging things along the bottom because this stirs up mud and sand.
(2) Kuarao fishing is strictly controlled and can be organised only by the Village Committee.
Members of Chea community are allowed to take fish and other seafood for their use of their own families. Their visitors may also take fish for their own eating.

Commercial fishing is to be done only in certain areas, as part of the Chea Village Community Resource Management Plan.

No bait fishing by Taiyo is allowed within the sea boundary from Kataghanogho goind east to Kemu Island and then going north westerly direction to Ebolo passage and returning south west to Kara stream on the island of Vangunu.

At times the Elders Council will put restriction on certain areas in the barrier reef so that the number of fish of shellfish can come up again.

The use of net fishing is only allowed for getting fish for food and not for commercial purpose.

Fishing with dynamite and poison is not allowed in the toba or in the sea area specified in 1.1(b) of this General Principles of this policy.

It is forbidden to do anything on land or in the sea, which will allow oil or chemicals or anything that are bad for the sea to go into it.

The taboo sele and pota mala is a special sea resource and there will be special rules to control its harvest so that its number does not go down too far.

The fishing of grouper (pajara) is restricted during its spawning period (keli pajara). Several days before omia mago (new moon) different types of pajara comes up in shallow water in large numbers. They always come at the same places. At this time the fish are full of eggs (bira and ota). We want pajara to increase so that we will be able to reserve them for our future generation and enough for our food.

The Karikana passage is reserved from activities to be identified by the Elders Council.

Spear fishing is restricted in certain areas that are to be identified by the Elders Council.

Taking of black and brown coral is allowed but will strictly be controlled so that the people may have enough for making carvings without over-collecting them.

Collection of trocus and beche-de-mer will be controlled to avoid over-exploitation to allow adequate stock.

Collecting of edible shells is allowed but will be controlled and restricted to local consumption and not for commercial purpose.
Fishing bunarokoroko is only allowed when the method of kuarao fishing is used and when seen necessary by the Elders Council.

Collecting of small coral fish for receiving financial benefit for aquarium and fish farming purposes is allowed but will be strictly controlled by the Elders Council to allow stock of fish to remain at an affordable level of supply.

5 Tourism Resource Development
Tourism is something about which we are unsure because the ways of tourists are very different. Also some of the tourists who come on yachts have been disrespectful to our customs and have taken things from our sea and from our land without asking us. If tourists will accept our rights and respect our customs then there will be some opportunities for us to benefit from a little tourism in our area.

Our policy for tourism resource development:

(1) There are to be rest houses for tourists on Babata land or in Chea Village. The rest houses are to be built in Chea Village for the community. The Village Committee will decide on the number of houses to be built.

(2) Divers are allowed to visit special areas marked for their use, but only if they operate under an agreement being approved and consented by the Chief and the company which arranges the diving. They must not take anything living, or not living from that area.

(3) A buoy must be fixed for tying the tour boats. The boats must not anchor because this will spoil the coral. They must not throw rubbish into the sea and must not allow oil or other chemicals to escape into or near the sea.

(4) Yachts will be allowed on certain conditions. Any yachts using TBT anti-fouling paints should be restricted. This is an area we want the appropriate government department to assist us.

(5) Tourists are allowed into the village and should be in a controlled manner. Tourism products are encouraged to be the benefit of both the tourists and the members of Chea community.

(6) Because the land on which Chea community members receives their benefits is tribal land and is controlled under the current tribal land
system, no lodges are to be built in other areas rather than the one in Chea Village.

(7) Yachts are not encouraged to anchor outside the barrier reefs. All yachts are encouraged to check with the chairman of the village administration committee. Special areas will be identified for yachts to be anchor.

(8) Tourism activities in Chea Village and the surrounding area must not cause adverse impact on the people’s identity, their culture and their social life. Tourism activities should not cause negative impact on marine life and the environment.

(9) The development of tourism in Chea Village should be in line with the tradition and inherent natural, cultural and historical life-style of the people.

(10) Eco-tourism activities are encouraged within the custom boundary of the community.

The above policies and plans are not exhaustive. The Chief through the Elders Council has the power in custom and under the community’s constitution to promulgate further resource orders, policies and plans which would be in the best interest and in response to the needs and the wishes of the community and also in the best interest of the resource base.
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