



# A legal pluralism perspective on coastal fisheries governance in two Pacific Island countries

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## ABSTRACT

In most coastal communities throughout the South Pacific customary rights to regulate access to vital and scarce resources evolved a long time ago. In many places, these systems have formed the basis of community-based marine management efforts. At the same time, national (fisheries and environmental) legislation regulates various aspects regarding the marine realm. The result is a legal pluralist situation – a circumstance that can affect the governability of coastal fisheries. This study draws on data from Fiji and Solomon Islands to examine how the national marine governance frameworks and customary/community-based marine resource management interact. Fiji has a centralized government and customary governance structures are fairly well defined. Various mechanisms exist that link the national and customary systems. In Solomon Islands customary systems and national governance authority are more dispersed and the latter is partly delegated to provincial governments. Here, partner organizations that engage in local marine management can play a vital role in bridging local and (sub-) national levels. The analysis of the two countries reveals that legal pluralist patterns can play out and be addressed differently. A deeper understanding of the interactions between national and customary marine governance systems can help to design procedures or legal mechanisms which optimize relations across levels and systems, and thus contribute to improving governance outcomes.

## 1. Introduction

Legal pluralism arises when different normative or legal ideas, principles or systems exist within and are applicable to a single setting or situation [1–3]. As an analytical approach it draws attention to the diversity of norms and other institutions that guide human behavior [4].

Legal pluralism often occurs in coastal-marine and in post-colonial contexts [5,6]. It is thus a common phenomenon in Pacific Island countries with their colonial legacy and strong connections to the sea [2,7]. Against predictions that the absence of state regulation and interference lead to a ‘tragedy of the commons’ [8], local communities and resource users often develop their own rule systems to regulate access to natural resources [6,9]. The case of customary marine tenure systems in the Pacific region serves as an interesting example for this [10]. These systems contain a complex of evolving rights and social processes to maintain control over territory and access to resources [11].

Before the colonial period, and thus before (major) European influence in the region, Pacific Island territories already relied on customary governance systems. With the exception of Tonga, few of these countries then had strong centralized governments; communities were autonomously managing themselves and their resources through customary rules and leadership. With colonialization, the new colonial governments introduced forms of centralized authority and superimposed Western laws on the customary governance systems. Given the relatively recent independence of Pacific Island States, they are still confronted with the challenge of developing their own legal systems – within the confines of the legacy legal systems - while reconciling them with customary law and adapting them to local (ecological and socio-cultural) conditions [2].

In the Pacific, customary marine tenure systems have for a long time been applied to regulate the use, access, and transfer of coastal fisheries resources [10–14]. Currently practiced community-based marine resource management (CBMRM) in the region still builds upon these customary systems [12,15], which grant customary rights holders

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tenure over areas of sea, usually adjacent to their land [16]. At the same time, national (mainly fisheries and environmental) legislation regulates various aspects regarding the marine realm. This has for many decades led to questions about the scope and applicability of (often legally backed) customary fishing rights vis-a-vis national law – which can affect the governability of coastal fisheries [17].

Adopting a legal pluralism perspective, this paper presents an analysis of the interactions between the customary and national governance systems for coastal fisheries in Fiji and Solomon Islands. To do so, the following question is raised: how do the national marine governance frameworks and customary/community-based marine resource management influence, connect to, and support or hinder each other?

This article first provides a conceptual background on legal pluralism and its history in the marine realm (Section 3.1), followed by a typology of legal pluralist settings (Section 3.2). It then reviews the occurrence of legal pluralism in the South Pacific (Section 3.3), and subsequently analyzes the legal pluralist situation in the coastal fisheries of Fiji (Section 4) and Solomon Islands (Section 5) by presenting key features of the national marine governance frameworks and institutional structures through which they relate to customary/community-based marine resource management. In the following Section 6, the legal pluralist settings of coastal fisheries in the two countries are characterized and compared, using the typology introduced in Section 3.2. Finally, conclusions are drawn and some recommendations provided on how interactions between the national and customary governance systems for coastal fisheries could be further strengthened and become more mutually supportive (Section 7).

## 2. Material and methods

This study is based on a systematic analysis of the national frameworks for coastal fisheries as well as of the provisions for customary coastal management in Fiji and Solomon Islands. This analysis included the review of relevant legislation, policy documents and government strategies. To support and contextualize this analysis of secondary sources, fieldwork was conducted over a two months period in each country in 2015. The first author conducted semi-structured and key informant interviews (n = 23) with government officials from the relevant ministries/authorities at the national and subnational levels, as well as with experts from partner organizations that engage in local marine management (e.g., international and local non-governmental organizations, conservation networks, research organizations) in both countries. These interviews sought to elicit an understanding of key legal provisions and institutional structures, their interactions with customary/community-based marine governance, as well as the role of the respondent's agency within these interactions. Additional, non-formal conversations with key informants helped to obtain information to frame later interviews, and to triangulate particular pieces of information following interviews (indicated as pers. comm. below). The above data was further supported by ethnographic fieldwork conducted by the first author in one local case study (village) in each country where communities engage in CBMRM on the basis of their customary rights. This way our analysis was complemented with local perspectives, gained through interviews and focus group discussions (total number of research participants at the village level = 76), on local marine resource management and the interactions with the national and/or provincial governance levels. Further information on the local study sites as well as the overall research methodology, including on the sampling process and the data collection techniques used during fieldwork, is detailed in [18].

## 3. Theory and background

### 3.1. The history and theory of legal pluralism with a focus on the marine realm

The history of rules and regulations for oceans and other water bodies is rich and complex, which is related to the fact that these environments provide essential resources and services to humans [5,19]. This has long motivated societies to engage in collective action to regulate use of and access to resources [9]. Law in the aquatic and marine realm thus developed on the basis of customary patterns, which then became institutionalized. These rules evolved further through diverse political and societal processes. In an early period (ca. 500 BCE to 800 CE) rules were codified in religious practice. Later on (ca. 100 CE up to 1950), imperial and colonial powers spread rules, e.g., with regards to (private/public) ownership and access to water-related services, to many parts of the world [5].

Grotius' notion of 'Mare Liberum' (the 'Freedom of the Seas') has been hugely influential in conveying the idea of a sea free to all. This idea not only served as foundation and justification for European colonial expansion and trade. It furthermore heavily influenced contemporary international maritime law under the United Nations Convention on the Law of the Sea (UNCLOS). Under UNCLOS large parts of the ocean remain open access up to today. Yet, the convention also led, inter alia, to the declaration of territorial seas and exclusive economic zones under countries' sovereignty [20]. It is thus assumed under UNCLOS that the 'state' is a legitimate overarching authority – without necessarily considering previous (and potentially conflicting) local understandings of rights and governance systems over marine areas. Overall, this historical evolution layered different legal systems and ideas upon the other and resulted in high degree of legal pluralism in the aquatic and marine realm [5], which is still present in many parts of the world today.

Legal pluralism as an analytical perspective investigates multiple normative orders or governance regimes that are applied to the same situation, enquiring existing norms and rules and how they connect or add up. The concept focuses on the underlying social values of these rules and outlines what mechanisms exist to reconcile legal disputes [6]. Legal pluralism does not see the state or government as exclusive or superior regulating authority, but acknowledges normative and institutional diversity to guide human behavior. It can thus provide deeper insights into the complexities around rights and 'living law' [4,5,21].

The legal pluralism approach draws on concepts from law and anthropology, informed by empirical investigations of social interactions at the local (community) level [1]. However, it has been noticed that legal scholars and anthropologists do not work together closely enough. Scaglione [2] has argued that legal scholars tend to stress the realm of substantive law (rules for normative behavior and related sanctions), focusing on written law and the state system, without considering the management disputes on the ground. In contrast, anthropologists rather occupy the realm of procedural law (mechanisms or processes that manage legal issues at the local level), thus, focusing on customary law and considering formal law to be outside of their concern. This 'gap' between law and anthropology might explain why there is less literature on legal pluralism than expected [2]. It is further argued here that not only legal scholars and anthropologists should work together more closely. Instead, discussions about legal pluralism and related governance challenges for coastal fisheries should also involve other professionals such as political, economic and natural scientists.

### 3.2. A typology of legal pluralist settings

The interactions and relations between different governance systems are diverse and dynamic [22], depending on power relations and interests at play. Legal pluralism can have varied impacts on

**Table 1**  
Typology of relations between legal systems (adopted from Bavinck and Gupta [5]:82).

Quality	Intensity	
	Weak relations	Strong relations
Contrary	Type 1: Indifference	Type 2: Competition
Affirmative	Type 3: Accommodation	Type 4: Mutual support

governance outcomes, depending on the nature of the relationship between the governance systems involved [5]. Bavinck and colleagues [5,23] developed a typology of such legal pluralist relationships. They distinguish four types, defined by the quality and intensity of the relations between the governance systems (Table 1). Type 1, *indifference*, is characterized by a lack of operational overlap between governance systems (e.g., because national legal regulations are not implemented and so customary rules continue to operate). In Type 2, *competition*, relationships are strong but contending, e.g., for power to rule over the same situation. Type 3, *accommodation*, arises when governance systems have reciprocally adapted to each other but with little integration in terms of institutions or jurisdiction (e.g., when national policies provide for local stakeholder participation). In Type 4, *mutual support*, governance systems act in partnership, such as co-management arrangements. It should be noted that the four different types are not meant to be exclusive; elements of all types may coexist in a given setting as legal plural patterns demonstrate a high degree of variation [5,23].

### 3.3. Legal pluralism in the South Pacific

Prior to colonialization, inhabitants of the islands in the South Pacific had lived for centuries in separate communities governed by local leaders and chiefs. They were regulating themselves according to their own practices and traditions, but with no concept of a unified state or society [7]. It has been argued that two different types of social order developed in the region. Descendants of an early wave of immigration, who are believed to have settled the region from what today constitutes Indonesia, developed a high diversity of cultures, languages, and varieties of customary institutions and political organizations. These groups, often referred to as non-Austronesians to distinguish them from the later wave of Austronesian settlers across the region, had relatively flat social hierarchies and were strongly reliant on reciprocal relationships. The later Austronesian settlers, who were seafaring people from Asia, in contrast had stronger normative orders, more hierarchically organized social structures, and leaders with more authority [2].

Altogether, societies across the Pacific developed a high variety of customary systems to govern social, political and economic behavior. These included mechanisms to enforce these customary rules and to settle disputes. Customs were dynamic and changing in nature even before the European colonial incursion [24]. Legal pluralism was hence not a new feature for Pacific societies. Yet, European colonialism created a new hierarchy of governance systems by superimposing colonizers' law upon existing customary systems, and confronted customary society with a faster and greater rate of change. Villages that used to be sovereign entities became part of larger political entities; customs were no longer the sole governance system to follow [24,25].

When, in the course of the 19th century, European governments gained control over large parts of the Pacific region, the colonial administrators used written laws to assert their control throughout the newly declared colonies and territories. Customary rules were allowed to prevail as a form of 'social control'. Nonetheless, customs were not meant to be applied by courts as part of the colonial legal systems, with the exception of issues regarding customary land titles [7]. Land rights and law are a contentious and crucial issue for the Pacific region [2,26], also because land rights are usually related to fishing rights, as detailed

below (Sections 4 and 5). During the colonial era western-based state law introduced the concepts of open access and state property of the waters below the high tide mark, adding further to the (partly contradictory) legal complexity between customary provisions and state law [27].

All former British colonies and protectorates, including Solomon Islands and Fiji, inherited the English common law system. At independence, most countries gave recognition to customary law via their constitutions, adding it to the common law [26,28] – with the exception of Fiji, where there is no Constitutional recognition of customary law. Overall, many operational aspects with regards to the precise application of customary law and its standing in the state system remain unclear in Pacific Island countries. The different law sources interrelate in complex ways and the boundaries between customary and state law have partially weakened, e.g., through attempts to incorporate customary law in statutory law [29].

### 4. Legal pluralism in the coastal fisheries of Fiji

Marine spaces and resources are historically, culturally and economically of great importance for Fijian communities. The sea forms part of their common heritage and identity [30]. In Fiji land was traditionally held by indigenous Fijians (*iTaukei*) on the basis of communal stewardship, which included exclusive access to and user rights over the adjacent fishing grounds (*'qoliqoli'*) [31,32].

Up to today, 88% of the land in Fiji remains under customary tenureship, governed under the iTaukei Lands Act (formerly referred to as the Native Lands Act) and the iTaukei Land Trust Act (formerly referred to as the Native Land Trust Act). However, the adjacent marine areas and fishing grounds do not enjoy the same status. The Fisheries Act is the primary legislation for coastal fisheries in Fiji. It grants (registered) customary land holders fishing rights within the *qoliqoli* – yet, according to the Constitution of the Republic of Fiji, ownership over nearshore fishing areas remains with the State (see also [32–34]). This goes back to the Deed of Cession, a document signed in 1874 under the British Administration, which effectively transferred the ownership of Fiji's waters to the Crown. Although the cession remains controversial (partly due to fact that land and reefs were communally held and chiefs concerned about individually ceding these rights, and also because traditional tenure was not equivalent to the Western concept of 'ownership'), it resulted in a distinction made between owner- or tenureship of land versus sea – which had traditionally been viewed as connected [34].

Customary law can be applied through Section 13 of the Fisheries Act. This section, regulating the licensing and permit system, enables customary rights holders to exercise management of their *qoliqoli*. Harvesters from outside the community have to obtain a permit from the District Commissioner who shall consult 'the subdivision of the Fijian people whose fishing rights may be affected'. In practice, fishing permits are thus commonly approved by the local chief (see also [13]), which was also confirmed by government officials as well as villagers throughout our empirical research (semi-structured interviews, August/September 2015). Altogether, customary leaders and communities can have decisive influence over local fisheries management (see also [33,35]).

The present fisheries legislation dates back to 1942. Our empirical research reveals that, despite several additional regulations and amendments made to the Act, there is consensus – including within government – that the Fisheries Act needs review (interviews and pers. comm. with an official of the Fisheries Department and NGO experts, September 2015). These respondents further highlighted that the drafting of a new Inshore Fisheries Decree, as well as related consultations, have been going on for several years. Yet, customary fishing rights and the question over expanding or restricting customary control over coastal fishing areas remain a politically highly sensitive issue in Fiji (which, as we argue here, adds complexity to this process and might

hence account for the rather slow evolution of this new legislation). This is due to the fact that exclusive fishing rights within *qoliqolis* are only given to indigenous Fijians (*iTaukei*), not to non-indigenous Fijians (mostly of Indian descent) [33], who constitute around 38% of the country's overall population [36]. Nonetheless, the (2017) Five-year National Development Plan states that the National Fisheries Policy “will be finalized soon” [37: 113], and that the review of the Inshore Fisheries Management Decree shall be concluded [37]. As expressed by an NGO expert and an official of the Fisheries Department (key informant and semi-structured interviews, September 2015), it is however not expected that the new Inshore Fisheries Decree will make a radical shift from the legal status of Government ownership over *qoliqoli* areas (see also [33]).

Environmental legislation also affects coastal fisheries. E.g., the Endangered and Protected Species (Amendment) Act regulates the domestic and international trade of species that are considered to be threatened, and includes numerous fish, shark and crustacean species. Also, the last National Biodiversity Strategy and Action Plan [38] identifies inshore fisheries as one focus area. Furthermore, a national protected areas committee was established under the Environment Management Act, involving several governmental departments as well as partner organizations. Our empirical research reveals (interviews and pers. comm. with government officials, NGO and academic experts, September 2015) that discussions about the development of a legislative framework for marine protected areas (MPAs) are ongoing (see also [39]). Thus far, there is no comprehensive legal instrument that provides for the creation and management of MPAs. However, a key informant from the Department of Environment and an NGO expert (interview and pers. comm., September 2015) expressed that this issue had been recognized and was being addressed as a matter of priority – in parts due to Fiji's international responsibilities under the United Nations Convention on Biological Diversity, as well as the government's commitment to protect 30% of the country's marine areas under a network of MPAs by 2020. The latter commitment was first made in 2005 and reiterated during the UN Conference on Small Island Developing States in 2014.

In Fiji, despite the parallel existence of local customary fisheries management and national fisheries and environmental legislation, various institutional structures exist that can serve to link the two systems.

Each of Fiji's fourteen provinces has a Provincial Council. As our empirical research discloses (interviews and pers. comm. with village leaders and government officials, August/September 2015), these Councils serve as a primary communication channel between the central government and rural villages and their leaders. Each Provincial Council is headed by an Executive Head (*'Roko Tui'*, derived from what traditionally was used as a title for Big Chiefs). Additionally, at the local level each village appoints a *'Turaga Ni Koro'*, a village headman, who is responsible for a variety of administrative tasks. This includes quarterly reports to the Provincial Council and/or the *'Mata Ni Tikina'*, who is an appointed representative of the villages of one district (*'Tikina'*). These reports can include basic demographic data, as well as information on community-based projects, environmental issues or any other village concerns. The *Mata Ni Tikina* also represents the district in the Provincial Council meetings that take place twice a year.

Furthermore, the current government has concentrated work and the coordination of development initiatives through the divisional level, i.e., through four regional Divisions (Central, Eastern, Southern and Northern Division). Each of the Divisions is headed by a Commissioner who also collaborates with the Provincial Councils. In line with this, the Department of Fisheries has started to execute its work through the Divisions and their respective divisional fisheries officers, and is thus operating on a more regional level, too.

In 2013 the Ministry of iTaukei Affairs established a Conservation Unit and assigned conservation officers to the Provincial Councils, where they report to the *Roko Tuis*. By the time data for this study were

collected, eight of the fourteen provinces had conservation officers. Their mandate is to advise communities on environmental issues and resource management; they also assist in getting communities' consent on fishing permits and have an advisory role within the province, assisting in efforts to develop resource management plans for the provincial level. Respondents from both government and civil society (semi-structured interviews, September 2015) noted that conservation officers were able to aid in linking not only the national, provincial and local level, but also to strengthen communication and coordination between sectors, i.e., the Department of Environment, the Department of Fisheries, as well as the Ministry of iTaukei Affairs. Nevertheless, these interview respondents also noted that, despite these potential positive effects of the conservation officers, in practice many of them were overwhelmed by: the amount of communities under their responsibility; the broadness of their mandate (covering all kind of environmental and fisheries issues); a lack of specialized training on these issues (though a range of workshops were being conducted); and an overload of administrative tasks within the Provincial Councils.

Data from our empirical research confirms that local voluntary fish wardens – provided for under the Fisheries Act – monitor local fisheries management, such as marine closures, in many villages in Fiji (focus group and interviews with villagers and an official of the Fisheries Department, August/September 2015). Fish wardens are also mandated to monitor national fisheries regulations (e.g., species restrictions or mesh sizes of nets). They are usually selected by the local chiefs and appointed by the Department of Fisheries. Despite their training and official appointment, our empirical data (semi-structured interviews with villagers, an official of the Fisheries Department and NGO experts, August/September 2015) indicates that they face a range of technical-financial (e.g., lack of equipment), institutional and legal (e.g., with regards to the prosecution of offenses), as well as social-cultural constraints (e.g., being embedded in a complex network of family and clan relationships that might hinder them from reporting local infringers) (see also [18]).

Also, the Fiji Locally Managed Marine Area Network (FLMMA) has been highly influential in promoting community-based management of coastal-marine resources across Fiji in the form of Locally Managed Marine Areas (LMMAs). As revealed by villagers, government agencies, NGO and academic experts (interviews and pers. comm., August/September 2015), the network has proven useful and successful in establishing partnerships between coastal communities, government, as well as conservation and research organizations (see also [16]). It is active in more than 400 communities in over 130 *qoliqoli* areas throughout the country [40]. By providing information and resources on community-based adaptive management as well as training, e.g., in monitoring and data management, FLMMA thus also contributes to the endeavors of the fish wardens and the conservation officers. Additionally, FLMMA has divisional representatives to support and coordinate work with and between government, communities and the provincial level [41]. Therefore, overall, FLMMA has contributed substantially to bringing government and communities (as well as other stakeholders) closer together. Nevertheless, because LMMAs are not legally binding, many villages face challenges with regards to their enforcement [18,42,43] – which can diminish their effectiveness. Experts from academia and a partner organization (pers. comm., September 2015) noted that the question whether and how to integrate LMMAs into the national framework for coastal fisheries has been an issue of debate for several years.

## 5. Legal pluralism in the coastal fisheries of Solomon Islands

In Solomon Islands coastal marine resources have been traditionally controlled by customary provisions, for instance through the declaration of sacred sites and temporary closures. Coastal areas such as coral reefs and lagoons are traditionally considered an extension of the land – and kinship groups generally associate with certain land and sea areas



[44]. To indigenous people land is of spiritual significance and a valuable heritage for the whole community. Still about 83% of the land in Solomon Islands counts as customary, which is governed by customary law. This comprises a heterogeneity of customs with regional variations (e.g., between matrilineal and patrilineal systems) [26]. In Solomon Islands the Constitution (Section 75 (1)), as well as the Fisheries Management Act 2015, the Land and Titles Act Cap 133, and the Provincial Government Act 1997 generally recognize customary rights. These rights include customary fishing rights and customary land tenureship. Depending on the customary uses in place, the latter can include foreshore areas - although there remains some ambiguity as to whether this also includes tenureship of reefs and the seabed [45].

In Solomon Islands government authority is shared between the national government and provincial governments to some extent, i.e., some functions are delegated to the provincial government level, while some remain centralized. Provinces may be responsible for implementing national legislation at the provincial level and for the development of provincial ordinances that are in line with national Acts. Provinces can also codify customary rights with regards to land and fishing. A number of environmental and fisheries provincial ordinances have been developed throughout the nine provinces of Solomon Islands (see [46] for a list of environmental and fisheries ordinances). Yet, as revealed by provincial and national government officials, the implementation of provincial ordinances has been a major constraint (pers. comm., May/June 2015). Additionally, due to rather recent changes in the relevant national legislation which guides the provincial ordinances, these might need revision in order to bring them in line with the new national legislation.

Provincial governments' political role also comprises the representation of their constituencies and the provision of a focus for regional aspirations. However, provincial governments generally suffer from a poor definition of roles and functions, weak relationships with the national government, as well as insufficient funding [47,48]. Throughout our empirical research, provincial and national government respondents as well as NGO experts (semi-structured interviews, May/June 2015) suggested that human and financial constraints of the provincial governments, as well as of the national government (i.e., Ministry of Fisheries and Ministry of Environment), also impede outreach to local communities. The geographical scatteredness and socio-cultural variations across the rural island areas exacerbate this challenge.

The recent Fisheries Management Act (2015) represents the main piece of legislation for inshore fisheries in Solomon Islands; its implementation is underway, yet, the issuing of new inshore fisheries regulations is still pending. The Fisheries Management Act delegates the primary responsibility for conserving and sustainably managing fisheries resources within provincial waters to the provincial government.

As disclosed by our empirical research, the (national and provincial) government conducts virtually no monitoring or enforcement of national fisheries or environmental regulations at the local level (semi-structured interviews with representatives of the Ministry of Fisheries and the Ministry of Environment, June 2015). Regulations on commodity species that are not consumed locally, such as the (seasonal) ban on sea cucumber, are mainly monitored at points of export (for records of confiscation of sea cucumbers on behalf of government see [49]). Consequently the (national and provincial) government and regulations generally play only a nominal role in local management of coastal, non-exported fisheries resources.

Data from interviews with NGO experts and government officials reveal that partner organizations supporting local marine management efforts, such as (international) environmental NGOs and research organizations, had the most direct links with a number of local communities (semi-structured interviews, May/June 2015). At the same time, these organizations are often linked to the provincial and national levels. This way, they can pass on information from government, e.g., on new legislation, to the communities, as well as report issues from the

communities to government authorities. Thus, partner organizations can become bridging-actors and facilitate the exchange of knowledge and information between different levels, as well as provide a pathway for higher-level representation of local concerns (see also [50]).

Locally, customary marine governance systems continue to function and be influential to varying degrees across Solomon Islands. These governance systems are based on varied approaches, including approaches that are family-based, community-based or tribal-based, and may also involve community-based organizations and churches [51]. In our study area in Western Province, customary chiefs and elders control marine resource use and access on the basis of customary law. A marine management initiative that set up various marine closures has been supported by a community-based organization, as well as by the local predominant church. However, (non-) compliance with and enforcement of these local management efforts represent a challenge [18]. Under the new Fisheries Management Act, communities can register local fisheries management plans. This could potentially empower them to implement and enforce local rules, such as marine closures. However, since the regulations for the Fisheries Management Act are still not finalized, this scenario has not come into effect yet. Also, a provincial executive as well as the (national) Director of Fisheries have to approve local fisheries management plans - which must include a spatial demarcation of the areas subject to fishing rights - before they can become effective. In practice, this might present a major challenge given the limited staff capacities in the respective agencies at the provincial and national level, as well as the potential for conflict over previously undemarcated areas (at least legally) at the community level.

The Protected Areas Act (2010, with its regulations from 2012) makes a similar provision: communities can apply to create a (marine or terrestrial) protected area under the act, and thus protect it from logging, mining or other damaging activities. Nevertheless, by the time data for this study were collected, no application had been successful due to the rather complex criteria and required biodiversity relevance of the sites, as revealed by various respondents from NGOs and an official of the Ministry of Environment (semi-structured interview and pers. comm., May/June 2015). Additionally, environmental legislation can affect coastal fisheries issues. The Environment Act and the Wildlife Protection and Management Act regulate, inter alia, environmental impact assessments, pollution control and trade of species, in order to conserve wildlife and habitats. However, their implementation at the local level is limited, as pointed out further down.

Similarly to FLMMA in Fiji, the Solomon Islands Locally Managed Marine Area Network (SILMMA) was established to facilitate cross-level, and cross-sectoral collaboration and communication. The network involves local community leaders, government ministries and partner organizations, and provides a platform for deliberation and cross-site learning [52]. Thus far, SILMMA has not been able to become truly functional; coordination and interactions were not durable, partly due to high interaction costs, and again, due to remote geography and the diversity, complexity and dynamism of marine governance at the local level [50,51]. Nonetheless, although SILMMA has been less effective than FLMMA in connecting government and communities, officials from the Ministry of Fisheries noted that SILMMA has raised awareness and offers a forum for knowledge exchange between different government agencies and partner organizations (semi-structured interview and pers. comm., June 2015).

## 6. Comparison of the legal pluralist settings of coastal fisheries in Fiji and Solomon Islands

Taking a legal pluralism perspective means looking at the interactions between different governance systems. For the purpose of this study this means interactions between customary law, which still builds the basis of currently practiced CBMRM, and national (fisheries and environmental) law.

The study of the two cases, Fiji and Solomon Islands, reveals similarities with regards to the importance and local prevalence of customary marine governance systems, or CBMRM based upon such. Customary (fishing) rights receive recognition by national legislation (in Fiji) as well as the constitution (in Solomon Islands). This provides the space for customary leadership to affect local marine management. At the same time, in both countries national fisheries, and to a lesser extent environmental, legislation regulates various aspects concerning the marine realm in parallel to customary provisions. Yet, a comparison of the two countries also reveals differences with regards to the quality and intensity of the interactions between the national and customary systems.

### 6.1. Fiji

Fiji has a centralized political system, with clearly structured and relatively stable marine tenure systems locally [51]. Customary fishing grounds are demarcated and registered, and so are customary right holders and villages. Various institutional structures and cooperation mechanisms exist and have the potential to connect the local and the national marine governance systems. Customary leaders are engaged in the fishing permit system (under the Fisheries Act) as they have to give their consent to allow people from outside to fish within the *qoliqoli*. Local fish wardens that are appointed by the Department of Fisheries can monitor local and national fisheries regulations (and report offenses, though with considerable limitations, as argued above, and laid out in detail in [18]); village headmen and district representatives (*‘Turaga Ni Koro’* and *‘Mata Ni Tikina’*) serve as communication links with the government via the Provincial Councils; the latter also collaborate with the divisional level through which the government is operating regionally; conservation officers appointed by the Ministry of iTaukei Affairs can assist in linking communities and government on environmental issues, as well as across sectors within government (Department of Fisheries, Department of Environment, iTaukei Affairs). Additionally, FLMMA plays a huge role in linking the local/customary and national level and in supporting CBMRM across Fiji. This often involves a co-management strategy with government or partner organizations [51,53]. In this light, the legal pluralist relationship pattern between the customary and state systems in Fiji mostly seems to be of *mutual support* (legal pluralist relationship Type 4, see Table 1).

Nevertheless, under the current Fisheries Act, when a community with customary rights over a *qoliqoli* wants to legally gazette a locally managed area to enhance its legal protection and enforcement, the rights holders have to waive their customary user rights over this area because in declaring a marine protected area they concede the national legal system's right to regulate it. In this case, the customary and state governance systems have a rather antagonistic relation and act in competition (legal pluralist relationship Type 2). The weakening or removal of local community rights to regulate, manage and benefit from this management would potentially open the way to the ‘tragedy of the commons’ [8].

### 6.2. Solomon Islands

In Solomon Islands the physical and logistical distance between government and communities makes it difficult for the (provincial and national) government authorities to engage in coastal fisheries management, including the implementation and enforcement of national fisheries (and environmental) regulations. Outreach by the government to the local level is further impaired by a lack of human, technical and financial capacities of the respective government authorities [46]. Local socio-political and tenurial systems are eclectic and diverse across the country [51]; boundaries of customary fishing rights are often not clearly delineated but dynamic, i.e., they can differ depending on the resource (e.g., benthic/pelagic species). Overall, the interactions between the national and customary systems governing coastal fisheries

can be characterized as rather weak (see also [48,54]), as they are largely operating in different spheres. This appears to most closely fit the legal pluralist relationship Type 1, *indifference* (see Table 1). However, the recent legislations (i.e., Fisheries Management Act and Protected Areas Act) that allow communities to register local management plans indicate a move by the state towards adapting national legislation to customary systems and supporting these. At the same time, communities would have to adapt to certain national requirements, e.g., with regards to mapping tenurial boundaries. This might decrease flexibility of customary tenure and provide unnecessary hurdles to communities who may be ill equipped to engage with government systems, which in turn may not work smoothly. Throughout interviews, government representatives expressed the wish and need to further support customary and community-based marine management and to expand cooperation through increased reach-out to communities. This emphasis on promoting a people-centered approach and supporting community-based management as part of a national strategy was also expressed in the Solomon Islands National Plan of Action for the Coral Triangle Initiative [55]. This would make interactions between the two governance systems more affirmative and stronger, and the setting would then rather be characteristic of the legal pattern of Type 3, *accommodation*, or Type 4, *mutual support*.

In the past, the state and customary systems have had stronger and more affirmative links in the context of bait fishing grounds. Beginning in the late 1970s, when the domestic commercial tuna fishery developed in Solomon Islands, the state started to map and recognize bait fishing grounds. These fishing grounds were crucial for the tuna fishery and were mainly located in customarily held shallow reef and lagoon areas. The aim was to ensure customary rights holders (i.e., usually the local coastal communities) were adequately compensated by royalty payments. Hence, it could be argued that the state and customary systems had accommodated or were even mutually supportive in this setting. However, this endeavor also revealed the difficulty of mapping the rights to bait fishing grounds due to the flexible nature of customary tenure and boundaries. Additionally, there were complaints of underpayments on behalf of communities [56].

The recently launched National Development Strategy 2016–2035 [57] for Solomon Islands frames current land tenure as “an obstacle to development” and states that rural and customary land needs “to be made available for commercial and agricultural development” ([57]:12). At the same time, it indeed mentions the importance of the fisheries sector for food security and economic development. The consequences the implementation of the strategy will have on customary (marine) governance in the coming years remains to be seen, but it highlights the potential discrepancies between customary/community-based resource management and national economic development endeavors. Also, if customary resource governance was weakened as a result of such strategy, government would need to concurrently strengthen national resource management to compensate for this loss of governance capacity and to prevent a ‘tragedy of the commons’. As mentioned above, in cases where communities jointly engage in marine resource management with NGOs or other partner organizations, relationships tend to be stronger. These collaborations can also constitute a link between government authorities and communities. This can lead to a relationship of *mutual support* (legal pluralist relationship Type 4). Thus, partner organizations may ‘step in’ to engage with and reach-out to communities. This way, partner organizations can play a vital role in bridging the local and national levels and parallel governance systems – a process that has also been observed in other cases of community-based resource governance where multiple levels are involved (e.g., [58]).

Nevertheless, partner organizations’ engagement might also run the risk of ‘exempting’ governments from their role to reach out and provide services to coastal communities. This can become challenging given that partner organizations are not accountable and do not have the same responsibility as government to deliver services (such as

natural resource management) to all communities and their people. Yet, government is so far not concentrating its scarce resources on coastal fisheries management [46]. Furthermore, this approach gives partner organizations a lot of power with regards to influencing management priorities and values (see also [59]). As a result, the new Fisheries Management Act rather reflects an NGO concept of community management in which each individual village would have to go through a process of making a management plan. The Act neglects any other recognition of how the acknowledged existence of customary tenure could be supported to ensure sustainable harvesting or management.

Also, the often limited time frames restricted by external funding cycles that partner organizations work on means that these are a poor substitute for nation-wide and long-term marine management efforts expected of national or provincial government. Additionally, partner organizations that are active across Solomon Islands have certain geographical foci. Consequently, not all regions are 'covered'. Instead, only a very small proportion of the approximately 4000 coastal communities in Solomon Islands has been supported or is likely to benefit from this potential support relationship. Therefore, it has been argued that more strategic and inclusive approaches need to be explored such as a more efficient and cost-effective 'lite-touch approach' where a few core communities that engage with partner organizations serve as multiplier of community-based resource management and advocate for such efforts to be followed by adjacent villages [60].

## 7. Conclusions

Overall, our analysis reveals a high degree of variation of the legal plural relationships between state and non-state governance systems for coastal fisheries in Fiji and Solomon Islands, ranging from indifference to accommodation and mutual support.

Fiji has a centralized national governance system, but with established links and cooperation mechanisms that can serve to bridge the national, subnational and local (customary) level. Yet, some of these mutual support structures are fairly new, are facing operational challenges, and do not exist across the whole country and/or in every community (i.e., conservation officers, fish wardens). Therefore, it seems these structures should be strengthened and support relationships further expanded; where already present, systems should be further improved. Since (non-) compliance with and enforcement of CBMRM continue to challenge communities, emphasis should be given to the matter – i.e., through improving collaboration across levels, clarifying legal support or developing new procedures, and supporting communities in the prosecution of environmental and fisheries offenses. Customary fishing rights remain a politicized issue in Fiji. It thus remains to be seen how the pending review of the Fisheries Act/Inshore Decree, as well as the results of the ongoing discussions on protected areas legislation, will influence and shape the relationships between the customary and national governance systems in the future.

In Solomon Islands legal plural interactions between the customary and national governance systems vary. Generally, interactions of the various levels of government with the local level remain a challenge. Relationships between customary and national marine governance systems may be rather indifferent where there is little to no connection between the two. However, relations can be of mutual support in selected communities where partner organizations engage in the frame of CBMRM and so help to bridge levels. The new fisheries and protected areas legislations, as well as the national strategy developed in the frame of the Coral Triangle Initiative, indicate that the government increasingly seeks to accommodate customary/community-based management in the national marine governance framework. In doing so, the government aims to fulfill a supportive role. Vice versa, communities can potentially support the implementation of national regulations through restating these in local management plans. Generally, a decentralized approach to coastal fisheries governance will remain crucial in order to cater for local diversity and context, as well as to

improve compliance and enforcement in the absence of centralized capacity. Provincial governments (which are closer to and better connected to rural communities) will need to play a key role in the future – inter alia through the development and, above all, implementation of provincial ordinances that help to implement national acts at the sub-national levels. Links between the national and provincial levels should thus be strengthened. Provincial governments' capacities (including human and financial) to assist communities in CBMRM should be enhanced, so that overall cross-level relationships can become stronger and mutually supportive. This might not be an easy task, but projects such as the 'Provincial Governance Strengthening Program in Solomon Islands' (implemented under the auspices of the UN between 2008 and 2014) have shown ways how to do so [61].

Altogether, this study reveals that legal pluralism is a core feature of coastal fisheries governance in Fiji and Solomon Islands. The study of the two countries discloses that legal pluralist patterns can play out and be addressed differently. A deeper understanding of the interactions between national and customary marine governance systems can help to design procedures or legal mechanisms which optimize relations across levels and systems – and thus, contribute to improving governance outcomes.

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## Conflict of interest statement

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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