

# Exploring the use of bylaws as an enabling tool for sustainable community-based fisheries management in Kiribati

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## Introduction

The critical importance of coastal fisheries to Pacific Island countries and territories (PICTs), and the urgent need to take more progressive management actions towards safeguarding these resources for current and future generations was formally and collectively recognised in 2015 with the drafting and political endorsement of *A new song for coastal fisheries – pathways to change: The Noumea strategy* (SPC 2015). Central to the proposed pathway to change in the 'New Song' is the use of community-based ecosystem approaches to fisheries management (CEAFM). Situated within a spectrum of possible co-management models, CEAFM<sup>2</sup> sees governments taking on more partnership-based roles while supporting communities to take the lead in local-level participatory resource management decision-making (Pomeroy and Berkes 1997). CEAFM initiatives are not without their challenges and failures; nevertheless, this more participatory and inclusive management approach is considered to be a positive step towards improved coastal resource benefit delivery to the people who are most in need (SPC 2015).

The New Song also recognises that meaningful improvements to coastal fisheries require significant additional governance<sup>3</sup> support, e.g. advocacy, political will, and community empowerment (SPC 2015). In this regard, community decision-makers must feel supported in their chosen management actions – both within and between communities, as well as by local and national governments – in order for community-led strategies to be sustainable in the medium- to long-term. As different models of CEAFM develop, evolve and scale out in their respective local contexts around the Pacific (see e.g. Johannes 2002; Govan 2009; Jupiter et al. 2014), the establishment of an enabling legal environment is an essential dimension of community-led resource management governance support (Pomeroy and Berkes 1997; Fa'sili and Kelekolio 1999; Techera 2009).

An absence of national-level legal backing has not stopped communities from pushing forward to formalise their vision

for community-led coastal fisheries management (Fa'sili and Kelekolio 1999; Techera 2009). In the Republic of Kiribati, a country that is relatively new to CEAFM, a handful of villages have sought to harness the power of local bylaws to help their community vision become a recognised reality.

This article briefly describes the introduction of community-based fisheries management (CBFM, a form of CEAFM) to Kiribati, and how bylaws emerged as a potential tool to support village-level CBFM plans. It then describes how the bylaw process in Kiribati was clarified and reflects on the potential impact of bylaws on the sustainability of CBFM initiatives in-country. Finally, it discusses areas of further interest to ensure that village bylaws provide the necessary legal foundations for CBFM success in Kiribati.

## *Community-based approaches to fisheries management in Kiribati*

As in many developing PICTs, coastal fisheries resources provide the people of Kiribati with essential food protein and livelihood benefits, and significant sustainable conservation and management challenges (Bell et al. 2009; Hoegh-Guldberg et al. 2011; GOK 2013). The Kiribati Ministry of Fisheries and Marine Resources Development (MFMRD) Coastal Fisheries Division has the mandate of developing, implementing, monitoring, and enforcing coastal fisheries management and conservation initiatives across Kiribati's 21 inhabited islands. This mandate is challenging not only because of the limited human, financial, capital and technical resources available to the Division to undertake these activities, but also because 'outer' island communities are numerous, remote, spread across vast ocean areas, and are all heavily reliant on coastal fisheries for their daily food and livelihood needs. This makes coastal management outreach, compliance and enforcement critical but also particularly challenging for a ministry that has its headquarters in the capital, South Tarawa.

Aware of the declining health of its coastal fisheries resources, in 2013, MFMRD partnered with the Australian National Centre for Ocean Resources and Security

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<sup>2</sup> A number of terms are actively used around the Pacific to describe CEAFM principles and approaches. Examples include: CBFM=Community-based fisheries management, CBRM=Community-based resource management, CBAM=Community-based adaptive management and LMMA=Locally-managed marine areas.

<sup>3</sup> Governance is defined here as the formal and informal institutions, structures, and processes that shape how power is exercised, responsibilities are allocated, and decisions are made in multi-level, multi-actor systems.



Butaritari Island's Tanimaiaki village works collaboratively on their community fisheries management plan in 2014. (image: A. Delisle).

(ANCORS) at the University of Wollongong, WorldFish and the Pacific Community on the Australian Centre for International Agricultural Research (ACIAR)-funded project *Improving community-based fisheries management in Pacific Island countries* (FIS/2012/074). This 'CBFM project' is a collaboration between local, sub-national, and national governments, with participating communities in Kiribati, Solomon Islands and Vanuatu.

With the exception of a previous draft assessment of CEAFM possibilities for one island, the CBFM project was the first time that CEAFM/CBFM approaches were introduced to Kiribati. The initial participatory diagnosis phase of the project identified and evaluated the social, economic, environmental and governance contexts of five selected pilot communities on two islands, the characteristics of their fisheries, and identified project entry points (Uriam and Delisle 2014; Delisle et al. 2016). Among the issues identified by village communities were perceived declines in local fisheries resources, widespread use of unsustainable fishing practices, a reliance on development-focused projects rather than sustainable management projects, an erosion of respect for customary village-based authority around marine resources use, and a poor understanding of their own decision-making power and available institutional and legal support for fisheries management.

In particular, many community members expressed their concern that unless formal legal recognition was created to honour community-led fisheries resource management efforts, any village-level management plan would ultimately not succeed due to a lack of effective compliance and enforcement mechanisms, especially against potential outside transgressors. Community members noted that in the past, informal village-based and island-based rules were used to regulate specific fishing activities (Teiwaki 1988; Johannes and Yeeting 2001; Delisle et al. 2016). These rules had the backing of traditional customary authority, i.e. the *Unimaane* or council of elders, and were strictly observed within, and sometimes between, villages. However, it was noted during consultations that these rules were no longer a strong behavioural deterrent. Identified reasons for this social shift included the following: changes to cultural values, changes in migration and land ownership patterns, and increases in population-driven resource exploitation pressure from 'outsiders'.

In working collaboratively towards identifying solutions to this issue, community members identified that island councils can create bylaws and noted that these had been used in the past with some degree of success. However, there was a widespread lack of understanding about the mechanisms and processes required to create bylaws,



or of the support available to do so. In response to this stated knowledge gap and request for more information, the CBFM project sought to clarify the process of making bylaws for coastal fisheries management in Kiribati. The aims of this exercise were to respond to community requests to understand the bylaw process, clarify the legal options available to them in support of community-led initiatives, strengthen communication between different actors, and foster an environment where communities felt more supported in making decisions.

## Clarifying the bylaw process for coastal fisheries management in Kiribati

Kiribati's small-scale and subsistence coastal fisheries are open-access and to date almost entirely unregulated, with the exception of a handful of species<sup>4</sup>. The national Fisheries Act (2010) makes no explicit mention of coastal fisheries or their management but does allow for coastal fishery designation and management by government, and offers some protection for nearshore customary fishing rights. The relative newness of CBFM concepts and the absence of formally recognised customary marine tenure in Kiribati (although sea tenure rights were important in the past, Teiwaki 1988) mean that no national-level support for community-led fisheries initiatives currently exists in law. However, the pilot implementation of CBFM is a short-term priority strategic action in the Kiribati National Fisheries Policy 2013–2025 (GOK 2013). In addition, Kiribati has a sub-national layer of government called the island council; these island-wide institutions have delegated power over marine resources within their 'area of authority' from the Government of Kiribati through the *Local Government Act 1984 (LG Act)* and subsequent amendments. It is through this Act that an island council's powers and duties are granted; this includes the creation of local bylaws.

### Defining the scope of fisheries bylaws in Kiribati

In 2016, the project team reviewed the content of the *LG Act* in detail to better understand the structural processes involved in creating bylaws and the nature and extent of the powers granted to island councils for coastal fisheries management. The *LG Act* states that an island council's area of authority is determined by the warrant that first establishes the council. Unless otherwise specified in the warrant and in agreement with other national Acts, this area includes waters adjacent out to 3 nautical miles seaward from the low-water line of the lagoon and/or sea.

Bylaws (known locally as 'bye-laws' or *ointua*) are rules with the force of law inside an island council's area of authority. Their primary purpose is to provide formal legal recognition

for the rules made by a local government to address the interests, issues and concerns of the community it represents. Bylaws are recognised and supported by the Government of Kiribati, including in the Fisheries Act. Island councils have the option of pursuing legal action against any person who breaches a bylaw in a court of law. Bylaws differ from informal village rules because bylaws are legally enforceable and can apply in one village, across many villages, or across a council's entire area of authority (i.e. island-wide), depending on what a council chooses to specify in their written bylaw. Under the *LG Act*, bylaws can also apply to specific groups of people; for example, people who fish for certain species at certain times of year or use specific gear types. They can dictate who has the authority to enforce bylaws, conditions constituting a breach, and the resulting fine or duration of imprisonment. Appropriate levels of punishment are set in the *LG Act* but the amounts can be increased upon approval by the Attorney General. Island councils have primary responsibility for proposing, drafting and enforcing bylaws.

The *LG Act* provides a foundation for understanding the roles and responsibilities of island councils towards coastal resource management and the structural ways in which bylaws can be used as a local governance support tool. However, the Act's finer points are not widely known in Kiribati and give little insight into how its bylaws component has been operationalised in practice. While bylaw processes are essentially similar around the world, there are contextual differences in practice; it is therefore important to define the local steps, actors, and applications to ensure that bylaws are understood and operationalised appropriately by all stakeholders.

### Clarifying the bylaw process

In order to clarify the bylaw process specific to Kiribati, the project team consulted with Ministry of Internal Affairs (MIA), MFMRD, and the Attorney General's Office (AGO) in order to understand how bylaws are created in practice and to specify how the process is applied with regards to coastal fisheries management. MIA has within its mandate the responsibility of supporting island and village-level affairs and employs and trains island council mayors and clerks. MIA is also the lead ministry responsible for facilitating the creation of bylaws through an island council and for approving bylaws into law. The AGO provides advice on the legality of a bylaw and is responsible for ensuring its content is legally sound and does not contradict national Acts. Infrequently, the AGO is asked to draft a bylaw in its entirety. Interestingly, it was discovered that there is currently a minimal official role for MFMRD in the drafting and approval process. Even if a proposed bylaw is coastal fisheries related in content, consultations with the ministry appear to be infrequent and on an ad hoc basis. MFMRD has a legal

<sup>4</sup> MFMRD is currently drafting a new amalgamated coastal fisheries regulation with the Pacific Community support, which will feature specific rules for a number of coastal species.

liaison officer, but it was not possible to clarify their functional role in the bylaw process. The timeframe provided from bylaw proposal to approval was between six months to a year; however the project team has observed that this can take much longer in practice. During the consultation process, it was observed that core knowledge about processes and practices for coastal fisheries bylaws development was fragmented across different key actors. The advice provided by actors also differed with respect to the scope of a bylaw's application (i.e. from village to island-wide) although this information is specified in the *LG Act*.

Prior to the CBFM team's engagement, there were no written guidelines on the bylaw process in Kiribati. Out of this consultation process, the project team produced a guidelines reference document for government departments and a 10-step poster for communities written in both English and the Kiribati language (Figure 1). The poster content was reviewed and approved by MIA's Local Government Unit. This poster was given to a representative from each pilot village in the hopes that it could serve as an easy-to-follow passive communication medium for communities. The community version also included some basic images. The consultation process sparked positive discussion across ministries about the current fisheries bylaw process; as a result, the creation and use of bylaws for community fisheries management was a significant feature of discussion between community leaders and government departments during the project's 2016 annual in-country stakeholder workshop. At this same meeting, alternative options for formalising community fisheries management plans were also identified by the Ministry of Women, Youth and Social Affairs (MWYSA). Noting that the bylaw approval process can be lengthy and has many different steps along the way, MWYSA representatives explained that villages could incorporate themselves as a community organisation through MWYSA (Incorporated Societies Act 2002) and submit their village fisheries management plan as their organisational plan.

## Bylaws as an enabling tool for sustainable CBFM in Kiribati

An enabling legal environment is a cornerstone to the successful involvement of communities in the management of their marine resources (Pomeroy and Berkes 1997; Fa'asili and Kelekolio 1999; Techera 2009). Across the Pacific, countries have put in place different legal frameworks to support CBFM initiatives (Techera 2009); including the use of village bylaws in Samoa (Fa'asili and Kelekolio 1999). In Kiribati, bylaws appear to be one of the tools that would support island-wide or community-wide initiatives with regards to coastal fisheries management. This section discusses some of the beneficial outcomes of clarifying the bylaw process but also highlights some of the remaining challenges in providing an enabling legal environment for CBFM initiatives in Kiribati.

As a result of the CBFM project's information collection and sharing, and its fostering of more active lines of communication (Reed 2008) between communities and levels of government, leaders from all pilot communities expressed increased confidence in their ability to push for a formalisation of their community fisheries management plan through the creation of a bylaw. Four villages began taking steps towards drafting a bylaw based on their community fisheries management plan. They are in the process of working with the island council and MIA to determine whether this bylaw can be applied at the village-level only, or if an island-wide bylaw can be created that reflects one village's particular interests in a specific area. At the time of writing, one community in particular is continuing to actively follow up on the proposition made by MWYSA to become incorporated under the Incorporated Societies Act (2002). A fifth village has decided to hold off on plans for plan formalisation for the time being. Instead, they have chosen to consult collaboratively with neighbouring communities and create an informal agreement that acknowledges the open-access nature of coastal fisheries resources but respects their village's desire to meet certain management objectives. Discussions held on the bylaw process highlighted that conflicting advice and miscommunication on the scope of bylaws for use in fisheries management (from village-based to island-based) had created some misunderstandings among stakeholders. This issue is currently being discussed as it will provide all stakeholders and the CBFM team with clear information for current and future CBFM communities in Kiribati. The other aspect that will need to be further explored among stakeholders is the potential differences, advantages and disadvantages of creating a village bylaw through incorporation under the Incorporated Societies Act (2002) or through the standard bylaw process of MIA.

In terms of identifying strengths and gaps in knowledge and communication across the current process, MIA Local Government Unit is the main point of knowledge when it comes to bylaws. They are keen to have stronger engagement with other ministries and with island councils about bylaw issues. The key will be to work towards strengthening direct dialogue habits between MFMRD and MIA in practice, and identify the key points of engagement along the 10-step bylaw process (Figure 1). Status updates on progress of newly written bylaws to island councils would also likely help in maintaining sound lines of communication and in retaining island council's long-term trust in the process. MFMRD's knowledge of the procedure has grown through project activities, but how they engage going forward is yet to be determined.

It is still too early to determine the longer-term fisheries management impact of this ongoing work and whether bylaws will in fact play a positive role in enabling more sustainable CBFM initiatives in Kiribati. A short-term impact is that greater awareness has been raised about bylaws across different levels of government, within communities, and CBFM project support staff, thus creating a better environment for

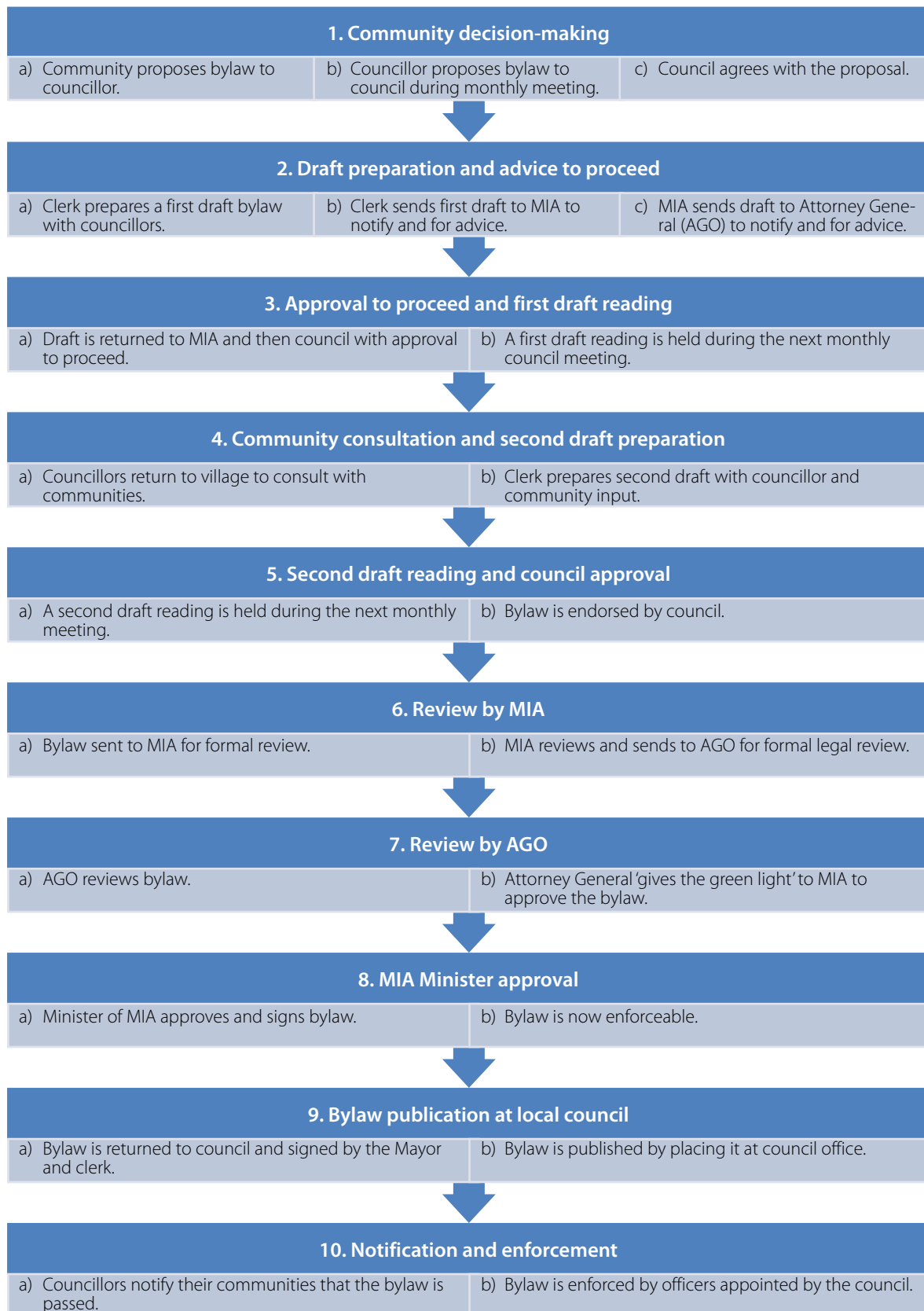


Figure 1: Simplified ten-step process diagram for making a bylaw in Kiribati (English only). This diagram was translated into the Kiribati language and given to pilot village councillors. For clarity, it excludes finer details and assumes bylaw approval. For example, the MIA Minister has the discretion to deny, cancel, create, or amend any bylaw.

continuing participation and engagement. However, the ultimate impact of bylaws as a support tool for CBFM in Kiribati will likely rely on the resolution of three key issues.

The first issue revolves around the determination of boundaries with respect to the marine areas between islands and villages. These boundaries are potentially quite important to have clarified if bylaw breaches occur at the margins between islands or villages. Those boundaries could establish areas of jurisdiction for village-based rules but would not establish ownership over these marine areas. The areas of jurisdiction would give a village the responsibility to monitor, evaluate and enforce village-based rules based on the approved bylaw. At the island level, it is possible that reviewing the island council warrant may assist in clarifying boundaries between islands and out to sea. However, locating copies of these warrants may be a significant undertaking and may not ultimately result in much clarification.

When it comes to defining boundaries between villages, it is evident through the participatory diagnosis work that customary boundaries exist to some extent in the waters immediately adjacent to a village, but there exist no known precedents where nearshore marine boundaries have had to be formally delimited in Kiribati. Rather than deflect the management of coastal fisheries into a bitter argument over boundaries (which has a history of happening for land resources), the most prudent course of action in this regard is likely for the village with the management plan to consult collaboratively with neighbouring villages about their rationale for the rules so as to gain support without having to formalise specific boundaries. Some villages are already using informal agreements with neighbouring communities that are based on sharing and mutual obligations. Regardless, more needs to be done on providing accurate information to villages in order to increase community engagement in coastal fisheries management and in reducing potential conflicts between villagers due to unresolved boundary issues.

A second issue concerns working through the practicalities of monitoring, compliance and enforcement of the formalised village plan. Bylaws can specify who can enforce their content and to whose satisfaction this content must be observed. Villages each have a warden (*Kaubure*) with a traditional 'policing' role that is still generally well respected. However, there is understandably great sensitivity around the social challenge of persecuting your neighbour in a relatively small and close-knit community. It is likely that resolving issues around bylaw breaches will play out very differently in villages that still have a relatively strong sense of community compared with villages where the sense of community is more diffuse due to larger size, in/out migration, and low local land ownership. This is more likely to be the case in villages closer to urban South Tarawa. In practice, bylaws are usually not required for breaches occurring within a village, and village-based rules adopted by a community normally suffice. Any breach is usually dealt with through local mechanisms and fines given by village leaders.

Compliance and enforcement becomes more challenging if the offending individual(s) are from another island elsewhere in Kiribati. For example, South Tarawa fishers currently fish in waters adjacent to North Tarawa villages, which is seen as a potential barrier by North Tarawa villagers who only rely on village rules to deal with outside transgressors. If the issue cannot be resolved between island councils with MIA's assistance, the option is then to go to court. At the moment the Kiribati Police does not hold a coastal fisheries enforcement mandate, and it is also not clear if MFMRD do for unregulated small-scale coastal fisheries. Despite the fact that fisheries bylaws have been around for decades, there are no known precedents for taking existing fisheries bylaw breaches to court. Questions could arise as to whether villages that decide to become incorporated can be taken to court and if boundaries could become an issue.

A third issue is the need to sustain lines of outreach, communication, and action beyond one or two key individuals. In particular, there is a need to make sure that community and government officers remain aware of their options as leadership changes. The roles of community leaders need to be clarified while engagement processes between MIA and MFMRD clearly need to be strengthened and sustained. As future bylaws become approved to support CBFM, it will be important that major stakeholders identified in this bylaw mapping exercise ensure that new bylaws are communicated, people are appropriately notified, and the bylaw is published by the island council.

A final consideration rather than a concern is the remaining need for supporting national legislation that recognises community-led fisheries resource management initiatives in Kiribati as legitimate and worthwhile. This may give community leaders a valuable sense of empowerment as part of the management cycle. This may, however, mean that new and more formal processes of co-management engagement may need to be developed between MFMRD, MIA, and island councils. Hopefully, the CBFM engagement model can prove useful in this respect.

## Conclusion

In conclusion, the participatory diagnosis of the CBFM project in Kiribati highlighted that considerable confusion existed across government, island council, and community stakeholders with regards to the processes involved in creating and applying fisheries bylaws. Major misunderstandings were around the scope, the steps involved, and procedural roles and responsibilities during the bylaw process. Open discussion and lesson-sharing around the bylaw process allowed stakeholders to reflect on the suitability of bylaws as a potential tool to support village-led coastal fisheries management plans. The differentiated approaches taken by CBFM communities are a reflection of the varied ways in which bylaws are likely to be used in practice for local management support. However, this work highlights

that further efforts are required in order to provide a clear and encompassing enabling legal environment to support community-led fisheries management initiatives in Kiribati. We have also demonstrated a reality of co-management in practice: that effective sharing of management responsibility with communities is involved, ongoing and complex, and that the key to workable solutions lies in continuous positive stakeholder engagement and participatory problem-solving.

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