

March 2007

Summaries of Existing Laws, Policies and Conventions referring to Cultural Issues in Samoa

1. Samoan Laws:

1.1. Samoa Antiquities Ordinance 1954

No info link

This ordinance aims to prevent the loss of national heritage treasures by export to overseas buyers.

- "Samoan antiquities includes Samoan relics, articles manufactured with ancient Samoan tools and according to Samoa customs and methods and all other articles or things of historic, anthropological or scientific value and relating to Samoa, including Samoan fine mats, orator staffs, orator fly whisks, ceremonial headdress and other artefacts, but does not include any botanical or mineral collections or specimens."
- The Head of State has the final decision if an item is a Samoan antiquity.
- The Head of State may acquire Samoan antiquities on behalf of the Government for their safe custody.
- All Samoan antiquities except fine mats taken to American Samoa for ceremonial use have to first be offered for sale to the Head of State/representative before they can be exported. A copy of the item can be made for the Government, before it is exported.
- If an item is exported without permission in writing by the Head of State, Customs officers can seize the item and a fine can be imposed on the exporter. The item will become the property of the Government of Samoa.

Note: This ordinance is not practised. There is, however, now an order from February 2007 restricting the number of fine mats which can be taken out of the country to:

10 per person for attendance of a funeral overseas
20 per family /40 per village for group Malaga (travel) overseas

1.2. Village Fono Act 1990

~~Samoan~~

English only
versatile

This act regulates the powers and limitations of the Village Fono (Village Chief Council). It also regulates the way appeals can be made against Village Fono Decisions. This act has been repeatedly in public discussion, and in the centre of several important court cases.

AA

The act describes which powers a Village Fono does have:

- to make rules for maintenance of hygiene, economic betterment of the village
- to direct people to do work required
- to punish people for village misconduct with fines (money, fine mats, animals or food) or order to do work on village land.

Village Fono punishments are to be taken into account in mitigation of sentence by court.

An appeal against Village Fono decisions can be made at the Land and Titles Court.

Limitation of Village Fono powers:

- not over any person who does not ordinarily reside in its village
- not over any person not being a matai of the village or tautua (are in serving relationship) to a matai living in the village on freehold or government land.

1.3. Robert Louis Stevenson Act 1991

English version

AA

This law was made to facilitate the establishment of the Robert Louis Stevenson Museum in Vailima.

- o Regulations for the establishment of the Robert Louis Stevenson Foundation and its approved objects:
 - o The restoration, maintenance and preservation of the residence of RLS in Vailima together with its grounds
 - o The raising of funds for this purpose and any approved project
 - o The preservation of the RLS tomb
 - o The renovation of any building of historical significance in Western Samoa
 - o The establishment, maintenance and management of a museum in Western Samoa
 - o The establishment, maintenance and management of any track, walkway, park in Western Samoa
 - o The making of charitable gifts
 - o
- o The Foundation is given the power to lease the RLS residence and grounds at Vailima for 20 years (two times renewable)
- o Exemption of certain taxes and duties for the work of the Foundation
- o Requirement to submit an Annual Report to the Minister of Education
- o Appointment of Samoan Directors to the Board by the Head of State on advice by Cabinet

1.4. Youth, Sports and Culture Act 1993/1994

No hyperlink

This is the revised form of a law legislating the responsibilities and areas of work for the Ministry of Youth, Sports and Cultural Affairs. The Ministry was founded in 1983 and dissolved in 2003 through the Public Sector Reform. The Youth Section is now with MWCSD, Sport Section and Culture Sections with MESC.

A new law, the *Ministry of Education, Sports and Culture Act 2005*, is in preparation (see below), but before this new law is passed, this Act is still valid.

1.5. Copyright Act 1998

No hyperlink

This law protects the rights of the producers of literary and artistic works.

These literary and artistic works, original intellectual creations, include:

- Books, pamphlets, articles, computer programs and other writings
- Speeches, lectures, addresses, sermons and other oral work
- Dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage production
- Stage productions of works mentioned in the previous item and of *expressions of folklore*^{note 1} that are apt for such productions
- Musical works, with or without accompanying words
- Audiovisual works
- Works of architecture
- Works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art
- Photographic works
- Works of applied art
- Illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture and science
- Translations, adaptations, arrangements and other modifications of works
- Collections of works.

^{note 1} *Expressions of folklore is defined in this law as:*

A group orientated and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including:

- *Folktales, folk poetry and folk riddles*
- *Folk songs and instrumental folk music*
- *Folk dances and folk plays*
- *Production of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewelry, handicrafts, costumes and indigenous textiles.*

The law does not protect any idea, procedure, system, method concept, principle, discovery or mere data. It also does not protect any official text of a legislative, administrative or legal nature.

The owner of the copyright is given *economic and moral rights*.

Economic Rights: The author or other owner of copyright has the exclusive right to carry out or authorise:

- Reproduction
- Translation
- Adaptation or other transformation
- Public distribution
- Rental or public lending importation
- Public display, public performance, broadcasting or other public communication of the work.

Private single copies are permitted without the authorisation by the owner if they are for personal use only, except for works of architecture or databases/ computer programs. Quotations, reproductions for teaching and library/archives copies for preservation of the original also are permitted without authorisation, provided the source is acknowledged. There are also special regulations for broadcasting for information purposes and other non-commercial uses.

Moral Rights: the author of a work (even if he/she is not the owner of the economic rights any more) has the right:

- o To have his/her name acknowledged
- o To object to any distortion or modification of the work which would be prejudicial to his/her honour or reputation.

The economic and moral rights are protected during the life of the author and for 75 years after his death. A collective work (e.g. a publication by a Ministry) is protected for 75 years after its publication or, if unpublished, its creation. Works of applied art are protected for only 25 years from their creation.

The Act provides detailed explanations who is the legal author of a work. The provisions of the Act apply to all works of authors who are nationals or permanent residents of Samoa, and any works first published/recorded/ broadcasted in Samoa, or published in Samoa within 30 days after first publication in another country. It also applies to any other works protected by international conventions signed by Samoa.

Performers and producers of sound recordings are entitled to equitable remuneration for the use of their recordings in commercial broadcasting.

The court can stop the use of a work and impound copies which were produced without the authorisation of the owner. Wilful or grossly negligent infringement for profit-making purposes shall be punished with a maximum fine of up to \$25,000.00, or imprisonment of up to five years, or both.

The owner of the rights is entitled to payment of damages by the infringer, including the reimbursement of reasonable legal costs.

There are special regulations for the protection of expressions of folklore. Reproduction, public performance/broadcasting and adaptation/translation for commercial purposes or outside their traditional or customary context (if it is not for

personal or scientific use) can only be made if authorised. The authorisation shall vest in a competent authority to be determined by the Minister of Justice. All monies collected in relation to folklore shall be used for purposes of cultural development.

1.6. Ministry of Education, Sports and Culture Bill 2005

No bill = 'returned' → therefore 'abrogated'?

The submitted bill was returned by Cabinet for revision. It will regulate the work of the Ministry of Education, Sports and Culture which was founded in 2003 as merge of Department of Education and Culture/Sports Division from Ministry of Youth, Sports and Culture.

1.7. PUMA Act 2004

Samoa English

+ amendments

OK

This act establishes the Planning and Urban Management Agency (PUMA) and provides a planning framework the management and protection of land in Samoa, integrated with environmental, social, economic, conservation and resource management policies at national, regional, district, village and site specific levels. This includes the development of national, local and site specific sustainable management plans, which plan and regulate the development of an area, e.g. they can restrict or prohibit construction work on an archaeological site. These sustainable management plans have to be approved by the PUMA Board. Development of land outside an approved sustainable management plan also requires the consent of the Board. For its decision, the Board will take into account the effect which this development will have on the natural and cultural heritage.

1.8. Public Records Bill 2005 – Draft

Not yet?

This proposed law aims to establish the National Archives of Samoa and strengthen public records management. A draft has been already circulated to Government institutions for comments.

2. Samoan Policies:

2.1. Heritage Policy – Ministry of Natural Resources and Environment

This policy was passed by Cabinet in 2002.

The policy provides a framework for the sustainable management of Samoa's natural and cultural heritage sites. As particular sites, it mentions four historical buildings in Apia, one of which (the Old Customs House) has since been demolished.

Objectives are:

- to create public awareness and improve understanding of Samoa's natural and cultural heritage
- to promote national sites of significant heritage values for preservation
- to incorporate heritage preservation into environmental planning and assessment
- to strengthen stakeholder participation in the planning and implementation of heritage preservation programmes

- o to develop global partnerships to support the preservation of national heritage (including World Heritage Convention).

2.2. National Policy on the Conservation of Biological Diversity - MNRE

This policy provides the framework for the conservation and sustainable use of Samoa's terrestrial and marine resources. The objectives include also references to traditional knowledge and use of natural resources:

- o the strengthening of the management of information on biodiversity resources, including local/traditional knowledge (which covers medical use)
- o The conservation of national biodiversity, which includes the promotion of beneficial traditional knowledge contributing to conservation
- o The promotion of the sustainable use of natural resources, including the promotion of sustainable small scale income generating activities for areas under conservation such as handicrafts and medicinal use.

Licensing procedures for bio prospecting and research were also developed. They are to be followed by all individuals, groups or businesses who wish to undertake investigation and/or research studies on the biodiversity resources of Samoa.

Application

- Proponent to lodge application for licence using official application form with MNRE
- Licensing fee of \$500 to be paid with application
- Licence valid for 12 months from date of approval; Renewal of license will depend on compliance with conditions of previous license

Sampling

- Sampling fee for collection is \$200 plus VAGST per sample
- Collection of sample prohibited in National Parks and Reserves
- Consent from private landowners to be facilitated by the MNRE
- Environment & Conservation Division staff to monitor sampling process and verify collection details. All incurred costs to be met by the proponent
- Only dried samples can be exported, and
- Size of samples to be 100 grams for plant material or 1 gram for extract

Reporting

- Register of all samples to be kept at the Environment & Conservation Division, the proponent to provide all necessary information to complete records;
- Proponent to submit report every six months, and
- Ownership of samples to remain with the Government of Samoa;

Benefit sharing

- Subject to mutually agreed terms
- Relevant traditional knowledge and practice to be acknowledged and considered in any subsequent benefit sharing; minimum royalty to be 10%.

2.3. National Youth Policy 2001 - 2010

This policy was developed by the Ministry of Youth, Sports and Culture and includes issues pertaining to culture – youth within the cultural social context, recreational cultural activities, and the passing on of traditional cultural knowledge and values to the young people of Samoa.

Policy objectives relating to culture include:

- to strengthen collaboration in the traditional family and village structures to address the concerns of young people
- to instil in youth an understanding of the importance and relevance of social distances (va) and mutual respect (fa'aaloalo) in their lives
- to build on the strengths of the traditional Samoan systems and religious teaching for conflict resolution
- to ensure that all youth have equal opportunity to be literate both in Samoan and English
- to ensure that traditional knowledge, practises and innovations crucial to the protection of Samoa's environment are passed on to future generations
- to acknowledge and develop the creative talents and natural abilities of youth

The rights create by the model law essentially fall into two categories: *Traditional cultural rights* and *moral rights*. The existence of these rights do not depend upon registration or other formalities.

Traditional cultural rights grant traditional owners exclusively rights in respect of a range of uses of traditional knowledge and expression of culture that are of a non-customary nature, irrespective of whether they are for commercial or non-commercial purposes.

Moral rights created for traditional owners are the right of attribution, the right against false attribution and the right against derogatory treatment in respect of traditional knowledge and expression of culture.

The model law establishes procedures whereby consent can be obtained for the non-customary use of traditional knowledge and cultural expressions, including the making of derivative works. If a derivative work is created, the intellectual property rights in the work vest in the creator, or as otherwise provided for by intellectual property rights. In other words, intellectual property rights are fully respected, and the model makes it clear that the rights it creates are in addition to and do not affect intellectual property rights. However, should a derivative work or traditional

database of stolen objects, better international cooperation in this field, and recommendations for regulations for customs and other relevant institutions.

3.3. UNESCO Convention concerning the Protection of World Cultural and Natural Heritage 1972

“Cultural Heritage” includes

1. monuments : architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings which are of outstanding universal value from the point of view of history, art or science;
2. groups of buildings are of outstanding universal value from the point of view of history, art or science;
3. sites : works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Each State Party to this Convention recognizes that the duty of ensuring the identification and preservation of the cultural and natural heritage situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international co-operation, to ensure that effective and active measures are taken for the conservation of its national heritage. This includes the development of a national heritage policy, the provision of protection services, and training.

Art. 6. Convention regulates the way heritage sites can be inscribed in the World