

Environmental Legislation Review - Western Samoa

1993

***Prepared by
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and the
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FOREWORD

This Environmental Legislation Review in Western Samoa has been produced as an important component of the National Environment and Development Management Strategies (NEMS) Project. The NEMS Project was developed to address sustainable environmental development and planning issues in a number of Pacific island countries. It was funded by the United Nations Development Programme (UNDP) and implemented through the South Pacific Regional Environment Programme (SPREP) as part of a broader UNDP assistance project called Pacific Multi-island (PMI): Planning and Implementation of Pacific Regional Environment Programme which concentrates on regional and in-country institutional strengthening and training of environmental managers.

Pacific islanders have lived in close harmony with their island environment for thousands of years and are well aware of its importance to their way of life. Pacific peoples today face the complex challenge, common to many other countries of the world, of integrating economic development with the need to protect the environment. This is the primary aim of sustainable development and must be addressed if the Pacific way of life is to survive. The introduction of appropriate legislation represents one important means by which sustainable development can be achieved in the Pacific. A fundamental first step is the identification and review of existing environmental laws, taking into account also traditional customary measures aimed at environmental protection. This review also investigates administrative procedures and policy to determine ways of incorporating and strengthening environmental laws within the existing structure in each of the Pacific island countries associated with this project.

The Environmental Legislation Review of Western Samoa looks at laws, administrative procedures and policy in terms of their effectiveness in addressing the major environmental issues existing in Western Samoa. The research has had a particular focus on the development of practical recommendations that build on the findings of the review. This review thus represents an important step along the road to improved environmental management and protection of the Pacific region.

This document forms one part of a series of Reviews of Environmental Legislation undertaken in several Pacific island countries. I would like to thank Mr. Clark Peteru for his work in preparing this Environmental Legislation Review for Western Samoa and Mr. Kosimiki Latu for his input.



Vili A. Fuavao
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EXECUTIVE SUMMARY

Western Samoa's statute law on environment and development issues is scattered amongst numerous statutes.

Of the approximately sixty or more statutes pertaining to environment and development issues, a handful comprise the core. Chief amongst these - although itself subject to internal inconsistencies - is the *Lands, Surveys and Environment Act 1989*. The Act contains a prevailing clause giving it supremacy over inconsistent provisions in other legislation. Draft Environmental Impact Assessment Regulations have been prepared under this Act but have still to be promulgated.

Western Samoa's environmental legislative situation would profit from a streamlining of the law by repealing irrelevant or redundant provisions (or even entire statutes) and consolidating what remains into several key Acts or, alternatively, reincarnating them in the form of a Regulation under the regulation making provision of, for example, the *Lands, Surveys and Environment Act 1989*, which is extensive.

As the legislative response to environmental problems becomes more specific and more technical, thought should be given to amending existing legislation or promulgating regulations in preference to creating new Acts.

As in most countries, effective law enforcement by the Police Service and regulatory agencies needs to be encouraged and should not blunt the legislative initiative. As well, customary (village-created) laws can be, and usually are, very effectively policed by the village which created the law.

A C R O N Y M S

DAFF	Department of Agriculture, Forests and Fisheries
DBWS	Development Bank of Western Samoa
DEC	Division of Environment and Conservation
DLSE	Department of Lands, Surveys and Environment
DP7	Seventh Development Plan
DTCI	Department of Trade, Commerce and Industry
DYSC	Department of Youth, Sports and Culture
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EIEPA	Enterprise Incentives and Export Promotion Act 1992
EPC	Electric Power Corporation
GWS	Government of Western Samoa
LSEA	Lands, Surveys and Environment Act 1989
MOT	Ministry of Transport
NEMS	National Environment and Development Management Strategies
NGO	Non-government Organisation
NPF	National Provident Fund
PSC	Public Service Commission
PWD	Public Works Department
SPDC	Special Project Development Corporation
TCIA	Trade, Commerce and Industry Act 1990
TEC	Target Environmental Component
WSTEC	Western Samoa Trust Estates Corporation

RECOMMENDATIONS

SUSTAINABLE ECONOMIC GROWTH

- (a) That consideration be given to reviving the *Handicrafts Industry Act 1965* (repealed), or enacting a similar Act.
- (b) That the *Customs Tariff Act 1975* be amended to reduce or eliminate rates for renewable energy apparatus.
- (c) That a "slowing down" of economic growth strategies be considered as an option.
- (d) That consideration be given to the need for urban and regional planning legislation.
- (e) That EIA Regulations be passed as soon as possible.
- (f) That Regulations under the *Lands, Surveys and Environment Act 1989* (LSEA) be made setting control standards for pollution.

THE LANDS, SURVEYS AND ENVIRONMENT ACT 1989

- (a) That serious consideration be given to drafting a separate Environment Act and that the Lands, Surveys and Environment Act be amended accordingly.
- (b) That the specific suggestions outlined in 3.2 relating to new environmental provisions be considered under the Lands, Surveys and Environment Act.
- (c) That leases of Government land under the Lands, Surveys and Environment Act should be screened for environmental considerations and modified where necessary.
- (d) If environmental legislation is required that Regulations be utilised rather than passing new Acts or amendments to existing Acts.
- (e) That the structure and placement of the Division of Environment and Conservation (DEC) enable as much independence as possible.

HUMAN RESOURCES

- (a) That the publication of the Public Service Commission (PSC) and International Labour Organisation planning document (Public Service Commission 1992) be awaited before making final recommendations.
- (b) That the *Labour and Employment Act 1972* be revised, in light of contemporary labour laws.

INSTITUTIONS

- (a) That key institutions and key individuals within those institutions be identified for inclusion into the Policy Committees recommended in the National Environment and Development Management Strategies (NEMS).
- (b) That environment and development laws relevant to or administered by each government body be compiled for the use of that body and sufficient copies made available for their staff.
- (c) That periodic training be given to officers in each government department regarding comprehension and enforcement of the laws identified for that department.
- (d) That a prosecution procedure for environmental offenders be worked out amongst the Division of Environment and Conservation (DEC), the Police Service and the Attorney-General's Office.

ENVIRONMENTAL PLANNING AND ASSESSMENT

- (a) That Environmental Impact Assessment (EIA) Regulations be passed as soon as possible.
- (b) That Government's recommendation to set up an Apia Municipal Authority be implemented.
- (c) That a Salelologa Municipal Authority be established.
- (d) That the need for urban and regional planning legislation be investigated.

POPULATION TRENDS

- (a) That educational and Non-government Organisation (NGO) work associated with family planning be continued rather than passing coercive legislation.
- (b) That the need for urban and regional planning legislation be investigated.

WASTE MANAGEMENT

- (a) That the recommendations at pages four to nine of the Warren Sisarich Report (1992) be considered for legislative action.
- (b) That imported goods be screened and preference given to alternatives which are biodegradable, non-toxic, durable, reusable, repairable, recyclable and come with minimal packaging.
- (c) That tariffs on environmentally sound products be reduced or eliminated and conversely that environmentally unfriendly products be banned or a high rate of duty be imposed.
- (d) That a summary offence procedure be established for littering.
- (e) That the sewerage provisions of the *Water Authority Act 1992/1993* be implemented as soon as possible.

LAND-USE PRACTICE

- (a) That more thought be given to the proposal that procedures be introduced "to facilitate the more effective and sustainable use of the customary land resource and its acceptability as primary security for loans for economic development projects" (SPREP 1992b).
- (b) That the Land Board, Western Samoa Trust Estates Corporation (WSTEC) and Samoa Land Corporation formulate sustainable land use policy regarding land under their jurisdictions.
- (c) That the lending policies of the Development Bank of Western Samoa (DBWS) and the National Provident Fund (NPF) for agricultural development and land acquisition be assessed for environmental safeguards.

- (d) That subsidy schemes for farmers be assessed for environmental implications and the subsidy be discontinued where environmental harm is likely to result.

DEFORESTATION

- (a) That the recommendations and options contained in the Western Samoa Forestry Policy Review (Government of Western Samoa 1993b) be considered.

BIOLOGICAL DIVERSITY

- (a) That the Protection and Conservation of Wild Animals Amendment Regulations 1993 be assessed for the inclusion of other species.
- (b) That similar protection provisions be formulated for plant life.

FRESH WATER QUALITY AND SUPPLY

- (a) That all watershed areas be identified and that the provisions of the Watershed Protection and Management Regulations 1992 be enforced.
- (b) That the provisions of the to-be-assented-to *Water Authority Act 1992/1993* be implemented as soon as possible.

SEA AND MARINE RESOURCES

- (a) That legislation regarding mining of marine minerals be consolidated, including placing responsibility for issuing licences under the Department of Lands, Surveys and Environment (DLSE).
- (b) That a marine pollution regime be prepared from the draft Shipping Bill, Ports Authority Bill and Marine Pollution Bill.
- (c) That a list be compiled of international conventions regarding maritime pollution to which Samoa is a Party.
- (d) That Division 5 and Division 6 of Part VIII of the Lands, Survey and Environment Act be brought into line with present fisheries and marine pollution legislation.

TRADITIONAL ARTS, CULTURE AND HISTORY

- (a) That EIAs contain cultural impact assessments.
- (b) That the Department of Youth, Sports and Culture (DYSC) have an oversight role with respect to cultural legislation.

ATMOSPHERE

- (a) That revenue legislation be amended to encourage renewable forms of energy.
- (b) That regulations under the Lands, Surveys and Environment Act be promulgated to deal with green-house gas emissions and ozone depleting materials.

CLIMATE CHANGE

- (a) That the need for urban and regional planning legislation be investigated.

INTERNATIONAL TREATIES

- (a) That Samoa ratify the London Amendments to the *Vienna Convention to the Protection of the Ozone Layer, 1985*.
- (b) That in the interests of acceding to the Framework Convention on Biological Diversity encouragement be given to efforts aimed at compiling a catalogue of species.
- (c) That a list of environment and development treaties which Samoa has ratified or is a Party to, be drawn up.

PART I SETTING

1 INTRODUCTION

This review was carried out in 1993 for the South Pacific Regional Environment Programme (SPREP) with funding made available to SPREP by the United Nations Development Programme (UNDP). The review was one component of the National Environment and Development Management Strategies (NEMS) Project.

NEMS includes planning and training components. The planning component includes activities such as an assessment of the state of the environment; a review of existing legislation; a review of institutional capabilities; development of environmental management strategies; and recommendations on environmental monitoring programmes. The training component includes comprehensive short-courses and on-the-job training.

1.1 NEMS AND SUSTAINABLE DEVELOPMENT

The aim of the NEMS is to produce a statement of Samoa's environmental principles and a detailed plan for the realisation of our long-term environmental goals. NEMS was developed following a dialogue amongst government departments, Non-government Organisations (NGOs), the private sector and individuals.

In the words of the draft Western Samoa NEMS document 1993 (Government of Western Samoa 1993a):

NEMS is Western Samoa's attempt to provide a planned and systematic approach to the integration of development and environmental concerns. The implementation of NEMS will promote the use of a consistent and sound set of principles and guidelines that will guide and assist the development process along a sustainable pathway.

The principles upon which NEMS is based are adapted from those declared at the Earth Summit in Rio de Janeiro in June 1992 (the Rio Declaration). Principle 1 of the Rio Declaration states:

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

NEMS analyses Samoa's environmental issues in a comprehensive, multisectoral framework and sets forth a long-term strategy for sustainable development that does not degrade the country's natural environment, or jeopardise the health and safety of our population or cultural heritage.

The NEMS Document 1993 states the main goals for NEMS are to improve the standard of living for all Samoans through stabilising population, boosting efficiency, restraining consumption and building a framework for change. The last requires the public to be aware of environmental issues, political leaders to provide sound policy guidelines for

environment and development activities and the community to promote the necessary actions to achieve sustainable development.

1.2 TERMS OF REFERENCE

This review concentrates on the "review of existing legislation" component identified in the previous page and encompasses five tasks.

- (a) To collect data on policy, legislation, regulations, decrees and administrative practices which have a bearing on environmental and resource management.
- (b) To interview relevant government and non-government personnel to identify environmental issues that need to be addressed in the review and identify overlaps.
- (c) To review and analyse the effectiveness of legislation, policies and administrative practices.
- (d) To review customary laws relating to the environment and analyse their effectiveness for incorporation into environmental law for Samoa.
- (e) To make recommendations relating to amendment of existing legislation, and/or the need for new legislation.

1.3 FORMAT

Part I introduces the scope and purpose of the Western Samoan NEMS and includes a section regarding the goal of sustainable economic growth.

Part II deals with the present institutional framework within which the formulation and implementation of policy to achieve sustainable development will take place.

Part III deals with eight of the twelve Target Environmental Components (hereafter TECs) identified in the draft NEMS document (Government of Western Samoa 1993b) (one TEC is dealt with in Part I, one in Part II and two are dealt with in Part IV). The TECs were chosen on the basis of what are *currently* considered the most critical issues affecting the local environment and national development. Each chapter begins with a brief overview of the TEC. This is followed by a statement of what the draft NEMS considers as appropriate action to deal with the TEC. The chapter concludes with a summary of the applicable statutory law.

Part IV deals with environmental problems having international ramifications.

Part V concludes the review.

This review is based on materials gathered from a variety of sources, a complete list of which is given at the end of this review. In particular, the National Report for the United Nations Conference on Environment and Development : Western Samoa (Government of Western Samoa (GWS) 1991) and the National Environment and Development Management Strategy (NEMS) for Western Samoa (Government of Western Samoa 1994) should be read. This review was written by Clark Peteru and Kosimiti Latu, the latter contributing Chapter 17.

The formal legislative history of Western Samoa falls into four main divisions (Turnbull 1978): the German period, 1889 - 1914, the League of Nations period, 1920 - c1945, the United Nations Trusteeship period, c1946 - 1962, and the Independence period, 1962 to the present. This review is concerned with the last period. The English common law came to apply in Samoa in 1920 as a consequence of Samoa being administered as an integral part of the Dominion of New Zealand.

The law is stated as at 30 June 1993.

2 SUSTAINABLE ECONOMIC GROWTH

2.1 BACKGROUND

Sustainability was the original economy of our species. Preindustrial peoples lived sustainably because they had to; if they did not, if they expanded their populations beyond the available resource base, then sooner or later they starved or had to migrate. The sustainability of their way of life was maintained by a particular consciousness regarding nature: the people were spiritually connected to the animals and plants on which they subsisted; they were part of the landscape, or of nature, not set apart as masters.

The era of this "original sustainability" eventually came to an end. The development of cities and the maintenance of urban populations called for intensive agriculture yielding a surplus. As a population grows, it requires an expansion of production, either by conquest or colonisation or improved technique. A different consciousness also embodied in a structure of myth, sustains this mode of life. The earth and its creatures are considered the property of humankind, a gift from the supernatural. Man stands outside of nature, which is a passive playing field that he dominates, controls and manipulates. This consciousness ... is dominant today. (Ruckleshaus, 1989)

The above quote broadly summarises the transition that many societies and countries are undergoing or have undergone. Samoa is also caught up in this transition and is accelerating towards the scenario described in the second paragraph.

ENVIRONMENT VERSUS DEVELOPMENT

"Environment" (i.e. conservation) and "Development" were for a time viewed as mutually exclusive or at least, antagonistic goals: one could only be pursued at the expense of the other. Development was - and still is in some quarters - seen as the nemesis of Environment, and vice versa.

SUSTAINABLE DEVELOPMENT

More recently, thanks in large measure to the report of the World Commission on Environment and Development 1987, entitled "Our Common Future" (commonly known as the Brundtland Report), it is now common to talk of sustainable development. The concept of sustainable development treats environment and development as potentially compatible goals that should be pursued hand-in-hand.

It recognises that development is frequently necessary to improve the lot of people but that at the same time the environment is not an illimitable resource and so should be safeguarded in order to continue to provide for present as well as future generations.

Sustainable development is defined in the Brundtland Report as "development that meets the needs of the present without compromising the ability of future generations to meet their

own needs"(World Commission on Environment and Development 1987). The concept refers to developing resources in such a way that renewable resources have the chance to replenish themselves, and non-renewable resources are depleted in a managed way to allow the economic and social system to adjust to the end of the resource (SPREP 1992a).

ECONOMIC GROWTH

According to the Bruntland Report, one basic principal of sustainable development is the "fulfilment of human needs". The prescribed mechanism for meeting these needs is revived economic growth powered by a continuing flow of wealth from industry.

Economic activity is ultimately a process in which the ecosystem is transformed by human work into "goods", that is, material wealth. The expansion of economic activity means the consumption and pollution of an increasing portion of the ecosystem. The economy is organised around the production of goods to provide *profits* for business. This is not the same thing as production of goods for human needs. Profits are usually reinvested in order to begin a new round of production and profit. However this cycle of expanding capital accumulation can occur only if production expands, which means exploitation of the ecosystem at a continually increasing rate. The assumption of conventional economics is that all growth is good: the corollary is that there is no progress without an increasing gross national product (GNP). While GNP however, is probably the best indicator of economic activity presently available, there are many activities and costs (externalities) such as pollution, it does not take into account, often making any correlation between a high GNP and a rising standard of living or high quality of life misleading.

SMALL ISLAND STATES

It appears to be accepted that for Samoa to improve it needs to develop further along the lines of Western economies. Reliance on (revived) economic growth whether recommended by the Bruntland Report or any other document, should not be followed blindly but instead needs to be critically assessed in the context of small island states.

Fairbairn (1986) speaking on sustained growth in island nations, warns against export-led growth strategies and over-dependence on international markets which could send the export sector crashing through changes in technology, terms of trade and competitive positions. Johannes (1978), on the question of lagoonal fishing likewise cautions against dependence on imports and urges a return to self-sufficiency.

Former Secretary-General of the South Pacific Commission, Atanraoi Baiteke is reported as having told the South Pacific Conference:

that if countries were not sure of what development would really bring them they should brake themselves. Economic growth, export development, privatisation and the sale of natural resources is a "sickness" that earns mainly just worsening malnutrition, overcrowded towns, environmental degradation, worsening crime and broken families, he believes. He argues for a re-examination of the region's needs, for more effort to better manage change and a "slowing down as an option for national development."
(Islands Business Pacific 1992)

A report by the Pacific Island's Development Program of Hawaii's East-West Center aired during the Pacific Leaders Conference held in June 1993 noted that aid-based attempts to create an enterprise economy had not worked and spoke of an "economic and social malaise" in the Pacific resulting from external intervention, including imperfect though well-intentioned aid (Observer 1993a).

2.2 LAW

The draft NEMS lists a series of objectives and activities that would contribute towards sustainable development. Following is a checklist of Acts and Regulations that contain statements regarding the environment and economic growth which could be referred to in implementing the strategies. Also listed are recent relevant reviews, planning documents, etc.

STRATEGY:

TO IMPROVE THE LOCAL STANDARD OF LIVING THROUGH SUSTAINABLE ECONOMIC DEVELOPMENT.

This Strategy contains several activities aimed at improving the standard of living through sustainable economic development, namely develop resource-based industries; attract foreign investment; encourage local entrepreneurial activities; encourage new cash crops; develop forest plantations; develop the fisheries sector; utilise renewable energy sources; and develop ecotourism. Relevant legislation which contains statements on both economic growth and the environment, which could be utilised in implementing the Strategy are listed.

- Develop resource-based industries.

Agriculture, Forests and Fisheries Ordinance 1959.
Enterprise Incentives and Export Promotion Act 1992.
Trade, Commerce and Industry Act 1990.

- Attract foreign investment.

Enterprise Incentives and Export Promotion Act 1992.
Trade, Commerce and Industry Act 1990.

- Encourage local entrepreneurial activities.

Development Bank Act 1974.
Enterprise Incentives and Export Promotion Act 1992.
Trade, Commerce and Industry Act 1990.
Handicrafts Industry Act 1965 (repealed).

- Encourage new cash crops.

Development Bank Act 1974.
Enterprise Incentives and Export Promotion Act 1992.
Trade, Commerce and Industry Act 1990.

- Develop forest plantations.

Agriculture, Forests and Fisheries Ordinance 1959.

Forests Act 1967.

Refer to the Forestry Policy Review (Government of Western Samoa 1993b).

- Develop the fisheries sector.

An Australian resources consultant is currently drafting legislation.

Fisheries Act 1988.

Exclusive Economic Zone Act 1977.

International Treaties.

- Utilise renewable energy sources.

Customs Tariff Act 1975 for reduction in rates for imported equipment.

Enterprise Incentives and Export Promotion Act 1992.

- Develop ecotourism.

Refer Western Samoa Tourism Development Plan 1992-2001 (Government of Western Samoa 1992).

Refer Environmental Planning for Tourism (KRTA 1988).

Western Samoa Visitors Bureau Act 1984.

STRATEGY:

TO INTEGRATE ECONOMIC DEVELOPMENT INTO OVERALL ENVIRONMENTAL PLANNING AND ASSESSMENT.

This Strategy contains several activities aimed at integrating economic development into overall environmental planning and assessment namely; establish procedures for local economic development; establish the framework for urban and regional planning; provide incentives for industries to practice clean industrial processes; set control standards for pollution; use environmental impact assessments; monitor development projects; and base public services on social equity and appropriate cost recovery. Relevant legislation and planning documentation that could be used to implement the Strategy are listed below.

- Establish procedures for local economic development.

Development Bank Act 1974.

Internal Affairs and Rural Development Act 1983.

Encourage income generating schemes which have no or little effect upon the environment.

- Establish the framework for urban and regional planning.

Decide whether planning legislation is necessary.

Refer for example to the Apia Town Plan 1984.

- Provide incentives for industries to practice clean industrial processes.

Business Licences Ordinance 1960.

Enterprise Incentives and Export Promotion Act 1992.

Lands, Surveys and Environment Act 1989.

- Set control standards for pollution.

By regulation under *Lands, Surveys and Environment Act 1989.*

- Use environmental impact assessments.

Environmental impact assessment (EIA) Regulations are to be introduced to Parliament late this year or early next year.

Environmental Impact Assessment to be carried out for major tourism development (Western Samoa Tourism Development Plan 1992-2001).

- Monitor development projects.

Some donor bodies, e.g. Australian International Development Assistance Bureau (AIDAB) and the Asian Development Bank (ADB), have their own internal environmental requirements.

The Division of Environment and Conservation (DEC) should be consulted along with Treasury regarding implementation of projects.

Lands, Surveys and Environment Act 1989.

Public Works Ordinance 1959.

Special Projects Development Corporation Act 1972.

- Base public services on social equity and appropriate cost recovery.

Electric Power Corporation Act 1980.

See the as-yet-unassented-to Water Authority Act.

STRATEGY:

TO INCREASE PUBLIC PARTICIPATION IN ECONOMIC PLANNING AND ECONOMIC DEVELOPMENT.

This Strategy contains two activities aimed at increasing public participation in economic planning and development namely; encourage business and labour inputs into formulation of economic policies and involve grass roots organisations in economic planning and development. Relevant actions to assist in implementation of this strategy are listed.

- Encourage business and labour inputs into formulation of economic policies.

Identify the policy making bodies and see if representatives from business and labour sectors can contribute to policy formulation meetings. Or if representation is set by Act, amend the Act to allow such representation if the Act does not already allow for it.

- Involve grassroots organisations in economic planning and development.

Identify the policy making bodies and see if representatives from grassroots organisations can attend policy formulation meetings. Or if representation is set by Act, amend the Act to allow such representation if the Act does not already allow for it.

2.3 **RECOMMENDATIONS TO ASSIST IMPLEMENTATION OF THE ABOVE THREE STRATEGIES**

- (a) That consideration be given to reviving the *Handicrafts Industry Act 1965* (repealed), or enacting a similar Act.
- (b) That the *Customs Tariff Act 1975* be amended to reduce or eliminate rates for renewable energy apparatus.
- (c) That a "slowing down" of economic growth strategies be considered as an option.
- (d) That consideration be given to the need for urban and regional planning legislation.
- (e) That EIA Regulations be passed as soon as possible.
- (f) That Regulations under the *Lands, Surveys and Environment Act 1989* be made setting control standards for pollution.

3 THE LANDS, SURVEYS AND ENVIRONMENT ACT 1989

3.1 DESCRIPTION

This Act is the cornerstone environmental Act in terms of scope and force (in the event of an inconsistency other Acts are subject to its provisions, s94(2)). The following description begins with a discussion of the new environmental provisions (mainly in Part VIII of the Act) and ends with a cursory description of the rest of the Act.

3.2 THE NEW ENVIRONMENTAL PROVISIONS

A SEPARATE ACT?

The Act derives from the *Land Ordinance 1959* to which has been added environmental provisions which have been borrowed from overseas legislation. As a result the Act does not read cohesively in places. Some reports have suggested that a separate Act encompassing those environmental provisions be drafted but current Government policy is to amend existing legislation.

PREAMBLE

The phrase "and the establishment of National Parks and other forms of protected area" should be deleted because National Parks are already provided under separate statute and "protected areas" is not a term described in any statute. Rather the term is "Reserve". If it is intended to use the term "protected area", which has a specific meaning in the biodiversity field, then it should be defined.

The phrase "Department of State" can be made more specific by substituting "Department of Lands, Surveys and Environment". The 1992/1993 Amendment Act substituted the title "Lands, Surveys and Environment" for "Lands and Environment".

The phrase "to make provisionate (sic) for the conservation and protection of the environment", needs to be carefully noted, as a pure conservation role will conflict with Samoa's projected economic growth goals. A realistic approach requires that something along the lines of "the balancing of development needs" be added.

COMMENCEMENT: s1

It is assumed that the *Lands and Environment Act 1989* Commencement Order, assented to on 27 July 1990, brought the entire Act into force. It is unknown however whether an Order under s94(1) has been declared indicating what geographic area (for example our Exclusive Economic Zone) is to be covered by Part VIII of the Act.

INTERPRETATION: s2

"Coastal waters" mentions lagoons but not reefs.

"Foreshore" needs to be tested as to whether it covers all coastal wetlands ecosystems.

The definition of "Government land" would appear to include land administered by the Samoa Land Corporation.

The definition of "Private land" can be tightened up by adding the phrase "(excluding Division 8)", so it would read: "for the purpose of Part VIII (excluding Division 8) of this Act". The reason is that Division 8 of Part VIII has its own definition of "Private land". The phrase "Socio-cultural" may be better defined as: "*in relation to the environment means social and cultural uses of the environment:*" rather than "*the traditional social and cultural use of the environment from which the Samoan way of life has developed:*". Socio-cultural factors would appear to be more relevant having a present rather than a past reference.

The phrase "Western Samoa[n] waters" is mentioned in the Act several times (e.g. at s116(c)) and should be defined.

The Exclusive Economic Zone (EEZ) is not mentioned or defined in the Act but should be. Perhaps the territorial sea should be defined as well.

GENERAL ADMINISTRATION

There is some confusion as to titles; s3(2) refers to the Minister for Environment and Conservation; s5 refers to the Director of Natural Resources and Environment. It is suggested the proper titles are, respectively, the Minister of and the Director of Lands, Surveys and Environment.

APPLICATION: s94

It is unlikely that the *whole* Act was meant to prevail over inconsistent provisions in any other Act, which is what s94(2) provides, but rather that the new environment provisions (i.e. Part VIII and relevant sections in s2 (Interpretation) and s146 (Regulations)) do so, as well as subsequent amendments touching upon those provisions. There would be no ambiguity if a separate Act was drafted containing the environmental provisions.

FUNCTIONS OF THE DEPARTMENT: s95

The Division of Environment and Conservation (DEC) as such is not created (or even mentioned) under the Act. Instead the Act refers to the Department.

The Principal Environment Officer is charged with administering Part VIII of the Act. The Department (which probably means the Director after he or she has consulted with the Principal Environment Officer) advises the Minister. The Minister is empowered to take any of the courses of action set out in s104 or may ask for a second opinion from the Environment Board, as he is entitled to do under s97(a), before acting.

The Department clearly has the day to day responsibility for the environment, however, there is some overlap in function with the proposed Environment Board as regards development projects.

The Environment Board can act as a check on advice or action by the Department because of s97(a), s116 (consideration of management plans prepared by the Director) and also because it reviews and endorses the annual corporate plans of the Department.

ENVIRONMENT BOARD: s97

As the present formula stands a nominee of any of the designated office-bearers can be anyone the office-bearer selects, assuming the office-bearer is unavailable to sit on the Board. Cabinet makes the actual appointment which is for 3 years.

As an alternative to that formula, the following can be considered. Under s97(2) the members (a) - (g) can just be named without having to be appointed by Cabinet. Instead of mentioning "nominee" the formula used in s6(5) of the Act can be used. Section 99 can be re-worded to make it applicable only to members appointed under s97(2)(g).

As with the comment made regarding the Preamble (see above), consideration should be given to adding on to s98 a neutral balancing function regarding environment and development, rather than a purely protect and conserve function.

However, the functions of the Department under s95 appear to give the Department rather than the proposed Board that function.

CONSERVATION OFFICERS

Following on from s106(3), the Police Service should be informed of their powers under this Act. Their powers for the purposes of the Act are wider (i.e. subject to fewer controls) than their powers under the *Criminal Procedure Act 1972* and they should be careful not to confuse the two.

Although a power to search is provided under s107, it is submitted that the right to enter private property (as opposed to public land) to make the search is not implied by that power.

The situation under s108(3) is already provided for in the *Constitution of the Independent State of Western Samoa 1960* (the *Constitution*), but does no harm being repeated here. Powers of search, seizure and arrest all have to measure up against the safeguards provided in the *Constitution*.

Under s110(1), consideration should be given to replacing the term "protected area" - which is not defined in the Act and does not appear in the *National Parks and Reserves Act 1974* - with "reserve". Either that, or define the term "protected area".

ENVIRONMENT FUND: s124

Consideration should be given to having fines paid into the fund from which the DEC can finance some of its activities. This would be especially desirable if the DEC were to take the form of a stand-alone office.

CONTROL OF LITTER: s125

The Interpretation section would look better at the beginning of the Act. Although "Litter" and "Private land" are given different meanings from the interpretations in s2, they can still be incorporated within those definitions.

A prosecution procedure needs to be established under s127 for those people caught littering but who do not pay the prescribed fine.

The Apia town area needs to urgently address its litter problem; this set of provisions should be tailored to dove-tail with the functions of the proposed Apia Municipal Authority.

EXISTING RIGHTS: s134

This is headed up "Saving" in the body of the Act as contrasted to the contents. One or other term should be used.

The phrase "nothing in this Act", should be replaced by, "nothing in this Division of the Act".

Section 134(1)(a) states that as regards fishing activities the Act will yield to other Acts (in this case, notably the *Fisheries Act 1988*).

Section 134(1)(b) provides that the Act does not affect the **existing use or occupation of any land or Western Samoa waters**. This statement does not preclude the operation of other Acts which may affect those uses or occupation. There does not appear to be any reason why the Act should disqualify itself from operating in those matters as well.

In the criminal law, the *Constitution* provides at Article 10(2):

No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence at the time it was committed.

This safeguard is adequate in case it might be thought that the offence provisions of the Act might be used to catch people unawares.

There are continuing practices which are detrimental to the environment and in which this Act should play a part in regulating or prohibiting. Further, proposed EIA Regulations will be severely limited in their operation unless section 134(1)(b) is deleted.

OFFENCES: s144

This provision provides maximum penalties for offences for which penalties are not provided. As far as is known, no penalty provisions under Part VIII of the Act have been used. Other penalty sections include s105 (special investigations); s118 (contravention of management plans); s122 (coastal zones); s123 (pollution of Western Samoa waters); s127 (litter).

REGULATIONS: s146

Thought should be given to adding paragraphs which will allow for promulgation of regulations pursuant to Treaties Samoa has signed or can be reasonably expected to sign, e.g. as regards: chemical weapons, reduction in use of chemicals destructive of the ozone layer and maritime pollution.

OTHER

The Act covers many areas, however it may be desirable from time to time to add other areas, (for example: disposal of derelict vehicles, ship-based pollution, dangerous goods, recycling, and well-drilling) and allowance should be made in the Act to allow for such additions.

It would also be useful to add a clause acknowledging that common law remedies are preserved.

Various structures for the DEC have been studied in the following reports: PA Management Consultants 1985; KRTA 1988, Part 5; Green 1990; and Harding 1992. The last report contains a draft bill which envisages the DEC operating in an autonomous or semi-autonomous manner, similar to the Visitors Bureau.

3.3 THE REST OF THE ACT

The rest of the Act, (i.e. the original *Land Ordinance 1959*) deals with the administration of Government land. The Land Board is charged with carrying out the provisions of the Ordinance for the administration, management, development, alienation, settlement, protection, and care of Government land (s7). Leases are provided for those successful enough in obtaining government land for the purpose of developing. The leases should be screened for environmental considerations and modified where necessary. An insightful account into the proper administration of the Act and functions of the Land Board can be found in report of the Commission of Inquiry into the Department of Lands and Survey and the Land Board undertaken in 1975 (Government of Western Samoa 1975b).

3.4 RECOMMENDATIONS

- (a) That the Lands, Surveys and Environment Act be amended.

- (b) That the specific suggestions outlined in 3.2 relating to new environmental provisions be considered under the Lands, Surveys and Environment Act.
- (c) That leases of Government land under the Lands, Surveys and Environment Act be screened for environmental considerations and modified where necessary.
- (d) That, if environmental legislation is required, Regulations be utilised rather than passing new Acts or amendments to existing Acts.
- (e) That the structure and placement of the Division of Environment and Conservation (DEC) enable as much independence as possible.

PART II HUMAN AND PLANNING CAPACITY

4 HUMAN RESOURCES

4.1 INTRODUCTION

There is a fundamental imbalance in the labour force, with large numbers of unskilled workers and too few skilled workers. The problem of the brain drain has been compounded by the inability of the education system and training system to equip people with the range of skills which employers in both the private and the public sectors are demanding (DP7 1992). Greater emphasis will be given to the economic purpose of fitting people for the economic opportunities which will exist for them (DP7 1992). The upgrading of the Western Samoa Technical Institute as well as the establishment of a vocational training college on Savaii are both welcome steps towards the reconciliation of educational training with available jobs.

Having a job is coming to mean more and more because cash is now required to meet almost all needs. Unfortunately, Samoa's limited economy offers few job opportunities. There has been a tightening of job opportunities within the Public Service. The private sector is reliant on Government creating the proper economic climate for investment, local and foreign, to occur and Government has responded with a policy of commercialisation, corporatisation and privatisation.

Remittances from family abroad, foreign aid and immigration have cushioned potential hardship.

Human resource planning is a prerequisite to the efficient use of human resources. To this end a plan has been prepared for the public sector Public Service Commission (Public Service Commission 1992) and the International Labour Organisation is preparing a plan for the economy as a whole (DP7 1992).

4.2 LAW

The National Environment and Development Management Strategies (NEMS) contains two Strategies relating to Human Resources. Under each of these Strategies are listed several activities aimed at implementation together with reference to the relevant legislation and experience of appropriate bodies.

STRATEGY:

TO IMPROVE THE MANAGEMENT OF HUMAN RESOURCES TO MEET COMMUNITY EXPECTATIONS AND ASPIRATIONS.

- Approve a national policy for the effective development and utilisation of human resources.

Refer to the public sector plan (Public Service Commission 1992) and the plan for the economy as a whole (DP7 1992).

- Strengthen the role of business and industries in sustainable development. Department of Trade, Commerce and Industry (DTCI). Refer also to the Chamber of Commerce and Manufacturers Association.
- Promote worker participation in management functions and decision making.

Labour and Employment Act 1972.

Public Service Act 1977.

Refer to the Public Service Association and the experiences of the Yasaki Company union.

STRATEGY:

TO INTEGRATE MANPOWER PLANNING NEEDS INTO OVERALL ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Establish a tripartite structure to manage industrial relations.

Labour and Employment Act 1972; this Act could be amended to allow employees to strike.

- Improve working conditions and occupational safety.

Labour and Employment Act 1972

4.3 RECOMMENDATIONS

- (a) That the publication of the Public Service Commission (Public Service Commission 1992) and International Labour Organisation planning document (see DP7 1992) be awaited before making final recommendations.
- (b) That the *Labour and Employment Act 1972* be revised in light of contemporary labour laws.

5 INSTITUTIONS

5.1 NON-CUSTOMARY INSTITUTIONS

(A) GOVERNMENT ORGANISATIONS

The environment is broadly defined to include physical, biological, cultural and aesthetic features of the land, sky and sea. Consequently, the Government's efforts to protect the environment have been distributed amongst an array of Ministries, Departments, Divisions, multisectoral Committees, Agencies and Corporations. Most of these, briefly described, are listed below.

(1) DEPARTMENT OF AGRICULTURE, FORESTS AND FISHERIES

Established under s3 *Agriculture, Forests and Fisheries Ordinance 1959*

AGRICULTURE:

To promote and encourage the development of all phases of the planting, agricultural, pastoral, and horticultural industries in Samoa with a view to maintaining and improving the quality and quantity of the products derived from those industries.

FORESTS:

To promote the conservation, production and development of the natural resources of Samoa, especially soil, water and forest. To maintain, and establish where necessary, areas of forest adequate to protect the climate, soil and water resources of the country.

(See *Forests Act 1967*)

FISHERIES:

To regulate fishing in Samoa and the territorial waters belonging thereto or any part thereof and to promote the economical and orderly taking and conservation of fish and the control of any industry engaged on the processing of fish and fish products. (See the *Fisheries Act 1988; Exclusive Economic Zone Act 1977*).

OBSERVATORY:

The Mulinuu Observatory comes within the jurisdiction of this Department. Amongst its functions are weather surveillance, mineral surveys and hydrological testing.

Other Divisions in the Department include Nafanua Propagation Station and Nuu Crop Station.

(2) DEPARTMENT OF BROADCASTING

Established under s3 of *The Broadcasting Ordinance 1959*.

To use the facilities and equipment of the Department for the purpose of promoting and assisting in the development and carrying on of those artistic, cultural, educational, and informational pursuits which are usually included in the purpose of broadcasting.

To collaborate with any society, association, or body of persons not formed for the purpose of pecuniary gain for any of the foregoing purposes.

(3) **CABINET**

Established under the *Constitution*. This body is selected by the Prime Minister. Until this year there were 9 Cabinet Ministers including the Prime Minister. Now there are thirteen. There is a committee of Cabinet called the Cabinet Development Committee. On occasion it becomes involved in projects that may require combined Ministerial action to assist implementation.

(4) **THE DEVELOPMENT BANK**

Established under s3 of the *Development Bank Act 1974*.

It would be useful to add a reference to sustainability of the environment in the operating principles.

(5) **DEPARTMENT OF EDUCATION**

Established under s4 of the *Education Ordinance 1959*.

CURRICULUM DEVELOPMENT UNIT (CDU)

The CDU is responsible for setting the curriculum for schools. An environmental science course is being organised and the geography curriculum could usefully be reviewed for possible environmental strengthening.

(6) **ELECTRIC POWER CORPORATION**

Established under s3 of the *Electric Power Corporation Act 1980*.

Concerned with the generation and supply of electricity.

The Corporation may secure rights to water, install transmission lines on public reserves and across watercourses and alter the course or level of waterbodies. The Act could be amended to encourage solar and renewables. A general policy on environmental matters could be sought.

(7) DEPARTMENT OF HEALTH

Established under s4 of the *Health Ordinance 1959*.

Dwellings must have adequate water supply, refuse water disposal and privy accommodation. Buildings can be cleaned, closed or demolished. (See Health Regulations; *Food and Drugs Act 1967*).

DIVISION OF PUBLIC HEALTH

Deals with complaints concerning matters of health.

HEALTH EDUCATION UNIT

Disseminates information on health issues.

(8) DEPARTMENT OF LANDS, SURVEYS AND ENVIRONMENT

Established under s4 of the *Lands and Environment Act 1989*.

DIVISION OF ENVIRONMENT AND CONSERVATION

No single government department had final responsibility or authority for the full range of necessary environmental initiatives. To remedy that situation, Parliament passed a Lands and Environment Act establishing a Division of Environment and Conservation (DEC) within the Department of Lands and Environment (later the title was changed to Lands, Surveys and Environment).

The DEC is organised into three functional units: the Environmental Planning Unit, the National Parks and Reserves Unit and the Education and Training Unit.

The Environment Board is established under s97 of the Act. At the time of writing no Board members had been appointed.

LAND BOARD

Established under s6 of the Act. Makes recommendations in respect of government land.

LAND COMMITTEES

Established under s8 of the Act.

(9) NATIONAL PROVIDENT FUND (NPF)

Established under s3 of the *National Provident Fund Act 1972*. Major loans are made to the public sector. Parcels of land owned by the NPF are sold from time to time to NPF members. It would be useful to add a reference to sustainability of the environment in the operating principles.

(10) **PARLIAMENT**

Established under the *Constitution*. Samoa now has its first full Parliament to be elected by those 21 years and over. Prior to the general election in April 1991, Samoa had a system of matai suffrage, that is, only matai could vote - except in respect of 2 "European" seats. With the exception of those two seats it is still the case that only matai can run for Parliament.

(11) **THE POLICE SERVICE**

Established under s3 of the *Police Services Act 1977*.

Administers the *Police Offences Ordinance 1961* which under s3(s) and (t) recognises the Director of Works as having authority over mining activities. See other offences.

Administers the *Road Traffic Ordinance 1960* (by authority of s4 of the *Road Transport and Traffic Control Act 1990*).

Police conduct minor prosecutions. Prosecutions of more serious offences are conducted by the Attorney-General's Office.

(12) **PUBLIC WORKS DEPARTMENT (PWD)**

Established under s3 of the *Public Works Ordinance 1959*.

The PWD is empowered to construct and maintain public streets, road, bridges, crossings, culverts, canals, and other facilities for the movement of vehicles, persons, ships or goods.

(13) **THE PRIME MINISTER'S DEPARTMENT**

NATIONAL PLANNING OFFICE
Responsible for publishing Development Plans.

(14) **SPECIAL PROJECTS DEVELOPMENT CORPORATION**

Established under s3 of the *Special Projects Development Corporation Act 1972*.

(15) **DEPARTMENT OF TRADE, COMMERCE AND INDUSTRY**

Established under s3 of the *Trade, Commerce and Industry Act 1990*.

Generally, to promote trade, commerce, industry and tourism in Samoa.
(See *Labour and Employment Act 1972*)

(16) THE MINISTRY OF TRANSPORT

Established under s3 of the *Ministry of Transport Act 1978*.

This Ministry has lost its jurisdiction over traffic to the Police Service but still retains jurisdiction regarding Civil Aviation and Shipping (see the *Shipping Act 1972*).

(17) DEPARTMENT OF TREASURY

Established under s4 of the *Public Money Act 1964*.

Facilitates foreign aid assistance to Samoa.

(18) WESTERN SAMOA VISITORS BUREAU

Established under s3 of the *Western Samoa Visitors Bureau Act 1984*.

APIA BEAUTIFICATION COMMITTEE

The name of this multisectoral committee is self-descriptive. It has expanded its work to include villages throughout Samoa.

Other relevant bodies include the Attorney-General's Office, the Disaster Committee, the Ministry of Women's Affairs, the Division of Internal Affairs and Rural Development, the Public Service Commission, Samoa Land Corporation and the Western Samoan Trust Estates Corporation (WSTEC).

An important multisectoral committee is the Aid Coordinating Committee. This is Government's principal coordinating mechanism, comprising the Ministry of Foreign Affairs, the Treasury, the Planning Division of the Prime Minister's Department and the Public Service Commission. It deals with aid matters and reviews project proposals before submission for donor funding.

Samoa has made the transition from a system of autonomous self-governing village units into a centralised state. While the degree of village self-government is still considerable, the institutions of central government are now operating effectively and gradually extending their influence (Munro 1990).

(B) NON-GOVERNMENT ORGANISATIONS

Non-government Organisations (NGOs) and People's Organisations (POs) have been around for many decades but it was the Earth Summit and Global Forum meetings in Rio de Janeiro in June 1992, that boosted their profile. As regards environment and development work they are in many cases the preferred avenue of aid assistance. There are in excess of 173 registered NGOs in Samoa (Faasavalu 1991) a handfull of which undertake activities associated with environment and development.

(1) **THE DISASTER SUPPORT ORGANISATION**

The Disaster Support Organisation is an umbrella organisation consisting of an informal network of more than 50 NGOs which come together after disasters to coordinate relief activities.

(2) **FAASAO SAVAII**

This conservation group has as its primary focus environmental issues on Savaii. It has a large number of village memberships.

(3) **O LE SIOSIOMAGA SOCIETY (INC)**

Founded in 1990, this national environmental group has as its aims: education and awareness, monitoring the state of the environment, and conservation and promotion of sustainable development practices.

(4) **SOCIETY FOR THE PROTECTION OF RIGHTS OF CONSUMERS IN SAMOA (INC)**

Established in late 1992, this organisation exists to increase the awareness of consumers, to identify and promote their proper interests and the means of their protection and to provide a channel for consumer opinion and representation. It is still in its formative stages and as yet has not developed programmes.

(5) **WESTERN SAMOA FAMILY HEALTH ASSOCIATION**

Established in August 1985 to advocate, promote, encourage and provide within Samoa the establishment of family planning clinics where anyone can obtain assistance for contraception, infertility, human relationships and development, maternal childcare and sexually transmitted diseases.

(6) **WESTERN SAMOA PUBLIC SERVICE ASSOCIATION**

Revived in 1979, this organisation works for the welfare and human rights of workers as well as upholding democratic principles and ensuring economic and social security for members.

(7) **WESTERN SAMOA RED CROSS SOCIETY (INC)**

Established in 1981, this Society's goals are to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendliness, cooperation and lasting peace amongst all people.

(8) **WESTERN SAMOA SUSTAINABLE FARMING SOCIETY**

Established in March 1991 this organisation has a work programme involving distribution of seedlings of legumes to farmers. It has encouraged the use of bio-fertilisers and arranges workshops for its members as well as for the public.

(9) **WESTERN SAMOA WOMEN COMMITTEES DEVELOPMENT ORGANISATION**

Established in July 1925, this organisation deals with health, agricultural and socio-economic issues facing women. It represents the majority of village women's committees.

(10) **YOUNG MENS CHRISTIAN ASSOCIATION OF WESTERN SAMOA**

Established in 1978 to amongst other things: stimulate throughout Samoa the growth of a sense of community; provide opportunities of people to use their skills and talents for the betterment of the community and to promote social justice, freedom and peace in Samoa.

Other NGOs include:

YOUTH: Aupalavou Kataliko Samoa; Methodist Youth Fellowship; Network Business Opportunities For Young Peoples Development (Inc); the Scout Association of Western Samoa; Girl Guides Association of Western Samoa; the Boys Brigade of Western Samoa; Seventh Day Adventist Youth; Western Samoa National Youth Council.

AGRICULTURAL DEVELOPMENT: Agricultural development groups include: Le Alamaligi Young Planters Association; Papaigalagala Planters Cooperative; Saipipi Village Farmer's Association; Lotofaga Farmer's Association; Saleapaga Development Community; Lepiu Farmer's Association; Sagone Vaialia Farmer's Association; Saint Martins Cooperative Society; Samoa Methodist Land Development.

OTHER: Manufacturer's Association; Women in Business; Samoan Arts Society; The National Council of Women.

(C) **OVERSEAS ORGANISATIONS**

In addition to these local institutions there are a number of overseas institutions (in the sense they do not arise from the local populace) which should be mentioned.

(1) **SOUTH PACIFIC REGIONAL ENVIRONMENT PROGRAMME (SPREP)**

SPREP performs a wide variety of functions. As an intergovernmental agency however its mandate is governed by its member governments of the South Pacific region.

(2) **AID AGENCIES**

This includes United Nations and other agencies (e.g., World Health Organisation, World Bank, Asian Development Bank, United Nations Development Programme.), the European Community, the Canada Fund etc. It is encouraging now to see a trend whereby donors are stipulating environmental guidelines be in place or EIAs commissioned in order to minimise environmental damage as a condition precedent to aid being provided.

(3) **NGOs**

The bigger international NGOs, (e.g. Greenpeace, World Wide Fund for Nature, Foundation for the Peoples of the South Pacific) have taken an interest in the Pacific and have programmes in many of the islands. As well there are regional NGOs such as the Pacific Concerns Resource Centre and the fledgling Pacific Island Association of NGOs (PIANGO).

5.2 **CUSTOMARY INSTITUTIONS**

Custom is defined in Black's law dictionary, abridged 5th edition, as:

A practice of the people, which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject matter to which it relates. It results from a long series of actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a tacit and common consent.

More simply stated, a custom is:

A rule of conduct obligatory on those within its scope, established by long usage. (Burke 1976)

Custom is not a direct source of law. In Papua New Guinea, its Constitution clearly states that customary law can overrule Western law as long as it is not cruel or inhumane. The same is not true for Samoa's *Constitution*. To the extent that a custom contradicts the law, it is illegal. There is however recognition of custom in some enactments, for example the *Land and Titles Act 1981*.

The *Constitution* is the supreme law of Samoa. It recognises custom and usage regarding land and titles matters and a Land and Titles Court has been set up for the resolution of disputes regarding land claims or matai titles. But the *Constitution* does not recognise custom and usage as a species of law. Custom and usage therefore has a subordinate ranking in relation to the *Constitution*, ordinary Acts of Parliament and regulations. At least in theory.

In practice village fono (or councils) exercise legislative, executive and judicial functions. They can pass measures which run contrary to the law and sometimes the *Constitution*: imposing curfews, regulating the length of women's dresses and men's hair, compelling church attendance, placing rocks in the road to get cars to slow down, and the like. Often the police are loath to interfere but will do so in respect of the more serious breaches of the law such as kidnap or murder. Nevertheless, village authority can be used for beneficial purposes and enforced in a way not possible through government. For example the village fono can issue a declaration over the local radio station banning dynamite fishing; prohibiting commercial logging; banning the hunting of flying foxes or the killing of turtles. Laws and government institutions need to be responsive to that reality. This may mean for instance, a decentralisation of government functions and the employment of villagers to police their forests or lagoons.

(1) **AIGA** (See Grattan 1948).

Samoa is a traditional society in which the aiga (family) is the basic unit of social organisation. Such a family does not consist merely of parents and children, but encompasses a wider family group of blood and marriage or even adopted connections who all acknowledge one person as the matai or head of that particular family.

Such a matai is a titled person either a chief (alii) or an orator (tulafale) whose particular duty is the leadership and care of the family under his (or her) control, and in return is entitled to the services and cooperation of all members of his family. All members of such a family group need not necessarily live under the same roof or even in the same village but will when occasion requires assemble, usually at the residence of the matai, to discuss family affairs or any happenings affecting the interests of the family, or to discharge the duties associated with deaths or weddings. Such an assembly to discuss family affairs is not merely a duty on the part of members of the family, but is a right which is jealously guarded. It is the duty of the matai to take care of the family land and to apportion it for the use of members of the family in return for services rendered to him as head of the family.

In short, a matai, acting if necessary with the advice and consent of members of the aiga, controls the affairs of the aiga, who look to him for guidance and assistance in their time of need. Family membership requires the allegiance of the individual to the aiga. The interests of the individual are subservient to those of the group.

(2) **VILLAGE FONO** (See Grattan 1948)

Within a village there are five groupings (Le Tagaloa 1991) the central group is the "saofaiga o alii ma faipule", or the chiefs and orators. Their meetings are known as village fono. The other groups are: "saoao ma tamaitai" (unmarried women), "aumaga" (untitled men), "faletua ma tausii" (wives of chiefs and orators), and "fanau o loo aoaoga" (children).

A village comprises groups of families, either claiming descent from a common ancestor or allied for traditional, matrimonial or other reasons. It is capable of existing as a separate political entity.

The titular head and representative of each family is the matai, and village affairs are controlled and directed by a council (fono) of all the matai of the village. This group meets regularly, and on such other occasions as required, to decide any issues in village affairs or to enquire into any misdemeanours, and each family or matai acknowledges the authority of any decision reached after full discussion by the village fono.

Although each matai controls his own family land, the fono normally exercises authority in matters relating to the lay-out and the precincts of the village, the reception of visitors, the use of water holes, the passing of local village laws, the imposition of fines according to Samoan custom (generally foodstuffs) for the breach of a village law or rule, the consideration of or adjudication upon the conduct of any matai of the village, and generally speaking any aspect of the communal life that calls for a wider and more general control than that exercised by a matai. Matters requiring decision are debated until unanimity is reached and all signify their agreement.

(3) **CHURCH** (See Ngan-Woo 1985)

As early European recorders of Samoan history have confirmed, Samoans had an Atua (God) whom they called TagaloaaLagi and whom existed long before the arrival of Christianity.

The early spirit mediums are known as taula aitu. They were regarded as the mediators between the gods and the people. If a mala (great misfortune) befell an aiga or village or an individual, it was generally assumed that the gods had meted out punishment for an indiscretion or for a crime that had been committed.

When Christianity arrived, the Samoans readily accepted his new lotu (religion) as a confirmation and reinforcement of their own spiritual beliefs. That is, there is a God above all gods and there are mediators between the people and the gods. It was also accepted for two other reasons - the timing of missionary John Williams' visit with that of King Malietoa's rise, and the willingness of the London Missionary Society and the Methodist Church to

allow church government to pass into village hands. This resulted in a reinforcement of faaSamoa.

The pastors, priests and other appointed religious people can be thought of as the modern day spirit mediums. The introduced lotu with its teachings, was so relevant to the needs of 19th century Samoa for a lasting peace, that Christianity has received a special place of honour in traditional oratory.

The Church is seen as the vehicle which sanctifies the Samoan culture. To the Samoan involved in every day living, a basic premise is that all things come from God. If, therefore, a calamity befalls any person, it is regarded as a just punishment from God. As a result, faatoesesga (forgiveness) is sought by that person through the pastor. When good tidings are received, no matter who the giver might be as intermediary, thanks are extended to God for the gifts. Samoans, therefore, accord the best food to God's messengers on earth and donations to church are obligatory as thanks giving for His blessings.

The structural hierarchy of many Christian churches is controlled by Samoans themselves. They have fully accepted Christianity and regard churches as their own. Both the churches and faaSamoa benefit mutually from their acceptance of one another.

In controlling the destiny of their own respective churches, Samoans have been able to Samoanise Christian theology and, in turn, faaSamoa has been Christianised. This process has been a two-way street for faaSamoa and the churches, each institution recognising its dependence on the other.

The Church is still a hallowed institution here after one hundred and sixty odd years of religion. The three predominant denominations are Congregationalists, Catholics and Methodists, but they are losing members to a growing number of less traditional religions.

Customary law needs to be integrated with existing black letter law. There are about 300 villages and 16,000 matai in Samoa. It has been observed that Samoa has succeeded in retaining a relatively comprehensive, unwritten, customary law system. Government has recognised the need to promote better liaison with village fono through the passage of the *Pulenuu and Sui o le Malo Act 1978*, the *Internal Affairs and Rural Development Act 1983*, and the *Village Fono Act 1990*. The last Act states in its preamble that its purpose is to:

validate and empower the exercise of power and authority by village fono in accordance with the custom and usage of their villages and to confirm or grant certain powers...

In other words it sanctions the exercise of some aspects of authority and power by the village fono.

The village fono and the church each work according to the faaSamoa. The faaSamoa roughly translates as the "Samoan way of life". The social structure is held together and is actively maintained by an adherence to unwritten but universally understood cultural conventions. These conventions govern the formalised giving and receiving of ava (respect), faaaloalo (reverence), and alofa (love, compassion and concern). These three practices are the basis of spiritual and cultural living. Respect, reverence and love are seen as qualities acceptable to God and hence necessary in the practice of faaSamoa (Ngan-Woo 1985).

A major feature of the faaSamoa is its consumption orientation. It is not considered to be poor cultural practice if material wealth is redistributed to "aiga faalavelave". This term refers to community related obligations and commitment that families experience, and to occasions when the family requires support in order to maintain its strength. Accumulated material wealth can be distributed to the lotu (church), or to the nuu (village) to be used for the support of local activities. The obligation to serve the aiga is referred to as tautua (Ngan-Woo 1985).

Pastors for example are accorded a special place in village rankings. Consequently they are well looked after. Their material needs - a house fully furnished, food and salary - are provided by the village. Parishioners are expected to contribute and for members of the Church without a regular cash income, pressure on them to provide for Church obligations can lead to more intense exploitation of their natural resources. Despite this, the faaSamoa responds to the realities of the Samoan economy: everyone is assured of a job, a piece of land to work on, assistance in times of need, protection in old age and a place in the community. FaaSamoa maintains order and stability. It represents a way of life, a code of behaviour and a perception of the world that is uniquely Samoan. It is an essential part of the Samoan identity and one that Samoans do not want to lose (Munro 1990).

Legislation pertinent to customary institutions includes the following:

Alienation of Customary Land Act 1965
The Constitution of the Independent State of Western Samoa 1960
Internal Affairs and Rural Development Act 1983
Lands and Titles Act 1981
National Cultural Centre Trust Act 1978
Pulenuu and Sui o le Malo Act 1978
Samoa Antiquities Ordinance 1954
The Samoan Village Regulations 1938
Taking of Land Act 1964
Village Fono Act 1990

5.3 **RECOMMENDATIONS**

- (a) That key institutions and key individuals within the aforementioned institutions be identified for inclusion into the Policy Committees recommended in the National Environment and Development Management Strategies (NEMS).

- (b) That environment and development laws relevant to or administered by each government body be compiled for the use of that body and sufficient copies made available for their staff.
- (c) That periodic training be given to officers in each government department regarding comprehension and enforcement of the laws identified for that department.
- (d) That a prosecution procedure for environmental offenders be worked out amongst the Division of Environment and Conservation (DEC), the Police Service and the Attorney-General's Office.

6 ENVIRONMENTAL PLANNING AND ASSESSMENT

6.1 INTRODUCTION

NEMS by definition encompasses environmental planning. The advantages of a national planned strategy over an insular ad hoc approach are obvious; one needs look no further than Apia.

The process of urban and regional planning:

... involves the encouragement of the proper management, development and conservation of resources to promote the social and economic welfare of the community and a better environment (Taulealo 1992).

Samoa does not currently have an all embracing Urban and Regional or (Town and Country) Planning Act, although one is planned. Nevertheless, if such legislation is introduced it should be scrutinised for conformity with the *Lands Survey and Environment Act 1989*. The experience of New Zealand with respect to its town and planning legislation and its environment legislation may be helpful in this regard.

Regarding planning for Apia, DP7 provides that "As soon as possible a comprehensive town plan will be drawn up to guide the town's inevitable growth" (DP7 1992). The establishment of an Apia Municipal Authority is envisaged. This agency could oversee and coordinate developments (roads, telephone lines, the proposed sewerage system, water reticulation) in the Apia area. The proposed Salelologa township would do well to set up a sister organisation before the planning process begins.

Regarding the rest of the country there is an urgent need for a legal framework for the control of land use, including customary land (DP7 1992). There are already some enactments in place which deal with village planning.

As regards environmental assessment, although EIA regulations have been drafted they cannot yet be promulgated into law until inconsistencies in the principal Act (i.e. the *Lands, Surveys and Environment Act 1989*) have been ironed out. Meanwhile developments are proceeding in the absence of such a process. It should be noted though that some funding bodies require environmental assessments for projects they fund even where the recipient country does not have such legislation in place.

Despite the absence of EIA legislation, Government has endorsed the use of EIAs for all major projects (DP7 1992). There will nevertheless be many projects that are not major but will warrant an EIA. The most notable recent example of an EIA concerned the Afulilo Hydroelectric Power Project which was conducted only after the Project was well under way.

Legislation with planning components includes:

Building Alignment Ordinance 1932

Burials Ordinance 1961

Dog Registration and Control Ordinance 1955

The Health Ordinance 1959

- Board of Health (Vermin) Regulations No. 2
- Board of Health (Rubbish) Regulations No. 4
- Board of Health (Mosquitoes) Regulations No. 5
- Board of Health (Buildings, Drainage and Privies) Regs No. 6
- Board of Health (Building, Drainage and Sanitation) Regs No. 8
- Board of Health (Concrete Buildings) Regulations No.16
- The Samoan Village Regulations 1938

Internal Affairs and Rural Development Act 1983

Lands, Surveys and Environment Act 1989

National Cultural Centre Trust Act 1978

National Parks and Reserves Act 1974

Public Works Ordinance 1959

Pulenuu and Sui o le Malo Act 1978

Road Traffic Ordinance 1960

- Road Traffic Regulations 1961
- Road Traffic Orders 1971

Road Transport and Traffic Control Act 1990

Survey Ordinance 1961

- Land Survey Regulations 1939

Taking of Land Act 1964

Village Fono Act 1990

Water Act 1965

Water Authority Act 1992/1993 (not yet assented to)

6.2 RECOMMENDATIONS

- (a) That Environmental Impact Assessment (EIA) regulations be passed as soon as possible.
- (b) That Government's recommendation to set up an Apia Municipal Authority be implemented.
- (c) That a Salelologa Municipal Authority be established.
- (d) That the need for urban and regional planning legislation be investigated.

PART III TARGET ENVIRONMENTAL COMPONENTS

7 POPULATION TRENDS

7.1 INTRODUCTION

A sustainable economy is one which lives within the ability of the environment to sustain indefinitely the impacts which the economy places on it. Without a sustainable economy we progressively diminish the ability of the environment to supply the broad variety of conditions necessary for a full human life. An integral part of achieving a sustainable economy is the stabilisation of population numbers.

While the annual net population growth rate is currently about 0.7 per cent, about 1.4 per cent of the people emigrate each year mainly to New Zealand, American Samoa, and the United States. There is also a large movement of people from Savaii to Upolu, and the movement to Apia is of some concern as it places pressure on urban infrastructure, particularly water supply, and sewage and solid waste disposal. Emigration is greatest in the 15-24 age group; partly for this reason, the birth rate is declining and the population is aging (Thistlethwaite and Votaw 1992).

The impact which a human population has on the environment it exploits is a function both of the size of the population and the resource use per capita. Per capita demand is a measure of the demands for resources of all sorts by each person, including as a resource, the ability of the environment to absorb pollutants generated by that person (Conservation Council of the South East Region and Canberra 1990). Accordingly, the population problem can be tackled either by reducing the population, or by reducing per capita demand for resources; or both.

For cultural and religious reasons, reducing the number of children per family is likely to be difficult.

The other option, cutting down on resource use, will lead to a decline in the standard of living. This will be an unpopular option as many have grown accustomed to improvements in the standard of living.

It has been stated that Samoa should aim for a "sustainable population growth rate". This notion implies a balance between the environment's potential and the demands made upon it by the population. In other words we should attain a national population growth rate that national resources can sustain; or simply, plan our families according to available resources. It has been estimated that each human being needs the products of 2.5 acres of agricultural land. With a total of 323,200 acres available for agriculture the optimum population for Samoa is 130,000 people.

7.2 LAW

The National Environment and Development Management Strategies (NEMS) contains three Strategies relating to Population. Under each of these Strategies are listed suggested activities aimed at implementation together with reference to relevant legislation.

STRATEGY:

TO ATTAIN A SUSTAINABLE NATIONAL POPULATION GROWTH RATE.

- Upgrade the quality and quantity of potable water supplies, and improve public health conditions.

Water Act 1965.

Health Ordinance 1959.

STRATEGY:

TO INTEGRATE POPULATION ISSUES INTO EFFECTIVE ENVIRONMENTAL PLANNING AND ASSESSMENT, IN LINE WITH PUBLIC INTEREST AND COMMUNITY ASPIRATIONS.

- Ensure the proper determination of development proposals to minimise adverse impacts on the environment.

EIA draft Regulations need to be promulgated into law.

Donor agencies are formulating their own criteria as well.

- Improve the design of subdivisions and human settlements and ensure effective provision of public utilities and infrastructures.

Urban and regional planning legislation may be desirable.

- Improve the design requirements for buildings to reflect the local conditions.

Public Works Ordinance 1959.

- Establish a central planning agency charged with all aspects of environmental planning, including the social, physical, natural, economic, historic, and cultural environment.

See Harding 1992, for the establishment of a stand-alone DEC.

STRATEGY:

TO EXPAND AND PROMOTE PRIMARY HEALTH CARE AND EDUCATION, THROUGH COMMUNITY HEALTH CARE PROGRAMMES AND GENERAL SCHOOL CURRICULA

- Improve public knowledge and understanding of nutrition, and encourage consumer protection.

Consumer Information Act 1988.

7.3 RECOMMENDATIONS

- (a) That educational and Non-government organisation (NGO) work associated with family planning be continued rather than passing coercive legislation.
- (b) That the need for urban and regional planning legislation be investigated.

8 WASTE MANAGEMENT

8.1 INTRODUCTION

The garbage problem Samoa is currently experiencing was not a problem in pre-European times as the materials used were biodegradable and non-toxic. Everything that was discarded was either reused or eventually returned to the natural ecosystem.

Samoa has been introduced to disposable products and unnecessary packaging made from materials not found here. Many of these articles do not degrade and contain toxic chemicals which are released during disposal (Greenpeace 1991). A rubbish collection system operates within the Apia area. In an attempt to increase efficiency this task has been contracted to the private sector.

Finding a disposal site for this waste has been a major problem for Government. The previous site was located in a mangrove swamp where there had been no control on the type of waste disposed. An alternative site has been opened at Tafaigata.

The threat to small islands such as Samoa is severe. On the other hand it is easier to control what is allowed to enter and be sold on the island.

Strategies to combat the waste problem include: reducing disposable products and unnecessary packaging; promoting biodegradable products; reducing toxic rubbish; promoting durability and reuse; and promoting recycling.

Apart from the highly visible household garbage, other sources of pollution include sewage (a sewerage system for Apia is being planned. See also the yet-to-be-assented to *Water Authority Act 1992/1993*); hazardous wastes, including pesticides and PCBs; factories and hospitals; and ships.

The waste question is dealt with in detail in a report by Warren Sisarich, 1992. Also of note are reports by Taylor, 1991 and Klinckhamers 1992.

8.2 LAW

The National Environment and Development Management Strategies (NEMS) contains three Strategies relating to Waste Management. Under each of these Strategies are listed suggested activities aimed at implementation, together with reference to relevant legislation.

STRATEGY:

TO PREVENT POLLUTION FROM DOMESTIC AND INDUSTRIAL WASTE.

- Prepare and implement a national oil spill contingency plan.

Petroleum Act 1984.

Shipping Act 1972; Port Control Regulations 1939.

Marine pollution workshop was held in 1992 under the Ministry of Transport (MOT).

See marine pollution conventions, Chapter 17.

- Rationalise the classification, storage, and handling of toxic chemicals.

Lands, Surveys and Environment Act 1989.

Health Ordinance 1959.

Poisons Act 1968.

- Establish pollution standards for domestic and industrial waste output.

Enterprises Incentives and Export Promotion Act 1992.

Lands, Surveys and Environment Act 1989.

Pesticide Regulations 1990.

- Establish incentives for non-polluting industrial processes and operations.

Customs Tariff Act 1975.

Enterprises Incentives and Export Promotion Act 1992.

- Enact legislation to control pollution levels and monitor compliance with standards.

Lands, Surveys and Environment Act 1989

Poisons Act 1968.

- Enact laws to prevent the importation of hazardous waste.

Poisons Act 1968.

Shipping Act 1972.

- Integrate pollution controls into the environmental planning and assessment of development projects.

Lands, Surveys and Environment Act 1989

Draft EIA Regulations.

STRATEGY:

TO REDUCE THE AMOUNT OF WASTE FOR DISPOSAL AND TREATMENT

- Minimise the generation of waste at source.

Customs Tariff Act 1975.

Lands, Surveys and Environment Act 1989

- Promote the recycling of waste materials .

Enterprise Incentives and Export Promotion Act 1992
Lands, Surveys and Environment Act 1989

- Provide incentives to industries for effective utilisation of resources, and recycling of waste products.

Customs Tariff Act 1975.
Enterprise Incentives and Export Promotion Act 1992

STRATEGY:

TO CREATE PUBLIC AWARENESS OF THE SUSTAINABLE AND SAFE MANAGEMENT OF WASTE, INCLUDING TOXIC CHEMICALS.

- Promote consumer awareness to minimise waste from food and stores packaging.

Consumer Information Act 1988.
Customs Tariff Act 1975.

8.3 RECOMMENDATIONS

- (a) That the recommendations on pages four to nine of the Warren Sisarich Report (1992) be considered for legislative action.
- (b) That imported goods be screened and preference given to alternatives which are biodegradable, non-toxic, durable, reusable, repairable, recyclable and come with minimal packaging.
- (c) That tariffs on environmentally sound products be reduced or eliminated and conversely that environmentally unfriendly products be banned or have a high rate of duty imposed.
- (d) That a summary offence procedure be established for littering.
- (e) That the sewerage provisions of the *Water Authority Act 1992/1993* be implemented as soon as possible.

9 LAND-USE PRACTICE

9.1 INTRODUCTION

The proper utilisation of land resources according to their appropriate capabilities holds the key to future land use management (Government of Western Samoa 1993a). Much technical information has been collected relating to land use capability. The ANZDEC 1990 study appears to be the most recent contribution (ANZDEC Limited Consultants 1990).

Article 101 of the Constitution divides land in Samoa into three categories: customary, freehold and public. Two reports give a fuller explanation of these three categories of land (Government of Western Samoa 1975a and Government of Western Samoa 1992).

There is a huge drive to cultivate land, mainly because of income to be made in the form of export earnings. Incentives are offered by the Department of Agriculture, Forests and Fisheries (DAFF) regarding planting of export crops. Weedicides are subsidised to aid land clearing. The Development Bank of Western Samoa (DBWS) lends money to encourage agricultural development. Although good news for the local economy, land cultivation has adversely affected watershed areas and has meant the loss of much of Samoa's rainforests.

Regarding land which Government can influence, i.e. public land, (through the Land Board, WSTEC, Samoa Land Corporation; or through lending institutions such as the DBWS or the NPF) an environmental policy should be formulated and adhered to. Government should set an example for free-hold and customary land owners.

Slightly over 80 per cent of land in Samoa is held according to Samoan custom. Exactly what "Samoan custom" means in relation to land ownership is a matter of interpretation. O'Meara claims the traditional view of customary tenure - where land pertained to a matai title, the holder of which exercised pule or authority over the land - is in eclipse. A new form of ownership is emerging where the person who clears the land is claiming ownership, for him and his descendants. As much as 60 per cent of village customary land may be held in this manner (Government of Western Samoa, 1993b; O'Meara 1987).

Control over land under customary ownership can be influenced by the lending policies of financial institutions such as the DBWS or NPF as well as DAFF subsidies. Compulsory acquisition of customary land under the *Taking of Land Act 1964* in most cases is an unrealistic option and other avenues will need to be explored.

Consideration has been given to whether a land registration system for customary land should be established, the idea being that such land would be able to secure loans by land-owners. This idea should be studied carefully because if implemented it could lead to an acceleration of unsustainable land-use practices.

Free-hold land is the category most amenable to regulation.

9.2 LAW

The National Environment and Development Management Strategies (NEMS) contains two Strategies relating to Land-use Practice. Under each of these Strategies are listed suggested activities aimed at implementation, together with reference to relevant legislation.

STRATEGY:

TO INCREASE OUTPUT FROM LAND UTILISATION.

- Establish a national land use classification system to guide the sustainable utilisation of land resources.

Agriculture, Forests and Fisheries Ordinance 1959.

Alienation of Customary Land Act 1965.

Lands, Surveys and Environment Act 1989 and Land Board.

National Parks and Reserves Act 1974.

Watershed Protection and Management Regulations 1992.

Refer to the WSTEC and Samoa Land Corporation.

Refer to Land Resources Planning Study: Western Samoa. (ANZDEC Limited Consultants 1990).

- Define various land use zones, and assess their sustainable capabilities.

Agriculture, Forests and Fisheries Ordinance 1959.

Alienation of Customary Land Act 1965.

Lands, Surveys and Environment Act 1989.

Watershed Protection and Management Regulations 1992.

Refer to Land Resources Planning Study: Western Samoa (ANZDEC Limited Consultants 1990).

STRATEGY:

TO INTEGRATE APPROPRIATE LAND-USE PRACTICE INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Review the present land tenure system and develop policies to promote better utilisation of customary lands.

The Constitution.

Lands and Titles Act 1981.

An Interdepartmental Committee was convened in 1992 to discuss this question. It may be appropriate to utilise their findings when published. (Government of Western Samoa 1975a).

- Establish a framework for historic and heritage planning.

National Cultural Centre Trust Act 1978.

Robert Louis Stevenson Foundation Act 1991.

- Establish a framework for local economic planning.

Internal Affairs and Rural Development Act 1983.

Trade, Commerce and Industry Act 1990

Village Fono Act 1990.

Development Bank Act 1974.

9.3 RECOMMENDATIONS

- (a) That more thought be given to the proposal that procedures be introduced "to facilitate the more effective and sustainable use of the customary land resource and its acceptability as primary security for loans for economic development projects" (Thistlethwaite and Votaw 1992).
- (b) That the Land Board, Western Samoan Trust Estates Corporation (WSTEC) and Samoa Land Corporation formulate sustainable land use policy regarding land under their jurisdictions.
- (c) That the lending policies of the Development Bank of Western Samoa (DBWS) and the National Provident Fund (NPF) for agricultural development and land acquisition be assessed for environmental safeguards.
- (d) That subsidy schemes for farmers be assessed for environmental implications and the subsidy be discontinued where environmental harm is likely to result.

10 DEFORESTATION

10.1 INTRODUCTION

Deforestation is perhaps the greatest single threat to Samoa's environment. Its effects include: top-soil loss; watershed destruction with subsequent water shortages; drinking water contamination; biodiversity loss; coastal flood damage during the rainy season; marine pollution; and cultural impoverishment. On the other hand, there are examples in the Pacific where conversion of forests to well-managed agriculture has met with success (UNDP, 1990). If deforestation cannot be stopped, then this option should be pursued further.

There are two causes of deforestation: agricultural clearing, and (on Savaii only) commercial logging. There is a third cause: act of God, e.g. fires and cyclones, but this will not be considered here. Nevertheless, the occurrence of such events should encourage us to adopt an even more conservative policy regarding utilisation of our forests.

The problem of agricultural clearing is largely attributable to Government's promotion of revitalisation of the primary sector, sustained economic growth and the desire for an increase in exports. Moreover, Samoa's increasing population puts pressure on families to clear land for more food and to meet ever-rising cash needs. Land once used for subsistence needs is largely being converted for large-scale agricultural purposes. A catalyst in this process is the recognition that the person clearing new land will gain title to it (UNDP, 1990:67).

Deforestation due to logging occurs only on Savaii. There is a huge overcapacity in the logging industry relative to the forestry resource. Between 1977 and 1992, 47 per cent of the merchantable forest of Savaii was cleared. Approximately 40 per cent was due to logging and 60 per cent was due to agricultural and other clearance (Government of Western Samoa 1993b).

A strategy for countering deforestation is detailed in the Western Samoa Forestry Policy Review (Government of Western Samoa 1993b). In relation to existing legislation, it states on page 22:

*the current forest related legislation has the potential to be effective.
However to date this legislation has not been implemented or enforced.*

and concludes in the Policy section on page 18 that:

Changes to legislation are minimal.

10.2 LAW

The National Environment and Development Management Strategies (NEMS) contains three Strategies relating to Deforestation. Under each of these Strategies are listed suggested activities aimed at implementation, together with relevant legislation.

STRATEGY:

TO INCREASE COMMUNITY BENEFITS DERIVED FROM FOREST RESOURCES AND RELATED PRODUCTS.

- Establish a masterplan for the sustainable development of forest resources.

Forests Act 1967.

Watershed Protection and Management Regulations 1992.

Refer to the Forestry Policy about to be finalised.

STRATEGY:

TO REGULATE THE CLEARANCE OF TREES AND FORESTS AREAS.

- Conserve unique rainforests and forest biodiversity.

Forests Act 1967.

National Parks and Reserves Act 1974.

Watershed Protection and Management Regulations 1992.

- Promote the conservation of water catchment areas.

Forests Act 1967.

Water Act 1965.

Watershed Protection and Management Regulations 1992.

- Promote appropriate land use practice for different land areas.

Agriculture, Forests and Fisheries Ordinance 1959.

Alienation of Customary Land Act 1965.

Lands, Surveys and Environment Act 1989.

National Parks and Reserves Act 1974.

Watershed Protection and Management Regulations 1992.

STRATEGY:

TO INTEGRATE THE IMPACTS OF DEFORESTATION INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Promote the allocation of appropriate forest areas for national parks and reserves.

National Parks and Reserves Act 1974.

Robert Louis Stevenson Foundation Act 1991.

- Enact legislation to allocate forest resources and national assets.

Alienation of Customary Land Act 1965.
Forests Act 1967.

- Provide legislation to control forest clearance and monitor soil erosion.

Forests Act 1967.
Lands, Surveys and Environment Act 1989.

10.3 RECOMMENDATION

- (a) That the recommendations and options contained in the Western Samoa Forestry Policy Review (Government of Western Samoa 1993b) be considered.

11 BIOLOGICAL DIVERSITY

11.1 INTRODUCTION

Biological diversity or biodiversity refers to the sum total of all life. This encompasses the ecosystems, species and genes that together constitute the living world. Samoa supports more than 750 species of vascular plants (including 200 species of ferns); 33 land birds (10 are endemic); three species of mammals (all bats); 21 species of butterfly; eight land snails; seven species of lizard; and one species of snake (UNDP, 1990). In the marine sector, there are believed to be 991 species of fish, about 40 of which are found only in Samoa (Government of Western Samoa 1993a). Recent studies of flora and fauna include: Pearsall and Whistler 1991, Whistler 1991, and Park et al 1992.

The reasons for preserving other species are primarily because our well-being is intimately dependent on the well-being of other species. Time after time, creatures thought useless or harmful are found to play crucial roles in natural systems. Predators driven to extinction no longer keep populations of potential pests in check; earthworms or termites killed by pesticides no longer aerate soils; mangroves cut for firewood no longer protect coastlines from the erosive force of the sea. Diversity is of fundamental importance to all ecosystems and all economies. Moreover species are the product of millions of years of evolution and are worthy of protection in themselves (Worldwatch Institute, 1992).

The repositories for this biological wealth are our forests and our coral reefs. Both these ecosystems are under severe threat.

Samoa has one National Park - O le Pupu Pu'e (established 1978) and five Reserves: Stevenson Memorial Reserve (1958), Mt Vaea Scenic Reserve (1958), Vailima Botanical Garden (1978), Togitogiga Recreation Reserve (1978), and Palolo Deep Marine Reserve (1979). The latter is Samoa's only Marine Reserve although a study has been completed for the Aleipata Islands (SPREP 1989a). The *National Parks and Reserves Act 1974* applies only to public land. This raises the problem of dealing with land which is held under customary title (SPREP 1989b).

One attempt to deal with the issue of conservation areas on customary land has been the signing of Agreements between overseas donor organisations and local villages. Falealupo, Tafua, Faala and Salelologa villages have each entered into separate Agreements whereby each agrees to preserve for 50 years a given area of rainforest in return for limited development assistance.

Village fono wield considerable influence and it is not uncommon to hear broadcast over national radio village edicts banning activities such as dynamite fishing and shooting of flying foxes. Generally, in comparison to government agencies, it is easier for the village fono to enforce redress against violations. By the same token if a village fono sanctions an activity such as dynamite fishing, such offences would be very difficult to prosecute as they are unlikely to be reported. Outside agencies may however be called upon to report the

offence or to help bring about a prosecution, for example, where there is an encroachment of fishing boundaries by members of another village.

As an indication of its commitment to biodiversity, the Prime Minister on behalf of the Government of Western Samoa signed the *Convention on Biological Diversity* in Rio de Janeiro in June 1992 (see Chapter 17).

11.2 LAW

The National Environment and Development Management Strategies (NEMS) contains two Strategies relating to Biological Diversity. Under each of these Strategies are listed suggested activities aimed at implementation, together with relevant legislation.

STRATEGY: TO PROTECT AND CONSERVE BIODIVERSITY.

- Protect the natural ecosystems of forests and river environments and preserve typical examples.

Lands, Surveys and Environment Act 1989.

National Parks and Reserves Act 1974.

Stevenson Memorial Reserve and Mount Vaea Scenic Reserve Ordinance 1958.

Water Act 1965.

STRATEGY: TO INTEGRATE THE SUSTAINABLE DEVELOPMENT OF BIODIVERSITY INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Develop planning controls to protect and conserve biodiversity.

Animals Ordinance 1960;

Protection and Conservation of Wild Animals Amendment Regulations 1993.

Lands, Survey and Environment Act 1989.

Forests Act 1967.

- Control and/or prevent the introduction of inappropriate foreign plants and animals.

Animals Ordinance 1960 and Regulations.

Customs Act 1977.

Noxious Weeds Ordinance 1961.

Plants Act 1984 and Regulations.

- Strengthen the capabilities of agricultural inspection and quarantine services.

Agriculture, Forests and Fisheries Ordinance 1959 and Regulations.

11.3 RECOMMENDATIONS

- (a) That the Protection and Conservation of Wild Animals Amendment Regulations 1993 be assessed for the inclusion of other species.
- (b) That similar protection provisions be formulated for plant life.

12 FRESH WATER QUALITY AND SUPPLY

12.1 INTRODUCTION

The need for an adequate supply of quality fresh water is obvious. Current strategies for the development of the water sector include measures to promote watershed management; to provide effective cost recovery; and to establish a water authority (Government of Western Samoa, 1993b).

Water catchment areas are required for two purposes: to ensure the continuous supply of water meeting acceptable quality standards, for domestic, commercial and industrial consumption; and to ensure the continuous supply of water for the generation of hydro electric power. Both quantity and quality are affected by the degradation of water catchment areas due to deforestation because of agricultural clearing and, in the case of Savaii, because of logging. To minimise damage to catchment areas, watershed management has been introduced to the Vaisigano River catchment.

Fingleton (1990) lists the following Acts as having powers relating to water resources: *Taking of Land Act 1964*; *Electric Power Corporation (EPC) Act 1980*; *Lands, Surveys and Environment Act 1989*; *National Parks and Reserves Act 1974*; *Forests Act 1967*; *Water Act 1965*. All except the first two have offence provisions. Recent legislation has also been passed supplementing existing watershed protection legislation.

Watershed degradation is due largely to the drive by land-owners to convert these areas into plantations. Because much of this land is customary, Government is often not able to act.

About two thirds of the population has access to water drawn from surface resources, the other third relying on borewater or rainwater. There has been an excessive use of water which has prompted Government to consider legislation metering water. The Water Authority Act 1992/1993 has been passed by the Legislative Assembly and is awaiting assent by the Head of State.

12.2 LAW

The National Environment and Development Management Strategies (NEMS) contains three Strategies relating to fresh water quality and supply. Under each of these Strategies suggested activities and relevant legislation are listed.

STRATEGY:

INCREASE PUBLIC ACCESS TO CLEAN WATER.

- Introduce sustainable cost recovery systems related to efficiency and equity of services.

Electric Power Corporation Act 1980.

Water Act 1965.

Water Authority Act 1992/1993 (not yet assented to).

STRATEGY:

TO PROTECT THE QUALITY AND SOURCES OF FRESH WATER.

- Establish an independent authority responsible for water resources management.

Water Authority Act 1992/1993 (not yet assented to).

- Develop programmes to protect water catchment areas.

Watershed Protection and Management Regulations 1992.

- Designate public reserves/national parks in water catchment areas.

National Parks and Reserves Act 1974.

Water Act 1965.

Watershed Protection and Management Regulations 1992.

STRATEGY:

TO INTEGRATE THE PROTECTION OF WATER RESOURCES INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Undertake environmental impact assessment to determine the effects of development projects on water resources.

Draft EIA regulations.

- Enact legislation to control the pollution of water resources.

Lands, Surveys and Environment Act 1989.

Police Offences Ordinance 1961.

Water Act 1965.

12.3 RECOMMENDATIONS

- (a) That all watershed areas be identified and that the provisions of the Watershed Protection and Management Regulations 1992 be enforced.
- (b) That the provisions of the to-be-assented-to *Water Authority Act 1992/1993* be implemented as soon as possible.

13 SEA AND MARINE RESOURCES

13.1 INTRODUCTION

The marine domain can be conveniently divided into the inshore area, encompassing mangroves, coastal wetlands, the lagoon and reef, and the offshore area, i.e. the area beyond the reef.

The increase in demand for fish, the introduction of new and very effective fishing techniques, the use of dynamite and poison for fishing, the advent of the cash economy in the village, export markets, the use of refrigerated storage, etc., have all acted to increase fishing pressure on inshore waters (Johannes 1982; Zann 1991).

Environmental degradation of inshore waters has added to the overfishing problem. Many mangrove swamps and marshes, important nurseries for many species of fish, have been drained and reclaimed. Soil erosion, a serious problem on land, has an even more disastrous effect on inshore reefs. Pollution, in the form of industrial discharges, petrocarbons, detergents, pesticides, heavy metals, and untreated sewage rich in nutrients and high in faecal bacteria now discharge directly via storm water drains, or indirectly via the water table into the shallow coastal lagoon off Apia (Zann 1991; Taylor 1991; Klinckhamers 1992).

Almost all of the wetlands in Samoa have been disturbed to some extent (Scott 1993). The inshore area also provides sand and coral deposits which are being mined in an unsustainable way (Observer 1991b).

Under the *Constitution* land seaward of the high water mark is vested in the State. No reference is made to the superjacent waters. Whatever the legal situation, in practice, the inshore waters and their fisheries are under the control of each village fono. In a move to protect the marine environment a marine park (Palolo Deep) has been established in Apia.

The offshore area is notable for bottom fish (e.g. off the west coast of Falealupo) and highly migratory species, particularly tuna. This fishery is largely untapped and efforts have been made to encourage exploitation by local fishermen through such means as the alia (fishing vessel) subsidisation scheme; placement offshore of fish aggregating devices; and the introduction of long-line fishing (Peteru 1990). There has been talk of establishing a local tuna cannery. Meanwhile, tuna continue to be fished under the renewed *Treaty on Fisheries between the Governments of Certain Pacific States and the Government of the United States of America 1993*.

13.2 LAW

The National Environment and Development Management Strategies (NEMS) contains three Strategies relating to sea and marine resources. Under each of these Strategies suggested activities and relevant legislation are listed.

**STRATEGY:
TO INCREASE THE HARVESTABLE STOCKS OF FISH AND OTHER MARINE
RESOURCES.**

- Approve sustainable limits for fish catches and resource utilisation.

Exclusive Economic Zone Act 1977.

Fisheries Act 1988.

New fisheries legislation is being drafted.

Treaty on Fisheries between the Governments of Certain Pacific States and the Government of the United States of America, 1993.

- Establish sustainable levels of species harvesting.

Fisheries Act 1988.

New fisheries legislation is being drafted.

**STRATEGY:
TO CONSERVE AND PROTECT MARINE BREEDING AND FEEDING AREAS.**

- Protect remaining wetlands and mangrove swamp areas.

Lands, Surveys and Environment Act 1989: ss119 - 123;

Refer to Land Board.

Constitution, Art. 104.

Refer to the publication *A Directory of Wetlands in Oceania* (Scott 1993).

- Prevent the pollution of lagoons and coastal areas from domestic and industrial operations.

Health Ordinance 1959.

Lands, Surveys and Environment Act 1989.

Police Offences Ordinance 1961.

- Control the siltation of lagoons from soil erosion.

Agriculture, Forests and Fisheries Ordinance 1959.

Forests Act 1968.

Lands, Surveys and Environment Act 1989.

Watershed Protection and Management Regulations 1992.

- Develop the sustainable mining of coral sand.

Lands, Surveys and Environment Act 1989.

Police Offences Ordinance 1961.

Black sand (as opposed to coral sand) also needs protection along with other marine mineral deposits.

- Encourage appropriate traditional fishing practices that are compatible with the sustainable development of marine resources.

Fisheries Act 1988.

STRATEGY:

TO INTEGRATE THE SUSTAINABLE DEVELOPMENT OF MARINE RESOURCES INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Establish pollution limits for the marine environment.

Fisheries Act 1988.

New fisheries legislation is being drafted.

A Shipping Bill, a Ports Authority Bill and a Marine Pollution Bill are being reviewed.

- Develop legislation to control the pollution and destruction of the marine environment.

Refer to the foregoing legislation (see above).

See marine pollution treaties regarding ship-based pollution (Chapter 17).

13.3 RECOMMENDATIONS

- (a) That legislation regarding mining of marine minerals be consolidated, including placing responsibility for issuing licences under the Department of Lands, Surveys and Environment (DLSE).
- (b) That a marine pollution regime be prepared from the draft Shipping Bill, Ports Authority Bill and Marine Pollution Bill.
- (c) That a list be compiled of international conventions regarding maritime pollution to which Samoa is a Party.
- (d) That Division 5 and Division 6 of Part VIII of the Lands, Surveys and Environment Act be brought into line with present fisheries and marine pollution legislation.

14 TRADITIONAL ARTS, CULTURE AND HISTORY

14.1 INTRODUCTION

The value in maintaining culture includes identity, pleasure and personal enrichment and meaning to life and the world (Government of Western Samoa 1993a). In relation to the environment, our culture - more specifically our customs - have in the past operated successfully (more or less: not all customary practices were environmentally sound) as an environmental management regime. For these reasons, it is felt that we should seek to preserve our culture.

Realistically change, in the form of westernisation of the culture, is unavoidable. New lifestyles, new technologies and new patterns of behaviour are rarely forced upon us. We consent to them. The price we pay is erosion of our culture and values.

Custom is a process, it changes as people's behaviour changes. What we know today as custom may not have been so several years ago. But we come to accept these as custom as they seem to cover not only the practices we have accept today but also the patterns of behaviour and social norms of the present (Reti 1992; see also UNDP 1990). Change can not be halted. It is a question of selecting those changes which preserve rather than eliminate desirable cultural practices.

Changes in our behaviour (e.g. because of a preference of overseas foodstuffs or building materials) often influence our culture directly. Culture is also influenced indirectly through alteration of the physical environment. Development projects such as Afulilo Hydroelectric dam, the Royal Samoa Hotel Project and Faleolo International Airport have altered the environment, destroying plant and animal habitats and possibly historic sites.

If the affected area had been used for certain activities, then the culture is impoverished to the extent that those activities are no longer possible. The folklore, legends and sayings of the country are the poorer to the extent that we no longer see the birds, trees, fishes, practices etc. which are the subject of those folklore, legends and sayings.

Conventional tourism is an example of a form of development well known for adversely affecting both peoples' behaviour and their physical environment. Yet it is one of the key growth areas. Recent detailed studies (KRTA 1988; Government of Western Samoa 1992) though give culture and the environment considerable attention and promote the concept of ecotourism.

There appears to be a clear desire to develop economically. Samoa's Sixth Development Plan stressed sustained economic growth, a greater degree of national self-reliance, improved quality of life for all Samoans, and protection of the environment as some of its goals. But DP7 concludes that it cannot be claimed that impressive progress during the past decade has been made towards achieving any of these objectives, despite development expenditure running into millions of dollars. Some cultural practices are implicated.

Although this is a testimony to the potency of the culture against development pressures, yet the conclusion is that there is a disharmony between the two ideologies.

14.2 LAW

The National Environment and Development Management Strategies (NEMS) contains two Strategies relating to traditional arts, culture and history. Under each of these Strategies suggested activities and relevant legislation are listed.

STRATEGY:

TO STRENGTHEN THE SENSE OF SAMOAN IDENTITY THROUGH THE PRESERVATION OF TRADITIONAL ARTS, CULTURE AND HISTORY.

- Establish a national museum for the preservation of traditional artifacts.

National Cultural Centre Trust Act 1978.
Samoan Antiquities Ordinance 1954.

- Develop national archive facilities to manage historic documents and Samoan history.

National Cultural Centre Trust Act 1978.
Samoan Antiquities Ordinance 1954.
Youth, Sports and Culture Affairs Act 1976.

- Establish a national cultural centre to promote the teaching and practice of traditional arts and crafts.

National Cultural Centre Trust Act 1978.

STRATEGY:

TO INTEGRATE THE PRESERVATION OF TRADITIONAL ARTS, CULTURE, AND HISTORY INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Provide incentives and controls to preserve historic monuments and sites.

National Cultural Centre Trust Act 1978.
Robert Louis Stevenson Foundation Act 1991.
Western Samoa Visitors Bureau Act 1984.
Forests Act 1967.

14.3 RECOMMENDATIONS

- (a) That EIAs contain cultural impact assessments.
- (b) That the Department of Youth Sports and Culture (DYSC) have an oversight role with respect to cultural legislation.

PART IV INTERNATIONAL ACTION

15 ATMOSPHERE

15.1 INTRODUCTION

There is no data suggesting Samoa has a problem with atmospheric pollution. Certainly there is nothing approaching the level of pollution in major European and American cities. The main sources of pollution are smoke from fires (caused by umu making on Sunday mornings, burning of grass clippings and other vegetation during village and household clean-ups and forest fires), vehicle exhaust emissions and smoke or fumes from industrial emissions. Education at the village level can help lessen the incidence of fires. Sound environmental practice suggests the monitoring and reduction of vehicle exhaust and factory emissions. In addition the use of renewable forms of energy should be encouraged.

At international fora we are involved in lobby groups such as the Alliance of Small Island States in an effort to put pressure on industrial nations to reduce their green-house gas emissions as well as gases and materials which contribute to ozone layer depletion. We also should attempt to reduce or ban the use of materials containing CFCs and other ozone unfriendly materials.

15.2 LAW

The National Environment and Development Management Strategies (NEMS) contains two Strategies relating to atmosphere. Under each of these Strategies suggested activities and relevant legislation are listed.

STRATEGY:

TO SUPPORT GLOBAL EFFORTS TO IMPROVE ATMOSPHERIC CONDITIONS AND AIR QUALITY.

- Encourage the use of materials and products that do not deplete the atmospheric ozone layer.

Consumer Information Act 1988.

Customs Tariff Act 1975.

Legislation prohibiting products containing CFCs and other ozone depleting materials.

- Promote the sustainable development of land transport infrastructure.

Ministry of Transport Act 1978.

Road Traffic Ordinance 1960.

- Conserve forest resources, and create tree cover.

The Forests Act 1967.

- Encourage the use of alternative and renewable energy sources.

Customs Tariff Act 1975.
Electric Power Corporation Act 1980.

- Review vehicle inspection standards to reduce exhaust emission and improve engine performance.

Lands, Surveys and Environment Act 1989.
Road Traffic Ordinance 1960.

STRATEGY:

TO INTEGRATE THE DETERMINATION OF ATMOSPHERIC QUALITY INTO ENVIRONMENTAL PLANNING AND ASSESSMENT.

- Review current policies on the importation and use of motor vehicles.

Customs Tariff Act 1975.
Business Licences Ordinance 1932.
Road Traffic Ordinance 1960.

- Establish pollution limits for atmospheric discharge from domestic and industrial activities.

Lands, Surveys and Environment Act 1989.
Health Ordinance 1959.

- Provide incentives for non or less-polluting industrial processes and products.

Enterprise Incentives and Export Promotion Act 1992
Trade, Commerce and Industry Act 1990.

- Develop appropriate designs for buildings and towns in response to predicted climatic changes.

Health Ordinance 1959.
Public Works Ordinance 1959.

15.3 RECOMMENDATIONS

- (a) That revenue legislation be amended to encourage renewable forms of energy.
- (b) That regulations under the Lands, Surveys and Environment Act be promulgated to deal with green-house gas emissions and ozone depleting materials.

16 CLIMATE CHANGE

16.1 INTRODUCTION

To the extent that the cause of climate change is human-induced (island states are on the receiving end of two centuries of unregulated industrial activity) island states can lobby at international fora against polluting activities by industrial nations and even aspiring developing countries. A more pragmatic option might be to insist on a compensation fund of some kind for Pacific Island countries as well as technical assistance in monitoring the phenomenon of sea-level rise. Scientific monitoring equipment has been installed in Samoa and other islands in the region and data obtained from these should aid in our preparations.

On a practical level there is little that can be done to combat the effects of climate change other than to prepare for them.

16.2 LAW

The National Environment and Development Management Strategies (NEMS) contain one Strategy relating to climate change. Under this Strategy suggested activities and relevant legislation is listed.

STRATEGY:

TO IMPROVE PREPAREDNESS OF PREDICTED CLIMATE CHANGE.

- Approve appropriate planning standards for coastal and low-lying areas.

Health Ordinance 1959.

Public Works Ordinance 1959.

- Develop urban design criteria to minimise the effects of climate change and potential sea-level rise.

Public Works Ordinance 1959.

Investigate the need for urban and regional planning legislation.

- Adopt appropriate land-use practice for low-lying areas.

Agriculture, Forests and Fisheries Ordinance 1959.

16.3 RECOMMENDATION

- (a) That the need for urban and regional planning legislation be investigated.

17 INTERNATIONAL TREATIES

17.1 INTRODUCTION

Under its constitutional processes, a Convention only becomes part of the law of Western Samoa after substantive implementing legislation has been adopted i.e. a treaty will not bind Western Samoa unless domestic legislation implementing that treaty is first in place. The extent to which implementing legislation may be required depends on the Convention itself. Some Conventions contain self-executing provisions, which apart from the act of ratification or accession will bind Western Samoa, without the need for implementing legislation. Other Conventions merely codify customary international law, which applies to Western Samoa without the need for accession, ratification or other forms of implementation. Unlike some other Pacific Island states the question of whether Western Samoa should become a Party to a particular treaty, is a prerogative of the Executive (Cabinet) and not Parliament.

It is interesting to note that since the conclusion of the Rio Summit in June of 1992 there has been a sudden upsurge of interest shown by the Government of Western Samoa in becoming a Party to various environmental treaties. Prior to the Rio Summit only a handful of environmental treaties were either signed, ratified or acceded to by Western Samoa. In the nine months following the Rio Summit the Government of Western Samoa has approved becoming a Party to three global environmental treaties, one regional Convention (Western Samoa has approved becoming a Party to the Biodiversity, Climate Change Convention, Vienna Convention on the Protection of the Ozone Layer and the Montreal Protocol on substances that deplete the Ozone Layer; and the Convention on the Prohibition of Driftnet Fishing in the South Pacific) and is presently considering becoming a Party to a number of other environmental conventions both regional and global (submissions for accession to the CITES Convention and a number of International Maritime Organisation (IMO) Conventions dealing with marine pollution are presently before Cabinet for approval).

The main reason for this shift in attitude towards environmental treaties, stems from the fact that there now exists a political will or a major resolve on the part of politicians to accept these environmental treaties coupled with a growing concern of the need to tackle significant environmental issues which are addressed by some of these environmental treaties.

17.2 GLOBAL TREATIES

United Nations Convention on the Law of the Sea (UNCLOS) Montego Bay 1982

UNCLOS was adopted by 130 states, at Montego Bay, Jamaica, on 10 December 1982. The Convention requires 60 ratifications before it enters into force, and there are now 55 ratifications deposited with the Secretary-General of the United Nations.

UNCLOS denotes an entire part - Part XII consisting of 46 Articles whose specific object is the protection and preservation of the marine environment. In addition, there are other

provisions in other Parts of UNCLOS, which while mostly concerned with other matters (e.g. Territorial sea, straits, archipelagic waters, exploration and exploitation of the international seabed, marine scientific research and the Exclusive Economic Zone) also have an indirect bearing on the safeguard of various existing species and consequently the environment.

Of special importance are the statements in Article 192 that States have the obligation to preserve and protect the marine environment, and in article 194, that States have a duty to take all necessary measures to prevent, resolve and control marine pollution from any source.

Western Samoa signed the Convention on the 28 September 1984 and has been for some time considering ratification. The legislative requirements of UNCLOS pose a substantial problem for Western Samoa in that it would require a significant overhaul of existing legislation and the further introduction of new legislation in order to conform with the provisions of UNCLOS. This problem appears to be one of the reasons why there has been a marked delay by Western Samoa in ratifying UNCLOS.

Furthermore, Western Samoa subscribes to the view that the majority of the provisions of UNCLOS including Part XII have now become part of Customary International Law. That being the case, the need to ratify UNCLOS therefore may not be necessary. However the extent to which parts of UNCLOS have formed part of Customary International Law is not entirely clear; what seems clear is that there exists State practice both on a global and regional level which appear to support the view that Part XII and other provisions relating to the protection and preservation of the marine environment have now become part of Customary International Law.

Nevertheless, UNCLOS has had a notable influence on the introduction of legislation in other areas especially with regards to the concept of the Exclusive Economic Zone (see the *Exclusive Economic Act 1977* and *Fisheries Act 1988*). Part V of UNCLOS gives the coastal State sovereign rights to explore and exploit the living and non-living resources in the zone. It also empowers the coastal State with jurisdiction in the zone over marine scientific research and the protection and preservation of the marine environment.

In terms of Articles 192 and 194 of UNCLOS, Western Samoa has taken some legislative steps to protect and preserve the marine environment from some sources of marine pollution (see also Section 123 of the *Lands, Surveys and Environment Act 1989* concerning the pollution of Western Samoan "Waters"). An elaborate Shipping Act was drafted in 1991 with the intention of dealing with marine pollution. However, it was felt by the Ministry of Transport that the provisions dealing with marine pollution were quite inadequate as they were limited only to ship-borne pollution and did not address other sources and, in particular, land-based sources of marine pollution which is the major contributor. There is now under way, a new legislative programme undertaken by the Attorney-General's Office which is designed to review the draft Shipping Act, the Ports Authority Act, and also introduce a Marine Pollution Act which will deal with marine pollution emanating from all possible sources.

Vienna Convention on the Protection of the Ozone Layer 1985
Montreal Protocol on Substances that Deplete the Ozone Layer 1987
London Adjustments and Amendments to the Montreal Protocol 1990

The Vienna Convention entered into force on 22 September 1988, and the Protocol on 1 January 1989 while the London Amendments, which were adopted in 1990, have not yet entered into force.

Although Western Samoa was not an original signatory to the Convention and Protocol, it acceded to both legal instruments on the 21st December 1992. It has not yet considered ratifying the 1990 London Amendments. The Vienna Convention is a result of the growing concern of States from every region of the world about the urgent need for effective action in protecting the ozone layer from chlorofluorocarbons (CFCs), halons and other substances such as greenhouse gases which contribute to global warming.

The Convention which has the character of a framework treaty, was followed by the 1987 Montreal Protocol, which establishes precise qualitative restrictions on the use of CFCs and halons.

The Protocol is relevant in having provided for the definition of the substances to be controlled, the time-scale for reducing the production or consumption of such substances, the trade restrictions in respect of non-parties, the special treatment for developing countries (mainly a ten-year grace period for the implementation of the control measures).

The amended Montreal Protocol provides for the establishment of a special multilateral fund to provide financial and technical cooperation including the transfer of some ozone friendly technologies to developing countries in order to meet their development needs while also protecting the environment.

This has significant implications for Western Samoa; as a Party, it will be able to acquire alternative technologies and compete better in the world export market for the new CFC-free products. Furthermore, Western Samoa will be entitled under Article 5 of the Protocol to a ten-year grace period, so as to comply with the control measures and so avoid disrupting the progress of development.

The adjustments and amendments to the Montreal Protocol, which were agreed upon at the second meeting of the Parties to the Protocol in London in 1990, resulted in a substantial improvement of the international regime. The reduction and phasing out of CFCs and halons was accelerated. The list of the controlled substances was widened in order to include isomers of any controlled substances and new control measures were introduced with respect to other substances.

A list of transitional substances (i.e. substances which may be substitutes for the controlled substances during the transitional period) was drafted. The barriers on trade of controlled substances with non-parties were strengthened. A specific procedure to deal with complaints for non-compliance was added.

RECOMMENDATION

Although the London Amendments have not yet entered into force; they form part of the international legal regime aimed at protecting the Ozone Layer from further depletion. The London Amendments establish a significant link between the developing countries' capacity to fulfil their obligations and effective implementation of financial cooperation. It is therefore recommended that Western Samoa should ratify the London Amendments, if it intends to obtain financial and technical assistance which is needed for switching from controlled substances to ozone friendly substitutes.

Framework Convention on Biological Diversity 1992

The absence of an international Convention dealing with the protection and preservation of genetic diversity to a large extent provided the impetus for the adoption of the Convention on Biological Diversity at the Rio Summit in June 1992.

The methods to be used for the preservation of biodiversity are both static and dynamic. The first category includes the creation of seed banks and culture collection, the setting up of inventories of genetic resources, the establishment of a network for the exchange of data and genetic material among states.

The dynamic methods aim at the maintenance of plant and animal populations in their natural environment. In this respect genetic preservation tends to coincide with the protection of wildlife or, in other words, it is clear that the preservation of biodiversity is impossible without the preservation of wildlife.

The preservation of genetic diversity is also related to biotechnologies. The Convention is the first international agreement in the field of the environment where developing countries have something specific to offer (being generally rich in biological resources) and from which they benefit.

IMPLICATIONS FOR WESTERN SAMOA

Like the Vienna Convention and its related Protocols on the Protection of the Ozone Layer, the Biodiversity Convention provides for the establishment of a financial mechanism to provide resources for developing countries to meet the agreed incremental costs of complying with the Convention as well as access to the transfer of technology and the benefits arising from the exploitation of the relevant genetic material.

Western Samoa, like many of the small Pacific Island States, is characterised by a high degree of species diversity and an extraordinary level of endemism. What is required is more scientific information about the physiology, biology, genetics and ethnology of these species so that they can be protected. Western Samoa requires assistance from developed countries and from global organisations such as UNEP and IUCN which have the expertise to prepare country studies and to undertake research programmes on the needs for the conservation of biodiversity. Some of these species are starting to disappear and urgent action is therefore required.

RECOMMENDATION

To assist Western Samoa's efforts in conservation and sustainable use of biological diversity, important measures ought to be assisted (e.g. compilation or an inventory list identifying the various components of biological diversity). Assistance to Western Samoa in this regard is provided for under Article 12 of the Convention which provides for the establishment of programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components.

There has been a certain amount of support to ratify the Convention not only within political circles but also from various outside organisations (e.g. Greenpeace has formally submitted a request urging Western Samoa to ratify the Biological Diversity Convention). In March this year the Government of Western Samoa approved ratification of the Convention. Legislative measures to implement the Convention are now under way, and its Instrument of Ratification is expected to be deposited with the Secretary-General of the United Nations before the end of the year.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989

The Basel Convention was adopted under the auspices of the United Nations Environment Programme (UNEP) on 22 March 1989. The Convention entered into force on 5 May 1992, and at present 23 countries are Parties to the Convention.

The Convention is based on the principle that states should take necessary measures to ensure that transboundary movement of hazardous wastes are consistent with the protection of human health and the environment, whatever the place of disposal. Although the Convention provides for specific notification, authorisation and control procedures, it is not intended to encourage transboundary movement of hazardous wastes for such wastes should, as far as compatible with environmentally sound and efficient management, be disposed of in the State where they were generated.

Very clearly, the Convention recognises that every State has the sovereign right to ban the entry or disposal of hazardous wastes in its territory. In the South Pacific Region there appears to be an increasing desire for the absolute ban or prohibition of transboundary movement of hazardous wastes. This was evident at the Fifth Intergovernmental Meeting of the South Pacific Regional Environment Programme (SPREP) held at Apia in September 1992, where the Government of Papua New Guinea submitted a proposal for a regional Convention on the Ban of the Import into the South Pacific and the Control of Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region.

Western Samoa signed the Basel Convention on 22 March 1989, but has yet to accede. Although Western Samoa is a signatory, it is unlikely that it will accede because the Convention does not provide for an absolute ban on the transboundary movement of hazardous wastes. Therefore it would appear that, if there is agreement on a regional

Convention, it is likely that Western Samoa would support such an initiative. However, since accession is a policy matter, it still remains a question for Government to decide on.

Climate Change Convention 1992

Western Samoa signed both the Climate Change and Biological Diversity Conventions at the Rio Summit in June 1992. Western Samoa has already expressed its intention to ratify both Conventions, and its instrument of ratification is expected to be deposited with the Secretary-General of the United Nations before the end of this year.

Although both Conventions are important from the point of view of the Government, the Climate Change Convention is probably the more important of the two in terms of its implications for Western Samoa. While climate change will negatively affect every country, some states (for instance, small Pacific Island States like Western Samoa) are more threatened than others. Western Samoa is very vulnerable, because like many of its Pacific Island neighbours, the concentration of population and many economic activities are located in coastal areas.

RECOMMENDATION

Although the amount and rate of rise in sea level remain uncertain, there is no doubt that sea-level rise and global warming will produce social and economic impacts on Western Samoa. Western Samoa, in particular, is very vulnerable to extreme natural events such as cyclones and what is required is forward planning in order to minimise the negative impacts of climate change. Thus climate change should be a basic consideration for any development planning in Western Samoa.

17.3 REGIONAL TREATIES

Convention on Conservation of Nature in the South Pacific Apia 1976

The Apia Convention was adopted at Apia in 1976. It entered into force on 28 June 1990. There are five States Party to the Convention, including Western Samoa (which is the Depository).

The Apia Convention is concerned primarily with the importance of the protection of areas and of species. 'Protected Areas' are divided into 2 categories: 'National Parks' and 'Natural Reserves' (see Article 1, which requires Parties to encourage the creation of protected areas). The Convention provides for Protective measures, such as the listing of species threatened with extinction. The Convention also allows for appropriate arrangements to be made for the customary use of areas and species according to traditional cultural practices (see Article 6). Parties agree to establish and maintain a list of species of indigenous fauna and flora that are threatened with extinction, found within their countries and give such species as complete protection as possible (see Article 5). Another major facet of the Convention is its promotion of cooperation between Parties in the conduct of research, exchange of information and the interchange and training of personnel (see Article 7).

The Apia Convention has now entered into force, however, for a long time it was neglected and did not receive wide regional acceptance. It has been suggested that the lack of regional support for the Convention lies in the fact that conservation of natural resources is regarded by some countries as a national, rather than a regional matter, as each country's needs are dependent on their own development priorities and in any case the objectives set out in conservation are generally pursued through national legislation in almost all Pacific countries (Pulea 1985).

A possible reason for this apparent neglect was certain developments such as the establishment of SPREP and later the SPREP Convention (1986) which attracted attention away from the Apia Convention and its objectives.

Western Samoa was not only the first to become a Party to the Apia Convention but also amongst the first to adopt national legislation in the region aimed at implementing objectives of the Apia Convention (*see National Parks & Reserves Act 1974* and its subsequent Amendment 1976). There is now a bill before Parliament which is aimed at implementing some of the conservation policies of government but, more importantly, it will give effect to the objectives of the Convention and the obligations which are required of States Party to the Convention - see the Protection and Conservation of Wild Animals Amendment Regulations 1993. This Regulation repeals the Animals (Protection of Wild Birds) Regulations 1981 and the Amendment Regulations 1989 which gives a list of protected species.

WEAKNESSES

The Convention is weakened by the absence of any enforcement provision for the preparation of management plans or for consultation with the community and affected interests in the establishment and management of protected areas. No special arrangements are made for funding of Convention-related activities or for secretariat support.

RECOMMENDATIONS

The continuing importance of the Apia Convention lies in the fact that it gives a necessary focus to nature, conservation and protected area concerns within the broader sustainable development principles governing SPREP.

Consideration may need to be given to the preparation of Protocols which link the Apia and SPREP Conventions and which provide detailed legal recognition to the importance of tradition and conservation approaches which embrace the multiple and subsistence uses of natural resources by island communities.

Alone, the Apia Convention is not a strong instrument for regional cooperation in addressing modern conservation problems but, when viewed as one component of an integrated policy for SPREP, it provides a useful legal basis on which to build a comprehensive conservation strategy and, despite some weaknesses, it should be supported.

Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (SPREP Convention) (Noumea) 1986

Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region (1986)

Protocol for the Prevention of Pollution in the South Pacific Region by Dumping (1986)

The SPREP Convention with its related Protocols was adopted at Noumea, on 25 November 1986. The Convention entered into force in 1990. Western Samoa signed the Convention and Protocols on 25 November 1986 and ratified the same on 19 July 1990.

The SPREP Convention makes provision for preventing, reducing and controlling pollution from ships, land-based sources, sea-bed activities, radioactive wastes, nuclear testing, dumping and atmospheric sources, and also makes provision to prevent, reduce and control damage caused by mining and coastal erosion (see Articles 6-13).

As indicated by its name, the SPREP Convention is a broadly-based instrument for the protection of the natural resources and the environment of the South Pacific.

The thrust of the SPREP Convention and both Protocols, is directed mainly towards pollution. In general, the provisions of the Convention follow closely the language of Part XII of the Law of the Sea Convention (UNCLOS) and in slightly more detail than the latter (part XII of UNCLOS deals with the Protection and Preservation of the Marine Environment).

The Protocol on pollution emergencies, recognises the need for the Parties to develop contingency plans in combating pollution emergencies (e.g. a draft National Oil Spill Contingency Plan was developed as a result of a joint initiative between the Ministry of Transport and the Department of Lands, Survey and Environment) and to this end requires the Parties to establish procedures to ensure that information about pollution incidents is reported as quickly as possible. The associated Protocol on dumping is aimed at preventing pollution by the dumping of hazardous substances. The Protocol is modelled on the 1972 London Dumping Convention (LDC); (Note that radioactive waste dumping and testing is banned under the Nuclear Free Zone Treaty (NFZT) 1985).

The two South Pacific Protocols appear to be essentially similar to other regional protocols around the world, for example, the 1978 Kuwait Protocol Concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency, the 1981 Abidjan Protocol Concerning Cooperation in Combating Pollution in Cases of Emergency and the 1976 Barcelona Protocol on Dumping and Combating of Oil Pollution and Other Harmful Substances in Cases of Emergency.

It must be noted that while the SPREP Convention is essentially a 'Pollution Control' Convention and has no application to land as such there is, however, one provision which is specifically aimed at protection of rare or fragile environments. Article 14 obliges Parties to take "all appropriate measures" to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat in the

Convention area. Protocols could be added progressively to the SPREP Convention on the initiatives of the Parties so that it evolves into a broad-based environmental management agreement.

Thus, the conservation of nature provision could be developed in the form of a protocol to address a wide range of current island issues, for example, endangered, migratory and introduced species. Such a conservation protocol would better integrate the SPREP Convention and complement the Apia Convention.

WEAKNESSES

The SPREP Convention only applies to the marine and coastal environment, and has no application to land which means that its territorial scope is limited (article 3 of the SPREP Convention allows the Parties to add 'areas' under its jurisdiction "within the Pacific Ocean"). Article 5 which obliges the Parties to prevent, reduce and control pollution merely requires them to use their "best endeavours". The SPREP Convention is also weakened by the lack of any detail on liability and compensation for damage resulting from pollution in the Convention Area, except for the general obligation for Parties to cooperate in the formulation of "appropriate rules and procedures" for such damage. (This limitation may be overcome by the possibility that Western Samoa is likely to accede to the 1969 Civil Liability Convention (CLC) and the 1971 international Convention on the Establishment of an International Fund for Oil Pollution Damage (Fund) which provides for compensation for damage from oil pollution).

Although the Convention does provide for prevention and punishment of various kinds of polluting activity under this Protocol, given the vastness of the area and the lack of any enforcement capability on the part of Pacific Island States, the Convention is ineffective in this respect.

But, despite these limitations, the SPREP Convention is probably the most significant Convention operating in the South Pacific in terms of the duties it places on countries in relation to the pollution and conservation of the marine environment.

RECOMMENDATIONS

There is no existing legislation in Western Samoa which deals with pollution of the marine environment in the manner envisaged by the SPREP Convention. The *Shipping Bill 1993*, does contain some provisions on marine pollution, but this is limited only to ship-borne pollution and does not cover other sources of marine pollution, such as land-based sources of marine pollution.

The drafting of a comprehensive Marine Pollution Act is presently being considered, which will not only give effect to the pollution provisions of the SPREP Convention but also to Part XII of UNCLOS.

A number of significant measures have been adopted by Western Samoa regarding pollution emergencies. Firstly, a draft oil spill contingency plan has already been developed and referred to a sub-committee for further review. It is hoped that the plan will be finalised

before the end of 1993. Secondly, such an oil spill contingency plan would be greatly enhanced by the likely possibility that Western Samoa may join the International Oil Pollution Compensation Fund (IOPC), a world-wide organisation established under the Civil Liability Convention (CLC) and the Convention on the Establishment of an International Fund for Oil Pollution Damage (FUND) which provides compensation for oil pollution damage resulting from oil spills. There is also the need to establish adequate procedures so that, in the event of a pollution emergency, information is available to enable appropriate action to be taken. In this respect, SPREP could act as the coordinating body within the region to disseminate information. These in the event of a pollution emergency, the Parties would be well informed as to what action ought to be taken. At the national level a small body could be established within the Ministry of Transport to act as the local focal point, in conjunction with the cooperation of the Department of Lands, Survey and Environment, to liaise with SPREP and other relevant organisations such as the International Maritime Organisation (IMO).

As far as enforcement is concerned the resources are clearly not available and it would assist Western Samoa if the capability to enforce and punish polluting activity did exist.

South Pacific Nuclear Free Zone Treaty 1985 (Rarotonga) and Related Protocols

The Nuclear Free Zone Treaty (NFZT) was adopted at Rarotonga in 1985. The NFZT entered into force on 11 December 1986, with 13 Pacific Island States, including Australia and New Zealand, Parties to the Treaty.

The Treaty is aimed at creating a nuclear-free zone in the South Pacific. The Parties agree to prevent the testing, stationing, manufacturing and dumping of nuclear weapons and devices within their territories and also to generally discourage areas of the region being used for nuclear testing and as waste disposal sites.

The Treaty provides for prevention of dumping of radioactive wastes or other radioactive matter within the South Pacific Nuclear Free Zone. The NFZT has received wide regional support. Territories aside, only Vanuatu is not Party to the Treaty.

The three protocols to the Treaty are aimed at securing the agreement of nuclear power states to: (1) refrain from using territories that they may be occupying within the region to manufacture, station and test nuclear explosive devices; (2) not to use or threaten to use any nuclear explosive device against Parties to the Treaty; and undertake not to test any nuclear explosive device anywhere within the area defined as "the South Pacific Nuclear Free Zone". The United States, France and Britain have not signed the Protocols while China and the former USSR have supported them. The stance of the United States, France and Britain on this issue has not been well received within the region.

Western Samoa signed the Treaty on 6 August 1985 and ratified on 20 October 1986.

IMPLICATIONS FOR WESTERN SAMOA

There is no doubt that the dumping of hazardous wastes and nuclear testing has had an adverse effect on the environment of the South Pacific. The nuclear tests carried out by the

United States on Bikini Atoll in the 1950s, clearly reflect the effect of nuclear weapons testing on the environment.

The position of Western Samoa, like the majority of Pacific island governments, is clear; it is against any dumping of nuclear wastes or testing in the South Pacific Region.

Western Samoa must continue to join other Pacific Island countries in protesting against the continued nuclear tests that are carried out by the superpowers and dumping of hazardous wastes if it is to ensure the protection of its fragile environment.

Convention for the Prohibition of Fishing with long Driftnets in the South Pacific, Wellington 1989

This Convention was adopted in Wellington in 1989. The Convention provides in Article 2 that:

each party undertakes to prohibit nationals and vessels documented under its laws from engaging in driftnet fishing activities within the Convention area.

The Convention also requires each Party to it to prohibit the import of fish products caught using a driftnet and restricting port access to driftnet fishing vessels. The impetus for concluding the Driftnet Convention was drawn from concerns that were expressed throughout the region and globally that large amounts of albacore tuna were being harvested through driftnetting. In particular, there was also the concern about the indiscriminate effect of driftnets on other marine species.

These concerns culminated in the passing of the Tarawa Declaration by the South Pacific Forum Meeting held at Tarawa, Kiribati, condemning the use of driftnets in the South Pacific Region. This matter was taken up further by the United Nations in 1992 where a resolution was passed which, amongst other things, placed a moratorium on large-scale pelagic driftnet fishing on the high seas.

Although Western Samoa was not a signatory to the Convention the Government has approved its becoming a Party to the Convention. National legislation implementing the Convention has also been completed and it is expected that its instrument of ratification should be lodged before the end of the year.

IMPLICATIONS FOR WESTERN SAMOA

The Convention, and the various resolutions and declarations regarding driftnet fishing clearly reflect not only a regional but global concern about the adverse effect on driftnetting on marine resources. Available scientific evidence clearly shows that the practice of driftnetting is an environmentally unsound practice that threatens the conservation and sustainable management of living marine resources.

If the controls on driftnetting are to be realised it would be necessary for Western Samoa to ensure that national legislation, prohibiting its nationals and vessels fishing within its waters, is enforced effectively.

17.4 TREATIES OF INTEREST

The current attitude and environmental policies of the government clearly reflect the significance which it places on environmental protection.

Apart from the Conventions which it has become a Party to in 1993 it has shown an interest in other Conventions. These include some of the IMO (marine pollution) Conventions such as the *International Convention for the Prevention of Pollution from Ships 1973/78* (MARPOL) and the CLC and FUND Conventions establishing the IOPC Fund. These marine pollution Conventions undoubtedly complement the SPREP Convention and its Protocols. Other Conventions of interest include the Convention on the International Trade in Endangered Species (CITES) which complements the Biodiversity Convention.

Finally, one outcome of the Earth Summit in Rio de Janeiro in June 1992, was that non-government organisations which attended the Global Forum, entered into their own treaty-making process. Treaties were drafted on more than 30 environment and development topics, including climate change and biodiversity. The treaties (not all of which are in final form) are open for signature by NGOs. Signatories have a good faith obligation to adhere to the terms of the treaty signed.

17.5 RECOMMENDATIONS

- (a) That Samoa ratify the London Amendments to the *Vienna Convention to the Protection of the Ozone Layer, 1985*.
- (b) That, in the interests of acceding to the Framework Convention on Biological Diversity, encouragement be given to efforts aimed at compiling a catalogue of species.
- (c) That a list of environment and development treaties which Samoa has ratified, or is Party to, be drawn up.

PART V CONCLUSIONS

18 CONCLUSIONS

- I The Division of Environment and Conservation should be at the hub of environment and development issues. Its organisational structure must therefore be considered carefully (see PA Management Consultants 1985; KRTA 1988 ; Green 1990; and Harding 1992) in terms of its autonomy (financially and politically) in carrying out its functions. Harding (1992) proposes a structure for the DEC which gives it more independence than present.

The empowering provisions for the DEC should be reviewed in relation to existing environment and development laws and also to make sure no relevant area has been omitted from its purview. Its powers *vis-a-vis* other departments is a relationship that will be defined over time through practice.

The present situation suggests that oversight capability is retained within the DEC while specific aspects of environmental control be administered within the departments presently designated (Harding 1992).

- II *The Lands, Surveys and Environment Act 1989* is in serious need of revision. A separate Act is warranted to avoid interpretation difficulties resulting from being lumped together with the provisions of the old Land Ordinance. Provisions within the present Act should be harmonised both for internal consistency and for consistency with other legislation.

Desperately needed EIA regulations are being held up because of defects within the empowering Act which should be ironed out as a matter of urgency.

The regulation making section under the *Lands, Surveys and Environment Act 1989* covers a wide field and should be fully utilised before seeking to achieve the same result by a separate Act. Ordinances, or Acts, or provisions in Acts may be repealed and resurrected in the form of a consolidated Regulation in order to save time in finding the law.

- III There is a substantial body of existing environmental legislation which is ineffective for the reason that it is unenforced.

The reasons for legislation not being enforced could include ignorance by a department of the law it administers, confusion over which department has the lead role for enforcement, lack of technical or staffing capacity to enforce the law, reluctance of a department to become involved in contentious matters involving villages or customary land, technical hitch in the law itself, or just lack of motivation.

The result is progressive degradation of the environment.

- IV Methods for enforcing existing legislation should be attempted rather than seeking new legislation. Departments should be supplied with copies of the laws they administer and advised on how best to enforce them.

A summary prosecution procedure should be instituted amongst the DEC, the Police Service and the Attorney-General's Office to facilitate routine or minor environmental infringements such as littering.

In instances where infringements occur on customary land, involvement of the village fono should be sought. Education has a major role to play as those who are aware of environmental problems are likely to be more easily persuaded to desist from the prohibited activity.

- V There is potential for conflict between competing governmental policies. On the one hand Government support sustained economic growth, which may have the effect of encouraging unsustainable development practices. On the other hand it wants to preserve its environment and culture. The idea of sustainable development recognises that trade-offs are inevitable but urges that the development impetus be tempered with a concern for the livelihood of future generations (and in our context it might be added, realisation that Samoa is resource poor). Recognition by Government of the need for environmental impact assessments for projects is an important first step.

APPENDIX 1

List of Environmental (and Related) Acts and Regulations as at June 1993 (Short Form)

1. *Agriculture, Forests and Fisheries Ordinance 1959*
 - Pesticide Regulations 1990
2. *Alienation of Customary Land Act 1965*
3. *Alienation of Freehold Land Act 1972*
4. *Animals Ordinance 1960*
 - Animal Diseases Prevention Regulations 1968
 - Animals (Protection of Wild Birds) Regulations 1981
 - Protection and Conservation of Wild Animals Amendment Regulations 1993
5. *Building Alignment Ordinance 1932*
6. *Burials Ordinance 1961*
7. *Business Licences Ordinance 1960*
8. *Civil Aviation Act 1963*
9. *Commerce Act 1978*
10. *The Constitution of the Independent State of Western Samoa 1960*
11. *Consumer Information Act 1988*
12. *Customs Act 1977*
 - Customs Amendment Regulations 1986
 - Order Prohibiting Export of Logs 1990
13. *The Customs Tariff Act 1975*
14. *Development Bank Act 1974*
15. *Dog Registration and Control Ordinance 1955*
16. *Electric Power Corporation Act 1980*
17. *Enterprise Incentives and Export Promotion Act 1992*
 - Enterprise Incentives and Export Promotion Act Regulations 1992
18. *Excise Tax (Domestic Administration) Act 1984*
Excise Tax (Import Administration) Act 1984
Excise Tax Rate Act 1984
19. *Exclusive Economic Zone Act 1977*
20. *Fisheries Act 1988*
- ✓ 21. *Food and Drugs Act 1967*
22. *Forests Act 1967*
 - Forests Regulations 1969, 83, 91
 - Watershed Protection and Management Regulations 1992
23. *The Fulusou Land for Public Purposes Ordinance 1949*
24. *Handicrafts Industry Act 1965 (Repealed)*
- ✓ 25. *The Health Ordinance 1959*
 - Board of Health (Vermin) Regulations No. 2
 - Board of Health (Rubbish) Regulations No. 4
 - Board of Health (Mosquitoes) Regulations No. 5
 - Board of Health (Buildings, Drainage & Privies) Regs No. 6

- Board of Health (Building, Drainage & Sanitation) Regs No. 8
- Board of Health (Concrete Buildings) Regulations No.16
- The Samoan Village Regulations 1938
- 26. *Internal Affairs and Rural Development Act 1983*
- 27. *Komesina o Sulufaiga (Ombudsman) Act 1988*
- 28. *Labour and Employment Act 1972*
 - The Labour & Employment Regulations 1973
- 29. *Land for Foreign Purposes Act 1992/1993*
- 30. *Land Registration Act 1992/1993*
- 31. *Lands, Surveys and Environment Act 1989*
 - Watershed Protection and Management Regulations 1992
- 32. *Lands and Titles Act 1981*
- 33. *Ministry of Transport Act 1978*
- 34. *National Cultural Centre Trust Act 1978*
- 35. *National Investment Corporation Act 1981*
- 36. *National Parks and Reserves Act 1974*
- 37. *Noxious Weeds Ordinance 1961*
- 38. *Omnibus Fees and Charges Amendment Act 1988; 1991*
Omnibus Rates and Exemptions Amendment Act 1986
- 39. *Petroleum Act 1984*
 - Petroleum Regulations 1960
- 40. *Plants Act 1984*
 - Plants and Soil Importation (Disease Control) Regs 1951
- 41. *Poisons Act 1968*
 - Poisons Licences Regulations 1969
 - Selenium Control Regulations 1969
 - Deadly Poisons Regulations 1969
 - Poison Regulations 1969
- 42. *Police Offences Ordinance 1961*
- 43. *Produce Export Ordinance 1961*
- 44. *Public Service Act 1977*
 - Public Service Regulations 1953
- 45. *Public Works Ordinance 1959*
- 46. *Pulenuu and Sui o le Malo Act 1978*
- 47. *Road Traffic Ordinance 1960*
 - Road Traffic Regulations 1961
 - Road Traffic Orders 1971
- 48. *Road Transport and Traffic Control Act 1990*
- 49. *Robert Louis Stevenson Foundation Act 1991*
- 50. *Samoan Antiquities Ordinance 1954*
- 51. *Shipping Act 1972*
 - Port Control Regulations 1939
- 52. *Special Projects Development Corporation Act 1972*
- 53. *Statistics Act 1971*
- 54. *Stevenson Memorial Reserve and Mount Vaea Scenic Reserve Ordinance 1958*
- 55. *Survey Ordinance 1961*
 - Land Survey Regulations 1939
- 56. *Taking of Land Act 1964*

57. *The Territorial Sea Act 1971*
58. *Trade, Commerce and Industry Act 1990*
59. *Village Fono Act 1990*
60. *Water Act 1965*
61. *Water Authority Act 1992/1993; (not yet assented to)*
62. *Western Samoa Trust Estates Corporation Act 1977*
63. *Western Samoa Trust Estates Corporation Reconstruction Act 1990*
- *Western Samoa Trust Estates Corporation Reconstruction Act 1990, Order as to Vesting of Lands*
64. *Western Samoa Visitors Bureau Act 1984*
65. *Youth, Sports and Cultural Affairs Act 1976*

APPENDIX 2

List of Environmental (and Related) Acts and Regulations as at June 1993 (Long Form)

Agriculture, Forests and Fisheries Ordinance 1959

PURPOSE:

To promote and encourage the development of all phases of the planting, agricultural, pastoral, and horticultural industries in Samoa: s4(a)

To promote in conjunction with the Department of Lands, Surveys and Environment the conservation, production and development of the natural resources of Samoa, especially soil, water and forest and the following principles and objectives:

- To maintain and establish where necessary, areas of forest adequate to protect the climate, soil and water resources of the country;
- As far as possible to provide, on a sustained yield basis, the forest produce requirements of the people and the industry of the country and to encourage an export trade;
- To ensure the best use of all forest lands for the general benefit of Samoa: s4(b)

[See also *Forests Act 1967*.]

To regulate fishing ... and to promote the orderly taking and conservation of fish and the control of any industry engaged in the processing of fish and fish product.

[see *Fisheries Act 1988*; *Exclusive Economic Zone Act 1977*.]

MINISTER'S POWERS:

[These are listed in s11 and are development oriented and not particularly sensitive to environmental issues, even though this Act was the primary vehicle for natural resource conservation. Such a conflict between development and conservation goals usually ended up with the Ministry fulfilling its primary goal of developing an industry with consequent neglect of environmental oversight. A possible solution is to create an umbrella environmental organisation with control over a number of natural resource and environmental health areas. The DEC creation is an important step in the direction of placing comprehensive oversight within one organisation. (Harding 1992)]

REGULATIONS:

Stock Control Regulations 1973

The Minister may establish and undertake disease prevention, eradication, or control programmes in respect of any or all types of stock.

[Although this Regulation controls introduced and domesticated species (although "poultry" is included in the definition of stock to mean "any fowl" which would include wild fowl e.g. lupe) this is relevant to wildlife biodiversity conservation under Lands, Surveys and Environment Act 1989]

Pesticide Regulations 1990

Pesticides need to be registered before they can be imported or sold. r10

A Pesticides Technical Committee established to, amongst other things, promote the efficient, prudent and safe use of pesticides. r5.

[principle of the "least amount of the least hazardous pesticide"]

AMENDMENTS:

1989

definition of pesticide added. s2

function of Department to now include regulation, control and supervision of the manufacture, importation, storage and use of pesticides. s3

regulations can be made for the matters described above. s4

1992/1993

Not seen.

ADMINISTRATION:

Animals Ordinance 1960

- Animal Diseases Prevention Regulations 1968
- Animals (Protection of Wild Birds) Regulations 1981

Exclusive Economic Zone Act 1977

Fisheries Act 1988

Forests Act 1967

Noxious Weeds Ordinance 1961

Plants Act 1984

- Plants and Soil Importation (Disease Control) Regulations 1951

Produce Export Ordinance 1961

Rhinoceros Beetle Ordinance 1954

Alienation of Customary Land Act 1965

PURPOSE:

Allows leasing and licensing of customary land for up to 30 by 30 years for hotel or industrial (e.g. manufacturing and processing) purposes; or up to 20 by 20 years for public, commercial, business (including agricultural and pastoral) or religious (under the 1978 Amendment) purposes. ss2 & 4

The Minister of Lands, Surveys and Environment may approve the lease or licence subject to other covenants, conditions, and stipulations. In the case of a forestry purpose the *Forests Act 1967* also has to be conformed to. s4(e)

[This Act has not met with much success in achieving its purpose of stimulating economic use of customary land . Government was prompted in 1991 to instruct an interdepartmental review into the land tenure system, the objective of which was to "enable a more productive use of customary land for agriculture and other developments" (Observer 1993b). As regards public land, Government has passed the Enterprise Incentives and Export Promotion Act 1992 (a consolidation of previous incentives legislation)].

Alienation of Freehold Land Act 1972

PURPOSE:

To control the alienation of freehold land to overseas corporations and persons who are not resident citizens. preamble

Minister of Lands, Surveys and Environment to consider various factors such as whether the prospective purchaser can achieve the purpose for which he requires the land, and the public interest. s7

Animals Ordinance 1960

PURPOSE:

Covers animal trespass (mainly cattle and pigs) - Part II - and measures against importation of animal diseases - Part V.

[For another provision on animal trespass, see s3(y) of the Police Offences Ordinance 1961. For cruelty to animals see s6 of the same Ordinance.]

Animals can be absolutely or partially protected. ss 41 & 42.

There is a prohibition against taking of birds without prior authorisation (s43A).

[A prohibition covering bats should be made as well.]

REGULATIONS:

Animal Diseases Prevention Regulations 1968

To prevent against animal diseases brought in by ships and in some cases aircraft. (r8: rat guards on mooring lines; r11: ship's garbage)

Animals (Protection of Wild Birds) Regulations 1981

Fifteen wild bird species requiring absolute protection are identified as well as three wild bird species requiring partial protection.

[This Regulation, and the Amendment Regulation following, could be transferred to the DEC to administer; s95(d)(ii) Lands, Surveys and Environment Act 1989. The DEC is now looking after National Parks and Reserves, a function previously held by the Agriculture Department.]

Animals (Protection of Wild Birds) Amendment Regulations 1989

[The fruitbat or pe'a is added to the list of partially protected wild birds (even though it is not a bird). Regulations for protection of animals can be made under s41 of the principal Act and a separate regulation for bats could thus have been made.]

Protection and Conservation of Wild Animals Amendment Regulations 1993

[Not seen, although it appears these new regulations repeal the 1981 and 1989 regulations.]

AMENDMENTS:

1989

Makes "attempting to export birds" an offence and gives power of entry, search and seizure on any ship or aircraft.

Building Alignment Ordinance 1932

An example of an early piece of planning legislation. Administered in the Department of Lands, Surveys and Environment (DLSE). It has been honoured more in its breach than in its observance. The problematic s8 (no new building to be built on the seaward side of Beach Road) has very belatedly been repealed under the *Lands, Surveys and Environment Amendment Act 1992/1993*.

Town Area of Apia is given a preliminary definition ("the area within a radius of 2 miles from the intersection of Vaitele and Vaea streets"). s2

Burials Ordinance 1961

Another example of planning legislation which has not worked. Administered in the Department of Health.

Duty of alii and faipule (chiefs and orators) of every village to provide a cemetery for that village (s3) which is to be registered by the Director-General of Health (s4). These cemeteries are in addition to government cemeteries.

Business Licences Ordinance 1960

All persons carrying on a "business or calling" - as defined in the Ordinance - are required to first obtain a licence, s4(1).

[Conditions (which can include environmental requirements) can be imposed on licences under s4(2). Such conditions may need to be spelt out in a separate provision and in s22 which deals with regulations (see especially s22(1)(a) and (e)). The Ordinance should operate as more than just a revenue earning piece of legislation for the Department of Inland Revenue.]

AMENDMENTS:

1988

Provides that motor vehicle dealers keep adequate supplies of spare parts in stock for the type of vehicle imported.

1989

No comment.

Civil Aviation Act 1963

Carriage of munitions and dangerous goods is regulated under s67.

Administered by the Ministry of Transport.

AMENDMENTS:

1980

No comment.

Commerce Act 1978

PURPOSE:

To keep under review trade practices and the prices of goods and services.

[Price control may be useful as a tool in regulating the type and amount of goods brought into the country in relation to local goods]

Administered in the Department of Trade, Commerce and Industry.

AMENDMENTS:

1988

No comment.

1992/1993

Not seen.

The Constitution of the Independent State of Western Samoa 1960

[There is no specific enshrinement of environmental matters although the following provisions have a bearing on the environment.]

Laws are not invalidated which provide for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals. Art. 14(2)(f)

Laws may provide for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas. Art. 14(2)(k)

[Government should set an example with respect to its own land, e.g. as regards trespassing and squatting in the Vaisigano water catchment area which is predominantly Government as opposed to customary land.]

The three classes of land in Samoa are: customary, freehold or public land. The last category means land vested in Western Samoa (which probably excludes land held by embassies or consulates) free from customary title and from any estate in fee simple and is therefore largely synonymous with government land.

[Compare with Article 123. The common law notion of "eminent domain" probably the legal basis for the Taking of Land Act 1964 needs to be re-thought as regards Samoan customary land.]

Subject to the provision of any Act, land below the high water mark shall be public land. Art. 104(1)

AMENDMENTS:

1991

No comment.

Consumer Information Act 1988

PURPOSE:

To make provision for informative labelling and marking of goods and for the prevention of deceptive or misleading packaging, labelling and advertising.

[This Act may help to raise consumer awareness about the type and quality, particularly of imported goods, and the availability of environmentally friendly alternatives.]

Customs Act 1977

PURPOSE:

To provide for the collection of duties and for the export and import of goods.

"Customs Acts" includes the Plants and Soil Importation (Disease Control) Ordinance 1950. This Ordinance has been repealed but not so the Regulations made under it which would therefore still be captured by the definition of "Customs Acts". The Plants Act 1984 replaces the repealed Ordinance.

[See also the Agriculture, Forests and Fisheries Ordinance 1959]

Certain food and drugs may be prohibited from being imported into the country.

[See also the Consumer Information Act 1988]

REGULATIONS:

1986 Amendment Regulations

No comment.

Order Prohibiting the Export of Logs, 1990

AMENDMENTS:

1984

No comment.

The Customs Tariff Act 1975

Goods produced by local industry can be protected by levying a higher duty on imported goods. s9

[This measure may or may not be desirable in the interests of sustainable economic growth.]

The customs tariff may be altered for certain (mainly trade) purposes. s5

[A list of tariffs on environmentally friendly items and those necessary for sustainable development purposes should be compiled and recommendations made for the duty to be reduced or eliminated. Similarly a list of those items harmful to the environment or not useful for sustainable development practices should be compiled and our disapproval of those items reflected in the amount of duty charged.]

The First Schedule to the Act contains 32 categories of goods and their corresponding rates of duty.

The Second Schedule lists items qualifying for concessionary rates of duty.

AMENDMENTS:

1980;1980;1981;1984;1986;1989

No comment.

1984

Updates the entire First Schedule.

Development Bank Act 1974

PURPOSE:

To promote the expansion of the economy of Samoa for the economic and social advancement of the people of Samoa by making loans and giving financial, technical and advisory assistance. s5

The Bank gives assistance having regard to, inter alia, the degree to which the enterprise is or will become or remain of value to the economy of Samoa and the extent to which the public interest of Samoa will be served by assisting the enterprise. s6

[Sustainability of the environment in the Bank's operating principles could be usefully added.]

AMENDMENTS:

1981;1984;1984;1986

No comment.

Dog Registration and Control Ordinance 1955

PURPOSE:

To control dogs by a system of registration. s4

Power to seize and dispose of dogs not wearing a badge. ss13 and 14

Administered by the Police Service.

[Relevant to animal welfare as well as the aesthetics particularly of the town area. Refer to the Animals Ordinance 1960.]

Electric Power Corporation Act 1980

PURPOSE:

Relates to the control and supply of electricity.

Functions under s15 include:

- to control and provide and maintain, on, over or under any land, generating and storage works, dams, roads, water races, penstocks, fuel storage facilities, electric lines, transformer stations, or any other plant or equipment used in the generation, transmission or distribution of electricity.
- to use waters or obtain the right to use waters in the sea, lake, waterfalls, rivers or streams for the purpose of generating electricity.
- to alter the course or level of any river, stream, water course or other area of water for the purpose of generation, transmission or distribution of electricity.

[Appropriate EIA studies should be conducted. Alternative sources of energy supply should be investigated and renewable energy alternatives encouraged.]

AMENDMENTS:

1981;1984;1986;1989

No comment.

Enterprise Incentives and Export Promotion Act 1992

PURPOSE:

To encourage the establishment and expansion of domestic and export enterprises in Samoa by making provision for the grant of certain relief from

duties and income tax to persons engaging in enterprises approved for the purposes of the Act.

[The repatriation of dividends, under s25, of profits and income by a shareholder in a company that is an export enterprise is counter-productive to the aim of sustainable economic growth. Consequently its usefulness as a bargaining tool or incentive to attract investment should not sacrifice short-term gain for long term unsustainability.]

This Act repeals both the *Enterprises Incentives Act 1984* and the *Industrial Free Zone Act 1974* and is administered by the Department of Trade, Commerce and Industry.

[The application for an approval order under s11 should be screened by the Enterprises Incentives Board as to whether an EIA is required or not. Approval depends on, amongst other things, the enterprise approval being in the public interest and of benefit to the economy. It would be desirable to amend the Act - or get an administrative decision - that environment effects and related indirect costs on the community will be taken into account in determining this (Warren and Sisarich, 1992).]

A regulations section appears to have been omitted.

See the Schedule for the types of enterprises eligible for approval under the Act.

REGULATIONS:

1992/1993

Not seen.

Excise Tax (Domestic Administration) Act 1984
Excise Tax (Import Administration) Act 1984
Excise Tax Rate Act 1984

The same comments can be made with this trilogy of Acts as with the Customs Tariff Act, as many items are subject to both excise and customs levies.

[Refer also to GST legislation.]

Exclusive Economic Zone Act 1977

PURPOSE:

Establishes an EEZ. s3

Regulations (not inconsistent with any other enactment) can be made for the zone. s15

The *Fisheries Act 1988* repeals the off-shore fishing and licencing provisions of this Act.

Administered by Department of Agriculture, Forestry and Fisheries.

Fisheries Act 1988

PURPOSE:

The conservation, management and development of Samoan fisheries and the licensing and control of foreign fishing. To promote the protection and preservation of the marine environment.

[One might add after the last sentence "in conjunction with the Department of Lands, Surveys and Environment" as was done for the Agriculture, Forests and Fisheries Ordinance. The Act does not adequately address coast conservation issues. Additional coast conservation and coastal planning requirements would aid protection of coastal marine resources such as mangrove forests and near-shore reefs (Harding 1992). A Fisheries Conservation Bill (not seen) is currently being prepared and this may address those concerns. The Fisheries Act deals both with in-shore and off-shore fishing and is administered by Department of Agriculture, Forestry and Fisheries.]

The Director may, in consultation with fishermen, industry and village representatives prepare and promulgate by-laws for the conservation and management of fisheries. s3(3)(d)

[The procedure for promulgating by-laws is specifically described in this Act (in contrast to, for instance the Internal Affairs and Rural Development Act which does not describe a procedure). The usefulness of having by-laws should be contrasted with the effectiveness of village fono conservation rules, which are aired by some villages over 2AP radio station.]

Prohibited fishing methods (e.g. explosives and poisons) are spelt out in s4 and the penalties provided in s21.

Regulations which may be made under the Act include: fisheries conservation; the marketing and distribution, import and export of fish and fish products; regulating aquaculture; and prevention of marine pollution. s25

[The marine pollution function can be discussed in conjunction with the Marine Division of the Ministry of Transport. A draft Shipping Bill and Ports Authority Bill are believed to deal with marine pollution in more detail.]

Food and Drugs Act 1967

[This is primarily a consumer protection Act but is relevant in dealing with the problem of importation of unwanted matter and the fate of this matter as waste.]

Administered in the Department of Health.

Forests Act 1967

PURPOSE:

Objectives are identical to s4(b) of *Agriculture, Forests and Fisheries Ordinance 1959* but no amendment has been made stating that the objectives are to be pursued in conjunction with the Department of Lands, Surveys and Environment.

Forestry Division established to have the primary control and management of all State forest land.

[The new Western Samoa Forestry Policy Review (Government of Western Samoa 1993b) should be referred to.]

Definition of "Forest land". The definition includes "State Forest land". s2

Leases or licences may be granted over any land for any purpose of forestry. (See s2 for meaning of "purpose of forestry".)

Land may be declared protected land. s59

Customary land may be made available for forestry. s65

[See the Alienation of Customary Land Act 1965.]

Historic places in forest lands may be protected. s68

[This section goes further than the National Cultural Centre Trust Act 1978. See also the National Parks and Reserves Act 1974, s8.]

Tree diseases. ss70 and 71

[See the Plants Act 1984.]

Regulations may be made over an extensive range of matters. s73

Administered by DAFF.

REGULATIONS:

1969;1983;1991

No comment. The 1991 Amendment was not seen.

Watershed Protection and Management Regulations 1992

Not seen.

The Fuluasou Land for Public Purposes Ordinance 1949

[This is an example of land taken for water-supply purposes. Compare with: Land for Hydro Electric and Water Supply Purposes Ordinance 1929; Land for Water Supply Purposes Ordinances 1921, 1935, 1955; and Taking of Land Act 1964.]

Handicrafts Industry Act 1965 (Repealed)

[This Act was repealed by the *Statutes Repeal Act 1990* but there may be value in reviving a new body with the same functions. Handicraft making has cultural importance as well as tourism (money earning) potential. Villages like Uafato are heavily reliant on wood-carving as a means of earning income which in turn helps preserve wood-carving skills.]

[See the National Cultural Centre Trust Act 1978, s9(a)(vi).]

The Health Ordinance 1959

PURPOSE:

A function of the Department is to promote and carry out research and investigations in relation to matters concerning the public health. s7(c)

[The public health link allows health inspectors to carry out important work in matters of environmental pollution.]

The Act provides a procedure for the hearing of what it defines as "nuisances" but adds that this is in addition to and does not affect rights at law or in equity or under any other Ordinance. Part III

[Section 22(n) should be expanded to include Vaiusu Bay in addition to Apia Harbour.]

Some control can be exercised regarding construction of buildings. Part II

[This is relevant with reference to planning legislation (which Samoa does not have) and should be cross-referenced to the work of inspectors in the Public Works Department which administers the Board of Health Regulations nos.6 (Buildings, Drainage and Privies), 8 (Buildings, Drainage and Sanitation) and 16 (Concrete Buildings).]

REGULATIONS:

Board of Health (Vermin) Regulations No. 2 r2(d) removal of rubbish.

Board of Health (Rubbish) Regulations No. 4 rubbish bins and limited rubbish collection.

Board of Health (Mosquitoes) Regulations No. 5 breeding and drainage, trees, rotting vegetation, empty tins.

Board of Health (Buildings, Drainage and Privies) Regulations No. 6

Board of Health (Buildings, Drainage and Sanitation) Regulations No. 8

**Board of Health (Concrete Buildings) Regulations No. 16
Samoa Village Regulations 1938**

Women's Committees may be carrying out these duties.

[Most of these Regulations are relevant to town planning legislation.]

AMENDMENTS:

1965

Offensive trades

1981

Public health (education) functions added.

Internal Affairs and Rural Development Act 1983

PURPOSE:

The administration of village affairs and rural development.

[The secretary has a very wide brief under ss6 and 7 (respectively, internal affairs, and rural development) of the Act. The internal affairs role is essentially that of facilitating local government. Under s6(f) the Secretary has power to consider and approve for recommendation to Cabinet proposed by-laws to have effect in local government. Unlike the Fisheries Act 1988, the nature of the by-laws are not described. One must also weigh whether any advantage will be gained by passing by-laws as compared with the village fono's capacity to make village rules and to enforce them. An appropriate paragraph about environmental concerns may be added to s7.]

Administered in the Prime Minister's Department.

[Refer to the Pulenuu and Sui o le Malo Act 1978; the Village Fono Act 1990; and the Samoa Village Regulations 1938 (NZ).]

Komesina o Sulufaiga (Ombudsman) Act 1988

[Provides an avenue of complaint against administrative decisions or acts of Government Departments as well as certain other organisations. A Freedom of Information Act would be another welcome step in the process of open government.]

Administered in the Legislative Department.

Labour and Employment Act 1972

PURPOSE:

A function of the Department of Labour is to take such measures as may be appropriate under the Act to ensure safe and healthy working conditions. s6

Industry means any business, trade, manufacture, undertaking, or calling of employers or any calling, service, employment, handicraft, or occupation of workers. s2

[The Act applies to private sector employment but exemptions may be made by order of the Minister - s3(1). A list should be made of such exemptions.]

A duty of the Department is to examine for purposes of industrial health and safety all dangerous materials, liquids, and machinery. s7(b)

Every place of employment shall be kept in a clean and tidy state and free from any nuisance. s36(1)

REGULATIONS:

1973

Steps shall be taken to remedy any defects observed in any installation, plant, layout, working methods which constitutes a threat to the health and safety of workers. r14

Prohibitory notices may be granted. r16

[Health inspectors carry out overlapping work.]

Land Registration Act 1992/1993

Not seen.

Land for Foreign Purposes Act 1992/1993

Not seen.

Lands, Surveys and Environment Act 1989

[See comments in Section/Chapter 3]

AMENDMENTS:

1992/1993

Changes title of the Act to its present description.

REGULATIONS:

Order as to application of Part VIII 1992/1993

Not seen.

Lands and Titles Act 1981

This Act relates to customary land and to matai titles.

"Custom and usage" means the customs and usages of Samoa accepted as being in force at the relevant time and includes - (a) the principles of custom and usage accepted by the people of Western Samoa in general; and (b) the customs and usages accepted as being in force in respect of a particular place or matter. s2

"Pulefaamau" means the ownership of any customary land or the control of any Samoan name or title either by a person in his sole right or on behalf of any Samoan title family, village or district. s2

Land deemed to be customary land is set out at s8 and a procedure for declaring land to be customary land is set out at s9.

Claims for the Pulefaamau (ownership over customary land) or appointment of a person to a matai title are set out at s14.

The jurisdiction of the Lands and Titles Court is set out at s34. All proceedings in the Court may be instituted by any "interested Samoan". s42

AMENDMENTS:

1983;1988;

No comment.

1992/1993

Not seen.

Ministry of Transport Act 1978

PURPOSE:

The Ministry is charged with the development of an efficient transport policy for Samoa.

[This Act was repealed by the Ministry of Transport Act Repeal 1984 but was later revived (with some changes) by the Road Transport and Traffic Control Act 1990. The Ministry of Transport Act puts marine and civil aviation matters under the control of the Ministry but road transport matters (and the Road Traffic Ordinance 1960) are now to be handled by the Police Service. Acts administered by the Ministry include the Civil Aviation Act 1963, the Carriage by Air Act 1964, and the Shipping Act 1964. A new Shipping Bill as well as a Ports Authority Bill have been drafted but have yet to be presented to Parliament.]

National Cultural Centre Trust Act 1978

Functions of the Trust are set out at s9 and include the following:

- to establish: a national museum; a national library service; national archives; a national theatre; art and craft training workshops; and a handicraft centre.
- to encourage and promote all aspects of Samoan culture and the practice and appreciation of Samoan arts and craft.
- to furnish information, advice and assistance in relation to the maintenance, preservation and administration of historic places and things.

[Refer also to s3(q) and (r) of the Police Offences Ordinance 1961 for defacement of buildings.]

Administered in the Department of Youth, Sports and Culture.

[Refer also to the Robert Louis Stevenson Foundation Act 1991, which has objectives concerning a museum and any building of historical significance.]

National Investment Corporation Act 1981

The function of the Corporation is to promote industry, agriculture and commerce by investing in such. s4

[It is not known if this body is operational. There should be a requirement regarding environmental considerations and sustainable development practices.]

National Parks and Reserves Act 1974

A national park consists of public land that is not set aside for any purpose and is not less than 1500 acres in area or is an island. Flora and fauna are to be preserved as far as possible and its value as a soil, water and forest conservation area is to be maintained. The public has a general freedom of entry into the park. ss 4 and 5

[In 1990 Department of Agriculture, Forests and Fisheries transferred all Parks and Reserves staff to the Division of Environment and Conservation recognising nature preservation should be under one organisation. Some consideration should be given to creation of areas for the protection of biological diversity on customary land. O le Siosiomaga Society is already administering 50 year rainforest conservation agreements with three villages in Savaii. The Minister for Lands, Surveys and Environment has power under s104(g) of the Lands, Surveys and Environment Act 1989 to enter into agreements with owners and occupiers of customary lands for the purpose of protecting their natural resources and environment.]

A nature reserve consists of public land or an area of the territorial sea that is not set aside for any public purpose. It is to be a reserve for the protection, conservation, and management of flora, fauna, or aquatic life, or the habitat of fauna or aquatic life. There may be restrictions on access by members of the public. Areas of territorial seas declared to be nature reserves are without prejudice to the customary fishing rights of any person in that area. s6.

[Palolo Marine Reserve (consisting of the beach fronting onto Palolo Deep as well as the Deep itself) is administered by an individual who looks after the Reserve on a commercial basis, keeping the Deep free from fishermen who may be legally exercising customary fishing rights. Discretion has proved the better part of valour and the law has not been enforced against the individual. In large part this is because the Deep is probably being conserved more effectively than might otherwise have been the case. The proprietor's plans for reclaiming more land as well as other developments should nevertheless be subject to environmental impact assessments. A venture involving private commercial interests such as in this case with some governmental assistance might prove fruitful for other conservation areas.]

Land may be set aside for recreation reserves. s7

Land may be set aside for historic reserves. s8

[Compare with the Forests Act 1967, s68. Historic buildings may not be covered within an historic reserve. Refer to the National Cultural Centre Trust Act 1978.]

Noxious Weeds Ordinance 1961

PURPOSE:

To control weeds.

The Minister of Agriculture may extend the First Schedule to the Act which lists plants which are noxious weeds.

[Water hyacinth could be added to the Schedule]

Omnibus Fees and Charges Amendment Act 1988; 1991
Omnibus Rates and Exemptions Amendment Act 1986

[These Acts should be checked for recent changes in fines for offences under the various Acts they cover. Also, other environmental legislation not presently covered, and not having their own fees and fines amending provisions, should be considered for inclusion in future Omnibus Amendment Acts.]

Petroleum Act 1984

PURPOSE:

To make provision for the supply, transport and storage of petroleum.

This Act replaces the Petroleum Ordinance 1960 but has no replacement for the also-repealed Petroleum Regulations 1960.

There is power to make regulations for the storage and transport of petroleum. s14(2)(a) and (b)

[See the Shipping Act 1972 and Regulations. It has been suggested that the Petroleum Act be replaced by an Act covering dangerous goods in general.]

REGULATIONS:

The Petroleum Amendment Regulations 1983

Not seen.

AMENDMENTS:

1986

No comment.

[Reference should be made to international treaties Samoa may be a party to or is contemplating being a party to, which deal with ship-based pollution and relevant international maritime issues.]

Plants Act 1984

[This Act deals with import and export of plants, and plant diseases, but does not affect the Acts listed in s30 which includes the Noxious Weeds Act. The Plants and Soil Importation (Disease Control) Regulations 1951 (amended in 1983) are preserved - insofar as they are not inconsistent with the Plants Act - under s31(2). Unlike the Animals Ordinance 1960, there is no provision for protection of endangered plant species.]

Poisons Act 1968

PURPOSE:

To regulate the importation, carriage, custody and sale of poisons.

The Act covers poisons; poisonous substances; prescription poisons; prohibited substances; radioactive substances; restricted poisons; and toxic substances. s2

[Cross-reference should be made to the Pesticides Regulations the Food and Drugs Act 1967 and the Narcotics Act 1967.]

Administered in the Department of Health.

1969 REGULATIONS:

Poisons Licences

Provides for a licencing system regarding the import and sale of poisons.

Selenium Control

Deadly Poisons

Poisons

These regulations list various classes of poisons and regulates their advertising, packing, storage, handling, labelling, importation and transport.

Police Offences Ordinance 1961

Section 3 prohibits various offences dealing with public cleanliness and convenience. Some paragraphs deal with littering public places (see for example (a),(e),(f),(j),(m)).

[The removal of sand, boulders etc. from any foreshore of any stream under paragraph (s) is controlled by the Director of Public Works rather than the Director of the Department of Lands, Surveys and Environment Provisions with parallel provisions in other Acts include animal trespass s3(y) - see the Animals Ordinance; fish poisoning s4(f) - see the Fisheries Act; insanitary premises, s5 - see the Health Ordinance; and polluting water, s20 - see the Water Act.]

AMENDMENTS:

1988

No comment.

Produce Export Ordinance 1961

PURPOSE:

To control and maintain the standard of primary produce exported from Samoa.

Administered in the DAFF.

Public Service Act 1977

PURPOSE:

To make better provision for the Public Service.

[The Government is the single biggest employer in the country. More imaginative solutions need to be tried in order to increase efficiency, reduce bad practices and to induce scholarship students to return and remain in Samoa. See also the Public Service (Special Posts) Act 1989.]

REGULATIONS:

1953

No comment.

1979

Not seen

Public Works Ordinance 1959

Functions are set out as s4.

[Works conducted by the Department should undergo an EIA process. Section 4(1)(i) allows the Public Works Department to carry out work for any person if the Minister so authorises. This should be reviewed (Warren & Sisarich 1992).]

Administers: Board of Health Regulations Nos. 6, 8 and 16; relevant sections of the Petroleum Ordinance 1960; relevant sections of the Police Offences Ordinance 1961; and the Water Act 1965.

[It is not known whether there is supervision of erection of concrete buildings under Board of Health Regulation No. 16. Regulations such as this would be relevant within a comprehensive town planning statute.]

REGULATIONS:

Building Permit Fees Regulations 1973

AMENDMENT:

1980

Electrical functions passed on to EPC.

Pulenuu and Sui o le Malo Act 1978

[A Pulenuu (village mayor) is nominated by the village and appointed by Government. A Sui o le Malo (government representative) is appointed by (and presumably nominated by) Government. The functions of these two groups are set by regulation (as far as is known, none have been made) or communicated to them by Government. While many villages have a Pulenuu, it is not known if any have a Sui o le Malo.]

Administered in the Legislative Department.

[A more appropriate administering body might be the office of Internal Affairs and Rural Development.]

Road Traffic Ordinance 1960

Relates to road traffic and the use of motor vehicles and other vehicles on roads. This Act is no longer administered by the Ministry of Transport but by the Police Service.

Vehicles must be registered and licenced. s7

Regulations may be made regarding the consumption (sic) of smoke, and the emission of visible vapour, sparks, ashes and grit; and to control excessive noise. s45

REGULATIONS:

Standing of Motor Vehicles Regulations 1935

Road Traffic Regulations 1961

Every motor vehicle shall be so constructed that no avoidable smoke or visible vapour is emitted therefrom. r32

[Consideration should be had to making this regulation a prerequisite to the granting of a Warrant of Fitness or a Certificate of fitness. r107 and 108]

Road Traffic Sign Prescription 1961

Road Traffic Orders 1971

[These Regulations are relevant to town planning legislation, but with the road works in Apia this year, the increase of vehicular traffic and the instalment of traffic lights, all will probably need to be amended in some way.]

AMENDMENTS:

1980;1989

No comment.

Road Transport and Traffic Control Act 1990

This Act revives the *Ministry of Transport Act 1978* by repealing the *Ministry of Transport Repeal Act 1984* and places the administration of the Road Traffic Ordinance with the Police Service.

Robert Louis Stevenson Foundation Act 1991

This Act empowers the RLS Foundation, a body corporate financed by overseas partners, to carry out specified activities, primarily regarding the restoration of the former residence and estate of Robert Louis Stevenson, but also including the renovation of any building of historical significance and the establishment of a museum. s4

The 17 acres leased to the Foundation is separate from the land comprised in the *Stevenson Memorial Reserve and Mount Vaea Reserve Ordinance 1958*. s5(2)

[The activities of the Foundation should be transparent and the 20 year lease agreement (with two rights of renewal for 20 years each) over the estate be available for public scrutiny. Proposed plans by the Foundation to establish a "green way" to Lake Lanotoo should be consistent with the National Parks and Reserves Act 1974.]

Administered in the Department of Education.

[This Act might equally have been administered in the Department of Youth, Sports and Culture.]

AMENDMENTS:

1992/1993

Not seen.

Samoan Antiquities Ordinance 1954

To make provision for the protection and preservation of Samoan antiquities, relics, curios and articles of anthropological interest and scientific value.

Permission is needed to export antiquities. s6

The definition of artifact does not include botanical or mineral collections or specimens. s2

AMENDMENT:

1975

No comment.

Shipping Act 1972

PURPOSE:

Regulates matters connected to shipping and ports.

[A Shipping Bill and Ports Authority Bill (neither of them seen by the writer) have been prepared but are yet to be placed before Parliament. It appears although they cover marine pollution incidents in more detail, they are themselves inadequate and will be reviewed alongside draft Marine Pollution Act.]

Mention is made concerning dangerous goods. s30

Regulations may be made on an extensive range of matters including: use of occupation of foreshore, lagoons, etc.; discharge of oil, tar or ballast water; control of nuisances; control of sea carriage of dangerous goods.

[Reference should be made to international treaties Samoa may be a Party to or is contemplating being a Party to, which deal with ship-based pollution and relevant international maritime issues.]

RELEVANT REGULATIONS:

Port Control Regulations 1939

Dangerous goods to be removed on landing. r19

Port Control Regulations Amendment Regulations 1960

Regulates petroleum shipments.

[See the Petroleum Act 1984.]

AMENDMENTS:

1989

Registration of ships having a gross tonnage of more than 15 tons.

Special Projects Development Corporation Act 1972

PURPOSE:

To undertake under contract to the Government various construction work.
To carry on the business of builders, construction contractors, engineers, steel workers, dredging contractors, and project contractors.

[Prior to Corporatisation, this body was a specialist construction arm of the Public Works Department.]

AMENDMENTS:

1981;1984;1986

No comment.

1988

Gives the Special Projects Development Corporation more commercial scope, for example, regarding lending, borrowing and investing money.

Statistics Act 1971

[The Schedule to the Act lists matters in relation to which the statistician may collect information. This includes population, agricultural, industrial and general matters. Environmental statistics may be usefully added.]

Stevenson Memorial Reserve and Mount Vaea Scenic Reserve Ordinance 1958

[The Stevenson Memorial Reserve is about 1 acre; the Mount Vaea Scenic Reserve consists of 2 parcels of land of about 69 acres and 49 acres. These parcels of land are separate from the 17 acres leased to the RLS Foundation under the Robert Louis Stevenson Foundation Act 1991.]

Survey Ordinance 1961

Part II of the Act regulates the subdivision of land.

Where any land is subdivided into allotments for the purposes of any disposition of land and any such allotment has an area of less than five acres, a scheme plan showing the proposed subdivision shall, unless the Minister otherwise determines, be prepared by a surveyor and submitted to the Minister for approval.

The Minister may refuse to approve any scheme plan, or may approve the plan either unconditionally or upon or subject to such conditions as he thinks fit. s6

A strip of land may be set aside as reserved for public purposes measuring 10 metres in width along the mean high water mark of the sea and of its bays, inlets, or creeks. This does not apply regarding customary land. s16

[It would be useful to add environmental considerations into this section. This is another Act which contains useful town planning components.]

REGULATIONS:

Land Survey Regulations 1939

Taking of Land Act 1964

PURPOSE:

To provide for the taking of land for public purposes.

Public purpose is extensively, although not exhaustively defined in s2, and includes forestry, control of coasts and rivers, safeguarding of water, soil and forest resources and provision of reserves for erosion control and water catchment. There is no mention of biodiversity conservation.

The Act extends to customary and freehold land. s7

Initiation of the procedure for taking of freehold land is covered in s14; that for customary land in s14A.

[The common law recognition of eminent domain springs from English feudal times where all land was by the Crown. This would appear to be how this Act derives its authority. Samoan customary land however has a different history and this may account for the (usually successful) resistance of landowners whenever this or a similar Act is invoked, e.g. the Forests Act and the National Parks and Reserves Act.]

AMENDMENT:

1980

No comment.

The Territorial Sea Act 1971

PURPOSE:

To determine the limits of Samoa's territorial sea, which is the area of sea between (except in certain situations) the low-water mark along the coast of Samoa and every point perpendicular to the low-water mark extending 12 nautical miles seaward.

[The territorial sea concept relates to Samoa's domestic jurisdiction.]

Subject to limited exceptions, the sea bed and subsoil of submarine areas bounded on the landward side by the high-water mark along the coast of Samoa (including the coast of all islands), and on the seaward side by the outer limits of the territorial sea of Samoa shall be deemed to be and always to have been public land vested in Western Samoa. s7

[See also Art. 104 of the Constitution.]

Trade, Commerce and Industry Act 1990

[This Act establishes the Department of Trade, Commerce and Industry which supersedes the Department of Economic Development. Its functions include the advancement of Samoa's trading position in the international economy (e.g. by tourism development and by export promotion via incentives for local, foreign and joint-venture businesses) as well as the monitoring of prices in the local economy.]

The Department administers the *Commerce Act 1978* and the *Enterprise Incentives and Export Promotion Act 1992*.

Village Fono Act 1990

PURPOSE:

To validate and empower the exercise of certain aspects of power and authority by village fono in accordance with the custom and usage of their villages.

The fono has powers relating to hygiene and economic development. s5

Every person adversely affected by a decision of a fono shall have a right of appeal to the Land and Titles Court. s11

[The Act legalises some exercises of authority which have been exercised in village fono for many generations. Probably its main impact will be to affect how conventional courts treat the decisions of those village fono. Much in Samoan tradition is at odds with the individual rights provisions of the Constitution and although there is a right of appeal to the Land and Titles Court, there appears to be nothing stopping a party whose Constitutional rights have been adversely affected by a decision of the village fono from taking the matter to the Supreme Court under Art. 4 of the Constitution.]

Water Act 1965

This Act regulates the conservation of water, its supply, and use.

Subject to any rights held as at the 12th of April 1928, the sole right to use water in lakes, falls, rivers or streams for the purpose of production of power or the purpose of supplying water for domestic, agricultural, pastoral, industrial or commercial uses is vested in Government. s5

Water Supply Committees may be appointed in respect of certain communities for the purpose of controlling the water supply of that or those communities. s9

The Director of Works or the Water Supply Committee may prepare a scheme plan for the better use of the water supply for that community. s13
Water Committees are empowered to levy water rates. s17

Pollution of waterworks and various offences relating to waterworks are covered under ss 43 and 46.

The Minister may prohibit cutting of bush or cultivation upon the banks of a river where it is advisable for the purpose of conserving the flow of water in any river or stream. s48

[See the definition of foreshore under the Lands, Surveys and Environment Act 1989, the Survey Ordinance 1961 s16, and the yet to be promulgated Watershed Protection and Management Regulations 1992.]

Regulation may be made for the control of all streams, and other waters and all lands, watersheds, catchment areas, reservations, dams, tanks, and appliances used in connection with water supply together with all drains and other means employed for the disposal of surplus water. s54

AMENDMENTS:

1992/1993

This Act makes key changes as regards water rates and a sewerage system.

1992/1993

The Water Amendment Act Commencement Order. Not seen, but presumably it brings the Amendment Act into force.

Water Authority Act 1992/1993:

(passed by the Assembly but not yet assented to.)

Contains provisions on sewerage.

Western Samoa Trust Estates Corporation Act 1977

The Corporation's functions are to control, manage, and develop as trustee for and on behalf of the people of Samoa, the assets of the Corporation vested in it and any other assets that the Corporation may have acquired or may acquire, whether real or personal; and to ensure the efficient and prudent agricultural, horticultural, pastoral, industrial, commercial or other development of its lands, assets and other enterprises. s11

The Corporation has power to hold any of the lands as reserves consistent with the functions of the Corporation and to dedicate any lands for any public purpose. s11

[WSTEC has failed to live up to expectations and to its potential. Most of its land is now vested in the Samoa Land Corporation.]

AMENDMENTS:

1983;1986;1988

No comment.

1992/1993

Not seen.

Western Samoa Trust Estates Corporation Reconstruction Act 1990

[This Act, in the then prevailing climate of privatisation, reorganised WSTEC, chiefly by divesting it of many of its land holdings and transferring these to Government. On 1 October 1990, Government transferred the land to an entity called the Samoa Land Corporation which is responsible for leasing out the lands. The leases should be screened for environmental considerations.]

ORDER:

Western Samoa Trust Estates Corporation Reconstruction Act 1990 Order as to Vesting of Lands.

[This Order authorised the transfer of land from Government to the Samoa Land Corporation. The Corporation appears not to have been created under statute and a description as to its functions and powers should be found in its incorporation documents lodged with the Registrar of Companies in the Department of Justice.]

Western Samoa Visitors Bureau Act 1984

The Bureau is established (s3) as a body corporate with some of its functions being: to encourage visits to Samoa by people from other countries and travel and holidays within Samoa or by people from Samoa or other countries; to encourage the development and improvement of facilities for tourists; to coordinate the activities of persons providing services for tourists; to advise the Government on all matters relating to tourism. s10

The Bureau approves applications for business licences from hoteliers and other types of business mentioned in the Schedule to the Act. It may grant its approval if it is satisfied that: the business or calling will be a benefit to the overall development of tourism in Samoa; and the business or calling will not unduly affect any existing business or calling of the same nature in Samoa. s20

Youth, Sports and Cultural Affairs Act 1976

PURPOSE:

To make provision for matters relating to youth, sports and cultural affairs.

A Council is established (s6) with general functions being: to foster and promote the total well-being of the cultural affairs of Samoa; to advise the Government on any matters relating to cultural affairs; and to investigate developments in culture and disseminate knowledge and information about such developments. s17

AMENDMENTS:

1984

No comment.

1992/1993

Not seen.

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