

Talofa lava malo le soifua maua ma le lagi mama

Kia ora koutou

Good morning

It's great to be back here

Thank you to the WIPO Secretariat for facilitating my participation

My name is Solamalemalo Hai-Yuean Tualima

I am from Samoa and currently living in Aotearoa/New Zealand

The collective nature of traditional knowledge and traditional cultural expressions from the Pacific with particular focus on Samoa.

By way of context:

- Samoa is an independent state
- Governed by a plural system with the Westminster system operating along side Customary law or the traditional system of authority
- The population is currently under 200,000
- The two main islands are Apia and Savaii

To illustrate the collective nature of traditional knowledge and traditional cultural expressions in Samoa I will give a snapshot into my thesis fieldwork that was carried out from February 2019 to January 2021.

The fieldwork used a decolonising methodology known as the Talanoa Research Methodology

- The Talanoa approach (a Pacific research methodology) contains features that are similar to established Indigenous knowledge approaches developed in Australia and New Zealand
- The values underlying the Talanoa approach draw from fa'asamoa or Samoa customs, values and practices
- I worked with participants to develop the research questions, method, and discussions.

- In total 57 interviews were conducted in Apia and Savaii, consisting of individuals involved in government, cultural practitioners, village matai members, village individuals and non-governmental organizations

One of the initial questions asked during fieldwork was what did participants understand by the terms traditional knowledge and intellectual property.

To illustrate the point, I will draw upon participant perspectives:

- One government officer said:
My definition of traditional knowledge is fa'asamoa. Fa'asamoa is actually one of the key areas that actually promote Samoa.
- Here fa'asamoa is synonymous with TK. The two are used interchangeably. Fa'asamoa is Samoan
- A village participant said:
Anything to do with Samoan philosophies, practical stuff, anything that utilised the traditional materials. When I say traditional materials, I just look at things before European goods arrived. You know building houses using traditional materials like senates and practice and things like that. All of the practices that go with those activities which are protected, well not protected kind of restored by stories and proverbial expression and not only how to make them but the spiritual connection, their relation to other materials around the environment and so on.
- Another village participant referred to traditional knowledge as existing everywhere:
Everything existing in Samoa is traditional knowledge. But there are many changes and some of these are no longer used.

Most participants suggested a broad conception of TK.

- It is a multi-layered construct flowing on from practice and before European contact.
- Samoan philosophies, traditional material and practices are identified as protected through stories and proverbial expression.
- Others commented that the definition of TK cannot be easily identified as existing in one material form.

- Rather it is intertwined with the spiritual beliefs, and the environment and how all these interact within that context.
- All of it tells a story that cannot be fixed.
- It also shows that it is oral tradition that transmits the knowledge and ensures its survival.

When asked about TK in the context of western law, the following response was common.

- A village participant who discussed the use of traditional knowledge said:
I've always been against the traditional. I always felt that it was a static term. I agree with Albert Wendt when he says that the term traditional needs, decolonising because custom and culture evolves.
- Another village participant said:
The first question that needs to be done is get the definition right. And I think the law would be the best mechanism to protect if you want to protect them from misuse or abuse by people who are not entitled to them...with International Conventions dealing with these types of things, I don't know whether they can be specific...about the whole question of definition. I don't think there's any way for owners of something indigenous to protect themselves or their ideas unless there is some law to punish those who try to abuse or misuse.

A common view communicated was that western law cannot take into consideration the contextual nuances required to be able to provide a suitable definition.

- Any definition adopted must come from the national legal framing of knowledge.
- Such framing must be able to consider all sources of law in Samoa including customs and protocols that prevents the inappropriate and offensive use of knowledge.
- Central to any definition is the interests of knowledge holders and custodians.
- These interests must be paramount to prevent abuse or misuse of their knowledge.

Participants also discussed intellectual property.

- A government officer said: *The lack of understanding of IP is still an issue today.*
- Another government officer explained the work on intellectual property: *We started the consultations in 2014 over a period of two and half years. We held four national workshops in the span of those two and half years. At the first one we were able to identify that the main areas they wanted to know about and build capacity on so that informed the following national workshops. But mostly IP was the issue, it's not something local, it's not a Samoan thing. Our society is a collective society. In the whole duration of the projects trying to work with them on IP, we had two workshops on IP just to get them to understand that. But the general understanding was that this is Samoan, it belongs to everybody and do with it what they want. The sense of ownership is collective, it's not individual.*
- In other words – IP is a foreign concept that introduces private property rights into a society where knowledge is collectively held, where custom may regulate access.
- Private property constructs create tensions and misunderstandings.
- A fashion designer talked about the use of the IP regime: *Intellectual property is costly plus will it work? Because I've heard of people who are complaining about it and they just registered but it cost money to register, it cost money to sue. It's just a procedure of who are you going to go sue, because you will see your work being worn by someone or on facebook, where do you start?*
- The suitability of the IP framework is questioned.
- Issues associated with costs and bringing legal action are deterring the public from engaging with the current intellectual property regulatory framework.

What are challenges raised by participants with protecting traditional knowledge?

- One of the challenges raised by participants was who owns traditional knowledge?

- As one village participant commented:
Who owns that knowledge? Who are the traditional owners? Especially when you have a collective society like Samoa, where for example, 80% of land is customary land, and where every village has its own genealogy, every village has its own way of doing things, every village has its own rules, so each is distinct from others.
- Questions about who has ownership over knowledge are difficult to determine in a collective society like Samoa.
- Other factors that also make ownership of knowledge complex include the fact that most of Samoa is on customary land, each village has its own genealogy, and each village is governed with its own specific rules.
- In other words, ownership is not able to be discerned with reference to a western binary construct where knowledge is treated as intangible property separate to rights to tangible property or land. Similarly, the binary distinction between individual and collective rights fails to fully capture what matters in the regulation of knowledge.

Looking at the general issue of ownership government participant said:

- *I think with our traditional knowledge it gets very complicated too. Because you will have multiple traditional healers with the same traditional medicine so how are you then going to figure out who is going to get IP. Is it going to be a community thing or individual healer thing? I am not sure how that is being considered in the framework but that is another issue.*
- The issue of ownership was discussed by participants with respect to specific knowledge and practices.
- Here ownership is addressed through knowledge associated with traditional healing.

Questions concerning ownership of knowledge or TK involved:

- Who will benefit from using that knowledge?
- Who is the original owner of the knowledge?
- Who do you acknowledge if the knowledge is used?
- Who do you approach for permission to use that knowledge?

- Included in this line of concerns participants raised issues - with how do you protect knowledge that is already in the public arena?

What are the expectations of protection?

- Protecting traditional knowledge is crucial to Samoans.
- Traditional knowledge sourced in practice, protocol and custom is an expression of Samoan personal and cultural identity and way of life.
- It is especially important that knowledge is protected against inappropriate and offensive use, including the commercial use by others, that is where non-Samoans use knowledge or TK to gain an economic benefit without acknowledging the source of knowledge or returning a benefit to the source of inspiration.
- One village participant commented on the significance of traditional knowledge:
It is to have everlasting knowledge so that it can continue and continue for future generations and generations to come.
- Elaborating further government participant said:
Another reason why it should be protected is that it may vanish in the future, especially the language. We see now it has changed. So the change with the language is that it has started to change even when you write something it has affected the writing of children; they have abbreviated or shortened words in literacy learning. And that tells you the words have started to vanish to an eventual non-existence. So, if we don't use the method of recording of the language it will be lost in the future.
- Knowledge must be sustained for future generations.
- There is concern that there are practices and customs and knowledge associated that has disappeared or at risk of dying out.
- Knowledge holders or potential beneficiaries are not trying to prevent the use of knowledge.
- Rather the concern is to ensure there has been culturally appropriate use and acknowledgement, and there is continuation of that knowledge associated with a practice, custom or protocol.

The comments discussed provide a snapshot so far more extensive fieldwork that was carried out.

Some broad propositions while reflective of Samoa, maybe relevant to other countries in advancing the protection of traditional knowledge:

- In Samoa traditional knowledge is primarily regulated through custom and customary law which is context and family specific
- Regulation of traditional knowledge is best understood in light of particular knowledge practices and connections between peoples and land.
- Both the terms TK and IP are often identified with international and western IP agendas.
- Custom evolves. This allows for flexibility when responding to commercial opportunities so long as village, government and commercial actors develop mutually beneficial arrangements.
- Western legal rights and litigation may be considered where serious infractions by outsiders occur, however where legal solutions are on offer these are not necessarily considered culturally appropriate or relevant. Litigation is rarely a viable option.

Thank you for the opportunity to provide an insight into the collective nature of traditional knowledge and traditional cultural expressions from a Samoan perspective.

- I look forward to discussing more of these issues throughout the week.

Soifua