



SAMOA

VILLAGE FONO ACT 1990

Arrangement of Provisions

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|--|--|
| 1. Short title and commencement | 5E. Use of faiga faavae in Land and Titles First Court |
| 2. Interpretation | 5F. Delegation by the Chief Executive Officer |
| 2A. Objects | 6. Punishments |
| 3. Village Fono continued | 7. Power of delegation |
| 4. Evidence of village misconduct and punishment | 8. Courts to take account of penalty imposed by Village Fono |
| 5. Powers of Village Fono relating to hygiene and economic development | 9. Limitation of jurisdiction of Village Fono |
| 5A. Registration of <i>faiga fa'avae</i> or <i>i'ugafono</i> | 10. Exemption from Income Tax |
| 5B. Mode of registration | 11. Right of Appeal |
| 5C. Effect of registration | 12. Structures and activities for community purposes |
| 5D. Register of <i>faiga fa'avae</i> or <i>i'ugafono</i> | |

VILLAGE FONO ACT 1990

1990

No.3

AN ACT 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 and to provide for incidental matters.

[Assent date: 30 July 1990]

[Commencement date: 16 October 1990]

1. Short title and commencement – (1) This Act may be cited as the Village Fono Act 1990.

(2) This Act comes into force on such date as shall be specified by the Head of State acting on the advice of Cabinet, by Order.

2. Interpretation – In this Act unless the context otherwise requires:

“banishment” means an offender is prohibited from being involved in village affairs, and is expelled from the village, never to be seen in the village until the village fono decides to uplift the banishment;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“faiga fa’avae or “i’ugafono” means village faiga fa’avae or i’ugafono made pursuant to section 5;

“freehold land” has the meaning in Article 101(3) of the Constitution;

“government land” has the meaning in section 2 of the Lands, Surveys and Environment Act 1989;

“lease” has the meaning in section 2 of the Land Titles Registration Act 2008;

“leasehold land” means land that is the subject of a lease;

“Ministry” means the Ministry responsible for Internal Affairs;

“ostracism” means an offender is prohibited from being involved in village affairs but still reserve the right to live in their respective homes within the village;

“Register” means the Register kept and maintained under section 5D;

“Sui-o-le-Nuu” means the person appointed as Sui-o-le-Nuu under section 14 of the Internal Affairs Act 1995;

“village Fono” in relation to any village means the assembly of the Alii and Faipule of that village meeting in accordance with the custom and usage of such village and includes the plural; “village land” does not include government land or freehold or leasehold land;

“village misconduct” in relation to any village means any act conduct or behaviour which is or has been traditionally punished by the Village Fono of that village in accordance with its custom and usage and

has the extended meaning required by sections 5 and 12(4).

2A. Objects – The objects of this Act are:

- (a) to provide for the recognition and protection of Village Fono
- (b) to confer the exercise of power and authority by Village Fono in accordance with custom and usage of their village;
- (c) to validate the past and future exercise of powers and authority by Village Fono:
- (d) to provide procedures to be followed by Village Fono when undertaking inquiries into village misconduct or imposing punishment, including banishment or ostracism; and
- (e) to empower the Village Fono to make faiga fa'avae or i'ugafono.

3. Village Fono continue – (1) The Chief Executive Officer shall compile and keep up to date a register of Village Fono in which is recorded the name of every village in which a Village Fono is functioning.

(2) A Village Fono in the exercise of any power or authority shall exercise the same in accordance with the custom and usage of that village.

(3) The past and future exercise of power and authority by a Village Fono with respect to the affairs of its village in accordance with the custom and usage of that village is hereby validated and empowered.

(4) In addition to the power and authority preserved or granted under this Act, every Village Fono shall have such other powers, authorities and functions as may be provided in any other Act.

(5) A certificate under the hand of the Chief Executive Officer to the effect that a Fono is entered on this register under this Act is *prima facie* evidence of the existence of such Fono.

4. Evidence of village misconduct and punishment – (1) A Village Fono may keep written record of its inquiry into any allegation of village misconduct or of any punishment imposed.

(2) A person who is found by a Village Fono to have been guilty of village misconduct is not, by reason only of that fact, to be treated as guilty of a crime or offence under any enactment.

5. Powers of Village Fono – (1) A Village Fono shall in respect to its village have the powers set out in subsection (2) even if the powers may not in a particular village form part of its custom and usage.

(2) A village Fono may make *faiga fa'avae* or *i'ugafono* for its application in its village in relation to the following:

- (a) hygiene and sanitation;
- (b) and health policies including but not limited to a vaccination and immunisation policy, pursuant to the requirements of the Ministry of Health;
- (c) development and use of village land for the economic betterment of the village;
- (d) harmony;
- (e) improvement of living standards;
- (f) enquiring any person to do any work for the purposes of paragraphs (a) to (d)
- (g) imposing a curfew within any village or village land in accordance with village customs and practices (including the power to exempt any person during a curfew if necessary in an emergency situation or to enforce the curfew)
- (h) promoting social cohesion and harmony;
- (i) classifying village misconducts and penalties
- (j) protecting Samoan customs and traditions;
- (k) safeguarding village traditions, norms and protocols;
- (l) protecting natural resources and the environment;
- (m) promoting natural justice and fairness principles in decision making processes and procedures;
- (n) recording of minutes or discussions during Village Fono meeting;
- (o) any other matter to give effect to or to promote wellbeing, development and maintenance of harmony and good order of the village and its inhabitants.

(3) A person is guilty of village misconduct and may be punished by his or her Village Fono who fails to obey any *faiga*

fa'avae or *i'ugafono* or direction made or given under the powers granted or preserved by this section.

(4) The powers to make *faiga fa'avae* or *i'ugafono* under subsection (2) includes the power to amend, suspend, revoke or replace *faiga fa'avae* or *i'ugafono*.

5A. Registration of *faiga fa'avae* or *i'ugafono* – (1) A Sui-o-le-Nuu (or any authorised representative of the Sui-o-le-Nuu) may send their original of the *faiga fa'avae* or *i'ugafono* to the Chief Executive Officer for registration in the Register of *faiga fa'avae* or *i'ugafono*.

(2) The original *faiga fa'avae* or *i'ugafono* must state:

- (a) the date of approval of the *faiga fa'avae* or *i'ugafono* by the Village Fono; and
- (b) the commencement date of the *faiga fa'avae* or *i'ugafono*.

(3) When the Chief Executive Officer receives the *faiga fa'avae* or *i'ugafono*, the Chief Executive Officer must:

- (a) stamp (including the date of stamping) the *faiga fa'avae* or *i'ugafono*; and
- (b) retain the original *faiga fa'avae* or *i'ugafono*; and
- (c) make and certify five (5) copies of the registered *faiga fa'avae* or *i'ugafono* and send a certified true copy to each of the following for their records –
 - (i) the Sui-o-le-Nuu (or any authorised representative of the Sui-o-le-Nuu) who sent the *faiga fa'avae* or *i'ugafono* under subsection (1); and
 - (ii) the Registrar of Land and Titles Court; and
 - (iii) the Attorney General; and
 - (iv) the Clerk of the Legislative Assembly;
 - (v) the Ministry of Police.

5B. Mode of registration – The registration of *faiga fa'avae* or *i'ugafono* is effected by entering the following in the Register:

- (a) the name of the Village Fono that makes *faiga fa'avae* or *i'ugafono* and the name of the village where the *faiga fa'avae* or *i'ugafono*;
- (b) the name or title and the commencement date of the registered *faiga fa'avae* or *i'ugafono*;

- (c) the date of stamping of the *faiga fa'avae* or *i'ugafono* under section 5A(3)(a);
- (d) any other information determined by the Chief Executive Officer.

5C. Effect of registration – (1) The registration of *faiga fa'avae* or *i'ugafono* under section 5A must not be taken as if the whole or part of the *faiga fa'avae* or *i'ugafono* are consistent with the Constitution.

(2) The non-registration of any *faiga fa'avae* or *i'ugafono* under section 5A does not invalidate or affect the operation of the *faiga fa'avae* or *i'ugafono* in the applicable village.

5D. Register of *faiga fa'avae* or *i'ugafono* – (1) The Chief Executive Officer must keep and maintain a Register of Village Fono *faiga fa'avae* or *i'ugafono*.

(2) The Register is open to search and inspection by the public.

5E. Use of *faiga faavae* in Land and Titles First Court – The Land and Titles First Court may refer to and consider a registered *faiga faavae* where it is relevant to a Land and Titles First Court proceeding before it.

5F. Delegation by the Chief Executive Officer – (1) The Chief Executive Officer may delegate to an officer of the Ministry (“delegate”) all or any of the powers of the Chief Executive Officer under this Act except the power of delegation in this section.

(2) The delegate:

- (a) may exercise delegated power in the same manner and with the same effect as if the power had been conferred on the delegate directly by this section and not by delegation; and
- (b) is presumed, in the absence of proof to the contrary, to be acting pursuant to the terms of the delegation.

(3) A delegation may be made:

- (a) to a specified officer or class of officers; or
- (b) to the holder or holders of a specified office or class of offices.

- (4) A delegation:
 - (a) is to be in writing and signed by the Chief Executive Officer; and
 - (b) may be subject to any special or general conditions; and
 - (c) does not prevent the exercise of any delegated power by the Chief Executive Officer; and
 - (d) is revocable at will; and
 - (e) until revoked, continues in force, even if the Chief Executive Officer who made it has ceased to hold office; and
 - (f) continues to have effect as if it were made by the successor in office of that Chief Executive Officer.

6. Punishments – (1) Without limiting the power of Village Fono preserved by this Act to impose punishments for village misconduct, the powers of every Village Fono to impose punishment under the custom and usage of its village are deemed to include the following powers of punishments:

- (a) the power to impose a fine in money, fine mats, animals or food; or partly in one or partly in others of those things;
- (aa) subject to subsection (2), the power to order banishment or ostracism;
- (b) the power to order the offender to undertake any work on village land.

(2) Before exercising its power under subsection (1)(aa), the Village Fono must, as a minimum, comply with the following procedures:

- (a) inform the alleged offender of the allegations against the offender, and any evidence supporting the allegations;
- (b) give the alleged offender an opportunity to respond, either orally or in writing and within a reasonable specified time, to the allegations and any supporting evidence;
- (c) give the alleged offender the option of having a support person or persons or representative to support or represent the offender when he or she

responds and makes submissions on the allegations against him or her;

(d) if the response received under paragraph (b) confirms the allegations, give the offender an opportunity to make a submission on, what the alleged offender believes, is the appropriate penalty for the misconduct.

(3) The response made under subsection (2)(b) may either confirm or contradict the allegations and any evidence in support of the allegations against the alleged offender.

(4) The Village Fono must take into account the response and any submissions made by the alleged offender under subsection (2) before it decides to confirm or reject the allegations and any supporting evidence.

(5) For the purposes of subsection (4), the Village Fono may take into account the faa-Samoa decision making process to ensure thorough discussions of the allegation and in particular where the Village Fono considers the allegation as serious.

(6) Despite subsection (2), the Village Fono may exercise its power under subsection (1)(aa) if an alleged offender does not respond to the Village Fono within a reasonable specified time pursuant to subsection (2)(b).

(7) As an exception to section 11, the person against whom the banishment or ostracism order is made under subsection (1)(aa) may appeal the order to the Land and Titles Court.

7. Power of Delegation – A Village Fono may delegate to a committee of its members all or any of its powers.

8. Courts to take account of penalty imposed by Village Fono– When punishment has been imposed by a Village Fono in respect of village misconduct by any person and that person is convicted by a Court of a crime or offence in respect of the same matter the Court shall take into account in mitigation of sentence the punishment imposed by that Village Fono.

9. Limitation of jurisdiction of Village Fono– (1) Subject to this section, the relevant Village Fono does not have jurisdiction over a person residing on Government, freehold or leasehold land located within village land where that person:

(a) is not a Matai of that village; or

(b) is not liable in accordance with the custom and usage of that village to render tautua to a Matai of that village.

(2) A Village Fono may, in any manner it considers appropriate, inform any person living on government land, freehold land or leasehold land within its village land about any village *faiga fa'avae* or *i'ugafono* registered under section 5A.

(3) Where the Village Fono has reasonable cause to believe that a person informed under subsection (2) disrupts or is likely to disrupt harmony within the village, Village Fono may summon that person to appear before them to discuss the Village Fono's concerns with a view to resolving those concerns.

(4) If the person fails to appear before the Village Fono or where the concerns of the Village Fono are not resolved, the Village Fono may request the registrar to convene a Samoan Conciliation under the Land and Titles Act 1981 to resolve the matter.

(5) A person commits an offence and is liable to a fine not exceeding 5 penalty units if the person fails to attend a Samoan Conciliation required under subsection (4).

10. Exemption from Income Tax – The income of a Village Fono is wholly exempted from income tax.

11. Right of appeal – (1) Subject to subsection (6), a person adversely affected by a decision of a Fono (including a decision as to punishment) has a right of appeal to the Court against such decision and the Court shall have jurisdiction to hear and determine the matter.

(2) An appeal is to be commenced by a petition in accordance with section 44 of the Land and Titles Act 1981.

(3) An appeal is to be commenced within one month of the date on which the decision was made, or within such further time as the Court may allow on application made either before or after the expiration of that month.

(4) Despite anything contained in the Land and Titles Act 1981, the Court has jurisdiction to hear and determine every appeal under this section.

(5) The Court may determine the appeal in one of the following ways:

- (a) it may allow the appeal and the decision appealed from is thereupon void;
- (b) it may dismiss the appeal;
- (c) it may refer the decision back to the Fono for reconsideration, –

but it does not have power to impose any punishment or penalty to substitute one punishment or penalty for another.

(6) Repealed by the Land and Titles Act 2020, No.24

(7) In all other respects, the procedure is prescribed by the Land and Titles Act 1981 or as directed by the Court.

(8) In this section, “Court” means the Land and Titles Court continued under the Land and Titles Act 1981.

12. Structures and activities for community purposes – (1)

If a person proposes:

- (a) to construct a building or structure of any kind; or
- (b) to undertake any activity,

for community purposes on village land, the person must first consult with the Village Fono to approve the building, structure or activity before it is constructed or undertaking the activity.

(2) When considering a request under subsection (1), the Village Fono must take into account the following factors:

- (a) the community purpose for the use of the building or structure or for undertaking the activity;
- (b) whether the building, structure or activity will have any benefit to the village and its community;
- (c) whether any other person in the village will be or likely to be adversely affected if approval is given, and the extent to which the person will be affected;
- (d) the effect on the applicant if the approval is declined;
- (e) consent of the matai of the family who are beneficial owners of the land.

(3) In this section:

“community purpose” includes any purpose (including large business operations) which impacts on the promotion of Samoan customs and traditions, community safety, health and wellbeing, social cohesion and village harmony;

“person” includes family, organisation or any community group.

(4) A person who constructs a building or structure or undertake an activity without the approval under subsection (1) is guilty of village misconduct and is liable to any punishment under section 6 or imposed pursuant to the powers granted or preserved under this Act.

REVISION NOTES 2008– 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 – 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Insertion of the commencement date;
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” changed to “a/an”;
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”;
 - “shall have” changed to “has”;
 - (iii) Removal/replacement of obsolete and archaic terms with plain language:
 - “notwithstanding” changed to “despite”
 - “notwithstanding that” changed to “even if”;
 - “in accordance with (the provisions of)” changed to “under”;
 - (iv) Removal of superfluous terms such as “the provisions of”;
 - (v) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate;
 - (vi) Section 6 and 9 re-paragraphed to create paragraphs (a) and (b). Section 11(6) paragraphed with new paragraph (c).

There following amendments have been made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Village Fono Amendment Act 2017, No.3 (commenced 26 January 2017):

- Section 2 amendments made to the definition of “village misconduct”, and insertion of new definitions of banishment, *faiga fa’avae* or *i’ugafono*, Chief Executive Officer, freehold land, government land, leasehold land, lease, Ministry, ostracism, Register and Sui-o-le-Nuu.
- Section 2A inserted
- Section 4 substituted
- Section 5 subsection (1) amended, subsection (2) substituted and new subsection (4) inserted.
- Sections 5A – 5F inserted
- Section 6 renumbered as subsection (1) and new subsections (2) – (7) inserted
- Section 9 substituted
- Section 12 inserted.

By the Infants Amendment Act 2019, No.29 (commenced 1 January 2020):

Section 5(2)(b) inserted new paragraph (b) “and health policies including but not limited to a vaccination and immunisation policy, pursuant to the requirements of the Ministry of Health;” and restructured paragraphs accordingly.

By the *Land and Titles Act 2020, No. 24, (commenced 15 March 2021)*:

Section 2 amended by omitting definition for “registrar”
Section 3 amended by substituting reference to “Registrar” with “Chief Executive Officer”
Section 5D amended by inserting a new subsection (2) and renumbering of subsection (1)
Section 5E amended by substituting it with new section 5E “Use of faiga faavae in Land and Titles First Court
Section 11 amended by omitting subsection (6)

*This Act is administered by
the Ministry of Women, Community and Social Development.*
