

II. Safeguarding System & Policy

Policy, legal and institutional frameworks for the protection and promotion of intangible heritage and matters of culture heritage management are the responsibility of the Ministry of Internal Affairs. Other Government agencies that deal with matters of culture heritage management are the National Archives and the Culture and Religion Liaison Office of the Ministry of Internal Affairs. The work of the National Council of Chiefs (a statutory body) often impacts upon issues of cultural heritage management. However, the main implementing agency for cultural heritage management is the Vanuatu Cultural Centre. The Culture Centre is established under the law of the Vanuatu National Council Act.

When we are regarding to the safeguarding of culture in a country, we have to look through the national laws or act related to the Intangible Cultural Heritage or Culture Heritage. In Vanuatu there are some laws related directly and indirectly to the safeguarding of ICH and CH. A Bill for an Act still drafting for the protection of Traditional Knowledge and Safeguarding for the people of the republic of Vanuatu. This Bill contains the traditional right of the owner also the administration for Traditional Knowledge.

The National Constitution

The preamble to the Constitution establishes Vanuatu as a nation founded on “traditional Melanesian values”. Article 7 declares that parents have a fundamental duty to educate their children in their own culture and customs. Articles 29 and 30 establish the National Council of Chiefs and their role to make recommendations for the preservation and protection of ni-Vanuatu culture and language. Article 95 states that customary laws are to have effect as the laws of Vanuatu.

Island Courts act (cap. 167) : Provides for the representation of chiefs and customary experts on island courts which solve disputes specifically in areas of traditional culture (and particularly land disputes). The island courts have the power to interpret customary law.

Other

Elements of the criminal code relating to the desecration of burials and legislative provisions protecting the right to religious expression could potentially be used to protect aspects of indigenous cultural expressions; however this has yet to be tested in a court of law.

There is also important legislation – the Copyright, Trademark, Patents and Designs bill – that addresses cultural heritage in the context of the protection of intellectual property rights. All these bills have specific provisions dealing with indigenous knowledge and expressions of indigenous culture. All these provisions make it an offence to reproduce or otherwise use such expressions if:

- the user is not one of the custom owners;
- the user has not been authorized by the custom owners;
- the person has not used the expression in accordance with the rules of custom.

The National Cultural Council and National Council of Chiefs are given the power under these bills to act as the custodian of copyright on behalf of disputing custom owners or if an owner cannot be identified.

These bills therefore do not establish clear rules for the use of indigenous knowledge and expressions, but rather prevent their improper use while facilitating their continued use in the realm of custom. Given the extensive consultation that will need to be undertaken with all cultural communities to design an appropriate legal instrument for the protection of their knowledge and expressions, this emphasis on the prevention of the improper use of this heritage in these bills is seen as a good interim measure to ensure their protection.

1. National Law/Act

There is no comprehensive or up-to-date legislation dealing with the protection and management of cultural heritage (tangible or intangible) in Vanuatu. Relevant legislation that provides a basis for legal and non-legal protection of cultural heritage includes the following:

A. Vanuatu National Cultural Council Act (cap.186) (1988, 2006)

This Act establishes the Vanuatu National Cultural Council “for the preservation, protection and development of various aspects of the rich cultural heritage of Vanuatu”. The Council is also responsible for all national cultural heritage institutions. The Vanuatu National Cultural Council Act commenced on the 1st April 1988. The VNCC is established under the Chapter 186 of the Laws of Republic of Vanuatu. The objectives of the Council are to support, encourage and make provision for the preservation, protection and development of various aspects of the cultural heritage of Vanuatu. Also to support, encourage and make provision for the establishment, maintenance and development of public libraries. It has to establish, maintain, administer and make provision for such national institutions as the Council shall consider necessary and appropriate for the purposes of its objects including (but not limited thereto) the following national institutions: the Vanuatu Cultural Centre, including the National Museum, the National Library, the National Film and Sound Unit and the

National Cultural and Historic Sites Survey; and the National Archives. The Council has to initiate, encourage and support all services, matters or things which are conducive towards the proper and orderly development of any national institution set up in accordance with this Act. To initiate, encourage, support and conduct research and training programme on any matters related to any national institution set up in accordance with this Act. Finally to foster co-operation in matters related to the provision of museums, libraries and international relations between the Council and governments, organizations and bodies interested therein.

Table of Amendments (since the Revised Edition 1988): Acts 13 of 1992, 14 of 1992 and Act 18 of 1995

B. Convention on Biological Diversity (CBD)

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

The CBD recognises indigenous ownership of traditional knowledge (TK) and expression of culture (EC) – s1(1) and s1(2) – provisions of CBD applies to Vanuatu – Art. 8(j) & Art. 15 of CBD.

Convention on Biological Diversity (Ratification) Act n°23 of 1992.

An Act to provide for the ratification of the Convention on Biological Diversity signed on 5th day of June, 1992. This Act has been approved on the 16th December 1992, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified that this act commences on the day which it is gazetted. The Act was published on the Extraordinary/Official Gazette on the 1st March 1993.

C. Copyright and Related Rights Act 2000

The copyright and related rights act n°42, has been approved on the 29th December 2000, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified in the Part 8 of the Act that the latter commences on the day on which it is published in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 8th February 2011. For the moment, the act has not been reformed/modified.

Part 1- applies to new and existing work...and expressions of culture. “expression of indigenous culture” (EC) means “any way in which

indigenous knowledge may appear to be manifested, and includes : all material objects, names, stories, histories and songs in oral narratives, dances, ceremonies, ritual performances or practices, delineated forms, parts and details of designs and visual compositions, and specialised and technical knowledge and the skills required to implement that knowledge, including knowledge and skills about biological resources, biological resource use and systems of classifications.

S3 & S4 Act - applies to works, performances, sound recordings, broadcast and expressions of indigenous culture that; are created on or after this Act or in existence before that commencement.S4 - copyright provisions does not apply to agreements made before the commencement of the Act – “sunset clause” to set a definite period for compliance (6years etc;).

D. Trade Secrets Act 2000

An Act to provide for the protection of trade secrets and other undisclosed information.The Trade Secret Act n°52 of 2000 has been approved on the 29th December 2000, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified on the S 5 of the act that the latter commences on the day on which it is published in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 8th February 2011.

E. Forestry Act 2001

An Act to make provision for the protection, development and sustainable management of forests and the regulation of the forestry industry in Vanuatu, and for related purposes.

The Forestry Act n°26 of 2001 has been approved on the 30th December 2001, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified on the Part 8 (S73) of the act that the latter commences on the day on which it is published in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 3rd March 2003.

F. Environmental Management and Conservation Act 2002

An Act to provide for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities.The Environmental Management and Conservation Act n°12 of 2002, has been approved on the 31st December 2002, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified in the Part 6 (46) of the Act that the latter commences on the on the date of its publication in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 10th March 2003.Environment Act sets up the Biodiversity Advisory Council (Part 4 (29)) to manage bio-prospecting applications and create offences for non-compliance. Council

should be satisfied of a Binding and Enforceable contract with custom owners of resources and traditional knowledge. Contract to also contain consent on access to genetic resources and any use of TK, royalties, ABS arrangements etc.

G. Trade Marks Act 2003

The Act was published on the Extraordinary/Official Gazette on the 8th February 2011;

H. Patents Act 2003

The Patents Act n°2 of 2003, has been approved on the 21st July 2003, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified on the Part 15 (article 55) of the act that the latter commences on the day on which it is published in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 8th February 2011;

Relevant definitions (Part 1):

“Expression of indigenous culture” (EC) means “any way in which indigenous knowledge may appear to be manifested, and includes : all material objects, names, stories, histories and songs in oral narratives, dances, ceremonies, ritual performances or practices, delineated forms, parts and details of designs and visual compositions, and specialised and technical knowledge and the skills required to implement that knowledge, including knowledge and skills about biological resources, biological resource use and systems of classifications.

“Indigenous Knowledge” means any knowledge that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and whose nature or use has been transmitted from generation to generation; and that is regarded as pertaining to a particular indigenous person or people in Vanuatu.

Part 12 - Indigenous Knowledge - S47, of this act is related to indigenous knowledge whom ICH is part. It refers to the registration of patent involving indigenous knowledge. The VNCC has the power to act as the custodian of copyright on behalf of disputing custom owners or recognition of the intellectual property of individuals, clans, and communities who inherit the indigenous knowledge.

I. Designs Act 2003

The Designs Act n°3 of 2003 has been approved on the 21st July 2003, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified on the Part 14 (article 86) of the act that the latter commences

on the day on which it is published in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 8th February 2011;

Relevant definitions (Part 1):

“Expression of indigenous culture” (EC) means “any way in which indigenous knowledge may appear to be manifested, and includes : all material objects, names, stories, histories and songs in oral narratives, dances, ceremonies, ritual performances or practices, delineated forms, parts and details of designs and visual compositions, and specialised and technical knowledge and the skills required to implement that knowledge, including knowledge and skills about biological resources, biological resource use and systems of classifications.

“Indigenous Knowledge” means any knowledge that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and whose nature or use has been transmitted from generation to generation; and that is regarded as pertaining to a particular indigenous person or people in Vanuatu.

Part 10 – Indigenous Knowledge - S62, of this act is related to indigenous knowledge whom ICH is part. It refers to the registration of design involving Indigenous Knowledge. The registrar must refer the application to the National Council of Chiefs.

J. Kava Act 2002

An Act to regulate the cultivation, sale and export of kava and kava products.

The Kava Act n°7 of 2002 has been approved on the 31stDecember 2002, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified on the Part 4 (article 13) of the act that the latter commences on the day on which it is published in the Gazette. The Act was published on the Extraordinary/Official Gazette on the 22nd September 2008.

“Kava” means: plants of the species, *Piper methysticum* or the traditional beverage obtained by cold water extraction of the plant’s underground organs.

Vanuatu’s languages distinguish and classify at least 247 kava cultivars, which are used for a range of medicinal and ceremonial purposes. The complexity of these folk taxonomies and associated mythologies indicates the antiquity of this plant’s use in Vanuatu, and this has been supported by botanical research, which identifies northern Vanuatu as the origin point for kava cultivation, which is now practiced across the Pacific. The cultivation of kava in Vanuatu is a living tradition that testifies to superior

agronomic practices and an ancient history of sea-borne agricultural technologies and intercultural exchange. That's why this act is related to ICH.

K. National Council of Chief Act 2006

An Act to establish the National Council of Chiefs, the Island Councils of Chiefs throughout Vanuatu and the Urban Councils of Chiefs in the urban areas and for related purposes.

The National Council of Chief Act n°23 of 2006 has been approved on the 30th December 2001, enacted by the President and the Parliament of the Republic of Vanuatu. It is specified in the Part 5 (25) of the Act that the latter commences on the day on which it is published in the Gazette (only the paragraph 10 (1) (c) commences on 1st January 2007). The Act was published on the Extraordinary/Official Gazette on the 11th September 2006;

The National Council of Chiefs is established pursuant to Article 29(1) of the Constitution.

The Council is the governing body of the Island Councils of Chiefs and the Urban Councils of Chiefs. Council is in charge of Cultural Authority and advocator of TK promotion and protection.

L. Preservation of Sites and Artefacts Act 2008

The first Preservation of Sites and Artefacts Act was published in 1965 in Laws of the Republic of Vanuatu, Chapter 39 (commencement 2 July 1965). There is a consolidated edition 2006.

The Preservation of Sites and Artefacts Act n°21 of 2008 to amend the Preservation of Sites and Artefacts Act (cap 39) of 1965 has been approved on the 12th June 2008. It has been gazetted on the 11th May 2009.

An Act to provide for the preservation of sites and objects of historical, ethnological and archaeological or artistic significance by the Minister responsible for culture (which is the Minister of Internal Affairs), and prohibits the export of items of material culture of special significance or over ten years old.

2. Cultural Policy

There is no official national policy in the area of culture or culture heritage management in Vanuatu. The policy statements that is used is the Custom Policy of Malvatumauri that is the National Council of Chiefs (Kastom Polisi Blong Malavatumauri)

A. National Cultural Policy (Draft)

The development of a National Culture Policy has been a prioritized action agenda for a while for the Vanuatu National Cultural Center.

Unfortunately, due to some unforeseen circumstances, it has taken quite a while to have the policy document in place.

A National Cultural Policy has been draft but not approved.

Aim

The overall aim for the drafting of this National Culture Policy is to ensure that mechanisms are developed and provided for the National Government, the Provincial Government and Municipalities, the local authorities and all other relevant cultural stakeholders to guide the implementation of the planned activities to achieve the strategic goals and objectives as outlined in the cultural planning document for the cultural sector of Vanuatu.

Goals

The strategic goals for the drafting of this National Culture Policy are as follows:

- To establish a Department of Culture that must oversee all cultural affairs.
- To undertake a nation-wide cultural campaign to advocate the optimistic cultural intuition that people should revive, revitalize, preserve and protect for sustenance.
- To train, increase and expand the cultural human resource capacity.
- To develop and expand the cultural industries.
- To enforce the existing national laws and regulations and the regional and international treaties and conventions related to culture.

Objectives

The key objectives for this National Culture Policy include the following:

- To provide guidelines for the establishment of an overarching body to effectively improve the management, coordination and functioning of the various existing cultural sectors collectively and simultaneously.
- To provide guidelines for the revival, revitalization, preservation and documentation of all tangible and intangible cultural items and contents and the natural heritage of Vanuatu.
- To provide guidelines for the protection of the tangible and intangible cultural rights of the creators and producers of Vanuatu.
- To provide guidelines for the proper coordination and enhancement of cultural industries in Vanuatu.

- To provide guidelines for the establishment of any cultural training institutions within Vanuatu and also to coordinate and facilitate training for cultural administrators and creative industries personnel both locally and overseas.
- To provide guidelines for equal participation of relevant and appropriate creative industry domains including traditional and contemporary art in recognized regionally and globally organized showcases, festivals, expos and conferences.
- To provide guidelines for the enforcement of the National Cultural Laws and the Regional and International Treaties and Conventions ratified by Vanuatu.

B. Custom Policy of Malvatumauri that is the National Council of Chiefs (Kastom Polisi Blong Malavatumauri)

An extensive document which details the customary policy of the Malvatumauri or National Council of Chiefs. Policies in a wide range of fields are outlined, including land ownership, environmental protection, migration and the preservation of language and all aspects of traditional cultures. However, the Custom Policy (Kastom Polisi) is not supported in legislation and has come to serve more as a guideline for elected member chiefs of the Malvatumauri themselves. Published in 1983, many of the declarations of the policy have been superceded by chiefly declarations on the ground. Work is now underway to enact legislation which would provide legal backing to many of these policies.

C. Vanuatu Cultural Research Policy

Developed principally to provide guidelines for research by foreigners (particularly by anthropologists and film-makers) into ni-Vanuatu cultures, this policy is implemented by Vanuatu National Cultural Council under its legislated powers. It has provided an effective tool for ensuring local consultation and participation in such activities since its institution in 1995 (it was revised in 2001). In the absence of an official national cultural policy, its also provides elements of a *de facto* policy statement for the Vanuatu National Cultural Council and Cultural Centre.

“Guiding principles” of the Policy, for example, are as follows:

- “Kastom” means indigenous knowledge and practice and the ways it is expressed and manifested;
- kastom embodies and expresses the knowledge, practices and relationships of the people of Vanuatu and encompasses and distinguishes the many different cultures of Vanuatu;

- the people of Vanuatu recognise the importance of knowing, preserving and developing their kastom and history;
- kastom belongs to individuals, families, lineages and communities in Vanuatu. Any research on kastom must, in the first instance, respond to and respect the needs and desires of those people to whom the kastom belongs;
- research in practice is a collaborative venture involving researchers, individual and groups of informants, local communities, chiefs and community leaders, cultural fieldworkers, cultural administrative bodies and local and national governments, and must be approached as such.

This policy advocates the recognition of traditional ownerships of resources under the Ni – Vanuatu culture; Promotes and protects traditional biological knowledge.

Research includes all studies and data collections, including studies of or incorporating TK or classification systems and practice (e.g. medicinal properties of plants and marine lives or their tenure systems etc;.

According to the text of the Vanuatu Cultural Research policy, the objectives are:

- To ensure that cultural research projects are consistent with Vanuatu’s own research priorities, and to make researchers aware of these priorities.
- To establish a clear process by which applications from foreign nationals to undertake research in Vanuatu can be evaluated. This Policy is not intended to apply to research undertaken by ni-Vanuatu, by Government officers in the execution of their duty or at the request of the Government of the Republic of Vanuatu.
- To ensure that the number of researchers working in Vanuatu at any one time is manageable, and that researchers are adequately prepared for collaborative fieldwork. For this reason, this Policy distinguishes between researchers new to Vanuatu, and those with previous experience in the country.

D. National Education Policy

Includes the study of customs and traditional practices at primary and secondary schools – promotion of Traditional Knowledge/Education Cultural creation and innovations.

The Vanuatu National Curriculum Statement guiding principles stated that teachers, curriculum developers, key educators and managers of academic institutions must consider and apply the basic principles where students' needs, background, perspectives and interests are reflected in learning programme. The Vanuatu National Curriculum Statement supports the inclusivity and multiculturalism that has existed for hundreds of years in the nation of island communities with their many languages and cultures. Such traditional way of life, cultures and languages have survived in many countries. The multicultural society is challenging as teachers need to cater for the diverse needs of children and students from many backgrounds and languages and ensure that they conserve and sustain their cultural heritage and languages. Traditional forms of communication such as dance forms, mask, costumes and body painting, drumming and sand drawing occurs when pass information to others and receive response. Information is passed from one person to another through various ways including sign and symbols and ways of communicating are culturally and significant. These traditional forms of communication reflect rich heritage that are unique to the people and way of life.

(- Education Act 2001)

(- Vanuatu National Language Council Act 2005) / Education Language Policy

E. Vanuatu Cultural Council Policy

All applications for researches are to be sanctioned by this Council through the background of their research policy. They also take the role of the Biodiversity Council in granting permits for environment research (and EIA assessment).

F. National Policy on filming in Vanuatu

- 1) All film making (including video) in Vanuatu falls under the jurisdiction of the National Film and Sound Unit of the Vanuatu Cultural Centre, which must be notified of any film making activity in the country.
- 2) Any film making that is undertaken by foreign film makers and that involves a cultural subject (that is, any ethnographic footage or footage particularly featuring scenes from people's daily lives) requires the consent of the Vanuatu National Cultural Council, and must satisfy the following conditions:
 - A formal application to film in Vanuatu must be made to the Vanuatu Cultural Centre at least 4 weeks in advance of filming. A tentative or confirmed itinerary must be presented with this application.
 - An authorization fee of minimum 300 000 vatu (for documentary) must be provided to the Vanuatu Cultural Centre before filming can commence. This fee may be modified or waived upon request.

- Copies of all footage taken, including unedited portions (RUSH) and edited final products in broadcast-quality SP-Betacam or DVC PRO, must be deposited with the National Film Unit of the Vanuatu Cultural Centre.
- A representative of the Vanuatu Cultural Centre is required to accompany the film maker while shooting footage. This is primarily to ensure cultural sensitivity on the film maker's part, however the Cultural Centre representative can also assist the film maker and help generally to facilitate filming.

The Vanuatu Cultural Centre may modify or waive any of the above conditions. Failure to comply with these conditions may result in confiscation of filming equipment and footage.

For any queries or applications by foreign film makers to film in Vanuatu please download the "Query form for foreign film maker in Vanuatu"

A new filming policy has been draft this year and should be soon approved.

3. Needs to enhance the process of developing safeguarding policies and systems

The problem is that there are some laws but they certainly are not necessarily respected and active. Needs to raise awareness at the government level the importance of national culture or develop the intangible cultural heritage may be to obtain legislative action in a state where the 'communities' belongs to or they can be recognised as an owner of intellectual property.

Make an important work of awareness at the highest level that is to say to a government level. Realize the importance of national culture.

In these days, holders of traditional knowledge confront with various difficulties to maintain and transmit the knowledge. The primary difficulties largely come from short or lack of relevant policy or legal system for protection of traditional knowledge at both national and international level even though several policy frameworks have been made in relation to protection of traditional level.

There is a need in strengthening and linking stakeholders together to conduct consultation meeting at all times. In order to enhance the process of developing safeguarding policies and systems, a certain policy or law must recognize property rights over traditional knowledge holders first.