

SAMOA

LAW REFORM COMMISSION

PRISONS ACT 1967
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Preface

The review of the Prisons Act 1967 (“Prisons Act”) of Samoa is a major law reform project (“Project”). The Samoa Law Reform Commission (“Commission”) has been mandated to review the Prisons Act having regard to the paradigm shift from containment to correctional service delivery approach as practiced in other jurisdictions such as Australia (ACT), New Zealand (“NZ”) and the Solomon Islands. This paradigm shift for Samoa is in accordance with the Law and Justice Sector Plan endorsed in November 2008. The policy reasons for such change is highlighted in one of the objectives of the Law and Justice Sector Plan and is consistent with Cabinet Directive (F.K. (09)33), which will be discussed later in this paper.

Upon completion of this review, the Commission will call for responses in the form of summary questions, on a number of issues that will be raised in this paper. The responses will form the basis for the Commission’s recommendation on how the current law and practice can be reformed in a way that is best suited to the Samoan context. In getting to this point, it is important to consider corrections legislation in other jurisdictions, with the ultimate aim of the resultant legislation assisting with the review of the Prisons Act.

The ultimate aim of this review is to assist in improving the quality of services delivery within prisons institutions in conformity with international standards of human rights as required under the International Conventions and Treaties, such as the United Nations Declaration on Human Rights and the United Nations Standards for the Humane Treatment of Prisoners.

The Commission has employed for this Issues Paper, the form of questions and a closing date for responses (31 March 2011). This paper therefore discusses the issues and poses questions for consideration. The intention is to enable detailed and practical consideration of the issues.

We emphasize that we are not committed to the views indicated and any provisional conclusions should not be taken as precluding further consideration of the issues.

We are grateful for the assistance of the following people who provided comments on earlier drafts of this paper:

We emphasize however that the views expressed in this paper are those of the Commission and not necessarily those of the people who have helped us.

Submissions or comments on this paper should be sent by the 31 March 2011 to the Executive Director, Samoa Law Reform Commission, Private Bag 974 or by email to lawreform@ag.gov.ws.

Introduction

This issues paper considers the current law and practice relating to the Prisons Act, with specific reference to Tafaigata Prison. The paper discusses comments which arose during the review of the Prisons Act. These comments were raised during preliminary consultations with the relevant stakeholders and are attached as **Annexure 1** to this paper. The paper will briefly look at the historic emergence of the corrections based approach with specific reference to the United States of America (“USA”). The paper considers the shift from containment to correctional service delivery in prisons having regard to the Law and Justice Plan 2008, which aims at establishing a separate and independent Prisons Authority. The paper also looks at relevant laws from comparable jurisdictions such as Australia, NZ and the Solomon Islands, which currently have corrections-based legislation. Analyzing these jurisdictions would assist in a way forward for prison administration laws in Samoa.

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1. IS THERE A NEED TO CHANGE?

1.1 The Samoan Experience

Following the establishment of the Commission in November 2008, the review of the Prisons Act began with the appointment of a Working Group from the relevant Government Ministries to review the Prisons Act. This Working Group which consisted of stakeholders representing the relevant government ministries met on various occasions beginning in the month of March 2009. These meetings which were chaired by the Commissioner of Police and facilitated by the Commission, discussed key issues arising out of prison administration in Samoa having regard to recent upheavals and serious incidents of disorder in Tafaigata prison reported by the media.¹ While many of the problems associated with the administration of Samoa's prisons may be said to be resource related (lack of personnel, training, funding and institutional support) it is clear that the Prisons Act in this context is outdated and in need of comprehensive review.

¹ Samoa Observer article "2009 at a glance: Prison Break", 2nd January 2010.

1.1.1 Working Group Prison Visit

Members of the Working Group visited Tafaigata Prison in April 2009. This was seen as an important opportunity for members to see for themselves the state of play and condition of Tafaigata Prison to assist with the review of the Prisons Act. At the time of this visit, the number of inmates serving sentences at Tafaigata Prison totaled 211; 17 of the prisoners were female inmates, 148 were male inmates and 46 were being held in custody awaiting sentences². There were about 15-20 inmates in one room. The number of inmates continues to increase given the influx of new prisoners. This is becoming a major problem as there are not enough prison rooms in Tafaigata to accommodate the increasing number of prisoners. The physical structure of Tafaigata Prison is nearly a century old and there is no proper fence to secure the prison compound. It only has a stone fence that is easily escapable by prisoners.

There are designated rooms for certain categories of prisoners based on the severity of their offending (eg. sexual offences and murder). These designated rooms are located towards the backyard a few meters from the main building where most prisoners are housed. These rooms are old and seem isolated. Prisoners who repetitively commit serious prison offences are sent to one of the rooms (Cell 9) equivalent to a small unit, without been afforded basic needs for a period of time. Recently this room was closed down upon order from Justice Vaai given its poor and unhygienic condition.³ The other rooms similar to that of Cell 9 are still being used to house special prisoners such as those with mental disorders, for close monitoring by Police officers. The female prisoners are kept separate from male prisoners with their compound a few meters away from where male prisoners are housed. The female prison compound is smaller than that of the male prisoners. The proximity of the female compound to the male compound is an issue. This issue should be re-examined as the number of female prisoners may increase rapidly over the years.

On the other hand, life for prisoners at Tafaigata is not all confined to the containment of prison cells. The prisoners utilize their time in prison doing certain activities.⁴ These activities include working the plantations for daily exercise with one or two police officers supervising.

² Prison Visit by Working Group, Report presented to WG meeting – SLRC, 1st April 2009.

³ Samoan Observer article “*Prison Conditions and Human Rights*” 3rd March 2009.

⁴ Ibid at n2.

The plantation provides for their everyday meals as prisoners are given three meals a day. The prisoners are also involved in church activities for their spiritual development and customary counseling from police officers. However, there is a great concern as these prisoners may require professional counseling particularly those who have serious mental problems such as many sexual offenders.⁵ Currently, police officers who are also prison officers cannot provide professional counseling. The only form of counseling available to prisoners at Tafaigata is rooted in Samoa's culture of respect which is the 'matai' system. The prisoners at Tafaigata do need proper counseling from professional and fully trained prison officers.

The Tafaigata Prison is viewed as a correctional facility with the name 'CORRECTION' carved on its front garden. This is seen as a positive move towards correctional services in prison although such is not embedded in the current Prisons Act of Samoa. A move towards correctional based services is seen by some of the members of the Working Group as positive and necessary to address the issue of repeat offenders. According to some members, this shift is beneficial to members of society as prisoners will be given the opportunity to receive counseling to prepare them to become responsible members of society once their sentences have been served.⁶ The shift to corrections will be discussed below.

One of the issues discussed at length during preliminary discussions with the relevant stakeholders was the establishment of an independent Prisons Authority separate from Police Services. There were detailed discussions on this issue. This will be dealt with in Part 3 of this paper.

2) ESTABLISHMENT OF PRISONS

2.1 Appointment of Prisons

Under section 4 of the Prisons Act, the Head of State is empowered to proclaim places or buildings to be prisons by Notice published in the Gazette. The following places have been proclaimed or appointed as prisons⁷:

⁵ Prison Visit by Working Group, Report presented to WG meeting – SLRC, 1st April 2009.

⁶ 15 September 2009, Review of Prisons Act, Ministry of Health Comments.

⁷ The Western Samoa Gazette, 1920-1927 (Volume 1).

- a) *Appointment No. 1 of 1920- Tuamasaga District;*
- b) *Appointment No.12 of 1922- Matautuu, Savaii;*
- c) *Appointment No. 40 of 1926- Tuvao, Upolu;*
- d) *Appointment No. 44 of 1927- Magia, Upolu;*
- e) *Appointment No. 57 of 1929- Apia Police Station, Aleipata Police Post, Leulumoega Police Post, Poutasi Police Post, Tuasivi Police Post, Falelima Police Post;*
- f) *Appointment No. 65 of 1930- Tafaiagata, Upolu;*
- g) *Appointment No. 70 of 1931- Tafaiagata, Upolu (extension);*

The focus of this paper will be Tafaiagata Prison, which holds the largest number of prisoners in Samoa.

2.2 Prisons Act 1967

The Prisons Act 1967 is the amalgamation of the Prisons Ordinance 1953 and Prisons Amendment Ordinance 1959.⁸ The Prisons Act 1967 was enacted to consolidate and amend the law relating to the establishment and regulation of prisons and of a Prisons Service in Samoa.⁹

The provisions of the Prisons Act are summarized as follows:

- a) *the establishment of prison gaols according to proclamations by the Head of State;*
- b) *composition of the prisons service according to the existing ranks within the service;*
- c) *provisions for the wages and allowances due on officers and other members who form part of the service;*
- d) *instances which warrant suspension of a police officer and the procedure for appointing a tribunal to oversee inquiries of charges laid against a police officer;*
- e) *specifications of appropriate punishments that should be impose once a charge has been proved;*
- f) *the separation of confinement based on gender;*

⁸ Samoa, *Parliamentary Debates*, Legislative Assembly, 12/7/1967, page 104.

⁹ Prisons Act 1967 (Consolidated Version) Attorney General's Office, Samoa.

- g) *regulations which are to be prescribed by the Head of State regarding duties of members of the prisons service, punishment for breaches of duties and offences, salaries, wages and allowances payable to members of the service, discipline and control of the service, construction and description of cells for separate confinement, treatment of prisoners, remission of portions of sentences, classification of the kind of labour performed by prisoners and good management of prisons;*
- h) *appointment and duties of Visiting Committee;*
- i) *distinction of the types of prisoner offences and the penalties that apply to committal of such offences;*
- j) *general provisions pertaining to terms of imprisonment, release of prisoners on parole, remission of parts of sentences, inquests on prisoners, description of prison writs and the removal of prisoners for trials; and*
- k) *provisions for the administration of a convicts property.*

3) THE CRIMINAL JUSTICE SYSTEM - CORRECTIONS

The criminal justice system consists of three main parts: 1) law enforcement (police); 2) adjudication (courts); and 3) corrections, which includes jails, prisons, probation and parole.¹⁰ These distinct parts operate together both under the rule of law and as the principal means of maintaining the rule of law within society.

After offenders have been dealt with by the law enforcement and adjudication agencies, they are then turned over to the correctional authorities or jails/prisons.¹¹ Historically, administration of punishment has taken many different forms. Early on, when civilizations lacked the resources necessary to construct and maintain prisons, exile and execution were the primary forms of punishment. Punishment in the middle ages included mutilation, branding, and flogging, execution and wergild. The criminal justice system has evolved since these times, with revised forms of punishment, added rights for offenders and policing reforms.¹² These developments have reflected changing customs, political ideals, and economic

¹⁰ http://en.wikipedia.org/wiki/Criminal_Justice 'Criminal Justice System', page 2-8 (Accessed 15 March 2010).

¹¹ Ibid at n10, page 4.

¹² Ibid at n10.

conditions. Correctional reform emerged in the USA towards the end of the 17th Century with the initiative of William Penn and subsequently spread out during the late 18th and early 19th centuries, known as the Quaker movement.¹³

3.1 Prisons

The most publicly visible form of punishment in the modern era is the prison. Early prisons were used primarily to sequester criminals and little thought was given to living conditions within their walls.¹⁴ Many societies view prison terms as a form of revenge or retribution, and any harm or discomfort the prisoner suffers is ‘payback’ for the harm they caused the victims.

This paper considers the USA jurisdiction which has the highest prison population rate in the world of more than seven million prisoners.¹⁵ Over two million persons in the USA become prisoners each year in jails, police stations, institutions for juvenile delinquents and prisons. However, no one knows how many are confined again or how soon the average re-arrest occurs. There is no adequate evidence as to what can be done to reduce the probability that those released will commit crime again.¹⁶ There have been many responses to the problem of repetitive offending in the USA, such as additional costs spent on treatment facilities and prison services, however, there is no convincing evidence that this investment reduces what criminologists call “recidivism”, the offenders return to crime.¹⁷

3.2 Correctional Research Movement

By the midpoint of the 20th century, a new form of correctional research developed independently in several parts of the world. This movement emerged and summarized as a sequence of three “R’s” in the handling of criminals or prisoners: *Revenge, Restraint, and Reformation*.¹⁸ Primary interest in revenge against criminals, by capital punishment for felonies and by corporal punishment for misdemeanors, was reduced markedly during the late 18th and early 19th centuries, although interest in revenge has never completely disappeared.¹⁹ With the

¹³ http://en.wikipedia.org/wiki/Criminal_Justice ‘Criminal Justice System’, page 2-8 (Accessed 15 March 2010).

¹⁴ Ibid at n13.

¹⁵ www.drugwarfacts.org/prison.htm ‘Prisons, Jails and Probation-Overview’ (Accessed 18 March 2010).

¹⁶ Glacer D 1964 ‘The Effectiveness of a Prison and a Parole System’, The Bobbs-Merrill Company Inc, USA.

¹⁷ Ibid at n16, page 4.

¹⁸ Ibid at n16, page 6.

¹⁹ Ibid at n16.

rise of democratic governments and a new accent on liberty, imprisonment gradually became the dominant penalty for crime. Prisons promised protections to society by incapacitating criminals, satisfied those who thirsted for revenge by denying the blessings of liberty to offenders, and satisfied 19th century religious interest in reforming criminals by including programs presumed to serve this purpose.²⁰

Many research studies have been conducted in the past with the aim of determining the issue of repetitive offending and parole. Research studies have emphasized the extent of alleged felony committed by released prisoners, because the public establishes prisons primarily to protect itself from felons rather than to cope with lesser behavior.²¹ Felony in this context is defined as an act of committing a serious crime such as murder or rape.²² A person who commits felony is a felon. It is said that if prison or parole experience changes a man from a terrible malefactor to a saint, that is excellent, but if it merely changes him from a felon to a nonfelon, its primary objective has still been achieved.²³

Today, prisoners increasingly are released by parole in the USA. Parole means the release of a prisoner before his or her sentence is completed, subject to continued monitoring and compliance with certain terms and conditions. The purpose of the parole is to maximize a prisoner's chances of achieving a non criminal life. It is the prevailing opinion in corrections that the public is best protected from crimes by released prisoners by: 1) *sentencing and parole policies which enable most prisoners to leave prison by parole rather than by complete discharge*; 2) *an optimum amount of surveillance of parolees, rather than none at all or gross excess (as well as more positive supervision functions such as counseling and assistance)*; 3) *some revocation of parole for nonfelonious behavior*.²⁴ The more of these three policies are adopted, the greater will be the proportion of released prisoners return to prison for nonfelonious behavior.²⁵ The issue of parole will not be the focus of this paper.

²⁰ Glacer D 1964 'The Effectiveness of a Prison and a Parole System', The Bobbs-Merrill Company Inc, USA.

²¹ Ibid at n20, page 28.

²² Oxford Advanced Learners Dictionary.

²³ Ibid at n20, page 28.

²⁴ Ibid at n20, page 28.

²⁵ Ibid at n20, page 28.

There are cases that justify the maxim that no human being should ever be regarded as hopelessly criminal. A few cases in the USA illustrate the potential for reformation as a result of imprisonment life, as follows:

Case S-122: Lawrence was a hardcore criminal with a continuous history of criminality; from his commitment to a state training school when thirteen years old to his release as age thirty one on his fourth prison sentence. His crime generally was auto theft and violating parole or conditional release. He has been out of prison for 7 years and has given no indication for further criminality. While in prison the last time he had completed high school and had taken correspondence courses in salesmanship and practical psychology. He now operates his own insurance brokerage, employing several salesmen.²⁶

Case S-517: Lester started his criminal record with six months' probation for larceny, when fourteen years old. He subsequently completed another probation term, a reformatory sentence, and was twenty five years old and the fifth year of a state penitentiary term when he escaped. He had a criminal record of consecutive robberies and kidnapping law enforcement officers. He had also escaped a number of times. He was immediately given thirty days' solitary confinement on bread, water, and occasional peanut butter, to demonstrate to others the state's attitude on escaping. Having completed his imprisonment and now around fifty years old, he makes such a favorable impression that it is difficult to picture him as the dangerous criminal he was in his twenties...²⁷

Case S-514: Ichabod had a difficult childhood having spent much of his earlier life in orphanages in which he followed delinquent activities and subsequently became happier in institutions than anywhere else. He had a criminal record of auto theft. He was twenty three years old when paroled and since he had no family to offer him a home and job assistance, he was provided assistance by the prison Employment Placement to work as an orderly in a hospital. This is where he changed remarkably and courted a young woman whom he married. He now is a much more self-sufficient person, in sharp contrast to the dependant individual who earlier sought refuge from responsibilities in institutions.²⁸

The above cases illustrate a pattern of conventional life for many years after a fairly long period of criminality and a long incarceration. Most of these individuals had difficulties in readjusting their lives at first, but were assisted in this period by different reformatory programs in prisons and assistance from fellow probation officers. Their ultimate success reflected effective reformatory programs such as assistance to those without families under the prison Employment Placement program. Education skills and work skills learned in prison

²⁶ Glacer D 1964 'The Effectiveness of a Prison and a Parole System', The Bobbs-Merrill Company Inc, USA.

²⁷ Ibid at n26, page 57.

²⁸ Ibid at n26, page 62.

together with habits or diligence and perseverance have contributed in the successful reintegration of these prisoners into society.

3.3 *Disciplinary Action and Counseling*

The preceding discussion considered the background to, and operation of, the corrections research movement.

This part focuses on disciplinary actions and counseling of prisoners from a correctional standard approach. The term ‘*discipline*’ has a variety of connotations in prison. It may be defined as all actions taken by a prison administration to stop and deter any inmate behavior which the administration considers intolerable.²⁹ *Counseling* implies the giving of advice or the stimulation of thinking. Counseling may or may not be related to discipline, depending on the manner and purpose with which each is pursued. According to the *Manual of Correctional Standards* of the American Correctional Association:

*“Discipline...looks beyond the limits of the inmate’s term of confinement. It is not merely the person’s ability to conform to institutional rules and regulations but his ability and desire to conform to accepted standards for individual and community life in free society. Discipline must...develop in the inmate personal responsibility to that social community to which he will return...”*³⁰

“Counseling, as the term is coming to be used in working with offenders, encompasses the personal and group relationships undertaken by staff with voluntary participation by inmates or parolees. It has as its goals either the immediate solution to a specific personal problem, or a long-range effort to develop increased self-understanding and maturity within the offender. Counseling, casework and clinical services are to be seen as a continuous part of the total correctional program...in the institutional system, from reception through parole and discharge...”

The above assertion highlights two significant aspects of a correctional program; discipline and counseling. Discipline is necessary when inmates or prisoners fail to conform to prescribed rules and regulations of prison administration. However, discipline should be proportionate to the breach committed and must assist the prisoner in every way possible in becoming a responsible person. For instance, prisoners who are being isolated in a cell for a number of

²⁹ Glacer D 1964 ‘*The Effectiveness of a Prison and a Parole System*’, The Bobbs-Merrill Company Inc, USA.

³⁰ Ibid at n29, page 172-173.

days should be regularly inspected and checked upon by officers and health officers.³¹ Prisoners, who are considered seriously disturbed, assaultive, homicidal, or suicidal, may be placed in a non-disciplinary maximum-custody unit in which they receive study material and some types of art and game material. In addition, a number of lesser penalties may be imposed such as in the context of the USA- barring an inmate from a particular activity temporarily, or deducting 'good time' from a prisoner's sentence for his or her conforming behavior during confinement. Also, meritorious service pay and meritorious service good time may be withheld if a prisoner misbehaves.³²

In relation to counseling; teachers, work supervisors, custodial staff, and all others dealing with inmates are also expected to do a certain amount of counseling whenever the need and opportunity arise. An interesting development in the USA is an 'open door' period, when case workers and some staff remained available in their offices for a visit by any inmate not in maximum custody, without an appointment of formal request.³³ The view of discipline now as discussed in the preceding paragraph makes the disciplinary process an aspect of correctional counseling.

A new goal of prison punishments is to offer criminals a chance to be rehabilitated. Many modern prisons now as discussed above in the USA, offer schooling or job training to prisoners as a chance to learn a vocation and thereby earn a legitimate living when they are returned to society.³⁴ Religious institutions also have a presence in many prisons, with the goal of teaching ethics and instilling a sense of morality in the prisoners. Many jurisdictions in the region such as Australia, NZ and the Solomon Islands have introduced corrections based legislation implementing correctional programs. These will be discussed later in this paper with the aim of assisting Samoa in the development of its prison legislation.

³¹ Ibid at n29.

³² Glacer D 1964 *'The Effectiveness of a Prison and a Parole System'*, The Bobbs-Merrill Company Inc, USA.

³³ Ibid at n32, page 185.

³⁴ http://en.wikipedia.org/wiki/Criminal_Justice *'Criminal Justice System'*, page 2-8 (Accessed 15 March 2010).

3.4 Law and Justice Plan 2008- The Establishment of a Separate Prison Services as a separate Authority

The implementation of a separate Prisons Authority from Police Services is long overdue and following the endorsement of the Law and Justice Sector Plan³⁵ in November 2008, one of the key outputs of this plan is to establish community safety through improved crime management (Goal 1). To ensure that this key output is achieved, the Plan highlights the following activities for future implementation:

<p>Offender rehabilitation and reducing re-offending</p>	<ul style="list-style-type: none"> ▪ Improve prison systems and facilities, specifically including rebuilding or fully renovating the prison, to ensure compliance with international standards and best practice, and ensure segregation of pre-trial detainees, juveniles and female offenders. ▪ Establish and resource the Prisons Services as an independent Authority. ▪ Develop and implement a community-based diversionary system for juveniles at risk of incarceration ▪ Develop and implement properly sanctioned rehabilitation programs including programmes to facilitate the reintegration into society of offenders: eg: <ul style="list-style-type: none"> - Young Offenders Justice & Violence Project³⁶ ▪ Develop and implement properly sanctioned Weekend Parole programmes for offenders ▪ Review of Parole Board structure and systems 	<p>√ - Year 1</p> <p>√ - Year 1</p>	<ul style="list-style-type: none"> ▪ Prison built or renovated to approved standards ▪ Prison Authority established ▪ Diversionary scheme introduced ▪ Rehabilitation program introduced ▪ Weekend parole introduced ▪ Review conducted and recommendations implemented 	<p>Prison Services (MoPP)</p> <p>Probation Services (MJCA)</p>
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In addition, the Ministry of Police and Prisons which is initiating the Project submitted an information paper to Cabinet for their endorsement of the review as there were still concerns amongst the Working Group on separating prisons from Police. Cabinet in response directed through Cabinet Directive F.K. (09) 33 to proceed with the review of the Prisons Act with the view of a separate and independent Prisons Authority from Police.

³⁵ Samoa Law and Justice Sector Plan 2008-2012, ‘Justice for a Safe and stable Samoa’ - The vision and mission of the Plan and its strategic focus on improving and strengthening the legal system and services in Samoa, so as to provide a safe and stable Samoa.

³⁶ Currently underway, initiated by the Chief Justice of Samoa.

The prison service as an independent and separate authority is seen as a positive approach by members of the Working Group as it is perceived as ‘*promoting criminal justice by the provision of a community based justice system that fosters community based sentencing options and the rehabilitation and reintegration of offenders*’.³⁷ Also, some viewed this separation as ‘*timely as prisoners must be given the opportunity to receive counseling to prepare them for when they reenter society once their sentences have been served*’.³⁸

There may be a general perception among members of the public that locking people away behind bars from society may deal with the immediate public safety issue particularly of those affected. However, from discussions above, it is evident that this perception is not regarded as a complete and helpful tool in combating repeat offenders. Thus, most developed jurisdictions such as NZ and Australia have moved from mere containment to correctional service delivery. The primary concern is **how can we deal with the prevalent challenges of repeat offending and provide for the rehabilitation and re-integration of offenders back into their families and communities?**

The Commission prepared an information paper on some of the advantages and disadvantages of a separate Prisons Authority from Police Services to provide some clarification on some of the concerns raised during preliminary discussions with the Working Group. The table below based on the information paper was presented to the Working Group:

SEPARATION OF PRISON SERVICES FROM POLICE SERVICES

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> - Attract more funds from international aids and donors to improve and maintain prison facilities or new correctional facility. - Great emphasis and focus on prison/correction administration hence improved service delivery. - Funds or aids obtained from overseas 	<ul style="list-style-type: none"> - Financial implications for a stand alone prison/correctional facility. Prison will become independent and self-financed. Where do we look for funding? - Resource restraints- lack of resources and capacity to administer separate and independent prison/service facility. - Lack of expertise and personnel to administer

³⁷ 21st September 2009, ‘*Law Reform Commission Review of the Prisons Act 1967*’, MWCSO Comments.

³⁸ 15 September 2009, ‘*Review of Prisons Act 1967*’, MOH Comments.

<p>are utilized to establish various rehabilitation activities such as counseling and educational programmes.</p> <ul style="list-style-type: none"> - Enactment of a new comprehensive Prison/Correction legislation (stand alone) similar to other developed jurisdictions. This standalone legislation can consolidate all prison-related legislation such as Parole Act and Youth Offenders Act for easier reference. - Stand alone legislation will address provisions that cover women and children including human rights provisions and rehabilitation programmes for prisoners. 	<p>prison/correction facility. There will also be cost implications as local officers will require training and capacity building.</p> <ul style="list-style-type: none"> - Cost implications for monitoring prison/correction facility as such facility must be under strict surveillance. - Clash between traditional views of containment and correctional service approach. Society will have to change their mentality and attitude towards correctional service approach.
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The above table highlights some of the advantages and disadvantages of a separate Prisons Authority from Police. A separate and independent Prisons Authority implies a great demand of resources and relevant skills to operate such body. Nevertheless, problems in these areas are always resource-related and there can never be sufficient resources to effectively operate any prison facility. The bright side is that greater emphasis will be placed on the administration of prisoners, as opposed to the existing organizational structure of Prison services in Samoa. There will also be greater attraction of funds from international donors to operate the prison given that Samoa complies with international accepted practices in the treatment of prisoners. The focus will be on the provision of the relevant services in prison such as those relevant under a correctional program. For instance, counseling and rehabilitative programmes for prisoners in Samoa.

As discussed above, there is a strong move towards a separate Prisons Authority under a correctional model. This is evident from comments of some government stakeholders and the Law and Justice Plan highlighted above. It is now crucial at this stage of this paper to state that

the position to take is the establishment of an independent Prison Authority under a correctional model.

4) COMPARABLE JURISDICTIONS AND OBSERVATIONS

This part focuses on the jurisdictions that have shifted from containment to correctional service approach, namely Australian states and territories-illustrated by the legislation in the ACT, NZ and the Solomon Islands with the aim of a developed or new Prison/Correction legislation for Samoa. The following discussions summarize the corrections legislation in these jurisdictions with emphasis on the treatment and handling of prisoners/detainees.

4.1 Australian Capital Territory (ACT) Corrections Management Act 2007

The ACT Corrections Management Act³⁹ (“ACT Act”) became effective on the 1st October 2009.⁴⁰ Chapter 2 of the ACT Act provides for the objects and principle of the Act such as promoting public safety and the maintenance of a just society, particularly by ensuring the humane and secure detention of detainees, and promoting the rehabilitation of offenders and their reintegration into society. The rationale underlying these objectives is to ensure that harm suffered by victims, and their need for protection is considered appropriately in regards to decision making in the management of the detained; as well as ensuring that the behavior of corrections officers recognizes and respects the inherent dignity of the detainees as individuals.

Chapter 3 deals with administration such as Ministerial directions to the Chief Executive Officer (“CEO”). The CEO is the administrative head of the Corrections Facility and acts under the direction of the Minister, and can delegate his or her functions to corrections officers. Corrections officers are appointed under the Act, as well as doctors and health professionals solely for the Corrections Facility. The Act is quite lengthy in regards to other special administrative provisions such as declaration of emergency and emergency powers.

There are also detailed provisions in Chapters 4 and 5 of the Act relating to the detention of detainees and escorting detainees; and differentiating between young detainees and adults. Chapter 6 of the Act looks extensively at the living conditions at correctional centers and

³⁹ www.austlii.edu.au ‘Corrections Management Act 2007’ ACT.

⁴⁰ Similar legislation is in force in the other Australian states and territories.

highlights the basic necessities and rights accorded to detainees such as food and drinks, personal hygiene and family visitations. This part also looks at the treatment of convicted and non convicted detainees. There are also other provisions detailing the treatment of detainees; from body searches to disciplinary actions taken against a detainee. Overall, the ACT Act encompasses comprehensive provisions which focus on the treatment and well being of detainees. The substantial provisions on treatment of prisoners will be discussed in detail in the analysis part of this paper.

4.2 NZ Corrections Act 2004

The Corrections Act 2004 came into force on 1st June 2005 and repealed and replaced the Penal Institution Act 1954⁴¹. It introduced reforms that reflect modern conditions and approaches to how the Department manages offenders and is in line with other recent criminal justice reforms⁴². The Corrections Act emphasizes that public safety is of central importance and now requires that the Department has to consider victims' interest when managing offenders⁴³. Since the early 1990s it has been recognized that corrections legislation was becoming increasingly outdated and was failing to reflect the modern correctional environment. Hence in 2000, the development of a new Corrections Bill was agreed upon by Minister. New corrections legislation aimed at putting into place a legal framework that supported modern correctional practice. The Department's new approach to offender management aims to reduce re-offending through effective targeting of rehabilitative and re-integrative programmes and services⁴⁴.

Some of the key provisions of the Corrections Act include:

- i) establishing the purpose and guiding principles of the corrections system;
- ii) requiring the Department to devise individual management plans for prisoners and provide programmes, within resources available, for their rehabilitation and reintegration into society;
- iii) prisoners minimum entitlements are in the Act and are more consistent with the UN Standard Minimum Rules for the Treatment of Prisoners;
- iv) Improving the prison disciplinary offence regime;

⁴¹ <http://www.corrections.govt.nz> (policy-and-legislation/corrections-act-2005.html), (Accessed 5/11/2009).

⁴² Ibid at n41.

⁴³ Ibid at n41.

⁴⁴ Ibid at n41.

- v) More information-sharing between the Department and the Police, including information on released, high-risk offenders;
- vi) The chief executive and prison managers to obtain advice from communities significantly affected by corrections policies and practices.

There are also Corrections Regulations of NZ which came into effect in 2005.

4.2.1 Corrections Regulations 2005

While the Corrections Act contains matters of principle and a policy framework for the corrections system, there is also in place the Corrections Regulations 2005 which came into force in June 2005. The Regulation provides for matters of detail and implementation⁴⁵. The Regulations comprise 14 parts and 8 schedules. The main areas covered are:

- i) administration of the corrections system;
- ii) movement of prisoners;
- iii) property and prisoner finances;
- iv) security classifications of prisoners;
- v) segregation of prisoners;
- vi) prisoner treatment and welfare (including health care);
- vii) visits to prison;
- viii) use of force, non-lethal weapons and mechanical restraints;
- ix) drug and alcohol testing;
- x) discipline and order;
- xi) complaints; and
- xii) special categories of prisoners.

4.3 Solomon Islands Correctional Services Act 2007

The drafting and passing of the Correctional Services Act 2007 of Solomon Islands (“SI Act”) came into force on the 1st April 2008 with the purpose of maintaining and operating its prisons in accordance with international standards of correctional services. The focus of the SI Act is aimed at stopping the prisoners from re-offending including retaining family connections and visitations.⁴⁶

⁴⁵ <http://www.corrections.govt.nz/policy-and-legislation/corrections-act-2005.html>, (Accessed 5/11/2009).

⁴⁶ Attorney General’s Chambers, ‘Solomon Islands Country Report’, (2008).

Some of the key provisions of the SI Act include:

- j) The establishment and appointment of a separate Commissioner of Prisons by the Police and Prisons Service Commission responsible to the Minister for the safety, security and good governance of the correctional facilities and the application of the Act.
- ii) The powers, protections and privileges of the officers of the correctional services (similar to that of Police Officers).
- iii) The management of prisoners such as breakout preventions, control and placement of prisoners as well as the general hygiene of prisoners.
- iv) Health management of the Correctional facilities including the appointment of Medical officers by the Commissioner, the conditions and arrangement of their visits as well as reports on the general sanitation and health of the prisoners.
- v) Forms of prohibited punishment that officers are not to carry out when disciplining prisoners especially in situations of security as well as potential break outs.
- vi) The Correctional Services offered including vocational training, agricultural production all in an effort to rehabilitate and prepare prisoners for the re-integration back into society as useful and productive citizens to prevent re-offending.
- vii) The parole board which consists of members appointed by the Minister including a retired judge, a registered medical practitioner and two persons with supervisory, management and rehabilitative experience.

4.3.1 The Correctional Services Regulations 2008

Solomon Islands has also enacted Correctional Services Regulations which pertain to the specific details of administering and managing the policy framework set out in its corresponding Act. The regulation is made up of 10 parts and 5 schedules. The main areas encompassed under the regulations are:

- i) The administration of the corrections system;
- ii) The management of prisoners including the security system and the rights of prisoners afforded to them under the act;
- iii) Health related schemes including doctor visitation and the conditions of visitation arrangements;
- iv) Disciplinary methods towards the prisoners including the overall security of the facilities and the prisoners as a whole;
- v) The services offered within the correctional facilities; and
- vi) The appointments of the parole board.

5) ANALYSIS- MOVING TO A CORRECTIONAL MODEL

5.1 Samoa

In light of the correctional services approach discussed in part 4 of this paper, the existing Prisons Act 1967 in its current form is inadequate in addressing the problems that have arisen in Tafaigata prison (and other prisons around the country), as discussed in Part I of this paper. The current legislation focuses mainly on the general administration of the prison system (Part III) emphasizing on the appointment and functions of police officers in the prison service (sections 5-14), and the disciplinary process for any breaches by police officers of their duties (sections 15-20). There is little emphasis on the management of prisoners with regards to labor employment (section 21) and separation of female prisoners from male prisoners (section 22).

Part IV of the Prisons Act generally empowers the Head of State to prescribe regulations, rules and instructions to guide the management of prisoners (sections to 24)). Part V deals with the appointment of the Visiting Committee responsible for prison visitations and inspections (sections 27-29). Part VI deals with offence breaches by prisoners and disciplinary provisions (sections 30-35) and offences by public against prison discipline (sections 36 to 38). Part VII deals with General Provisions which includes release of prisoners on parole (section 39A), remission of part of prison sentence (section 39B) and handling of prisoners in legal custody and before trials (sections 43-50). Part VIII and Part IX of the Prisons Act deals with Administration of Convict's property and Miscellaneous provisions. As a whole the current legislation is mainly administrative focused and lacks the proper emphasis on the actual governing and treatment of inmates or prisoners in Samoa.

To be more specific, the emphasis on the current Prisons Act is substantially focused towards general administrative matters as stated in Parts III, IV and V of the Prisons Act. Parts III, IV and V focus mainly on the appointment of police officers in the prison services and disciplinary provisions for breach of duties of these police officers. It also looks at powers to prescribe regulations on the handling of prisoners with little legislative effect. There are no specific regulations of rules in place implementing such provisions required under Part IV. The provisions under Part IV are also very general and do not define what is considered discipline, safe custody of prisoners, or the treatment and corrections of prisoners (section 23(1)). The

only part that deals specifically with handling of prisoners is Part VI where the current legislation looks at offence breaches by prisoners and avenues for disciplinary actions.

Part VII further looks at general provisions dealing with the handling of prisoners while under legal custody and before trials, and parole release. There is an absence of specific provisions outlining specific human rights afforded to prisoners such as access to proper living conditions and accommodation, access to proper health care and medical treatment and access to educational needs and counseling for prisoners. These provisions are detailed in the legislation of NZ and Australia, which will be discussed later in this paper.

The current legislation also lacks proper structure on the general administration of prisons. For instance, Part III looks at the appointment of police officers in the prison service along with the management of prisoners such as labor employment and separation of male from female prisoners. There is no organized order of provisions separating administrative provisions from the actual handling and treatment of prisoners. Sections 21 and 22 of the Prisons Act are more relevant to be included in Parts IV, VI and VII where handling and treatment of prisoners are mentioned. Some provisions under Part VII such as sections 39, 39A, 39B and 43-50 are more relevant to be included under the relevant Parts pertaining to handling of prisoners such as Part IV (Regulations, Rules and Instructions) or Part VI (Offences) of the Prisons Act.

In this regard, the Prisons Act is both outdated and lacking in compliance in terms of international standards of human treatment as seen in the Universal Declaration of Human Rights where the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment is overlooked. During the visit by the Working group in 2009 discussed in Part 1 of this paper, the living conditions of Tafaigata Prison which were condemned by the US State Department as ‘unfair’, was seen.⁴⁷ The review of the current Prisons Act has helped identify the shortcomings of prison administration in general in Samoa. For instance, the prison break in 2009 due to poor living conditions and common complaints by prisoners on poor living conditions. This paper will not focus specifically on these occurrences as reported by the media; but will only refer to it in support of the present

⁴⁷ 23rd March 2010 ‘Police defends Prison Condition’, Samoa Observer page 10.

condition of prison with the aim of developing a legislative framework for prison administration in Samoa.

5.2 NZ, Solomon Islands and Australia

As set out above, the legislation in these jurisdictions clearly reflect the modern corrections based approach which prioritizes rehabilitation and re-integrative programmes and services for detainees and prisoners. The analysis will focus on the crucial aspect of a corrections based approach in relation to the treatment and entitlements of prisoners. Given the lengthy provisions of these pieces of legislation, the paper will not go into detail on each of the parts or chapters. The focus will be on the management and treatment of prisoners in order to clearly highlight the corrections approach.

5.2.1 Management and Treatment of Prisoners/detainees

■ *ACT (Australia)*

The preamble of the ACT Corrections Management Act 2007 (“ACT Act”) focuses in promoting the rehabilitation of imprisoned offenders and their reintegration into society (Chapter 2). It also ensures that the imprisoned offenders and people remanded or otherwise detained in lawful custody are treated in a decent, humane and just way (section 7(d)). Sections 8 and 9 emphasize the management of correctional services (section 8) and the treatment of detainees generally (section 9). The wellbeing and management of detainees and remandees are recognized as a priority in the preliminary sections of the ACT Act and this is evident from the lengthy provisions governing them. For instance, section 10 and 11 looks at the treatment and management of remandees alone separate from handling of detainees in sections 9 and 10.

Significantly, section 12 provides for the minimum living conditions of detainees which consider the rights of detainees as follows:

- a) access to sufficient food and drink;*
- b) access to sufficient suitable clothing;*
- c) access to suitable facilities for personal hygiene;*
- d) suitable accommodation and bedding;*
- e) reasonable access to the open air and exercise;*
- f) reasonable access to telephone, mail and other facilities for communication;*
- g) reasonable opportunities to receive visitations from families, accredited people and others;*

- h) reasonable opportunities to communicate with their lawyers;*
- i) reasonable access to news and education facilities;*
- j) access to suitable health services and health facilities;*
- k) reasonable opportunities for religious, spiritual and cultural observances;*

The above minimum living conditions are provided in details in Chapter 6.

Chapter 3 of the ACT Act deals broadly with administrative matters such as the appointment of correctional officers including the Chief Executive Officer. Their sole responsibilities are to make corrections policies and operating procedures to facilitate the effective and efficient management of correctional services (section 14). Such responsibilities also include the appointment of medical officers to provide health services to detainees (section 21) and health professionals (section 22). The other chapters of the ACT Act that deals specifically with detainees are the handling of prisoners at time of admission to correctional centers (Chapter 8), the management and security measures to ensure safety and good order (Chapter 9) and segregation of detainees as denial of rights and opportunities. Given the extensiveness of these chapters, this paper will not go in detail but will only refer to it as to highlight the emphasis of the ACT Act, which is the proper management of detainees. Chapter 10 looks at disciplinary provisions relating to detainees and again, this will not be the focus of this paper but will only refer to it as to show detailed disciplinary avenues available to detainees while in correction centers.

- *New Zealand*

As previously stated, the recent Corrections Act of NZ introduced reforms that reflect modern conditions and approaches to how the Department manages offenders and is in line with other recent criminal justice reforms. This is clearly evident from the sections of the Corrections Act which establish the purpose and guiding principles of a corrections system. This is summarized in the following paragraph:

s5. "...to improve public safety and contribute to the maintenance of a just society by a) ensuring that community-based sentences, home detention, custodial sentences and related orders are imposed by the courts, are administered in a safe, secure, humane and effective manner; b) providing corrections facility that are in accordance with the United Nation Standard Minimum Rules for the Treatment of Prisoners; and c) assisting in

the rehabilitation of offenders and their reintegration into the community...through the provision of programmes and other interventions.”

Section 6 of the Corrections Act places a strong emphasis and focus on combating reoffending by criminals and maintenance of public safety. This is achieved through the development and provision of rehabilitative programmes and other interventions intended to effectively assist the rehabilitation and reintegration of offenders into the community (section 6(1) (c)). The victim’s interest is also considered in decisions about the management of persons under control or supervision, as well as that of the offender’s family whose involvement in decision making is significant (section 6 (1)(e)).

Part 2 of the Corrections Act establishes the Corrections Department and requires officers to devise and implement corrections programmes for prisoners, within resources available, for their rehabilitation and reintegration into society (section 52). These officers include the Chief Executive Officer (section 8), Prison Manager (section 11), Hearing Adjudicators (section 15), Visiting Justices (section 19) and Medical Officers (section 20). In relation to the administration of community based sentences, home detention, conditions of release, parole or sentences; probation officers are appointed under the Corrections Act (sections 24-27). Inspectors of corrections are also appointed (sections 28 and 29).

In the same vein as ACT, the minimum entitlements for prisoners (section 69) are provided specifically in the Corrections Act of NZ and are consistent with the UN Standard Minimum Rules for the Treatment of Prisoners.⁴⁸ These minimum requirements are as follows:

- i) exercise on a daily basis (section 70);*
- ii) proper bedding (section 71);*
- iii) diet (section 72);*
- iv) entitlement to private visitors (section 73);*
- v) entitlement to legal adviser (section 74);*
- vi) entitlement to medical treatment and health care (section 75);*
- vii) entitlement to send and receive mail upon notice to prison manager (section 76);*
- viii) entitlement to make outgoing calls (section 77); and*

⁴⁸ <http://www.corrections.govt.nz> (policy-and-legislation/corrections-act-2005.html), (accessed 5/11/2009).

ix) entitlement to information and education needs of prisoners (section 78).

The Corrections Act further entitles prisoners to religious and spiritual needs (section 79), considerable working conditions (section 81) and proper accommodation consistent with prison regulations (section 82).

▪ *Solomon Islands*

The Solomon Islands Corrections Services Act 2007 establishes the Corrections Service of Solomon Islands. The aim of the Act is to focus treatment of offenders on their reintegration into the community through activities and service aimed at stopping them from re-offending, including retaining family connections and visitations⁴⁹. The focus is quite similar to the New Zealand Corrections Act which strongly focuses on combating re-offending of criminals through the provision of rehabilitative programmes.

The objective of the Act is stated in section 3 as follows:

3. *a) provision for the establishment of correctional centers based on internationally accepted standards for the fair and humane treatment of offenders consistent with the cultural, traditional and religious values of the Solomon Islands; b) rehabilitation and re-integration of prisoners through access to activities and services in preventing re-offending; c) reasonable and practical assistance to prisoners to develop/maintain relationships with the community; d) fair and effective administration of terms of imprisonment; e) maintenance of the safety of the community and employees.*

Part II of the Corrections Services Act deals with the appointment of a Commissioner of Correctional Services in Solomon Islands. Parts III and IV deal with general administration matters pertaining to Correctional Services Officers. Part IV is significant as it entitles prisoners to visitations by religious representatives, traditional elders and respective persons (section 29).

Part V provides for the management of prisoners, which includes a correctional center security system (section 31) to ensure security, order and good governance of the facility. It also includes provisions relating to the admission of prisoners and applicable rules such as the

⁴⁹ Attorney General's Chambers, 'Solomon Islands Country Report', (2008).

separation of female prisoners from male prisoners, and for young females to be kept separate from adult prisoners or prisoners of other classifications (section 34). Prisoners are also provided with sufficient information relating to the practices and procedures of the correctional center (section 35).

The classification of prisoners is required under the Act to achieve effective rehabilitation whilst maintaining effective security (section 36). The obligations of a prisoner are also clearly outlined in the Act (section 39). Section 40 specifies different rights accorded to prisoners such as access to:

- a) *an adequate bedding;*
- b) *washing facilities for personal hygiene;*
- c) *safe and clean drinking water and food;*
- d) *natural and artificial light;*
- e) *sanitary facilities and products;*
- f) *clean and sufficient clothing;*
- g) *legal representative;*
- h) *medical care and treatment;*
- i) *receive and send written correspondence; and*
- j) *family, friends and members of the community.*

Part VI further entitles prisoners to medical care and treatment. Medical officers and nurses are appointed under the Act by the Commissioner to provide medical services in correctional centers (section 42). Prisoners are also entitled to other medical and related services such as dental treatment, public awareness and education programs relating to certain diseases (section 45). The Act also considers the deteriorating health of a prisoner as a circumstance to review his or her sentence (section 48). The Act also requires a medical officer or nurse to visit each correctional center on a regular basis and must report to the Commandant or Commissioner on the condition of the Correctional Center (section 50).

Section 53 prohibits the following types of punishments against prisoners: - *corporal punishment, use of instruments of restraint, withdrawal of basic food rations or basic toiletry supplies or denial of visitation rights or right to communicate with friends, families or*

religious representative. Part VIII of the Act establishes work, programs and enterprises to develop prisoners with their personal and employment skills to assist their effective rehabilitation and reintegration into the community (section 59).

6) CONCLUSION

The preliminary part of this paper raises a significant issue on whether there is a need for change with regards to the current Prisons Act in Samoa. This issue emerged subsequent to a directive from Cabinet for an independent prison authority. This paper has looked at the present condition of the prison from a Working Group visit at Tafaigata prison in 2009. This visit was seen as necessary to assist in the review of the Prisons Act. Following this visit, some of the Working Group members submitted that the move towards an independent prison authority is timely and seen as promoting criminal justice by the provision of a community based justice system, that fosters community based sentencing options, rehabilitation and reintegration of offenders.

Part 3 of this paper looked briefly at the historical emergence of the correctional concept in replacement of the traditional containment approach. The USA was the focus as it holds the largest number of prisoners in the world and has long operated correctional facilities. There was a detailed analysis of the correctional approach which aims at rehabilitating prisoners or detainees and their reintegration into society.

This paper also considers the Law and Justice Plan endorsed in 2008 which highlights '*Offender rehabilitation and reducing re-offending*', as one of its key output. This plan has already laid down the road map for prison administration in Samoa, with the aim of an improved prison system and the establishment of the Prison Services as an independent Authority. This road map was confirmed in Cabinet Directive (09) 33 by Government. There was also a brief discussion on some of the advantages and disadvantages of a separate and independent prison Authority based on an information paper prepared by the Commission.

This paper analyzed the current status of the Prisons Act of Samoa with specific reference to the relevant provisions. The current legislation is clearly outdated and mainly administrative focused. There is little emphasis on the treatment and management of prisoners under police

custody and in prison. There is an absence of provisions aimed at rehabilitation and reintegration of prisoners into society.

This paper discussed and analyzed the comparable jurisdictions; namely ACT (Australia), NZ and Solomon Islands. These jurisdictions have enacted recent legislation which reflects the corrections approach. Each of the legislation in these jurisdictions promote and focus on the rehabilitation of offenders and their reintegration into societies. This is through the provision of correctional based services which would assist prisoners and detainees become responsible members of society and combating re-offending is the primary goal. In ACT and NZ, there are detailed provisions setting out minimum entitlements for prisoners or detainees such as proper bedding, visitations and medical care. This is also the case in Solomon Islands. Such minimum entitlements are not provided for under the Prisons Act of Samoa.

This paper concludes with the review of the Prisons Act (**Annexure A** to this paper). The lengthy comments provided by some members of the Working Group are a clear indication of an outdated Prisons Act. There were many provisions in the current Prisons Act that needed updating to address modern concerns of prison administration in Samoa such as those raised by the Working group.

8. WAY FORWARD

The Commission has employed for this issues paper the following questions calling for public submissions and views. These submissions and views will form the basis of the Commission's recommendations.

9. SUMMARY OF QUESTIONS

1. *Should Samoa's prison administration legislation be changed to a corrections based system similar to ACT (Australia), New Zealand and Solomon Islands?*
2. *What is a 'corrections approach' in the context of Samoa's culture and traditions?*
3. *Should the administration of prisoners in Samoa be managed by a separate department as in the case of New Zealand?*
4. *Should the head of a corrections facility for Samoa be titled CEO (NZ and Australia) or Commissioner of Prisons (Solomon Islands)?*

5. *Should Samoa still employ police officers to work in a corrections facility or corrections officers?*
6. *Should a corrections based legislation for Samoa be focused specifically on administration of corrections officers and prisoners?*
7. *What about medical officers and health professionals? Should Samoa also make specific reference in the appointment of these officers in its legislation, similar to ACT and NZ?*
8. *Should minimum entitlements be given to prisoners in Samoa similar to ACT, NZ and Solomon Islands? To what extent should these rights will be given?*
9. *Should all forms of mistreatment or punishment of prisoners be prohibited in Samoa? (similar to Solomon Islands)*
10. *Should Samoa follow the approach used by ACT (Australia) in conducting disciplinary inquiries on disciplinary breaches or prison offences? Should the inquiries be quasi-judicial?*
11. *Should procedures for disciplinary inquiries be clearly outlined in a corrections based legislation for Samoa?*
12. *Should there be an independent body to inquire into disciplinary breaches in prisons for Samoa as opposed to being conducted by senior police officers, as in the case of Solomon Islands?*
13. *Should penalties for disciplinary breaches or prison offences in Samoa exclude access to basic necessities such as food and family visitations?*
14. *Should vocational trainings and specific rehabilitative programmes such as professional counseling be specifically stated in corrections legislation for Samoa? (similar to NZ)*
15. *Should requirements/criteria for selecting counselors and trainers be outlined in corrections legislation in Samoa?*

ANNEXURE 1

PRELIMINARY COMMENTS

The following preliminary comments were provided by some members of the Working Group in 2009 as a result of their preliminary review of the Prisons Act, namely representatives of the Ministry of Police and Prisons, Ministry of Health and Ministry of Women, Community and Social Development:

Interpretation section

Section 2 of the Prisons Act is the interpretation provision. The definition of Medical Officer should be amended to be in line with changes in the health system since 1967 to read “A *Samoan Registered Medical Officer with a current license to practice in Samoa*”.

Prisons Constituted or Continued

Section 4 of the Prisons Act appoints prisons and police gaols as prison through proclamations by the Head of State. The Act does not include particular requirements for what building can be declared prisons and police gaols. The Working Group proposed that this section be revised to be in line with the Health Ordinance 1959 with regard to ensuring public health safety for all prisons.

The Samoan Prison Service

The Samoan Prison Service is established under section 5 of the Prisons Act. Officers of the service who were appointed under the repealed legislation are deemed to be officers of the Samoan Prison Services (section 5(2)). Section 5 of the Prisons Act provides for the Constitution of Service or hierarchy of ranks in Samoa Prison Service.

The Working Group has proposed that section 5 should be aligned with the ranks under Police Service Bill:

1. Commissioner
2. Deputy Commissioners
3. Assistant Commissioners
4. Superintendents

5. Inspectors or First Chief Officers
6. Senior Sergeants
7. Sergeants
8. Warders, Wardresses or Constables

The reference to First Chief Officers under section 5 shall be amended by adding ‘*or Inspector/s*’ and new insertions of ‘*Deputy Commissioners and Assistant Commissioners*’ to section 6 to be in line with Police Service Bill 2009.

An associated change would be to amend section 7 to align appointments of Superintendents, Prisons with appointment of Superintendents, Police Service.

Officer Appointments

Sections 9, 10 and 12 of the Prisons Act deals with appointment of officers of the prison service namely First Chief Officers, subordinate officers and temporary officers. These prison officers are appointed by the Commissioner with consent of the Minister.

Section 9(1)-Appointment of First Chief Officers - (1) The Commissioner with the consent of the Minister may from time to time appoint such number of First Chief Officers as the Commissioner deems necessary.

Comments

For the reasons set out in the previous discussion, section 9(1) should be amended to align appointment of First Chief Officers/Inspectors, Prisons *with appointments of Inspectors, Police Services.*

9(3)-, The rank of First Chief Officer shall be equivalent to the rank of Chief Inspector of Police. (As to First Chief Officer and First Chief Officers, see section. 2A)

Comments:

Section 9(3) should be amended by deleting the word ‘Chief’.

10. Appointment of subordinate officers - The Commissioner with the consent of the Minister may from time to time appoint such numbers of subordinate officers of different grades as the Commissioner deems necessary.

Comments:

The appointment/promotion of subordinate officers for the Prison Service with appointment/promotion of subordinate officers of the Police Service should align with the appointment/promotion of subordinate officers of the Police Service. The section should also be amended by adding the words ‘*Subject to section 10(2)*’ before the words ‘The Commissioner...’ and deleting the words ‘with the consent of the Minister’. A new section 10(2) should be inserted to provide for merit based on open competitive appointment/recruitment of subordinate prison officers in line with similar appointments in Police Service. The following sentence shall be added at the end of section 10(2) - “*but no temporary appointment shall exceed 2 years*”.

Additionally, a new section 10A should be inserted which provides for an appointment process, basic recruit training, starting rank etc of new Prison Service members similar to section 30 of the Police Service Bill 2009. A new section should also be inserted to allow for temporary exchange of members with overseas prison services and overseas deployment of members similar to section 43 and 44 of the Police Service Bill 2009.

Members of the Police Service to take Oath

Section 13(1) of the Prisons Act requires all members of the prison service to take an oath before the Chief Justice prior to engaging in work of the service.

13. Members of the Service to take oath - (1) *No person shall be capable of being a member of the Service or of acting in any other way therein until he or she has taken and subscribed before the Chief Justice or any person appointed in writing in that behalf by the Minister the following oath.*

“I, AB, do swear that I will well and truly serve the Independent State of Samoa in the Prisons Service without favour or affection, malice or ill will until I am legally discharged; that I will see and cause the peace of the Independent State of Samoa to be kept and preserved; that I will prevent to the best of my power all offences against the same: and that while I continued to be employed in the Service I will to the best of my skill and knowledge discharge all my duties therein faithfully.”

Section 13(2) provides that a person who has taken such an oath shall be deemed to have entered into a written agreement and may be required to serve until legally dismissed or otherwise removed from office or membership,

unless his or her resignation has been accepted by 'the Commissioner or the Superintendent by the Head of State or of any First Chief Officer by the Commissioner with the consent of the Minister, or of any other member by the Commissioner.

Comments

Section 13(1) should be amended by deleting the words “the Chief Justice” and substituting the words “a judge”.

Section 13(2) should be restructured into shorter, more reader-friendly sentences. The subsection should also be amended by deleting all the words after Commissioner and substituting the following:

“Deputy Commissioner or Assistant Commissioner by the Head of State, Commissioned Officers by the Minister or of any other member by the Commissioner”

This ensures alignment with appointment authorities’ provisions.

Discharge of Office

Sections 16 and 17 of the Prisons Act deals with instances where an officer can be discharged from office.

16. Suspension pending disposal of charge- (2) Any officer who is suspended from the Service under this section:
(a) May at any time be reinstated in the Service, in the officer’s old position or any other, by the authority who suspended the officer; and
(b) Shall not be entitled to receive any salary, allowance or other remuneration in respect of the period of his or her suspension unless otherwise directed by:
(i) The authority who suspended the officer; or
(ii) On any appeal, the Board of Appeal

17. Inquiries into charges of breaches of duty and punishments (1) any officer other than the Commissioner and the Superintendent who is charged with a breach of duty shall be charged in writing by the Commissioner, and, if the officer makes a written denial of the charge, the following provisions shall apply...’

Comments:

The Working Group’s view is that this provision should be changed so that receiving a salary is the default position for suspended officers. Hence, section 16(2) (b) should be amended by deleting the word “not” after “Shall” and before “be”. Hence, it shall read “*Shall be entitled to receive any salary...*”

Section 17(1) should be amended by inserting the words “Deputy Commissioner, Assistant Commissioner” before the words “and “the Superintendent”.

Special Regulations

Section 25 of the Prisons Act empowers the Head of State to make regulations as to photographing, measuring and taking fingerprints of prisoners and accused persons.

25. Regulations as to photographing, etc., prisoners and accused persons - (1) The Head of State, acting on the advice of Cabinet, may from time to time make regulations as to photographing and taking measurements and finger prints of all prisoners or accused persons who are for the time being confined in any prison or police goal.

Comments:

In order to accommodate scientific advances, section 25(1) should be amended by deleting the words “and fingerprints” and inserting the following after the word “measurements”:

“fingerprints and other scientific DNA specimens required for identification”.

Appointment and duties of Visiting Committee.

Section 27 of the Prisons Act empowers the Head of State to appoint members of Visiting Committee to a prison.

27. Appointment and duties of Visiting Committee - (1) The Head of State may from time to time appoint a Visiting Committee of any prison which shall include the Minister and:
c) The Commissioner or the Senior Superintendent of Police; and
d) A member of the Legislative Assembly

Section 27(2) gives the Visiting Committee certain powers and duties, including “to hear any complaint made to them by any prisoner”.

Comments:

Section 27(1) (c) should be amended by deleting the words “the Senior Superintendent of Police” and substituting the words “his/her delegate”. Also, the CEO of the Ministry of Health should be included in the Visiting Committee to ensure that health status of prisons (public health) is an area that is reviewed during these inspections.

Section 27(2) (d) should be amended by inserting the words “in writing” after the word “complaint”. Consistently with the proposed section 27(1)(c), section 27(2)(d) should be

amended by deleting the words “Superintendent and substituting the words “*Commissioner or his/her delegate*”.

Offences in Prison

Sections 30 to 38 of the Prisons Act deal with offences in prisons including disciplinary punishments for committing such offences. In particular, section 31 permits the Commissioner to inflict certain punishments on a prisoner who has committed a ‘minor prison offence’. The Commissioner must note the imposition of any punishment in the ‘Punishment Book’ including the name of the offender, the date of the offence, particulars of the punishment, and the date on which the Commissioner imposed the punishment. Section 31(4) requires that a copy of every such entry shall be sent by the Commissioner to the Minister.

Section 32 relates to aggravated prisoner’s offences and punishments. Section 32(2) requires the Commissioner to ‘forthwith report to the Minister every punishment ordered’ under the section.

Comments

Section 31(4) should be amended by adding the words, “*upon request*” after the word “Minister”. Similarly, section 32(2) should be amended by deleting the word “forthwith report to the Minister” and substituting the words “*at the Minister’s request report to him/her*”.

The Working Group also suggest a change to section 38, which imposes an offence on any member of the Prisons Service who permits prohibiting articles to be admitted into, sold or used in a prison. Section 38 should be amended by inserting the words “*the Police or*” before the words “Prison Services”. All references to Prison Service should include the Police Service and vice versa.

General Provisions- Term of Imprisonment expiring on Sunday and Release of prisoners on parole, Remission of part of prison service

Section 39 of Prisons Act includes general provisions relating to release of prisoners after completion of their sentences, release on parole and remission of part of prison service.

39A. Release of prisoners on parole - (1) *“The Commissioner may from time to time authorise the Superintendent or First Chief Officer to direct the temporary release on parole of an prisoner for such period or periods...”*

Comments:

Consistently with other changes suggested by the Working Group, section 39A should be amended by deleting the words “Superintendent or First Chief Officers” and substituting the following “*Deputy Commissioner, Assistant Commissioner, Superintendent, Chief First Officer or Inspector*”.

39B. Remission of part of prison sentence - (1) *The Minister may at any time grant to any prisoner serving a sentence of imprisonment of one year or more remission of any part of his or her sentence, not exceeding one-fourth of the term thereof, on the ground of his or her good conduct and industry. (2) Where the Minister considers that the conduct of any prisoner has been exemplary during his prison sentence or where any prisoner has during his or her sentence performed some outstanding act of service, the Minister may grant to the prisoner, in addition to any remission which may be granted to him under subsection (1), a special remission of part of his or her sentence not exceeding one-twelfth of the term(3) A grant under this section of remission of any part of the sentence of any prisoner may be revoked, in whole or in part, by the Minister at any time before the prisoner is released, if the Minister is satisfied that the conduct or industry of the prisoner since the granting of the remission has been unsatisfactory or that the grant was made in error. (4) For the purpose of this section, cumulative terms of imprisonment shall be treated as one term.*

Comments:

Section 39B (1) (2) and (3) should be amended by inserting the words “*on the advice of the Commissioner*” after the word “Minister”. Also, section 39B (3) should be amended by inserting the words “*or after*” following the word “before”. Lastly, a new subsection should be inserted after 39B (3) to provide for obligation of prisoner to serve remainder of original prison term where Minister revokes remission under section 39B (3).

Removal of Prisoners to Hospital

45. Removal of prisoners to hospital - (1) *In case of illness of any prisoner he or she may by order of a Medical Officer be removed by the First Chief Officer from any prison to any hospital to be mentioned in such order as occasion requires. (2) In any such case the prisoner shall be deemed to remain in the lawful custody of the First Chief Officer who removed the prisoner, and that First Chief Officer shall under a like order as aforesaid have power to remove such prisoner from such hospital back to the prison from which he or she was removed.*

Comments:

Section 45.1 provides for the removal of prisoners to hospital. This section should be amended to add word “*registered*” to “*medical officer*” to read “*Registered Medical Officer*”. In relation to section 45.2, the registered medical officer needs to have a say on whether a prisoner’s

status of health is such that he/she can be safely removed form a hospital. This is because the First Chief Police does not have the expertise to determine whether prisoners admitted to hospital are ready to be discharged.