

SAMOA

LAW REFORM COMMISSION

CRIMES ORDINANCE 1961
Issues Paper IP 01/09

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Preface

The review of Criminal law includes the review and reform of the Crimes Ordinance 1961, the Criminal Procedure Act 1972, the Evidence Ordinance 1961 and the creation of a Sentencing Bill. This major law reform reference was given to the Law Reform Commission by Cabinet and the Attorney General in November 2008.

This is the first in a series of papers on aspects of the Criminal law. This first issues paper will deal with the Crimes Ordinance 1961.

The Commission has employed for this Issues Paper, the form of questions and a closing date for responses. 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.

The case for change cannot simply be based on the premise that other jurisdictions have moved on in their criminal legislation. In any determination for reform, it must always be kept in mind that Samoan custom and traditions must be factored in. At the same time, this must be balanced against the enhancement of the social, cultural, economic and commercial enhancement of Samoa as well as the laws of Samoa meeting the needs of government and the community.

Given that many questions have been posed, the Commission will make its recommendations for reform once it has received all submissions from stakeholders. The recommendations of the Commission will form the basis of its final report to Cabinet. The recommendations of the Commission will be independent of all stakeholders.

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 19th of March 2010, to the Executive Director, Samoa Law Reform Commission, Private Bag 974 or by email to lawreform@ag.gov.ws.

We are grateful for the assistance of the following people who provided comments on earlier drafts of this paper: Peter Lown, (Director, Alberta Law Reform Institute), Eileen Skinnider, (Associate, The International Centre for Criminal Law Reform and Criminal Justice Policy), Annemieke Holthius, (Criminal Law Policy Section, Justice Canada), Heather Kay, (Executive Officer, Law Reform Commission of Western Australia), Gregory Blue, (Staff Lawyer, British Columbia Law Institute), Cheryl Lowen, (Counsel, Alberta Law Reform Institute), and especially the assistance of the working group made up of the Criminal Prosecution team of the Attorney General's Office, and representatives from Ministry of Police and Prisons, Ministry of Justice and Courts Administration, Ministry of Finance, Ministry of Women, Community and Social Development, Ministry of Health, National Health Services, the Audit Office, Fire and Emergency Services Authority, the Central Bank of Samoa and Transnational Crimes Unit.

Introduction

This issues paper considers the current law and practice relating to the operation of the Crimes Ordinance 1961, and explores options for reform. As the Crimes Ordinance 1961 is quite comprehensive, this paper will be divided in the following way;

The content of the issues paper will be as follows:

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1) IS THERE A NEED FOR CHANGE?

On 5 December 1961, the Honourable Anapu Solofa, Minister for Justice, moved a motion for the introduction of the Crimes Bill into Parliament. On the 11 December 1961, the Crimes Bill went to second reading. The date of assent was on 16 December 1961 and the commencement date was 1 January 1962. Most parts of the Ordinance were based on the Samoa Act 1921, and therefore the Ordinance does not cover some of the crimes which have arisen in the last fifty or so years.

Samoa is no exception in experiencing demands from the international community to respond to priority crimes including: crimes involving terrorism; organized crime; money laundering; corruption; trafficking in woman and children; trafficking in drugs, firearms and explosives; and cyber crime.¹

Legislative reform could clarify some of the ambiguities in the current Crimes Ordinance and as well as fill in some of the gaps in order to modernize the Ordinance and make it more relevant to this day and age. Even though the Commission cannot rely on the statistical validity of our information, we can rely on the anecdotal and public comment that the “crime rate” is a matter of concern.

Whilst the statistics from the Ministry of Police and Prisons, the Ministry of Justice and Court Administration, and those from the Samoa Bureau of Statistics pose problems in terms of reliability because those sets of statistics differ vastly, these are the only statistics available to illustrate the crime rate in Samoa.

Statistics from the Ministry of Police and Prisons show on the one hand, that the number of convicted cases (sexual offences) dealt with in the Supreme Court rose from 5 in 2004 to 28 in 2007. These statistics show that in 2005, 17 people were convicted of sexual offences.² However the statistics from MJCA show that forty four (44) people were imprisoned for sexual offences in 2005.³

Drug related offences have remained relatively high. Persons convicted of possession of narcotics in 2002 was ninety (90), in 2003 was eighty seven (87), in 2004 was forty two (42), in 2005 was forty four (44), in 2006 was twenty eight (28) and in 2007 was nineteen

¹ The International Centre for Criminal Law Reform and Criminal Justice Policy, 2007, *Promoting Criminal Justice Reform*, Canada.p.81.

² Ministry of Police, Prisons and Fire Services (*Criminal Convicted Cases Dealt within the Supreme Court Classified by Principal Type of Offences, 2002-2007*).

³ Ministry of Justice and Court Administration (*Supreme Court sentencing Classified by Offence Group, 2005-2007*).

(19).⁴ The statistics from MJCA show that in 2005, one hundred and five (105) people were imprisoned for drug offences.⁵

Statistics from the Samoa Bureau of Statistics show that the number of convicted crimes in 2007 was ninety four (94) with fifty three (53) being in the area of crimes against person and reputation.

The correlation between a modern Crimes legislation and a reduction or otherwise in the crime rate will not be a conclusion of this paper, although it is an issue which warrants an attempt through legislative review of the Crimes Ordinance and related legislation.

2) CURRENT LAW AND PRACTICE

Criminal law protects members of society from harmful and socially unacceptable behaviour and is used as a powerful tool by the government to control crime and protect society.⁶ Codification is thought to advance some of the fundamental values of the criminal law. Many of these values are captured in the maxim *nullum crimen sine lege, nulla poena sine lege*: “there must be no crime or punishment except in accordance with fixed, predetermined law.”⁷ However in Samoa, statutory provisions are interpreted against the background of the general principles of common law.

The current statutory criminal law in Samoa is made up of the following:

- i) *Arms Ordinance 1960*
- ii) *Arms Amendment Act 1999*
- iii) *Arms Amendment Act 2000*
- iv) *Arms Amendment Act 2000(No. 2)*
- v) *Community Justice Act 2008*

⁴ Ministry of Police, Prisons and Fire Services (*Criminal Convicted Cases Dealt within the Supreme Court Classified by Principal Type of Offences, 2002-2007*).

⁵ Ministry of Justice and Court Administration (*Supreme Court sentencing Classified by Offence Group, 2005-2007*).

⁶ The International Centre for Criminal Law Reform and Criminal Justice Policy, 2007, *Promoting Criminal Justice Reform*, Canada.p.82.

⁷ Roach. K, Healy. P & Trotter. G, 2004, *Criminal Law and Procedure Cases and Materials: 9th Edition*, Edmond Montgomery Publications Ltd, Canada.p.25.

- vi) *Crimes Ordinance 1961*
- vii) *Crimes (Abolition of Death Penalty) Amendment Act 2004*
- viii) *Crimes (Extra Territorial Jurisdiction) Amendment Act 2003*
- ix) *Criminal Procedure*
- x) *Evidence Ordinance 1961*
- xi) *Money Laundering Prevention Act 2000*
- xii) *Money Laundering Prevention Act 2007*
- xiii) *Money Laundering Amendment Act 2000*
- xiv) *Mutual Assistance in Criminal Matters Act 2007*
- xv) *Narcotics Act 1967*
- xvi) *Narcotics Amendment Act 1992*
- xvii) *Narcotics Amendment Act 2006*
- xviii) *Police Offences Ordinance 1961*
- xix) *Proceeds of Crimes Act 2007*
- xx) *Prevention and Suppression of Terrorism Act 2002*
- xxi) *Road Traffic Ordinance 1960*
- xxii) *Young Offenders Act 2007*
- xxiii) *Money Laundering Prevention Act 2007*

The current statutory criminal law has been the result of ad hoc and reactive law reform. For example, amendments to the Narcotics Act 1967 were the result of cocaine and methamphetamine being found in Samoa as well as the prevalence of marijuana cases. The Prevention and Suppression of Terrorism Act 2002 was in reaction to terrorist attacks on the United States of America 9/11, and amendments to the Arms Ordinance 1960 were because of the increase in gun smuggling into Samoa. The establishment of the Samoa Law Reform Commission is an attempt by the government of Samoa, *inter alia*, to conduct a more comprehensive review of the criminal law. Law Reform Commissions do not themselves change the law but can provide advice on how the law should be reformed.⁸

⁸ The International Centre for Criminal Law Reform and Criminal Justice Policy, 2007, *Promoting Criminal Justice Reform*, Canada.p. 116.

Not all of the Commissions recommendations will be contained in this issues paper. Those recommendations which the Commission believes do not substantively change a section are not included in this issues paper but will be included in its final report.

The Crimes Ordinance is old, the language is old and specific, and the statute does not apply well in modern circumstances. The Commission is faced with many issues such as:

- i) do we amend and broaden the language of the Crimes Ordinance?;*
- ii) do we create a new Crimes Ordinance to deal with new situations?; and*
- iii) how do we respond appropriately to pressures of the international community to deal with emerging issues of transnational scope?.*

3) THE CRIMES ORDINANCE 1961

3.1) PART VI: Crimes Against Religion, Morality and Public Welfare

➤ Sexual Crimes

Sexual Crimes in the Crimes Ordinance 1961 fall under this Part and are covered by sections 46-58H. The sexual crimes section raises a number of questions primarily on the topics of gender and age discrepancies, personal relationships, old terminology and moral crimes.

Section 47 is the offence of rape. Rape is defined under the Ordinance as the act of a male person having sexual intercourse with a woman or girl:

- i) without her consent freely and voluntarily given; or*
- ii) with consent extorted by fear or bodily harm or by threats; or*
- iii) with consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of or grievous bodily injury to a third person; or*
- iv) with consent obtained by personating her husband; or*
- v) with consent obtained by a false and fraudulent representation as to the nature and quality of the act.*

The predominant issue that arises under section 47(3) is that it does not apply to married women being raped by their husbands and men raping men and/or men raping adolescent boys. This section excludes a husband from criminal liability for raping his own wife, unless at the time of the intercourse there was in force in respect of the marriage a decree of judicial separation or a separation order.

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| Question: | <ol style="list-style-type: none"> 1. <i>Should a husband be able to be convicted of rape on his wife?</i> 2. <i>Should the offence still be called 'rape' if it is gender neutral as 'rape' is limited to sexual intercourse?</i> 3. <i>Should an offence of sexual violation be added and include not only penetration of the penis but also the use of foreign objects into the vagina, anus, or mouth of another person without consent?</i> |
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Section 49 deals with incest. Incest is sexual intercourse between:

- i) *parent and child; or*
- ii) *brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or*
- iii) *grandparent and grandchild;*

where the person charged knows of the relationship between the parties.

An issue is the definition of a 'child' which does include an illegitimate child but does not include an adopted child, foster child or stepchildren.

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| Question: | <ol style="list-style-type: none"> 4. <i>Should the definition of a child be defined more widely than it is currently under this section to include an adopted child, a foster child and stepchildren?</i> |
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Sections 50-53 deal with sexual intercourse and indecency by a man with a young girl either living within his family, or under a certain age.

Section 50 deals with sexual intercourse or attempted sexual intercourse by a man with a young girl living in his family. The girl must be under twenty one (21) years old and at the time of the intercourse or attempted intercourse must have been living with him as a member of his family. The girl can be a step daughter, foster daughter or ward.

The policy consideration behind this section is the protection of young women from men who are supposed protectors of them and with whom they have a relationship of trust. It differs from rape as the intercourse may be consensual but consent will not be a defence to this offence because consent may have been obtained from the relationship of trust.

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| Question: | <i>5. Should the section reflect the need to show a relationship of trust so that a wider range of relationships can be caught under the section, e.g. teacher-student, doctor-patient.</i> |
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Sexual intercourse with a girl under twelve (12) years of age is covered under section 51. The current penalty for sexual intercourse is a term of imprisonment not exceeding ten (10) years and for attempted sexual intercourse it is a maximum penalty of seven (7) years imprisonment.

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| Question: | <i>6. Given the prevalence of this type of offending, should the penalty for sexual intercourse with a girl under 12 years of age be increased to 14 years, or 20 years or life imprisonment?</i> |
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Section 52 deals with indecency with girl under 12 years of age. The current maximum penalty is 7 years imprisonment.

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| Question: | <i>7. Should the maximum penalty of 7 years imprisonment be increased to 10 years as this type of offending has increased significantly?</i> |
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Section 53 deals with sexual intercourse or indecency with a girl between twelve (12) and sixteen (16) years. There is no clear definition of Indecent Assault in the Crimes Ordinance. In the Case of *Police v Vaitolu* [2003] WSSC 55, Justice Doherty outlined the elements of Indecent Assault:

- i) *that there must be an assault (an assault is the intentional touching of the body of another person or in some cases the threat of such touching, so its an intentional application of force);*
- ii) *Secondly that the touching was indecent according to commonly accepted community standards;*
- iii) *Thirdly that the accused knew the touching was indecent in that sense; and*
- iv) *Fourthly that the complainant was aged more than 12 years but under 16 years.*

Section 53(7) places a limitation on the prosecuting of this offence if the prosecution is not commenced within twelve (12) months from the date when the offence was committed. In effect this means that no one can be prosecuted for this offence if the twelve (12) months timeframe from the date of the offence, expires. For all other offences, there is no limitation period imposed.

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| Question: | 8. <i>Should this limitation be removed?</i> |
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Indecent assault on women and girls over the age of sixteen (16) years is dealt with in section 54. This section deals with indecent assault with consent obtained by a false and fraudulent representation as to the nature and quality of the act. It does not cover the intimidation of a woman, girl or boy to commit an indecent act, or the obtaining of consent by threat to another, e.g. a child.

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| Question: | 9. <i>Should a new offence be created to cover unlawful sexual intimidation of a person?</i> |
| | 10. <i>Should consent obtained by threat to another be covered under this section?</i> |

Section 57 deals with sexual intercourse with an idiot or imbecile woman or girl. The words ‘idiot’ and ‘imbecile’ are still in the section, but lack any clear definition. These words are also considered derogatory.

There are conflicting interests that should be balanced and those are, on the one hand protecting such people while not taking away their freedom of choice to procreate and enter into relationships. Again procreation may lead to pregnancies and the question then arises about the interests of the children from such unions.

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| Question: | <p><i>11. Should the words ‘idiot’ and ‘imbecile’ be removed and replaced with a medically accepted term, such as ‘mental disorder’ or ‘mental incapacity’ as defined in the Mental Health Act 2007?</i></p> <p><i>12. Should there be allowance for legal marriages, de facto relationships and consensual sexual relations?</i></p> |
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Sections 58 and 58A relate to adultery by married persons and adultery with married woman and carry fines not exceeding \$100. The issue has arisen as to whether adultery should remain a criminal offence, or should it be taken out as a moral issue. It is imperative to therefore determine this issue by considering the following:

- i) on the one hand, is the function of the law to intervene in the private lives of citizens or to seek to enforce any particular pattern of behaviour?; and*
- ii) secondly, is a common morality not an integral part of holding a society together therefore making it important for the State to legislate against immorality?⁹*

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| Question: | <p><i>13. Should the offence of adultery and related sections remain in the Crimes Ordinance?</i></p> |
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⁹ Roach. K, Healy. P & Trotter. G, 2004, *Criminal Law and Procedure Cases and Materials: 9th Edition*, Edmond Montgomery Publications Ltd, Canada.p.50-53.

Section 58C deals with indecency between man and boy. This section does not differentiate between boys of different ages as it is set out for offences against girls of different ages. It merely deals with indecency with a boy under the age of sixteen (16) and provides that no person under the age of twenty one (21) years can be charged with this offence.

The issue which arises is that young boys are just as vulnerable as young girls and should not be treated any differently: the same protection should be afforded to them. There is also the issue of those under twenty one (21) years being of sufficient years and should not escape liability under this section.

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| Question: | <p><i>14. Should differentiation be made between the different age groups as in the case of offending against girls, e.g. under the age of 12, between 12-16 years and over 16 years?</i></p> <p><i>15. Should the age categories of under 12 years, between 12 years and 16 years and over 16 years be applied generally to all sexual offences?</i></p> <p><i>16. Should the proviso remain that no person under the age of 21 be charged with this offence?</i></p> |
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Section 58E makes sodomy an offence. It deals specifically with sodomy committed on females and boys under the age of sixteen (16) years. Sodomy was defined in the case of *Police v Poi*.¹⁰ Sodomy means anal intercourse, that is, penetration of the complainant's anus by the accused's penis. The extent of penetration is irrelevant but there must be some degree of penetration. Ejaculation by the accused is also not necessary. The second element is that the complainant must be under the age of sixteen (16) years and the accused must be of or over the age of twenty one (21) years. Consent is not a defence.

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| Question: | <p><i>17. Should there be differentiation between sodomy committed on</i></p> |
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¹⁰ *Police v Poi* [2007] WSSC 49.

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| | <p><i>different age groups under 12 years, between 12 years and 16 years and over 16 years?</i></p> <p><i>18. Should an exception be made to the act of sodomy between consenting adults in private? And if so, what age should consent become relevant?</i></p> |
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Section 58F deals with Bestiality or having sexual intercourse with animals.

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| <i>Question:</i> | <i>19. Should this offence remain under the Crimes Ordinance or is it better suited to animal protection legislation?</i> |
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➤ **Crimes Against Morality and Decency**

Crimes Against Morality and Decency fall under this Part and are covered by sections 43-45. This section raises issues of modernizing language to fit the current situation.

Section 45 prohibits the distribution and exhibition of indecent matter. Indecent matter under section 43(3) is a question of fact as to whether the matter served the public good or whether there is evidence of excess beyond the public good.

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| <i>Question:</i> | <i>20. Should the words 'indecent matter' be replaced by 'pornography and other similar paraphernalia'?</i> |
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3.2) PART VIII: Crimes Against Rights of Property

Crimes against rights of property are covered under sections 85 to 115. This part raises questions primarily on the topics of fraud like offences and old terminology.

The increase in the prevalence of fraud-like crimes has prompted the review of the following sections.

Section 85 defines theft. Theft or stealing is the act of fraudulently or dishonestly taking, or converting to the use of any person, anything capable of being stolen, with intent:

- i) to deprive the owner or any person having any property or interest therein permanently of such thing or of such property or interest; or*

- ii) *to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking or converting.*

The definition does not include the theft of intangibles such as electricity and credit.

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| Question: | <p><i>21. Should this section include the theft of intangibles?</i></p> <p><i>22. Should tampering with meters (water and electricity) be included under this Ordinance or be reserved for another Act?</i></p> <p><i>23. Should the definition of theft, also include the intent to pledge (the thing capable of being stolen) or to deposit it as security, or to part with it under a condition as to its return which the person parting with it may be unable to perform?</i></p> |
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Section 86 deals with punishment of theft. Currently the penalties are imprisonment for a term not exceeding:

- i) *3 months if the value of the property stolen does not exceed \$4;*
- ii) *1 year if the value of the property stolen exceeds \$4 but does not exceed \$100;*
- iii) *3 years if the value of the property stolen exceeds \$100 but does not exceed \$400;*
- iv) *5 years if the value of the property stolen exceeds \$400;*
- v) *7 years if the property stolen is testamentary instrument;*
- vi) *10 years if the property stolen is a ship or aircraft;*
- vii) *7 years if the property stolen is anything stolen by a clerk or servant which belongs to or is the possession of his employer;*
- viii) *7 years if the property stolen is anything in the possession of the offender as a clerk or servant, or as an officer of the Government of Samoa or of any local authority or public body, or as a constable; or*
- ix) *7 years if the theft is one within the extended definition contained in section 88 of the Crimes Ordinance.*

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| Question: | <i>24. Should the penalties be increased given the prevalence of theft?</i> |
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Section 87 says that a person can be guilty of theft regardless of the fact that he or she was in lawful possession of the property stolen, that he or she had a lawful interest in the property stolen, whether as a partner, co-owner, bailee, bailor, mortgagee, mortgagor, trustee or executor or administrator. A spouse is not included which means a spouse cannot be guilty of theft.

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| Question: | <i>25. Should spouses be included in the list of persons who can be guilty of theft?</i> <i>26. Should de facto relationships be specified so that those involved in de facto relationships are also caught under the section?</i> |
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Section 88 deals with the extended definition of theft. Every person shall be deemed guilty of theft who holds, receives, or obtains any money, valuable security, or other thing whatsoever capable of being stolen, subject to any obligation (whether arising from an express or implied trust, or from an express or implied contract, or from any other source whatsoever) to deal with such money, valuable security, or thing in any manner, and who fraudulently or dishonestly deals with it in any other manner, or fails to deal with it in accordance with such obligation.

This definition does not cover theft by misappropriating proceeds held under direction; theft by person requiring to account; and theft by person holding a power of attorney.

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| Question: | <i>27. Should the extended definition of 'theft' include theft by misappropriating proceeds held under direction, theft by person requiring to account; and theft by person holding a power of attorney?</i> |
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Section 89 deals with obtaining by false pretence. A false pretence is a representation either by words or otherwise of a matter of fact either present or past, which representation is

known to the person making it to be false and is made with the fraudulent intent to induce the person to whom it is made to act upon it. The penalty is currently three (3) years imprisonment. Obtaining by false pretence does not currently cover those acting in the capacity of an officer or clerk or servant, with intent to defraud or cause loss to any person by any false pretence, obtains valuable credit.

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| Question: | <p>28. <i>Given the prevalence of false pretence, should the penalty for false pretence be increased to 7 years?</i></p> <p>29. <i>Should false pretence extend to officers/clerks/servants obtaining credit by false pretence with intent to defraud or cause loss to any person?</i></p> |
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Section 95 makes everyone who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration or undertakes to tell fortunes, liable to imprisonment for a term not exceeding six (6) months.

The difficulties presented by this offence have surfaced in a recent case in which it was difficult to find a definition of witchcraft as the offence had long been removed from English common law. There were also difficulties in proving the offence. The local practices of ‘taulasea’, ‘fofo’, and ‘faipele’ could potentially be caught under this offence.

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| Question: | <p>30. <i>Should this offence be qualified by the statement that only if witchcraft, sorcery, enchantment, or conjuration or telling of fortunes are offences, if such practices cause actual harm (physical or mental) to a person?</i></p> <p>31. <i>Should the practices be defined if this section is maintained?</i></p> <p>32. <i>Should this offence be abolished?</i></p> |
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- **New Offences**

There are fraud-like offences which are not covered by the current Act. They are:

- i) *taking or dealing with certain documents with intent to defraud;*
- ii) *fraudulently destroying document;*

- iii) *fraudulent concealment; and*
- iv) *impersonation.*

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| Question: | <i>33. Should these new offences be included in the Crimes Ordinance?</i> |
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The penalties for receiving stolen property should then correspond to any new offences (if any) added to the Crimes Ordinance.

Section 98 deals with falsifying accounts relating to public funds. Public Money is not defined in this section. However it is defined in section 2(1) of The Public Finance Management Act 2001. Public money means all money other than trust money received by the government, including all revenues, grants, loans and other moneys, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any department by:

- i) *any Officer of Government in his capacity as such; or*
- ii) *any person on behalf of Government.*

False accounting by employees currently carries a maximum penalty of five (5) years imprisonment.

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| Question: | <i>34. Given the increase in this type of offending, should this penalty be increased to 7 years?</i> |
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Section 101 deals with extorting anything from a person by way of accusations or threats of accusations. There is currently no offence to deal with compelling someone to execute, make, accept, endorse, alter, or destroy any valuable security or compelling any person to write, impress or affix any name or seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security.

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| Question: | <i>35. Should this new offence be included in section 101?</i> |
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Section 102 deals with burglary by breaking and entering a building with intent to commit a criminal offence therein. Section 102(2) defines “to break” as breaking any part of a building or to open by any means whatever any door, window or other thing intended to cover any opening to the building. It does not cover open styled homes in Samoa where parts of the building are open and someone enters the building through those openings.

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| Question: | <p>36. <i>Should the definition of “to break” be extended to cover situations where someone enters into a part of a building left permanently open, e.g. a Samoan fale?</i></p> <p>37. <i>Should burglary by breaking and entering a vehicle also be included in this section?</i></p> |
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Sections 103 and 104 make the distinction between committing offences by day or by night. This is reflected in greater penalties for offending at night. The issue has arisen as to why there is a need for this distinction.

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| Question: | <p>38. <i>Should the distinction between by day and by night be removed so that the penalty is the same for all offending, regardless of the time of the offence?</i></p> |
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Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine. Forgery is dealt with under section 107 with a maximum penalty of five (5) years imprisonment.

The terms “document” and “false document” are not defined.

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| Question: | <p>39. <i>Should the maximum penalty be increased to 10 years imprisonment?</i></p> <p>40. <i>Should the term “document” be defined in order to cover (in addition to paper), photograph, photographic negative, plate, slide, film, microfilm, photo static negative, disc, tape, wire, sound track, card, email, websites, other electronic document or other</i></p> |
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| | <p><i>data storage device.</i></p> <p>41. <i>Should the term “false document” be defined?</i></p> |
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Section 108 deals with using, dealing with or acting upon any forged document knowing it is a forged document or causing any person to use or deal with forged documents.

There is no offence for altering or reproducing documents with intent to defraud, and using or reproducing documents with intent to defraud.

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| Question: | <p>42. <i>Should a new offence of using, altering or reproducing a document with intent to defraud be added?</i></p> |
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Sections 109-111 deal with counterfeit coin, in terms of the making, impairing and uttering of counterfeit coin. These sections do not capture counterfeit paper money.

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| Question: | <p>43. <i>Should this term ‘counterfeit coin’ be changed to ‘counterfeit money’ and be defined to include paper money as well as coins?</i></p> |
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Arson is currently covered under section 112 and carries a maximum penalty of five (5) years imprisonment. Arson is when someone wilfully sets fire to, or damages by means of any explosive:

- i) *any building, erection, or structure, or any ship or aircraft or any well of any combustible substance, or any mine, or any bush, forest, or plantation; or*
- ii) *any property, whether he or she has an interest in it or not, if he or she knows or ought to know that danger to life is likely to ensue.*

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| Question: | <p>44. <i>Should the penalty for arson be increased to 7 years imprisonment for intentionally or recklessly damaging any property by fire or by any explosive?</i></p> <p>45. <i>Should the penalty for arson be increased to 14 years imprisonment for knowing that danger to life is likely to ensue?</i></p> |
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Section 113 deals with Wilful damage. Everyone is liable to imprisonment for a term not exceeding fourteen (14) years who wilfully destroys or damages:

- i) *any property, whether he or she has an interest in it or not, if he or she knows or ought to know that danger to life is likely to ensue; or*
- ii) *any road, railway, bridge, tunnel or similar means of communication, or any aerodrome, wharf, quay or jetty, if he knows or ought to know that it is thereby likely to be rendered dangerous, impassable or unusable; or*
- iii) *any power station, or any building, erection or structure, or any equipment, line, cable or pipe, used for or in connection with the production, transmission or distribution of electricity, if he or she knows or ought to know that the supply of electricity is thereby likely to be affected.*

There is no definition of ‘wilful’ in this section.

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| Question: | <i>46. Should the term ‘wilful’ be defined in this section?</i> |
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- **New Offences**

This part of the Crimes Ordinance does not deal with computer crime and electronic theft or fraud.

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| Question: | <i>47. Should there be a new part of the Crimes Ordinance to deal with this type of crime?</i> |
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There are also no comprehensive anti-corruption provisions in this part. There is a provision covering official corruption in section 35.

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| Question: | <i>48. Should more comprehensive anti-corruption provisions be inserted into this Act or should it be in separate legislation?</i> |
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3.3) PART VII: Crimes Against Person and Reputation

Crimes Against Person and Reputation are covered by sections 59 to 84.

Section 59 covers and defines the offence of homicide. Culpable homicide is murder or manslaughter or infanticide. Section 61(2) defines when homicide is culpable. Homicide is culpable when it consists in the killing of any person either:

- i) by an unlawful act; or*
- ii) by an omission without lawful excuse to perform or observe any legal duty; or*
- iii) by both combined; or*
- iv) by causing that person by threats or fear of violence, or by deception, to do an act which causes that person's death; or*
- v) by wilfully frightening a child under the age of 14 years or a sick person.*

The recommendation is that two new instances of culpable homicide be included as follows:

- i) by being a driver of a motor vehicle which is driven in a dangerous, reckless, or negligent manner, or under the influence of alcohol or any illicit drug. If such a driver kills a person as a result of a traffic accident, this should be culpable homicide and fall under an offence of Motor Manslaughter; and*
- ii) by being an expert or professional in any particular field of work, and performing his/her duties in a negligent and careless manner, causes the death of another.*

This issue has been brought to the fore in recent times by the incident at Solosolo whereby eight people died as a result of a bus crash. The driver has been charged with negligent driving causing death under section 39A of the Road Traffic Ordinance 1960. This offence carries a maximum penalty of five years imprisonment or a fine of not exceeding twenty (20) penalty units (\$200.00).

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| Question: | <i>49. Should death resulting from these actions fall under culpable homicide so that the penalty is increased?</i> |
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Section 72 deals with Infanticide. Where a woman causes the death of any child of hers within twelve (12) months from the date of its birth in a manner that amounts to culpable

homicide, and where at the time of the offence the balance of her mind was disturbed by reason of her not having fully recovered from the effect of childbirth or by reason of lactation or of any disorder consequent upon childbirth, to such an extent that she should not be held fully responsible, she is guilty of infanticide, and not of murder or manslaughter, and is liable to imprisonment for a term not exceeding three (3) years.

Upon the trial of a woman for the murder or manslaughter of any child of hers under the age of twelve (12) months, if there is evidence to support a verdict of infanticide as above, it shall be open to the jury (assessors) to return such a verdict, and the accused shall be liable accordingly.

Whilst there is mention of a mental disorder consequent upon child birth, there is no process for determining this. Infanticide carries a maximum penalty of three (3) years imprisonment, much less than the penalty for murder and manslaughter which is life imprisonment. It is therefore important to ensure that this section is not abused while at the same time being available for women who suffer from such mental disorders consequent to child birth.

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| <i>Question:</i> | <p><i>50. Should a woman upon being charged with infanticide, be examined by the Chief Mental Health Officer and an Adviser to the court as defined under the Mental Health Act 2007?</i></p> <p><i>51. Should a woman, if determined insane by the appropriate officers be detained at a Treatment Centre?</i></p> <p><i>52. Which period is relevant for the purposes of determining insanity, the time of the report or the time of the commission of the offence?</i></p> <p><i>53. When should the charge be amended to murder or manslaughter?</i></p> |
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Abortion is covered by sections 73 to 73D and at present catches the following offences:

- i) killing unborn child (section 73);*
- ii) procuring abortion (s73A);*
- iii) female procuring own miscarriage (s73B);*
- iv) supplying means of procuring abortion (s73C);*

v) *effectiveness of means used immaterial (s73D).*

The only exception contained in section 73 at present is if death of a child before or during the birth of a child, is caused by means employed in good faith for the preservation of the life of the mother.

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| Question: | <p>54. <i>Should abortion continue to be illegal?</i></p> <p>55. <i>If so, should the exception in section 73 be extended to include means employed in good faith for the prevention of the development or aggravation of serious mental or physical health consequences for the mother by continuing the pregnancy?</i></p> <p>56. <i>Should this procedure be approved and/or performed by a senior medical practitioner?</i></p> |
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Where the criminal law imposes a positive duty to act, failure to comply with that duty (that is, an omission to act) may constitute an offence. The duty to provide the necessaries of life is covered by section 76. ‘Necessaries of life’ shall include the provision of proper and adequate care and attention, food, drink, clothing, shelter and medical treatment. ‘Necessaries of life’ as defined in section 76(3) includes medical treatment but it has been suggested that this does not include respirators and intravenous drips and injections.

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| Question: | <p>57. <i>Should respirators and intravenous drips and injections be included in the definition of ‘necessaries of life’?</i></p> |
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Grievous bodily harm is covered by section 79. In the case of *Police v Malagamaalii Eiesa Tulaga*¹¹, CJ Sapolu defined the elements of Grievous Body Harm as an assault that was grievous, without lawful justification and that it was wilful.

It is suggested that a permanent injury to another or others as a result of dangerous, reckless or negligent driving, or under the influence of alcohol or other illicit drug, should fall under grievous bodily harm.

¹¹ [1997] WSSC 5.

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| Question: | <i>58. Should GBH cover permanent injuries caused by dangerous, reckless, careless or negligent driving?</i> |
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Abduction of a woman or girl is under section 83.

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| Question: | <i>59. Should this offence be extended to abduction of a person so that the offence is gender neutral?</i> |
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Abduction of a child under 16 in section 83B, specifically mentions a girl for the purposes of intending to have sexual intercourse.

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| Question: | <i>60. Should this provision make specific mention of girls?</i> |
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Section 84 covers defamatory libel. Everyone who publishes a defamatory libel is liable to imprisonment for a term not exceeding six (6) months. To publish a defamatory libel means to do any act which confers upon the person defamed a right of action for damages for libel.

In a prosecution under this section the burden of proof shall be determined by the same rules as in an action for damages for libel. In a prosecution under this section it shall be no defence that the libel is true unless the publication was for the public benefit.

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| Question: | <i>61. Should this remain a criminal offence or are civil remedies sufficient?</i> |
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- **New Offences**

A new offence which is proposed is one which deals with causing death which may have been prevented. This covers the withholding of medical care, taking a terminally ill person home to die and may also catch the health care professional who administers pain relief in order to make the patient more comfortable but has the effect of hastening death.

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| Question: | <i>62. Should this new offence be added?</i> |
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There is also a recommendation that a new offence be added which covers the infliction of a bodily injury but the immediate cause of death is treatment applied in good faith. This could cover situations where a bystander administers CPR (cardiopulmonary resuscitation) in good faith but fails.

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| Question: | <i>63. Should this new offence be added?</i> |
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There is no offence for setting traps in the legislation. It is suggested that a new offence of setting traps be included and be worded in a way to balance on the one hand, the interests of someone putting up traps to protect their person and property, and those traps being extremely dangerous as to injure, maim or kill someone.

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| Question: | <i>64. Should such an offence be included?</i> |
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There is also no offence of poisoning with intent.

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| Question: | <i>65. Should such an offence be included?</i> |
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3.4) PART III: Parties to the Commission of the Offences

Parties to the Commission of the Offences are covered under sections 23-27.

Often a crime is committed by more than one person. A person who assists in the commission of the offence can be convicted of the same offence as the person who actually commits the offence. Section 23 which deals with Parties to offences is said to be the subject of continual litigation due to confusion about the application of this section. It is suggested that the purpose of the section be included at the outset of the section, in order for the section and its application to be better understood.

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| Question: | <i>66. Should the purpose of the section be included to simplify and</i> |
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| | <i>clarify this section?</i> |
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Section 26 deals with accessory after the fact. The penalty provision is contained in s115 where it says that everyone who is an accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no provision is made by this Ordinance or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding half the longest term to which a person committing the crime may be sentenced on a first conviction.

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| Question: | <i>67. Should the penalty provision be included under section 26?</i> |
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Section 27 deals with attempts. A person may be guilty of the separate offence of attempting a specified crime even if he or she does not succeed in carrying out the prohibited act. Section 114 could perhaps be moved forward for purposes of simplification as there is nothing in the section which deals with the penalty for an attempt. Section 114 says that everyone who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Ordinance or by some other enactment is liable to imprisonment for a term not exceeding 10 years if the maximum punishment for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed that offence.

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| Question: | <i>68. Should the penalty provision be moved forward to be included in this section?</i> |
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- **New Offences**

This part of the Act does not have a general conspiracy provision. A conspiracy like an attempt is something that occurs before a completed offence is committed.

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| Question: | <i>69. Should there be a new section included of conspiracy to commit an offence?</i> |
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3.5) PART IV: Crimes Against Public Order

Crimes against public order are covered by sections 28-34A.

Forcible entry onto land is covered under section 32. Everyone is liable to imprisonment for a term not exceeding 6 months who, by force or threats of force, enters on land then in the actual and peaceful possession of another for the purpose of taking possession of it, whether the person who so enters is entitled to the possession of it or not.

This does not cover retaining possession of land unlawfully.

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| Question: | <i>70. Should retaining land unlawfully be included in this section?</i> |
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- **New Offences**

This part of the Act does not provide for participation in organized criminal groups.

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| Question: | <i>71. Should this offence be included in this Part?</i> |
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There are also no provisions against advocating genocide, hate propaganda and related advocacy.

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| Question: | <i>72. Should these be made offences under the Crimes Ordinance?</i> |
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3.6) PART V: Crimes Affecting Administration of law and Justice and Public Administration

Crimes Affecting Administration of law and Justice and Public Administration are covered by sections 35-41.

- **New Offences**

Whilst there is an offence under section 35 which deals with official corruption, it only specifies judicial or other officers in the service of the Independent State of Samoa. Other officers may include prosecutors, registrars, and other employees of the Ministry of Justice

and Courts Administration. It does not deal with corrupting or the corruption of witnesses, assessors and lawyers. This class of persons may be referred to as ‘justice system participants’.

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| Question: | <i>73. Should a new offence be created within this Part to deal with Justice System Participant corruption?</i> |
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3.7) PART II: Matters of Justification or Excuse

Matters of justification and excuse are covered by sections 9-22. A justification has been described as ‘socially approved conduct’ whereas an excuse is conduct which is not socially approved but ‘forgivable’.¹²

Section 13 deals with insanity. Everyone shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved. No person shall be convicted of an offence by reason of an act done or omitted by him or her when labouring under natural imbecility or disease of the mind to such an extent as to render the person incapable:

- i) *of understanding the nature and quality of the act or omission; or*
- ii) *of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong.*

Insanity before or after the time when the person did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when the person did or omitted the act, in such a condition of mind as to render him or her irresponsible for the act or omission.

¹² Fairall P & Yeo S, 2005, *Criminal Defences in Australia (LexisNexis Butterworths, 4th Edition)*, Sydney.p.1-2

The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

The term 'natural imbecility' is used in s 13(b).

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| Question: | <i>74. Should the term 'natural imbecility' be replaced with 'mental disorder'? (Refer s 57)</i> |
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Section 15 deals with self defence against unprovoked attack. Everyone unlawfully assaulted, not having provoked the assault by any blows, words or gestures, is justified in repelling force, if the force he or she uses:

- i) is not meant to cause death or grievous bodily harm; and*
- ii) is no more than is necessary for the purpose of self defence.*

Section 15(2). Everyone unlawfully assaulted, not having provoked the assault by any blows, words or gestures, is justified in repelling force by force although in so doing he or she causes death or grievous bodily harm, if:

- i) he or she causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his or her purpose; and*
- ii) he or she believes, on reasonable grounds, that he or she cannot otherwise preserve himself or herself from death or grievous bodily harm.*

It is suggested that the words of the common law be used in this section.

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| Question: | <i>75. Should the words ...the force "is no more necessary for the purpose of self defense' be replaced by words currently used by the courts which are ...the force "is reasonable in the circumstances"?</i> |
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Section 19 deals with defence of person under protection. It limits the defence as only applying to defending those under a person's protection

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| Question: | <i>76. Should this defence of another be extended to the protection of any person, regardless of whether they are under a person's protection or not?</i> |
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- **New Defence**

Provocation

There is no defence of provocation to murder in the Crimes Ordinance. Provocation as a partial common law defence can reduce murder to manslaughter. It does exist in common law in Samoa and section 9 states that all rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence.

The New Zealand Law Commission in its Report 23 stated that;

At the heart of the defence of provocation is the collision between two fundamental public interests. Each is a facet of the basic value of any civilized society: the protection of the humanity of each of its members and the humanity of the community as a whole. One expression of that value is the profound importance given to the preservation of human life. The other expression of that same value is the recognition of the part compassion must be allowed to play in the criminal justice system.

NZLC made the recommendation that the partial defence of provocation be abolished from the Crimes Act in New Zealand, in that matters of provocation can be taken into account in the exercise of a sentencing discretion for murder.

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| Question: | 77. Should this partial defence to murder be brought into the Crimes Ordinance? |
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- **New Offences**

Trans-national criminal activities are not covered under the Crimes Ordinance. The United Nations Convention Against Transnational Organized Crime, states that an offence is transnational in nature if:

- i) *it is committed in more than one State;*
- ii) *it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;*
- iii) *it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*
- iv) *it is committed in one State but has substantial effects in another State.*

These include:

- *hijacking;*
- *taking hostages;*
- *ransom;*
- *pedophiles;*
- *identity theft or fraud;*
- *smuggling of flora and fauna, marine-life species, cross-border firearm trafficking;*
- *espionage;*
- *slavery;*
- *sexual servitude;*
- *deceptive recruiting;*
- *debt bondage;*
- *telecommunications offences;*
- *computer offences (unauthorized use of computers, obtaining computer services and mischief in relation to data);*
- *contamination of goods;*

- *child pornography; and*
- *human trafficking.*

The suggestion has been made that these offences be part of the Crimes Ordinance.

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| Question: | <i>78. Should trans-national crimes be in separate legislation or be part of the Crimes Ordinance?</i> |
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4) OPTIONS AND RECOMMENDATIONS FOR REFORM

It is important to re-emphasise that the case for change cannot simply be based on the premise that other jurisdictions have moved on in their criminal legislation. In any determination for reform, it must always be kept in mind that Samoan custom and traditions must be factored in. At the same time, this must be balanced against the enhancement of the social, cultural, economic and commercial enhancement of Samoa as well as the laws of Samoa meeting the needs of the community.

Given that many questions have been posed, the Commission will base its recommendations for reform once it has received all submissions from stakeholders. The recommendations of the Commission will form the basis of its final report to Cabinet. The recommendations of the Commission will be independent of all stakeholders.

5) SUMMARY OF QUESTIONS

- 1. Should a husband be able to be convicted of rape on his wife?*
- 2. Should the offence still be called ‘rape’ if it is gender neutral as ‘rape’ is limited to sexual intercourse?*
- 3. Should an offence of sexual violation be added and include not only penetration of the penis but also the use of foreign objects into the vagina, anus, or mouth of another person without consent?*

4. *Should the definition of a child be defined more widely than it is currently under this section to include an adopted child, a foster child and stepchildren?*
5. *Should the section reflect the need to show a relationship of trust so that a wider range of relationship can be caught under the section, e.g. teacher-student, doctor-patient.*
6. *Given the prevalence of this type of offending, should the penalty for sexual intercourse with a girl under 12 years of age be increased to 14 years, or 20 years or life imprisonment?*
7. *Should the maximum penalty of 7 years imprisonments be increased to 10 years as this type of offending has increased significantly?*
8. *Should this limitation be removed?*
9. *Should a new offence be created to cover unlawful sexual intimidation of a person?*
10. *Should consent obtained by threat to another be covered under this section?*
11. *Should the words 'idiot' and 'imbecile' be removed and replaced with a medically accepted term, such as 'mental disorder' or 'mental incapacity' as defined in the Mental Health Act 2007?*
12. *Should there be allowance for legal marriages, de facto relationships and consensual sexual relations?*
13. *Should the offence of adultery and related sections remain in the Crimes Ordinance?*
14. *Should differentiation be made between the different age groups as in the case of offending against girls, e.g. under the age of 12, between 12-16 years and over 16 years?*
15. *Should the age categories of under 12 years, between 12 years and 16 years and over 16 years be applied generally to all sexual offences?*
16. *Should the proviso remain that no person under the age of 21 be charged with this offence?*
17. *Should there be differentiation between sodomy committed on different age groups, under 12 years, between 12 years and 16 years and over 16 years?*

18. *Should an exception be made to the act of sodomy between consenting adults in private? And if so, what age should consent become relevant?*
19. *Should this offence remain under the Crimes Ordinance or is it better suited to animal protection legislation?*
20. *Should the words 'indecent matter' be replaced by 'pornography and other similar paraphernalia'?*
21. *Should this section include the theft of intangibles?*
22. *Should tampering with meters (water and electricity) be included under this Ordinance or be reserved for another Act?*
23. *Should the definition of theft, also include the intent to pledge (the thing capable of being stolen) or to deposit it as to its return which the person parting with it may be unable to perform?*
24. *Should the penalties be increased given the prevalence of theft?*
25. *Should spouses be included in the list of persons who can be guilty of theft?*
26. *Should de facto relationships be specified so that those involved in de facto relationships are also caught under the section?*
27. *Should the extended definition of 'theft' include theft by misappropriating proceeds held under direction; theft by person requiring to account; and theft by person holding a power of attorney?*
28. *Given the prevalence of false pretence, should the penalty for false pretence be increased to 7 years?*
29. *Should false pretence extend to officers/clerk/servants obtaining credit by false pretence with intent to defraud or cause loss to any person?*
30. *Should this offence be qualified by the statement that only if witchcraft, sorcery, enchantment, or conjuration or telling of fortunes are offences, if such practices cause actual harm (physical or mental) to a person?*
31. *Should the practices be defined if this section is maintained?*
32. *Should this offence be abolished?*
33. *Should these new offences be included in the Crimes Ordinance?*
34. *Given the increase in this type of offending, should this penalty be increased to 7 years?*

35. *Should this new offence be included in section 101?*
36. *Should the definition of “to break” be extended to cover situations where someone enters into a part of a building left permanently open, e.g. a Samoan fale?*
37. *Should burglary by breaking and entering a vehicle also be included in this section?*
38. *Should the distinction between by day and by night be removed so that the penalty is the same for all offending, regardless of the time of the offence?*
39. *Should the maximum penalty be increase to 10 years imprisonment?*
40. *Should the term “document” be defined in order to cover (in addition to paper), photograph, photographic negative, plate, slide, film, microfilm, photo static negative, disc, tape, wire, sound track, card, email, websites, other electronic document or other data storage device.*
41. *Should the term ‘false document’ be defined?*
42. *Should a new offence of using, altering or reproducing a document with intent to defraud be added?*
43. *Should this term “counterfeit coin” be changed to ‘counterfeit money’ and be defined to include paper money as well as coins?*
44. *Should the penalty for arson be increased to 7 years imprisonment for intentionally or recklessly damaging any property by fire or by any explosive?*
45. *Should the penalty for arson be increased to 14 years imprisonment for knowing that danger to life is likely to ensure?*
46. *Should the term ‘wilful’ be defined in this section?*
47. *Should there be a new part of the Crimes Ordinance to deal with this type of crime?*
48. *Should more comprehensive anti-corruption provisions be inserted into this Act or should it be in separate legislation?*
49. *Should death resulting from these actions fall under culpable homicide so that the penalty is increased?*

50. *Should a woman upon being charged with infanticide, be examined by the Chief Mental Health Officer and an Adviser to the court as defined under the Mental Health Act 2007?*
51. *Should a woman, if determined insane by the appropriate officers be detained at a Treatment Center?*
52. *Which period is relevant for the purposes of determining insanity, the time of the report or the time of the commission of the offence?*
53. *When should the charge be amended to murder or manslaughter?*
54. *Should abortion continue to be illegal?*
55. *If so, should the exception in section 73 be extended to include means employed in good faith for the prevention of the development or aggravation of serious or physical health consequence for the mother by continuing the pregnancy?*
56. *Should this procedure be approved and/or performed by a senior medical practitioner?*
57. *Should respirators and intravenous drips and injections be included in the definition of ‘necessaries of life’?*
58. *Should GBH cover permanent injuries caused by dangerous, reckless, careless or negligent driving?*
59. *Should this offence be extended to abduction of a person so that the offence is gender neutral?*
60. *Should this provision make specific mention of girls?*
61. *Should this remain a criminal offence or are civil remedies sufficient?*
62. *Should this new offence be added?*
63. *Should this new offence be added?*
64. *Should such an offence be included?*
65. *Should such an offence be included?*
66. *Should the purpose of the section be included to simplify and clarify this section?*
67. *Should the penalty provision be included under section 26?*
68. *Should the penalty provision be moved forward to be included in this section?*
69. *Should there be a new section included of conspiracy to commit an offence?*
70. *Should retaining land unlawfully be included in this section?*

71. *Should this offence be included in this Part?*
72. *Should these be made offences under the Crimes Ordinance?*
73. *Should a new offence be created within this Part to deal with Justice System Participant corruption?*
74. *Should the term ‘natural imbecility’ be replaced with ‘mental disorder’?(Refer s57)*
75. *Should the words ...the force “is no more necessary for the purpose of self defence” be replaced by words currently used by the courts which are ...the force “is reasonable in the circumstances”?*
76. *Should this defence of another be extended to the protection of any person, regardless of whether they are under a person’s protection or not?*
77. *Should this partial defence to murder be brought into the Crimes Ordinance?*
78. *Should trans-national crimes be in separate legislation or be part of the Crimes Ordinance?*

6) CALL FOR RESPONSES

There are a total of seventy eight (78) questions for consideration and response. It is not necessary to respond to all questions. It is preferred that responses be in writing.

Responses on this paper should be sent by the 19th of March 2010, to the Executive Director, Samoa Law Reform Commission, Private Bag 974 or by email to lawreform@ag.gov.ws.