

SAMOA
LAW REFORM COMMISSION

REVIEW OF PRISONS ACT 1967
Report 04/11

June 2011

Afioga i le Alii Palemia
Ofisa o le Palemia

20 Iuni 2011

SLRC Ripoti 04/11- Toe Iloiloina o le Tulafono mo Falepuipui 1967

Ou te fiafia e tuuina atu le Ripoti a le Komisi o le Toefuataiga o Tulafono a Samoa 04/11 mo le ***Toe iloiloina o le Tulafono mo Falepuipui 1967***. E tusa ai o le Vaega e 6 o le Tulafono o le Komisi o le Toefuataiga o Tulafono 2008, ua tuuina atu i lau Afioga aua le tuuina atu i luma o le Laulau a Fono a le Palemene mo le talanoaina.

O le a faatalia sou finagalo aua le faatagana e lolomia ai ma faaliliu lenei Ripoti.

Ma le fa'aaloalo lava,

Leilani Tuala-Warren
Pule Faatonu

The Hon Tuila'epa Sailele Malielegaoi
Prime Minister
Office of the Prime Minister
Apia, SAMOA

20 June 2011

Dear Prime Minister,

SLRC Report 04/11- Review of the Prisons Act 1967

I am pleased to submit to you Samoa Law Reform Commission Report 04/11, *Review of Prisons Act 1967*, which we submit under section 6 of the *Law Reform Commission Act 2008*. In accordance with this Act, a copy of the Report should be laid before the Legislative Assembly as soon as practicable.

We look forward to receiving your approval to arrange for translation and publication of this Report.

Yours sincerely

Leilani Tuala Warren
Executive Director

Preface

In 2009, the Samoa Law Reform Commission (“Commission”) was given the reference by Cabinet to review the Prisons Act 1967. The review is timely and necessary given the outdated state of the legislation which fails to take into account developments in prison administration and most importantly the rehabilitation of prisoners. The current legislation has been in operation for over 30 years hence poses an urgent need for a total reappraisal of the entire corpus of prisons in Samoa. The review is also in line with the Law and Justice Sector Plan (“Plan”) which has approved the separation of prisons from police and improving prison facilities to consider the rehabilitation of prisoners. Cabinet has also endorsed this separation by way of F.K. (10)11 on the 31st March 2010.

The Commission has completed an Issues Paper (IP07/10) for the review of the Prisons Act. The Issues Paper was developed based on preliminary consultations with the relevant stakeholders¹ and independent research by the Commission on comparable jurisdictions with similar legislation. Following the completion of the Issues Paper, the Commission consulted the public, both in Savaii and Upolu in November 2010 on issues raised in the Issues Paper. The responses and submissions from the public are incorporated into this final report together with the Commission’s recommendations which pave the way for a new and updated Prisons legislation for Samoa.

The Commission is grateful for the assistance of *Professor Paul Rishworth, Faculty of Law, University of Auckland* who provided comments on earlier drafts of this paper.

¹ Stakeholders include the Ministry of Justice and Courts Administration, Public Service Commission, Ministry of Health, Ministry of Women, Community and Social Development, Ministry of Police and Prisons, Samoa’s Umbrella for Non-Government Organization, Ministry of Finance, Attorney General, Australian Federal Police and a member from the National Council of Churches (Reverend Maauga Motu)

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Overview of current state of Prisons

The Prisons Act 1967 was enacted to consolidate and amend the law relating to the establishment and regulation of prisons in Samoa. It came into effect following repeals of the Prisons Ordinance 1953 and Prisons Amendment Ordinance 1959. A 'prison' is defined by the Oxford Advanced Learner's Dictionary as a 'building where people are kept as a punishment for a crime they have committed, or while they are waiting for trial'. The current legislation defines 'prison' as 'all houses, buildings and any place declared by or under the legislation to be or constituted prisons'. A prisoner is a person who is kept in prison as a punishment, or while they are awaiting trial.

The Head of State of Samoa is empowered to proclaim places or buildings to be prisons by Notice published in the Gazette.² A few places have been proclaimed as prisons as stated in the Issues Paper (IP 07/10), however the focus of this report will be on Tafaigata prison which holds the largest number of prisoners in Samoa.

Prisons Taskforce Visit April 2011

In a recent visit by the Prisons Taskforce³ in April 2011 to Tafaigata prison, much has been done to improve prison services and the rehabilitation of prisoners. The rural village setting of the prison as was observed by the Taskforce in its visit in April 2009 remains. The prison facilities are amongst family houses belonging to prison officers and their families. The female prison is located a few meters away from the male prison. The female prison is relatively smaller compared to the male prison, with 5 cell rooms. The number of female prisoners during the visit was 23 and they are confined in 5 cells rooms. Two of these cell rooms are for those remanded in custody⁴ and for the containment of those in breach of serious prison offences. The male prison is larger with more than 10 cell rooms. There were about more than 60 male prisoners including those remanded in custody. There are 8 cell rooms for male prisoners that have already been sentenced and 3 cell rooms designated for those remanded in custody. There are special cell rooms for high profile prisoners and those prisoners with a bad record of behavior within prison.

Rehabilitative Programmes

The prison service at Tafaigata has undergone many developments over the years in the aim of rehabilitating prisoners. During the last visit by the Taskforce in April 2009, it was observed that there were not many programmes implemented for prisoners' rehabilitation given budget constraints. Parts of the prison facilities were in an appalling state where overcrowding and poor hygiene was observed. The move towards a correctional facility

² Prisons Act 1967 (section 4)- 'Gazette' and 'Samoa Gazette' is defined in the Act Interpretation Act 1974 as meaning Gazette published by or under the Authority of the Government of Samoa, and shall include any publication of the Savali.

³ Members of the Prisons Taskforce include representatives of the Ministry of Justice and Courts Administration, Public Service Commission, Ministry of Health, Ministry of Women, Community and Social Development, Ministry of Police and Prisons, Samoa's Umbrella for Non-Government Organization, Ministry of Finance, Attorney General, Australian Federal Police and a member from the National Council of Churches (Reverend Maauga Motu)

⁴ A prisoner who is remanded in custody is kept in prison subsequent to a preliminary hearing before a court of law until the hearing is resumed, or the trial is commenced.

and rehabilitation has become evident with the renovation of prison cells and building of additional prison cells to accommodate the increasing number of prisoners. The Ministry of Police and Prisons has placed much emphasis on creating programmes and activities for rehabilitating prisoners. Many of the prisoners are skilled workers and well-educated hence the need to put their skills and knowledge into practice. Some activities include:

- Vegetable gardens for female and male prisoners
- Carpentry and Electrician work for male prisoners
- Bakery programmes for male and female prisoners
- Arrangements for young prisoners to complete tertiary education.

Challenges

Despite the many developments there are ever present challenges and issues. Overcrowding remains an issue at Tafaigata with the increasing number of male and female prisoners. There are health issues of prisoners who become medically unfit and require immediate medical attention. There have been alleged cases of mistreatment and abuse of prisoners as reported by the media in Samoa. The different rehabilitative programmes currently available prove useful for prisoners to utilize their time, knowledge and skills. However, there is a need to legislate for these programmes to ensure prisoners can participate and benefit from these programmes. These programmes also need to be structured and accorded sufficient funding support to ensure continuity.

Way Forward

The Commission has put together in this Final Report recommendations for new prisons legislation in Samoa following public consultations and independent legal research. This final report will not go into much detail on the current legislation but will look entirely into new directions of developing a new legislation that meets the needs of Government and the community as well as prisoners. Submissions from the Australian Federal Police (“AFP”) will also be considered in this Final Report.⁵ The proposed structure of new prisons legislation for Samoa will be outlined in this report.

As a matter of Structure:

The Prisons Act 1967 is old and outmoded. There is too little/no emphasis on rehabilitation. The current legislation does not ensure that the United Nation Standard Minimum Rules on the Treatment of Prisoners⁶ is adhered to. The Plan has endorsed the improvement of prisons in Samoa to consider rehabilitation of prisoners for re-integration into society. Stakeholders and the public have submitted that the current legislation needs to be replaced.

⁵ Australia Federal Police was commissioned by the Government of Samoa through the Ministry of Police and Prisons in 2010 to undertake a survey study on the current status of Prisons legislation and provide a report. A Report was disbursed amongst stakeholders for information.

⁶ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955 and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of 31st July 1957 and 2076 (LXII) of 13 May 1977. It is an internationally recognized and accepted standard for treatment of prisoners and has been incorporated into legislation around the world as a legal basis for treatment of prisoners. It forms part of the ICCPR in which Samoa is a party to.

This final report recommends:

Recommendation 1: The operation of prisons be removed from the Ministry of Police and be vested in a new separate Authority call the Prisons and Corrections Authority manned by corrections/prison officers and headed by a Chief Executive Officer of Prisons and Corrections. The Minister responsible for overseeing matters of prisons and correctional services is the Minister of Prisons and Corrections.

1. The scope of the new legislation should address the following issues:
 - I. Chapter 1- Preliminary Sections
 - II. Chapter 2- Establishment of Prison and Correction Services
 - III. Chapter 3-Inspection and Visits
 - IV. Chapter 4-Admission and Confinement of Prisoners
 - V. Chapter 5-Medical Treatment, Infectious Diseases, ETC
 - VI. Chapter 6-Classification of Prisoners
 - VII. Chapter 7-Disciplining Prisoners
 - VIII. Chapter 8-Use of force, Restraints and Firearms
 - IX. Chapter 9-Prison Labor and Rehabilitative Programmes
 - X. Chapter 10-Schemes for Early release
 - XI. Chapter 11-Discharge of Prisoners
 - XII. Chapter 12-Offences by Prison Officers

1. Preliminary Sections

Introduction

1.1 This chapter examines the proposed provisions to be included in the preliminary sections of a new prisons legislation. In doing so, relevant provisions from comparable jurisdictions will be considered. Submissions from stakeholders will be addressed. There were no submissions from the public on this issue. In light of the relevant provisions and submissions, the Commission will formulate its views and recommendations.

Background

1.2 In countries where there is an established correction-based system, legislation is cited as Prisons and Corrections Act 2006 (Fiji), Corrections Act 2004 (NZ) and Corrections Management Act 2007 of Australian Capital Territory (ACT). The ideal focus is establishing a legislation that focuses on the management of a correction-based system. This is outlined in a form of a preamble or Purpose or Guiding Principles which is common in legislation in Fiji, NZ and ACT. These guiding principles or purpose guide the operation of the corrections system. For instance, guiding principles in the Fiji legislation is provided in section 3. Section 5 of the NZ Act states the purpose of the corrections system which aims at improving public safety and contributing to the maintenance of a just society (similar to chapter 2 of the ACT Act).

Submissions

1.3 AFP in their review summary of the Prisons Act proposed a change of name to 'Correctional Services Act' to reflect new directions towards a correctional based system. A significant proposal by AFP is to incorporate Guiding Principles into the Prisons Act, similar to the provisions in NZ, ACT and Fiji. The view is that the Guiding Principles reflect international obligations and compliance. The Guiding Principles also take into account health issues for prisoners and is focused on rehabilitation.

Commission's views

1.4 The new prisons legislation should be called the Prisons and Corrections Act and should cover all matters to do with the implementation of sentences of imprisonment by the Courts of Samoa. The Prisons and Corrections Authority is to be responsible for prison administration and treatment of prisoners.

1.5 The new legislation should have a Preamble or Purpose in the beginning which fosters rehabilitation of prisoners, international obligations and United Nation Standard Minimum Rules on the Treatment of Prisoners⁷.

Recommendation 2: The new prisons legislation should be called the ‘Prisons and Corrections Act 2011’ of Samoa.

Recommendation 3: The new prisons legislation should include a Preamble or Purpose which fosters rehabilitation of prisoners, international obligations and United Nation Standard Minimum Rules on the Treatment of Prisoners. This is consistent with trends in legislation in NZ and ACT.

2. Establishment of Prisons and Corrections Service

Introduction

2.1 This chapter examines provisions relating to the establishment of a corrections service. Such provisions include proclamation of prisons, appointment of administrative head of corrections, appointment of corrections officer and other relevant officers. In doing so, the Commission considers legislation from comparable jurisdictions. Public submissions and stakeholders’ views will also be addressed. In light of the discussions, the Commission will formulate its views and recommendations on a way forward for this chapter.

Background

Proclamation of Prisons

2.2 The current Prisons Act 1967 of Samoa empowers the Head of State to proclaim places to be prisons and police gaols (s 4). The relevant provisions of the Fiji legislation appoints the relevant Minister to declare by order in the Gazette any place, building or part of a building to be a prison. The relevant Ministers also appoint/declare prison/correctional centers in NZ and ACT.

Head of Prisons and Corrections

2.3 Section 5 of the Fiji legislation appoints the Commissioner of Prison who is appointed upon the order and direction of the relevant Minister. The chief executive is appointed under section 8 of the NZ Act with the relevant powers.⁸ Similarly in ACT, the chief executive is appointed and powers are directed by the relevant Minister (chapter 3).

Prison/correction Officers

2.4 Officers appointed under a corrections system differ in jurisdictions but serve a common purpose of looking after the general welfare of prisoners to ensure that they live in a safe and stable environment. For example, appointments of prison officers of different positions are provided in detail in Parts II and III of the Fiji legislation. In NZ, prison manager and prison officers of different positions are provided in sections 11-14. Other officers and bodies appointed include security officers, visiting justices and medical officers. In ACT, correction officers are appointed (Part 3.2). One of the

⁸ *Chief executive* means the chief executive of the department that is, with the authority of the Prime Minister, for the being responsible for the administration of this Act. (Interpretation section, *Corrections Act 2004* (NZ))

most interesting provisions in ACT is the declaration of emergency in the event the security and safety of anyone at the center or elsewhere is threatened (Part 3.4). In these events, police assistance is sought in cases of emergency.

Other officers

2.5 The following officers are also appointed in legislation of comparable jurisdictions with specific functions to assist in the role of prisons/corrections officers:

- *Medical officers (Part 3 Fiji, s 20 NZ, ss 21-22 ACT)*
- *Security officers (s 7 NZ)*
- *Doctors to provide health services to detainees (s 21 ACT)*
- *Health Practitioners to exercise non-therapeutic functions⁹ (s 22(2) ACT)*

2.6 Appointment of medical officers will be discussed in Chapter 5 of this report.

Submissions

2.7 The Commission considers in this part earlier submissions from stakeholders.

2.8 The Working Group expressed the view that proclamation of prisons should ensure public health safety and hygiene for all prisons. Medical officers should also be amended to ‘*Registered Medical Officers*’ in accordance with recent health legislation. Given the number of health-related incidents in prisons, it was proposed during one of the consultations with stakeholders that a health officer/medical officer or doctor at the National Hospital should be on call to cater for the health needs of prisoners. The oath taken by Police officers should extend to ‘prison officers’ in the event of the separation.

2.9 AFP submitted that any changes, whether it relates to appointment of officers or relevant functions, must be considered in the context of the separation of Prisons from Police and future responsibilities of Police for those in their custody and remand prisoners. In the event of the separation of Prisons from Police, all persons sentenced to imprisonment should be placed into custody of the Prisons Service as soon as practicable. Provisions relating to interchange of members with Police Service is seen as no longer relevant in the event of a separation as staff employed by Prisons Service will be recruited and trained to be prison staff. In relation to the employment of prisoners outside prison, specific Rules and Regulations should be established to manage and monitor such form of employment. The provision relating to the separation of female prisoners from male prisoners should be carefully looked at to ensure that there is reasonable proximity, taking into account emergency situations and approved operational requirements whereby attendance of male staff members is required.

2.10 The public in Savaii submitted to appoint medical officers to prisoners given the spread of diseases that could affect members of the visiting public.

⁹ *Non-therapeutic function* does not include a health service or other function mentioned in section 21 (doctors).

*Commission's views***Proclamation of Prisons**

2.11 In light of the separation, the relevant Minister of Prisons and Corrections should proclaim and declare places to be prisons in Samoa. It is not practical for the Head of State of Samoa to proclaim places to be prisons. The proclamation of prisons should consider public health safety and hygiene for all prisons in accordance with health standards in Samoa.

Head of Prisons and Corrections

2.12 There should be a Chief Executive Officer for Prisons and Corrections Authority in Samoa who shall be subject to the orders and directions of the Minister of Prisons and Corrections and have the administrative command and direction of all officers. He or she shall also have powers to make Orders for observance by prisons officers and prisoners. He or she shall have control of all prisoners and may allocate them to such prisons as he or she sees fit. He or she shall also have the power to designate from time to time the classification, purpose and function of any prison, and have the power to make delegations of his or her authority to any officer by written instrument of delegation.

Prison/Correction officers

2.13 In light of the separation, the relevant officers for prisons and corrections are to be appointed for the daily operation of prisons. The ranks designated may classify officers as prisons and corrections officers or may use any other classification. All officers and employees shall act under the direction of the Chief Executive Officer and their superior officers in the discharge of their lawful duties and functions.

2.14 There should also be a provision that states that all persons who at the commencement date are officers and employees of the prison service of Samoa shall continue to hold their office and to remain in their employment in the prison service, and shall be subject to the provision of the new prisons legislation.

Other Officers

2.15 The Commission is of the view that officers with special duties are to be provided for in the new legislation. For instance, a specified registered doctor (medical practitioner) at the National Hospital with a current practicing certificate that can be on call to provide health services to prisoners in need of medical attention. It can also be a contracted General Practitioner (private sector) that will not be required to work full time. Such health services should include dental care and other necessary health treatments. Security officers should also be appointed to ensure public safety. Counseling should also be made available for prisoners particularly those suffering from mental illness or repetitive offenders of prison offences. Therefore the new legislation should allow for the appointment of qualified counselors or mentors to provide counseling to these prisoners.

Recommendation 4: The Minister of Prisons and Corrections should proclaim and declare places to be prisons in the new prisons legislation. Health standards relating to

public health safety and hygiene for all prisons should be complied with.

Recommendation 5: The Head of Prisons and Corrections should be the Chief Executive Officer of Prisons and Corrections Authority who shall be subject to the orders and directions of the Minister.

Recommendation 6: The relevant officers for the daily operation of prisons and corrections should be appointed in the new prisons legislation. They shall be subject to the Chief Executive Officer or superior officers in the discharge of their lawful duties and functions. The ranks and positions should be consistent with those of other comparable corrections facilities.

Recommendation 7: Specified registered doctor (medical practitioner) with a current practicing certificate shall be made available to be on call to provide health services to prisoners. It can also be a contracted General Practitioner (private sector) that will not be required to work full time. Qualified counselors and security officers shall also be appointed.

3. Inspection and Visits

Introduction

3.1 This chapter examines provisions relating to inspection of prison facilities by designated groups appointed under the relevant legislation and visits by the public and organizations.

Background

3.2 Currently in the Prisons Act 1967 of Samoa, a Visiting Committee is appointed by the Head of State which shall make inquiries as to the state of prisoners and condition of prisons and make a report to the Head of State. The Visiting Committee includes the Minister of Police and Prisons and the following persons:

- a) District Court Judge;
- b) Medical Officer;
- c) The Commissioner or the Senior Superintendent of Police; and
- d) A member of the Legislative Assembly.

3.3 The Visiting Committee at present is inactive. However, religion and non-government organizations regularly visit prisons to perform outreach programmes.

Comparable jurisdictions

3.4 Similar provisions in comparable jurisdictions are more comprehensive. For instance, the Commissioner is required to inspect each prison (Part 4 Fiji). Medical officers also visit and inspect prisons at least once a week (s 17 Fiji). There are also arrangements for official visits to Fiji prisons which include Officers of the Human Rights Commission (s 20(2) Fiji) and representatives of the religions and denominations of the prisoners (s21 Fiji).

- 3.5 Inspectors are appointed in NZ for the same reasons (ss 28-29). They are required to examine the treatment of prisoners by those in authority and inquire into all abuses and alleged abuses (ss 29(c-d)). Other visitors include private visitors (s 73) such as legal advisers. Independent inspections are provided for in the ACT Act which applies to each of the following: *a) judge b) a magistrate c) member of the legislative assembly d) human rights commission e) ombudsman (s 56)*. Each person may enter and inspect correctional center at any reasonable time.
- 3.6 Complaints by detainees may be made to the official visitors and each complaint is investigated unless the official visitor believes on reasonable grounds that the complaint is frivolous and vexatious (s 60). The official visitor may make a recommendation about the complaint to the chief executive or give the Minister a report.

Submissions

- 3.7 Submissions from a stakeholder proposed to include the CEO of the Ministry of Health in the Visiting Committee to ensure that health status of prisons (public health) is considered during these inspections.
- 3.8 AFP in their submissions proposed to consider changing the name of Part V to Prison Inspections and Official Visits. Reference should be made to legislation in other jurisdictions in which visits from a number of individuals and groups are provided. For instance, visits by medical officers, religious representatives, chiefs and respected persons. AFP further submitted to prescribe regulations to include roles of visiting committee and official visitors. Consideration should also be given to drafting provisions in a new Act which provides for the establishment of an Independent Prison Inspector role. This would be an alternative approach to the establishment and administration of a number of committees.

Commission's views

- 3.9 Inspection and visits to prisons are very important to examine status of prison facilities and administration, and ways in which these services can be improved. In comparable jurisdictions discussed above, legislation require special visits by designated bodies representative of the community and government to examine treatment of prisoners and inquire into any mistreatment or abuse.
- 3.10 The Commission is of the view that the new legislation should require visits and inspections to prisons. A special Visiting Committee appointed by the Minister responsible shall consist of the following:
- a) District Court Judge or Faamasino Fesoasoani;*
 - b) CEO of the Ministry of Health or delegated senior officer to inspect health status of prisons;*
 - c) CEO of Prisons and Corrections or designated senior officers to be prisons inspector;*
 - d) A senior representative of the community who is a high chief in Samoa;*

- e) *A member from the National Council of Churches.*
- f) *A Member of Parliament.*

- 3.11 The Visiting Committee shall be appointed by the relevant Minister of Prisons and Corrections. Such committee shall visit each prison in Samoa at such suitable times prescribed by Regulations. Duties and functions of the committee should be prescribed by Regulations.
- 3.12 The appointment of the above Committee shall not restrict the following members from carrying out independent inspections on a regular basis to ensure order and hygiene in prisons: 1) *a medical officer who shall visit once a week;* and 2) *CEO of Prisons and Corrections, or designated senior officer who shall inspect prisons and report to the CEO in relation to any aspect of the administration of prisons and the welfare of prisoners and officers.*
- 3.13 The new legislation should legislate for other arrangements for official visits to prisons such as judges, religion representatives, human rights bodies, public bodies, legal counsel and non-government organizations.
- 3.14 There should also be provisions in relation to making prison inquiries into incidents arising in any prison which have affected the security or good governance of the prison. These incidents include abuse and alleged abuse. In the interests of natural justice, the Commission is of the view that an independent prison inspector(s) should be appointed to investigate any incidents arising in any prison and the administration of the prison service. The independent prison inspector(s) shall also enquire and report on the operation and effectiveness of the new legislation.

Recommendation 8: A Visiting Committee in paragraph 3.10 above shall be appointed in the new legislation to inspect and make inquiries as to the state of prisons in Samoa. The functions of the Visiting Committee and time of visits shall be prescribed by Regulations. The new legislation must ensure that the Visiting Committee carries out their functions at the stipulated times prescribed by Regulations. The appointment of a Chairman of the Visiting Committee must be provided in the new legislation. The new legislation shall also ensure that there is fund available for allowances of members of the Visiting Committee.

Recommendation 9: Medical Officers shall visit prisons regularly and report on the health status of prisons. This is to ensure hygiene and proper living standards.

Recommendation 10: The new legislation should require the CEO of Prisons and Corrections or designated senior officer to inspect prisons regularly. In the case of a senior designated officer, he or she shall report to the CEO the state of prisons and the welfare of prisoners and officers.

Recommendation 11: The new legislation should allow visits from organizations and religious groups to achieve rehabilitation of prisoners.

Recommendation 12: Alternatively, an independent prison inspector(s) shall be appointed to investigate any incident arising in any prison and the administration of the prison service.

4. Admission and Confinement of Prisoners

Introduction

4.1 This chapter examines the relevant provisions from comparable jurisdictions pertaining to the admission and confinement of prisoners. This is the stage when prisoners are introduced into prison and the relevant process involved. This process includes the transfer of prisoners to prison upon sentencing and the initial examination and inspection of prisoners. The confinement of prisoners is also another aspect that will be discussed in light of the relevant provisions in comparable jurisdictions. The issues relevant to Samoa will be addressed such as classification of prisoners, living conditions and minimum entitlement of prisoners.

Background

Current Practice

Admission

4.2 In an interview with a senior officer of the prison service at Tafaigata in April 2011, the process of admission of prisoners was discussed. Similar to many countries in the world, prisoners are admitted upon a signed warrant or other lawful order given by court. Once prisoners have been sentenced, they are transported to prison with a form or document containing the charges proven and all sentencing details. This form or document is signed by an authorized police officer. Consequently the detail of the form or document is entered into a Chorus Book at Tafaigata where it contains personal details of all prisoners.

4.3 Once a new prisoner is transported to Tafaigata, registration takes place. There is a personal file for all prisoners which is kept and updated by a supervising officer who informs each prisoner admitted of prison rules and conditions. Each prisoner will be required to surrender all items with him or her at time of admission except for wedding rings for those with spouses. There are no medical examinations of prisoners upon admission. Prisoners under 17 years of age are transferred to Olomanu Juvenile

Center and female prisoners are kept separate from male prisoners. Those prisoners remanded in custody are sent to custody rooms at Tafaigata.

Confinement

4.4 This part refers to the imprisonment of prisoners and the important issues involved. For prisoners remanded in custody, they are entitled to visitation rights at any time of the week. For prisoners sentenced, they are only entitled to visitation rights on Sundays if they are of good behavior. For funeral arrangements, they are released only upon the approval of the Commissioner. Prisoners at Tafaigata live a predominantly subsistence lifestyle; they plant their food. For instance, vegetable gardens and plantations. Prisoners are afforded three meals a day at Tafaigata. There are also programmes available to prisoners for their rehabilitation which will be elaborated on in Chapter 9 of this final report. For personal hygiene, prisoners participate in a programme that ensures hygiene in prisons. For instance, keeping their cell rooms clean for inspections. There are new cells already being built at Tafaigata to accommodate the increasing number of prisoners. Each prison cell resembles a traditional family setting with a senior respectable male appointed as the head chief of each cell. These head chiefs are able to provide counseling to younger prisoners and become spokespersons of prisoners to police on any issues arising.

4.5 The accessibility of prisoners to medical treatment will be discussed in the following chapter (5).

Comparable Jurisdictions

Admission

4.6 Generally, prisoners are admitted upon the authority of a signed warrant or other lawful order of detention (ss23 Fiji). Part of the process of admission is the medical examination of prisoners to assess health needs (s 26 Fiji) to be made within 24 hours after admission (s 68 ACT) or the assessment of prisoners on reception to address specific needs of prisoners (s49 NZ). The arrangement of certain prisoners is also undertaken at this stage of the process, for instance, female, young prisoners, non convicted and civil prisoners (ss 24 (1-2) Fiji). Prisoners are also required to be identified and registered (ss 65 & 76 ACT), and be given certain information about entitlements and obligations (s 42 NZ, s 66 ACT).

Confinement of Prisoners

4.7 In most jurisdictions, prisoners are put into security classifications for safety reasons (s 47 NZ, s 92 ACT). In serving their sentences, prisoners are afforded minimum entitlements in prison/correctional centers (s 69 NZ), work and earnings (s 66 NZ), remission of sentence and diet (ss 28-29 Fiji). In ACT, the entitlements of prisoners are comprehensively provided in legislation. For instance, chapter 6 specifically provides for the living conditions at correctional centers. The living conditions refer to food and drink, clothing, personal hygiene, sleeping areas, health care and visitations. Other important entitlements include transfer of prisoners for medical care (s 30 Fiji, s 54 NZ). Rehabilitative programmes are also provided (s 52 NZ, s 7(d) ACT) - Also refer to chapter 2 of the ACT Corrections Management Act.

Submissions

4.8 Two questions were asked during public consultations for public submissions: 1) whether there is a need to change the current prison system to take into account rehabilitation for prisoners and secondly whether the current law should be changed to take into account minimum entitlements of prisoners?

4.9 Submissions from the Savaii consultations expressed the view to maintain current prison system with harsh punishments to be imposed on more serious offenders. Some of the public submitted that rehabilitation will not work in prison as it is their belief that prisoners in Samoa will never repent. On the other hand, some of the public expressed the view that the current law should be changed to consider health status and wellbeing of prisoners. More people in Savaii realized the importance of affording prisoners proper prison living conditions and minimum entitlements such as visitation rights, as most prisoners escape because of poor living conditions.

4.10 The public in Upolu supported changing the current law to take into account minimum entitlements of prisoners and rehabilitation. Although there were mixed views regarding the current prison system, more people expressed the view that rehabilitation should be put into law to ensure prisoners are taught for a better life as they are also human beings.

4.11 AFP in their written submissions proposed that reference should be made to the relevant provision of the Fiji legislation in regards to section 23 of the Prisons Act of Samoa. Special regulations as to the accused persons (s 24) must comply with the United Nation Standard of Minimum Rules for the Treatment of Prisoners. Section 25 should be left to the authority of the Ministry of Police. Section 26 of the Prisons Act should form the basis of induction training for prison staff.¹⁰

Commission's views

Admission

4.14 The new legislation should address the admission of prisoners into prisons. The admission process should include the following provisions:

- i) Admission upon the authority of a signed warrant or other lawful order of detention (court order) similar to comparable jurisdictions.
- ii) Provisions for identification, registration, disposal of prisoner's property and classification of prisoners.
- iii) Prisoners should also be informed of prison rules, obligations and entitlements upon admission. Such provisions should apply to prisoners remanded in custody.
- iv) Medical assessment of all prisoners should form part of the admission process to address any health issues prisoners may have during the time of admission. This should be done within 24 hours after admission or any other time deemed appropriate for medical assessment. There should be no discriminatory treatment

¹⁰ Ss 23-26 of Prisons Act (Samoa) 1967 refer to ***Regulations, Rules and Instructions*** to be prescribed in relation to the treatment of prisoners including accused persons and the general administration of prisons.

or classification of prisoners as a result of being diagnosed with a serious disease or illness eg HIV/AIDS.

- 4.15 There should be provisions on the arrangement or classification of prisoners upon admission. For instance, the separation of female prisoners, young prisoners and those remanded in custody. Classification of prisoners is discussed in Chapter 6 of this final report.

Confinement

- 4.16 Provisions relating to the confinement of prisoners should be included in the new legislation. The minimum entitlements of prisoners or living conditions of prisoners should be consistent with the United Nation Standard for Minimum Rules for the Treatment of Prisoners.

Recommendation 13: The admission of prisoners and the processes involved should be included in the new prisons legislation. For instance, admission upon a signed warrant or court order, identification and registration, information available to prisoners upon admission and classification of prisoners (Chapter 6).

Recommendation 14: Medical assessment of prisoners upon admission should be mandatory in the new prisons legislation. This should be done within 24 hours or any time the CEO deems necessary based on circumstances arising. There should be no discriminatory treatment of prisoners during admission.

Recommendation 15: Confinement of prisoners should be consistent with the United Nation Standard for Minimum Rules for the Treatment of Prisoners. This applies to minimum entitlements and living conditions.

5. Medical Treatment, Infectious Diseases, ETC

Introduction

- 5.1 This chapter focuses specifically on medical/health care and treatment afforded to prisoners confined in prisons/correctional centers. In comparable jurisdictions, designated medical officers are appointed particularly for this role to ensure proper medical services are provided to prisoners.

Background

Current Practice

- 5.2 Currently, medical officers such as doctors are not always available at Tafaigata prison to provide medical care to prisoners. A doctor or nurse only visits prisons upon request from the Ministry of Police and Prisons. In the event a prisoner is seriously ill, he or she is taken to hospital for medical treatment under the

supervision of police officers. There is no clear process in law to address transfer of prisoners to hospital. Hence, there is an urgent need to have a registered doctor on call to provide medical care to prisoners when the need arises particularly in circumstances when there is an outbreak of contagious diseases like tuberculosis (TB). Prisoners with special needs and mental health problems are treated by medical officers for an initial six months from date of admission; however, extension of treatment is done if initial treatment is not successful.

Comparable Jurisdictions

5.3 In comparable jurisdictions, legislation appoints medical officers responsible for the general health care of prisoners (s 31 Fiji, s20 NZ, ss 21-22 ACT). These medical officers are required to attend to the health needs of prisoners at any stipulated time. The standard of health care provided to prisoners is equivalent to that available to the general public (s 53(a) ACT). The interests of female prisoners must also be taken into account when appointing a medical officer to any prison at which female prisoners are held, and when providing medical services to female prisoners (s 52 (b) Fiji). No separation of prisoners shall be ordered only on the basis of HIV/AIDS status (s 31(6) Fiji).

5.4 Access to other medical and related services must also be made available to prisoners. For instance, dental treatments, public awareness/education on health issues, vaccination programmes and support services for infants and mothers (s 32 Fiji). The health assessment performed in the initial process of admission in chapter 4 requires periodic follow up by medical officers particularly of prisoners identified as suffering from mental illness. For prisoners who have sustained injuries from the use of force and restraints (Chapter 8) by prison officers, they must be medically examined (s 141 ACT)

Submissions

5.5 Stakeholders raised the need to appoint medical officers to provide medical assistance to prisoners. Stakeholders expressed the view that a nurse must be based at Tafaigata prison to provide medical services to prisoners; a doctor can attend when the urgent need arises. However, there was skepticism regarding the available budget to fund these services.

5.6 There was an overwhelming public support to consider the health status of prisoners given the deteriorating state of prisons which may cause spread of contagious diseases.

Commission's views

5.7 The new legislation should provide for the availability of registered doctors for each prison facility in Samoa. The Commission agrees with the stakeholders' view that there should be a designated medical officer to be on call for each prison in Samoa, such as a registered doctor or a nurse. This is to avoid unnecessary expense of transporting prisoners to hospitals for medical treatment and outbreak of contagious diseases such as TB. The interests of women and young prisoners should be

considered when appointing a medical officer. The standard of health care should be equivalent to that available to the general public hence this should be reflected in the preamble of the new legislation or in this chapter of the report.

- 5.8 The issue of HIV/AIDS should not be the only basis for separating prisoners with HIV/AIDS status. The Commission is of the view that such an issue is paramount and should be reflected in the preamble of the new legislation. Confidentiality is of utmost importance and the new prisons legislation must ensure this principle is adhered to upon the admission of prisoners with HIV/AIDS status.
- 5.9 For prisoners with special needs or mental illness, there should be provisions in the new prisons legislation to allow special and immediate care for these prisoners. These provisions should include follow up health assessment by medical officers appointed under the new legislation to ensure the health status of these prisoners improves over time. For prisoners who have sustained injuries from the use of force and restraints by prisons authorities, they should be able to receive medical assessment and treatment.
- 5.10 The Commission is of the view that other medical and related services should be made available to prisoners. The new legislation should address medical services such as dental treatments, public awareness/education on health issues, vaccination programmes and support services for infants and mothers.

Recommendation 16: The new prisons legislation should provide for registered doctors with current practicing certificates to be on call for each prison facility in Samoa to ensure every prisoner receives adequate medical treatment. The appointment of these registered doctors should consider interests of women, young prisoners and prisoners remanded in custody.

Recommendation 17: Standard of health care for prisoners should be the standard of health care equivalent to that available to the general public.

Recommendation 18: Provisions on HIV/AIDS should be included in the new prisons legislation as a basis for non-discriminatory treatment of prisoners with HIV/AIDS status. The principle of confidentiality must be complied with in relation to prisoners with HIV/AIDS status.

Recommendation 19: There should be provisions for treatment of prisoners with special needs and mental illness. Prisoners who have sustained injuries from the use of force and restraints by prison authorities shall be medically assessed and treated.

Recommendation 20: The new prisons legislation must ensure that other medical and related services be made available to prisoners. For instance, dental treatments, support services for infants and mothers and public awareness/education.

6. Classification of Prisoners

Introduction

6.1 The focus of this chapter will be on the classification of prisoners based on gender, age, background and nature of the offence. It will also look at the security classification of prisoners such as segregation of prisoners for safety reasons. The relevant provisions from comparable jurisdictions will be discussed along with submissions from stakeholders. There were no submissions from the public on this issue.

Background

6.2 The current practice is that female prisoners are confined separately from male prisoners. Young offenders (17 years and under) are sent to Olomanu Juvenile Center to serve their sentences. Prisoners remanded in custody are sent to designated custody rooms at Tafaigata. For young offenders remanded in custody, they can be confined at the Police Station or sent to designated custody rooms at Tafaigata. In practice prisoners at Tafaigata are confined in prisons in the absence of any specific classification. Designated leaders are appointed for each cell and become mentors for other prisoners and spokespersons for prisoners to police officers if issues arise in prisons. Prisoners who are found to have committed serious prison offences are kept in solitary confinement in a designated cell with a quarter of their normal entitlements as a form of discipline.

Comparable Jurisdictions

6.3 The principal objective in applying classification criteria to all prisoners shall be to achieve effective rehabilitation of the prisoner (s35 (a) Fiji). Therefore, classification procedures shall be applied so as to ensure that appropriate arrangements are made for the separate accommodation and other appropriate separation within prisons. This classification shall apply to female prisoners, young prisoners, unconvicted prisoners and civil prisoners, and prisoners considered to be at risk within the prison environment (s35(b) Fiji). Classification of prisoners should also consider the prisoner's history, age, level of education, character and background (s 35(d) Fiji). Other factors to be considered are the cultural background as well as health and well being of prisoners (s 88 ACT).

6.4 In NZ, regulations are prescribed in relation to the safe custody of prisoners (s 202 NZ). There are also provisions for the security classification of prisoners for the maintenance of security and good order in prisons (s 47 NZ). Prisoners are also segregated ('segregation') for security purposes, protective custody and health reasons (ss 90-92 ACT). Restrictions of ability to associate are imposed on these prisoners (s 57 NZ).

Submissions

6.5 AFP submitted to have in place regulations to implement classification of prisoners. For instance, regulations to keep prisoners remanded in custody separate from sentenced prisoners. Prisoners remanded in custody or untried are presumed to be innocent and shall be treated as such. Young prisoners who are remanded in custody

shall be kept separate from adults and shall in principle be detained in separate institutions. Any restrictions on prisoners as a result of classification must be in line with the United Nation Standard Minimum Rules for the Treatment of Prisoners e.g. entitlements during solitary confinement.

6.6 In relation to the separate confinement of female prisoners from male prisoners, consideration must be given to the prevention of seeing, conversing or holding interviews with any male, except in situations of emergencies where the health or wellbeing of female prisoners is affected.

Commission's view

6.7 The Commission supports having in place provisions on the classification of prisoners to be consistent with trends in comparable jurisdictions. Such provisions are essential to ensure interests of prisoners are taken into consideration. For instance, interest of female prisoners, young prisoners, prisoners considered to be at risk within the prison environment and prisoners in custody. The Commission is of the view that the current practice in Samoa is still relevant but the new legislation needs to address, recognize and build on what is already in practice.

6.8 The new legislation shall also ensure that prisoners remanded in custody are treated separately from sentenced prisoners. Legislation should ensure that proportionate use of resources is implemented to address interests of prisoners remanded in custody. For instance, appropriate accommodation and entitlements. This applies to female prisoners and young prisoners.

6.9 The Commission is of the view that the new legislation should consider other important factors pertaining to prisoners during classifications. For instance, consideration should be given to the cultural background of prisoners who are non-Samoans and health status particularly elderly prisoners and prisoners with special needs or mental illness. The current practice in Tafaigata where prisoners are not confined in any specific classification is good practice hence a provision in the new legislation should allow prison authorities to classify prisoners in a manner likely to achieve rehabilitation. This provision should be stated in the beginning of this chapter to reflect the overall objective of the new legislation.

Recommendation 21: The new prisons legislation should prescribe Regulations for the classification of prisoners. The provisions shall ensure that the overall objective of rehabilitation of prisoners is achieved through classification.

Recommendation 22: The new prisons legislation shall ensure that the interests of every prisoner are considered in the classification process. For instance, the interests of female prisoners, young prisoners, prisoners in custody, elderly prisoners, prisoners with special needs or mental illness and the safety of prisoners in general.

Recommendation 23: Prisoners should not be subject to any form of discrimination. The United Nation Standard Minimum Rules for the Treatment of Prisoners should be complied with.

7. Disciplining Prisoners

Introduction

7.1 This is one of the most important aspects of prison administration. Every prison has rules and regulations to govern its administration. In situations where prisoners breach prison rules/offences, they are subject to disciplinary actions. For instance, the solitary confinement of prisoners with minimum entitlements being reduced. In some countries, they are segregated to designated cells if these prisoners pose a risk to other fellow prisoners. There are also cases whereby minimum entitlements are reduced as a matter of discipline. For instance, reduction of food ratio, restriction of the ability to associate with others and visitation rights being refused. In some jurisdictions, corporal punishment is still practiced.

Background

7.2 During the Prisons Task Force visit in April 2011, it was noted that the prison rules notice is publicly displayed outside one of the cells. This is good practice as it informs prisoners and police officers of prison rules. According to a senior officer at Tafaigata prison, prisoners are informed of their rights and obligations upon admission into prison. These rights and obligations include prison rules. The public display of notice is another method to inform prisoners of the prison rules to be complied with and the appropriate punishment in the event of any breach.

Comparable jurisdictions

7.3 The display of prison offences notice is required in other legislation. For instance, in Fiji, a provision that such notice must be prominently displayed (s 37). In terms of punishment, corporal punishment is prohibited in Fiji prisons (s 38(a)). This prohibition extends to use of instruments of restraint, withdrawal of basic food rations and basic toiletry supplies, and total denial of visitation rights. Proceedings relating to prison offences may be prescribed by regulations which shall consider limitations provided in section 39(2).¹¹ Proceedings shall be conducted in a manner which applies the principles of natural justice (s 39 (3) Fiji). There is also a provision which allows arrangements to be made for designated prisoners to play leadership or mentoring roles in relation to other prisoners.

7.4 In NZ and ACT, disciplinary provisions are very detailed and require special bodies to be appointed to hear grievances relating to prison offences. For instance, powers of hearing adjudicators in NZ relating to offences against discipline (s 133). Chapter 10

¹¹ Limitations include 1) *forfeiture of remission of sentence for a period not exceeding 90 days; b) deprivation of earnings, or part thereof, for a period not exceeding 60 days; c) forfeiture of privileges in accordance with this Act for a period not exceeding 60 days; or d) separation for a period not exceeding 14 days.*

of the ACT legislation provides a comprehensive look at the procedures involved in investigating and hearing of disciplinary breaches. In both of these jurisdictions, decisions by disciplinary bodies are subject to review by an appellant body to ensure that natural fairness and justice is achieved (s 136 NZ, Part 10.3 ACT).

Submissions

- 7.5 The public in Upolu and Savaii in general expressed the need to consider minimum entitlements of prisoners in relation to better prison conditions, and changing the current law to address problems such as abuse and inhumane treatment of prisoners.
- 7.6 AFP submitted to have in place regulations to monitor discipline of prisoners in accordance to classification of prisoners. For instance, prisoners remanded in custody which includes young prisoners. In relation to prison offences, AFP submitted that classification of offences needs to be updated and offences to be clearly defined in regulations rather than detailing in the body of the legislation. Special consideration should be given to relevant sections of the United Nation Standard Minimum Rules for the Treatment of Prisoners when punishments are imposed for breach of prison offences.
- 7.7 In terms of hearing complaints of offences by prisoners, AFP submitted that it is appropriate for the appointed Head of Prisons and Corrections or most senior member of the organization to hear all complaints in respect to any offence by prisoners. This task should be delegated to the Officer in charge of an institution, or for more serious offences, a visiting justice or tribunal. For members of the service who commit offences, they should be subject to provisions, processes and penalties of the Public Service Act for all relevant officers if the Ministry of Prisons and Corrections is to be under the Public Service Commission.

Commission's view

- 7.8 The Commission supports the view that prison rules/offences and the appropriate punishments, be clearly defined in regulations rather than detailing in the body of the new legislation. Such regulations should consider the classification of prisoners e.g female prisoners, young prisoners, prisoners remanded in custody, prisoners with special needs and health problems. The current prison offences should be re-assessed and updated. Prison offences should be in both English and Samoan for every prisoner to understand. The requirement for public display of prison offences should be spelt out in the new legislation.
- 7.9 The Commission is of the view that the United Nation Standard Minimum Rules for the Treatment of Prisoners must be adhered to when disciplining prisoners for breach of prison offences. For instance, the prohibition of corporal punishment, punishment by close confinement or reduction of diet and use of instruments of restraint (unless lawfully authorized). The ultimate aim of prisoners' rehabilitation must be considered when disciplining prisoners.

7.10 In relation to proceedings for prison offences, such should be prescribed by Regulations rather than detailing in the body of the new legislation. The power to hear and determine proceedings shall be by the CEO of Prisons and Corrections or delegated senior prison officer. The CEO may review a decision of the senior prison officer if the proceeding is heard by the senior officer. In the interests of natural justice, the Commission is of the view that a special body or independent tribunal be appointed to review decisions and punishments imposed on prisoners in more serious cases. Functions of such special body or tribunal should be prescribed by way of Regulations.

Recommendation 24: Prison rules/offences and punishments should be clearly defined in Regulations rather than detailing in the body of new prisons legislation. Such Regulations should consider the classification of prisoners.

Recommendation 25: The current prison offences in the Prisons Act 1967 should be reviewed and updated to be incorporated in Regulations.

Recommendation 26: The new prisons legislation should require that prison offences be publicly displayed in the prisons. The prison offences shall be in both Samoan and English.

Recommendation 27: Discipline of Prisoners should be consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Recommendation 28: In relation to proceedings for prison offences, they should be prescribed by Regulations. The CEO of Prisons and Corrections or delegated senior officer shall hear and determine proceedings.

Recommendation 29: In the interests of natural justice, a special body or independent tribunal should be appointed to review decisions in more serious cases. Its functions and powers should be prescribed by Regulations

8. Use of force, Restraints and Firearms

Introduction

8.1 This chapter examines legislative provisions regarding the use of force, restraints and firearms by police officers/prison authorities in handling of prisoners. In doing so, provisions from Fiji, NZ and ACT will be discussed in the aim of developing provisions regulating the use of force, restraints and firearms in Samoa's prisons.

Background

8.2 The current prisons legislation does not specifically address the use of force, restraints and firearms by the relevant officers in prisons. The point of reference for

the use of force and firearms is the Police Powers Act 2007 which provides police officers with certain powers necessary to carry out enforcement activities. Currently the Ministry of Police and Prisons are merged together hence the Police Powers Act 2007 governs the use of force and firearms in prisons. The use of firearms is allowed only in circumstances provided in section 13 of the Police Powers Act, which requires that a police officer must satisfactorily carry out appropriate training in the safe use of firearms and dangerous weapons. The use of force must be reasonably necessary to achieve a public purpose (s 16 Police Powers Act 2007).

Comparable jurisdictions

8.3 Similar provisions in Fiji and NZ require that an officer may not use more force than is necessary in circumstances (s 40 Fiji) or must use force only if it is reasonably necessary such as self-defense (s 83 NZ). In relation to the use of firearms, legislation in Fiji requires that an officer must undertake a course of training in relation to their use. In NZ, the use of non-lethal weapons is subject to regulations (s 85). The use of instruments of restraint is impermissible in Fiji but only allowed in exceptional circumstances authorized by regulations (s 42(1) Fiji). The use of restraints must not be applied in such a way as to cause unnecessary pain to prisoners and such restraints must preserve the dignity of the prisoners. In ACT, the use of restraints or weapons must be proportionate to the circumstances (s 140) and legislation requires that medical examination must be conducted after the use of force (s 141).

Submissions

8.4 There were no submissions on this chapter. However, the Commission considers the importance of this chapter to be included in new prisons legislation.

Commission's view

8.5 The Commission is of the view that this chapter of the final report should be included in the new prisons legislation to guide prison/corrections officers in carrying out their duties when handling prisoners. The relevant provisions of the Police Powers Act 2007 of Samoa relating to the use of force and firearms must be incorporated into the new legislation for prison officers. It is also important to specify in the new legislation the relevant trainings to be mandatorily taken by prison officers in the use of firearms and weapons, as stipulated in section 13 of the Police Powers Act 2007. The use of restraints must be consistent with the United Nation Standard Minimum Rules for the Treatment of Prisoners.

8.6 The Commission is of the view that the lawful use of force, restraints and firearms must be prescribed by regulations. Prisoners who have sustained injuries from use of force, restraints and firearms must be medically examined.

Recommendation 30: This chapter should be included in the new prisons legislation.

Recommendation 31: The relevant provisions of the Police Powers Act 2007 relating to the use of force and firearms is applicable in a separate prison administration hence

should be incorporated in the new prisons legislation as relating to prisons/corrections officers.

Recommendation 32: Prisons and Corrections Officers should mandatorily undertake relevant training in the use of firearms and weapons (s13 Police Powers Act 2007).

Recommendation 33: The use of restraints must be consistent with the United Nation Standard Minimum Rules for the Treatment of Prisoners.

Recommendation 34: The lawful use of force, restraints and firearms/weapons should be prescribed in Regulations.

9. Prison Labor and Rehabilitative Programmes

Introduction

9.1 This chapter focuses on prison labor and rehabilitation programmes available to prisoners. It also examines the possibility of prison enterprises in Samoa that will assist in the rehabilitation of prisoners such as commercial programmes aimed at employing prisoners.

Background

9.2 The current prisons legislation provides that prisoners may be employed outside prison (s 21). Such employment must be prescribed by regulations; however, there are no regulations in place to govern the kind of work or labor to be performed by prisoners.

9.3 In Tafaigata, the prisoners live a predominantly subsistence lifestyle; they grow and plant what they eat. Prisoners spend part of their time outside of their cells working vegetable gardens and plantations for their everyday meals. In the female prison, women are involved in handicraft work and growing vegetables for their meals. Men are more involved in physical labor such as cultivating the land and growing crops. Men are also involved in other programmes such as bakery and carpentry work. These are some of the ongoing programmes available at Tafaigata which assist in the rehabilitation of prisoners. Prisoners also participate in hygiene programmes such as cleaning their cell rooms for inspection to ensure that hygiene in prisons is maintained.

9.4 Prisoners are also provided with the opportunity to trade their products outside of prisons. For female prisoners, their handicrafts and vegetables are sold at the markets or restaurants. The money earned from this trade goes towards the developments of ongoing rehabilitation programmes discussed above. The prison authorities are looking into other programmes for rehabilitation such as sculpture making and entertainment to meet financial constraints in prison.

Comparable jurisdictions

9.5 The Fiji legislation requires that every convicted prisoner may be required to undertake labour, within or outside prison (s 43(1)). Such labor may be prescribed by regulations and shall have regard to the different interest of prisoners (male and female) and must assist in every way possible in rehabilitating prisoners. This also applies in setting up of prison enterprises for further enhancement of prisoners' rehabilitation (s 45). Section 52 of the NZ Act requires that rehabilitation programmes are provided to those prisoners sentenced to imprisonment. Such programmes must be consistent with the resources available and beneficial to prisoners once their sentences have been served. The preamble of the ACT Act provides for the rehabilitation of imprisoned offenders and their reintegration into society.

Submissions

9.6 The public in Savaii and Upolu supports the rehabilitation of prisoners. AFP submitted that there should be in place provisions of rehabilitation programs and the establishment of agreements with external service providers. Programmes must target educational, vocational, offence specific and re-integration needs of prisoners.

Commission's view

9.7 The Commission is of the view that the rehabilitation of prisoners is the fundamental aspect of the new prison legislation hence rehabilitative programmes for prisoners must be legislated for mandatory compliance by the prison authorities. Prison labor and rehabilitation programmes must be prescribed by regulations and such regulations must consider the classification of prisoners. Work and labor to be performed by prisoners must comply with the United Nation Standard Minimum Rules on the Treatment of Prisoners.

9.8 The Commission notes the ongoing rehabilitative programmes currently available to prisoners at Tafaigata. The new prisons legislation must ensure that every prisoner confined in prisons around Samoa is afforded with the opportunity to participate in programmes to assist with their reintegration into society.

Recommendation 35: The new prisons legislation should provide for rehabilitation programmes for prisoners to assist reintegration into society. Rehabilitation programmes should be available to every prisoner.

Recommendation 36: The rehabilitation programmes should consider the classification of prisoners. Such programmes should be prescribed by Regulations.

Recommendation 37: Prison Labor must comply with the United Nation Standard Minimum Rules on the Treatment of Prisoners.

10. Schemes for Early Release

Introduction

10.1 This chapter explores some of the early release schemes in legislation in comparable jurisdictions and those available in Samoa.

Background

10.2 In Tafaigata prison, parole is the only temporary release scheme in operation administered under the Prisons Parole Board Act 1977. There is weekend parole approved for prisoners who have served half of their sentences and have a record of good behavior. There is also parole for prisoners to spend time with their families during public holidays. Prisoners eligible for public holiday parole are those with spouses and children or the matured responsible prisoners. For prisoners with deteriorating health, they can be released early for health reasons accompanied by a report from a medical practitioner. An example of this involved a former Member of Parliament who was sentenced to life imprisonment for murder. His health deteriorated in prison and as a result he was released from prisons on medical grounds.

Comparable jurisdictions

10.3 Early release programmes are done with the aim of assisting in the rehabilitation of prisoners and shall provide opportunities for prisoners to re-enter society by the performance of community work or paid employment, or enrolment in a course of education or instruction (s 46, Fiji). There are requirements and conditions imposed by Regulations for prisoners to be eligible for early release such as having a low security classification and having 12 months or less of his or her effective sentence to serve. These conditions apply to the performance of community work or paid employment and course of education or instruction (s 46(1) Fiji). In relation to short term release, regulations may be made for the following:

- a) weekend release;*
- b) release from prison to attend a course of instruction;*
- c) release into the care and supervision of traditional chiefs or other community leaders for the purpose of facilitating the re-entry of the prisoner into his or her village or community; or*
- d) any other arrangement permitting short term release which may assist in the rehabilitation of a prisoner or facilitate the prisoners return to his or her family, village or community.*

Submissions

10.4 There were no submissions from the public on this issue.

10.5 AFP submitted that regulations should be in place to prescribe a broader prisoner classification process including the process of approval for parole release. This process should consider the prisoners offending history and length of sentence and behavior in prison. The application of temporary release should be used as an incentive for good behavior and applied in the remaining time of sentence. Parole release should not be confused with release on parole under the Prisons Parole Board Act but must refer to administrative release as temporary release or short term release.

10.6 In remission of part of a prisoner's sentence, AFP proposed to follow provisions in the Fiji Act with regards to early release scheme (Part 11). There should also be provisions allowing release on compassionate grounds, usually in the event of a terminal illness and impending death. Provisions should also consider arrangements for female prisoners and their children consistent with rights and obligations of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and Convention on the Rights of the Child ("CRC") in particular to provide early release to give birth.

Commission's view

10.7 The Commission is of the view that the following early release schemes must be provided in the new prisons legislation of Samoa:

- a) *Weekend release;*
- b) *Release from prison to attend a course of instruction;*
- c) *Release into the care and supervision of the village fono or other community leaders for the purpose of facilitating the re-entry of the prisoners into his or her village or community; or*
- d) *Any other arrangement permitting short term release which may assist in the rehabilitation of a prisoner or facilitate the prisoners return to his or her family, village or community.*

10.8 Such early release schemes shall be prescribed by regulations and the aim for such schemes shall be for the rehabilitation of prisoners for reintegration into society. Early release schemes should also consider prisoners with terminal illness and impending death. Consideration should be given to the interests of female prisoners and their children to be consistent with international obligations.

Recommendation 38: The new prisons legislation should address broader release schemes in paragraph 10.7 above. Such early release schemes should be prescribed by Regulations and the ultimate aim shall be for the effective rehabilitation of prisoners.

Recommendation 39: The provisions for early release schemes should consider prisoners with terminal illness and impending death, interests of female prisoners and children to be consistent with international obligations i.e CRC and CEDAW.

11. Discharge of Prisoners

Introduction

11.1 This chapter examines the processes involved in discharging prisoners in situations where their sentences have been served or when they are released on parole or in accordance with any authority or court order. The relevant provisions from Fiji and NZ will be discussed.

Background

11.2 The Prisons Parole Board Act 1977 (Samoa) administers the discharge of prisoners on parole. The legislation establishes the Prisons Parole Board and makes provisions for the parole of offenders.

11.3 The prisons legislation in Fiji establishes the Parole Board (s 49) and its relevant functions. In NZ and ACT, separate legislation provides for discharge of prisoners under the Parole Act 2002 (NZ) and Crimes (Sentence Administration) 2005 in the case of ACT. These legislation provide a more detailed look at the processes involved in the release or discharge of prisoners on parole or other authorized purposes.

Submissions

11.4 There were no submissions from the public on this issue.

11.5 Submissions from AFP proposed to consider reviewing the Prisons Parole Board Act and incorporate the provisions of the Parole Board in the new prisons legislation. It also submitted to consider including the legislative provisions prescribing the conduct of the Probation and Parole Service as contained in the Community Justice Act 2008 and the Young Offenders Act 2007 into the new prisons legislation.

Commission's view

11.6 The relevant provisions on the discharge of prisoners on parole in Samoa are contained in a separate legislation referred to as the Parole Board Act 1977. The Commission is of the view that the Parole Board Act 1977 should be reviewed and updated to consider current situations. Upon completion of the review and update, the relevant provisions should be incorporated into the new prisons legislation as the principal legislation for easier reference.

11.7 In relation to the release of prisoners upon completion of their sentences, the relevant provisions of the Community Justice Act 2008 aimed at rehabilitation and reintegration of prisoners into society must be incorporated into the new legislation for easier reference. The relevant provisions of the Young Offenders Act 2007 relating to the sentencing of young offenders should also be incorporated into the new prisons legislation to address discharge of young prisoners.

Recommendation 40: The Parole Board Act 1977 should be reviewed and updated for incorporation into the new prisons legislation.

Recommendation 41: The relevant provisions of the Community Justice Act 2008 of Samoa should be incorporated into the new prisons legislation to address prisoners who have been discharged into communities upon completion of their sentences.

Recommendation 42: The relevant provisions of the Young Offenders Act 2007 relating to the sentencing of young offenders should be incorporated into the new prisons legislation.

12. Offences by Prisons Officers

Introduction

12.1 This chapter briefly looks at the offences or breaches by prison officers and disciplinary measures in place for these offences or breaches.

Background

12.2 The current prisons legislation of Samoa provides for breaches of duties by members of the prison service (s 15). The process involved in dealing with these breaches is similar to that of prison offences committed by prisoners. Inquiries are conducted in relation to the breach and the appropriate punishment. There is also an appeal process available to the prison officer against a decision of the tribunal (s 19).

12.3 In Fiji, there are detailed provisions on offences by prison officers which includes inciting and harboring a prison officer (s 52), unlawful entry and prohibited articles (s 53). The punishment imposed is mainly in monetary value depending on the severity of the offence and are provided at the end of each provision of offences.

12.4 Provisions relating to offences by prison officers in NZ and ACT are contained in separate comprehensive legislation.

Submissions

12.5 There were no submissions from the public concerning this issue.

12.6 In reviewing the prisons legislation of Samoa, AFP submitted that provisions relating to breaches of duty by members of the Service needs to be consistent with the relevant provisions of the employment legislation in Samoa. Such change must also consider the separation of prison from police.

Commission's view

12.7 The Commission is of the view that provisions relating to offences by prison officers and the relevant disciplinary proceedings should be an additional part in the new Prisons Act. It should be modeled after the existing Police Tribunal with an outsider to sit with the Panel. For instance, such tribunal is to be chaired by a senior Prisons officer nominated by the CEO of Prisons and Corrections. Other panel members should include a Police officer nominated by the Commissioner of Police and a lawyer nominated by the President of Law Society. The appointment of this Tribunal is provided in section 51 of the Police Service Act 2009.

12.8 The current provisions of Prisons Act 1967 relating to breaches of duty by members of the service (ss 15-20) is still relevant and should be maintained. Such provisions should form part of the new prisons legislation. However, the current provisions should be reviewed and updated to be in line with the separation of police from prisons.

Recommendation 43: The provisions relating to offences by prison officers and the disciplinary proceedings should form part of the new prisons legislation. Disciplinary proceedings should be modeled after the existing Police Tribunal. (Refer to paragraph 12.7 above).

Recommendation 44: The current provisions of the Prisons Act 1967 are still relevant and should form part of the new prisons legislation. However, such provisions should be reviewed and updated to be in line with the separation.

Appendices

List of Recommendations

Recommendation 1: The operation of prisons be removed from the Ministry of Police and be vested in a new separate Authority call the Prisons and Corrections Authority manned by corrections/prison officers and headed by a Chief Executive Officer of Prisons and Corrections. The Minister responsible for overseeing matters of prisons and correctional services is the Minister of Prisons and Corrections.

Recommendation 2: The new prisons legislation should be called the ‘Prisons and Corrections Act 2011’ of Samoa.

Recommendation 3: The new prisons legislation should include a Preamble or Purpose which fosters rehabilitation of prisoners, international obligations and United Nation Standard Minimum Rules on the Treatment of Prisoners. This is consistent with trends in legislation in NZ and ACT.

Recommendation 4: The Minister of Prisons and Corrections should proclaim and declare places to be prisons in the new prisons legislation. Health standards relating to public health safety and hygiene for all prisons should be complied with.

Recommendation 5: The Head of Prisons and Corrections should be the Chief Executive Officer of Prisons and Corrections Authority who shall be subject to the orders and directions of the Minister.

Recommendation 6: The relevant officers for the daily operation of prisons and corrections should be appointed in the new prisons legislation. They shall be subject to the Chief Executive Officer or superior officers in the discharge of their lawful duties and functions. The ranks and positions should be consistent with those of other comparable corrections facilities.

Recommendation 7: Specified registered doctor (medical practitioner) with a current practicing certificate shall be made available to be on call to provide health services to prisoners. It can also be a contracted General Practitioner (private sector) that will not be required to work full time. Qualified counselors and security officers shall also be appointed.

Recommendation 8: A Visiting Committee in paragraph 3.10 above shall be appointed in the new legislation to inspect and make inquiries as to the state of prisons in Samoa. The functions of the Visiting Committee and time of visits shall be prescribed by Regulations. The new legislation must ensure that the Visiting Committee carries out their functions at the stipulated times prescribed by Regulations. The appointment of a Chairman of the Visiting Committee must be provided in the new legislation. The new legislation shall also ensure that there is fund available for allowances of members of the Visiting Committee.

Recommendation 9: Medical Officers shall visit prisons regularly and report on the health status of prisons. This is to ensure hygiene and proper living standards.

Recommendation 10: The new legislation should require the CEO of Prisons and Corrections or designated senior officer to inspect prisons regularly. In the case of a senior designated officer, he or she shall report to the CEO the state of prisons and the welfare of prisoners and officers.

Recommendation 11: The new legislation should allow visits from organizations and religious groups to achieve rehabilitation of prisoners.

Recommendation 12: Alternatively, an independent prison inspector(s) shall be appointed to investigate any incident arising in any prison and the administration of the prison service.

Recommendation 13: The admission of prisoners and the processes involved should be included in the new prisons legislation. For instance, admission upon a signed warrant or court order, identification and registration, information available to prisoners upon admission and classification of prisoners (Chapter 6).

Recommendation 14: Medical assessment of prisoners upon admission should be mandatory in the new prisons legislation. This should be done within 24 hours or any time the CEO deems necessary based on circumstances arising. There should be no discriminatory treatment of prisoners during admission.

Recommendation 15: Confinement of prisoners should be consistent with the United Nation Standard for Minimum Rules for the Treatment of Prisoners. This applies to minimum entitlements and living conditions.

Recommendation 16: The new prisons legislation should provide for registered doctors with current practicing certificates to be on call for each prison facility in Samoa to ensure every prisoner receives adequate medical treatment. The appointment of these registered doctors should consider interests of women, young prisoners and prisoners remanded in custody.

Recommendation 17: Standard of health care for prisoners should be the standard of health care equivalent to that available to the general public.

Recommendation 18: Provisions on HIV/AIDS should be included in the new prisons legislation as a basis for non-discriminatory treatment of prisoners with HIV/AIDS status. The principle of confidentiality must be complied with in relation to prisoners with HIV/AIDS status.

Recommendation 19: There should be provisions for treatment of prisoners with special needs and mental illness. Prisoners who have sustained injuries from the use of force and restraints by prison authorities shall be medically assessed and treated.

Recommendation 20: The new prisons legislation must ensure that other medical and related services be made available to prisoners. For instance, dental treatments, support services for infants and mothers and public awareness/education.

Recommendation 21: The new prisons legislation should prescribe Regulations for the classification of prisoners. The provisions shall ensure that the overall objective of rehabilitation of prisoners is achieved through classification.

Recommendation 22: The new prisons legislation shall ensure that the interests of every prisoner are considered in the classification process. For instance, the interests of female prisoners, young prisoners, prisoners in custody, elderly prisoners, prisoners with special needs or mental illness and the safety of prisoners in general.

Recommendation 23: Prisoners should not be subject to any form of discrimination. The United Nation Standard Minimum Rules for the Treatment of Prisoners should be complied with.

Recommendation 24: Prison rules/offences and punishments should be clearly defined in Regulations rather than detailing in the body of new prisons legislation. Such Regulations should consider the classification of prisoners.

Recommendation 25: The current prison offences in the Prisons Act 1967 should be reviewed and updated to be incorporated in Regulations.

Recommendation 26: The new prisons legislation should require that prison offences be publicly displayed in the prisons. The prison offences shall be in both Samoan and English.

Recommendation 27: Discipline of Prisoners should be consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Recommendation 28: In relation to proceedings for prison offences, they should be prescribed by Regulations. The CEO of Prisons and Corrections or delegated senior officer shall hear and determine proceedings.

Recommendation 29: In the interests of natural justice, a special body or independent tribunal should be appointed to review decisions in more serious cases. Its functions and powers should be prescribed by Regulations

Recommendation 30: This chapter should be included in the new prisons legislation.

Recommendation 31: The relevant provisions of the Police Powers Act 2007 relating to the use of force and firearms is applicable in a separate prison administration hence should be incorporated in the new prisons legislation as relating to prisons/corrections officers.

Recommendation 32: Prisons and Corrections Officers should mandatorily undertake relevant training in the use of firearms and weapons (s13 Police Powers Act 2007).

Recommendation 33: The use of restraints must be consistent with the United Nation Standard Minimum Rules for the Treatment of Prisoners.

Recommendation 34: The lawful use of force, restraints and firearms/weapons should be prescribed in Regulations.

Recommendation 35: The new prisons legislation should provide for rehabilitation programmes for prisoners to assist reintegration into society. Rehabilitation programmes should be available to every prisoner.

Recommendation 36: The rehabilitation programmes should consider the classification of prisoners. Such programmes should be prescribed by Regulations.

Recommendation 37: Prison Labor must comply with the United Nation Standard Minimum Rules on the Treatment of Prisoners.

Recommendation 38: The new prisons legislation should address broader release schemes in paragraph 10.7 above. Such early release schemes should be prescribed by Regulations and the ultimate aim shall be for the effective rehabilitation of prisoners.

Recommendation 39: The provisions for early release schemes should consider prisoners with terminal illness and impending death, interests of female prisoners and children to be consistent with international obligations i.e CRC and CEDAW.

Recommendation 40: The Parole Board Act 1977 should be reviewed and updated for incorporation into the new prisons legislation.

Recommendation 41: The relevant provisions of the Community Justice Act 2008 of Samoa should be incorporated into the new prisons legislation to address prisoners who have been discharged into communities upon completion of their sentences.

Recommendation 42: The relevant provisions of the Young Offenders Act 2007 relating to the sentencing of young offenders should be incorporated into the new prisons legislation.

Recommendation 43: The provisions relating to offences by prison officers and the disciplinary proceedings should form part of the new prisons legislation. Disciplinary proceedings should be modeled after the existing Police's Police Tribunal. (Refer to paragraph 12.7 above).

Recommendation 44: The current provisions of the Prisons Act 1967 are still relevant and should form part of the new prisons legislation. However, such provisions should be reviewed and updated to be in line with the separation.

