



OFFICE OF THE OMBUDSMAN

Annual Report June 2014-June 2015

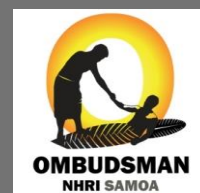


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Ombudsman's Statement



Samoa continues to be innovative in important aspects of nation building. Our Office has been a part of Samoa's progressive national profile in this regard with the enactment of the *Ombudsman (Komesina o Sulufaiga) Act 2013*. This Act mandated the Office of what used to be a conventional Ombudsman of Samoa to function also as the National Human Rights Institution (NHRI) and to exercise independent investigative and determinative powers with regard to misconduct in police and other disciplined forces through the Special Investigation Unit (SIU).

Effectively, all three functions of the Office seek to promote democracy and freedom in Samoa. Good

Governance promotes accountability, fairness in decision-making and the proper use of power by those entrusted with such power in public agencies. NHRI's role is to work towards a Samoa underpinned by integrity and fairness in governance and built on a foundation of human rights principles. The SIU function looks at the exercise of the coercive powers of the State, and where necessary to investigate and determine allegations of misconduct within the police, prison service and any other disciplined force that may be designated. All three functions are interrelated, and build on one another to ensure the sound development and advancement of a modern democratic society.

These new changes for Samoa presented our small Office with difficult challenges. The new responsibilities put the Office under strain given its minimal resources and handful of staff. We were fortunately well served in the early stages of our expansion by Australian Volunteers for International Development, the United States Fulbright Scholar Program and technical assistance from the Asia Pacific Forum of National Human Rights Institutions (APF) and the Pacific Ombudsman Alliance (POA).

We have thus endeavoured by all means available to us to grow into and to embrace more fully our expanded functions. This process is continuing still and we are determined to succeed in creating a sustainable multifunctional organisation that meets the unique needs of Samoa in our special fields of interest.

The major achievement for this year is the first 'State of Human Rights Report' in Samoa (SHRR). In the absence of reliable national data on the issues of interest we had to undertake a plan of targeted consultations to provide basis for credible reporting. This was an effort that engaged the full capacity of our small Office to the unavoidable temporary detriment of our other functions. We managed to do a quality job of the SHRR only because of the rapid response of the US Embassy to facilitate our acceptance of a Fulbright scholar placement and being enabled to finally recruit quality staff to fill a number of our new positions.

The support of national, regional and international agencies has been a real strength. We have appreciated these key relationships and intend to continue developing them. The sharing of knowledge and experiences will assist our Office to grow and succeed.

Human rights and Fa'asamoa side by side strengthen the positive capacities of our people as we strive for a better, brighter Samoa.

Fa'afetai ma ia Manuia,

A handwritten signature in dark ink, appearing to read 'Maiava Iulai Toma', with a large, stylized initial 'M'.

Maiava Iulai Toma
Ombudsman

1. OUR ROLE

1.1 Mandate

The work of the Office is mandated by the *Ombudsman (Komesina o Sulufaiga) Act 2013* (the Act).

1.2 Vision

A progressive Samoa that is governed to the satisfaction of its people and communities wherein human rights and proven traditional values are cherished in daily life.

1.3 Mission

To promote awareness and observance of human rights and good governance in Samoa and to ensure that the people are treated legally, fairly and with respect in their dealings with state agencies.

1.4 Objectives

To promote transparency, accountability and integrity in the administration and decision-making of Ministries and State Organizations;

To promote and protect the dignity of humankind enshrined in the Constitution, international human rights law, as the foundation of a fair, just and peaceful society; and

To protect citizens against improper exercise of coercive power.

1.5 Functions

The Office is an independent office with responsibilities in three (3) areas:

- i. It is a conventional Ombudsman Office;
- ii. It is the National Human Rights Institution (NHRI) of Samoa; and
- iii. It is mandated to operate as a Special Investigation Unit.

1.5.1 Ombudsman Office

As the conventional Ombudsman office, its functions are to investigate complaints against public bodies, usually to ascertain whether the action complained of:

- appears to have been contrary to law;
- was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any enactment or a

practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

- was based wholly or partly on a mistake of law or fact; or was wrong.

The Office serves to protect the individual against improper and unreasonable administrative actions of government. The functions and powers of the Ombudsman are given to him to be exercised in the interests of good governance and the disgruntled citizen who otherwise would be relatively powerless against a governmental agency with which that citizen may take issue on matters of vital interest to him. The Ombudsman is not an advocate for a complainant but a neutral entity that endeavours to form opinions on complaints based on reasonableness and fairness. Where the agency is considered to be right in any matter the Ombudsman must be equally forthright in declaring it as he would were the opposite to be the case.

The Ombudsman may refuse to investigate a complaint if there is an adequate alternative remedy or right of review available, or having regard to all circumstances of the case, he considers any further investigation unnecessary. The Ombudsman may also decide not to investigate a complaint on any matter of which there has been complainant knowledge of more than twelve months. The Ombudsman ordinarily may conclude and recommend:

- that a matter be referred to the appropriate authority for further consideration;
- that an omission be rectified;
- that a decision be cancelled or varied;
- that any practice on which a decision, recommendation, act, or omission was based be altered;
- that any law on which a decision, recommendation, act, or omission was based be reconsidered;
- that reasons be given for a decision;
- that any other steps be taken.

The Ombudsman cannot direct remedial action. He may only recommend remedies he considers appropriate to the agencies concerned.

1.5.2 National Human Rights Institution

The NHRI's main functions are to promote and protect human rights, dignity and respect in Samoa. Included are:

- Inquiries & reporting on human rights violations;
- Monitoring & promotion of compliance with international and domestic human rights law;
- Participation with the court's permission in proceedings as a friend of the court or party to human rights issues;
- Consulting, engaging & co-operating with civil society organizations, business organizations and academic institutions;
- Advising on matters referred to the Ombudsman by government;

- Consulting, engaging & co-operating with other national, regional and international human rights bodies;
- Visiting places of voluntary and involuntary confinement or detention; and
- Reporting to Parliament each year on the status of human rights in Samoa.

In the event an NHRI inquiry finds evidence of human rights violations, the Ombudsman's report may include any or all of:

- A determination that a violation of human rights has occurred and should not be repeated or continued;
- A recommendation that a person should perform reasonable acts to redress the violation of human rights;
- A recommendation that victims of violations are entitled to compensation for any loss or damage suffered; and
- A recommendation for action to any person and require the person to report to the Ombudsman on the steps that the person has taken to give effect to the recommendations.

These report findings and recommendations are to be made public and Parliament is to be provided with a copy.

The Ombudsman does not have the mandate at the present time to investigate and resolve individual complaints. It is intended for the Office to expand over time to incorporate this mandate.

1.5.3 Special Investigation Unit

The SIU's functions are to investigate complaints against a police officer, prison and corrections officer or a officer of other prescribed disciplined force where there is reason to believe that:

- there has been an abuse of process by the Police; or
- there has been an unreasonable delay in the investigation; or
- the matter has not been appropriately investigated.

1.6 VALUES AND PRINCIPLES

Our Values and Principles are:

- Integrity and Impartiality
 - We are ethical and honest in everything we do.
 - We respond to complaints without bias and we do not take sides.
 - We are independent.
- Fairness and Dignity
 - We treat people equitably.
 - We value respect and diversity.
- Accessibility and Accountability

- We are accessible to all people.
- We are transparent and accountable for our actions.
- Consistency and Diligence
 - We respond to complaints quickly. If we cannot help, we will explain why and, if possible, suggest another action.
 - We produce timely and high quality work.
 - We develop our skills to improve service and become a catalyst for change in promoting good governance and human rights.
- Culture and Rule of Law
 - We respect and value *Faa-Samoa*.
 - We operate within the laws of the Independent State of Samoa

1.7 OFFICE POLICIES AND PROCEDURES

Since the last reporting period, the following foundational policies and structures are in place and implemented well:

- Office Police Guidelines
- Staff Review and Performance Assessment Procedures

However the following policies are still in the process of establishment:

- » **Corporate Plan:** A draft is in place and the Office aims to have it finalised by the next financial year.
- » **Website Development Policy:** The website of the Office was re-designed to reflect the new mandate of human rights. Included in this new website have been more resources to inform the public of our work and the profile of those in the Office. As the Office continues to grow the website will be used as a tool to raise awareness and publicise its work. Unfortunately, as a small Office we are unable to have a dedicated IT staff member to maintain the website and service the IT needs. Skills development for Office staff will be undertaken in FY 2015/16 to improve their IT skills to enable them to manage the website to ensure it is kept up to date.
- » **Monitoring and Evaluation Tool:** A Monitoring and Evaluation is currently under development to assist the Office in its new mandates. The tool will host all Office documents and data for internal and external use.

These tools will be particularly invaluable in an Office like ours where we have few staff with many functions to fulfil. For instance, the Monitoring and Evaluation tool will host a major part of the data and information that will form the basis of the SHRR. As well, it will be a means for the Office to monitor and evaluate all work. It will be implemented in FY 2015/16.

All the aforementioned policies and tools are integral to establishing and entrenching the new role of the Office. These will be developed and amended as the Office continues to

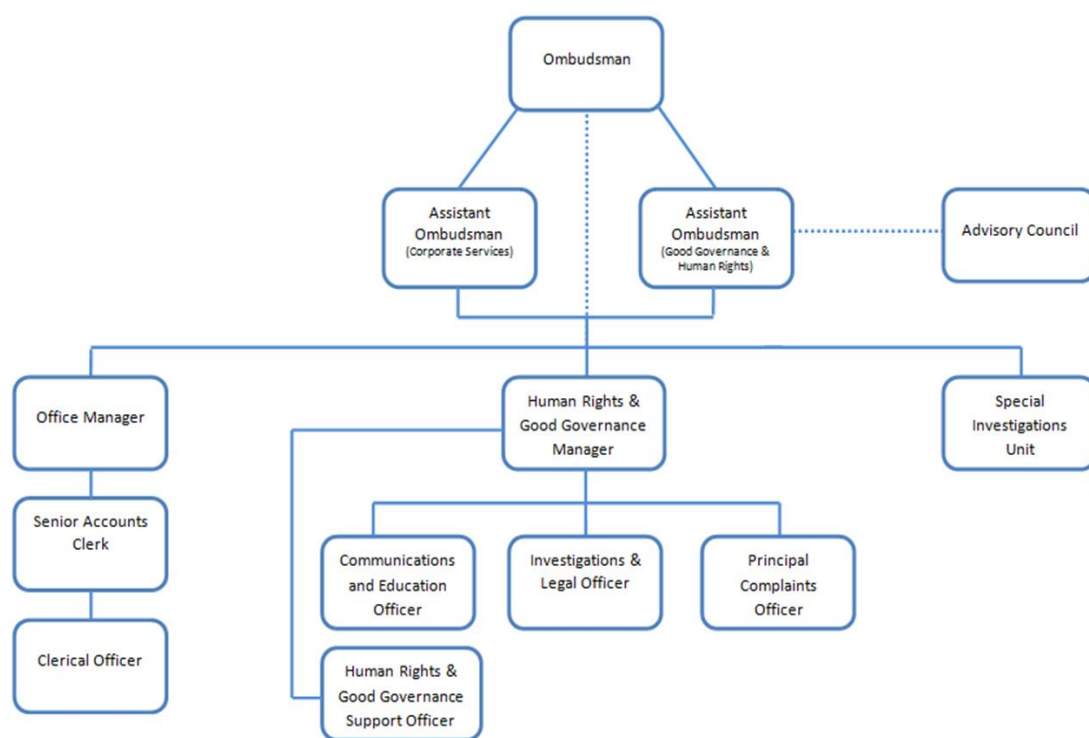
carry out its functions, and will help instil the independence and unique position of the Office in Samoa.

1.8 ORGANIZATIONAL STRUCTURE AND STAFF

The new mandates were clearly beyond the then existing manpower capacity of the Office. The new mandates required new skills, knowledge and experience which had to be developed or acquired and there was no experience within the Office. As the success of the Office depended entirely on having highly competent and motivated staff, the organization needed good human resources development, performance management and sound ongoing corporate financial planning.

The following chart illustrates the new Office structure. Since February 2015, four staff for the NHRI mandate was recruited: Human Rights and Good Governance Manager, Human Rights and Good Governance Investigations and Legal Officer, Communication and Education Officer and Support Officer. At present, the following roles are still vacant:

- Assistant Ombudsman (Corporate Services)
- Special Investigations Unit officers.



Available funds do not allow us as yet to have an Assistant Ombudsman who would be in charge of the Corporate Services team. In the future, we hope to recruit an individual to fill this role as an essential component of our expanded mandates.

A crucial objective of the Office organization is to have a small corps of capable lawyers headed by a designated Good Governance and Human Rights Manager to be:

- (i) available for the Ombudsman to consult in-house as he needs on the full spectrum of his statutory responsibilities; and
- (ii) to undertake as a team the substantive work of the Office in all three mandates.

This is the small group of officers who will deliver the substantive output of the Ombudsman's Office. We plan in the 2015/16 financial year to supplement this programmatic capacity with specialist police investigative capacity to more adequately discharge our SIU mandate.



Photo: Office staff as of February 2015

2. HIGHLIGHTS OF WORK UNDERTAKEN DURING THE YEAR 2014-2015

2.1 GOOD GOVERNANCE

The Office dealt with various types of cases under our good governance function. The following selection of cases is indicative of the kind of problems ranging from the very simple to complex that ordinary people face and for which they seek assistance.

2.1.1 Professional Standards Unit Complaint (PSU) Reviews

The Police Service Act 2009 brought into existence the Professional Standards Unit within the Police establishment to investigate complaints alleging neglect of duty, misconduct or corrupt or improper practice within the Police Service. The Act enables the Ombudsman to review the work of the PSU on a regular basis. The following are some of the reviews that may be of interest:

A. Ministry of Police (MOP)

Unreasonable/Unlawful detainment

This matter was not only an issue of defective administration but it also involved a violation of human rights, in particular the rights of a child.

Mr S and his wife complained to the Ombudsman that their 3 year old son had been locked up in a police cell. The Police had detained Mr S together with his son for repeatedly being caught driving the same unregistered vehicle despite initial warnings from an Inspector and subsequent officers that had caught him that he would be charged if he was found again in the said vehicle. Mr S had claimed that the vehicle was not his. A notice of intention to investigate the complaint was forwarded to MOP.

It was established that when Mr S was first brought to the Police station the vehicle he was driving in was unregistered yet it had a sticker registered to another vehicle. The Inspector took over the matter and had decided to release Mr S with a warning which was reasonable enough at the time. However, in exercising his discretion he had also released a vehicle that should have been held in Police custody for further investigation of fraudulent acts. If this action had been effected, the incident may have been avoided. It was later learned that Mr S had lied and that the vehicle involved was actually his.

The sequence of events that led to the detainment of Mr S and the violation of his young son's rights exposed some shortcomings in the chain of command from the Inspector to a Sergeant to a Constable in clarifying instructions, showing initiative or plainly using common sense. It was obvious that Mr S was courting trouble with Police and using his son as a shield or defence mechanism from Police action, which was a failure on his part as a father.

Nevertheless, the Ombudsman expressed that even if it was absolutely necessary to lock up Mr S, the mere fact that a young child had accompanied his father should have been sufficient for Police to pursue other effective measures than detainment. In fact, a proper course of action would have been to delay detainment until somebody was found to assume care of the child or with regard to Mr S to proceed against him by summons to appear in Court. The matter was not criminal but a minor traffic violation. Also, the detainment of the child was in violation of the Convention of the Rights of the Child (CRC) of which Samoa is a signatory.

The Ministry was informed of the Ombudsman's findings.

B. Ministry of Health (MOH)

Unreasonable/Unlawful action

Mr R, a foreign businessman, complained to the Ombudsman that the manner in which MOH officials had conducted an inspection on his premises was a violation of his rights and an unnecessary abuse of power.

The purpose of the investigation was in relation to allegations of illegal kava sales. According to Mr R one of the Health inspectors had forced his way into the store and flat where they resided without his consent and without producing any formal

documentation to confirm the search. When Mr R informed the Health inspector that he would be contacting his lawyers, the officer allegedly threatened Mr R that he did not care about his lawyers and that if he did contact them, then he would have further problems.

The Ombudsman enquired whether Mr R had contacted MOH about the matter. Prior to any formal proceedings, complainants were strongly advised to raise the matter first with the implicated agency. In response, one of Mr R's local partners Mr T said that they had contacted MOH and a senior official had agreed to meet Mr R and his local partners. An appointment with the Minister of Health had also been arranged to voice their concerns on the matter. Mr T advised the Ombudsman that they would be in contact after their meetings with MOH and the Minister.

Not long after, Mr R wrote to the Ombudsman requesting that the matter be formally withdrawn as the meetings were successful through traditional reconciliation between Mr R's local partners and MOH senior officials. Mr R also conveyed his appreciation for the Ombudsman's assistance in his matter.

It was noted that traditional reconciliation could work for certain cases even serious matters where abuse of authority was involved. No further action was taken and the matter was considered closed.

C. Samoa Ports Authority (SPA)

Unfair Dismissal

This complaint was a referral from the Prime Minister under s19 (3) of the *Ombudsman (Komesina o Sulufaiga) Act 2013*. Ms F was a senior officer who was dismissed by SPA 'immediately without notice', for breaching confidentiality obligations under SPA Employment Policies on Confidentiality by 'disclosing SPA information to third parties' which in this matter were a Minister's wife and the Authority's external Auditors.

Ms F was allegedly accused of (a) improperly discussing two matters with the Minister's wife and (b) of 'disclosing issues' to the Auditors.

The matter initially stemmed from an alleged phone call from the Minister's wife to SPA complaining about a phone conversation she had with Ms F concerning management's rejection of Ms F's SPA Higher Education application for leave to study overseas. Ms F was seeking Ministerial intervention in the matter if possible but the Minister was unavailable at the time. The other part of the conversation was on an incident involving the Minister's car a few months earlier that was publicised. SPA alleged that Ms F had divulged sensitive information pertaining to the incident that was privy to the Authority, which Ms F had categorically denied.

The last element of the confidentiality breach was SPA's concern that Ms F had disclosed 'issues' to their Auditors, implying that there were certain matters that should not have been revealed to the Auditors during the audit. SPA policy required staff, 'to maintain an appropriate standard of confidentiality'.

The Ombudsman observed that:

- SPA management had used the Minister's wife's telephone complaint to implement their intention to dismiss Ms F for breach of confidentiality in accordance with the dismissal procedure in the SPA Policies Manual.
- SPA management declining study leave allowable under SPA Employment Policy was a refusal that lacked genuine substance.
- SPA management were satisfied that Ms F was a disloyal employee, who may have been responsible for leaking SPA information to the media months before and in interactions with SPA external Auditors.
- SPA management could have accommodated a more flexible policy on confidentiality to properly work for the agency.
- SPA management had made an unreasonable decision in dismissing Ms F on insubstantial grounds.

The Ombudsman recommended that Ms F be reinstated and the requested leave to study overseas be granted on the condition that a Bond was signed in accordance with SPA Employment Policies.

The Prime Minister was advised accordingly.

D. Ministry of Natural Resources and Environment (MNRE)

Unreasonable decision/action

Ms L complained to the Ombudsman alleging concerns surrounding the appointment/appeal process of a vacant position within the Ministry. A notice of intention to investigate the complaint was issued to MNRE.

Ms L was provisionally appointed to the vacancy subject to appeal. The appointment was appealed and the outcome led to the appointment being cancelled and the appeal withdrawn on the grounds that both Ms L and the appellant did not meet the selection criteria of '3 years working experience'. The position was then re-advertised with MNRE amending the years of working experience from 3 to 2 years.

MNRE confirmed the situation of Ms L and informed the Ombudsman that the Ministry had been advised by the Public Service Commission (PSC) to suspend all matters pertaining to the complaint until further notice. Ms L had earlier submitted a grievance letter to the (PSC) raising her concerns over the selection process in re-advertising the vacancy. The Ombudsman decided to wait on the outcome of PSC's investigation.

PSC had found lapses in MNRE's selection process for the initial advertisement of the vacancy and its ensuing re-advertisement.

- Both Ms L and the appellant should not have been shortlisted in the initial interview process given that they did not meet the ‘Essential’ selection criteria of ‘...at least 3 years working experience...’
- Ms L was not shortlisted in the second interview process and was only added on when she had queried the decision but withdrew because she had lost confidence in the impartiality of the selection process and the individuals involved.

PSC recommended that the position be re-advertised a third time due to the shortcomings in the Ministry’s recruitment and selection process with PSC leading the selection panel. Ms L was interviewed and was appointed unanimously to the vacant position.

The Ombudsman acknowledged both agencies on the outcome of the matter and that the issues of concern were fairly and satisfactorily addressed. Gratitude was also conveyed for the cooperation extended by both agencies and that the matter was considered closed.

The reviews have shown that police generated complaints over minor matters are dealt with more efficiently than public complaints.

2.2 HUMAN RIGHTS

Despite the fact that staffs (3) for this new mandate were only recruited in the end of 2014-beginning 2015, the Office (with minimal staff and resources) still carried out two main activities under this mandate.

2.2.1 Inspection of Detention Facilities

The Office as the Ombudsman pursuant to its Act is mandated to ‘*visit all public... and private places of voluntary and involuntary confinement or detention*’ (Section 33(e), *Ombudsman (Komesina o Sulufaiga) Act 2013*).

In January and February 2015, the Office carried out its first inspections of places of detention and other places of confinement in an effort to monitor facility conditions assess the basic standards and identify any areas for improvement. The detention facilities that were inspected included: (1) prisons- Tafaigata, Vaiaata and Oloamanu Juvenile Centre, (2) Police custodies- particularly Apia, Faleolo, Tuasaivi, Lalomalava custodies, and (3) the Mental Health Treatment Centre.

Following these inspections the Detention Centre Inspections Report 2015 was produced and published. This report was distributed to all detention facilities for appropriate action on the 18th June 2015. The Office will monitor the progress of the work required of the detention facilities as per recommendations provided in the report. The report comprehensively discusses four major issues: (1) overcrowding in the main prison, (2) lack of access to clean water, sanitation and hygiene (3) lack of basic health care (4) lack of

rehabilitation and reintegration activities and (5) the substandard conditions of Tuasivi Police Custody Cells.



Photo of detention centre inspections: Office staff with Commissioner of Prisons and Corrections Service and officers in charge with Olomanu Juvenile Centre

A copy of the Detention Centre Inspections Report 2015 is attached as **Annex A**.

2.2.2 State of Human Rights Report 2015

Section 40 of the Act requires the Office to submit to Parliament a State of Human Rights Report by 30 June each year (SHRR).

It is important to note here that the first report was supposed to be prepared and delivered to Parliament in 2014, however as stated earlier, staff were only recruited at the end of 2014. As such, the Office has prepared Samoa's first periodic State of Human Rights Report, covering the period since its inception to June 2015. The report has been submitted to Parliament on 30 June 2015.

The main objective of this report is to comprehensively depict how human rights are recognized and protected in Samoa. In doing so, it highlights what the Government is doing well, what gaps exist, what needs to be improved, and then provides recommendations to address these issues that the Office will then monitor in subsequent reports.

It is also important to note that the second Universal Period Review for Samoa is due in April 2016. As such the Office intends to submit a shadow report based on this report.



Photos of SHRR consultations: The Office with members of the National Council of Churches; A member of the Human Rights Advisory Council, Tavui Annie Laumea with women of Lalomauga.

2.3 SPECIAL INVESTIGATION UNIT (SIU)

This new mandate has yet to begin functioning. Pursuant to the Act, the functions, duties and powers of the SIU shall be prescribed by regulations. Following the passage of the Act, the Office has been working closely with the Office of the Attorney General to draft the Special Investigation Unit Regulation. The Ministry of Police and the Samoa Prisons and Corrections Services were also consulted on this draft regulation. The final draft of the regulation is currently with the Attorney General awaiting the issuance of the Attorney General's Certificate.

It is hoped that judicious use in combination of the powers given to the Ombudsman under both the *Police Service Act 2013* and the *Ombudsman Act* would allow a process of Ombudsman oversight whereby potential within Professional Standards Unit of Police to investigate complaints could be encouraged to develop to a high standard. This would allow as much of the investigation and determination of complaints to remain in police hands and minimising the need to resort to measures contained in the Ombudsman Act for the direct investigation and determination of complaints.

2.4 AWARENESS RAISING ACTIVITIES

The Office has sought to continue raising the profile of the Office and awareness of its role. Advertisements aired occasionally on television and press releases when events present opportunities for media feed-ins have been chosen as the best means to publicise the Office, using minimal resources especially given the limited resources and personnel in our Office.

Given that the Office historically had few staff it was unattainable to carry out comprehensive awareness raising activities. However, since the additional staffs as of February 2015 the Office has the capacity to support this function.

2.4.1 Human Rights Day

In December 2014, the Office in collaboration with the Ministry of Women Culture and Social Development (MWCSD) organised an event to mark Human Rights Day.

The event was successful, drawing a large number of attendees and providing an opportunity to recognise the human rights achievements of a range of Samoans, from school children to human rights advocates. It is envisaged that this will be an annual event which the Office aims to eventually head spear as the NHRI in the future.



Photos of the Human Rights Day: Deputy Ombudsman Mauaiaivao P Seiuli (Master of the Ceremony) Rev, Hon. Tolofuaivalelei Falemoe Leiataua (Keynote Speaker) and Ombudsman Maiava Iulai Toma; Participants of the Human Rights Day

2.4.2 Public Consultations

In preparing the SHRR, the Office undertook consultations and collected data from government, civil society, and communities to present as complete a picture as possible regarding human rights in the country. The Office completed sets of consultations with village representatives (Sui Tamaitai, Sui o Nu'u and Sui o Malo) of selected villages prior to village and schools consultations. Following these consultations, eleven villages, seven schools, National Council of Churches, various non-NCC church leaders as well as the National Youth Council both Savai'i and Upolu took part in the survey and focus group discussions for the SHRR. These consultations wrapped up with Sui o Malo, Sui o Nu'u and Sui Tamaitai o Nu'u meetings throughout Upolu and Savaii.



Photos of SHRR consultations: Office staff facilitating focus group discussions with participants of the villages of Apolima and Moataa.

This was an opportunity to extend the Office's awareness raising activities on the functions and mandate of the Office and did so through various presentations on the functions of the Office and its new mandate as the NHRI. Visits to schools through consultations gave opportunity to publicise the role of the Office and to explain its relevance to students. It was well received by schools and pupils. A key objective of our work is to include human rights in the school curriculum. As such, the Office envisions assisting schools with developing a human rights approach and with providing resources through the Ministry of Education.



Photos of SHRR consultations: Office staff facilitating focus group discussions with participants of Sasina village and Falealupo village.

2.4.3 Human Rights Education

The Office has begun holding meetings with various organisations to discuss way forward for awareness raising activities. Initial consultations began with Oloamanu Training Centre to discuss avenues for the delivering of Human Rights Training for various government organisations particularly Ministry of Police (MoP) and Samoa Prisons and Corrections Services (SPCS). Meetings with Training Unit of the MoP was carried out in April 2015 on ways to include human rights education in different levels of their trainings particularly introduction course with new police recruits. It is envisaged that this will be extended to various government ministries and from these meetings a solid plan will be produced on how this will be put into action.



Photo of school consultations for SHRR: Office staff facilitating school survey and discussions on human rights with students of Itu o Asau College and Palauli College.



Photo of school consultations for SHRR: Office staff facilitating school survey and discussions on human rights with students of Leififi College and Anoamaa College.

Through the release of the SHRR the Office aims to further extend the Office's awareness raising activities through various social media outlets in collaboration with UN

organisations. Various activities have been incorporated into the Communications Plan which the Office hopes to implement in this financial year.

3. FINANCIAL STATEMENT FOR FINANCIAL YEAR ENDING 30 JUNE 2015

Financial

For the FY 2014-2015, my office received a budget of \$789,591 compared to \$560,173 for the previous year. An increase of 41% this year is due to the expansion of the office with its two additional functions namely the Human Rights & Special Investigations Unit (SIU).

All ministries and government agencies' budgets were affected for this financial year due to the SIDS conference hosted by government in September 2014 followed by the Commonwealth Youth Games in 2015. Despite this, government approved a further \$60,000 to fund a human rights survey which was undertaken by the Samoa Bureau of Statistics (SBS) on our behalf. This was to provide a baseline for the monitoring and evaluation of human rights developments and enable prioritization of human rights issues for the first National Human Rights Status Report. The \$60,000 was appropriated under the SBS budget.

Our budget for the FY 2014-2015 was fully spent. Enclosed is a copy of the Expenditure Report for period ending 30 June 2015.

Please see our budget summary below for FY 2013-2014 and FY2014-2015. No capital provision due to budget cuts.

Output Number	Description	2014-15	2013-14
01	Good Governance		
	Personnel	137,490	218,477
	Operating Expenses	57,040	57,040
	Capital costs	-	-
	Total	194,530	275,517
02	Human Rights		
	Personnel	211,577	-
	Operating Expenses	85,000	-
	Capital costs	-	-
	Total	296,557	-
CSU	Personnel	96,444	83,191
	Operating	54,778	51,313
	Total	151,222	134,504
	Transactions on behalf of the State		
	Membership Fees & Grants		
	International Ombudsman Institute	2,500	2,500
	APF NHRI fees	3,600	-
	Rents & Leases		
	Rents & leases	97,095	114,360
	VAGST		
	Vagst Output Tax	44,087	33,392

	Total transactions on behalf of the State	147,282	150-,152
	TOTAL EXPENDITURE ESTIMATES	\$789,591	\$560,173

4. EXTERNAL RELATIONS

4.1 GOVERNMENT MINISTRIES AND NON-GOVERNMENTAL ORGANISATIONS

The Office has been involved in various activities with other ministries and non-governmental agencies consisting of consultations, training and working group. Specifically the Office has:

Government Ministries

- Regularly participated in the Law & Justice Sector Steering Committee.
- Formally joined the MWCSO's CEDAW and CRC taskforces.
- Consulted all government ministries on our SHRR.
- Participated in Ministry of Commerce Industry and Labour's meeting to initiate a whole-of-government approach to addressing child labour.
- Attended an International Labour Organisation/MWCSO Inception workshop on Youth Unemployment.
- Participated in the consultations on MWCSO's Child Protection Baseline report.
- Participated in the Review of the National Policy for Women/National Policy for Youth.
- Participated in the scoping study to determine the costs of implementing the Convention on Rights of Persons with Disabilities (CRPD).

NGOs

- Engaged with Samoa Victim Samoa Group, Samoa Family Health Association, Women In Business Development Incorporated, Nuanua O Le Alofa and Samoa Umbrella Non-Governmental Organization in the preparation of the State of Human Rights report.

- Presented on human rights and good governance at a training workshop for government and civil society representatives organized by the University of the South Pacific.

Attending consultations and reviewing Bills are consistent with the Office's strategic objective of reviewing legislation and providing advice to government. In the future, it is envisioned the Office will continue to review legislation and make recommendations on legislation. Such a function ensures Samoa is compliant with human rights standards. Further as the NHRI in Samoa the Office hopes to be involved in the development of human rights in sector wide agencies and be available for future training.

4.2 INVOLVEMENT IN WORKSHOPS/TRAINING AND CONFERENCES (Local, Regional & International)

The Office has been involved in various workshops, and conferences throughout the community and with our international partners. This involved attendance in the following:

Local

- MWCSO's train the trainer training for implementation of CRPD.
- Monitoring places of detention workshop.
- Core Investigations Skills Training.

Regional

- Fiji Ombudsman forum.
- Panel Discussion on Strengthening National Human Rights Institutions in the Pacific, Fiji.

International

- ANU Human Rights Workshop.
- Regional Blended Learning Course & Face-to-Face Workshop, Thailand.
- Regional Blended-learning Course on Investigating and Documenting Torture, Philippines.
- APF Lesbian, Gay, Bisexual, Transsexual and Intersex training, Thailand.
- Investigations Training, Australia.



Photo: Office staff with trainers from the Pacific Ombudsman Alliance during the Core Investigations Training on 25 May 2015.

4.2 COMMUNITY INVOLVEMENT

The Office has reached out to the Samoan community through the consultations for the SHRR. In order to ensure that the report is for Samoa by Samoa, the Office conducted survey consultations in 11 villages (Motaa'a, Lalomauga, Vavau, Matautu Lefaga, Falelatai, Taga, Iva, Falealupo, Sasina, Manono-tai, Apolima-tai), 7 schools (Leififi College, Apia Primary, Anoamaa College, Aana No. 2 College, Mata'aevave College, Itu o Asau College, Palauli College) and with all community leaders through the Sui o Nu'u, Sui o Tamaitai and Sui o Malo. This provided significant insight into how human rights is perceived in Samoa and will inform further community outreach and education programs during 2015-16.



Photos: Office staff with community participants during village consultations for SHRR

4.3 PARTICIPATION IN INTERNATIONAL MEETINGS

The Office has participated in various international meetings throughout this reporting period. These have included:

- » **Senior Executive Officers Roundtable Meeting for NHRI, Sydney, Australia:** 23-24 June, the Assistant Ombudsman attended this meeting. This meeting is important to the role of our Office by generating support and partnerships with other institutions. The Office will continue to participate in these meetings in the future.
- » **Asia Pacific Forum 19th Annual General meeting and Biennial Conference, India:** In October 2014, the Ombudsman attended this meeting. About 150 participants from NHRIs, civil society organisations and UN agencies attended. Several issues were discussed during this meeting; of continuing relevance to us was the strategic focus on how we can work together with other NHRIs in furthering human rights. As the Office develops, attendance at these meetings will continue to be important to ensure we are working collaboratively with other partners in the region. It is as well that APF has been paying for accommodation and travel to these meetings.

4.4 REGIONAL AND INTERNATIONAL PARTNERSHIPS

Various regional and international agencies have consulted the Office concerning the developments Office human rights and good governance in Samoa. Visits have included the Secretariat of the Pacific Community Regional Rights Resources Team (SPC). SPC have offered assistance to the Office to develop capacity in human rights and to work together to develop the mandate of human rights in Samoa. United Nations Women, United Nations AIDS, ILO and World Health Organisation provided support to the drafting and outreach for the SHRR. A productive partnership was developed with UNESCO in the preparation of our SHRR. In order to facilitate our survey consultations in schools UNESCO generously donated a number of books "... Pacific" for us to donate to school libraries. These gifts facilitated our outreach in schools and were gratefully accepted by the schools consulted.

The Office has begun consultations with the UNDP in the hope that this will lead to cooperation on a number of outreach focussed activities in 2015-16. The Office continues to receive significant support from the APF. APF supported the placement of a consultant in the Office from until late 2014 to help get the NHRI up and running. APF sent Ash Bowe to conduct detention inspections training for the Office in January 2015 and to participate in the NHRI's first detention inspections. APF continues to support the Office, including through assistance with the development of an online monitoring and evaluation tool for the Office.

The Pacific Ombudsman Alliance also continues to provide support to the Office. It supported Michael Woodhead (Australian Commonwealth Ombudsman) to participate in the NHRI's first inspections of detention facilities in Samoa and Michael Woodhead and Ron Colley (Australian Commonwealth Ombudsman) to provide the Office with strategic budget planning support and investigations and corporate delivery training to assist the Office deliver all its mandates. The New Zealand Ombudsman also sent their prison inspections expert to assist with the delivery of Samoa's first detention facility inspections.

5. ACHIEVEMENTS AGAINST PERFORMANCE MEASURES FOR FINANCIAL YEAR 2014-2015

The table below reflects the performance indicators for implementation that were noted in the budget document this financial year.

OUTPUT 1: ADMINISTRATIVE JUSTICE	
(Investigation and Resolution of Complaints about Govt Departments)	
Objective: To investigate complaints arising from the acts, omissions, decisions and recommendations of government departments and agencies.	
Performance Measures	Achieved/Behind Schedule/Delay
Number of formal complaints received (65-75)	Achieved
Number of informal complaints received (100-110)	Achieved
Number of complaints received out of jurisdiction (40-50)	Achieved
Number of complaints on hand (200-210)	Achieved
Own-motion investigations (20-30)	Behind Schedule There were not many complaints/matters that warrants an own motion investigation by the Office.
Awareness programme (twice a year)	Achieved
Investigations under s19 of the Act- referrals from Prime Minister (15-20)	Achieved
Review/Audit of the Police Service PSU as well as ad-hoc reviews as the Ombudsman sees applicable	Delay There were changes in Management with Police and the MOU between Police and the Office needed to be reviewed to continue review.
Complaints completed	50 not including formal complaints resolved
Telephone approaches/enquiries	300

OUTPUT 2: HUMAN RIGHTS	
Objective: To promote public awareness of human rights and efforts to combat all forms of discrimination or corruption through the provision of information and education; to inquire into, and report on, alleged violations of human rights; to monitor and promote compliance with international and domestic human rights law.	
Performance Measures	Achieved/Behind Schedule/Delay
Number of public awareness to promote and protect human rights (1 national public awareness campaign)	Achieved <ul style="list-style-type: none"> The Office in collaboration with MWCSO hosted the Human Rights Day 2014. To promote human rights the Office carried out

	<p>a human rights story telling competition.</p> <ul style="list-style-type: none"> • A Rights Taleni Show 2014 was produced for purposes of raising awareness of the NHRI and also promoting human rights.
Number of human rights investigations undertaken and reports with recommendations produced (1 investigation with accompanying report)	<p>Achieved</p> <p>There were no direct human rights complaints to the Office however the Office undertook own motion investigations into human rights related cases which were brought to the attention by the media this included a child that was detained by the Ministry of Police in custody. A report was produced and published in the media.</p>
Number of detention places inspected and reported on (2 inspections and reports)	<p>Achieved</p> <p>The Office carried out inspections of the Mental Health Treatment Centre, Police Custodies (Police Headquarters/Tuasivi), Tafaigata, Vaiaata Prisons, Olomanu Juvenile Detention Centre. The reports of the state of these detention places have been combined in one report which is attached as Annex A to this Report.</p>
State of Human Rights Report (by 30 June)	<p>Achieved</p> <p>A copy of the State of Human Rights Report 2015 was submitted to Parliament on 30 June 2015.</p>
Number of pieces of draft legislation reviewed (2)	<p>Achieved</p>

SECTION SIX: WAY FORWARD

This year has been challenging given our commitments to carry out Samoa's first SHRR with limited resources however, the Office will continue to focus on establishing our new functions and expanding the capacity and resources of this Office. We will continue to build on the support and assistance we have received internationally, regionally and nationally.

As we conclude our Report for this period, we would like to reiterate the new functions of our Office. In particular we now operate with three mandates; for the promotion of good governance, for the promotion and protection of human rights and to investigate the conduct of police Officers, prison Officers and other disciplined forces. While there are many facets to the foregoing, our Office is confident we will be able to achieve the objectives set before us in the upcoming financial year.

We are hopeful that our Office will receive the minimum staff required to adequately discharge our heavy mandates. We will continue to be independent and impartial and to strive to be accessible to everyone.

Annex A: Detention Centre Inspection Report 2015



DETENTION CENTRE INSPECTIONS REPORT



**Office of the Ombudsman/Human
Rights Institution**

June 2015



**Komesina o
Sulufaiga**

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1. MESSAGE FROM THE OMBUDSMAN/HUMAN RIGHTS COMMISSIONER



On the 30th of May 2013, Parliament passed the *Ombudsman (Komesina o Sulufaiga) Act 2013*, to include the protection and promotion of human rights as part of the functions of the Office of the Ombudsman. The Office of the Ombudsman and also the National Human Rights Institution (NHRI) is working towards a State underpinned by integrity and fairness in governance and built on a foundation of human rights, reflected in every law passed, every case heard and every administrative decision made at every level.

This Report marks the first Report my Office has prepared in delivery of our new mandate as the NHRI of Samoa. It also marks the first inspections of detention facilities and other confinement facilities in Samoa undertaken pursuant to this new mandate. This is an important aspect of the human rights mandate as it works to ensure the basic human rights of all but especially the most disadvantaged people in the Samoan society are protected. While there is divergence in the origin of human rights beliefs between Europeans and Samoans, they are equivalent in nature and complement each other by sustaining human dignity and entitlements and improving the welfare of individuals and their families.¹ *Human Rights* are underpinned by core values of respect, dignity equality and security for everyone. Similarly, Samoa holds core values which guide social interaction such as respect, dignity, security, love, and service. There is a Samoan statement that says:

“O Samoa o le atunu’u ua ma’ea ona tofi ona paia ma mamalu i ona tupu ma tamali’i, faleupolu, sa’oaluma ma aualuma, sa’oamaga ma aumaga, o faletua ma tausima le tupulaga. E fa’apea fo’i ona laei ma taumafa, i tiute tauave, maota ma laoa, o malaefono, ma lana gagana. O nei mea uma ua tu’ufatasia ma fusia i le FA’AALOALO, ALOFA, AVA FATAFATA, TOFA ma le FA’AUTAGA ona taua lea o le ‘AGANU’U a SAMOA e FA’AVAE I LE ATUA”.

Faaaloalo (respect) for instance, is a core value which is demanded of all Samoans, particularly of children towards their parents, of brothers towards their sisters, of serving members towards their chiefs, of young towards the old, of the congregation towards their pastor, of students towards their teachers and so on. Respect is shown not merely in the manner of talking, but also in the body language of the person. *Alofa* (love) is another core value which is demonstrated when parents care for their children or their children care for their elderly parents; in this case, children expect their parents to care for them while young, and parents expect their children to care for them when old. Thus, respect and love may also be expressed in terms of rights.² The human rights of persons in detention facilities and other confinement facilities are equally important.

I am pleased to see the new policies and practices which the separation of Prisons and Police is creating. I am keen for my Office to stay engaged with the process of separation to ensure positive outcomes for both organisations. I am also keen for my Office to be closely engaged with the redesign of the new prison facility to replace Tafaigata prison. This provides an excellent opportunity for Samoa to develop a best practice detention facility, as can be seen with our newly created Mental Health Treatment Centre which is an example for our region. It continues to be a credit to Samoa that using our traditional matai system as a foundation for the operations of our prisons is leading to such favourable results in managing prisoners.

There were other aspects of the inspections which were disappointing and which require urgent attention or comprehensive systemic effort to resolve. I was saddened to hear of the conditions under which suspected offenders are detained at Tuasivi police station. My Office has already taken steps to see that

¹ Unasa L F Va’a, Samoan Customary and Human Rights: An Indigenous View pgs 249-250.

² Unasa L F Va’a, Samoan Customary and Human Rights: An Indigenous View pgs 238, 243, 244.

these conditions are improved but more must be done. It is not acceptable for our people to be detained under such conditions, particularly when they have not even been convicted of a crime. Clean water and basic sanitation are issues which must be addressed in all facilities³ - it is not satisfactory for anyone to go without drinking water or be unable to conduct their personal hygiene for any length of time. This is a denial of the most basic of human rights. While noting the effectiveness of the matai system in the prisons, I am also keen to see more focus on education and rehabilitation activities for the prisoners, particularly our youth. This is a measure which will help the prisoners to become functioning members of society once released and is in the interests of all Samoans by reducing the risk of former prisoners reoffending.

The NHRI will continue to work closely with the Samoa Prisons and Corrections Services (SPCS), the Ministry of Police (MoP) and the National Health Services (NHS) to ensure appropriate standards are maintained and improvements in treatment and conditions are made where required. I hope to continue a productive relationship to see positive outcomes for our prisoners and Samoa as a whole. Through such efforts can we work towards a Samoa where the human rights of all are respected and protected.

Faafetai,

Maiava Iulai Toma
Ombudsman/Human Rights Commissioner

³ Apart from the Mental Health Treatment Centre.

2. EXECUTIVE SUMMARY

2.1 BACKGROUND

The NHRI pursuant to the *Ombudsman (Komesina o Sulufaiga) Act 2013* has been mandated to be the National Human Rights Institution for Samoa. It has been vested with functions, duties and powers relating to human rights to ensure the dignity, equality and worth of individuals and recognise that individuals have the right to life, liberty and freedom from discrimination.⁴ One such function is to inspect and monitor places of detention and other places of confinement.⁵ In delivery of this function, the NHRI carried out its first inspections from the 13th to the 19th of January and 3rd of February 2015.

This Report aims to:

- (a) provide an overview of the conditions of all places of detention and other places of confinement;
- (b) assess whether basic standards for treatment of prisoners are recognised and complied with; and
- (c) identify any areas which require improvement.

A follow up visit will be made at future dates as necessary to monitor implementation of the recommendations outlined in this report.

2.2 SUMMARY OF FINDINGS

The Inspection team were pleased with a number of aspects of the current operation of detention facilities and other places of confinement in Samoa. The matai system is functioning well in the prison facilities and provides a uniquely Samoan approach to prisoner management and rehabilitation. There is genuine respect between prisoners and prison and corrections officers, evidenced in the low escape rates seen across facilities, despite the low security environment. The clearest example of this is Vaiaata prison which accommodates inmates in an open, community-like environment. The separation of the prisons from the MoP is progressing well and provides an important opportunity for the SPCS to review practices and implement new policies in line with current standards for treatment of prisoners. Although not to an acceptable standard, basic prisoner needs in terms of food and shelter are met at all detention facilities⁶, possible improvements in these areas will be discussed further in the Report. There is also some provision for prisoner's spiritual education and religious expression. The Mental Health Treatment Centre is state of the art and apparently better than similar facilities overseas.

There were other issues seen in the prison facilities which were less satisfactory and require improvement. Firstly, Tafaigata prison was overcrowded, an issue which exacerbates all other problems. Overcrowding in prisons can create conditions that amount to inhumane and demeaning treatment. The water supply was an issue across all facilities⁷ with prisoners often going without clean drinking water and water for washing. Sanitation and hygiene practices were also unsatisfactory with an increased focus on cleanliness and practices to promote good health recommended for all facilities.⁸ Policies and practices in place in relation to health care also need improvement, including better serviced and resourced clinics and better access to hospitals at Tafaigata especially Oloamanu and Vaiaata prisons. More time and effort should also be focussed on rehabilitating prisoners and ensuring they can effectively reintegrate into society with reduced risk of reoffending. Improved educational and vocational programs for all prisoners should be developed to address this, in particular at Oloamanu Juvenile Centre (OJC). Finally, the sub-standard condition of the Tuasivi police custody is a matter which needs urgent attention. There was serious concern for the facility's hygiene condition. No

⁴ Ombudsman (Komesina o Sulufaiga) Act 2013, Long Title and s.33.

⁵ Ombudsman (Komesina o Sulufaiga) Act 2013 s. 33(e).

⁶ Apart from the Mental Health Treatment Centre.

⁷ Ombudsman (Komesina o Sulufaiga) Act 2013 s. 33(e).

⁸ Apart from the Mental Health Treatment Centre.

individual should be subject to such demeaning condition especially when they have not been convicted of a crime.

2.3 SUMMARY OF RECOMMENDATIONS

The following is a brief summary of the recommendations. The details of these recommendations and actions required to be implemented by the appropriate organization are outlined under section 11 of this Report. The NHRI will monitor the progress of these recommendations in their next inspections. It is recommended that:

TIMEFRAME	RECOMMENDATIONS
POLICE CUSTODY AND PRISON FACILITIES	
Urgent Attention	<ul style="list-style-type: none"> i. The use of the Tuasivi police custody must cease unless they are refurbished to be fit for human containment. ii. Persons detained in Tuasivi police custody must be transferred either to Vaiaata prison or Apia police station. iii. Basic needs such as food, water, access to proper toilet and shower must be provided for persons that are in custody for more than 24 hours in all Police custody cells. iv. Follow up on the rape of an 11 year old prisoner at OJC in 2014.⁹ v. Immediate separation of juveniles from adults in all facilities.
ALL PRISON FACILITIES	
Immediate Attention	<ul style="list-style-type: none"> i. Address water supply. ii. Improve hygiene and sanitation. iii. Classify and separate prisoners. iv. Develop and implement a standard induction process. v. Improve transportation for inmates. vi. Develop and improve record keeping.
Medium Attention	<ul style="list-style-type: none"> i. Develop and implement educational and vocational training and rehabilitation programs for prisoners. ii. Improve access to health care services. iii. Provide comprehensive training for officers. iv. Standardise record keeping. v. Provide separate accommodation for staff at OJC.
Long Term Attention	<ul style="list-style-type: none"> i. Consider relocating OJC. ii. Engage the NHRI in the development of the new prison. iii. Develop an Electronic Management Records System for all facilities.
POLICE CUSTODY CELLS	
Immediate Attention	<ul style="list-style-type: none"> i. Use appropriate search facilities. ii. A person should not be detained in custody for more than 24 hours. Install phone(s) for use by people in custody.
Medium Attention	<ul style="list-style-type: none"> i. Tuasivi police custody should be renovated to be fit for human containment ii. Develop, implement and enforce comprehensive training for all police officers.
Long Term Attention	<ul style="list-style-type: none"> i. Tuasivi police custody must meet basic standards of a detention accommodation.
MENTAL HEALTH TREATMENT CENTRE	
Immediate Attention	<ul style="list-style-type: none"> i. Remove CCTV cameras in the bathrooms. ii. Enforce the use of proper forms regarding treatment orders.

⁹ As reported in the Samoa Observer, 10 December 2014.

Medium Attention	<ul style="list-style-type: none"> i. Engage qualified doctors and more nurses. ii. Develop, implement and enforce comprehensive training for all staff. iii. Install a best practice safe room. iv. Develop a log book to record the handing over of patients by police and prison and corrections officers to the Mental Health Treatment Centre and vice versa.
Long Term Attention	<ul style="list-style-type: none"> i. Consider enforcing training for handing over patients by police and prison and corrections officers to Mental Health Treatment Centre and vice versa a continuous training.

3. THE VISITS

The visits were carried out from the 13th to 19th of January and 3rd of February 2015.¹⁰ They were conducted by Maualaivao Pepe Seiuli¹¹, Loukinikini Vili¹², Pei Tauiliili Reupena¹³, Vaiao Eteuati, Ieti Seiuli, Tracey Mikaele, Seiao Saena, Johanna Gusman, Bronwen Burfitt, Folau Ioane (the “Inspection team”) with support from Jacki Jones of the New Zealand Ombudsman’s Office, Michael Woodhead of the Commonwealth Ombudsman’s Office Australia¹⁴ and Ash Bowe of the Asia Pacific Forum for NHRIs.

In order to establish good working relationships with the MoP, SPCS and NHS staff, all detention facilities and other confinement facilities were given advance notice of the visits with the exception of Tuasivi police custody. In future, it is expected that inspections will take place on an *unannounced basis*. The detention facilities were asked to make certain information available during the visit – such as the registries and records – and ensure staff and prisoners were available for interview. A common approach and objectives for all visits were designed by the NHRI during a four day workshop¹⁵ facilitated by Ash Bowe. It was intended to provide the Inspection team with guidance on areas of focus and create a structure for all of the visits.¹⁶ At the commencement of each visit, the Inspection team met with officers in charge and senior officers of all detention facilities¹⁷ for an initial interview on the conditions and particular issues at each facility. The Inspection team also interviewed staff and inmates of each facility. Agreement to be interviewed was given by all interviewees. The Inspection team also inspected records and registries and toured the detention facilities.

The following areas were examined:

PRISONS AND CUSTODIES	MENTAL HEALTH TREATMENT CENTRE
<ul style="list-style-type: none"> a. Material Conditions <ul style="list-style-type: none"> i. Accommodation ii. Water and Food b. Hygiene and Good Health <ul style="list-style-type: none"> i. Hygiene ii. Health Care Services 	<ul style="list-style-type: none"> a. Accommodation (Safety and Security) b. Treatment c. Activities and Communications <ul style="list-style-type: none"> i. Educational/Rehabilitation Activities ii. Access to information d. Record Keeping

10 Tafaigata Prison, Tuesday 13 January 2015; Police Custody (Apia), Wednesday 14 January 2015; Mental Health Treatment Centre, Moto’otua, Thursday 15 January 2015; Vaiaata Prison and Tuasivi Police Custody (Savaii), Friday 16 January 2015; Oloamanu Juvenile Centre, Monday 19 January 2015; Tuasivi Police Station, Savaii (follow up), Fagamalo, Asau and Palauli Police Outposts, Savaii and Faleolo Police Outpost, Upolu, Tuesday 3 February 2015.

¹¹ Deputy Ombudsman and Head of Inspection team.

¹² Team Manager.

¹³ Representative of the NHRI Advisory Council.

¹⁴ They were funded and supported by the Pacific Ombudsman Alliance

¹⁵ 6th-9th January 2015.

¹⁶ A copy of the Prison Inspections Plan is attached as **Appendix A** to this report.

¹⁷ Taitotua F E Winterstein- Commissioner of Prisons and Corrections Service (and also Senior Sergeant and Officer in Charge of Vaiaata Prison, Senior Sergeant and Officer in Charge of Oloamanu Juvenile Centre) Leota Laki Sio- General Manager of the National Health Services, Misa Tauveve Sefo Pati, Inspector Ministry of Police.

- c. **Treatment**
 - i. Labour
 - ii. Classification of Prisoners
 - iii. Punishment, Torture, Discipline
 - iv. Use of Force
- d. **Activities and Communications**
 - i. Educational/Rehabilitation Activities & Outdoor Exercise
 - ii. Access to Information and Outside World
- e. **Record Keeping**

3.1 CONSULTATIONS

A draft copy of this Report was forwarded to SPCS, MoP and NHS for comments as to facts, findings or omission prior to finalisation. Comments were provided, discussed and addressed in this Report where appropriate.

4. SOURCES OF STANDARDS FOR PRISONERS

The standards to be applied to the treatment of prisoners and mental health patients are primarily derived from national and international sources.

National Standards

The *Constitution of the Independent State of Samoa 1960* at Articles 5, 7-13 and 15¹⁸ provides basic human rights for all Samoans, including prisoners. Samoa also has a number of laws (legislation and regulations)¹⁹ in place which provide specifically for the standards and treatment of prisoners. The *Prisons and Corrections Act 2013* also encourages the use of Faasamoa as a mechanism to manage prison facilities.²⁰

International Standards

Samoa also recognises and applies international standards where appropriate. The *Prisons and Corrections Act 2013* provides that there must be full regard to the following for the treatment of prisoners:

- (a) recognised international standards and obligations relating to the treatment of prisoners; and
- (b) any international Convention to which Samoa is a Party; and
- (c) the Standard Minimum Rules for the Treatment of Prisoners (adopted at Geneva in 1955).²¹

It further provides that the rights and obligations of the CEDAW²² and CRC²³ must be applied to the fullest extent possible.²⁴ Attached as **Appendix A** provides a list of all relevant conventions to which Samoa is a signatory and also relevant recognised international standards for the treatment of prisoners and prisoners applied by Samoa where appropriate. Based on these sources the basic standards that are

¹⁸ Articles 5 Right to Life, Article 7 Freedom from inhuman treatment, Article 8 Freedom from forced labour, Article 9 & 10 Right to fair trial and due process, Article 11 & 12 Freedom of Religion, Article 13 Rights regarding freedom of Speech, assembly, association, movement and residence, Article 15 Freedom from discriminatory legislation.

¹⁹ Attached as **Appendix A** to this Report lists the relevant legislations and regulations.

²⁰ Prisons and Corrections Act 2013, s.3 (a) & (d).

²¹ Prisons and Corrections Act 2013, s.3 (b).

²² Convention on the Elimination of All Forms of Discrimination Against Women.

²³ Convention on the Rights of the Child.

²⁴ Prisons and Corrections Act 2013, s.3 (c).

expected to be met by all detention facilities (specifically Prisons & Custodies) are outlined in **Appendix B** attached to this Report.

5. MATAI SYSTEM

It was observed during the inspections that all prison facilities (and custodies at Tafaigata) replicate the matai system to assist with prisoner management. Such a system is unique to Samoa. In each facility, the Corrections Management selects a matai for each cell based on maturity and leadership skills of the prisoner. The matai is seen as a leader and mentor to prisoners who assist with resolving any minor issues/disputes among the prisoners and raises any concerns that the prisoners might have with prison and corrections officers and vice versa. Generally, this system promotes respect among the prisoners and between the prisoners and prison and corrections officers. Furthermore, Vaiaata prison is like a family unit and officers do not refer or treat the prisoners as “prisoners”. The trust and respect generated between the prisoners and prison and corrections officers allows the facility to operate with minimum security. It is the Inspection team’s view that such practice should be encouraged and continue to operate in all detention facilities.²⁵ However, in some cases it could lead to prisoners not being able to make a complaint through the formal channels. As such the complaint mechanism should be strengthened to ensure that it can coexist with the matai system.

6. TAFaIGATA PRISON

Tafaigata prison is the main prison in Samoa and is located at Tafaigata, Upolu. The prison holds adult male and female prisoners, juvenile prisoners and persons in long-stay. On the day of the visit, the total number of prisoners was 444: 332 males and 32 females serving sentences; and 80 in custody awaiting their sentence or mention.

6.1 MATERIAL CONDITIONS

6.1.1 Accommodation & Security

Male Prison

There are 15 medium security dormitory prison cells of 70 sq m with 20-25 prisoners per cell; 8 solitary confinement cells of 6 sq m with 1 – 4 prisoners per cell; 5 separate cells of 6 sq m for faafafine prisoners with 1 prisoner per cell; 2 recently built minimum security fale samoa of 140 sq m for elderly prisoners with 15 prisoners per fale; and 3 medium security dormitory cells of 37 sq m for persons in custody with 20 – 25 cutodies per cell.

There are 3 -5 bunk beds (2 storey bunks) in each medium security dormitory prison cell. Not every prisoner have a separate bed with remaining prisoners using the traditional bed –mats – to sleep on the floor.²⁶ The traditional bed is also used in the solitary confinement, the custody cells, faafafine cells and the fale Samoa. Each prisoner is required to provide their own bedding (sheets, pillows etc). There is a toilet and shower in each prison and custody cell. The faafafine cell and fale samoa have toilets but no proper shower. The prisoners take turn to wash from water stored in a big barrel. The solitary confinement cells neither have a proper toilet nor shower.

²⁵ Corrections Management has to cater for the level of security and safety risks prisoners presents. High/medium risk prisoners due to the security and safety of the public cannot be managed as suggested because they are different types of prisoners. While Vaiaata prison presents a very good example of minimum security prison and how it should be run, thus regime cannot be expected to be the same with high risk prisoners. SPCS comments dated June 16 2015.

²⁶ According to the Commissioner of SPCS, these bunk beds were initially there when at the time there was approximately 15 prisoners each cell. However, given the prison number has increased and need for space in the blocks no more bunk beds were build.

In the prison and custody cells, the prisoners use sheets tied to sharp sticks as a cover for the bathroom/shower facility. This was observed as a serious issue because the sticks were sharp and can be used as a dangerous weapon. Furthermore, the barrel(s) of water that was used by prisoners for bathing in and outside of the cells may be an issue of security given that previously a prisoner was killed in a similar barrel of water.²⁷

Issues:

- » Prison and custody cells remain overcrowded due to (1) lack of refurbishment or construction of new facilities and (2) increased in prisoners. Overcrowding appears to have been a problem in recent years. The facility experience period occupancy rates which surpass their maximum capacity. Sometimes the numbers detained in each cell reach 30 or more. The maximum number of prisoners that should be held in these cells is 15.²⁸ Overcrowding in prison can create conditions that amount to inhumane and demeaning treatment.
- » The toilets and showers in the cells are not adequate for frequent use by every prisoner. They are frequently blocked and this presents significant risk of disease, including hepatitis, gastric infections etc.

Female prison

The women's prison is on the same site but is fenced-off from the male prison and located about 100 meters away from the male prison. There are 3 newly built big open rooms and 5 old small rooms, 1 custody cell and 1 cell for solitary confinement. The sick inmates and inmates with new born babies were housed separately. On the day of the visit, there were 3 prisoners with babies under 12 months old. Traditional mats are used by prisoners in the new cells; 2 beds per cell plus mats are used in the old cells. There is an adequate toilet and shower installed in each cell. There were barrels/buckets in the shower and toilet used to draw water from water tanks because of the shortage of water. There is only a toilet and no shower in the custody and solitary confinement cell.

Issues:

- » Accommodation was not fit and proper to raise babies due to:
 - insufficient space to be shared by the mothers and the possibility of spread of illness between babies and sick inmates who are sometimes housed nearby. It was observed on the day of the visit that one baby had a skin condition; and
 - no proper bedding or nursery for the babies.

The issues regarding overcrowding and lack of proper space in the cell block are not new. As stated earlier there were two recently built open fale samoa to try and cater for the increase in the number of prisoners and lack of space. However, this still does not solve the problem of overcrowding. A new prison facility is currently in the process of being designed and built at Tanumalala and SCPS hopes that this will address the issues of insufficient spaces etc.

KEY RECOMMENDATIONS:

- The design of the new prison facility should meet basic standards of detention accommodation e.g good ventilation/air circulation, lighting, sufficient space in cells, beds for all inmates, proper toilet and shower facilities, proper nursery for new born babies etc.
- SPCS to engage NHRI to be part of the development of the new prison to ensure that issues currently facing detention facilities in Samoa are avoided and human rights standards are met.

²⁷ Hans Dalton case.

²⁸This was also seen as an issue in the Commission of Inquiry Report "Tafaigata Prison & Other Issues", February 2014, pg. 30 ; U.S Department of State 2013 Country Report on Human Rights Practices: Samoa, <http://www.refworld.org/topic,50ffbce4c9,50ffbce4d8,53284a7c12,0,USDOS,,WSM.html>.

6.1.2 Water and Food

All prisoners are provided with meals 3 times a day: breakfast (vaisalo or koko rice), lunch and dinner (tin fish or chicken and yam or banana). Prisoners are also allowed to receive food from families and friends. The prisoners prepare their own food. The kitchen is a typical traditional Samoan kitchen built near the prison's pig pen. Due to security issues with the dining room the male prisoners are required to eat in their cells where food is served to them in buckets and they must share the food amongst themselves. It was observed that prisoners also provide their own eating utensils and are stored away in their cells.

Issues:

- » The pots used to prepare the food are old and rusty.²⁹
- » The kitchen is old and dirty. Hygiene is compromised due to its immediate proximity to the pig pen and an open trench of dirty water running around the kitchen complex.
- » There is a serious water shortage.³⁰ When there is no water, prisoners draw water from storage tanks or from next door village. The water supply has been an on-going issue.³¹
- » The quality of drinking water is very poor. It was observed that water storage tanks were not clean and appeared not to have been cleaned for some time.³² Some prisoners reported that dead rats were found in the water tanks. Some prisoners reported wide-spread of gastric illnesses.
- » Prisoners felt that the amount of food provided is insufficient and the quality and preparation is very poor. Some prisoners reported that tinned fish was rotten.

KEY RECOMMENDATION:

- Water supply to be addressed to ensure that prisoners have access to 24 hours a day of clean water.

6.2 Hygiene and good health

6.2.1 Hygiene

Male Prison

Medium security prison cells and custody cells

Overall the hygiene conditions within the male prison cells are very poor.³³ This is exacerbated by the overcrowding of the cells. The cells are dirty, malodorous, have poor lighting, insufficient natural light and no proper ventilation. Fresh air only comes through the bars of the entry area into the cell and four small barred openings in the wall (two above the entry and two high up on the back wall).³⁴ The floors (where most prisoners sleep) have cracks and are dirty. Some prisoners sleep next to the toilet and shower used by more than 15 prisoners. Prisoners washing was hung everywhere in the cells which further inhibits air quality and circulation. There is a single shower and toilet unit per cell. These are dirty and

²⁹ New pots have been purchased. SPCS comments 16 June 2015.

³⁰ The water issue has been a long outstanding issue. There is no immediate solution given that the prison will soon be relocated however they are working to address this issue for the time being. SPCS consultation May 15 2015.

³¹ This was observed as an issue and recommendations for the water sanitation to be fixed and repaired by the Justice, Police and Prisons and Land Titles Committee Report, Samoa Observer, "Positive developments noted at overcrowded Tafaigata Prison", Monday 21 July 2014.

³² This was observed as an issue and recommendations for the water sanitation to be fixed and repaired by the Justice, Police and Prisons and Land Titles Committee Report, Samoa Observer, "Positive developments noted at overcrowded Tafaigata Prison", Monday 21 July 2014.

³³ This issue was also raised in the U.S Department of State 2010 Human Rights Report: Samoa, <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154400.htm>; U.S Department of State 2013 Country Reports on Human Rights Practices: Samoa, <http://www.refworld.org/topic,50ffbce4c9,50ffbce4d8,53284a7c12,0,USDOS,,WSM.html> and 24 May 2012 <http://www.refworld.org/topic,50ffbce4c9,50ffbce4d8,4fc75a6828,0,USDOS,,WSM.html>.

³⁴ This was also observed as an issue by the Justice, Police and Prisons and Land Titles Committee Report, Samoa Observer, "Positive developments noted at overcrowded Tafaigata Prison", Monday 21 July 2014.

have no door. Prisoners use sheets tied to sticks as a cover for the bathroom/shower facility.³⁵ This contributes to the poor air quality in the cells. Further, the issue with water supply means the toilets cannot be flushed at times, and prisoners are unable to shower or wash their clothes. Consequently some prisoners have developed skin diseases and gastric infections. Paint cans were also noticed in custody cells used by prisoners as a toilet.

Solitary Confinement Cell

The confinement cell also suffers from very poor hygiene. The cells smelt bad, were dirty, poorly ventilated, poorly lit, severely lacked natural light and had a cockroach infestation. There is a communal outdoor shower. It lacks privacy and the area has many rats. The toilet facilities are very poor with paint cans provided in each cell for use as a toilet.

Faafafine cells and fale samoa

The faafafine cell is a little bit better than the prison and custody cells but is still dirty and smells bad. It has poor ventilation and insufficient natural light. Fresh air only comes through the bars of the entry area into the cell and about five small barred openings high on the front wall opposite the cells. Each cell had a toilet. A big barrel of water³⁶ was just outside the cells for communal bathing. It was observed that previously a prisoner was killed in a similar barrel of water.³⁷ The fale samoa has good ventilation, natural light and is much cleaner compared to the other cells. There were recently built showers which were not connected to water and therefore unused. Consequently prisoners shower outside using a barrel of water. The outdoor shower is completely open and lacks privacy. Each fale samoa had one toilet shared by all 15 elderly prisoners. The toilet was well built a few meters away from the prisoners.

Female prison

The female prison cells are much cleaner than the male prison. The floors are tiled and have lots of windows so there is good lighting and ventilation. There is a well-built shower and toilet in each room. They are fairly clean, private and properly separated from the cells.

Issues:

- » Poor hygiene overall³⁸, in particular the toilet and shower areas. It is unhygienic to require male prisoners to eat in their cells and there is no proper storage for their cutlery within the cells.
- » Poor ventilation and air circulation and lighting.
- » Cockroach and vermin infestations.

KEY RECOMMENDATION:

- Improve hygiene and sanitation in the male prison. Efforts should be made to clean up the facility and maintain it in a clean and hygienic condition.

6.3HEALTH CARE SERVICES

There is a small medical clinic on the premises serviced by a female prisoner.³⁹ The clinic provides care for male and female prisoners and person in custody. It offers first aid services for very minor illness/sickness or injuries such as minor cuts, cold/flu etc. According to SPCS, it is part of their Strategic Plan to put in place key personnel for the appropriate management of prisoners which includes obtaining

³⁵ It was observed that the sticks used can be a dangerous weapon

³⁶ Approx. 44 Gallon.

³⁷ Hans Dolton case.

³⁸ It is the focus of SCPS to ensure that general sanitation and hygiene of prison standards are improved. SPCS consultation May 15 2015.

³⁹ Cabinet has directed that NHS supplies a full time doctor for SPCS and also to be funded by NHS. SPCS comments 16 June 2015.

a paid registered nurse. For serious illness or injury (including dental) prisoners are referred to the national hospital in Motootua for treatment.⁴⁰ The SPCS cover hospital and pharmaceutical costs. There is currently no provision of other medical services such as public awareness and education programmes, vaccination programmes, programmes of specific treatment for certain diseases or support services for infants and mothers. However, with the separation of prisons from the MoP, the SPCS is developing a draft Strategic Plan to ensure that such programmes are in place and operational. There are no appropriate services for prisoners with mental health disabilities. It was noted that a previous prisoner with mental illness died in the prisons.⁴¹ However, the newly built Mental Health Treatment Centre is expected to assist the SPCS with prisoners or prisoners with mental illness.⁴²

Issues:

- » There are no medical assessments for prisoners on admission.
- » Prisoners find it difficult to have access to medical care because there are no daily inspections by the officers or a medical doctor. Further, prisoners stated they were never informed of any medical services.
- » The medical clinic was also used to store other equipment such as concrete bags etc.
- » There is insufficient mosquito netting throughout the facility and thus prisoners are not adequately protected from vector-borne diseases.
- » There is no separation of sick prisoners from other prisoners unless there is a serious illness.
- » The poor hygiene of the cells could promote the development and spread of disease.
- » As prisoners with a disability or mental problems are not housed separately, other prisoners, none of whom have specialized knowledge or training, are called on to look after these prisoners and their needs.
- » Prisoners in solitary confinement complained they had been waiting for over a week to receive medical treatment. One prisoner had a broken nose and black eye from an assault⁴³ which he was yet to receive medical treatment for. There were also prisoners awaiting treatment for an infected boil and broken hand. The officers were unable to provide records of treatment for this particular prisoner.

KEY RECOMMENDATIONS:

- SPCS to engage a proper registered nurse.
- Develop and implement an induction process which includes health assessment of prisoners prior to admission and briefing on medical care available while in detention and all matters relating to their detention.
- Improve hygiene and sanitation. Efforts should be made to clean up the facility and maintain it in a clean and hygienic condition so as to avoid development and spread of diseases.
- Improve access to health care services. Remove practices and policies which prevent prisoners from accessing the hospital. The feasibility of regular doctor's visits to the prisons should be explored.

6.4 TREATMENT

In general it was felt that the matai system is a good mechanism as it sets order and discipline among the prisoners and towards the prison and corrections officers.

⁴⁰ It is noted that this was an issue observed by the Justice, Police and Prisons and Land Titles Committee Report. It was recommended to establish a First Aid Station within the prison facility in case of sickness and illness conditions of prisoners as well as officers due to the unhealthy environment of the compound, Samoa Observer, "Positive developments noted at overcrowded Tafaigata Prison", Monday 21 July 2014.

⁴¹ Hans Dalton case.

⁴² Cabinet has directed that NHS supplies a full time doctor for SPCS and also to be funded by NHS. SPCS comments 16 June 2015.

⁴³ It was unclear who he had been assaulted by.

6.4.1 Labour

Detainees in custody and solitary confinement cells do not do any labour. The remaining prisoners work twice a day (morning and evening) for at least 8 hours in total. Some of the male prisoners work the 10 acre plantation and others work the vegetable garden to provide produce for the prisoners' food. It was reported that some prisoners had not been out of the cells for a long time. Women prisoners work on their own vegetable garden area separate from the men and weave fine mats in their cells. It is said that the fine mats are entered into Iniini "fine mats" competitions. All prisoners are required to keep their own cells and rooms, common areas, kitchen, toilets and bathing facilities, clothing and utensils clean but are often unable to do so due to over-crowding and hygiene issues. There are currently no labour opportunities to enhance opportunities and provide meaningful rehabilitation for prisoners. As noted earlier in this report, the Commissioner of SPCS has advised that such labour opportunities are noted in the draft Strategic Plan.

6.4.2 Classification of Prisoners

Female and male prisoners are detained in separate accommodations distant from each other. Persons in custodies are held separately from convicted prisoners. It is noted that the new *Prisons and Corrections Act 2013* and *Prisons and Corrections Regulation 2014*⁴⁴ provide for the process of classification of prisoners. However, there is currently no separation of prisoners according to such classification. On the day of the visit it was observed that: a prisoner with a disability (blind) was housed together with other prisoners; and prisoners with civil offences and/or minor criminal offences were housed together with prisoners with serious criminal offences.

6.4.3 Discipline, Punishment, Torture

The solitary confinement cells were in regular use to punish prisoners for various misdemeanours (such as escape, fighting with other prisoners, etc). From discussion with prisoners in the confinement cells, it was apparent that prisoners were regularly kept in these cells for more than the 6 day maximum and up to several months. Some prisoners indicated that they had chosen to be there as a self-discipline measure.

6.4.4 Use of Force

When interviewed, some of the prison and corrections officers demonstrated understanding of what and how much force they were legally allowed to use. It was observed on the day of the visit that there was a male prisoner with a broken nose and black eye. Discussions with the prisoner and prison and corrections officers did not establish a clear cause of the injuries – it was unclear whether they had happened while the prisoner had escaped or were inflicted on his return by staff or another inmate. The Inspection team was unable to locate appropriate records of the incident or any treatment provided.

6.5 ACTIVITIES AND COMMUNICATIONS

6.5.1 Educational/Rehabilitation Activities and Outdoor Exercise

Educational/Rehabilitation Activities: There are no proper educational or rehabilitation activities. However, according to the Commissioner of SPCS, educational and rehabilitation activities are in the draft Strategic Plan. Current educational and rehabilitation activities are plantation work, bible study and women weaving mats.

Outdoor Exercise: Zumba⁴⁵ is currently the only outdoor exercise that every prisoner (sometimes including minimum security custodies) engages in once a week. This is because a current prisoner is a

⁴⁴ Prisons and Corrections Services Act 2013, Part VII and Prisons and Corrections Regulation 2014, Part 6.

⁴⁵ An aerobic fitness featuring movements by various styles of dance.

zumba instructor. Some prisoners reported not being out of their cells for any exercise for more than two (2) months.

6.5.2 Access to information and outside world

All prisoners, except for prisoners in solitary confinement, are allowed visitation from their families subject to application and screening. Telephones are available to the prisoners should they wish to contact their families or lawyer. Some prisoners reported that they did not know of right to access telephone. According to prisoners, they were not provided with any information prior to admission on matters relating to a right to appeal, rights of prisoners in custody, prisoners duties/responsibilities/obligations whilst in custody, consequences of bad behaviour, procedures to earn low security classifications and entitlement to privilege and early release, and risks involved in engaging in unsafe sex etc.

The Commissioner of SPCS stated that prisoners are informed about the system of complaint and about his open door policy. However, according to prisoners they were not informed on methods of seeking information and making complaints and they believed any complaints would not be followed through.

KEY RECOMMENDATIONS:

- Develop and implement a standard induction process which covers all matters of relevance to their detention, including their rights and obligations.
- Inform current prisoners of their rights and obligations in prison: inmates should be briefed on all matters of relevance to their detention.
- Develop educational and vocational training and rehabilitation programs for prisoners to ensure their proper rehabilitation and reintegration.

6.6 RESOURCES

The following matters were observed by the inspection team as impacting the proper and effective continuation of the operation of the services provided by the SPCS:

Transportation: There was a lack of vehicles to perform relevant services for the facility. There is one truck to transport prisoners to the hospital. It was reported by the Commissioner of SPCS that he had to cease the transportation of prisoners in big groups at the back of the truck due to safety reasons. Sometimes prisoners cannot be referred to the hospital because the vehicle is not available. The MoP is assisting the SPCS with vehicles and other resources until the transition period has expired.⁴⁶

Staff: As a result of the separation of the prisons from the MoP some prison and corrections officers and staff members have resigned or been retrenched. The SPCS have to recruit new officers and staff members. Some prison and corrections officers reported being afraid of some prisoners due to low staff numbers.

Training: The *Prisons and Corrections Act 2013*⁴⁷ provides that there should be training for prison and corrections officers on: the application of universal precautions to protect themselves from possible transmission of infectious diseases, basic and on-going training on use of force, use of riot gear and other means of asserting control over riots, and dealing with passive aggressive behaviour. From interviews it was evident that not every officer was exposed to proper training. However, the Commissioner of SPCS advised that the New Zealand Corrections will arrive in February 2015 to provide basic training for all prison and corrections officers.

⁴⁶ There is currently in place an MOU between Ministry of Police and Prisons and Corrections Service where the Ministry of Police is assisting the Police and Prisons Service until the 6 months transition period expires.

⁴⁷ Prisons and Corrections Act 2013, s. 38 (3a), s.44 (3).

Record Keeping: It was observed that all records are kept manually in hard cover books apart from the remand register which was recorded on a blackboard. There was a register of inmates, an occurrence book, a medical record book, a solitary confinement register, and a new complaints book (as yet unused).

Issues:

- » The medical register appears to be unreliable as it does not record all incidents. Further, there is no indication of why prisoners are going to hospital.
- » Prisoners were concerned that there is no proper and effective system in place for complaints. They have found it very difficult to file a complaint and if a complaint is made, it is not followed through.
- » There was no record found of the prisoner who had a broken nose and black eye as a result of an assault in any registry.
- » The solitary confinement cell register indicated a lack of consistency in length of punishment for similar misdemeanours and regular overstay of the 6 day maximum punishment policy.
- » There is no use of force record.

KEY RECOMMENDATIONS:

- Develop and implement comprehensive training for prison and corrections officers relevant for each facility such as use of force, first aid, restraining mental health prisoners, human rights obligations, etc.
- Improve transportation for inmates eg: Consider requesting the Government for a bus from the SIDS buses to be donated to the prisons.
- Registries should be kept in a standardised fashion, with sufficient and consistent information recorded, for all facilities. All facilities should have the following registers – daily occurrences, medical, use of force, transfers, solitary confinement, complaints, etc. The facilities should also consider having a punishment log book.
- Develop Electronic Records Management System for all prison facilities.

7. VAIAATA PRISON

Vaiaata prison is the second prison and is located at Vaiaata, Savaii. The prison holds only male prisoners (juvenile and adult male prisoners). Female prisoners are transferred to Tafaigata prison. On the day of the visit, the total number of prisoners was 33. The youngest prisoner was 20 years old.

7.1 MATERIAL CONDITIONS

7.1.1 Accommodation & Security

Prisoners are accommodated in a house-like building with 3 dormitory rooms. The facility is approximately 140 sq m in size, including a large open balcony area. On the day of the visit there were 24 prisoners. The rooms had reasonable ventilation but were poorly lit, with insufficient natural light and inadequate screen wires on doors/windows. The open balcony area however had adequate lighting and air. There were sufficient beds for 14 prisoners with the remaining prisoners sleeping on mats on the floor of the dormitories and common area. Every prisoner was required to provide their own bedding. Those who cannot provide bedding must sleep on the floor. Some prisoners had individual mosquito nets but not all. There are two communal toilets and showers inside the accommodation. There was very low security. No security fence or check point at the entrance gate.

7.1.2 Water and Food

All prisoners are provided with 3 meals a day: breakfast (vaisalo or koko rice), lunch and dinner (tin fish or chicken and yam or banana). There is a serious shortage of water and the quality for drinking is poor.

According to the officer in charge, the issue of water is a long outstanding issue and the SPCS is working towards improving access to clean water.

KEY RECOMMENDATION:

- Water supply to be addressed to ensure that prisoners have constant access to clean water.

7.2 HYGIENE AND GOOD HEALTH

7.2.1 Hygiene

Overall the condition of the facility is fairly clean. Some parts of the floor in the dormitory had cracks and the floor was dirty. The kitchen is a typical samoan kitchen and is fairly clean. Some prisoners indicated that the food preparation was unsanitary due to inadequate water to wash dishes and keep the kitchen clean. The toilets and showers were dirty and smelt bad. There was also a messy area of exposed pipes where a sink had been uninstalled due to the water shortage. Also due to the water shortage, the prisoners do not have regular access to adequate water for bathing, cleaning and cooking.

7.2.2 Health Care Services

There is no medical clinic on the premises or even a first aid kit to cater for minor injuries or illness. Prisoners indicated that they must supply their own paracetamol, band-aids, etc or ask the guards to provide them from their personal supply. A prisoner with a serious illness or injury (including dental) is referred to Tuasivi Hospital, about 40 minutes drive from the prison. Any medical or pharmaceutical costs are paid by the SPCS. There are no public awareness and education or vaccination programmes. As stated earlier by the Commissioner of SPCS, these programmes are in the draft Strategic Plan.

Issues:

- » Prisoners do not receive any medical inspections prior to admission or at anytime during the year.
- » Prisoners are not informed or provided with any information regarding medical care upon admission.
- » On the day of the visit there was one prisoner with a swollen leg that appeared to have been injured from a machete when he was working in the plantation. There was no medical attention provided for the prisoner.
- » There is no separate accommodation for prisoners with serious illness, disability or mental illness.
- » Due to the lack of transportation prisoners are often not able to be taken to the hospital. Further, prisoners are required to make their own way to the hospital (eg: by taxi) for follow-up visits.
- » Some prisoners indicated that the officers would threaten to remove their weekend parole if they asked to receive medical attention. As such, many prisoners did not report illness or injury as they did not want to lose their weekend parole.

KEY RECOMMENDATIONS:

- A proper clinic with at least one nurse and well stocked first aid kits should be established. The feasibility of a regular doctor's visit to the prisons should be explored.
- Develop and implement a standard uniform induction process which includes a medical examination and briefing for prisoners which covers all matters of relevance to their detention, including their rights and obligations.
- Improve transportation for inmates to ensure that prisoners receive proper medical care they need from hospitals etc.
- Improve hygiene and sanitation. Efforts should be made to clean up the facility and maintain it in a clean and hygienic condition so as to avoid development and spread of diseases.

7.3 TREATMENT

Generally Vaiaata prison was managed quite differently from Tafaigata prison. Firstly, the facility itself is a house-like accommodation rather than containment cells, and secondly the prison was managed like a family unit. The matai system is very strong and generally sets order and discipline amongst the prisoners and towards the prison and corrections officers.

7.3.1 Labour

All prisoners are engaged with labour once a day – in the morning for 4-5 hours in the plantation of over 10 acres. Prisoners are required to clean their accommodation, common areas, kitchen, toilet and bathing facilities, clothing and utensils. There are currently no labour opportunities to enhance opportunities and provide meaningful rehabilitation for the prisoners. As advised by the Commissioner of SPCS such labour opportunities are noted in the draft Strategic Plan.

7.3.2 Classification of Prisoners

There was no classification and separation of prisoners taking into account their age, criminal histories, illness etc.

7.3.3 Discipline, Punishment, Torture

Prisoners reported that they were sent to Tuasivi police custody for solitary confinement punishment. However the Commissioner of SPCS indicated that this practice is no longer in place due to the poor condition of the cells at Tuasivi. Prisoners are now sent to Tafaigata prison for solitary confinement. This was supported by the inspection of Tuasivi police custody which held no inmates from Vaiaata on the day of inspection.

7.3.4 Use of Force

From discussions with the officer in charge and prison and corrections officers of the facility, it appeared that they had some understanding about the use of force, however they do not engage in continuous training on the use of force or any other relevant training.

7.4 ACTIVITIES AND COMMUNICATIONS

7.4.1 Educational/Rehabilitation Activities and Outdoor Exercise

There are no proper educational or rehabilitation activities. Current educational activities that are carried out by the SPCS include bible study and cultural lessons by prison and corrections officers. However, it is noted that these prison and corrections officers are not qualified nor have had any training on providing educational or rehabilitation services. The Commissioner of SPCS stated that these are some of the activities that are noted to be included in the draft Strategic Plan.

7.4.2 Access to information and Outside World

Access to information: Prisoners are not informed on methods of seeking information and making complaints after admission. It was observed that the complaint system was just put in place on the day of the visit. Prisoners generally felt comfortable with their ability to make complaints to the prison officers and had seen success recently with the removal of an abusive officer. Despite this they felt they did not know who to go to if they have a problem with the prison officers.

Access to outside world: Families and friends of prisoners are free to visit anytime. There are no formal applications or screening to be made prior to visitation. There are no telephones available for prisoners to

contact families or a lawyer, so officers' private cell-phones are used should a prisoner need to call their family or lawyer.

KEY RECOMMENDATIONS:

- Develop and implement a standard induction process which includes a medical examination and briefing for prisoners which covers all matters of relevance to their detention, including their rights and obligations.
- Inform *current* prisoners of their rights and obligations in prison.
- Develop educational and vocational training and rehabilitation programs for prisoners.

7.5 RESOURCES

The following matters were observed by the inspection team as concerns to the continuation of proper operation of the services provided by the SPCS:

Transportation: There is only 1 truck to perform all services. If the vehicle is not available the prisoners may not be able to be transported to the hospital or the prisoner must make his own way to the hospital. This is a great issue because the prison is located inland and is about 20 minutes drive to the main road with no public transportation available.

Training: Similar to Tafaigata prison, ongoing basic training is needed for Vaiaata prison and corrections officers.

Record Keeping: There is a medical record book, however it does not record the injuries or illness of the prisoner nor the remedies provided by the medical officer. There is no use of force record. However there is an "Occurrence Book" which records everything that happens each day. The complaint system was just put in place on the day of the visit.

KEY RECOMMENDATIONS:

- Develop and implement comprehensive training for officers relevant for the facility such as use of force, first aid, restraining mental health prisoners, human rights obligations, etc.
- Improve transportation for inmates eg: Consider requesting from government a SIDS bus to be donated to the prisons.
- Registries should be kept in a standardised fashion, with sufficient and consistent information recorded, for all facilities. The facility should have the following registers – daily occurrences, medical, use of force, transfers, solitary confinement, complaints, punishment log book etc.
- Develop an Electronic Records Management System for all prison facilities.

8. OLOAMANU JUVENILE CENTRE

The Oloamanu Juvenile Centre (OJC) is Samoa's only juvenile detention facility and is located at Mulifanua, Upolu. It holds only young male inmates up to the age of 26 years old. On the day of the visit, the total number of inmates was 24. The Commissioner of SPCS stated that there has been an issue with detaining juveniles of 17 and 18 year olds at the centre because there is no other proper facility to detain these juveniles.

8.1 MATERIAL CONDITIONS

8.1.1 Accommodation & Security

The facility is two dormitory houses. There is one big open room in each house which is used by the juveniles as their sleeping area. At the time of the visit, there were 23 offenders: 13 in one

accommodation and 10 in the other accommodation. Prisoners indicated that they are locked out of their rooms during the day. The floor was tiled and clean. There were cupboards used to store away prisoners bedding, clothing, etc. There was good lighting and all windows had fly screens. The rooms were quite hot as there were no fans and fairly poor air circulation. There was no separate accommodation provided for the guards at the facility who indicated that they also slept in the dormitories or the main open fales with the inmates.

All prisoners sleep on traditional mats and provide their own bedding. Those unable to provide their own bedding sleep on the tiled floor. Prisoners indicated they would like to be provided with beds as there were problems with centipedes on the floor. There were two toilets, two showers and one sink in each house. Due to the water shortage these facilities were not in use. The juveniles were required to use the shower and toilet outside. There is very low security. No security fence or check point at entrance gate.

KEY RECOMMENDATIONS:

- Staff should not sleep in same building with juveniles. An existing building should be converted into an accommodation for the staff **OR** a new staff head quarter is built.
- Address water supply to ensure that toilet and shower facilities are used by the prisoners.

8.1.2 Water and Food

Prisoners are provided with 2 meals a day – lunch and dinner (both tin fish or chicken and yam or banana). They are not provided with breakfast prior to plantation work but are able to eat ripe banana/esi/etc while working. The food is prepared by the prisoners. The prisoners indicated that they were often quite hungry and that they only got access to a small amount of the food they collected in the plantation. The kitchen is a typical Samoan kitchen - it is quite dirty. There is a serious shortage of water, including clean drinking water, at the centre. Prisoners indicated that they had gone for periods of up to 2 months without water and during these times niu (young coconuts) were their only source of hydration. There were at least 4 water tanks around the facility but many of them were not connected appropriately to harvest rainwater and thus could only be used when the facility had access to rain water.

KEY RECOMMENDATIONS:

- Address water supply to ensure that prisoners have constant access to clean water.
- Ensure the prisoners are properly fed from the produce of the plantation.

8.2 HYGIENE AND GOOD HEALTH

8.2.1 Hygiene

The sleeping accommodation, and attached showers and toilets were clean. However, the toilets and showers were not in use at the time of the visit due to water shortage. It was reported that during periods without water prisoners were not able to shower at all and were required to go to the toilet in the field. It was reported that the prisoners had previously gone two months without water and had to survive only on coconuts and without any showers. Prisoners also indicated they are unable to keep the kitchen sufficiently clean due to insufficient water and this had led to frequent gastro intestinal illness by prisoners.

8.2.2 Health Care Services

There is no medical clinic on the compound or a first aid kit to cater for any minor injuries or illness. Prisoners must provide their own first aid items or ask the guards for them. A prisoner with an illness or injury (including dental) is referred to Leulumoega Hospital, about an hour's drive from the centre. Any medical or pharmaceutical fees are paid by the SPCS. The centre has only 1 vehicle (truck) and

consequently, if the vehicle is not available the sick prisoner would not have access to the hospital for medical treatment. On the day of the visit, there was one prisoner with a boil on his leg, which appeared extremely swollen and painful and no medical care was provided for him. Prisoners indicated that the centre had a chikungunya epidemic with about half of them contracting the illness. They indicated that they were taken to hospital for this. There is no separate accommodation for prisoners with serious illness, mental disorder or with disability. There are also no special arrangements or programmes for prisoners with mental disorders or disabilities.

Issues:

- » Accessibility of the centre is a serious problem. The access road to the prison is a long dirt road in poor condition which takes about 40 minutes to get to the main road. This would be an issue in an emergency.
- » The prisoners are not provided with medical inspections prior to admission or any inspections by a medical doctor during the year.
- » Prisoners are not informed or provided with any information regarding medical care upon admission.
- » Furthermore there are no public awareness and education or vaccination programmes. These services are in the draft Strategic Plan.

KEY RECOMMENDATIONS:

- Improve hygiene and sanitation.
- Put uniform induction process in place which includes a medical examination and briefing for prisoners which covers all matters of relevance to their detention, including their rights and obligations.
- Improve transportation for inmates eg: Request to government for SIDS buses to be donated to the prisons.
- Remove practices and policies which prevent prisoners from accessing the hospital.
- Improve access to health care services.

8.3 TREATMENT

8.3.1 Labour

According to SPSC, the daily work routine for all prisoners starts at 8am and finishes approximately 10.30am or 11am. The prisoners return to the prison and have their cooked lunch and rest. At approximately 3.30pm they return to work for about 2 and half hours in the afternoon returning at 6pm. All prisoners are required to work on the approximately 300 acre plantation. The land grows various crops such as bananas, yam, taro and pineapples. Prisoners are required to weed the grass, plant crops, harvest the crops and carry them to the facility. According to SPCS, this routine provides work ethics and also promotes rehabilitation and reintegration for these young prisoners. It was also reported that with this routine, there has been very little number of returned prisoners. Also, young prisoners that have been difficult when detained in the Tafaigata prison have been rehabilitated well when transferred to OJC. The officer in charge advised that the fruits of these crops are used to supply food for the other prison facilities (Tafaigata and Vaiaata) as well as other organizations such as Mapufagalele etc and some Government figureheads. Prisoners are also responsible for keeping the accommodation as well as regularly used areas clean and cutting the grass in the compound using machetes.

According to the *Prison and Corrections Act 2013*⁴⁸, if a prisoner is a juvenile, the prisoner must be treated as a child under the CRC. The CRC seeks to address the particular needs of children and to set minimum standards for the protection of their rights. The CRC helps protect young people when they are in the custody of the State and their parents are not able to carry out their obligations. Prisoners told the Inspection team that at times they would be required to work during scheduled breaks or when they were

⁴⁸ Part V, sections 3 and 27.

sick. While prisoners may tend to exaggerate complaints, the physical evidence of the work they do at OJC speaks for itself. The 300 acres of well-kept taro plantings is not only impressive by any standard, it puts to shame by perhaps thirtyfold the plantation efforts of the Tafaigata main prison. OJC is planted and maintained by only 20 to 30 juveniles who indicated they regularly work at least 8 hours each day. The team notes the report from SPCS that the labour routine is working well from a rehabilitation perspective; however, it is important that the CRC is also upheld. Further, is the view of the inspection team, that there was not enough time set aside by the SPCS for educational or other rehabilitation programmes (Please refer to para. 8.4.1). This practice is not in accordance with CRC and may amount to child labour.⁴⁹

Issues:

- » Prisoners reported that they had access to only a small amount of these crops.
- » It was observed that labour carried out by these young prisoners is far more excessive than the work load of adult prisoners in Tafaigata and Vaiaata prison facilities.
- » Prisoners indicated that the head officer expected a particular daily output from the plantation and if he was dissatisfied with the amount harvested he would deny inmates their lunch break and send them back to work during the heat of the day.
- » Prisoners feel they are unable to refuse to do plantation work if they're too tired or sick as if they do they get threatened that they'll be taken to Tafaigata prison.

KEY RECOMMENDATIONS:

- More time should be spent by juveniles on educational, vocational and recreational activities.

8.3.2 Classification of Juveniles

There is no classification and separation among young prisoners. Having prisoners with serious criminal history housed (e.g rape, etc) with other prisoner with very minor offences is of concern because of the possible negative influence they may have and the potential for them to physically or sexually abuse the minor offenders. Whilst the centre is intended to house juveniles it was apparent that there were inmates up to the age of 26 there. Housing adults with inmates as young as 11 is of further concern. There was report on a case of rape of an 11 year old male prisoner by a 19 year old male prisoner within the centre.⁵⁰

KEY RECOMMENDATION:

- There should be a clear classification and separation of prisoners, especially young prisoners. At no time should children be detained with adults. The SPCS should immediately apply the classification process of prisoners as established under the *Prisons and Corrections Regulation 2014*.

8.3.3 Detention, Punishment and Protection from all forms of Violence

When a prisoner misbehaves, he is transferred to Tafaigata prison or has his weekend parole removed. One prisoner indicated that many prisoners were sent there and never returned. In doing this, prisoners are sent to a location where they are much more vulnerable. It was observed during the visit to the Tafaigata prison that a young prisoner (aged 12) was housed in the same cell as adult male prisoners however a follow-up visit indicated that a separate wing has now been reserved for juvenile prisoners and custodies.⁵¹ Prisoners indicated that if they seriously misbehave they are handcuffed outside to a pole⁵² for up to 24 hours without food or water. One prisoner indicated he had been punished for starting a fight with another prisoner. However, discussion with one of the prison officers indicated that this practice has been discontinued since September 2014. Prisoners further indicated that they consider the plantation work to be a form of punishment.

⁴⁹ Art. 32 CRC.

⁵⁰ Samoa Observer reported on 10 December 2014

⁵¹ The cell block that was used to detain faafafine's on the day of the visit was now used to detain juveniles (custody and prisoners)

⁵² One prisoner advised of being handcuffed to a pole outside in the sun, and the other to a pole of a fale Samoa.

8.4 ACTIVITIES AND COMMUNICATIONS

8.4.1 Educational/Rehabilitation Activities and Outdoor Exercise

Educational/Rehabilitation activities: There is a severe lack of proper educational or rehabilitation activities, particularly considering the increased focus that should be placed on education for juveniles. Current programs are daily bible study led by the officers, a weekly cultural day led by the facility matai and further church education every Friday led by a local church group. In addition to this, Ministers from Malua Theological College provide a computer room for the facility and deliver two computing lessons per week for prisoners. However, computer classes are **only** delivered to prisoners under the age of 18 who demonstrate through a test that they are literate and have some understanding of computing. Further, the classes do not go ahead if the Ministers are unable to make it. There is also informal mechanics vocational training where two people each day get to learn mechanics from another inmate. Prisoners felt that there are not enough education/vocational programs to prepare them for life in the real world.

Outdoor exercise: Prisoners have sufficient outdoor exercise through recreation time outside the accommodation cells and weekly sport. It was observed however, that prisoners were engaged more in labour rather than on education, relaxation or play time which is encouraged under the CRC.

8.4.2 Access to information and Outside World

Access to information: Prior to admission, prisoners are not provided with information on matters relating to a right to appeal, rights of persons in custody, prisoners duties/responsibilities/obligations whilst in custody, consequence of bad behaviour, procedure to earn low security classifications and entitlement to privilege and early release and risks involved in engaging in unsafe sex etc. The Inspection team was advised by officers of the facility that information regarding offences was displayed on accommodation doors on the day of the visit. Prisoners are not informed on methods of seeking information and making complaints upon admission. A complaint system was just established on the day of the visit. Prisoners indicated that they didn't feel the complaints system worked. They feel unable to complain to prison officers about their situation. Similarly the facility's matai just reports complaints to the officers so they also feel unable to complain to him.

Access to outside world: Prisoners are allowed visitation from their families. However, due to the distant location of the facility and poor access, prisoners rarely receive any visits from friends and families and difficult to access the hospital. There are no telephones within the facilities, however the officers cell phones are used by prisoners should they wish to contact their families or lawyer.

KEY RECOMMENDATIONS:

- Put an induction process in place which includes a medical examination and briefing for prisoners which covers all matters of relevance to their detention, including their rights and obligations.
- Inform **current** prisoners of their rights and obligations in prison.
- Phone(s) should be installed and made available for prisoners use to contact their families and obtain legal advice.
- Develop educational and vocational training programs for prisoners.

8.5 RESOURCES

The following matters were observed by the Inspection team as concerns to the operation of the services provided by the SPCS:

Transportation: The lack of transportation is an issue within the centre. The centre has only 1 vehicle to perform all related services. At times prisoners are unable to be transported to the hospital because the vehicle is not available.

Staff: There are inadequate staffs. There are six officers (including the officer in charge) rotating duty. They live on the premises without separate staff quarters. The officers' work 24 hours for four straight days and are paid at only 8 hours per day. One officer advised that he worked eleven (11) straight hours on duty.

Training: There were no continuous relevant trainings for the officers to deal with juveniles or any first aid trainings. It is hoped this will be addressed in February 2015 through training planned in cooperation with New Zealand Corrections. Special training to deal with juveniles may do away with the need to send juveniles to Tafaigata prison when they misbehave.⁵³

Record Keeping: The facility keeps an occurrence book and an attendance check book. The occurrence book is used to record instances of use of force and the check book records when prisoners are transferred to Tafaigata prison. This makes it difficult to isolate records on these matters. Maximum security and complaints registers were only started two weeks ago prior to the inspection. Unfortunately the facility does not have a medical log book.

KEY RECOMMENDATION:

- Registries should be kept in a standardised fashion, with sufficient information recorded, for all facilities. All facilities should have the following registers – daily occurrences, medical, use of force, transfers, solitary confinement, complaints, etc. The facility should also consider having a punishment log book.

9. POLICE CUSTODIES

There are 4 custody accommodations located at:

- i. *Ministry of Police Head Quarters, Apia Upolu:* Adult male and female prisoners and juveniles prisoners and persons in custody are held in this custody. On the day of the visit there were 6 adult male custodies.
- ii. *Faleolo Custody, Police Outpost, Upolu:* All (adult and juvenile males and females) are detained in this custody for at least 1hr then transferred to the custody cells in Apia. On the day of the visit there were no custodies.
- iii. *Tuasivi Custody, Police Station, Savaii:* Only adult and juvenile custodies are held in custody. On the day of the first visit, there were four male custodies (three adults and one juvenile) on the day of the second visit there were custodies as they have been transferred to Apia for their court mention.
- iv. *Lalomalava Custody, Police Outpost, Savaii:* All (adult and juvenile males and females) are detained in this custody while interviews are conducted prior to transfer to Tuasivi police station for formal charging. On the day of the visit there were no prisoners.

9.1 MATERIAL CONDITIONS

9.1.1 Accommodation

Apia Police Custody

⁵³ There will occasions where a juvenile due to safety and security of the public that a juvenile will be placed needs to be placed at Tafaigata but under special management plan. SPCS comments dated June 16 2015.

There are five cells which detain all juvenile and adult male and female prisoners and custodies. The cells hold prisoners for at least 24 hours before they are released or remanded in custody at Tafaigata prison. There is one concrete bed in each cell with no bedding. The cells are clean and have air condition. The custodies/prisoners indicated that they suffered from the cold without proper bedding. There is one communal toilet with a sink and no shower. The female custodies/prisoners are referred to use the female officers' toilet. There is a shower for the police officers outside the custody cells which prisoners/custodies can use if there for longer than 24 hours. The cells are appropriate for short stays of small numbers of prisoners/custodies. However, it was observed on the day of the visit that two prisoners had been in custody for a month and another for a week. Further, on court days the cell complex can have up to 40 people detained there. This would lead to serious overcrowding of the five cells.

Faleolo Police Custody

There are two cells which detain all juvenile and adult male and female custodies. The cells hold both juvenile and adult male and female custodies for at least an hour before they are transferred to the Apia custody cells. It is noted that each cell can hold up to two prisoners and not more. The officer in charge stated that because Faleolo is a troubled area, the persons in custody are quickly transferred to the Apia custody to be detained there. There is no proper bedding. The cells are clean, have proper lighting and ventilation. The officers' toilet and shower is used by the prisoners.

Tuasivi Police Custody

It is a one unit facility with four cells. Persons detained in this facility include juvenile and adult males. The facility was filthy, had poor lighting and very poor ventilation. There is no bedding. There is no toilet or shower. Bottles filled with persons in custody urine was observed on the day of the visit and prisoners had to call out to police officers if they wished to defecate. This was observed again on the follow up visit.

Fagamalo Custody

It was observed that there was a room with no window or light that was used as a holding room while interviews are conducted before transfer to Tuasivi police station for formal charging. There was no one detained in the room on the day of the visit. There was no bedding and police officers' toilet and shower was used.

9.1.2 Water and Food

There is no provision of food for persons in custodies (even if detained for more than 24hrs). Police officers stated that the families of prisoners in both custodies are encouraged to provide prisoners with food. If families are unable to provide food the prisoners go hungry. Police officers at the Apia custody sometimes provide prisoners/custodies with food out of their own pockets. Prisoners in the Apia custody have access to a water fountain when in need of water. However, prisoners in the Tuasivi, Faleolo and Lalomalava do not have access to water.

KEY RECOMMENDATIONS:

- Persons should not be detained for more than 24 hours.
- If persons are detained for more than 24 hours, the MoP should make arrangements with SPCS to transfer these persons to be detained in the prison cells in order to receive basic needs- e.g food, water, proper toilet and shower.

9.2 Hygiene and Good Health

9.2.1 Hygiene

Generally, the custody cells at Apia were clean. The toilet smelled and requires maintenance. Faleolo and Lalomalava custody cells were also clean. The Tuasivi custody cells were in very poor condition and below the basic national and international standards. They were very dirty. There is poor ventilation and air circulation in the cells, no proper open area, minimum lighting and foul smells. The cells had clearly not been cleaned for some time with old food in the cells and rubbish left by previous prisoners. There is no toilet or shower in the cells. There were water bottles just outside the cells full of prisoners' urine. The cell condition at Tuasivi is not fit for human confinement.

Despite the decision by the Commissioner of SPCS to cease using the Tusivi cells as a solitary confinement for Vaiaata prison, the cells were still in use by the MoP to hold prisoners in custody. There were four prisoners in custody on the day of the visit, all of whom had been there for about a week. One of them was a 16 year old juvenile from any potential abuse by adult prisoners. It appeared that the prisoners had not showered for more than two days. The officer in charge of the facility stated that the MoP will not cease to use the cell as a confinement because there is no other appropriate facility to detain custodies.

KEY RECOMMENDATIONS:

- The use of the Tusivi custody cells must cease. The persons in custody in Tuasivi should be held at Vaiaata or Apia police station: in the interim these are more appropriate facilities for detainment.
- Tuasivi custody cells should be renovated or rebuilt.
- Persons should not be detained in custody for more than 24 hours.

9.2.2 Health Care Services

There is no medical inspection by a qualified medical officer of a prisoner prior to admission to any of the custodies. There is no medical clinic on any of the facilities or a first aid kit for minor illness or injury. Should the prisoner require medical attention then he/she is transported to the nearest hospital. In the case of prisoners with mental illness officers ensure that medical care is sought prior to charging them.

9.3 TREATMENT

9.3.1 Classification of Prisoners

Apia Custody: Male, female and juvenile prisoners are held together in the same custody facility. The police officers indicated that they place persons accused of serious crimes in separate cells. For example, on the day of the visit two persons accused of attempted murder were being housed in separate cells; they weren't allowed out of their cells or to talk to anyone apart from police officers. Women and men are also housed in different cells. All prisoners/persons in custody use the same toilet. For privacy, a separate female cell with private toilet facilities would be appropriate. Police officers were aware of the need to treat disabled persons with care and where a disabled person is detained they exercise discretion and expedite remand.

Tuasivi Custody: Juveniles and adult males were detained together. The facility is not fit for confinement of any person, particularly juveniles. The facility also did not have capacity to separate prisoners/custodies based upon the seriousness of their crime.

Faleolo and Lalomalava Custodies: Adult male and female prisoners and juveniles are detained in same cell.

9.3.2 Search processes and storage

Apia Custody: A private room for searching prisoners is in the watch-house but according to the police officers on duty they did not use it, rather searches were conducted in the open area between the cells. Discussions with the criminal investigation division (CID) indicated that for persons being interrogated for serious crimes there was also no search facility at the Apia Police Headquarters. The CID instead used a corner of their open office area to conduct strip searches in the presence of up to 20 police officers. They indicated that females are allowed to use the interview room for strip searches however even this does not provide privacy as the door has a viewing peephole. This is clearly insufficient protection of a prisoner's privacy and alternative arrangements should be made.

Police officers on duty also commented that the storage facilities at the Apia custody were insufficient to store all prisoners' belongings on busy days. Again, a storage room was in the facility but for some reason was not used by officers.

Tuasivi, Faleolo and Lalomalava Custodies: There are no search rooms. There were proper registries to record prisoners' properties but no proper storage to store them.

KEY RECOMMENDATION:

- The existing search facilities should be used appropriately.

9.3.3 Use of Force

The police officers interviewed at the Apia custody cells found that they did not need to use force with the prisoners, it was generally sufficient to ask them for respect. However, there does seem to be a process in place where officers must include a report on a prisoner's investigation file if force has been used. There was no specific registry to enter occasions of use of force. Police officers state that if there is any use of force then that would be recorded in the Occurrence registry. It was observed in the Occurrence Registry that there were no records of use of force.

9.4 COMMUNICATIONS

9.4.1 Access to information and outside world

The police officers on duty at the Apia custody cells indicated that prisoners are not allowed access to a phone but police officers will call their families if needed. Persons in custodies have a right to legal representation but there is no availability of legal aid pre-trial. In practice, this means that many are detained and undergo interrogation without legal advice. Where persons in custody wish to speak to a lawyer police officers provide them with access to a phone and also space in their office to meet with their lawyer if required. The rest of the custodies have access to either the office phone or officers' cell phones to contact families or lawyer.

9.5 RESOURCES

9.5.1 Staff, Training and Record Keeping

Apia Custody: It was well resourced for staff. Staff felt they would benefit from additional IT resources – officers in the watch-house would like a computer to keep their registers and CID officers would like internet access to research best practices.

Police officers have had two trainings on dealing with prisoners with mental illness but they feel they aren't yet well qualified to deal with this issue. Generally, there seems to be a frequent program of training on a range of elements of officers' jobs. Police officers indicated that they receive training in how

to meet persons in custody needs however further specific training on human rights, etc would be welcomed. Further discussion with the training unit would be valuable to determine where the gaps are in this training schedule.

Tuasivi Custody: The office is well staffed for its size. However police officers felt that there is not enough basic training in relation to use of force, first aid etc. The Occurrence and Charge registries are properly kept but the transfer registry is incomplete. It was observed that the transfer a person in custody to the Apia custody cells was not recorded.

Faleolo and Falemalo Custody: Registries were properly kept.

All Custody Cells: There is no separate register for use of force for all custody facilities; rather it is recorded on prisoners' investigation files. All incidents including use of force are recorded in the Occurrence Registry. A record book is also kept for custody's/prisoner's property. None of the registries recorded any use of force.

In the Apia custody cells, the Superintendent of CID indicated that they encourage prisoners to make formal complaints if they're unhappy and that they have brochures from the Office of the Ombudsman's available for this purpose. The Inspection team also notes that there is a Professional Standards Unit brochure that includes the right to complain to the Office of the Ombudsman. However, when junior officers were questioned on this practice they were unaware of any brochures.

KEY RECOMMENDATION:

- Develop and implement comprehensive training for officers such as use of force, first aid, restraining mental health prisoners, human rights obligations, etc.

10. MENTAL HEALTH TREATMENT CENTRE

The Mental Health Treatment Centre (the Centre) is established pursuant to the *Mental Health Act 2007* (MHA) and is located at the Motootua Hospital, Upolu. The current building was opened in December 2014, and is therefore fairly new. It is the main mental health treatment centre in Samoa. The Centre gives preference to the provision of care, support, treatment or protection on (i) voluntary basis and (ii) within the family and community in which the person lives⁵⁴. The Centre treats females, males and juveniles. The youngest person treated as an inpatient was a 17 year old boy at the Seclusion Unit and a 6 year old boy treated as an outpatient. On the day of the visit, there was one regular adult male patient.

The MHA provides the basis for the standard for a healthy mental health facility. In addition to the standards outlined in the MHA, the inspection team used the 5 core questions developed by the Care Quality Commission in England to inspect mental health facilities.

The CQC assesses services against five key questions:

- (i) Are they safe?
- (ii) Are they effective?
- (iii) Are they caring?
- (iv) Are they responsive to people's needs?
- (v) Are they well led?

10.1 ACCOMMODATION (Safety and Security)

The new Centre was opened and started operating in December 2014. The Centre is well equipped with two seclusion rooms to detain patients that are violent or at risk (in the seclusion area there is a nurses

⁵⁴ Mental Health Act 2007, s.5

station just outside and security to constantly monitor the patients), two treatment rooms, four interview rooms, two day bed rooms for out-patients, a spacious cafeteria/kitchen area and storage rooms.

In the seclusion rooms, there was a clean toilet and shower. It was observed that there were cameras in the toilet and shower. This is a serious breach of prisoner privacy, especially as non-clinical staffs have access to the CCTV screens at the security office. There was no padding for the walls to prevent patients from injuring themselves. Also, it was observed that sometimes two patients are kept in one seclusion room. This could be a risk for the patients. The centre appeared to be well secured with cameras to monitor movements of patients as well as electronic keys to open and lock doors. It was observed that there were cameras in the shower/toilet of patients which is against their right to privacy.

The Centre was difficult to find on the Motootua Hospital complex. This will be resolved in the medium term when the old hospital facility is demolished. In the short term, signage should be erected to direct persons to the Centre.

KEY RECOMMENDATIONS:

- The cameras in the bathrooms should be removed/switched off.
- Install a best practice safe room that is appropriate for the Centre to prevent self harm by patients.

10.2 EFFECTIVE TREATMENT

Under the MHA there are three types of treatment that the centre provides for mental health patients: (i) Involuntary Treatment where the person upon assessment is eligible to be treated at the health care facility and (ii) Community Treatment where upon assessment the person is eligible to be treated at the person's place of residence (iii) Inpatient Treatment. Illnesses treated at the MHA include Psychosis, Affective and Mood Disorders. The Centre does not treat Personality Disorders or Intellectual Disabilities. Over the last three years the number of patients has increased. According to the Doctor in charge of the Centre, before the newly established Centre, on average there would be 1 admission per month. Now it is about 2-3 admissions a week.

10.3 ACCESS TO INFORMATION AND REVIEW OF TREATMENT ORDER

Part IV of the MHA requires that the person is explained their rights, the treatment order and requirements of and reasons for the order in Samoan and/or English. In addition to this the person has the right to review the order of treatment. Patients are provided with such information.

In reviewing a treatment order, such review is carried out by the Court.⁵⁵ The Court comprises of a District Court Judge and a Mental Health Care Professional sitting as an Advisor to the Court. The Advisor is appointed by the Head of State acting on the advice of the Minister. It is not provided in the MHA whether or not the Minister can recommend a Mental Health Care Professional from the Centre. The reason being is that, currently there are no Mental Health Care Professionals (except for the Doctor who is currently in Charge of the Centre) in Samoa. It is important to note that an independent (not employed or affiliated with the Centre) Mental Health Care Professional is appointed to be an Advisor to the Court to ensure an independent review of a patient's treatment order.

10.4 RESOURCES

The following were some of the matters that were observed by the inspection team as concerns for the provision of proper services by the Centre:

⁵⁵ Part VI of the MHA

Staff and Training: There was a lack of staff and qualified staff. There is no qualified psychiatric doctor. The National Health Services currently engages a part time Consultant Psychiatrist from Australia to assist the Centre. He works only for 3 hours for three days (a total of 9 hours a week). With the lack of staff, current staff members do not get to go on lunch break and sometimes work overtime. It was observed that the salary packages for psychiatrist are low and interested personnel have sought better opportunities elsewhere. There was a lack of proper training for staff such as restraining mental health prisoners, human rights obligations, etc. Also, there is a need for proper and continuous training provided for Police and Prisons officers when they hand over a patient to the Centre and vice versa to ensure the safety of not only the Police and Prisons officers but also the patient.

Record Keeping: It was observed that the centre kept good records. However the following were some issues with regards to records keeping:

- a. Proper forms were not used to fill in details regarding treatment orders;
- b. There was no proper documented procedure for handing-over a patient from Police or Prisons custody to the Centre and vice versa. This is to ensure that any injury sustained by the patient from police and/or prison and corrections officers or staff of the Centre is recorded.

KEY RECOMMENDATIONS:

- Revise staff salaries to entice more skilled doctors and nurses.
- Develop and implement comprehensive training for staff relevant to the operation of the Centre.
- Develop and implement comprehensive and continuous training for Police and Prisons officers for handing over of patients to the Centre and vice versa.

11. RECOMMENDATIONS

The following table provides recommendations and actions required by the appropriate facility to address and implement within the specified timeframes. The next inspections by the NHRI will follow up on the progress of these recommendations. Therefore, it is recommended that:

Key:

Urgent Attention	Within 3 months from release of report.
Immediate Attention	Within 6 months from release of report.
Medium Attention	Within 9 months from release of report
Long Term Attention	Within in 12 months from release of report.

FACILITY	RECOMMENDATIONS	DESIRED OUTCOME	ACTIONS REQUIRED	TIMEFRAME (to complete actions required within specified timeframe)	RESPONSIBLE AGENCY
a. Tuasivi Custody Cells	1. The use of Tuasivi custody cells must cease unless facility is refurbished to be fit for human containment.	1. The use of Tuasivi Custody cells is ceased. 2. Prisoners are not housed in such degrading conditions. 3. All prisoners held in Tuasivi custody cells are referred to Vaiaata Prison or the Apia Police Station. 4. Basic standards of detention accommodation are met.	1. Cease use of Tuasivi Custody cells and transfer prisoners to Vaiaata Prison or Apia police station. 2. Fix/renovate the cells to meet basic standards of detention accommodation and be fit for human containment such as: good air circulation/ventilation, lighting, proper toilet and shower, proper bedding etc. 3. Basic needs such as food, water and proper bedding, toilet and shower must be provided for prisoners that are detained for more than 24hrs.	URGENT Attention.	Ministry of Police
	1. Develop and improve record keeping	1. Efficient and effective standardised record keeping system is implemented.	1. Revise current record keeping system (e.g types of log books, details recorded etc) to ensure that they are standardised throughout all	URGENT Attention.	Ministry of Police Prisons and Corrections

b. All Prison and Police Custody facilities		2. Other relevant registries are developed.	the facilities. 2. Develop relevant registries such as punishment log book, use of force log book, medical log book ⁵⁶ 3. Train all staff on proper record keeping: e.g how to document relevant information, importance of record keeping, ensure relevant information is updated and consistent with other log books.		Services
c. All Prison Facilities: Tafaigata, Oloamanu, Vaiaata	1. Address water supply	All facilities have access to 24 hours clean water	1. SWA to carry out an assessment of Oloamanu Juvenile Centre and Vaiaata Prison and report back to Government on what is required to ensure that these facilities have access to 24 hours a day of clean water. 2. SWA to carry out an assessment of Tafaigata and report back to Govt on what is required to ensure Tafaigata has temporary ⁵⁷ access to 24 hours a day of clean water. 3. Government to implement SWA recommendations (Long Term Attention)	IMMEDIATE Attention.	Prisons and Corrections Services Samoa Water Authority (SWA)
	2. Improve hygiene and sanitation	1. Clean and hygiene facilities 2. Improve health conditions of inmates 3. Reduce risk of developing and spreading of diseases.	1. Establish and implement a clean-up day: e.g water blast cells ⁵⁸ , dusting and scrubbing cells including toilets and shower; some toilets require repair etc 2. Construct proper hanging laundry	IMMEDIATE Attention.	Prisons and Corrections Services

⁵⁶This requirement applies only to facilities that do not have in place any of these registries.

⁵⁷ Temporary given that there is plans in progress for the relocation and establishment of new Tafaigata Prison.

⁵⁸ Particularly the male cells at Tafaigata.

			line outside of prison cells to hang prisoners washing.		
	3. Classify and separate prisoners	1. Clear classification and separation of prisoners is implemented e.g: a. No children should be detained with adults; b. Prisoners with minor convictions are separated from prisoners with serious convictions; c. Persons with disability or mental illness are kept separate and are provided with special monitoring.	Enforce the classification process of prisoners as established under the <i>Prisons and Corrections Regulation 2014</i>	IMMEDIATE Attention.	Prisons and Corrections Services
	4. Establish a standard uniform induction process.	1. Standard induction process implemented which includes: medical assessment, briefing for prisoners of all matters relevant to their detention 2. Persons in custodies and prisoners are aware and informed of all matters relevant to their detention.	1. Develop and implement a standard uniform induction process to include medical assessment and a well informed briefing on all matters relating to detention e.g persons in custodies and prisoner's obligations/responsibilities and rights. 2. Implement training for staff to carry out induction. 3. Engage the assistance of NHS to develop a medical assessment process.	IMMEDIATE Attention.	Prisons and Corrections Services National Health Services
	5. Improve transportation for inmates.	Prisoners and persons in custodies have 24 hours access to transportation to attend to medical emergencies or any	Allocate additional vehicle to facilities with only one vehicle for emergencies and medical transfer- consider requesting MOF for a SIDS bus	IMMEDIATE Attention.	Prisons and Corrections Services



		other matter related to his/her detention.			
	6. Install phone(s) for persons in custodies and prisoner use.	Persons in custody and prisoners have access to phone to contact families and lawyer.	1. Install 1 telephone (or cell phone) at facilities with no telephone; and 2. Establish and implement a procedure and policy for the use of phone (for all facilities).	IMMEDIATE Attention.	Prisons and Corrections Services
	7. Develop educational and vocational training and rehabilitation programs for prisoners.	1. Effective educational and vocational training in place 2. Prisoners upon release are properly rehabilitated and well integrated back into society	1. To incorporate and implement in the draft Prisons and Correction Services Strategic Plan and implement effective educational and rehabilitation programmes 2. Engage with relevant organisations e.g MCIL, MESC, Oloamanu Training Centre, APTC, NHS (Social Worker experts) to assist with development of appropriate of educational, vocational and rehabilitation	MEDIUM Attention.	Prisons and Corrections Services MCIL National Health Services MESC
	8. Improve access to health care services.	1. Prisoners and Custodies health care needs are met 2. Easy and prompt access to health care services when required	Relevant organisations to implement relevant responsibilities as outlined in the <i>Prisons and Corrections Regulation 2014</i>	MEDIUM Attention.	Prisons and Corrections Services National Health Services
	9. Develop effective training programmes for all prison staff.	1. Staffs are educated and increased their knowledge, understanding and awareness on relevant areas (e.g) use of force, first aid, restraining mental health prisoners, human rights obligations.	1. Develop and implement continuous (twice a year) annual training e.g: a. Use of force b. First aid c. Human rights	MEDIUM Attention.	Prisons and Corrections Services

	10. Provide separate accommodation for staff at Oloamanu Juvenile Centre.	<ol style="list-style-type: none"> 1. Staffs do not sleep together in same building with juveniles. 2. Separate accommodation for staff. 	Convert an existing building into a separate accommodation for staff OR construct new staff quarters.	MEDIUM Attention.	Prisons and Corrections Services
	11. Relocate Oloamanu Juvenile Centre.	<ol style="list-style-type: none"> 1. Easy access for family and visitors to visit juveniles 2. Easy access to hospital and other emergencies 	<ol style="list-style-type: none"> 1. SPCS to conduct an assessment and provide report on suitable relocation of the centre. 2. Govt to implement recommendations. 	LONG TERM Attention.	Prisons and Corrections Services
	12. Engage Ombudsman Office in design of new prison.	New prison facility meets standards of detention accommodations.	SPCS to engage a member of the Office of the Ombudsman to be part of the planning committee.	LONG TERM Attention.	Prisons and Corrections Services Office of the Ombudsman
	13. Develop an electronic Prisoners Management Record System	<ol style="list-style-type: none"> 1. A standardised Electronic Prisoners Management Record System is implemented. 2. Records of prisoners are accessible and consistently recorded and updated. 	<ol style="list-style-type: none"> 1. Engage a consultant to develop and implement an effective Prisoners Management Record System (PMRS) in all facilities. 2. Train staff on how to effectively use the PMRS. 	LONG TERM Attention.	Prisons and Corrections Services
d. Police Custody Cells	1. Install telephone(s) to be used by persons in custodies.	Persons in custodies have access to telephone to contact families and lawyer.	<ol style="list-style-type: none"> 1. Install 1 phone (for Outposts with no telephones phones); and 2. Establish and implement procedure and policy for the use of phone (for all facilities). 	IMMEDIATE Attention.	Ministry of Police
	2. Appropriately utilise existing search rooms for strip search of prisoners.	<ol style="list-style-type: none"> 1. Existing search room in Watch House Apia Custody are used accordingly. 2. Privacy of prisoners are protected and upheld. 	<ol style="list-style-type: none"> 1. Enforce the use of existing search facilities to carry out proper strip search of prisoners. 2. Implement current policies on searching prisoners. 3. Carry out refresher and continuous training of all staff on how and 	IMMEDIATE Attention.	Ministry of Police

			where to search prisoners appropriately.		
	3. Tuasivi custody cells to be renovated to be fit for human containment.	Facility is fit for human containment and meets standards of detention accommodation.	1. Renovate/clean facility and ensure that it has: proper lighting, good ventilation, natural light, proper toilet and shower; OR 2. Rebuilt proper facility to be fit for human containment (Long Term attention).	MEDIUM Attention.	Ministry of Police
	4. Persons in custody should not be detained for more than 24 hours.	1. Persons are not detained for more than 24 hours. 2. Proper arrangements are provided for persons detained for more than 24 hours. Basic needs of persons detained for more than 24 hours are attended to such as food, water, shower, proper bedding etc.	If a person is detained for more than 24 hours, MoP should organize appropriate arrangements with SPCS for the transfer of persons to be remanded in custody.	MEDIUM Attention.	Ministry of Police Prisons and Corrections Services
	5. Develop and implement comprehensive trainings for all staffs.	1. All staffs are educated and increased knowledge, understanding and awareness on relevant areas (e.g) use of force, first aid, restraining mental health prisoners, human rights obligations.	1. Develop and implement continuous (twice a year) annual training e.g: • Use of force • First aid • Restraining mental patients • Human rights etc 2. Engage the assistance of relevant organizations to assist with developing and carrying out specific trainings stated above.	MEDIUM Attention.	Ministry of Police National Health Services Office of the Ombudsman
	1. CCTV cameras in the bathrooms should be removed.	Privacy of prisoners are protected and upheld.	Remove cameras from bathrooms.	IMMEDIATE Attention.	National Health Services

d. Mental Health Treatment Centre	2. Employ skilled doctors and more nurses.	1. The facility has enough qualified/specialised staff to accommodate patient's needs. 2. Doctors and nurses are physically and mentally rejuvenated for work.	Propose to government to revise current staff salaries to entice more skilled/qualified doctors and nurses.	MEDIUM Attention.	National Health Services Ministry of Finance
	3. Develop and implement comprehensive training for all staff.	1. All staffs are educated and increase knowledge, understanding and awareness on relevant areas such as mental health illness, how to handle persons with mental illness etc.	1. Develop and implement relevant trainings (continuous) and engage all staff to participate. 2. Ensure to have regular professional development training.	MEDIUM Attention.	National Health Services
	4. Install a best practice safe room.	Patients are prevented from self harm.	Reassess and report back to the Office of the Ombudsman on the safety of patients in current safe room- lack of padding.	MEDIUM Attention.	National Health Services



12. FOLLOW UP ACTIONS

The following are follow up actions on the recommendations:

- a. The NHRI will share this report with each detention facility and work together to determine how to approach the different issues raised in the recommendations; and
- b. The NHRI will have follow up inspections on specified timeframes to ensure that the recommendations are addressed.

13. ACKNOWLEDGEMENTS

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The inspections were not possible without the support of all heads of detention facilities involved in this report and also officers in charge of each facility:

- (a) Commissioner of Prisons and Corrections Service, Taitosua F E Winstertein and officers in charge of Vaiaata, and Olomanu Juvenile Centre;
- (b) Misa Tauveve Sefo Pati, Inspector on behalf of the Ministry of Police and officers in charge of Tuasivi, Fagamalo, Asau, Palauli and Faleolo Police Outposts; and
- (c) Leota Laki of the National Health Services and Doctor in Charge of the Mental Health Treatment Centre.

14. APPENDICES

Appendix A

Table 1.1 National and International Standards

NATOINAL STANDARDS	INTERNATIONAL STANDARDS
Constitution of the Independent State of Samoa 1960	Universal Declaration of Human Rights adopted by United Nations General Assembly on 10 Dec 1948
Prisons and Corrections Act 2013	Convention on the Elimination of All Forms of Discrimination Against Women adopted by United Nations General Assembly in 1979
Prisons and Corrections Regulations 2014	Convention on the Rights of the Child adopted by the United Nations General Assembly on Nov 20 1989
Mental Health Act 2007	The Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC in its resolutions 633C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977
Police Service Act 2007	The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by the United Nations General Assembly in Resolution 45/111 of Dec 14, 1990
Police Service Regulations 2010	Convention on the Rights of Persons with Disabilities
Prisoners Complaint Business Rules	International Covenant on Civil and Political Rights
	United Nations Standard Minimum Rules for the Administration of Juvenile Detention
	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
	International Convention on the Elimination of All Forms of Racial Discrimination
	International Covenant on Economic, Social and Cultural Rights
	United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

Appendix B

Based on the sources outlined in **Appendix A**, basic standards that are expected to be met by Prisons & Police Custody facilities are outlined in the table below:

a) Material Conditions	b) Hygiene and good health	c) Treatment	d) Activities and Communications	e) Record keeping
i. Accommodation & Security <ul style="list-style-type: none"> Accommodation must meet health requirements with due regard to minimum floor space, lighting, ventilation, and heating. (<i>SMR rule 10</i>); Where dormitories are used, they must be occupied by prisoners suitable to associate with one another. (<i>SMR rule 9(2)</i>); Every prisoner is provided with a separate bed and separate clean bedding (in accordance with local or national norms). (<i>SMR rule 19</i>); Adequate installations of toilet and shower to enable every prisoner to comply with needs of nature and shower frequently. (<i>SMR rules 13,15</i>); Solitary confinement at least 9 sq meters; well 	i. Hygiene <ul style="list-style-type: none"> All parts of the institution regularly used by prisoners must be properly maintained and kept clean (<i>SMR rule 14</i>); Prisoners must be provided with adequate bathing facilities (as frequent as necessary for general hygiene) and toilets (to enable every prisoner to comply with needs of nature in a clean and decent manner). (<i>SMR rules 12-13</i>) ii. Health Care Services <ul style="list-style-type: none"> Prisoners must receive a medical examination within 24 hours of admission or as soon as practicable. (<i>PC Act s.30</i>); Prisoners must be advised of risks associated with transmissible diseases and encouraged to undertake voluntary counselling and 	<ul style="list-style-type: none"> Treatment must encourage prisoner's self-respect and a sense of personal responsibility to re-build their morale, instil good citizenship and hard work. (<i>SMR rule 65</i>); It should allow prisoners to lead a good and useful life after discharge. (<i>PC Act s. 47 (1) (d), SMR rule 65</i>); Appropriate means must be used including education, vocational guidance and training, social casework, employment counselling, religion where relevant, physical development and strengthening of moral character in accordance with individual needs and circumstances. (<i>SMR rules 65-66</i>); If upon admission a prisoner appears to be a young prisoner, the officer in charge must ensure to treat the prisoner as a young prisoner under the PC Act, PC Regulations and the Commissioner's Orders. Furthermore the young prisoner must be treated in accordance with the requirements of the CRC. (<i>PC Act s.26 (6)</i>). i. Labour	i. Educational/Rehabilitation Activities and Outdoor Exercise <ul style="list-style-type: none"> Provision of further education for all prisoners capable of profiting, including religious instruction where relevant. (<i>SMR rule 77 (1)</i>); Compulsory education of illiterate prisoners; Recreational activities must be provided for the benefit of the mental and physical health of prisoners. (<i>SMR rule 78</i>); Prisoners not employed in outdoor labour must have at least 1 hour of suitable exercise in open air per day. (<i>SMR rule 21</i>); Prisoner kept in solitary confinement for more than 2 days are entitled to: 1 hour exercise within confinement area per day, visitation, and reading materials. (<i>PC Regulation, regulation 50</i>) 	<ul style="list-style-type: none"> Medical log book Use of force log book Occurrence book Solitary confinement log book Admissions log book <p>(<i>PC Act s.37, 44 (2) SMR rule 7</i>)</p>

<p>ventilated; contain toilet & wash basin (& if possible a shower); dark cells are prohibited. (<i>PC Regulation, regulation 50 (3), (5)</i>)</p> <ul style="list-style-type: none"> • Prisoners are able to reside in a secure area without threat to their personal safety and where security is proportionate (<i>SMR rules 27, 48, 57</i>) • Searchers and Strip searches shall be carried out in private and by an officer of the same gender (<i>CAT Arts 13 and 16</i>) <p><i>In addition Juveniles:</i></p> <ul style="list-style-type: none"> • have the right to a standard of living that is good enough to meet their physical and mental needs. (<i>CRC Art. 27</i>) <p>ii. Water and food:</p> <ul style="list-style-type: none"> • All prisoners are provided with sufficient basic food and should not be withheld or reduced as a punishment. (<i>SMR rule 21, PC Act s.33</i>); • Food provided must reflect 	<p>testing. (<i>PC Act s.30</i>);</p> <ul style="list-style-type: none"> • Prisoners must be transferred/referred to appropriate medical practitioner if in need of a specialist treatment. (<i>PC Act s.35(3)</i>); • Prisoners suffering from disease/illness or where there is a risk of infection or spread of disease must be held separately. (<i>PC Act s.35 (4)</i>); • There must be provision of other medical services as required: dental, public awareness and education programmes, vaccinations, specific treatment for certain diseases, pharmaceutical services, and support services for infants and mothers. (<i>PC Act s.36</i>); • Prisoners with an infectious disease, serious illness, mental health problem or any disability are treated in a manner which takes into account their basic rights and special needs. (<i>PC Act s.3(h)</i>); • The condition within the 	<ul style="list-style-type: none"> • Prisoners to keep their cells and rooms, common areas, kitchens, toilet and bathing facilities, furniture, clothing and utensils clean and in good repair. (<i>PC Act s. 47(2)</i>); • Prison labour must not be of afflictive nature and be sufficient work of a useful nature. (<i>SMR rule 71</i>); • Labour is aimed at providing meaningful rehabilitation and skills to enhance rehabilitation and opportunities after discharge. (<i>PC Act s. 47 (1) (d)</i>); • Women to undertake labour appropriate for women. (<i>PC Act s. 47 (1) (b)</i>); • Prisoners not to work for more than eight (8) hours each day and at least one day each week must be set aside for rest or recreation. (<i>PC Act 47 (1) (g)</i>). <p><i>In addition Juveniles</i></p> <ul style="list-style-type: none"> • must be protected from work that is dangerous or might harm their health or their education. Work should not jeopardize their rights to education or relaxation or play. (<i>CRC Art.32</i>); • must be engaged with labour that is appropriate for a person of such age. (<i>PC Act s.47 (1) (c)</i>) <p>ii. Classification of Prisoners</p>	<p>(4).</p> <p><i>In addition juveniles:</i></p> <ul style="list-style-type: none"> • have the right to relax and play and join wide range of cultural, artistic and other recreational activities. (<i>CRC Art. 31</i>); • have a right to education which should develop each child's personality, talents and abilities to the fullest. (<i>CRC Art. 28 & Art. 29</i>) <p>ii. Access to communication and outside world</p> <ul style="list-style-type: none"> • Prisoners should be given information as soon as practical after admission on: <ul style="list-style-type: none"> ○ right to appeal, ○ rights of prisoners in custody, ○ prisoners duties/responsibilities/obligations whilst in custody, ○ consequences of bad behaviour, ○ procedure to earn low security classifications, entitlement to privilege and early release, and ○ risks involved in engaging in unsafe sex 	
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<p>the religious and dietary habits of individual prisoners. (<i>PC Act s.33</i>);</p> <ul style="list-style-type: none"> • Food is of wholesome quality, well prepared and served. (<i>SMR rule 20</i>); • Drinking water is available to every prisoner. (<i>SMR rule 20</i>) 	<p>cells should not promote the spread of diseases. (<i>PC Act s.38</i>)</p> <p><i>In addition Juveniles:</i></p> <ul style="list-style-type: none"> • Must have best health care – safe drinking water, nutritious food, clean and safe environment. (<i>CRC Art. 24</i>). 	<ul style="list-style-type: none"> • There must be separation of prisoners for personal safety of any other person, security or good order, discipline within a prison, and containment of any infectious disease. (<i>SMR rules 8, 67, PC Act s.39, PC Regulation, Part 6</i>). <p>iii. Discipline, Punishment, Torture</p> <ul style="list-style-type: none"> • No prisoner should be subjected to: <ul style="list-style-type: none"> ○ corporal punishment in any form, ○ the use of instruments of restraint, ○ withdrawal of basic food rations, ○ denial of sleeping mats and standard bedding, ○ total denial of visitation rights, or ○ denial of the right to communicate with the outside world (<i>PC Act s. 42, SMR rules 31, 33</i>); • Prison offences must be displayed at all prisons at a place(s) where prisoners have access and be in Samoan and English (<i>PC Act s.41 (1)</i>); • Prisoners in solitary confinement must be visited at least twice a day (<i>PC Regulations, regulation 50 (4)</i>). <p><i>In addition Juveniles:</i></p> <ul style="list-style-type: none"> • are not to be punished in a cruel or harmful way. (<i>CRC Art. 37</i>) • should not be put in prison together with adults, be able to keep in contact 	<p>etc. (<i>PC Act s.29, SMR rule 35</i>);</p> <ul style="list-style-type: none"> • Prisoners are informed of methods of seeking information and making complaints (<i>PCB Rules</i>); • Complaints are dealt with in a fair and timely manner (<i>PCB Rules</i>); • Prisoners are allowed to communicate with their family and friends at regular intervals via correspondence and visits (<i>SMR rule 37</i>); • Every prisoner have the right to communicate privately with a lawyer. (<i>BPP, Principle 18</i>) 	
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		<p>with families. (<i>CRC Art. 37</i>)</p> <ul style="list-style-type: none"> • are protected from being hurt and mistreated, physically or mentally; are properly cared for and protected from violence, abuse and neglect; protected from any form of discipline involving violence (it is prohibited). (<i>CRC Art. 19</i>) <p>iv. Use of force</p> <ul style="list-style-type: none"> • Officers not to use force against any prisoner except for: self-defence, escape or attempted escape, when prisoner uses actual or passive resistance. (<i>PC Act s. 44 (1)</i>) <p>Officer not to use force more than necessary in the circumstances. (<i>PC Act s. 44 (2)</i>)</p>		
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