

### INVESTIGATION REPORT APRIL 2016

*“Complaint made by Mr Suitupe Misa on treatment by Police and on own motion into Police use of force and firearms”*



*Caption: Artists' impression of the moment of arrest, based on witness and police interviews.  
Kindly produced by UN Online volunteer Anna Palgan and others.*

## **1. Office of the Ombudsman**

The Office of the Ombudsman is a State institution that is independent of Government. Pursuant to the *Ombudsman Act 2013* (the Ombudsman Act), the Ombudsman holds three main areas of responsibility, all related to overseeing the performance of Government and working with it to identify areas for improvement. The three areas of responsibility are:

- i. *Good Governance*: Investigating and reporting on decision making by public agencies;
- ii. *Human Rights*: Protecting and promoting human rights through education activities, investigations and reporting;
- iii. *Special Investigations Unit*: Investigating and monitoring complaints against individual Police officers and officers of other prescribed forces.

The Ombudsman is concerned with fairness and justice and has wide ranging powers to investigate and report on matters falling within the categories above.

For more information on the role of the Office of the Ombudsman, or to view the Ombudsman Act 2013 please visit [www.ombudsman.gov.ws](http://www.ombudsman.gov.ws).

## **2. How was this Report made?**

The following Report was conducted under the ‘Good Governance’ mandate following a complaint received by the Ombudsman regarding the actions and decision making of the Police.

Under the Ombudsman Act, the Ombudsman was able to summon witnesses to give evidence under oath to the investigation team. The witnesses during this process do not have legal representation because all proceedings are kept confidential unless it is in the public interest or if the matter is already in the public domain. The only criminal charge that can arise from giving evidence to the Ombudsman is that of perjury. Therefore, the only expectation of persons summoned by the Ombudsman to give evidence is that they shall tell the truth.

The powers used to investigate this complaint against the Police are the very same powers used by the Ombudsman to investigate complaints against any other agency of the State as provided under the Ombudsman Act.

In the course of this investigation over 20 witnesses were interviewed, including members of the public present at the scene, attending officers, other officers experienced in investigations and the Commissioner of Police. The interviews took place over several weeks and took in excess of 50 hours. All interviews were video recorded.

It was often the case that some of the witnesses may have had a bias towards a certain viewpoint, either favouring the actions of the Police or in defence of the complainant. These potential biases were taken into account by the investigations team and all

conclusions drawn in the Report have been verified by a variety of witnesses. Where a viewpoint was put forward by a group of people with the same potential bias, or an individual, conclusions were not drawn unless they could be reasonably verified. The Ombudsman is concerned with the truth and with fairness and to take an alternative approach would have been contrary to these principles.

Samoa is a small country and in the course of investigations such as this, potential conflict of interest can arise when an investigator may know a person they are due to question or investigate. In all cases before the Office of the Ombudsman, these potential conflicts are identified in advance and addressed. In this case one officer to be interviewed is the cousin of one of the investigations team and therefore that team member was removed from the process at that stage to avoid the conflict.

Following the conclusion of the investigation, the Commissioner of Police was given the draft report and invited to indicate where the report was not factual or does not reflect the truth. One small factual error was subsequently amended. The Commissioner also chose to raise a number of concerns which can be read in full in Annex A. His points are addressed in the end notes throughout this report. The two officers who are suspected of committing perjury before the investigations team were invited for a second interview. Both maintained their original versions of events.

For more information attached to this Report are the following Annexes:

## **ANNEXURE**

## **DETAILS**

<i>Annex A</i>	Ombudsman letter dated 10 Sept 2016 to Commissioner giving notice of intention to investigate a complaint brought by Suitupe and requested information regarding the complaint.
<i>Annex B</i>	Commissioner letter dated 14 Sept 2016 in response to Ombudsman letter dated 10 Sept 2016.
<i>Annex C</i>	Ombudsman letter dated 16 Sept 2016 acknowledging Commissioner's response and advised him that the Ombudsman will carry out an own motion investigation into the complaint.
<i>Annex D</i>	Ombudsman letter dated 16 Sept 2016 to Minister of Police informing him of investigation.
<i>Annex E</i>	Ombudsman letter dated 15 Feb 2016 to Commissioner attaching draft report of the investigation for comments.
<i>Annex F</i>	Ombudsman letter dated 15 Feb 2016 attaching draft investigation report to Minister of Police for his information and comments.
<i>Annex G</i>	Commissioner letter dated 25 Feb 2016 to Ombudsman outlining his comments to draft investigation report.
<i>Annex H</i>	Ombudsman letter dated 1 March 2016 to Commissioner acknowledging his comments to the draft investigation report.

## **THE INVESTIGATION**

### **3. Introduction**

Tuesday 18<sup>th</sup> August 2015 was a watershed moment in the history of Samoa – it was the day police used<sup>i</sup> firearms in a public place to carry out a pre-planned arrest of an individual for the very first time.<sup>ii</sup> In a scene described as ‘something you only see in Hollywood movies’ Mr Suitupe Misa (shall be referred hereinafter as Suitupe) was arrested at gunpoint by a contingent<sup>iii</sup> of armed plain clothed officers in front of a shocked and distressed Fugalei marketplace. It transpired that the arrested man had committed no crime and the arrest was carried out based on insubstantial and second-hand evidence, raising serious questions over the actions of the Commissioner of Police (shall be referred hereinafter as the Commissioner).

This event occurred against a backdrop of a number of well-publicised events during which it was alleged that the Police used excessive force in the execution of their duties.

*The question for Samoa is this: do we choose to accept and endorse a more forceful and gun orientated approach to policing or do we seek to revert to and strengthen the more traditional approach based on communication and respect?*

This investigation will seek to answer this question by fully examining the complaint made by the arrested individual regarding his treatment at the hands of the police and by considering the current wider use of force and firearms and what it may mean for our country.

### **4. The Law**

The law in Samoa relating to when and how police officers are permitted to use firearms is quite clear. The *Police Powers Act 2007* (the Police Powers Act) delegates the power to the Commissioner to permit an officer to carry a firearm **only when**:

- (a) The Minister has approved the arming of the police officer or person; and
- (b) The police officer or person has satisfactorily carried out appropriate training in the safe use of firearms and dangerous weapons.

The *Police Powers Act* goes on to set out that the Minister may only approve the arming of a police officer in ‘*exceptional circumstances and is otherwise in accordance with relevant police internal orders or rules*’. The relevant rules referred to exist in the form of the *Samoa Police Service Use of Force Policy 2012*. Additionally, during the course of any investigation the Police are guided by the comprehensive ‘*Criminal Investigations Manual*’.

The other area of law relevant to this complaint is with regard to the difference between arrest and detention. To detain a person is a very different matter to placing them under arrest.

In relation to detaining a person, s. 36 of the *Police Powers Act* provides that an officer has the authority to “stop”, “detain” and “search” a person if the officer ‘*suspects on reasonable ground that the person is carrying or has in his/her possession a **thing** relevant to a serious offence*’. So to prevent that **thing** from being concealed, lost or destroyed it is necessary for a police officer to detain the person, search and seize the **thing** (if found) without a warrant because the circumstances are serious and urgent.

However, an arrest occurs, "(w)here a police officer makes it clear to a suspect that he is not free to go and is to be interrogated by the officer on suspicion of a crime, then that person is arrested".<sup>iv</sup>

Police are therefore able to stop and detain a person to conduct a search of that person where they are at that moment in time, whereas an arrest may only occur when the Police have probable cause to suspect the person committed a crime. When a person is arrested they are entitled to certain rights, such as the right to hear the charges against them and access to a lawyer.

This Report will refer to the law, policy and the manual throughout events to assess whether proper procedure was followed.

## **5. The Fugalei Market Arrest: Timeline and Analysis**

### **1.1 Events leading up to the arrest**

The foundations for the arrest of Suitupe were laid several days before the event itself. On 13<sup>th</sup> August 2015 the Minister for Police granted Ministerial approval under s.13 of the *Police Powers Act* to enable the Commissioner to authorise his officers to carry and use firearms. Already at this stage, several areas of concern arise.

Firstly, the Ministerial approval was not limited to “*exceptional circumstances and is otherwise in accordance with relevant police orders or rules*”, as required by the *Police Powers Act*. Instead it was for prescribed officers to ‘have in their possession firearms... in the execution of a warrant pertaining to the search and seizure of large scale narcotics and unlawful firearms... and other special duty authorise (sic) by Commissioner orders or rules **as from 13<sup>th</sup> August 2015 until 13<sup>th</sup> August 2016**’.

The scope of this approval for officers to be armed is clearly and manifestly beyond the purpose imagined by the *Police Powers Act*. ‘Exceptional circumstances’ is an imprecise phrase which is often open to subjective interpretation. The Oxford English Dictionary defines ‘exceptional’ as ‘unusual, or not typical’. The Ministerial approval issued relates specifically to the search and seizure under warrant of **large scale narcotics** and **unlawful firearms** AND generally to special duties authorise (sic) by Commissioner orders or rules. The result of extending the approval essentially hands power to the Commissioner to transform his or her force from an unarmed one to one that is armed for the duration of the Ministerial approval. This not only defeats the purpose of the act but it transfers the decision making power over whether Samoa’s police force should be routinely armed away from Samoa’s elected officials and into the hands of the

Commissioner. The Minister needs to retain the power to authorise the arming of officers for any identified special needs.

This approval was first used a day later on August 14<sup>th</sup> 2015 to execute a drugs raid at Faleatiu. Had the approval been limited to this raid where a set of exceptional circumstances existed then proper process would have been followed.

As will be seen, the Ministerial ‘blanket’ approval of 13 August 2015 was abused within a week by the Commissioner to arm police officers in the unexceptional circumstances of the case under investigation.

*It must be made clear that circumstances do exist where Police require the use of firearms for their own safety and the safety of the public, and this investigation is not suggesting for one moment the total banning of firearms by the police. It is more concerned with ensuring that their use is limited to proper and rightful use within the law.*

Finding 1: The Ministerial approval granted is too broad in scope for the purposes of the *Police Powers Act 2007*.

Two days after the raid on Faleatiu events unfolded that would ultimately lead to the wrongful and unlawful arrest of Suitupe.

On Sunday 16<sup>th</sup> August 2015 a person who we shall refer to as *Witness A* (as they undertook no wrongdoing and ultimately ended up being a victim in their own right) was pulling out of a driveway near their place of residence in Leauvaa and close to where the Minister of Police resides. *Witness A* was accompanied by a number of workers in the tray of the truck. A car pulled up, blocking their way, and a clearly drunk man started shouting from inside of his car. The drunken man was angry about the recent raid conducted at Faleatiu, and for reasons unknown wanted to vent his anger towards *Witness A*. He shouted that it was a good job he himself and the others were not present during the raid and that the Police did not find everything. **According to *Witness A* there was no mention by the angry drunk man of a threat to kill the Minister and the Commissioner.**

The workers started to get out of the tray of the truck to confront the man but *Witness A* calmed them down, telling them it was just a drunk and not worth getting into trouble for. The drunken man eventually tired and went on his way. *Witness A* recognised the drunken man as a former Police officer although was not aware of his name. *Witness A* was, however, well acquainted with Suitupe and clearly knew the drunken man was not him. Regardless, it was not an incident which caused a great deal of concern.

Two days later, at some time before the early afternoon of Tuesday 18<sup>th</sup> August 2015, the Commissioner was in a meeting with the Minister of Police who communicated the events of two days before and either referred to the drunken man as a former officer or identified him as ‘Suitupe’.<sup>v</sup> At some stage a direct threat against the Commissioner and other Ministers was added into the story. We are all familiar with ‘chain whispering’,

where the story dramatically changes as it passes down a line of players. This is exactly why Police rely on first hand evidence as the basis for action wherever possible.

Exactly when and how the story evolved into a direct threat against the Commissioner and others is unclear and other than highlighting the dangers of relying on second hand evidence it is not pivotal to this investigation.

At this point the Commissioner is faced with a decision – whether the reported incident should be treated seriously and if so how best to proceed with the investigation. It is also at this point that events start to become increasingly troubling.

To provide some insight into what may have been the best course of action at this stage the investigation team sought extensive evidence from experienced Police officers in relation to what constitutes normal and best practice, as defined by the *Criminal Investigations Manual*. The Manual states that the role of the Police is to; (1) establish whether or not a crime has been committed and where it was committed using investigative skills (to) establish the identity of the offender; and (2) arrest those suspected of committing crimes and to provide the necessary evidence in accordance with the law to prosecute those responsible.

Therefore an entirely sensible course of action would have been for the Commissioner to call *Witness A* (knowing as he did at the time the identity and contact details of the witness) to provide a formal statement and in full knowledge of the facts decide how best to proceed. By speaking directly with the witness to the event he could have established the exact nature of the reported incident, who the suspect was and whether *Witness A* viewed the incident to be serious in nature. However, the Commissioner instead chose to rush immediately back to Police Headquarters where he quickly assembled the Tactical Operations Section (TOS) to brief them on the reported incident. He did not choose to assemble any Criminal Investigations Division (CID) officers, who have the skills and expertise to handle investigations of this nature.

After assembling the TOS unit the Commissioner explained the nature of the ‘threat’ that had been made against him two days previous. Additionally, during the course of the interview with the Commissioner it was clear that the ‘threat’ was particularly worrying because it was made against him and he worried for his own safety. On numerous occasions when referring to the ‘threat’ he made only mention of himself and the inclusion of Cabinet Ministers and other officers was only occasionally given as an afterthought.

The assembled TOS unit were asked for any information they had on Suitupe and this was duly forthcoming as several had worked with Suitupe when he spent a year working as an officer several years ago. Suitupe’s previous conviction card was also obtained. Suitupe was previously convicted of a threat to kill, where the 5 days spent in custody was treated as his sentence. There were also pending issues that the Police took into account and helped form the view of the Commissioner to locate Suitupe and bring him into the headquarters. Information was provided in relation to his possible whereabouts

given he was known to work for a taxi stand and as a market trader at Fugalei. Two TOS officers were duly dispatched to survey the market and confirm his presence.

The briefing continued and the Commissioner ordered every officer to fully arm themselves in preparation for taking in Suitupe. News quickly arrived from the two dispatched officers that Suitupe was present at the market and the Commissioner immediately ordered everyone into two vehicles as he jumped in his own with his driver, both also armed.<sup>vi</sup>

*An entirely inadequate briefing was given.<sup>vii</sup> No individual roles were assigned. There was no CID involvement, nor any first hand evidence obtained. No warrant existed for Suitupe's arrest. The armed TOS squad moved out.*

The officers present felt under-briefed and rushed. It was clear that insufficient preparation was undertaken by the Commissioner. Extensive evidence was given by experienced officers who displayed a level of professionalism and dedication that the investigation team commends. The normal process for any alleged crime was clearly explained and the high standards that are required of officers both internally and within the criminal justice system to secure a prosecution. A principle from the *Criminal Investigations Manual* was recited on a number of occasions: 'Sources before Resources', emphasising the value of first hand witness statements and other evidence as the basis for any action rather than simply relying on the resources at their disposal.

*By choosing to arrest and handcuff Suitupe at gunpoint without any first hand verifying evidence against him the Commissioner turned the principle of 'Sources before Resources' upside down.*

When questioned by the investigation the Commissioner made it clear he felt any potential crime communicated to him by the Minister of Police must be treated as 100% true, utterly serious and immediately acted upon. Despite the eventual outcome of these events the Commissioner was unrepentant and said he would act the same again in similar circumstances. Conversely, officers interviewed during the investigation stated that it was not handled appropriately and that there were other more suitable approaches that could have been taken. Some expressed anger and dismay with the approach and how it badly reflects on the professionalism of the force.

Finding 2: The Commissioner of Police failed to meet basic investigation principles and placed undue consideration on second hand evidence, leading directly to the wrongful and unlawful arrest of Suitupe.

The Commissioner conceded that *Witness A* could have been called in prior to arresting Suitupe but that the threat was of such a grave nature immediate action was required. This excuse is not accepted by the investigation as the Commissioner contradicted himself by stating he initially thought it could take up to several weeks to identify and locate the right person. Additionally, once Suitupe had been located he was being watched by two officers in a public place (Fugalei Market) from where he was highly



unlikely to launch an assault on anyone, let alone the Commissioner of Police and Ministers. The situation was under control and at that time *Witness A* could have been interviewed to provide the necessary first-hand information. He wasn't.

Let us for one moment consider if a hypothetical situation where *Witness A* had been called to provide formal evidence and had provided firm evidence identifying a suspect, and that suspect was located in a public place. For arguments sake let us suppose that the identified person had a prior conviction for making threats. Would a decision in these circumstances necessitate officers to carry out the arrest at gunpoint?

It is important to restate here that the Police Powers Act sets out that the Minister may only approve the arming of police in '*exceptional circumstances and is otherwise in accordance with relevant police internal orders or rules*'. The arming of Police must be in accordance with internal orders and rules. The Use of Force policy is quite clear in stating that the amount of force used should be the 'minimum amount necessary'. Not one single officer who was interviewed believed the approach ordered by the Commissioner met this principle. It is an approach that has never been used or needed in Samoa before. One officer echoed the majority of the views of the officers interviewed that

*"The main weapon of a police officer ever since I was with the force was the mouth/conversation/speech. But with the team that I am with at the moment, we are armed on instructions of the commissioner and approval of the Minister".*

So why was it used? The Commissioner was firm in his belief that it was entirely necessary and appropriate, claiming that Suitupe may well have had a bazooka in the boot of his taxi and an uzi hidden under his market stall. This is worrying reasoning from a person who supposedly understands the Samoan context and in whom the power to arm officers of the law is entrusted.

Furthermore, when quizzed on under what authority he had ordered his men to be armed the Commissioner was unconvincing in his answers but firm in his belief that the Ministerial approval properly gave him the authority to proceed as he did. Given that his actions did not comply with the Police *Use of Force Policy* in ensuring using the minimum amount of force necessary, his belief was incorrect for this and other reasons. Furthermore, following the arrest the Commissioner made no attempt to find out exactly how many officers had drawn and used their firearms. Nor was a report on the incident ever written.

The Commissioner strongly felt that times are changing in Samoa and that greater use of firearms by the Police is inevitable. However, he demonstrated **little understanding of the potential detrimental impact that premature loosened resort to firearms by the Police may have on this country and the safety of its people.**

It was conveyed to the investigation that people in the market felt that if the Police were regularly going to descend in the manner in which they did to arrest Suitupe then maybe they had better arm themselves too. This is a slippery slope from which there is no way back up and the Commissioner showed no understanding of this, instead dismissing these concerns out of hand.

Finding 3: The Commissioner's decision to arm and allow the use of firearms by his officers contravened the Police *Use of Force Policy*, was irresponsible, and could negatively impact the overall safety and security within Samoa.

## **1.2 The arrest**

Eleven officers, the Commissioner's driver and the Commissioner himself descended upon Fugalei Market at around 3pm on Tuesday 18<sup>th</sup> August 2015. One of the vehicles bore no police markings, the other had minimal markings identifying it as a police vehicle. The officers wore heavy jack boots, a variety of unmarked and different coloured shorts and trousers, navy blue polo shirts with a small police badge on the front and 'POLICE' in 3 inch high letters on the back. Some officers wore marked bullet-proof vests.

The Commissioner provided conflicting evidence on the importance of ensuring clear public understanding during armed arrests of this nature. International best practice is clearly established in that when armed arrests of this nature occur great efforts must be taken to ensure that the public know it is a police operation<sup>viii</sup>. This is in order to reassure the public and prevent the public from taking preventive action which could substantially worsen the situation.

The Commissioner initially appeared to support this approach and indicated he had requested all uniformed traffic officers in the vicinity to come over from the junction near Farmer Joes to provide the necessary visual police presence. However, he acknowledged that he never followed up on that request and had no idea whether it was obeyed. No witness interviewed saw any uniformed officers that day.

Whilst there were small visible signs that this was a police operation in the form of badges on the polo shirts and bullet-proof vests, and the Police vehicles having Police number plates, it is not reasonable to expect that in a high pressure fast moving situation, the likes of which Samoa has never seen before, people were able to focus on the finer details of the scene unfolding before them. The Commissioner stated that at no point was he worried about the safety of the public in the marketplace and showed no understanding of how it may have caused confusion and panic.

The resulting actions and lack of police identification led to one woman being so distressed that she has since suffered serious health issues and has been unable to return to the market, which happens to be her workplace. The Commissioner was surprised to hear of this, yet did not appear concerned.

Finding 4: The Commissioner failed to take appropriate steps to identify the actions of his officers as being part of a police operation, leading to widespread distress and in one case serious health issues.

It is hard to convey the horror that must have been experienced by those unfortunate enough to have been in the marketplace that day as a large group of largely unidentifiable men brandishing guns rushed towards Suitupe. Some of the officers jumped over the stall with their guns drawn, some army rolled underneath – it truly was like something out of a movie. Before anyone could draw breath Suitupe, who was opening a niu at the time, had a gun inches away pointed at his head by Officer X, and Officer Y pointing at him with his firearm from two or three feet away.

*“I thought we were being invaded by a foreign army.”*

*Witness to the arrest of Suitupe Misa*

The officers did not identify themselves as Police. They did not tell Suitupe who they were or why he was being arrested (Officer X claimed unconvincingly otherwise), Officer Y waved his gun around wildly to control the crowd. Suitupe petrified that if he moved it would be the last move he ever made, stared straight ahead and prayed for the best. Children were crying and many people were visibly upset.

Finding 5: The actions of the Officers X and Y in drawing their weapons were contrary to the Use of Force Policy and their failure to inform the complainant of his legal rights or reason for arrest contrary to the Police Powers Act 2007 and the Constitution of Samoa.

Suitupe, hands above his head and fearing for his life, was asked to confirm his name before being handcuffed and dragged off to the waiting police vehicle. During this time one of the officers ordered another to seize Suitupe’s taxi. Two officers jumped in it and drove off to the station – there was no legal basis for this action.

*The arrest lasted a matter of minutes. However, the series of failures leading up to and during the arrest and the potential consequences are numerous.*

The Police *Criminal Investigations Manual* states that ‘arresting a person and taking away their liberty is a serious step to take. All police members are to exercise this power with common sense’.

But let us pause – was this an arrest or merely a detention? The Commissioner in this regard is quite clear. Suitupe was only detained and there was definitely **no arrest**. Therefore, he contends, there was no legal requirement to read Suitupe his rights nor tell him the reason for his detention. For one, the Commissioner points out, there was no probable cause, which is required to make an arrest. Why was there no probable cause? Quite simply, because the Commissioner had wilfully failed to verify the second-hand evidence against Suitupe.

More worryingly is the Commissioner's understanding of detention versus arrest and his lack of clarity in communicating the nature of the operation to his TOS officers.

All of the officers on the operation are unequivocal in stating that they were sent to Fugalei Market by the Commissioner to **arrest** Suitupe and some efforts were made to cover up the lack of regard that was paid to the proper process in arresting him. Furthermore, the lack of briefing and assignment of specific roles led to great confusion among the officers about why they were to arrest Suitupe with one officer who was not at the briefing claiming that he was given a gun in the car yet he had no idea what Suitupe was supposed to have done. He was only aware of the situation when he overheard the conversations amongst officers in the car when they were on their way to the market to bring a person that made threatening words to the Minister of Police and Commissioner.

Finding 6: The lack of a proper briefing by the Commissioner led to confusion and misunderstanding by his officers about the operation, endangering the safety of the public. No clear guidance was provided on whether they were to detain or arrest Suitupe with the only clear instruction being to arm themselves.<sup>ix</sup>

In addition to the Commissioner's decision to arm his officers for a routine arrest and totally inappropriate and insubstantial preparations one of the most concerning aspects of this whole investigation is his fundamental lack of understanding of law and procedure in Samoa with regard to detention and arrest.

Adamant in his evidence that Suitupe was only detained and not arrested paints a very clear picture of a Commissioner who fails to grasp one of the basic concepts of law enforcement in the jurisdiction.

This Report has already described the law around detention versus arrest and how a detainment may be made to search for an item or thing which, if found, may give Police probable cause for arrest. Does that mean that a person can be taken by Police to a different location? To be handcuffed? At gunpoint? It most certainly does not, yet the Commissioner demonstrated no comprehension of this in either his actions or his evidence.

The law states if an officer reasonably believes a person to be carrying a stolen item they may:

- (a) *stop and detain* the person; and
- (b) *conduct a search* of the person for the relevant thing; and
- (c) *seize the thing* if the officer finds it.

As soon as a person is deprived of their liberty then it is taken that an arrest has occurred. In the case of Suitupe there is absolutely no doubt whatsoever that he was placed under arrest. The only person who holds such a doubt is the Commissioner.

Finding 7: The Commissioner does not have an understanding of the basic laws regarding arrest and detention in Samoa.

Given that the actions of the Police constitute an arrest of Suitupe and that there was no probable cause for arrest and he was not read his rights nor informed of the reason for his arrest it can only be concluded that this arrest was unlawful and improperly carried out.

**Finding 8: The arrest of Suitupe Misa was unlawful and improperly undertaken and therefore violated his fundamental human right to liberty.**

*Traditional policing methods in Samoa are based around one fundamental concept: communication. Officers are taught to use the power of communication to build community relations, uncover the facts of a case and remain in control of any situation. It is an approach borne out of the faasmoa principle of feavaa'i (mutual respect), which is demanded of all Samoans. It is a type of respect that is shown not only in the manner of talking but also in the body language of the person.*

By focusing on communication and respecting the principle of feavaa'i the officers, except in cases of pre-planned raids, have never previously had to resort to tactics such as the ones deployed at Fugalei market and the reason why various sources report Police enjoy such high regard from their peers when they serve on overseas missions. A common theme among the witnesses who gave evidence in this investigation was that they had never seen an approach like this before. Indeed, many of the officers themselves were concerned by the approach and stated there were other means by which the whole matter could have been handled. The *Use of Force Policy* dictates that only the minimum necessary use of force must be used in the exercise of duties. It is clear that the directions and lack of an adequate tactical briefing given by the Commissioner resulted in the abandonment of this principle by Samoa Police.

**Finding 9: Under the orders of the Commissioner, the actions taken by the officers were contrary to established procedurals and Samoan methods of policing and did not meet the requirement of 'minimum necessary use of force'.**

### **1.3 After the Arrest**

During the drive back to the police station Suitupe sat in the back of the Prado – shocked, confused and above all frightened. The officers accompanying him remained silent. Some of them knew him from his time as a colleague of theirs and stated they were ashamed with the manner of his arrest. None of them wanted to make eye contact, let alone speak – the traditional reliance on good communication had been completely removed as a direct result of the Commissioner's lack of verifying evidence and insistence on arrest at gunpoint.

At the station Suitupe was accompanied into the CID division by two of the arresting officers and instructed to sit on the floor, still handcuffed. The two officers turned to leave but were called back by the on-duty CID officer asking for an explanation as to what he had been arrested for and what they were supposed to do with him. The arresting officers were unable to give an answer, having not been properly briefed by the

Commissioner beforehand. At that moment Officer X walked in and was able to inform CID that the arrest had been carried out on the Commissioner's orders and a heated debate ensued<sup>x</sup> over whether reasonable grounds for the arrest existed.

The CID officer, concerned for Suitupe's welfare, took the opportunity to inform him of the reasons for his arrest and his legal rights. This was the first time Suitupe had been given this information.

During this period several TOS officers were coming through the CID division, heavily armed and clearly high on adrenaline from the exhilarating arrest that took place. Officer X had procured a knife from somewhere and it was tucked in front of his vest. It is well documented that in pressure situations where officers are armed, reactions like this occur and a type of tunnel vision can occur. This is the reason why armed officers should be well trained so that discipline and order are instinctive and second nature. Unfortunately the Commissioner did not seem overly keen to instil this within his officers and when questioned about the knife displayed by Officer X responded that he must have obtained it himself and confirmed it was not standard service issue, yet he was happy with his officers to do that because sometimes "you just need to do whatever you need to protect yourself". Let us be clear here – the Commissioner is quite happy for his officers to take their own weapons to carry out unlawful arrests in public places in Samoa. Alarm bells are ringing.

Where was the Commissioner while all of this unfolded? He had retreated to his office.<sup>xi</sup> He was unaware of the chaos that was ensuing as a result of his failings. He was genuinely surprised when it was put to him by the investigation team that during the whole time Suitupe was in custody he had not been questioned by any officer. No-one, least of all the Commissioner, was in control of the high drama situation.

Finding 10: The Commissioner was not in control of his own (unlawful) operation or his officers. Without this control the officers acted wildly and improperly and the rights of the complainant and the public were violated.

Returning to events; shortly after Suitupe was brought to the station a call was made to *Witness A* requesting they come to the station to identify Suitupe. *Witness A* had no prior knowledge of the impending arrest and nor had he spoken with the police about the person who made the 'threat'.

Upon arrival at the station *Witness A* was informed that they 'had Suitupe'. *Witness A* froze in his tracks – he knew only one person with that name and knew full well this was not the man who he had encountered. Peering around the corner of the CID office, witness A's worst fears were confirmed. Instead of the drunken man, sat his friend – the wrong man. Unable to face Suitupe, witness A turned instead to confront Officer X.

*“If they had showed me photos of previous police officers I could have identified the correct man, I was worried I would be implicated in the wrongful arrest of my friend.”*

*Witness A*

After the departure of Witness A, a CID officer turned to confront Officer X and angrily pointed out that they had endangered *Witness A's* life. Not only had they involved him in the wrongful and unlawful arrest of one of his friends but they had failed to detain the actual person of interest. *Witness A* became an even greater victim several weeks later when it was reported in the press that the Police were considering charges against an informant for the provision of false evidence. Whether the Police issued this statement or not, they had a duty of care to *Witness A* to clarify this story and failed to do so.

Why then was the correct person not sought after *Witness A* had come to the station, telling them he could identify the right person? The answer may lie in the Commissioner's response to this question during interview. He is still of the firm belief that they got the right person in Suitupe and that *Witness A* simply changed his story for a reason the Commissioner can't explain. The Commissioner has drawn this conclusion from having never spoken to *Witness A* at any time and testified that it was his “**gut feeling**”.

If the Commissioner believes they got the right person initially then why did he not seek to speak to *Witness A* and get him to tell him the truth, which would have given him probable cause to re-arrest Suitupe for threat to kill? The Commissioner at this point believes that *Witness A* himself should come in the office and tell them the truth instead of the Police calling him in for further questioning.

Maybe it was because he had become too busy, as he claimed to the investigation. But too busy to chase the person who only that morning he had deemed such a threat that he fully armed a large squad of his men and stormed the market place? It does not add up. Maybe it was because he had achieved his goal of intimidating Suitupe or whoever it may have been by his ready resort to guns. Maybe we will never understand his motivation. What we do know is that his actions were not within the confines of the law, the Police *Use of Force Policy* or in line with the *Criminal Investigations Manual*. We also know that Suitupe did not deserve the treatment he endured at the whim of the Commissioner.

Finding 11: The decision not to formally interview Witness A or take any further action by the Commissioner raises serious concerns about the process and motivations for this operation.

After it became abundantly clear to the CID officers that a mistake had been made, not only in the unjustified arrest of a man, but in the manner of that arrest, Suitupe was immediately released. He was handed the keys to his taxi, which he still erroneously believed was where he had left it at the market, and drove back to his stall.

*During the entire time Suitupe spent at the station he was not interviewed and would have been completely unaware of the reasons for his arrest had it not been for the professionalism of the CID officers.*

Upon his return to the marketplace there were emotional scenes. It is not overly-dramatic to report that many thought they would never see their friend again. A communal sense of disempowerment and violation hung heavy in the air. There was a feeling among the able-bodied that they had not been able to meet their obligation to one another of *fepuipua'i* (mutual protection). There were tears and hugs. The marketplace has not been the same since and many witnesses interviewed noted the change that has occurred in Suitupe as a result of his treatment at the hands of the Police.

Finding 12: The actions of the police had a significant negative impact on the psychological health and well-being of Suitupe and violated his right to freedom from cruel or degrading treatment. They took their toll also on the emotional well-being of the close-knit market community.

## **2. The wider use of the coercive powers of the State and matters of perjury**

### **2.1 The use of force by Police**

A concern of this investigation is not simply whether the Suitupe Misa case was handled improperly or unlawfully but whether practices displayed during the arrest are symptomatic of a change in approach to policing generally.

There have been public calls to include a number of cases of police use of firearms currently being investigated by the Police Professional Standards Unit. These ongoing cases demonstrate in themselves a greater resort to the use of firearms in ordinary cases, and for reasons of time this Report does not wish to look into the details of matters currently under consideration. However, this investigation in itself will surely have curtailed this unwanted trend from continuing.

One area that the investigation was able to look into, however, was the increased use in the handcuffing of arrested individuals. It was reported to the investigation team by a number of experienced officers that handcuffs in Samoa have historically only been used for escaped prisoners or repeat offenders. In other words when there is no other course of action which guarantees the safety of the officers, the public and the suspect.

A pattern of greater use of handcuffs emerged before the investigations team and was confirmed by the officers who were interviewed. Take for example the case of Suitupe. Was it really necessary to handcuff him in front of a packed marketplace when he had two guns pointed at him and was surrounded by 11 officers?

It reflects a trend towards the greater use of handcuffs and away from the reliance on communication and mutual respect. The Commissioner was quick to point out that times are changing in Samoa and that is indeed true, with some terrible and violent crimes having been committed over the past year. It is also crucial that our Police remain safe in



the exercise of their duties. However, it is also true that policy changes such as this must be well-thought out, considerate of cultural norms and mindful of using the ‘minimum necessary amount of force’.

The Commissioner conveyed several times in his interview that times are changing in Samoa and that we can’t fight it so it is best to be prepared. However, Samoan culture has policed our society for generations and what has proven to work for the Police should not be rejected out of hand.

**Finding 13: The use of handcuffs has increased at the command of the Commissioner and without proper consideration of actual need and cultural norms.**

In his interview the Commissioner gave the very strong impression that he believed policing in the style of his previous jurisdiction, Los Angeles, was inevitable in Samoa and that preparing for this eventuality was essential. However, by escalating the use of force and firearms in the conduct of regular Police business this leads to a loss of public safety and an environment in which people are more likely to alienate and be confrontational towards police and to considering being armed themselves.

## **2.2 New recruit training**

All new Police recruits are required to undergo a rigorous training program covering all aspects of policing, which includes weekly physical and theoretical tests. Not all those who begin the process make the required grade but for those who do it is a critical and impressionable time for them in terms of their career.

The involvement of the Commissioner in the training process was brought to the attention of the investigation team – in one instance in a favourable way and in another in a not quite so favourable way. Both are worth highlighting for the purposes of this wider investigation.

It was reported to the team by a number of witnesses the great pride and encouragement that the Commissioner demonstrated towards the recruits during their training and that one of the key principles he regularly stressed was that of always making sure you do the right thing, even if that means questioning a senior officer.

In 2014, as a result of the 3 year old in custody case, the Ombudsman highlighted the blind obedience displayed by some officers and called for greater willingness among officers to question their superiors if they believed an order to be wrong. In the training process the Commissioner relayed the story of a junior officer who destroyed case evidence on the command of his superior officer, strongly stressing the need and ways of questioning orders if they can reasonably be believed to be wrong.

**Finding 14: The Commissioner’s commitment towards changing the culture of questioning superior commands is commendable**

The Commissioner also made his presence felt following two days of crowd control and public order training at Apia Park. Congratulating the recruits on an excellent job he went on to demonstrate the next level up in seriousness from what they had been learning.

At that stage they had been taught how to control violent situations by restricting baton strikes to around a person's lower body – and this is all that the current law in Samoa allows for.

Regardless, the Commissioner went on to demonstrate how to use a baton in a full-scale riot situation, showing how you should use the baton in any way you can including by smashing it back into a person's face and head. When questioned, the Commissioner stated that inevitably that type of situation will arise in Samoa in the future and that it is best the recruits are fully prepared. But will it and is it? Will Samoa really see the full scale riots like in LA that the Commissioner was so keen to relate to? And is it best if the new recruits are prepared for this now? It was unclear how his comments were interpreted by the 50-60 people there that evening. Some thought he was joking, some that he was deadly serious. Is it not more likely to be the case that if these new recruits are shown how to use the baton in this way at such an impressionable time, and by their Commissioner no less, that they will deploy these techniques? And that if these techniques are deployed where it is not strictly necessary that it will create further civil unrest and greater divisions between the Police and the communities they serve? It is the contention of this investigation that it would.

Finding 15: The Commissioner was irresponsible in his address to the new recruits and his actions could undermine the future security and safety of Samoa.

### **2.3 Perjury**

As per s. 43 (2) (a) of the Act, the Ombudsman may summon and examine on oath any person believed to possess relevant information. All of the witnesses called to give evidence were required to swear on oath that the evidence they gave would be the truth, the whole truth and nothing but the truth. Each witness was explained the consequences of lying under oath and that perjury charges may arise should it later be shown that they provided false information.

Regardless of this, in the course of interviewing numerous witnesses as part of this investigation it became clear that some were being economical with the truth and others telling outright lies.

It is not reasonable to expect that people will be able to remember every detail of past events exactly as it happened.

*What is reasonable to expect, however, is that people will not deliberately mislead or lie. We should reasonably expect people to tell the truth in the normal course of everyday life, let alone as part of an investigation which has serious long-term repercussions for the liberty and security of every person in Samoa.*

The Office of the Ombudsman has never before invoked s (43) (2) (a) of the Act and it is unfortunate that the evidence provided by certain persons during this investigation leaves little option. Three cases of suspected perjury were detected. All three are Police officers. In the case of one officer the evidence provided was so completely at odds with all other evidence received that it is concluded that the pressure of giving a sworn statement led to confusion and panic. No further action will be taken in this case.

In the case of the other two officers they were invited back for a second interview to be told of the contradicting evidence that had been collected and, in the spirit of natural justice and fairness, given the opportunity to review their original statements. In both cases they chose to confirm their original evidence and consequently the Ombudsman will be referring these cases to the Director of Public Prosecutions for consideration of a charge of perjury.

### **3. Comparative analysis of use of force and firearms**

The investigation into Suitupe's complaint has highlighted serious issues in relation to many of the decisions taken by the Commissioner that led to his unlawful and wrongful arrest. The evidence given by the Commissioner also indicates that in his view it is inevitable that there will be greater use of firearms by Police in Samoa in the coming years. With the current Commissioner at the helm this investigation does not doubt this.

Regardless of the numerous failings in this individual case it is an opportune moment to consider what the best policy for Police use of firearms is and it is helpful to consider the approach taken in other jurisdictions in coming to a conclusion.

The UK bases their policy on the use of firearms and force on international best practice standards where use of a weapon by an officer requires special authorisation<sup>xii</sup>. This keeps usage down to an absolute minimum, consistent with public safety. In both New Zealand and the UK any use of firearms must be justified before any action if there is time to do so and retrospectively if immediate action is required. In both countries the level of justification is very similar – the decision maker (whether that be an individual officer or a commanding officer who chooses to arm his people for an operation) must show that it was a method of last resort. This is a very high threshold that is strictly enforced.

*“Police officers must only resort to the use of firearms if other means remain ineffective, or there is no realistic prospect of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury.”<sup>xiii</sup>*

For officers in either country it is drilled into them from the very first day of their training that they must always consider the *least forceful method* of apprehending a suspect before considering the next level of seriousness in the use of force. They will always have to justify their decision after the event, whether it be a split-second decision or tactical operational decision.

In Australia firearm laws are the responsibility of individual State governments and while all officers are allowed to be routinely armed, the guidelines for using force and firearms hold many similarities with New Zealand and the UK. The Australian Federal Police state that ‘using reasonable force underpins... the AFP use of force model’<sup>xiv</sup> and the Queensland State guidelines build on that by ordering that Police officers shall not use firearms against another person except in self-defence or defence of others against the imminent threat of death or serious injury’.<sup>xv</sup>

Whilst the policy on officers carrying firearms may be different, the circumstances in which they may be used and the wider use of force policy is almost identical, and the majority of developed States work towards these international standards also. What is also identical is the strict application of these policies and guidelines and the holding to account of any officer who uses force in the course of their duties. In essence these countries have strong guiding principles in line with international best practice and strongly enforce them.

Let us compare that with another jurisdiction – the United States, where Police use of firearms varies from State to State. Regardless, it has recently been found that every single State fails to comply with international standards, 13 fall below even lower standards enshrined within U.S constitutional law and **nine States currently have no laws at all to deal with the issue.**<sup>xvi</sup> Amnesty International reported that ‘none of the laws establish the requirement that lethal force may only be used as a last resort with non-violent means and less harmful means to be tried first’. Additionally the lower standards do not require the officer to have ‘probable cause’ to believe a suspect poses a significant threat of death or serious physical injury to the officer or others.<sup>xvii</sup>

The comparison with other countries is useful to us because Samoa currently has law, policies, guidelines and standards similar to that of Australia, New Zealand and the UK. However, in the case of Suitupe there was no probable cause, nor was the use of firearms the least forcible course of action to deal with the situation. Furthermore there was no written report made of the incident after it occurred. Not one officer other than the Commissioner believed the approach taken to be the only approach to arrest Suitupe and a number stated their concern that it was excessive. The Commissioner is clearly keen for Samoa to adopt the U.S style of policing and that this may not be a popular view among his officers.

The Commissioner was quite clear in his evidence which approach he favours and that **he believes he is being given carte blanche to use firearms as he sees fit and proper – the ultimate decision maker.** There is only one jurisdiction in the developed world that takes remotely this approach and that is the United States. This is also the only country the Commissioner has previously worked in and the one he clearly aspires to emulate here in Samoa. He has also demonstrated that he is willing to ignore not only the principles of the use of force policy in Samoa but work outside the legal framework under which he is employed to discharge his functions.

Finding 16: The Commissioner of Police believes an American style approach to policing and use of firearms leads to greater safety and public security and that the overall record of the police in the U.S in this respect is very good despite overwhelming evidence to the contrary.

By looking at which approach leads to a safer and more secure society we can be better informed in coming to an answer to the question posed at the beginning of the report: do we choose to accept and endorse greater use of firearms and force by the police with lower levels of justification or do we strengthen existing and traditional practices and policies?

So which approach does lead to greater levels of safety and security, both for the public and the police officers themselves? It is quite clear that the lower the threshold for police use of firearms, the greater number of deaths there are at the hands of the police. The number of fatal police shootings per 10 million people is:

US – 35<sup>xviii</sup>

Australia – 2.7<sup>xix</sup>

New Zealand – 2.2<sup>xx</sup>

UK – 0.18<sup>xxi</sup>

*Police in the US (population 316m) killed more people in the first 24 days of 2015 than police in the UK (population 56.9m) killed in the past 24 years.<sup>xxii</sup>*

Does this greater use of firearms by the police in the US lead to lower crime levels? One would certainly hope so given the human cost, however this is not the case. In 2012 the number of homicides in the US per 100,000 people was 6.2<sup>xxiii</sup>, compared with 1.1 in Australia<sup>xxiv</sup>, 1.0 in the UK<sup>xxv</sup> and 0.9 in New Zealand<sup>xxvi</sup>. Levels of homicide are not the only indicator of public safety and freedom, but other statistics support the conclusion that greater use of force and firearms does more harm than good. The Legatum Prosperity Index<sup>xxvii</sup> ranks 142 countries in a variety of areas – the US clearly comes out worst in our comparison in the areas relating to safety & security and personal freedom.

	Safety & Security (Global Ranking)	Personal Freedom
Australia	16 <sup>th</sup>	3 <sup>rd</sup>
New Zealand	10 <sup>th</sup>	1 <sup>st</sup>
UK	21 <sup>st</sup>	10 <sup>th</sup>
US	31 <sup>st</sup>	21 <sup>st</sup>

It is very easy to find statistics to prove any point. Finding statistics to prove greater public safety by adopting a US approach to policing may well just be the exception to that rule. Whichever way you look at it, greater use of force and firearms leads to greater deaths, less public safety, no impact on overall crime and worse personal freedom.

Samoa Police have never used firearms to carry out a pre-planned arrest of an individual in a public place before – there has never been any need for such an approach. **There was no need in this case either, yet it was done.** The techniques previously employed by officers drew on the faasamoa and the power of communication. We can see from these statistics that this approach even works well in countries which don't have our rich culture as an additional foundation.

*“In New Zealand we have a style of policing that is termed policing by consent; in that the public trust and respect... officers to effect arrests without recourse to firearms. (T)he police trust the public with their safety, which in turn facilitates public trust of the police.”<sup>xxviii</sup>*

The comprehensive answer to the original question in this report must surely therefore be NO: we should not choose to embrace greater use of firearms and force by our Police with less accountability. The Commissioner has come out in strong support of the opposite viewpoint during this investigation and demonstrated a willingness to ignore laws and policy to implement that view.

Finding 17: Traditional Samoan methods of policing, in accordance with international standards and best practice lead to safer and more secure societies and it is this approach which must remain in place and strengthened for the future.

The final question that remains is whether we can strengthen and improve our existing system. It is evident that most of the necessary ingredients are already there: a use of force policy, a legislative framework, a degree of training on use of firearms for recruits. However, the investigation uncovered a few areas for improvement, the most notable being the legislative framework under which the police operate.

The *Police Powers Act* requires Ministerial approval to be in operation any time officers use firearms in the course of their duty. Whilst this is appropriate for operations that can be planned well in advance, or for thematic operations such as large scale narcotics raids over a period of time. However, what about a situation where police are required to immediately respond to a developing situation where a suspect is armed? There would be no time to obtain the Ministerial approval and it would not be safe for the officers to approach the situation unarmed. The alternative would be for them to act in an unlawful manner, simply to protect their own safety and this is not right.

The approach taken by most other jurisdictions is to have two contexts when police are authorised to use firearms. The first is by prior approval and the second is in **clearly defined circumstances which then require retrospective justification by the officer or officers involved.** Samoa is clearly in need of refining the Police Powers Act to allow

for this second set of circumstances under which the use of firearms is permitted and accountability mechanisms for each time it is used.

Finding 18: The *Police Powers Act* does not give sufficient powers to the police in the use of firearms.

#### 4. Findings and recommendations

This investigation has made a series of serious findings that will require follow up action. The most serious involve the findings that the arrest of Suitupe was wrongful and unlawful, the use of firearms was not permissible and reflects a worrying trend under the new Commissioner to a US style of policing that is demonstrated to have a negative impact on public safety and security. The actions of the Commissioner leave a lot to be desired, as do the actions of some of the officers during the arrest and their subsequent involvement in this investigation.

Where it is appropriate, recommendations are made below in relation to the findings.

*Table of Findings:*

Finding 1:	The Ministerial approval granted is too broad in scope for the purposes of the Police Act 2007
Finding 2:	The Commissioner of Police failed to meet basic investigation principles and placed undue consideration on second hand evidence, leading directly to the wrongful and unlawful arrest of Suitupe.
Finding 3:	The Commissioner’s decision to arm and allow the use of firearms by his officers contravened the Use of Force policy, was irresponsible, and could negatively impact the overall safety and security within Samoa.
Finding 4:	The Commissioner failed to take appropriate steps to identify the actions of his officers as being part of a police operation, leading to widespread distress and in one case serious health issues.
Finding 5:	The actions of the Officers X and Y in drawing their weapons was contrary to the Use of Force Policy and their failure to inform the complainant of his legal rights or reason for arrest contrary to the Police Powers Act 2007.
Finding 6:	The lack of a proper briefing by the Commissioner led to confusion and misunderstanding by his officers about the operation, endangering the safety of the public. No clear guidance was provided on whether they were to detain or arrest Suitupe with the only clear instruction being to arm themselves.
Finding 7:	The Commissioner does not have an understanding of the basic laws

	regarding arrest and detention in Samoa.
Finding 8:	The arrest of Suitupe was unlawful and improperly undertaken and therefore violated his fundamental human right to liberty.
Finding 9:	Under the orders of the Commissioner, the actions taken by the officers were contrary to established procedures and Samoan methods of policing and did not meet the requirement of ‘minimum necessary use of force’.
Finding 10:	The Commissioner was not in control of his own (unlawful) operation or his officers. Without this control the officers acted wildly and improperly and the rights of the complainant and the public were violated.
Finding 11:	The decision not to formally interview Witness A or take any further action by the Commissioner raises serious concerns about the process and motivations for this operation.
Finding 12:	The actions of the police had a significant negative impact on the psychological health and well-being of Suitupe and violated his right to freedom from cruel or degrading treatment. They took their toll also on the emotional well-being of the close-knit market community.
Finding 13:	The use of handcuffs has increased at the command of the Commissioner and without proper consideration of actual need and cultural norms.
Finding 14:	The Commissioner’s commitment towards changing the culture of questioning superior commands is commendable
Finding 15:	The Commissioner was irresponsible in his address to the new recruits and his actions could undermine the future security and safety of Samoa.
Finding 16:	The Commissioner of Police believes an American style approach to policing and use of firearms leads to greater safety and public security and that the overall record of the police in the U.S in this respect is very good despite overwhelming evidence to the contrary.
Finding 17:	Traditional Samoan methods of policing, in accordance with international standards and best practice lead to safer and more secure societies and it is this approach which must remain in place and strengthened for the future.
Finding 18:	The <i>Police Powers Act</i> does not give sufficient powers to the police in the use of firearms.



The above table of findings makes for grim reading and clearly demonstrates a series of errors of judgment and unlawful actions that are nowhere near what we should be able to expect from our Police force.

It is without question that the more serious of these issues must be addressed. The unlawful nature of the arrest, the Commissioner's lack of understanding of the law and the failings in the investigation. Whether this happens in the public domain or behind closed doors, it does not matter. What matters is that it happens sooner rather than later to prevent Samoa going further down the path towards a style of policing that will undoubtedly undermine our culture and lead to a more fearful and less secure society, as has been demonstrated in many other jurisdictions.

### **Recommendations:**

Aside from the action that common sense indicates must be taken this Report recommends the following:

1. The Ministerial Approval be immediately revoked and reissued with the scope confined to large scale narcotics and firearms raids where a warrant exists and clearly specified special duties.
2. Section 13 of the *Police Powers Act* to be reviewed by the Ministry of Police, in consultation with the Office of the Attorney General, to prescribe a clearer process and parameters for issuing authorizations for the use of firearms, and the inclusion of a provision and guidelines for use of firearms in urgent situations without prior Ministerial approval. Such provision should include a clear accounting process for justification after each use of firearms by police.
3. What Suitupe endured on Tuesday 18 August 2015 was unlawful as this Report clearly shows. Members of the public are sometimes adversely affected by wrongful actions of the Police. This is unfortunate but these things do happen from time to time. Suitupe deserves an apology from the Police but an apology is only meaningful if it is genuine and sincere. At any rate I make no recommendation concerning Suitupe. It is not much but at least something that this Report vindicates him and his unhappiness with the Police.

Furthermore, the Office of the Ombudsman will be referring two Police officers who provided evidence to the Director of Public Prosecutions (DPP) on a charge of perjury. The DPP will decide whether there is a case to answer and if it is in the public interest to pursue the charge. The Ombudsman would like to make it clear that anyone providing sworn evidence before his Office is expected to tell the truth, the whole truth and nothing but the truth. Those who do not can expect similar consequences.

## 5. Conclusion

This very sorry affair has highlighted a dangerous trend towards greater use of firearms by the Police, a tendency towards an American style of policing (America has its own set of circumstances) and a disregard for the law within our law enforcement agency.

However, it is now up to the relevant people to ensure that this type of incident does not occur again. It is also up to each and every one of us to work towards greater community engagement with our Police officers. Without trust and support, law enforcement becomes reliant on use of force rather than communication. Guns, rather than words. There will be times when fear makes it tempting to call for greater use of firearms by the Police but let us draw strength from the fa'asamoa and from examples around the world such as New Zealand and the United Kingdom and be resolute in our commitment to peaceful and respectful law enforcement.



Maiava Iulai Toma  
Ombudsman

11 April 2016

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<sup>i</sup> In the Commissioner's written response to the first draft of the report the states the wording of the report in saying firearms had been 'used' gives the impression they were discharged. As the report goes on to explain, international law defines the use of firearms as when they are either drawn or discharged. At no point does the report state that the firearms were discharged. In deciding what course of action should take the officers need to apply the SPS Use of Force Policy which states "police officers must only resort to the use of firearms if other means remain ineffective". By drawing their weapons, the officers were 'using' their weapons when it has been established other means would have been effective, thereby contradicting the Use of Force Policy.

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- <sup>ii</sup> The first draft report contained slightly different wording and the Commissioner highlighted several cases where arrests had occurred at gunpoint. The wording was amended to reflect the precise nature of the arrest in that it was pre-planned and of an individual. The Commissioner did not provide any examples of previous arrests of this nature.
- <sup>iii</sup> In his written response to the first draft of the report the Commissioner questions whether Suitupe could have been arrested by a ‘contingent’ of armed officers when only 4 were armed. The definition of a ‘contingent’ is *a group of people sharing a common feature, forming part of a larger group*. The officers had the common feature of being armed and formed part of a larger operational unit therefore the definition is valid. Furthermore, in his sworn evidence the Commissioner is unable to confirm how many officers were armed that day stating he was unable to confirm whether it was all or only a few.
- <sup>iv</sup> *Police v Valaau [1998] WSSC 18 (1 July 1998)*
- <sup>v</sup> In his written response to the first draft of the report the Commissioner states that he was informed Suitupe’s full name, employment history and village. This is in contradiction of the sworn evidence he gave and that of a number of other sworn witnesses.
- <sup>vi</sup> In his written response to the first draft of the report the Commissioner questions whether this is known for a fact or is an assumption. The report does not draw assumptions; rather it uses evidence from a range of witnesses to deduce events. In this matter evidence was provided by a number of witnesses who confirmed the Commissioner was armed. Furthermore, the Commissioner was given the opportunity to correct any factual errors after the first draft of the report and did not choose to do so on this matter.
- <sup>vii</sup> In his written response to the first draft of the report the Commissioner refutes the lack of a tactical plan. However, this was not supported by any of the other evidence provided to the investigation, not least when considering every officer involved believed they were there to arrest Suitupe rather than merely detain him.
- <sup>viii</sup> For example, see ‘Human Rights Standards and the Police’ (OHCHR), p.25, found at <http://www.ohchr.org/Documents/Publications/training5Add3en.pdf>
- <sup>ix</sup> In his written response to the first draft of the report the Commissioner spends considerable time arguing that Suitupe was not arrested at any point. He fails to address the report findings that this could not have been a detention due to the nature of events, specifically that Suitupe was forcibly removed from the place he was stopped and held in the station for over an hour. The report outlines how this does not fall within the definition of detention in most jurisdictions, including Samoa. The fact he was taken at gunpoint and in handcuffs further strengthens this point. The Commissioner, in his response, fails to address this finding at all.
- <sup>x</sup> In his written response to the first draft of the report the Commissioner questions whether this incident occurred. The investigation team spoke to all parties to this conversation and concluded beyond any reasonable doubt that it did occur as reported.
- <sup>xi</sup> In his written response to the first draft of the report the Commissioner refutes that he retreated to his office and states that he went there to call the witness to the threat to attend the station to identify the suspect. However, as the Commissioner also points out, Suitupe was at the station for over an hour including during the time the witness was present. He was therefore in his office for a substantial amount of time when the events were unfolding downstairs.
- <sup>xii</sup> Home Office (2003) Code of Practice on the Use of Firearms and Less Lethal Weapons, found at <http://tna.europarchive.org/20100419081706/http://www.police.homeoffice.gov.uk/publications/operational-policing/useoffirearms2835.pdf?view=Binary>
- <sup>xiii</sup> *Ibid*
- <sup>xiv</sup> <http://www.afp.gov.au/about-the-afp/~media/afp/pdf/ips-foi-documents/ips/publication-list/AFP%20Commissioners%20Order%20on%20Operational%20Safety%20CO3.ashx>
- <sup>xv</sup> <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter14.pdf>
- <sup>xvi</sup> Amnesty International USA, ‘Deadly Force: Police Use of Lethal Force in the United States’, June 2015, found at [http://www.amnestyusa.org/sites/default/files/aiusa\\_deadlyforcereportjune2015.pdf](http://www.amnestyusa.org/sites/default/files/aiusa_deadlyforcereportjune2015.pdf)
- <sup>xvii</sup> *Ibid*
- <sup>xviii</sup> 1107 killed in 2014, population 316.6m, source: <http://killedbypolice.net/kbp2014.html>
- <sup>xix</sup> 6 deaths in 2010-11, population 24m, source: <http://aic.gov.au/publications/current%20series/rip/21-40/rip34.html>
- <sup>xx</sup> Average 1 death per year 2013-14, population 4.5m, source: <http://www.radionz.co.nz/news/national/280368/police-shootings-29-in-last-65-years>
- <sup>xxi</sup> 1 death in 2014, population 56.9m, source: <http://www.inquest.org.uk/statistics/fatal-police-shootings>
- <sup>xxii</sup> <http://www.theguardian.com/us-news/2015/jun/09/the-counted-police-killings-us-vs-other-countries>
- <sup>xxiii</sup> [http://www.unodc.org/documents/gsh/pdfs/2014\\_GLOBAL\\_HOMICIDE\\_BOOK\\_web.pdf](http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf)
- <sup>xxiv</sup> *Ibid*
- <sup>xxv</sup> *Ibid*
- <sup>xxvi</sup> *Ibid*
- <sup>xxvii</sup> <http://www.li.com/activities/publications/2015-legatum-prosperity-index>
- <sup>xxviii</sup> [http://www.rethinking.org.nz/assets/Newsletter\\_pdf/Issue\\_82/THE%20CASE%20AGAINST%20ARMING%20THE%20NEW%20ZEALAND%20POLICE.pdf](http://www.rethinking.org.nz/assets/Newsletter_pdf/Issue_82/THE%20CASE%20AGAINST%20ARMING%20THE%20NEW%20ZEALAND%20POLICE.pdf)

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**ANNEXURES**