OFFICE OF THE ATTORNEY GENERAL
SAMOA

PILON REPORT
2017
ACKNOWLEDGEMENT

The Attorney General thanks and acknowledges the Law and Justice Sector, the staff of the Office of the Attorney General (OAG), and particularly the officers who assisted in the preparation and compilation of this Report.
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Foreword

Greetings and Talofa Lava!

This year has been very busy due to the completion of many projects, the commencement of new ones, as well as the continuation of others.

As reported in 2016, the approval by Cabinet of the Assistant Attorney General – Commercial and International Law signaled the division of the Civil Division into two (2) Divisions: Civil Litigation and Opinions and Civil Commercial and International Team.

Following the passage by Parliament of the repeal of the National Prosecution Act, the criminal arm of the Attorney General was re-integrated in the Office of the Attorney General. The Criminal Team presently consists of two teams one headed by the Assistant Attorney General for Supreme Court matters; and the other by the Assistant Attorney General for District Court matter.

The Civil legal work continues to be one of the busiest team of the Office of the Attorney General due to the increasing civil litigation undertaken by our Office on behalf of the Government, timely provision of professional legal opinions and advice to Government Ministries and Agencies as well as reviewing and drafting all Government contracts/deeds and other related legal documents both domestic and international.

The Legislative Drafting Division has also been quite busy this year, from meeting drafting deadlines before dissolution of Parliament to the General Elections to the first meeting of the new Parliament and also due to the usual demands of government ministries for legislation to be drafted and finalized.

The Corporate Services Division continues to provide exceptional support service to adequately deal with the demanding workload of the Office and has conducted scheduled training for this year in relation to time management and leadership in the Office.

We will also continue to stand in full support of the police and prosecution services of our country where required.

As Attorney General, I express my gratitude to PILON for its ongoing support, and I am pleased to present Samoa's PILON country report for 2016.

(Lemalu Hermann P. Retzlaff)
ATTORNEY GENERAL
OUTLINE OF STRUCTURE AND GOVERNANCE OF RELEVANT LAW AND JUSTICE AGENCIES

OFFICE OF THE ATTORNEY GENERAL

MANAGEMENT STRUCTURE

Prime Minister/Minister of the Office of the Attorney General

Attorney General

Assistant Attorney General – Civil Litigation

Assistant Attorney General – Commercial and International Law Division

Assistant Attorney General – Supreme Court (Prosecution)

Chief Legislative Drafter – Legislative Drafting Division

Assistant Attorney General – District Court (Prosecution)

Manager Corporate Services – Corporate Services Division
**LAW AND JUSTICE SECTOR**

*Vision:* A safe, fair and just Samoa.

*Mission:* We will be more effective and accountable in implementing and monitoring our agreed projects and challenge ourselves to lead, take ownership and consistently look to improving our Sector performance.

The law and Justice Sector is overseen by its Steering Committee comprising of the following members:

- **Chief Executive Officer - Ministry of Justice and Courts Administration (MJCA) - Chairman**
- **Executive Director – Samoa Law Reform Commission**
- **ACEO –Ministry of Finance (Aid Coordination)**
- **President Samoa Umbrella for Non-Government Organisations (SUNGO)**
- **Samoa Council of Churches Representative**
- **Sui Tamaitai o Nu’u Representative**
- **Attorney General**
- **Commissioner of Police**
- **Chairman– Public Service Commission**
- **President of the Samoa Law Society Association**
- **Commissioner – Samoa Prisons and Corrections Services**
- **Matai Representative**
- **Sui o le Nu’u Representative**
- **Chief Executive Officer – Ministry of Women, Culture and Social Development**
- **Ombudsman**
MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

Below are the Law and Justice Sector’s achievements for 2016.

(a) **Separation of Prisons from Police** – The Ministry of Prisons is now officially separated from the Ministry of Police pursuant to Prisons and Corrections Act 2013. Despite the separation, the two Offices continue to work collaboratively to assist each other in the executing of their respective functions and duties.

(b) **Samoa Returnees Charitable Trust Integration Assistance Programme** – The Trust continues with its outreach programs which have proven very successful in the rehabilitation and re-integration of criminal deportees back into the community as per the Trust’s main objective.

(c) **Review of the Village Fono Act 1990** – The Village Fono Amendment Bill 2016 is currently with Parliament - Select Committee stage (more detail under “Significant Legal Reform” section).

(d) **Appointment of the Public Advocate for the Community Law Centre** – Interviews has been completed for the Public Advocate position to manage the Community Law Centre (appointment is soon to be released by Cabinet).

(e) **Neighbourhood Watch Project** - The neighbourhood watch project targets areas in Samoa that do not have the village governing system of the Alii and Faipule (Village Council). The project puts in place a watch program that allow the Police and other emergency services to easily identify the residence of inhabitants of such areas by assigning house numbers to the neighbourhood residences. This project is on-going.

(f) **Mentoring of Government Lawyers** – Through the Law and Justice Sector, the mentoring program was offered to the OAG over the years. This training was not provided for lawyers for this year.

(g) **PILON Sexual Gender Based Violence Working Group 2016**- The Working Group meeting held in Samoa from 3rd – 6th May was a result of members of the Samoa Law & Justice Sector coming together to support and provide assistance and work together with PILON to address the issue on sexual gender based violence (SGBV). The members of the Law & Justice Sector involved in the hosting of this meeting included the Ministry of Justice & Courts Administration, the Judiciary of Samoa, the Ministry of Finance, the Ministry of Police, the OAG and the National Prosecution Office.

(h) **Legislative Drafting Advisor (LDA)** – The OAG was fortunate enough to once again secure the extension of Rupeni Nawaqakuta’s contract for his services as the LDA for another year. Even though the extension of his contract ends in October 2016, he will be returning to complete the remaining three months of his duties as LDA in 2017. His mentoring, expertise and experience in legislative drafting and statutory interpretation are invaluable and benefits the whole Office.

(i) **Establishment of the National Human Rights Institute (NHRI) at OMB** - Earlier this year was a good year for the Ombudsman’s Office when it attained the “A” status from the Institution by the Global Alliance of National Human Rights Institutions (G.A.N.H.R.I) during its Accreditation session held in Geneva on May 2016 and publicly released on the 5th of this month.
The G.A.N.H.R.I is a network of N.H.R.Is from all around the world, which coordinates the relationship between N.H.R.Is and the United Nations human rights system. It is the only non-UN organisation whose internal review accreditation system grants access for an N.H.R.I to various committees within the United Nations, including the UN Human Rights Council.

The 'A' level rating means that the Office of the Ombudsman/N.H.R.I is now able to engage with various human rights bodies and participate independently at the UN Human Rights Council and its subsidiary bodies. The accreditation decision also means that the Office joins other 'A status' N.H.R.Is in the Asia Pacific Region as full member of the Asia Pacific Forum (A.P.F) of National Human Rights Institution.

(j) **Alcohol and Drugs Court** – The first graduation of rehabilitants was held in August 2016. At present, Justice Tuatagaloa is the Alcohol and Drugs Court Judge while Justice Aitken travels over around every 3 months to check on the progress.

**SIGNIFICANT COURT DECISIONS**

The following are the significant cases for Samoa’s jurisdiction which were decided by the Supreme Court and Appeal Court for the reported period.

**Court of Appeal Decisions**

1. **CA08/17 Land and Titles Court v Talalelei Lofipo Kalevini and Lesili Fipe Lofipo Kalevini**

   This matter concerns with a motion to appeal the decision by his Honour Vaai J of the Supreme Court regarding a motion to strike out filed by our the Attorney General ("AG") on behalf of the Appellant. The decision of the Supreme Court is as follows:

   a. That the principle of judicial immunity does not apply in circumstances where a judge or a judicial officer is proven to have acted without jurisdiction or unlawfully as it only applies to litigants who are parties to proceedings and Judges of the Court;
   b. In terms of the proposition by the Appellant that the Respondents claim is defective, the Supreme Court held that it is not settled law whether a judicial officer in this jurisdiction is protected by judicial immunity from liability in a civil suit for damages if it is proven that he or she acted with the clear knowledge that he or she did not have the relevant jurisdiction in circumstances where he or she acted to the detriment of an aggrieved party; and
   c. The proposition by the Appellant that the claim by the Respondents is frivolous, vexatious and incapable of reasoned argument, his Honour Vaai J held that the submissions by the Appellant did not satisfy the required standard to establish this proposition.

   The facts which the claim in the Supreme Court was premised on relates to a lease of customary land that was entered into between the Chief Executive Officer of the Ministry of Natural Resources and Environment as the lessor ("the Lessor") and the Respondents as the lessee. When the claim was first filed, the Lessor was cited as the Third Defendant. However, after filing the strike out motion by the AG on behalf of the Appellant and the Lessor as the Third Defendant and before hearing of the same, the Respondents withdrawn its claim against the Lessor as the Third Defendant. The application to withdraw the claim by the Respondents was duly granted by the Supreme Court. The
process for a lease of customary land was duly followed and the intended lease of customary land was advertised on behalf of the beneficial owners of the land in accordance with section 8 of the Alienation of Customary Lands Act 1965. The purpose of the proposed leased as noted on the advertisement as well as the application made for lease was for a business. Objections to the leasing of the land in terms of its advertisement were to be filed with the Office of the Registrar of the Appellant within 3 months from the date of the advertisement. The 3 months period lapsed and no objections were received. The lease was then formalised between the lessor and the Respondents as the lessee and on the 4 September 2015 a Deed of Customary Land Lease was signed by the Lessor and the Respondents. Between the 9 and 10 September 2015, the Respondents secured the necessary building permits, acquired materials and constructed a residential house on the leased land. On the 28 September 2015, the Appellant received a letter of complaint from some of the beneficial owners of the leased land regarding the lease. The Registrar of the Appellant in an attempt to settle the disagreement between the beneficial owners of the leased land and the Lessee called several meetings to discuss this matter. Unfortunately, the said meetings did not resolve this matter and some of the beneficial owners then wrote to the Registrar of the Appellant on 7 October 2015 seeking an order to stop the Respondents from doing any further work on the land. The Registrar of the Appellant then requested another meeting with the relevant parties to try and resolve the issue with the lease. This meeting did not eventuate and the Registrar of the Appellant then issued an Interim Order pursuant to section 50 of the Lands and Titles Act 1981 ("LT Act") dated 14 October 2015 requiring the Respondents to stop all work in progress on the leased land and not to set foot on the same again until the so called dispute was resolved. It is the said Interim Order that the Respondents based its claim upon seeking damages from the beneficial owners of the leased land as the First Defendant, the Appellant as the Second Defendant and the Lessor as the Third Defendant in its claim filed with the Supreme Court.

Following the decision by the Supreme Court to dismiss the strike out motion as alluded above, the AG then filed a notice of motion to appeal the said decision on behalf of the Appellant on the following grounds:

a. That the learned Judge erred in law in limiting the application of the principle of judicial immunity to litigants who are parties to proceedings and Judges of the Court. The Appellant contends that the principle of judicial immunity is not restricted to proceedings in Court rather is extended to provide protection for orders made by the Court;

b. The learned Judge erred in law when he made the determination that even if the Registrar is a judicial officer, he is not a judge so as to afford the protection by judicial immunity. The Appellant contends that the authorities referred to in this matter say otherwise and section 52 of the LT Act stipulates that orders made under section 50 of the LT Act are orders of the Lands and Titles Court ("LTC");

c. The learned Judge disregards the two Judges who concurred to the Interim Order dated 14 October 2015 and section 52 of the LT Act by referring only to the Registrar. The Registrar was not named as a party in the proceedings by the Respondents;
d. The Respondents’ claim in the Supreme Court was against LTC. The LTC is a Court and accordingly the principle of judicial immunity should apply;
e. The learned Judge erred in law in determining that judicial immunity may not apply in circumstances where a judge or judicial officer is proven to have acted without jurisdiction. The Appellant submits that judicial immunity applies even if the Judge or judicial officer acted without jurisdiction; and
f. The Appellant further submits that judicial immunity is not applicable in matters where the conduct of a Judge is akin to criminal conduct. The Respondents have not adduced any evidence that would suggest that the LTC have engaged in such conduct.

After hearing of submissions on behalf of the Appellant in support of its’ motion to appeal the decision of the Supreme Court, and submissions in opposition of the same by the Respondents the Court of Appeal (“the Court”) noted the following as preliminary issues in relation to this matter:

a. The cause of action against the Appellant
i. The Court made comments that the acts which the claim was premised on were those of the Registrar and not the LTC. The Registrar is an officer of the Government as defined in section 2 of the Government Proceedings Act 1974 (“GP Act”). Section 9 (3) of the GP Act then provides that the Government may be joined as a Defendant to any civil proceedings by joining the Attorney General and as such, this is how the Registrar of the LTC should have been joined. The claim against the Appellant (LTC) as pleaded in the Statement of Claim of the Respondents is “That the Second Defendant being aware of the lease in favour of the Plaintiffs has acted unreasonably and without lawful justification in issuing the restraining orders against the Plaintiffs thereby causing loss and damage to the Plaintiffs as particularised hereunder.”
ii. During the hearing, the Court inquired with Counsel for the Respondents (“Counsel”) how the pleading could found a claim for damages against the Registrar. Counsel acknowledged that the current pleading did not disclose any cause of action. She further accepted that, there being no suggestion that the Registrar acted maliciously or otherwise in bad faith, no claim could lie for misfeasance in public office.
iii. The Court then held that in the circumstances it is clear that there is no conceivable basis on which the Respondents could bring a claim arising out of the Interim Order. The pleadings as it concerns the Appellant cannot be cured and must be struck out.

Although the Court that its finding that the claim against the Appellant is irremediably defective is sufficient to dispose of the appeal, in deference to the findings of the Supreme Court on the potential application of the principle of the judicial immunity, the Court will made brief comments of the said issue as follows:

a. It is well established through case laws that judicial immunity does not apply to simply shield judges from claims for damages but extends to any person exercising judicial functions. The broad scope of immunity as it affects claims in tort is enshrined in section 6 (3) of the GP Act.
b. The case of Crispin v Registrar of the District Court [1986] 2 NZLR 246 which the Appellant submitted is an example of a case in which the Registrar exercising judicial functions was entitled to immunity under the common law and also to the protection available under section 6(5) of the Crown Proceedings Act 1950 which is the equivalent of the GP Act.

c. The principle of judicial immunity applies even when the judge or judicial officer acts in excess of jurisdiction.

The Court of Appeal then held that his Honour Vaai J erred in finding that judicial immunity may not apply to the Respondents claim and the appeal therefore succeeds.

**Supreme Court Decisions**

2. **MISC216/15 Attorney General on behalf of the Ministry of Natural Resources and Environment and Ors v Leapai Enele Leapai and Leapai Richard Brown and Ors**

This matter concerns with motions by eight Applicants to set aside a judgement by formal proof given by the Supreme Court on 9 September 1996. In the above judgement of the Court, it was held that survey plans 4444L and 5561 and cadastral 13 are invalid as they are incorrect. The Court further held that such survey plans be corrected so that they be in accordance with the plan of parcel 52 dated 28 July 1936 and Plan Flur 4A.

The First Applicant was represented by the Attorney General. In the application to set aside judgement filed by our Office on behalf of the First Applicant, we sought that the judgement of 1996 be set aside pursuant to rule 140 of the Supreme Court (Civil Procedure) Rules 1980. The application was further made in reliance on a decision by the Court of Appeal which set out the approach to be taken to a motion to set aside a regularly obtained judgement. This case held that to succeed in an application to set aside a regularly obtained judgement, the Applicant must establish that there is a substantial ground of defence, a reasonable justification for the delay and that the Plaintiff will not suffer irreparable harm if the judgement is set aside. Apart from the First Applicant, none of the other applicants was cited as a party to the 1996 judgement and as such none of those applicants appeared in the 1996 proceedings. The Supreme Court after considering our application to set aside as well as the applications by the other applicants ruled in our favour and ordered that the judgement by formal proof of 9 September 1996 is set aside.


This matter is in relation to a Statement of Claim filed by the Plaintiff. In the Statement of Claim, the Plaintiff claims breach of Article 78 and Article 7 of the Constitution. The Plaintiff for each cause of action claims a declaration that the first Defendant’s actions breached the Constitution, general damages for hurt and humiliation of $1million tala and costs.

The Attorney General represented both the First and Second Respondents. In response to the Statement of Claim by the Plaintiff, our Office filed a Strike Out Motion on behalf of both Defendants. The grounds for our Strike Out motion were that the proceedings
against the First Defendant are barred by the doctrine of judicial immunity, that the Statement of Claim by the Plaintiff does not disclose a maintainable cause of action, that the Claim by the Plaintiff is an abuse of process and that the Second Defendant is wrongfully named as a party pursuant to the Government Proceedings Act 1974. The Strike Out Motion was filed pursuant to the Court's inherent jurisdiction and Rule 70 of the Supreme Court (Civil Procedure) Rules 1980. In determination of our Motion to Strike out the claims by the Plaintiff against both Defendants, the Supreme Court ruled that the doctrine of judicial immunity applies to the First Defendant as the remarks made against the Plaintiff which was the subject matter of the Claim were discharged during a case which was before the Court of Appeal and therefore the First Defendant was discharging his judicial duty. Furthermore, the Court held that the claim against the Second Defendant fails as under the law it is the wrong party to be named. Therefore, the whole Statement of Claim was struck out in its entirety and costs were then awarded to the Defendants.

4. **Nanai Liu Tokuma and others v Samoa Land Corporation, Ministry of Enterprises and the Attorney General on behalf of the Land Board**

This matter concerns a Statement of Claim, Motion for Orders and Supporting Affidavit filed by the Applicants against the First, Second and Third Respondents. The motion by the Applicants in essence sought orders from the Supreme Court to confirm that the land which they reside on at Sogi belongs to them as per an oral gift that was made by former Government officials to their ancestors some 100 years ago. The Applicants further sought orders from the Court to confirm that the title of the land belongs to them pursuant to the said oral gift, and that the Respondents be ordered to stop the implementation of the Relocation Plan to vacate them from the said land.

The Attorney General on behalf of all three Respondents filed a motion to strike out the motion and statement of claim by the Applicants on the grounds that the Second and Third Respondents were misjoinder pursuant to the Supreme Court (Civil Procedures) Rules, that the Applicants failed to particularise any tenable causes of actions against the Respondents, that some of the orders sought are unavailable to the Applicants pursuant to the Government Proceedings Act 1964 and that the claim was frivolous, vexation and had no prospect of success.

The Supreme Court after consideration of the facts and the applicable law, held that the Second and Third Respondents were misjoinder as alleged by our Office on behalf of the Respondents. However, the Court held that the claims by the Applicants against the First Respondents have merits and should therefore be a matter for further evidence and consideration at a substantive hearing.

**SIGNIFICANT LEGAL REFORM**

**SIGNIFICANT LAW REFORMS**

1. **ACTS PASSED**

A total of 19 Acts have been passed by Parliament from November 2016, to date. These Acts are listed in the attachment marked Annex A. This list does not include other subsidiary legislative instruments drafted and enforced in November 2016 to date.
A brief explanation of substantive Acts passed and Bills in progress for this year are as follows.

(2) **SUBSTANTIVE ACTS**

(a) **Foundations Act 2016**

The object of the Foundations Act 2016 is to create foundation as a legal entity to manage properties. This Act commence on the date of assent. The Act covers the following:

- creation, registration and establishment of a foundation;
- appointments and removal of members of the Council, a Supervisory Person and Guardian;
- duties and powers of the Court regarding a foundation;
- registration of overseas foundation in Samoa and vice-versa.
- revocation or variation of any power regarding a foundation and the variation of terms of Constitution of a foundation;
- winding-up of a foundation by its Council or an official liquidator appointed by the Court or the Registrar upon written request of the Council.

(b) **Trusts Amendment Act 2016**

The Trusts Amendment Act 2016 (Act) amends the Trusts Act 2014 (Principal Act). The objects of the Act are:

- to re-define the definition of —foreign benefitting trusts‖ to remove reference to a —citizen of Samoan‖;
- to insert new section 51A to include a provision which relates to further additions of property to a Samoan International Special Trust Arrangement (SISTA);
- to amend section 63 of the Principal Act to provide combination of trust with limited partnerships;
- to amend section 80(2) of the Principal Act to address instances whereby if a request is properly and legally made for information in respect of a Double Taxation Agreement (DTA) or Tax Information Exchange Agreement (TIEA) then, subject to the provisions of the DTA or TIEA, the information must be provided;
- to insert the new section 80A to the Principal Act to provide that, where the trustee or one of the trustees of a Samoan trust is either a trust corporation or a natural person, who is a tax resident of Samoa, that trustee is required to obtain and retain such accounting and other information concerning the trust as may be required under the laws of Samoa. This Act commence on the date of assent.

(c) **Coroners Act 2017**

The Act repeals the Coroners Ordinance 1959 and provides a coronial system to investigate sudden or unexplained deaths or deaths in special circumstances through inquiries and inquests to help prevent deaths in circumstances similar to those deaths and for related purposes.
(d) **Police Service Amendment Act 2017**

The Act seeks to amend the Police Service Act 2017 to allow the Head of State, on the advice of the Cabinet, to suspend or terminate the Commissioner or Assistant Commissioner under certain circumstances without the need to establish a Commission of Inquiry if it is clear and substantial there are grounds for suspension or removal. The Act inserts same provisions into the Prisons and Corrections Act 2013 and the National Prosecution Office Act 2015 for uniformity. These new changes are an exception to the general rule which is a Commission of Inquiry or Tribunal may still be held if there is a need to do so.

(e) **Village Fono Amendment Act 2017**

The Act seeks to amend the Village Fono Act 1990 (Act). The object of the Act is to strengthen our culture to ensure stability in Samoa by strengthening the role of the Village Fono and to ensure that the exercises of the powers of the Village Fono are in accordance with the Constitution. The Act covers the following:

a. the granting of a specific power to impose curfews and banishment;

b. the inclusion of limited jurisdiction over those living in government, lease or freehold land located within village lands;

c. the provision of specific power to Village Fono to make their own faiga faavae or iugafono and register them at the Ministry of Women, Community and Social Development in order for them to be recognized by the Court. However, the registration of faiga faavae or iugafono do not necessarily mean that they are consistent with the Constitution;

d. the requirement to consult and obtain the approval of the Village Fono before any building or activity can be undertaken – e.g. a shop or a new church. If the Alii and Faipule decline the proposed activity or building, the decision can be appealed to the Land and Titles Court under section 11 of the Act.

e. the requirement to consult and obtain the approval of the Village Fono before any building or activity can be undertaken. If the Alis and Faipules decline the proposed activity or building, the decision can be appealed to the Land and Titles Court.

(f) **Police Powers Amendment Act 2017**

The Act seeks to amend section 13 of the Police Powers Act 2007. It authorises the Minister responsible for the Samoa Police Service to approve a police officer to be armed under exceptional circumstances, in accordance with relevant police internal orders or prescribed rules and after consultations with the Attorney General.

(g) **Constitution Amendment (No.1) 2017**

This Act abolishes the National Prosecution Office (NPO) and repeals the NPO Act 2015. The prosecutorial powers that were with NPO is now back to the Attorney General’s Office. The National Prosecution Office is now the criminal division under the supervision of the Attorney General’s Office.
(h) Constitution Amendment (No.2) 2017

The Constitution Amendment (No.2) Act 2017 amends the Constitution of the Independent State of Samoa 1960 by inserting in the body of the Constitution that Samoa is a Christian nation. This is to declare the dominance of Christianity in Samoa.

(i) Fees and Charges (Miscellaneous Amendments) Act 2017

The Act seeks to amend various Acts of Parliament in relation to fees and charges and to give effect to a Cabinet Directive F.K.(14) 25 dated 16 July 2014. The main purpose of the Act is to ensure that all fees and charges for services rendered by Government Ministries, Government Agencies and public beneficial bodies and selected public trading bodies are to be prescribed by Regulations made by the Head of State, subject to the approval of the National Revenue Board.

(3) **SUBSTANTIVE BILLS**

(a) Sex Offenders Registration Bill 2017

The Bill seeks to require offenders that commit sexual crimes to keep the police informed of their whereabouts, for the safety of the public and prevention of re-offending.

The objects of the Bill are:

- a. to set up a register of names (and other required details) of offenders of sexual crimes to be kept and regulated by the Samoa Police Service;
- b. to prevent registered sex offenders from working in child-related employment;
- c. to regulate movements of all sex offenders in Samoa that are released back into the community including those already in the community before the commencement of the Bill once passed.

(b) Film Production (Tax Incentive) Bill 2017

The Bill seeks to provide for a standard legislation to legislate matters or incentives or privileges that will be granted to any overseas company that wishes to film any production such as television series, film or movie in Samoa.

The objects of the Bill are:

- a. to authorise the payment of a prescribed cash rebate;
- b. to provide for tax and duty incentives;
- c. to provide for reporting and accounting provisions; and
- d. to provide for regulations making power provisions, in relation to any production in Samoa.

(c) Conventional Arms Bill 2017

The object of the Bill is to domesticate and implement the Arms Trade Treaty ("ATT") that was signed by Samoa in 2013. The ATT aims to regulate legal transport of conventional arms from country to country so that the transports of the same are not for the purpose of committing international crimes. The Bill
therefore ensures that the prevention and eradication of illicit trade and diversion of conventional arms is maintained.

(d) **Energy Efficiency Bill 2017**

The objective of the Bill is to regulate the energy efficiency of energy using products and consumer information on those products and for related purposes.

**PILON LEGAL POLICY AGENDA - UPDATE**

(a) **Cybercrime**


- offences against the confidentiality, integrity and availability of computer data and systems (i.e. illegal access, interception, data and system interference, and misuse of devices)
- computer-related offences (i.e. forgery and fraud)
- content-related offences (i.e. child pornography), and
- offences related to infringements of copyright and related rights.

A senior state solicitor has been granted an opportunity as a representative for Samoa to be engaged for a period of 3 months in the twinning programme offered by Australian AGD to work on Samoa's compliance against the Budapest Convention. As a result of this attachment Samoa should be able to come up with a comprehensive policy document addressing cybercrime issues as well as a law domesticating the Budapest Convention.

(b) **Environmental Crime and Corruption**

Environmental Crime

The Environment Management and Conservation Bill addresses the gaps in the legislative framework required to combat environmental crime. The Bill intends to domesticate the Convention on Biological Diversity, the Cartagena Protocol to the Convention on Biological Diversity, the Convention Concerning the Protection of the World Cultural and Natural Heritage, the Convention on Wetlands of International Importance especially as Waterfowl Habitat, the Convention on the Conservation of Migratory Species of Wild Animals, the Convention on Conservation of Nature in the South Pacific and the Agreement Establishing the South Pacific Regional Environment Program.

The objectives of these conventions and agreements are to conserve and protect, biological diversity, the environment, on land and sea, and to utilise these resources for Samoa with a sustainable approach to ensure the fair and equitable sharing of such resources.

Holistically, managing the effects of development on the environment and conserving it by the Government through this legislation combats environmental crime with the creation of certain offences under which individuals or legal entities may be prosecuted. Protection afforded under the Bill extends to bio-prospecting activities, as there have been cases in the past where due to a lack of the required legal provisions, Samoa was not able to have a say in how plants found native to Samoa only were used in research by foreign legal entities.
This Bill also addresses the required balance that development needs to take account of when being implemented throughout Samoa.

The instructing Ministry wish to implement an instant fine system for minor breaches of the legislation so that such offences are dealt with 'on the spot'. Principles of natural justice apply i.e. a person’s avenue to appeal the issuing of an offence notice and not pay the fine is made available.

With regard to best practices, the Government is bound to maintain, effective, and transparent systems available to the public in implementing the provisions of the Bill. For instance, reporting obligations placed on the relevant authorities, establishing and maintaining lists of matters of environmental significance. These lists include natural heritage sites, list of wetlands etc, or lists of threatened native species etc.

Authorised officers are appointed to implement and enforce the provisions of the legislation. Best practice in combating environmental crime ensures that powers afforded to authorised officers do not unreasonably infringe on the rights of others. Search and seizure provisions are clear that the necessary search warrants are obtained from court before these powers can be carried out.

The Bill has completed its’ national and stakeholders consultations and is currently with the instructing Ministry for further review before providing instructions to OAG.

Samoa aims to complete its review of Environmental related legislation (Rio Bills) which includes the finalization of the Environmental and Conservation Bill. This attempts to deal more comprehensively with environmental crime.

In terms of Corruption, Samoa has recently submitted ratification documents on the Convention against Corruption with the domestic compliance review completed. Domesticated law will be the next step once instructions are confirmed.

**Corruption**

The legal framework for corruption laws in Samoa are contained in different legislations. The relevant law that provides for measures to combat corruption includes the Crimes Act 2013, Proceeds of Crime Act 2007, Money Laundering Prevention Act 2007 and Mutual Assistance in Criminal Matters Act 2007.

In Samoa, the Financial Intelligence Unit (“FIU”) and Anti Money Laundering (“AML”) Unit established within the Central Bank of Samoa deals with managing restrained and confiscated assets from criminal offending.

(c) **Sexual and Gender Based Violence**

**Child Care and Protection Bill 2017** – This had finally been finalised and if plans are followed should be tabled in Parliament in early 2018. Significance of this law reform on SGBV related issues is the equal treatment between males and females on the minimum marital age permitted. The current minimum age for marriage for females is 16 whereas it is 18 for males. This Bill also provides more stringent regulation of allowing children to sell goods on the street at night. On the recommendation of policy instructors, the restriction applies to all children 18 years and under. This recommendation is directly linked to studies
showing young girls are the target of prostitution due to the lack of regulation of children being able to sell goods on the street late at night.

**Crimes Act 2013**—The Act repeals the Crimes Ordinance 1961, and in doing so introduced several significant changes to provisions relating to sexual offences.

**Family Safety Act 2013**—This Act is to provide for a greater protection of families and the handling of domestic violence and related matters.

**LEGISLATIVE FRAMEWORK(S) FOR CRIMINAL DEPORTEES**

(a) **Types of criminal deportees**

The different types of criminal deportees may cover the following:

- offenders voluntarily returning to Samoa whether after conviction or serving prison sentence ("Returnees");
- offenders deported to Samoa under the immigration laws after conviction or serving prison sentence ("Returnees");
- offenders brought under the International Transfer of Prisoners Act 2009 to complete serving their sentences in Samoa.

(b) **Legislation**

Samoa does not have any legislation:

- dealing with the notification of Returnees to be made between Samoa and another country;
- requiring the information of Returnees to be disclosed;
- allowing the Police or Prisons and Corrections to monitor Returnees who have arrived into Samoa.

As a result, it is difficult for relevant government agencies in Samoa to monitor returnees with regards to whether the returnee is still subject to parole overseas, etc.

However, the Prisons Parole Board Act 1977 (under section 7) establishes a Prisons Parole Board to decide on the parole of offenders. It applies when relevant government agencies, such as the Police, have been notified from overseas that the Returnee is still on parole.

(c) **Samoa Returnees Charitable Trust ("SRCT")**

The SRCT was registered under the Charitable trusts Act 1965 in 2012 to help rehabilitate Returnees. SRCT was initiated by the Samoa Law and Justice Sector (in association with the OAG) in 2010.

The only form of information exchange with regards to returnees is between the Transnational Crimes Unit ("TCU") and SRCT when the Returnee arrives into Samoa.

The goal of the SRCT is to provide both a resettlement service (i.e. counselling support, family reunification links and temporary accommodation to ensure a strategic intervention to the possible increase in crime and/or anti-social behavior by criminal deportees). The scheme is voluntary, therefore does not cover Returnees who do not register their names with SRCT (for monitoring purposes).

(d) **Deported or prisoner transferred Returnee**

For Returnees who have been convicted and sentenced overseas and have been deported under immigration laws or transferred as prisoners, the following Acts apply:
• International Transfer of Prisoners Act 2009 which refers to the transfer of prisoners to and from Samoa and covers information exchange relating to transferred prisoner;
• Prisons Parole Board Act 1977 which establishes a Prisons parole Board to make provision for the parole of offenders.

Those Acts provide for information exchange between Samoa and another country for transferred prisoners.

LEGISLATIVE FRAMEWORK(S) FOR RECEIVING EVIDENCE FROM EXPERT WITNESSES

Evidence Act 2015 – One of the significant reforms in this Act is that it now legally provides for the admissibility of opinion evidence by an expert as well as the conduct of expert, when giving opinion evidence in civil proceeding (to be in accordance with the rules of court). The relevant sections dealing with evidence from expert witnesses are as follow:

“16. Admissibility of expert opinion evidence"-(1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.
(2) An opinion by an expert is not inadmissible only because it is about an ultimate issue to be determined in a proceeding; or incidentally refers to a matter of common knowledge.
(3) Subject to subsection (4), if an opinion by an expert is based on the existence of a matter or state of affairs that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that matter or state of affairs is or will be proved or judicially noticed in the proceeding.
(4) If expert evidence about the sanity of a person is based in whole or in part on a statement that the person made to the expert about the person’s state of mind, then:
   (a) the statement of the person is admissible to establish the facts on which the expert’s opinion is based; and
   (b) neither the hearsay rule nor the previous consistent statement rule applies to evidence of the statement made by the person.

17. Expert’s conduct in civil proceedings"-(1) In a civil proceeding, experts are to conduct themselves in preparing and giving expert evidence in accordance with the applicable rules of court relating to the conduct of experts.
(2) The expert evidence of an expert who has not complied with rules of court of the kind specified in subsection (1) may be given only with the permission of the Judge.”

SIGNIFICANT ISSUES AFFECTING THE LAW AND JUSTICE SECTOR AND OPTIONS TO ADDRESS THESE ISSUES

(i) Need for a local Forensic Pathologist – This is still an issue that my Office is trying to address in collaboration with the National Health Services and the Ministry of Health. There is now a trainee in this area of expertise however it will be a long way off before the trainee’s studies and trainings are completed. The challenge in the meantime is therefore ensuring that a qualified pathologist is available for cases that come up.

(ii) Capacity of Police
The capacity of Police officers in investigating cases and preparing criminal files is a constant issue actively addressed by the Prosecution Division with the Ministry of Police in Office meetings. So far there is a continual issue with the quality of files provided to our office from the Police. There is also an issue with delays in police internal investigations in terms of issues raised by the Prosecution Division on the conduct of some of the police officers, such as losing evidence or losing files by the time of the hearing.

(iii) **Lack of Capacity in Mid Senior Levels of Legal Practitioners**
Within the OAG, one primary issue still evident is the lack of capacity in mid senior levels of legal practitioners due to lawyers at those positions leaving the Office after 4 or 5 years of experience and those at lower levels do not have enough experience to fill in the vacancies. To address this issue, the OAG has implemented its retention plan which will put into operation an increase in salaries.

(iv) **Recruit of Lawyers**
There has been improvement since the past year with recruitment of lawyers. All positions are now filled with the exception of the 3 entry level positions. The challenge to now address is attracting new graduates to apply to the vacant positions. It is however foreseen that by the next financial year, these positions would have been filled.

(v) **Absence of Legislative Drafting Advisor**
For the past 10 years, the Drafting Team has had the assistance of a Legislative Drafting Advisor to assist with the capacity building and mentoring drafters within the team. In 2006, there were only 2 drafters. By 2016 the organisational structure increased to 13 with only 3 vacancies. This not only speaks of the success in the Australian funded programme but particularly in the contribution made by the most recent Advisor who opted to stay for 5 years for a contract which is originally intended for 2 years. The extension of the length of time has helped in developing a team of drafters who are now mansing the team. The challenge since the end of the Advisor’s contract has been to carry on the workload without delays in deadlines. The workload has been slightly immense however, deadlines have still been met.

We take this opportunity to thank the Australian Government for this assistance as well as the all Drafting Advisors who have contributed to the development of Samoa’s legislative drafters. We make particular mention of Mr. Rupeni Nawaqakuta who was with the team for 5 years.

(vi) **Need for Continuing Legal Education and Training**
With the increase of new and young lawyers in the OAG, there is a continuing need for on-going legal training as a means of capacity building to expand the lawyers’ experience in the law.

SIGNIFICANT INITIATIVES /PROJECTS INVOLVING THE MEMBER COUNTRY AND ITS LAW AND JUSTICE SECTOR

i. **Project Management Training**
The Project Management Training was conducted by Leasomaletenari Solomona and Anita Poutoa of the Corporate Service Team from 17th-19th May 2017, at the AGO Conference
Room. The training focused on project management essentials, initiating a project, planning a project, executing the project and closing of a project. The Attorney General, Lemalu Hermann P. Retzlaff awarded certificates to those who attended the training. Tacy Sasagi and Losa Kelekolio attended this training on behalf of the Legislative Drafting Division.

ii. **Presentation on draft instrument**

Internal presentation and discussion of draft legislative instruments assigned to drafters are carried out monthly where a drafter will present to other lawyers within the Office a draft instrument they are working on. This provides an opportunity for each draft instrument to be heavily scrutinised by lawyers, testing whether the draft instrument is legally sound and practical. The exercise has been fruitful not only in informing the Office of draft laws intended to be passed whilst at the same time contributing to the improvement of draft instruments. This also teaches junior drafters lessons in improving draft laws as well as learning to justify a draft law assigned to them for drafting.

iii. **Consolidation of Regulation Project**

This has been an ongoing project for the past 4 years which the team has undertaken as a project on top of the work it does on a daily basis. This project started within the team and when securing funding for it was unsuccessful, the team undertook the first phase which is a compilation of all Regulations made to date in preparation for consolidating them. The first phase was very challenging as it required typing of all regulations that do not have electronic copies and then verifying that all electronic copies are accurate. Phase 2 will be to begin consolidating all regulations. Phase 3 will be to revise the consolidation before Phase 4 is completed which is to finalise the Consolidation of Regulations.

There are approximately 349 regulations in force in Samoa to date. This will prove as useful tool once completed as this exercise has already been done for all Acts which are done annually as reported above.

As this is not a mandated project but rather an initiative for the Team, there is no deadline as it is extra work on top of daily work assigned to the Team. This project is therefore ongoing.

**PROJECTS**

i. **Annual Consolidation of Acts**

The annual consolidation of Acts for 2016 was done and completed before 31 December 2016. The consolidated Acts were then distributed through compact disks (“CD”) to Ministries and other bodies and agencies. The normal security process was also followed whereby one CD is referred to the Australian Attorney General’s Department for safekeeping as well as the Central Bank vault storage.

ii. **AGO Procurement Manual and Contracts Templates Review**

In September the CILD conducted a week long review of the procurement templates approved by the Ministry of Finance for use in all Government Procurement of
Consultancy Services (Major and Minor), Works (Major and Minor), Goods and Related Services (Major and Minor), General Services (Major and Minor) and the AGO templates.

Upon completion of the review, comments and suggestions were provided to MOF confirming use upon consideration of comments and suggestions. As a result, the AGO Templates Manual has been revised and significantly reduced to cover only procurement not covered by the MOF Templates.

It is intended that the Review Exercise will achieve a streamlining of the procurement process (requiring AGO clearance) and better protect the interests of Government in procurement.

iii. **International Database**

This is a new project still ongoing for the development of a database to record all matters relating to international law. This project started within the team as a way to manage and share information about international law conventions, advices that had been issued in relation to them and any necessary law enacted for the purposes of implementation.

The First Phase has involved the determination of the form for the database to take and how it can be made accessible and user friendly. Factors that were taken into consideration included division by subject matter, what to be included etc. The Second Phase comprised of data collection. For example, any relevant law (Diplomatic Privileges and Immunities Act 1978), international law (Vienna Convention on Diplomatic Relations), advices (on application of privileges and immunities), agreements (UN Host Agreement).

At this stage, the Database has been created and data is still being collected under relevant headings for ease of use by the Office.

As this is not a mandated project but rather an initiative for the Team, there is no deadline as it is extra work on top of daily work assigned to the Team. This project is therefore ongoing. Any assistance to formalize or improve on the database form would be welcome.

iv. **Model Litigant Policy**

The Attorney General approved the creation of a Model Litigant Policy to provide a guide and practice standards for Civil Litigators of the Civil Litigation Division of the Office of the Attorney General.

v. **Advice and Research Database**

As part of consolidating all its work, the Civil Litigation Division created a database to consolidate research, submissions for ease of reference for all civil litigators.

vi. **Technical legal assistance**

The Technical Legal Assistance training priorities for CILD are:

1. Procurement Training for World Bank and ADB Processes
2. Public International Law Training
3. Commercial Law training
4. Negotiation Training
5. International Trade Law Training (WTO, Regional Trade Agreements etc)
6. International Commercial Arbitration

For Law and Justice Training or Technical Assistance provided in the last 12 months:

Refer to attachments of relevant training attended by members of CILD.
(A) OVERVIEW

The Criminal Prosecutions Division key responsibility is to supervise and conduct criminal prosecutions and appeals in a fair and just manner.

The main function of this Division includes handling of all District Court prosecutions, criminal appeals to the Supreme Court and criminal appeals from the other lower Courts to the District Court. The District Court itself it divided into specialized Courts namely, Family, Youth, Traffic, Inquests and General. Therefore, the Criminal District division of our office handles a variety of Prosecutions under the specialized Courts, and also prosecution against police officers and criminal matters. The Division also handles prosecution from Government Ministries as they all fall under the jurisdiction of the District Court. Government Ministries refer some of their complex enquiries and cases to the Division on separate occasions. The criminal division also handles mutual legal assistance with other countries as well as proceeds of crime applications.

The Division is headed by the Assistant Attorney General for Criminal Prosecutions – District & Specialized Courts working alongside the Assistant Attorney General for Criminal Prosecutions – Supreme Court. The team currently consists of one legal consultant, one senior public prosecutor, one state public prosecutor, two law clerks, and one part-timer. It is intended that four posts will be filled before December of this year, and these posts are – Associate Public Prosecutor, Principal Public Prosecutor, Senior Public Prosecutor, and State Public Prosecutor. Given the workload undertaken the Division continues to be one of the busiest divisions in the Attorney General’s Office and there is plan for more recruitment in the near future. But as of now, the office has engaged the assistance of the Commissioner of Police attaching Police prosecutors with some years of experience, to assist with the prosecution.

Even though the District work is now specialized, but all Lawyers in the whole Criminal Division (Supreme & District) conduct a wide range of work in both Supreme and District to ensure that all lawyers are exposed and gain experience in both jurisdictions.

(B) STRUCTURE
(I) Current staff
The Criminal Division consists of the following:

<table>
<thead>
<tr>
<th>Name of officer</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Leone Sua-Mailo</td>
<td>Assistant Attorney General - Supreme</td>
</tr>
<tr>
<td>4. Rexona Titi</td>
<td>Assistant Attorney General - District</td>
</tr>
<tr>
<td>6. Ofisa Tagaloa</td>
<td>Legal Consultant - Supreme</td>
</tr>
<tr>
<td></td>
<td>Name</td>
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<tr>
<td>7</td>
<td>Lucymaria Sio</td>
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<tr>
<td>10</td>
<td>Fuifui Ioane</td>
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<tr>
<td>24</td>
<td>Constable Tu Ieni</td>
</tr>
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</table>

(ii) **Vacant Positions - District**

The following positions are vacant:

- (i) Associate Public Prosecutor – 1 positions
- (ii) Principal State Prosecutor – 1 positions
- (iii) Senior State Solicitors - 1 positions
- (iv) State Solicitors – 2 positions
## ACHIEVEMENTS/SIGNIFICANT MATTERS IN DISTRICT CRIMINAL FILES

(I) Criminal File Statistics - DISTRICT

As the following table and graph illustrates, a total count of 816 criminal files were registered in the Auafa Mau Database to have been referred to the Division from June 2013 to June 2014. Of the total count, 396 of the criminal files have been closed and 420 are still pending completion.

<table>
<thead>
<tr>
<th>Total Amount of Cases from June 2016-June 2017</th>
<th>2035</th>
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<tbody>
<tr>
<td>Closed Cases</td>
<td>797</td>
</tr>
<tr>
<td>Cases are Still in progress at Court</td>
<td>1238</td>
</tr>
<tr>
<td>Total working Hours for closed cases only</td>
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<tr>
<td>Total Estimated Cost for all cases for closed cases only</td>
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</tr>
</tbody>
</table>

![Graph showing total inward files, closed files, and cases in progress]
ISSUES

There are still a number of issues that the Division continues to face in our line of work.

(I) Capacity of Police
The Division works closely with the Police for all prosecution matters but the capacity and the ability of the Police to investigate cases and prepare files continues to be a key challenge within the Office. Trainings are an on-going process to combat this issue.

(II) Turnover and shortage of staff
Since the jurisdiction in District Court has increased to 7 years and no longer 5 years, the need for lawyers to prosecute in the District is now great. As noted above, only 3 lawyers in the District can do serious matters in the District Court, while our fellow police prosecutors only have the capacity to handle minor matters and cases with no substantial legal issues.

The Criminal Division continues to experience a high turnover of staff members, creating a shortage of experienced Prosecutors to handle complex prosecution matters. Therefore, senior lawyers from other Divisions of the Attorney General’s Office have had to step in to handle prosecutions when necessary.

Junior prosecutors receive training through first hand observation and whenever senior prosecutors are not at Court. The majority of Court work therefore falls to the very few senior prosecutors in the Division, and it remains a challenge for the Division to meet Court deadlines, targets and demands from the Ministry of Police and Government Ministries.
**(C) OVERVIEW**

The Criminal Prosecutions Division key responsibility is to supervise and conduct criminal prosecutions and appeals in a fair and just manner.

The main function of this Division includes handling of all Supreme Court prosecutions, criminal appeals to the Supreme Court and criminal appeals to the Court of Appeal. With the enactment of the Crimes Act 2013 and the recent amendments to the District Court Act which had increased the jurisdiction of the District Court to handle matters with 7 years jurisdiction, it had resulted in many matters being referred to District Court for prosecution. Such offences include Intentional Damage, Actual Bodily Harm and Grievous Bodily Harm under section 118(2) of the Crimes Act 2013 to name a few. Albeit this change, it had not reduced the number of prosecution in the Supreme Court because more and more matters are reported and referred to our team for prosecution and coupled with the increase in the number of judges that had ascended to Supreme Court had also contributed to this.

The Division is headed by the Assistant Attorney General for Criminal Prosecutions – Supreme Court. The team currently consists of one legal consultant, one senior public prosecutor, one state public prosecutor, two law clerks. The matters which are prosecuted in the Supreme Court range from offences such as Murder, Rape, Manslaughter, Motor Manslaughter property offences to name a few. An average of 3 assessor trials will be determined on a weekly basis with such cases being heard between a period of two days up to 2 weeks depending on the complexity of the matter. On a weekly basis, matters that will be called in Supreme for hearing vary between 5 to 9 cases which does not include matters called for sentencing, bail applications, applications for costs and other preliminary applications and hearings.

The current situation for the Supreme Court division is that there are only 5 lawyers including the Assistant Attorney General who are able to conduct hearings on their own without supervision. Of these lawyers, only 3 are able to conduct assessor trials. The other lawyers in the team assists with administrative work not only in preparation for the trials but also for sentencing and other pre or post trial applications.

**(D) STRUCTURE**

**(III) Current staff**

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**Vacant Positions - District**

The following positions are vacant:

(v) Associate Public Prosecutor – 1 position
(vi) Principal State Prosecutor – 1 position
(vii) Senior State Solicitors - 1 positions
(viii) State Solicitors – 2 positions
26 ACHIEVEMENTS/SIGNIFICANT MATTERS IN SUPREME COURT

(II) Criminal File Statistics - DISTRICT

As the following table and graph illustrates, a total count of ........ criminal files were registered in the Auafa Mau Database to have been referred to the Division from ........ Of the total count, 396 of the criminal files have been closed and 420 are still pending completion.

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There are still a number of issues that the Division continues to face in our line of work.

(III)Gap in Experience

The years of experience of the prosecutors in the team vary. There is a 6 year gap in experience between the Assistant Attorney General and the Legal Consultants who currently conduct trials in the Supreme Court. As such, with the limited experience, they have only just recently been attending cases of serious nature and thus have less than 1 year experience in conducting trials which carry maximum penalties of life imprisonment. As such, it is only the Assistant Attorney General that is able to carry out prosecutions for Murder, Manslaughter and Motor Manslaughter cases as these are grave offences.

The other prosecutor conducting minor offences has been in the office for a little over 3 years but her experience in conducting trials has only been for a period a little over a year. As for the other lawyers in the team, they have not year been admitted to court and thus have no court experience and are not able to attend court.

With the increase in number of judges with various practices, experiences and preferences, it is a real and constant struggle for us to accommodate the various judges and also prepare the matters in advance to ensure prosecution at its highest standard.

The variation in the experience possessed by each prosecutor makes it a real struggle for the files to be allocated because each case varies and depending and the prosecutors allocated for each matter depends on the seriousness of the charge and the complexity of the matter.

(IV)Lack of training

Whilst it is imperative that all lawyers are continually trained and be able to upkeep with the changes in the law and practices, it is a notable regret that none of the lawyers in this office have been trained or are receiving training. Whilst training is obtained from first hand observation of those in senior position, most often lawyers are unable to attend court to observe because they have to either attend to other matters in court or are required to remain back at the office to attend to pressing matters that require attention.

Ideally, there should be two lawyers representing the prosecution with one lawyer as lead counsel and the other as a junior who does the preparatory work as well observe the lead counsel. However, since August 2016, this has not been possible because of the severe shortage of staff.
(V) Turnover and shortage of staff

Given the high volume of matters before the Supreme Court and the increase in number of judges presiding on a daily basis, the need for more prosecutors to retained is imminent.

The Criminal Division continues to experience a high turnover of staff members, creating a shortage of experienced Prosecutors to handle complex prosecution matters. Therefore, senior lawyers from other Divisions of the Attorney General's Office have had to step in to handle prosecutions when necessary. The only issue with this current arrangement is whether these lawyers will be able to remain in the team to ensure continuity or whether they in time will have to revert back to the divisions which they are currently being paid from.

Junior prosecutors receive training through first hand observation and whenever senior prosecutors are not at Court. The majority of Court work therefore falls to the very few senior prosecutors in the Division, and it remains a challenge for the Division to meet Court deadlines, targets and demands from the Ministry of Police and Government Ministries.

The high turn over of staff not only to private practice but also to other government Ministries is due to the following reasons:

(i.) Lawyers are not able to take on their annual leave or sick leave entitlements at its entirety because of their cases;
(ii.) Lawyers are not paid overtime nor will it be prudent to fill in time in lieu as these are never usually taken just like annual leave;
(iii.) Better pay offered by private practice and government Ministries at a far less stressful and demanding environment
ANNEX A

Foundations Act 2016
Trust Amendment Act 2016
International Partnership and Limited Partnership Amendment Act 2016
Supplementary Appropriation Act (No.1) 2017
Police Service Amendment Act 2017
Coroners Act 2017;
Village Fono Amendment Act 2017
Police Powers Amendment Act 2017
Tax Information Exchange Amendment Act 2017
Stamp Duty Amendment Act 2017
Constitution Amendment (No.1) 2017
Constitution Amendment (No.2) 2017
Appropriation Act 2017/2018
Income Tax Amendment Act 2017
Excise Tax Rates Amendment Act 2017
Fees and Charges (Miscellaneous Amendments) Act 2017
Casino and Gambling Control Amendment Act 2017
Customs Tariff Amendment Act 2017
Public Service Amendment Act 2017
<table>
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<tr>
<th>Name of Training</th>
<th>Participant</th>
<th>Location of Training</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Consultation Workshop for the Development of OEC Strategic Plan 2016 - 2021</td>
<td>Leitu Moananu - Drafting</td>
<td>Ministry of Health, Conference Room</td>
<td>10 – 16 July 2016</td>
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<td></td>
<td>Terina Sefo</td>
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<td>Samoa in country training S827 public sector project management.</td>
<td>AI</td>
<td>PSC</td>
<td>7-11 March 2016</td>
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<td>SIFA training of Private Wealth Management at DBS Conference Room Level 6 DBS Building</td>
<td>RS/CTR</td>
<td>SIFA</td>
<td>2-13 May 2016</td>
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<td>Climate Change Negotiations Training</td>
<td>GN</td>
<td>MFAT</td>
<td>6-9 June 2016</td>
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<tr>
<td>Mobile for Social-Economic Development</td>
<td>Bryan Patea, Mearold Viliamu</td>
<td>Tanoa Tusitala Hotel</td>
<td>22 -24/08/16</td>
</tr>
<tr>
<td></td>
<td>Uiti Kapeteni</td>
<td>Tanoa Tusitala Hotel</td>
<td>25/08/16</td>
</tr>
<tr>
<td>Invitation to participate to the National Gender &amp; Protection in Humanitarian Action Training.</td>
<td>ET</td>
<td>Tooa Salamasina Hall</td>
<td>14-16 Sept 2016</td>
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<tr>
<td>ADB/MOF workshop on tax issues</td>
<td>RS/ET</td>
<td>MOF</td>
<td>21-22 September 2016</td>
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<tr>
<td>PROJECT MANAGEMENT TRAINING</td>
<td>LS</td>
<td>PSC</td>
<td>3 – 7 APR 2017</td>
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<tr>
<td></td>
<td>AP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anti-Money Laundering and Countering the Financing or Terrorism (AML/CTF) Training, 03-04 may 2017, Apia, Samoa</td>
<td>TS</td>
<td>Central Bank of Samoa, APIA</td>
<td>3-4 May 2017</td>
</tr>
<tr>
<td>Money Laundering and Countering the Financing or Terrorism</td>
<td>AI</td>
<td>CBS</td>
<td>May</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
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</tr>
<tr>
<td>National Workshop on WTO Notifications Requirements</td>
<td>GN/ET</td>
<td>MFAT</td>
<td>16-19 May 2017</td>
</tr>
<tr>
<td>Name of Training</td>
<td>Participant</td>
<td>Location of Training</td>
<td>Date</td>
</tr>
<tr>
<td>INTERNATIONAL</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32nd Session of the Human Rights Council and Induction course for SIDS/LDCs delegates</td>
<td>Ane Iati – Civil Division</td>
<td>Geneva</td>
<td>8 June – 1 July 2016</td>
</tr>
<tr>
<td>11th Southeast and Northeast Asia Training Session on International Humanitarian Law</td>
<td>Esekia Soloi – Civil Division</td>
<td>Hiroshima, Japan</td>
<td>11 – 15 July 2016</td>
</tr>
<tr>
<td>Pacific Legal Policy Champions Training Program</td>
<td>Mearold Viliamu</td>
<td>Canberra Australia</td>
<td>20-31 March 2017</td>
</tr>
<tr>
<td>Legal Reasoning</td>
<td>Mearold Viliamu</td>
<td>Canberra Australia</td>
<td>3-4 April 2017</td>
</tr>
<tr>
<td>Following the money in Trafficking in Person Case</td>
<td>Tafailagi Peniamina</td>
<td>Bali Indonesia</td>
<td>23-24 May 2017</td>
</tr>
<tr>
<td>Aoaoga Faaauau mo atunu o le Pasefika e faatatau I le mataupu 76 o le feagaiga a malo auaataasi I le tulafono o le sami ma le atinaeina o ogasami faatagaina</td>
<td>Constance T Rivers</td>
<td>Sydney Australia</td>
<td>22-26 May 2017</td>
</tr>
<tr>
<td>22nd Rhodes Academy of Oceans Law and Policy</td>
<td>GN</td>
<td>Greece</td>
<td>2-22 July 2017</td>
</tr>
</tbody>
</table>

Attachment B: Summary of major regional meetings attended

<table>
<thead>
<tr>
<th>Workshop/Training</th>
<th>Objective</th>
<th>Date &amp; Place</th>
<th>Attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-GIZ Adapting to Climate Change and Sustain-able Energy (ACSE) Programme Technical Group Meeting for the Energy Bill &amp;</td>
<td>To discuss any challenges key implementing agencies are facing and review the existing Working</td>
<td>2 February 2017</td>
<td>Mearold Viliamu</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Central Bank of Samoa</td>
<td></td>
</tr>
<tr>
<td>Event Description</td>
<td>Description</td>
<td>Location</td>
<td>Date</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
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<td>------------------------------</td>
</tr>
<tr>
<td>Sustainable Bioenergy in Samoa Project</td>
<td>Plan for the Sustainable Bioenergy Project in Samoa.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Estate Planning Course</td>
<td>To further knowledge and understanding on different types of International Estate Planning available in Samoa such as Trusts, Companies, Special Purpose International Companies and especially Foundations, a new entity that has just been recently introduced in Samoa under the Foundations Act 2016.</td>
<td>Development Bank of Samoa</td>
<td>6-17 February 2017</td>
</tr>
<tr>
<td>Prosecution Training</td>
<td>To refresh and further knowledge on basic skills of prosecutions.</td>
<td>Tofilau Eti Alesana Building, Mulinuu.</td>
<td>21 February 2017</td>
</tr>
<tr>
<td>Drafting Division Beginners Training</td>
<td>To train juniors and refresh knowledge for the seniors on basic aspects and requirements of legislative drafting.</td>
<td>Conference Room, Office of the Attorney General</td>
<td>14 February 2017</td>
</tr>
<tr>
<td>Pacific Disability Forum</td>
<td>To build a more inclusive and equitable pacific for all persons with disabilities by providing opportunities and space for young persons with disabilities form Pacific Island countries and territories.</td>
<td>Tanoa Tusitala Hotel Conference Room</td>
<td>20-24 February 2017</td>
</tr>
<tr>
<td>Personal Property Security Register System</td>
<td>To introduce the new online personal property register system established under the Personal Property Securities Act 2013.</td>
<td>ACB Building</td>
<td>27 February 2017</td>
</tr>
<tr>
<td>Customary Land Advisory Committee Stakeholder Consultation</td>
<td>To provide update from public consultations in relation to the</td>
<td>MNRE Conference Room</td>
<td>21 February 2017</td>
</tr>
<tr>
<td>Event Description</td>
<td>Details</td>
<td>Location/Date</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
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</tr>
<tr>
<td>Mortgage of customary leases and the development of the Committee strategic plan for the next 3 years.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anti-Money Laundering and Counter Terrorist Financing Workshop</td>
<td>To discuss the progress made by Samoa to address the deficiencies identified in the Asia/Pacific Group on Money (&quot;APG&quot;), Mutual Evaluation Report for Samoa 2015 on Anti-Money Laundering and Counter Terrorist Financing.</td>
<td>Central Bank of Samoa 2 May 2017</td>
<td></td>
</tr>
<tr>
<td>Drugs Reform (Narcotics Act 1967)</td>
<td>To discuss the issues paper for the new project on drugs reform.</td>
<td>Conference Room, Office of the Attorney General May 2017</td>
<td></td>
</tr>
<tr>
<td>Pacific Island Law Officers Network Executive Meeting (PILON)</td>
<td>To discuss matters confirming the PILON Secretariat to remain in Samoa and also confirming the ongoing work of the three working groups for the areas of Sexual Gender Based Violence, Environmental Crime and Cybercrime.</td>
<td>Office of the Attorney General 15-16 June 2017</td>
<td></td>
</tr>
<tr>
<td>International Maritime Organisation Member State Audit Scheme (IMSAS) Workshop by SPC</td>
<td>Regional preparations by SPC for auditing Pacific Island Countries who already joined the audit scheme and new member countries.</td>
<td>Conference Room, Ministry of Works, Transport and Infrastructure 1 August 2017</td>
<td></td>
</tr>
<tr>
<td>Consultation on Family Safety Research (29 June 2017) and launching of the Family Safety Report</td>
<td>Discussion on the presentation of statistics and findings on issues regarding family safety in Samoa. Also the launching of the Family Safety</td>
<td>Ministry of Women Community and Social Development 29 June 2017; 14 July 2017</td>
<td></td>
</tr>
</tbody>
</table>

Attachment C: Contact information for all law and justice agencies
<table>
<thead>
<tr>
<th>Name of Agency</th>
<th>Contact person and position</th>
<th>Contact phone number and email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the Attorney General</td>
<td>Lemalu Hermann P. Retzlaff&lt;br&gt;Attorney General</td>
<td>(685) 20295/20296&lt;br&gt;<a href="mailto:hermann.retzlaff@ag.gov.ws">hermann.retzlaff@ag.gov.ws</a></td>
</tr>
<tr>
<td>Law and Justice Sector</td>
<td>Roni Fereti&lt;br&gt;Sector Coordinator</td>
<td>(685)27424&lt;br&gt;<a href="mailto:roni.fereti@samoaljs.ws">roni.fereti@samoaljs.ws</a></td>
</tr>
</tbody>
</table>

**Attachment D: List of regional and international organisations currently working on projects in your country**

<table>
<thead>
<tr>
<th>Name of Organisation</th>
<th>Contact person and contact details (phone number/email)</th>
<th>Project type (legislative review or drafting or development/policy development/what kind training etc)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Foreign Affairs and Trade (Australia)</td>
<td>Clyde Hamilton&lt;br&gt;First Secretary- Development DFAT&lt;br&gt;<a href="mailto:Clyde.Hamilton@dfat.gov.au">Clyde.Hamilton@dfat.gov.au</a></td>
<td>Rupeni Nawaqakuta&lt;br&gt;Legislative Drafting Advisor in OAG</td>
</tr>
</tbody>
</table>