

SAMOA COUNTRY REPORT

1. Major law and justice sector achievements

Rights Empowerment and Cohesion (R.E.A.C.H Pilot)

The REACH pilot initiative aims to enhance citizen access to justice, government and women's services for rural, maritime and otherwise remote areas in Samoa. This is achieved through an integration of services to facilitate start to finish delivery by service providers in remote areas, with the focus on reaching the furthest behind first. The REACH program involved government officials and other partners who conducted the REACH mobile service delivery including officers from UN Women and the United Nations Development Programme ("UNDP"), who evaluated the implementation of the project, shared good practices and challenges, and discussed future innovative approaches for improved delivery of services to rural and remote areas. The REACH pilot initiative provided more than 900 during its 10-day mobile service delivery program, reaching 10 rural communities in Upolu and Savaii.

The adaptation and pilot of the REACH mobile service delivery was led by the Government of Samoa with support from UNDP and UN Women.

The *government and civil society services* included the explanation the review of the family laws of Samoa by the Samoa Law Reform Commission, adoption issues and default debtors by the Office of the Attorney General, rehabilitation programmes by the Samoa Prisons and Corrections Services, maintenance, affiliation and divorce applications by the Ministry of Justice and Courts Administration, and reporting of lost personal items by the Ministry of Police.

2. Significant court decisions

The following case is a sexual and gender-based violence case where the defendant was charged for attempted murder (in addition to being in possession of an unregistered firearm and being armed with a dangerous weapon):

P v Peter Tulaga [2019] WSSC 11 (11 July 2019)

Brief Facts:

The charges resulted from a domestic violence situation between an engaged couple where the defendant allegedly shot the victim in the face on or about 17 January 2019. The victim was airlifted to New Zealand where she underwent extensive surgery, and Although the victim survived, she is now maimed for life.

Decision

The Defendant was convicted of the following charges;

Charge 1: Attempted Murder in pursuant to s104 of the Crimes Act 2013;

Charge 2: Being in possession of an unregistered firearm, namely a 12-gauge shotgun rifle break action single barrel in pursuant to s7 (1)(4) of the Arms Ordinance 1960 and was convicted and discharged; and

Charge 3: Being armed with a dangerous weapon, namely a 12-gauge shotgun rifle break action single barrel without lawful purpose in pursuant to s25 of the Police Offences Ordinance 1961.

The Court reviewed both submission from the Prosecution and the Defence. Justice Tuala-Warren stated that the Defendant's attitude showed no remorse to the offence and to Victim. The Defendant clearly intended the victim to die and did not show any concern if she did. The Court concluded that the Defendant intended to address his offending behaviour, or to make amends to the victim. Justice Tuala-Warren relied on Justice Clarke remarks in *Police v Crichton: Where serious violence using a weapon is perpetrated against a spouse or an inmate Partner, the offender should be under no illusion that such offending will likely be punished with a lengthy custodial term of imprisonment*. She found that this was the most serious case of domestic assault in an intimate partner relationship. It was premeditated, a firearm was used and discharged at the victim's face at close range, the Defendant left her after shooting and this caused serious disfigurement and disabilities as a result.

The court relied on the Court of Appeal case in ***Bragovits v National Prosecution*** [2017] WSCA 2 stated: *"It follows that in relation to the most serious cases the starting point maximum must reflect the statutory maximum here, life imprisonment"*. Her Honour Justice Tuala Warren took into account all of the aggravating factors and sentence the defendant to 28 years..

3. PILON strategic priorities

a. Cybercrime

Cybercrime Reform Project

Due to the increase in cyber-related activities and crime in Samoa and abroad, the Samoan Government, through the Office of the Attorney General as the leading driver for this cybercrime project, has taken the initiative to strengthen its legal framework in cybercrime and electronic evidence through legislative reform to avoid Samoa becoming a "safe haven" for cyber criminals. Through Samoa's National Cybersecurity Strategy Plan 2016-2021, the Attorney General's Office is tasked with strengthening the legal framework on cybercrime through the ratification of the Council of Europe's Budapest Convention on Cybercrime and electronic evidence ("Budapest Convention").

This project includes taking active steps to bring Samoa into a legislative position to ultimately ratify the Budapest Convention. Samoa aims to take a collaborative approach with its neighbouring countries around the Pacific region to combat cybercrime. This project will create and promote harmonisation of cybercrime and electronic evidence legislation between Samoa and member countries of the Budapest Convention (including PILON members) consistent with the Budapest Convention and allow for co-operation with member countries of the Budapest Convention in cyber-related investigations and prosecutions through mutual assistance requests.

The amendment of current legislation and the introduction of new provisions into Samoan law will introduce a new approach to the investigation of cybercrime in Samoa. The investigation of the new offences will include a suite of procedural powers that will change the way Samoan police collect evidence. To effectively implement this regime the Samoan Police will need to work with service providers both in Samoa and internationally. They will also need to develop a range of processes and procedures to effectively use the powers. Relationships with service providers will be key to the success of many investigations. Education and training for all stakeholders will also be necessary.

The necessary amendments to Samoan laws will include criminal laws to combat computer offences, computer related offences and to combat child abuse. There may also be a need for new and amended offences related to copyright and fraud. The amendments will include new procedural powers, consistent with the Budapest Convention, which will assist with the investigation of any offences with an online element but specifically offences that are perpetrated online. These powers include search warrants for access to computer data and computer devices, authorisations for access to subscriber and traffic data, preservation orders and access to the interception of communications. Finally, there is a need to enhance international cooperation through amendments to the mutual assistance legislation and the introduction of procedural powers to allow a foreign State to request the preservation of traffic and content data in anticipation of a request for access to that information.

Given that Samoa has existing legislation which provides for cyber offences, procedural powers and mutual assistance, possible amendments will be made to the following Acts (but not limited to):

- i. For cyber offences - Crimes Act 2013, Copyright Act 1998 and Indecent Publications Ordinance 1960;
- ii. For Procedural Powers specific to law enforcement and internet service providers re electronic evidence - Criminal Procedure Act

- 2016, Police Powers Act 2007, Telecommunications Act 2005, Evidence Act 2015; and
- iii. For Mutual legal assistance (Mutual Assistance in Criminal Matters Act 2007, Extradition Act 1974).

b. Corruption

(i) Samoa accedes to the United Nations Convention against Corruption (“UNCAC”)

Samoa acceded to the UNCAC on 18 April 2018. The anti-corruption framework comprises provisions from several laws, notably the Crimes Act 2013, the Criminal Procedure Act 2016, the Extradition Act 1974, as amended in 1994, the Mutual Assistance in Criminal Matters Act 2007, the Police Powers Act 2007, the Proceeds of Crime Act 2007 and the Money-Laundering Prevention Act 2007.

Relevant institutions in the fight against corruption include the Public service Commission, the Office of the Ombudsman, the Office of the Attorney General, the Samoa Audit Office, the Samoa Police Service, the Samoa Transnational Crime Unit and the Samoa Financial Intelligence Unit.

(ii) Country Review Report of Samoa: United Nations Office on Drugs and Crime

Samoa also prepared its ‘Country Review Report’ (“Report”) for the United Nations Office on Drugs and Crime on UNCAC. The Office of the Attorney General contributed immensely to this report which was prepared by the Public Service Commission as the focal point for UNCAC. The report reflected the outcome of the country visit that was conducted last year in September 2019.

c. Sexual and Gender-Based Violence

Model Provisions for amending Evidence or Criminal Procedure Acts to incorporate special measures for vulnerable witnesses to Sexual and Gender Based Violence Offences

On 24 August 2020 Samoa was allocated section 15 of the model provisions to explain the policy justification and operation of the section, which also raised the following question:

Section 15: Judicial Directions

- Why is it important to have provisions that ensure that adverse inferences against vulnerable witness are avoided?

The relevant legislation which Samoa referred to in response to the allocated section 15 of the model provision, was the Evidence Act 2015 which set out the directions when giving evidence under certain conditions

(section 100) and directions as to evidence given by a child and judicial warning about identification evidence (section 102). Samoa also referred to the Criminal Procedure Act 2016 which provides for trial with or without assessors (section 6) and defendant's notice to be tried with judge alone (section 125), for the purposes of this task.

4. Significant issues (including COVID-19) impacting the law and justice sector, and options to address these issues

Samoa has responded well to the impacts of the global pandemic (COVID-19) through a Proclamation of Emergency under the Constitution of the Independent State of Samoa,¹ to which Samoa has been in a State of Emergency (SOE) since March 2020 to date. The Office of the Attorney General has taken on additional duties in providing on the spot legal advice during the SOE and whilst also drafting and clearing legislative instruments required for the regulation of the SOE.

Further, an Advisory Board was appointed and set up for the duration and purposes of the Proclamation of Emergency to deal with individuals who breach the State of Emergency Orders. The National Emergency Operation centre ("NEOC") has also been activated as part of Samoa's National Emergency Response Plan as per the National Disaster Management Plan under the Disaster and Emergency Management Act 2007. The NEOC have been the focal point providing collaboration and operational coordination amongst all stakeholders, with advice and technical guidance from the Ministry of Health during the emergency period.

There were evidential challenges with regards to the criminal prosecutions and litigation, due to the SOE enforced as cases were deferred as the Court was required to close and were suspended from March 2020 to June 2020 (approximately 6 weeks). Thus, once restrictions were lifted court resumed work.

5. Significant initiatives/projects involving the member country and its law and justice sector

a. Annual consolidation of Laws

The Consolidation of Laws is an annual project. The timeframe for consolidating all the laws of the Samoa was met. A copy of the annual consolidation has been sent off-site for safe keeping. The Consolidation of laws project is conducted every calendar year (January to December). Thus the annual consolidation of laws that is reported in this financial year was completed in December 2019. As of 31st December 2019 there were 287 Acts of Parliament that were considered for the annual consolidation of laws.

¹ Article 105, Constitution.

6. Technical legal assistance

A number of technical assistance needs fall within the category of advocacy more specifically ongoing training for lawyers on prosecution.

7. Contact information for key law and justice agencies

Agency	Key responsibilities	Contact person and position	Phone number and email
Office of the Attorney General	Attorney General of Samoa	Savalenoa Mareva Betham-Annandale	(685) 20295/20296 mareva.BA@ag.gov.ws
Ministry of Justice and Courts Administration	Chief Executive Officer/ Registrar of the Court	Moliei Simi Vaai	(685) 22671/22672 Moliei.Vaai@mjca.gov.ws
Samoa Law Reform Commission	Executive Director	Telei'ai Dr. Lalotoa Mulitalo	(685) 28493 lalotoa.mulitalo@samoalawreform.gov.ws
Law and Justice Sector	Acting Sector Coordinator	Line Ah Yen	(685) 22671/22672 l.ahyen@mjca.gov.ws