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# PARTICIPANTS' PAPERS

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## THE JUSTICE SYSTEM IN SAMOA FOCUSING ON THE ALCOHOL AND DRUGS COURT

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### I. INTRODUCTION OF THE JUSTICE SYSTEM IN SAMOA

Samoa has a Constitutional system incorporating common law and customary laws. The Constitution is the supreme law.<sup>1</sup> The former systems include the German Decrees followed by New Zealand and British laws and local ordinances and custom. The national government has three branches – the executive, the legislature<sup>2</sup> and the judiciary. The judiciary is divided into:

(i) The Court of Appeal

The superior court of record comprising the Chief Justice and other judges of the Supreme Court and such other persons as are appointed by the Head of State, acting on the advice of the Judicial Service Commission.<sup>3</sup> In addition to the Chief Justice and the Supreme Court Judges, the government uses retired judges from New Zealand on the bench. The Court of Appeal cases include those such as *AG v Fepuleai Atila Ropati [2019]*,<sup>4</sup> which is a case in which the defendant was not satisfied with the decision and decided to appeal the decision made by the Supreme Court for a further decision by the Court of Appeal.

(ii) The Supreme Court

The Head of State appoints the Chief Justice on the advice of the Prime Minister; other judges are appointed by the Head of State acting on the advice of the Judicial Service Commission.<sup>5</sup> The Supreme Court has jurisdiction over offences for which the penalty is life imprisonment or more than ten (10) years' imprisonment,<sup>6</sup> such as the murder case *Police v Uimaitua Papalii Samuleu [2020]*<sup>7</sup> and civil claims such as *Chan Mow Company Ltd v Tuilimu Tili Tiavaasue [2018]*.

(iii) District Court

The District Court is established pursuant to the Constitution and governed by the Magistrate's Court Act 1969. The jurisdiction deals with offences for which the penalty is not more than seven (7) years. The District Court consists of the Family Court and the Family Violence Court,<sup>8</sup> the Alcohol and Drugs Court, the Youth Court<sup>9</sup> and the Coroners Court.<sup>10</sup> The Family Court usually involves a disagreement between family members or extended family members, for instance, the case of *Police v Leaitua Taua Falefitu Toeoaana and Faumuina Taimane Afamagasa [2016]*,<sup>11</sup> where the defendants exchanged words and created tension, but they are family members. The Family Violence Court is, thus, different from the Family Court. A Family Violence Court case *Police v Pai Mulitalo [2020]* is a case in which the defendant assaulted his wife.

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<sup>1</sup> Constitutional Convention of Samoa 1960 s.39.

<sup>2</sup> Executive – cabinets, legislative – parliament.

<sup>3</sup> Constitution of the Independent State of Samoa art.75.

<sup>4</sup> *AG v Ropati [2019]* WSCA 2 (15 April 2019) accessed 10 Nov. 2021.

<sup>5</sup> Constitution of the Independent State of Samoa art.65.

<sup>6</sup> Crimes Act 2013, s.103.

<sup>7</sup> *Police v Samuelu [2020]* WSCA 1 (5 August 2020) > accessed 10 Nov. 2021.

<sup>8</sup> Family Safety Act 2013.

<sup>9</sup> Young Offenders Act 2007.

<sup>10</sup> Coroners Act 2017.

<sup>11</sup> *Police v Toeoaana [2016]* WSFC 1 (19 February 2016), accessed 10 Nov. 2021.

(iv) Fa'amasinoga Fesoasoani Court

This court was established by the Magistrate's Court Act 1969. This court deals with offences for which the penalty is not more than one (1) year's imprisonment. It usually hears matters with the lowest punishment and civil claims of not more than \$2000.00SAT. It rarely orders imprisonment unless the accused is a repeat offender.

(v) Land & Titles Court

It deals with all court cases on customs and traditions and including all *matai* titles and customary land matters.<sup>12</sup>

(vi) *Fono*<sup>13</sup>

Village Councils deal exclusively with village affairs such as culture, customs and traditions and including all customary land matters.<sup>14</sup>

## II. SAMOA ALCOHOL AND DRUGS COURT

The Alcohol and Drugs Court was first introduced in the Court System of Samoa in February 2016 and was presided over by Her Honour Justice Emma Atiken from New Zealand. When Her Honour Justice Atiken left Samoa, her replacement was the first ever female Justice in the judiciary of Samoa, Her Honour Justice Tuatagaloa. The Court was adopted from the same type of Court in New Zealand. It has been five (5) years since the Alcohol and Drugs Court came to be in the justice system of Samoa, and it is a milestone for Samoa. The Alcohol and Drugs Court is a specialized court designed to supervise offenders whose offending is driven by their alcohol or drug dependency. The desired outcomes of the ADC pilot are to: reduce alcohol and drug consumption and dependency, reduce reoffending, reduce the use of imprisonment and to positively impact on health and well-being. Alcohol and Drug related offences with defendants having exceeded a higher reading of an alcohol and drug evidential breath test were referred for an ADC report on their suitability to join the programme. The Defendant is to enter a guilty plea and is likely to have committed the offence under the influence of or in pursuit of alcohol or drugs<sup>15</sup> to qualify for this rehabilitation programme such as in the case of *Police v Talagata Salesa [2016]*. It is also noted that defendants with previous convictions are also admitted into the programme if they have never been given the chance to attend and participate in the ADC Programmes such as in the case of *Police v Leuma Sakalaka [2019]<sup>16</sup>*. It is compulsory that legal representation is provided for the defendant all throughout participation in the ADC programme. The cases of *Police v Ropati Tiatia [2016]* and *Police v Faatui Faamoemoe [2016]* are examples of participants represented by counsel throughout their participation in the Alcohol and Drug Court programmes.

### A. Alcohol and Drugs Court Programmes

The ADC programmes are carried out by the Case Manager, Clinician and Probation Officers. The programmes consist of life changing, spiritual, physical and mental health as well as customs and values of Samoa. The programmes are carried out for three (3) months or twelve (12) weeks with thirty-six (36) sessions. Participants must attend all 36 sessions in order to graduate and complete their sentence from the court. If the participant(s) fully complete the programme and comply with the court conditions, the sentence imposed is always a supervision term. The supervision term depends on the offending and lapses if any reoffending occurs. So far, the Alcohol and Drugs Court has sentenced some of the participants to a conviction and discharge. The following are some of the session topics:

- Fonofale Model
- Wheel of Change
- Aganuu & Tulafono (Culture and Law)
- Keep Improve Stop Start Action Plan (KISS Action Plan)

<sup>12</sup> Land and Titles Act 1981.

<sup>13</sup> Fono – village council consisting of titled men including the chiefs.

<sup>14</sup> Village Fono Act 1990.

<sup>15</sup> Eligibility Checklist [2016] WSADCLRes 2 (27 October 2016), accessed 10 Nov. 2021.

<sup>16</sup> Unreported case of 2019.

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- Lifestyle Imbalance
- Spiritual – Alcohol & Drugs conduct by Rev Ututau Sio
- Talking Therapy and etc.

The programmes discuss reasons why participants commit the crimes that they are charged with and solutions to their habits of either drinking or narcotics.

### **B. Limited Opportunities and Shortages**

Below are some of the problems faced by the court:

- Shortage of Probation Officers manning the programme.
- Greater need for psychological and other relevant consultants to provide trainings and mobilize the participants in their weekly sessions.
- Inability to secure and confirm appropriate and suitable Community Justice Supervisors.
- Travelling costs to attend training by the defendant are seen as a downside. Some participants were unable to participate in programmes due to the lack of money for bus fares as they are from remote villages.
- Legal representation does not extend to regular visits to check the welfare and how the defendant is progressing in the ADC Programme as counsel only consults with the participant in court.
- Some participants are unable to complete programmes due to family environment. In the case of *Police v Sakaio Misa Laki [2021]*,<sup>17</sup> the defendant was unable to complete programmes due to a family issue with parents or legal guardians.
- There are not so many rehabilitative programmes to assist defendants before and after sentencing. Currently in Samoa, the Salvation Army<sup>18</sup> is the only group that offers programmes for defendants in the Supreme Court apart from the Alcohol and Drugs Court programmes. Men and women's advocacy deals with counselling for men and women in the Family Court and Teen Challenge programmes for the young offenders. There is no programme(s) offered for defendants already serving their time in prison or on parole.
- Not all defendants are eligible for legal representation. In the Supreme Court, only the suspects who are accused of serious offences, such murder, sexual connection, possession of methamphetamine and etc., for which penalties are life imprisonment, are eligible for legal representation, for instance, *Police v Pitoitua Aloese & ors [2021]*,<sup>19</sup> where the defendants were charged with methamphetamine, they were all represented under the legal aid scheme. And as for the case *Police v Ioapo Pio Tulaga [2009]*,<sup>20</sup> the defendant was charged with possession of narcotics, and also he was unrepresented.
- There are situations where a defendant needs more than a rehabilitation programme. His/her needs are not met at the ADC. People with relevant expertise are needed in these programmes. In addition, the programmes should extend their duration just to monitor the attitude and behaviour of the defendants.

### **C. Solution**

To overcome these challenges, it is necessary to increase the ADC budget to accommodate the shortage of appropriate staff, pay for more legal representation hours outside of the courtroom, for regular visits in assessment rooms, as indicated earlier; Offer legal representation to all the suspects in order to exercise their fundamental Right to Fair Trial<sup>21</sup> – not only suspects of more serious offending and young offenders but to anyone accused of a crime.

The solid support from village mayors, church ministers, village representatives and especially family is necessary in order for participants to reduce reoffending, and the operation of community business to occupy defendants and parolees' time to avoid anti-social peers and drinking, which ends up in committing crimes.

If an effective case management system is provided and the courts' administrative processes become faster and more efficient with the help of advanced technology, then it may enhance judicial efficiency and

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<sup>17</sup> Unreported case of 2021.

<sup>18</sup> A Christian group offering programmes in alcohol related offending and counselling.

<sup>19</sup> *Police v Aloese [2021]* WSSC 14 (31 March 2021) accessed 10 Nov. 2021.

<sup>20</sup> *Police v Tulaga [2009]* WSSC 44 (20 April 2009) accessed 10 Nov. 2021.

<sup>21</sup> Constitution of the Independent State of Samoa, art. 9.

effectiveness. If the fast-track court is modernized with advanced technology, human resources and the stakeholders realized their responsibility, then it would be easy to take adequate measures to ensure speedy trial. It is possible only due to effective management systems which will continually review and keep track of cases in order to assure the effectiveness and efficiency of the procedure and processes.