

HIV/AIDS in Western Samoa: the legal framework

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Introduction

Due to a colonial background some of the existing legislation in Western Samoa reflect measures that were perhaps seen relevant by the legislators at the time but questionable today. Our existing Health Ordinance from 1959 is one example of that colonial legacy. AIDS is not listed as one of the infectious disease in the schedule of the Health Ordinance 1959. However, the Western Samoa Government in 1987/88 has notified HIV/AIDS in the Government Gazette as an infectious or communicable disease. Infectious disease is defined in the Ordinance as: "any disease for the time being specified in the First Schedule to this Ordinance, and includes any other disease which may be declared by the Minister by notice in the Western Samoa Gazette to be an infectious disease".

Part IV of the Ordinance deals specifically with infectious diseases. The following sections are worth noting in the context of HIV/AIDS:

5.29 Gives the Director of Health special powers subject to Ministers approval for the purpose of preventing the outbreak or spread of any infectious disease.

5.29 (c) The Director of Health may require persons to report themselves or submit themselves for medical examination at specified times and places.

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5.29 (h) Director of Health may forbid persons to leave the place in which they are isolated or quarantined until they have been medically examined and found to be free from infectious disease, and until they have undergone such preventative treatment as he may in such case prescribe.

5.36 empowers the Director of Health to isolate persons likely to spread infectious diseases. That is, the Director will do such a thing if it is expedient to do so in the interests of public health.

A new bill called the 'The Health of the People Bill 1995/96' has already been drafted and now ready to be tabled in Parliament's next sitting. This bill is a substantial attempt to amend and consolidate laws relating to the health of the Samoan people. It is also an attempt to bring together all laws relating to the health instead of isolating different aspects relating to the health of the people. In short, the bill

amongst other things, brings together Dental Practitioners and Nurses, etc. Again, the bill does not list AIDS in the schedule as an infectious disease.

Immigration Act 1966

This legislation is also relevant especially in relation to HIV/AIDS issues. There was a recent incident in Western Samoa whereby two visitors (tourists) were ordered by the Minister of Immigration to leave Western Samoa pursuant to S.13 (1)(a) of the Act. One of the immigrants was HIV positive according to information relayed by New Zealand authorities to the immigration authorities in Samoa. Both health and immigration authorities interviewed and inspected the two tourist and they also subsequently found some form of drugs in their possession. They claimed and voluntarily admitted that the drug were used to relieve pain. The relevant authorities therefore advised the Minister who then decided to exercise his power under Section 13(1)(a) of the Act.

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S. 13(1) (a) is as follows:

The Minister may, by order signed by him and served on any immigrant, stating one or more of the grounds set out in this subsection, order the immigrant to leave Western Samoa within a period from the date of service to be stated in the order, if he is of the opinion, based on information or advice received from a source considered by him to be reliable:

(a) That the immigrant is disaffected or likely to be a danger to the peace, order, or good Government of Western Samoa, or to be otherwise an undesirable immigrant.

There have been subsequent debates whether or not the Minister has done the right thing, in the circumstances. Even if more facts or information are found to seriously question the Minister's actions, the legislation protects the decision of the Minister (see S.13(2)). Therefore, it is interesting to note that this Act has a "privatise clause" in S.13(2) which literally says that the decision of the Minister shall be final and conclusive and not examinable in any proceedings in any Court. But note the House of Lords decision in *Anisminic case* (1969) 2 A.C. 147 whereby all the Law Lords agreed that no privatise clause could oust judicial review for jurisdictional error. Therefore, perhaps this particular section of the Immigration Act 1966 needs reviewing especially in relation to HIV/AIDS related cases.

Discussion

Western Samoa does not have a Law Commission body. Although the Attorney-General's Office plays a major role in screening, revising and drafting legislation Government Departments would usually instruct the Attorney General's Office to draft amendments to legislations before tabling in Parliament. But the Attorney General's Office does not have the manpower to do such tasks. There is only one Parliamentary Counsel who deals specifically with drafting legislations. It would be ideal to engage a group of lawyers to focus entirely on making recommendations on what amendments needed for any legislations. Solicitors at the Attorney-General's Office do not have the time to be devoted to revising legislations as they have lots of other duties, especially litigation on behalf of the State. The main problems facing the Attorney-General Office are: funding - rely on outside financial aid; expertise/consultants is limited, therefore, there is a need to engage outside expertise; and no guarantee that draft legislations or amendments will be approved by Parliament. Funding by Forum Fisheries Agency enabled a consultant to revise and draft legislations on environment and maritime aspects.

It is possible that, in responding to AIDS, Pacific countries will be forced to face up to realities, and to adopt urgently more realistic, honest and sensible laws and policies. Any specific legislation in Western Samoa that deals with HIV/AIDS must follow policies already established by the National AIDS Co-ordinating Council (NACC). Health education has

Table 1. Health activities on AIDS/STD in Western Samoa since 1987

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| <p>General public education</p> <p>Through media (press and radio) and World AIDS Day activities in 1988, 1989 and 1990.</p> <p>Pamphlets have been distributed to international travellers.</p> <p>Billboards for AIDS awareness.</p> |
| <p>Workshop and seminars for</p> <p>Health workers (2000);</p> <p>Teachers (300);</p> <p>Youth Groups (2500);</p> <p>Police and prisons (50);</p> <p>Women's Committees (300);</p> <p>Pulenuu (50); and</p> <p>Others in meetings conducted by Family Health Association and Red Cross</p> |
| <p>Development of educational materials by</p> <p>Health Department</p> <p>Red Cross</p> <p>Family Health Association</p> <p>Education Department</p> |
| <p>Surveillance and testing</p> <p>Screening of blood donors</p> <p>STD patients.</p> <p>Emigrants: Since 1987, at least 4000 tests were performed. Only one HIV positive test in January 1990.</p> <p>Pre and post test counselling.</p> <p>Maintain confidentiality</p> |
| <p>Case Management and reduction</p> |

informed the community about HIV/AIDS prevention (see Table 1). It is impossible to lay down universal rules for AIDS because of the diversity of Pacific cultures. This is because laws on sensitive matters must respond to local needs, reflect local culture and grow out of local institutions. However such laws should incorporate the right principle in accordance with the regional and global standards in relation to the dealings with HIV/AIDS. Laws should have the right mixture of both the local and external factors. It is easy to pass legislation but there are needs to look at consequences first before enacting.

One AIDS case was diagnosed in January 1990 and died in February 1990. The patient had been living overseas and

was cared for at home in Samoa by family and health workers. The patient needed: medical, emotional, spiritual and psycho social support. The family friends and health providers also needed support.

The political leaders need to face the very hard choices to be made if there is to be real containment of AIDS. The existing legislations are inadequate, for example, the Immigration Act 1966 allows people to travel freely to Western Samoa without having to declare their HIV status. Therefore there is a risk that HIV positive people may transmit the virus to the locals.

Debates over the issue of confidentiality and right of public to know challenges the nature of traditional Samoan society which makes it hard for any individual to keep his/her privacy or confidentiality (i.e. the conflict between the individual right and the communal rights). The future of health legislation holds many such challenges. The HIV/AIDS debate will bring out the best and worst of law makers, politicians, health

workers and the community.

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References

References are available from the authors on request. □



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