

# EFFECTIVE MEASURES FOR THE TREATMENT OF JUVENILE OFFENDERS AND THEIR REINTEGRATION TO SOCIETY

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## I. INTRODUCTION

The Kingdom of Tonga (also known as “The Friendly Islands”) is a monarchy with King George V as the Head of the State. It is comprised of three main island groups, Tongatapu, Vava’u and the Ha’apai group. There are minor islands such as ‘Eua and the two Niuas located further to the North.

The 1875 Constitution of Tonga is still the country’s Supreme Law and is also one of the oldest Constitutions in the world. The Criminal Offences Act (COA) governs criminal activities within the Kingdom. This law applies equally to everyone regardless of their age, race, religion or status. The law of Tonga does not stipulate the youngest age at which a person may be charged with a crime.

The Kingdom still has no Probation Act to guide the work of its probation officers. However, those within the Crown Law Office who are responsible for drafting legislation are addressing this matter. Therefore the probation officers’ duties are authorized and guided by the following directives:

- (i) Court Orders, particularly under section 25A of the COA. This is in relation to Community Service Orders;
- (ii) Cabinet Decisions, particularly the new rehabilitation programme for youth known as the “Youth Diversion Programme”;
- (iii) Traditional procedures formulated by Ms. Grigg, a volunteer from the UK who founded the probation service in 1994;
- (iv) Legal advice from the Crown Law Officers.

The Probation Division in Tonga handles adult and youth (juvenile) cases, both through the justice system and outside it.

In addition, the Probation Division is under the supervision of the Secretary for Justice and it employs five officers. This is a major development because last year, there were only three officers. These five officers are based at the main island, Tongatapu. The Probation Service is yet to be extended to the outer islands. There are five Magistrate Courts as well as the Supreme Court in Tongatapu, two Magistrate Courts at Vava’u and one at Ha’apai. The Supreme Court has Court Circuits to Ha’apai and Vava’u, once and twice respectively every year. There are also monthly Magistrate Court Circuits to ‘Eua from the Tongatapu Magistrate’s Court and the Niuas from Vava’u Magistrate’s Courts. The Probation Division’s work is limited to the courts on the main island unless there is an urgent need for an officer on the other islands.

As a result of the riot in Tonga on 16 November 2006, the implementation of the now major youth rehabilitation programme commenced. The name of this programme is the Youth Diversion Programme. First time offenders aged seventeen and under are diverted to this programme at the discretion of the Prosecution Service. The details of this new programme will be discussed later in the paper.

With the limited staff and infrastructure of the Probation Division, we do our best to cope with the increasing workload and to provide the highest quality service possible.

## II. SERVICES PROVIDED BY THE TONGA PROBATION DIVISION

### A. General Services

The following are the services provided by the Probation Division in Tonga in relation to juvenile rehabilitation and reintegration into Tongan society:

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- (i) Preparation of pre-sentencing reports as directed by the Court;
- (ii) Arrangement and supervision of Community Work;
- (iii) Co-ordination and Supervision of the Youth Diversion Programme;
- (iv) Counselling;
- (v) Supervision of Probation Orders;
- (vi) Outreach programmes for youths e.g. "Youth Crime Awareness".

Services (i), (ii) and (v) have been implemented since the establishment of the Probation Division in Tonga. Service (iv) began in April 2007 with the recruitment of an Officer with knowledge of counselling. Service (iii) commenced in early December 2006 after the riot in Tonga. This is a new development in the rehabilitation of youths and will be discussed in detail later in the paper. Service number (vi) is currently in formulation and is to commence in July 2007.

### **B. Youth Diversion Programme (YDP)**

This is the first time this rehabilitation programme has been implemented in Tonga. After the riot in November 2006, the Honourable Minister and Attorney General decided that it was time for Tonga to allow offending youths a second chance, starting with the youths who were involved in the riot. The objectives of this YDP are:

- (i) To divert criminal issues from the courts in cases where young people are involved;
- (ii) To enable those who played a role in causing the damage to develop a full understanding of the harm they have caused and acknowledge their responsibility for it;
- (iii) To enable those who played a role in causing the damage to contribute to repairing the harm;
- (iv) To increase community involvement in the justice process, and community commitment to restoring peace and harmony in Tonga.

These incorporate some of the core objectives of the criminal justice system. The YDP also intends to resolve matters quickly, and to avoid imposing a life-long record of conviction on youths which could prevent travel and limit employment opportunities. The Prosecution Service has the discretion to nominate eligible youths to be diverted to the YDP and the qualifications are:

- (i) That he or she is 17 years old or under;
- (ii) That he or she is a first time offender; and
- (iii) That the case in which he or she is involved is a minor one (under the jurisdiction of the Magistrate's Court).

### **III. TREND OF YOUTH OFFENDING IN TONGA**

There has been a gradual increase in youth crime in the last four years. The following table is taken from the Tonga Police Force's statistics and shows what type of criminal activities youths have committed from 2002 to 2005.

136TH INTERNATIONAL TRAINING COURSE  
PARTICIPANTS' PAPERS

**Major offences committed by young offenders (15-24 years) in Tonga (2002-2005)**

<i>Offences</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>
<i>Grievous Bodily Harm</i>	2	5	4	5
<i>Bodily Harm</i>	15	11	24	11
<i>Common Assault</i>	106	102	82	74
<i>Indecent Assault on a child</i>	7	2	6	2
<i>Theft</i>	57	113	191	39
<i>Receiving</i>	3	7	–	–
<i>Robbery</i>	1	–	3	–
<i>Embezzlement</i>	1	4	1	–
<i>Forgery</i>	–	–	99	–
<i>Obtain money by false pretences</i>	2	6	68	–
<i>Housebreaking</i>	5	15	8	7
<i>Unlawful entry into a building</i>	9	12	17	9
<i>Willful damage to properties</i>	13	9	13	12
<i>Disturbance</i>	24	36	59	30
<i>Abusive language</i>	40	31	45	39
<i>Drunkenness</i>	348	274	443	417
<b><i>Total</i></b>	<b>633</b>	<b>627</b>	<b>1063</b>	<b>645</b>

The trend indicates a gradual change with a significant increase in 2004. In 2005, the average age for using any type of alcohol was 17, which correlates to the increase in drunkenness in Tonga for that year.

In general, the PYJD works closely with non-governmental organizations (NGOs). These NGOs include the Tonga Salvation Army, the Tonga Center for Women and Children, the Tonga National Youth Congress, and Legal Literacy. The referral of youths from the PYJD to each NGO for appropriate rehabilitation programmes is based on the probation officer's assessment of what kind of the guidance and assistance the youth needs. For example, a youth who stole something to trade for liquor will be referred to the Alcohol and Drugs Awareness Course of the Salvation Army and perhaps the Life Skills Training course also.

For the PYJD to use the NGOs' allowances, each NGO must seek permission from the Chief Justice of Tonga by submitting an application. The Chief Justice must also endorse their respective rehabilitation programmes.

**IV. CHALLENGES FACING THE PROBATION DIVISION IN RELATION TO  
YOUTH REHABILITATION SERVICES**

**A. Financial**

Because the national budget is limited, the PYJD can barely meet the existing costs of manpower and equipment. This prevents the extension of services to the outer islands. The equipment required includes a reliable vehicle, maintenance tools such as lawnmowers, and administrative tools such as computers, etc. This is the greatest challenge in the work of the PYJD.

**B. Cultural**

It is the traditional belief of Tongans that a criminal will be punished by a court. Society is therefore questioning the effectiveness of this new YDP programme. Some Tongans challenge the YDP and say that it is unfair that prior to the establishment of the YDP some youths were sentenced to hard labour whilst present offenders are not.

### **C. Social**

Youths who were committing offences are still mingling with other members of society and may have a negative influence on their peers. There have been a few cases where a young offender living with peers has encouraged the others to commit further offences. There are also a few cases where young offenders have been before the Courts since the age of 12 for stealing and housebreaking. Having attained the age of 21 and been to prison a number of times, their behaviour has not improved. Despite attending various NGOs' rehabilitation programmes, the offenders still are not employed.

### **D. Lack of Legal Infrastructure**

First of all, Tonga is yet to establish a separate court for juveniles and is yet to enact a separate Juvenile Act. Discussion of this very important issue is currently proceeding. It was only in April 2007 that the Convention for the Rights of Child was launched in Tonga.

The arresting procedure of a juvenile is the same with that of an adult. There is no difference whatsoever. The juvenile is also detained in exactly the same way as adults. After the 16 November riot in Tonga, many people, including juveniles, were arrested. In fact, these juveniles were detained with the adult offenders from overnight to a week or more.

Additionally, the same prosecution procedure is applied to juveniles in Tonga and the same sentences are also applicable.

### **E. Problem Families**

The number of juveniles from broken families is increasing. In some cases, both parents have migrated overseas leaving the juvenile with relatives who equally neglect their guardianship of these minors. There is also a lack of guidance for parents who have difficulty raising their children. In some cases, juveniles have been known to commute between both parents, finally ending up living with a peer group from whom he or she can pick up all sorts of criminal activities.

There are also some juveniles who left school at a very young age; some are engaged in hard labour to earn a living whilst others roam the streets seeking other ways to earn an income.

Some interviewees lie to the probation officer when questioned about the juvenile, making it very difficult for the probation officer to make a correct risk assessment of the juvenile.

### **F. Specific Challenges in Introducing the Youth Diversion Programme**

There are no additional staff to co-ordinate this newly established diversion programme, nor has the salary scale increased to reflect the extra workload. There is also a lack of funds for resources such as vehicles. There is an absence of any official regulation or law for the guidance and protection of the Diversion Programme.

So far the repayment of victims' losses is via compensation ordered in the Courts. Attempts have been made for some offenders to execute their Community Work hours to the victim's benefit, but in most cases there is lingering ill-feeling between the two parties.

## **V. EFFECTIVE MEASURES IN THE TREATMENT OF JUVENILE OFFENDERS**

So far, Tonga lacks the facilities for institutional treatment. However, the close relationship and co-operation of the NGOs makes the rehabilitation and reintegration of juvenile offenders much more possible. Below is a sample of the Tonga Salvation Army rehabilitation programmes for juveniles:

- Assessment
- 12 Step Comprehensive Treatment Programme
- 12 Steps to Good Health
- Life-Skills
- Healthy Anger
- Smoking Cessation Programme
- Psychology of Winning
- Family Focus Group

- Parental Information Group
- Recovery Group
- Community Based Programmes
- Recreational Programme
- Recovery Group

#### **A. Community-based Treatment of Juvenile Offenders**

An unofficial restorative justice programme is in practice in one of the villages in Tongatapu. In this restorative justice system, the complaint is verbally submitted by the complainant to the Noble or his representative and the elders in the village at the *fono* meetings. There is an apology from the person who is the subject of the complaint and some kind of agreement is negotiated by that person and the offended party as to how the relationship will be restored.

The main objective of this unofficial restorative justice is to maintain peace and harmony in the village by the efforts of the community members themselves. According to the members of the village, it is very effective.

#### **B. Effective Measures to Promote the Reintegration of Juveniles into the Community**

The best method practiced in Tonga is when parents and elders include young offenders in their community gatherings, such as *kava* parties, and give them good advice and let them know they are not outcasts.

In the YDP, there is a family conference where the parents are present and involved in the discussion of what is best for their child. With the 16 November cases, the victims were not invited, mainly because of the political unrest in Tonga. Inviting the victims may have caused more problems for everyone rather than finding a peaceful solution to what happened.

There is still a lack of hostels and other rehabilitation aid places in Tonga. There are however some people who take in delinquents and try to help them become better people and citizens. Some are successful and some are not.

### **VI. CONCLUSION**

In conclusion, Tongans have now realized that sending people to prison to punish them for their crimes is not the only way to create a better Tonga. The introduction of the YDP proves this. Parents and community members are surprised that the Government who passed the law is now giving another chance to criminals, especially the youth, to realize what they did was wrong and to save them from any limitations on future employment and travel opportunities. It is the foremost duty of the Tonga PYJD to oversee any rehabilitation programmes within the Ministry and NGOs and to oversee the reintegration of youths into the community.

The main task of the Probation Division is to make youths feel accepted by including them in rehabilitation programmes so that they will understand the causes and the consequences of their wrongful actions and will make better choices.

This is also why the Tonga PYJD is formulating and will implement the Crime Awareness Programme to inform juveniles of what they should and should not do in order to abide by the law, because most juveniles admitted that they did not know that by perpetrating a specific act, they actually committed an offence.

In summary, the Tonga PYJD is doing its best with present staff and infrastructure to assist the vision of the Ministry of Justice for a "Better Tonga Tomorrow".