



## REPORT

### CHILD IN POLICE LOCK-UP

#### Introduction

Sauafea Tiavaasue and his wife Mareta complained to the Ombudsman that their three year old son had been locked up in a police cell on Friday 26 September 2014. The Police had caught Sauafea Tiavaasue on that day driving an unlicensed vehicle. His three year old son was with him as sole passenger in the vehicle. When Tiavaasue was later locked up, the boy was placed in the cell with him.

#### Questions

Two questions arise:

1. Why was Tiavaasue locked up for such a trivial traffic matter as driving an unlicensed vehicle?
2. Why was the 3 year old boy locked up at all?

#### Sequence of Relevant Events

Tiavaasue was stopped at Savalalo by a police constable on Monday morning 22 September 2014. It was subsequently discovered after contacting police headquarters that the minivan he was driving did not have current registration. The registration sticker on the windscreen was a current sticker but it had been put there fraudulently. It was a sticker that had been issued for a Toyota Hiace van belonging to a Ululoloa woman.

Tiavaasue was taken to the station for further questioning. He told police that he was not responsible for the vehicle because it did not belong to him. He said that he had bought a car from another person. That person was servicing the vehicle before handing it over and had given him the minivan to use in the meantime.

The police constable who had been handling the case from the start contacted the alleged owner of the minivan and told him that Tiavaasue was involved with the police because of the state of the vehicle's registration and the fraudulent sticker. The man agreed to come in to clear things up.

At that juncture the Inspector in charge of Traffic arrived on the scene and took matters over. Tiavaasue repeated to the inspector his story that he did not own the minivan and that he knew nothing about the fraudulent sticker.

The Inspector decided to release Tiavaasue with a warning. He was told to return the minivan to its owner and to get a registered vehicle for his use. Tiavaasue was told that he would be charged if he was seen again driving the unregistered vehicle.

On Tuesday 23 September another constable while crossing from the SNPF mall to the flea market saw Tiavaasue driving the same minivan and reminded him of the police warning he had been given concerning that vehicle. Tiavaasue explained that he was still waiting upon the party he had earlier mentioned to the police.

On Friday morning 26 September. Tiavaasue was caught by yet another constable driving the same distinctive unlicensed minivan with a picture of a large bottle of wine on the side. The 3 year old boy was with him in the vehicle. Tiavaasue was again warned and allowed to go.

The constable shortly afterwards reported in on the radio his encounter and further warning to Tiavaasue. Unfortunately however for Tiavaasue, the Inspector heard the radio report and asked for him to be brought in. The Constable located Tiavaasue and informed him of the Inspector's instructions. Tiavaasue, his 3 year old son and the constable all duly arrived at police headquarters.

From this point on accounts from police witnesses begin to differ on important details. The Inspector ordered Tiavaasue to be detained and charged. The order passed down two levels of subordinates. Tiavaasue was at the time sitting in the police station with his three year old son. The lower of the two subordinates, a constable did not think it right to lock up the boy with his father but when he asked the sergeant who had instructed him he was told to just carry out the Inspector's orders. The sergeant obviously saw father and son as forming a package as far as the Inspector's detention instructions were concerned.

It is amazing that a sergeant could think an Inspector to be ordering the lock up of an innocent child and not question that order directly.

The Inspector denied any inference that his orders included the child. He insisted in his evidence that when he issued the order to the sergeant he had neither spoken to Tiavaasue nor seen his son. His subordinate sergeant thought otherwise. The latter felt sure that the Inspector had seen the boy because although he was small "*he wasn't an ant*".

The constable who implemented the lock-up did so with diffidence after requesting Tiavaasue to have someone come to take the little boy away. He had replied that his wife and aiga were far away at Falealili and that the boy would be okay with him. The constable had then requested the Watch House people to make available the front cell so that the pair would be on their own.

Once inside the cell, Tiavaasue was able with his cell phone to take photos of his son in the cell.



According to Tiavaasue, his son and he were exactly fifty-seven minutes in the lock-up. He had remarkable presence of mind to be so precise in his time keeping. The police

witnesses were vague about time giving indications ranging from a few minutes to "under an hour" for the entire episode.

It is interesting that Tiavaasue did not want earlier to ring for someone to take the boy away yet a brother and a niece were able to be at the police station within about an hour of the lock-up. It appears that Tiavaasue was able to make good use of his cell phone once he had his photographs.

Traffic Division leadership eventually decided to take corrective action on the matter but by the time it got around to doing so, someone from outside of Traffic had been sensible enough to remove Tiavaasue and his son from the cell to a visiting room.

### Rights of the Child

Samoa is a signatory of the Convention on the rights of the child (CRC). Human Rights are important for everyone but special significance and importance attach to the rights of the child. These derive from the fact that a child cannot stand up for his or her own rights. The child relies on "others" around him to protect or facilitate the enjoyment of his rights. In the forefront of these "others" at all times are parents and guardians of the child.

In all of the circumstances of the case under examination here, the three year old toddler involved was miserably let down with regard to his rights by the responsible people around him; his father and police officers.

This case provides a neat example of the 'Rights of the Child' in action and is a good opportunity for us to consider what they are and what they are not. What they are not is the view that exists in Samoa that the Convention on the Rights of the Child (CRC) gives children a 'carte blanche' right to do as they please. The CRC is instead a set of principles that seek to address vulnerabilities unique to children - in this case not being placed in detention and having their right to liberty removed unlawfully or disproportionately.

The CRC is a framework that is designed to protect our children and allow parents to fulfill their rightful role as guardian of their offspring's well-being and development. It is complementary to the Fa'a Samoa and we would do well to accept this sooner rather than later.

Article 37 (b) of the CRC requires State parties to ensure that **"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest period of time."**

A child may only ever be detained in custody if it is in accordance with law and as a measure of last resort.

**Observations and Conclusions**

There can be no doubt that the "detention", if detention it was, for a brief period on Friday September 2014 of a 3 year old boy was violation of his rights at the hands of incompetent unprofessional police officers. "Detention" was not in accordance with law and it was not a matter of necessity to resort to such detention.

It must be said that police objective in the case under examination was the detention of the father. The boy was put in the cell to facilitate the detention of his father in the same way that a baby possibly may be placed with his or her mother in a gaol cell. The boy was confined to the cell not by the will of the police but by his attachment to his father with which the police was not prepared at the time to interfere.

Be that as it may, sitting in a lock-up cell is an experience a 3 year old boy can surely do without.

**Even if for the sake of argument it was absolutely necessary to lock up the father and it could not be done as long as the child was with him, the reasonable course, and an entirely possible one with a little initiative and effort, would have been to delay the lock-up until somebody was found to assume care for the child. It is unbelievable that the father did not kick up a fuss to this end at the time.**

It is evident however that it was not necessary to lock the father up at all. In fact, a proper course of action with regard to the father would have been to proceed against him by summons to appear in Court. The matter was not a criminal but a minor traffic violation.

**It would appear that the man was locked up because an Inspector of Police who may have been peeved by the man's disregard of warnings had the power to lock him up.**

**Moreover, it cannot be denied that matters would never have developed to the disastrous situation of Friday 26 September if the same Inspector of Police had not exercised his powers in whimsical manner on Monday 22 September 2014.**

It was established when Tiavaasue was first brought to the police station on 22 September that he was in possession of a minivan that did not have current registration but was fraudulently affixed with a valid registration sticker. Tiavaasue claimed that it was not his vehicle,

The minivan by the above information, rather than Tiavaasue had become the more important focus of police attention and the constable handling the matter had set things in motion to further legitimate inquiries. At that point the Inspector in charge took over the case.



30

The Inspector decided to be magnanimous in the use of his powers. He released not only Tiavaasue but the vehicle he claimed not to own. (Police claim to have later learned that Tiavaasue had lied. The vehicle he had bought was in fact the minivan he was caught driving).

The Inspector's release of Tiavaasue was reasonable enough action at the time. **In his magnanimity however he also released a vehicle that should have been held in police custody for the investigation of fraudulent acts.** If this had been done Tiavaasue would not have been able to ride around in the van with his young son in the days following. The police also may have been able to discover who was responsible for the fraudulent sticker.

The 3 year old involved in this case was not afforded the protection he was entitled to because of the incompetent and unprofessional conduct of police officers.


The father of the 3 year old boy was blatantly courting trouble with the police. He chose to have his son with him during the risky unlawful activity of driving around in an unregistered vehicle against repeated police warnings not to do so. When inevitably the boy was embroiled in his mess he did not do what a reasonable parent would have done to avoid undesirable treatment of the boy. These circumstances, when viewed together with the cool precise time keeping he was able to bring to bear on things, do not reflect well on integrity and motive.

Finally, the fact of the matter pitifully is that the 3 year old was under no legal impediment on Friday 26 September 2014. He was free to go. The problem was the fact that he couldn't exercise his right to freedom on his own. He needed someone to help him realise and enjoy his right to freedom. His problem simply- "he was a child"; and all those around him that day, including his father failed in their duties towards him.

### **Recommendations**

It is recommended that for shortcomings in the handling of the case and reasons cited in this short report:

1. the Inspector who was in charge of this case and who issued the lock-up order as well as the Sergeant to whom the order was given and who passed it on down should both be demoted in rank;
2. It be drummed into every police recruit that if an order is not clear-ASK; and if an order appears ridiculous-ASK.

  
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Ombudsman