

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 29 of the Crimes Rules – Conversion

Description

A person who, without lawful excuse but not so as to be guilty of theft, takes or converts to his or her use or to the use of any other person any movable property, commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) took or converted
- (iii) movable property
- (iv) without lawful excuse
- (v) for use.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who unlawfully converted another person's property.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 30 of the Crimes Rules – Breach of Trust

Description

- (1) A trustee who with intent to defraud, and in violation of the trust, converts anything of the trust to a use not authorised by the trust, commits an offence.
- (2) For the purposes of this rule an executor or administrator shall be deemed to be a trustee of the property subject to the administration.

Elements of Offence

- (i) a person (accused)
- (ii) a trustee
- (iii) intended to defraud the trust
- (iv) took or used the property of the trust
- (v) in a way not permitted by the trust.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove the accused was the trustee who took or used the property of the trust without permission and had intention to defraud the trust.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment (Commissioner).

20 penalty units or 1 year imprisonment (High Court).

Rule 31 of the Crimes Rules – Fraud

Description

- (1) A person who by deceit or falsehood or other fraudulent means –
 - (i) defrauds the public or any person ascertained or unascertained;
 - (ii) causes or induces a person to execute, make, accept, endorse, or destroy the whole or any part of a valuable security, commits an offence.
- (2) A person who in incurring a debt or liability obtains credit by fraud, commits an offence.

Elements of Offence

- 1** Rule 31(i)
 - (i) a person (accused)
 - (ii) deceived OR lied to another person
 - (iii) that deception or lie caused the accused or another to receive a benefit.
- 2** Rule 31(ii)
 - (i) a person (accused)
 - (ii) deceived OR lied
 - (iii) that deception or lie persuaded OR caused another person to make OR accept OR cancel a bank deposit or loan.
- 3** Rule 31(2)
 - (i) a person (accused)
 - (ii) obtains a loan or obtains property on credit
 - (iii) by fraud.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who lied to another person caused that person to confer a benefit on the accused.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment (Commissioner).

20 penalty units or 1 year imprisonment (High Court).

Rule 32 of the Crimes Rules – Forgery

Description

- (1) A person who makes a false document with intent to defraud or deceive any person, whether ascertained or unascertained, commits an offence.
- (2) In this rule, “false document” means a document —
 - (i) of which the whole or any material part purports to be made by a person who did not make it or authorise its making; or
 - (ii) of which the whole or any material part purports to be made on behalf of a person who did not authorise its making; or
 - (iii) in which, though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time, date or place of its making, where material, or any number or distinguishing mark identifying the document, where either is material, is falsely stated; or
 - (iv) of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or
 - (v) which is made in the name of an existing person either personally or by the authority of that person, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.
- (3) In this rule, “make a false document” includes making a material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal, or otherwise.
- (4) The offence under this rule is complete —
 - (i) as soon as the document is made with the requisite intent, although the offender may not have intended that any particular person should use or act on it as genuine, or should be induced by the belief that it is genuine to do or refrain from doing anything;

- (ii) although the false document may be incomplete, or may not purport to be such a document as would be valid in law, if it is so made and is such as to indicate that it was intended to be acted on as genuine.
- (5) A person who procures the execution of a document by falsely pretending that its contents are different from what they really are commits an offence.

Elements of Offence

Rule 32(1)

- (i) a person (accused)
- (ii) made a false document
- (iii) with intent to defraud OR deceive any person.

Rule 32(5)

- (i) a person (accused)
- (ii) inaccurately described the contents of a document to another person
- (iii) that description persuaded another person to create a implement a document.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who intentionally made a false document OR inaccurately told another person about the content of a document and persuaded that other person to agree to that document.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

“false document” refers to a document made for a purpose that is set out in subparagraph (2) of Rule 32 of the Crimes Rules.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment (Commissioner).

20 penalty units or 1 year imprisonment (High Court).

Rule 34 of the Crimes Rules – Intentional fire

Description

A person who intentionally and without lawful excuse –

- (i) sets fire to any property; or
- (ii) damages or destroys property by means of explosive; or
- (iii) endangers human life by fire and by means of explosive.

This covers three distinct offences.

Elements of Offences

Rule 34(1)(i)

- (i) a person (accused)
- (ii) set fire to any property
- (iii) intentionally
- (iv) without lawful excuse.

Rule 34(1)(ii)

- (i) a person (accused)
- (ii) damaged or destroyed property
- (iii) by means of explosive
- (iv) intentionally and
- (v) without lawful excuse.

Rule 34(1)(iii)

- (i) a person (accused)
- (ii) endangered human life by fire or by means of explosive
- (iii) intentionally and
- (iv) without lawful excuse.

Commentary

(1) Identification

In court, the prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must provide evidence to prove that it was the accused who committed the offence, for example it was the accused who set the fire, damaged property by use of explosives.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes to your satisfaction that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Intentionally and unlawfully

“Intentionally and unlawfully” are important elements of this offence.

The prosecution must prove that the accused intended to set fire to the property. The prosecution must also show that there was no lawful reason for setting the fire (for example, following the orders of the Pūlenuku to burn rubbish).

(4) Defences

If the prosecution has proved the elements of the offence, the accused may still have a defence.

An accused may bring evidence to show that he or she was forced to commit the offence. The accused will have to establish their defence, on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 35 of the Crimes Rules – Careless Fire

Description

A person who negligently causes a fire commits an offence.

Elements of Offence

- (i) a person (the accused)
- (ii) caused a fire
- (iii) negligently.

Commentary

(1) Identification

In court, the prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must provide evidence to prove that it was the accused who committed the offence, i.e it was the accused who caused the fire.

A fire can be caused directly or by an act or omission that enabled the fire to start.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

“Negligently” is an important element of this offence. The prosecution must prove that the accused did or failed to do what a reasonable person would have done in the circumstances.

(3) Defences

If the prosecution has proved the elements of the offence, the accused may still have a defence.

The accused will have to establish their defence, on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 36 of the Crimes Rules – Damage to property

Description

A person who intentionally and without reasonable excuse destroys or damages the property of another commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) the property of another
- (iii) destroyed or damaged
- (iv) intentionally and
- (v) without reasonable excuse.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must provide evidence to prove that it was the accused who damaged and destroyed the property.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Intentionally and without reasonable excuse

“Intentionally and without reasonable excuse” are important elements of this offence.

The prosecution must prove that the accused intended to damage or destroy the property and without reasonable excuse damaged or destroyed the property. The prosecution must prove that the accused had no reasonable excuse for damaging or destroying the property.

“Property of another”: The prosecution must prove that the property which was damaged or destroyed did not belong to the accused.

(4) Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence, on the balance of probabilities (i.e more likely than not)

Maximum Sentence

3 penalty units or 3 months imprisonment (Commissioner).

20 penalty units or 1 year imprisonment (High Court).

Rule 37 of the Crimes Rules – Animal Trespass

Description

A person who owns, uses or has the care of an animal which wanders or is at large in a public place, or is on private property without permission, commits an offence.

Elements of Offence

1 Rule 37

- (i) a person (accused)
- (ii) owned OR used OR had the care of an animal
- (iii) that animal
- (iv) wandered in a public place OR
- (v) was taken into a public place and not tied up or put in a cage
OR
- (vi) was in private property without permission.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who owned the animal that wandered in a public place or wandered on to another person's private property without their permission.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 38 of the Crimes Rules – Trespass

Description

- (1) A person who, without lawful excuse, is —
 - (i) in or on a building; or
 - (ii) in an enclosed yard or similar area; or
 - (iii) in or on a vessel or vehicle,
 - (iv) belonging to anothercommits an offence.

- (2) A person who —
 - (i) enters a plantation, garden, land or house of another with intent to commit an offence;
 - (ii) without lawful excuse enters or remains in a plantation, garden, land or house of another after being warned not to enter, or to leave as the case may be,commits an offence.

Elements of Offence

Rule 38(1)

- (i) a person (accused)
- (ii) without lawful excuse
- (iii) was in or on a building or in an enclosed yard or similar area or in or on a vessel or vehicle.

Rule 38(2)(i)

- (i) a person (accused)
- (ii) entered a plantation, garden, land or house
- (iii) of another
- (iv) with intent to commit an offence there.

Or

Rule 38(2)(ii)

- (i) a person (accused)
- (ii) without lawful excuse

- (iii) entered or remained in, a plantation, garden, land or house
- (iv) of another
- (v) was warned not to enter or was told to leave
- (vi) did not obey.

Commentary

(1) Identification

In court, the prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must provide evidence to prove that it was the accused who entered the building or vessel or entered the land of another with intent to commit an offence or stayed on the land of another after being warned not to enter or to leave.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence proves that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Examples of “lawful excuse” are – official visits, entry permitted by law, or accepted by the owner, electricity repairs, telephone repairs.

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 39 of the Crimes Rules – Indecent documents and things

Description

- (1) A person who, knowingly and without lawful excuse —
 - (i) sells, or exposes for sale or to public view, an obscene or indecent book, picture, film, tape, photograph, document, or object or thing; or
 - (ii) publicly exhibits an obscene or indecent show, commits an offence.

- (2) Any person who has in his or her possession an obscene or indecent book, picture, film, tape, photograph, document, or object, or thing, commits an offence.

Elements of Offence

- 1** Rule 39(1)(i)
 - (i) a person (accused)
 - (ii) knowingly
 - (iii) sold OR exposed for sale OR exposed to public view
 - (iv) an obscene OR indecent
 - (v) document OR object OR thing
 - (vi) without lawful excuse.

- 2** Rule 39(1)(ii)
 - (i) a person (accused)
 - (ii) knowingly
 - (iii) publicly exhibited
 - (iv) obscene OR indecent show
 - (v) without lawful excuse.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who knowingly exposed the public to an indecent OR obscene document OR object, OR thing OR show.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment (Commissioner).

20 penalty units or 1 year imprisonment (High Court).

Rule 40 of the Crimes Rules – False report to the Police

Description

A person who —

- (i) contrary to the fact and without a belief in the truth of the statement, makes or causes to be made to a constable a written or oral statement alleging that an offence has been committed; or
- (ii) does an act or makes a statement with the intention of causing wasteful deployment, or of diverting deployment, of police personnel or resources, or being negligent as to that result, commits an offence.

Elements of Offence

Rule 40(i)

- (i) a person (accused)
- (ii) contrary to the fact and without a belief in the truth
- (iii) made or caused a written or oral statement to be made
- (iv) to a constable
- (v) the statement is incorrect and the accused did not believe it was true

Or

Rule 40(ii)

- (i) a person (accused)
- (ii) did an act or made a statement
- (iii) intentionally or negligently
- (iv) to cause wasteful deployment of police resources or
- (v) to divert deployment of police resources.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who wrote or caused the statement to the police or that it was the accused who did the act or made the statement intended to waste the resources and time of police.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 41 of the Crimes Rules – Accusation of offence

Description

A person who —

- (i) with intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person of an offence, whether the person accused or threatened with the accusation is guilty of that offence or not; or
 - (ii) with the intent as specified in subparagraph (i), threatens that any person shall be so accused by any person; or
 - (iii) causes any person to receive a document containing an accusation or threat of the kind specified in this rule, knowing its contents,
- commits an offence.

Elements of Offence

Rule 41(i)

- (i) a person (accused)
- (ii) intended to gain something unlawfully from another
- (iii) accused or threatened to accuse any person of an offence

Or

Rule 41(ii)

- (i) a person (accused)
- (ii) intended to gain something unlawfully from another
- (iii) threatens a person that they will be accused by another of having committed an offence

Or

Rule 41(iii)

- (i) a person (accused)
- (ii) caused another person to receive

- (iii) a document which contain an accusation or having committed an offence or threatens that the accused will be made
- (iv) knowing what is in the document.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who who made the threat, knew what was in the document and intended to gain something unlawfully.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Whether the accusation of offending is correct or not, is irrelevant.

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 42 of the Crimes Rules – Spreading Rumours

Description

A person who knowingly spreads an untrue report which is likely to cause any other person to suffer in reputation commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) spread a report
- (iii) knowingly it was not true
- (iv) likely to cause damage to the reputation
- (v) of another.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who spread the report knowing that it was not true and likely to damage the reputation of another.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

It would be a good defence that the report was true.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 43 of the Crimes Rules – Obstruction in a public place

Description

A person who intentionally obstructs a public place, or without lawful excuse, knowingly creates a source of danger in a public place, commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) intentionally obstructed a public place OR without lawful excuse and knowingly created a danger in a public place.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who caused the obstruction and that the accused intended to cause the obstruction OR that it was the accused who created the danger in the public place and the accused knew of that.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 44 of the Crimes Rules – Fighting in a public place

Description

A person who, without lawful excuse, fights in a public place commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) without lawful excuse
- (iii) fought
- (iv) in a public place.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who fought in a public place and that there was no lawful excuse for the fighting.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 45 of the Crimes Rules – Offensive behaviour

Description

A person who —

- (i) in or within view of a public place, behaves in an indecent, offensive or disorderly manner; or
- (ii) in a public place, addresses any words to any person intending to threaten, alarm, or offend that person; or
- (iii) in or within hearing of a public place uses threatening or insulting words and is negligent as to whether any person is alarmed or insulted by those words; or
- (iv) uses profane, indecent, or obscene language in a public place or within the hearing of a person in a public place, commits an offence.

Elements of Offence

1 Rule 45(i)

- (i) a person (accused)
- (ii) behaved in an indecent OR offensive or disorderly manner
- (iii) within view of public place.

2 Rule 45(ii)

- (i) a person (accused)
- (ii) in a public place
- (iii) addressed words to a person
- (iv) intending to threaten, OR alarm, OR offend that person

3 Rule 45(iii)

- (i) a person (accused)
- (ii) within hearing of a public place
- (iii) used threatening or insulting words
- (iv) negligent as to whether any person is alarmed or insulted by those words.

4 Rule 45(iv)

- (i) a person (accused)
- (ii) used profane OR indecent, or obscene language
- (iii) in a public place or within the hearing of a person in a public place.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who behaved offensively in one of the four ways specified.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 46 of the Crimes Rules – Noise

Description

A person who makes or causes the making of an unnecessary and unreasonable noise in a village commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) made or caused
- (iii) unnecessary and unreasonable noise
- (iv) in the village.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who made or caused the making of unnecessary and unreasonable noise in the village.

“Unnecessary and unreasonable noise” means the noise that is not acceptable according to the custom of the village.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 47 of the Crimes Rules – Throwing Stones

Description

A person who throws or discharges a stone or other object in a manner that is likely to cause injury, damage or disturbance to any person, commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) threw or discharged
- (iii) a stone or other object
- (iv) likely to cause injury, damage or disturbance.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who threw the stone which had caused damage or disturbed another person.

“Discharge” involves the use of a tool such as a slingshot to project an object.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 48 of the Crimes Rules – Invasion of privacy

Description

A person who, without reasonable excuse, peeps or peers into a house commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) without reasonable excuse
- (iii) peeped or peered
- (iv) into a house.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who peeped or peered into the house without reasonable excuse for doing so.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 49 of the Crimes Rules – Drugs

Description

Rule 49(2)

Subject to paragraph (3) a person, other than a qualified medical practitioner, who knowingly —

- (i) imports a drug into Tokelau; or
- (ii) has a drug in their possession, commits an offence.

Elements of Offence

Rule 49(2)(i) and (ii)

- (i) a person (accused)
- (ii) not a qualified medical practitioner
- (iii) knowingly
- (iv) imported a drug into Tokelau OR had a drug in their possession.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who imported the drug into Tokelau or had a drug in her or his possession and was not a qualified medical practitioner.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

In Rule 49 of the Crimes Rules, “drug” means —

- (i) cannabis plant or seed, opium poppy, coca leaves, or any derivative, preparation or product of any of them; and
- (ii) any psychotropic liquid or substance.

(3) Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a defence.

The accused may prove that he or she had a written prescription from a medical practitioner to import the drug for his or her use or for that of the family.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 50 of the Crimes Rules – Intoxicating Liquor

Description

- (1) A person who sells or supplies intoxicating liquor to a person under the age of 18 years commits an offence.
- (2) It is no defence to a charge under paragraph (1) that the person charged believed that the person to whom the liquor was sold or supplied was not under the age of 18 years.
- (3) A person under the age of 18 years who drinks any intoxicating liquor knowing the liquor to be intoxicating commits an offence.

Elements of Offence

- 1** Rule 50(1)
 - (i) a person (accused)
 - (ii) sold or supplied
 - (iii) intoxicating liquor
 - (iv) to a person under 18 years of age.

- 2** Rule 50(3)
 - (i) a person (accused)
 - (ii) under 18 years of age
 - (iii) drank intoxicating liquor
 - (iv) knowing the liquor to be intoxicating.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who sold intoxicating liquor to a person under 18 years, or for (2) that the accused was under 18 years and drank intoxicating liquor knowing it is intoxicating.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

A belief that the person supplied is at least 18 years of age is not a defence to a charge under paragraph (1).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 51 of the Crimes Rules – Tobacco

Description

A person under the age of 16 years who smokes tobacco in any form commits an offence.

Elements of Offence

Rule 51

- (i) a person (accused)
- (ii) smoked tobacco
- (iii) under 16 years of age.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who smoked the tobacco and was under 16 years of age. Remember Rule 114 – a person under 10 years of age cannot commit an offence special rules apply to a person between the age of 10 and 14 years.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 52 of the Crimes Rules – Drunkenness

Description

A person who is drunk in a public place, and —

- (i) causes a disturbance; or
- (ii) is unable to look after him or herself, commits an offence.

Elements of Offence

Rule 52(i)

- (i) a person (accused)
- (ii) drunk
- (iii) public place
- (iv) caused a disturbance.

Rule 52(ii)

- (i) a person (accused)
- (ii) drunk
- (iii) public place
- (iv) unable to look after himself or herself.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who was drunk in a public place and caused disturbance or was unable to look after himself or herself.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Found drunk as to incapable of taking care of himself or herself

The prosecution must prove beyond reasonable doubt that the accused was affected by alcohol. The prosecution must also prove that the accused was drunk. The effect of drunkenness must be such that the person was not in control and could not manage themselves.

(4) Public Place

The prosecution must prove that the accused was in a public place. It needs to be proved that the place was in a public place in nature of, for example the “malae”, the Meeting house, or hospital.

(5) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 53 of the Crimes Rules – Use of Explosives

Description

A person who —

- (i) discharges a firearm or explosive carelessly or in such a manner or place as to cause or be likely to cause danger to the public;
- (ii) uses dynamite, gelignite or any other explosive or any deleterious liquid or substance for the purpose of killing or taking fish, commits an offence.

Elements of Offence

Rule 53(i)

- (i) a person (accused)
- (ii) discharged a gun or explosive
- (iii) carelessly OR in a manner or place to cause or to be likely to cause danger
- (iv) to the public.

Rule 53(ii)

- (i) a person (accused)
- (ii) used
- (iii) explosive or harmful liquid or harmful substance
- (iv) for fishing.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who discharged the fire arm carelessly to cause danger to the public or that it was the accused who used the explosive or harmful liquid or substance for fishing.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 54 of the Crimes Rules – Offensive weapons and disabling substances

Description

- (1) In this rule —
- “disabling substance” means any anaesthetising or other substance produced for use for disabling persons, or intended for such use by the person who has it;
- “offensive weapon” means —
- (i) in paragraph (2)(i) an object made or altered for use for causing bodily injury, or intended for such use by the person who has it;
 - (ii) in paragraph (2)(ii) an object capable of being used for causing bodily injury including any form of knife.
- (2) A person who —
- (i) without reasonable excuse, has an offensive weapon or disabling substance in a public place; or
 - (ii) has possession, in any place, of an offensive weapon or disabling substance in circumstances that prima facie show an intention to use it to commit an offence, involving bodily injury or the threat or fear of violence,
- commits an offence.
- (3) It is a defence to a charge under paragraph (2)(ii) if the person accused proves that it was not his or her intention to use the weapon or substance to commit an offence.

Elements of Offence

- 1** Rule 54(2)(i)
- (i) a person (accused)
 - (ii) without lawful excuse
 - (iii) had an offensive weapon or disabling substance
 - (iv) in a public place.
- 2** Rule 54(2)(ii)
- (i) a person (accused)
 - (ii) had possession

- (iii) an offensive weapon or disabling substance
- (iv) circumstances show intention to use it
- (v) to commit an offence that involves bodily injury or the threat or fear of violence.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who had an offensive weapon or disabling substance in a public place without OR that the accused had an offensive weapon or disabling substance with intention to use it as described in subparagraph (ii).

“disabling substance” means any anaesthetising or other similar substance.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 55 of the Crimes Rules – Public Boats

Description

- (1) A captain shall be designated for each public boat.
- (2) The captain of a public boat shall be responsible —
 - (i) for its navigation, working and safety when on the water, and may refuse to take any person or cargo into the boat unless he considers it safe to do so; and
 - (ii) for the loading and discharge of passengers and cargo into and from the boat.
- (3) A person who without reasonable excuse fails to obey the command of the captain of a public boat given in the exercise of the duty of the captain commits an offence.

Elements of Offence

Rule 55(3)

- (i) a person (accused)
- (ii) without reasonable excuse
- (iii) failed to obey the command
- (iv) of the captain of a public boat
- (v) given in the exercise of the duty.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who failed to obey the command of the captain of a boat in the exercise of the captain's duty without reasonable excuse.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 56 of the Crimes Rules – Use of Vehicle and Vessel

Description

- (1) A person who drives or rides a vehicle or uses a vessel without due care and attention or without reasonable consideration for other persons using the road or place, commits an offence.
- (2) In paragraph (1) “vehicle” includes bicycle and motor-bike.

Elements of Offence

Rule 56(1)

- (i) a person (accused)
- (ii) drove or rode
- (iii) a vehicle (includes bicycle or motorbike) or a boat
- (iv) without due care and attention OR reasonable consideration for other persons who are using the road or place.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who drove the vehicle on the road, or used the boat carelessly or without reasonable consideration for other people.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 57 of the Crimes Rules – Endangering Vessel

Description

A person who does an act or omits to do an act with intent to damage or endanger a vessel or its cargo, or with intent to injure or endanger a person on a vessel commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) did an act or omitted to act
- (iii) with intent
- (iv) to damage or endanger a vessel or its cargo OR injure or endanger a person on a vessel.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused did an act or omitted to do an act with the intention to damage or endanger the boat or its cargo or injure or endanger another person on the boat.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 58 of the Crimes Rules – Visiting Vessel

Description

- (1) A person who visits or boards a vessel while it is calling at Tokelau except —
 - (i) with the prior permission of the Faipule and of the officer in charge of the vessel; or
 - (ii) as an official or ticket-holding passenger; or
 - (iii) as required or permitted by any other enactment; or
 - (iv) as a member of the crew of the vessel,
commits an offence.
- (2) If a person under the age of 14 years visits or boards a vessel in contravention of paragraph (1), each parent of that child commits an offence.

Elements of Offence

Rule 58(1)

- (i) a person (accused)
- (ii) not listed in paragraph (1) visited or boarded a vessel.

Rule 58(2)

- (i) a person (accused)
- (ii) is the parent of a child under 14 years
- (iii) who visited or boarded the boat
- (iv) without right under paragraph (1).

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who visited the boat without right or is the parent of a child under 14 years of age who visited the boat.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 59 of the Crimes Rules – Poison

Description

A person who without lawful excuse places poison where it is a source of danger to human beings or to animals commits an offence.

Elements of Offence

Rule 59

- (i) a person (accused)
- (ii) without lawful excuse
- (iii) placed poison
- (iv) to be a danger to human beings or animals.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who placed a poison in a position of danger to animals or a human beings without lawful excuse.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 60 of the Crimes Rules – Polluting Water

Description

A person who throws offensive matter into or otherwise pollutes any well, tank, or other place from which the supply of water for human use is obtained, commits an offence.

Elements of Offence

Rule 60

- (i) a person (accused)
- (ii) threw offensive matter or polluted
- (iii) a well, tank or other place of water supply for human use.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused polluted or threw rubbish into a tank or other place that supplied water for human use.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 61 of the Crimes Rules – Unwholesome Provisions

Description

Any person commits an offence, who —

- (i) provides for public consumption; or
- (ii) sells, or exposes for sale; or
- (iii) possesses with intent to sell,
any food or drink which that person knows, or might by the exercise of reasonable care have known, to be unwholesome.

Elements of Offence

Rule 61

- (i) a person (accused)
- (ii) provided for public consumption OR sold or exposed for sale
OR possessed for sale
- (iii) knew or OR ought reasonably to have known
- (iv) any food or drink
- (iv) to be unwholesome.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who provided food or drink for public consumption and knew or ought to have known that the goods were unwholesome.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

“Unwholesome” means rotten or prepared wrongly or likely to cause sickness or past the expiry date.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 62 of the Crimes Rules – Unsanitary Premises

Description

A person who permits any place in his or her occupation or belonging to him or her to be in an insanitary or offensive condition to the danger or annoyance of the public or of neighbours commits an offence.

Elements of Offence

Rule 62

- (i) a person (accused)
- (ii) permitted a place
- (iii) in his or her occupation or ownership
- (iv) to be in an unhealthy condition
- (v) that was a danger to or annoyed
- (vi) the public or neighbours.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who occupied or owned the place and permitted to be in a condition that annoyed or was a danger to others.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

This provision deals with uses of land such as those that may attract rats, flies, insects and spread diseases, and also to those that annoy because of smell or untidiness.

Note the requirement that the public place or neighbours are endangered or annoyed eg by smell of rubbish.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 63 of the Crimes Rules – School Attendance

Description

- (1) Every person between the ages of 5 and 16 years who is resident in Tokelau shall attend school.
- (2) The parent or guardian of a child required by paragraph (1) to attend school who, without just cause, refuses or neglects to keep the child in regular attendance at school, commits an offence.

Elements of Offence

Rule 63(2)

- (i) a person (accused)
- (ii) the parent or guardian
- (iii) of a child between the age of 5 and 16 years resident in Tokelau
- (iv) refused or neglected to keep the child in regular attendance at school
- (v) without just cause.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that the accused is the parent or guardian of a child under 16 years had refused or neglected to send the child to school regularly.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

No mental element is required, it is enough that the parent or guardian has not sent the child to school.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

It is a good defence to have a ‘just cause’ eg the child was sick.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 64 of the Crimes Rules – Gaming

Description

A person who plays a game for money with cards or with dice commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) played a card game or dice
- (iii) for money.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who played a game with cards or dice for money.

This rule does not apply to bingo or dominoes. It does not apply to games with cards or dice unless money is used.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 67 of the Crimes Rules – Telephones

Description

- (1) No person, other than a person approved by Teletok for the purpose, shall interfere with or effect any connection or carry out any maintenance to any public telephone line.
- (2) A person who contravenes paragraph (1) commits an offence.

Elements of Offence

- (i) a person (accused)
- (ii) not approved by Teletok
- (iii) interfered with OR made a connection line OR carried out maintenance
- (iv) public telephones.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who interfered with the telephones lines.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 68 of the Crimes Rules – Electricity

Description

- (1) No person shall make a connection to a public electricity supply except with the prior approval of the public officer responsible for electricity.
- (2) The public officer responsible for electricity may refuse to approve the connection of any building to any public electricity supply or order the disconnection of any building from any such supply if —
 - (i) the building is not suitably constructed or is unsound;
 - (ii) the connection is likely to endanger the supply of electricity to, or the safety of, other buildings on the same circuit, or the safety of the circuit; or
 - (iii) insufficient generating capacity is available.
- (3) No person, other than a person authorised by the public officer responsible for electricity, shall interfere with or effect any connection to, or carry out any maintenance on, any public electricity supply.
- (4) No person shall —
 - (i) use any electrical appliance connected to any public electricity supply after having been warned not to do so by the public officer; or
 - (ii) use any electricity from any public electricity supply in such a manner as to interfere with the efficiency of the supply.
- (5) The public officer responsible for electricity or a person authorised by the public officer responsible for electricity may, at any reasonable time, enter any building connected to a public electricity supply for the purpose of inspecting or testing any electrical installation.
- (6) A person who contravenes this rule commits an offence.

Elements of Offence

Rule 68(1)

- (i) a person (accused)
- (ii) made a connection to the public electricity system
- (iii) not approved by the public officer responsible for electricity.

Rule 68(3)

- (i) a person (accused)
- (ii) not authorised by the public officer responsible for electricity
- (iii) interfered with or made a connection to or carried out maintenance on
- (iv) the public electricity system.

Rule 68(4)

- 1**
- (i) a person (accused)
 - (ii) used any electrical appliance
 - (iii) connected to the public electricity system
 - (iv) after being warned not to do so by a public officer.

Rule 68(4)

- 2**
- (i) a person (accused)
 - (ii) used electricity from any public electricity system
 - (iii) in such manner to interfere with the efficiency of the supply.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who made a connection or interfered with the system without the approval of the public officer responsible for electricity.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 69 of the Crimes Rules – Sea Voyages

Description

- (1) No person shall use a boat of Tokelau for the purposes of travelling between the islands of Tokelau or between an island of Tokelau and any other place without approval of the village.
- (2) Before granting approval under paragraph (1), the village shall satisfy itself that the boat is in a sea-worthy condition, adequately manned and provided with sufficient serviceable life-saving equipment which shall consist of not less than —
 - (i) one life-jacket for each occupant of the boat;
 - (ii) one life-boat compass;
 - (iii) one electric lantern with spare battery or one oil lantern with filled oil container;
 - (iv) one life-boat sea anchor; and
 - (v) life-boat smoke signals or flares.
- (3) In addition to the life-saving equipment the village may require a boat travelling between islands to carry a serviceable radio-transceiver, and to communicate with the Tokelau radio station at designated times.
- (4) A person who travels between islands of Tokelau or Tokelau and any other place in a boat of Tokelau except in accordance with this rule commits an offence.

Elements of Offence

Rule 69(1)

- 1**
 - (i) a person (accused)
 - (ii) used a boat of Tokelau
 - (iii) for the purpose of travelling between islands of Tokelau and any other place
 - (iv) without the approval of the village.

Rule 69(2)

- 2**
 - (i) a person (accused)
 - (ii) travelled between the islands of Tokelau in a Tokelau boat
 - (iii) without complying with the requirements in paragraph (2).

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who travelled by boat without the approval of the Taupulega OR the accused travelled without following the requirements of paragraph (2).

This rule does not relate to any boat operated by or for the government of Tokelau.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 72 of the Crimes Rules – Official Corruption

Description

- (1) Any public officer commits an offence who corruptly —
 - (i) accepts or agrees to accept; or
 - (ii) obtains,
 - (iii) a bribe
 - (iv) in respect of any act done or to be done by that person in an official capacity.

- (2) Any person commits an offence who corruptly —
 - (i) gives; or
 - (ii) offers,
 - (iii) a bribe to another with intent to influence that other person in respect of any act done or to be done by that person in an official capacity.

- (3) A public officer who corruptly uses information gained in an official capacity to obtain a personal advantage or an advantage for any other person commits an offence.

Elements of Offence

Rule 72(1)

- (i) a person (accused)
- (ii) accepted or agreed to accept or obtained a bribe
- (iii) for an act or to be done in a official capacity.

Rule 72(2)

- (i) a person (accused)
- (ii) gave or offered a bribe to another
- (iii) with intent to influence
- (iv) an act done or to be done
- (v) done in official capacity.

Rule 72(3)

- (i) a person (accused)
- (ii) public officer
- (iii) corruptly used
- (iv) information gained in official capacity
- (v) to obtain a personal advantage or an advantage for another person.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that the accused was a public officer who took a bribe or used official information for private benefit; or that the accused was the person who bribed a public officer.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need not to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 73 of the Crimes Rules – Abuse of Office

Description

- (1) A public officer, acting under pretence of authority who fails to account for money duly levied commits an offence.
- (2) A public officer employed to execute an order of court who by neglect or omission misses the opportunity of executing the order commits an offence.

Elements of Offence

Rule 73(1)

- (i) a person (accused)
- (ii) a public officer obtained money from another in the course of their job
- (iii) failed to deal to deal with that money in accordance with the law.

Rule 73(2)

- (i) a person
- (ii) a public officer
- (iii) employed to carry out an order of the court
- (iv) missed the opportunity to execute the order because they failed to do something.

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that the accused was a public officer and failed to appropriately deal with money OR neglected to carry out an order of the court.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

Rule 74 of the Crimes Rules – Contempt

Description

- (1) A person who —
 - (i) within or close to the room or place where a court is sitting, intentionally misbehaves in a violent, threatening, or disrespectful manner, to the disturbance of the court, or to the intimidation of suitors or others resorting to the court;
 - (ii) intentionally insults a member of a court, or an officer of a court, during a sitting of a court,commits an offence and may be immediately apprehended by order of the court, and detained until the rising of the court.

- (2) A person who—
 - (i) intentionally refuses or neglects to appear before a court when summoned to do so;
 - (ii) attempts wrongfully to interfere with or influence a witness before court either before or after the witness has given evidence in connection with the case;
 - (iii) intentionally refuses or neglects to obey a court order;
 - (iv) refuses to be sworn or give evidence, or having been sworn refuses to answer a question that the person is lawfully required to answer,commits an offence.

Elements of Offence

Rule 74(1)(i)

- (i) a person (accused)
- (ii) intentionally
- (iii) misbehaved in a violent OR threatening OR disrespectful manner
- (iv) within or close to a place where a court is sitting
- (v) disturbed OR intimidated a person in court .

Commentary

(1) Identification

The prosecution should identify the person charged by clearly pointing out that person in court.

The prosecution must prove that it was the accused who misbehaved in a way set out in Rule 74(1)(i) of the Crimes Rules.

(2) Burden of proof

The prosecution must prove all the elements beyond reasonable doubt.

The defence does not need to prove anything, however if the defence establishes that there is a reasonable doubt, then the accused is not guilty and the case must be dismissed.

(3) Defences

If the prosecution has proved the elements of the offence beyond reasonable doubt, the accused may still have a defence.

The accused will have to establish the defence on the balance of probabilities (i.e more likely than not).

Maximum Sentence

3 penalty units or 3 months imprisonment.

APPENDICES

Tokelau Amendment Act 1986 (NZ)

An Act to amend the Tokelau Act 1948

1. Short Title and commencement

- (1) This Act cited as the Tokelau Amendment Act 1986, and shall together with and deemed part of the Tokelau Act (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of August 1986.

2. Interpretation

In this Part of this Act, unless the context otherwise requires, “Commissioner” means the Commissioner for Atafu or for Fakaofu or for Nukunonu appointed under section 5 of this Act.

PART 1 - CIVIL AND CRIMINAL JURISDICTION

3. High Court of New Zealand to be a Court of Tokelau

- (1) The High Court of New Zealand shall have all the jurisdiction which may be necessary to administer the law of Tokelau in the same manner in all respects as if that jurisdiction had been conferred upon that Court as a separate Court of justice in and for Tokelau.
- (2) The jurisdiction conferred on the High Court by subsection (1) of this section may, subject to the provisions of any

regulations made under the principal Act and to the provisions of any rules made by the General Fono, be exercised in the same manner in all respects as if Tokelau was for all purposes part of New Zealand.

- (3) In the exercise of the jurisdiction conferred on it by subsection (1) of this section, the High Court may sit either in Tokelau or in New Zealand, or in such other appropriate place as the Chief Justice may direct.

4. Appeals to Court of Appeal of New Zealand

- (1) An appeal shall lie to the Court of Appeal of New Zealand from any judgment, decree, or order of the High Court Zealand exercising the jurisdiction conferred on it by section 3 of this Act in the same manner as from any judgment, decree, or order of the High Court exercising its jurisdiction in respect of New Zealand.
- (2) The decision of the Court of Appeal on any appeal this section shall be final.

5. Appointment of Commissioners

- (1) The Governor-General, on the recommendation of the Minister of Foreign Affairs made after consultation by that Minister with the Elders of the island concerned, may appoint any Tokelauan to be -
 - (a) Commissioner for Atafu:
 - (b) Commissioner for Fakaofu:
 - (c) Commissioner for Nukunonu.
- (2) Subject to subsections (4) and (5) of this section, every Commissioner shall hold office for a term of 3 years.
- (3) Every Commissioner shall be eligible for reappointment from time to time.
- (4) The Governor-General may, if the Governor-General thinks fit, remove a Commissioner for inability or misbehaviour.

- (5) A Commissioner may resign the office of Commissioner by notice in writing addressed to the Administrator of Tokelau.
- (6) Every Commissioner may be paid out of the Tokelau General Account such salary or allowance and other allowances as may be fixed by the Administrator of Tokelau.

6. Incapacity or absence of Commissioner

- (1) If at any time a Commissioner is incapable by reason of sickness or otherwise of performing the office of Commissioner or is absent from the island for which that person is Commissioner, or where there is a vacancy in the office of Commissioner, any person performing in that island the functions of a Faipule may, without further authority or appointment, exercise any function, duty, or power of the Commissioner during that incapacity, absence, or vacancy.
- (2) The fact that any person performing the functions Faipule exercises any function, duty, or power a Commissioner shall be conclusive evidence of that person's authority to do so.

7. Jurisdiction of Commissioners

- (1) A Commissioner shall have jurisdiction -
 - (a) In actions for the recovery of any debt or damages not exceeding \$1,000 in amount:
 - (b) In actions for the recovery of chattels not exceed \$1,000 in value:
 - (c) In criminal proceedings for any offence punishable by fine only:
 - (d) In criminal proceedings for any offence punishable by imprisonment for not more than 1 year.

- (2) Subject to the provisions of any regulations made under the principal Act, a Commissioner shall, in the exercise of that Commissioner's criminal jurisdiction, have power to do any one or more of the following things:
- (a) To impose a term of imprisonment not exceeding 3 months:
 - (b) To impose a fine not exceeding \$150:
 - (c) To order the performance of community work:
 - (d) To place an offender under Police supervision:
 - (e) To give a public reprimand:
 - (f) To order the payment of compensation, not exceeding \$1,000 in amount, for the loss of or damage to any property of the victim of the offence:
 - (g) To order the restitution of any property to the victim of the offence.
- (3) Subject to subsection (3A) of this section, to any regulations made under the principal Act, and to any rules made by the General Fono under section 3A of the principal Acts, a Commissioner shall have jurisdiction only in respect of -
- (a) The island for which that Commissioner is appointed; and
 - (b) The territorial sea of Tokelau that surrounds that island.
- (3A) Notwithstanding anything in subsection (3) of this section, but subject to subsection (1) of this section, any Commissioner may exercise jurisdiction in respect of the following offences:
- (a) Any offence to which section 9 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 applies:
 - (b) Any offence against the law of Tokelau that is committed on board any vessel or aircraft, in any case where, at the time of the commission of the offence, the vessel or aircraft -

- (i) Is in the service of Tokelau; and
 - (ii) Is travelling to or from Tokelau or between any of the islands of Tokelau.
- (4) In any criminal proceedings, a Commissioner may, at any time during those proceedings, discuss the case, in the presence of the prosecutor, the defendant, and the defendant's counsel (if any), with the Taupulega of the island for which that Commissioner is appointed.
- (5) Where any such discussion is held, the Commissioner shall give –
 - (a) The prosecutor; and
 - (b) The defendant or the defendant's counsel (if any) - the opportunity to be heard and to tender evidence on any matter raised in that discussion.

8. Extension of Jurisdiction of Commissioners by agreement between the parties

If, but for the amount or value of the subject-matter claimed or in issue, a Commissioner would have jurisdiction under section 7(1)(a) or (b) of this Act, and the parties, by memorandum signed by them or by their respective agents, agree that a Commissioner shall have jurisdiction to hear and determine the proceedings, that Commissioner shall, notwithstanding anything in any enactment, have jurisdiction to hear and determine the proceedings.

9. Abandonment of part of claim to give Commissioner jurisdiction

- (1) Where a plaintiff has a cause of action for more than \$1,000 in respect of which a Commissioner would have jurisdiction if the amount were not more than \$1,000, the plaintiff may abandon the excess, and thereupon a Commissioner shall have jurisdiction to hear and determine the action.

- (2) Where any action, in which the plaintiff has abandoned part of the plaintiff's claim under this section, is heard by a Commissioner, the plaintiff shall not recover an amount exceeding \$1,000 together with costs thereon, and the judgment of the Commissioner in the action shall be in full discharge of all demands in respect of the cause of action, and judgment shall be entered accordingly.

10. Appeal from Commissioners

- (1) Subject to subsections (2) and (3) of this section, any party to any proceedings, whether civil or criminal, before a Commissioner may appeal from the judgment of the Commissioner to the High Court of New Zealand in the exercise of the jurisdiction conferred on it by section 3 of this Act -
 - (a) Subject to any other enactment, as if that judgment were a decision of a District Court in New Zealand; and
 - (b) In accordance with such procedures as a judge of the High Court determines are appropriate to the circumstances.
- (2) Any person who wishes to appeal pursuant to subsection (1) of this section shall, within 28 days after the date of the judgment of the Commissioner, give notice in writing to the Administrator of that person's intention to appeal.
- (3) No appeal shall lie pursuant to subsection (1) of this section in respect of any judgment of a Commissioner in any proceedings for any offence punishable by imprisonment for not more than 3 months or any offence punishable only by a fine of not more than \$150, but any party to any such proceedings may appeal from the judgment of the Commissioner to such body, and in accordance with such procedures, as are prescribed by regulations made under the principal Act.

Rule 16 of the Constitution of Tokelau

16 Human Rights

- (1) Individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights, and reflected in the International Covenant on Civil and Political Rights.
- (2) The rights of individuals in Tokelau shall be exercised having proper regard to the rights of other individuals and to the community to which the individual belongs.
- (3) If a person thinks that one of their human rights as provided in this Constitution has been denied or may be denied, that person may apply to the Council for the Ongoing Government for protection of that right.
- (4) If the Council of Ongoing Government agrees with the complaint, it may make any order it thinks appropriate for the protection of that right.
- (5) An order made under paragraph (4) may be enforced in the same manner as a judgment of the High Court.
- (6) The Council for the Ongoing Government has original and final authority to determine all matters of human rights.

[from the Constitution]

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration

Universal Declaration of Human Rights

constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Universal Declaration of Human Rights

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

International Covenant on Civil and Political Rights

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

International Covenant on Civil and Political Rights

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

International Covenant on Civil and Political Rights

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

....

Court Clerk

Each Commissioner has a court clerk. The clerk is appointed by the relevant Taupulega.

The court clerk must fully understand the role of the Commissioner and be a careful and reliable assistant to the Commissioner by being professional at all times.

For a clerk, being professional means:

- perform tasks promptly when asked;
- maintain a dignified personal appearance;
- maintain focus when there is work to be done; and
- display respectful behaviour in all public functions.

Duties

The duties of the court clerk are set out in the law and in the job description. They include:

Daily activities

- inform the Commissioner when the Police or other persons have commenced a case in the Commissioner's court.
- keep a record book in which he or she registers all cases commenced in the Commissioner's court and records every order made by the Commissioner.
- The book must have an alphabetical index (Rule 85(1) of the Crimes Rules).
- co-ordinate and maintain the Commissioner's appointments and sittings.
- ensure the courtroom is properly arranged for the trials, court papers are in order and the Commissioner is ready for each court sitting.

Court Clerk

In court,

- The court clerk must check that the defendant is the person whose full name was called out.
- In criminal cases, the court clerk must read out the charge, ensure that the accused understands the charge, and take the accused's plea (guilty or not guilty).
- If any witnesses are called in the case, the court clerk must administer the oath or affirmation.
- The court clerk must keep a record of arguments and evidence presented in court and properly manage the court filing system.
- The court clerk must take custody of any exhibits presented during the trial, and ensure that they are correctly labelled.

After judgment

- The court clerk should ensure that the Police accurately record any sentence imposed.
- In a criminal case where the accused has been convicted, the court clerk must inform that person of their right to appeal.

Minutes of Proceedings

All witness evidence must be recorded in writing and in Tokelauan.

One of the most important duties of the court clerk is to keep an accurate record of the proceedings.

Criminal Jurisdiction

Fakaofu Registry

Between : Police - Prosecution

-v-

And : *Mele Ioane* - Accused

Offences : 1. Fighting in Public (Rule 44).

2.

3.

Date Filed : 03 April 2008

Date	Item	Particulars
03 April 08	1	Receive charge (Notice to appear – F.2) from Police (initial by clerk)
“ “ “	2	Forward to Law Commissioner for fixture and signature. (initial by clerk)
04 April 08	3	Case is set down for mentioning on 18 April at 9.00 am. (initial by Law Commissioner)
04 April 08	4	Actioned and forward to LC for signature (initial by clerk)
05 April 08	5	Notice to appear taken by Constable -Service Officer. (initial by S.O.)
05 April 08	6	Affidavit of Service filed. (initial by clerk)
16 April 08	7	Police report, statement of fact, etc filed. (initial by clerk)
18 April 08	8	Case heard. Accused pleads Guilty and is convicted. Fine for \$20.00 to be paid within 14 days. (initial by LC)
22 April 08	9	\$20.00 paid under receipt # 237 (initial by court clerk)

Tokelau Court Register

Case No	Date filed	Prosecution	Accused	Offence & section	Decision	Receipt & Date
01/08	01/04/2008	Police	Mele Ioane	Fighting in Public (Rule 44).	Fine \$20.00 to be paid within 14 days.	\$20.00 - Rec # 237 22/04/08
02/08	14/04/08	Police	Malia Uga	Drunkenness (Rule 52)		
03/08	04/05/08	Police	Mete Sione	Assault (Rule 15)	Fine \$50.00 to be paid within 2 months	
04/08	18/05/08	Police	Viliamu Iona	Throwing stones (Rule 47)		

Custom as a Source of Law Rules 2004

1 Name

These are the Custom as a Source of Law Rules 2004.

2 Custom as a source of law

- (1) Where in a case before the High Court, any party to the proceedings or the Court raises a matter of Tokelau custom, the Court shall seek the advice of the General Fono on that question and shall adjourn its proceedings for 30 days or the earlier receipt of advice from the General Fono.
- (2) Where the High Court refers a matter to the General Fono it shall —
 - (i) briefly state the facts relevant to the matter;
 - (ii) enquire whether there is Tokelau custom on the matter; and
 - (iii) if there is Tokelau custom on the matter, request a description from the General Fono of the custom.
- (3) On receipt of a reference under this rule, the General Fono shall refer the matter to each Taupulega and shall, on the basis of the Taupulega responses, tender a formal response to the High Court.
- (4) Where within 30 days from the date of the request the General Fono gives information on a Tokelau custom, the Court shall determine issues concerning the matter of custom by reference to that information.
- (5) Where within 30 days from the date of the request the General Fono does not respond or responds that there is no relevant Tokelau custom, the High Court shall decide the matter on the basis that custom is not applicable.

Lawyers in the courts of Tokelau

The qualifications needed to practice law in the courts of Tokelau are stated in Rule 95 of the Crimes Rules.

As at 1 September 2008, the Council for the Ongoing Government has approved three lawyers:

Jovilisi Suveinakama

Lise Hope Suveinakama

Talei Janet Pasikale