

(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 not 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 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.

## ***Rule 78 of the Crimes Rules – Offence against Public Officers***

### *Description*

- (1) A person who without reasonable excuse fails to assist a constable when requested by a constable to do so commits an offence.
- (2) A person who intentionally resists, assaults or knowingly obstructs —
  - (i) a public officer in the performance of that officer's duty; or
  - (ii) a person acting in aid of any constable, commits an offence.

### *Elements of Offence*

#### Rule 78(1)

- (i) a person (accused)
- (ii) without reasonable excuse
- (iii) failed to assist a constable
- (iv) when requested.

#### Rule 78(2)

- (i) a person (accused)
- (ii) intentionally resisted or assaulted or knowingly obstructed
- (iii) a public officer in the performance of their duty OR a person acting in aid of a constable.

### *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 assist a constable or intentionally resisted or obstructed a constable or 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.