

(iii) Equality

Judges must conduct themselves and proceedings so as to ensure equality according to the law. This means judges should:

- carry out their duties with appropriate consideration for all persons (for example, parties, witnesses, court clerks) without discrimination;
- disapprove of improper conduct in the court. Improper conduct includes sexist, racist, or discriminatory language or actions which are prohibited by law.

(iv) Judicial independence

An independent judiciary is indispensable to justice under the law. Judges must make their decisions independently and free from influence by other people.

(v) Impartiality

Justice requires judges not only to be impartial, but also to appear to be impartial in their decision making.

Impartiality requires judges to not hear cases in which they have a personal involvement, either through the parties involved or through the subject of the case. Judges should never hear a case where close family members are parties.

If the Commissioner is the subject of a case, the matter must be heard by the High Court (Rule 88 of the Crimes Rules).

(vi) Judicial demeanour

At all times judges should maintain firm control of court processes and ensure all people in the court are treated with courtesy and respect.

### ***III JURISDICTION***

Jurisdiction means the power to hear and determine a particular matter. Jurisdiction is given by a law. Courts may act only within the jurisdiction given by the law. If a court acts outside its jurisdiction, those acts are invalid.

There are three main areas of jurisdiction for the Commissioners:

1. Territorial
2. Criminal
3. Civil.

#### ***1 Territorial***

Territorial jurisdiction refers to the geographic area within which a court has the power to hear a case. Tokelau law applies on the islands of Tokelau and to the territorial sea of Tokelau that surrounds those islands (Section 7(3)(b) of the Tokelau Amendment Act 1986). The Commissioner can hear a case arising from conduct within the village, and in the sea within 12 miles of the village.

The Commissioner can also hear any breach of the Crimes Rules committed on board any vessel or aircraft that is:

- in the service of Tokelau; and
- travelling to or from Tokelau, or between any of the islands of Tokelau (Section 7(3) of the Tokelau Amendment Act 1986).

#### ***2 Criminal Jurisdiction***

This involves the types of offences that the Commissioner can deal with and also with the penalties that can be imposed.

## Jurisdiction

No person can be prosecuted for an act or omission that is not an offence under the Crimes Rules or other laws.

A Commissioner has jurisdiction:

- for any offence punishable by fine alone;
- for any offence punishable by imprisonment for not more than one year (Section 10 of the Tokelau Amendment Act 1970).

Offences for which the maximum penalty does not exceed 3 penalty units or 3 months imprisonment must be tried before a Commissioner (Section 7 of the Tokelau Amendment Act 1986; Rule 112(5) of the Crimes Rules). The maximum penalties for offences are set out in Schedule 2 of the Crimes Rules.

If the maximum penalty is more than 3 penalty units or more than 3 months imprisonment, the High Court also has jurisdiction.

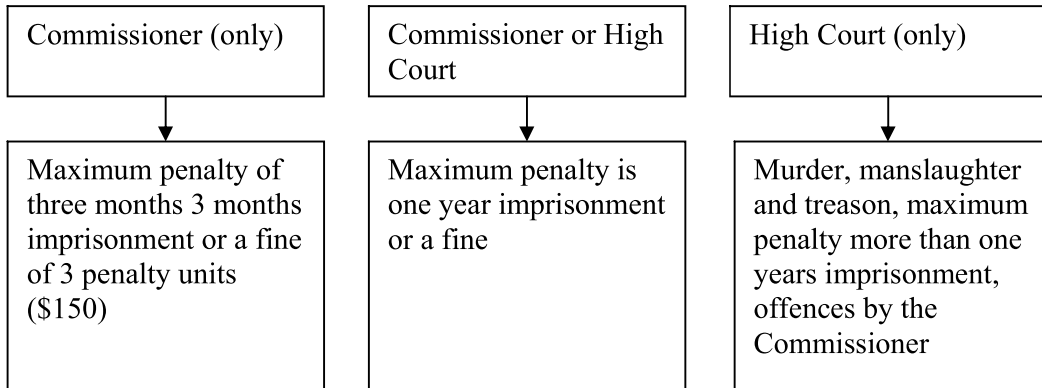
The maximum penalty a Commissioner can impose in any case is a fine of 3 penalty units (\$150) or 3 months imprisonment. Where the Crimes Rules permit a higher penalty, only the High Court may impose that higher penalty.

The High Court alone has jurisdiction to hear murder, manslaughter and treason charges, and any case in which a Commissioner is a party.

## Jurisdiction

The criminal jurisdiction of the courts in Tokelau is shown in this diagram.

### *Criminal Jurisdiction*

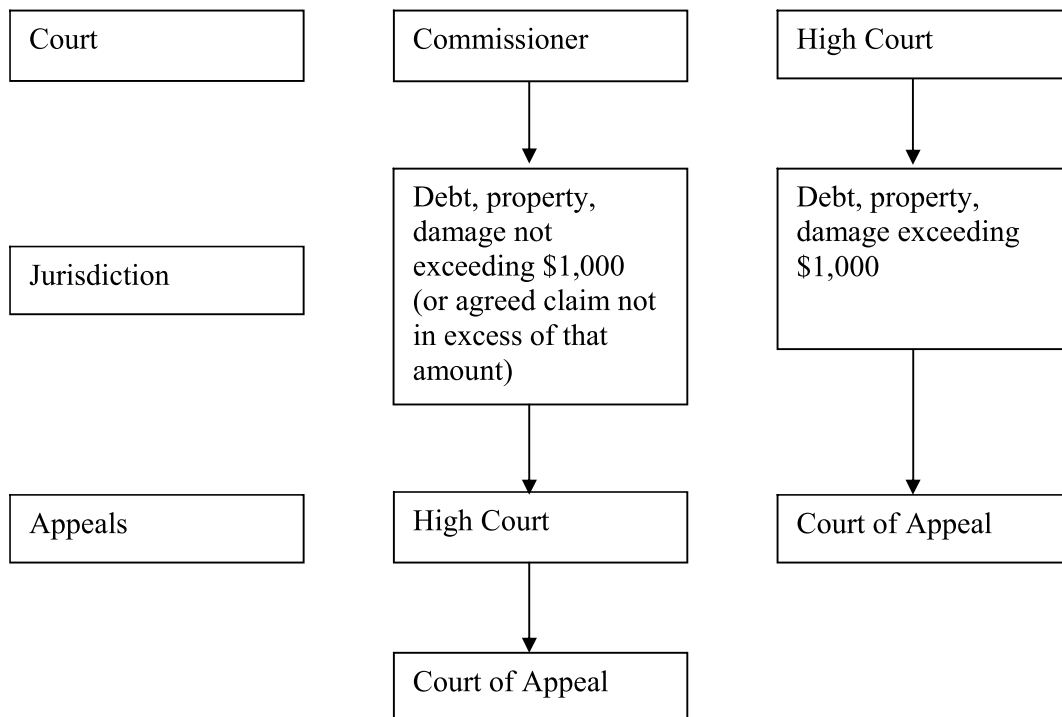


### 3 *Civil Jurisdiction*

This jurisdiction concerns disputes between individuals, and by individuals and the government which do not involve penalties. These are usually demands for money. Commissioners have power to hear claims for the recovery of any debt, property or damage not exceeding \$1,000 (Section 10 of the Tokelau Amendment Act; Rule 142 of the Crimes Rules).

Claims in excess of \$1,000 must be heard in the High Court. Where a claim would otherwise exceed \$1,000, parties may agree to reduce the amount of money sought to \$1,000 so that the case can be heard by a Commissioner.

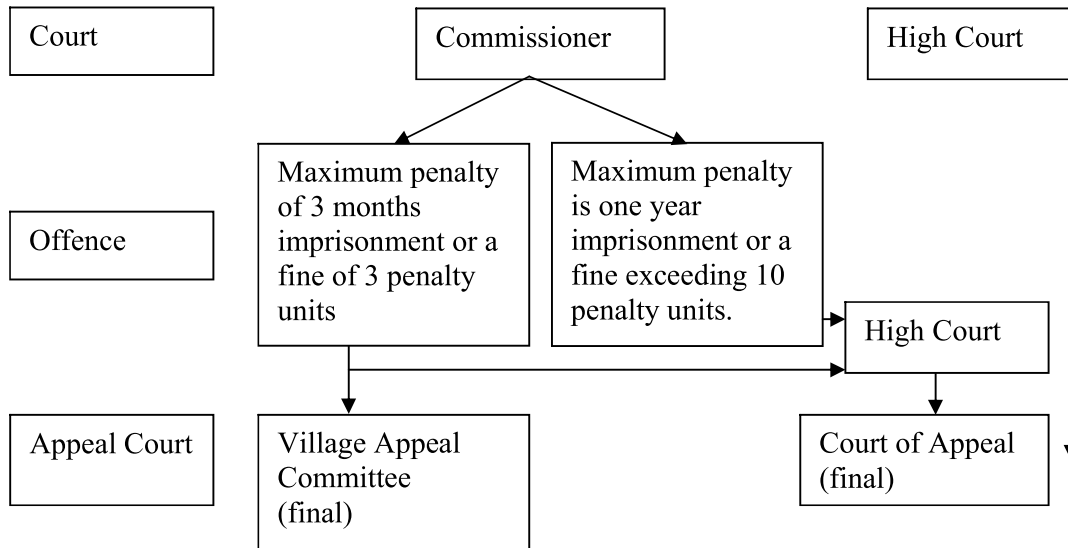
#### *Civil Jurisdiction*



## 4 Appeals

### (i) Criminal appeals

#### *Criminal Appeals*



#### Appeal Committee

The Appeal Committee of each village may hear appeals from some judgments of Commissioners (Rule 140(1) of the Crimes Rules). Offences punishable by imprisonment for not more than 3 months or only by a fine may be appealed to the village Appeal Committee. There is no appeal from the judgments of the Appeal Committee.

#### High Court

A person may appeal to the High Court instead of the village Appeal Committee. For offences for which the maximum penalty is more than 3 months imprisonment the appeal from a Commissioner's judgment is to the High Court.

## Court of Appeal

Judgments of the High Court may be appealed to the Court of Appeal.

### (ii) Civil Appeals

Civil judgments of the Commissioner can be appealed to the High Court. There is no appeal to the Village Appeal Committee. Judgments of the High Court can be appealed to the Court of Appeal.