

## ***VI PREPARING FOR COURT PROCEEDINGS***

Before going to court the Commissioner should:

- Ensure that the clerk has prepared the case list for the day;
- Try to have a Police officer present.

### ***1 Bail***

#### **(i) General**

Bail is extremely important as it deals with the right of an individual to liberty. This right is contained in the Universal Declaration of Human Rights, and incorporated into Tokelau law by Rule 16 of the Constitution.

No person shall be arrested without a warrant, except where the Rules expressly permit that to occur. An accused may be granted bail at any stage of the proceedings (Rule 122(1) of the Crimes Rules).

Upon arrest of a person under warrant, the person must be brought before the court. Upon being brought into court, the court must:

- Commit the accused to the custody of the apprehending police officer;
- Commit to other safe custody as the court thinks fit;
- Admit to bail on such conditions as the court orders.

An accused must not be committed to custody for more than seven days unless the circumstances make it necessary or proper that the accused should be held in custody before trial (Rule 121(2) of the Crimes Rules). The court may order custody for a longer period but no order shall be for a longer period but no order shall be for more than 30 days. There is no limit on the number of orders that may be made (Rule 121(4) of the Crimes Rules).

## (ii) Bail on Appeal

Occasionally, an individual convicted of an offence will appeal the conviction and the court will have to deal with bail. The court may:

- Order that the accused should be released on bail, with or without sureties till the appeal is heard;
- Deny bail (Rule 121(1) of the Crimes Rules).

## (iii) Relevant factors for bail:

There are a number of factors relevant to whether bail should be granted. These include:

- the protection of the rights of all persons to their personal liberty contained in the Universal Declaration of Human Rights.
- whether the person will try to leave Tokelau while on bail;
- the nature, circumstances and seriousness of the offence charged;
- the weight of the evidence against the accused, bearing in mind the presumption of innocence;
- the history and circumstances of the accused, including age, physical and mental condition, past conduct, community ties;
- whether at the time of the alleged offence, the accused was subject to a sentence or awaiting trial;
- whether the accused will interfere with witnesses or the Police investigation;
- the possibility of further offences;
- the danger posed by the accused to the alleged victim;
- the needs of the accused's family.

## **2 *Victims***

The victim of a crime is usually the main witness in criminal proceedings relating to the crime. There are no specific rules that deal with victims; judges are expected to treat them with courtesy and compassion.

## **3 *Assistance with the law***

The Judge decides who may speak in court. A person who wants another person to speak for them (for instance, a young offender may wish a parent to speak for them) or who wants assistance with the law, must ask the court. The matter is dealt with in Rule 94 of the Crimes Rules.

Requests for assistance with the law are referred to the Council for the Ongoing Government which will decide in accordance with Rule 94(3) and (4).

If a Commissioner needs special assistance with the law, the Commissioner must make a request to the Council for the Ongoing Government under Rule 96 of the Crimes Rules.

**4 The following diagram shows how a case comes to the Commissioner:**

