

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).

VII FIRST APPEARANCE

1 General

At the first hearing, the judge will be concerned with some or all of the following:

- whether the matter is within the court's jurisdiction;
- whether the facts alleged support the validity of the charge made;
- non-appearance, summons and warrants;
- legal representation;
- plea;
- remand in custody;
- bail;
- adjournments.

Once a charge has been laid, the court can ensure the attendance of the accused, and other witnesses through:

- a summons
- a warrant.

A summons is a formal means of ensuring the attendance of people, particularly those who will not appear voluntarily, before the court. If a court is satisfied that a person is able to give or produce evidence relevant to a case, that person may be required to attend.

If a witness (including the accused) does not appear, the court may issue a warrant for his or her arrest (Rule 102(1) of the Crimes Rules).

2 Taking a plea

After the court is sure the accused understands the charge, the accused is asked to plead guilty or not guilty.

Taking a plea

The accused should be asked whether the charge is true or not. If the accused says it is true:

- Ask the prosecution to read a brief summary of the facts;
- Tell the accused to listen very carefully to this and explain that he or she will be asked at the end whether the facts are true;
- After the facts have been stated, ask the accused whether the facts are true or not.

Note that a plea of guilt is a plea to the elements of the offence and is not necessarily an acceptance of the Police summary of the facts. If the accused only disputes facts that are not relevant to the elements of the offence, the court should enter a plea of guilty. If the disputed facts are relevant to the elements, the court must enter a plea of not guilty for the accused.

If the accused denies the charge, or refuses to plead, the court must enter a plea of not guilty.

(i) Guilty Plea- Next Steps

Once a guilty plea has been entered, the court can convict the accused. The court may also impose a sentence if it considers doing so is appropriate. No person under 16 years shall be given a prison sentence (Rule 136(3) of the Crimes Rules). Further, a person should never be sentenced without first being convicted.

(ii) Not Guilty – Next Steps

If the accused pleads not guilty, a hearing must follow. The hearing may be held immediately, or adjourned until a later date (Rule 91 of the Crimes Rules). If the accused is found guilty, conviction and sentencing may follow.